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INDIAN EDUCATION AND CIVILIZATION

A REPORT PREPARED IN ANSWER TO SENATE RESOLUTION OF FEBRUARY 23, 1885

BY
ALICE C. FLETCHER
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among the Indians, the Secretary of the Interior is hereby authorized to confirm such occupation to such society or organization, in quantity not exceeding one hundred and sixty acres in any one tract, so long as the same shall be so occupied, on such terms as he shall deem just; but nothing herein contained shall change or alter any claim of such society for religious or educational purposes heretofore granted by law. And hereafter in the employment of Indian police, or any other employés in the public service among any of the Indian tribes or bands affected by this act, and where Indians can perform the duties required, those Indians who have availed themselves of the provisions of this act and become citizens of the United States shall be preferred.

Sec. 6. That upon the completion of said allotments and the patenting of the lands to said allottees, each and every member of the respective bands or tribes of Indians to whom allotments have been made shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside; and no Territory shall pass or enforce any law denying any such Indian within its jurisdiction the equal protection of the law. And every Indian born within the territorial limits of the United States to whom allotments shall have been made under the provisions of this act, or under any law or treaty, and every Indian born within the territorial limits of the United States who has voluntarily taken up, within said limits, his residence separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life, is hereby declared to be a citizen of the United States, and is entitled to all the rights, privileges, and immunities of such citizens, whether said Indian has been or not, by birth or otherwise, a member of any tribe of Indians within the territorial limits of the United States without in any manner impairing or otherwise affecting the right of any such Indian to tribal or other property.

Sec. 7. That in cases where the use of water for irrigation is necessary to render the lands within any Indian reservation available for agricultural purposes, the Secretary of the Interior be, and he is hereby, authorized to prescribe such rules and regulations as he may deem necessary to secure a just and equal distribution thereof among the Indians residing upon any such reservations; and no other appropriation or grant of water by any riparian proprietor shall be authorized or permitted to the damage of any other riparian proprietor.

Sec. 8. That the provision of this act shall not extend to the territory occupied by the Cherokees, Creeks, Choctaws, Chickasaws, Seminoles, and Osage, Miamies and Peorias, and Sacs and Foxes, in the Indian Territory, nor to any of the reservations of the Seneca Nation of New York Indians in the State of New York, nor to that strip of territory in the State of Nebraska adjoining the Sioux Nation on the south added by Executive order.

Sec. 9. That for the purpose of making the surveys and resurveys mentioned in section two of this act, there be, and hereby is, appropriated, out of any moneys in the Treasury not otherwise appropriated, the sum of one hundred thousand dollars, to be repaid proportionately out of the proceeds of the sales of such land as may be acquired from the Indians under the provisions of this act.

Sec. 10. That nothing in this act contained shall be so construed as to affect the right and power of Congress to grant the right of way through any lands granted to an Indian, or a tribe of Indians, for railroads or other highways, or telegraph lines, for the public use, or to condemn such lands to public uses, upon making just compensation.

Sec. 11. That nothing in this act shall be so construed as to prevent the removal of the Southern Ute Indians from their present reservation in south-western Colorado to a new reservation by and with the consent of a majority of the adult male members of said tribe.

Approved, February 8, 1887.

LEGAL STATUS OF INDIANS.

The act of July 22, 1790, was the first act making provision in reference to "intercourse with the Indians," and therein it is stated that any
offense committed by a citizen against the person or property of peaceable and friendly Indians shall be punishable in the same manner as if the act had been committed against a white inhabitant.\(^1\)

The act of May 19, 1796, gave to the President the power for the legal apprehension or arresting, within the limits of any State or district, of any Indian guilty of theft, outrage, or murder.\(^2\) The act of March 3, 1817,\(^3\) provided that a similar provision\(^4\) should not "be so construed as to affect any treaty in force between the United States and any Indian nation, or to extend to any offense committed by one Indian against another within any Indian boundary." During the twenty years between the two last acts the idea that the Indian tribes were to be distinct nations with their own forms of government, and power to conduct their social polity, had taken form and been distinctly stated in treaties. The right of the Indians to punish white intruding settlers had also been stipulated in treaties made with the Choctaw, Chickasaw, Creek, Cherokee, Wyandotte, Delaware, Ottawa, Chippewa, Potawatomie, and Sac Nations, Shawnees and other tribes.\(^5\) In the case of The Cherokee Nation v. The State of Georgia (5 Peters, 1), the court stated:

