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SEC. 9. The sum of $25,000 is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to be expended by the Secretary of State in administering this Act.

Appropriation authorized.
Post, pp. 1124, 1153, 1315.

Approved, August 31, 1935.

[CHAPTER 839.]

AN ACT

To refer the claim of the Menominee Tribe of Indians to the Court of Claims with the absolute right of appeal to the Supreme Court of the United States.

September 3, 1935.
[S. 3210.]
[Public, No. 413.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That jurisdiction is hereby conferred on the Court of Claims to hear, determine, adjudicate, and render final judgment on all legal or equitable claims of whatsoever nature which the Menominee Tribe of Indians may have against the United States, arising under or growing out of any treaties, agreements, or laws of Congress, or out of any maladministration or wrongful handling of any of the funds, land, timber, or other property or business enterprises belonging to said tribe or held in trust for it by the United States, or otherwise; including, but without limiting the generality of the foregoing, (1) a claim for damages for swamp lands which the United States allegedly purported to convey to the Menominee Tribe of Indians by a treaty ratified May 12, 1854 (10 Stat. L. 1064), but which the United States allegedly did not convey because of already having conveyed the same to the State of Wisconsin (9 Stat. L. 519); (2) claims for damages resulting from the improper or unlawful expenditures of tribal trust funds, including trust funds created by the Act of April 1, 1880, entitled "An Act to authorize the Secretary of the Interior to deposit certain funds in the United States Treasury in lieu of investment" (21 Stat. L. 70), and the Act of March 22, 1882, entitled "An Act authorizing the sale of certain logs cut by the Indians of the Menominee Reservation in Wisconsin" (22 Stat. L. 30), and the Act of June 12, 1890, entitled "An Act to authorize the sale of timber on certain lands reserved for the use of the Menominee Tribe of Indians, in the State of Wisconsin" (26 Stat. L. 146), and the Act of March 28, 1908, entitled "An Act to authorize the cutting of timber, the manufacture and sale of timber, and the preservation of the forests on the Menominee Indian Reservation in the State of Wisconsin" (35 Stat. L. 51), and the Act of February 12, 1929, entitled "An Act to authorize the payment of interest on certain funds held in trust by the United States and Indian Tribes" (45 Stat. L. 1164); (3) claims for damages allegedly caused by the United States cutting timber on the Menominee Reservation contrary to the terms and provisions of the aforesaid Act of March 28, 1908 (35 Stat. L. 51); (4) claims for damages allegedly caused by maladministration on the part of the United States as respects its management of the timber and lumber industries of the Menominee Indian Tribe, in particular, its management of the Menominee Indian mills.

Menominee Tribe of Indians.
Jurisdiction to hear claims of.

Vol. 10, p. 1064.

Vol. 9, p. 519.

Vol. 21, p. 70.

Vol. 22, p. 30.

Vol. 26, p. 146.

Vol. 35, p. 51.

Vol. 45, p. 1164.

Vol. 35, p. 51.

SEC. 2. The Menominee Tribe of Indians is hereby empowered to bring such suit, as party plaintiff, against the United States, as party defendant, by filing its petition in the Court of Claims and serving a copy thereof on the Attorney General of the United States. Such petition shall set forth the facts on which the claim for recovery is based and shall be verified by the attorney or attorneys employed by said Menominee Tribe of Indians in accordance with existing law to prosecute such claims which may be made upon information and

Petition to be filed.

Limitation of action.

belief and no other verification shall be necessary. Suit shall be instituted within two years from the date of this Act by the filing of a petition in the Court of Claims in behalf of the Menominee Tribe of Indians.

Principles of law applicable.

SEC. 3. At the trial of said suit the court shall apply as respects the United States the same principles of law as would be applied to an ordinary fiduciary and shall settle and determine the rights thereon both legal and equitable of said Menominee Tribe against the United States notwithstanding lapse of time or statute of limitations. No payment or payments which have been made by the United States upon any claim or claims therein asserted or for the account of said Menominee Tribe of Indians nor any gratuities paid to or expended for said tribe or members thereof shall apply as an estoppel against said suit but may be pleaded as offsets. No gratuities, however, paid to or expended for said tribe or members thereof prior to the Act of Congress of March 28, 1908 (35 Stat. L. 51), or paid pursuant to any emergency relief legislation enacted subsequent to January 1, 1933, or out of any appropriations authorized by the Act of June 18, 1934 (48 Stat. L. 984), shall be pleaded by the United States as offsets.

