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Letter from the Secretary of the Treasury, accompanying a letter addressed to him by the Third Auditor of the Treasury, in reply to statements made by Lieutenant Thomas H. Bradley to the Secretary of War.

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L E T T E R

FROM

THE SECRETARY OF THE TREASURY,

ACCOMPANYING

A letter addressed to him by the Third Auditor of the Treasury, in reply to statements made by Lieutenant Thomas H. Bradley to the Secretary of War.

MARCH 1, 1873.—Ordered to lie on the table and be printed.

TREASURY DEPARTMENT,

Office of the Secretary, March 1, 1873.

SIR: I herewith transmit a letter from the Third Auditor of the Treasury, addressed to the Secretary of the Treasury, under date of the 19th of February, 1873, in reply to statements made in two reports by Thomas H. Bradley, lieutenant, to the Secretary of War, and by him transmitted to the Senate, under date of January 8, 1873, and printed in Executive Document No. 24, third session Forty-second Congress.

Very respectfully,

GEO. S. BOUTWELL,

Secretary.

Hon. SCHUYLER COLFAX,

Vice-President of the United States, and

President of the Senate.

TREASURY DEPARTMENT,

Third Auditor's Office, February 19, 1873.

SIR: I respectfully invite your attention to Senate Executive Document No. 24, third session of the Forty-second Congress, which contains a communication by which the Secretary transmits to the Senate sundry reports prepared in the War Department, and sundry documents, &c.

The reports therein referred to were made by a subordinate officer in the War Department, and contain several erroneous assertions in respect to this office, which need correction. My first information of their existence was received within a few days past, and by means of a letter addressed to you by a Senator, and referred by you to this office, asking whether any reply would be made by the Treasury Department.

You will remember that on applying to you, I was by oversight in-

formed that you had not seen or heard of any such reports; and not until 30th January last did I learn that the reports had actually been transmitted to you. I refer to this fact merely to show that there has been no delay in replying to the charges after their existence became known to me.

I presume that the motive in transmitting the reports to you was to afford opportunity for reply. But before any reply has been or could be made, those charges are communicated to the Senate, and published to the community. If the Senate had called for any such information, I would have no reason to complain; but the fact is that the Senate had *not* made any such call. The claims to which those charges relate are those which originated in the Indian hostilities in Oregon in 1854, and the adjustment of which was directed by the act of January, 1871, became a law ten days (Sunday excepted) after January 21, 1871.

But the claims in relation to which the Senate resolution of January 6, 1873, called upon the Secretary of War for information are an entirely distinct class. They are those originating in the general Indian war of 1855-'56, in Oregon and Washington Territories, and for the settlement of which provision was made by the act of March 2, 1861. In relation to the latter class of claims you will perceive that no new and valuable information of any kind whatsoever has been given to the Senate, the two lists appended to the Secretary's communication (see pages 62-67) being the same which had long before been prepared in this office, transmitted by you to the Senate in November, 1871, and printed by order of the Senate. But, as an answer to the Senate resolution, the charges in relation to the other class of claims have been laid before the Senate before any reply thereto could possibly be made, and, indeed, before I knew of their existence.

I have said that the Senate called for, but did not obtain, information in relation to the Oregon and Washington claims under the act of March 2, 1861. I desire to call your attention to some facts in connection with them. There is no dispute that the law vested exclusive jurisdiction of this class of claims in this office, and gave to the War Department no authority in regard to their settlement. Notwithstanding this fact, the reports of this subordinate officer of the War Department show that each and every final settlement of this class, made since about November 1, 1871, has been arbitrarily stopped in the War Department, and the claimants have neither been paid the amounts allowed nor has any reason been assigned for the delay.

For this seizure of jurisdiction, this invasion of the rights of claimants, and this utter disregard of the laws of Congress, especially the act of March 30, 1868, some powerful reasons certainly ought to be shown.

