

1-16-1884

## Report : Claim of J. Leathers

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IN THE SENATE OF THE UNITED STATES.

JANUARY 16, 1884.—Ordered to be printed.

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

REPORT:

[To accompany bill S. 253.]

*The Committee on Claims, to whom was referred the bill (S. 253) for the relief of John Leathers, having considered the same and accompanying papers, submit the following report:*

A bill identical with the present bill was referred to, considered, and reported by this committee to the first session of the Forty-seventh Congress. (Report No. 676.) The facts are correctly stated in that report, which is as follows:

The record shows that on the 6th day of February, A. D. 1879, John Leathers was duly indicted by the grand jury of the United States for the district of Nevada, under the Revised Statutes of the United States, "of fishing within an Indian reservation, to wit, in Pyramid Lake, in the State of Nevada;" that on the 1st day of July, same year, he was regularly convicted by a trial jury in the district court of the United States for the district aforesaid of said offense, and was sentenced to pay a fine and costs, amounting to \$744.90, which amount was covered into the Treasury of the United States by miscellaneous warrant No. 1397, first quarter 1881; that immediately thereafter the pardon of said John Leathers was recommended by the district attorney and the judge for the district of Nevada; for which transgression the President of the United States granted to him, on the 28th day of February, 1881, a full and unconditional pardon.

The effect of a pardon upon the condition and rights of its recipient is established by the following decision, from which extracts are given:

Case of *Osborn v. The United States*. United States Reports Supreme Court, Otto, vol. 1, pp. 474, 475, 476, 477, and 478.

\* \* \* \* \*

A pardon by the President restores to its recipient all rights of property lost by the offense pardoned. \* \* \* The pardon of that offense necessarily carried with it the release of the penalty attached to its commission. \* \* \* It is of the very essence of a pardon that it releases the offender from the consequences of his offense. \* \* \* The penalty of forfeiture annexed to the commission of the offense must fall with the pardon of the offense itself, provided the full operation of the pardon be not restrained by the condition upon which it is granted. \* \* \* The pardon, in releasing the offense, obliterating it in legal contemplation (*Carlisle v. United States*, 16 Wall., 151), removes the ground of the forfeiture upon which the decree rests. \* \* \* But, were this otherwise, the constitutional grant to the President of the power to pardon offenses must be held to carry with it, as an incident, the power to release penalties and forfeitures which accrue from the offenses. \* \* \*

Without authorization by Congress the President has no power to render to the claimant the moneys derived on account of "fine and costs in case of *United States v. John Leathers*." There was no penalty attached other than the fine, which was paid. There was no imprisonment attached and no penalty not executed; therefore the pardon could only act upon the original conviction, vacating it, and this necessarily carried with it a remission of the penalty.

Your committee are of opinion that owing to the slightness of the offense, and the offender being released by a full and unconditional pardon, relief should be granted to the extent of remitting the fine but not the costs, and your committee hereby report back said bill with the recommendation that it do pass as amended.

The petition for pardon appears to have been forwarded to the Attorney-General by the United States attorney for the district of Nevada, with favorable recommendation, July 25, 1879, less than a month after the conviction.

The pardon was granted February 28, 1881. The granting of the pardon appears to have been a proper exercise of Executive clemency, but it came too late to avail the claimant, as before it was granted he had been compelled to pay into court the amount of the fine and costs. \$744.90. Although the effect of a pardon by President may be to remit a pecuniary penalty accruing to the United States, yet if the penalty has been paid and the money actually came into the Treasury of the United States it cannot be drawn therefrom without appropriation by act of Congress. (8 Op. Attorney-General, 281.)

The United States attorney recommended the granting of the pardon upon condition that the claimant should pay the costs of the prosecution.

Your committee therefore recommend that the bill be amended by striking out the words "seven hundred and forty-four dollars and ninety cents" and inserting in lieu thereof the words five hundred and one dollars, being the amount of the fine, and that the bill do pass when so amended.

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