

COURTS OF JUSTICE IN ALASKA.

APRIL 6, 1880.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. MULDROW, from the Committee on the Territories, submitted the following

REPORT:

[To accompany bill H. R. 5633.]

The Committee on the Territories, to whom was referred the letter of the Secretary of the Treasury, dated January 2, 1880, and addressed to the Speaker of the House of Representatives, calling attention to the necessity of some additional legislation by Congress to aid and advance the better interests of the public service in Alaska, have, after full and fair consideration of the subject, agreed upon the following report and bill for that object:

The third article of the treaty with Russia, of March 3, 1867, by which Alaska was ceded to the United States, provides that the inhabitants of this Territory, with the exception of the uncivilized native tribes, shall be admitted upon their own volition to the enjoyment of the rights of citizens of the United States; and that they shall be maintained and protected in the full enjoyment of their life, their property, and their religion. The laws of the United States now in force throughout Alaska are the statutes of 1868, which, in section 1954 of the Revised Statutes, provide that the laws of the United States relating to customs, commerce, and navigation shall be extended over said Territory, and in section 1957 of the same is provision that offenses against the said laws committed within that Territory shall be triable in the district courts of the United States, either in California, Oregon, or Washington Territory. These two provisions of the general law of 1868 have been found inadequate to protect the persons and property of the white inhabitants of Alaska, who are alone amenable to our laws and customs. Your committee have, therefore, carefully reviewed the whole matter, examined into the character and resources of the country in question, ascertained the numbers, location, and occupation of its people, and, in the light of this information, have prepared the accompanying bill, which it is believed meets all the just demands of Alaska for legislation at the hands of this Congress. Explanatory of the committee's action the following digest of the subject is respectfully submitted.

In the first place, it is not generally understood that the superficial area of Alaska is equal to one-sixth of the entire area of the United States and Territories, viz, 580,000 square miles; or, in other words, it is 2,000 miles in continuous expanse of landed surface from east to west, and 1,200 miles direct between its northern boundary and its southern limit.

During the twelve or thirteen years since we have been in possession of this new country our people have been active in exploring, prospecting, and testing its resources. The substantial result up to date of their investigations may be accurately summarized in the following words:

1st. The climatic conditions which exist in Alaska are such as to preclude the successful prosecution of any or all agricultural enterprises or stock farming of any kind whatever.

2d. Nothing very definite or positive is known to-day about the real mining resources of Alaska; thus far no mine of any precious or economic mineral has been discovered in Alaska that is worthy of more than faint local notice.

3d. The only trade or commerce belonging to Alaska at the present day, or that has existed in the past, is the fur-trade and the fisheries. The fur-trade comprises nine-tenths of the entire pecuniary value of the commerce in that region; from the Prylilor or Seal Islands the government derives a net annual revenue of over \$300,000, being the tax paid into the Treasury of the United States by the Alaska Commercial Company, who hold those islands under a lease from the government, so framed as to prevent the slightest injury being done on these islands to the preservation and perpetuation of the interests of the government thereon, and the seal life also. From the fur-trade elsewhere in Alaska, which is divided up among half a dozen rival companies, the government derives no revenue whatever, nor is it practicable to do so. The fisheries of Alaska have not as yet been developed to any noteworthy degree, on account, perhaps, of the poor demand on the Pacific coast for dried or salt codfish and salmon. Half a dozen little codfishing schooners comprise the entire fishing-fleet engaged this season in Alaskan waters.

4th. The people of Alaska, residents, are summed up as follows, viz:

Whites, men, women, and children	250
Half-breeds or "Creoles," men, women, and children	2,000
Indians or "Koloshians," men, women, and children (an estimate)	5,000
Aleutians, men, women, and children	2,500
Eskimo or "Mahlemoots," men, women, and children (an estimate).....	4,000
Grand total	13,750

It is to this list of the white people of Alaska, made by the direction of the Secretary of the Treasury last October, 1879, and reported to him by Capt. George W. Bailey, commanding the United States revenue-marine steamer *Rush*, who personally in that year visited each and every settlement of the slightest claim to the name which is established and exists in that country; it is to this census for 1879 that the committee have looked for a correct estimate of what is really the need and due of Alaska at the present time for additional legislation from Congress. Certainly no one can deny the fact that the white citizens of Alaska are the only persons up there who can have the least appreciation or understanding of our legislative, executive, and judicial system of law and order, and they are the only ones to whom we can intelligently apply these legal provisions. Any one at all acquainted with Indians and their life will at once admit the futility of attempting to treat those people to courts of justice or trials by jury; the Eskimo are positively out of the question in this connection, while the Aleutians have never known the need of a lawyer or asked for a court.

