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Letter from the Secretary of the Treasury, transmitting a copy of a communication from the Attorney-General, submitting papers in the claims of certain legal counsel, in matters in which the United States were interested, and for the payment of which there is no appropriation.

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CLAIMS OF CERTAIN LEGAL COUNSEL.

L E T T E R

FROM

THE SECRETARY OF THE TREASURY,

TRANSMITTING

A copy of a communication from the Attorney-General, submitting papers in the claims of certain legal counsel, in matters in which the United States were interested, and for the payment of which there is no appropriation.

JANUARY 18, 1893.—Referred to the Committee on Appropriations and ordered to be printed.

TREASURY DEPARTMENT,
January 17, 1893.

SIR: I have the honor to transmit herewith, for the consideration of Congress, a communication from the Attorney-General, of the 14th instant, submitting papers in the claims of certain legal counsel in matters in which the United States were interested and for the payment of which there is no appropriation, amounting to \$4,300.

Respectfully, yours,

CHARLES FOSTER,
Secretary.

The SPEAKER OF THE HOUSE OF REPRESENTATIVES.

DEPARTMENT OF JUSTICE,
Washington, D. C., January 14, 1893.

SIR: Inclosed herewith are claims of legal counsel in matters in which the United States were interested, directly or indirectly, for transmission to Congress for appropriation; for the payment of which the Department of Justice has no appropriation.

(1) Claim of James Lyons, late assistant United States attorney for the eastern district of Virginia, for legal services rendered in the circuit court of the city of Richmond, Va., in the cause of the Farmers' Bank of Virginia, etc., against the Alexandria Canal Company *et al.*, in which the United States was not a party of record, but was largely interested therein as a large stockholder and creditor of the Alexandria Canal Company, in which suit Mr. Lyons appeared by direction of

the Solicitor of the Treasury given in July, 1886; approved for payment, upon an appropriation made by Congress, in the sum of \$500. (See Exhibit A.) No compensation could be paid to Mr. Lyons from the fees of the district attorney or from the salary of the regular assistant to the district attorney. I am informed that the services in the case were of value to the Government and ought to be paid, but I do not see how this Department can state an account in his favor that will be audited and adjusted by the accounting officers of the Treasury.

(2) Claim of Charles L. Heitman, of Idaho, for services in the injunction suit brought in the Territorial court of Idaho by R. E. MacFarland against McClure, receiver of the land office at Coeur d'Alene City, to compel McClure to pay him (MacFarland) certain money which MacFarland claimed was due him as register of the land office at Coeur d'Alene City, McClure being the proper disbursing officer for that purpose. The United States attorney was instructed to examine into and report the case, but was unable to do so until it was called for trial, and he therefore requested Mr. Heitman, who was attending to the matter at the request of Mr. McClure, to go on with the case. Attorney Wood states that the charge of Mr. Heitman is much less than he could have attended to the matter for, as the distance between Rathdrum, where the case was pending, and the city of Boise, Idaho, is about 550 miles. The account is approved for appropriation in the sum of \$150. (See Exhibit B.)

(3) Claim of S. R. Peters for assisting the United States attorney for Kansas in the preparation and argument, in the United States circuit court at Cheyenne, Wyo., of the case of the United States against the Trans-Missouri Freight Association *et al.* District Attorney Ady was met by eight leading counsel of the railroad companies and felt unable to conduct the argument without assistance. He asked for the appointment of an assistant counsel. The Department replied that the appropriation for such services was exhausted, and no assistant was therefore appointed. Under the circumstances, Attorney Ady says, nothing was left for him to do but to request Mr. Peters to assist him in the argument. The account is approved in the sum of \$600, and an appropriation therefor is recommended. (See Exhibit C.)

(4) Claim of Charles Richardson, of Aberdeen, Miss., at the April term of the United States court at that place in 1892 for services rendered at the instance of the Post-Office Department in the case of the United States against the Pearsons and six other mail-robbers from Winston, that section of Mississippi having been for some time the scene of many post-office robberies, there being two bands, which were subsequently broken up and nearly all the members of them sent to the penitentiary. Mr. Richardson had lived for a long time in the county, knew the localities where the robberies took place, the robbers themselves, and the witnesses for the United States. He was mainly instrumental in pointing out to the post-office inspectors the manner in which the robbers could be ascertained. He was offered by one of the defendants \$500 to defend him. He preferred to take the employment offered him that came from the Post-Office Department, and the fee agreed upon with District Attorney Montgomery was \$250. Through some circumstances, fully explained in the exhibit, no formal appointment was made by the Department of Justice of Mr. Richardson as assistant attorney. This makes necessary the reference of the account to Congress for an appropriation. The account is approved in the sum of \$250 and an appropriation therefor is recommended. (See Exhibit D).

