

INTEREST ON CHICKASAW TRUST FUND.

Argument Before the House Committee on Indian Affairs, by Halbert E. Paine, Attorney of the Chickasaw Nation.

Mr. Chairman and Gentlemen of the Committee :

The Chickasaws ask congress to make an appropriation for the payment of arrears of interest, at five per cent. per annum, on \$184,143.09 of their trust fund, from December 31, 1840, to June 30, 1889, and on \$56,021.49 from March 9, 1850, to March 3, 1891.

In 1832 the Chickasaws owned and occupied a large territory within the present limits of the states of Mississippi, Tennessee, and Alabama. On the 20th of October, 1832, they entered into a treaty with the United States, in which they ceded, to the United States, all their lands east of the Mississippi river; and the United States promised to survey and sell the ceded lands, and to pay the proceeds, less the expenses of sale, to the Chickasaw nation.

It was stipulated, in the same treaty, that, whenever the Chickasaws should emigrate to a new country, west of the Mississippi, the expenses of their emigration should also be paid out of the proceeds of the sales of their lands.

The residue of the proceeds of the sales of the ceded lands, after the deduction of the expenses of the sales and the expenses of the emigration, was made the trust fund of the Chickasaw nation, to remain subject to the control

of the United States, for a period of fifty years from the date of the treaty, October 20, 1832.

In 1834 the United States entered into another treaty with the Chickasaws, the effect of which was to add to the "trust fund" of the Chickasaw nation the proceeds of the sales of the lands of the incompetents and of the orphans. The United States expressly agreed to pay annual interest on this trust fund at the rate of five per cent. per annum. This annual interest was always paid on the amount of the trust fund shown at the time, by the treasury books, to be in the custody of the United States. To ascertain that amount it was only necessary to add together the proceeds of the nation's lands, of the incompetents' lands, and of the orphans' lands, and to subtract from the sum so obtained the lawful charges for the expenses of the land sales and the expenses of the emigration.

In the treaty of 1834 the United States promised to furnish the Chickasaws with semi-annual statements of their trust fund accounts. I read from the eleventh article of the treaty of 1834:

And that they may be advised of these matters it is stipulated that the government of the United States, within six months after any public sale takes place, shall advise them of the receipts and expenditures, and of balances in their favor; and also, at regular intervals of six months, after the first report is made, will afford them information of the proceeds of all entries and sales.

But, notwithstanding the constant and urgent importunities of the Chickasaws, the United States wholly disregarded this promise for a period of thirty years. As early as 1840 the Chickasaws began to complain that the volume of their trust fund was not correctly exhibited on the books of the treasury; that a large amount of that fund, actually present in the treasury of the United States, was not represented on the books of the treasury, and therefore yielded them no interest. They implored the

government to rectify its book-keeping, so that the accounts of the treasury might accord with the facts of the case. These complaints and importunities were put off, by dilatory pleas, for a period of twelve years. At last, in the year 1852, a new treaty was made between the Chickasaws and the United States. In this treaty an umpire was designated, to settle the differences between the parties. The umpire's decision was made final and conclusive on all concerned. Ordinarily the umpire chosen by contending parties is a disinterested third person. But in this case one of the parties was made the umpire. The United States, in the person of the secretary of the interior, became the umpire of the dispute between the United States and the Chickasaw nation. I read from the treaty, on page 974 of volume 10 of the statutes-at-large:

ARTICLE 4. The Chickasaws allege that in the management and disbursement of their funds by the government, they have been subjected to losses and expenses which properly should be borne by the United States. With the view, therefore, of doing full justice in the premises, it is hereby agreed that there shall be, at as early a day as practicable, an account stated, under the direction of the secretary of the interior, exhibiting in detail all the moneys which, from time to time, have been placed in the treasury to the credit of the Chickasaw nation, resulting from the treaties of 1832 and 1834, and all the disbursements made therefrom. And said accounts, as stated, shall be submitted to the Chickasaws, who shall have the privilege, within a reasonable time, of filing exceptions thereto; and any exceptions so filed shall be referred to the secretary of the interior, who shall adjudicate the same, according to the principles of law and equity, and his decision shall be final and conclusive on all concerned.

Provision was also made for the correction of the accounts of the incompetents and orphans. But, notwithstanding the persistent entreaties of the Chickasaws, the secretary of the interior neglected to state the account for a period of sixteen years after the date of the treaty of 1852. In 1868 the secretary caused the account to be stated and submitted to the Chickasaws, who promptly filed their exceptions thereto. Thereupon the proofs were

taken, and all were filed early in 1869. The case was then ripe for the adjudication of the secretary. But a sudden change in the office of secretary occurred. And the hopes of the Chickasaws were again disappointed. For a period of fourteen years, extending from 1869 to 1883, the successive secretaries of the interior persistently neglected or refused to fulfil the treaty of 1852, by making the stipulated adjudication.

In 1883 I was employed by the Chickasaw nation to prosecute this cause. When I applied, at the Indian office, for permission to inspect the account, which had been stated under the treaty of 1852, I was informed that it had been lost, and inasmuch as I was unable to find any officer in the interior department who had ever seen that account, I concluded that it had not been on file, in the Indian office, since 1869, that is to say had been lost for a period of fourteen years. I urgently requested the secretary to cause the account to be restated. But the answer was that there was neither clerical force nor money available for that purpose. At last the Chickasaw legislature enacted a law appropriating money, to be expended by the secretary in restating the account. But the commissioner naturally doubted the propriety of placing officers of the United States under pay of the Chickasaw nation. He then designated a day for a further conference. On the day designated he informed me that the lost account had mysteriously reappeared. I then requested that it might be printed, to guard against a second loss. In answer to my request the secretary sent me the following letter:

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., April 16, 1883.

