

IN THE SENATE OF THE UNITED STATES.

JANUARY 12, 1880.—Ordered to be printed.

MR. MAXEY, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany bill S. 317.]

The Committee on Military Affairs, to whom was referred the bill (S. 317) for the relief of Capt. J. B. Campbell, having carefully considered the same, respectfully submit the following report:

The letter below was addressed by the Secretary of War to the chairman of the committee:

WAR DEPARTMENT,
Washington City, April 19, 1879.

SIR: I have the honor to return Senate bill 280, for the relief of Capt. J. B. Campbell, together with House Report No. 91, Forty-fifth Congress, third session, containing full information in this case from the records of this department.

Very respectfully, your obedient servant,

GEO. W. MCCRARY,
Secretary of War.

Hon. T. F. RANDOLPH,
Chairman Committee on Military Affairs,
United States Senate.

It will be observed that the Secretary of War states that House Report No. 91, Forty-fifth Congress, third session, contains full information in this case from the records of this department. That report is as follows:

[House Report No. 91, Forty-fifth Congress, third session.]

JANUARY 31, 1879.—Committed to the Committee of the Whole House and ordered to be printed.

MR. BRAGG, from the Committee on Military Affairs, submitted the following report, to accompany bill H. R. 6271:

The Committee on Military Affairs, to whom was referred a communication from the Secretary of War recommending the passage of an act for the relief of Capt. J. B. Campbell, of the United States Army, beg leave to report:

That they have carefully considered said communication and accompanying documents, and recommend the passage of the bill prepared by the committee.

WAR DEPARTMENT,
Washington City, February 15, 1878.

The Secretary of War has the honor to transmit to the House of Representatives a copy of a communication from Capt. J. B. Campbell, Fourth Artillery, and other papers, in regard to the suit recently brought against him by Hugh Waters in the United States circuit court of Oregon; and as the suit was brought for acts done in his official capacity and in obedience to specific orders, he asks that the government assume the payment of the judgment against him and costs, amounting to \$2,291.85.

It will be seen from the indorsement of General McDowell, commanding the Military Division of the Pacific, that Captain Campbell was acting in the line of his duty

In obeying the orders of his military superiors and in carrying out sections 1957, 2150, and 2151 of the Revised Statutes.

This matter is therefore respectfully submitted, with the urgent recommendation that an act be passed at the present session of Congress for the relief of Captain Campbell.

GEO. W. MCCRARY,
Secretary of War.

The SPEAKER of the House of Representatives.

COPIES OF PAPERS RELATIVE TO SUIT BROUGHT AND JUDGMENT OBTAINED BY HUGH WATERS AGAINST CAPT. J. B. CAMPBELL, FOURTH ARTILLERY, FOR ACTS DONE IN HIS OFFICIAL CAPACITY AS COMMANDING OFFICER, POST OF SITKA, ALASKA, &c., AND FROM WHICH JUDGMENT, COSTS, &c., CAPTAIN CAMPBELL NOW PRAYS RELIEF.

Official copies.

E. D. TOWNSEND,
Adjutant-General.

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,
Washington, February 14, 1878.

[Occident Hotel, Megler & Wright, proprietors.]

HEADQUARTERS BATTALION FOURTH ARTILLERY,
EN ROUTE, AT ASTORIA, OREG.,
June 27, 1876.

Maj. H. CLAY WOOD, Assistant Adjutant-General,
Headquarters Department of the Columbia :

I respectfully inform the commanding general that one Hugh Waters, late of Wrangel, Alaska, who was arrested in August, 1874, at Wrangel, Alaska, as one of the firm of Curry & Waters, for selling liquor at Wrangel, in violation of the laws of the United States, has to-day instituted suit against me personally in the circuit court of Oregon for Clatsop County for false imprisonment, laying damages in the sum of \$25,000. It is answerable in ten days from date in pain of default. Of course this is one of many such things that I suppose will be attempted, and they must be brought before the United States district court, as all my operations in Alaska were as a public officer of the United States, carrying out and executing United States law. I have had no time to see anybody concerning the matter this evening, but will take the necessary steps to have the case postponed until it can be transferred to the United States district court.

I cannot remain behind my command, and will only do what is necessary to tide the matter over for the present. I respectfully request you to procure the authority of the War Department and Department of Justice to have this case properly and thoroughly defended, and that it be done with the utmost promptness. I should be relieved of all expense in the matter, as all I did as commanding officer of Sitka was done by the positive and direct order of my superiors.

I do not exactly know the process by which a case is transferred from a State to a United States court; but if action of the judge or district attorney is necessary, please procure them. Robert Fulton and Page & Yocum are attorneys for the plaintiff.

