

CLAIM OF ALLEN R. ENGLISH.

LETTER

FROM

THE ACTING SECRETARY OF THE TREASURY,

TRANSMITTING

A copy of a communication from the Attorney-General submitting for an appropriation the papers in the claim of A. R. English for services rendered in defending certain Indians charged with crime in the Territory of Arizona.

APRIL 26, 1892.—Referred to the Committee on Appropriations and ordered to be printed.

TREASURY DEPARTMENT,
April 23, 1892.

SIR: I have the honor to transmit herewith, for the consideration of Congress, copy of a communication from the Attorney-General, of the 22d instant, submitting for appropriation the papers in the claim of Allen R. English for services rendered under appointment of the court in defending certain Indians charged with crime at the October term, 1889, of the first judicial district court of the Territory of Arizona, \$800.

Respectfully, yours,

O. L. SPAULDING,
Acting Secretary.

The SPEAKER OF THE HOUSE OF REPRESENTATIVES.

DEPARTMENT OF JUSTICE,
Washington, D. C., April 22, 1892.

SIR: Herewith inclosed are copies of papers in support of the claim of Allen R. English, for services rendered under appointment of the court in defending certain Indians charged with crime, at the October term, 1889, of the first judicial district court of the Territory of Arizona. Inclosed are copies of the indictments, of his account as approved by the court, of the letter of Mr. English transmitting his claim to his agent, A. J. Falls, of this city, and of the letter of Mr. Falls, of April 18, 1892, forwarding the same to this Department.

A reference is made by Attorney Falls to an appropriation for similar services transmitted to the Secretary of the Treasury, and by him sent to Congress on August 5, 1890, being Ex. Doc., No. 455, Fifty-first Congress, first session; Attorney-General Miller stating that the accounts did "not fall within any appropriation under the control of the Department of Justice;" that "they could not be audited and certified for payment by the accounting officers of the Treasury;" that "the services could not be paid as fees of a district attorney or as compensation of assistant attorneys, being services of counsel appointed by the court in a case of emergency;" that "they were presented to Congress for its specific action at the request of the claimant."

The Attorney-General then respectfully requested the payment of the accounts presented.

In similar manner, under similar circumstances, and a similar view of the law, this claim is transmitted to you, with the recommendation for payment in the sum of \$800, that the same may be forwarded to Congress for its action at its present session.

Very respectfully,

CHARLES H. ALDRICH,
Acting Attorney-General.

The SECRETARY OF THE TREASURY.

WASHINGTON, D. C., *April 18, 1892.*

SIR: I have the honor to transmit herewith the account of Allen R. English for services rendered by him in defending certain Indians in the October term, 1889, of the first judicial district court of the Territory of Arizona; and have the honor to ask that the same may meet with your favorable action, and be transmitted to Congress with your recommendation, the same as in the case of the account of Mr. M. H. Williams for like services, which was referred by you to Congress for an appropriation in your letter of August 1, 1890 (House docket No. 455, Fifty-first Congress, first session).

Very respectfully,

A. J. FALLS.

The ATTORNEY-GENERAL.

TOMBSTONE, COCHISE COUNTY, ARIZ.,
March 28, 1892.

DEAR SIR: Yours of 21st and 22d inclosing the account of Mr. M. H. Williams received to-day, and I hasten to reply. In Mr. Williams's case all of his cases were indicted and tried in the court while exercising jurisdiction over United States offenses, because the You-shay-ee case (130 U. S., 343) had not then been decided, while in my cases the above cited authority had become well-known, and all Indians were indicted and tried as per rule and construction there laid down in territorial courts.

I inclose copy of indictments in two cases, which you will find as above in territorial courts. Here is just the point: There was no law outside of the United States statutes responsible for all costs of the trials of Indians in the territorial courts; there was no territorial statute authorizing the Territory, or any county in it, to pay an attorney for services rendered an indigent defendant where such attorney was appointed by the court to so defend, neither was there any law of the United States so authorizing any payment where the services were rendered in the United States branch of the court; and, yet, in Mr. Williams's case the Judiciary Department construed that act of Congress making the Government responsible for the expenses of Indian trials, responsible for attorney's compensation in defending as well as for prosecuting.

Therefore I think that whether in United States or Territorial court, my case is on all fours with the Williams case, and that the latter is precedent, and it is right. These Indians are wards of the Government, more so, perhaps, than any other tribe within its boundaries, completely dependent upon the Government. Now to say

that this great Government has millions to prosecute these Indians of any crime with which one of them might be accused, but that (well knowing none of them have a dollar and are totally without means to get one) not a cent shall be expended in their defense, would be a construction of that act of Congress unworthy of the high officials of that department; their construction was right in the Williams case, and was solely based upon that act of Congress and I can not see where there is any chance on earth for them, neither can I see why they are now inclining to disregard and ignore the precedent established in their former ruling.

I do trust you will have little or no further trouble in adjusting the matter and making the collection.

Yours truly,

ALLEN R. ENGLISH.

Mr. A. J. FALLS,
Washington, D. C.

In the district court of the first judicial district of the Territory of Arizona, in and for the county of Graham. Adjourned October term, 1889. May 21, 1890.

Court convened at 9 o'clock a. m. Present, Hon. Richard E. Sloan, judge of the first judicial district, presiding, and with Frank Dysart, clerk.