Gen'l H. E. PAINE,

Atty. for Chickasaws, Washington, D. C.

SIR: Replying to your letter of March 28, 1883, inquiring whether it is practicable to have printed the account of the receipts and expenditures of the general fund of the Chickasaw nation, which has been stated

as required by the 4th article of the treaty of 1852 (10 Stat. 974), and, if so, whether the Chickasaw nation will be required to pay the cost of printing; also, requesting an approximate estimate of the cost of the printing; you are respectfully informed that the account referred to is a very voluminous one of 254 pages of "super royal" paper, and only one copy of it has ever been made. It would require considerable time and labor to prepare a copy for the printer.

In order to make a printed copy useful it would be necessary to print with the account certain of the correspondence on the subject of its preparation and consideration.

An approximate estimate of the cost of this printing, made by a practical printer of this department, is stated at about \$2,000.00 for fifty copies. The limited amount of money for printing, at the disposal of the department, will not warrant the payment of the cost of this printing therefrom.

In this connection you are informed that the question is now under consideration, of submitting the matters of the Chickasaw nation, covered by the 4th article of the treaty of 1852, to the Court of Claims for the finding of the facts, and conclusions of law therein, under the provisions of the act of March 3, 1883, entitled "An act to afford assistance and relief to Congress and the executive departments in the investigation of claims and demands against the Government."

This matter of the Chickasaw nation has been pending before this department for thirty years; its reference to the Court of Claims under the law referred to, and where all papers submitted by the Government will be printed, offers opportunity for an earlier settlement than can possibly be had otherwise, in view of the press of urgent current business upon this department.

If you have any suggestions to offer regarding this disposition of the matter I shall be pleased to hear from you.

Very respectfully,

H. M. TELLER,
Secretary.

1348 Ind. Div. 83.

The case was sent to the court of claims early in 1883. More than three years were spent in the preparations for the trial, which consumed all the working days of the court in the month of December, 1886, and a part of the month of January, 1887. On the 23d day of May, 1887, the court of claims filed its findings of law and fact in the interior department. On the 20th of December, 1887, the secretary made his final decision in the case, which is set forth in the following communications:

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., December 20, 1887.

SIR: I have the honor to enclose herewith for presentation to congress, in accordance with the provisions of section 2 of the act of July 7, 1884

(23 Stat. 254), copy of a letter of the 17th instant from the commissioner of Indian affairs, with the estimate of appropriation noted therein, in the sum of \$240,164.58 required to fulfil treaty stipulations with the Chickasaw nation of Indians under the 4th article of the treaty with the Chickasaws of June 22, 1852, as per certified copy of the findings of the United States court of claims, also herewith enclosed. The amount named in the estimate is the principal sum found due to said Indians by the court, without interest.

The court remarks in its findings on the subject of interest that—

“In an action between individuals interest would also be allowed, for the issue presented is one of unauthorized disbursement by a trustee of trust funds expressly stipulated to be held invested in interest-bearing securities.

“We refrain, however, from expressing any opinion on this subject, as the question must necessarily be taken to the legislative department of the government, which alone has power to grant relief, which will consider the equities of the case, and which will decide whether it is one wherein the doctrine should be waived that, as the sovereign does no wrong and is ever ready and willing to pay just debts, the government pays no interest.”

The findings of fact and the opinion of the court of claims in the case have been adopted as the decision of the department in the matter.

I have the honor to be, very respectfully,

L. Q. C. LAMAR,
Secretary.

THE SECRETARY OF THE TREASURY.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,

WASHINGTON, D. C., December 17, 1887.

SIR: I have the honor to acknowledge the receipt of your communication of the 12th instant, returning the papers in the matter of the claim of the Chickasaw nation *v.* The United States, under the fourth article of the treaty of June 22, 1852 (10 Stats. 974-976), with advice that, after a careful consideration of the case, you have concluded to adopt as the decision of the department in the matter the findings and opinion of the court of claims thereon, as set forth in the certified copy of opinion filed April 25, 1887.

In this communication this office is instructed to report the case to the department, with such brief statement of the history relating thereto as may be necessary, to the end that it may be presented for the action of congress.

In reply, I have to state that under treaties made with the Chickasaw nation in 1832 and 1834, a large trust fund was created for their benefit from the net proceeds of sale of their lands lying east of the Mississippi river.

This fund was deposited in the United States treasury prior to the year 1839, subject to reductions on account of certain charges for specific expenses authorized by said treaties. Prior to 1852, the Chickasaw Indians had complained that errors existed in the accounts of their trust funds kept at the treasury department, and that in consequence of such errors the balance had been represented as much less than its actual amount: therefore, the semi-annual payments of interest which they

had received on their trust funds were less than they were entitled under the said treaties to receive, and they requested that the matter be corrected. The alleged errors of account were divided into two classes: 1st, those pertaining to charges for disbursements from the Chickasaw general fund, and, 2d, those pertaining to the orphan and incompetent funds.

Prior to 1868 the United States failed to perform the duties imposed by the above treaty stipulations. In 1868 an account was stated, under direction of the secretary of the interior, and submitted to the said nation. In 1869 the Chickasaws filed their exceptions to this account with the interior department. It remained on file until 1883, at which time it was transmitted to the court of claims under the provisions of the second section of the act of March 3, 1883. The agent of the United States, under the direction of the secretary of the interior, in 1869 investigated the cases of alleged illegal disbursements of the orphan and incompetent funds, and closed his report in that year. This report remained on file until its transmission to the court of claims in 1883.

