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L. A. Noyes.

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L. A. NOYES.

FEBRUARY 21, 1895.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BUNN, from the Committee on Claims, submitted the following

REPORT:

[To accompany H. R. 824.]

The Committee on Claims, to whom was referred the bill (H. R. 8254) for the relief of L. A. Noyes, have carefully considered the same and report it back with a favorable recommendation.

Your committee adopt the report of Mr. Atkinson, made at the second session of the Fifty-second Congress, which is as follows:

The Committee on Claims, to whom was referred the bill (H. R. 8756) for the relief of L. A. Noyes, submit the following report:

The committee, in reporting this bill, submit the following statement of facts:

At the close of the sealing season in 1886, George R. Tingle, special Treasury agent in charge of seal islands, Alaska, had permission to return to Washington, D. C., and was instructed to leave two of his three assistants at the islands during the winter, one in charge of St. Paul and the other in charge of St. George. The three assistants were T. F. Ryan, A. P. Loud, and J. P. Manchester, the two latter having gone up to the islands at the opening of the season, it being that they required twice the force in the summer as in the winter.

Mr. Tingle and Mr. Ryan, having wintered on the islands the winter previous, were, in accordance with custom and the written permission of the Secretary of the Treasury, granted leave to return to the States, and Captain Loud relieved Mr. Tingle at St. Paul Island, according to expectation; but Mr. Manchester, who was expected to relieve Mr. Ryan at St. George, had a verbal understanding with Assistant Secretary Smith, before he left Washington, that on account of the illness of his wife he, too, if he chose, at the close of the sealing season, might return home, which he decided to do, thus leaving St. George without a Government officer, which Mr. Tingle knew would not answer, as valuable property interests were at stake, and accordingly applied to Dr. L. A. Noyes, the post physician for the Alaska Commercial Company at St. Paul Island, to take charge of St. George Island for the winter. Having examined the records of his office, he found that in a similar emergency, in 1870, Captain Bryant, Treasury agent in charge, had appointed Mr. Falconer to fill a vacancy, and that the Secretary subsequently ratified the appointment, and he was paid for his services without objection.

This action was taken by Mr. Tingle because he had no time to confer with the Treasury Department at Washington, and it was the best he could do and carry out his instructions to have an assistant in charge of each island, which was of absolute necessity, in order to preserve Government property, to keep the seal rookeries from marauding parties from outside, and the natives from dissensions within. This agent, being the only official authority of the United States on the island, and charged with all the duties of government administration there, that such agent is, in fact, the government itself.

Dr. Noyes reluctantly accepted the appointment, for he had been eighteen months away from home. The appointment was made in due form, and he took the oath of office and removed from St. Paul to St. George, and performed duty from August 1, 1886, to June 1, 1887, ten months, which, at \$6 per day, the regular pay for Treasury agents, would amount to \$1,800, no part of which has he ever received.

When Dr. Noyes's claim for pay was presented to the Secretary of the Treasury he thought it unlike the case of Mr. Falconer, appointed by Captain Bryant, in 1870. In that case there was an actual vacancy in the office, and, by his approval of Falconer's

appointment, it entitled him to his pay. But in this case there was no vacancy in the office, and, being in doubt whether he could rightfully pay Dr. Noyes, he referred the question to the Solicitor of the Treasury, who, among other things, says:

"There is no doubt suggested as to the necessity for the services of such agent or the efficiency of their performance by Dr. Noyes. The only question for consideration is whether the law will authorize payment of the claim."

Without quoting the whole opinion of the Solicitor, will say that the Solicitor concluded that Dr. Noyes's appointment was irregular, because there was no real vacancy in the office of assistant agent to the seal islands, and that the Secretary of the Treasury could not make the appointment legal by approval of it; and in closing his opinion says:

"I must, therefore, conclude with regret that there is no law which would authorize the payment of Dr. Noyes for services that were both necessary and meritorious."

In reply to a letter of Dr. H. H. McIntyre, late special Treasury agent at the seal islands and superintendent of seal fisheries of Alaska, Assistant Treasurer Nettleton, under date of December 30, 1892, among other things, said:

"I have to say that the whole matter was referred to the Solicitor of the Treasury for an opinion as to whether this claim could legally be allowed and paid, the Department being fully disposed to pursue this course in case there were no legal obstacles. I inclose herewith the Solicitor's opinion, which, as you will see, is adverse; the legal reasons seem to be conclusive against allowing the claim, a fact which I regret. The only resort now seems to be a request for relief at the hands of Congress."

