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JURISDICTION OF THE WAR DEPARTMENT OVER THE TERRITORY OF ALASKA.

LETTER

FROM

THE SECRETARY OF WAR,

TRANSMITTING

A copy of a brief on the subject of the jurisdiction of the War Department over the Territory of Alaska.

FEBRUARY 29, 1876.—Referred to the Committee on the Territories and ordered to be printed.

WAR DEPARTMENT,
February 26, 1876.

The Secretary of War has the honor to transmit to the United States Senate and House of Representatives, copy of brief on the subject of the jurisdiction of the War Department over the Territory of Alaska, with copies of papers therein referred to, and to earnestly recommend such legislation as will more precisely define the duties of the War Department over the Indian country in general, and particularly over the Territory of Alaska.

WM. W. BELKNAP,
Secretary of War.

COPIES OF BRIEF AND PAPERS RELATIVE TO THE STATUS OF ALASKA AND THE EXTENT OF THE JURISDICTION OF THE WAR DEPARTMENT OVER THAT TERRITORY UNDER EXISTING LAWS.

WAR DEPARTMENT,
ADJUTANT-GENERAL'S OFFICE,
Washington, February 21, 1876.

Official:

E. D. TOWNSEND,
Adjutant-General.

BRIEF.

WAR DEPARTMENT, *February* 4, 1876.

To the honorable the SECRETARY OF WAR:

I am directed to examine the accompanying papers and prepare for you "a full brief of all the legal points which are involved in the question of the jurisdiction of the War Department over the Territory of Alaska."

Fire-arms.—By act of Congress approved July 27, 1868, and entitled "An act to extend the laws of the United States relating to customs, commerce, and navigation over the territory ceded to the United States by Russia, to establish a collection-district therein, and for other purposes," (15 Stat., 240,) it was enacted as follows:

That the laws of the United States relating to customs, commerce, and navigation be, and the same are hereby, extended to and over all the main-land, islands, and waters of the territory ceded to the United States by the Emperor of Russia, by treaty concluded at Washington on the thirtieth day of March, anno Domini eighteen hundred and sixty-seven, so far as the same may be applicable thereto.

The fourth section provides:

That the President shall have power to restrict and regulate or to prohibit the importation and use of fire-arms, ammunition, and distilled spirits into and within the said Territory, and the exportation of the same from any other port or place in the United States, when destined to any port or place in the said Territory.

The section goes on to prescribe forfeitures, and a penalty of fine or imprisonment. The requirement of bonds is also authorized in certain cases.

The seventh section provides:

That, until otherwise provided by law, all violations of this act, and of the several laws hereby extended to the said Territory and the waters thereof, committed within the limits of the same, shall be prosecuted in any district court of the United States in California or Oregon, or in the district courts of Washington, and the collector and deputy collectors appointed by virtue of this act, and any person authorized in writing by either of them, or by the Secretary of the Treasury, shall have power to arrest per-

sons and seize vessels and merchandise liable to fines, penalties, or forfeitures under this and the said other laws, and to keep and deliver over the same to the marshal of some one of the said courts; and said courts shall have original jurisdiction, and may take cognizance of all cases arising under this act and the several laws hereby extended over the territory so ceded to the United States by the Emperor of Russia, as aforesaid, and shall proceed therein in the same manner and with the like effect as if such cases had arisen within the district or Territory where the proceedings shall be brought.

February 20, 1869, the President approved the following order:

The prohibition hitherto resting upon the importation of arms and ammunition into Alaska is hereby removed, subject, however, to such restrictions upon the disposal of the same, when so imported, as shall be imposed (in regard to the disposal of the same when so imported) by the military authorities.

February 8, 1870, the President made the following order:

Under and in pursuance of the authority vested in me by the provisions of the second section of the act of Congress approved on the 27th day of July, 1868, entitled "An act to extend the laws of the United States relating to customs, commerce, and navigation, over the territory ceded to the United States by Russia, to establish a collection-district therein, and for other purposes," the importation of distilled spirits into and within the district of Alaska is hereby prohibited, and the importation and use of fire-arms and ammunition into and within the islands of Saint Paul and Saint George, in said district, are also hereby prohibited, under the pains and penalties of law.

July 3, 1875, the President approved the following circular to collectors of customs:

The importation of breech-loading rifles and fixed ammunition suitable therefor into the Territory of Alaska, and the shipment of such rifles or ammunition to any port or place in the Territory of Alaska, are hereby forbidden, and collectors of customs are instructed to refuse clearance of any vessels having on board any such arms or ammunition destined for any port or place in said Territory.

Then follows a direction to require bonds in certain cases.

In acknowledging the receipt of this circular the collector at Sitka remarked as follows:

It will be difficult to prevent the introduction of breech-loading arms and fixed ammunition into this district by the Indians located at this place. The present restriction upon trade, imposed by the military commander, prohibiting (except in small quantities) the sales of molasses and sugar, has caused the Indians to visit British trading-posts, taking with them their furs and peltries, receiving in exchange anything and everything they require.

The military commander made the following explanation, premising that the Indians had learned the art of distillation:

Vast quantities of molasses used to be shipped to this country, and as an efficient means to stop the whisky-traffic, which demoralizes alike the Indians and the whites, I at first limited the sale of molasses and sugar to Indians, and finding it impossible to regulate it properly in that way I have prohibited its introduction or sale in this vicinity. I would have extended the order all over the Territory had I been in possession of the means of enforcing obedience to it.

Upon this General Schofield indorsed as follows:

I have no doubt of the wisdom of prohibiting the importation of breech-loading arms and ammunition into Alaska, nor of the practicability of enforcing the prohibition. Unless I am greatly mistaken the Hudson Bay Company do not trade in that kind of arms. But I believe the result of all other restrictions upon trade are only evil. Whether the Territory is to remain in its present anomalous condition, or be provided with a military or civil government, I believe it would be well to foster unrestricted trade and intercourse between the natives of that country and the civilized world, and direct the efforts of Government toward the advancement in civilization of that remarkable people, rather than the colonization of the Territory by those of another race.

Liquor.—The third article of the treaty of cession (15 Stat., 539) reads as follows:

The inhabitants of the ceded territory, according to their choice, reserving their natural allegiance, may return to Russia within three years; but if they should prefer to remain in the ceded territory they, with the exception of uncivilized native tribes, shall be admitted to the enjoyment of all the rights, advantages, and immunities of citizens of the United States, and shall be maintained and protected in the free enjoyment of their liberty, property, and religion. The uncivilized tribes will be subject to such laws and regulations as the United States may, from time to time, adopt in regard to the aboriginal tribes of that country.

January 30, 1869, Mr. Seward, who signed the treaty on the part of the United States, wrote to the Secretary of War as follows:

I understand the decision of the Supreme Court of the United States in the case of Harrison *vs.* Cross, (16 Howard, 164–202,) to declare its opinion that upon the addition to the United States of new territory by conquest and cession, the acts regulating foreign commerce attach to and take effect within such territory *ipso facto*, and without any fresh act of legislation expressly giving such extension to the pre-existing laws. I can see no reason for a discrimination in this respect between acts regulating foreign commerce and the laws regulating intercourse with the Indian tribes. There is, indeed, a strong analogy between the two subjects. The Indians, if not foreigners, are not citizens, and their tribes have the character of dependent nations under the protection of their governments. As Chief-Justice Marshall remarks, delivering the opinion of the Supreme Court in Worcester *vs.* The State of Georgia, (6 Peters, 557:) "The treaties and laws of the United States contemplate the Indian territory as completely separated from that of the States, and provide that all intercourse with them shall be carried on exclusively by the Government of the Union." The same clause of the Constitution invests Congress with power "to regulate commerce with foreign nations, * * and with the Indian tribes." The act of June 30, 1834, (4 Stat., 729,) defines the Indian country as, in part, "all that part of the United States west of the Mississippi and not within the States of Missouri and Louisiana, or the Territory of Arkansas. This, by a happy elasticity of expression, widening as our dominion widens, includes the territory ceded by Russia."

November 11, 1872, three indictments were found by the grand jury of the district of Oregon against Terneta Savaloff, for introducing spirituous liquors into the Indian country, for distilling spirituous liquor without having paid a tax, and for disposing of liquor to an Indian. The defendant had been arrested in Alaska and brought to the district of Oregon by the military force of the United States, under section 23 of the Indian-intercourse act of June 30, 1834. The judge declined jurisdiction, saying:

The jurisdiction of this court over offenses committed in Alaska is conferred by section 7 of the act of July 27, 1868, and by such section confined to violations of that act, and of the laws "relating to customs, commerce, and navigation," thereby extended over that Territory.

In consequence of this decision, the following provision was added to the sundry civil appropriation act of March 3, 1873, (17 Stat., 530:)

That section 1 of an act entitled "An act to extend the laws of the United States relating to customs, commerce, and navigation over the territory ceded to the United States by Russia, to establish a collection-district therein, and for other purposes," approved July 27, 1868, be so amended as to read as follows: "That the laws of the United States relating to customs, commerce, and navigation, and sections 20 and 21 of 'An act to regulate trade and intercourse with Indian tribes and to preserve peace on the frontiers,' approved June 30, 1834, be, and the same are hereby, extended to and over all the main-land, islands, and waters of the territory ceded to the United States by the Emperor of Russia, by treaty concluded at Washington on the thirtieth day of March, A. D. 1867, so far as the same may be applicable thereto."

Section 21 of the above-mentioned Indian-intercourse act provides as follows:

That if any person whatever shall, within the limits of the Indian country, set up or continue any distillery for manufacturing ardent spirits, he shall forfeit and pay a penalty of one thousand dollars; and it shall be the duty of the superintendent of

Indian affairs, Indian agent, or subagent, within the limits of whose agency the same shall be set up or continued, forthwith to destroy and break up the same; and it shall be lawful to employ the military force of the United States in executing that duty.

Section 20 originally began as follows:

That if any person shall sell, exchange, or give, barter or dispose of any spirituous liquor or wine to an Indian, (in the Indian country,) such person shall forfeit and pay the sum of five hundred dollars; and if any person shall introduce, or attempt to introduce, any spirituous liquor or wine into the Indian country, except such supplies as shall be necessary for the officers of the United States and troops of the service, under the direction of the War Department, such person shall forfeit and pay a sum not exceeding three hundred dollars.

This section was amended by acts of March 3, 1847, (9 Stat., 203,) February 13, 1862, (12 Stat., 339,) and March 15, 1864, (13 Stat., 29.) The last-mentioned act provides that the section shall read as follows:

That if any person shall sell, exchange, give, barter, or dispose of any spirituous liquors or wine to any Indian under the charge of any Indian superintendent or Indian agent appointed by the United States, or shall introduce, or attempt to introduce, any spirituous liquor or wine into the Indian country, such person, on conviction thereof before the proper district or circuit court of the United States, shall be imprisoned for a period not exceeding two years, and shall be fined not more than three hundred dollars: *Provided, however,* That it shall be a sufficient defense to any charge of introducing or attempting to introduce liquor into the Indian country, if it be proved to be done by order of the War Department, or any officer duly authorized thereunto by the War Department. And if any superintendent of Indian affairs, Indian agent or subagent, or commanding officer of a military post, has reason to suspect, or is informed that any white person or Indian is about to introduce, or has introduced, any spirituous liquor or wine into the Indian country, in violation of the provisions of this section, it shall be lawful for such superintendent, agent, subagent, or commanding officer to cause the boats, stores, packages, wagons, sleds, and places of deposit of such person to be searched; and if any such liquor is found therein, the same, together with the boats, teams, wagons, and sleds used in conveying the same, and also the goods, packages, and peltries of such person shall be seized and delivered to the proper officer; and shall be proceeded against by libel in the proper court, and forfeited, one-half to the informer, and the other half to the use of the United States; and if such person be a trader, his license shall be revoked and his bonds put in suit. And it shall, moreover, be the duty for any person in the service of the United States, or for any Indian, to take and destroy any ardent spirits or wine found in the Indian country, except such as may be introduced therein by the War Department. And in all cases arising under this act, Indians shall be competent witnesses.

November 13, 1873, the Attorney-General rendered an opinion that as to the matter of the introduction of spirituous liquors or wine into the Territory of Alaska:

Alaska is to be regarded as "Indian country," and that no spirituous liquors or wines can be introduced into the Territory without an order by the War Department for that purpose.

June 3, 1874, the Attorney-General returned an affirmative answer to the following question by the Secretary of War:

Has this Department authority to permit the introduction of spirituous liquors or wines into the Territory of Alaska, when the liquors or wines are not for the use of officers of the United States or troops of the service?

By General Orders No. 57, Adjutant-General's Office, June 15, 1874, concerning the introduction of wines and liquors into Alaska, it is provided as follows:

Such articles will be introduced into the Territory only upon special permits to be given from headquarters Military Division of the Pacific, or from the headquarters of the Department of the Columbia.

Indian agent.—March 9, 1875, the commanding officer, Department of the Columbia, telegraphed as follows:

According to instructions of General Halleck, commandant in Alaska is *ex-officio* agent for Indian affairs. Please ask that this authority be sanctioned by Secretary of Interior.

The instructions referred to were contained in a letter of General Halleck's, dated September 6, 1867.

May 5, 1875, the Attorney-General rendered an opinion upon the construction of sections 1222 and 2062 of the Revised Statutes of the United States, concluding as follows:

Section 1224 declares that Army officers shall not be employed as disbursing agents of the Indian Department, where such employment requires them to be separated from their regiments or companies, or otherwise interferes with the performance of their military duties proper. Subject to this qualification, I am of the opinion that it is competent to the President to direct the military commandant in Alaska to execute the duties of an Indian agent in that Territory.

May 14, 1875, the Secretary of the Interior wrote as follows:

In view of the Attorney-General's opinion, of the 5th instant, and of the anomalous condition of the inhabitants of the Aleutian Islands, this Department is of the opinion that the War Department may properly detail an Army officer to exercise such powers and duties in controlling said inhabitants, and in providing for their wants, morally, intellectually, and physically, as in the judgment of the War Department may be deemed necessary, and this Department has no objection to conferring upon an officer so detailed the powers herein indicated, but, on the contrary, desires the War Department to take such action.

May 18, 1875, by direction of the President, the commanding officer of the United States troops in Alaska was appointed by the Secretary of War "to execute the duties of Indian agent in controlling the intercourse with the Indians in Alaska, including the Aleutian Islands, and to act *ex officio* as Indian agent over the tribes in said Territory."

July 12, 1875, the commanding officer at Sitka issued an order announcing that, by direction of the President, he assumed the duties of Indian agent in the whole of Alaska Territory and Aleutian Islands; that the strictest provisions of the Indian-intercourse law would thereafter be rigidly enforced in all his jurisdiction; that the following sections of the Revised Statutes of the United States, relative to trade, intercourse, and residence in his jurisdiction, were published for the information of all concerned, viz: sections 2111, 2128, 2129, 2130, 2131, 2133, 2134, 2145, 2147, 2148, 2150, &c.; and that all persons desiring to trade in Alaska Territory must procure a license and give bonds. But the commanding officer, Department of the Columbia, suspended that portion of the order requiring a bond, so far as related to existing traders, including unnaturalized foreigners.

The Board of Trade of Portland, Oregon, having requested that the order be countermanded as being "against the interests of trade and commerce with Oregon," the Commissioner of Indian Affairs expressed the opinion "that the restrictions placed upon trade and commerce in Alaska by the provisions of Captain Campbell's orders aforesaid are not justified by law, and that such orders, so far as relates to everything except the twentieth and twenty-first sections of the intercourse act of 1834, should be revoked." The judge-advocate, Department of California, concurred in this view, and by order of General Schofield, made a full report upon the laws governing trade and intercourse with the Indians in Alaska, taking the ground that so far as the introduction and use of liquor is concerned, Alaska is "Indian country," but no further; and intimating a doubt whether the War Department can legally permit the introduction of spirits into Alaska, except such supplies as may be necessary for the officers of the United States and troops of the service.

By request of General Howard the assistant adjutant-general, Department of the Columbia, made a careful examination of the whole subject, coming to opposite conclusions, and sustaining the legality of

Captain Campbell's orders, but advising that he be instructed to revoke them; General Schofield thereupon invited attention to these conflicting reports, and added:

> I do not think it incumbent upon me to even express an opinion upon this subject; but I have no hesitation in recommending that Congress provide by law for the Territory of Alaska a government suited to its condition.

December 22, 1875, the commanding officer, Department of the Columbia, called the attention of the Secretary of War to a bill introduced by Senator Sargent, for a repeal of the legislation of March 3, 1873, extending the twentieth and twenty-first sections of the Indian-intercourse act to Alaska. General Howard is of opinion that the Indian trade and intercourse laws are in force in Alaska, but he reminds the Secretary that the United States district court for Oregon declines jurisdiction in that matter, except under and by virtue of the act which it is now proposed to repeal.

Review.—The foregoing is a history of the jurisdiction of the War Department over the Territory of Alaska, so far as it appears from the accompanying papers. The first legal point involved relates to the imposition of restrictions upon the disposal of fire-arms and ammunition, when imported into Alaska. By order of the President fire-arms and ammunition (not being breech-loading rifles and fixed ammunition suitable therefor) are now allowed to be imported into Alaska, excepting the islands of Saint Paul and Saint George, subject to such restrictions upon the disposal of the same, when so imported, as may be imposed by the military authorities. It is respectfully submitted that it would be more regular for such restrictions to be imposed by order of the President. The act of July 27, 1868, gives the President power to restrict the importation and us of fire-arms and ammunition into and within the ceded territory. Section 9 provides:

> That the Secretary of the Treasury may prescribe all needful rules and regulations to carry into effect all parts of this act, except those specially intrusted to the President alone.

It would seem that no delegation of power to restrict the use of fire-arms within the Territory was contemplated by the act.

The second point relates to giving special permits for the introduction of spirituous liquor or wine into the ceded territory. This question lacks actuality, in view of the opinion of the Attorney-General, dated June 3, 1874, which affords a sufficient warrant for the present practice of the War Department. Perhaps, however, a question might have been raised whether the whole of Alaska is Indian country, under the act of March 3, 1873, or only such regions as are actually occupied by Indian tribes. If the latter view be correct, then that act did not supersede the fourth section of the act of July 27, 1868, and the President's prohibition of "the importation of distilled spirits into and within the district of Alaska" is still in force. The right of the War Department to introduce distilled spirits into the Indian country there, would then be limited to spirits distilled within the district; and it is difficult to see how any such spirits can be legally distilled before the application of the internal-revenue laws is extended to the ceded territory.