Payments heretofore made.

Evidence admitted.

SEC. 4. At the trial of such action so instituted in the Court of Claims, any letter, paper, document, map, or record in the possession of any officer or department of the United States (or a certified copy thereof) may be used in evidence, and the departments of the Government of the United States shall give full and free access to the attorneys for said tribe of Indians to such letters, papers, documents, or records as may be useful to said attorney or attorneys in the preparation for trial or trials of such action and shall afford facilities for the examination of the same and the making of copies thereof.

Appeals to Supreme Court of United States.

SEC. 5. Either party shall have the absolute right of appeal (not by writ of certiorari) from any final judgment entered by the Court of Claims to the Supreme Court of the United States and the Supreme Court of the United States is hereby invested with jurisdiction of such appeals.

Payments to Indians if determined that United States unlawfully failed to convey certain swamp lands.

SEC. 6. (a) If it shall be determined by the court that the United States in violation of the terms and provisions of the treaty ratified May 12, 1854 (10 Stat. L. 1064), unlawfully failed to convey certain swamp lands to the Menominee Tribe of Indians the court shall render judgment in favor of the Menominee Tribe of Indians for a sum equal to (1) the value of the timber removed therefrom since May 12, 1854, with interest at 4 per centum per annum from the time of such removal and (2) the present acquisition costs of such lands to the Menominee Tribe of Indians, which shall be determined by the court, with a proviso that the United States may in lieu of paying the present acquisition costs of such lands acquire and hold said lands in trust for the sole benefit and use of the Menominee Tribe of Indians.

Judgment if determined that United States unlawfully expended tribal funds, etc.

(b) If it shall be determined by the court that the United States has improperly or unlawfully expended or misappropriated tribal funds or properties of said tribe of Indians the court shall render judgment against the United States for an amount equal to the value of all such funds and property with interest thereon at the same rate per annum as provided by the Act of Congress authorizing the creation of the fund or property improperly or unlawfully expended or misappropriated from the date of the unlawful expenditures or misappropriations.

Unlawfully cut timber.

(c) If it shall be determined by the court that the United States has violated the terms and provisions of the Act of Congress of March 28, 1908 (35 Stat. L. 51), by cutting other than dead and down timber or such fully matured and ripened timber as the Forestry Service shall have properly designated, or by cutting such timber so as to prevent forest perpetuation, the court shall award as damages to the Menominee Tribe of Indians either (1) the difference between the net income that has been and will be received from the liquidation of the timber unlawfully cut and the net income which would have been and would be received from an acreage which would have produced, under selective cutting, if then cut, the same volume of timber as that unlawfully cut, from the time of the commencement of the unlawful cutting up to the time when the timber unlawfully cut shall have been replaced by replanting and the sustained yield from the said replanted timber shall be equal, acre for acre, to the sustained yield from the timber had it been selectively cut so as to perpetuate the forest, as required by law, with interest thereon at the rate of 4 per centum per annum for the same period, said period, wherever specified herein, to be deemed to be sixty years, unless otherwise determined at the trial, plus the cost of replacement of the timber on the same areas including the necessary protection until the replanted timber shall have attained the said sustained yield; or (2) the cost of replacement of timber on the respective areas thus unlawfully cut, including the necessary protection until the replanted timber shall have attained the aforesaid sustained yield plus interest at 4 per centum per annum for the same period of time on an amount equal to the reasonable value as of the date of the unlawful cutting of the timber on the areas thus cut, whichever is the greater.

Maladministration of timber and lumber industry.