(5) Claim of Allen R. English for services in the first judicial district court, Territory of Arizona, at the adjourned November term, 1889, in defending certain Indians indicted and tried under the Territorial laws of Arizona; the judge of the court appointing Mr. English as their counsel, the account being certified by the judge; the same being set forth in Ex. Doc., No. 215, Fifty-second Congress, first session; the same being approved by the Department of Justice, through the Acting Attorney-General, in the sum of \$800. Reference to the executive document more fully explains the services. There is no appropriation out of which the services can be paid. (See Exhibit E, being a copy of the executive document mentioned.)

(6) The claim of the firm of Bronson & Wells, now represented by Wells, Monroe & Lee, special assistant attorneys at Los Angeles, Cal.; in the matter of the Mission Indians, under appointment of Hon. Benjamin Harris Brewster, Attorney-General of the United States, of June 26, 1883, upon the recommendation of Hon. H. M. Teller, Secretary of the Interior—they being appointed special assistant United States attorneys in all cases affecting the interests of the Mission Indians in California touching their rights to certain lands in jeopardy. The exhibit sets forth in detail the character of the services. For the services rendered from July 6, 1883, to January 14, 1886, the charge was \$2,000. It was recommended to Congress for appropriation April 22, 1892. (See Exhibit F, being House Ex. Doc. No. 201, Fifty-second Congress, first session, reference being made to page 3, line 11, and to pages 30 and 31.)

The last two accounts are presented for the second time for the consideration of Congress at the request of the claimants.

Very respectfully,

W. H. H. MILLER,
Attorney-General.

The SECRETARY OF THE TREASURY.

EXHIBIT A.

The United States to James Lyons, late assistant United States attorney, eastern district of Virginia, Dr.

To fee for legal services rendered in the circuit court of the city of Richmond, Va., in the cause of the Farmers' Bank of Virginia, etc., vs. the Alexandria Canal Company *et al.*, in which the United States was not a party of record, but was largely interested therein, as a large stockholder and creditor of the Alexandria Canal Company, in which suit I appeared by direction of the Solicitor of the Treasury, given July, 1886, etc..... \$500
[Approved to be sent to Congress, \$500.]

At the request of Mr. James Lyons, I hereby state that I was of counsel for the plaintiff in the suit above referred to. The questions involved were complicated and difficult. I remember that Mr. Lyons appeared before the court for the purpose of protecting the interests of the United States. While I am not able at this time to recall details, from the importance and difficulty of the questions involved, the size of the record, and the labor and time Mr. Lyons must have expended in investigations out of court, I should say that a fee of \$500 for all his services in the premises would be reasonable and proper.

FRANK W. CHRISTIAN.

FEBRUARY 4, 1891.

At the request of Mr. James Lyons, late assistant United States attorney, eastern district of Virginia, I make the following statement from memory in regard to the litigation respecting the Alexandria Canal Company, in which the United States were largely interested: (1) By an act of May 20, 1836 (5 Stat. at Large, 32), and the sub-

sequent act of March 3, 1837 (5 Stat. at Large, 190), the United States appropriated \$300,000 for the purposes of the Alexandria Canal Company upon certain terms and conditions therein set forth. The said sum of \$300,000 was actually paid by the Secretary of the Treasury to the said Alexandria Canal Company, but the United States did not receive the 300 shares of stock in said Alexandria Canal Company to which the United States were entitled for and in consideration of the said sum of \$300,000. Afterwards, by direction of the Solicitor of the Treasury, proceedings were instituted in the United States circuit court, eastern district of Virginia, at Alexandria, to enforce this claim of the United States for 3,500 shares of stock in the said Alexandria Canal Company and to obtain pecuniary compensation for the failure to deliver said shares. (See *United States vs. City of Alexandria et al.*, 4 Hughes, 545; 19 Fed. Rep., 609 and 614.)

In these proceedings the rights of all parties were adjudicated, and the assets of the said Alexandria Canal Company sold and distributed by the court to those entitled.

Pending these proceedings in the Federal court, suits had been instituted and prosecuted in the State court (the circuit court of the city of Richmond, Va.) by the Farmers' Bank of Virginia *et al. vs.* the said Alexandria Canal Company *et al.*, seeking to subject the franchises and property of the Alexandria Canal Company to the payment of certain judgment debts, etc., asserted against it. The United States was not a party, and could not properly be a party, to the proceedings in the State court, although the United States was the largest stockholder and had the largest pecuniary interest in the Alexandria Canal Company. It was for evident reasons necessary that the proceedings in the State court should be defended and defeated, if possible, and the then Solicitor of the Treasury, Judge McCue, as I understood at the time, instructed Mr. Lyons to appear and defend the proceedings in the State court for that purpose. Mr. F. W. Christian, of counsel for the plaintiffs in the State court, and Mr. Kemper, counsel for the city of Alexandria, have certified that \$500 is a reasonable fee to be paid Mr. Lyons for his services in the State court. From their statements and my general knowledge of said litigation and the interest of the United States therein I certify that \$500 is a reasonable fee to be paid Mr. Lyons for his services in the State court.