And again, on the 14th of February, 1893, in reply to a letter of Hon. C. H. Mansur, acting chairman Committee on Claims, for an opinion as to the merits of it, Assistant Treasurer Spaulding says:

"As there was no authority of law for the employment of Mr. Noyes, and no appropriation from which he could be paid, his claim was necessarily rejected by the Department. I concur, however, in the views expressed by the Acting Solicitor that his services were both necessary and meritorious, and think that he is entitled to relief by Congress."

From the facts in the case it is quite clear that the service was rendered as claimed, and that the Treasury Department thinks that the claim is just and ought to be paid; and your committee, sharing the same opinion, recommend the passage of the bill.

TREASURY DEPARTMENT, OFFICE OF THE SECRETARY,
Washington, D. C., February 13, 1893.

SIR: In compliance with your verbal request of this date, I have to inform you that the records of the Department, while they do not show the exact dates of the beginning and termination of the services rendered by Dr. L. A. Noyes upon the island of St. George, it would appear from these records that he performed the duties assigned to him by the then special agent in charge, Mr. George R. Tingle, from about October 1, 1886, till about June 1, 1887, a period of, say, nine months. The compensation of the special agents of the seal islands of the second class at that time was \$6 per diem.

Respectfully, yours,

O. L. SPAULDING, *Assistant Secretary.*

Hon. W. W. GROUT,
House of Representatives.

OFFICE OF H. H. MCINTYRE,
West Randolph, Vt., April 26, 1892.

SIR: I was for twenty years—from 1870 to 1889, inclusive—superintendent of the seal fisheries of Alaska for the lessees, and as such was personally cognizant of the facts in relation to the claim of Dr. L. A. Noyes, of Randolph, Vt., about which he asks me to write you.

In the fall of 1886 Mr. George R. Tingle, special Treasury agent in charge of the seal islands, had permission to return to Washington, D. C., and was instructed to leave two of his three assistants, one at each island, on duty through the following winter. These assistants were T. F. Ryan, J. P. Manchester, and A. P. Loud; but of these three Mr. Ryan and Mr. Manchester insisted upon coming away, leaving only Mr. Loud on duty. St. George was, therefore, in danger of remaining without a representative of the Government or any recognized official authority, exposed to marauders upon the seal rookeries from without and dissensions among the natives from within.

In this dilemma Dr. L. A. Noyes, the post physician of the Alaska Commercial Company at St. Paul Island, was applied to by Mr. Tingle and urged to accept the vacant place at St. George Island as acting assistant Treasury agent, but he had already spent the preceding winter at St. Paul Island, and was preparing, under the rules of the Alaska Commercial Company, which allowed every second winter off duty, to visit his family in Vermont. He accepted Mr. Tingle's offer very reluctantly, and did so only upon his (Tingle's) assurance that he would surely be paid by the Department for his services. In giving this assurance, Mr. Tingle relied upon the precedent established in 1870, when Special Treasury Agent Charles Bryant appointed Samuel Falconer acting assistant agent in the same place where Dr. Noyes was afterwards stationed, and under similar circumstances. In this case the appointment of Mr. Falconer was recognized by the Department as a necessity, and he was duly paid for his services.

Mr. Tingle could not but take the action he did. He had no opportunity to appeal to the Department for advice, nor to obtain its sanction, for no further communication could be had with the islands that season, nor was there any other person present than Dr. Noyes who could take the place. Certainly to have left the island without an officer of the Government would, under the circumstances, have been to incur the just displeasure of the Department; and if the money which should have been held for Dr. Noyes was paid by the Department to one of the regular appointees absent from his post of duty without leave, the acting agent ought not, therefore, to be left unpaid.

Dr. Noyes received the appointment with due formality, and was vested with all the authority Treasury Agent Tingle was able to give him. He duly took the oath of office before his superior, and, as I am personally aware, served for the full time for which he asks payment to the entire satisfaction of Mr. Tingle and everyone concerned.