But what is now shown? The reports of this subordinate officer evince that they were made with the design of making up a case against this office, if false insinuation, suppression, and misstatement could accomplish such result. But after an investigation commenced and prosecuted for more than one year in such a spirit, what errors can now be found in the settlement of these claims? Simply that in one case (see pages 40 and 49 of the executive document) it was found that the power of attorney had not been attested by two witnesses. Not that there was any doubt of the genuineness of the instrument or of its having been duly executed according to the laws of the place where made, but it was simply doubted whether acts of Congress did not make two witnesses necessary. This doubt, however, was speedily resolved; for on asking the opinion of the Second Comptroller that officer replied

that he had always held that the acts referred to did not apply to these cases, and that he considered the power of attorney as properly executed.

Had it been, as it certainly was not, the design of this subordinate officer to afford his testimony to the care and accuracy used by this office in the investigation of claims the adjustment of which is by law devolved upon it, he could scarcely have succeeded better than he has unintentionally and unwittingly done by his inability to find or manufacture even the most trivial error in any one of these many settlements.

I have stated what has been done in the past, and now I call your attention to the astonishing proposition made by this subordinate officer to the Secretary of War as to the course to be pursued in the future. It is gravely proposed that no payments shall be hereafter made unless the laws be so changed as to give to the War Department authority to pronounce the final decision upon the claims. In short, it is recommended by him that the alternative be held out to Congress either that it must make its legislation conform to the views of this subordinate, or that its laws will be in the future, as they have been in the past, entirely defied and set at naught.

If this proposition be a sample of the peculiar fitness of an officer of the War Department to exercise a general revisory power over the settlements made by the accounting officers, Congress may perhaps consider it judicious to intrust the execution of its laws to officers who will respect and obey them.

I will now refer to the other class of claims, and reply briefly to the false statements in regard to this office.

This class of claims grew out of the expenses of two companies employed in suppressing Indian hostilities in Oregon, in 1854, subsequent to the Rogue River Indian war, and prior to the general Indian war in Oregon and Washington Territories in 1855-'56. Neither the act which directed the settlement of the Rogue River war-claims nor that which directed the settlement of the claims of 1855-'56 applied to this class, and there was no authority for their settlement until Congress, on the 21st* January, 1871, passed an act for that purpose.

The three claims which have been acted on under the authority of that act are those of Mr. Griswold, Mr. Dowell, and Messrs. Chester and Jesse Robinson, and it is in relation to these three cases that this subordinate officer has made his false charges against this office.

The claim of Mr. Griswold, consisting of five vouchers, was filed by him in this office on the 18th November, 1861. Why he then filed it I do not know, for there was no authority to settle it; but he did so, and it remained in the files until after the passage of the act of January, 1871, when it was sent to the War Department in pursuance of his request. The claims of Mr. Dowell and Messrs. Robinson were filed after the passage of the act.

The leading falsehood which underlies the reports of this subordinate officer consists in the fact that they were prepared for the purpose of covering and concealing the fact that the delinquency or insufficiency, if any, in the examination of these three claims is chargeable to the War Department, and not to this office, on which he now seeks to devolve the responsibility.

The act did not direct or empower this office to adjust these claims, but it did devolve that duty and responsibility solely upon the Secretary

* Became a law ten days thereafter, Sundays excepted.

of War. It was not within the province of this office to determine or consider any questions as to the character or sufficiency of the evidence or the merits of the claims.