ROBERT W. HUGHES, *Judge.*

FEBRUARY 23, 1891.

As one of the judges of the State of Virginia I held, in the month of July, 1886 (I think), a special term of the circuit court of the city of Richmond for the trial of what was usually called the Alexandria canal case, pending under the style of Farmers' Bank of Virginia against the Alexandria Canal Company and others on a report by Commissioner Kean. An immediate sale of all the property, rights, and franchises of said company was asked and pressed for; no opposing counsel were present except Mr. James Lyons, representing the United States as assistant attorney for the eastern district of Virginia. He strongly objected to any decree of sale on the grounds that the proper parties were not before the court. And at his earnest request I adjourned the cause to give him time to go to the city of Washington and secure the presence of Mr. Gibson, the attorney of the United States for the eastern district of Virginia, and also the presence of the counsel of the city of Alexandria, who were all present when the decree in the cause was entered. The terms of that decree I do not exactly remember (the record will show), but in effect it permitted the United States and the city of Alexandria and all other parties interested to come into the suit, set up, and litigate their rights.

The action of Mr. Lyons on the occasion was prompt and decided—I infer of value and importance to the United States, a large stockholder in the Alexandria Canal Company, and interested to preserve and protect its rights, franchises, and property. The certificates of F. W. Christian, counsel for the plaintiffs, and of K. Kemper, counsel for the city of Alexandria, both gentlemen of high character and standing, fix the sum of \$500 as a reasonable fee to be paid to Mr. James Lyons for his services; and such, also, is the opinion of Judge Robert W. Hughes, of the eastern district of Virginia, as shown by his certificate. And seeing no reason for a difference of opinion I concur with Mr. Christian, Mr. Kemper, and Judge Robert W. Hughes in fixing the sum of \$500 as a reasonable fee to be paid Mr. James Lyons, and so attests—

F. D. IRVING,

Judge of the Third Judicial Circuit of Virginia.

F. W. MORILL, Virginia.

United States circuit court for the eastern district of Virginia, at Alexandria.

THE UNITED STATES
vs.
 THE ALEXANDRIA CANAL COMPANY ET AL. } In equity.

I, John S. Fowler, deputy clerk of said court, do hereby certify, that acting under a decree herein entered on the 1st day of October A. D. 1889, I paid to the Secretary of the Treasury of the United States, on the 28th day of October, 1889, by a check payable to his order, the sum of \$5,950, that being the net amount to be paid unto the United States out of the fund to the credit of the court in this cause.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Alexandria, in said district, this 12th day of May, A. D. 1891.

[SEAL.]

JOHN S. FOWLER,
Deputy Clerk.

ALEXANDRIA, VA., *February 7, 1891.*

This is to certify that, as attorney for the city of Alexandria, Va., I was familiar with the suit of "The Farmers' Bank of Virginia, etc., *vs.* The Alexandria Canal Company *et al.*," and also with the suit of "The United States *vs.* The City Council of Alexandria and the Alexandria Canal Company"—the first pending in the circuit court of the city of Richmond, and the other in the United States district court for the eastern district of Virginia. The litigation in both was long and tedious, every step being warmly contested. I also well remember a conference with James Lyons, esq., attorney at law, in regard to those cases, and a visit we made together to Judge McCue, Solicitor of the United States Treasury, in July, 1886, and that Judge McCue instructed Mr. Lyons to appear in behalf of the United States and press the case to a conclusion. In view of the laborious character of this litigation and the services rendered by Mr. Lyons, I am of the opinion that \$500 would be a very reasonable fee, and think it would be proper to allow him this amount.

K. KEMPER.

DEPARTMENT OF JUSTICE,
 Washington, D. C., *September 10, 1892.*

SIR: The letters formerly received from you about your services in the case of the Farmers' Bank of Virginia against the Alexandria Canal Company, and your charge for those services, have been examined anew.

You understand that the services having been rendered in a State court they are properly the services of the district attorney, under section 299, Revised Statutes; that compensation can not be made from the fees of the district attorney or the salary of the regular assistant to the district attorney. I am informed that the services in the case were of value to the Government and ought to be paid; but I do not see how an account can be stated that will be audited and adjusted by the accounting officers of the Treasury.

