
In the Court of Claims

OF THE
UNITED STATES.

December Term, 1904.

JOHN T. AYRES, Executor of the Estate of Eli Ayres,
deceased, Claimant,

vs.

THE UNITED STATES.

No. 11903, Congressional.

BRIEF OF CLAIMANT.

GEORGE C. HAZELTON,
Attorney for Claimant.
JOHN H. HAZELTON, *of Counsel.*

IN THE
Court of Claims of the United States.

DECEMBER TERM, 1905.

JOHN T. AYRES, Executor of the Estate of Eli Ayres, deceased, <i>Claimant,</i>	} Congressional. No. 11,903.
<i>vs.</i> THE UNITED STATES.	

BRIEF FOR CLAIMANT.

A full statement on behalf of the claimant will be found in his Statement and Abstract of Evidence, which has been printed and filed separately. Relying on that statement we shall confine this brief to the points involving the questions referred to the Court for findings of fact, commencing with the date of the treaty.

The following questions are referred to the Court by the Act of Congress (33 Stat. L., part I, p. 808), for findings of fact, to wit:

First. As to the purchase of said parcels or sections of land from the Chickasaw Indians by said Ayres.

Second. As to the deeds received by him from the said Indians, and the amounts paid by said Ayres to said Indians per acre for said parcels or sections of land.

Third. As to the title of said Ayres to the same.

Fourth. Also to find the facts as to the alleged appropriation by the United States Government of the said parcels or sections of land alleged to have been so purchased by said Ayres from the said Indians.

Fifth. What disposition, if any, has been made of the same by the United States, whether the same has been disposed of by the United States under the public land laws, and all the material facts in connection therewith, embracing the amount which should be paid to the legal representatives of said Eli Ayres, deceased, by reason of the loss occasioned to him, if any, by the appropriation by the Government of the said parcels or sections of land purchased from said Indians as herein claimed.

Sixth. What amount of the proceeds of the sale of said lands, if any, is held by the Government in trust for the said Chickasaw Indians.

Seventh. Whether any of the said parcels or sections of land are still held and not disposed of by the United States.

Eighth. The Court is authorized to find any other fact or facts of importance to the parties which may arise in said claim.

1. Title of Chickasaw Indians.

By the provisions of article five of the Treaty of May 24, 1834, there were granted reservations of land in fee out of the Chickasaw Reservation in the State of Mississippi, to heads of families, being Indians, and having Indian families consisting of ten persons and upward, four sections; to those consisting of five persons and less than ten, three sections; to those consisting of less than five persons, two sections; and to those owning more than ten

slaves, an additional section, and to those owning ten slaves and less than ten, an additional half section.

By article six of the said treaty, a section each is granted in fee to persons, male and female, not being heads of families, who are of the age of twenty-one years and upwards, a list of whom, within a reasonable time, should be made out by the seven persons named in the fourth article of the treaty, and filed with agent, upon whose certificate of its believed accuracy the register and receiver should cause the reservations to be located upon lands fit for cultivation.

7 Stat. L., p. 450.

The lists were made out by the persons named in the treaty, including all of the names of the Indian reservees from whom claimant's decedent, Eli Ayres, purchased his 194 sections of land. Some of these lists are in the record and some of them have, in the course of the long time that has expired, been lost. The certificates of the Indian Agent show that the lands were duly reserved and located in the names of the grantors of Eli Ayres.

Claimant's Stat. and Abs. Ev., pp. 5-10.

Book 13, transmitted by Secy. Int., pp. 83-88, 130-136.

Letter of Commissioner Smith of April 26, 1876, pp. 6-8.

Letter of Commissioner Price of April 19, 1882, pp. 6, 7.

Report of Commissioner Crawford of April 12, 1841, pp. 7, 8.

Sen. Rep. No. 466, 57th Cong., 1st Sess., p. 5, Ex. A.

Sen. Rep. No. 1,457, 54th Cong., 2nd Sess., p. 4.

