
**IN THE COURT OF CLAIMS OF THE
UNITED STATES**

No. L-51.

THE SEMINOLE NATION, PLAINTIFF,
VS.
THE UNITED STATES, DEFENDANT.

**PLAINTIFF'S REQUEST FOR FINDINGS OF
FACT AND BRIEF.**

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REQUEST FOR FINDINGS OF FACT.

The plaintiff, the Seminole Nation of Indians, considering the facts hereinafter set forth to be proven and deeming them material to the due presentation of this case in the special findings of fact, requests the court to find the same as follows:

FINDING I.

This suit is brought under a special jurisdictional act, approved May 20th, 1924 (43 Stat. 133), which reads as follows:

That jurisdiction be, and is hereby, conferred upon the Court of Claims, notwithstanding the lapse of time or statutes of limitation, to hear, examine, and adjudicate and render judgment in any and all legal and equitable claims arising under or growing out of any treaty or agreement between the United States and the Seminole Indian Nation or Tribe, or arising under or growing out of any Act of Congress in relation to Indian Affairs, which said Seminole Nation or Tribe may have against the United States, which claims have not heretofore been determined and adjudicated on their merits by the Court of Claims or the Supreme Court of the United States.

Sec. 2. Any and all claims against the United States within the purview of this Act shall be forever barred unless suit be instituted or petition filed as herein provided in the Court of Claims within five years from the date of approval of this Act, and such suit shall make the Seminole Nation party plaintiff and the United States party defendant. The petition shall be verified by the attorney or attorneys employed to prosecute such claim or claims under contract with the Seminoles approved by the Commissioner of Indian Affairs and the Secretary of the Interior. Official letters, papers, documents, and records, or certified copies thereof, may be used in evidence, and the departments of the Government shall give access to the attorney or attorneys of said Indian nation to such treaties, papers, correspondence, or records as may be needed by the attorney or attorneys of said Indian nation to such treaties, papers, correspondence, or records as may

be needed by the attorney or attorneys of said Indian nation.

Sec. 3. In said suit the court shall also hear, examine, consider, and adjudicate any claims which the United States may have against said Indian nation, but any payment which may have been made by the United States upon any claim against the United States shall not operate as an estoppel, but may be pleaded as an offset in such suit.

Sec. 4. That from the decision of the Court of Claims in any suit prosecuted under the authority of this Act, an appeal may be taken by either party as in other cases to the Supreme Court of the United States.

Sec. 5. That upon the final determination of any suit instituted under this Act, the Court of Claims shall decree such amount or amounts as it may find reasonable to be paid the attorney or attorneys so employed by said Indian Nation for the services and expenses of said attorneys rendered or incurred prior or subsequent to the date of approval of this Act: Provided, That in no case shall the aggregate amounts decreed by said Court of Claims for fees be in excess of the amount or amounts stipulated in the contract of employment, or in excess of a sum equal to 10 per centum of the amount of recovery against the United States.

Sec. 6. The Court of Claims shall have full authority by proper orders and process to bring in and make parties to such suit any or all persons deemed by it necessary or proper to the final determination of the matters in controversy.

Sec. 7. A copy of the petition shall, in such case, be served upon the Attorney General of the United States, and he, or some attorney from the Department of Justice to be designated by him, is hereby directed to appear and defend the interests of the United States in such case.

That said Act was later modified by joint resolution of May 19, 1926 (44 Stat. 568), permitting plaintiff to bring separate suits on one or more causes of action, and by the Act of Congress, approved February 19th, 1929 (45 Stat. 1229), the time for filing such suits was extended to June 30th, 1930.

FINDING II.

A petition under the provisions of this act was filed February 24th, 1930, in answer to which the defendant, on April 5th, 1930, filed a general traverse. By leave of court first obtained, plaintiff, on September 19th, 1934, filed an amended petition, to which defendant filed a general traverse.

FINDING III.

Under the Seminole Treaty of August 7, 1856, 11 Stat. 699, the United States was obligated to disburse for the Seminole Nation in the manner and amounts as follows:

(a)

Article 8.

\$3,000. yearly for schools	for 10 years.....	\$30,000.00
2,000. " " agricultural assist.	" " "	20,000.00
2,200. " " support of blacksmiths " "		22,000.00

Article 9.

20,000. for improvements	20,000.00	92,000.00
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Although said amounts were appropriated for the items above set forth, yet the actual disbursements made for the above obligations were as follows (G. A. O. Rep., Stat. No. 10, pages 143-145):

Schools (Education)	3,000.00
Agricultural aid	2,278.00
Support of blacksmiths	5,158.58
Payment for improvements	18,210.00
	<hr/> 28,646.58
Balance due on above treaty obligations	63,353.42

Therefore, the Seminole Nation has a just claim against the United States under the above Treaty of 1856 obligations in the sum of \$63,353.42.

(b)

That under said Article 8 of the Treaty of August 7, 1856, 11 Stat. 699, the United States was obligated to pay 5 per centum interest per annum on a \$250,000.00 fund, which was to be enlarged to a \$500,000 fund upon the emigration of the Seminoles remaining in Florida. That in the year 1859 payments of \$25,000 per annum

That there was actually paid under the above treaty obligation the following amounts:

G. A. O. Rep., page	Fiscal Year	Amount
186	1868	568.85
"	1869	4,966.08
188	1870	2,431.80
"	1871	2,375.92
"	1872	2,233.60
189	1873	2,789.17
"	1874	1,537.38

Total 16,902.80

That there is due the Seminole Nation under the above treaty obligation a total of \$90,597.20.

(b) Article 3 of said Treaty of March 21, 1866, provided that \$15,000.00 shall be paid by the United States for the erection of a mill suitable to accommodate the Seminole Nation. That the defendant did not so erect said mill in accordance with the requirements of said treaty obligation, and there is due the Seminole Nation under this treaty obligation the sum of \$15,000.00.

(c) Article 6 of said Treaty of March 21, 1866, provides that the United States expend \$10,000 for the construction of agency buildings upon the new Seminole reservation. That although said amount was twice appropriated by Congress

for said purpose, yet said amount was not so expended by defendant for said purpose (G. A. O. Rep., page 20). That there is due plaintiff under this treaty obligation the sum of \$10,000.00.

Total claims under this finding:

(a)	\$ 90,597.20
(b)	15,000.00
(c)	10,000.00

Total 115,597.20

FINDING V.

That Section 19 of the Curtis Act, approved June 28, 1898, 30 Stat. 495, provided that no payments of any moneys on any account whatever shall thereafter be made by the United States to any of the tribal governments of the Five Civilized Tribes, or to any officer thereof, for disbursement. That said governments and officers had ceased to be representative officers of the tribe as a whole, but were using the common property of the tribe to further their own private ends; that said Section 19 was enacted to correct this condition of affairs, and for the express purpose of insuring to all members of the tribe an equal share in the distribution of the common property of the tribe; and that the citizens of the Seminole Nation were entitled to the protection of said Section 19.

That notwithstanding the plain provision and the purpose of the enactment of said Section 19,

the Secretary of the Interior, in violation of said Section 19 and in disregard of the rights of the Seminole citizens thereunder, illegally paid the following amounts to said Seminole Treasurer:

G. A. O. Rep., page	Fiscal Year	Amounts	Totals
161	1899	25,000.00	
197		3,500.00	
216		75,000.00	103,500.00
162	1900	25,000.00	
198		3,500.00	
216		75,000.00	
283		288.00	103,788.00
162	1901	25,000.00	
198		3,500.00	
216		74,933.75	103,433.75
162	1902	25,000.00	
198		3,500.00	
217		75,000.00	103,500.00
163	1903	25,000.00	
199		3,500.00	
217		75,000.00	
283		7.71	103,507.71
163	1904	25,000.00	
199		3,500.00	
217		75,000.00	103,500.00

163	1905	25,000.00	
199		3,500.00	
218		74,552.00	103,052.00
164	1906	25,000.00	
200		3,500.00	
218		75,000.00	103,500.00
164	1907	12,500.00	
200		1,750.00	
218		22,671.12	36,921.12

Total 864,702.58

Therefore, the defendant is liable to plaintiff for the violation of said Section 19 in the sum of \$864,702.58.