On the 23d day of May, 1887, the court of claims caused its findings of facts and conclusions of law in the case to be filed in this department, showing that the Chickasaw general fund and the Chickasaw incompetent fund had been subjected to erroneous reductions on the books of the United States as follows:

CHICKASAW GENERAL FUND.

Payments of transportation and demurrage to S. Buckner (charged against the trust fund prior to December 31, 1840)	\$58,299 00
Payments to conductors of emigration (charged prior to December 31, 1840).....	26,563 68
Payment to assignees of William M. Gwin (charged prior to December 21, 1844).....	56,021 49
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	\$140,884 17

CHICKASAW INCOMPETENT FUND.

Payments from incompetent fund (charged prior to December 31, 1840).....	99,280 41
Total.....	<hr/>
	\$240,164 58

In order that the matter may be laid before Congress I have caused to be prepared an estimate of appropriations required to pay the award made under the treaty. The question of interest has not been considered in preparing this estimate in view of the absence of instructions from the department in the premises. I submit herewith said estimate, together with the certified copy of the findings of the court of claims.

Very respectfully,

J. D. C. ATKINS,
Commissioner.

THE SECRETARY OF THE INTERIOR.

In January of the year 1888, the secretary of the treasury sent to congress a communication, which I read from the first page of Executive Document No. 42, House of Representatives, 50th Congress, 1st session:

TREASURY DEPARTMENT, *January 5, 1888.*

SIR: I have the honor to transmit herewith for the consideration of congress, copy of a communication from the secretary of the interior of the 20th ultimo, submitting an estimate for an appropriation of \$240,164.58, to fulfil the treaty stipulations with the Chickasaw nation of Indians, under the fourth article of treaty of June 22, 1852, as per finding of the United States court of claims therewith.

Respectfully yours,

C. S. FAIRCHILD,
Secretary.

THE SPEAKER OF THE HOUSE OF REPRESENTATIVES.

This sum of \$184,143.09, which as a part of the trust fund of the Chickasaws was restored to its place on the books of the United States, by the decision of the Secretary of the Interior, on the 20th day of December, 1887, was paid to the Chickasaws in July, 1889, in pursuance of an act of Congress approved March 2, 1889.

In like manner the sum of \$56,021.49, which was restored to its place, in the Chickasaw trust funds, on the books of the United States, on the 20th day of December, 1887, was paid to the Chickasaws in April, 1891, by virtue of an act of Congress approved March 3, 1891.

The man who became the lawful holder of ten registered bonds of the United States, ten years ago, and has been the lawful holder of those bonds ever since, has been entitled to interest on them for ten years. Suppose that, after he had regularly received interest on each of the bonds for five years, the bookkeepers at the treasury had represented, in 1887, that, as the result of certain business transactions between him and the government, one of these bonds had been paid, and thereupon the government had refused to pay interest on that bond for a period of five years, from 1887 to 1892. And suppose, further, that in 1892 the treasury officials finally discover that the bond has never been paid. The maxim that the government is always ready to pay its debts, and therefore pays no interest, will afford no pretext for a refusal to pay the

interest on this bond. The government is bound to pay the interest, because the government expressly agreed to pay the interest on all the bonds, and for five years has failed to pay interest on this bond.

I shall undertake to show that the right of the Chickasaws to recover arrears of interest, on that part of their trust fund which is now under consideration, is, in its nature, absolutely identical with the right of the bondholder, in the case supposed, to arrears of interest for the five years during which it was withheld.

The United States are bound, by express treaty obligations, to pay the arrears of interest claimed. The existence and validity of these treaty obligations are established by the facts shown in the treaties themselves, in the statutes, in the findings and opinions of the court of claims, in the final judgment of the secretary of the interior, and in the accompanying statement of the commissioner of Indian affairs, made in pursuance of his order. The following are the facts so established:

1. In the treaties of 1832, 1834, and 1852, the United States expressly agreed that the trust funds of the Chickasaws should be held invested in interest-bearing securities, and by the act of January 9, 1837, fixed the minimum rate of interest thereon at five per centum per annum.

2. By the enactment, from time to time, of twelve different statutes, making appropriations for the defaulted interest on "state stocks" held, as trust fund investments, for the Chickasaws, the United States have recognized, reaffirmed, and performed these treaty obligations.

3. The United States have, in like manner, recognized, reaffirmed, and performed these treaty obligations, by the enactment of twenty-one different statutes, making appropriations for the payment of interest on the trust funds of the Chickasaws held in the form of money, in the treasury of the United States.

4. From December 31, 1840, until June 30, 1889, this sum of \$184,143.09, and from March 9, 1850, until March 3, 1891, the sum of \$56,021.49 were parts of the Chickasaw trust fund, held in cash or state stocks in the treasury of the United States; but, during that period, the account books of the United States failed to show the presence of these sums in the treasury.

5. Interest remained unpaid, on \$184,143.09 of the Chickasaw trust fund, from December 31, 1840, to June 30, 1889, and on \$56,021.49 from March 9, 1850, until March 3, 1891.

6. The precedents to be found in the legislation of congress, are in favor of the payment of the arrears of interest on this trust fund, which has been restored on the books of the United States, by the award of the secretary of the interior, followed by the corresponding appropriations of the fiftieth congress and fifty-first congress.

7. Congress has not only made appropriations, for the payment of arrears of interest on trust funds, improperly dropped from the books of the United States, and afterwards restored thereto, but has also, in legislation, expressly declared that such payments were made in pursuance of the treaty of 1852.

I.

In the treaties of 1832, 1834, and 1852, the United States expressly agreed that the trust funds of the Chickasaws should be held invested in interest-bearing securities, and by the act of January 9, 1837, fixed the minimum rate of interest thereon at five per centum per annum.

