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DISBURSEMENT OF MONEY BY INDIAN AGENTS.

FEBRUARY 14, 1882.—Referred to the House Calendar and ordered to be printed.

Mr. HASKELL, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany bill H. R. 3943.]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 3943) to authorize the Commissioner of Indian Affairs, with the consent of the Secretary of the Interior, to issue orders to Indian agents for the disbursements of money, and so forth, having carefully considered the same, respectfully submit the following report:

The Indian Bureau is in some respects seriously impeded in its work by defects in its legal organization. *Nominally* this bureau, under the authority of the Secretary of the Interior, is charged with the conduct of Indian affairs.

Nominally the Commissioner of Indian Affairs, acting under the authority of the Secretary of the Interior, is charged with whatever of *discretionary* power there is by law lodged in the hands of any person in the conduct of Indian affairs, and it is popularly supposed that whatever of *responsibility* there is placed upon any person for the discharge of the duty of executing the laws of the United States in relation to the affairs of the various Indian tribes, devolves upon the Commissioner of Indian Affairs and the Secretary of the Interior.

Your committee find, however, that while these officials are charged with the conduct of Indian affairs, loaded with the grave responsibility of discharging under existing law their difficult tasks in this regard with acceptance to the government, and with justice alike to the Indian and his white neighbor, they are by some provisions of law, as they now exist, often rendered impotent to act, powerless to accomplish the evident intendment of Congress, or the full, just requirements of treaty stipulation.

Given large discretionary power, they are needlessly impeded in its use. Commanded by law to carry out a given line of policy, they find their path so obstructed that their task is at once laborious and uncertain of result.

The trouble lies in the fact that there are two executive *heads* to the service, *i. e.*, in effect.

The one is found in the Interior Department, and the other in the Treasury Department.

The Indian *agent* is the officer to whom, under the authority of the Secretary of the Interior and the Commissioner of Indian Affairs, is confided, in large measure, the duty of applying and executing the law.

The officer from whom he receives his appointment, by whom he is directed, from whom comes the order that dismisses him from the service if he violates his instructions or fails to perform his duty, is a Cabinet officer of the government—the Secretary of the Interior; but the officer who audits his accounts is in another department of the government—the Treasury; and the power which appoints and dismisses him is impotent to protect him. The Indian agent has a two-fold character; he is an executive officer and a disbursing officer. As an executive, he is under the control of the Interior Department; as a disbursing officer, he is under the control of the Treasury Department. In this, as in all divided households, there is, therefore, the inevitable conflict.

To an extent, the above condition of affairs must continue. The Treasury must, of course, continue to supervise and make record of disbursements; but, under certain circumstances, the Secretary of the Interior must be made (if there is to be an effective Indian service) the *head* of that service, and the *responsible* head, to the extent of protecting his subordinates *fully* in the execution of his orders.

The duties of these Indian agents are varied and peculiar.

They are located on the several Indian reservations; with the various tribes, in remote places and isolated, away from railroads and telegraph lines; they have in their custody the property of the Indians and of the government; they issue to the Indians clothing and rations, annuities and other funds, and are in general the executive officers charged with the local details of their agencies—with the preservation of peace and good order on the reservations. These men are disbursing officers and under heavy bonds. Every dollar disbursed by them must be disbursed in exact conformity to law; they are required to give it rightful construction; they are personally liable on their bonds. In general they are poor men, and are given mean and inadequate salaries. In most cases the law is clear and easily followed; in many, however, it is not difficult to honestly give the statute or the provision of law *two* fair constructions. In some cases, discretionary power is given by acts of Congress to the officers of the Indian service without clearly *locating* the power with some *one* person or class of persons or officials.

Congress, or the Secretary of the Interior, can hardly direct the doing of *any* specific thing that, in the end, does not entail the expenditure of *some* money.

And your committee here reach the difficulty sought to be remedied by this bill. Action and the consequent expenditure of money are not to be divorced from each other; but, under the present condition of the law, the Secretary of the Interior is not left, as by right he should be, the sole judge of what ought and what ought not to be done under the law which he is charged with executing. As the law now stands, the Commissioner of Indian Affairs and the Secretary of the Interior may join in directing the agent to do a specific thing. It may be evident to any person cognizant of the situation that the action ordered is not only *just*, but *imperatively demanded*. War may be imminent—disaster, quick and far-reaching, may be impending; but when the agent, in obedience to the orders of his superiors, discharges his duty, and, in consequence, disburses the amount of money thereby involved, he finds—it may be *years* later—that the *order* of his superior fails to protect him on his bond, and the sum expended is charged up to his personal account, and taxed against his meager salary, by the decision of a subordinate clerk in the Treasury Department, who asserts *his* judgment against that of a Cabinet officer of the government.

This bill provides that when the Secretary of the Interior and the

Commissioner of Indian Affairs join in an order to an Indian agent to perform a certain duty or disburse money, the agent shall obey, and be relieved under his bond for the amount involved. The Secretary of the Interior and the Commissioner of Indian Affairs should become the responsible parties.

It is not expected that these officers will in many cases make an order under this bill. In all ordinary disbursements the agent will be left to his construction of the law, and he must pay the penalty if the officers of the Treasury Department fail to confirm his judgment; but when from his far-off station on the frontier he telegraphs or writes his superiors in, perhaps, a case of great emergency or of hopeless doubt, and receives from the department at Washington *specific orders* to proceed in a given direction, he shall be *protected* in his obedience.

The provisions of this bill present no novel features. Under various provisions of law the order of the Postmaster-General is made a sufficient authority to a subordinate officer for the disbursement of funds.

The order of a general of the Army for purchase of supplies, and for other purposes, is to a quartermaster a good and sufficient authority for his action.

And the following statute confers like power upon naval commanders: Section 285, Revised Statutes, provides:

Every disbursement of public moneys or disposal of public stores made by disbursing officers, pursuant to an order of any commanding officer of the Navy, shall be allowed by the proper accounting officers of the Treasury in the settlement of the accounts of the officer, upon satisfactory evidence of the making of such order, and of the payment of money or disposal of stores in conformity with it, and the commanding officer by whose order such disbursement or disposal was made shall be held accountable for the same.

The exigencies of the Indian service recur as often and are as great as any that can arise in times of peace in the Army and Navy, or at any time in the postal service of the country, and in all such cases *the head of the service* should have the power to make and enforce his orders, assuming the responsibility therefor, and in so doing relieve the obedient subordinate from such responsibility.

Your committee are of the opinion that this bill will open no door to fraud or wrong. *Some* officer of the government *must* be relied upon to construe law and to disburse money. And they believe that the Secretary of the Interior and the Commissioner of Indian Affairs, concerning the business confided to their charge, will be as scrupulous and careful as a clerk in the Treasury Department in seeing that the law is obeyed and the funds of the government protected.

At least, when they, by and with the advice of the law officers of the government, construe the laws, use the discretion confided to them, and deliberately issue an order to their far-off subordinates at least *they*, and *not* the subordinates, should be responsible therefor.

Your committee therefore recommend the passage of the bill with the following amendments:

- (1.) In line 4 strike out the words "an order," and insert in lieu *a written order*.
- (2.) After the words "Indian agent" in line 5, insert *which order shall be countersigned by the Secretary of the Interior*.
- (3.) After the words "Indian agent" in line 9, insert *in accordance with such order*.
- (4.) In lines 11 and 12 strike out "The audit and settlement of his account or for."