FINDING VI.

That during the period from July 1, 1912 (fiscal year 1913), to date, the following amounts were paid by the Secretary of the Interior, from the tribal funds of the Seminole Nation, for purposes herein set forth, which payments were not specifically appropriated by Congress from such funds:

Cash payments in lieu of allotments:

Seminole of Okla. Fund (G. A. O. Rep.,
p. 315) 1918 \$ 120.00

Expenses of making per capita payments:

Ind. Mon. Pro. Labor (G. A. O. Rep., p.
284) 1914 1,498.99
Int. on Sem. Mon. on dep. in Banks (G. A.
O. Rep., p. 291) 1915 3,023.11

Therefore, the Seminole Nation is due the amount of \$51,460.08 for said illegal disbursements from its tribal trust funds.

(c) Congress specifically limited disbursements from Seminole trust funds for education for the fiscal years 1929 and 1930 to a total of \$33,000.00 each year, in the Acts of March 7, 1928 (45 Stat. 200, 216), and March 4, 1929 (45 Stat. 1562, 1577), respectively. That the Secretary of the Interior paid out of said Seminole funds for education without authority of law during said fiscal years 1929 and 1930, the following amounts over and above the amounts authorized:

G. A. O. Rep., page	Fund	Amounts disbursed	
		1929	1930
289, 290—Ind. Mon. Pro. Labor (Seminoles)		269.30	1,337.87
294 —Int. on Sem. School Fund		2,100.00	3,470.83
295 —Proc. of Land, etc., FCT (Sem.).....		32,581.66	117.19
299, 300—Seminole School Fund		1.29	30,031.82
Total		34,952.25	34,957.71
Amounts authorized		33,000.00	33,000.00
Excess disbursements		1,952.25	1,957.71

Therefore, the Seminole Nation is due the amounts of 1,952.25 and 1,957.71, or a total of \$3,909.96, for excess disbursements from its funds for education during the fiscal years 1929 and 1930.

(d) Included in payments for "Education" set forth above are disbursements for insurance

and for construction, and repair of buildings. Payments from Seminole trust funds for said purposes are doubly illegal in that they are a part of the amounts illegally disbursed for education, and as separate items of disbursement they are illegal, since they were not specifically appropriated by Congress. Said payments are set forth as follows (Reply of G. A. O. to Ptf's Req., filed May 28, 1934):

Fiscal Year	Fund	Insurance	Construction and repair of bldgs.
1913	Indian Moneys, Proc. of Labor		78.20
1914	" "		62.99
1915	" "		195.92
1916	" "		147.73
1920	" "	150.00	
1921	" "	107.10	
1922	" "	107.10	
1924	" "	332.30	
1923	Seminole School Fund	104.20	
1925	"	141.80	
Totals		942.50	484.84

(e) However, certain amounts disbursed from Seminole tribal funds for insurance and for construction and repair of buildings were *not* included in the amounts claimed as illegal disbursements for education in Finding VII (a), (b) and (c). Therefore, the Seminole Nation claims the following amounts as payments from its trust funds (Reply of G. A. O. to Ptf's Req., filed May 28, 1934) for above items made by the Secretary of the Interior without specific appropriation by

Congress, which claim is made as independent of the facts set forth in Finding VII (d):

Fiscal Year	Fund	Insurance	Construction and Repair of buildings
1913	Interest on Seminole School Fund		761.14
1914	" "		1,089.09
1915	" "	443.70	1,461.31
1916	" "		593.50
Total		443.70	3,905.04

Therefore, a total of \$4,348.74 is due the Seminole Nation for the above illegal payments from its tribal funds made without specific appropriation by Congress.

Total claims under this finding:

(a)	154,455.30
(b)	51,460.08
(c)	3,909.96
(e)	4,348.74

Total..... 214,174.08

FINDING VIII.

Adjustment of Erroneous Bookkeeping Entries.

The balanced statements of the Seminole funds, which are set forth in the General Accounting Office Report filed herein show that errors in bookkeeping were made by the officers of the United States in the handling of said funds—some in favor of the Seminole Nation, and some in favor of the United States. Said report shows

that certain moneys were erroneously treated as Seminole receipts and were deposited in Seminole funds, which properly belonged to funds of other Indian tribes, etc. (debit side of balanced statements). On the other hand, said report shows that moneys which should have been properly deposited in Seminole funds were erroneously transferred to, or deposited in, the funds of other Indian tribes, etc.; also that the Seminole funds were erroneously charged with disbursements made for the sole benefit of other Indian tribes, and with unaccounted for balances of Seminole moneys advanced to disbursing officers of the United States for disbursement to the Seminoles, which were never so disbursed (credit side of balanced statements). Because of said errors of defendant, there is due the Seminole Nation the difference between the total amounts of the erroneous debits and credits, or the amount of \$178,533.42.

Said erroneous entries are explained in detail in the Report of the General Accounting Office filed herein, and are set forth in detail as follows:

Statement No.	Fund	Gen. Acctg. Pages	Off. Rep. Items	Debit	Credit
2	Fulfilling Treaties with Florida Indians or Seminoles	24, 25	(j)....	10	
2	" " "	24, 26	(r)....		102.91
"	" " "	"	"		6,592.56
"	" " "	"	"		1,465.00
2	" " "	25, 26	(t)....		6,050.00
2	" " "	"	(u)....		4,200.00
2	" " "	"	(w)....		3,905.63*
2	" " "	"	(x)....		929.93
"	" " "	"	"		1,022.49*
"	" " "	"	"		30.18
2	" " "	25, 27	(z)....		15,759.10
"	" " "	"	"		8,095.41*
"	" " "	"	"		399.25
"	" " "	"	"		47,282.03
"	" " "	"	"		19,975.65*
"	" " "	"	"		1,068.67
5	Removal and Subsistence of Seminoles now in Florida	74, 75	(f)....		156.67
"	" " "	"	"		30,000.00
"	" " "	"	"		30,000.00
"	" " "	"	(h)....		24.87*
"	" " "	"	"		3.72*
18	" " "	268	(d)....		27.50
"	" " "	"	"		419.87
"	" " "	"	(e)....		678.75
"	" " "	"	"		81.17
"	" " "	268, 269	(f)....		226.25
"	" " "	"	"		27.05
20	Indian Moneys, Proceeds of Labor (Seminoles)	272, 273	(b)....	1.00	
"	" " "	"	(f)....		119.00
"	" " "	"	(g)....		.02
24	Interest collected on moneys belonging to the Seminole Nation	278	(c)....		82.58
25	Interest on Seminole Moneys on Deposit in Banks	279	(b)....	191.74	
Totals		192.84			178,726.26
Less Debits					192.84
Balance due Seminole Nation on erroneous bookkeeping entries					178,533.42

*We claim less under these items than the figures shown by the General Accounting Office's Report. Explanations of these differences are set forth in our brief under the sub-head "Adjustment of Erroneous Bookkeeping Entries."

FINDING IX.

(a) Interest at the rate of 4 per centum per annum from February 12, 1929, to date of judgment is due the Seminole Nation under the provisions of the Act of Congress, approved February 12, 1929, 45 Stat. 1164, on certain of the amounts heretofore claimed and set forth specifically as follows:

Finding III, (a)	\$ 63,353.42
" IV, (b)	15,000.00
" " (c)	10,000.00
" V,	288.00
" "	7.71 295.71
<hr/>	
" VI,	4,981.25
" VII, (b)	51,460.08
" " (c)	3,909.96*
" VIII,	178,533.42
<hr/>	
Total	327,533.84

*Interest on \$1,957.71 of this amount would begin to run from 1930, when said amount was illegally disbursed.