Please give this matter the most prompt attention, and have me relieved of the expenses I may have to undergo here in the way of counsel. Let me hear from you by return of mail.

Respectfully, your obedient servant,

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

[First indorsement.]

HEADQUARTERS DEPARTMENT OF THE COLUMBIA,
Portland, Oreg., July 10, 1876.

Respectfully forwarded to the assistant adjutant-general, Military Division of the Pacific, inviting attention in this connection to the views indorsed October 6, 1875, by the assistant adjutant-general (subsequently carefully considered and concurred in by me), upon the application of Lieutenant Boyle, Twenty-first Infantry, for counsel in a similar case.

The request of Captain Campbell for authority to employ counsel to defend him is urgently recommended for approval.

Judge W. W. Upton, in this city, by request of Captain Campbell, prepared necessary papers for the transfer of the case from the State court to the United States court, and will have charge of and conduct the defense until concluded, it being understood that it is no part of the duties of the United States district attorney to undertake the defense of an Army officer in such cases. I therefore recommend the employment of Judge Upton in this case.

The plaintiff, Hugh Waters, was arrested at Fort Wrangel, October 24, 1874 (one of the firm of Curry & Waters), for violation of section 20, act of Congress approved June 30, 1834, introducing spirituous liquors into the Indian country, and discharged by United States Commissioner Wilcox June 8, 1875, improperly, as I think, for there is clear evidence that Curry & Waters were keeping open bar and selling liquor at Fort Wrangel.

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

[Second indorsement.]

HEADQUARTERS MILITARY DIVISION PACIFIC,
San Francisco, July 17, 1876.

Respectfully forwarded to the Adjutant-General.
In the absence of the division commander.

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

[Third indorsement.]

ADJUTANT-GENERAL'S OFFICE,
Washington, July 27, 1876.

Respectfully submitted to the Secretary of War, with copy for the Department of Justice.

E. D. TOWNSEND,
Adjutant-General.

WAR DEPARTMENT,
Washington City, July 29, 1876.

SIR: I have the honor to inclose copy of letter from Capt. J. B. Campbell, Fourth Artillery, dated the 27th ultimo, reporting that suit has been brought against him by Hugh Waters, late of Wrangel, Alaska, and beg to invite your attention to the indorsement of General Howard.

The counsel mentioned by General Howard has not been employed by direction of this department, nor does it concur in his views as to duties of United States attorney.

I have respectfully to request that the defense of Captain Campbell be undertaken by such officer as the Department of Justice may direct.

Very respectfully, your obedient servant,

J. D. CAMERON,
Secretary of War.

The Hon. ATTORNEY-GENERAL.

DEPARTMENT OF JUSTICE,
Washington, August 1, 1876.

SIR: Replying to your letter of the 29th ultimo, I have the honor to inform you that I have this day instructed Rufus Mallory, esq., United States attorney for the district of Oregon, to appear in defense of Capt. J. B. Campbell, Fourth Artillery, in the suit for assault and battery and false imprisonment brought against him by one Hugh Waters, late of Wrangel, Alaska, the ground of the action being the arrest of said Waters by Captain Campbell in August, 1874, at Wrangel, for selling liquor in violation of the law of the United States.

Very respectfully, your obedient servant,

ALPHONSO TAFT,
Attorney-General.

Hon. J. D. CAMERON,
Secretary of War.

HEADQUARTERS POINT SAN JOSÉ, CAL.,
September 23, 1877.

To the Hon. SECRETARY OF WAR. (Through Headquarters Military Division of the Pacific:)

I respectfully ask your attention to the following:

In August, 1874, I was ordered to Sitka, Alaska, in command of Companies F and L, Fourth Artillery. While *en route* for that place from San Francisco, I was met at Astoria, Oreg., by Brevet Maj. Gen. J. C. Davis, U. S. A., then commanding the Department of the Columbia, who especially called my attention to General Orders Nos. 40 and 57, War Department, series of 1874, and to General Order No. , Headquarters Department of the Columbia, of 1874. He told me that my conduct as commanding officer must be guided strictly by the above-mentioned orders, and that he should expect me to exert as much energy and perseverance in carrying out their provisions as possible. He told me he knew from personal experience that the command was a difficult and arduous one at all times, and that it would be especially so now (then) on account of the mining excitements and the large contraband trade that had sprung up. He especially called my attention to alleged unlawful trade and violations of law at Fort Wrangel; said he wished me to break them up, and establish the licensed trade provided for in his orders. He told me that Captain Rodney, my predecessor at Sitka, had suppressed illicit distilling at that place, and that I would find there several citizen prisoners, who had been in the guard-house several months.