Under the circumstances you are informed that the account will be sent to Congress at its next session approved for the sum of \$500, that a specific appropriation may be made in the case. If at the next session of Congress you would make a personal explanation to the Committee on Appropriations of the House of Representatives, they would have a clearer understanding of the merits of the case than they will probably get from the copies of the correspondence that will be forwarded to them by this Department.

Very respectfully,

W. H. H. MILLER,
Attorney-General.

JAMES LYONS, Esq.,
Attorney at law, Richmond, Va.

EXHIBIT B.

BOISE CITY, IDAHO, *November 25, 1892.*

I herewith hand you an account which Charles L. Heitman has against the United States for services as attorney in a case in which the Government was interested. The suit was an injunction suit brought in the Territorial court by R. E. MacFarland against McClure, receiver of the land office at Cœur d'Alene City, to compel McClure to pay him, MacFarland, certain moneys which MacFarland claimed were

due him as register of the land office at Cœur d'Alene City, said McClure being the proper disbursing officer for that purpose. I was instructed to examine into and report upon the case, but never could ascertain where the case was commenced until about the time it was called for trial. I was then busy in court here, and as Mr. Heitman was attending to the matter at the time at the request of Mr. McClure, I asked him to go on with the case. Mr. Heitman attended to the cases and he has made his charge much less than I could have possibly attended to the matter for, as the distance between Rathdrum, where the case was pending, and this city is about 550 miles. The charge contained in the account is very reasonable, and if there is any fund from which it could be paid I would recommend the payment of the claim.

Very respectfully,

FREMONT WOOD,
United States Attorney.

The ATTORNEY-GENERAL,
Washington, D. C.

Department of Justice of the United States, to Charles L. Heitman, attorney at law, Rathdrum, Idaho.

For professional services rendered U. S. Government in the case of Robt. E. McFarland v. W. J. McClure, tried in the district court of the first judicial district of the State of Idaho, in and for Kootenai County \$150

Chas. L. Heitman, being duly sworn, deposes and says that the above account is correct, and that the services therein mentioned and referred to in the memorandum hereto attached were performed by him.

CHAS. L. HEITMAN.

Subscribed and sworn to before me this 2d day of May, 1892.

[SEAL.]

ROBERT J. BROGAN,
Clerk of District Court.
By HENRY T. RAY,
Deputy.

In the district court of the first judicial district of the State of Idaho, in and for the county of Kootenai.

ROBERT E. MCFARLAND, PLAINTIFF, }
vs. }
WILLIAM J. MCCLURE, DEFENDANT. }

This cause was tried at a special term of said court before W. G. Piper, judge. Plaintiff was register of the United States land office at Cœur d'Alene, Idaho; defendant, William J. McClure, was receiver of said land office in such land district.

Plaintiff claimed in this action that there was due him, on account of his salary and commission, and commissions and fees, a considerable sum of money, and that said sum was in the hands of the defendant, as receiver of said land office, for payment to plaintiff.

That plaintiff had been a witness for the United States Government before a United States court of inquiry, held at Fort Sherman, Idaho, in the year 1887, to investigate certain irregularities charged to have been committed by certain officers of the United States Army.

That the plaintiff, Robert E. McFarland, received from the paymaster of the United States Army the regular per diem and mileage of a witness before said court of inquiry, in violation of section 850, Revised Statutes of the United States.

That defendant, William J. McClure, acting under instructions from the Department of the Interior, at Washington, D. C., refused payment to the plaintiff, Robert E. McFarland, of the sum so due him as register of said land office.

Plaintiff, Robert E. McFarland, in this action applied for a writ of mandamus to compel the defendant, William J. McClure, to pay over said sum so claimed to be due by plaintiff, Robert E. McFarland, on his salary as register of said land office.

Two hearings were had upon the matter before the district court, and the case was finally settled in favor of the defendant, William J. McClure.

Charles L. Heitman, esq., attorney at law, residing at Rathdrum, Idaho, acting under instructions from the United States attorney for the district of Idaho, appeared for the defendant, William J. McClure, and represented the United States Government.

EXHIBIT C.

The United States of America to Samuel R. Peters, Dr.

For services in attending United States circuit court at Cheyenne, Wyo., August 1, 2, and 3, 1892, both inclusive, and assisting the United States attorney in the preparation and argument of the case of the United States *vs.* The Trans-Missouri Freight Association *et al* \$1,000
 SAMUEL R. PETERS.

