Mr. MEANS, from the Committee on Claims, submitted the following

REPORT

[To accompany H. R. 5787]

The Committee on Claims, to whom was referred the bill (H. R. 5787) for the relief of J. C. Herbert, having considered the same, report favorably thereon with the recommendation that the bill do pass without amendment.

The facts are fully set forth in House Report No. 2140, Sixty-ninth Congress, second session, which is appended hereto and made a part of this report.

[House Report No. 2140, Sixty-ninth Congress, second session]

The committee finds that J. C. Herbert was, during the years 1910 to 1919, a surveyor and an experienced land man, well versed in the location of land surveys in Clay County, N. C., and was well acquainted with the aged residents of said vicinity and with the history and location of certain surveys therein; that the United States for a long period at said time had a suit pending in the United States District Court for the Western District of North Carolina, involving the title of the United States to a tract of some 5,000 acres of land having timber thereon at that time of not less than $50,000 value and being now worth at least $150,000; that said land and timber were claimed by the Hiwassee Lumber Co. placed a tenant thereon, thereby forcing the United States to bring
land and timber; that said litigation was pending for several years, during which
there were three trials in said court and at least two appeals to the Circuit Court of
Appeals or the Supreme Court of the United States; that said litigation finally
developed the sole issue as to the location of the beginning corner of said tract of
5,000 acres of land.

Whereupon it became vitally important to the interests of the United States
in said litigation that the ancient location of the beginning corner of said survey
should be shown by competent evidence to be obtained from aged residents of
that vicinity then remote; that the Hon. A. E. Holton, who was then the district
attorney for said district, found it imperatively necessary to secure the assistance
of some veteran surveyor and resident of said vicinity who was sufficiently
familiar with the people thereof and with the location of land surveys therein to
enable him to find existing evidence available to establish the contention of the
United States that it was the owner of said land; that the said Hon. A. E. Holton,
then district attorney, knowing said J. C. Herbert to be a person especially well
qualified to perform said work in the interest of the United States in said litigation,
procured the services of the said J. C. Herbert, and agreed with him that he, the
said J. C. Herbert, should receive a reasonable compensation therefor, to be
thereafter paid by the Government; that the said J. C. Herbert then interested
himself actively in ascertaining and reporting the facts obtainable and the wit-
nesses available to establish the facts relied upon by the United States in said
litigation and continued to give valuable services in said connection during
the remainder of the history of said litigation as conducted by the Hon. A. E.
Holton, then United States district attorney of said district; that thereafter the
Hon. William C. Hammer, now a Representative from said district in Congress,
succeeded the said Hon. A. E. Holton as United States district attorney for said
judicial district, and as the attorney in charge of the interests of the United
States in said litigation; whereupon he, the said William C. Hammer, solicited a
continuance of the services of the said J. C. Herbert and assured him, the said
J. C. Herbert, that he, the said William C. Hammer, would make every effort
to cause him, the said J. C. Herbert, to be reasonably compensated for the valu-
able services he was rendering therein; that thereafter the said J. C. Herbert
did continue to render said services, which your committee finds to have been of
indispensable importance in the recovery of said land which was finally awarded
to the United States, the verdict and judgment therefor being based almost
solely upon the facts discovered and presented upon the trial of said cause as a
result of the knowledge, investigation, and services of the said J. C. Herbert;
that the services of said J. C. Herbert were reasonably worth the sum of $750,
and that he has never been paid therefor. Your committee therefore recom-

STATEMENT OF FACTS DEVELOPED ON HEARING BEFORE SUBCOMMITTEE

A subcommittee of the Committee on Claims conducted a hearing upon said
bill (H. R. 5787) for the relief of J. C. Herbert, and called as witnesses the Hon.
Zebulon Weaver, Representative from the tenth district of North Carolina, and
Hon. William C. Hammer, Representative from the seventh district of North
Carolina.

The Hon. Zebulon Weaver testified before your subcommittee that before he
became a Member of Congress, and when he was in no manner connected with
said litigation, and when he was more or less familiar with land litigation and land
lines and the location of surveys in the vicinity of the land claimed by the United
States in said litigation, J. C. Herbert consulted with him in the interest of the
United States for the purpose of obtaining information valuable to the Govern-
ment in the successful conduct of the same, and that he knew that the said Her-
bert was very active, and rendered valuable service in connection with the same.
The testimony of Mr. Weaver further shows that the timber on said land was at
said time of the value of more than $50,000, and that in his judgment the rea-
sonable value of the services of the said J. C. Herbert was about the sum of
$1,000.