That the sections of land were actually reserved and

located to said Indians, as claimed, does not seem to have ever been a matter of dispute in the departments.

Stat. and Abs. Ev., p. 10-12, 6th par. on p. 11.
 Report of Commissioner Crawford, April 12, 1841,
 printed as Exhibit "C" to Mr. Teller's Report,
 S. 57th Cong., 1st Sess., pp. 11-15.
 Book 13, transmitted by Secy. Int., pp. 83-88, 130-
 136.
 Head note to tabulated statement No. 46, transmit-
 ted by Secy. Int., printed on p. 50, Stat. and Abs.
 Ev.

Commissioner Price states (Letter Apr. 19, 1882) that all of the lists could not be found in April, 1876, but that informal inquiry at the General Land Office elicited the information that reservations were located to the number of 524 by the Register and Receiver from the lists transmitted to that office. The sections located for and the names of the Indian reservees from whom Eli Ayres purchased, are included in the above 524 sections.

Secretary of War Bell called them "locations," in his order of May 4, 1841.

Stat. and Abs. Ev., p. 25.

The committees of both the Senate and House have uniformly held that the lands were duly and regularly reserved and located for said Indians, and that the title was vested in them.

Stat. and Abs. Ev., pp. 30-34.
 Mr. Gifford's Rep., H. R. No. 2,959, 51st Cong.,
 1st Sess., pp. 4-5.
 Mr. Jones' Rep., S. No. 1,457, 54th Cong., 2nd
 Sess., p. 7.
 Mr. Teller's Rep., S. No. 466, 57th Cong., 2nd
 Sess., pp. 1-2.

Mr. Benjamin's Rep., S. No. 391, 34th Cong., 3rd
 Sess., p. 1.
 Mr. Dubois' Rep., S. No. 401, 58th Cong., 2nd
 Sess., pars. 1 and 2.
 Mr. Clover's Rep., H. R. No. 2,113, 52nd Cong.,
 1st Sess., pp. 1-2.
 Mr. Turpin's Rep., H. R. No. 1,900, 53rd Cong.,
 3rd Sess., p. 3.
 Mr. Stewart's Rep., S. No. 951, 57th Cong., 1st
 Sess., pp. 1-6.
 Mr. Stewart's Rep., S. No. 1,660, 58th Cong., 2nd
 Sess., pp. 14-16.

Congress recognized the title of the Indians when it refunded the money paid by Wray and Hardin for patents to parts of said land, the patents having been held void by the Courts.

11 Stat. L., p. 514.
 17 Stat. L., p. 705.

The Courts of the State of Mississippi and of the United States have also uniformly held that the said lands were so reserved and located to the said Indians as to vest the title in them under the grant in the treaty.

Stat. and Abs. Ev., pp. 42-46.
 Wray *vs.* Doe, 10 Smed. and Mar. (Miss.), 461.
 Hardin *vs.* Ho-yo-po-nubby's Lessee, 27 Miss. Rep.
 (5 Cush.), 582.
 Best *vs.* Polk, 18 Wall., 115.

It seems to be the fact, therefore, that the title of the Indians to the lands so reserved and located for them, has been recognized, admitted, and confirmed by the departments, by the committees of Congress, by Congress itself, and by the highest Courts, State and National.

Mr. Gifford states the facts and the law concisely as follows:

"These two decisions of the Mississippi Court were approved and confirmed in a decision coming up on exactly similar facts by the Supreme Court of the United States in *Best vs. Polk*, 18 Wall., 112. The conclusion of the Courts in these several cases was that the treaty of 1834, by the force of its own provisions, conveyed the title to the Indians, and was nothing more nor less than a grant. In each case the Indian title was one of those here in question, and it was contested by a party holding a United States patent subsequently given. The Court in each case held the absolute title to be in the Indian and the patent void.

In the first case of *Wray vs. Doe*, Congress appropriated money to repay the amount paid by the patentee (see 11 Stat., 514). In *Harden vs. Doe*, the Executive Department made similar restitution to the party claiming under the patent. (See Land Book 3, p. 300.)

