49TH CONGRESS, 1st Session. | SENATE. | Ex. Doc. No. 33.

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING

A communication from the Secretary of the Interior relative to trial of Indians committing certain crimes.

JANUARY 12, 1886.—Read and referred to the Committee on Indian Affairs and ordered to be printed.

To the Senate and House of Representatives:

I transmit herewith a communication of 2d instant from the Secretary of the Interior submitting, with accompanying papers, a draft of a bill to amend section nine of the act of March 3, 1885, relating to the trial and punishment of Indians committing certain specified crimes.

The subject is presented for the consideration and action of Congress.

GROVER CLEVELAND.

EXECUTIVE MANSION,
January 12, 1886.

DEPARTMENT OF THE INTERIOR,
Washington, January 2, 1886.

To the President:

I have the honor to submit herewith a copy of a report of 26th ultimo from the Commissioner of Indian Affairs, with inclosures therein referred to, on the subject of the provision of law contained in section 9 of the act of March 3, 1885 (23 Stat., 385), making Indians committing certain specified crimes subject to the same laws, triable in the same courts, and in the same manner, and subject to the same penalties as are all other persons committing like crimes.

The Commissioner believes that the law is a step in the right direction, but thinks that the expenses attending the arrest, conviction, and punishment of the Indians, who bear no portion of the public burdens, should be defrayed by the General Government, and not by the people of the Territories.

The Commissioner also invites attention to the fact that as the Indian Territory is not an organized Territory of the United States, the provisions of the law are not applicable to the crimes committed in that country; he believes that the law should be extended to all parts of that Territory not set apart for and occupied by the five civilized tribes, and he submits a draft of a bill designed to so amend the law as to remove the objects and difficulties in the way of its practical operation and execution.

It is recommended that the matter be presented for the consideration and action of Congress.

I have the honor to be, very respectfully, your obedient servant,

H. L. MULDROW,
Acting Secretary.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, December 26, 1885.

SIR: I have the honor to acknowledge the receipt, by Department reference, of a letter from the acting Attorney-General, dated September 14, 1885, transmitting copy of a communication from the United States attorney for the district of Dakota, making certain suggestions with reference to section 9 of the act of Congress approved March 3, 1885 (33 Stats., 385).

The district attorney, after remarking that Judge Church, of the first district of Dakota, has construed this section as transferring the jurisdiction from the Federal side of the district courts to the Territorial side of the same, states that this will render the act wholly inoperative, for the reason that the counties in the Territory will not bear the expense of the prosecutions, and have not the machinery to arrest offenders or to compel the attendance of witnesses, and that Territorial grand juries will not indict because of the great expense resulting.

He also argues against the policy of subjecting the Indians to the same laws that govern white men.

I also have the honor to acknowledge the receipt, by Department reference, of a letter from the Acting Attorney-General, dated September 30, 1885, transmitting "for your consideration and such disposition as you may deem for the interest of the United States," a copy of a communication from Associate Justice William E. Church, of the supreme court of Dakota, relative to the same subject.

Judge Church also makes an argument against the policy of the law referred to, and states that the first judicial district of Dakota embraces the larger part of the Great Sioux Reservation; that for judicial purposes the district is composed of three subdivisions, the county of Pennington forming one, the counties of Custer and Fall River another, while all the remainder is attached to the county of Lawrence; and that the whole expense of administering these penal laws among these alien savages, who are fed and maintained in idleness by the Government, and who bear no portion of the public burdens, pay no taxes, and contribute nothing to the public wealth, is by the statute imposed upon the inhabitants of Lawrence and Butte Counties.

I do not agree with these officers in their arguments against the policy of the law, as I believe the act to be a step in the right direction, and that the Indians should be brought under the same law and held to the same accountability as are all other persons.

The objections to the law, so far as the expenses are concerned, however, appear to be valid.

The Indian agents in other Territories complain that this question of expense is causing embarrassment in securing the arrest and conviction of Indian offenders.

It seems only just and proper that the expenses attending the arrest, conviction, and punishment of the Indians, who bear no portion of the public burdens, should be defrayed by the General Government.

It is thought, however, that the jurisdiction should be left in the Territorial courts, as these courts are more easily accessible and hold more frequent terms than the United States courts.

It is therefore suggested that the jurisdiction should remain in the Territorial side of the court, but that all expenses attending the operations of the crimes section of the act of March 3, 1885, should be borne by the United States, thereby relieving the people of the Territory of a heavy burden and removing the pecuniary objection to the law.