Hon. William C. Hammer testified that when he succeeded the Hon. A. E.
Holton as the attorney of the United States in charge of said litigation, the said
A. E. Holton advised him that he, the said A. E. Holton, had sought and ob-

obtained the services of the said J. C. Herbert; that the said J. C. Herbert had
rendered valuable services and that he, the said A. E. Holton, had assured the
Herbert that he would be compensated therefor. Hon. William C.
Hammer testified that he solicited a continuance of the services of the
J. C. Herbert

said J. C. Herbert, assuring him, the said J. C. Herbert, that he, the said William C. Hammer, would earnestly endeavor to procure for him compensation therefor; that the said J. C. Herbert continued to render said services; that after protracted litigation, said land was finally recovered by the United States, very largely as a result of the information and service obtained and furnished by the said J. C. Herbert; that the timber on said land at the time of the final trial of said suit, was worth at least the sum of $50,000, and is now worth at least $125,000; that he does not believe that said litigation could have been won but for the assistance of said J. C. Herbert; that he believes the services of said J. C. Herbert were of the reasonable value of $750, and that the said J. C. Herbert has never been paid said compensation.

STATE OF NORTH CAROLINA,

Clay County:

Personally appeared before me, the undersigned notary public, E. C. Mease, who, being by me first duly sworn, deposes and says:
That he is a resident of Clay County, N. C., 50 years of age, and a surveyor by profession; that he was a witness for the defendant in the case of the United States Government v. Hiawassee Lumber Co., and is familiar with the character and amount of work done by J. C. Herbert, resident of Hayesville, N. C., and United States commissioner for the western district of North Carolina for and on behalf of the United States Government in connection with said case, and that he knows that said services were beneficial to the Government, and in his opinion had it not been for the activity of the said J. C. Herbert in locating the original chain bearers, who assisted in making the original survey of the grant under which the Government claimed, and in locating other witnesses, who were old residents of Clay County, N. C., and who testified on behalf of the Government in said case, the Government could not have established its title to the lands involved, or won the case.

E. C. MEASE.

Subscribed and sworn to before me this 12th day of May, 1924.

[seal.] G. H. HAIGLER,
Notary Public, Clay County, N. C.

My commission expires the 22d day of May, 1924.

STATE OF NORTH CAROLINA,

Clay County:

Personally appeared before me, the undersigned notary public, Ed. T. Shearer, a resident of Clay County, N. C., with whom I am personally acquainted, who, being first duly sworn, deposes and says:
That he is 50 years of age and a surveyor by profession and was appointed by the United States court as one of the surveyors to survey the land in controversy in the case of the United States Government v. Hiawassee Lumber Co., which was pending in the United States District Court for the Western District of North Carolina at Asheville, during the years from 1910 to 1919, and that he assisted in making the survey of the lands involved in said case; that the corners of the grant under which the Government claimed title were all gone and the Government had to rely on oral testimony of witnesses who had knowledge or information as to the location of the corners and boundaries as established by the original survey of said grant; that J. C. Herbert, a resident of Hayesville, N. C., and United States commissioner for the western district of North Carolina, acted as representative of the Government in obtaining the witnesses who testified as to the location of the said corners and boundaries, and in assisting in the preparation of the trial of said case; that he has known the said J. C. Herbert intimately for the past 40 years, and that he knows that the said J. C. Herbert was well qualified to perform these services for the Government, and that he did a great deal of work in this connection during the whole time that said case was pending and that his services were of great value to the Government in this suit.

ED. T. SHEARER.

Subscribed and sworn to before me this the 12th day of May, 1924.

[seal.] G. H. HAIGLER,
Notary Public, Clay County, N. C.

My commission expires the 22d day of May, 1924.
STATE OF NORTH CAROLINA,
County of Buncombe:

Personally appeared before me the undersigned notary public, J. C. Herbert, of Hayesville, N. C., with whom I am personally acquainted, who, first being duly sworn, deposes and says:

That he is a resident and citizen of Hayesville, Clay County, N. C., and is now, and has been for the past 26 years, United States commissioner for the western district of North Carolina; that some time prior to August 19, 1910, the Hiawassee Lumber Co., a corporation organized and existing under the laws of the State of North Carolina, asserted title to certain lands situate in Clay County, N. C., on the waters of Tusquittee and Fires Creeks, which land was owned by the United States Government, having been acquired by it from Levy Stevens by deed executed and delivered about the year 1868, and the representatives of the Hiawassee Lumber Co. undertook to take possession of said lands; that upon learning that said Hiawassee Lumber Co. was claiming title to this land and attempting possession of it, he immediately notified the United States district attorney for the western district of North Carolina, Hon. A. E. Holton, of these facts, and thereupon and about August 19, 1910, a suit was instituted by the United States Government in the United States District Court for the Western District of North Carolina, against the Hiawassee Lumber Co. to establish the title of the United States Government to the said lands, and to quiet the Hiawassee Lumber Co. from attempting possession of said lands, and to remove the cloud upon the title of the Government to said lands arising on account of the adverse claims of said Hiawassee Lumber Co.