I expressed my alarm and apprehension at such a state of affairs, declared it was in contravention of the rights of citizenship, and at variance with every idea I held concerning personal rights and liberty, and that my first act would be to send these people to Portland to be either convicted or acquitted by the proper courts. General Davis told me I must not do so, because the United States courts in Oregon denied jurisdiction in such cases. I asked him what I should do; he said means would ultimately be found to bring offenders to justice, and that in the mean time he would only reiterate the orders of the War Department, which were that the commanding officer at Sitka should proceed against all offenders. He told me to be careful to arrest no one without sworn testimony of at least two parties, and, if possible, to have all cases examined by a board of officers; said he would permit me, if I chose, to release arrested parties on condition of their leaving the Territory.

I told him I feared such a course would render me liable to suit for condonation of crime; that I should arrest no one except upon clear proof, and that if I should liberate such parties without giving them the benefit of a trial, they would have good cause for action against me for false imprisonment. He agreed with me in this respect, and told me all he had further to say was that he had confidence in my judgment and integrity, and that he expected me to be vigorous and impartial in carrying out the law, and clearing the Territory of a very bad class of people who had assembled there.

On my way up the coast I ascertained that the law in reference to liquor was extensively and openly violated at Fort Wrangel, a settlement upon the abandoned site of a military post at the mouth of the Stickeen River, the *entrepôt* for the British Columbia gold mines and Hudson Bay posts in that country, and a place of considerable commercial importance since the treaty of Washington made the Stickeen a free commercial river. I ordered Captain Rodney on his way down the coast to land his force at Wrangel, and, being governed by the orders of the War Department and Department of Columbia, to destroy all illicit liquor he might find there, seize the goods, chattels, &c., of those violating the law, turn them over to the custody of the collector of customs at that place, and to report his operations fully to me, and also to the commanding general Department of Columbia, on his arrival in Portland. I directed Captain Rodney to make no arrests, first, because General Davis had forbidden the sending of prisoners to Portland, and second, because there was no authority in force to hold prisoners at Fort Wrangel.

By the return mail-boat I was ordered by commanding general Department of Columbia to send an officer and twelve men to Fort Wrangel to keep the peace and prevent law-breaking. I gave the officer I sent, Lieut. A. B. Dyer, Fourth Artillery, copies of the War Department and Department of Columbia orders before mentioned, and told him in all his operations he must be limited and controlled by them. I also reiterated to him General Davis's verbal orders to me in reference to arrests, and told him if any of the offenders detected by Captain Rodney remained there, to arrest them, provided he could get the affidavits against them.

Among the most prominent violators of the law at Fort Wrangel was a firm known and doing business under the name of Curry & Waters. Both Curry and Waters were arrested and with others sent to Sitka as prisoners, where they arrived about the 16th of October, 1874. I at once represented to headquarters Department of Columbia how these prisoners were accumulating upon my hands, and urged as persistently as I was able that something should be done to determine their status, and at least to relieve me at once of any further care and custody of them; that my power and duty ceased after their arrest; that I possessed no magistral or judicial authority in their

cases; that I held them under sworn statements as to their guilt; that Alaska was destitute of any of the machinery of civil law, either local or national, and that the nearest tribunal available was in Oregon, 1,800 miles distant.

Meanwhile my lieutenant at Wrangel had detected the collector of customs of that place not only in the violation of the non-intercourse Indian laws, but in smuggling of foreign liquor into the Territory. He arrested him, and at once a flood of complaints poured in from all sources, of extortion in office, fraud, bribery, and other offenses against this official. The customs officials closed the custom-house, and refused to enter or clear the British ships arriving or clearing from that port, thinking thereby to force me to liberate the collector. One British steamer came to Sitka with this news, and for information as to how she was to get her papers. I told the custom-house people I would not liberate Carr (the collector's name); that they might act as though he had died, and that unless the custom-house was, and that speedily, opened by them, I would take the responsibility of putting one of my military officers there; that public business and treaty guarantees could not and should not be impeded. In this way they opened the office, and Carr was subsequently tried, convicted, and punished for his offenses.

This man Carr belonged to a dirty political ring of Oregon, and I was at once attacked through the press in the most virulent manner. No falsehood was too huge or too mean to print concerning me, and public opinion was manufactured against me; the merchants whose contraband trade I had destroyed joining in the outcry.