It may well be doubted whether those tribes, which reside within the acknowledged boundaries of the United States, can with strict accuracy be denominated foreign nations. They may more correctly, perhaps, be denominated domestic dependent nations. They occupy a territory to which we assert a title, independent of their will, which must take effect in point of possession when their right of possession ceases; meanwhile they are in a state of pupilage. Their relations to the United States resemble that of a ward to his guardian. They look to our Government for protection; rely upon its kindness and its power.\(^6\)

This confused relation between dependence and independence, which continues to the present day, has permitted much harm to reach the Indians and retarded their advance towards civilization. The need for recasting the entire legal position of Indians towards the state and towards each other, and of permitting the laws of the land to be fully extended over all the various reservations and tribes, has been from time to time fully set forth by Indian Commissioners,\(^7\) and appeals have been made for adequate legislation. Efforts at such legislation have as yet met with but partial success.

On March 3, 1885,\(^8\) the following act was passed extending the law over Indians to a limited extent:

That immediately upon and after the date of this act all Indians committing against the person or property of another Indian or other person any of the following crimes,

\(^1\)United States Statutes at Large, Vol. I, p. 133. \(^2\)Ibid., p. 472. \(^3\)Ibid., Vol. III, p. 383. \(^4\)The court decided that that part of the act of March 3, 1817, "which assumes to exercise a general jurisdiction over Indian countries within a State, is unconstitutional and of no effect. The crime of murder charged against a white man for killing another white man in the Cherokee country, within the State of Tennessee, can not be punished in the courts of the United States." (United States v. Bailey, 1 McLean's C. C. R., 234.) \(^5\)Synopsis of treaties with these tribes. \(^6\)United States Statutes at Large, Vol. II, p. 146. \(^7\)Report of Indian Commissioner 1876, p. ix, and 1883, p. x, and 1884, p. xiv. \(^8\)United States Statutes at Large, Vol. XXIII, p. 385.
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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 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; and all such Indians committing any of the above crimes against the person or property of another Indian or other person within the boundaries of any State in the United States, and within the limits of any Indian reservation, shall be subject to the same laws, tried in the same courts and in the same manner and subject to the same penalties as are all other persons committing any of the above crimes within the exclusive jurisdiction of the United States.

By the act known as the severalty act, approved February 8, 1887, Indians taking their lands individually are placed under the laws, civil and criminal, of the State or Territory in which they reside, and are also made citizens of the United States.

The following extract from the decisions of the Attorney-General, the United States and State courts gives the present legal status of the Indians within the limits of the United States.

The United States court has ruled concerning Indians who maintain their tribal relations as follows:

Indians who maintain their tribal relations are the subjects of independent governments, and, as such, not in the jurisdiction of the United States, within the meaning of the Constitution and laws of the United States, because the Indian nations have always been regarded as distinct political communities, between which and our Government certain international relations were to be maintained. These relations are established by treaties to the same extent as with foreign powers. They are treated as sovereign communities, possessing and exercising the right of free deliberation and action, but, in consideration of protection, owing a qualified subjection to the United States. (Ex parte Reynolds, 5 Dillon, p. 394.)

Concerning Indians living apart from their tribe the court decides:

When the members of a tribe of Indians scatter themselves among the citizens of the United States, and live among the people of the United States, they are merged in the mass of our people, owing complete allegiance to the Government of the United States, and equally with the citizens thereof, subject to the jurisdiction of the courts thereof. (Ex parte Reynolds, 5 Dillon, p. 394.)

The following rulings apply to all Indians on or off reservations:

The right of expatriation is a natural, inherent, and inalienable right, and extends to the Indian as well as to the white race. (United States v. Crook, 5 Dillon, p. 453.)

* * * In time of peace, no authority, civil or military, exists for transporting Indians from one section of the country to another without the consent of the Indians, nor to confine them to any particular reservation against their will; and where officers of the Government attempt to do this, and arrest and hold Indians who are at peace with the Government, for the purpose of removing them to and confining them on a reservation in the Indian Territory, they will be released on habeas corpus. (United States v. Crook, 5 Dillon, p. 454.)