It is the 250 white citizens of Alaska only who are deprived of those legal rights and privileges and protection that the committee must keep in mind as they frame a bill for the establishment of additional courts

and the re-enactment of additional law and penalties, &c., for their further protection and relief.

These white people of Alaska are living to-day in the following settlements: At Wrangel, 160; at Sitka, 50; at Kodiak, 10; at Oonga, 4; at Belcorskies, 4; at Oonalashka, 7; Seal Islands, 10; Saint Michael's, 8; scattering miners and traders who wander about in canoes and small sloops cannot be counted. On looking at the map of Alaska it will be observed that Sitka and Wrangel are located comparatively near together, in the extreme southeastern extremity of the Territory; that the next nearest village to them is Kodiak, 750 miles, as the crow flies, to the west-northwest; then from Kodiak to Oonga, the next nearest village, is 450 miles to the southwest; then direct to Belcorskies from Oonga is 75 miles; from Belcorskies to Oonalashka, 175 miles; from Oonalashka to the Seal Islands, 200 miles; and from these islands to Saint Michael's it is over 600 miles north-northeast. In contemplating the great distances that separate these small Alaskan villages, in which less than two hundred and sixty of our people reside, it should also be borne in mind that the only means of communication between them is by way of San Francisco, Cal.; or, in other words, there is no land travel whatever between them; and when the little trading vessels that sail from California direct to these posts with supplies every spring, summer, and fall, as the case may be, they bear letters and tidings from Kodiak, for instance, when they return to San Francisco, for the friends and relatives of the writers at Sitka; these letters are forwarded from the Golden Gate, via Portland, Oreg., to their destination. And in precisely the same manner do the people of Oonalashka communicate with their kinsmen of Kodiak. Thus, it becomes entirely plain that there is absolutely no practicable means of communication in Alaska between its own scattered, scanty settlements, located as they are with such vast spaces of forbidding land or tempestuous seas and oceans between them.

Therefore, as matters stand to-day in Alaska, your committee find that the white residents of Sitka and Wrangel constitute the only communities in that Territory requiring additional legislation from Congress. It is undoubtedly just and proper that these citizens should have a judiciary, and that the laws of the Territory of Washington relating to crimes and their punishments should be extended over and made the law of Alaska. In accordance with this view, the bill of your committee herewith reported makes provision for a United States district court and three justice's courts, one to be located at Sitka and the other at Wrangel, which are the only two settlements in all Alaska at the present day where a jury can be impaneled. For the maintenance and enforcement of the law to the westward throughout those wide-scattered and far-distant settlements, as hitherto noticed, it has been deemed by the committee best and most practicable to direct the holding of a third court in the ports reached by the revenue steamer, as she shall cruise every year between those settlements in discharge of revenue marine duties; thus officers of the law will be brought into every Alaskan settlement once or twice a year, and judging from the past history of the people of Alaska who live beyond Sitka, the court will have little or nothing to do in the future.

Manifestly these officers and their deputies, as designated in the bill of your committee, cannot live upon the fees that might belong to them in the discharge of their duties in Alaska, for the mere handful of people at Sitka and Wrangel could not possibly support such a judiciary, and the others have nothing to go to law about or valuable enough to call in legal arbitration. Your committee has therefore deemed it best to

provide these officers, as designated, with fair living salaries, and in order that they shall not turn the influence of their offices to private or personal gain as traders or agents of trading companies, a proviso has been drawn prohibiting such action.

In order that the wills, &c., of decedents may be proven, registered, and administered in Alaska, the power of probate has been given to the courts as designated in the bill of your committee, and the laws and the practice of the Territory of Washington governing all testamentary and probate proceedings are made in this bill the law and practice for Alaska. Thus these courts become courts of record, and all quieting of titles, signing of contracts, &c., can be duly validated by them.

Finally, with regard to the physical power of the government to protect its citizens in Alaska, and enforce the provisions of law therein, your committee find that ample authority exists, now vested in the President of the United States and the Secretary of the Treasury, who can use the Army, the Navy, and the revenue marine force at will. The past history of the country establishes the fact that a gun-boat is the most effectual and inexpensive power that can be employed for the complete control and subjection of the savages of Alaska.