It is the practice of the government of the United States to pay no interest, on demands prosecuted in the court of claims without an express promise to pay interest. An

individual, who does not pay his debt, when it falls due, must pay interest on it thereafter, whether he has or has not expressly promised to pay interest. The facts of such a case raise an implied promise to pay interest. But the government recognizes no such implied promise as obligatory upon the United States in the court of claims. So far as the payment of interest is concerned it honors only the express promises of the nation. It is provided in the revised statutes of the United States as follows:

SEC. 1091. No interest shall be allowed, on any claim, up to the time of the rendition of judgment thereon, by the court of claims, unless upon a contract expressly stipulating for the payment of interest.

The theory upon which this discrimination is made, by the government, in its own favor, is said to be this, that the government is never in default,—that it is always ready and willing to pay its debts,—that if its debts are not always promptly paid when due, it is the fault of the creditors, who fail to hold out their hands to receive the payments thrust upon them. This theory does not seem to be at all disturbed by the fact that the supreme court, every year, forces the United States to pay debts, which the government officials have persistently refused to pay for many years—often for fifty years, and sometimes for still longer periods. It does not seem to be disturbed by the fact that the great work of the court of claims is to pass upon alleged debts of the United States, and to compel the government to pay just and lawful debts, which its officers have refused to pay. It does not seem to be disturbed by the fact that congress annually provides for the payment of debts repudiated by the executive authorities.

It does not seem to be abashed by the notorious fact that the government, in its dealings with its creditors, habitually adopts courses which the individual cannot with impunity pursue. The assertion that the government is

always ready to pay its debts, and never in default, is evidently an assertion of the fact, not as it is, but as it ought to be. Its accuracy, as a statement of actual fact, is disproved, every day, by defaults which often assume forms of great hardship and cruelty. Indeed, the erroneous nature of the statement is aptly illustrated by this very case. The United States dropped from their books, in 1840, items of the Chickasaw trust fund, amounting to \$184,143.09, and, although this amount in fact remained in the treasury, and the Chickasaws persistently petitioned the United States to conform their books to the facts, the officials neglected and refused to restore the sum to the trust fund, on their books, for a period of forty-seven years, that is to say, until the year 1887.

But whether this practice is just or unjust, whether the theory, on which it rests, is in fact true or false, the practice and the theory are both alike wholly immaterial to the case now before congress. This case does not rest on an implied promise of the government. It rests upon an express promise of the government.

I assume of course that it is not essential to the validity of a promise by the United States, to pay interest on the Chickasaw trust fund, that the promise shall be completely embodied in any one written instrument; I assume that if several written instruments, read together, exhibit the promise, the requirements of the case are met.

An express promise to pay interest is not, necessarily, an absolute promise to pay interest. An express promise to pay interest upon default of another person in the payment thereof, is indeed a conditional promise, and not an absolute promise. But it is just as truly an express promise to pay interest, as is an express absolute promise to pay interest. It is an express promise to take effect upon a condition prescribed. It is in no sense an implied promise.

The court of claims found that the United States expressly stipulated that the trust funds of the Chickasaws should be held invested in interest-bearing securities. The conclusion of the court on this point, is stated in the following words :

The issue presented is one of unauthorized disbursement by a trustee of trust funds expressly stipulated to be held invested in interest-bearing securities.

The secretary of the interior, who, by the treaty of 1852, was constituted the final arbiter in the case, has adopted this conclusion of the court of claims, in his decisions. In his annual report he quotes this language of the court, and states that he approves and adopts it. He also quotes and adopts it, in his communication to the secretary of the treasury, submitting an estimate for an appropriation, which communication was transmitted to the house of representatives, by the secretary of the treasury, and is printed on pages 1 and 2 of executive document No. 2, house of representatives, 50th congress, 1st session.

Inasmuch as the secretary of the interior was, by the treaty of 1852, authorized and required to decide this case, and his decision was made final and conclusive on both the Chickasaws and the United States, the congress of the United States is manifestly bound by the conclusion of the secretary that "the issue presented is one of unauthorized disbursement by a trustee of trust funds expressly stipulated to be held invested in interest-bearing securities."

But senators and representatives may wish to know on what grounds this conclusion of the secretary rests. I proceed therefore to cite the treaty stipulations and the statutory provisions which necessitated the decision of the secretary on this point.

I begin with the treaty of 1832. It is printed at page 381 of the seventh volume of the statutes :

ARTICLE XI. The Chickasaw nation have determined to create a perpetual fund, for the use of the nation forever, out of the proceeds of the country now ceded away. And for that purpose they propose to invest a large proportion of the money arising from the sale of the land, in some safe and valuable stocks, which will bring them in an annual interest or dividend, to be used for all national purposes, leaving the principal untouched, intending to use the interest alone. It is therefore proposed by the Chickasaws, and agreed to, that the sum to be laid out in stocks as above mentioned shall be left with the government of the United States until it can be laid out under the direction of the president of the United States, by and with the advice and consent of the senate, in such safe and valuable stock as he may approve of, for the use and benefit of the Chickasaw nation. * * * At the expiration of fifty years from this date, if the Chickasaw nation shall have improved in education and civilization, and become so enlightened as to be capable of managing so large a sum of money to advantage, and with safety, for the benefit of the nation, and the president of the United States, with the senate, shall be satisfied thereof at that time, and shall give their consent thereto, the Chickasaw nation may then withdraw the whole, or any part of the fund now set apart to be laid out in stocks or at interest, and dispose of the same in any manner that they may think proper at that time, for the use and benefit of the whole nation ; but no part of said fund shall ever be used for any other purpose than the benefit of the whole Chickasaw nation.

