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Letter from the Secretary of War, accompanying a copy of a letter of the Commanding General, Department of the Columbia, and a copy of the decision of the Judge of the District Court for the District of Oregon, in the case of John A. Carr

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LETTER

FROM

THE SECRETARY OF WAR,

ACCOMPANYING

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

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

WAR DEPARTMENT, *February 4, 1875.*

The Secretary of War has the honor to transmit to the United States Senate, for the information of the Committee on the Judiciary, for consideration in connection with letter of the 13th ultimo upon the same subject, (see Senate Executive Document 15, 43d-Congress, 3d session,) copy of letter of the commanding general, Department of the Columbia, and copy of the decision of the judge of the district court for the district of Oregon, in the case of John A. Carr.

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

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

Special attention is invited to this matter, and the passage of a law is earnestly recommended which will clearly define the duties of the Department in cases arising out of violation of the Indian intercourse laws, and that in cases like the present the Department be authorized to transfer prisoners to the custody of a United States marshal, to be stationed in Alaska, or that sufficient time be allowed in which to deliver prisoners arrested in Alaska into the custody of the United States marshal of the district of Oregon.

WM. W. BELKNAP,
Secretary of War.

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

SIR: I have respectfully to inclose copy of a decision, cut from the Oregonian of this date, of Hon. M. P. Deady, judge United States dis-

trict court for the district of Oregon, which is of great interest to us in connection with the administration of affairs in the distant Territory of Alaska.

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

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

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

O. O. HOWARD,

Brigadier-General, Commanding.

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

(Through division headquarters.)

Decision on habeas corpus in the United States district court.

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

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

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

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

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

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

said, in which case they really act as civil officers and in subordination to the civil law.

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

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

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

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

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

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

Official copy.

E. D. TOWNSEND,
Adjutant-General.

[General Orders No. 40.]

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

The act of Congress of March 3, 1873, having extended the laws of the United States relating to customs, commerce, navigation and trade, and intercourse with Indian tribes, &c., over the 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, "except such supplies as shall be necessary for the officers of the United States and troops of the service, under the direction of the War Department," is 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 passing through the waters of Alaska, may be landed at any port in that Territory for transshipment only, under the regulations of the Treasury Department.

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

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

Act approved March 3, 1873.

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

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

That section one of an act entitled "An act to extend the laws of the United States relating to customs, commerce, and navigation over the territory ceded to the United States by Russia, to establish a collection-district therein, and for other purposes," approved July twenty-seventh, eighteen hundred and sixty-eight, be so amended as to read as follows: "That the laws of the United States relating to customs, commerce, and navigation, and sections twenty and twenty-one of 'An act to regulate trade and intercourse with Indian tribes and to preserve peace on the frontiers,' approved June thirtieth, eighteen hundred and thirty-four, be, and the same are hereby, extended to and over all the 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 regulations as may be established by the President of the United States, to cause the boats, stores, packages, and places of deposit of such person to be searched, and if any such spirituous liquor or wine is found, the goods, boats, packages, and peltries of such persons shall be seized and delivered to the proper officer, and shall be proceeded against by libel in the proper court and forfeited, one half to the use of the informer and the other half to the use of the United States; and if such person is a trader, his license shall be revoked and his bond put in suit. And it shall moreover be lawful for any person in the service of the United States, or for any Indian, to take and destroy any ardent spirits or wine found in the Indian country, except military supplies as mentioned in this section.

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

Act of July 27, 1868.

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

Opinions of the Attorney-General.

DEPARTMENT OF JUSTICE,
August 12, 1873.

