

LETTER

FROM

THE SECRETARY OF THE INTERIOR,

TRANSMITTING

A draft of a bill to be entitled "An act to amend the ninth section of the act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations, etc., approved March 3, 1885."

MARCH 3, 1896.—Referred to the Committee on Indian Affairs and ordered to be printed.

DEPARTMENT OF THE INTERIOR,
Washington, March 2, 1896.

SIR: I have the honor to transmit herewith a draft of a bill to be entitled "An act to amend the ninth section of the act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations, etc.," approved March 3, 1885.

The necessity for this legislation was brought to the attention of this Department by a report through the War Department of the attempt of a local sheriff to enter the White Mountain Apache Reservation, in Arizona, with a posse, and to arrest Indians belonging thereon who were charged with larceny, which attempt was resisted by the Indians, and resulted in the killing of one of them by a member of the sheriff's posse.

Believing that trouble will result in most cases where arrests are attempted to be made by the civil authorities without the assistance of the agents, I have to request that this matter receive the early and favorable action of Congress.

I inclose for your information copy of a report, dated 7th instant, from the Commissioner of Indian Affairs, and an opinion of the Honorable Assistant Attorney-General for this Department, dated 11th instant, which bears my approval, relative to this matter.

Very respectfully,

HOKÉ SMITH, *Secretary.*

The SPEAKER OF THE HOUSE OF REPRESENTATIVES.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, February 7, 1896.

SIR: I have received, by Department reference, by reference from the War Department, the correspondence between Lieut. W. C. Rivers,

who is in charge of the White Mountain Apache Indians, under Capt. Albert L. Myer, acting agent of the San Carlos Agency, and the military officers within the Department of the Colorado, relative to the right of the civil authorities of Arizona to enter an Indian reservation for the purpose of arresting Indians charged with one of the offenses named in section 9 of the act of March 3, 1885. (23 Stat. L., 385.)

It seems that the correspondence referred to was called forth by the attempt of a local sheriff to enter the White Mountain Apache Reservation with a posse, and to arrest Indians belonging thereon who were charged with larceny, which attempt was resisted by the Indians, and resulted in the killing of one of them by a member of the sheriff's posse.

It appears to be the opinion of the officers of the War Department that local civil authorities of a Territory do not possess the right, under the act of March 3, 1885, to enter an Indian reservation for the purpose of arresting Indians charged with a crime under said act, but that they must obtain possession of the Indian charged through the methods provided in sections 2152 and 2156 of the Revised Statutes. It also appears that Captain Myer, the acting agent of the San Carlos Agency, has been advised by the United States attorney for Arizona that it is his opinion the local sheriff has the power to enter the reservation to make arrests on proper warrants.

Section 9 of the act of March 3, 1885, provides as follows:

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, viz, murder, manslaughter, rape, assault with intent to kill, arson, burglary, and larceny, within any Territory of the United States, and either within or without an Indian reservation, shall be subject therefor to the laws of said 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 all other persons charged with the commission of said crimes, respectively, and the said courts are hereby given jurisdiction in all such cases. * * *

The sections of the Revised Statutes referred to in the correspondence, and which the officers of the War Department appear to hold as preventing an officer of the Territory from exercising any right to enter an Indian reservation for the purpose of arresting Indians charged with one of the offenses above named, provide that the superintendents, agents, and subagents shall endeavor to procure the arrest and trial of all Indians accused of committing any crime, offense, or misdemeanor, and also of all other persons who may have committed crimes or offenses within any State or Territory and have fled into the Indian country, either by demanding the same of the chiefs of the proper tribe, or by such other means as the President may authorize, and the President has power to direct the military force of the United States to be employed in the apprehension of such Indian, and also in preventing or terminating hostilities between any of the Indian tribes (sec. 2152).

Section 2156 provides that if any Indian belonging to a tribe in amity with the United States shall take or destroy the property of any person lawfully within the Indian country, or shall pass from the Indian country into any State or Territory inhabited by citizens of the United States and there take, steal, or destroy any horse or other property belonging to a citizen or inhabitant of the United States, such citizen or inhabitant, his representative, attorney, or agent, may make application to the proper superintendent, agent, or subagent, who, upon being furnished with the necessary documents and proofs, shall, under the direction of the President, make application to the nation or tribe to which the Indian belonged for satisfaction. If the nation or tribe neglect or refuse to make satisfaction in a reasonable time, not exceed-

ing twelve months, the superintendent, agent, or subagent is required to make return of his doing to the Commissioner of Indian Affairs, that such further steps may be taken as shall be proper, in the opinion of the President, to obtain satisfaction for the injury.

In passing on the validity of the ninth section of the act of March 3, 1885, the Supreme Court held that said section is valid and constitutional in both its branches, that giving jurisdiction to the courts of the Territories of the crimes named committed by Indians within the Territories, and that giving jurisdiction in like cases to courts of the United States for the same crimes committed on an Indian reservation within a State. (118 U. S., 375.)

Inasmuch as the sections of the Revised Statutes referred to by the officers of the War Department contemplate only that the superintendent, agent, or subagent should endeavor "to secure the arrest," etc., of offending Indians, and as courts of the Territories do not have jurisdiction to direct the agents of this office to perform any duty required of them under the statute, and as it is not a part of the duty of the Executive officers to apprehend criminals over which courts have jurisdiction, I do not see how the Territorial court could put into operation the jurisdiction granted by the ninth section of the act of 1885, unless its sheriffs were permitted to enter the reservation for the purpose of making arrests. It is my opinion, therefore, that the sheriffs of Arizona have authority under section 9 of the said act of 1885 to enter the White Mountain Apache Reservation for the purpose of arresting an Indian charged with larceny.