Here is a clear agreement that the trust fund of the Chickasaws, which they propose to "invest in some safe and valuable stocks, which will bring them in an annual interest, or dividend, to be used for national purposes, leaving the principal untouched, intending to use the interest alone," shall be kept invested by the United States for a period of fifty years ; and that, at the expiration of the prescribed period of fifty years, "the Chickasaw nation may then withdraw the whole or any part of the fund now set apart to be laid out in stocks or at interest," on the terms set forth in this article of the treaty.

I submit that this article, as a whole, exhibits an express promise, on the part of the United States, to keep the trust fund of the Chickasaws safely invested, at interest, for a period of fifty years, and that this express promise is, in effect, a promise that the government of

the United States will pay the interest, in either one of two contingencies—first, if the trust fund, or any part of it, shall not be invested so as to "bring in" interest, and, secondly, if the investments prove not to be "safe" and fail to "bring them in an annual interest, or dividend."

This promise is repeated in the last clause of the eleventh article of the treaty of 1834. I read from page 454 of volume 7 of the statutes.

The funds thence resulting, after the necessary expenses of surveying and selling, and other advances which may be made, are repaid to the United States, shall, from time to time, be invested in some secure stocks, redeemable within a period of not more than twenty years : and the United States will cause the interest arising therefrom annually to be paid to the Chickasaws.

Here is an express promise that the United States will keep the trust fund invested in "some secure stocks," and "will cause the interest arising therefrom annually to be paid to the Chickasaws." To my mind, the proposition that this express promise is in substance and effect a promise that the United States shall guaranty the interest, and shall pay it, if not duly realized from the stock, is too clear to admit of dispute or doubt. It is impossible for me to comprehend how any man can deny that, from the date of the treaty of 1834, the United States were legally bound by an express promise to pay interest on defaulted investments, or that congress was bound to make appropriations for such interest.

It is enacted, in section 2096 of the revised statutes, the substantive provisions of which first appeared in the act of January 9, 1837, as follows :

The secretary of the interior shall invest, in a manner which shall be in his judgment most safe and beneficial for the fund, all moneys that may be received under the treaties containing stipulations for the payment, to the Indians annually, of interest upon the proceeds of the lands ceded by them, and he shall make no investment of such moneys, or of any portion, at a lower rate of interest than five per centum per annum.

Here is an express promise on the part of the United

States to make safe investments of all interest-bearing trust funds, at a rate of interest not lower than five per centum per annum. And this promise has legal effect from the date of the original passage of the act, January 9, 1837.

Next comes the treaty of 1852. I read, from the fifth article, the following stipulation:

The Chickasaws are desirous that the whole amount of their national fund shall remain with the United States in trust for the benefit of their people, and that the same shall, on no account, be diminished. It is therefore agreed that the United States shall continue to hold said fund in trust, as aforesaid, and shall, constantly keep the same invested in safe and profitable stocks, the interest upon which shall be annually paid to the Chickasaw nation (10 stat. 975).

Here again is an express promise that the United States "shall constantly keep the same invested in safe and profitable stocks, the interest upon which shall be annually paid to the Chickasaw nation." It is, in effect, a promise, valid from the date of the treaty of 1852, that the United States will pay defaulted interest on such investments.

II.

By the enactment, from time to time, of twelve different statutes, making appropriations for the defaulted interest on "state stocks" held as trust fund investments for the Chickasaws, the United States have recognized, reaffirmed, and performed these treaty obligations.

In 1845 congress made an appropriation—

To make good the interest on investments in state stocks and bonds for various Indian tribes, not yet paid by the states, to be reimbursed out of the interest, when collected, \$68,439.93 (5 stat. 777).

Congress made an appropriation June 27, 1846, as follows:

To make good the interest on investments in state stocks and bonds for various Indian tribes not yet paid by the states, to be reimbursed out of the interest when collected, \$19,534.09 (9 stat. 34).

In 1847 congress made an appropriation—

To make good the interest on investments in state stocks and bonds for various Indian tribes, not yet paid by the states, to be reimbursed out of the interest when collected, \$19,534.09. To make good the interest on investments in state stocks and bonds for the Chickasaw tribe of Indians, not yet paid by the states, to be reimbursed out of the interest when collected, \$14,963.26 (9 stat. 145).

In 1848 congress made an appropriation,

For amount to make good the interest on investments in state stocks for the Chickasaw Indians not yet paid by the states, to be reimbursed out of the interest when collected, \$16,200 (9 stat. 254).

In 1851 an appropriation was made as follows:

To make good the interest on investments in state stocks and bonds for the Chickasaw tribe of Indians not yet paid by the states, to be reimbursed out of the interest when collected, \$22,225 (9 stat., 615).

In 1852 congress appropriated—

To make good the interest on investments in stocks of the state of Arkansas, held in trust by the secretary of the treasury for the Chickasaw Indians, not yet paid, to be reimbursed out of the interest when collected, \$5,400 (10 stat. 95).

On the 28th of February, 1859, congress appropriated—

For arrears of interest due January 1st, 1859, on five per cent. bonds of the state of Indiana, held in trust for the Chickasaw incompetents, by the secretary of the interior, \$350. (11 stat. 392).

In 1860 congress made an appropriation—

To enable the secretary of the treasury to pay to the Chickasaw Indians interest on \$100,000, part of their national fund which was paid into the treasury in January, 1857, on account of the redemption of that amount of the state stock of Ohio, previously held by that department, in trust for that fund, \$21,000 (12 stat., 110).

On the 2d of March, 1861, congress appropriated—

For arrears of interest, due 1st January, 1861, on \$70,000, five per centum bonds of the state of Indiana, \$7,000. (12 stat. 238.)