(d) If it shall be determined by the court that there has been maladministration on the part of the United States as respects its management of the timber or lumber industry of the Menominee Indian Tribe, including, but without limitation, its disposal of timber and lumber products and its management of the Menominee Indian Mills, the court shall award to the Menominee Tribe of Indians as damages either (1) an amount equal to the net losses incurred during the year or years in which maladministration is found, with interest thereon at the rate of 4 per centum per annum from the respective dates of said losses, or, (2) interest at the rate of 4 per centum for the particular year or years in which maladministration is found on the capital investment of the Menominee Tribe of Indians in their standing timber, lumber, plant, buildings, equipment and all other assets used in, or about, or in any way connected, with the Menominee Indian Mills or the timber and lumber industry of the Menominee Indian Tribe, whichever is the greater. "Net losses" shall be determined by using customary and accepted principles of accounting. "Capital investment" in standing timber and lumber shall be determined by using the unit price for each species of lumber and timber as used by the United States in its accounting records at the Menominee Indian Mills at the beginning and end of each year in which maladministration is found and dividing the sum thereof by two. "Capital investment" in plant, buildings, equipment and all other assets shall be determined by using cost less depreciation at the beginning and end of each year in which maladministration is found and dividing the aggregate thereof by two. In determining "Cost less depreciation" the general ledger accounts maintained at the Menominee Indian Mills shall be accepted subject to such adjustments as may be found proper upon investigations using customary and accepted principles of accounting.

Fees upon final determination of suits.

SEC. 7. Upon the final determination of such suit, cause, or action, whether by judgment, compromise, or otherwise, the Court of Claims shall decree such fees as it shall find reasonable to be paid the attorney or attorneys employed therein by said Menominee Tribe of Indians under contracts negotiated and approved as provided by existing law: *Provided*, That in the event the claim for damages for swamp lands shall be compromised and settled by the Menominee Tribe of Indians and the United States without the assistance of the attorney or attorneys employed hereunder pursuant to a special resolution adopted by the Menominee Advisory Council authorizing the rendering of such assistance, no fees shall be paid or decreed with respect thereto: *Provided further*, That in the event the claim for damages for swamp lands shall be compromised and settled by the Menominee Tribe of Indians and the United States, prior or subsequent to the institution of suit hereunder but prior to the trial thereof, with the assistance of the attorney or attorneys employed hereunder pursuant to a special resolution adopted by the Menominee Advisory Council authorizing such attorney or attorneys to render such assistance, the Secretary of the Interior shall, for such assistance, award to said attorney or attorneys such fees, with respect thereto, as based upon a quantum meruit he shall deem reasonable. In no case shall the fee decreed by said Court of Claims and the Secretary of the Interior be in excess of the amount stipulated in the contracts approved by the Commissioner of Indian Affairs and the Secretary of the Interior. The fees decreed by the court to the attorney or attorneys shall be paid out of any sum or sums recovered in such suit or action or received by compromise and not otherwise. All actual and necessary expenses incurred by the attorney or attorneys so employed, including court costs, bills for printing required by law, or court rules, the cruising and examination of lands and timber, the auditing and tabulation of accounts, travel, and subsistence of said attorney or attorneys and his or their employees while engaged solely in the preparation or prosecution of said suit or suits, securing and taking evidence deemed material therein, the compensation of stenographers, and such clerical assistance as shall be reasonably employed solely upon work in connection therewith, fees or commissions of notaries public or commissioners, and any other expense reasonably necessary for the preparation for trial or prosecution of any such suit or suits shall be paid by the Secretary of the Interior, when approved by him, from time to time, as the same shall accrue out of the funds standing to the credit of said Menominee Tribe of Indians in the Treasury of the United States upon verified accounts submitted in such form as may be required by the Secretary of the Interior, and without regard to the outcome or success of said suit or action against the United States. The net amount of any judgment recovered shall be placed in the Treasury of the United States to the credit of the said Indians, and shall draw interest at the rate of 4 per centum per annum and shall be thereafter subject to appropriation by Congress for the benefit of said Indians, including the purchase of lands and building of homes, and no part of said judgment shall be paid out in per capita payments to said Indians.

Provisos.
If compromise effected without assistance of attorneys.

With assistance.

Restriction on amount.

Expenses.

Deposit of net amount of judgment.

Service of copy of petition.

SEC. 8. A copy of the petition in any suit instituted under this Act shall be served upon the Attorney General of the United States and he, or some attorney from the Department of Justice to be designated by him, is hereby directed to appear and defend the interests of the United States.

Approved, September 3, 1935.