An Indian is a person within the meaning of the habeas corpus act, and as such is entitled to sue out a writ of habeas corpus in the Federal courts when it is shown that the petitioner is deprived of liberty under color of authority of the United States, or is in custody of an officer in violation of the Constitution or a law of the United States, or in violation of a treaty made in pursuance thereof. (United States v. Crook, 5 Dillon, p. 453.)
The Indian country (territory) is within the jurisdiction of the western district of Arkansas. A writ of habeas corpus issued by the United States court of that district, or the judge thereof, will run in that territory. (Ex parte Kenyon, 5 Dillon, 385.)

An Indian may abandon his tribe, and, for the purpose of jurisdiction, become a member of the body politic known as citizens of the United States. (Ex parte Kenyon, 5 Dillon, p. 385.)

The Attorney-General has given the following opinion on the relation of Indians to citizenship:

The fact, therefore, that Indians are born in the country does not make them citizens of the United States.

* * * The Indians are the subjects of the United States, and therefore are not in mere right of home-birth citizens of the United States. The two conditions are incompatible.

This distinction between citizens proper, that is, the constituent members of the political sovereignty, and subjects of that sovereignty, who are not therefore citizens, is recognized in the best authorities of public law.1 (See Puffendorf, De Jure Nature, Lib. VII, Cap. II, 8.)

Indians and half-breeds do not become citizens of the United States by being declared electors by any one of the States.2

* * * Electorship and citizenship are different things; they are not, of necessity, consociated facts; a person may be elector and not citizen, as he may be citizen and not elector.3

Indians * * * can be made citizens of the United States only by some competent act of the General Government, either a treaty or an act of Congress.4

Members of the following tribes can become citizens by treaty stipulations:

Delaware, 1836 (United States Statutes at Large, Vol. XIV, p. 793, art. 9; also ibid., Vol. XVIII, p. 175); Kickapoo, 1862 (Ibid., Vol. XIII, p. 623, sec. 3); Miami, 1873 (Ibid., Vol. XVII, p. 631, sec. 3); Miami of Indiana, 1873 (Ibid., p. 213, sec. 5); Ottawa, 1862 (Ibid., Vol. XII, p. 1237, sec. 1); Peoria, Kaskaskia, Wese, Piankeshaw, 1867 (Ibid., Vol. XV, p. 513, art. 28); Sioux, 1868 (Ibid., Vol. XV, p. 635, art. 6); Stockbridge Munsee, 1865 (Ibid., Vol. XIII, p. 562, sec. 4); Winnebagoes living in Minnesota, 1870 (Ibid., Vol. XVI, p. 361, sec. 10).

The Pueblo Indians and other sedentary tribes that came under the dominion of the United States by the treaty of Guadalupe Hidalgo and Gadsden purchase.5

The following decision by the United States court decides the status of mixed bloods:

The condition of the offspring of a union between a citizen of the United States and one who is not a citizen, e. g., an Indian living with his people in a tribal relation, is that of the father. The status of the child in such case is that of the father. The rule of the common law and of the Roman civil law, as well as of the law of nations, prevails in determining the status of the child in such case. (Ex parte Reynolds. 5 Dillon, p. 394.)

The following legislation applies exclusively to contracts touching lands, annuities, or benefits derived by treaty or official act of the United States:

Sec. 2103. No agreement shall be made by any person with any tribe of Indians or individual Indians not citizens of the United States for the payment or delivery of any

money or other thing of value, in present or in prospective, or for the granting or procuring any privilege to him or any other person in consideration of services for said Indians relative to their lands, or to any claims growing out of or in reference to annuities, instalments, or other moneys, claims, demands, or thing under laws or treaties with the United States, or official acts of any officers thereof, or in any way connected with or due from the United States, unless such contract or agreement be executed and approved as follows:

First. Such agreement shall be in writing, and a duplicate of it delivered to each party.

Second. It shall be executed before a judge of a court of record, and bear the approval of the Secretary of the Interior and the Commissioner of Indian Affairs indorsed upon it.

Third. It shall contain the names of all parties in interest, their residence and occupation, and if made with a tribe, by their tribal authorities, the scope of authority and the reason for exercising that authority shall be given specifically.