Now comes Allen R. English, esq., and presents to the court his account made out in manner and form as required by Attorney-General Miller, for services rendered by him in defending certain Indians at the October term, 1889, of this court, which said account, certified to by the judge of this court, is in words and figures following, to wit:

| | | |
|--|---|-------|
| Territory of Arizona <i>v.</i> En-des-so-da, an Indian. Charge, murder: | | |
| Jan. 28, 1890, to services ex. panel grand jury..... | } | \$300 |
| Jan. 30, 1890, to services on arraignment..... | | |
| Jan. 31, 1890, to services on final trial before jury..... | | |
| Feb. 3, 1890, to services at sentence..... | | |
| Approved for \$200—R. E. Sloan, judge. | | |
| Territory of Arizona <i>v.</i> Clo-ch-Lay, an Indian. Charge, murder: | | |
| Jan. 28, 1890, to services ex. panel grand jury..... | } | 300 |
| Jan. 30, 1890, to services on arraignment..... | | |
| Jan. 31, 1890, to services on final trial by jury..... | | |
| Feb. 3, 1890, to services at sentence..... | | |
| Approved for \$200—R. E. Sloan, judge. | | |
| Territory of Arizona <i>v.</i> Gis-Ga-Ah-a, an Indian. Charge, assault with a deadly weapon: | | |
| Jan. 28, 1890, to services ex. panel grand jury..... | } | 100 |
| Jan. 30, 1890, to services on arraignment..... | | |
| Feb. 1, 1890, to services on final trial by jury..... | | |
| Feb. 3, 1890, to services at sentence..... | | |
| Territory of Arizona <i>v.</i> Dil-Ya-Hay, an Indian. Charge, murder. | | |
| Jan. 28, 1890, to services ex. panel grand jury..... | } | 300 |
| Jan. 30, 1890, to services on arraignment..... | | |
| Jan. 30, 1890, to services on entry of plea..... | | |
| Feb. 3, 1890, to services at sentence..... | | |
| Approved for \$200—R. E. Sloan, judge. | | |
| Territory of Arizona <i>v.</i> We-Kin-Ya, an Indian. Charge, assault to commit murder. | | |
| May 12, 1890, to services at setting time for trial..... | } | 100 |
| May 13, 1890, to services at final trial by jury..... | | |
| May 17, 1890, to services at sentence..... | | |
| Total..... | | 1,100 |

The foregoing account is approved as charged for, except the charges made in cases of defendants tried upon the charge of murder, which are respectively approved in the sum of \$200 each, and which allowance I consider a fair and reasonable fee for the services rendered.

RICHARD E. SLOAN,
Judge.

I, Frank Dysart, clerk of the district court of the first judicial district of the Territory of Arizona, in and for the county of Graham, do hereby certify that Allen R. English was appointed by the court to defend En-des-so-da, Clo-ch-Lay, Gis-Ga-Ah-a, Dil-Ya-Hay, and We-Kin-Ya, and that he was present and performed the services enumerated in the foregoing account; and, further, that each of the above-named defendants are Apache Indians, and that they stated to the court, under oath, that they were poor and destitute of money with which to employ counsel.

Witness my hand and seal this 21st day of May, 1890.

[SEAL.]

FRANK DYSART,
Clerk of the District Court in and for Graham County, Ariz.

In the district court of the first judicial district of the Territory of Arizona, in and for the county of Graham. Territory of Arizona against Dul-Zu-Hay. Indictment at the October term, A. D. 1889.

Dul-Zu-Hay is accused by the grand jury of the county of Graham, by this indictment, found this 30th day of January, 1890, of the crime of murder, committed as follows, to wit: The said Dul-Zu-Hay, on the 15th day of September, A. D. 1889, at said county of Graham, in the Territory aforesaid, did one Dick, whose other name is to the grand jury unknown, with a pistol loaded with powder and leaden ball, in his hand held, unlawfully, willfully, and feloniously kill and murder, against the peace and dignity of the Territory of Arizona, and contrary to the form of the statutes in such cases made and provided.

A. M. PATTERSON,
District Attorney.

Names of witnesses examined before said grand jury upon finding the foregoing indictment: Chopo, No. 5, Ark-do-go.

(Indorsed:) No.—. In district court of the first judicial district of the Territory of Arizona, in and for the county of Graham. Indictment for murder. Territory of Arizona vs. Dul-Zu-Hay. A true bill. M. W. Stewart, foreman. Presented by the foreman of the grand jury, in open court, and filed as a record of this court, this 30th day of January, 1890. Frank Dysart, clerk. By _____, deputy. A. M. Patterson, district attorney of the county of Graham, Territory of Arizona.

In the district court of the first judicial district of the Territory of Arizona, in and for the county of Graham. Territory of Arizona against Gis-Ga-Ab. Indictment at the October term, A. D. 1889.

Gis-Gu-Ab is accused by the grand jury of the county of Graham, by this indictment, found this 30th day of January, 1890, of the crime of an assault with a deadly weapon committed, as follows, to wit: The said Gis-Gu-Ab, on the 27th day of November, A. D. 1889, at said county of Graham, in the Territory aforesaid, did, upon the person of one Na-yu-ab-a, unlawfully, willfully, and feloniously make an assault with rifle, loaded with powder and leaden ball, in his hand then and there held, which said rifle was then and there a deadly weapon, against the peace and dignity of the Territory of Arizona, and contrary to the form of the statutes in such cases made and provided.

A. M. PATTERSON,
District Attorney.

Names of witnesses examined before said grand jury upon finding the foregoing indictment: Bulish, Con-Can.

(Indorsed:) No.—. In district court of the first judicial district of the Territory of Arizona, in and for the county of Graham. Indictment for assault with deadly weapon. Territory of Arizona vs. Gis-Gu-Ab. A true bill. M. W. Stewart, foreman. Presented by the foreman of the grand jury in open court, and filed as a record of this court this 30th day of June, A. D. 1890. Frank Dysart, clerk. By _____, deputy. A. M. Patterson, district attorney of the county of Graham, Territory of Arizona.