On the 21st of December, 1874, I received orders from the department commander to send the civilian prisoners to Portland, Oreg., for trial, and they left on the return of the steamer on the 24th of December, 1874. They were taken before a United States commissioner, and some of them bound over for trial; others were discharged for want of evidence, without an effort having been made to produce the evidence I indicated. Hugh Waters was liberated on the score of his claiming to have merely been barkeeper for Curry, although the law would have punished him as such as well as his principal.

I was relieved from command at Sitka in June, 1876, and while *en route* for San Francisco, Cal., was sued by the above-named Hugh Waters, at Astoria, in the county court of Clatsop County, Oregon, for false imprisonment, and damages claimed at \$25,000. I at once notified the commanding general of the Department of Columbia of the suit, and was ordered to proceed personally to Portland. I applied to the commanding general for assistance. He told me to procure a lawyer—mentioning Hon. W. W. Upton—to remove the case to the United States district court, and that he would apply to the War Department to have the defense assumed by the government, as I was sued for an act done officially in the line of my duty. The Department of Justice directed the United States district attorney for Oregon to defend the suit, and afterward, I understand, especially employed the Hon. Wm. W. Upton to assist in the case. The trial was put off from time to time, and finally was brought to trial before United States District Judge Deady in June last. A verdict for \$3,500 was rendered by the jury, and a motion at once made by the district attorney for a new trial, on the ground of excessive damages. The motion was argued before the United States circuit court, Judges Field and Deady, and finally was compromised by a judgment for \$2,000 and costs being entered against me.

The ground on which damages were granted, I learn from the district attorney, were that "the prisoner was not a military prisoner, but a civil prisoner; that he should not have been confined with men convicted of offenses; that he should not have been made to work; that he should not have been held more than five days in military custody; and that Davis's order to take the prisoners to Sitka, there to be dealt with according to law, did not authorize you [me] to hold them over five days."

In justification of my conduct in the premises, I will say that I continued the line of procedure that had been customary among my predecessors, General Davis included; that I had but one place of confinement—the post guard-house—and that, until I could arrange it to separate the prisoners, which I did as soon as I could get the material and labor to make the necessary changes, I was forced to keep all kinds together; that the post surgeon, Dr. J. A. Fitzgerald, U. S. A., advised me that unless I kept the prisoners in the open air and exercised them, their health would be permanently injured; that there were sometimes as many as thirty prisoners, including Indians, and that I had not the force to wait upon them and cut the wood and carry water necessary for their use; that my finding citizens in the guard-house who had been there for months, and the orders of the commanding general, were sufficient to lead me to believe that the law in reference to five days' confinement was inoperative, especially when I had but one opportunity in thirty days to send them from my post; that all these prisoners were arrested by other officers, and turned over to me with written charges against them, and that, under the sixty-ninth Article of War, I was bound to hold these prisoners until proper authority released them; that the only authority in the premises was superior military authority, or the proper civil officers of the United States, as these men were specifically charged with violating laws of the United States. I also hold that the records of the post of Sitka, as well as the Department

of Columbia, bear abundant evidence of my untiring efforts to get these prisoners off my hands and obtain them a hearing before a proper tribunal.

During the time I commanded in Alaska my whole effort, to the best of my judgment, experience, and ability, was to uphold and carry out the law, benefit the community, and keep the peace in a turbulent community of mixed races and half-breed Indians, ignorant, demoralized, intemperate, and in many cases vicious, who had little or no employment, and who were surrounded by numerous tribes of powerful and warlike Indians. Questions and requests for assistance were daily presented to me on all kinds of disputes, from breaches of the peace, non-payment of debts, brawls, drunkenness, and the like; up to title to property, and even an accusation against one of the Greek clergy of the Beecher-Tilton stripe. The people under Russian rule looked to the chief man in command as all-powerful, and it was difficult and often impossible to make them understand that such a state of affairs had passed away on their transfer to the United States. My command and administration were thoroughly inspected by the commanding general in person and by numerous deputized parties, and satisfaction was always fully expressed in my acts as well as ways of performing them.

As this suit was brought against me for an act I did in my official capacity and in obedience to specific orders, I respectfully ask that the War Department assume the payment of the judgment against me as well as the costs for defending the suit. The Hon. W. W. Upton, the assistant district attorney in the case, now the Second Comptroller of the United States Treasury, is in Washington, and doubtless will, if called upon, be able to give such information in reference to the case and its management as the War Department may deem necessary. I submit herewith a certified copy of the judgment and a statement of expenses incurred by me in carrying on the suit. Captain Rodney, Assistant Surgeon Fitzgerald, and Lieutenants Stuart and Paddock have been in the field against the Nez Percés Indians ever since the suit closed, and I have been unable to get vouchers in proper form from them as yet. I will forward them, however, as soon as they can be procured. The amounts given I learned in personal letters to me.