The Secretary of War having decided that the same rates, &c., applied in the settlement of the Rogue River war claims should apply to the claims under this act, each of these three claims was referred to the Secretary of War, with a preliminary report made up on that basis, and all the vouchers or other evidence pertaining to the claims were transmitted therewith. The sole object of this reference was that the examination and decision contemplated by the law should be made in the War Department. This office had made no such examination, for the sufficient reason that no such duty had been imposed upon it and no such authority given to it by the law. But it had the right to presume, and necessarily did presume, that the War Department would discharge the duty which Congress had devolved upon it; and when, after a considerable period in each case, the claims were returned with the decisions of the Secretary of War, the presumption necessarily was that such duty had been performed in a full and proper manner. By what right, and, indeed, upon what principle of common decency could this office, to which no authority had been given by the act, presume that a final decision would be made in the War Department without a proper examination into the evidences. I do not charge that such examination was not made, for I had not then nor have I now any means of knowing what investigation was made in that Department. But if it be the fact, as this subordinate officer asserts, that such duty was either wholly neglected or performed in an insufficient manner, the War Department must bear the responsibility, for it alone was empowered to perform the duty.

The poor pretense of this subordinate that it was presumed in the War Department that this office had undertaken this duty will not answer. It is bad in law and false in fact. It is bad in law; for how could such a presumption, if it had really been entertained and had had any basis, excuse the War Department for the non-performance of a duty which Congress had intrusted to it alone? The spurious apology would be at least as bad as the failure to discharge the duty. The pretense is false in fact, for there was no ground upon which it could possibly have been entertained. Certainly the mere fact that this office was not empowered to perform such a duty would have been small reason for a presumption that it had performed it, and yet the presumption could have had no other shadow of basis.

And this pretense is in ridiculous contrast to the course pursued by the War Department, as even this subordinate admits, in respect to claims over which the law has given final jurisdiction to the accounting-officers, and which they, therefore, fully examined before making settlements. If, in a case where the accounting-officers have all the jurisdiction and the War Department none, it is considered by that Department not proper to give to the certificate of the final accounting-officer the faith and effect which the law declares it shall have, until a revision in that Department shall ascertain the correctness of the decision, then certainly it is a preposterous falsehood to pretend that in such a case as the present a final decision was made by the War Department upon any mere presumption that the evidence had been fully examined by an office which was not authorized by law to make such an examination, and had, therefore, not undertaken to make it.

As I stated before, the reports of this subordinate have been concocted in the desperate attempt to transfer to this office a responsibility

which belongs to the War Department alone. The subterfuge and falsehood resorted to in this attempt are too transparent to need further comment.

To Congress it belongs to accept or reject the apology which his subordinate has advanced for the alleged utter neglect by the War Department of the duty imposed upon it by Congress. The apology, stripped of verbiage, amounts simply to this: that the War Department allowed these claims without the least examination and upon an unfounded presumption that such duty had been fully performed by an office which was not authorized by law to perform it, and which had, therefore, not undertaken it. If the apology were true in *fact* it would be worthless, but it is false in fact.

For any errors which may occur in this office I purpose to consider myself responsible, but I do not intend that any officer of the War Department shall by such false and shallow pretenses impose on this office any responsibility for the errors of commission or omission in that Department, if any such there be.

I do not mean to be understood as expressing any opinion that these three claims are not meritorious, or that they are not supported by proper and sufficient evidence. Upon that point I know nothing; for no examination in that respect was made in this office. The papers are not now in this office, and if they were I would not consider it within my province now to examine them.

Very respectfully, your obedient servant,

ALLAN RUTHERFORD,

Auditor.

Hon. GEORGE S. BOUTWELL,
Secretary of the Treasury.

NOTE.—As you have called my attention specially to a statement on page 19 of the executive document, that “the sum of \$9,690 has been awarded,” &c., I have to say that I do not understand that statement to imply that the *Treasury settlement* was made for any greater amount than was allowed by the decision of the Secretary of War. If it did so mean, reference to the papers would at once contradict it and show that such settlement was made for the exact amount which had been allowed by the decision of the Secretary of War.

I understand that statement to mean only this, viz: that in the opinion of this officer of the War Department certain items, amounting to \$9,690, were not admissible upon the basis adopted. This, however, was a matter which belonged exclusively to the War Department to decide, and the items were *not* stricken out by the decision of the Secretary of War.

ALLAN RUTHERFORD.

Auditor.