AUTHORIZING CITIZEN BAND OF POTTAWATOMIE INDIANS IN OKLAHOMA TO SUBMIT CLAIMS TO THE COURT OF CLAIMS

MARCH 27 (calendar day, MARCH 29), 1926.—Ordered to be printed

Mr. HARRELD, from the Committee on Indian Affairs, submitted the following

REPORT

[To accompany S. 1963]

The Committee on Indian Affairs, to whom was referred the bill (S. 1963) authorizing the Citizen Band of Pottawatomie Indians in Oklahoma to submit claims to the Court of Claims, having considered the same, report favorably thereon with the recommendation that the bill do pass with the following amendment:

Strike out all after the enacting clause and insert in lieu thereof the following:

That jurisdiction is hereby conferred on the Court of Claims with right of appeal to the Supreme Court of the United States by either party as in other cases, notwithstanding the lapse of time or statutes of limitation, to hear, examine, and adjudicate and render judgment in any and all legal and equitable claims arising under or growing out of the treaty of February 27, 1867 (15 Stat. 531), or arising under or growing out of any subsequent act of Congress in relation to Indian affairs which said Citizen Band of Pottawatomie Indians of Oklahoma may have against the United States, which claims have not heretofore been determined and adjudicated by the Court of Claims or the Supreme Court of the United States.

SEC. 2. Any and all claims against the United States within the purview of this act shall be forever barred unless suit or suits be instituted or petition filed as herein provided in the Court of Claims within five years from the date of the approval of this act, and such suit or suits shall make the Citizen Band of Pottawatomie Indians of Oklahoma party plaintiff and the United States party defendant. The petition shall be verified by the attorney or attorneys employed to prosecute such claim or claims under contract with the said Citizen Band of Pottawatomie Indians approved in accordance with existing law; and said contract shall be executed in their behalf by a committee or committees to be selected by said Citizen Band of Pottawatomie Indians. Official letters, papers, documents, and records, or certified copies thereof, may be used in evidence, and the departments of the Government shall give access to the attorney or attorneys of said Citizen Band of Pottawatomie Indians to such treaties, papers, correspondence, or records as they may require in the prosecution of any suit or suits instituted under this act.

SEC. 3. In said suit or suits the court shall also hear, examine, consider, and adjudicate any claims which the United States may have against the said Citizen Band of Pottawatomie Indians, but any payment or payments which may have
been made by the United States upon any such claim shall not operate as an estoppel, but may be pleaded as a set-off in such suit or suits, as may any gratuities paid to or expended for said Indians subsequent to February 27, 1867.

Sec. 4. The court shall join any other tribe or band of Indians that may be necessary to a final determination of any suit brought under this act. Upon the final determination of such suit or cause of action, the Court of Claims shall have jurisdiction to decree the fees to be paid to the attorney or attorneys, not to exceed 10 per centum of the amount of the judgment, if any, recovered in such cause, and in no event to exceed the sum of $25,000, together with all necessary and proper expenses incurred in preparation and prosecution of the suit, to be paid out of any judgment that may be recovered, and the balance of such judgment shall be placed in the United States Treasury to the credit of the Indians entitled thereto, where it shall draw interest at the rate of 4 per centum per annum or be paid direct to the Indians, in the discretion of the Secretary of the Interior.

This bill as amended has the approval of the Secretary of the Interior, as shown in letter from him under date of February 13, 1926, which is attached hereto and made a part of this report.

HON. J. W. HARRELD,
Chairman Committee on Indian Affairs,
United States Senate.

MY DEAR SENATOR HARRELD: Further reference is made to your recent letter inclosing for a report a copy of (S. 1963) a bill authorizing the Citizen Band of Pottawatomie Indians in Oklahoma to submit claims to the Court of Claims. After certain amendments are made to the bill as drawn, this department would have no objection to the enactment thereof.

Under the treaty of 1867 (15 Stat. 531) provision was made for the sale by the United States to the Citizen Band of Pottawatomie Indians of a tract of land suitable for a reservation in what was then the Indian Territory. The Indians selected a reservation as agreed under the provisions of the treaty, and the selection was approved by the Secretary of the Interior in 1870.

By the terms of the treaty of 1867, supra, it was provided that out of the moneys received from the sale of the lands of the Pottawatomie Indians in Kansas the Government should retain a sum sufficient to pay for the reservation in the Indian Territory at the price paid by the United States therefor to the Creeks and Seminoles. The Government afterwards came into possession of $283,500.50 belonging to the Citizen Pottawatomie Indians, proceeds from land sales in Kansas. These Indians had other invested funds also in the hands of the Government.