In conclusion, therefore, your committee have to say that more than the provisions of the bill which they herewith report Alaska does not appear to need in the line of additional legislation from Congress. Whenever she does possess a population of the right character and sufficient in numbers to warrant the establishment of a Territorial form of government within her borders, upon a clear showing of such a claim, she will doubtless be endowed with it. At present, however, no valid claim is made in her behalf for such a government.

Your committee, therefore, call attention to the appended letters of the Secretary of the Treasury, dated January 2, 1880, and March 4, 1880, together with a recent decision from the United States circuit court of Oregon, all of which illustrate the need and importance of the passage of the bill of your committee as reported herewith.

TREASURY DEPARTMENT, OFFICE OF THE SECRETARY,
Washington, D. C., January 2, 1880.

SIR: I have the honor to call attention to the fact that in the last annual message of the President to Congress reference was made to the third article of the treaty with Russia, of March 3, 1867, by which Alaska was ceded to the United States, which provides that the inhabitants of said Territory, with the exception of the uncivilized native tribes, shall be admitted to the enjoyment of the rights of citizens of the United States, and shall be maintained and protected in the full enjoyment of their liberty, property, and religion. The President stated that both the obligations of said treaty and the necessities of the people require that some organized form of government over the Territory of Alaska be adopted. Reference was also made to the subject in the last annual report of this department, and the purpose was therein expressed to submit a form of bill to establish a government for the Territory of Alaska. The only government officers now located in that Territory are the customs officers, and their powers are confined to the discharge of their duties as such, and give them no jurisdiction over offenses against the public peace or the rights of citizens.

Section 1954 of the Revised Statutes provides that the laws of the United States relating to customs, commerce, and navigation shall be extended over said Territory, and section 1957 provides that offenses against the same, committed within that Territory, shall be triable in the district courts of the United States in California, Oregon, or Washington Territory. These have not been found adequate to protect the persons and property of the inhabitants there, and, in accordance with the purpose before indicated, I transmit herewith a form of bill to provide for the appointment of justices of the peace and constables for that Territory, and for the extension of the criminal laws of Oregon over the same. The authority proposed to be vested by this bill in the

collector of customs is on account of the fact that he is the chief United States officer located in the Territory.

It is thought that this bill provides the necessary measures to protect the people of that Territory until a Territorial government shall be deemed advisable, and it is hoped that the subject will receive the careful consideration of Congress.

Very respectfully,

JOHN SHERMAN,
Secretary.

HON. SAMUEL J. RANDALL,
Speaker of the House of Representatives, Washington, D. C.

TREASURY DEPARTMENT, *March 4, 1880.*

SIR: I understand that the bill forwarded by this department to Congress some time since in regard to providing courts for the Territory of Alaska, was referred to your committee. In connection with this bill I now inclose a copy of a decision of Judge Deady, of the United States circuit court for the district of Oregon, on the trial of a man indicted for an assault with a deadly weapon with intent to commit murder at Sitka, Alaska.

Judge Deady held in this decision that there is no law of the United States that punished such offenses. This decision serves to show still more strongly the necessity for some such legislation as was referred to in the bill before specified.

Very respectfully,

H. F. FRENCH,
Assistant Secretary.

HON. H. L. MULDROW,
Chairman Committee on the Territories, House of Representatives.

[From the Daily Oregonian, Tuesday morning, February 10, 1880.]

Decision in the United States circuit court.

Deady, J., United States circuit court, district of Oregon.

SATURDAY, *February 5, 1880.*

THE UNITED STATES }
vs. } No. 908. Indictment for attempt to commit murder.
JOHN WILLIAMS. }

(1) Attempt to commit murder. There is no law of the United States for the punishment of the crime of an attempt to commit murder upon land in places within the exclusive jurisdiction thereof, unless committed by some means other than an assault with a dangerous weapon, as by poison, drowning, or the like.

(2) Dangerous weapon. A dangerous weapon is one likely to produce death or great bodily harm, and a loaded pistol is such a weapon within the knowledge of the court.

(3) *Idem.* When it is practicable for the court to declare a particular weapon a dangerous one or not, it is the duty of the court to do so; but otherwise it is a question of law and fact to be determined by the jury under the direction of the court.

DEADY, J.:

On January 7, 1879, the grand jury for this district found an indictment against the defendant containing two counts. The first one charges him with "an attempt to commit the crime of murder by means not constituting an assault with a dangerous weapon, by willfully and maliciously shooting one Edward Robert Roy," on October 8, 1879, with a *loaded pistol* with intent him to murder, at Sitka, in the Territory of Alaska. The second one charges him with an assault upon said Roy, at the time and place aforesaid, with a loaded pistol with intent him to kill, and alleges that said Territory of Alaska was then and there Indian territory. The defendant demurred to the indictment upon the ground that the facts stated did not constitute a crime.