Again, as to the right of the War Department to authorize the introduction into the Indian country of spirituous liquors and wine, other than necessary supplies for the use of the military service, while the objection raised by the judge-advocate of California is not believed to be tenable, inasmuch as a law which no longer exists can hardly be said to be "extended" over additional territory; yet it is by no means

clear that it was the intention of Congress, in amending the original twentieth section of the Indian-intercourse act, to enlarge the jurisdiction of the War Department. The original section prohibited the introduction of any spirituous liquor or wine into the Indian country except such supplies as should be necessary for the officers of the United States and troops of the service, under the direction of the War Department. In the judicial administration of this law, the question would naturally arise, what are necessary military supplies, the presumption being against the white man. In 1862, the section was amended so as to provide:

> That it shall be a sufficient defense to any charge of introducing or attempting to introduce liquor into the Indian country, if it be proved to be done by order of the War Department, or of any officer duly authorized thereto by the War Department.

At the same time the exception in the original section was stricken out, either as surplusage, or with the design of enlarging the jurisdiction of the War Department. The Attorney-General, taking the new section as it stands, gives it the latter interpretation.

The third point which appears in the papers, relates to the appointment of the commanding officer of the United States troops in Alaska to execute the duties of Indian agent. This question, also, lacks actuality, in view of the favorable opinion of the Attorney-General. But it may be remarked that there seems to be much force in the view suggested by the Secretary of War, in his letter to the Attorney-General, that for the military commander in Alaska to execute the duties of an Indian agent, would not be the acceptance of such a civil office, or the exercise of the functions of such a civil office as is contemplated by the law forbidding any officer of the Army on the active-list to hold any civil office, whether by election or appointment, and providing that every such officer who accepts or exercises the functions of a civil office shall thereby cease to be an officer of the Army. It is believed that this law contemplates civil offices actually established by law. For instance, if the President should appoint, by and with the advice and consent of the Senate, an officer of the Army on the active-list to one of the regular Indian agencies established by act of Congress, and such officer should accept or exercise the functions of such office, it would seem to be a clear violation of the law. But to require the military commander on a remote frontier, where no civil Indian agency has been established by law, to execute the duties of Indian agent until the Indian service should be regularly extended to that country, resembles the case of requiring the commanding officer of a naval squadron to visit a secluded country and make a treaty, with the intention, of course, of eventually intrusting the intercourse thus opened to a regular diplomatic agent.

The fourth section of the act of June 30, 1834, (4 Stat., 735,) to provide for the organization of the Department of Indian Affairs, when that Department was under the Secretary of War, contains the following clause:

> And it shall be competent for the President to require any military officer of the United States to execute the duties of Indian agent.

Inasmuch as this clause has been allowed to stand in the Revised Statutes, as well as the above-mentioned law forbidding any officer of the Army on the active-list to exercise the functions of a civil office, the Attorney-General regards the special case as an authorized exception to the general rule.

The duties of Indian agents are now defined by section 2058 Revised Statutes of the United States:

Each Indian agent shall, within his agency, manage and superintend the intercourse with the Indians agreeably to law, and execute and perform such regulations and duties, not inconsistent with law, as may be prescribed by the President, the Secretary of the Interior, the Commissioner of Indian Affairs, or the superintendent of Indian affairs.

Section 2132 provides as follows:

The President is authorized, whenever in his opinion the public interest may require the same, to prohibit the introduction of goods, or of any particular article, into the country belonging to any Indian tribe.

It may be remarked that this power is not conferred upon Indian agents.

The commanding officer in Alaska, having been required by the President to execute the duties of Indian agent, the question arises whether Alaska is an Indian country to all the intents of the Indian-intercourse act, or only as to the matters embraced in the twentieth and twenty-first sections, formally extended to the ceded territory by act of March 3, 1873. This is the fourth point, and the one of most immediate interest. The expression "Indian country" has a natural and an artificial meaning; that is to say, it may mean the country occupied by an Indian nation, to which the title has not been extinguished, or it may mean a region defined by act of Congress, for convenience and precision in applying certain rules of Indian intercourse. The former is the primary use of the term.

Chief-Justice Marshall, delivering the opinion of the Supreme Court of the United States, in Worcester *vs.* The State of Georgia, (January term, 1832,) uses the following language:

From the commencement of our Government, Congress has passed acts to regulate trade and intercourse with the Indians, which treat them as nations, respect their rights, and manifest a firm purpose to afford that protection which treaties stipulate. All these acts, and especially that of 1802, which is still in force, manifestly consider the several Indian nations as distinct political communities, having territorial boundaries within which their authority is exclusive, and having a right to all the lands within those boundaries, which is not only acknowledged but guaranteed by the United States.

The territories of the several Indian nations were often contemplated as one territory, completely separated from that of the States or Colonies. A proclamation of the King of England, soon after the peace of 1763, contained the following passage:

We do further declare it to be our royal will and pleasure, for the present, as aforesaid, to reserve, under our sovereignty, protection, and dominion, for the use of the said Indians, all the lands and territories lying to the westward of the sources of the rivers which fall into the sea from the west and northwest, as aforesaid; and we do hereby strictly forbid, on pain of our displeasure, all our loving subjects from making any purchases or settlements whatever, or taking possession of any of the lands above reserved, without our special leave and license for that purpose first ascertained.

The Indian-intercourse act of 1802 directed that the boundary-line therein described, established by treaty between the United States and various Indian tribes, be clearly ascertained and distinctly marked, subject to variation by any future treaty. It may be remarked, by the way, that this act did not in terms prohibit carrying liquor across the general boundary, but provided—

That the President of the United States be authorized to take such measures, from time to time as to him may appear expedient, to prevent or restrain the vending or distribution of spirituous liquors among all or any of the said Indian tribes.

The Indian-intercourse act of 1834 defined the Indian country, this side of the Mississippi, as "that part of the United States east of the

Mississippi River, and not within any State, to which the Indian title has not been extinguished," the intention being that the limits of this section of the Indian country should be subject to variation by future treaty, extinguishing Indian title. But the trans-Mississippi section of the Indian country was laid down absolutely as "all that part of the United States west of the Mississippi, and not within the States of Missouri and Louisiana or Territory of Arkansas," the intention being that the limits of this section were to be varied by future legislative definition as circumstances might require. There has, however, been no subsequent general definition of the Indian country west of the Mississippi River by act of Congress, although the changing circumstances of that region soon made the old description practically obsolete. The wearing of immigrant trails across the country, the settlement of Oregon, the determination of the British boundary, and the acquisition of extensive possessions from Mexico, together with the course of legislation opening up a great portion of the trans-Mississippi country to settlement, and establishing territorial governments there, undoubtedly had the effect to restrict the practical and rightful application of the Indian-intercourse act within the region broadly laid down in 1834 as Indian country, for the purposes of the act.

It was further contended, in the interest of the settlers west of the Rocky Mountains, that the act did not run beyond those mountains, because it was not believed to apply to after-acquired territory, and because even Oregon was not then in the exclusive and undisputed possession of the United States. It does not appear, however, that there was any intention of excluding Oregon from the Indian country. In the twenty-fourth section, the southern part of the trans-Mississippi Indian country was annexed for legal purposes to the Territory of Arkansas and the northern part to the judicial district of Missouri. The southern part was described as extending west to the Mexican possessions, but no limit was set to the northern part. Naturally, the Indian-intercourse acts operated chiefly among the neighboring tribes. The important point at every stage of this legislation was to define the boundary between the Indian country and that of the States; and this, as has been seen, shifted westward with the progress of settlement. The western limit of the Indian country was left indefinite, and, in the opinion of Mr. Seward, may properly be regarded as corresponding with the western limit of the territory of the United States, "widening as our dominion widens."

September 28, 1850, the President was authorized to appoint three Indian agents for California, such agents to perform the duties now prescribed by law to Indian agents. By acts of June 5, 1850, (9 Stats., 437,) and February 27, 1851, (9 Stats., 587,) the Indian-intercourse act, or such provisions of the same as might be applicable, were extended over the Indian tribes in the Territories of Oregon, New Mexico, and Utah. In an able opinion of Attorney-General Cushing, (7 Op., 293,) the above-mentioned enactment relating to Oregon was pronounced a declaratory enactment, declaring what would have been the law without it. As to the objection that Oregon was not a part of the Indian country as described by the act of 1834, he asks: Is not Oregon a "part of the United States west of the Mississippi?" "Moreover," he adds, "it seems to be mistakenly supposed that 'the Indian country' in the acts of Congress is inclusive or exclusive of certain political boundaries of organization. Not so. It applies in general to such portions of the acquired territory of the United States as are in the actual occupation of Indian tribes, and wherein their title of occupancy has not been extinguished either

by cession to the United States or to individuals with sanction of the United States."

In this passage the Attorney-General uses the term Indian country in what has been mentioned above as its natural and primary meaning. To all Indian country, in this sense of the word, within the limits of the artificial and more sweeping description in the act of 1834, the laws of the United States regulating intercourse with the Indian tribes are believed to remain applicable, after that artificial description becomes obsolete. It may be observed, that the declaratory acts concerning Oregon, Utah, and New Mexico do not attempt to define a new boundary for the Indian country, but simply say that the law is extended "over the Indian tribes" in those Territories.

The declaratory enactment of March 3, 1873, concerning the territory ceded by Russia, differs from the above-mentioned enactments in that it embraces but two sections of the Indian-intercourse act, and the law is not said to be extended over the Indian tribes in the ceded territory, but over the ceded territory. This latter phraseology, however, is not believed to be entirely conclusive. The law may be extended over the ceded territory to apply to any and all Indian country within that territory; and if the sweeping description in the act from which the two sections are taken has become practically obsolete everywhere else, this extension of the two sections may well be supposed to extend only the existing application of them. On the other hand, it may be said that the circumstances do not yet exist in Alaska, and may not exist for a long time, which have operated to make that artificial but convenient description obsolete elsewhere, and in the absence of those modifying circumstances the entire territory may be regarded, for the present, at least, as Indian country. At any rate, the Attorney-General is of opinion that, for the purposes of the two sections, Alaska is Indian country.

But if, as laid down by Mr. Seward, upon the addition of the United States of new territory, the laws regulating intercourse with the Indian tribes attach to and take effect within such territory, *ipso facto*, and without any fresh act of legislation expressly giving such extension to the pre-existing laws, it may be asked, what is the advantage of the act of 1873? To this it may be replied that the two sections thereby extended have for their sanction certain pains, penalties, and forfeitures, which cannot be inflicted without due process of law, and the effect of the act is to confer jurisdiction upon certain courts for that purpose. Provisions to extend the general laws of the United States over newly-acquired territory are generally introductory to provisions for the creation of the requisite administrative and judicial machinery to put those laws into operation. Inasmuch as that machinery has not yet been fully supplied for the enforcement of any part of the Indian-intercourse act in Alaska, excepting the twentieth and twenty-first sections, it is believed that the activity of the military commander in executing the duties of Indian agent should be directed to the channel marked out by Congress.

In conclusion, it is respectfully submitted that the legal points involved in the question of the jurisdiction of the War Department over the Territory of Alaska, as far as they appear in the accompanying papers, are, first, the right of the military authorities to impose restrictions upon the disposal of fire-arms and ammunition lawfully imported into the ceded territory; secondly, the right of the War Department to give permits for the introduction of spirituous liquor and wine, other than necessary military supplies; thirdly, the right of the commanding

officer at Sitka to exercise the functions of Indian agent; and, fourthly, his right in that capacity to treat Alaska as Indian country, and enforce the Indian-intercourse act.

With regard to the first point, it is respectfully suggested that it would be more regular if the restrictions in question were imposed by direct order of the President. The second and third points are practically settled by the favorable opinions of the Attorney-General. The fourth point is likewise settled, as far as relates to the introduction of spirituous liquor or wine. The right of the military commander, in executing the duties of Indian agent, to enforce all the provisions of the existing twentieth and twenty-first sections of the Indian-intercourse act is also clear. Beyond that, as the law stands, it is not believed to be his duty to proceed in imposing restrictions upon trade.

Respectfully submitted.

ROBBINS LITTLE,
Clerk, War Department.

NOTE.—The acts of Congress, Opinions of the Attorney-General, and General Orders from the War Department, cited in the foregoing brief, relative to the jurisdiction of the War Department over the introduction of liquor into Alaska, are published in the annexed congressional document. (Senate Executive Document No. 24, second session Forty-third Congress.)

[Senate Executive Document No. 24, Forty-third Congress, second session.]

Letter from the Secretary of War, accompanying a copy of a letter of the commanding general, Department of the Columbia, and a copy of the decision of the judge of the district court for the district of Oregon, in the case of John A. Carr.

FEBRUARY 6, 1875.—Referred to the Committee on the Judiciary and ordered to be printed.

WAR DEPARTMENT, *February* 4, 1875.

The Secretary of War has the honor to transmit to the United States Senate, for the information of the Committee on the Judiciary, for consideration in connection with letter of the 13th ultimo upon the same subject, (see Senate Executive Document 15, 43d Congress, 2d session,) copy of letter of the commanding general, Department of the Columbia, and copy of the decision of the judge of the district court for the district of Oregon, in the case of John A. Carr.

Mr. Carr was arrested by the military authorities upon the charge of introducing spirituous liquors into Alaska without authority of the War Department, and, in obedience to a writ of *habeas corpus*, he was produced before the United States district court for the district of Oregon, and discharged for the reason stated in the inclosed opinion.

Copies of General Orders Nos. 40 and 57, series of 1874, from this Department, publishing the opinions of the Attorney-General as to what is Indian country, and as to the jurisdiction of this Department over the introduction of spirituous liquors or wine into that country, are herewith inclosed.

Special attention is invited to this matter, and the passage of a law is earnestly recommended which will clearly define the duties of the Department in cases arising out of violation of the Indian-intercourse

laws, and that in cases like the present the Department be authorized to transfer prisoners to the custody of a United States marshal, to be stationed in Alaska, or that sufficient time be allowed in which to deliver prisoners arrested in Alaska into the custody of the United States marshal of the district of Oregon.

WM. W. BELKNAP,
Secretary of War.

HEADQUARTERS DEPARTMENT OF THE COLUMBIA,
Portland, Oreg., January 8, 1875.

SIR: I have respectfully to inclose copy of a decision, cut from the Oregonian of this date, of Hon. M. P. Deady, judge United States district court for the district of Oregon, which is of great interest to us in connection with the administration of affairs in the distant Territory of Alaska.

I recommend speedy legislation with regard to that Territory, that either it may be *without question* under military authority, or, far better, that it may be organized under a civil government.

If there are too few inhabitants for a territorial government, it could be placed, as a county, provisionally under the authority of Washington Territory.

I am, sir, very respectfully, your obedient servant,

O. O. HOWARD,
Brigadier-General Commanding.

The ADJUTANT-GENERAL OF THE ARMY,
Washington, D. C.

(Through division headquarters.)

Decision on habeas corpus in the United States district court.

United States district court, district of Oregon, Thursday, January 7, 1875.— In re John A. Carr, on *habeas corpus.*

At the court yesterday morning, Judge Deady announced his opinion upon the demurrer to the return in this case. The opinion was oral, and substantially as follows:

Two questions are made in support of the demurrer to the return: first, that section 23 of the Indian-intercourse act of 1834 has not been extended to Alaska, and therefore the military force cannot be employed in the apprehension of persons who may be found introducing spirituous liquors into Alaska; and, secondly, that although the military force might have been employed in arresting the petitioner upon such charge, yet he could only be held in such custody five days before removal to the civil authority authorized to proceed against him according to law.

It appears from the petition and return that the petitioner, being the collector of customs at Fort Wrangel, in Alaska, was arrested, by Lieutenant Dyer, of the Army, in the latter part of September, 1874, upon the charge of violating section 20 of the Indian-intercourse act, by introducing spirituous liquors into the country in the month of July, without the consent of the War Department; and that the petitioner was kept in custody by direction of Capt. J. B. Campbell, commanding the district of Alaska, until the service of the writ herein on December 19, when he was sent, in custody of Captain Joselyn, to this place, in obedience to the writ.

Section 1 of the Alaska act of July 27, 1868, (15 Stat., 240,) having been amended by the act of March 3, 1873, (17 Stat., 530,) so as to extend over the Territory of Alaska sections 20 and 21 of the intercourse act of 1834, said Territory, so far as the introduction and disposition of spirituous liquors is concerned, became what is known as "Indian country," and the military force of the United States may be employed by the President for the arrest of persons found therein violating either of said sections. To accomplish this result, it was not necessary for Congress to extend section 23 of the intercourse act by name over Alaska. By force of its own terms that section applies to any territory of the United States declared by Congress, either in terms or effect, to be "Indian country;" that is, a country in which the intercourse between the

whites and Indians is regulated and restrained by special acts of Congress. So soon, then, as Alaska was made "Indian country," so far as the introduction and use of spirituous liquors is concerned, section 23 of the act, which authorizes the employment of military force, became applicable to it and in force therein.

The President, by means of the proper officers, has authorized the employment of the military to make arrests in Alaska for the violation of said sections 20 and 21. If, then, there was sufficient cause to arrest the petitioner for said offense, Lieutenant Dyer was authorized to make it. Of course, in so doing, he was merely acting as a police-officer, as a marshal or constable, for the purpose of enforcing an act of Congress, and was not authorized to make the arrest unless it appeared upon oath or affirmation that there was probable cause, as provided in the fourth amendment to the Constitution of the United States. It is a mistake to suppose that the Territory of Alaska is under military rule any more than any other part of the country, except as to the introduction of spirituous liquors, and the making of arrests for violations of sections 20 and 21 aforesaid, in which case they really act as civil officers and in subordination to the civil law.

As to the second point the demurrer is well taken. The petitioner having been detained over five days—indeed, near ninety—before any attempt was made to remove him for trial by the civil authorities, his detention, therefore, became unlawful and unauthorized. The statute is peremptory upon the subject, and with good reason: "*Provided*, That no person apprehended by military force as aforesaid shall be detained longer than five days after the arrest and before the removal." If the removal cannot be commenced in that time, the prisoner must be discharged. It was supposed by Congress, as this proviso manifests, that these arrests would often be made at remote and out-of-the-way places, where the prisoner would be comparatively helpless, without access to counsel or friend, and if the officer whose custody he was in was to be the judge of when he would or conveniently could remove him to the civil authorities for trial, it might sometimes happen that the detention would be continued captiously or maliciously and the imprisonment become grossly oppressive. In Barclay *vs.* Goodale, this court, after able argument and full consideration of the premises, held that the defendant, who had arrested the plaintiff under section 23, and detained him more than five days before removal, because he had not sufficient means wherewith to do otherwise, was liable for false imprisonment.

The petitioner is entitled to be discharged. I have also considered whether, upon the facts stated in the return, I ought now to commit the petitioner upon a charge of introducing spirituous liquors into Alaska contrary to section 20 aforesaid. It is not alleged directly in the return that the petitioner was guilty of this offense, but only that he "was arrested for it." The evidence upon which the arrest was made is not stated in or attached to the return. I do not think the statement in the return is sufficient evidence or information to authorize a commitment by me.

The respondent then had leave to amend the return, and annex thereto, among other things, the affidavit of W. P. Wilson, taken before Lieutenant Dyer on September 24, 1874, stating that in July he paid John A. Carr $100 for the privilege of taking a lot of liquors out of the bonded warehouse at Fort Wrangel, to be taken to his own house in Wrangel, while at the same time said Carr made out a clearance of the goods to Glenora Landing, B. C.

