1-23-1893

Letter from the Attorney-General, in response to Senate resolution of January 21, 1893, transmitting copies of certain decisions of the Court of Claims in Indian depredation cases.

IN THE SENATE OF THE UNITED STATES.

LETTER

FROM

THE ATTORNEY-GENERAL,

IN RESPONSE

To Senate resolution of January 21, 1893, transmitting copies of certain decisions of the Court of Claims in Indian depredation cases.

JANUARY 24, 1893.—Referred to the Select Committee on Indian Depredations and ordered to be printed.

DEPARTMENT OF JUSTICE,
Washington, D. C., January 23, 1893.

SIR: I have the honor to acknowledge the receipt of the following resolution of the Senate of January 21, 1893:

Resolved, That the Attorney-General be directed to transmit to the Senate a copy of the decision mentioned in his communication to the Senate of the third instant, announced by the Court of Claims, that two specified classes of Indian depredation claims are entitled to priority of consideration under section four of the act of March third, eighteen hundred and ninety-one.

In pursuance of such resolution, I beg to transmit herewith copies of the decisions of the Court of Claims in the cases of John T. Mitchell, administrator, etc., *vs.* The United States and Sioux Nation of Indians, and of James S. Valk, executor, etc., *vs.* The United States and Rogue River tribe of Indians.

The court held, in the case of John T. Mitchell, administrator, etc., *v.* The United States and Sioux Indians, (1) that those claims should be regarded as allowed under the act of March 3, 1885, or subsequent Indian appropriation acts, which had been actually examined and approved under said act as to amount of loss or damages, but which were not in terms allowed by the Secretary of the Interior on the ground that they had not been filed or presented within three years of the date of the depredation, and hence were considered barred under the act of June 30, 1834, for the reason that such bar of the statute of limitations was removed in express terms by the act approved March 3, 1891. (2) That those claims which were not actually examined after the passage of the act of March 3, 1885, but which were reported to Congress by the Secretary of the Interior, on March 11, 1886 (House Ex. Doc. No. 125), pursuant to said act, as having been approved and allowed by a former Secretary of the Interior, and in which no subsequent action was taken should also be regarded as allowed under the act of March 3, 1885, for

the reason that the Secretary of the Interior, by so reporting them as approved and allowed and taking no subsequent action thereto, thereby ratified the action of his predecessor in that behalf, and in effect allowed them pursuant to the act of March 3, 1885.

The opinion of the court in regard to the latter class of claims was announced orally, and has not been printed. In the former class the opinion has been printed and a copy thereof transmitted herewith.

Very respectfully,

W. H. H. MILLER,
Attorney-General.

The PRESIDENT OF THE SENATE,
Washington, D. C.

[Court of Claims. Indian Depredations, Nos. 474, 4948.]

John T. Mitchell, administrator of Cyrenius Beers, deceased, John T. Mitchell, administrator of Solomon Vail, deceased, *vs.* The United States and the Sioux Nation or Band of Indians. Motion of claimants for judgment.

OPINION.

Richardson, C. J., delivered the opinion of the court.

The claimants make the following motion:

"Now come the said petitioners, by Denver & Brownell, their attorneys, and move this honorable court for judgment on the awards in the said above-entitled cases, as made by the Secretary of the Interior in the month of March, A. D. 1884, in the Cyrenius Beers claim, for the sum of $9,700, and in the Wm. L. Robison and Solomon Vail, copartners, claim, for $6,750, as appears by the papers, records, and files in the claim, No. 474, filed therein in the Court of Claims, in compliance with the provisions of the statutes in such cases made and provided."

The act of March 3, 1891, chapter 538, section 4, provides as follows:

"*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." [1 Supplement to R. S., 2d ed., p. 915.]

The present claims were examined, approved, and allowed by the Secretary of the Interior before the passage of the act of March 3, 1885, and it is contended on behalf of the defendants that such claims only as were approved after the passage of that act are entitled to judgment "unless either the claimant or the United States shall elect to reopen the case."

We will consider whether or not these claims have been again approved since the passage of the act of 1885.