(b) Interest at the rate of 5 per centum per annum is due the Seminole Nation from the dates of the illegal disbursements to date of judgment on the following illegal payments from Seminole trust funds, which by law creating said funds draw interest at said rate of 5 per centum per annum:

Finding VI,	.....	1918	.....	120.00
" VII, (a)	..	1920	.....	25,744.50
" " "	..	1921	.....	6701.06
" " " "	..	"	.....	490.22
				7,191.28
				<hr/>
" " "	..	1922	.....	17,743.43
" " "	..	1923	.....	16,679.86
" " "	..	1924	.....	247.94
" " "	..	1925	.....	6,504.72
" " "	..	1926	.....	12,809.52
" " "	..	1927	.....	17,815.59
" " "	..	1928	.....	19,685.35
" " "	..	1929	.....	1.29
" " "	..	1930	.....	30,031.82

FINDING X.

There is claimed by the Seminole Nation in this suit a total of \$1,746,013.23, as set forth as follows:

Finding III, (a)	.....	\$ 63,353.42	
(b)	.....	304,551.28	\$367,904.70
			<hr/>
Finding IV, (a)	.....	90,597.20	
(b)	.....	15,000.00	
(c)	.....	10,000.00	115,597.20
			<hr/>
Finding V,	.....		864,702.58
Finding VI,	.....		5,101.25
Finding VII, (a)	.....	154,455.30	
(b)	.....	51,460.08	
(c)	.....	3,909.96	
(e)	.....	4,348.74	214,174.08
			<hr/>
Finding VIII,	.....		178,533.42
			<hr/>
Total			1,746,013.23

Interest is also claimed to date of judgment on the amounts and at the rates set forth in Finding IX.

BRIEF.

This claim of the Seminole Nation is one of accounting, and is similar to the claim presented by the Creek Nation in Case H-510, decided by this court on December 4, 1933. A general accounting of all Seminole funds has been made by the General Accounting Office, and the figures set forth in the plaintiff's requested findings are taken from this report.

THE QUESTIONS PRESENTED.

The questions of law presented fall into two general classes:

1. The *failure* of the United States to make payments in the amounts and manner provided by its treaties and agreements with the Seminole Nation.

2. The *illegal disbursement* of Seminole trust funds made without authority of law by the Secretary of the Interior, which funds were entrusted by Congress to his custody.

I.

The Failure of the United States to Make Payments in the Amounts and Manner Provided by Its Treaties and Agreements with the Seminole Nation.

Indian treaties, having the same dignity as Acts of Congress, are the supreme laws of the

United States, and the right of an Indian tribe to demand of the United States the consideration called for by the express terms of these treaties is too fundamental to require discussion. We need only to state the principle.

The figures of the Report of the General Accounting Office, showing disbursements of amounts for treaty and agreement obligations, have been checked against the total amount of the treaty obligation, and when "weighed in the balance and found wanting" claim is made herein for the underpayments. These claims are specifically set forth in Findings III and IV, and will be thoroughly discussed in the order in which they appear therein.

CLAIMS UNDER TREATY OF AUGUST 7, 1856.

In Finding III (a) plaintiff claims the amount of \$63,353.42 due from defendant for the nonfulfillment of Articles 8 and 9 of the Treaty of August 7, 1856, 11 Stat. 699, between the United States and the Seminole Nation.

Article 8 of this treaty provides in part as follows:

"In consideration of such release, discharge and obligation, * * * The United States do therefore agree and stipulate as follows, viz.: To pay to the Seminoles now west, * * * to provide annually for ten years the sum of three thousand dollars for the support of schools; two thousand dollars

for agricultural assistance; and two thousand two hundred dollars for the support of smiths and smith shops among them, said sums to be applied to these objects in such manner as the President shall direct. * * *

Article 9 of this treaty provides in part as follows:

"The United States agree to * * * expend for them in improvements, after they shall all remove, the sum of twenty thousand dollars. * * *

With reference to the above treaty obligations of the United States, the Report of the General Accounting Office filed herein states as follows (pages 138-139):

"Congress made annual appropriations to fulfill the stipulations contained in the foregoing treaty * * * of which * * * \$30,000 was for ten annual installments of \$3,000 each for the support of schools; \$20,000 was for ten annual installments of \$2,000 each for agricultural assistance; \$22,000 was for ten annual installments of \$2,200 each for the support of blacksmiths and blacksmith shops; * * * \$20,000 was for the expenses of making improvements; * * *

Although said total of \$92,000 was so *appropriated* to fulfill these treaty obligations, yet the General Accounting Office Report (pages 148-150) shows that a total of \$28,646.58 only was disbursed for the objects above specified for the ten-year period, beginning August 7, 1856 (see Article 26

of this treaty), leaving a net amount due plaintiff under these articles of \$63,353.42, which is now claimed.

CLAIM FOR INTEREST ON \$500,000 FUND.

In Finding III (b) plaintiff claims the amount of \$304,551.28 due from defendant for nonpayment of interest on the \$500,000 fund established for the Seminole Nation under Article 8 of the Treaty of August 7, 1856.

Article 8 of this treaty provides in part as follows:

“* * * the United States do therefore agree and stipulate as follows, viz.: * * * Also to invest for them the sum of two hundred and fifty thousand dollars, at five per cent per annum, the interest to be regularly paid over to them *per capita* as annuity; the further sum of two hundred and fifty thousand dollars shall be invested in like manner whenever the Seminoles now remaining in Florida shall have emigrated and joined their brethren in the west, whereupon the two sums so invested, shall constitute a fund belonging to the united tribe of Seminoles, and the interest on which, at the rate aforesaid, shall be annually paid over to them *per capita* as an annuity; but no portion of the principal thus invested, or the interest thereon annually due and payable, shall ever be taken to pay claims or demands against said Indians, except such as may hereafter arise under the intercourse laws.”

Article 26 of this treaty provides in part as follows:

“This convention * * * shall take effect and be obligatory on the contracting parties from the date hereof, whenever it shall be ratified by the Senate and President of the United States.”

This treaty was ratified by the Senate on August 16th, 1856, and proclaimed by the President on August 28th, 1856 (2 Kapp. 756). Under the terms of this treaty interest on the \$250,000 fund began to accrue from August 7th, 1856. Payments of \$12,500 for this interest for the year beginning August 7, 1856, and ending August 6, 1857, and of \$12,500 for the year beginning August 7, 1857, and ending August 6, 1858, are shown in the Report of the General Accounting Office as having been credited to the Seminole Nation in the fiscal years 1858 and 1859, respectively (page 148).

Interest on the two \$250,000 Seminole funds was paid for the year beginning August 7, 1858, and ending August 6, 1859, and \$25,000 is shown in the Report of the General Accounting Office (page 148), as having been credited to the Seminole Nation in the fiscal year 1860. In appropriating interest on the second \$250,000 Seminole fund, Congress, by Act approved March 3, 1859, 11 Stat. 409, provided as follows:

"FLORIDA INDIANS OF [OR] SEMINOLES.—For interest on two hundred and fifty thousand dollars, at five per centum, to be paid as annuity, per eighth article treaty seventh August, eighteen hundred and fifty-six, they having joined their brethren in the West, twelve thousand five hundred dollars."