Objection was made that this affidavit was not made before an officer authorized to administer oaths.

The court held that the affidavit was duly taken in pursuance of paragraph 1031 of the Army Regulations of 1861, and upon it committed the petitioner to answer the charge, and fixed his bail at $2,500.

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,
Washington, February 1, 1875.

Official copy:

E. D. TOWNSEND.
Adjutant-General.

[General Orders No. 40.]

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,
Washington, May 16, 1874.

The act of Congress of March 3, 1873, having extended the laws of the United States relating to customs, commerce, navigation and trade, and intercourse with Indian tribes, &c., over the main-land, islands, and waters of the territory ceded to the United States by the Emperor of Russia, by treaty concluded at Washington on the 20th day of March, A. D. 1867, the introduction into the Territory of Alaska of spirituous liquors and wines, "except such supplies as shall be necessary for the officers of the United States and troops of the service, under the direction of the War Department," is pro-

hibited. Such supplies will be introduced into the Territory only upon special permits to be given from headquarters Military Division of the Pacific, or from the headquarters of the Department of the Columbia.

Spirituous liquors or wines for ports or places which can be reached only by passing through the Territory of Alaska, shipped upon vessels intending to touch at or trade with places in, or passing through the waters of, Alaska, may be landed at any port in that Territory for transshipment only, under the regulations of the Treasury Department.

The commanding officer at Sitka, Alaska, will proceed against all persons violating sections 20 and 21 of the act of Congress approved June 30, 1834, by introducing any spirituous liquors or wines into the Territory of Alaska, as therein directed.

The following acts of Congress and opinions of the Attorney-General upon this subject are published for the information of all concerned:

Act approved March 3, 1873.

AN ACT making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and seventy-four, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, * * * * * *

That section one of an act entitled "An act to extend the laws of the United States relating to customs, commerce, and navigation over the territory ceded to the United States by Russia, to establish a collection-district therein, and for other purposes," approved July twenty-seventh, eighteen hundred and sixty-eight, be so amended as to read as follows: "That the laws of the United States relating to customs, commerce, and navigation, and sections twenty and twenty-one of 'An act to regulate trade and intercourse with Indian tribes and to preserve peace on the frontiers,' approved June thirtieth, eighteen hundred and thirty-four, be, and the same are hereby, extended to and over all the main-land, islands, and waters of the territory ceded to the United States by the Emperor of Russia by treaty concluded at Washington on the twentieth day of March, anno Domini eighteen hundred and sixty-seven, so far as the same may be applicable thereto."

Act of June 30, 1834.

SEC. 20. *And be it further enacted,* That if any person shall sell, exchange, or give, barter, or dispose of any spirituous liquor or wine to an Indian, (in the Indian country,) such person shall forfeit and pay the sum of five hundred dollars; and if any person shall introduce, or attempt to introduce, any spirituous liquor or wine into the Indian country except such supplies as shall be necessary for the officers of the United States and troops of the service, under the direction of the War Department, such person shall forfeit and pay a sum not exceeding three hundred dollars; and if any superintendent of Indian affairs, Indian agent, or subagent, or commanding officer of a military post, has reason to suspect, or is informed, that any white person or Indian is about to introduce, or has introduced, any spirituous liquor or wine into the Indian country in violation of the provisions of this section, it shall be lawful for such superintendent, Indian agent, or subagent, or military officer, agreeably to such regulations as may be established by the President of the United States, to cause the boats, stores, packages, and places of deposit of such person to be searched, and if any such spirituous liquor or wine is found, the goods, boats, packages, and peltries of such persons shall be seized and delivered to the proper officer, and shall be proceeded against by libel in the proper court and forfeited, one half to the use of the informer and the other half to the use of the United States; and if such person is a trader, his license shall be revoked and his bond put in suit. And it shall, moreover, be lawful for any person in the service of the United States, or for any Indian, to take and destroy any ardent spirits or wine found in the Indian country, except military supplies as mentioned in this section.

SEC. 21. *And be it further enacted,* That if any person whatever shall, within the limits of the Indian country, set up or continue any distillery for manufacturing ardent spirits, he shall forfeit and pay a penalty of one thousand dollars; and it shall be the duty of the superintendent of Indian affairs, Indian agent or subagent, within the limits of whose agency the same shall be set up or continued, forthwith to destroy and break up the same; and it shall be lawful to employ the military force of the United States in executing that duty.

Act of July 27, 1868.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the laws of the United States relating to customs, commerce, and navigation be, and the same are hereby, extended to and over all the mainland, islands, and waters of the territory ceded to the United States by the Emperor of Russia by treaty concluded at Washington on the thirtieth day of March, anno Domini eighteen hundred and sixty-seven, so far as the same may be applicable thereto.

Opinions of the Attorney-General.

DEPARTMENT OF JUSTICE,
August 12, 1873.

SIR: In June last I received a communication from the chief clerk of the War Department, dated the 16th of that month, which purports to have been sent to me during your absence, but by your direction, inclosing a number of papers relating to questions that have arisen in connection with the administration of the Indian-intercourse laws. Referring to the terms "Indian country," used in those laws, it is observed in the above-mentioned communication that the question is constantly recurring: What is Indian country? And I understand it to be one of the objects of the communication to elicit from this Department an answer to that question. The communication, besides, contains a request for an opinion as to whether the War Department has exclusive authority to permit the introduction of spirituous liquors into the Indian country. With regard to the subject just adverted to, it appears that by the twentieth section of the act of June 30, 1834, (4 Stat., 732,) a penalty was imposed upon any person who should "sell, exchange, or give, barter, or dispose of any spirituous liquor or wine to an Indian, in the Indian country," or who should "introduce, or attempt to introduce, any spirituous liquor or wine into the Indian country, except such supplies as shall be necessary for the officers of the United States and troops of the service, under the direction of the War Department." The effect of this enactment was not only to prohibit the sale or disposal of those articles to the Indians in the Indian country, but also to wholly prohibit their introduction into that country, excepting where they were taken there as military supplies under the direction of the War Department.

By the second section of the act of March 3, 1847, (9 Stat., 203,) amendatory of the twentieth section of the act of 1834, imprisonment was added to the fines imposed by the latter section. Thus stood the law on this subject until the passage of the act of February 13, 1862, (12 Stat., 339,) which amended the twentieth section of the act of 1834 so as to read as follows:

"That if any person shall sell, exchange, give, barter, or dispose of any spirituous liquor or wine to any Indian under the charge of any Indian superintendent or Indian agent appointed by the United States, or shall introduce or attempt to introduce any spirituous liquor or wine into the Indian country, such person, on conviction thereof before the proper district court of the United States, shall be imprisoned for a period not exceeding two years, and shall be fined not more than three hundred dollars: *Provided, however*, That it shall be a sufficient defense to any charge of introducing or attempting to introduce liquor into the Indian country, if it be proved to be done by order of the War Department, or of any officer duly authorized thereto by the War Department," &c. The remainder of the provision is unimportant to the matter in hand.

This amendment was afterward re-enacted by the act of March 15, 1864, (13 Stat., 29,) which gave to the circuit court, also, cognizance of cases arising thereunder, but made no other material alteration therein; and, as thus re-enacted, it appears to be the only law now in force which is applicable to the subject under consideration. This law, in effect, declares that any person who introduces or attempts to introduce spirituous liquor into the Indian country is punishable by fine and imprisonment, except it "be done by order of the War Department, or any officer duly authorized thereunto by the War Department." By fair implication, the introduction of spirituous liquor into the Indian country is prohibited wherever it is not done by authority of the War Department; and hence the authority of that Department touching the introduction of liquor into the Indian country would seem to be exclusive. The question, What is Indian country within the meaning of the Indian-intercourse laws, is one of less easy solution. By the act of March 30, 1802, (2 Stat., 139,) a boundary-line between the territory then allotted or secured by treaty to the Indians (which is therein designated as "Indian country") and the other territory of the United States was definitely established by metes and bounds, with a proviso, however, that the same might thereafter be varied by treaties with the Indians. From the multiplicity of these treaties, it, in the course of time, became difficult to ascertain precisely what were the limits of the Indian country.

To remedy this inconvenience and render those limits more obvious and certain, the act of June 30, 1834, (4 Stat., 729,) in its first section provided "that all that part of

the United States west of the Mississippi, and not within the States of Missouri and Louisiana or the Territory of Arkansas, and also that part of the United States east of the Mississippi River, and not within any State, to which the Indian title has not been extinguished, for the purposes of this act be taken and deemed to be the Indian country."

The understanding of the framers of the law of 1834 was that the Indian country, as thereby defined, would embrace: 1st, the whole of the territory of the United States west of the Mississippi, not within the States of Missouri and Louisiana or the Territory of Arkansas; 2d, that part of the territory of the United States east of the Mississippi not within any State to which the Indian title remains unextinguished. (See report of committee, House of Representatives, No. 474, first session Twenty-third Congress, pages 1 and 10.) In the report just cited it is remarked with reference to the Indian country as defined in the first section of that act: "On the west side of the Mississippi its limits can only be changed by legislative act. On the east side of that river it will continue to embrace only those sections of country not within any State to which the Indian title shall not be extinguished. The effect of the extinguishment of the Indian title to any portion of it (*i. e.*, of the country east of the Mississippi) will be the exclusion of such portion from the Indian country." Subsequently the question arose as to whether the Territory of Oregon was within the limits of the Indian country west of the Mississippi, as described in the act of 1834; and Congress, apparently assuming that it was not, provided, by the fifth section of June 5, 1850, (9 Stat., 437,) as follows:

"That the law regulating trade and intercourse with the Indian tribes east of the Rocky Mountains, or such provisions of the same as may be applicable, be extended over the Indian tribes in the Territory of Oregon." By the seventh section of the act of February 27, 1851, (9 Stat., 587,) it was also provided: "That all the laws now in force regulating trade and intercourse with the Indian tribes, or such provisions of the same as may be applicable, shall be, and the same are hereby, extended over the Indian tribes in the Territories of New Mexico and Utah." And recently, by the act of March 3, 1873, chapter 227, sections 20 and 21 of the act of 1834 were "extended to and over all the main-land, islands, and waters of the territory ceded to the United States by the Emperor of Russia, by treaty concluded at Washington on the 30th day of March, A. D. 1867, so far as the same may be applicable thereto." From this legislation it would seem that, in the view of Congress, the Indian country *west* of the Mississippi, as defined in the act of 1834, was originally limited to the territory then belonging to the United States situated between that river and the Rocky Mountains, and not within the States of Missouri and Louisiana or the Territory of Arkansas. Respecting that part of the Indian country, it was the understanding of the framers of the act of 1834 that the limits thereof could only be changed by legislative enactment. I am not aware of the existence of any statute that in direct terms changes those limits. But the course of legislation since the date of that act, in opening up a great portion of that region to settlement, in establishing territorial governments there, and in the admission of new States formed therein, has doubtless had *the effect* to alter the limits referred to, or at least to very much restrict the applicability of the Indian-intercourse laws within the district of country thereby described.

It will be observed that the acts of 1850 and 1851, cited above, do not declare the whole of the Territories of Oregon, New Mexico, and Utah to be Indian country, but extend the intercourse-laws, or such provisions of the same as may be applicable, over the Indian tribes in those Territories respectively.

I think it unquestionable, both as regards the region west of the Mississippi originally included within the limits of the Indian country by the act of 1834, and as regards the region formerly included within the Territories just mentioned, that all Indian reservations occupied by Indian tribes, and also all other districts so occupied to which the Indian title has not been extinguished, are Indian country within the meaning of the intercourse-laws, and remain (to a greater or less extent, according as they lie within a State or a Territory) subject to the provisions thereof. Whether a district to which the Indian title has been extinguished or which is open to pre-emption, homestead, or other settlement under the laws of Congress, situated in one of the Territories established within the same boundaries, may also, under any circumstances, be deemed Indian country, and subject to the intercourse-laws, I express no opinion in view of the fact that a case is pending before the Supreme Court of the United States in which the question is involved.

I shall endeavor to procure an early hearing of the case referred to, at the ensuing term, and will advise you of the decision of the court as soon as it is ascertained.

I return herewith the papers received.

Very respectfully, your obedient servant,

GEO. H. WILLIAMS,
Attorney-General.

Hon. W. W. BELKNAP,
Secretary of War.

DEPARTMENT OF JUSTICE,
Washington, November 13, 1873.

SIR: I have the honor to acknowledge the receipt of your letter of the 10th instant submitting, for my official opinion, the questions as to whether or not the Territory of Alaska is embraced within the term "Indian country," and also whether or not your Department has authority to exercise control over the introduction of spirituous liquors into that Territory.

Section 4 of the act of July 27, 1868, (15 Stats., 241,) provides "That the President shall have power to restrict and regulate or to prohibit the importation and use of fire-arms, ammunition, and distilled spirits into and within the said Territory." Pursuant to the power thus conferred, the President made several proclamations regulating the introduction and use of distilled spirits in Alaska.

The last paragraph of the act of March 3, 1873, (17 Stats., 530,) provides "that the laws of the United States relating to customs, commerce, and navigation, and sections twenty and twenty-one of 'An act to regulate trade and intercourse with Indian tribes, and to preserve peace on the frontiers,' approved June thirtieth, eighteen hundred and thirty-four, be, and the same are hereby, extended to and over all the main-land, islands, and waters of the territory ceded to the United States by the Emperor of Russia by treaty concluded at Washington on the thirtieth day of March, anno Domini eighteen hundred and sixty-seven, so far as the same may be applicable thereto."

Section 20 of said act of 1834, as amended by the act of the 13th of February, 1862, (12 Stats., 339,) is as follows:

"SEC. 20. *And be it further enacted*, That if any person shall sell, exchange, give, barter, or dispose of any spirituous liquor or wine to any Indian under the charge of any Indian superintendent or Indian agent appointed by the United States, or shall introduce or attempt to introduce any spirituous liquor or wine into the Indian country, such person, on conviction thereof before the proper district court of the United States, shall be imprisoned for a period not exceeding two years, and shall be fined not more than three hundred dollars: *Provided, however*, That it shall be a sufficient defense to any charge of introducing or attempting to introduce liquor into the Indian country if it be proved to be done by order of the War Department, or of any officer duly authorized thereto by the War Department. And if any superintendent of Indian affairs, Indian agent or subagent, or commanding officer of a military post, has reason to suspect or is informed that any white person or Indian is about to introduce or has introduced any spirituous liquor or wine into the Indian country in violation of the provisions of this section, it shall be lawful for such superintendent, agent, subagent, or commanding officer, to cause the boats, stores, packages, wagons, sleds, and places of deposit of such person to be searched; and if any such liquor is found therein, the same, together with the boats, teams, wagons, and sleds used in conveying the same, and also the goods, packages, and peltries of such person, shall be seized and delivered to the proper officer, and shall be proceeded against by libel in the proper court, and forfeited, one-half to the informer and the other half to the use of the United States; and if such person be a trader, his license shall be revoked and his bond put in suit. And it shall, moreover, be lawful for any person in the service of the United States, or for any Indian, to take and destroy any ardent spirits or wine found in the Indian country, except such as may be introduced therein by the War Department. And in all cases arising under this act Indians shall be competent witnesses."

In so far as this section conflicts with preceding acts of Congress they are repealed. According to the said act of 1868, the President was invested with unlimited discretion over the introduction and use of spirituous liquors in the Territory of Alaska; but Congress, in 1873, adopting the above-cited section 20 of the act of 1834, absolutely prohibits the introduction of spirituous liquors or wine into said Territory, unless authorized by the War Department.

My opinion, therefore, is that, as to this matter, Alaska is to be regarded as "Indian country," and that no spirituous liquors or wines can be introduced into the Territory without an order by the War Department for that purpose.

Very respectfully,

GEO. H. WILLIAMS,
Attorney-General.

Hon. W W. BELKNAP,
Secretary of War

By order of the Secretary of War:

E. D. TOWNSEND,
Adjutant-General.

[General Orders No. 57.]

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,
Washington, June 15, 1874.

In accordance with the following opinion of the Attorney-General, paragraph 1 of General Orders No. 40, May 16, 1874, from this Office, is hereby amended to read as follows:

The act of Congress of March 3, 1873, having extended the laws of the United States relating to customs, commerce, navigation, and trade, and intercourse with Indian tribes, &c., over the main-land, islands, and waters of the territory ceded to the United States by the Emperor of Russia, by treaty concluded at Washington on the 30th day of March, A. D. 1867, the introduction into the Territory of Alaska of spirituous liquors and wines is prohibited, except it be done "by order of the War Department, or of any officer authorized thereto by the War Department." Such articles will be introduced into the Territory only upon special permits to be given from headquarters Military Division of the Pacific, or from the headquarters of the Department of the Columbia.

Opinion.

DEPARTMENT OF JUSTICE,
Washington, June 3, 1874.

SIR: I have the honor to acknowledge the receipt of your letter of the 30th ultimo, in which you submit for my official opinion the following question:

"Has this Department authority to permit the introduction of spirituous liquors or wines into the Territory of Alaska, when the liquors and wines are not for the use of officers of the United States or troops of the service?"

Section 20 of the act of June 30, 1834, (4 Stats., 732,) imposes a penalty upon any person who should sell, exchange, or give, barter, or dispose of, any spirituous liquor or wine to an Indian, (in the Indian country,) or who should introduce, or attempt to introduce, any spirituous liquor or wine into the Indian country, except such supplies as shall be necessary for the officers of the United States and troops of the service, under the direction of the War Department.

By the act of February 13, 1862, (12 Stats., 339,) this section was amended so as to read as follows: "That if any person shall sell, exchange, give, barter, or dispose of any spirituous liquor or wine to any Indian under the charge of any Indian superintendent or Indian agent appointed by the United States, or shall introduce or attempt to introduce, any spirituous liquor or wine into the Indian country, such person, on conviction thereof before the proper district court of the United States, shall be imprisoned for a period not exceeding two years, and shall be fined not more than three hundred dollars: *Provided, however*, That it shall be a sufficient defense to any charge of introducing or attempting to introduce liquor into the Indian country if it be proved to be done by order of the War Department or of any officer duly authorized thereto by the War Department," &c.

This act, though in the nature of an amendment, is a substitute for the whole of section 20 of the act of 1834, and nothing of said section not contained in said act is left in force. The only way to read said section is as provided in said act. According to said section 20, as it originally stood, no liquor or wine could be lawfully introduced into the Indian country, "except such supplies as shall be necessary for the officers of the United States and troops of the service, under the direction of the War Department;" but in the act of 1862 this phraseology is changed, and it is provided "that it shall be a sufficient defense to any charge of introducing or attempting to introduce liquor into the Indian country if it be proved to be done by order of the War Department or of any officer authorized thereto by the War Department." I think the object and effect of this change were to invest the War Department with a jurisdiction over the introduction of spirituous liquors or wine into the Indian country, to be exercised at its discretion. The said act of February 13, 1862, was re-enacted, with some not material alterations, by the act of March 15, 1864, (13 Stats., 29,) and by the act of March 3, 1873, (17 Stats., 530,) was made applicable to the Territory of Alaska.