UNITED STATES OF AMERICA, *District of Kansas, ss:*

Samuel R. Peters, being first duly sworn, says that the above and foregoing account is just and correct; that the services therein charged for were necessarily and actually performed as therein stated, and that the same is now due and unpaid.
 SAMUEL R. PETERS.

Subscribed and sworn to before me this 5th day of December, 1892.

[SEAL.]

JOSIAH FOLTZ,

Clerk District Court for Harvey County, Kans.

I consider the amount charged in above bill of Samuel R. Peters a reasonable charge for the services performed.

JOHN A. RINER,
Judge.

TOPEKA, KANS., *December 2, 1892.*

SIR: I have the honor to call your attention to the inclosed claim of Hon. S. R. Peters for fees for assisting in the preparation and argument of the case of United States *vs.* The Trans-Missouri Freight Association *et al*. You are already aware of the extended nature and gravity of this case. In the argument at Cheyenne I was confronted by eight leading counsel of defendant railroad companies, who appeared on behalf of defendants, and felt unable to conduct the argument without assistance.

Some two or three months prior to the argument of the cause I addressed a letter to you requesting the appointment of assistant counsel in that case. At the time you were absent from Washington, and the Assistant Attorney-General answered me to that effect. About the same time I made application for an assistant in the case of United States *vs.* Leavenworth Coal Company, and the answer to my application was to the effect that the appropriation for such services was exhausted, and hence no assistant was appointed. Under the circumstances nothing was left for me to do but to request Mr. Peters to assist me in the argument, which I did with the hope that an account presented by him for services might meet with your recommendation and indorsement and be submitted to Congress for an appropriation, which I wery earnestly request that you will do.

I have the honor to remain, your obedient servant,

J. W. ADY,
United States Attorney.

The ATTORNEY-GENERAL,
 Washington, D. C.

EXHIBIT D.

OXFORD, MISS., *April 11, 1892.*

DEAR SIR: I send you two telegrams which passed without my instructions between Col. Hancock and the post-office inspector in charge at Chattanooga.

You can see for yourself to what they refer. The Post-Office Department seems to be very anxious in regard to the prosecution of a band of post-office robbers who have just been arrested in Winston County. Post-Office Inspector Hancock asked me to telegraph for the employment of special counsel. I refused to do so on the ground that I could not see that it was necessary. But as these telegrams passed without my instruction and have come into my hands, I read them to you.

We have seven men in one band, all from Winston County. Mr. Charles Richardson, of the firm of Sykes & Richardson, came from Winston County. He was reared there. If he is not retained by the Government he will be employed by the defendants, and he, knowing everybody almost in that county, would doubtless be a very strong prosecutor, as he is regarded by many as the finest advocate at this bar.

I do not now recommend the employment, but I do not care to take the responsibility of refusing to lay the matter before you. If you think proper to accept the solicitation of the Post-Office Department it would be very acceptable to me, though I do not at present see the necessity of it. If you decide to employ him, please wire me; if not, "no wire" will indicate it.

Very respectfully,

M. A. MONTGOMERY,
United States Attorney.

Hon. W. H. H. MILLER,
Attorney-General, Washington, D. C.

[Telegram.]

CHATTANOOGA, TENN., *April 9, 1892.*

JNO. HANCOCK,
Post-Office Inspector:

Chief wires appropriation available does not warrant expenditure as requested; have United States district attorney ask permission Department of Justice to employ special counsel; this has been done before by Department of Justice.

SHARP,
Inspector.

[Telegram.]

CHATTANOOGA, TENN., *April 18, 1892.*

JNO. HANCOCK,
Post-Office Inspector:

Have wired Department and recommended your allowance of \$250 per attorney; think you should have it; advise with Maynard, New Orleans division about this.

SHARP, *Inspector.*

DEPARTMENT OF JUSTICE,
Washington, D. C., April 26, 1892.

SIR: Yours of April 11 with reference to the employment of special counsel in the case against the post-office robbers, Winston County, is received. As you do not recommend such employment and as there is no money available at present for that purpose, no employment will be made. We think that you should be able to secure conviction in this matter without assistance.

Very respectfully,

CHARLES H. ALDRICH,
Acting Attorney-General.

M. A. MONTGOMERY, Esq.,
United States Attorney, Oxford, Miss.

OXFORD, MISS., *May 7, 1892.*

SIR: In reply to yours of the 26th ultimo I have to say, that before the arrival of your letter, and at the instance of the post-office department, which had been at large expense in the case of the United States against the Pearsons (the band of mail robbers), Mr. Richardson, of Aberdeen, was employed as assistant United States counsel. At the time of his employment he had an offer of \$500 to take the case of Thomas Pearson (and indirectly of some of the rest). He had lived in the county in which the robberies had taken place and was intimately acquainted with the localities where each of the robberies had occurred. He knew, also, personally most of the characters in the cases—both the robbers themselves and the witnesses for the United States. This made the post-office inspectors very anxious about the success of the case, not so much the inspectors who had charge of the case as Col. Hancock, who was present at the time the affidavits were made out, the other inspectors not being able to get to Aberdeen for some time on account of high water.