From the fiscal year 1859 down to the end of the fiscal year 1909, interest at 5 per centum or \$25,000, was required to be paid by defendant on said \$500,000 fund, under the terms of Article 8 of said Treaty of 1856. By the Act of March 3, 1909, 35 Stat. 806, Congress authorized the capitalization of this fund, and provided that the Secretary of the Treasury be authorized and directed:

"* * * to place on the books of the Treasury to the credit of the Seminole tribe of Indians, the sum of five hundred and seventy thousand dollars, said sum, or any part thereof, so long as it remains in the Treasury, to draw interest at the rate of five per centum per annum, being the balance of the unappropriated amounts due said tribe under article eight of the treaty of August seventh, eighteen hundred and fifty-six (Eleventh Statutes at Large, page seven hundred and two), and article three of the treaty of March twenty-first, eighteen hundred and sixty-six (Fourteenth Statutes at Large, page seven hundred and fifty-six)."

Although the interest on said \$500,000 combined Seminole fund at the rate of five per centum per

annum, or \$25,000, was required to be paid the Seminole Nation, under Article 8 of said Treaty of August 7, 1856, yet the defendant failed to comply with said treaty obligation, either in whole or in part for the fiscal years and in the amounts specifically set forth in Finding III (b); and therefore, the sum of \$304,551.28 is due the Seminole Nation from defendant under said treaty obligation.

CLAIMS UNDER TREATY OF MARCH 21, 1866.

In Finding IV (a) plaintiff claims the amount of \$90,597.20 due from defendant for the nonfulfillment of Article 3 of the Seminole Treaty of March 21, 1866, 14 Stat. 755, between the United States and the Seminole Nation.

Article 3 of this treaty provides in part as follows:

"* * * The balance due the Seminole Nation after making said deductions, amounting to one hundred thousand dollars, the United States agree to pay in the following manner, to-wit: * * * seventy thousand dollars to remain in the United States Treasury, upon which the United States shall pay an annual interest of five per cent; fifty thousand of said sum of seventy thousand dollars shall be a permanent school fund, the interest of which shall be paid annually and appropriated to the support of schools; * * *"

The interest at five per centum per annum on the \$50,000 fund amounts to \$2,500

annually, which, by the terms of said Article 3, was to be expended for the support of schools. This obligation of the United States continued in full force and effect from the fiscal year 1867 to the end of the fiscal year 1909, a period of 43 years in all. By the Act of March 3, 1909 (quoted *supra*), the \$50,000 fund was capitalized and the above treaty obligation of defendant ceased.

At the rate of \$2,500 annually, for a period of 43 years, the total obligation of the United States under said Article 3 provision for support of schools, was \$107,500.00. The General Accounting Office Report (pages 186, 188 and 189) shows that a total of \$16,902.80 only was disbursed by the United States for the support of schools under this treaty obligation. Therefore, the difference between \$107,500.00, the total obligation, and \$16,902.80 the total amount disbursed for this purpose, would leave a net amount of \$90,597.20 due the Seminole Nation under said provision of Article 3 of the Treaty of 1866, which amount is claimed herein.

ERECTION OF MILL.

In Finding IV (b) plaintiff claims the amount of \$15,000 due from defendant for the nonfulfillment of that part of Article 3 of the Seminole Treaty of March 21, 1866 (14 Stat. 755), which is quoted as follows:

"Fifteen thousand dollars shall be paid for the erection of a mill suitable to accommodate said nation of Indians."

This is the only item in the claim presented by our petition for which we must seek evidence outside of the report filed by the General Accounting Office. Defendant has filed in this case photostatic copies of all the documents which throw any light upon this transaction. For the convenience of the court we have selected enough of these exhibits introduced by defendant to give the court a clear understanding of the situation, and have printed them as an appendix to this brief.

On December 25, 1866, the Chiefs and Council of the Seminole Nation wrote the Superintendent of Indian Affairs at Ft. Smith, Arkansas, stating the urgent necessity that the mill provided for by the treaty be supplied the Nation without delay.

On August 27, 1869, the same Chiefs wrote the Commissioner of Indian Affairs that there was an effort to palm off upon them an old and worthless mill which did not meet with the treaty requirements, and which they refused to accept. That they either be furnished a mill in accordance with the treaty requirements, or be permitted to receive the \$15,000 in cash for the benefit of the Nation.

On September 9, 1869, Capt. T. A. Baldwin, U. S. A., who had just been appointed Seminole Agent in place of one Reynolds wrote the Commissioner of Indian Affairs that the mill was in

the possession of one Brown a white trader and business associate of the former agent, Reynolds. It being doubtful that the mill would be received by the Indians as complying with the treaty, it was held for the purpose of assisting Brown in furnishing lumber for his own enterprises.

On February 17, 1871, the Chiefs, by order of the Seminole General Council, wrote the Commissioner of Indian Affairs that they still refused to receive the mill, stating that it was "old and worthless and could not materially be beneficial to our people," and "in conclusion, beg the Honorable Commissioner of Indian Affairs to use his exertions on our behalf in this matter to repair if possible the great wrong we are about to sustain. An early reply is earnestly solicited."

However, here the record closes. Nothing further was done by the Government, and the matter stands today as it stood when this last appeal of the Seminoles was made. It is clear that this provision of the treaty was not complied with, and that the sum of \$15,000 is due plaintiff.

ERECTION OF AGENCY BUILDINGS.

In Finding IV (c) plaintiff claims the amount of \$10,000 due from defendant for the nonfulfillment of Article 6 of said Treaty of March 21, 1866, 14 Stat. 755, which is quoted as follows:

"Inasmuch as there are no agency buildings upon the new Seminole reservation, it is

therefore further agreed that the United States shall cause to be constructed, at an expense not exceeding ten thousand (10,000) dollars, suitable agency buildings, the site whereof shall be selected by the agent of said tribe, under the direction of the Superintendent of Indian Affairs; in consideration whereof, the Seminole Nation hereby relinquish and cede forever to the United States one section of their lands upon which said agency buildings shall be directed (erected), which land shall revert to said nation when no longer used by the United States, upon said nation paying a fair value for said buildings at the time vacated."

The Report of the General Accounting Office, pages 175-176, states as follows:

"A total of \$609,138.09 was appropriated by Congress pursuant to and in connection with the foregoing treaty for the fiscal years 1867 to 1910, of which * * * \$10,000 was for the erection of agency buildings; \$10,000 was to replace the said appropriation of \$10,000 for agency buildings which was returned to surplus (see page 20)."

On page 20 of this report is the following statement:

"With reference to the amounts returned to surplus, as set out in note (y) of the aforesaid balanced statement, the amounts of \$10,000 and \$969.85 were from moneys appropriated for agency buildings pursuant to Article 6 of the Treaty of March 21, 1866, 14 Stat. 755. Congress, by the Act of July 28, 1866, 14 Stat. 319, appropriated the sum of \$10,000 for said

agency buildings, but this sum was not used and was returned to surplus. However, another appropriation of \$10,000 to replace the amount so returned to surplus was carried in the Act of May 18, 1872, 17 Stat. 132, and the said sum of \$969.85 was from this latter appropriation (see Indian Office Ledger No. 18, folio 132)."

The ledger account above referred to shows that the \$10,000 appropriated by the Act of May 18, 1872, was advanced to Henry Breiner, United States Indian Agent for the Seminoles, for disbursement. Although this amount was twice appropriated by Congress for the erection of agency buildings under said Article 6, yet said \$10,000, or any part thereof, was not disbursed in accordance with the terms of said Article 6. Therefore, the amount of \$10,000 is due plaintiff from defendant under this provision of the Treaty of 1866.

II.

The Illegal Disbursement of Seminole Trust Funds Made Without Authority of Law by the Secretary of the Interior.

We have heretofore discussed claims of plaintiff which arose from the failure of the defendant to comply with its treaty obligations; hereafter we discuss claims of plaintiff which arose after funds had been paid plaintiff, and placed in the custody of the Secretary of the Interior to be disbursed to plaintiff under the direction of Congress, but which were not so disbursed by said Secretary.

All the basic questions arising under this section of our brief have been settled in case H-510, *Creek Nation v. The United States*, decided by this court on December 4, 1933, and this decision will be discussed when applicable to claims hereafter made for the Seminole Nation.

