36TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT, No. 345.

GEORGE FISHER.

[To accompany S. R. No. 8.]

APRIL 6, 1860.

Mr. EDWARDS, from the Committee on Indian Affairs, made the following

REPORT.

The Committee on Indian Affairs, to whom was referred a joint resolution relating to the claim of George Fisher, deceased, respectfully report:

That in the year 1813, in Florida, very considerable damage was done to the property of the said Fisher, when living, by the troops and militia, in the name of the United States; that by an act of Congress, approved April 12, 1848, the Second Auditor of the Treasury was directed to examine the proofs of the loss and determine the amount, not however to allow for any loss or destruction by Indians. The Auditor at that time, Mr. McCalla, found the amount of the property destroyed to be of the value of $17,946, and allowed the claimant one-half as destroyed by the troops; leaving the other half to be regarded as destroyed by Indians, and allowed no interest on the claim.

In December of the same year his attention was again called to the claim and he reviewed his decision, and confirmed it so far as related to damages, except that he corrected an error of one hundred dollars in his former computation, and allowed interest on the part of the claim which he had allowed, from 1832 to 1848, amounting to $8,797 94.

In both the examinations he rejected certain depositions which were before him, to wit: those of Wiley Davis, James Turner, and Samuel Harrison, for want of authentication.

Subsequently, on the 12th of May, 1849, a Second Auditor, the successor of McCalla, in accordance with a construction of the act of 1848, by the Attorney General, Hon. Isaac Toucey, allowed a further amount of interest of $10,004 89, being for interest on the damages before allowed from 1813 to 1832.

In 1850, October 19, the claimants perfected the rejected testimony by due authentication, and filed it with the Second Auditor and asked a further allowance upon the claim. The Auditor declined to entertain the application on the ground that the case was closed.

At the second session, the 33d Congress passed the following act:

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AN ACT supplemental to an act therein mentioned.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be the duty of the Second Auditor of the Treasury, under the provisions of the act of Congress for the relief of the legal representatives of George Fisher, deceased, approved 12th of April, 1848, to re-examine the said case, and to allow the claimants the benefit of the testimony heretofore marked "*rejected for the want of authentication*," provided the same is now legally authenticated by the executive of Alabama; the adjustment to be made in strict accordance with the act herein above referred to, and to which this act is barely supplemental.

Approved December 22, 1854.

This act was never executed by the Auditor; its execution was objected to by the Secretary of the Treasury for reasons which it is not now necessary to refer to.

The case was again presented to Congress at the 1st session of the 35th Congress, and a joint resolution was passed transferring to the Secretary of War the duties to be performed by the act of 1854 aforesaid, and by the act to which it was supplemental, and the said Secretary was required to proceed *de novo* to execute the said acts in their plain and obvious meaning, and instructed by said resolution to deduct from such account as he should find equitably due to the legal representatives of said George Fisher all sums which had been heretofore allowed and paid on account of said claim.

Under this resolution the Secretary of War made examination of the case and allowed to the claimant in addition to what had been before allowed, on the 13th of October, 1858, the sum of $9,131 principal, and $30,096 50 for interest thereon from 1813 to the date of the allowance.

It is now suggested that the Secretary of War, in executing the act aforesaid, disallowed some portion of the amount which had been allowed by McCalla and paid, and that he did not give full effect to the testimony of witnesses whose depositions had been before rejected for want of authentication, but which were then before him duly authenticated, and Congress are now asked to authorize and require his revisal of his adjudication, and by the joint resolution passed by the Senate he is required so to do, and under instructions as to the manner in which he shall execute the duty first assigned to him, not contained in the resolution by which the duty was originally imposed.

Under this statement of facts the committee are of opinion that the resolution will be sufficiently specific if the Secretary, without any more specific instructions, shall be authorized and required to re-examine the case, and to give effect to all the testimony filed therein, including the depositions before referred to, and to correct any error in his first award, and to make such additional allowance, if any, to the claimant as he shall think the justice of the case requires; and for this purpose they report the accompanying amendment to said resolution.