I feel a personal interest in the matter, because, without my earnest appeal to him to subordinate for the general good his strong desire to visit his family, after eighteen months' absence, and accede to Mr. Tingle's request, he would probably not have done so.

In view of the facts, I am sure the claim is just and ought to be paid; and if the Department has no warrant for allowing it, I respectfully ask the honorable Secretary to recommend to Congress that the necessary amount be included in the proper deficiency bill.

The original papers in the case, including Dr. Noyes's appointment, oath of office, and Mr. Tingle's report upon an explanation of the matter, are in the Senate files, if they have not been recently withdrawn, accompanying Senate bill 1009, Fiftieth Congress, first session.

I am, very respectfully,

H. H. McINTYRE,

Late Special Treasury Agent and Superintendent of the Seal Fisheries of Alaska.

HON. CHARLES FOSTER,

Secretary of the Treasury, Washington, D. C.

OFFICE OF H. H. McINTYRE,
West Randolph, Vt., December 30, 1892.

SIR: I had the honor to call the attention of the Department to the claim of Dr. L. A. Noyes, of this town, on the 26th day of April, 1892, by a letter, a copy of which is hereto appended, and to receive in reply the following letter under date of July 7, 1892, from Assistant Secretary Nettleton:

TREASURY DEPARTMENT, OFFICE OF THE SECRETARY,
Washington, D. C., July 7, 1892.

SIR: Referring to your communication of the 26th of April last, in which you call attention to the claim of Dr. L. A. Noyes for services rendered in 1886-87 on the Island of St. George, Bering Sea, I have to say that the whole matter was referred to the Solicitor of the Treasury for an opinion as to whether this claim could legally be allowed and paid, the Department being fully disposed to pursue this course in case there were no legal obstacles.

I inclose herewith the Solicitor's opinion, which, as you see, is adverse. The reasons seem to me to be conclusive, a fact which I regret.

The only resort now seems to be a request for relief at the hands of Congress.

Respectfully, yours,

A. B. NETTLETON, *Assistant Secretary.*

H. H. McINTYRE, Esq.,
West Randolph, Vt.

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A copy of the Solicitor's letter, to which the Assistant Secretary refers is also hereto appended.

Both the Assistant Secretary and Solicitor admit the justness of Dr. Noyes's claim, and express regret that under existing law he can not be paid; the former stating that the Department was disposed to pay him "in case there were no legal obstacles;" and the latter "that there is no doubt suggested as to the necessity for the services of such agent, or the efficiency of their performance by Dr. Noyes," and he concludes, "with regret that there is no law which would authorize the payment of Dr. Noyes for services which were both necessary and meritorious."

There is further appended hereto a copy of Special Agent Tingle's explanation of the reason the illegal appointment of Dr. Noyes was made, and his recommendation that he be paid.

Under the circumstances, I respectfully ask the Secretary of the Treasury to recommend to the Committee on Claims of the House of Representatives, to which a bill for the relief of the claimant has been referred (copy inclosed), that it be favorably reported.

I will thank the Department to give the matter immediate attention, as the term of the present Congress will soon expire, and to advise me of its action.

I am, very respectfully,

H. H. McINTYRE.

Hon. CHARLES FOSTER,
Secretary of the Treasury.

TREASURY DEPARTMENT, OFFICE OF THE SECRETARY,
Washington, D. C., February 14, 1893.

SIR: In reply to your letter of the 13th instant, relative to House bill 8756, for the relief of L. A. Noyes, in which you request that your committee may be furnished with information touching the subject, and also ask an expression of my views as to the propriety of a favorable report upon said claim by your committee, I have the honor to state that the facts and circumstances upon which Mr. Noyes based his claim are fully set forth in the accompanying copies of a communication, dated the 25th of February, 1888, from Mr. George R. Tingle, formerly Treasury agent in charge of the Seal Islands, and of the opinion of the Acting Solicitor of the Treasury, dated the 25th of June, 1892.

As there was no authority of law for the employment of Mr. Noyes, and no appropriation from which he could be paid, his claim was necessarily rejected by the Department. I concur, however, in the views expressed by the Acting Solicitor that his services were both necessary and meritorious, and think that he is entitled to relief by Congress.

Respectfully, yours,

O. L. SPAULDING, *Assistant Secretary.*

Hon. C. H. MANSUR,
Acting Chairman Committee on Claims, House of Representatives.