I am, sir, respectfully your obedient servant,

J. B. CAMPBELL,
Captain Fourth Artillery.

Memorandum of judgment and expenses of suit of Hugh Waters vs. Capt. J. B. Campbell, Fourth Artillery, in district court of the United States, district of Oregon, and United States circuit court, sitting in Portland, Oreg.

Judgment against Capt. J. B. Campbell.....	\$2,100 50
Marshal's and clerk's fees for transferring suit	13 45
Mileage and expenses of Asst. Surg. J. A. Fitzgerald, United States Army, summoned from Lapwai by defense	26, 00
Mileage, per diem, and expenses of Dr. F. A. Stirling, summoned from Oroville, Cal., to San Francisco, Cal., witness for defense before United States Commissioner Sawyer	67 90
Fees of L. S. B. Sawyer, United States commissioner, San Francisco, taking and sending testimony of Captain Field and Lieutenant Quinan, Fourth Artillery, and Dr. Stirling	33 00
Mileage and expenses of Capt. S. B. Rodney, Fourth Artillery, United States Army, summoned from Astoria to Portland, for defense	17 00
Same, Lieut. W. F. Stuart, Fourth Artillery, for defense	17 00
Same, Lieut. G. H. Paddock, Fourth Artillery, for defense	17 00
Total.....	2,291 85
Of the above amount I have paid, myself, cost and fees of prosecution	113 95
Dr. Stirling's bill	67 90
Commissioner Sawyer's bill	33 00
	214 85

J. B. CAMPBELL,
Captain Fourth Artillery.

FORT CANBY, WASH., September 6, 1877.

DEAR SIR: I was informed by Major Rodney, some time since, that you wanted Lieutenant Paddock and myself to notify you of the expense of our trip to Portland (in June last) as witnesses in your case before the United States court.

The following is a list of my expenses:

June 8. Fare to Portland, including state-room and meals	\$4 50
Hotel bill at Portland, June 9 to 14	9 00
June 14. Fare to Astoria, including meals	3 00
Porterage	50
	17 00

Respectfully, &c.,

Maj. J. B. CAMPBELL.

WM. F. STUART.

United States circuit court, Oregon.

HUGH WATERS }
 vs. }
 J. B. CAMPBELL. }

Maj. J. B. Campbell, Fourth United States Artillery, to L. S. B. Sawyer, United States commissioner, Dr.

To fees for taking testimony of William R. Quinan, Edward Fields, Frank S. Stirling, and Jno. Walsh

\$35

Paid by

J. B. CAMPBELL,
 Captain Fourth Artillery,

Receipt sent to Portland and not yet returned.

[C. B. Upton, attorney and counselor at law, P. O. box 673, No. 9 Dekum's Building, Portland, Oreg.]

SEPTEMBER 19, 1877.

DEAR SIR: Your letter of the 4th instant came duly to hand, and would have been answered sooner, but that my father sailed for San Francisco on the 4th instant, and expected to see you while there. I have just received a letter from him, saying that he did not meet you; his stay in San Francisco was very short.

Before his departure we argued the motion for a new trial in your case before Judge Deady and Judge Field, of the Supreme Bench, who was here holding a term of the circuit court. Judge Field held (just as Deady did) that persons in such cases were not military prisoners, but civil prisoners; that it was unlawful to cause them to do any work; that it was unlawful to confine them with men convicted of offenses. He also held that after four days the defendant should have been discharged, and that Davis's order "to take the prisoner to Sitka, to be there dealt with according to law," did not authorize you to hold them after the expiration of the four days.

We also made a strong effort on the proposition that the damages were excessive, and upon that question both judges agreed with us, and said that unless the plaintiff would consent to take a judgment for \$2,000, they would order a new trial. The plaintiff elected to take the judgment of \$2,000, and the judgment was so entered.

This is the *finale* of the case. As the judgment is not \$5,000, there can be no appeal to the Supreme Court. Appeal cases are limited by an act of Congress to cases where the amount in controversy, exclusive of costs, exceeds the sum of \$5,000, and in actions for damages the amount in controversy is the amount for which plaintiff obtains judgment. The plaintiff has filed his cost bill, which includes fees of officers and his witnesses. I have examined the same and it is correct. The amount is \$103.70. Then, in addition, there is clerk's and marshal's fees for work done for you of the amount of \$10.25, making in all \$113.95. This amount the bondsmen who signed the bond given on removing the cause from the State court are liable as well as yourself, so you will please send me the amount, \$113.95, and I will pay these off for you. The judgment itself, of course, you will let stand unpaid. If there is anything further that I can do, please command me.