Fourth. It shall state the time when and place where made, the particular purpose for which made, the special thing or things to be done under it, and, if for the collection of money, the basis of the claim, the source from which it is to be collected, the disposition to be made of it when collected, the amount or rate per centum of the fee in all cases, and if any contingent matter or condition constitutes a part of the contract or agreement, it shall be specifically set forth.

Fifth. It shall have a fixed limited time to run, which shall be distinctly stated.

Sixth. The judge before whom such contract or agreement is executed shall certify officially the time when and the place where such contract or agreement was executed, and that it was in his presence, and who are the interested parties thereto as stated to him at the time, the parties present making the same, the source and extent of authority claimed at the time by the contracting parties to make the contract or agreement, and whether made in person or by agent or attorney of either party or parties.

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 suit in the name of the United States in any court of the United States regardless of the amount in controversy, and one-half thereof shall be paid to the person suing for the same and the other half shall be paid into the Treasury for the use of the Indian or tribe by or for whom it was so paid.\(^1\)

SEC. 2104. * * * The moneys due the tribe, Indian, or Indians, as the case may be, shall be paid by the United States, through its own officers or agents, to the party or parties entitled thereto; and no money or thing shall be paid to any person for services under such contract or agreement until such person shall have first filed with the Commissioner of Indian Affairs a sworn statement showing each particular act of service under the contract, giving date and fact in detail, and the Secretary of the Interior and Commissioner of Indian Affairs shall determine therefrom whether, in their judgment, such contract or agreement has been complied with or fulfilled; if so, the same may be paid, and if not, it shall be paid in proportion to the services rendered under the contract.

SEC. 2105. The Secretary of the Interior is directed to cause settlements to be made with all persons appointed by Indian councils to receive moneys due to incompetent or orphan Indians, and to require all moneys found due to such incompetent or orphan Indians to be returned to the Treasury; and all moneys so returned shall bear interest at the rate of 6 per centum per annum until paid by order of the Secretary of the Interior to those entitled to the same. No money shall be paid to any person appointed by any Indian council to receive moneys due to incompetent or orphan...

\(^1\)Revised Statutes, p. 367, section 2103.
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Indians, but the same shall remain in the Treasury of the United States until ordered to be paid by the Secretary to those entitled to receive the same, and shall bear 6 per centum interest until so paid.

The courts of Kansas and Washington Territory have held that "an Indian sustaining tribal relations is as capable of entering into binding contracts as any other alien," except in the particular instance prohibited by section 2103 et seq., Revised Statutes; that is, that said contract shall not touch his lands, annuities, or statute benefits. "The right to contract necessarily draws after it the liability to be sued?; therefore upon contracts of the aforesaid character Indians can sue and be sued.1

Jurisdiction of State courts over Indians.—John Rubideaux, a Miami Indian chief, bought a piece of land in Miami County of Jack Vallie, and in consideration therefor gave to Vallie an instrument in writing, substantially a promissory note. After maturity of the note Vallie sued Rubideaux thereon in the district court of Miami County, Kans. Held: That said court has jurisdiction to hear and determine the case.

There is no law of the United States nor of this State that authorizes Indians to purchase lands in Kansas, and then refuse to pay for the same. Neither is there any law that prohibits the courts of Kansas from taking jurisdiction of the persons and property of Indians found within the territorial boundaries of this State, except while such Indians or property are actually situated on a reserve excluded from the jurisdiction of the State.2

TRADING REGULATION.

The trader from the earliest time wielded great influence among the Indians. From him the natives obtained fire-arms, implements, and utensils of metal, and thereby secured an advantage over Indians not so well supplied. By the introduction of the goods of the white man's make native manufacture fell into disuse, as the stone, wooden, or pottery implements cost the Indian much labor and were less useful when completed than the articles offered by the trader in exchange for peltries. Weaving became a lost art among the tribes nearest to white settlements, and the tanning of skins for raiment finally gave place to the cheaper calico and flannel. The wants thus created among the Indians by the traders required to be supplied in order to keep the people peaceful, and the importance of having the traders directly responsible to the Government was early recognized and enforced.

The proclamation of George III3 set forth the claim of the Crown to regulate trade and license traders. The Articles of Confederation4 reserved that right to Congress. The ordinance for the regulation of Indian affairs, passed August 7, 1786, provides that none but citizens were to reside or trade among the Indians, and no person, under penalty of $500, to so reside or trade without a license from the superin-