DEPARTMENT OF JUSTICE,
OFFICE OF THE SOLICITOR OF THE TREASURY,
Washington, D. C., June 25, 1892.

SIR: I have examined the claim of Dr. L. A. Noyes for compensation as acting assistant Treasury agent at the island of St. George, Alaska, under appointment of George R. Tingle, Treasury agent, dated July 31, 1886.

There is no doubt suggested as to the necessity for the services of such agent, or the efficiency of their performance by Dr. Noyes.

The only question for consideration is whether the law would authorize payment of the claim.

The appointment, though irregular, could now be approved by the Secretary of the Treasury if, in the first instance, he had the authority of law to make the same.

Section 1973 of the Revised Statutes authorizes the Secretary of the Treasury to appoint one agent and three assistant agents to take charge of the seal fisheries of Alaska, at a compensation fixed by the succeeding section, the act of March 3, 1875 (Supp., p. 158), and later acts.

The act of July 31, 1876 (Supp., p. 234), repealed the statute authorizing the appointment of two assistant agents. But at the time of Noyes's appointment, and previously for several years, the appointment of one agent and three assistants was duly authorized.

But it does not appear that there was any vacancy in the office of assistant agent when the so-called appointment of Noyes was made. He was, therefore, appointed to fill an office which I understand from the papers submitted, did not exist.

Section 1760. Revised Statutes, directs that "no money shall be paid from the Treasury to any person acting or assuming to act as an officer, civil, military, or naval, as salary, in any office when the office is not authorized by some previously existing law, unless such office is subsequently sanctioned by law."

I must, therefore, conclude with regret that there is no law which would authorize the payment of Dr. Noyes for services that were both necessary and meritorious.

The papers referred are herewith returned.

Very respectfully,

F. A. REEVE, *Acting Solicitor.*

The SECRETARY OF THE TREASURY.

TREASURY DEPARTMENT, *February 25, 1888.*

SIR: In the matter of the claim of Dr. L. A. Noyes, of Vermont, for services as acting assistant Treasury agent at St. George Island, Alaska, I am asked to file with the papers my statement of the facts in reference to the basis of the claim. At the time I appointed Dr. Noyes acting assistant Treasury agent he was the resident physician on St. Paul Island. Mr. Ryan, on St. George Island, and myself, on St. Paul Island, having wintered on the Islands, were, in accordance with the custom and written permission of the Secretary of the Treasury, granted leave to come down to our homes. Mr. J. P. Manchester, who had gone up to the Islands for the first time, and was expected to remain to relieve Mr. Ryan on St. George Island (while Captain Loud relieved me on St. Paul Island), determined to return to his home on account of his wife's illness, and without permission of the Secretary, but on the strength of a verbal understanding with Assistant Secretary Smith, and without my consent, did return at the close of the sealing season in August. This left St. George Island without an agent, or any authority representing the Government.

In the official letter of the Secretary, informing me of the appointment of Mr. Manchester as one of my assistants, and directing his assignment to duty, it was stated that "Mr. Manchester is desirous of returning home at the close of sealing season, and if I could make any arrangement for his doing so, the Department would have no objections." Thus, as you see, the matter was referred to me. Knowing that it would not do to leave the island of St. George without an officer for the winter, I asked Dr. Noyes if he would like the position from me, and go over to the island and take charge until Mr. Ryan or Mr. Manchester would return in the spring, explaining to him that under the law the Secretary could not pay him, and that I was not authorized by law to appoint to fill a vacancy, he would have to be paid by an act of Congress for his relief, or take his chances for compensation.

On looking over the records in my office, I found a precedent for my action in appointing Dr. Noyes and referred to it in the papers in the case, namely: In 1870 Capt. Bryant, Treasury agent in charge, appointed Mr. Falconer to fill a vacancy, and the Secretary subsequently appointed him to be an assistant agent. Dr. Noyes performed the duties of the position faithfully and well, to my entire satisfaction, having moved from St. Paul to St. George at some personal sacrifice and discomfort to guard Government property and interests. I have no hesitation in recommending the payment of his claim.

Very respectfully,

GEORGE R. TINGLE,
Treasury Agent, Alaska Seal Fisheries.

The CHAIRMAN OF THE COMMITTEE ON CLAIMS,
Senate.