In 1870 congress made an appropriation,

For interest on certain stocks and bonds belonging to the Chickasaw national fund, \$15,140.00.

For interest on certain stocks and bonds belonging to the Chickasaw incompetents, \$100.00. (16 stat., 358.)

III.

The United States have, in like manner, recognized, reaffirmed, and performed these treaty obligations, by the enactment of twenty-one different statutes, making appropriations for the payment of interest on the trust funds of the Chickasaws held in the form of money in the treasury of the United States.

In 1871 congress appropriated,

For interest on the Chickasaw national fund, \$15,140.00.

For interest on the Chickasaw incompetents' fund, \$200 (16 stat., 569).

On the 29th of May, 1872, congress appropriated,

For interest on the Chickasaw national fund, \$15,140.

For interest on the Chickasaw incompetents' fund, \$100 (17 stat., 188).

On February 14th, 1873, congress appropriated,

For interest on the Chickasaw national fund, \$15,140.00.

For interest on the Chickasaw incompetents' fund, \$100 (17 stat., 462).

In 1874 congress made an appropriation,

For interest on the Chickasaw national fund, \$25,220.00.

For interest on the Chickasaw incompetents' fund, \$100 (18 stat., 174).

In 1875 congress made an appropriation,

For interest on the Chickasaw national fund, \$15,140.00 (18 stat., 448).

In 1876 congress made an appropriation,

For trust-fund interest due Chickasaw national fund, namely, on \$168,000 of Arkansas six per centum bonds, \$10,080; \$104,000 of Tennessee six per centum bonds, \$6,246.00; \$66,666.66 $\frac{2}{3}$ of Tennessee five and a quarter per centum bonds, \$3,500.00. * * * (19 stat., 198.)

On the 3d of March, 1877, congress appropriated—

For trust-fund interest due Chickasaw national fund, \$19,820 (19 stat., 293).

On the 27th of May, 1878, congress appropriated—

For trust-fund interest due Chickasaw national fund, \$19,820 (20 stat., 86).

In 1879 congress made an appropriation—

For trust-fund interest due Chickasaw national fund, \$19,820 (20 stat., 315).

Since 1879 congress has made ten annual appropriations of interest on the Chickasaw trust fund, each in these words:

For trust-fund interest due Chickasaw national fund, \$19,820.

These ten appropriations were made as follows:

In 1880 (21 Stat., 132); in 1881 (21 Stat., 501); in 1882 (22 Stat., 87); in 1883 (22 Stat., 450); in 1884 (23 Stat., 96); in 1885 (23 Stat., 383); in 1886 (24 Stat., 46); in 1887 (24 Stat., 466); in 1888 (25 Stat., 237); in 1889 (25 Stat., 1001); in 1890 (26 Stat., 360), and in 1891 (26 Stat., 1014).

In the presence of these treaty stipulations and statutory enactments no man can deny that the government of the United States is under an express obligation either to hold the trust fund of the Chickasaws invested, at five per centum per annum, or to pay five per centum interest on such trust fund.

IV.

From December 31, 1840, until June 30, 1889, this sum of \$184,143.09, and from March 9, 1850, until March 3, 1891, the sum of \$56,021.49, as parts of the Chickasaw trust fund, were held in the Treasury of the United States; but, during that period, the account books of the United States failed to show the presence of these sums in the treasury.

If the foregoing statement be true, it will follow that the stipulated interest on these sums, if not already paid, must be paid by the United States to the Chickasaw nation.

The circumstance that the government pays no interest on demands sued in the court of claims, either before or after they are due, without an express promise to pay interest, does not touch the outermost circumference of this

case. For in this case there was an express promise to pay interest. And while a trustee, under an express contract to pay interest on the trust fund, may, by lawful disbursements therefrom, reduce the volume of the fund on which interest is payable, he cannot, by illegal disbursements from the fund, reduce the volume of the fund on which he is liable for interest. Nor can a trustee by claiming a disbursement to be lawful, which is, in truth, unlawful, and by evading a settlement of the question, for fifty years, relieve himself from his liability to pay interest during the period which elapses between the date of the unlawful disbursement and the date of the final adjudication declaring it illegal. If he could do this he could forever avoid the payment of interest on any part of the trust fund by presenting a claim for the disbursement of the entire fund and renewing that claim, from time to time, so as to keep it always pending.

On the 31st day of December, 1840, the books of the treasury were in such a shape that they failed to show the presence of \$184,143.09 of the Chickasaw trust funds in the treasury of the United States, and on the 9th day of March, 1850, they failed to show the presence in the treasury of the further sum of \$56,021.49. The officials of the treasury in effect declared that these sums were not in the treasury. They in effect declared that these sums had been lawfully and properly paid out of the treasury, for the benefit of the Chickasaw nation. These declarations the Chickasaws promptly denied. They persistently petitioned the United States to correct their books, so that they should show the presence of this trust money in the treasury. At length the United States, in the treaty of 1852, agreed to submit to the final arbitrament of the secretary of the interior the question whether these moneys were a part of the Chickasaw trust funds held in

the treasury of the United States in 1840 and 1850 respectively, or had been lawfully and properly paid out. After long delay the secretary of the interior, in 1883, referred these questions to the court of claims for a report as to the law and facts. The court found that these moneys had not been lawfully or properly paid out, but had remained a part of the trust fund of the Chickasaws in the treasury of the United States.

