

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 28, 1891.—Reported and ordered to be printed.

Mr. MOODY, from the Committee of Conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 8150), submitted the following

REPORT:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill H. R. 8150, "An act to provide for the adjudication and payment of claims arising from Indian depredations," having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate, and agree to the same with an amendment as follows, so that the bill, as amended, will read:

H. R. 8150.

AN ACT TO PROVIDE FOR THE ADJUDICATION AND PAYMENT OF CLAIMS ARISING FROM INDIAN DEPREDACTIONS.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That in addition to the jurisdiction which now is, or may hereafter be, conferred upon the Court of Claims, said court shall have and possess jurisdiction and authority to inquire into and finally adjudicate, in the manner provided in this act, all claims of the following classes, namely:

First. All claims for property of citizens of the United States taken or destroyed by Indians belonging to any tribe or nation in amity with the United States, without just cause or provocation on the part of the owner or agent in charge, and not returned or paid for.

Second. Such jurisdiction shall also extend to all cases which have been examined and allowed by the Interior Department; and also to such cases as were authorized to be examined under the act of Congress making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes for the year ending June 30, 1886, and for other purposes, approved March 3, 1885, and under subsequent acts, subject, however, to the limitations hereinafter provided.

Third. All just offsets and counterclaims to any claim of either of the preceding classes which may be before such court for determination.

SEC. 2. That all questions of limitations as to time and manner of presenting claims are hereby waived, and no claim shall be excluded from the jurisdiction of the court because not heretofore presented to the Secretary of the Interior or other officer or Department of the Gov-

ernment: *Provided*, That no claim accruing prior to July 1, 1865, shall be considered by the court unless the claim has been allowed or has been or is pending prior to the passage of this act before the Secretary of the Interior or the Congress of the United States, or before any superintendent, agent, subagent, or commissioner authorized under any act of Congress to inquire into such claims; but no case shall be considered pending unless evidence has been presented therein: *And provided further*, That all claims existing at the time of the taking effect of this act shall be presented to the court by petition, as hereinafter provided, within three years after the passage hereof, or shall be thereafter forever barred: *And provided further*, That no suit or proceeding shall be allowed under this act for any depredation which shall be committed after the passage thereof.

SEC. 3. That all claims shall be presented to the court by petition setting forth in ordinary and concise language, without unnecessary repetition, the facts upon which such claims are based, the persons, classes of persons, tribe or tribes, or band of Indians by whom the alleged illegal acts were committed, as near as may be, the property lost or destroyed, and the value thereof, and any other facts connected with the transactions and material to the proper adjudication of the case involved. The petition shall be verified by the affidavit of the claimant, his agent, administrator, or attorney, and shall be filed with the clerk of the said court. It shall set forth the full name and residence of the claimant, the damages sought to be recovered, praying the court for a judgment upon the facts and the law.

SEC. 4. The service of the petition shall be made upon the Attorney-General of the United States in such manner as may be provided by the rules or orders of said court. It shall be the duty of the Attorney-General of the United States to appear and defend the interests of the Government and of the Indians in the suit, and within sixty days after the service of the petition upon him, unless the time shall be extended by order of the court made in the case, to file a plea, answer, or demurrer on the part of the Government and the Indians, and to file a notice of any counterclaim, set-off, claim of damages, demand, or defense whatsoever of the Government or of the Indians in the premises: *Provided*, That should the Attorney-General neglect or refuse to file the plea, answer, demurrer, or defense as required the claimant may proceed with the case under such rules as the court may adopt in the premises; but the claimant shall not have judgment for his claim, or for any part thereof, unless he shall establish the same by proof satisfactory to the court: *Provided*, That any Indian or Indians interested in the proceedings may appear and defend, by an attorney employed by said Indian or Indians, with the approval of the Commissioner of Indian Affairs, if he or they shall choose so to do.

In considering the merits of claims presented to the court, any testimony, affidavits, reports of special agents or other officers, and such other papers as are now on file in the Departments or in the courts relating to any such claims shall be considered by the court as competent evidence; and such weight given thereto as in its judgment is right and proper: *Provided*, That all unpaid claims which have heretofore been examined, approved, and allowed by the Secretary of the Interior or under his direction, in pursuance of the act of Congress making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending June 30, 1886, and for other purposes, approved March 3, 1885, and subsequent Indian appropriation acts, shall have

priority of consideration by such court, and judgments for the amounts therein found due shall be rendered, unless either the claimant or the United States shall elect to reopen the case and try the same before the court, in which event the testimony in the case given by the witnesses and the documentary evidence, including reports of Department agents therein, may be read as depositions and proofs: *Provided*, That the party electing to reopen the case shall assume the burden of proof.