SIR: In June last I received a communication from the chief clerk of the War Department, dated the 16th of that month, which purports to have been sent to me dur-

ing your absence, but by your direction, inclosing a number of papers relating to questions that have arisen in connection with the administration of the Indian intercourse-laws. Referring to the terms "Indian country," used in those laws, it is observed in the above-mentioned communication that the question is constantly recurring, What is Indian country? And I understand it to be one of the objects of the communication to elicit from this Department an answer to that question. The communication, besides, contains a request for an opinion as to whether the War Department has exclusive authority to permit the introduction of spirituous liquors into the Indian country. With regard to the subject just adverted to, it appears that by the 20th 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 2d section of the act of March 3, 1847, (9 Stat., 203,) amendatory of the 20th 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 20th section of the act of 1834 so as to read as follows :

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

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

To remedy this inconvenience and render those limits more obvious and certain, the act of June 30, 1834, (4 Stat., 729,) in its 1st section, provided "that all that part of the United States west of the Mississippi, and not within the States of Missouri and Louisiana or the Territory of Arkansas, and also that part of the United States east of the Mississippi River, and not within any State, to which the Indian title has not been extinguished, for the purposes of this act be taken and deemed to be the Indian country."

The understanding of the framers of the law of 1834 was that the Indian country, as thereby defined, would embrace: 1st, the whole of the territory of the United States west of the Mississippi, not within the States of Missouri and Louisiana or the Territory of Arkansas; 2d, that part of the territory of the United States east of the Mississippi, not within any State, to which the Indian title remains unextinguished. (See report of committee, House of Representatives, No. 474, first session Twenty-third Congress, pages 1 and 10.) In the report just cited it is remarked with reference to the Indian country as defined in the first section of that act: "On the west side of the Mississippi its limits can only be changed by legislative act. On the east side of that river it will continue to embrace only those sections of country, not within any State, to which the Indian title shall not be extinguished. The effect of the extinguishment

of the Indian title to any portion of it (*i. e.* of the country east of the Mississippi) will be the exclusion of such portion from the Indian country." Subsequently the question arose as to whether the Territory of Oregon was within the limits of the Indian country west of the Mississippi, as described in the act of 1834; and Congress, apparently assuming that it was not, provided, by the fifth section of June 5, 1850, (9 Stat., 437,) as follows:

"That the law regulating trade and intercourse with the Indian tribes east of the Rocky Mountains, or such provisions of the same as may be applicable, be extended over the 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 twenty and twenty-one 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.

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

DEPARTMENT OF JUSTICE,
Washington, November 13, 1873.

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

Section 4 of the act of July 27, 1868, (15 Stats., 241,) provides "That the President shall have power to restrict and regulate or to prohibit the importation and use of 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 proved to be done by order of the War Department, or of any officer duly authorized thereto by the War Department. And if any superintendent of Indian affairs, Indian agent or subagent, or commanding officer of a military post, has reason to suspect or is informed that any white person or Indian is about to introduce or has introduced any spirituous liquor or wine into the Indian country in violation of the provisions of this section, it shall be lawful for such superintendent, agent, subagent, or commanding officer, to cause the boats, stores, packages, wagons, sleds, and places of deposit of such person to be searched; and if any such liquor is found therein, the same, together with the boats, teams, wagons, and sleds used in conveying the same, and also the goods, packages, and peltries of such person, shall be seized and delivered to the proper officer, and shall be proceeded against by libel in the proper court, and forfeited, one-half to the informer and the other half to the use of the United States; and if such person be a trader, his license shall be revoked and his bond put in suit. And it shall moreover be lawful for any person in the service of the United States, or for any Indian, to take and destroy any ardent spirits or wine found in the Indian country, except such as may be introduced therein by the War Department. And in all cases arising under this act Indians shall be competent witnesses."

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

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

Very respectfully,

GEO. H. WILLIAMS,
Attorney-General.

HOB. W. W. BELKNAP,
Secretary of War.

By order of the Secretary of War:

E. D. TOWNSEND,
Adjutant-General.

[General Orders No. 57.]

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

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

The act of Congress of March 3, 1873, having extended the laws of the United States relating to customs, commerce, navigation, and trade, and intercourse with Indian tribes, &c., over the 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.

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

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

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

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

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

I therefore return an affirmative answer to your question.

Very respectfully,

GEO. H. WILLIAMS,
Attorney-General.

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

By order of the Secretary of War:

E. D. TOWNSEND,
Adjutant-General.