I remain, very respectfully, yours,

C. B. UPTON.

Capt. J. B. CAMPBELL,
 Point San José, Cal.

Answered September 25, and certificate of deposit in National Bank of San Francisco, No. 6400, for \$114, inclosed, subject to order of C. B. Upton.

J. B. CAMPBELL.

In the circuit court of the United States for the district of Oregon.

HUGH WATERS, PLAINTIFF,
vs.
 J. B. CAMPBELL, DEFENDANT. } No. 332.—SEPTEMBER 4, 1877.

Now at this day, the court being fully advised in the premises, it is ordered that the motion for a new trial filed herein by the defendant be, and the same is hereby, allowed, unless the plaintiff will consent to remit fifteen hundred dollars of the damages heretofore assessed by the jury against the defendant, in which case said motion is denied; and thereupon said plaintiff remits the damages as aforesaid; said plaintiff appearing by Messrs. W. W. Page and George W. Yocum, his attorneys, and said defendant appearing by W. W. Upton and C. B. Upton, his attorneys.

Whereupon it is considered that the said plaintiff have and recover of and from the said defendant the sum of two thousand dollars, his damages assessed by the jury herein, together with his costs and disbursements herein expended, taxed at one hundred dollars and fifty cents.

THE UNITED STATES OF AMERICA,
District of Oregon, ss:

I, R. H. Lamson, clerk of the United States circuit court for the district of Oregon, do hereby certify that the foregoing copy of entry of judgment in the journal of said court has been by me compared with the original, and that it is a correct transcript therefrom, and of the whole of such original, as the same appears of record at my office and in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Portland, in said district, this 21st day of September, 1877.

R. H. LAMSON, *Clerk.*

OROVILLE, BUTTE COUNTY, CAL.,
 May 31, 1877.

Received from Capt. J. B. Campbell, Fourth Artillery, the sum of \$67.90, currency, for travel expenses, &c., incurred during journeys from Oroville, Cal., to San Francisco, Cal., on the 24th, 25th, 26th, 29th, 30th, and 31st days of May, 1877, for the purpose of appearing before the United States commissioner, Sawyer, in order to give testimony in the suit of Hugh Waters *vs.* J. B. Campbell.

F. S. STIRLING, M. D.

UNITED STATES OF AMERICA,
District of California:

I, Joseph F. O'Bierne, United States commissioner, district of California, do hereby certify that Frank S. Stirling, M. D., a witness on behalf of Maj. J. B. Campbell, in the case pending at the United States circuit court of Oregon, entitled "Hugh Waters *vs.* J. B. Campbell," appeared before me on the 25th and 30th days of May, A. D. 1877, in order to testify on behalf of defendant in said action.

Attest, &c.

JOS. F. O'BIERNE,
United States Commissioner and Deputy Clerk United States Court, California.

[Indorsements.]

HEADQUARTERS MILITARY DIVISION PACIFIC AND DEPARTMENT CALIFORNIA,
San Francisco, Cal., October 6, 1877.

Respectfully forwarded to the Adjutant-General, requesting the attention of the Secretary of War be invited hereto at an early day.

Captain Campbell, Fourth Artillery, while commanding officer at Sitka, Alaska, in obeying the orders of his military superiors, and in carrying out the acts of Congress, sections 1957, 2150, 2151, Revised Statutes United States, has been found guilty of unlawful conduct by the United States district court of Oregon, and judgment found and affirmed by the United States circuit court against him for \$2,100, which, together with the costs, amounts to \$2,291.85. The sections of the statutes referred to, when applied in Alaska, contain incompatible provisions. It is not possible for a military commander in Alaska, under section 2150, to arrest a violator of section 1955, and "keep and deliver" him for trial as prescribed by section 1957, without himself violating the provisions of section 2151, which declares he shall not detain a prisoner over five days after arrest and before removal.

Captain Campbell at Sitka could not comply with all the statutes, but he did the best he could, and brought those who had offended against the laws of the United

States to trial and conviction, and for doing this and upholding the majesty of the laws of the United States he finds himself mulcted in damages amounting to \$2,291.85 by the courts of the United States.

I do hope the Secretary of War will be able to come speedily to Captain Campbell's relief, if in no other way, by asking Congress to pass an act for his relief.

IRVIN McDOWELL,
Major-General, Commanding Division and Department.

ADJUTANT-GENERAL'S OFFICE,
Washington, October 16, 1877.

Respectfully submitted to the Secretary of War, with papers upon which the United States district attorney for Oregon was instructed to appear in defense of Captain Campbell in the suit herein mentioned.