The post-office department at New Orleans authorized the payment of \$250 to Mr. Richardson. I did not feel warranted in refusing the assistance, especially when

there seemed to be so much local and general interest in the cases and when there was so much at stake.

It turned out, as I really believed that it would, that the evidence was so crushing that there was no escaping a verdict against the robbers. The cases in which Mr. Richardson was employed proved to be the easiest cases in the court, and we sent twelve mail robbers to the penitentiary—but this is “after sight”—and I am certain that nothing was lost in the employment of Mr. Richardson.

I have the honor to be, most respectfully, your obedient servant,

M. A. MONTGOMERY,
United States Attorney.

Hon. CHARLES H. ALDRICH,
Acting Attorney-General, Washington, D. C.

OXFORD, MISS., July 26, 1892.

SIR: In the eastern division of this district, for many months previous to the April term of the United States court at Aberdeen, there were many post-office robberies. Two bands of those robberies were broken up and nearly all the members of the same sent to the penitentiary at the above-named term of court. In one of the cases there had been so many robberies and there were connected with it so many men of desperate character, and the post-office department at New Orleans (having been at work at the matter for more than two years) had spent so much time and money in running the robbers down, that great interest was taken in the prosecution. The parties—the Pearsons and postmaster Dempsey—lived in Winston County. The court is held at Aberdeen. In Aberdeen is a very strong firm of attorneys, one of whom, Mr. Charles Richardson, is the most effective advocate at that bar, and was for years a resident of Winston County, so that he knew thoroughly all the roads and by-paths of the parts of the county in which the robberies had been committed, and, also, the parties charged with the crime.

One of the defendants offered him—his firm—\$500 to defend him; but Mr. Richardson had originally been instrumental in pointing out to the post-office inspectors the manner in which the robbers could be ascertained and in recommending them to his brother, George Richardson, esq., a leading attorney in said county of Winston, through whom and his partner all the correspondence was carried on which resulted in breaking up the clan called “Uncle Sam’s Boys” among themselves and organized under oath for the purpose of “robbing the United States Mails on every possible occasion,” and in sending all the members to the penitentiary. There were four sets of mail robbers convicted at that term of the court, and it so happened that the case which seemed at first most dependent on circumstantial proof—the case against the Pearsons—and likely to turn largely upon a knowledge of the community in which the crimes were committed and of the character of the participants, was the easiest of all the cases to establish.

But this could not be known beforehand, and Post-Office Inspector Hancock—Col. John Hancock, of Washington, D. C., and the inspector-in-charge at New Orleans—were so much interested in the success of the prosecution that they (and especially Col. Hancock, of the Chattanooga division, who had originally set on foot the plan of capture, and who, in the absence of Mr. Crawford and Col. Thomas, under whom the prisoners had been detected and arrested, they being detained on the way for days by high water, was assisting with the testimony in the case), urged the employment of Mr. Charles Richardson to assist in the prosecution. This idea became very popular with the court officers generally. I did not believe that it was necessary, but I couldn’t help seeing that it would be a good stroke of policy.

The firm expressed themselves willing to accept just half as much for aiding in breaking up the band as they were offered to defend one of them. I told Col. Hancock that I would not recommend the employment as *necessary*, but that I thought that it was good policy, and that it would be a fitting recognition of a firm of attorneys who had been instrumental in running down the robbers; and I so wrote to you at Washington, but you were at the time at Hot Springs, Ark., and I did not receive an answer to my letter until after the trial and conviction, or, at least, until about that time. But Col. Hancock had telegraphed to headquarters at Chattanooga, and the inspector in charge to Washington. The reply was to Hancock that they had no authority. But about that time Inspectors Crawford and Thomas, from New Orleans, came in. They telegraphed to New Orleans, and they again to Washington (as I understood), and an answer came empowering me to make the arrangement with Mr. Richardson.

I had had time to hear from Washington, but had not heard; and I supposed that as a communication had come from Washington twice, the first time no, and the second time yes, that the authority was complete, although I knew that a con-

tract of that kind, where there is time for it at all, must be signed by the Attorney-General; and acting upon the authority of this second telegram I asked the assistance of the firm of Sykes & Richardson, they agreeing to assist in the prosecution of the six parties, nearly all engaging in different robberies, and they did so. The telegram from the Post-Office Department specified the amount (it had been previously referred to them), \$250.