I also have the honor to call your attention to what I believe to be another defect in the act.

By the treaties with the five civilized tribes or nations in the Indian Territory these nations have full jurisdiction over persons and property of their own people within their respective limits, but there is no law for the punishment of offenses committed by one Indian against the person or property of another Indian, in any other portion of the Indian Territory, and the act of March 3, 1885, is not applicable for the reason that the Indian Territory is not an organized Territory of the United States.

I think the provisions of the act should be extended to all parts of the Indian Territory not set apart for and occupied by the Cherokee, Creek, Choctaw, Chickasaw, or Seminole tribes.

I have, therefore, prepared the draft of a bill amendatory of the ninth section of the act of March 3, 1885, providing that when any of the enumerated crimes are committed against the person or property of another Indian, the judge of the court before which such Indian may be tried shall certify to the Attorney-General of the United States the cost of the apprehension and trial of such Indian, who shall cause the same to be reimbursed to the Territory or county thereof incurring the same out of funds that may be appropriated or available for the same, and that the cost of the support and maintenance of Indians convicted of any of said crimes and sentenced to imprisonment shall be borne by the United States—also extending the jurisdiction to the Indian Territory as hereinbefore suggested.

I recommend that the bill be transmitted to Congress with a request for favorable action.

I return the papers, and inclose two copies of each, two copies of the proposed bill and two copies of this report.

Very respectfully, your obedient servant,

J. D. C. ATKINS,
Commissioner.

Hon. SECRETARY OF THE INTERIOR.

DEPARTMENT OF JUSTICE,
Washington, September 14, 1885.

SIR: I have the honor to transmit herewith a copy of a letter from the United States attorney for the district of Dakota, making certain suggestions with reference to section 9, of chapter 341, approved March 3, 1885, Laws, second session Forty-eighth Congress, for your information, and such action as you may deem proper in the premises.

Very respectfully,

JOHN GOODE,
Acting Attorney-General.

Hon. L. Q. C. LAMAR,
Secretary of the Interior.

BISMARCK, DAK., *September* 9, 1885.

SIR: I have the honor to call your attention to section 9, of chapter 341, approved March 3, 1885, Laws, second session Forty-eighth Congress. This section will be seen at once to be a rider on the Indian appropriation bill. Judge Church, of the first district of Dakota, has construed said section as transferring the jurisdiction to punish Indians from the Federal side of our district courts to the Territorial side of the same, so far as the crimes therein enumerated are concerned. His construction seems to be warranted by the language of the section.

I do not think the section was intended to have this effect by Congress. Before the passage of said section the Crimes Act of the United States had not been extended to the punishment of one Indian committing a crime against the person or property of another Indian, and this section seems to have been an attempt to render the commission of the crimes therein mentioned when committed by one Indian against the person or property of another Indian punishable, but instead of making them amenable to United States laws they or Congress have made them amenable to the Territorial laws. This is in direct violation of the policy of the Government from the time it has attempted to deal with Indians, and the latest expression of that policy is found in the Crow Dog case, decided by the Supreme Court of the United States in December, 1883; it is there expressly declared that it has always been the policy of the Government not to subject the Indians to the same laws that governed the white man, but only to such laws as Congress might enact for them, and further, by this section, the United States has abrogated its guardianship over the Indians and transferred the same to the Territory. The section has, in this Territory, a very pernicious effect in this way. The right to punish the Indian is taken from the United States side of the district court and transferred to the Territorial side. This will render the act wholly inoperative for the reason that the counties in the Territory will not bear the expense of the prosecutions, nor have they the machinery to arrest offenders, or to compel the attendance of witnesses. The process of the Territory will not run on these large Indian reservations. The sheriff cannot and will not travel hundreds of miles to subpœna witnesses, and Territorial grand juries will not indict because of the great expense resulting, and in the first district of this Territory the principal causes on the United States side of the court has been the trial of Indians charged with larceny from cattlemen. This law of Congress will result in letting the Indians pursue their thieving without molestation.

It is my opinion that the Interior Department ought to be made acquainted with the state of affairs and the law modified. If the law is to have the effect given to it by the courts it is wholly subversive of the policy of Government in its dealings with the Indians heretofore. I feel it my duty to call your attention to this, so that the mistake in the law, if unintentional, may be rectified by Congress.

Very respectfully,

JOHN E. GARLAND,
United States Attorney.

Hon. A. H. GARLAND,,
Attorney-General, United States, Washington, D. C.

DEPARTMENT OF JUSTICE,
Washington, September 30, 1885.