I therefore return an affirmative answer to your question.

Very respectfully,

GEO. H. WILLIAMS,
Attorney-General.

Hon. W. W. BELKNAP,
Secretary of War.

By order of the Secretary of War:

E. D. TOWNSEND,
Adjutant-General.

See also Senate Ex. Doc. No. 27, second session Forty-third Congress.

Additional correspondence relative to introduction of liquor.

HEADQUARTERS DEPARTMENT OF THE COLUMBIA,
Portland, Oreg., December 22, 1875.

SIR: I learn from the telegraphic report of the proceedings of Congress that Senator Sargent, of California, has introduced a bill to repeal that portion of the act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1874, and for other purposes, approved March 3, 1873, which refers to the Territory of Alaska.

This portion of said act amends the act extending the laws relating to customs, commerce, and navigation over the Territory of Alaska, approved July 27, 1868, so as to read, "That the laws of the United States relating to customs, commerce, and navigation, and sections 20 and 21 of an act to regulate trade and intercourse with Indian tribes, and to preserve peace on the frontiers, approved June 30, 1834, be, and the same are hereby, extended to and over the main-land, islands, and waters of the territory ceded to the United States by the Emperor of Russia," &c.

The late General Canby initiated the action which ultimately secured the passage of this law, (see his letter dated December 13, 1872,) and with the object to enable the United States district court for Oregon to accept jurisdiction (prior to that date declined) of offenses in Alaska under sections 20 and 21 of the act of 1834.

With the existing legislation, according to the views entertained by the judge of the United States district court for Oregon, the effect of the repeal proposed will be to leave Alaska without any judicial jurisdiction whatever.

While I am clearly of opinion the Indian trade and intercourse laws are in force in Alaska, as there seems to be doubt in the premises, I ask that the attention of the Secretary of War may be called to the matter, with a view to a non-repeal of the act of March 3, 1873.

I am, sir, very respectfully, your obedient servant,

O. O. HOWARD,
Brigadier-General, Commanding.

The ADJUTANT-GENERAL UNITED STATES ARMY,
Washington, D. C.

[Indorsement.]

WAR DEPARTMENT,
ADJUTANT-GENERAL'S OFFICE,
January 8, 1876.

Respectfully submitted to the Secretary of War with General Canby's communication of December 13, 1872, referred to by General Howard.

E. D. TOWNSEND,
Adjutant-General.

HEADQUARTERS DEPARTMENT OF THE COLUMBIA,
Portland, Oreg., December 13, 1872.

SIR: I have the honor to transmit, for the information of the major-general commanding the division, a copy of a decision of the United States district court for Oregon, which is of interest in connection with our relations with the Indians of Alaska. This decision covers

both the trade and intercourse law of 1834 and the amendatory law of 1864.

The opinion of the Attorney-General, (vol. vii. page 293,) and the communication from the Secretary of State to the Secretary of War, dated January 30, 1869, have heretofore been regarded as authority upon the points now decided by the court, and the law of July 20, 1868, extending the laws relating to customs, commerce, and navigation over Alaska, has not been understood as limiting or superseding existing laws regulating intercourse with Indians.

The Executive orders, and the regulations of the Treasury and War Departments, indicate that the object of the law was to impose additional restrictions, and not to exempt from punishment those who have introduced or sold liquors in violation or evasion of law.

Under this decision, however, the court being without jurisdiction of offenses under the laws of 1834 and 1868, officers who arrest offenders and seize their property or destroy their liquors are trespassers and may be liable to prosecution in the civil courts.

I have the honor, therefore, to request that this question may be brought to the notice of the Secretary of War, and that Congress may be asked to remove any doubts by appropriate legislation.

Very respectfully, your obedient servant,

ED. R. S. CANBY,
Brigadier-General, Commanding.

The ASSISTANT ADJUTANT-GENERAL,
Military Division of the Pacific, San Francisco, Cal.

[Extract from Daily Oregonian of December 12, 1872.]

Decision in the United States district court by Judge Deady.

THE UNITED STATES *vs.* TERNETA SAVALOFF. } Indictment for introducing spirituous liquors into the Indian country. No. 274.

SAME *vs.* SAME. } Indictment for distilling spirituous liquors without having paid a tax. No. 275.

SAME *vs.* SAME. } Indictment for disposing of liquor to an Indian.

1. "The Indian country," within the meaning of the act declaring it a crime to introduce spirituous liquors therein, is only that portion of the United States which has been declared to be such by act of Congress, and a country which is owned or inhabited by Indians, in whole or in part, is not, therefore, a part of "the Indian country."

2. The act of June 30, 1834, (4 Stat., 729,) defining the limits of "the Indian country," and regulating the trade and intercourse with the Indian tribes therein, is a local act, and was therefore not extended *proprio vigore* over the Territory of Alaska upon its cession to the United States.

3. The act of July 27, 1868, (15 Stat., 240,) extending the laws "relating to customs, commerce, and navigation" over Alaska, construed not to extend the Indian-intercourse act of 1834 (*supra*) over that Territory, although the latter is a regulation of commerce "with the Indian tribes."

4. Section 20 of the act of 1834, (*supra*,) as amended by act of March 15, 1864, (13 Stat., 29,) making the disposing of spirituous liquors to Indians a crime, is in this respect a general act, and *prima facie* applies wherever the subject-matter exists—an Indian under the charge of an agent appointed by the United States; but Alaska being acquired by the United States after the enactment of such amendment, it is doubtful whether it was extended over that Territory *proprio vigore* upon its acquisition; and the act of July 27, 1868, (*supra*,) having provided for the subject of the introduction and use of distilled spirits in Alaska by implication, Congress thereby excluded such amendments therefrom.

5. The act of July 20, 1868, (15 Stat., 125,) imposing a tax on distilled spirits, being a general act, and passed since the acquisition of Alaska, is in force there.

6. The jurisdiction of the district court for the district of Oregon over offenses committed in Alaska, is conferred by section 7 of the act of July 27, 1868, (*supra*,) and by such section confined to violations of that act and the laws "relating to customs, commerce, and navigation," and therefore it has no jurisdiction over the crime of distilling spirits therein without paying a tax therefor.

TUESDAY, *December* 10, 1872.

DEADY, J.:

These indictments were found, by the grand jury of this district, on November 11. The defendant was then in custody, upon a commitment issued by the United States commissioner, he having been before that time arrested in Alaska and brought to this district by "the military force of the United States," under section 23 of the Indian-intercourse act of June 30, 1834, (4 Stat., 733.)

The indictment in No. 274 substantially alleges that the defendant, in the district of Oregon and within the jurisdiction of this court, on June 8, 1872, did unlawfully introduce spirituous liquors, to wit, whisky, "into the Indian country, to wit, the island of Sitka, Alaska, United States of America."

No. 275 alleges that the defendant, of Sitka, Alaska, in the United States of America, and within the jurisdiction of this court, "on June 9, 1872, and prior thereto, without having paid the tax therefor, did presume to be and was a distiller of spirituous liquor, producing one hundred barrels or less of distilled spirits annually."

No. 276 alleges, as 275, that the defendant is of Sitka, and within the jurisdiction of this court, and that he, "on June 8, 1872, at Sitka aforesaid, did dispose of spirituous liquors, to wit, whisky, to one John Doe, an Indian whose name is unknown, and who resides at the Sitka Indian agency, and was and is under the charge of one Maj. Harvey A. Allen, an Indian agent appointed by the United States, and in charge of said agency, and commanding the military post at that place."

The defendant demurs to the indictments, and assigns for cause of demurrer to each of them:

1. That it does not state facts sufficient to constitute a cause of action.

2. That this court has not jurisdiction of the action.

The demurrers were argued and submitted together, on November 29.

On the arguments, the points made in support of the demands, were:

1. The Territory of Alaska, whether inhabited or owned by Indians or not, is not in a legal sense a part of "the Indian country," because not made so by act of Congress.

2. That this court has no jurisdiction over crimes committed in the Territory of Alaska, except in pursuance of section 1 of the act of July

27, 1868, (15 Stat., 240,) and that the jurisdiction thereby conferred is limited to violations of that act and the laws of the United States relating to customs, commerce, and navigation, then and thereby extended over Alaska.

The district attorney maintained that Alaska is a part of the Indian country, because it is inhabited by Indians and because the act defining the Indian country and regulating trade and intercourse with Indians, and all other acts of Congress not locally inapplicable, were extended over the country *proprio vigore* as soon as it was acquired from Russia.

"The Indian country," within the meaning of the statute making it a crime to introduce spirituous liquor therein, is only that portion of the United States or its Territories which has been declared to be such by an act of Congress. Because a country is inhabited or owned in whole or in part by Indians, it is not, therefore, an Indian country within the purview of the trade and intercourse acts.

This is plain upon the reason of the thing, and has long since been settled by the highest authority.

The act of June 30, 1834, (4 Stat., 729,) defining "the Indian country," is as much a local act as the donation act of Oregon, or the penal code of the District of Columbia. By its terms "the Indian country" was limited to "that part of the United States west of the Mississippi, and not within the States of Missouri, or Louisiana, or the Territory of Alaska," (Arkansas?) "and also that part of the United States east of the Mississippi River and not within any State, to which the Indian title has not been extinguished.

At an early day a question arose as to whether the Territory of Oregon was, at the date of the act, 1834, "a part of the United States west of the Mississippi," and therefore within the limits of "the Indian country" as defined thereby. Congress assuming that it was not, provided by the act of June 5, 1850, (9 Stat., 437 :)

That the law regulating trade and intercourse with the Indian tribes *east of the Rocky Mountains*, or such provision of the same as may be applicable, be extended over the Indian tribes in the Territory of Oregon.

In 1853, the supreme court of the Territory of Oregon, in United States *vs.* Tom, (1 Or., 27,) held that the act of 1834 was not in force to the westward of the Rocky Mountains until specially extended over the Territory of Oregon by the act of June 5, 1850, (*supra.*) In delivering the opinion of the court Chief Justice Williams says:

Great Britain and the United States made a treaty in 1818, by which the northern boundary of the latter was extended west on the forty-ninth parallel of north latitude to the Stony Mountains; and the territory beyond this was described "as country to be held in the joint occupancy of the two powers." The Rocky Mountains was then the western boundary of the United States for legislative purposes, and so continued until 1846. The act of 1834 shows in terms that it was intended for a country over which the General Government had absolute and exclusive jurisdiction. Congress, by express enactment in 1850, extended said act to this Territory, for the reason, as must be supposed, that it was not in force before that time. The act of 1834, then, has no vitality here because Oregon is Indian country, but by virtue of the act of 1850, which gives it effect here, so far as its provisions may be applicable.

Olney, J., in the same case, speaking of the act of 1834, says:

It was a local statute, and was no more extended by the last clause of our organic act (9 Stat., 329) than were the local laws of the District of Columbia.

McFadden, J., says:

I concur in opinion that whatever vitality the act of 1834, entitled, &c., may have in this Territory is derivable from the act of Congress of June, 1850, which extends the act of 1834, or so much of it as may be applicable to the situation of affairs in the Territory of Oregon.

Contrary to this there is an "opinion" by Attorney-General Cushing (7 Opin., 295) to the effect that Oregon was a part of "the Indian country," because at the date of such opinion (1855) it was "a part of the United States west of the Mississippi." But this process of reasoning ignores the real inquiry whether Oregon was such "a part of the United States" at the passage of the act (1834) defining the Indian country, and within the real purview and intent of such act; and if it was not, being a local act, how and when did it become extended over Oregon, without and prior to the act of Congress of June 5, 1850? The opinion also asserts that "the Indian country" in the acts of Congress is not limited by any specific boundaries, but includes generally all "such portions of the acquired territory of the United States as are in the actual occupation of the Indian tribes while the Indian title thereto is unextinguished. In this conclusion, the "opinion" is in direct conflict with the decision of the Supreme Court in American Fur Company *vs.* United States, (2 Peters, 358,) where it was held, in an action to forfeit an Indian trader's goods, for taking whisky into "the Indian country" for the purpose of disposing of "the same among the Indian tribes," that a country purchased from the Indians subsequent to the act of March 30, 1802, (2 Stat., 139,) and therefore no longer within the specific limits of "the Indian country," as defined by section 1 of said act, was not such country within the meaning of the trade and intercourse act, although it was then frequented and inhabited exclusively by Indian tribes. The fact that the Indian title to the country in question had been extinguished subsequent to March 30, 1802, was only material to the decision because the act of that date, defining the boundary-line between the said Indian tribes and the United States, expressly provided that if said line should thereafter be varied by treaty, then the provisions of such act should "be construed to apply to the line so varied" as if it were the original one. Therefore, it appears that the court held that the treaty of purchase of the lands wherein the supposed offense was committed, changed the line between the tribes and the United States so as to exclude the lands so purchased from the limits of the Indian country.

But the act of 1834 (*supra*) defines the Indian country absolutely by metes and bounds, and no subsequent purchase of lands within those limits would, of itself, operate to take them out of the category of Indian country or except them from the laws regulating trade and intercourse with Indians who might be found thereon.

Nor can the act of 1834 be held to have extended itself or migrated over Alaska upon its cession by Russia to the United States; for although such act by its terms applied to a large tract of country, and it were even uncertain whether its western boundary stopped at the Rocky Mountains or extended to the Pacific Ocean, still it was purely a local law and contained no provision by which it should in future be extended in any direction, as to California or Alaska, upon the contingency of their acquisition by the United States.

Did the act of 1868 (*supra*) extend the act of 1834 (*supra*) over Alaska? By section 1 of that act, "the laws of the United States relating to customs, commerce, and navigation," were extended over that country, and this language, taken unqualifiedly, is broad enough to carry with it the laws regulating "trade and intercourse" with the Indian tribes in Alaska.

The power to regulate commerce is conferred upon the National Government by the Constitution (art. 1, sec. 8, sub. 3) in the same language and upon the same terms in the case of "foreign nations," the "several

States," and the "Indian tribes." It is under this clause that Congress exercises the power to regulate trade and intercourse with the Indian tribes as well without as within the Indian country. (The United States *vs.* Cisna, 1 McLean, 260; The United States *vs.* Holliday, 3 Wal., 416.) In the leading case of Gibbons *vs.* Ogden, (9 Wheat., 189,) Chief-Justice Marshall says: "Commerce undoubtedly is traffic, but it is something more; it is intercourse."

Unless, then, there is something in the circumstances of the case or in the act, from which it appears that Congress did not intend to use the phrase "laws relating to commerce," in an unqualified sense, it follows that the act of 1834 is in force in Alaska, as a regulation of commerce with the Indian tribes therein.

Considering that the laws regulating what is deemed commerce with the Indian tribes are generally confined to *intercourse* with them, and are mostly of a local character, and intended as a restriction upon commerce in the popular sense of the word, rather than otherwise—as a sort of police regulation to preserve the Indians from the injurious consequences of unrestricted intercourse with the white population—it does not appear probable that Congress intended to extend any laws over Alaska relating to commerce, except those relating to commerce "between foreign nations and the several States."

But in addition to this consideration it appears that the whole subject of the introduction and use of distilled spirits in relation to all the inhabitants of Alaska, whether Indians or other, is regulated by the act of 1868. Section 4 provides "that the President shall have power to restrict and regulate, or to prohibit the importation and use * * * of distilled spirits into and within the said territory," and also for the forfeiture of such spirits introduced or used contrary to such regulation, and for the punishment of the person engaged in the violation thereof.

Under these circumstances I conclude that the Territory of Alaska is not a part of "the Indian country," so declared by law, whatever it may be in fact; and therefore it is not a violation of section 20 of the act of 1834, under which the indictment in No. 274 is found, to introduce spirituous liquors therein.

As to No. 275, the sufficiency of the indictment does not turn upon the point whether Alaska is a part of "the Indian country" or not. Section 20 of the act of 1834, as amended by the acts of February 13, 1862, (12 Stat., 339,) and March 15, 1864, (13 Stat., 29,) makes the disposing of spirituous liquor to any Indian under the charge of any Indian agent, a crime, without reference to the locality in which the act was done. (United States *vs.* Holliday, *supra*, 418.)

In this respect the act is a general one, and *prima facie* applies wherever in the United States the subject-matter exists—that is, "an Indian under the charge of an Indian agent appointed by the United States."

But this feature of the act being enacted as early as 1864, before Alaska was a part of the United States, it is not clear upon authority whether it extended *proprio vigore* to Alaska upon its cession to the United States. It has been so common a habit of Congress upon the acquisition of territory to specially extend the laws of the United States over it, that an impression seems to prevail that without such action these laws would not affect territory acquired after their passage. For my own part, I can see no good reason why any general law of the United States does not become in force at once in any country acquired by it, without reference to the time of its passage.

Nevertheless, I am inclined to the opinion that if Congress had intended this or any other provision of the intercourse act to be in force in

Alaska, it would, in accordance with its common practice, have so declared in the act of July 27, 1868. This consideration, taken in connection with the provision already referred to in section 4 of such act, apparently intended to give the President power to provide by regulation for the whole subject of the introduction and use of distilled spirits in Alaska, points to the conclusion that Congress has by implication excluded the amendment of 1864, touching the disposition of spirituous liquor to Indians, from the Territory of Alaska, and left the subject to be governed by the act of 1868, (*supra.*)

I would not be understood as stating this conclusion without doubt. On the contrary, I have reached it with hesitation, and express it subject to correction. But in this case it is safer to err, if at all, by declining the jurisdiction than to accept it. If Congress should think it desirable that this or any other provision of the Indian-intercourse act should be in force in Alaska, it can so provide, beyond doubt.

The indictment in 275 is founded on section 44 of the act of July 20, 1868, (15 Stat., 142,) imposing taxes on distilled spirits, &c. The treaty of purchase was concluded March 30, 1868, and this act being a general one and passed after that date, there can be no doubt that it is in force in Alaska, as in any other part of the United States. But, notwithstanding this, it is equally clear that the demurrer is well taken. The jurisdiction of this court over offenses committed in Alaska is conferred by section 7 of the act of July 27, 1868, and by such section confined to violations of that act and of the laws "relating to customs, commerce, and navigation," thereby extended over that Territory. It is only necessary to state that the crime charged in this indictment is not a violation of either of these acts, and therefore not within the jurisdiction of this court.

The demurrers are sustained.

A. C. GIBBS, *for the plaintiff.*

H. H. NORTHRUP, *for defendant.*

[Indorsement.]

HEADQUARTERS MILITARY DIVISION OF THE PACIFIC,
San Francisco, Cal., December 20, 1872.

Respectfully forwarded to the Adjutant-General, inviting special attention of the Secretary of War to this subject.