SEC. 5. That the said court shall make rules and regulations for taking testimony in the causes herein provided for, by deposition or otherwise, and such testimony shall be taken in the county where the witness resides, when the same can be conveniently done, and no person shall be excluded as a witness because he is party to or interested in said suit, and any claimant or party in interest may be examined as a witness on the part of the Government; that the court shall determine in each case the value of the property taken or destroyed at the time and place of the loss or destruction, and, if possible, the tribe of Indians or other persons by whom the wrong was committed, and shall render judgment in favor of the claimant or claimants against the United States, and against the tribe of Indians committing the wrong, when such tribe can be identified.

SEC. 6. That the amount of any judgment so rendered against any tribe of Indians shall be charged against the tribe by which, or by members of which, the court shall find that the depredation was committed, and shall be deducted and paid in the following manner: First, from annuities due said tribe from the United States; second, if no annuities are due or available, then from any other funds due said tribe from the United States, arising from the sale of their lands or otherwise; third, if no such funds are due or available, then from any appropriation for the benefit of said tribe, other than appropriations for their current and necessary support, subsistence, and education; and fourth, if no such annuity, fund, or appropriation is due or available, then the amount of the judgment shall be paid from the Treasury of the United States: *Provided*, That any amount so paid from the Treasury of the United States shall remain a charge against such tribe, and shall be deducted from any annuity, fund, or appropriation hereinbefore designated which may hereafter become due from the United States to such tribe.

SEC. 7. That all judgments of said court shall be a final determination of the causes decided and of the rights and obligations of the parties thereto, and shall not thereafter be questioned unless a new trial or rehearing shall be granted by said court, or the judgment reversed or modified upon appeal as hereafter provided.

SEC. 8. That immediately after the beginning of each session of Congress the Attorney-General of the United States shall transmit to the Congress of the United States a list of all final judgments rendered in pursuance of this act in favor of claimants and against the United States, and not paid as hereinbefore provided, which shall thereupon be appropriated for in the proper appropriation bill.

SEC. 9. That all sales, transfers, or assignments of any such claims heretofore or hereafter made, except such as have occurred in the due administration of decedents' estates, and all contracts heretofore made for fees and allowances to claimants' attorneys, are hereby declared void, and all warrants issued by the Secretary of the Treasury, in payment of such judgments, shall be made payable and delivered only to the claimant or his lawful heirs, executors, or administrators or transferees under administrative proceedings, except so much thereof as shall be allowed the claimant's attorneys by the court for prosecuting said

claim, which may be paid direct to such attorneys, and the allowances to the claimant's attorneys shall be regulated and fixed by the court at the time of rendering judgment in each case and entered of record as part of the findings thereof; but in no case shall the allowance exceed 15 per cent. of the judgment recovered, except in case of claims of less amount than \$500, or where unusual services have been rendered or expenses incurred by the claimant's attorney, in which case not to exceed 20 per cent. of such judgment shall be allowed by the court.

SEC. 10. That the claimant, or the United States, or the tribe of Indians, or other party thereto interested in any proceeding brought under the provisions of this act shall have the same rights of appeal as are or may be reserved in the statutes of the United States in other cases, and upon the conditions and limitations therein contained. The mode of procedure in claiming and perfecting an appeal shall conform, in all respects, as near as may be, to the statutes and rules of court governing appeals in other cases.

SEC. 11. That all papers, reports, evidence, records, and proceedings now on file or of record in any of the Departments, or the office of the Secretary of the Senate, or the office of the Clerk of the House of Representatives, or certified copies of the same, relating to any claims authorized to be prosecuted under this act shall be furnished to the court upon its order or at the request of the Attorney-General.

SEC. 12. To facilitate the speedy disposition of the cases herein provided for in said Court of Claims, there shall be appointed, in the manner prescribed by law for the appointment of assistant attorney-generals, one additional assistant attorney-general of the United States, who shall receive a salary of \$2,500 per annum.

SEC. 13. That the investigation and examinations, under the provisions of the acts of Congress heretofore in force, of Indian depredation claims shall cease upon the taking effect of this act, and the unexpended balance of the appropriation therefor shall be covered into the Treasury, except so much thereof as may be necessary for disposing of the unfinished business pertaining to the claims now under investigation in the Interior Department, pending the transfer of said claims and business to the court or courts herein provided for, and for making such transfers and a record of the same, and for the proper care and custody of the papers and records relating thereto.

And that the Senate agree to the same.

G. C. MOODY,

A. S. PADDOCK,

CHARLES J. FAULKNER,

*Managers on the part of the Senate.*

BINGER HERMANN,

B. W. PERKINS,

SILAS HARE,

*Managers on the part of the House.*