Opinion No. 19-2283

May 28, 1919

BY: HARRY S. BOWMAN, Assistant Attorney General

TO: Mr. P. T. Lonergan, Superintendent Pueblo Indian Agency, Albuquerque, New Mexico.

Jurisdiction of Justice of the Peace Over Criminal Libel Case Between Indians.

OPINION

Your letter of the 21st instant, addressed to Mr. Askren, requesting an opinion regarding the jurisdiction of a justice of the peace to hear and determine a case instituted by a Pueblo Indian against another Pueblo Indian for criminal libel, the libeling being alleged to have taken place in the school house built and owned by the United States government on lands owned by the government, at a hearing of the Board of Indian Commissioners held for the purpose of settling difficulties existing between two factions of the San Juan Indian Pueblo, has not received a more prompt reply, owing to the desire of the writer to make a thorough investigation into the laws governing the subject prior to venturing an expression of his views thereon.

At the outset I might state that I feel that this question is one which should have been submitted to the United States District Attorney or to the Attorney for the Pueblo Indians for their rulings rather than to this office, but since you have seen fit to request our views upon the matter I have taken both the time and the energy to examine into the authorities and with this result:

Under date of March 26, 1915, Attorney General Frank W. Clancy rendered an opinion to Mr. Robert Cameron, Justice of the Peace at Bernalillo, New Mexico, holding that a justice of the peace had jurisdiction to cause the arrest of a Pueblo Indian and to put him under bond to keep the peace upon the complaint of another Indian. Mr. Clancy suggested at the time that it was desirable that the question of the jurisdiction of state courts to try Indians for offenses committed upon Indian reservations should be determined by courts of last appeal.

The question of the jurisdiction of state and federal courts over litigation involving Indians and Indian property has been before the courts, both state and federal, many times, and with considerable diversity of rulings as a result. Formerly, it was universally held that Indians were subject to trial in state courts for the commission of offenses committed upon Indian reservations, but the latter opinions, especially those of the supreme court of the United States, have held to the contrary in a great many cases.

In 14 R. C. L., page 39, the rule is thus stated:

"The state courts, therefore, have no jurisdiction of crimes committed by an Indian within the limits of an Indian reservation; and the federal jurisdiction is not affected by the fact that the Indian committing the crime has been granted citizenship, and has received a patent for land within the reservation under an allotment act which grants a conditional power of alienation only, or specifies a period during which the land shall be held in trust by the United States."

This statement of the law is said to be sustained by the cases cited in the notes on this page, but a careful examination of these cases does not seem to sustain the broad statement that state courts have no jurisdiction of any crime committed by Indians upon Indian reservations. All of the cases decided by the supreme court of the United States are uniform in holding that offenses which are defined as such by section 9, Act March 3, 1865, section 10502, United States Compiled Statutes, Criminal Code, section 328, are exclusively within the jurisdiction of the federal courts, and therefore that state courts have no right to try offenders for any offense designated in those sections. Such is the holding in the cases of,

United States vs. Celestine, 215 U.S. 278, 30 S. Ct. 95, 54 U.S. (L. Ed.) 195;

United States vs. Pelican, 232 U.S. 442, 34 S. Ct. 396, 58 U.S. (L. Ed.) 676;

Apapas vs. United States, 233 U.S. 587, 34 S. Ct. 704, 58 U.S. (L. Ed.) 1104.

A like position was taken by the Court of Appeals of the State of New York in the case of People vs. Daly, 212 N. Y. 183, 105 N. E. 1048, Ann. Cas. 1915D 367.

A note digesting the late cases upon the subject is appended to this case in the Ann. Cas. volume last above cited.

In the note to the case of Ex Parte Moore, 28 S. D. 339, 133 N. W. 817, Ann. Cas. 1914B, 648, on page 652 of the last named volume the annotator makes the statement that it is generally held that as to Indians on reservations set apart by the United States government the civil and criminal laws of the states within whose boundaries the reservations are located do not apply, but the Indians are subject only to the laws of the United States government.

The cases cited in support of this statement are likewise cases wherein the offense for which the Indian was being tried was designated in the section of the federal statutes heretofore mentioned.

A careful examination of all of these cases which are cited in support of the broad proposition that state courts have no jurisdiction over offenses committed by Indians upon Indian reservations does not disclose a single case where the offense for which the Indian was on trial was one prescribed by the state statutes and not by the federal statutes.

In the note to the case of State vs. Wolf, 13 Ann. Cas. 189, on page 192 again appears the statement of the annotater that,

"The jurisdiction of the federal government over Indian tribes, and over the members of such tribes while they are on Indian reservations, is exclusive. Consequently the persons of such Indians, while they are on their reservations, cannot be controlled by the state within which the reservations are located. Such Indians are not subject to the civil or criminal laws of the state."

As heretofore stated, we are of the opinion that this broad attempt to divest the state courts of any jurisdiction over Indians for offenses committed upon Indian lands is without substantial authority. While the courts might hold that offenses against state laws which are not included among these designated in the federal statutes heretofore cited are also exclusively within the jurisdiction of the federal courts, at least they have not so held up to present time, and the contention that the case of Apapas vs. United States, supra, takes that position is not sustained by a careful reading of that case.

The offense for which the defendant was on trial was that of murder, and murder is one of the offenses designated in the section of the federal statutes above cited.

We would therefore be inclined to hold that a justice of the peace would have jurisdiction to bind over a defendant in the case submitted in your letter, the offense of criminal libel not being either a crime or misdemeanor designated within the provisions of section 9 of the Act of March 3, 1885.

In this position we are sustained by the case of Kitto vs. State, a recent case decided in the state of Nebraska in the year 1915, and reported in 152 N. W. 380, L. R. A. 1915F 587, wherein it was held that all crimes and misdemeanors committed by Indians and not expressly reserved by section 9, Act of March 3, 1885, are within the jurisdiction of the state courts.

We should be glad to have this question determined by some court of final jurisdiction, preferably, of course, the supreme court of the United States, and trust that the case in question may be appealed, in the event that the defendant is bound over to the district court and found guilty of the offense charged.

There is sufficient uncertainty regarding this question to make it advisable that a determination thereof be had by the highest court of the land, and in this manner there will be cleared up one of the few remaining questions concerning the jurisdiction of state and federal courts over Indians and Indian lands, the majority of the questions upon this subject having been finally determined by that court.