Thus all the departments of the Government have recognized the binding force of the Court decisions. As to the cases themselves, of course the decisions are *res adjudicata*. As to the other cases under consideration, these decisions are *stare decisis*. They form a 'rule of right,' made by the highest Courts, after due deliberation, which it would be a great hardship to disregard.

We must, therefore, conclude that the Indians who undertook to convey to the claimant had the title to their several reservations, and that the subsequent attempt on the part of the United States to convey the same lands to other parties by patent was wholly nugatory and void. It is, however, a fact that those claiming under patents from the United States were permitted to take possession of the lands, and have continuously held them up to the present."

Stat. and Abs. Ev., p. 31.

Mr. Gifford's Rep., H. R. No. 2,959, 51st Cong., 1st Sess., pp. 4-5.
See also 17 Stat. L., 705.

2. Title of Eli Ayres.

Eli Ayres purchased 194 sections or parcels of land which had been located for certain Chickasaw Indians. The roll numbers, names of Indian reservees, and the description of the sections and parcels of land, as certified by the Indian Agent, and conveyed by deeds to Eli Ayres, are identical.

Stat. and Abs. Ev. (tab. stats.), pp. 12-16, 18-22.
Book 13, transmitted by Secy. Int., pp. 83-88, 130-136.

The listing of the said Chickasaw Indians, and the location of the said tracts and parcels of land in their names and roll numbers, were completed in accordance with the requirements of the treaty and the title thereto vested in said Indians, before Eli Ayres purchased the same. The number of locations, including those purchased by Ayres, was 2,370, of which 1,844 had been approved.

Stat. and Abs. Ev., pp. 23-24.
Rep. Com. Price, Apr. 19, 1882, pp. 5, 6.
Rep. Com. Crawford, Apr. 12, 1841.
Rep. Com. Smith, Apr. 26, 1876.
Sen. Rep. 466, 57th Cong., 1st Sess.
Sen. Rep. 1,457, 54th Cong., 2nd Sess.

Eli Ayres purchased the land from the Indians and took their deeds of conveyance to the same upon the strength of the acts of the Chickasaw Commissioners and Chiefs, and of the acts of the Indian Agent and Register and Receiver of the Land Office at Pontotoc, Miss., which showed the

proceedings to have been regular and in accordance with the provisions of the treaty. Under such circumstances, and upon the precedents established in the approval of like locations, was he not justified in making the purchases and in believing his locations and deeds would be approved? He had no knowledge that the Chickasaw nationality of any of the reservees was in question at the time of his purchase, and, in fact, this question appears to have been an afterthought of the very Commissioner who certified to the nationality and qualifications of said Indians to claim the reservations and locations.

Stat. and Abs. Ev., p. 24.
Com. Crawford's Rep. April 12, 1841, and Exhibits.

The identical sections and parcels of land that had been located for said Indian reservees (Abs. Ev., pp. 12-16), were conveyed by them to Eli Ayres by deeds duly executed and witnessed and for a fair and valuable consideration recited therein, which was paid (Abs. Ev., pp. 18-22). The original deeds, 150 in number, with the original certificates and receipts thereto, have been preserved. They were kept by Eli Ayres until he delivered them into the custody of his attorney, George E. Harris, who kept them in a safe deposit box in Washington until he delivered all of them but two to Simon Wolf, who has made them exhibits to his deposition in this case. The others, two in number, had been delivered by said George E. Harris to Ewan H. Jemison, who has made them exhibits to his deposition in this case.

See affidavit Eli Ayres, Ex. B to Harris' deposition, printed pp. 39-40, Stat. and Abs. Ev.
Exhibits 19 to 166 to Simon Wolf's deposition.
Exhibits A and B to Ewan H. Jemison's deposition.
Affidavit Dollarhide, Ex. to Jones' deposition, printed on pp. 37-38, Stat. and Abs. Ev.

