

FRANCIS PICARD, ADMINISTRATOR OF PIERRE AYOTT.

DECEMBER 15, 1857.—Committed to a Committee of the Whole House, made the order of the day for to-morrow, and ordered to be printed.

The COURT OF CLAIMS submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled :

The Court of Claims respectfully presents the following documents as the report in the case of

FRANCIS PICARD, ADMINISTRATOR OF PIERRE AYOTT, *vs.*
THE UNITED STATES.

1. The petition of the claimant.
2. Report of the Third Auditor of the Treasury, transmitted to the House of Representatives.
3. Claimant's brief.
4. United States Solicitor's brief.
5. The opinion of the Court adverse to the claim.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at Washington, this seventh day of December, A. D. 1857.

SAML. HUNTINGTON,
Chief Clerk Court of Claims.

To the honorable Judges of the Court of Claims of the United States :

The petition of Francis Picard, of Rouse's Point, in the county of Clinton, in the State of New York, administrator of the estate, rights, and credits of Pierre Ayott, deceased, begs leave respectfully to represent unto this honorable Court that he is interested as administrator of the estate, &c., of the said Pierre Ayott in a claim which the said Pierre Ayott had against the United States for services in the revolutionary war.

That his interest in said claim arises from the consideration that

he is administrator of the estate, rights, and credits of the said Pierre Ayott, who died intestate on or about the ——— day of ———, A. D. 1814; and in consideration of certain resolves of Congress hereinafter named.

And your petitioner further represents unto this honorable Court, that the said Pierre Ayott was commissioned by Congress a captain in the continental service in the revolutionary war, and served as such to the close, or until reduced or retired. That, by a resolution of Congress of October 21, 1780, it was provided that the officers who should continue in the service to the end of the war should be entitled to half-pay during life, to commence from the time of their reduction; and by a subsequent resolution of Congress of March 22, 1783, it was further provided that officers then in service, and that should continue therein to the end of the war, should be entitled to receive the amount of five years' full pay in money, or securities on interest at six per cent. per annum as Congress should find most convenient, instead of half-pay promised for life, by the resolution of the 21st of October, 1780. That, by a resolution of Congress of March 8, 1785, it was further provided, that the officers who retired under the resolve of the 31st of December, 1781, are equally entitled to the half-pay or commutation with those officers who retired under the resolve of the 3d and 21st October, 1780.

And your petitioner further represents and shows to this Court, that the commutation money, or half pay, provided for in either of the foregoing resolves of Congress has never been paid, but remains as a claim due to the said estate of the said Pierre Ayott from the United States.

And your petitioner further states that the United States is justly indebted to the estate of the said Pierre Ayott; for, at the breaking out of the revolutionary war, the said Pierre Ayott was an inhabitant of Canada, and the owner of two lots of land of the value of \$4,000, which was confiscated, in consequence of his having taken up arms against Great Britain and in favor of the American cause, which was induced by the promises of protection and remuneration by Congress and its agents at the time; and, subsequently, by resolves of Congress of the 23d of April, 1783; and of the second Congress in the second session promising the same, which resolutions are more particularly set forth in the former petition to Congress, and to which your petitioner begs leave to refer and make a part of this case. And your petitioner further states, that he presented the above claims to Congress in two petitions in 1854, but what action was had thereon he is not informed.

Your petitioner therefore prays that this honorable Court will examine into the justice and equity of the said claim, and report a bill to Congress providing for the payment thereof, together with the interest thereon, unto the heirs or legal representatives of the said officer; or such other order or bill as to your honors shall seem fit and proper to report in the premises, with the reasonable interest thereon.

And your petitioner as in duty bound will ever pray.

FRAS. PICARD.

Dated ROUSE'S POINT, *July 30, A. D. 1855.*

STATE OF NEW YORK, }
County of Clinton, } ss.

Francis Picard, of Rouse's Point, in the county of Clinton, in the State of New York, being duly sworn doth depose and say, that the petition above by him subscribed contains the truth according to the best of his information and belief.

FRAS. PICARD.

Sworn and subscribed before me, this 30th day of July, A. D. 1855.

JOHN BULLIS,
Justice of Peace.

TREASURY DEPARTMENT,
Third Auditor's Office, June 28, 1856.

