

tion by way of abundant caution, and in order to make it plain beyond doubt, that these sections do not affect your case.

Now observe what these sections contain. And first, it must be observed, and kept in mind, that neither of these sections attach any criminal or penal consequences to the mere act of making such a contract with the Indians as section 2103 forbids.

These sections stop at simply rendering void any contract so made, and coming within the prohibitions of such section 2103, without making it penal or criminal to enter into one of said forbidden contracts. * * *

Again, the only prohibition against a citizen receiving from Indians, or of Indian money, other than payments by officers of the United States, is that contained in the above quoted clause at the conclusion of section 2103, which quotation we repeat as follows:

“All contracts or agreements made in violation of this section shall be null and void, and all money or other thing of value paid to any person by any Indian or tribe or any one else, for or on his or their behalf, on account of such services, *in excess* of the amount approved by the Commissioner and Secretary, for such services, may be recovered by a suit in the name of the United States in any court of the United States, regardless of the amount in controversy.”

Here it is seen that the express letter of this last clause of section 2103 prohibits no payment by an Indian or any one else, except such a payment as would be “in excess” of that fixed by the contract required by section 2103. The gist of the offence here defined is in *its disregard of a limitation as to the amount of pay or compensation which is fixed by an actual existing contract*. There must be a contract the compensation of which is *exceeded*, and this act of taking compensation in excess of a solemn, written, approved, acknowledged, and recorded stipulation is the offence, and nothing else is.