The due and lawful execution and delivery of these deeds by the Indian reservees and grantors to Eli Ayres has never been questioned by the Government, nor by anybody else. Nor has the payment of the consideration or its fairness ever been disputed.

Mr. Gifford says, upon this point, in his Report, H. R. No. 2,959, 51st Cong., 1st Sess., pp. 4-5, as follows:

"The remaining considerations to which the committee addressed their attention were, whether the complainant had paid over to the Indians a proper consideration for the lands in question, and whether he had been diligent in the prosecution of his claim. On the first of these points Mr. Ayres has made much more than a *prima facie* case, and nothing appears in the record or on file in opposition. The deeds themselves state consideration, and were duly witnessed and executed. They each have attached a receipt for the full amount at \$1.25 per acre, duly signed by the grantor and attested by two witnesses. About twenty of the deeds were certified to by the agent, as he was officially required to do, that the consideration was a fair one, and that the same had been paid. In addition to these evidences of the record the plaintiff filed the evidence of himself and one Dollarhide, showing that the compensation was a fair and proper one, and that all the payments had been duly made. The credibility and reliability of both Mr. Ayres and Mr. Dollarhide are strongly certified to by Hon. Olin Wellborn, ex-Member of Congress from Texas; Mr. Jo Abbott, of Texas; Hon. J. K. Jones, Senator from Arkansas; Hon. Thomas C. McRae, Member of Congress from Arkansas, and Hon. C. R. Breckinridge, from the same State."

See Rep. of Mr. Turpin, H. R. No. 1,900, 53rd Cong., 3rd Sess., p. 5.
See deposition of Hon. J. K. Jones.

Affidavit of Eli Ayres, Ex. B to Harris' deposition, printed on pp. 39-40, Stat. and Abs. Ev.
 Affidavit of Dollarhide, Ex. to Jones' deposition, printed on pp. 37-38, Stat. and Abs. Ev.
 Stat. and Abs. Ev., pp. 46-47.

Mr. Teller says in his Report, S. 466, 57th Cong., 1st Sess., p. 2:

"That in 1839, 150 Chickasaw Indian reservees, in conformity with the requirements of the treaty made with the Chickasaw Indians in 1834, sold 194 sections of their reserved lands, situated in the State of Mississippi, to Eli Ayres, in his lifetime, for which they executed and delivered to him 150 deeds and were paid therefor by Ayres \$1.25 per acre, making an aggregate sum of \$155,200."

See also Mr. Stewart's Rep., No. 1,660, 58th Cong., 2nd Sess., pp. 15-16; Mr. Allen's Rep., S. 1,599, 55th Cong., 3rd Sess., p. 1; Mr. Stewart's Rep., S. No. 951, 57th Cong., 1st Sess., p. 5; Mr. Jones' Rep., S. No. 1,457, 54th Cong., 2nd Sess., pp. 4-5; Mr. Dubois' Rep., S. No. 401, 58th Cong., 2nd Sess., p. 3; Stat. and Abs. Ev., pp. 46-47.

As heretofore shown the Courts have decided that the title to the said sections of land became absolutely vested in the Indian reservees by virtue of the reservation and location thereof as provided for in the grant in the treaty. Three cases were contested in the Courts by Eli Ayres in the only way remedies were available to him. He was not in a position in consequence of the acts of the Government and the restrictions thrown around him and his deeds and title, to bring actions in ejectment to maintain and establish his rights and possession to the lands described in his deeds. He was compelled to accomplish indirectly what he

could not do directly, namely, establish his rights and title by the prosecution of the suits in the manner he did. The Courts sustained the title of the Indian reservees to the lands and thereby, in effect, established the title of Ayres under his deeds. The title had vested in the Indians and through them in Ayres before any of the unauthorized acts and restrictions had taken place on the part of the Government. The Indians had done all they could to invest Ayres with the title and had received their pay for the land. The deeds were left in Ayres' hands in their incomplete condition by reason of the unauthorized acts and restrictions of the Government alone, and Ayres was helpless against the Government in this respect. We contend therefore that the title to the lands passed from the Indians to Ayres.