SIR: I have the honor to return to you the order of the Court of Claims requesting information in relation to Captain Pierre Ayott, as an officer of the army of the revolution, which you referred to me for a report, and have to inform you that the account current of the officers of the revolution have been destroyed in the burning of the public buildings. The revolutionary books of this office, however, show that he had an account with the government, which stands settled and closed on the books. He is not returned as having received commutation, nor as having been entitled thereto.

With great respect, your obedient servant,

ROB'T J. ATKINSON, *Auditor.*

Hon. JAMES GUTHRIE,
Secretary of the Treasury.

IN COURT OF CLAIMS.

FRANCIS PICARD, Administrator, &c.,	}	Claimant's brief and points.
Claimant,		
<i>vs.</i>		
THE UNITED STATES.		

I. The claim is founded upon a law of Congress. The consideration was for services in part executed, and to be continued to the end of the war; and the consideration of the contract being complied with by the officer, the obligation to enforce the law now rests with Congress.—(See resolution of Congress, May 15, 1778, Mayo & Moulton's "Pension and Bounty Lands," 3; Resolution of August 24, 1780, *Ib.* 6; Resolution October 21, 1780, *Ib.* 7; Resolution March 22, 1783, § 2, *Ib.* 9; Resolution March 8, 1785, *Ib.* 10; *Ib.* in the introduction, pages xxi, xlii.)

II. The obligation is acknowledged by repeated precedents on the part of Congress.—(See Captain Gibson and Lieutenant Price's case,

in October, for the relief of, March 2, 1833; Mayo & Moulton, 180; Lieutenant Wilson's case, act February 27, 1833, his heirs allowed seven years' half pay, with interest, per resolution of Congress, August 24, 1780; *Ib.* 175.

If there is not an express there is an implied agreement to compensate for confiscated property of claimant, he being an inhabitant of Canada, and joining the American army under the proclamation of Congress, &c.—(See resolution October 3, 1780; Journals of Congress 1774, pages 42 to 45, and 74 to 76.)

James Barrett's case, act March 2, 1833; interest on commutation.

William Price's case, act March 2, 1833; interest on commutation.

Captain George Hulbert's case, act July 2, 1836; interest on commutation.

Dr. James Prescott's case, act July 7, 1838; commutation with interest.

Dr. Axson's case, act June 15, 1832; commutation with interest; *Ib.* 163.

Captain McDuff's case, act April 2, 1830, § 2; land given him the same as to other captains in the continental line; *Ib.* 148.

Lieutenant Jacob's case, act July 14, 1832; commutation and interest allowed him; *Ib.* 167.

Colonel Harrison and Thomas Davenport's cases, act July 14, 1832; commutation and interest allowed to heirs; *Ib.* 168.

Colonel Thornton's case, act February 9, 1833; commutation and interest to administrators, one-fourth to widow, and residue distributed to persons entitled according to the laws of Virginia; *Ib.* 173.

John Thomas and Peter Foster's cases, act March 2, 1833; commutation and interest as officers; *Ib.* 178.

Richard Henly Court's case, act March 2, 1833; commutation to his widow, and interest; *Ib.* 178.

Captain Triplit's case, act March 2, 1833; commutation and interest; *Ib.* 179.

C. K. AVERILL,
Attorney for Claimant.

IN THE COURT OF CLAIMS, NOS. 22 AND 338.

FRANCIS PICARD, ADMINISTRATOR OF PIERRE AYOTT

vs.

THE UNITED STATES.

Brief of United States Solicitor.

I. In petition No. 22 the petitioner claims an amount allowed under resolutions of the continental Congress of February 24 and September 14, 1785.

By the resolution of February 24, 1785, it appears that Ayott was present at the place where Congress held its sessions, and petitioned

that body for relief. The resolution allowed him the pay of a captain for a period stated, to be credited in his accounts, and authorized him to draw at once \$300 in advance of settlement, to enable him to return to Canada on business. The resolution of September 14, 1785, passed after reference to the Secretary of War, authorized the above, and a further allowance for expenses to be made in the liquidation of Ayott's accounts by the army commissioner.

The petitioner assumes that no part of the allowance above voted has been paid, and that there was nothing to Ayott's debit on the books of the Treasury to be deducted in the liquidation of his accounts except the \$300 advanced as above. He assumes, also, that no settlement ever was made by the army commissioner under the resolutions. He claims the gross amount voted by the two resolutions, without other deduction than the amount advanced under the first.