That this case was pending in said United States District Court for the Western District of North Carolina from August 10, 1910, until March 11, 1919, when final judgment was rendered establishing the title of the Government to said lands and removing the cloud upon the title created by the claims of said Hiawassee Lumber Co. to said property; that this case was tried in the United States district court three times before a jury, the first time there was a mistrial and the Government's attorneys permitted judgment to be entered in the district court in favor of the defendant and appealed the case to the circuit court of appeals, from which court it was taken to the Supreme Court of the United States to settle legal questions as to the legal title of the respective parties, and the Supreme Court of the United States reversed the lower court, held that the Government had a good legal title under the deed from said Stevens and sent the case back to the district court for trial as to issues of fact involved; that the case was tried the second time in the United States district court and again resulted in a mistrial, but upon the third trial the jury found the issues of fact in favor of the Government and on this verdict of the jury judgment was rendered as above stated on March 11, 1919, in favor of the Government; that aside from the legal questions involved the pleadings raised issues of fact, of which were questions as to location of the grant under which the Government claimed and whether or not the defendant had ripened title to the property by possession, the grant under which the Government claimed, being a senior grant, and the grants under which the defendant claimed being junior grants.

That pursuant to instructions and directions from the said Hon. A. E. Holton, United States district attorney, affiant made a careful and thorough investigation of the facts as to the location of the grant under which the Government claimed and as to the possession of the defendant of the land covered by said grant, and searched for witnesses to prove the facts sustaining the Government's contention in the litigation and after devoting many months to this investigation, at his own expense, he succeeded in locating the original chain bearers, who assisted in the original location and survey of the grant under which the Government claimed and who testified in the case as to the location of the corners and boundaries of the said grant under which the Government claimed, and that before the last trial of the case, the two chain bearers died, and he located two witnesses, Thomas J. Cothren and Millard Dailey, old residents of Clay County, who testified upon the last trial that other old residents of Clay County, N. C., had pointed out to them the beginning corner of the grant under which the Government claimed as being at the place where the Government contended it was located; and affiant further states that he located many other witnesses who testified as to material facts upon the trials of the case and that he, at the request of the United States district attorney and other attorneys for the Government in the case, supervised the obtaining of witnesses, the summoning of them, and the looking after the witnesses at the trials in Asheville; that he on one occasion went with the Hon. S. W. Williams, one of the Assistant Attorneys General, who assisted in the trial.
of the case, far back into the mountains, and had witnesses who testified in the

point out to Mr. Williams the location of the lands and the locations of the

grants under which the defendant claimed; and that he devoted a large portion

of his time during the whole period of the nine years that this case was pending

in the court in helping in the preparation of and attending at the trials of the case,

and at all times during this period held himself ready to do any and all things

requested by the attorneys for the Government or necessary in the preparation

for and trial of the case.

Affiant further states that the deed from Levy Stevens to the Government

conveyed in addition to the land involved in this case which consisted of about

5,000 acres, being grant No. 3110, certain other large tracts of land situate in

Clay and Graham Counties, N. C., and that he is advised that the bringing of

this suit and the decision of same by the United States Supreme Court on the

appeal from the first trial settles the legal title of the Government to these other

tracts.

Affiant further says that Hon. A. E. Holton, United States district attorney

for the western district of North Carolina, the Hon. S. W. Williams, Assistant

Attorney General of the United States and the Hon. Clarence Miles, also Assistant

Attorney General of the United States, Hon. W. C. Hammer, United States
district attorney for the western district of North Carolina, all of whom were

attorneys for the Government in the trials of this case, requested him to render

the services that he rendered in connection with this case for and on behalf of

the Government, and advised him that he would be compensated by the Gov-

erment for his services; but up to this time, he has received no compensation

from the Government for these services and has received no compensation for

such services from anyone else, except the regular witness fees which he was

allowed for attending as a witness on several trials of the case, and that he has

not been reimbursed any of the expenses incurred by him in connection with this

work; he further states that he kept no account of the expenses incurred, nor of

the time devoted to this work and that the sum of $2,000 proposed to be paid

to him by the Government under the authority and direction of House Resolu-

tion 7842, introduced in the House of Representatives on March 11, 1924, by

the Hon. Zebulon Weaver, Representative in Congress from the tenth district

of North Carolina, is a just, fair, and reasonable compensation for the services

rendered and the expenses incurred by him.

J. C. HERBERT.

Subscribed and sworn to before me this the 9th day of May, 1924.

[SEAL.]

JOHN B. ANDERSON,
Notary Public, Buncombe County, N. C.

My commission expires the 5th day of September, 1924.

ASHEVILLE, N. C., May 10, 1924.

To whom it may concern:

I, Verne Rhoades, of Asheville, N. C., make the following statement:

(1) That I have known Mr. J. C. Herbert, of Hayesville, N. C., since 1915.

(2) That as forest examiner in charge of the Pisgah-Nantahala purchase areas,

and subsequently as supervisor of the Pisgah National Forest, I was familiar

with the services rendered by Mr. Herbert in connection with the case of the

United States v. Hiawassee Lumber Co.

(3) That Mr. Herbert’s services during the years mentioned in assisting the

Government to obtain clear title to several thousand acres of land in western

North Carolina were of such paramount importance that the United States

would have lost its possession of said land had he not so diligently and faith-

fully and unstintedly used his time in building the groundwork for presentation

of the Government’s case in the Federal court.

(4) That it was always my understanding Mr. Herbert was to be compensated

for the services rendered.

VERNE RHOADES.

Subscribed and sworn to before me this 10th day of May, 1924.

B. M. MORRISON, Principal Clerk.