Wray vs. Doe, 10 Smed. and Marsh. (Miss.), 461.
 Hardin vs. Ho-yo-po-nubby, 27 Miss. Rep., 582.
 Best vs. Polk, 18 Well., 115.
 Stat. and Abs. Ev., pp. 42-46.

Some of the original deeds filed in this suit are made to Niles and Ayres as grantees. This is explained by Eli Ayres in his affidavit, as follows:

"The said Niles was one Thomas N. Niles, and Eli Ayres this affiant; that the said Niles and Ayres were dealers in real estate in the Chickasaw lands in Mississippi; that in taking deeds, some of them were to Niles, some to Ayres, and some to Niles and Ayres. That upon final settlement between this affiant and the said Thomas N. Niles, of their land transactions, the said one hundred and forty-nine deeds (149) (now in the hands of the said Geo. E. Harris) fell to the lot of this affiant, Eli Ayres, the said Niles taking for his part or share other lands.

That the said 149 deeds are now wholly the property of and belonging absolutely to this affiant, Eli

The acts of the govt were authorized.

This is an admission that he had no remedy at law, proceeds from him in

Ayres in his own right, and that no other person or persons have any right, claim, or title, or pretended title thereto, nor has any other person ever claimed title thereto, and that the said deeds are his only muniments of title to the said lands. That he is informed and believes that the said Thomas N. Niles died in the year 1852 or thereabouts."

Exhibit B to Harris' deposition, printed on pp. 39-40, Stat. and Abs. Ev., transmitted by Congress as No. 27.

Niles died in 1852 and Ayres died in September, 1890. Each of the deeds contains the following clause:

"To have and to hold the above granted and described premises, with the appurtenances, unto the said parties of the second part as joint tenants and not as tenants in common, and the survivors or survivor of them and their assigns, and the assigns of such survivor, and the heirs of such survivor forever."

See Exhibits 19 to 166 to Wolf's deposition, and Exhibits A and B to Jemison's deposition, Stat. and Abs. Ev., pp. 28-29, 35-36.

3. Unauthorized Acts and Restrictions of the Government.

The President first tried to control the location of the reservations by an unauthorized regulation promulgated in December, 1834. Mr. Crawford, Commissioner of Indian Affairs, suggested to the President that he did not "perceive that in any portion or part of either treaty authority has been reserved to the President to control the location of reservations."

Rep. Com Price., Apr. 19, 1882, pp. 5, 6.
Rep. Com. Crawford, Apr. 12, 1841, pp. 6, 7.
Rep. Com. Smith, Apr. 26, 1876, pp. 3, 4.
Stat. and Abs. Ev., pp. 22-23.

And in *Wray vs. Doe* (10 Smed. and Marsh. (Miss.), 452, 462), the Court says:

"That the instructions from the War Department, as to the construction of the treaty have no binding force. One party to the treaty could add nothing to its terms, without the consent of the other. The rules of the Department as to the mode of carrying the treaty into execution, and for the guidance of the officers of the Government, not trenching upon the rights of the parties, would be considered obligatory. But the Department could impose no new condition upon the reservees."

The next interference of the President or Executive Department resulted in absolute disaster to the rights, interests and title of Eli Ayres in connection with said lands, notwithstanding his strenuous and diligent efforts to avert such disaster. It was instigated by the barest intimation that land may have been located for persons not Chickasaws, coupled with a suggestion that no titles pass until an investigation should be made. It will be observed that the title to the lands purchased by Ayres had already vested in the Chickasaw reservees in due form under the treaty, and had been conveyed by deeds to said Ayres by them, and was not in condition to be affected, excepting wrongfully by the powerful arm of the Government. This power was exercised regardless of vested rights and equities. The Secretary of War, on May 4, 1841, sent the list of what he designated as "unconfirmed locations" to the committee provided for in the fourth article of the treaty of 1834, for revision and correction. This committee had been established by the provisions of the treaty. But the list of "unconfirmed locations" sent by the Secretary of War never