J. M. SCHOFIELD,
Major-General, Commanding.

FIRE-ARMS.

(For previous correspondence on the subject of the introduction of breech-loading fire-arms into Alaska, see House Ex. Doc. No. 83, first session Forty-fourth Congress, pages 134 to 138.)

TREASURY DEPARTMENT,
Washington, D. C., July 10, 1875.

SIR: I have the honor to acknowledge receipt of your letter of the 23d ultimo, inclosing copy of a communication from the commanding officer at Sitka, Alaska, dated the 19th of April last, relative to the importation into the Territory of Alaska of breech-loading rifles and ammunition, by the Alaska Commercial Company, for sale to Indians; also

inviting my attention to the suggestions of the commanding general, Military Division of the Pacific, as contained in the papers accompanying your letter, and requesting that measures might be taken, if legal and proper, to carry out the suggestions of General Schofield.

In reply I beg leave to state that certain instructions, in circular form, prepared under date of the 3d instant, and which it is believed will meet the exigencies of the case, having received the approval of the President, will, under the authority of statutes relating to the subject, be forthwith issued for the information and guidance of collectors of customs, and others concerned.

A copy of the said circular instructions is herewith inclosed.

I am, very respectfully,

B. H. BRISTOW,
Secretary..

Hon. WM. W. BELKNAP,
Secretary of War, Washington, D. C.

[General Orders No. 72.]

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,
Washington, July 20, 1875.

The following circular from the Treasury Department relative to the importation of breech-loading rifles, and fixed ammunition suitable therefor, into the Territory of Alaska, is published for the information of the Army:

"TREASURY DEPARTMENT,
"*Washington, D. C., July* 3, 1875.

"*To Collectors of Customs:*

"The importation of breech-loading rifles, and fixed ammunition suitable therefor, into the Territory of Alaska, and the shipment of such rifles or ammunition to any port or place in the Territory of Alaska, are hereby forbidden, and collectors of customs are instructed to refuse clearance of any vessel having on board any such arms or ammunition destined for any port or place in said Territory.

"If, however, any vessel intends to touch or trade at a port in Alaska Territory, or to pass within the waters thereof, but shall be ultimately destined for some port or place not within the limits of said Territory, and shall have on board any such fire-arms or ammunition, the master or chief officer thereof will be required to execute and deliver to the collector of customs at the port of clearance a good and sufficient bond, with two sureties, in double the value of such merchandise, conditioned that such arms or ammunition, or any part thereof, shall not be landed or disposed of within the Territory of Alaska. Such bond shall be taken for such time as the collector shall deem proper, and may be satisfied upon proofs similar to those required to satisfy ordinary export bonds, showing that such arms have been landed at some foreign port; or, if such merchandise is landed at any port of the United States not within the limits of the Territory of Alaska, the bond may be satisfied upon production of a certificate to that effect from the collector of the port where it is so landed.

"CHAS. F. CONANT,
"*Acting Secretary.*

"Approved:
"U. S. GRANT,
President."

By order of the Secretary of War:

THOMAS M. VINCENT,
Assistant Adjutant-General.

TREASURY DEPARTMENT,
Washington, D. C., October 13, 1875.

SIR: Referring to this Department's letter to you of the 10th July last, transmitting a copy of its circular instructions of the 3d of July, 1875, forbidding the introduction of breech-loading fire-arms into the

Territory of Alaska, for sale to Indians, I have the honor to transmit herewith, for your information, a copy of a report from the collector of customs at Sitka, Alaska, in relation to that subject.

Inviting such further communication as you may see fit to make in regard to this matter,

I have the honor to be, very respectfully,

B. H. BRISTOW,
Secretary.

Hon. W. W. BELKNAP,
Secretary of War, Washington, D. C.

CUSTOM-HOUSE, SITKA, ALASKA,
Collector's Office, August 31, 1875.

SIR: Acknowledging receipt of Assistant Secretary Conant's letter of the 10th ultimo, transmitting copy of circular instructions, under date of the 3d of July, 1875, relating to the importation of breech-loading arms in Alaska, for my information and guidance, I have the honor to state that I have this day prepared copies of the said circular for transmission to the offices of my deputies.

It will be difficult to prevent the introduction of breech-loading arms and fixed ammunition into this district, by the Indians located at this place. The present restrictions upon trade, imposed by the military commander, prohibiting (except in small quantities) the sales of molasses and sugar, have caused the Indians to visit British trading-posts, taking with them their furs and peltries, receiving in exchange anything and everything they require.

As far as practicable, I will use my utmost endeavors to prevent their introduction.

I am, sir, very respectfully, your obedient servant,

M. P. BERRY,
Collector.

Hon. B. H. BRISTOW,
Secretary of the Treasury, Washington, D. C.

[First indorsement.]

WAR DEPARTMENT,
ADJUTANT-GENERAL'S OFFICE,
Washington, October 21, 1875.

Official copy respectfully referred to the commanding general, Division of the Pacific, for report.

By order of the Secretary of War:

E. D. TOWNSEND,
Adjutant-General.

[Second indorsement.]

HEADQUARTERS MILITARY DIVISION OF THE PACIFIC,
San Francisco, October 30, 1875.

Respectfully referred to the commanding officer, Department of the Columbia, for report.

By order of Major-General Schofield:

J. C. KELTON,
Lieutenant-Colonel, Assistant Adjutant-General.

[Third indorsement.]

HEADQUARTERS DEPARTMENT OF THE COLUMBIA,
Portland, Oreg., November 10, 1875.

Respectfully referred to the commanding officer, Sitka, Alaska, for his information and report.

To be returned by return steamer, if practicable.

By command of Brigadier-General Howard:

H. CLAY WOOD,
Assistant Adjutant-General.

[Fourth indorsement.]

HEADQUARTERS, SITKA, ALASKA,
December 1, 1875.

Respectfully returned to headquarters Department of the Columbia, with the required report.

J. B. CAMPBELL,
Captain Fourth Artillery.

[Inclosure to fourth indorsement.]

HEADQUARTERS, SITKA, ALASKA,
November 30, 1875.

To the ASSISTANT ADJUTANT-GENERAL,
Headquarters Department of the Columbia:

In compliance with the third indorsement upon the communication from the honorable Secretary of the Treasury, forwarded by the War Department, I have the honor to report as follows:

I have been here in command for fifteen months, and have availed myself of every opportunity to ascertain what the habits, occupations, and dispositions of the Alaska Indians are. They are very superior to the interior or plains Indians in intelligence, and further advanced in civilization, in that they live in fixed habitations, very substantially constructed of timber, are possessed of great mechanical skill, are industrious whenever opportunity offers, and are both commercial and frugal in their habits. They count their wealth by blankets and slaves. They construct canoes capable of holding from ten to forty and fifty men, or five or six tons of freight, and perform in them voyages of hundreds of miles in length, for the purposes of trade. Their habitations, in the form of regular villages, of houses so strongly built as to be able to withstand as much, almost, as a modern block-house, are always built upon the shore of the sea or river. Their skill in canoe navigation would enable them to readily concentrate in formidable and very dangerous numbers at any spot they might choose; and if they were armed with modern arms of power and precision they could soon clear the country of the few troops and white inhabitants. They are hardy and brave in character, and do not know their strength. I have found all with whom I came in contact very easy to manage and inclined to do as they are told. Under Russian rule they were always given rum in trade for peltries, if they wanted it, and when they worked it was part of their ration. They missed this on our advent; their supply of liquor was cut off, and although it was very little, they missed it. Renegade Americans set up small stills in out-of-the-way places, and supplied the Indian demand at exorbitant prices. Finally the Indians themselves got hold of the art of fermentation and distillation, and, being apt to learn, the

art of making whisky from molasses, sugar, or berries became known throughout the length and breadth of Alaska.

The Indians at first only made it to meet their own wants, but, upon the rigid exclusion of all liquor from the whites and the destruction of their small stills for its manufacture, the Indians became the sellers and the whites the buyers. Finding it a very profitable business the Indians enter largely into it; they locate their stills, that are of the most elementary description, at secluded places, and for the past two years have made vast quantities of liquor, called *houchinan*, from the fact that the Indians living at Koutzinon, Admiralty Island, were the first to make it; they have thus completely inverted the status that the laws were framed to meet. The Indian, from being the consumer and purchaser, has become the manufacturer and seller. There is no law to punish an Indian for selling liquor, or making it, either, except to destroy his distilling-apparatus and stock if you can catch it. Vast quantities of molasses used to be shipped to this country, and as an efficient means to stop the whisky-traffic, which demoralizes alike the Indians and the whites, I at first limited the sale of molasses and sugar to Indians, and finding it impossible to regulate it properly in that way, I have prohibited its introduction or sale in this vicinity. I would have extended the order all over the Territory had I been in possession of the means of enforcing obedience to it. In this step I have been bitterly opposed and complained of by the whites, first, because Indians would buy molasses wherewith to make rum, with more avidity, and in fact to the exclusion of everything else; and, second, because, when the supply of molasses became short, the Indians raised the price of their liquor, and of course these same people who were the consumers were again affected. My inability to reach and control efficiently the traders located away from here, enables the Indians to procure supplies of this commodity thereat, and the only way to prevent it is to enforce the law of the United States requiring all traders in the country to procure license and give bonds for their good behavior and obedience to law and trade regulations. I started to do this on receiving the appointment of acting Indian agent for Alaska, but I was overruled by the department commander, and forbidden to require a bond of any traders but "new-comers." As I could see no reason in thus conferring favors upon a class, or result likely to come from a simple license, I have issued none whatever except to one new-comer, of whom I have exacted a bond in accordance with law. The Indians go to Fort Simpson, Buck's Bar, on the Stickeen, Peet-la-ca-ta, Nast River, and all other Hudson Bay posts in British Columbia, and procure all the molasses they want; in fact, at Fort Simpson a barrel is presented to every canoe of trading Indians who take their peltries there for exchange. A vast amount of smuggling in the shape of blankets and hardware is done from those points. I am credibly informed that over forty bales of British blankets were this year brought by the Indians to the village just outside of this post. I also notice that they have English hardware, that American merchants cannot afford to keep on account of the high duties. The Hudson Bay traders only have for an object the procuring from Indians of fine fur—the fur of an animal that is shot is inferior. I have never known of a rifle of any kind to come from British Columbia into the hands of Indians. All that I have ever seen them have, they tell me were procured from Northern Indians. I have been told by re iable parties that the Alaska Commercial Company used to sell large numbers of breech-loading arms, and have so reported; also, the metallic ammunition for the same. I will state that this summer, while the revenue

steamer Walcott was here, the Indians were preparing for their voyages south, and I knew they intended to bring foreign blankets into the country in large quantities. I sent for the collector of the port, and told him of this, and also warned the Indians that they would have the blankets taken from them by the boat. They were much concerned. The Walcott went away, and the next I heard was from some of the Indians. They found the Walcott at Fort Simpson, and boarded her, and asked about blankets; they said the "Ty-hee" they saw on board told them to take all the blankets they wanted; that they would not be interfered with.

I will state that the impression made upon me as to the zeal of the customs officials for the suppression of illegal trade is not very favorable. I was obliged to arrest the deputy collector, Carr, at Wrangel, last year, for violation of liquor-law and malfeasance in office in regard to the custody of seized property, and since then all kinds of rascality are being found out against him. The deputy collector, McKnight, at this place, encouraged violation of the law by purchasing liquor he knew was illegally sold. The customs officials are directed by the Hon. Secretary of the Treasury to assist the military in the execution of the non-intercourse laws, but they never, or rarely, actually do anything.

I am, sir, respectfully, your obedient servant,

J. B. CAMPBELL,
Captain Fourth Artillery, Commanding Post.

[Fifth indorsement.]

HEADQUARTERS DEPARTMENT OF THE COLUMBIA,
Portland, Oreg., December 22, 1875.

Respectfully returned to the assistant adjutant-general, headquarters Military Division of the Pacific, inviting attention to the inclosed report of the post commander, Sitka, Alaska.

I am impressed with the belief that many of the troubles and complaints originating in Alaska Territory are occasioned by the difference in the laws of the American and British Governments.

The object, it would appear, of the post commander in restricting and, latterly, prohibiting the sale of molasses and sugar as a police measure, is the suppression of the manufacture of liquor, "How-chi-now," by the Indians.

He has therefore recommended that "the introduction of molasses into the Territory be entirely prohibited, and that all grades of unclarified sugar be allowed only in limited quantities," a recommendation in which I did not concur, nor am I aware of any law under which it can be done.

I have not interfered with his orders in the premises. I cannot, however, say that I regard them altogether wise and judicious, though he has issued them undoubtedly with good intent.

I instructed Captain Campbell to suspend so much of his orders with reference to requiring license and bonds from traders then doing business in Alaska, as shown by my indorsement to division headquarters, dated September 8, 1875, because I believed the rigid enforcement of these provisions of law unwise and injudicious. I am confirmed in this opinion now.

O. O. HOWARD,
Brigadier-General, Commanding.

[Sixth indorsement.]

HEADQUARTERS MILITARY DIVISION PACIFIC,
San Francisco, January 3, 1876.

Respectfully returned to the Adjutant-General, inviting attention to the inclosed report of the commanding officer, Sitka, Alaska, and indorsement hereon of the commanding officer Department of the Columbia.

I have no doubt of the wisdom of prohibiting the importation of breech-loading arms and ammunition into Alaska, nor of the practicability of enforcing the prohibition. Unless I am greatly misinformed, the Hudson Bay Company do not trade in that kind of arms. But I believe the results of all other restrictions upon trade are only evil.

Whether the Territory is to remain in its present anomalous condition or be provided with a military or civil government, I believe it would be well to foster unrestricted trade and intercourse between the natives of that country and the civilized world, and direct the efforts of Government toward the advancement in civilization of that remarkable people, rather than the colonization of the Territory by those of another race.

J. M. SCHOFIELD,
Major-General.

INDIAN AGENT.

[Telegram.]

PORTLAND, OREG., *March* 9, 1875.

To Colonel KELTON.
Division Headquarters, San Francisco:

According to instructions of General Halleck, commandant in Alaska is *ex-officio* agent for Indian affairs. Please ask that this authority be sanctioned by Secretary of Interior. This will protect commandant against civil suits.

O. O. HOWARD,
Brigadier-General, Commanding.

[Indorsement.]

HEADQUARTERS MILITARY DIVISION PACIFIC,
San Francisco, March 11, 1875.

Official copy respectfully forwarded to the Adjutant-General, and attention invited to paragraph 17 of General Halleck's letter of September 6, 1867, herewith, containing the instructions referred to by General Howard.

J. M. SCHOFIELD,
Major-General.

Extract from General Halleck's instructions, before cited.

HEADQUARTERS MILITARY DIVISION OF THE PACIFIC,
San Francisco, Cal., September 6, 1867.

GENERAL: You have been appointed commander of the Military District of Alaska, which includes all the Russian-American territory ceded

to the United States by the treaty of March 30, 1867. You will, therefore, assume command of the two companies designated in Special Orders No. 141, current series, from these headquarters, for the garrison of Sitka, as soon as the same are ready to embark on the transport chartered for that purpose.

* * * * * * *

17. In regard to the aboriginal and uncivilized tribes of your district, you will, in the absence of any organized civil territorial government, and so far as our laws authorize or permit, act as their general superintendent, protecting them from abuse, and regulating their trade and intercourse with our own people. Military officers have no authority to make Indian treaties. You will, therefore, enter into no negotiations of that kind, or attempt to bind our Government to any contracts or agreements without special authority, and under special instructions.

* * * * * * *

Very respectfully, your obedient servant,

H. W. HALLECK,
Major-General, Commanding.

Bvt. Maj. Gen. J. C. DAVIS, *Present.*

WAR DEPARTMENT,
Washington City, March 30, 1875.

SIR: I have the honor to transmit copy of telegram of the commanding general, Department of Columbia, asking that the commandant in Alaska be confirmed as *ex-officio* agent for Indian affairs in Alaska.

Very respectfully, your obedient servant,

WM. W. BELKNAP,
Secretary of War.

The Hon. SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., April 24, 1875.

SIR: Referring to your letter of the 30th ultimo, transmitting copy of telegram of commanding general, Department of Columbia, asking that the commandant in Alaska be confirmed as *ex-officio* agent for Indian affairs in Alaska, I have the honor to remark that the Indians of Alaska are not under the control of this Department.

As the act of Congress approved July 15, 1870, prohibits an officer of the Army from accepting, or holding, or exercising the functions of any civil office, this Department could confer no appointment upon the commandant in Alaska, even if he had jurisdiction in that Territory. (See Revised Statutes, sec. 1222.)

A copy of a report of the Commissioner of Indian Affairs on the subject is herewith transmitted for your information.

Very respectfully, your obedient servant,

C. DELANO,
Secretary.

The Hon. SECRETARY OF WAR.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, D. C., April 3, 1875.

SIR: I have the honor to acknowledge receipt by Department reference of communication from the honorable Secretary of War, trans-

mitting copy of telegram from the commanding general, Department of Columbia, asking that the commandant in Alaska be confirmed as an *ex-officio* agent for Indians in Alaska.

In compliance with the reference of the honorable Secretary, which also invites attention to section 2062 of the Revised Statutes, I have the honor to report as follows: Section 2062 (R. Stat.) provides that the President may require a military officer to execute the duties of an Indian agent, and that in performance of such duties he shall receive no other compensation than his actual traveling-expenses. This provision, however, seems to be in direct conflict with that of section 1222, which provides that no officer of the Army "shall hold any civil office, whether by election or appointment, and every such officer who accepts or exercises the functions of a civil office shall thereby cease to be an officer of the Army, and his commission shall be thereby vacated."

The Territory of Alaska is understood to be entirely without law, and whatever protection is afforded to its inhabitants must come through the military force.

It appears to be the judgment of the officer commanding the Department of the Columbia that the power of an agent conferred upon the commandant of Alaska would give additional facilities for exercising proper restraint and authority in that country. If, therefore, the requirement of the President that the commanding officer in Alaska execute the duties of an Indian agent will confer upon him the authority to put the intercourse act of 1834 in force through this department, and if that officer can execute this trust without being liable to the pains and penalties of section 1222, I respectfully recommend that the request of the War Department be granted, provided no compensation be allowed, and no authority to incur any indebtedness on account of the Department be conferred.

The papers in the case are herewith returned.

Very respectfully, your obedient servant,

EDW. P. SMITH.
Commissioner.

The Hon. SECRETARY OF THE INTERIOR.

WAR DEPARTMENT,
Washington City, April 28, 1875.

SIR: A request of the commanding general, Department of Columbia, that the commandant in Alaska might be empowered as *ex-officio* agent for Indian affairs in Alaska, was referred to the Secretary of the Interior, who, in reply, cites the act of Congress approved July 15, 1870, prohibiting an officer of the Army from accepting, holding, or exercising the functions of a civil officer, as a reason for declining to confer said appointment.