1. It is extremely improbable that Ayott suffered the balance of the amount voted him to remain undrawn, being on the spot when the resolution passed, and having immediately drawn a part of the allowance (see Register's certificate.) The presumption, from the lapse of time, and, still stronger, from the circumstances, is, that he drew all that was due him as soon as the settlement could be made. It is not conceivable that a person who had taken the trouble to prosecute his claim personally before Congress, and had obtained its allowance during his attendance upon that body, and had even received a part, as earnest money, pending the statement of his account, should go off and never apply for the balance. Ayott lived till 1814. If he got no more it was because, on the liquidation of his claims, directed to be made by the resolution, nothing more was found due. Rations were authorized by the same resolutions, and it is not claimed that he did not draw them.

2. But there was a settlement, and he was paid. The Third Auditor's report to this court, and letter to Averill, the petitioner's attorney, shows that two accounts were settled with Ayott. When they were settled he does not state; but the Third Auditor is the successor of the commissioner of army accounts, and no doubt the settlements reported were those made by him on his books; Ayott's account stands closed.

3. The claim is barred by the act of February 12, 1793.—(1 Stat., 301.)

II. He claims in petition No. 22 land under the resolution of September 14, 1785.

1. That resolution only placed him upon the same footing with other Canadian refugees, and in common with them his case was provided for by the act of April 7, 1798.—(1 Stat., 547.)

2. The resolution of April 23, 1783, promised to reward the Canadian refugees by a provision of land, and that promise was carried out by the act above cited. In the fourth section it provides for a board consisting of the Secretary of War, the Secretary of the Treasury, and the Comptroller of the Treasury. They were directed to take into consideration losses and sufferings sustained, and services performed, and to make allowance in land therefor, deducting any allowance already made by individual States. The petitioner's attorney

cites the balloting book of New York, showing that Ayott received land from that State, and if he never prosecuted his claim under the act of 1798, and other acts extending it, (cited in foot note thereto, 1 Stat., 547,) it unquestionably was because he had already received as much land from New York as he could have claimed under the act from the United States.

3. All such claims are now barred by limitation under the acts above cited in regard to this subject.

III. In petition No. 338, the petitioner claims the half-pay or commutation due a continental officer under the resolution of October 21, 1780, and March 22, 1783.

There is no evidence that he ever was regularly commissioned in Hazen's or any other regiment. He raised and commanded a company in Canada in 1775-'76—the time for which Congress paid him by resolutions above cited; but the terms of the first resolution imply that he was not commissioned. He was left behind in the retreat of the American army in 1776, and was probably captured and imprisoned, as Congress made compensation for imprisonment. All the certificates of the military officers speak of his service in Canada in 1775-'76; none of them speak of any service elsewhere; and this almost conclusively negatives his claim of having served after the retreat of the army from Canada; for these certificates were given in 1784. The only evidence offered to prove the alleged service are those of private persons, who could have had no proper opportunity of knowing the exact nature of his connexion with the service. His step-daughter's testimony seems to show that he was a scout, spy, or secret agent. An officer in the continental service could not have gone into Canada and there publicly married a Canadian woman, after bans there published, as Ayott did in 1779.—(See extract from parish register.) It was not till after this that he was forced to fly from Canada.

The evidence utterly fails to show that he remained a captain in continental service till the close of the war. It is not alleged that he was discharged.

IV. He claims indemnification for losses incurred in consequence of his adherence to the cause of the colonies.

On this point I refer to remarks above on his claim (II) for land under the resolution of September, 1785.

V. He claims the bounty land due a continental officer under resolutions of September 16, 1776.

1. The Department of the Interior has authority to adjust such claims under the act of February 8, 1854, (10 Stat., 267,) and the claim should first be presented there.

2. The administrator cannot recover bounty land; it descends as real estate. Opinions of Attorney General Taney, of October 25, 1832, and September 5, 1833.

Much of the evidence offered is inadmissible under the rules of this Court.

JOHN D. McPHERSON,
Deputy Solicitor Court of Claims.

IN THE COURT OF CLAIMS.

FRANCIS PICARD, ADM'R OF PIERRE AYOTT, DEC'D,

vs.

THE UNITED STATES.

SCARBURGH, J., delivered the opinion of the Court.