President acted within authority vested specifically by Treaty

reached this committee, and the committee never met, or considered, or corrected, or revised the list. On October 25, 1842, Major Armstrong got together in an informal manner at Boggy Depot, Indian Territory, what he himself called a council, consisting of 25 Indians and himself, and proceeded in one day to wipe out 520 locations, which had been located, many, if not all of them, two years previously upon the strength and good faith of the testimony and signatures of Chief Ish-to-ho-to-pa and Isaac Alber-son, who had the audacity to attend this so-called council and stultify themselves; none of the other members of the committee were present at the gathering. No great effort appears to have been made by Major Armstrong to comply with the order of the Secretary of War, and as the facts disclose, as do also the reports of the gathering of Indians at Boggy Depot and of Major Armstrong, upon their face, that order never was complied with, and what was done by the so-called council of Indians was clearly without authority and absolutely void. And this is the view entertained by those who have had the matter under considera-
tion.

Stat. and Abs. Ev., pp. 23-28.

Mr. Turpin's Rep. H. R. No. 1,900, 53rd Cong.,
3rd Sess., p. 4.

Mr. Jones' Rep. S. No. 1,457, 54th Cong., 28th
Sess., pp. 5-6.

Mr. Turpin says, in his report of February 21, 1895,
H. R. No. 1,900, 53rd Cong., 3rd Sess., p. 4:

"It is now clearly apparent from the decision of
the Supreme Court of the State of Mississippi and
of the Supreme Court of the United States, that the
rights of these reservees had already become vested,

and they were then the owners in fee of their several
reservations. The order, therefore, made by the Sec-
retary would have had no binding validity had it been
carried into effect; but the fact is that the list in ques-
tion was never submitted, so far as appears, to the
said commissioners. It was submitted about a year
and a half after the date of the order to a self-con-
stituted council of from twenty to twenty-five Indians
who met at Boggy Depot, in the Indian Territory.
This council, which seems to have been wholly without
authority in the premises, passed upon the validity, or
invalidity, of 524 selections. The work was all done
in one day. Four of the selections were declared to be
valid and 520 of them invalid. This finding, with
all its want of validity and regularity, seems to have
found its way to the Department, and was not only
treated as the report of the commission provided for
in the treaty, but as furnishing sufficient basis for re-
fusal on the part of the President to approve the deeds
of any of the 520 reservees found on the list, when
they attempted to alienate their reservations. More
than this, all the reservations declared invalid by this
council were suspended, and forever after treated by
the Executive as absolutely void."

The fact that certain officers reported their report as certified to by me more than a year after the date of the order of the Secretary of War referred to in my report.

The order of the Secretary of War is dated May 4,
1841; the meeting of the 25 Indians was held at Boggy
Depot on October 25, 1842; the report of these Indians,
as to their proceedings, is dated October 25, 1842; Major
Armstrong's report on the same subject is dated October
28, 1842; these reports appear to have been received at the
War Department on March 1, 1843, and were approved on
the 3d day of that month.

Stat. and Abs. Ev., pp. 23-28.

Papers transmitted by Congress as Nos. 21 and 36.

The issuing of the order sending the list to the committee

for correction and revision suspended the further certification of the deeds by the Indian Agent, and also suspended the approval of the deeds by the President. When the reports of the Boggy Depot meeting and Major Armstrong's, were received and approved on March 3, 1843, the deeds held by Ayres were treated by the Government as void, and Ayres' rights ever after ignored, and his lands disposed of by the United States.

4. Efforts of Ayres to Have His Deeds Perfected and Approved by the President.

That Ayres made every effort in his power to protect his rights under his purchases and deeds, is abundantly shown by the record in all directions. He repeatedly applied to the proper departments for the approval of his deeds by the President. His applications were all rejected. He fought for his rights in the Courts, and won in every case; but the Government still persistently refused to grant to him his rights by approving his deeds.