In the same connection the Commissioner of Indian Affairs cites section 2062, Revised Statutes, providing that the President may require a military officer to execute the duties of an Indian agent, and that in performance of such duties he shall receive no other compensation than his actual traveling-expenses, and thinks it conflicts with section 1222, providing that no officer shall hold any civil office, &c.

As it seems to be very desirable, in the present condition of Alaska, that the power of an agent should be conferred upon the military commander there, your opinion upon the points raised is respectfully requested.

This Department inclines to the belief that this would not be the acceptance of such civil office or the exercise of the functions of such civil office as is contemplated by the act referred to.

Very respectfully, your obedient servant,

WM. W. BELKNAP,
Secretary of War.

The Hon. ATTORNEY-GENERAL.

DEPARTMENT OF JUSTICE,
Washington, May 5, 1875.

SIR: Your letter of the 28th ultimo directs my attention to sections 1222 and 2062 of the Revised Statutes, and suggests the question whether the present military commandant in Alaska may be authorized to perform the duties of an Indian agent there.

By section 1222 it is declared that "no officer of the Army on the active-list shall hold any civil office, whether by election or appointment, and every such officer who accepts or exercises the functions of a civil office shall thereby cease to be an officer of the Army, and his commission shall be thereby vacated." But by section 2062 it is provided that "the President may require any military officer of the United States to execute the duties of an Indian agent; and when such duties are required of any military officer, he shall perform the same without any other compensation than his actual traveling-expenses."

In construing these two provisions, the latter is to be understood as constituting an exception to the former, according to the well-established rule of interpretation that where a general intention is expressed in a statute, and the statute also expresses a particular intention incompatible with the general intention, the particular intention is to be considered in the nature of an exception. Regarding the matter from this point of view, it is clear that the President has the power to devolve upon an Army officer on the active-list the duties of an Indian agent.

Yet there is another provision in the Revised Statutes which seems to qualify that power slightly. Section 1224 declares that Army officers shall not be employed as disbursing-agents of the Indian Department, when such employment requires them to be separated from their regiments or companies, or otherwise interferes with the performance of their military duties proper.

Subject to this qualification, I am of the opinion that it is competent to the President to direct the military commandant in Alaska to execute the duties of an Indian agent in that Territory.

I have the honor to be, very respectfully,

GEO. H. WILLIAMS,
Attorney-General.

Hon. W. W. BELKNAP,
Secretary of War.

WAR DEPARTMENT,
Washington City, May 8, 1875.

SIR: Referring to the correspondence with your Department relative to the suggestion that the commandant in Alaska be empowered as *ex-officio* agent for Indian affairs, I now have the honor to transmit copy of General Orders No. 40, of 1874, Adjutant-General's Office, containing acts of Congress and opinions of the Attorney-General on this subject, also copy of letter of the Attorney-General of the 5th instant, in

reply to a request for his opinion in this particular case, and to renew the request that the military commandant in Alaska may be designated to act as Indian agent, under the restrictions contained in the two last paragraphs of the letter of the Attorney-General here referred to.

Very respectfully, your obedient servant,

WM. W. BELKNAP,
Secretary of War.

The Hon. SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., May 14, 1875.

SIR: I have the honor to acknowledge the receipt of a letter, dated the 8th instant, from the honorable the Secretary of War, inclosing copy of an opinion of the Attorney-General of the United States as to the authority of the President to devolve the duties of an Indian agent upon an Army officer on the active-list.

This Department has no legal right to appoint an officer of the Army to the position of Indian agent, or to authorize an officer of the Army to exercise the functions appertaining to the office of an Indian agent. But in view of the Attorney-General's opinion of the 5th instant, and of the anomalous condition of the inhabitants of the Aleutian Islands, this Department is of the opinion that the War Department may properly detail an Army officer to exercise such powers and duties in controlling said inhabitants and in providing for their wants, morally, intellectually, and physically, as in the judgment of the War Department may be deemed necessary, and this Department has no objection to conferring upon an officer so detailed the powers herein indicated, but, on the contrary, desires the War Department to take such action.

Very respectfully, your obedient servant,

C. DELANO,
Secretary.

The Hon. SECRETARY OF WAR.

WAR DEPARTMENT,
Washington City, May 25, 1875.

SIR: In connection with your letter of the 14th instant upon the subject, I have the honor to inclose a copy of General Orders No. 61, dated May 21, 1875, from this Department, appointing the commanding officer of the United States troops in Alaska to execute the duties of Indian agent in that Territory.

Very respectfully, your obedient servant,

WM. W. BELKNAP,
Secretary of War.

The Hon. SECRETARY OF THE INTERIOR.

[General Orders No. 61.]

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,
Washington, May 21, 1875.

By direction of the President—under section 2062, and subject to the limitation in section 1224, of the Revised Statutes—the commanding officer of the United States troops in Alaska, stationed at Sitka, is appointed to execute the duties of Indian agent, in controlling the intercourse with the Indians in Alaska, including the Aleutian Islands, and to act *ex officio* as Indian agent over the tribes in said Territory.

The following are the sections of the Revised Statutes referred to:

"SEC. 1224. Officers of the Army on the active-list shall not be separated from their

regiments or corps for employment on civil works of internal improvement, nor be allowed to engage in the service of incorporated companies, or be employed as acting paymaster or disbursing agent of the Indian Department, if such extra employment require that he be separated from his regiment or company, or otherwise interfere with the performance of the military duties proper.

"SEC. 2062. The President may require any military officer of the United States to execute the duties of an Indian agent; and when such duties are required of any military officer, he shall perform the same without any other compensation than his actual traveling-expenses."

By order of the Secretary of War:

E. D. TOWNSEND,
Adjutant-General.

BOARD OF TRADE,
Portland, Oreg., July 27, 1875.

SIR: I am asked to forward you the annexed communication and to request the favor of your kindly countermanding the order referred to after you have satisfied yourself that it is what we claim, against the interest of trade and commerce with Oregon.

I am, sir, very respectfully, your obedient servant,

WILLIAM REID,
Secretary.

Hon. W. W. BELKNAP,
Secretary of War, Washington, D. C.

[Newspaper slip.]

AN IMPORTANT ORDER.—ALASKA VIRTUALLY CLOSED TO COMMERCE.—SEEMS TO CONFLICT WITH TREATY OF CESSION.

We give below an order issued by Capt. Jas. B. Campbell, Fourth Artillery, commanding at Sitka, Alaska, which is quite important to traders in that Territory, and those who may propose going there for trading purposes. The order is dated, "Orders No. 96. Headquarters, Sitka, Alaska, July 12, 1875," and the purport is as follows:

(For full text of Orders No. 96, see copy following General Howard's indorsement.)

We understand that the Portland Board of Trade have this unprecedented order under consideration and will take measures to have this ukase repealed or modified, so as not to destroy the commerce of this city with the upper northwest coast. We respectfully ask General Howard to review this order and adapt its provisions to the rights, laws, treaties, &c., of American citizens, so that the harmony between the civil and military relations on this coast may remain uninterrupted.

If the order is enforced as threatened, the whole trade of that immense and wealthy region will be held by the military as the sole property of the Alaska Fur Company and the British smugglers of Victoria.

[Indorsements.]

WAR DEPARTMENT,
ADJUTANT-GENERAL'S OFFICE,
Washington, August 13, 1875.

Respectfully referred, through headquarters of the Army, to the commanding general Military Division of the Pacific for report.

By order of the Secretary of War:

E. D. TOWNSEND,
Adjutant-General.

HEADQUARTERS OF THE ARMY,
Saint Louis, August 16, 1875.

Respectfully transmitted.
By command of General Sherman:

JNO. M. BACON,
Colonel and Aid-de-Camp.

HEADQUARTERS MILITARY DIVISION OF THE PACIFIC,
San Francisco, Cal., August 23, 1875.

Respectfully referred to the commanding officer Department of the Columbia for report.
By order of Major-General Schofield:

J. C. KELTON,
Lieutenant-Colonel, Assistant Adjutant-General.

HEADQUARTERS DEPARTMENT OF THE COLUMBIA,
Portland, Oreg., September 8, 1875.

Respectfully returned to the assistant adjutant-general, headquarters Military Division of the Pacific, inclosing copy of Post Orders No. 96, of July 12, and No. 110, of August 19, 1875, from the post of Sitka, Alaska. Attention is also invited to communications dated July 28 and September 4, 1875, from these headquarters. These letters show the action taken by me, viz: a suspension of that portion of paragraph III of Orders 96, requiring a bond so far as relates to existing traders, including unnaturalized foreigners. It will be seen that this order is mainly a transcript of law, and if the change that I have made is sustained by the War and Interior Departments, I think trade will not suffer in consequence of the order, or if it does, the law, and not the publication thereof, is at fault.

The action of the post commander at Sitka and myself is submitted for the consideration of superior authority, and for instructions.

O. O. HOWARD,
Brigadier-General, Commanding.

[Orders No. 96.]

HEADQUARTERS, SITKA, ALASKA,
July 12, 1875.

I. By direction of the President, the undersigned hereby assumes the duties and functions of Indian agent for the Territory of Alaska, including the Aleutian Islands.

The laws of the United States relating to trade and intercourse with Indians will hereafter be rigidly enforced in Alaska and outlying islands. Alaska and the islands along its coast are all adjudged to be Indian country under the law.

II. The following extracts from the Revised Statutes of the United States, relative to trade, intercourse, and residence, are published for the information of all concerned:

"SECTION 2111. Any person who sends any talk, speech, message, or letter to any Indian, native tribe, chief, or individual, with an intent to produce a contravention or infraction of any treaty or law of the United States, or to disturb the peace and tranquillity of the United States, is liable to a penalty of two thousand dollars."

"SECTION 2128. Any loyal person, a citizen of the United States, of good moral character, shall be permitted to trade with any Indian tribe, upon giving bond to the United States in the penal sum of not less than five nor more than ten thousand dollars, with at least two good sureties to be approved by the superintendent of the district within which such person proposes to trade or by the United States district judge or district attorney for the district in which the obligor resides, renewable each year, conditioned that such person will faithfully observe all laws and regulations made for the government of trade and intercourse with the Indian tribes, and in no respect violate the same.

"SECTION 2129. No person shall be permitted to trade with any of the Indians in the Indian country without a license therefor from a superintendent of Indian affairs or

Indian agent or subagent, which license shall be issued for a term not exceeding two years for tribes east of the Mississippi, and not exceeding three years for the tribes west of that river.

"SECTION 2130. Any superintendent or agent may refuse an application for a license to trade if he is satisfied that the applicant is a person of bad character or that it would be improper to permit him to reside in the Indian country, or if a license, previously granted to such applicant, has been revoked, or a forfeiture of his bond decreed. But an appeal may be had from the agent or superintendent to the Commissioner of Indian Affairs.

"SECTION 2131. The superintendent of the district shall have power to revoke and cancel any license to trade with the Indian country whenever the person licensed has, in his opinion, transgressed any of the laws or regulations provided for the government of trade and intercourse with the Indian tribes, or whenever, in his opinion, it is improper to permit such person to remain in the Indian country. No trade with the tribes shall be carried on within their boundary except at certain suitable and convenient places, to be designated from time to time by the superintendents, agents, and subagents, and to be inserted in the license. The person granting or revoking such license shall forthwith report the same to the Commissioner of Indian Affairs for his approval or disapproval."

"SECTION 2133. Any person other than an Indian who shall attempt to reside in the Indian country as a trader, or to introduce goods, or to trade therein without such license, shall forfeit all merchandise offered for sale to the Indians or found in his possession, and shall, moreover, be liable to a penalty of five hundred dollars.

"SECTION 2134. Every foreigner who shall go into the Indian country without a passport from the Department of the Interior, superintendent, agent, or subagent of Indian affairs, or officer of the United States commanding the nearest military post on the frontiers, or who shall remain intentionally therein after the expiration of such passport, shall be liable to a penalty of one thousand dollars. Every such passport shall express the object of such person, the time he is allowed to remain, and the route he is to travel."

"SECTION 2145. Except as to crimes, the punishment of which is expressly provided for in this title, the general laws of the United States as to the punishment of crimes committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to the Indian country."

"SECTION 2147. The superintendent of Indian affairs and Indian agents and subagents shall have authority to remove from the Indian country all persons found therein contrary to law; and the President is authorized to direct the military force to be employed in such removal.

"SECTION 2148. If any person who has been removed from the Indian country shall thereafter at any time return (to) or be found within the Indian country, he shall be liable to a penalty of one thousand dollars."

"SECTION 2150. The military forces of the United States may be employed in such a manner and under such regulations as the President may direct:

"First. In the apprehension of every person who may be in the Indian country in violation of law, and in conveying him immediately from the Indian country, by the nearest convenient and safe route, to the civil authority of the Territory or judicial district in which such person shall be found, to be proceeded against in due course of law.

"Second. In the examination and seizure of stores, packages, and boats, authorized by law.

"Third. In preventing the introduction of persons and property into the Indian country contrary to law.

"Fourth. And also in destroying and breaking up any distillery for manufacturing ardent spirits, set up or continued within the Indian country."

III. All persons desiring to trade in Alaska Territory will at once make written application to the undersigned for a license, stating the name and residence and the particular locality at which they wish to transact business. The application must be accompanied by a bond for the "penal sum of five thousand dollars," duly executed by the applicant as principal, and two sureties. If not known to the undersigned, the sureties must be approved and vouched for by the United States district judge or United States district attorney for the district in which the obligor resides. The condition of the bond must be that the principal will faithfully observe all laws and regulations made for the government of trade and intercourse with Indians in Alaska, and in no respect violate the same. This bond will be renewed every year. If the applicant be a naturalized citizen he will present his naturalization papers with his application. Unnaturalized foreigners cannot procure license.

* * * * * * *

J. B. CAMPBELL,
Captain Fourth Artillery, commanding Sitka, Alaska,
and Indian Agent for Alaska.

[Orders No. 110]

HEADQUARTERS, SITKA, ALASKA,
August 19, 1875.

I. The following extracts from the Revised Statutes of the United States are published for the information and government of all concerned:

"SECTION 2058. Each Indian agent shall, within his agency, manage and superintend the intercourse with the Indians agreeable to law, and execute and perform such regulations and duties not inconsistent with law as may be prescribed by the President, the Secretary of the Interior, the Commissioner of Indian Affairs, or the superintendent of Indian affairs."

"SECTION 2062. The President may require any military officer of the United States to execute the duties of Indian agent; and when such duties are required of any military officer he shall perform the same without any other compensation than his actual traveling-expenses."

"SECTION 2064. Indian agents are authorized to take acknowledgments of deeds and other instruments of writing, and to administer oaths in investigations committed to them in Indian country, pursuant to such rules and regulations as may be prescribed for that purpose by the Secretary of the Interior; and acknowledgments so taken shall have the same effect as if taken before a justice of the peace."

"SECTION 2066. The limits of each superintendency, agency, and subagency shall be established by the Secretary of the Interior, either by tribes or geographical boundaries."

"SECTION 2135. Every person, other than an Indian, who, within the Indian country, purchases or receives of any Indian, in the way of barter, trade, or pledge, a gun, trap, or other article commonly used in hunting, any instrument of husbandry, or cooking utensils of the kind commonly obtained by Indians in their intercourse with the white people, or any article of clothing, except skins and furs, shall be liable to a penalty of fifty dollars.

"SECTION 2136. If any trader, his agent or any person acting for or under him, shall sell any arms or ammunition at his trading-post, or other place within any district or country occupied by uncivilized or hostile Indians, contrary to the rules and regulations of the Secretary of the Interior, such trader shall forfeit his right to trade with the Indians, and the Secretary shall exclude such trader and the agent, or other such person so offending, from the district or country so occupied."

"SECTION 2139. No ardent spirits shall be introduced, under any pretense, into the Indian country. Every person, except an Indian, in the Indian country, who sells, exchanges, gives, barters, or disposes of any spirituous liquors or wines to any Indian under charge of any Indian superintendent or agent, or introduces or attempts to introduce any spirituous liquor or wine in the Indian country, shall be punished by imprisonment for not more than two years, and by a fine of not more than three hundred dollars. But it shall be a sufficient defense to any charge of introducing or attempting to introduce liquor into the Indian country, that the acts charged were done by order of, or under authority of, the War Department, or any officer duly authorized thereunto by the War Department.

"SECTION 2140. If any superintendent of Indian affairs, Indian agent, or subagent, or commanding officer of a military post, has reason to suspect, or is informed, that any white person or Indian is about to introduce or has introduced any spirituous liquor or wine into the Indian country, in violation of law, such superintendent, agent, subagent, or commanding officer, may cause the boats, stores, packages, wagons, sleds, and places of deposit of such person to be searched; and if any such liquor is found therein, the same, together with the boats, teams, wagons, and sleds used in conveying the same, and also the goods, packages, and peltries of such person, shall be seized and delivered to the proper officer, and shall be proceeded against, by libel, in the proper court, and forfeit, one half to the informer and the other half to the use of the United States; and if such person be a trader, his license shall be revoked and his bond be put in suit. It shall, moreover, be the duty of any person in the service of the United States, or of any Indian, to take and destroy any ardent spirits or wines found in the Indian country, except such as may be introduced therein by the War Department. In all cases arising under this and the preceding sections, Indians shall be competent witnesses.

"SECTION 2141. Every person who shall, within the Indian country, set up or continue any distillery for manufacturing ardent spirits, shall be liable to a penalty of one thousand dollars; and the superintendent of Indian affairs, Indian agent, or subagent, within the limit of whose agency such distillery of ardent spirits is set up or continued, shall forthwith destroy and break up the same.

"SECTION 2142. Every white person who shall make an assault upon an Indian or other person, and every Indian who shall make an assault upon a white person within the Indian country, with a gun, rifle, sword, pistol, knife, or any other deadly weapon,

with intent to kill or maim the person so assaulted, shall be punished by imprisonment, at hard labor, for not more than five nor less than one year.

"SECTION 2143. Every white person who shall set fire, or attempt to set fire, to any house, outhouse, cabin, stable, or other building in the Indian country, to whomsoever belonging; and every Indian who shall set fire to any house, outhouse, cabin, stable, or other building in the Indian country, in whole or in part belonging to, or in lawful possession of, a white person, and whether the same be consumed or not, shall be punished by imprisonment, at hard labor, for not more than twenty-one years, nor less than two years."

"SECTION 2152. The superintendents, agents, and subagents shall endeavor to procure the arrest and trial of all Indians accused of committing any crime, offense, misdemeanor, and of all other persons who may have committed crimes or offenses, within any State or Territory, and have fled into the Indian country, either by demanding the same of the chiefs of the proper tribe, or by such other means as the President may authorize to be employed in the apprehension of such Indians, and also in preventing or terminating hostilities between any of the Indian tribes."

II. Persons residing in places in Alaska not supplied with mail facilities will be allowed until January 1, 1876, to apply for a license to trade. All persons after that date who have not procured license will be proceeded against under the law.

