Conclusion—

Use of Lands

By William L. Paul, Sr.

The latest case from the US Supreme Court is that commonly called the WALPAI INDIANS vs SANTA FE RR CO. In that case, the railroad claimed certain lands in northern Arizona under a Congressional land grant made in 1866 in aid of railroad construction (314 US 339 in 1941). The lands were claimed by the Walapai Tribe as part of its ancestral homeland. The Supreme Court, reversing the decision of two lower courts, held that the railroad was not entitled to any land which had been occupied by the Walapai Tribe before the grant to the railroad and had not been voluntarily relinquished by the Indians.

The Indians have prevailed even against the Secretary of the Interior, (LANE vs PUEBLA OF SANTA ROSA(249 US 110 in 1919).

In one case, Attorney General Stone issued an opinion holding that the Secretary of the Interior had no right to dispose of such mineral within Indian lands in the manner proposed, for the reason that the minerals in question belongs to the Indians, whose property rights were "complete and exclusive." (34 Op. Atty. Gen. 181).

In the case of the Saxman village near Ketchikan, Alaska, where 150 of the Indians were living on land one mile square taken up by the Presbyterian Church for them as mission land, a cannery plastered "soldiers' script" on half the water front and over the protest of this speaker, the local agent, sanctioned the homestead application, which the Washington, D.C. office promptly nullified. The action of the local federal agent is still typical of government whether the State or the United Stated. It takes money to fight entrenched power and the Eskimos and Indians don't have money.

All governments have so disregarded the native original title, that even departments of the federal government blandly assume that all the land (in this stance) on the Arctic Slope of the Brooks Range is public land. Therefore we should print an accepted definition of what constitues public land. I take this from; sec. 2243.2-1 (c):

"The term 'public land' means vacant, unappropriated, and unreserved public lands in Alaska."

In several of the cases cited by me, the claim was that of an Indian not protected by a treaty, statute, or executive order. The case of the Walapai Indians is outstanding, and it played a controlling part in the latest case, namely, the TLINGIT AND HAIDA INDIANS OF ALASKA vs USA (177 Fed. Supp. 432) decided on Oct. 7, 1959.

This is a case where the Court of Claims upheld the original Indian title antedating the purchase of Alaska by the United States. They, the Indians, numbered about 5,000. The area is about 500 miles by 200 miles or 4,000 acres per capita. The court said, the plaintiffs were in actual occupation, by which you have to understand that this occupation is not by "visible signs," which is the stand applied to a white man, but Indian occupation as defined by John Marshall in the Mitchell case.

I haven't touched on the impact on the finances of the State of Alaska or its University. However, you can assume that the administration of the Eskimos will be reasonable because in their now enlightened understanding of their owner ship, they know that their income will depend on the exploitation by capital and so the terms will be such as to induce capital to come in. Certainly, the terms won't be any worse than that now charged by the USA, and probably will be more reasonable both in conditions of development and fees.