SIR: I have the honor to transmit here with, for your consideration and such disposition as you may deem best for the interests of the United States, a copy of communication of 23d instant, from Associate Justice William E. Church, of the suprem e court of Dakota, relative to the administration of justice in that Te rritory and the other Territories, so far as concerns the Indians, and more especially to the provisions of sec. 9, chap. 341, second session, 1885, page 385, conferring jurisdiction of crimes committed by Indians, upon the State and Territorial courts.

Very respectfully,

JOHN GOODE,
Acting Attorney-General.

The SECRETARY OF THE INTERIOR.

DEADWOOD, DAK., *September* 23, 1885.

SIR: I deem it my duty to call the attention of the Department of Justice to the concluding section of the Indian appropriation act passed at the second session of the Forty-eighth Congress. (Laws of 1884–'85, chap. 341, sec. 9, P. L., 385.)

The provisions of this enactment are so completely subversive of the policy heretofore pursued by the Government in relation to the Indians, and their practical operation will involve so much of injustice, not only to the Indians but also to many of the white citizens of the Territory, that I am constrained to believe that this section must have escaped that intelligent and careful consideration which the importance of its subject-matter certainly demanded.

It will be observed that under this statute—

(1) All offenses of the classes designated, committed by Indians anywhere within the geographical boundaries of any of the Territories, whether on or off the reservations, are to be determined and punished according to the laws of the Territory relating to such crimes; and

(2) The Territorial courts sitting for the administration of the Territorial laws, and not in their exercise of the jurisdiction of the circuit and district courts of the United States, are charged with jurisdiction within their respective districts over these offenses, while it follows also that their process is to be executed and these prosecutions conducted, not by the United States marshals and attorneys, but by the local sheriffs and district attorneys.

Such, at least, is the construction which I have given to this statute in my instructions to the Federal and Territorial grand juries at the present term of court in this district.

Whether or not the effect of sections 2145 and 2146 of the Revised Statutes is to subject these Indians to the operation of the Federal crimes acts for offenses committed against white persons upon the reservations may perhaps be regarded as a somewhat difficult question in view of the observations of the Supreme Court of the United States in the case "Ex parte Crow Dog" (109 U. S., p. 556; see especially the concluding paragraphs, citing U. S. *vs.* Joseph, 94 U. S., p. 617).

But however that may be, it is obvious that one effect of this later enactment is to make them amenable for the designated offenses, even when committed in their own country, to the laws of what is to them a foreign sovereign, to whom they are not in other respects subject and with whom they have no other relation.

Possibly this aspect of the subject might not be deemed strictly within the province of the consideration of a judicial officer whose duty it is to administer the law as it is, but I can hardly consider it inappropriate to the legitimate purpose of this communication, since any lawyer at all familiar with the intricacies of criminal jurisprudence will at once recognize the difficulties which are sure to arise in the attempt to apply to an ignorant, uncivilized, and non-English speaking people the refinements by which not only the various grades of the designated crimes are commonly distinguished, but those also which distinguish them from similar but not designated offenses, as, for instance, larceny and embezzlement, assaults with intent to kill, and common assaults, &c. The possible injustice of the attempt would seem to be even more apparent than that pointed out by Mr. Justice Matthews in the case already referred to. (See p. 571.)

But another aspect of the matter is at least equally serious, and concerning it I shall speak only as it affects the first judicial district of the Territory of Dakota, over which I am presiding.

This district extends to the tier of unorganized counties along the west bank of the Missouri River, divided therefrom by lines as yet unsurveyed and more or less vague and difficult of ascertainment in fact. It embraces the larger part of the Great Sioux Indian Reservation, inhabited by several thousand Indians, and includes two of the most important agencies, those at Pine Ridge and Rosebud.

For judicial purposes the district comprises three subdivisions, the county of Pennington forming one, the counties of Custer and Fall River another, while all the remainder is attached to the county of Lawrence.

Of these the four named, together with the county of Butte, which adjoins, and is associated with the county of Lawrence, are the only organized counties, and are settled by white citizens.

It will be seen, therefore, that the whole expense of administering these penal laws among those alien savages, who are fed and maintained in idleness by the Government, and who bear no portion of the public burdens, pay no taxes, and contribute nothing to the public wealth, is by this statute imposed upon the inhabitants of Lawrence and Butte Counties; former already struggling under the enormous debt of some $700,000, while the latter, recently segregated from Lawrence, has a debt of, say, $20,000.