J. B. CAMPBELL,
Captain Fourth Artillery, commanding Sitka, Alaska,
and Indian Agent for Alaska.

HEADQUARTERS DEPARTMENT OF THE COLUMBIA,
Portland, Oreg., July 28, 1875.

SIR: The department commander instructs me to acknowledge receipt of your communication of the 14th instant, covering Post Orders No. 96, of the 12th instant, and to reply that he deems it wise on your part to publish, as you have done, extracts from existing laws that evidently apply and should be enforced in Alaska Territory, which is construed as "Indian country" under the decision of the Attorney-General of the United States. He directs you to suspend the operation of the third section of your order, so far as it relates to the bond in "penal sum of five thousand dollars," with reference to existing traders, including unnaturalized foreigners. As these traders have gone to Alaska without understanding that this law applied to them, and have already invested their means, many of them being unable to furnish the requisite bonds, it is believed that the Government may in equity regard this law, now for the first time put into actual execution, in the nature of an *ex-post-facto* law, and may relieve existing traders from its execution, so long as in other respects they conform to the letter and spirit of the laws affecting them.

Your order will be transmitted to the War Department and Indian Bureau for approval or modification; meantime it will stand approved with the exception herein mentioned.

Until otherwise instructed, the department commander deems it your duty to send all reports touching military or Indian affairs in Alaska Territory through these headquarters.

Very respectfully, your obedient servant,

H. CLAY WOOD,
Assistant Adjutant-General.

The COMMANDING OFFICER,
Sitka, Alaska.

HEADQUARTERS DEPARTMENT OF THE COLUMBIA,
Portland, Oreg., September 4, 1875.

SIR: Your communication of August 21, ultimo, relative to your Orders 96 and 110, is at hand, and I am directed to reply—

I. The department commander does not advise you to countermand

your Orders 96 and 110. He wishes you simply to suspend paragraph III of Order 96 in so far as it relates to the penal bond in the sum of $5,000, required of traders already in business at the date of the order, including even unnaturalized foreigners already trading in Alaska. He thinks you are right in demanding licenses, with a bond, for all new men, but no bond had better be required of those now trading until the decision of authorities at Washington can be obtained.

He is of the opinion that a short order, simply suspending the portion of paragraph III above referred to till further orders, will be enough. If, however, any have given bonds as you required, you had better keep them till the decision at Washington is made known.

He understands fully your views of your sole responsibility as Indian agent, and yet it is difficult *always* nicely to define and limit that responsibility. He suspended the operation of your Order 96, it being properly issued in your double capacity, in order to prevent the helping of monopolies by crushing out small traders, and to check a fierce opposition already arisen from California, Oregon, and Washington Territory.

II. The department commander says, further, if you can satisfy yourself that the beer is not alcoholic and will not intoxicate, you certainly can allow the opening of the brewery under General Schofield's ruling; but if it does produce intoxication and breaking the peace as it is made at Sitka, you are right to prohibit it as a police regulation. In this connection, he advises that you select two officers, one medical, to examine into and determine the question. Whichever way you decide, the general feels sure it will be rightly done.

III. Concerning the bonds of the Alaska Commercial Company, you have probably before this received a communication upon the subject from the president of the company. The department commander is of opinion that if bonds are given for each of the districts, so called, into which the company has divided the coast they occupy, the object of the law will be attained. He leaves the matter, however, more to your judgment, as you are upon the ground and are better acquainted with the necessities of the case.

I am, sir, very respectfully, your obedient servant,

J. A. SLADEN,
Aid-de-Camp.

The COMMANDING OFFICER,
Sitka, Alaska.

WAR DEPARTMENT,
Washington City, October 5, 1875.

SIR: I have the honor to transmit for your information copy of complaint of the Board of Trade, Portland, Oreg., against Capt. J. B. Campbell, commanding Sitka, Alaska, and Indian agent for Alaska Territory, asking that certain orders of Captain Campbell's against the interests of trade and commerce be countermanded, and General Howard's report thereon.

Very respectfully, your obedient servant,

W. T. BARNARD,
Acting Chief Clerk, for the Secretary of War, in his absence.

The Hon. SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR,
Washington, October 19, 1875.

SIR: For your information, I have the honor to transmit herewith a copy of a report, dated the 16th instant, from the Commissioner of Indian Affairs, containing his views and suggestions in relation to certain orders issued by Captain Campbell, agent for the Indians in Alaska, which were the subject of complaint from the Board of Trade of Portland, Oreg., and of a report of General O. O. Howard, communicated to this Department in letter of the honorable the Secretary of War, dated the 5th instant.

The views of the Commissioner appear to be sustained by the laws, quoted by him, in relation to the subject to which I have the honor to invite your attention.

Very respectfully, your obedient servant,

B. R. COWEN,
Acting Secretary.

The Hon. SECRETARY OF WAR.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, D. C., October 16, 1875.

SIR: I have the honor to acknowledge the receipt, by reference from the Department, under date of the 6th instant, for my consideration and suggestions, of a letter from the War Department, inclosing a copy of complaint of board of trade, Portland, Oreg., against Capt. J. B. Campbell, commanding station, Sitka, Alaska, and Indian agent for Alaska Territory, asking that certain orders of Captain Campbell against the interest of trade and commerce be countermanded, and General Howard's report thereon.

In returning the War Department letter herewith, I have the honor to state that the treaty with Russia, concluded March 30, 1867, (Stat. at Large, vol. 15, p. 539,) by the terms of which the territory now known as Alaska was ceded to the United States, provides in the third article thereof that "The uncivilized tribes will be subject to such laws and regulations as the United States may from time to time adopt in regard to aboriginal tribes of that country."

The last section of an act of Congress approved March 3, 1873, (Stat. at Large, vol. 17, p. 530,) provides:

> That the laws of the United States relating to customs, commerce, and navigation, and sections twenty and twenty-one of an act to regulate trade and intercourse with Indian tribes and to preserve peace on the frontiers, approved June thirtieth, eighteen hundred and thirty-four, be, and the same are hereby, extended to and over all the main-land, islands, and waters of the territory ceded to the United States by the Emperor of Russia * * * so far as the same may be applicable thereto.

Sections 20 and 21 of the act of June 30, 1834, aforesaid, relate to the introduction or manufacture of liquor in the Indian country, and in my judgment none of the provisions of this or any subsequent law regulating intercourse with the Indian tribes are applicable to the Territory of Alaska, except the provisions of said sections 20 and 21.

The order of Captain Campbell is believed to be founded upon a mistaken idea as to the fact of the territory in question being properly considered Indian country and coming within the purview of the intercourse act, except as specifically mentioned.

With this view of the case, I am of the opinion that the restrictions

placed upon trade and commerce in Alaska by the provisions of Captain Campbell's orders aforesaid are not justified by law, and that such orders, so far as relates to everything except the twentieth and twenty-first sections of the intercourse act of 1834, should be revoked.

The letter of the War Department (with inclosures) is herewith returned.

Very respectfully, your obedient servant,

EDW. P. SMITH,
Commissioner.

The Hon. SECRETARY OF THE INTERIOR.

WAR DEPARTMENT,
ADJUTANT-GENERAL'S OFFICE,
Washington, October 28, 1875.

Respectfully referred to the commanding general, Military Division of the Pacific, for report. To be returned.

By order of the Secretary of War:

E. D. TOWNSEND,
Adjutant-General.

HEADQUARTERS MILITARY DIVISION PACIFIC,
San Francisco, November 8, 1875.

Respectfully referred to Maj. H. P. Curtis, judge-advocate Department of California, for examination of and report on the laws governing trade and intercourse with Indians in Alaska.

By order of Major-General Schofield:

J. C. KELTON,
Lieutenant-Colonel, Assistant Adjutant-General.

JUDGE-ADVOCATE'S OFFICE,
DEPARTMENT OF CALIFORNIA,
November 11, 1875.

Respectfully returned with report called for in accompanying paper, marked A.

H. P. CURTIS,
Judge-Advocate Department.

Report, marked A.

JUDGE-ADVOCATE'S OFFICE,
HEADQUARTERS DEPARTMENT OF CALIFORNIA,
San Francisco, November 11, 1875.

GENERAL: I respectfully return the accompanying package of papers, referred to me for examination and report on the laws governing trade and intercourse with Indians in Alaska.

An inclosed letter to the Secretary of the Interior, from the Commissioner of Indian Affairs, speaks of a letter from the War Department, inclosing copy of complaint from board of trade, Portland, Oreg., against Captain Campbell, commanding at Sitka, and also a report from Gen-

eral O. O. Howard thereon. Neither of these papers accompanies those now returned.

The treaty of 1867, whereby Russia ceded Alaska to the United States, provided, in its third article, that "the uncivilized tribes will be subject to such laws and regulations as the United States may from time to time adopt in regard to aboriginal tribes of that country."

This provision is in the future tense throughout, and appears to have left the Alaska Indians unprotected by any laws in regard to intercourse with the whites, which were in force in the other parts of the United States at the time of the treaty.

Congress, in July, 1868, enacted a law extending to Alaska the laws of the United States relating to commerce, customs, and navigation, and in the fourth section, doubtless with a reference to the Indian tribes there residing, gave the President of the United States "power to restrict and regulate or prohibit the importation and use of fire-arms, ammunition, and distilled spirits into and within the said Territory."

Pursuant to the power thus conferred, the President has, from time to time, made proclamations regulating the introduction of these articles into Alaska.

The act of 1868, just referred to, was amended March 3, 1873, so that the enactment now reads, "The laws of the United States relating to customs, commerce, and navigation, and *sections* 20 *and* 21 of an act to regulate trade and intercourse with Indian tribes and to preserve peace on the frontiers, approved June 30, 1834, be, and the same are hereby, extended to and over all the main-land, islands, and waters of the Territory of Alaska."

Section 20 of the act of 1834 relates to the introduction, sale, or barter of liquor to Indians in the Indian Territory, and provides the punishment for doing so. Section 21 prohibits the manufacture of liquor *within* the Indian country.

By section 20 the power of regulating the introduction of liquors into the Indian country was vested in the War Department. By the act of 1868 the President had unlimited discretion over the introduction and use of spirits in Alaska. Congress, by adopting, in 1873, the above-cited section of the act of 1834, now prohibits the introduction of spirituous liquors in said Territory, unless authorized by the War Department.

So far, then, as the introduction and use of liquors are concerned, Alaska is, I think, "Indian country," but no further. The President can regulate or prohibit the introduction of arms and ammunition into Alaska; the introduction of liquor is exclusively under the control of the War Department.

But Alaska is Indian country no further than this goes. Congress, by providing that sections 20 and 21 of the act of 1834 *should* be in force in Alaska, implied that the remaining provisions of that act should *not*.

It has never, so far as I am aware, been expressly declared that Alaska should be considered as part of the Indian country. The act of 1834 defines the Indian country to be "all that part of the United States west of the Mississippi and not within the States of Missouri or Louisiana or Territory of Arkansas, and also that part of the United States east of the Mississippi River, and not within any State, to which the Indian title has not been extinguished."

At the time of the passage of this act the United States did not embrace Texas, New Mexico, California, or Oregon, and certainly not Alaska. Clearly these Territories were not embraced within the Indian

country; and Congress has, by repeated enactments, extending some or all of the provisions of the law of 1834 to other and later-acquired regions, shown its opinion to be that subsequent legislation was required to bring these regions within its provisions. Congress not having done this for Alaska, except in respect to the law for excluding spirits, that Territory is not Indian country, except in that single sense. Aside from this one thing, then, I am of the opinion that Alaska stands on an equality with all other portions of the United States in respect to the laws of commerce, customs, and navigation, which have nothing to do with trade or intercourse with Indian tribes, and that the provisions of the law of 1834, requiring permits to trade, the employment of the military to exclude white men and foreigners, the giving of bonds by traders, &c., are not in force within its limits.

The "Indian country," strictly so called, which was called into official existence by the act of 1834, was a region set aside by Congress for the exclusive occupation of Indians. All citizens of the United States—all white men—were to be rigidly excluded, except a few traders, who were allowed to visit it from time to time for the benefit and convenience of the Indians; and these traders were to be carefully watched, and visited with heavy penalties, including expulsion from the country, in case of any violation of the law which gave them admission.

It is not probable that Congress purchased Alaska at a cost of nine millions of dollars with any such purpose as this.

To apply the foregoing observation to Orders No. 96 and No. 110 of Captain Campbell, against which it appears that protests have been made, I cannot avoid the conclusion that that officer has exceeded his authority in treating the Territory of Alaska as "Indian country," from which traders are to be excluded, unless on the condition of giving heavy bonds; and that, with the exception of those provisions of law which bear on the introduction and sale of liquor, and its manufacture within the Territory, the various clauses selected and published by him from the United States Revised Statutes are not applicable, and do not justify the position he has taken.

In the inclosed copy of letter from General Howard to Captain Campbell of July 28, 1875, General Howard approves of the publication of these clauses by that officer, and remarks that they should be enforced in Alaska; "which," he says, "is construed as Indian country under the decision of the Attorney-General of the United States." I know of no such decision. It certainly is not found with the inclosed papers now returned. If General Howard refers, as is possibly the case, to the Attorney-General's opinion of November 13, 1873, published in General Orders No. 40, War Department, a copy of which is inclosed, he has, I think, misunderstood or inadvertently overlooked one important modifying clause. The Attorney-General, in discussing in that opinion the right of the War Department over the introduction of liquor into Alaska, adds: "My opinion, therefore, is that, *as to this matter*, Alaska is to be regarded as Indian country, and that no spirituous liquors or wines can be introduced into the Territory without an order by the War Department for that purpose."

"As to this matter" means, I cannot doubt, the introduction and manufacture of spirits, and, so far as these are concerned, Alaska is clearly by law Indian country, but, I submit, no further than this. The same mistake (if it be a mistake) may have been made by Captain Campbell, or it is not impossible that that officer has been misled to some extent (on the assumption of course that my view of the law is right) by the opening paragraph of the order referred to, namely, Gen-

eral Order No. 40, in which it is rather too broadly laid down that the act of 1873 has extended "the laws of the United States relating to customs, commerce, navigation, and trade and intercourse with Indian tribes, &c.," over the Territory of Alaska. What the act of 1873 did do I have already stated, and that it did not do what is here alleged is apparent from the act itself, quoted in the same order. To this inadvertent misstatement may perhaps be attributed what is, in my judgment, an unwarrantable expansion of jurisdiction on the part of Captain Campbell.

One remark in addition, on the subject of the introduction of liquor into Alaska, may, perhaps, be permitted. And this is, that to me it appears quite doubtful whether, under the law as it now stands, the Secretary of War, or any person authorized by him, can now legally permit the introduction of spirits into the Territory of Alaska, except when intended for the officers of the United States, or troops of the service, and in my opinion further legislation by Congress is required to legalize the contrary practice which now obtains. What Congress meant to do is one thing; what they have done, seems to me quite another. Section 20 of the act of 1834 imposes a penalty upon any person who shall sell, exchange, give, &c., any spirituous liquor or wine to an Indian, (in the Indian country,) or who should introduce, or attempt to introduce, any spirits or wine into the Indian country, except such supplies as shall be necessary for the officers of the United States and troops of the service, under direction of the War Department.

By the act of February 13, 1862, this section (20) was amended, by providing that "it shall be a sufficient defense to any charge of introducing or attempting to introduce liquor into the Indian country, if it be proved to be done by order of the War Department, or of any officer duly authorized thereto by the War Department."

But the act of 1873, before referred to, which extended to Alaska the laws of the United States relating to customs, commerce, and navigation, extended also to that region sections 20 and 21 of the act of 1834. The act of 1873 did not, at least in terms, extend section 20 and *its amendment* to Alaska, but expressly enacted that *section* 20 *of the act of* 1834 should be so extended. I feel considerable doubt, therefore, whether under the strict law any liquor can be admitted into Alaska, except for the use of officers of the United States and troops of the service.

In an opinion of the Attorney-General, dated June 3, 1874, and published in General Orders, War Department, No. 57, 1874, that officer, in answer to the precise question, "whether the War Department has authority to admit spirits or wines into Alaska, when not for the use of officers or troops," decided that it *can* do so. I fail to understand his reasoning, and believe its soundness open at least to question.

Undoubtedly, so long as this opinion of the Attorney-General remains in force, and unreversed by any higher authority, there can be no doubt of the propriety of continuing the present practice; but it is dubious, in my opinion, whether that practice can be justified under a rigid or even a fair construction of the law as it stands.

Respectfully submitted.

H. P. CURTIS,
Judge-Advocate Department.

The ASSISTANT ADJUTANT-GENERAL,
Military Division of the Pacific, San Francisco, Cal.

HEADQUARTERS MILITARY DIVISION OF THE PACIFIC,
San Francisco, November 13, 1875.

Respectfully referred to the commanding officer, Department of the Columbia, for his report, inviting attention to the opinion of the judge-advocate, Department of California, inclosed herewith.

These papers to be returned.

By order of Major-General Schofield:

J. C. KELTON,
Lieutenant-Colonel, Assistant Adjutant-General.

HEADQUARTERS DEPARTMENT OF THE COLUMBIA,
Portland, Oreg., December 22, 1875.

Respectfully returned to the assistant adjutant-general, Military Division of the Pacific.

After a careful perusal of the laws, orders, and opinion of the Attorney-General, (August 12, 1873,) relating to the question of Alaska being considered as Indian Territory, I came to the decided conclusion that "Alaska is Indian Territory." I was much supprised at the adverse opinion of the Indian Bureau and of Major Curtis.

I have requested Major Wood, assistant adjutant-general, to make a careful examination of the whole subject, with a view to help me make up the report required by the foregoing indorsement.

This he has done, making an examination of all the laws bearing upon this subject, and furnishing the inclosed exhaustive report.

In the conclusions of this report I fully concur, and believe the War and Interior Departments will preserve uniformity and consistency of action by taking the same views, until further legislation shall relieve us from all responsibility in the matter.

I have suspended such action of Captain Campbell in Alaska, under his Orders 96 and 110, current series, as conflict with my views of a judicious enforcement of the trade and intercourse laws, until further instructions from superior authority.

O. O. HOWARD,
Brigadier-General, Commanding.

HEADQUARTERS DEPARTMENT OF THE COLUMBIA,
Portland, Oreg., December 16, 1875.

SIR: By your direction I have the honor to submit the following report:

The first section, after the enacting clause, of the act of Congress, approved June 30, 1834, "to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers," reads, "That all that part of the United States west of the Mississippi, and not within the States of Missouri and Louisiana or the Territory of Arkansas, and, also, that part of the United States east of the Mississippi River, and not within any State, to which the Indian title has not been extinguished, for the purposes of this act, be taken and deemed to be the Indian country."

The treaty ceding the Russian possessions in North America—now styled Alaska Territory—to the United States, was concluded March 30, 1867; ratified by the United States May 28, 1867; ratifications exchanged June 20, 1867; and proclamation made by the United States June 20, 1867.