At the time of a later agreement with these Indians, dated June 25, 1890 (26 Stat. 1016–1018), the Indians claimed that they had paid for the reservation purchased under the treaty of 1867 as agreed and that title thereto was therefore in the tribe. The Government contended, however, that the sale had never been consummated under the treaty of 1867, supra, and that title to the reservation selected thereunder had never vested in the Citizen Band of Potawatomi Indians as a tribe.

By section 12 of the act of March 3, 1891 (26 Stat. 989–1021), ratifying the agreement of 1890, supra, Congress conferred full jurisdiction on the Court of Claims to determine the matter. Thereafter suit was filed by the Indians in the Court of Claims February 4, 1892. (Case No. 17356.) On May 6, 1895, the court ordered the case to be consolidated with the case of the Prairie Band of Potawatomi Indians (No. 17654), and another pending case of the Citizen Band of Potawatomi Indians (No. 17402), with permission to file an amended petition. Apparently the cases were never followed up, and on May 20, 1901, dismissal of the three cases for want of prosecution was ordered on motion of the defendant in case No. 17402.

The Department of Justice has refused to consent to reinstatement of case No. 17356 of the Citizen Band of Potawatomi Indians, holding that the court is without jurisdiction to allow such a motion, citing as authority Murray's case. (45 Ct. Cls. 94, 99, 104.)

In view of the record as above cited, it will be seen that the Indians have never had the judicial determination of their claims on their merit that Congress
intended they should have; and as there is apparently no chance of getting the
original suit reinstated in the court further legislation seems necessary to settle
this claim.

It is recommended that the bill be modified by striking out all after the enacting
clause and inserting the following:

"That jurisdiction is hereby conferred on the Court of Claims with right of
appeal to the Supreme Court of the United States by either party as in other cases,
notwithstanding the lapse of time or statutes of limitation, to hear, examine, and
adjudicate and render judgment in any and all legal and equitable claims arising
under or growing out of the treaty of February 27, 1867 (15 Stat. 531), or arising
under or growing out of any subsequent act of Congress in relation to Indian
affairs which said Citizen Band of Pottawatomie Indians of Oklahoma may have
against the United States, which claims have not heretofore been determined and
adjudicated by the Court of Claims or the Supreme Court of the United States.

"Sec. 2. Any and all claims against the United States within the purview of
this act shall be forever barred unless suit or suits be instituted or petition filed as
herein provided in the Court of Claims within five years from the date of the ap-
proval of this act, and such suit or suits shall make the Citizen Band of Pottawa-
tomie Indians of Oklahoma party plaintiff and the United States party defendant.
The petition shall be verified by the attorney or attorneys employed to prosecute
such claim or claims under contract with the said Citizen Band of Pottawatomie
Indians approved in accordance with existing law; and said contract shall be
executed in their behalf by a committee or committees to be selected by said
Citizen Band of Pottawatomie Indians. Official letters, papers, documents, and
records, or certified copies thereof, may be used in evidence, and the departments
of the Government shall give access to the attorney or attorneys of said Citizen
Band of Pottawatomie Indians to such treaties, papers, correspondence, or records
as they may require in the prosecution of any suit or suits instituted under this
act.

"Sec. 3. In said suit or suits the court shall also hear, examine, consider, and
adjudicate any claims which the United States may have against the said Citizen
Band of Pottawatomie Indians, but any payment or payments which may have
been made by the United States upon any such claim shall not operate as an
estoppel, but may be pleaded as a setoff in such suit or suits, as may any gratuities
paid to or expended for said Indians subsequent to February 27, 1867.

"Sec. 4. The court shall join any other tribe or band of Indians that may be
necessary to a final determination of any suit brought under this act. Upon the
final determination of such suit or cause of action, the Court of Claims shall have
jurisdiction to decree the fees to be paid to the attorney or attorneys, not to
exceed 10 per centum of the amount of the judgment, if any, recovered in such
cause, and in no event to exceed the sum of $25,000, together with all necessary
and proper expenses incurred in preparation and prosecution of the suit, to be
paid out of any judgment that may be recovered, and the balance of such judg-
ment shall be placed in the United States Treasury to the credit of the Indians
entitled thereto, where it shall draw interest at the rate of 4 per centum per
annum or be paid direct to the Indians in the discretion of the Secretary of the
Interior."

This department has no information as to the aggregate amount of the claims,
though reference to the petition filed under the act of March 3, 1891, supra, will
probably disclose what was then claimed.

The Director of the Bureau of the Budget has advised that this report is not
in conflict with the financial program of the President.

Very truly yours,

Hubert Work.