The petitioner represents that he is interested in his representative character in a claim which his intestate had against the United States for services in the revolutionary war. He states the following case :

Pierre Ayott died intestate in the year 1814. He was commissioned by Congress a captain in the continental service in the revolutionary war, and served as such to the close, or until reduced or retired. The half-pay or commutation provided for in the resolutions of October 21, A. D. 1780, December 31, A. D. 1781, March 22, 1783, and March 8, A. D. 1785, has not been paid, but still remains due.

At the breaking out of the revolution, Pierre Ayott was an inhabitant of Canada and the owner of two lots of land of the value of \$4,000, which were confiscated in consequence of his having taken up arms against Great Britain. He was induced to take up arms in favor of the American cause "by the promises of protection and remuneration by Congress and its agents at the time, and subsequently by resolves of Congress of the 23d of April, 1783, and of the second Congress in the second session promising the same."

The petitioner prays that this court will report a bill to Congress for the payment of his claim, together with interest thereon, unto the heirs or legal representatives of his intestate, or such other bill as may be proper in the premises.

On the 24th day of December, A. D. 1784, Congress, on the report of a committee, to whom was referred a petition of Pierre Ayott, (he is called in the Journal Mr. Ayot,) with sundry papers accompanying the same, stating himself *as having served as captain* in the service of the United States in Canada, and praying a settlement of his accounts and compensation, adopted the following resolution : "That the said petition and prayers be referred to the Paymaster General, to settle the accounts of the petitioner against the United States, and if any difficulty should occur, to report especially."—(4 Journals Cong., 459.)

On the 24th day of February, A. D. 1785, Congress, on the report of a committee, to whom was referred a petition of Pierre Ayott, (he is called in the Journal Captain Pierre Ayot,) with sundry papers accompanying the same, adopted the following resolution : "That the commissioner for settling the accounts of the army be, and he is hereby, directed, in settling the accounts of Captain Pierre Ayot, to admit

to his credit the pay of a captain, during the time of his *serving as such* in the army of the United States, or of his being held in a state of captivity, *any want of form in his commission* notwithstanding; and that the President drew a warrant in his favor, on the Treasurer of the United States, for 300 dollars, to enable him to leave this city and to return to Canada, which sum shall be deducted from the balance which may appear to be due to him on a settlement of his accounts."—(4 Journals of Cong., 474.)

Again: On the 14th day of September, A. D. 1785, Congress, on a report from the Secretary of War, to whom was referred a memorial of Pierre Ayott, adopted the following resolution: "That the commissioner of army accounts, in liquidating the claims of Pierre Ayott, allow him the pay and subsistence of a captain for the year 1776, deducting 300 dollars advanced him by the resolution of the 24th of February last.

"That the further sum of 150 dollars be allowed him in full of all expenses incurred by him in the service of the public.

"That he be allowed rations until the first of June next, and that the same quantity of lands be assigned to him as may be assigned to the heads of other Canadian families."—(4 Journals of Cong., 570.)

Mary Vincelet, who was a step-daughter of Pierre Ayott, testified that she personally knew that he served as a captain in the American army in the revolutionary war, from the time of his intermarriage with her mother, in 1779, till the peace in 1783; that she and her mother followed him in the camp till after the peace; and that, at the close of the war, and after he ceased to draw rations for himself and his family, he was left in a destitute situation, and was obliged to return to the frontier of Canada, where he settled and died in 1814.

There are on file certain papers purporting to be certificates, which, though they do not appear to be duly authenticated, yet are treated as evidence by the deputy solicitor in his brief. They are, in substance, as follows:

(1.) A certificate, signed by Lewis Duboys, Lieut. Col. of 5 N. Yk. regiment, that "Captain Highet commanded a company in Canday in the year 1775 and in the year 1776." (This paper is dated April 24, A. D. 1774.)

(2.) A certificate, dated June 1, A. D. 1784, "that Captain Peter Ayott was one of the oldest captains in late Brigadier General Hazen's regiment, who has suffered much by imprisonment and otherwise in Canada, is now here a refugee from thence, and entitled to draw provisions as a captain under the resolution of Congress of the ninth of August, 1783, from the 1st of May last." Signed "Edward Antill, lieutenant colonel of the second regiment."

