HISTORY, JURISDICTION, AND PRACTICE OF THE COURT OF CLAIMS (UNITED STATES)

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OF THE

COURT OF CLAIMS.

(UNITED STATES.)

BY

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COURT OF CLAIMS.

(UNITED STATES.)

HISTORY.

Previous to the year eighteen hundred and fifty-four the accumulation of private claims against the Government of the United States presented to Congress for examination and relief had, at various times, engaged the attention of Senators and Representatives. It was seen and acknowledged by them all that it was beyond the power of Congress or its committees to make a thorough investigation of those claims, or to act intelligently upon the large and constantly increasing number of petitions introduced at each session in behalf of persons having claims of various kinds for which they sought relief. Claimants had gone to Congress, and would continue to go there, as a matter of right secured to them by the first article of the amendments to the Constitution of the United States, guaranteeing to the people the privilege to petition the Government for redress of grievances.

It was seriously felt both in and out of Congress that the constitutional guaranty was of little value, and was substantially violated if private claimants against the government were allowed merely the naked right to have their petitions presented, without any further investigation and consideration.

To neglect to hear petitioners, or not to act upon their complaints when heard, was practically the same to them as would be the effect of a law expressly abridging the right of petition in direct and flagrant violation of the Constitution.

The first edition of this article appeared in the March number of the Southern Law Review, A. D. 1882. The history is now brought down to A. D. 1885.

And yet such was the extent of these claims, and the difficulty of reaching the real facts in each case, that few of them were ever acted upon, and many honest creditors of the United States were turned away without a hearing, and others were deterred from presenting their petitions for redress by the difficulties in the way of ever reaching a final determination, while it was occasionally found that, upon hasty consideration or imperfect *ex-parte* evidence, a claim was allowed and paid which was, to say the least, of doubtful validity.

Committees could not constitute themselves courts for the trial of facts. They had not the time to devote to that kind of investigation, to the interruption or exclusion of their duties to the country on the great national questions which were always pending in Congress. They could not effectively examine the claimants' witnesses to any great extent before themselves, and they were not sufficiently familiar with the matters in controversy to be able to procure witnesses for the Government. Claimants, in fact, presented only *ex-parte* cases, supported by affidavits and the influence of such friends as they could induce to appear before the committees in open session, or to see the members in private. No counsel appeared to watch and defend the interest of the Government. Committees were, therefore, perplexed beyond measure with this class of business, and most frequently found it more convenient and more safe not to act at all upon those claims which called for much investigation, especially when the amounts involved seemed large. Moreover, when bills for relief in meritorious cases were reported, few of them were acted upon by either House, or, if passed by one, were not brought to a vote in the other House, and so fell at the final adjournment, and if ever revived, had to be begun again before a new Congress and a new committee, and so on year after year and Congress after Congress.

Several plans for relief were from time to time proposed by bills, resolutions, or motions, or were suggested by Senators and Representatives in the course of debate. But no measure was carefully and fully considered until the second session of the Thirty-third Congress, in the year eighteen hundred and fifty-four.

On the sixth of December of that year Senator BRODHEAD, of Pennsylvania, in pursuance of previous notice, asked and obtained leave to introduce a bill establishing a commission for the examination and adjustment of private claims, which was

read a first and second time by its title and referred to the Committee on Claims. This was a carefully drawn and well-prepared bill. It had evidently been considered by members of the committee and had their concurrence before its introduction, for it was soon reported back without amendment. When the bill came up for discussion in the Senate, it soon became apparent that the prevailing opinion of members was that something more was needed than a mere commission, with its members appointed for a term of years, or removable at the pleasure of the Executive. It was seen that there would be frequent changes of commissioners with the change of parties or the incoming of new administrations, and that with the constant liability of removal the independence of the commissioners would be greatly weakened and their usefulness much impaired. Besides, men of ability and learning in the law would not give up their position and practice to accept such semi-judicial offices, subject to removal at any time. The desire expressed was to have an independent and permanent tribunal, which should pass upon the claims made against the Government with all the formalities, safeguards, and judicial learning which distinguish courts of justice established for the trial of causes between individuals.

Senator HUNTER, of Virginia, suggested some amendments and proposed the appointment of judges with life tenure, instead of commissioners, as the best means of securing that complete independence which it was important to establish, and of obtaining the best men to fill the positions. He said:

"When these safeguards are provided, I think we should establish the most admirable tribunal for doing justice to private claimants, and, at the same time, for throwing proper checks about the Treasury of the United States, that could be established."