Stat. and Abs. Ev., pp. 41-46, 56-59.

5. The United States Disposed of the Land.

After the Secretary of War had approved the reports of the Boggy Depot meeting of Indians, and disregarded the rights of Ayres by treating his deeds as void, the Government proceeded to dispose of the lands by selling some of it at public sale and locating the remainder. A tabulated statement transmitted by the Interior Department shows that the lands so sold and located are the identical lands that were reserved and located to the Chickasaw Indians and sold and conveyed by them to Eli Ayres. A comparison makes this clear. The Government, according to its

own showing, sold 141 sections of the land for \$48,061.56 net, and appropriated and located 53 sections.

Stat. and Abs. Ev., pp. 12-16, 18-22, 50-53.

Book 13, transmitted by Int. Dep., pp. 83-88, 130-136.

Tabulated Stat. Int. Dep., inc. No. 46.

Deeds to Eli Ayres, Exhibits 19 to 166, Wolf's deposition and A and B to Jemison's deposition.

6. Proceeds of the Land Sold.

By the third article of the treaty of 1832 the United States agreed to pay over to the Chickasaw Nation all the money arising from the sale of the lands ceded by the treaty, after deducting the whole cost and expenses of surveying and selling the same (7 Stat. L., 382).

Pursuant to the provisions of the Act of April 20, 1836 (5 Stat. L., 10), the net proceeds of the sales of the tracts of Ayres' land that were wrongfully sold by the United States, amounting to \$48,061.56, were covered into the Treasury and held for the Chickasaw Nation in trust, and invested upon interest for their benefit, as provided for in the eleventh article of the treaty of 1832 (7 Stat. L., 385).

It is established by the proof that the dates of sales of the Chickasaw lands were between December 5, 1836, and May 20, 1853, the approximate average date of such sales being estimated as May 1, 1846; that the \$48,061.56 was invested by the United States for the Chickasaw Indians at the rate of not less than five per cent interest per annum; that computing interest at five per cent per annum on \$48,061.56 from May 1, 1846, the approximate average date of sales of said reserved lands, down to November 1, 1905, the interest amounts to \$142,983.14, which added to the principal of \$48,061.56, makes a total of \$191,044.70.

We claim that in right and equity this sum should be refunded to the claimant.

Rep. Secy. Treas., Nov. 14, 1905, printed on pp. 54-55, Stat. and Abs. Ev.

7. Lands of Ayres Located to Others.

The Government wrongfully located to Chickasaw Indians or others, according to the report of the Secretary of the Interior, 53 sections of the land which Eli Ayres had purchased from the reservees as evidenced by his deeds, and for which he had paid \$42,400. Claimant is entitled to a finding in his favor on this part of the claim.

Rep. Secy. Int., inc. No. 46, printed on pp. 50-53, Stat. and Abs. Ev.

11 Stat. L., 514.

17 Stat. L., 705.

Respectfully submitted,

GEORGE C. HAZELTON,

Attorney for Claimant.

JOHN H. HAZELTON,
Of Counsel.

TABLE

OF PAPERS, DOCUMENTS AND PROOF REFERRED TO AND RELIED ON BY THE CLAIMANT.

Papers and Documents Transmitted by Congress.

1. Senator Jones' Report, S. No. 1,457, 54th Congress, 2nd Session, transmitted as No. 7.
2. Copy Letter Secretary Schurz, transmitted as No. 9.
3. Copy of Report of Commissioner Crawford, transmitted as No. 10.
4. Copy of Report of Commissioner Jones, transmitted as No. 11.
5. Copy Report of Commissioner Price, transmitted as No. 12.
6. Copy of Report of Commissioner Crawford, transmitted as No. 15.
7. Copy of Report of Commissioner Smith, transmitted as No. 18.
8. Copy of Report of Council or gathering of Indians at Boggy Depot, transmitted as No. 21.
9. Copy of Affidavit of Eli Ayres, transmitted as No. 28.
10. Copy and Originals of Affidavits of Dollarhide, transmitted as Nos. 29, 30 and 31.
11. Certified Copy of Letter from Secretary Teller to Speaker Reed, transmitted as No. 35.
12. Letter or Report of Armstrong to Crawford, concerning meeting at Boggy Depot, transmitted as No. 36.

