

There can be no such thing imputed to you as receiving money "*in excess of the amount approved by the Commissioner and Secretary,*" for your services, when there is no contract fixing the amount of your services, nor any approval by these officers of any sum. In other words, there can be no transgression of the limitation fixed by the Commissioner and Secretary when no such limitation exists. But, as already remarked, the very gist of the crime or offence named in section 2105, is the transgression of such *limitation* by a receipt "in excess of" the limit.

It may be said that the receipt by you of *any* money is a receipt in excess of the amount approved by the Commissioner and Secretary, because they have approved *no* compensation. But the reply to that suggestion is, that this penal statute *has not provided for that case*. If the receipt of money from the Indians, where *no contract exists*, ought to have been made a crime, then such omission by the statute, to make *this* a crime gives no authority to the court to legislate it into a crime. For the court to legislate that it shall be a crime when money is paid by the tribe itself, in payment of just compensation for valuable services, in the absence of all limitations fixed by the Commissioner and Secretary, is for the court to flagrantly transgress the very rule of interpretation quoted from the above authorities. It is, in other words, for the court, by its inferences, constructions, interpretations, to create crimes unknown to the statute; and, hence, unknown to the people who are to be visited by these judicially-created crimes.

This statute has not chosen to define as an offence, or to prohibit, the receipt of money where no contract exists, such as is contemplated by section 2103. But the statute has, as already remarked, been content with defining as an offence a violation of a statutory contract, by taking money in excess of said statutory contract. If