PAYMENTS MADE IN VIOLATION OF SECTION 19 OF THE CURTIS ACT.

In Finding V plaintiff claims the amount of \$864,702.58, which represents a total of payments made by the Secretary of the Interior in violation of Section 19 of the Act of Congress, approved June 28, 1898, 30 Stat. 495, known as the Curtis Act.

Before the passage of the Curtis Act, the Seminole Nation, like the Creek Nation, was entrusted with the disbursement of certain of its tribal income, the payments of which were authorized to be made to the tribal treasurer (Acts of April 15, 1874, 18 Stat. 29; and March 2, 1889, 25 Stat. 980, 1004). However, the tribal governments ceased to be representative of the majority of the tribe, and it was reported that their officers were using tribal moneys to further their own private interests. In the case of *Stephens v. Cherokee Nation*, 174 U. S. 445, the facts showing these conditions are set forth in quotations from the reports of Congressional Committees, and of the Dawes Commission. We quote from the Stephens case, as follows:

(p. 451) "In the report of November 18, 1895, the Commission, among other things, said:

(p. 452) 'The Commission is compelled to report that so long as power in these nations remains in the hands of those now exercising it, further effort to induce them by negotiation to voluntarily agree upon a change that will restore to the people the benefit of the tribal property, and that security and order in government enjoyed by the people of the United States, will be in vain.'

* * * * *

(p. 453) 'The Commission is compelled by the evidence forced upon them during their examination into the administration of the so-called governments in this Territory to report that these governments in all their branches are wholly corrupt, irresponsible, and unworthy to be longer trusted with the care and control of the money and other property of Indian citizens, much less their lives, which they scarcely pretend to protect.' "

In order to correct these evils Congress passed the Curtis Act, under the terms of which the United States assumed full administrative control over the property of the Five Civilized Tribes (*Cherokee Nation v. Hitchcock*, 187 U. S. 294). In regard to annuities formerly paid to the tribal treasurer, this act specially provided:

"Sec. 19. That no payment of any moneys on any account whatever shall hereafter be

made by the United States to any of the tribal governments or to any officer thereof for disbursement, but payments of all sums to members of said tribes shall be made under direction of the Secretary of the Interior by an officer appointed by him; and *per capita* payments shall be made direct to each individual in lawful money of the United States, and the same shall not be liable to the payment of any previously contracted obligation."

This section was enacted for the very purpose of changing the manner of payments of annuities theretofore in force, and of insuring to the members of the tribe their proportionate shares of the tribal income.

In case No. H-510, *The Creek Nation v. The United States*, decided by this court on December 4, 1933, the effect of said Section 19 is stated as follows:

"The authority to disburse the tribal funds and all moneys coming to the tribe under the provisions of the three acts was lodged solely in the Secretary of the Interior" (Op. p. 11).

"Section 19 of the Curtis Act changed only the manner in which the Creek tribal funds were to be disbursed. Neither that section nor any other provision of the act defines or limits in any way the purposes for which the tribal funds might be expended. These funds were no longer paid into the Creek National Treasury by the United States for the purpose of disbursement by the tribal authorities, but were retained in the Treasury

of the United States to the credit of the tribe, and were disbursed by the Secretary of the Interior. * * * Consequently, we think that when Congress, by the provisions of Section 19 of the Curtis Act, took away from the Creek tribal authorities the control which they had formerly exercised over the disbursement of their tribal funds and charged the Secretary of the Interior with the duty of disbursing the funds, without defining or limiting the purposes for which they might be expended, it by clear and necessary implication invested him with authority to disburse and expend the funds in such manner and for such purposes as would, in his judgment, satisfy the needs of the Creek Nation and promote the welfare and happiness of its citizens, subject to such limitations as Congress might subsequently impose" (Op. pp. 12, 13).

Notwithstanding the express purpose and effect of said Section 19, the Secretary of the Interior, in disregard of its provisions, continued thereafter to pay over Seminole moneys to the Seminole tribal treasurer; thus depriving the members of the tribe the protection provided in said Section 19. Therefore, the sum of \$864,702.58 is due the Seminole Nation for payments made in violation of said Section 19.

**DISBURSEMENTS MADE IN CONTRAVENTION OF THE
PROVISO IN THE ACT OF AUGUST 24, 1912, AND
SUBSEQUENT ACTS.**

In Finding VI plaintiff claims the amount of \$5,101.25 for disbursements made by the Secretary of the Interior from Seminole trust funds in con-

travention of the express inhibition contained in the Act of August 24, 1912, 37 Stat. 518.

This question was decided in Case H-510, *supra*, and we will quote that part of the court's opinion upon which we rely:

"* * * An important limitation on the expenditure of the tribal funds generally was carried in Section 18 of the Indian Appropriation Act for the fiscal year beginning July 1, 1912 (37 Stat. 518), which reads:

'Sec. 18. *Provided*. That during the fiscal year ending June thirtieth, nineteen hundred and thirteen, no moneys shall be expended from the tribal funds belonging to the Five Civilized Tribes without specific appropriation by Congress, except as follows: Equalization of allotments, *per capita* and other payments authorized by law to individual members of the respective tribes, tribal and other Indian schools for the current fiscal year under existing law, salaries, and contingent expenses of governors, chiefs, assistant chiefs, secretaries, interpreters and mining trustees of the tribes for the current fiscal year, and attorneys for said tribes employed under contract approved by the President, under existing law, for the current fiscal year: * * *'

This provision was continued in each annual Indian appropriation act thereafter until the Act of May 24, 1922, 42 Stat. 575, when the provision 'That hereafter no money shall be expended from tribal funds belonging to the Five Civilized Tribes without specific ap-

appropriation by Congress' was made a permanent provision of law.

* * * However, in view of the plain and unmistakable meaning of the language used by Congress, we see no room for discussion of the effect of the proviso on the authority of the Secretary of the Interior to expend the tribal funds. Congress, in the exercise of its plenary power over the funds, declared in the Act of August 24, 1912, 37 Stat. 518, that with certain exceptions therein stated no part of the funds should be expended without specific appropriation. This limitation was continued by repeated enactments during the entire remaining period of the claim. During and for the fiscal years 1912 to 1927, inclusive, the Secretary of the Interior made payments from the tribal funds which were not specifically appropriated by Congress. To hold that the Secretary of the Interior had the legal right to expend such funds, in the face of positive prohibition against their expenditure without specific appropriation would be equivalent to holding that the Secretary of the Interior, not Congress, had full administrative control and power over the property of the plaintiff tribe. The court cannot say that, and consequently it must be held that all the disbursements from plaintiff's tribal funds set out in Finding 2 that do not fall within the exceptions contained in the proviso of Section 18 of the Act of August 24, 1912, and succeeding acts, were made by the Secretary of the Interior without authority of law. Such payments were not only made without authority of law but were made in contravention of positive provisions of law."

The items claimed in this finding do not fall within the exceptions to the proviso, and therefore the amount of \$5,101.25 is due the Seminole Nation because of said illegal payments.

**ILLEGAL PAYMENTS FROM PRINCIPAL OF
PERMANENT SCHOOL FUND.**

In Finding VII (a) plaintiff claims the amount of \$154,455.30 for disbursements made by the Secretary of the Interior without authority of law from the principal of the "Seminole School Fund."

The "Seminole School Fund" was provided for in the Original Seminole Agreement, dated December 16, 1897, and ratified by Act of Congress, approved July 1, 1898, 30 Stat. 567. This agreement provided in part as follows:

"Five hundred thousand dollars (\$500,000) of the funds belonging to the Seminoles, now held by the United States, shall be set apart as a permanent school fund for the education of children of the members of said tribe, and shall be held by the United States at five per cent interest, or invested so as to produce such amount of interest, which shall be, after extinguishment of tribal government, applied by the Secretary of the Interior to the support of Mekasuky and Emahaka Academies and the district schools of the Seminole people; and there shall be selected and excepted from allotment three hundred and

twenty acres of land for each of said academies and eighty acres each for eight district schools in the Seminole country."