I had a letter days afterwards from the acting Attorney-General, taking the same view of the matter that I did personally, without authorizing the employment, and stating that I had not recommended it.

I have received two letters from Mr. Richardson asking me to see if I can not in some way hurry up the payment. And on this account I have written you at much length about the matter. I supposed that everything was all right, coming as it did, and I hope that I beg your pardon for this long letter, but I could not well lay the whole matter before you otherwise.

Most respectfully,

M. A. MONTGOMERY,
United States Attorney.

Hon. W. H. H. MILLER,
Attorney-General, Washington, D. C.

ABERDEEN, MISS., *September 2, 1892.*

DEAR SIR: At the April term of the district court of United States for the eastern division of the northern district of Mississippi I was employed to assist the district attorney in the prosecution of seven mail-robbery cases from Wiuston. The telegram authorizing my employment, I am informed, came through the Post-Office Department, and the fee was agreed upon with District Attorney Montgomery at \$250. The officials promised to see to the collection of fee, but there seems some delay somewhere. It may be that I should have presented my account to some Department of the Government. Will you kindly inform me if the matter is properly before the Department authorized to make such allowances, and if there is anything on my part necessary to be done?

Our success in the cases and small fee charged should commend the claim to you even if there should be an error in not having been authorized by the proper Department.

Yours, very truly,

CHARLES RICHARDSON.

The UNITED STATES ATTORNEY-GENERAL,
Washington, D. C.

EXHIBIT E.

[House Ex. Doc. No. 215, Fifty-second Congress, first session.]

TREASURY DEPARTMENT,
April 23, 1892.

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

Respectfully, yours,

O. L. SPAULDING,
Acting Secretary.

The SPEAKER OF THE HOUSE OF REPRESENTATIVES.

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

SIR: Herewith inclosed are copies of papers in support of the claim of Allen R. English for services rendered under appointment of the court in defending certain Indians charged with crime, at the October term, 1889, of the first judicial district

court of the Territory of Arizona. Inclosed are copies of the indictments, of his account as approved by the court, of the letter of Mr. English transmitting his claim to his agent, A. J. Falls, of this city, and of the letter of Mr. Falls of April 18, 1892, forwarding the same to this Department.

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

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

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

Very respectfully,

CHARLES H. ALDRICH,
Acting Attorney-General.

The SECRETARY OF THE TREASURY.

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

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

Very respectfully,

A. J. FALLS.

The ATTORNEY-GENERAL.

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

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

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

Therefore I think that whether in United States or Territorial court, my case is on all fours with the Williams case, and that the latter is precedent, and it is right. These Indians are wards of the Government, more so, perhaps, than any other tribe within its boundaries, completely dependent upon the Government. Now to say that this great Government has millions to prosecute these Indians of any crime with which one of them might be accused, but that (well knowing none of them have a dollar and are totally without means to get one) not a cent shall be expended in their defense, would be a construction of that act of Congress unworthy of the high officials of that Department; their construction was right in the Williams case, and was solely based upon that act of Congress and I can not see where there is any

chance on earth for them, neither can I see why they are now inclining to disregard and ignore the precedent established in their former ruling.

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

Yours, truly,

ALLEN R. ENGLISH.

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

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

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

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

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

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

RICHARD E. SLOAN,
Judge.

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

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

[SEAL.]

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

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

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

A. M. PATTERSON,
District Attorney.

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

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

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

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

A. M. PATTERSON,
District Attorney.

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

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

EXHIBIT F.

[House Ex. Doc. No. 201, Fifty-second Congress, first session.]

[Page 3.]

Special counsel for Mission Indians, California, from July 16, 1883, to
January 14, 1886..... \$2,200

[Pages 30 and 31.]

LOS ANGELES, CAL., *April 2, 1892.*

MY DEAR FALLS: I have at last reached the matter of our account against the United States Government, and I herewith send you the claim and will proceed to explain the same.

On June 26, 1883, the Department of Justice, by a letter under the date signed by Benjamin Harris Brewster, Attorney-General (letter marked S. B. S. in the upper right-hand corner and B. C. in the upper left-hand corner), upon the recommendation of Hon. H. Price, Commissioner of Indian Affairs, based upon a letter from Helen Jackson, and upon the recommendation of Hon. H. M. Teller, Secretary of the Interior, appointed us special assistants to the United States attorney, S. G. Hilborn, esq., in all cases affecting the interests of the Mission Indians in California, touching their rights to certain lands now in jeopardy, and upon our qualifying and accepting the position we were to proceed.

