

rendered to the tribes in *the absence* of express contracts, and relying on the integrity of such tribes to pay for the service what it was worth.

It is essential to keep carefully in mind that it is the suppression of these oppressive express contracts and this alone that these sections are directed to, as the mischief meant to be prevented.

Another matter, somewhat preliminary in its character, it is essential should be carefully fixed in mind, namely, that these sections 2103 and 2105, taken together, *do not cause any transaction to work a "forfeiture" of payments made, which transaction is not, also, made to be a crime by the first clause of section 2105.* This feature is expressly and unmistakably fixed in the statute by that provision of section 2105 which enacts that—

*"The person so receiving such money contrary to the provisions of the two preceding sections, and his aiders and abettors, shall, in addition to the forfeiture of such sum, be punishable by imprisonment for not less than six months, and by a fine of not less than one thousand dollars."*

Thus it is seen that the sections, taken together, define the thing that is made a crime *in no other way than by making the acts which work a forfeiture under section 2103 to be a crime under section 2105.*

The importance of keeping this in mind, is that this renders it impossible to say that this statute tolerates a forfeiture and a recovery back of moneys paid, in cases or under facts *different from, and less culpable than,* those which section 2105 makes to be crimes; and that, therefore, the principles of law which we presently invoke, which prohibit the courts from creating "constructive crimes," and compel strict construction of such penal statutes, are not applicable to section 2103 creating a mere forfeiture, and not a crime. In other words, no forfeiture or recovery back is here tolerated for any act