(3.) A certificate, dated April 27, A. D. 1784, that "Captain Ayott commanded a company in Canada, and that he was, in March and April, 1776, under my immediate command at Point Levy, and was very active good officer and of great service to the army while in Canada on several occasions, and, to the best of my knowledge, he belonged to Hazen's regiment, which was then raising for the United States." Signed "James Clinton, late brigadier general."

(4.) A certificate "that Pierre Ayott was appointed a captain in the

Canadian regiment commanded by Moses Hazen, esq. ; that he raised a company in a very short time, and was actually employed in keeping up the blockade of Quebec and other very hard service, during which time he and his men were very attentive to their duty, behaved remarkably well upon every occasion, particularly under the command of the then Major Lewis Dubois on the south shore below Quebec in quelling an insurrection, in which he signalized himself for his zeal, conduct, and courage; that a great many of his vouchers and accounts were lost and fell into the enemy's hands with my other baggage on our precipitate retreat from Quebec, at which time he was left behind, being uninformed of our retreat." Signed "Edward Antill, late lieutenant colonel, commanding colonel."

These certificates purport to come from the Secretary of State's office in New York, and to be copied from the books and documents relating to the military service in the war of the revolution. They are, as already stated, not duly authenticated.

The Third Auditor, in a communication to the Secretary of the Treasury, dated June 28, 1856, states "that the accounts current of the officers of the revolution have been destroyed in the burning of the public buildings. The revolutionary books of this office, however, show that he (Pierre Ayott) had an account with the government, which stands settled and closed on the books. He is not returned as having received commutation, nor as having been entitled thereto."

In a letter from W. H. S. Taylor, acting Third Auditor, to C. H. Averill, counsel of the petitioner, dated September 8, A. D. 1856, he says, "that Pierre Ayott appears to have been a captain, but he is not returned on the revolutionary books of this office as having received commutation, nor as having been entitled thereto. He is shown to have had accounts with the government, in the first of which he is charged as follows: To Jonathan Turnbull, \$46; and is credited, By United States, for pay, \$46. In the second account he is credited, By pay of the army, \$454 12; and is charged, To certificates issued, \$454 12. The journal that would contain the entries of the second account has been lost or destroyed."

Mary Vincelet testified that, upon the intermarriage of Pierre Ayott with her mother, he came to the possession of her mother's property, a farm, which is described in the affidavits of other witnesses; and that after the marriage they were driven from it, and it was confiscated by the British government.

The only additional evidence in this case relates to the value of the farm, in relation to which Mary Vincelet testified. The witnesses estimate it as worth \$4,000, sixty years previous to the date of their affidavits in October and November, A. D. 1852.

The evidence in relation to the confiscation of Pierre Ayott's land in Canada is neither satisfactory nor sufficient in law to establish that fact. If it actually occurred, there must be better evidence of it than that which has been adduced; and no excuse for the failure to produce such evidence is offered or suggested. We therefore do not deem it necessary to consider whether, if that fact were established, Pierre Ayott was entitled to indemnity therefor against the United States.

In looking into the evidence in this case, it will be observed that

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Pierre Ayott, in his petition to Congress in December, A. D. 1784, merely stated "himself as having *served as captain* in the service of the United States *in Canada*." There is no statement of that date that he ever served *elsewhere*. In the resolution of the 24th of February, A. D. 1785, the commissioner of army accounts was "directed to admit to his credit the pay of a captain, *during the term of his service as such* in the army of the United States, or *of his being in a state of captivity, any want of form in his commission* notwithstanding;" and in the resolution of the 14th September, A. D. 1785, he was directed to "allow him the pay and subsistence of a captain for the year 1776." It will be observed, too, that the certificates, which have been noticed, refer only to services *in Canada*. The only evidence which refers to any other service is the mere *ex parte affidavit* of Mary Vincelet. The evidence shows it to be doubtful whether Pierre Ayott was at any time during the revolution a duly commissioned captain in the American army. It is apparent, that even in 1784 there was some difficulty in relation to the settlement of his accounts, which rendered it necessary for him to apply for the interposition of Congress. Congress acted on his case on three *several* occasions. What the difficulty was, we have not the means of determining. It probably can now be only a matter of mere conjecture.

Under these circumstances, we cannot say that Pierre Ayott was ever entitled to half-pay for life, or to five years' full pay in lieu of such half-pay for life, under the resolutions of Congress, which have been referred to.

We are of the opinion that the petitioner is not entitled to relief.