Under this provision the "Seminole School Fund" was to be "a *permanent school fund* for the education of children of the members of said tribe," and the *interest only*, was authorized to be applied by the Secretary of the Interior for this purpose.

The Report of the General Accounting Office (pages 275, 344) shows that the "Seminole School Fund" was established on March 6, 1906, and interest at the rate of 5 per centum per annum began to accrue from that date. Interest on this fund was set up on the books of defendant as a separate fund entitled "Interest on Seminole School Fund" (G. A. O. Rep., p. 276), and was used by the Secretary of the Interior from the fiscal years 1907 to 1930, inclusive, for the education of Seminole children (G. A. O. Rep., pp. 294, 342-343).

Disregarding the law of this fund, the Secretary of the Interior illegally diminished the *principal* of said school fund by making *per capita* payments therefrom, by payments for education and for equalization of allotments, as set forth in this finding. Therefore, the Seminole Nation claims the amount of \$154,455.30, for the illegal and unauthorized diminution of the principal of the "Seminole School Fund."

OTHER ILLEGAL DISBURSEMENTS FROM SEMINOLE FUNDS FOR EDUCATION.

In Finding VII (b) plaintiff claims the amount of \$51,460.08 for disbursements made by the Secretary of the Interior without appropriation by Congress from Seminole funds, other than the fund "Interest on Seminole School Fund."

As we have seen, the only law authorizing the Secretary of the Interior to make disbursements from Seminole funds for education, was the provision in the Original Seminole Agreement, providing that the *interest only* on the "Seminole School Fund" could be used by the Secretary of the Interior for this purpose. However, during the period from the fiscal years 1913 to 1928, inclusive, the Secretary of the Interior, "without specific appropriation by Congress," disbursed other Seminole funds for education. These disbursements were made beyond the period in which the Secretary had implied powers to so disburse other Seminole funds, and therefore the said amount of \$51,460.08 is due the Seminole Nation for such illegal disbursements of its tribal funds.

EXCESS DISBURSEMENTS FOR EDUCATION FOR FISCAL YEARS 1929-1930.

In Finding VII (c) plaintiff claims the amount of \$3,909.96 for disbursements made by the Secretary of the Interior for education over and above the specific amounts authorized by Congress

to be disbursed for this purpose during the fiscal years 1929 and 1930.

Congress specifically limited disbursements from Seminole funds for education during the fiscal years 1929 and 1930 to a total of \$33,000 for each year in the Indian Appropriation Acts of March 7, 1928 (45 Stat. 200, 216), and March 4, 1929 (45 Stat. 1562, 1577). For each of these years the Secretary of the Interior disbursed amounts over and above the \$33,000 authorized by Congress. Therefore, the Seminole Nation is due the amount of \$3,909.96 for these excess disbursements made from its funds for education during the fiscal years 1929 and 1930, as said excess disbursements were not authorized by Congress.

INSURANCE AND CONSTRUCTION AND REPAIR OF BUILDINGS.

In Finding VII (d) plaintiff claims the amount of \$942.50 for disbursements made by the Secretary of the Interior from Seminole funds for insurance; also the amount of \$484.84 for disbursements so made for construction and repair of buildings.

If the court agrees with our contentions and allows the claims set forth in Finding VII (a), (b) and (c), it can disregard the claims for above amounts, as said amounts are included in the amounts claimed in Finding VII (a), (b) and (c) as illegal disbursements for "Education." The Report of the General Accounting Office filed

herein lumps together all disbursements for insurance and for construction and repair of buildings with the figures shown for "Education," and did not set forth specifically the amounts disbursed by fiscal years for insurance and for construction and repair of buildings. Therefore, it became necessary for plaintiff to ask the court to issue a request upon the Comptroller-General to get the specific amounts disbursed for insurance and for construction and repair of buildings (see Reply of G. A. O. to Plaintiff's Request, filed May 28, 1934).

However, should the court disagree with our contentions under Finding VII (a), (b) and (c), then it is to consider above amounts disbursed for insurance and construction and repair of buildings, as separate claims, independent of any claims under Finding VII (a), (b) and (c) for illegal disbursements under "Education."

In Finding VII (e) plaintiff claims the amount of \$4,348.74 for disbursements made by the Secretary of the Interior from Seminole trust funds for insurance and for construction and repair of buildings without specific appropriation by Congress, which amount is *not* a part of the amounts heretofore claimed in Finding VII (a), (b) and (c) as illegal payments for "Education." An independent claim in this amount is made herein for these illegal payments for insurance and for construction and repair of buildings, which claim

is not subject to the contingency upon which are predicated the claims for insurance and for construction and repair of buildings set forth in Finding VII (d).

DISCUSSION OF THE LAWS GOVERNING DISBURSEMENTS FOR INSURANCE.

Disbursements from Seminole funds for insurance on buildings were made during the period from the fiscal year 1913 to the fiscal year 1925, both inclusive.

In the *Creek Case*, No. H-510, it was called to the attention of the court that after the passage of the Act of August 24, 1912 (37 Stat. 518, 531), containing the proviso "That no moneys shall be expended from the tribal funds belonging to the Five Civilized Tribes without specific appropriation by Congress," payments from tribal trust funds of the Five Civilized Tribes for insurance were not authorized (5 Comp. Gen. Dec. 308, 309), and that such payments were not specifically authorized until the passage of the Act of April 13, 1926 (44 Stat. 242). The court, in its opinion (pages 19 and 20), allowed the claim for insurance payments during the period for which they were unauthorized by law; *i. e.*, from the fiscal year 1913, to the fiscal year 1925, inclusive.

Therefore, the amounts disbursed for insurance from Seminole funds and above claimed are

illegal disbursements, and claim is made herein for said amounts which are due the Seminole Nation.

DISCUSSION OF THE LAWS GOVERNING DISBURSEMENTS FOR CONSTRUCTION AND REPAIR OF BUILDINGS.

Disbursements from Seminole funds for construction and repair of buildings were made during the period from the fiscal years 1913 to 1916, both inclusive. These disbursements were made after the passage of the Act of August 24, 1912 (37 Stat. 518, 531), containing the above-quoted proviso.

In 21 Comp. Dec. 280, the Comptroller held (pp. 282-283) that:

"There appears to be no authority to continue these schools for the fiscal year 1915. But even if it could be held, upon the ground that proper provision has not yet been made for the education of the Chickasaw Indian children in the public schools of Oklahoma, that the Secretary is authorized to continue these schools under the authority of the Act of 1906, *supra*, or that the authority to purchase this property by implication authorized him to continue this particular school, it is evident from the laws herein cited that his authority to use tribal funds to defray the necessary expenses of such schools does not authorize the use of such funds to make extensive permanent improvements to school properties.

You are advised, therefore, that the use of tribal funds for the improvements contemplated is not authorized."

This decision of the Comptroller led to the insertion of the following provision in the exception to the proviso "that no moneys shall be expended without specific appropriation by Congress," as contained in the Act of May 18, 1916, 39 Stat. 123, 148 (fiscal year 1917):

"That the Secretary of the Interior is hereby empowered, during the fiscal year ending June thirtieth, nineteen hundred and seventeen, to expend funds of the Chickasaw, Choctaw, Creek and Seminole Nations available for school purposes under existing law for such repairs, improvements, or new buildings as he may deem essential for the proper conduct of the several schools of said tribes."

This provision is carried in every subsequent Indian appropriation act, and beginning with the fiscal year 1917 disbursements for construction and repair of buildings are specifically authorized.

