

LEGAL REPRESENTATIVES OF ELI AYRES, DECEASED.

JULY 29, 1892.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. CLOVER, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany H. R. 9679.]

By the terms of a treaty with the Chickasaw Nation, made the 24th of May, 1834 (7 Stat. L., 450), it was provided that the following reservations should be granted in fee to the individual members of the nation, to wit:

To heads of families, being Indians, or having Indian families, consisting of ten persons and upwards, four sections of land are reserved. To those who have five and less than ten persons, three sections; those who have less than five, two sections. Also those who own more than ten shares shall be entitled to one additional section, and those owning ten and less than ten to half a section. * * *

Also reservations of a section each shall be granted 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, shall be made out by the seven persons hereinbefore mentioned, and filed with the agent, upon whose certificate of its believed accuracy the register and receiver shall cause said reservations to be located upon lands fit for cultivation, but not to interfere with the settlement rights of others.

The treaty further provides that the reservees might sell or otherwise dispose of their reservations in the following way: Upon the certificate of at least two persons out of seven named in the treaty—

That the party owning or claiming the same, is capable to manage, and to take care of his or her affairs; which fact to the best of his knowledge and information shall be certified by the agent; and furthermore that a fair consideration has been paid; and thereupon the deed of conveyance shall be valid, provided the President of the United States, or such other person as he may designate shall approve of the same, and indorse it on the deed, which said deed and approval, shall be registered at the place and within the time required by the laws of the State in which the land may be situated; otherwise to be void.

It is claimed by Ayres that after the titles to various tracts in pursuance of the treaty had become vested in certain of these Chickasaw Indians, he purchased their lands; that the certificate as to the capacity of the grantor to manage his or her own affairs, as provided in the treaty, was duly made in each case; that the deeds were duly made and executed, and a fair consideration paid to the Indians, and that a portion of the deeds were indorsed with the certificate of the agent as required by the treaty; that these deeds were presented to the President for his approval, but he refused to approve them; that subsequent to such refusal he, the said Ayres, secured the judgment of the supreme court of the State of Mississippi as to the validity of one of the titles in question, the court holding (*Wray v. Doe*, 10 S. & M.,

462) that the complete title was in the reservee, and that the patent given by the United States to Wray was void; that the title in the *Wray v. Doe* case rested upon the same grounds as the titles in all the other cases where Ayres was asking the approval of the President; that after the decision of the court as aforesaid the President was again asked to approve the deeds held by the said Ayres, but again refused; that subsequent to said second refusal on the part of the President the Supreme Court of the United States decided the case of *Best v. Polk* (18 Wal., 112), in which the title to another tract of land that Ayres had purchased from one of said Indians was in issue, and the court held, as the Mississippi court had held, that the United States parted with its title and the same became vested in the Indian when the land was selected and set apart for that particu'ar Indian, and any subsequent conveyance attempted on the part of the Government was void; that after this latter decision Ayres again applied to the President for the approval of the deeds mentioned and the President again refused to approve the same; that subsequent thereto Ayres petitioned Congress for relief, and since 1877 has continuously pressed his claim in the committees and before the two Houses of Congress for redress; that after the first refusal of the President to approve the deeds made by the Indians to Ayres, the Government treated the lands so granted to the Indian reservees aforesaid as public lands, and sold and disposed of them, giving patents for the same, and the patentees took possession and they and their grantees have continued to hold the same until the present time.

Ayres claims that by reason of the refusal of the President to approve the deeds aforesaid, and by reason of the acts of the land office in making the purported sales of the lands in question and giving patents therefor, he has been wrongfully deprived of his rights.

The proofs before the committee show that there has been no laches on the part of the claimant. The claim originated something more than fifty years ago, and about one year ago the original claimant, Eli Ayres, died, leaving a widow, who is old and said to be in indigent circumstances.

The claim is of such character that your committee concluded the interests of the claimants and the Government would be best served and protected by the adjudication of a court, and accordingly report the accompanying bill authorizing the Court of Claims to take jurisdiction and render judgment according to the law and the facts of the case, reserving the right of either party to appeal to the Supreme Court. We report this as a substitute to H. R. 3521 and recommend its passage.

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