And in December, 1887, the secretary of the interior, exercising the power conferred by the treaty of 1852, made his final decision in the case. He adopted the findings of law and fact reported to him by the court of claims. His decision, taken in connection with the accompanying statement of the commissioner of Indian affairs, made by his order, shows that on the 31st day of December, 1840, the sum of \$184,143.09 was present in the treasury of the United States, as a part of the trust funds of the Chickasaw nation, but its presence was not shown by the books of the treasury, and that on the 9th day of March, 1850, the sum of \$56,021.49 was in the treasury, but was not shown to be there by the treasury books.

The statement of the commissioner of Indian affairs, made in obedience to the order of the secretary of the interior, and transmitted by the secretary, with his decision under the treaty, contained the following paragraphs already cited for another purpose :

Prior to 1852 the Chickasaw Indians had complained that errors existed in the accounts of their trust funds kept at the treasury department ; and that in consequence of such errors the balance had been represented as much less than its actual amount ; therefore the semi-annual payments of interest, which they had received on their trust funds, were less than they were entitled, under the said treaties, to receive ; and they requested that the matter be corrected. The alleged errors of account were divided into two classes :

1st. Those pertaining to charges for disbursements from the Chickasaw general fund, and 2d. Those pertaining to the orphan and incompetent funds. * * *

On the 23rd day of May, 1887, the court of claims caused its findings of facts and conclusions of law in the case to be filed in this department, showing that the Chickasaw general fund and the Chickasaw incompetent fund had been subjected to erroneous reductions, on the books of the United States, as follows:

Chickasaw general fund:	
Payment of transportation and demurrage to S. Buckner (charged against the trust fund prior to December 31, 1840)	\$58,299 00
Payments to conductors of emigration (charged prior to December 31, 1840).....	26,563 68
Payment to assignees of Wm. M. Gwinn (charged prior to December 21, 1844).....	56,021 49
Total.....	\$140,884 17

Chickasaw incompetent fund:	
Payments from incompetent fund (charged prior to December 31, 1840).....	99,280 41
Total.....	\$240,164 58

V.

Interest remained unpaid, from December 31, 1840, to June 30, 1889, on \$184,143.09, of the Chickasaw trust fund, and on \$56,021.49 from March 9, 1850, until March 3, 1891.

This proposition hardly requires any comment beyond the mere statement of it. For more than forty years the government has denied the presence of these sums in the treasury and has controverted its obligation to pay this interest. Trust fund interest is paid only on the balance of the trust fund held in the treasury of the United States, as shown by the books of the treasury. On the 31st day of December, 1840, the books of the treasury erroneously represented that \$184,143.09 of this trust fund was not in the treasury, and on the 9th day of March, 1850, they erroneously represented that the further sum of \$56,021.49 was not in the treasury. The statement of the commissioner of Indian affairs, in the report already cited, shows that no interest has been paid by the United States to the

Chickasaw nation, on either of these sums since those respective dates.

The interest on \$184,143.09, from December 31, 1840, to June 30, 1889, at five per centum per annum will be \$446,546.99. The interest on \$56,021.49 from March 9, 1850, to March 3, 1891, will be \$114,797.36. The aggregate is \$561,344.35.

VI.

The precedents, to be found in the legislation of congress, are in favor of the payment of the arrears of interest on this trust fund, which has been restored on the books of the United States, by the award of the secretary of the interior, followed by the corresponding appropriations of the fiftieth congress, and fifty-first congress.

In 1837 the sum of \$112,042.99 of the trust fund of the Chickasaws, which was in fact in the treasury of the United States, was dropped from the books of the treasury, in precisely the same way as that in which the sums now under consideration were dropped in 1840 and 1850. The amounts and dates being changed, the two cases are exactly alike. In that case, as in this, the apparent volume of the trust fund, as shown on the books, was reduced by an improper charge against the trust fund. In that case, as in this, the error, in the book-keeping of the United States, was rectified by a decision of the secretary of the interior, restoring to its place on the books the trust fund, which had remained in the treasury, although dropped from the books. In that case the charge was for damaged pork and flour furnished to the Chickasaws in 1837, but rejected by them and returned to the United States. The charge was made prior to September 1, 1837. As the result the United States failed to pay interest on this fund of \$112,042.99 from September 1, 1837, to March 9,

1850, a period of nearly thirteen years. But on the 11th day of March, 1850, \$58,124.14 was restored to the Chickasaw trust fund on the books of the United States, and on the 28th day of March, 1851, the residue, \$53,918.85, was restored. Thereupon the books harmonized with the facts. Thenceforth the annual interest was to be provided in the annual appropriation bills. But meantime, during the interval between the date when the item was dropped from the books and the date when it was restored, no interest had been paid on this sum of \$112,042.99. In 1855 congress appropriated \$72,960.25 to cover this interest. The appropriation, which will be found on page 671 of the tenth volume of the statutes at large, stands in the following words:

To pay this amount for interest due to the Chickasaws, at the rate of five per cent. per annum, in pursuance of the treaty of 1832, on the sum of \$112,042.99 improperly charged to said nation, according to the decision of the proper accounting officers of the treasury, from the first of September, 1837, until the ninth of March, 1850, \$72,960.25.

The case now before the committee is in principle exactly like that just considered, except on one point, and as to that point the case now before the committee is the stronger of the two. In the case now before you, the restoration to the trust fund was made by the secretary of the interior, in pursuance of a treaty, but in the other case the restoration was made by the secretary without any treaty authority. In this appropriation of 1855, then, we find a clear, strong precedent for the appropriation now asked. Indeed what we now ask is, *mutatis mutandis*, an exact repetition of the act of 1855.