The act of March 3, 1885, was an appropriation act, and contained the following provisions:

"Indian depredation claims. For the investigation of certain Indian depredation claims, ten thousand dollars,

"And in expending said sum the Secretary of the Interior shall cause a complete list of all claims heretofore filed in the Interior Department and which have been approved in whole or in part and now remain unpaid, and also all such claims as are pending but not yet examined, on behalf of citizens of the United States on account of depredations committed, chargeable against any tribe of Indians by reason of any treaty between such tribe and the United States, including the name and address of the claimants, the date of the alleged depredations, by what tribe committed, the date of examination and approval, with a reference to the date and clause of the

treaty creating the obligation for payment, to be made and presented to Congress at its next regular session.

"And the Secretary is authorized and empowered, before making such report, to cause such additional investigation to be made and such further testimony to be taken as he may deem necessary to enable him to determine the kind and value of all property damaged or destroyed by reason of the depredations aforesaid, and by what tribe such depredations were committed; and his report shall include his determination upon each claim, together with the names and residences of witnesses and the testimony of each, and also what funds are now existing or to be derived by reason of treaty or other obligation out of which the same should be paid." [1 Sup. to R. S., 2d ed., p. 913, note 3 to sec. 1, and 23 Stat. L., 376.]

It will be observed that by this act the Secretary of the Interior was required to report to Congress "a complete list of all claims heretofore filed in the Interior Department, and which have been approved in whole or in part and now remain unpaid," as well as all claims pending but not yet examined. He was also required, before making report, to cause such additional investigation to be made and such further testimony to be taken as he might deem necessary to enable him to determine the kind and value of all property damaged or destroyed by reason of the depredations aforesaid.

On the 11th of March, 1886, the Secretary made a report to Congress in compliance with said act, printed as House Ex. Doc. No. 125, Forty-ninth Congress, first session, in which, on page 180 of said printed document, appear these two claims, numbered together as No. 2835, and against the same, respectively, in the column of "amount allowed" are put down $9,700 and $6,750.

The records show that prior to the date of the Secretary's said report, these claims had been reëxamined by the Commissioner of Indian Affairs, who, on February 16, 1886, made report to the Secretary, in which, reviewing, but not rejecting, them on their merits, he "regards the claims as barred by force and effect of the statutes regulating trade and intercourse with the Indian tribes, approved June 30, 1834" (4 Stat. L., 731), and recommends their dismissal.

On February 19, 1886, the Secretary addressed a letter to the Commissioner saying: "Your recommendation for disallowance of the claim is concurred in, it not having been presented as required by law then in force within three years after the commission of the injury." The fact of this disallowance on account of the statute of limitation was not included in the report to Congress of March 11, 1886, for some reason not explained.

The appropriation act of May 15, 1886, ch. 333 (24 Stat. L., 44), makes the following provision:

"For continuing the investigation and examination of certain Indian depredation claims originally authorized, and in the manner therein provided for, by the Indian appropriation act approved March third, eighteen hundred and eighty-five, twenty thousand dollars; and the examination and report *shall include claims, if any, barred by statute*, such fact to be stated in the report."

After this act, the claims were again examined by the Commissioner, with a report of the Committee on Indian Affairs of the House of Representatives before him, and he made report December 31, 1886, in which it is stated:

"The Committee on Indian Affairs, in its consideration of the case, came to the conclusion that $7,800 to the former claimant, and $6,000 to the latter, would be a fair valuation for the property lost, as shown by the evidence.

"From a careful review of the case, it is believed that the conclusions of the committee, under all the circumstances, are correct and just, and it is therefore submitted.

"(1) That at the date of the alleged injuries claimants were citizens of the United States, and said Indians were in treaty relations with the Government. (Treaty October 10, 1865, 14 Stat. L., p. 695.)

"(2) That said depredations were committed by said Minneconjou Sioux Indians at the time and place as charged, by which the claimant Beers lost 38 mules and 1 horse, worth $7,800, and the claimants Robinson and Vail lost 30 mules worth $6,000, for which amount said Indians, by the terms of the first article of said treaty, were chargeable, but as claimants failed to apply for relief within the time prescribed by the law then in force (4 Stat. L., p. 732) their claims are barred."

On July 3, 1887, the Secretary of the Interior concurred in this report as follows:

"Your report of the 31st ultimo, submitting the claims of Cyrenius Beers, of Chicago, Ill., and Wm. L. Robinson and Solomon Vail, of Sedalia, Mo., amounting to $12,719.08 and $10,278.75, for compensation for depredations alleged to have been committed in 1866 by Minneconjou Sioux Indians, has been considered, and your findings, viz, that Cyrenius Beers lost property as alleged to the value of $7,800, and that Robinson and Vail lost property as alleged to the value of $6,000, and that said claims were not presented within the limitation fixed by law, are concurred in.