Therefore, the amounts herein claimed by plaintiff as illegal disbursements for construction and repair of buildings were expended by the Secretary of the Interior from Seminole funds during the period from the fiscal year 1913 to the fiscal year 1916, both inclusive, when such disbursements were not specifically authorized by Congress.

III.

Adjustment of Erroneous Bookkeeping Entries.

The Seminole Nation claims the amount of \$178,533.42 due after all errors made by the accounting officers of the defendant in the handling of Seminole funds have been adjusted. The detailed statement of these errors has been set forth in Finding VIII, the detail of which is found in the various balance statements of Seminole funds as shown by the General Accounting Office Report filed herein. The accounting officers of the defendant had the sole control of these funds, and erroneously deposited \$192.84 in the funds of the Seminole Nation which should have gone to other Indian funds, etc.; also, erroneous charges were made against Seminole funds amounting to \$178,726.26. Giving the defendant credit for the \$192.84, there remains a balance of \$178,533.42 due the Seminole Nation because of these erroneous bookkeeping entries, which amount is now claimed by the Seminole Nation.

Certain of the amounts claimed by us under the adjustment of erroneous bookkeeping entries, set forth particularly in Finding VIII of plaintiff's request for findings of fact, vary from the amounts set forth in the Report of the General Accounting Office. It will be noticed that in all cases of difference in these figures claim is

made for less amounts than those set forth by the General Accounting Office's Report. To avoid any question we are making hereafter explanations of the manner in which these figures were computed. It is only where a variance occurs in these figures that a discussion is necessary.

\$3,905.63 CREDIT ITEM.

The amount of this item is shown by the General Accounting Office's Report, page 25, as \$6,507.23. However, defendant's officers corrected a part of this \$6,507.23 error under authority of the Act of March 2, 1889, 25 Stat. 922, which reappropriated to the Seminole Nation \$2,621.60 of the above amount (see G. A. O. Rep., p. 329). In making this claim we have subtracted the \$2,621.60 repaid to the Seminole Nation from the \$6,507.23, and ask credit for \$3,905.63 only, which is the unpaid balance due the Seminole Nation under this erroneous bookkeeping item.

\$1,022.49 CREDIT ITEM.

The amount of this item is shown by the General Accounting Office's Report, page 26, as \$26,022.49, as an unaccounted for balance due from H. Breiner, disbursing agent. The amount of \$25,000 of said \$26,022.49 represents an interest payment due the Seminole Nation under Article

8 of the Treaty of August 7, 1856, 11 Stat. 699 (G. A. O. Rep., p. 20).

We have already claimed this amount of \$25,000 as an unpaid interest installment in Finding III (b), and in order to avoid a double claim for the same item, we have deducted the \$25,000 from the \$26,022.49, leaving a net claim of \$1,022.49 due the Seminole Nation under this item.

\$8,095.41 CREDIT ITEM.

The \$8,095.41 claimed under this item is a part of an item of \$20,595.41 shown by the General Accounting Office's Report, page 27, as an unaccounted for balance due from Henry Breiner, disbursing agent. The amount of \$12,500 of said \$20,595.41 represents an interest payment due the Seminole Nation under Article 8 of the Treaty of August 7, 1856, 11 Stat. 699.

We have already claimed this amount of \$12,500 as an unpaid interest installment in Finding III (b), and in order to avoid a double claim for the same amount, we have deducted the \$12,500 from said \$20,595.41, leaving a net claim of \$8,095.41 due the Seminole Nation under this item.

\$19,975.65 CREDIT ITEM.

The amount of this item is shown by the General Accounting Office's Report, page 27, as \$32,-

475.65, as an unaccounted for balance due from G. W. Ingalls, disbursing agent. The amount of \$12,500 of said \$32,475.65 represents an interest payment due the Seminole Nation under Article 8 of the Treaty of August 7, 1856, 11 Stat. 699 (G. A. O. Rep., p. 22).

We have already claimed this amount of \$12,500 as an unpaid interest installment in Finding III (b), and in order to avoid a double claim for the same item, we have deducted the \$12,500 from the \$32,475.65, leaving a net claim of \$19,975.65 due the Seminole Nation under this item.

\$24.87 AND \$3.72 CREDIT ITEMS.

The General Accounting Office's Report, page 74, shows an amount of \$200,028.59 of Seminole funds returned to surplus. The sum of \$200,000 was reappropriated and disbursed for the Seminole Nation (G. A. O. Rep., pp. 74, 75 (b), leaving net claims due the Seminole Nation in the above amounts.

INTEREST CLAIMED.

The Act of February 12, 1929, 45 Stat. 1164, provides for the payment of interest at 4 per centum per annum on Seminole funds which had not drawn interest theretofore. This act provides in part as follows:

“* * * That all money in excess of \$500 held by the United States in a trust fund account, and carried on the books of the Treasury Department to the credit of an Indian tribe, if the payment of interest thereon is not otherwise authorized by law, shall bear simple interest at the rate of 4 per centum per annum from the date of the passage of this act. * * *”

Therefore, interest at 4 per centum per annum is claimed on unfulfilled treaty obligations and illegal disbursements from these funds, as set forth in Finding IX (a), from February 12, 1929, to the date of judgment (see G. A. O. Rep., p. 264). We have claimed no interest on claims of plaintiff for defendant's unfulfilled obligations to pay interest on Seminole funds, as this would be claiming compound interest to which plaintiff would not be entitled.

Illegal disbursements were made from two Seminole funds drawing interest at 5 per centum per annum: “Seminole of Oklahoma Fund,” and the “Seminole School Fund” (G. A. O. Rep., pp. 262, 303-304). Interest at 5 per centum per annum is claimed on illegal disbursements from these funds, as set forth in Finding IX (b), from the close of the fiscal year in which they were made, to date of judgment.

In Conclusion.

We respectfully submit that for the items enumerated and discussed above, the plaintiff should recover from the defendant the sum of \$1,746,013.23, with interest upon the items which we have indicated.

Respectfully submitted,

E. J. VAN COURT,

Attorney of Record for Plaintiff.

J. B. CAMPBELL,

W. W. PRYOR,

P. M. NIEBELL,

Of Counsel.

APPENDIX.

(Exh. pp. 683-684.)

Indian Office Seminole B-33, 1866.

Seminole Agency,

Dec. 25th, 1866.

Hon. Wm. Byers,
Supt. Ind. Affairs,
Fort Smith, Ark.

We the undersigned Chiefs and Council of the Seminole Nation, most respectfully ask you to purchase and erect at the earliest possible moment, the mill provided for, in our late Treaty. We are now engaged, in building our houses and opening our farms; we do not expect the assistance of the Government, any longer, than the coming year, and we know, that we must raise for our women and children, a sufficient supply of provisions, or they will starve. There is no mills, within a hundred miles of us, and we need very much, lumber to build our houses, our school houses and churches, and a mill to prepare our corn and wheat for use. We also ask you; to urge our Great Father in Washington, to pay us our money, provided in the Treaty, to open our farms, to supply us with provisions, and to pay our losses—occasioned by the late war—If ever you poor children needed money it is now, but we are en-

tirely dependent upon the money, that is due us from the sale of our lands.

We are your poor red children.

In presence of	John Chupeo, Chief	his x mark
George A. Reynolds	Fos. Harjo	his x mark
U. S. Indian Agent	Fos. Hot she	his x mark
Robert Johnson	Pas co fu	his x mark
Interpreter	John Jumper	his x mark

(Exh. pp. 692-695.)

Indian Office Seminole B-366, 1869.

Seminole Agency,

August 27th, 1869.

Hon. E. S. Parker,

Commissioner of Indian Affairs,

Washington City, D. C.

Sir:

We have the honor to make the following statement, and request. When the Treaty was entered into between the United States, and the Seminole Nation, during the year of 1866, an appropriation of \$15,000.00 fifteen thousand dollars

was made, for the erection of a suitable mill, for the use of the people comprising this Nation. Nothing definite was stated in said Treaty as to what kind of a mill it should be. But it was to be a mill suited to the wants of the Nation.