By a letter dated July 16, 1883, we acknowledged the letter of June 26, and inclosed in due form our oath of office, and informed the Department of our acceptance of the appointment, and to immediately enter upon the duties and the discharge of the same, which letter will be found on file in the Department of Justice.

We immediately investigated the cases, taking much time and expense, corresponding with the Indian agent at this place, and preparing to protect the Indians in the possession of their lands, which they were then attempted to be ejected from, especially a portion of the Rancho San Jacinto, in San Diego County.

About January, 1884, we found it necessary to make expenditures for the purpose of preparing the case for trial, which had then been commenced against the Indians. A copy of the letter under date of June 26, 1883, appointing us, is herewith inclosed, marked Exhibit A.

Our oath of office will be found on file in Department of Justice and our letter in reply to that.

On January 11, 1884, we wrote to the Attorney-General, Brewster, for permission for the expenditure of money amounting to \$150 or \$200, which letter is inclosed, marked Exhibit B. To which letter we received a reply January 21, 1884, authorizing us to expend a sum not exceeding \$200, copy of which letter is inclosed, marked Exhibit C.

After the expenditures we forwarded to the Department the expense account for the expenditure of the \$200 under date of July 24, 1884, a copy of which is herewith inclosed, marked Exhibit D. To which letter we received an answer dated November 1, 1884, from the Treasury Department, First Auditor's office, marked on the upper left-hand corner T. S., asking us to itemize the account. The account was on file in the First Auditor's office. A copy of the letter is herewith inclosed, marked Exhibit E, which letter no doubt is on file in the Auditor's office.

We replied to Hon. H. H. Markham, then member of Congress from this district, and forwarded him again the account under date January 11, 1886, a copy of which letter we herewith inclose, marked Exhibit F.

On January 14, 1886, our matters were ended by the Attorney-General, A. H. Garland, notifying us that our relations as United States attorneys were ended, a copy of which letter is inclosed, marked Exhibit G.

We have an account on file with the Auditor for the moneys which we disbursed, independent of any fees belonging to us. Our services were largely in adjusting and settling matters outside of real cases in court. There was a case commenced in 1884 to eject the Saboba Indians from the San Jacinto rancho, in San Diego County; a default was taken, contrary to the stipulation made with us by the attorney on the other side, who caused said default to be obtained. We went on and tried the case, filed a bill of exceptions in the case, took it on appeal to the Supreme Court, prepared a brief in it, and it was pending in the Supreme Court upon our brief when Mr. Garland discontinued our employment, when Mr. Ward, who was appointed, continued said case, when the Supreme Court reversed the judgment and decided the case in our favor, in accordance with an opinion written at the time the case was first commenced, giving the Indians the right of possession of the property.

During the same time we had another case, entitled *Rogerio vs. Porter*, pending in our superior court, which caused us a great deal of trouble and a great deal of labor, all of which we gave to it and followed it to its conclusion; also another case, in regard to Sec. 2, T. 14 S., R. 2 E., San Bernardino meridian, against James Meade; also some five or six other cases against various parties. Our work was unusually important, taking a great deal of our time, calling us from our office to San Diego, San Francisco, San Bernardino, and elsewhere. We were successful in every case in which we were connected, except one.

I herewith inclose our bill for services for the Mission Indians, marked Exhibit H.

This amount is not what our services are worth, but it is a very reasonable bill for the amount of time and labor and the result and importance of it. Our bill should have been for \$5,000 if we charged the Government at the same rate we are allowed for our services in like cases.

I herewith inclose a letter, marked Exhibit I, which will explain matters to you. The letter was written to Hon. H. H. Markham. Our work consisted in attending to the cases here in court, some eight or nine altogether, and in corresponding with the Departments, with the Indian Commissioners, in taking depositions, and in consulting

with the Indians for the purpose of getting at the facts in regard to them. We visited the Indian reservations, some twelve or fifteen altogether, and we did an immense amount of labor and work, which we have not charged in our bill, but have grouped it altogether, so that our bill against the Government amounts to \$2,000, and the money actually expended, authorized by the Department, for which we rendered a bill, which is in the Auditor's Office, \$200, making \$2,200 altogether.

We think this gives you a summary of the account sufficient for you to present our bill and to obtain the amount allowed by the Department. We think there should be no hesitancy on the part of the Government in allowing us this claim. We have done the work faithfully. We expended the money, believing we would be reimbursed for it. The account was assigned to our present firm, Wells, Monroe & Lee, and whatever is allowed belongs to that firm.

Hoping that you may be able to understand the matter and present it intelligently to the Department from the letter I have written, I am, very respectfully, yours,
WELLS, MONROE & LEE.

A. J. FALLS, Esq.,
1419 F street NW., Washington, D. C.

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