E. D. TOWNSEND,
Adjutant-General.

Transcript showing action of department in previous claims of this nature herewith.

[Indorsement on (1747 A. G. O., 1871), May 15, 1871.]

Arthur Walters, hospital steward, United States Army, states that in the case of State of Mississippi vs. Walters, he was ordered to pay \$39.70, fine and costs; requests information, as he was acting under orders in recovering government property, whether he or the United States Government has to pay these costs.

Respectfully submitted to the Secretary of War.

E. D. TOWNSEND,
Adjutant-General.

ADJUTANT-GENERAL'S OFFICE, *May 24, 1871.*

May 29, 1871, returned from War Department with the following indorsement: "When the official reports of the result of the trial and proper vouchers are received, the amount of fine and costs, \$39.70, may be paid from Army contingencies."

July 3, 1871, Steward Walters requests to be furnished with the information desired in his communication of May 15 last, adding: "I was ordered to pay costs, \$29.70, and the fine, \$10, should be dropped; this has now been done."

By letter of July 19, 1871, from this office, the commanding general Department of the South was requested to transmit a report of the case, showing result of the trial, fine, &c., required for a proper adjustment of the matter, which was returned July 31, 1871, inclosing a report of the commanding officer post of Jackson, Miss.

See 2728 Adjutant-General's Office, 1871, for report.

Respectfully submitted to the Secretary of War.

E. D. TOWNSEND,
Adjutant-General.

ADJUTANT-GENERAL'S OFFICE, *August 8, 1871.*

August 11, 1871, returned by the Secretary, with the following order:

Let the sum of \$29.70 be paid to the hospital steward.

WM. W. BELKNAP,
Secretary of War.

Respectfully referred to the Quartermaster-General for proper action, inviting attention to indorsement of the Secretary of War, of August 11, 1871, hereon.

The commanding general Department of the South, has been informed of this reference.

E. D. TOWNSEND,
Adjutant-General.

ADJUTANT-GENERAL'S OFFICE, *August 14, 1871.*

[Indorsement on (3330, A. G. O., 1873), August 8, 1873.]

Col. J. C. Davis, commanding Department of Columbia, forwards correspondence of Maj. A. J. Dallas, Twenty-third Infantry, requesting to be reimbursed \$22.90, incurred by him in payment of costs of a suit brought against him for acts committed while in his official capacity as commanding officer Fort Vancouver, Wash.

Respectfully submitted to the Secretary of War.

E. D. TOWNSEND,
Adjutant-General.

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE, *August 27, 1873.*

September 2, 1873, referred from War Department to Judge-Advocate-General, and returned with indorsement, in which he says: "No reason is perceived why the account should not be paid, if there is any fund available by the War Department for this purpose."

Returned from War Department September 9, 1873. "This account is approved, and will be paid from Army contingencies."

Respectfully referred to the Second Auditor of the Treasury, inviting attention to preceding indorsement of the Secretary of War.

E. D. TOWNSEND,
Adjutant-General.

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE, *September 13, 1873.*

[Memorandum.]

ADJUTANT-GENERAL'S OFFICE,
Washington, October 16, 1877.

See, also, action of the Secretary of War in case of Sergeant Shemp, Company A, Sixteenth Infantry. Fine and costs, paid by Capt. R. N. Scott, his commanding officer, refunded from Army contingencies, by order of the Secretary of War.

November 2, 1870. *Vide B B, 26, 1227.*

WAR DEPARTMENT,
Washington City, November 22, 1873.

SIR: Referring to your letter of the 14th instant, and inclosed copy of letter from the United States district attorney for the northern district of Illinois, who expresses the opinion that Lieut. Mark Walker, Nineteenth Infantry, who was arrested by the authorities of the State of Illinois, on a charge of false imprisonment in arresting a supposed deserter, is liable for damages, but that the case can be settled for \$100, I have the honor to inform you that this department is willing to assume the responsibility of Lieutenant Walker's actions in the matter, and, by paying the amount named, have the case foreclosed.

Very respectfully, your obedient servant,

WM. W. BELKNAP,
Secretary of War.

The Hon. ATTORNEY-GENERAL.

Sections 1957, 2150, 2151, Revised Statutes, referred to by General McDowell, are as follows:

SEC. 1957. Until otherwise provided by law, all violations of this chapter, and of the several laws hereby extended to the Territory of Alaska 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 for Alaska Territory, and any person authorized in writing by either of them, or by the Secretary of the Treasury, shall have power to arrest persons and seize vessels and merchandise liable to fines, penalties, or forfeitures under this and the other laws extended over the Territory, and to keep and deliver the same to the marshal of some one of such courts; and such 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, 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 are brought.