Papers and Documents Transmitted by Secretary Interior.

13. Letter from Acting Commissioner Indian Affairs to Secretary Interior, transmitted as No. 3.
14. Letter to Commissioner Indian Affairs, enclosing sheets containing locations, etc., transmitted as No.

15. Original Certificate of Commissioners and Chiefs that Indians named therein were Chickasaws, etc., transmitted as No. 5.
16. Original Certificates, like the preceding one, transmitted as Nos. 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15.
17. Copy of Certificates of Indian Agent Reynolds as to names of Indians and locations,, transmitted as No. 17.
18. Letter of Pitchlyn, transmitted as No. 18.
19. Letter of Hubbard, transmitted as No. 19.
20. Letter of Major Armstrong, transmitted as No. 20.
21. Report of Commissioner Crawford to Secretary War (Bell), with letter of Major Armstrong attached, and endorsement Sec'y War thereon, transmitted as No. 22.
22. Report of Major Armstrong on Boggy Depot meeting of Indians, transmitted as No. 26.
23. Report of Proceedings at Boggy Depot, made by 25 Indians, transmitted as No. 27.
24. Copy of Letter of Commissioner Price to Secretary Interior, transmitted as No. 28.
25. Copy of Report of Commissioner Price to Secretary Interior, transmitted as No. 29.
26. Copy Instructions of Commissioner Crawford to Major Armstrong, transmitted as No. 30.
27. Report of Mr. Teller, S. No. 466, 57th Congress, 1st Session, transmitted as (No. 2).
28. Certificate of names of Indians entitled to land, transmitted as No. 39.
29. Copy Letter of Commissioner Price to Secretary Interior, transmitted as No. 40.
30. Copy Letter Secretary Schurz, transmitted as No. 41.
31. Copy Report Commissioner Smith to Secretary Interior, transmitted as No. 43.
32. Copy Letter Acting Commissioner Indian Affairs to Secretary Interior, transmitted as No. 44.
32. Land Book No. 13, of locations and reservations.
33. Tabulated Statement from the General Land Office, of sales of lands and proceeds thereof, and of locations of land not sold, transmitted in duplicate as Nos. 46 and 47.

Papers and Documents Transmitted by Treasury Department.

34. Report of Secretary Treasury of Nov. 14, 1905, as to proceeds of sales of lands, their investment and accrued interest.

Depositions, Papers and Documents Filed as Evidence by the Claimant.

35. Deposition of Simon Wolf and 166 exhibits.
36. Deposition of George E. Harris, identifying exhibits to Wolf's deposition, with exhibits.
37. Deposition of E. H. Jemison, with exhibits.
38. Deposition of James K. Jones, with exhibits.
39. Deposition of Ernest C. Varela.
40. Mr. Clover's Report, H. R. No. 2,113, 52nd Congress, 1st Session.
41. Mr. Turpin's Report, H. R. No. 1,900, 53rd Congress, 3rd Session.
42. Mr. Teller's Report, S. No. 466, 57th Congress, 1st Session.
43. Mr. Jones' Report, S. No. 1,457, 54th Congress, 2nd Session.
44. Mr. Stewart's Report, No. 951, 57th Congress, 1st Session, p. 4.
45. Mr. Stewart's Report, No. 1,660, 58th Congress, 2nd Session, p. 14.
46. Mr. Gifford's Report, No. 2,959, 51st Congress, 1st Session.
47. Mr. Allen's Report, No. 1,599, 55th Congress, 3rd Session.
48. Mr. Dubois' Report, No. 401, 58th Congress, 2nd Session, p. 3.
49. Mr. Benjamin's Report, No. 391, 34th Congress, 3rd Session.