"The claim is hereby returned to be included by you in the list of depredation claims to be submitted to Congress, as required by law."

Thus we have the approval of the Secretary of the Interior of these claims on their merits, and their disallowance only on the ground of not having been presented within the time allowed by law in force at the time the injuries were committed.

This latter ground is expressly waived by the following provision of the Indian depredation act under which this court is proceeding:

"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 Government. (March 3, 1891, ch. 538, 1 Sup. to R. S., 2 ed., p. 914.)"

In our opinion, the statute of limitation having been waived by Congress, the action of the Secretary in relation to these claims has been such that they may be held to have been "examined, approved, and allowed by the Secretary of the Interior, or under his direction, in pursuance of the act of Congress" of March 3, 1885, for the amounts named in his last approval, and so are of the class in which judgments are to be rendered unless either party elects to reopen the same.

The claimants have elected not to reopen the cases and the defendants have as yet made no election. Under these circumstances judgment can not be entered upon the motion. But, as it is understood that the defendants are willing to make the election not to reopen the cases if they can do so under the statute, we have thus expressed our opinion on the subject and suspend action on the motion pending the election of the attorney for the defendants.

[Court of Claims. Indian depredations, No. 475.]

James S. Valk, executor, etc., *vs.* The United States and The Rogue River Indians. Motion of claimant for judgment.

OPINION.

Richardson, Ch. J., delivered the opinion of the court.

The claimant makes the following motion:

"Now comes the petitioner, by Denver and Brownell, his attorneys, and moves this honorable court for a judgment on the award in the said above-entitled cause, as made by the Secretary of the Interior, to wit, in the month of April, A. D. 1890, for the sum of three thousand seven hundred and seventy-six dollars and fifty cents ($3,776.50), as will appear by the records and files in the said claim, No. 475, filed therein in the Court of Claims, in compliance with the provisions of the statutes in such cases made and provided."

In response to a call of the court for "any information or papers supposed to be on file in the Interior Department" in relation to this claim, the Secretary of the Interior, on July 31, 1891, transmitted a report from the Commissioner of Indian Affairs "inclosing papers pertaining to the case referred to, and showing the action taken by this office thereon."

From these papers we find that in 1889 the claim was investigated by the Interior Department through a special agent, who made a favorable report for the allowance to the claimant of $3,776.50, the amount for which judgment is now asked.

This report appears to have been examined by a clerk in the Office of Indian Affairs, and a report to the Secretary of the Interior prepared by him for the signature of the Commissioner, with these conclusions:

"The recommendations of Special Agent Bishop are adopted, and the following formal conclusions are submitted:

"(1) That claimants were citizens of the United States at the date of the depredations.

"(2) That the Rogue River Indians were in treaty relations at that time by treaty of September 10, 1853, and by Article VI of such treaty are chargeable with claimants' loss (*vide* 10, statute 1018).

"(3) That claimants lost, as alleged, property valued at $3,776.50, and enumerated in the allowance made by Commissioners Tryon, Blake, and Sutherland on page 12 of this report, and the claim is recommended for allowance in that amount."

The report, supposed to be drafted about April, 1890, is without date and was never signed by the Commissioner.

It does not anywhere appear that this unsigned report was ever approved by the Secretary of the Interior, either directly or indirectly, or that it has been treated in the Interior Department as a determination of the claim. On the contrary, we find in the report of the Secretary of the Interior made to Congress March 11, 1886, in

compliance with the act of March 3, 1885, this claim mentioned, and in the column headed "Amount allowed" no amount is put down, while in the column headed "Remarks," are the words "Claim returned to claimant (Ex. Doc. 125, Forty-ninth Congress, first session, p. 4, No. of claim 21)."

We must therefore hold that this is not one of the unpaid claims examined, approved, and allowed by the Secretary of the Interior in pursuance of the act of March 3, 1885, which are entitled to priority of consideration by the court and to judgment "unless either the claimant or the United States elect to reopen the case." (Act of March 3, 1891, Ch. 538, I Supp. to R. S., 2d ed., p. 913, and notes.)

In Mitchell's case (ante p. —) we have expressed our opinion of the effect of the report of the Secretary of the Interior as to the approval of previously allowed claims.

The motion is overruled.