The question presented substantially is: Is Alaska Territory Indian country, within the meaning of the statutes of the United States?

To apply, in part, the language of Attorney-General Cushing, (VII Opinions, p. 295,) Alaska "is a part of the United States. As such it is subject to all laws which the General Government may make or enact within the Constitution. It no more needs, in any general act of Congress, to mention" Alaska "specially, than it does to mention each one of the other States and Territories *nominatim*. The local application of acts of Congress depends on their subject-matter. All general acts of Congress have applications as such. Speciality of application is the exception"—not the rule—"and must be specially set forth, either by inclusion or exclusion, in the act of Congress."

But it is said that Alaska "is not, geographically speaking, a part of 'the Indian country,' as described by the act of Congress."

Why not? The terms of the act are: "All that part of the United States west of the Mississippi, and not within the States of Missouri and Louisiana or the Territory of Arkansas, and, also, that part of the United States east of the Mississippi River, and not within any State, to which the Indian title has not been extinguished," shall, "for the purposes of this act, be taken and deemed to be the Indian country." Why, I repeat, does not this description apply to Alaska with mathematical precision of certainty? Is not Alaska a part of the United States west of the Mississippi?

Moreover, it seems to be mistakenly supposed that "the Indian country," in the acts of Congress, is inclusive or exclusive of certain political boundaries of organization. Not so. It applies in general to such portions of the acquired territory—I repeat the word, *acquired* territory—"of the United States, as are in the actual occupation of Indian tribes, and wherein their title of occupancy has not been extinguished, either by cession to the United States or to individuals with sanction of the United States."

"The Indians are acknowledged to have an unquestionable, and, heretofore, unquestioned, right to the lands they occupy, until that right shall be extinguished by a voluntary cession to our Government." (The Cherokee Nation *vs.* The State of Georgia, 5 Peters, p. 17.)

There are upward of sixty thousand (60,000) Indians in Alaska Territory, dispersed in numerous tribes and bands.

Whatever may have been the legal status of these Indians under the imperial government, it will not be contended, it is presumed, that, so far as the United States is concerned, the Indian title has been extinguished either by cession to the United States or otherwise. Indeed, March 3, 1871, Congress forbade future treaties with Indian tribes.

In an opinion delivered December 10, 1872, by the United States district judge for the district of Oregon, while deciding adversely on the main question, on the ground that the act of 1834 is a *local* act, Judge Deady uses this language: "I can see no good reason why any *general* law of the United States does not become in force at once, in any country *acquired* by it, *without reference to the time of its passage.*"

The United States district attorney, in that case, maintained "that Alaska is a part of 'the Indian country,' because it is inhabited by Indians, and because the *act defining 'the Indian country' and regulating trade and intercourse with Indians*, and all other acts of Congress not locally inapplicable, were extended over the country, *proprio vigore, as soon as it was acquired* from Russia."

So far as its provisions are applicable to new territory, the act of 1834

is a general law. "The application of this, as of any other general law, is a question of the subject-matter."—Cushing. It would be just as reasonable to say that the revenue laws of the United States were not general laws. The moment the United States acquired the Territory of Alaska, all general laws of the United States, so far as applicable, "by their nature, subject-matter, or general tenor," were *ipso facto* in force in Alaska.

In the Supreme Court of the United States, in the case Cross *vs.* Harrison, (16 Howard, p. 164,) this question was presented: Whether upon the ratification of the treaty for the cession of California the existing several laws came into operation so as to regulate the rate of duties on imported goods without any act of Congress declaring their will in that respect, and creating collection-districts. The court held "that the ratification of the treaty made California a part of the United States, and that, as soon as it became so, the Territory instantly became subject to the acts which were in force to regulate foreign commerce with the United States."

The argument was urged in that case that the revenue laws applied only to the territory under our jurisdiction when they were passed, until Congress, by creating collection-districts in the new territory, or some other act of the same nature, had manifested its will that the laws should be thus applied. That argument was overruled by the court, and reasoning by analogy, the adverse argument in this case, which is precisely identical, viz, that the act of 1834 is restricted in its operation to the region of country west of the Mississippi, *at the time of the passage of the act*, would be overruled, in respect to commerce with the Indian tribes in Alaska.

In a letter, dated January 30, 1869, concerning the alleged habitual encroachment of the agents of the Hudson Bay Company upon the trade and Territory of Alaska, addressed to Hon. John M. Schofield, Secretary of War, the late Secretary of State, Mr. Seward, writes: "I understand the decision of the Supreme Court of the United States in the case of Harrison *vs.* Cross, (16 Howard, 164–202,) to declare its opinion that upon the addition to the United States of new territory, by conquest and cession, the acts regulating foreign commerce attach to and take effect within such territory *ipso facto* and *without any fresh act of legislation* expressly giving such extension to the pre-existing laws. I can see no reason for a discrimination in this respect between acts regulating foreign commerce and the laws regulating intercourse with the Indian tribes; there is, indeed, a strong analogy between the two subjects. The Indians, if not foreigners, are not citizens, and their tribes have the character of dependent nations under the protection of their government. As Chief-Justice Marshall remarks, delivering the opinion of the Supreme Court in Worcester *vs.* The State of Georgia, (6 Peters, 557:) 'The treaties and laws of the United States contemplate the Indian territory as completely separated from that of the States, and provide that all intercourse with them shall be carried on exclusively by the Government of the Union.' The same clause of the Constitution invests Congress with power 'to regulate commerce with foreign nations, * * * and with the Indian tribes.' The act of June 30, 1834, (4 Stat., 729,) defines the Indian country as, in part, 'all that part of the United States west of the Mississippi and not within the States of Missouri and Louisiana or the Territory of Arkansas.' This, by a happy elasticity of expression, widening as our dominion widens, includes the territory ceded by Russia."

And here allusion may be permitted to the question: Whether the

act of July 27, 1868, does not *de facto* extend the act of 1834 over Alaska? By section first of that act "the laws of the United States relating to customs, *commerce*, and navigation" were extended over that country, and this language, taken unqualifiedly, is broad enough to carry with it the laws regulating "trade and intercourse" with the Indian tribes in Alaska.

The power to regulate commerce, as stated above, is conferred upon the National Government by the Constitution (art. 1, sec. 8, par. 3) in the same language and upon the same terms in the case of "foreign nations," "the several States," and "the Indian tribes." It is under this clause that Congress exercises the power to regulate trade and intercourse with the Indian tribes, as well without as within the Indian country. United States *vs.* Cisna, (1 McLean, 260;) United States *vs.* Holliday, (3 Wallace, 416) In the leading case of Gibbons *vs.* Ogden, (9 Wheaton, 189,) Chief-Justice Marshall says: "Commerce, undoubtedly, is traffic, but it is something more: *it is intercourse.*"

Unless, then, there is something in the circumstances of the case or in the act from which it appears that Congress did not intend to use the phrase "laws relating to commerce" in an unqualified sense, it follows that the act of 1834 is in force in Alaska, as a regulation of commerce with the Indian tribes therein."

The fact that Congress—"apparently assuming" that territory acquired since the passage of the act of 1834, in the case of Utah, New Mexico, Oregon, &c., was not within the limits of "the Indian country" as described in said act—has extended the laws regulating trade and intercourse with Indian tribes, or such provisions of the same as are applicable, over the Indian tribes in said Territory, should not have weight as an adverse argument in this matter, since I believe it to be capable of demonstration that Congress has not so legislated through any doubt on its part that the general laws of the United States, on the acquisition of new territory, by the *act itself* of cession or conquest, immediately are in force, so far as they are applicable, in the new territory, but, as in the case of Oregon, to settle definitely and speedily disputed questions, which had arisen among frontiersmen in said Territory originating in encroachments upon the Indians by the whites, and probable retaliation on the part of the Indians. Like acts to quiet titles, these various extension acts were to quiet a conflict of races upon the frontier. They gave *beyond peradventure* law and judicial jurisdiction to a region of country in which frontiersmen, through self-interest or ignorance, contended there was no law but their own wills.

Upon this point Judge Deady, in the opinion, (*supra*,) says: "It has been so common the habit of Congress upon the acquisition of territory to specially extend the laws of the United States over it, that an impression seems to prevail that without such action these laws would not affect territory *acquired after their passage.*" And then follows the language quoted above: "For my own part, I see no good reason why any general law of the United States does not become in force at once, in any country acquired by it, *without reference to the time of its passage.*"

I do not conceive that the understanding of the framers of any law (opinion of Attorney-General Williams, dated August 12, 1875) can have an important bearing upon the question of its interpretation, unless that understanding is so clearly consistent with the manifest interpretation of the law as to leave no room for doubt. The object or intent of any action may be clearly understood; but the consequences of the act may be vastly different from what the actor intended or anticipated.

Attorney-General Williams says, "In the report [of committee] just

cited, it is remarked with reference to the Indian country as defined in the first section of that act: 'On the west side of the Mississippi its limits can only be changed by legislative act.'" This expression is surplusage and irrelevant, for it has already been shown that the terms of the very act are not restrictive, but include within its ample provisions "all that part of the United States west of the Mississippi" *now* as then.

The conclusions, as a result of their reasoning, at which the Commissioner of Indian Affairs and the judge-advocate, Major Curtis, in considering the act of March 3, 1873, have arrived, viz: That "Congress, by providing that sections 20 and 21 of the act of 1834 *should* be in force in Alaska, implied that the remaining provisions of that act should *not*," show that they—as also Attorney-General Williams—are not aware of the cause which instigated the passage of that act. In the opinion (*supra*) dated December 10, 1872, declining jurisdiction over offenses committed in Alaska, Judge Deady decided that the jurisdiction of the district court for the district of Oregon, "over offenses committed in Alaska, is conferred by section 7 of the act of July 27, 1868, and by such section confined to violations of that act and of the laws 'relating to customs, commerce, and navigation.'"

Congress thereupon was requested to pass the act of March 3, 1873, amending the first section of the act of July 27, 1868, so as to embrace sections 20 and 21 of the act of 1834 in the act of 1868, because, then, under Judge Deady's own decision, by the seventh section of the act of 1868, the United States district court for Oregon *would have jurisdiction* of the offenses named in said sections committed in Alaska. Whether sections 20 and 21, or any other sections of the act of 1834, were in force in Alaska or not was not presented to Congress for its consideration, or acted upon by Congress; but it was requested to enact a law simply to fix the question of *jurisdiction* of the United States district court for Oregon over offenses committed in Alaska.

Of this fact I am aware, because the initiatory steps to secure this legislative action were taken by the late General Canby, December 13, 1872, and on account of the opinion (*supra*) of Judge Deady, declining jurisdiction.

And just here it may be remarked that the act of March 3, 1873, is not found in the Revised Statutes of the United States. In its stead appears the *original* first section of the act of July 27, 1868; the words, "and sections 20 and 21 of an act to regulate trade and intercourse with Indian tribes and to preserve peace on the frontiers,' approved June thirtieth, eighteen hundred and thirty-four," through oversight or design, have been omitted. (See section 1954.)

The third article of the treaty with Russia, in which article alone reference is made to Indians, reads: "The inhabitants of the ceded territory, according to their choice, reserving their natural allegiance, may return to Russia within three years; but if they should prefer to remain in the ceded territory, they, with the exception of uncivilized native tribes, shall be admitted to the enjoyment of all the rights, advantages, and immunities of citizens of the United States, and shall be maintained and protected in the free enjoyment of their liberty, property, and religion. *The uncivilized tribes will be subject to such laws and regulations as the United States may, from time to time, adopt in regard to aboriginal tribes of that country.*"

The exception "uncivilized native tribes," in this article, merely restricts the word "inhabitants," and is not material to the question. The text of the article italicized is all that can be construed as in any manner pertinent to the question, and I am unable to see why this sen-

tence might not have been omitted from the treaty. It seems to have been added to the article to finish some incomplete conception connected with the use of the words "uncivilized native tribes," in the exception. It certainly adds nothing to the force of the treaty. It is a mere statement of a self-evident truth. The Constitution "confers on Congress the powers of war and peace, of making treaties, and of regulating commerce with foreign nations, and among the several States, and with the Indian tribes. These powers comprehend all that is required for the regulation of our intercourse with the Indians. They are not limited by any restrictions on their free actions. * * * The treaties and laws provide that all intercourse with Indians shall be carried on exclusively by the Government of the Union. * * * From the commencement of our Government Congress has passed acts to regulate trade and intercourse with the Indians." (Worcester *vs.* The State of Georgia, 6 Peters, pp. 557–'9.) The acts of Congress regulating trade and intercourse with Indians were extended over Alaska, *proprio vigore;* as soon as it was acquired from Russia. It was then a physical necessity—the "uncivilized native tribes" passing by the act of cession under the ægis of the general laws of the Government not locally inapplicable—that "such laws and regulations as the United States may, from time to time, adopt," should regard *the future*, as Major Curtis remarks.

The treaty left the Alaska Indians precisely in the same condition as are all our Indians to-day, "subject to such laws and regulations," under the Constitution, "as the United States may, from time to time, adopt in regard to" them.

I do not comprehend that fine, metaphysical, vague reasoning which regards Alaska as Indian country in one case, but *perhaps* not in another case. If one desires to introduce liquor, it *is* Indian country; if he does not it *is not* Indian country, or doubtful. This method of reasoning calls to mind the interview between Hamlet and Polonius. Yonder cloud has the shape of a camel, weasel, or whale, depending upon the medium through which it is seen. Alaska is Indian country, or not, according to the stand-point from which it is viewed. My opinion is that Alaska *is* Indian country, or *it is not* Indian country. If it is Indian country for any purpose it is Indian country for all.

The reasoning of my opponents would leave the Indians in Alaska utterly without law and protection, except as provided in the act of July 27, 1868, as it was made to read by the act of March 3, 1873.

I think it then unquestionable—though it may seem presumptuous to question such distinguished authorities—that Alaska is Indian country within the meaning of the Indian trade and intercourse laws, and that the new Territory became a part of the Indian country June 20, 1867.

How far the act of 1834 or any of its provisions may be superseded or affected by the sections of the Revised Statutes, title 28, Indians, I do not purpose to inquire; still it may be remarked that several of these sections, 2058, 2062, 2066, 2111, 2128, 2136, (and perhaps others,) published in Captain Campbell's orders, are not limited to "the Indian country," whatever that may be, but have application *prima facie* wherever within the limits of the Federal domain the subject-matter exists.

Nearly, if not quite, all the provisions of the act of 1834 are included in the Revised Statutes, and it is well to notice that section 5595 expressly states that the "seventy-three titles embrace the statutes of the United States *general and permanent* in their nature."

The legality of the orders, Nos. 96, of July 12, and 110, of August 19, 1875, of Captain Campbell, post commander, (and Indian agent,) Sitka, Alaska Territory, in my judgment cannot be questioned. I do not

think the post commander has exceeded his authority. It is "the law and not the publication thereof that is at fault." I advise, however, that the post commander at Sitka be instructed to revoke these orders.

It is presumed the General Government would gladly see a hardy, enterprising, and industrious people forming permanent homes in the new Territory, and by wise and fostering legislation would encourage its early settlement. The rigid enforcement in Alaska of some of the provisions of the Indian trade and intercourse laws would operate rather to encourage monopolies, drive away settlers, and depopulate the Territory. The applicability of these laws may be considered in two senses. In a legal sense their applicability in Alaska is, in my judgment, clear and certain. In the sense of *the wisdom of the enforcement* of some of their provisions in Alaska, I am of opinion that they are wholly inapplicable, and for the reasons just stated. I think their attempted enforcement as contemplated by the orders of the post commander at Sitka is at least not advisable; from my stand-point, it is injudicious and unwise, as tending to a severity of military rule not demanded by the condition of affairs in that country. So long as the inhabitants, including Indians, are generally peaceable and orderly, let the country drift, until Congress shall provide a government therefor to be administered by civil authority.

With reference to the collateral question raised by the judge-advocate of the Department of California, whether spirituous liquor or wine can lawfully be introduced into the Territory of Alaska by order of the War Department or any person duly authorized thereunto by the War Department, *except such supplies are intended for the officers of the United States and troops of the service*, and relative to which he remarks, "it is dubious, in my opinion, whether that practice can be justified under a rigid or even a fair construction of the law as it stands;" and, "further legislation by Congress is required to legalize the contrary practice which now obtains," the opinion of Attorney-General Williams is believed to be correct, and sanctioned by law.

The phrase "except such supplies as shall be necessary for the officers of the United States and troops of the service," in the twentieth section of the act of 1834, does not appear in the amendatory acts of February 13, 1862, and March 15, 1864, which are, so far as the point in issue is concerned, substantially the same.

The act of March 15, 1864, is really a substitute for the entire twentieth section of the act of 1834, and in effect worked a repeal of all parts of the original section in conflict therewith. The act of 1864 replaced the original twentieth section of the act of 1834, and became a part of said act, and when Congress, March 3, 1873, amended the first section of the act of July 27, 1868, it extended the *amended* section 20 (now a part of the original act) "to and over all the main-land, islands, and waters" of the Territory of Alaska.

Indeed, the question of jurisdiction, by the United States district court for Oregon, of criminal offenses in Alaska, (*supra*,) turned upon the ruling by the court that the amendatory act of March 3, 1873, became a substitute for or replaced the first section of the act of July 27, 1868, and consequently, the act having been so amended, the seventh section of the original act conferred upon the district court of the United States for Oregon jurisdiction of violations of sections 20 and 21 of the act of 1834 in Alaska.

Therefore, when Congress passed the act of March 3, 1873, the *original* twentieth section had no legal existence. It was as if expunged from the statute-book; and in its place appeared the act of March 15, 1864, as *the* twentieth section of the act of 1834.

The act of March 3, 1873, did not revive, *vivify*, the original twentieth section, but extended the twentieth section of the act of 1834 as the act existed or read March 3, 1873.

Unless by an utter disregard of all the rules applicable to the interpretation of statute law, the question cannot be regarded as doubtful.

However, whether the opinion of the Attorney-General Williams, and the views here expressed, are sound and logical or not, the question is definitely and conclusively settled beyond dispute, now, by the act of Congress, approved June 22, 1874—the Revised Statutes of the United States—in which act the amended section is re-enacted, the phrase "except such supplies as shall be necessary for the officers of the United States and troops of the service," having been omitted. Section 2139, and see marginal reference, (March 15, 1864.)

Respectfully submitted.

H. CLAY WOOD,
Assistant Adjutant-General.

Brig. Gen. O. O. HOWARD,
Commanding.

HEADQUARTERS MILITARY DIVISION OF THE PACIFIC,
San Francisco, January 3, 1876.

Respectfully forwarded to the Adjutant-General, inviting attention to the conflicting opinions expressed in the reports of the judge-advocate Department of California and assistant adjutant-general Department of the Columbia.

I do not think it incumbent upon me to even express an opinion upon the subject; but I have no hesitation in recommending that Congress provide by law, for the Territory of Alaska, a government suited to its condition.

J. M. SCHOFIELD,
Major-General.

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