The court sustained the demurrer to the second count, holding that Alaska was not "the Indian country" within the purview of section 21 of the act of March 27, 1854 (10 Stat., 270, section 2142 R. S.), defining the crime of an assault by a white person within such country, with a deadly weapon with intent to kill, and citing *United States v. Savaloff*, 2 Saw., 311; *United States v. Carr*, 3 Saw., 302; *Waters v. Campbell*, 4 Saw., 121.

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The demurrer to the second count was overruled *pro forma*, whereupon the defendant pleaded guilty thereto and then moved an arrest of judgment for the cause stated in the demurrer. This count is based upon section 2 of the act of March 3, 1857 (11 Stat., 250, section 5342 R. S.), which provides in effect that every person who, within any place or district of country under the exclusive jurisdiction of the United States, or upon the high seas, or other water within the admiralty jurisdiction thereof, and out of the jurisdiction of any particular State, attempts to commit murder "by any means not constituting the offense of assault with a *dangerous* weapon," shall be punished, &c.

Without doubt, Sitka, in Alaska, is a place under the exclusive jurisdiction of the United States, and so far as this charge is concerned, not within the jurisdiction of any organized or judicial district thereof. Therefore, it appearing from the indictment that the defendant was first brought within this district for trial, it follows that if the alleged assault is a violation of any law of the United States the motion must be denied. (Section 730 R. S., *United States vs. Carr, supra.*)

The only provision in the statutes of the United States for punishing an attempt to commit murder or manslaughter on land is found in section 5342, *supra*, but for some reason this is confined to cases where the means used do not constitute "the offense of assault with a dangerous weapon."

The punishment of an assault with a dangerous weapon or with intent to perpetrate a felony committed on the waters within the jurisdiction of the United States, and out of the jurisdiction of any particular State, was provided for in section 4 of the act of March 3, 1825 (4 Stats., 115; section 5346 R. S.), but not the attempt to commit murder or manslaughter unless it was coincident with such an assault. But an attempt to commit murder or manslaughter on *land*, or an assault there by whatever means committed, was not punishable by any law of the United States until 1857, when, as has been stated by section 2 of the act of March 3 of that year, it was declared that an attempt to commit murder or manslaughter, whether on land or water, should be punished as therein prescribed, *provided* such attempt was not made by means of the assault mentioned in the act of 1825, *supra*, thus limiting the operation of the statute to attempts made by drowning, poisoning, or the like. And probably this was so provided upon the erroneous impression that the act of 1825 was applicable to assaults committed on land as well as water. But however this may be, as a result of this patchwork legislation, it appears that there is no punishment provided for an assault with a dangerous weapon committed within the exclusive jurisdiction of the United States, if committed on *land*, even if such assault should involve, as it may and did in this case, an attempt to commit murder.

In the drawing of the indictment an effort has been made to bring this case within the terms of section 5342, R. S., by an averment therein that the attempt to murder was made "by means not constituting an assault with a dangerous weapon." But this is necessarily avoided and in effect rendered null by the very statement of the commission of the alleged offense—that the defendant attempted to commit murder by shooting Roy with a loaded pistol.

Whether a particular weapon is a deadly or dangerous one is generally a question of law. Sometimes, owing to the equivocal character of the instrument, as a belying pin, or the manner and circumstances of its use, the question becomes one of law and fact, to be determined by the jury, under the direction of the court. But where it is practicable for the court to declare a particular weapon dangerous or not, it is its duty to do so. A dangerous weapon is one likely to produce death or great bodily harm. A loaded pistol is not only a dangerous but a deadly weapon. The prime purpose of its construction and use is to endanger and destroy life. This is a fact of such general notoriety that the court must take notice of it. (*United States vs. Small*, 2 Curt., 242; *United States vs. Wilson*, 1 Bald., 99.) It appears, then, from the indictment, notwithstanding the averment therein to the contrary, that the act alleged to be an attempt to commit murder was an assault with a dangerous weapon, and therefore not punishable by the statute.

The motion in arrest of judgment must be allowed and the defendant discharged.

By this ruling the defendant will escape punishment for what appears to have been an atrocious crime, but the court cannot inflict punishment where the law does not so provide. It is the duty of the legislature to correct the omission or defect in the law, and it is to be hoped that the result in this case will attract the attention of Congress to the matter at an early day.

Rufus Mallory, for the United States.

William W. Page, for the defendant.