After this discussion the bill was referred on the 18th of December, 1854, to a select committee composed of Senators BRODHEAD, of Pennsylvania, JONES, of Tennessee, HUNTER, of Virginia, CLAYTON, of Delaware, and CLAY, of Alabama. On the 20th of December this committee reported a substitute entitled "An act to establish a Court for the investigation of claims against the United States." This bill differed from the former one very little, except in the important feature of establishing a permanent and independent court instead of a commission. The bill thus drawn met the approval of the Senate,

and on the 21st of December it passed that body, without a vote recorded against it.

The bill reached the House of Representatives on the 24th of December, and was referred first to the Judiciary Committee, but this reference was changed and it was sent to the Committee on Claims. It was soon reported back with some amendments which did not alter the main features of the bill, and was passed by the House on the 23d of February, 1855, by a vote of 150 to 46. Two days after, February 25, the bill was signed by the President and became a law.*

The act required the appointment of three judges by the President, by and with the advice and consent of the Senate, to hold their offices during good behavior. President PIERCE appointed two of them on the 3d of March, and the other on the 8th of May, 1855. They organized on the 11th of May, 1855, making choice of Judge GILCHRIST as Presiding Judge, and immediately entered upon the discharge of their duties.

The magnitude and difficulties of the business of the court, with its peculiar jurisdiction, are well presented in a report made to Congress by Judge GILCHRIST, for himself and his associates, bearing date June 23, 1856, from which the following extracts are taken:

"As to the business of the court, we are convinced that no one who has not had personal experience on the subject can have any correct idea of its diversity, its intricacy, its perplexity, the exhausting labor necessary for its investigation, or the large sum of money it involves. Until the institution of this court, there had never been anything like a systematic inquiry into the modes of action by the Government through the Executive Departments, or the relation in regard to contracts and the liabilities arising therefrom which the Government bore to the citizens. It was inevitable, and it is astonishing that it should not have been sooner perceived, that among twenty-five millions of people, inhabiting the almost boundless territory comprehended by the Union, innumerable questions of the most difficult and delicate nature must have arisen, delays in the decision of which were alike discreditable to the moral sense of the people and the public faith of the Government, of which the people were the foundation. It has been often asserted, and proved by the experience of the British Parliament, that legislative bodies are unfitted, by the pressure of great public in-

* 10 Stat. L., 612.

terests, from careful judicial investigation into private rights. The consequence has been in our country that claims accumulated until their magnitude repressed all willingness to investigate them, and a state of things arose which made it hopeless almost to present a claim against the United States with any prospect of a decision. Such was the condition of affairs when we entered upon the discharge of our duties. Our field of action was entirely new. We had no precedents to guide us. It was necessary at once to adopt some system of rules for the transaction of business. The ordinary rules of practice in courts of law were obviously inapplicable. We were forced to adopt rules in advance of any experience upon the subject, conscious that we should be forced often to modify and sometimes to abrogate them. We found numerous cases involving questions entirely out of the path of ordinary legal investigation, requiring a degree of care and study rarely necessary in courts of justice. Cases of contracts, intricate in their details, imperfectly defined by the evidence, reducible with difficulty to any legal principles, and enormous in amount, met us at the threshold. Cases involving the proper construction of treaties, important questions of public law, and that most difficult and delicate of all questions, the responsibility of the United States to their citizens, were laid before us. The construction of acts of Congress, the legitimate powers of the Executive Departments, the duties and liabilities of Government officers, the constitutional powers of the General Government, the duties of neutral nations, and questions arising out of a state of war, were all, directly or incidentally, to be inquired into. It cannot be presumed that, with a due regard to our own reputation or to our official oaths, we were disposed to pass lightly upon questions of such momentous importance. Our object has been to give each case such a degree of care and patient attention as would enable us to use it as a precedent in subsequent cases of a like character. Our desire has been, not to get rid of the cases, but to decide them; and in order to do that they must be carefully examined."

The original act provided that at the commencement of each session of Congress, and at the commencement of each month during the session, the court should report the cases upon which they had finally acted, stating in each the material facts which they found established by the evidence, with their opinion in the case, and the reasons upon which such opinion