Wetherby, *supra*, Indian reservations are not legally appropriated or severed from the public lands when held by the common Indian title or right of occupancy. If such Indian reservations were legally appropriated and severed from the public domain then there was scarcely an acre of public land in either of the States of Indiana, Illinois, Michigan, Wisconsin, Missouri, Iowa, Minnesota, or any other State heretofore admitted into the Union, because almost the entire body of lands in those States was embraced in Indian reservations prior to their admission.

Even the Military reservation, out of which grew the said Wilcox-Jackson suit, was established on a former Indian reservation. So, then, one of two things is true: either the lands embraced in Indian reservations while the fee-simple title was in the United States were public lands, or else there were no public lands in any State admitted into the Union.

Again, the L. L. and G. R. R. case (92 U. S., 733) has been referred to as in point, but an examination of that case will show that it has no bearing whatever. That grant (12 Stats., 772) provided that if, at the time the line of said road is definitely located, it shall appear that the United States has sold any of the granted lands, or that the same has been reserved for any purpose whatever, then other lands in lieu thereof could be selected. When this grant was made the Osage Indian title had not been extinguished, and before the road was definitely located other disposition had been made of the lands, so the railroad company had to accept lieu lands, as the grant provided.

Now, with this brief statement of the facts and the law, I respectfully submit the case, with the hope that it will receive such consideration as its merits require.

SAMUEL J. CRAWFORD,
Attorney for the State.

WASHINGTON, D. C., *November 24th*, 1886.