During the year of 1867, a mill was transported to this place, to be erected and transferred to the Nation. On its arrival it was noticed that it had been used and in fact an old mill. Many of the Chiefs who saw it, at once protested and told the Agent that it was not the kind stipulated in the Treaty made with the United States, and was informed by the Agent that it should be made as good as new, and to be nothing but an *A No 1 Mill*. Mechanics were then brought to repair it and after having worked upon it some (2) two months it was abandoned; and remained in this state until March 1st, 1869, when other mechanics were brought, and employed upon it, and it was finished or completed during the month of July 1869.

Upon hearing of its completion, we called a General Council to examine and receive it, if we considered it a suitable mill, as called for in the Treaty of 1866, and upon examination we found that it was much worn, and nothing about it new, excepting the great mill (or stones) for the grinding of flour, and the bolting machine. The last had been enclosed with green lumber and on its becoming seasoned it had shrunk to a great extent.

The building under which this mill has been erected is but one story high, and the saw and grist mill is covered by one roof, there being no floor excepting the ground. Also it is not entirely closed it being partially open on two sides.

And in fact we do not consider that this mill which is now said to be ready to be transferred to (us or) the Nation meet the requirements of the Treaty.

And we would most respectfully ask an investigation of the above facts, and that if we are compelled to accept this mill that a reduction be made in the price of it, and the difference be turned over to the Nation. And if this cannot be done, that we may be permitted to reject this mill and receive the \$15,000 fifteen thousand dollars for the benefit of this Nation, as the people may elect.

And if this request could not be granted would we be permitted to reject this mill and receive one in its place, properly constructed and enclosed.

We await your answer with great anxiety, as our Crops are now ripening, and we have had no mill up to the present time, having waited several years for this one to be constructed and completed.

We have the honor to be,

Very respectfully

Your obedient Servants

John Chup-co his
 x
 mark

King or head Chief
 his
John Jumper x
 mark
Chief Seminoles

Witness present to their
Marks

T. A. Baldwin

Capt. US. Indian Agent.

(Exh. pp. 696-701.)

Indian Office Seminole B-382, 1869.

Seminole Agency,
September 9, 1869.

Hon. E. S. Parker,
Commissioner of Indian Affairs,
Washington City, D. C.

Sir:

I take the liberty to address this a personal and private letter, for the reason that I am unable to report such facts, as official information, and supposing that they may be of some importance, as well as interest to you. I communicate the following:

On my arrival at this Agency, as I have officially reported, I found no records or data whatever, the Agent being absent, as also a Mr. E. J. Brown, a Trader (who has resided in this nation since the removal of the Seminol from Kansas, and who has always acted as Agent during absence of Maj. Geo. A. Reynolds, form-

erly Agent.) who had gone north to purchase a stock of goods. On Mr. Brown's return, several weeks afterwards; knowing that he had seen Maj. Reynolds, and being aware that he knew as much, if not more than the Agent himself in reference to matters connected with this Agency, I asked him for the following information.

Whether Maj. Reynolds had sent any funds by him to be transferred. If there was any records belonging to this office, also if there was any property to be transferred or if there was any in the nation owned by the United States. He replied that Maj. Reynolds would forward the funds, that no records was kept by the Agent, but that they were always turned over to the Superintendant and was in his possession. Also that there was no property which was owned by the United States, except an old log house.

Before his return but after my arrival, the Indians held a Council, to accept or reject a saw and grist mill which had been erected, but finished or Completed after I had assumed the duties of Agent, and was then run, or being used by Mr. Brown's employees. I being aware of this fact, asked him if this mill had ever been turned over to the nation. He replied that it had not, but that it was in his possession. I then asked him, that if the mill had never been turned over: To whom it belonged. He said that Maj. Reynolds had it on his papers, and that he, Maj. Reynolds,

would settle the matter, and that it would never be turned over, as Agents, always, settled their accounts without transferring anything. He also stated that he had repaired and erected this mill under contract, and that there was due him \$4,000.00 and that he should hold the mill until he was paid, and no one should get possession of it unless the Indians should receive it.

I then asked him, who had permits to remain and live in the nation. He answered that he had a permit until October next, and that his permit gave him the right to employ all the men or hands that he thought necessary, and that he had been adopted into the Seminole nation which guaranteed him the right to employ as many, and whoever he wished.

I then informed him that I thought that this was a direct violation of the intercourse law, and that I did not think that it gave the right, to bring any and everyone that he wished into the nation, or that the clause in the Treaty stating that all hereafter adopted into this nation, should have the rights, and privileges, of the Indians, and could not be construed to include white men who was citizens of the United States. He then remarked that the Superintendent had so recognized him, and that the Hon. E. S. Parker, was aware that he had been made a citizen of the Seminole nation, and had recognized him as such.

A few days after this conversation, another General Council was held to receive or to reject

said mill, when I was called upon by the Chiefs to know whether they had any right to communicate with you, and enter a protest, and if I thought the mill was worth what it was represented to be.

I informed them, that they had such a right and that I would forward any communication they deserved. Also that I did not consider the mill worth what it was represented to be.

I forwarded this communication on the 1st day of September, and am in doubt if it reached its destination.

This mill was no doubt purchased at a very low price, brought here, and then repaired and erected, by the said E. J. Brown under the supervision of Maj. Reynolds, and finding that it was doubtful, if this mill would be received by the Indians, it was held for the purpose of assisting Mr. E. J. Brown to furnish lumber with which to erect buildings now under construction on lands which has been set aside for his own use.

I do not give this information through any personal feeling. Yet I am unable to see how this mill if it is the property of the United States, can either be turned over by Mr. Brown, or Maj. Reynolds, who is not now an Agent. Or how Mr. Brown can retain possession of a mill which is the property of the United States.

I am also at loss to know, how Mr. Brown who is neither related to the Seminoles by blood or marriage, can have all the rights and privileges

as well as the authority to bring anyone he may wish into this nation.

I would also state that had the agents done their duty, the swindle, which has been perpetrated by those who are empowered to collect the bounties due the loyal Indians, could never have been enacted.

I should not have made this long statement, but these matters have been so arranged that I was unable to take any notice of them officially.

I sincerely hope that I have not intruded upon your time, and that this will meet your approbation.

I have the honor to be

Your obedient Servt

T. A. Baldwin
Capt.

(Exh. pp. 628-629.)

Indian Office Seminole B-110, 1871.

Seminole Nation,
February 17th 1871.

To the Hon. Com. Ind. Affrs.
Washington D. C.

Sir:

The Chiefs of the Seminole Nation respectfully beg leave to forward through the proper channel the following Statement.

That a communication, addressed to the Indian Department at Washington, in or about the month of January of last year, asserting that a "Mill of ample capacity"—complete in every particular. "Erected in good faith in accordance with the treaty provision" etc. purporting to have been gotten up and signed by us, is a matter of which we are entirely ignorant as far as we may be understood to say anything recommendatory of the said Mill. When called upon to certify that a Mill had been erected among us and in contemplation with the treaty provision, we could only do so in connection with Statement the Mill was *old* and worthless, and could not materially be beneficial to our people: and called attention of Dept to previous Statements of such facts, and so understood ourselves to speak in the communication referred to, which we are surprised and grieved to learn embodied Statements we shunned to make.

This much we think due to ourselves to say by way of explanation, and in conclusion beg the Hon. Commissioner Indian Affairs to use his exertions on our behalf in this matter to repair if possible the great wrong we are about to sustain. An early reply is earnestly solicited.

Very Respectfully your Obt Serv-
ant—By order of the Genl Council
Assembled

John Jumper
Long John

Principal
Chiefs.

To Hon. Com.

Ind Affairs

Washington, D. C.