SEC. 2150. The military forces of the United States may be employed in such 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; which persons and property shall be proceeded against according to law;

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

SEC. 2151. No person apprehended by military force under the preceding section shall be detained longer than five days after arrest and before removal. All officers and soldiers who may have any such person in custody shall treat him with all the humanity which the circumstances will permit.

Section 2151, it will be seen, declares that "no person apprehended by military force under the preceding section (2150) shall be detained longer than five days after arrest and before removal." *

Waters was arrested at Fort Wrangel, Alaska, by command of Captain Campbell, and sent, with others, to Sitka, arriving there about October 16, 1874. It appears that Captain Campbell promptly reported the arrest to department headquarters, and urged that he be relieved from the further care and custody of the prisoners on hand, stating that his power and duty ceased with the arrest; that he possessed no power as a magistrate or judicial authority in their cases.

While this was going on, the collector of customs at Fort Wrangel (an abandoned post at the mouth of Stickeen River, the entrepôt for British Columbia gold mines) was arrested for smuggling liquor and violating laws in reference to intercourse with Indians. It further appears that Alaska was "destitute of any of the machinery of civil law, either local or national, and that the nearest tribunal was in Oregon, 1,800 miles distant."

On the 21st December, 1874, Captain Campbell received orders from the department commander to send the civilian prisoners to Portland, Oreg., and obeyed said order December 24, 1874. Article 69 of the Rules and Articles of War, embraced in section 1342 Revised Statutes, reads as follows:

ART. 69. Any officer who presumes, without proper authority, to release any prisoner committed to his charge, or suffers any prisoner so committed to escape, shall be punished as a court-martial may direct.

If Waters was guilty as charged, then his arrest was lawful and rightfully made under the authority of the orders given Captain Campbell by his superior officer, the department commander.

The five days' limit for detention of the prisoner set forth in section 2151 has nothing to do with the legality of arrest. Captain Campbell could not, upon the showing he makes, remove the prisoner 1,800 miles away for trial, without means of removal. Thus, for failing to do an impossible thing, he appears liable to the naked letter of section 2151. But it must be borne in mind that article 69 of the Rules and Articles of War was just as much the law of the land as section 2151.

This man Waters had violated wantonly the law. It was the captain's duty to arrest, and, under article 69, just as much his duty to hold his prisoner as to arrest, until lawfully relieved by superior authority. This he did not get until December 21, 1874, much more than five days after the arrest, and he obeyed promptly by sending the prisoners on the return steamer, December 24, 1874. In this conflict, or seeming conflict, the whole spirit of the provisions of the law relating to the unorganized Territory of Alaska, a Territory without courts, local or national, sustains that law obeyed by Captain Campbell most in harmony with good order, peace, and observance of law in that distant Territory, and it might be questioned whether a general law conflicting with the evident purpose of the laws specially applicable to Alaska Territory could, by rigid enforcement, annul the whole policy applicable to that distant unorganized Territory, destitute of courts to enforce law.

In the judgment of the committee, in view of the surroundings of this case, it would be unjust and cruel to require Captain Campbell to pay this judgment or any of the expenses of this suit. To do so would be to place a premium on neglect and a discount on meritorious diligence. The committee insert the orders referred to by Captain Campbell.

* This has no special reference to Alaska. The laws specially relating to that unorganized Territory are to be found in Revised Statutes, sections 1954 to 1976, both inclusive; section 2151 relates to Indian intercourse generally.

[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 mainland, islands, and waters of the territory ceded to the United States by the Emperor of Russia, by treaty concluded at Washington 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 directions of the War Department," is prohibited. 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 pass 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 mainland, 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 regulation 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, 1863.

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.

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

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 understood 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., 263), 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 act of March 30, 1862 (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 purpose 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 Rep., No. 474, 1st sess. 23d Cong., pp. 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 the act 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 mainland, 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.

DEPARTMENT OF JUSTICE,
Washington, Nov. 13, 1873.

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

SIR: I have the honor to acknowledge the receipt of your letter of the 10th inst., 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 firearms, 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 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." 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 sub-agent, 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, sub-agent, 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 1873, 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.

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 mainland, 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 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.HON. W. W. BELKNAP,
Secretary of War:

SIR: I have the honor to acknowledge the receipt of your letter of the 30th ult., 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 by 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.

By order of the Secretary of War:

E. D. TOWNSEND,
Adjutant-General.

Upon the whole case the committee, so far from finding fault, find just grounds of commendation of Captain Campbell for his efficient, intelligent discharge of a difficult duty. Wherefore, the committee report back Senate bill 317 without amendment, and recommend its passage.