It is difficult to estimate the probable annual expense of prosecutions under this statute, but including the preliminary examinations and considering the very great intervening distances and the absence of public means of communication, it would

probably be safe to place it at from $15,000 to $20,000. And it may be further remarked that the labor of conducting the prosecutions would devolve entirely upon the county district attorney, who could scarcely be expected to assume so onerous a task without a corresponding increase of salary, involving an additional charge upon the counties.

Surely such results could never have been contemplated by Congress.

I have thus barely indicated, in a superficial manner, one or two of the more important and obvious objections to this statute, but trust they may be deemed of sufficient gravity to justify me in calling your attention to the matter, and in expressing the ope that some relief may be provided by Congress at its approaching session.

If I may be permitted one or two additional observations, suggested by some experience in the trial of Indians, I would desire first to recall the familiar fact that although with our own race existing laws are the growth of centuries of civilization, yet the maxim that "every one is presumed to know the law" is founded in necessity rather than in truth.

To attempt its application to a people who had no voice in the creation of the law, to whose customs, experiences, and creeds that law is largely foreign, to whom even its language is unknown, and who can at best apprehend only its simplest elements, would be a task not less distasteful than difficult to any right-minded judge.

If, therefore, it is to be the policy of the Government to continue the present reservation system, and to subject these Indians to the operation of municipal law, would it not be more just, as well as more convenient, if a special code, simple and adapted to their peculiar condition and circumstances, were carefully framed by competent persons and a distinct tribunal created for its administration?

Yet even this would afford but partial relief. More radical changes are needed.

So long as these people are permitted to maintain their tribal relations, and are supported in idleness by the Government upon this great reservation, with its millions of acres of land for which they have no use except to roam over it occasionally in search of the rapidly disappearing deer and buffalo, for just so long will they continue ignorant, degraded, and under constant temptation to commit depredations upon the property of their neighbors; for just so long will the large cattle owners occupy the ranges adjoining the reservation, separated from it by an unmarked and imaginary line, obtain, more or less surreptitiously, the free use, subject to occasional predatory levies by the Indians, of large tracts of land which, if added to the public domain, would soon be occupied by *bona fide* settlers, and be contributing their vast and fertile resources to the productive and taxable wealth of the country, and for just so long will these conditions necessitate the constant, expensive, difficult, and largely profitless endeavor to regulate, by the enactment and enforcement of penal laws, the relations between these parties.

I have the honor to be, very respectfully, your obedient servant,

WILLIAM E. CHURCH,
Associate Justice Supreme Court
and Judge First Judicial District, Territory of Dakota.

Hon. A. H. GARLAND,
Attorney-General.

A BILL to amend the ninth section of an act entitled "An act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending June thirtieth, eighteen hundred and eighty-six, and for other purposes," approved March third, eighteen hundred and eighty-five.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section nine of the act entitled "An act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending June thirtieth, eighteen hundred and eighty-six, and for other purposes," approved March third, eighteen hundred and eighty-five, be, and the same is hereby, amended so as to read as follows:

"SEC. 9. That immediately upon and after the date of the passage of this act all Indians committing, against the person or property of another Indian or other person, any of the following crimes, namely: murder, manslaughter, rape, assault with intent to kill, arson, burglary, or larceny, within any Territory of the United States, and either within or without an Indian reservation, shall be subject therefor to the laws of such Territory relating to said crimes, and shall be tried therefor in the same courts and in the same manner, and shall be subject to the same penalties as are all other persons charged with the commission of said crimes, respectively; and the said courts are hereby given jurisdiction in all such cases: *Provided,* That in all cases where any of said crimes shall be committed against the person or property of another Indian, the judge of the court before which such Indian may be tried shall certify to the

Attorney-General of the United States the cost of the apprehension and trial of such Indian, and the Attorney-General shall cause the same to be reimbursed to the Territory or any county thereof incurring the same, out of funds that may be available or appropriated for that purpose: *And provided further*, That the cost of the support and maintenance of Indians convicted of any of said crimes against the person or property of another Indian, and sentenced to imprisonment, shall be borne by the United States.

"And all Indians committing any of the above crimes against the person or property of another Indian or other person within the boundaries of any State of the United States, and within the limits of any Indian reservation, or within the limits of any portion of the Indian Territory, not set apart for and occupied by the Cherokee, Creek, Choctaw, Chickasaw, or Seminole Indian tribes, shall be subject to the same laws, tried in the same courts and in the same manner, and be subject to the same penalties as are all other persons committing any of the above crimes within the exclusive jurisdiction of the United States."

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