However, on account of the excitable and warlike nature of the Indian, this office has uniformly advised the consulation with the agents whenever it becomes the duty of Territorial officers to make arrests of Indians of a reservation to devise the best means of accomplishing the arrests without exciting the Indians. It seems to me that it would be to the interest of the sheriff in this case to advise with Captain Myer and arrive at the best plan of accomplishing the arrest of the parties charged by him with theft.

I have the honor to inclose the communications from the War Department on this subject, and to recommend that a copy of this report be forwarded to the Secretary of War for his information.

I will add that I have, by letter of even date herewith, sent a copy of this report to Captain Myer, and instructed him in accordance with the views expressed herein.

Very respectfully, your obedient servant,

D. M. BROWNING, *Commissioner.*

The SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE ASSISTANT ATTORNEY-GENERAL,
Washington, February 11, 1896.

SIR: I am in receipt, by your reference, of the letter from the Honorable Commissioner of Indian Affairs, bearing date February 7, 1896, including certain correspondence touching the attempt of the sheriff of the Territory of Arizona to enter the White Mountain Apache Indian Reservation with a posse to arrest an Indian belonging thereon who was charged with an offense named in section 9 of the act of March 3, 1885 (23 Stat. L., 385). The question presented is, Whether

the civil officers of the Territory of Arizona can enter an Indian reservation for the purpose of making arrests for an offense named in section 9 of the act of March 3, 1885, supra, and your reference calls for an opinion on this question.

My information is that this reservation was created by Executive order, and there is no provision in the act of Congress creating the Territory of Arizona, nor in any treaty with the Indian tribes, so far as I have been able to discover, which excludes the lands so reserved for the use of the Indians from Territorial jurisdiction. This being the case, the lands held by these Indians are a part of the Territory and subject to its jurisdiction, and a process may run there for the arrest of anyone over whose person and offense the Territorial courts have jurisdiction. (See 102 U. S., p. 147, where this principle is decided.)

The ninth section of the act approved March 3, 1885 (23 Stat. L., 385), confers jurisdiction upon the Territorial courts of certain crimes mentioned therein, whether committed within or without an Indian reservation. This section applies to Indians committing crimes against the person or property of another Indian or any other person. The first clause of said section is as follows:

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, and larceny, within any Territory of the United States, and either within or without the Indian reservation, shall be subject therefor to the laws of said 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 the said crimes, respectively.

Very soon after the enactment of this law the Supreme Court construed the clause above quoted of the section now under consideration, and held that—

The first clause subjects all Indians guilty of these crimes, committed within the limits of a Territory, to the laws of that Territory and to its courts for trial. (See 118 U. S., p. 277; also 130 U. S., pp. 350, 351, and 352.)

Inasmuch as the Territorial courts are given jurisdiction of the offenses enumerated in the ninth section of the act of March 3, 1885, it must necessarily follow that their processes will run into the reservation, and that the officers can enter the reservation for the purpose of executing the same. (102 U. S., supra.)

My attention has been called to sections 2152 and 2156 of the Revised Statutes, and the suggestion is made that no civil officer of the Territorial government should enter a reservation for the purpose of making an arrest, but should apply to the superintendent, agents, or subagents having charge of the reservation, for the apprehension and delivery of an Indian thereon to such civil officer, as is provided in section 2152, supra. Section 2152, Revised Statutes, reads as follows:

The superintendents, agents, and subagents shall endeavor to procure the arrest and trial of all Indians accused of committing any crime, offense, or misdemeanor, and of all other persons who may have committed crimes or offenses within any State or Territory, and have fled into the Indian country, either by demanding the same of the chiefs of the proper tribe, or by such other means as the President may authorize. The President may direct the military force of the United States to be employed in the apprehension of such Indians, and also in preventing or terminating hostilities between any of the Indian tribes.

This section, in my opinion, prescribes the duty to be performed by the superintendent, agents, and subagents having charge of an Indian reservation, when they shall be applied to procure the arrest of Indians thereon; but this provision of law can not be construed to prohibit the

civil officers of the Territorial government from entering upon a reservation, which is subject to the Territorial government, for the arrest of an Indian who has committed an offense named in the ninth section of the act of March 3, 1885, supra. It may be, and doubtless is, the better course for a civil officer to apply to the superintendent or agent, as provided in section 2152, Revised Statutes, for the delivery to him of an Indian whose arrest is sought; but there is nothing in the law which compels him to pursue this course.

Section 2156 of the Revised Statutes has reference entirely to procuring compensation for injuries done to personal property by Indians, and has no bearing whatever upon the question presented by the letter of the Commissioner of Indian Affairs.

The papers are herewith returned.

Respectfully submitted.

JOHN I. HALL,
Assistant Attorney-General.

The SECRETARY OF THE INTERIOR.

Approved.

HOKE SMITH, *Secretary.*

A BILL entitled "An act to amend the ninth section of the act 'making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations, and so forth, 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 the ninth section of the act "making appropriations for the current and contingent expenses of the Indian Department," approved March third, eighteen hundred and eighty-five, be, and the same hereby is, amended as follows:

"The officer seeking the arrest of an Indian upon any such reservation, for any offense herein named, shall first demand of the agent or officer in charge of the reservation, the delivery of such Indian, as is provided in section twenty-one hundred and fifty-two of the Revised Statutes: *Provided, however,* That if there be no agent or officer present upon the reservation at the time the arrest of an Indian is sought, or if the agent or officer in charge should refuse to deliver up such Indian, or should fail to comply promptly with such demand, the officer may enter upon any such reservation with his posse and make the arrest."

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