

P. H. WINSTON.

MARCH 14, 1888.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. DATES, from the Committee on the Judiciary, submitted the following

REPORT:

[To accompany bill H. R. 4239.]

The Committee on the Judiciary, to whom was referred the bill (H. R. 4239), having had the same under consideration, find that a similar bill for the same purpose has been favorably reported to the Senate; and the Senate report, in the opinion of your committee, sets forth sufficient reasons for the passage of the bill, which Senate report is hereto attached. The committee recommend the passage of the bill.

[Senate Report No. 219, Fiftieth Congress, first session.]

The Committee on Claims, to whom was referred the bill (S. 212) for the relief of Patrick H. Winston, jr., have carefully examined the same, and respectfully report:

The only evidence touching the right of the claimant to relief from Congress is found in a letter from Attorney-General Garland addressed to Hon. Z. B. Vance, dated January 7, 1887. This letter from the Department of Justice, in the opinion of the committee, presents all the facts upon which the right of this claimant rests, and in the judgment of the committee clearly establishes the obligation of the Government to pay a reasonable compensation for the services rendered by the claimant in the defense of Tom Hill, a captain of the Indian police.

Your committee feel that the recommendation of the Attorney-General that \$750 would be a reasonable compensation should be adopted, as all the facts upon which the claim rests are in possession of the Department of Justice, and as there is no other evidence in the papers to guide the committee in fixing a different measure of compensation. The committee would therefore recommend that the bill be amended in the sixth line by striking out the words "one thousand dollars" and inserting in lieu thereof the words "seven hundred and fifty dollars;" and as so amended the bill is reported favorably, with the recommendation that it do pass.

The letter of the Attorney-General is hereto attached as a part of this report.

DEPARTMENT OF JUSTICE,
Washington, January 7, 1887.

SIR: I have the honor to acknowledge receipt of your letter of 6th instant relative to the legal services rendered by Mr. P. H. Winston, jr., in the defense of Tom Hill, a captain of the Indian police of the Nez Percés Agency, Idaho, charged with the killing of the Indian "Nine Pipes," and the amount of compensation which may be reasonably due to Mr. Winston for his said services.

In reply I beg leave to state that upon my attention being called to the case by the Secretary of the Interior on November 14, 1885, I wrote the same day to the

United States attorney for the district of Idaho, and directed him, in view of its being apparent that the act was committed by Tom Hill while in the discharge of his official duty as police captain, to appear for the defense. The United States attorney acknowledged receipt of the instructions in due course, and reported his purpose to be present at the trial of the case.

When, however, the first district court met at Mount Idaho in April, 1886, the United States attorney found himself unable to be present, by reason of his necessary attendance upon a term of the second district court which was being held at the same time at Bois  City, and before which several important Government suits were pending, which required his attention.

The judge of the first judicial district, Hon. Norman Buck, then appointed Mr. Winston to appear for Tom Hill at the instance of Mr. Charles Monteith, United States agent at the Nez Perc s Reservation.

Mr. Winston discovered that Tom Hill could not have a fair trial in Idaho County, in consequence of the unfounded popular belief that he was concerned in the atrocities which had been perpetrated seven years before by Chief Joseph and his band. He therefore moved for a change of venue to Nes Perc s County, which motion, after strong opposition from the prosecuting attorney and his assistant, was granted by the court.

When the case came up at Lewiston, Nez Perc s County, on June 21, 1886, the prosecution was again assisted by special counsel, employed by the authorities of Idaho County, and an earnest effort was made to convict the prisoner by appealing to the recollections of the horrors of the Chief Joseph raid of 1879. Tom Hill himself added to the difficulties of his defense by conceiving the idea that the United States attorney (Mr. Hawley) was in league with his enemies to procure his destruction, a belief which it was impossible to eradicate, on account of his absolute ignorance of the English language. His mind and body were, moreover, enfeebled by his long confinement in jail and by his utter refusal to touch food for fear of poison. He was brought to the bar in a condition of physical exhaustion.

The United States attorney, when made aware of Tom Hill's suspicion toward himself, allowed Mr. Winston to conduct the defense. The trial lasted four days, and was characterized by the United States attorney, in his official report of the case, as "a desperate effort to secure the conviction of the accused." Mr. Winston, however, obtained a verdict of "not guilty."

The case was one which excited widespread interest. On the one hand the population of Idaho County, exasperated by hideous memories of savage warfare, clamored for the blood of the prisoner; on the other, the Secretary of the Interior, the Commissioner of Indian Affairs, and the officers of the Philadelphia Indian Association were equally zealous to protect the Indian from the effects of an unjust popular resentment.

Mr. Winston's first appearance in the case was rendered necessary by the unavoidable absence of the United States attorney. His second appearance was equally necessary in consequence of the prejudices, though unfounded, of the prisoner against the United States attorney.

Mr. Winston states that his labors in the matter involved four days of travel, through mud and snow, over rough mountain roads, and four days' arduous labors in court, and that his assignment to the defense by Judge Buck was almost the direct means of saving the prisoner's life, as two out of the three lawyers, including himself, who were at Mount Idaho at the first trial, were employed on behalf of the prosecution, and a failure to obtain a removal of the cause to Nez Perc s County would have resulted in his conviction.

The Commissioner of Indian Affairs, in his report of October 5, 1886, to the Secretary of the Interior, a copy of which was transmitted to this Department, says that he is informed by the judge who presided at the trial that Mr. Winston "performed services of the greatest importance, and earned a good fee," and also by the Indian agent, Mr. Monteith, that "Winston defended Hill at his request in the absence of the district attorney, and did so faithfully." The certificate of the judge and Indian agent to the above purport are on file in this Department.

There is no appropriation from which I can compensate Mr. Winston for his services, otherwise I should have cheerfully paid him a fee, and in an amount equal to those usually allowed for such cases. I think he has earned \$750 in the matter.

Very respectfully,

A. H. GARLAND,
Attorney-General.

Hon. Z. B. VANCE,
United States Senate.