Capt. R. D. C. Collins, of the army, was detailed to act as disbursing officer for the Chickasaw emigration. His alleged disbursements included the sum of \$15,140.84, which was charged against the Chickasaw trust fund in 1839. From 1839 until 1852 the United States failed to

pay the Chickasaw interest on that sum. But in 1852 congress having discovered that the sum so charged as a disbursement had not been disbursed for the Chickasaws, but had been embezzled by Capt. Collins, made an appropriation restoring the sum of \$15,140.84 to their trust fund and paying interest thereon from 1839 to 1852, amounting to \$9,841.45.

The appropriation is in the following words:

For payment to the Chickasaw Indians for amount of defalcation of Capt. R. D. C. Collins, U. S. disbursing agent, together with interest thereon at the rate of six per cent. per annum, from March, 1839, until paid, \$24,982.29 (10 stat. 43).

In the case before the committee the principal of the trust fund has already been restored to its place, on the books of the United States, by the award of the secretary of the interior, made in pursuance of the provisions of a valid treaty, after a full investigation by the court of claims, followed by an appropriation of the amount of the principal by congress. The Chickasaws now ask congress to do precisely what was done in the case of Capt. Collins, viz: to appropriate for the arrears of interest due on the restored principal of the trust fund.

In 1876 congress made an appropriation—

For trust fund interest due Chickasaw national fund, namely: * * * deficiency arrears of interest on \$78,000 of Arkansas state six per centum bonds, from July 1, 1874, to July 1, 1875, \$4,680, in all, \$24,500 (19 stat., 198).

In 1878 congress made an appropriation—

For trust fund interest which accrued between the first day of January, 1861, and the first day of July, 1866, on trust funds held by the United States for the Chickasaw nation the sum of \$222,290.25 (20 stat., 233).

On the 3d of March, 1855, congress appropriated—

For the payment of this sum due the Cherokees, on account of interest, between the first of May, 1835, and first of May, 1846, on stocks of the state of Michigan, held in trust by the secretary of the interior, under the treaty of 1835, and the supplement of March, 1836, \$20,97 (10 stat., 687).

Congress also appropriated, on the 3d of March, 1855, as follows :

IOWAS. For arrears of interest, in lieu of investments, on \$157,500, being for four months from the first March to the thirtieth June, 1854, and on \$50,000 of the same to the thirtieth September, 1854, per second article treaty nineteenth October, 1838, \$3,257.19 (10 stat., 690).

On the 28th of February, 1859, congress appropriated—

For arrears of interest, due January 1, 1859, on five per cent. bonds of the state of Indiana, held in trust for the Pottawatomies, by the secretary of the interior, \$12,053.20 (11 stat., 397).

On the 10th of April, 1869, congress appropriated—

For this amount, being the interest on \$50,000 from August 16, 1866, the date of the ratification of the treaty made with the Seminoles March 21, 1866, to November 12, 1868, the date when the payment of said sum commenced, two years two months and twenty-six days, as per third article of treaty of March 21, 1866, \$5,597.21 (16 stat., 31).

Congress also appropriated on the 10th of April, 1869, as follows :

For payment of interest on \$1,299,300 non-paying stocks, held by the secretary of the interior in trust for various Indian tribes, up to and including the interest payable July 1, 1869, less two months (sevenths) of six per centum interest on \$796,800 Virginia stock, for the payment of which provision has been made, \$65,618.57, or so much thereof as may be necessary (16 stat., 38).

VII.

Congress has not only made appropriations for the payment of arrears of interest on trust funds improperly dropped from the books of the United States, and afterwards restored thereto, but has also, in legislation, expressly declared that such payments were made in pursuance of the treaty of 1832.

As we have already seen, congress made an appropriation in 1855—

To pay this amount for interest due to the Chickasaws, at the rate of five per cent. per annum, in pursuance of the treaty of 1832, on the sum of \$112,042.99 improperly charged to said nation, according to the decision of the proper accounting officers of the treasury, from the first of September, 1837, until the 9th of March, 1850, \$72,960.25 (10 stat., 671).

In this act congress declared that the sum therein appropriated was "interest due to the Chickasaws, at the rate of five per cent. per annum, in pursuance of the treaty of 1832."

Now here is an express legislative declaration that the treaty of 1832 bound the United States to pay interest on the uninvested trust funds of the Chickasaws. This act of 1855 is therefore tantamount to an express promise, by congress, to pay such interest, valid from the date of its enactment, March 3, 1855. This sum of \$112,042.99 had been diverted from the trust fund. It had been paid out for damaged flour and pork. Congress appropriates \$72,960.25 "to pay this amount for interest due to the Chickasaws, at the rate of five per cent. per annum, in pursuance of the treaty of 1832." This payment of interest is declared to be made in pursuance of the treaty of 1832. Could any language be clearer than this?

But so far as the orphans and incompetents are concerned the terms of the treaty of 1852 are still more explicit and clear and strong. I read from the treaty, on page 975 of the tenth volume of the statutes :

And if it shall appear to the satisfaction of said secretary that any of the orphans and incompetents have been defrauded by such wrongful payment, the amount thus misapplied shall be accounted for by the United States as if no such payment had been made.

"The amount thus misapplied shall be accounted for, as if no such payment had been made." But, if no such payment had been made, the United States would have been bound to pay, or guaranty, the interest every year. Can the United States account for the amount so misapplied, "as if no such payment had been made," without including, in the accounting, the interest which the Chickasaws would have received, "if no such payment had been made"? The answer is too plain

for dispute or doubt. This declaration of the treaty of 1852 is an express promise to pay interest, on the diverted trust funds of the orphans and incompetents. As such express promise, it has been binding on the United States since the date of treaty of 1852. And it happens to be the fact that of the trust fund on which arrears of interest are now due, the sum of \$99,230.41 belongs to the Chickasaw incompetents.