

PREVENTION OF TRESPASS ON INDIAN LANDS

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MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING

*A communication from the Secretary of the Interior relative to the more adequate prevention of trespass upon Indian lands.*

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MARCH 29, 1882.—Referred to the Committee on Indian Affairs and ordered to be printed.

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*To the Senate and House of Representatives :*

I transmit herewith a communication from the Secretary of the Interior, dated 24th instant, in relation to the urgent necessity of action on the part of Congress for the more adequate prevention of trespasses upon Indian lands, with copy report from the Commissioner of Indian Affairs upon the subject, and draft of a bill for the object indicated.

‡ The subject is commended to the consideration of Congress.

CHESTER A. ARTHUR.

EXECUTIVE MANSION, *March 29, 1882.*

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DEPARTMENT OF THE INTERIOR,  
*Washington, March 25, 1882.*

SIR: I have the honor to submit herewith copy of a communication of the 13th instant, from the Commissioner of Indian Affairs, urging action on the part of Congress for the more adequate prevention of trespasses upon Indian lands, and presenting a draft of proposed legislation for the object indicated.

Trespasses upon Indian lands are of constant occurrence. Persons are daily entering upon Indian reservations in violation of law, under various pretexts, and, having once gained a foothold, and made some improvement, or opened mines, when the attention of the department is called to the matter, and they are removed, or about to be removed, make the fact of their entrance and labor the basis of a claim to Congress at its next session for the right to retain possession of what they have in reality wrongfully gained.

These trespasses frequently cause difficulties with the Indians, and

sometimes result in bloodshed and open war. The existing law imposes no penalty beyond removal for the first unlawful entry, and a fine not exceeding \$1,000 for the second offense (Rev. Stats., secs. 2147, 2148). In most cases the imposition of a fine amounts to nothing, in consequence of the inability of the offender to pay it. The bill in question inflicts a penalty of not more than \$500 and imprisonment at hard labor for not more than one year for the first offense, and for every subsequent offense not more than \$1,000 nor less than \$500, and imprisonment at hard labor not more than two years, nor less than one year, but exempts all emigrants or travelers peaceably passing through Indian lands, tribal reservations, or lands specially set apart for Indian purposes, without committing any willful trespass or injury to person or property.

The subject having my approval, I respectfully ask that it may be presented for the early attention and action of Congress.

I have the honor to be, sir, very respectfully, your obedient servant,  
 S. J. KIRKWOOD,  
*Secretary.*

The PRESIDENT.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,  
 Washington, March 13, 1882.

The honorable the SECRETARY OF THE INTERIOR:

SIR: In the annual report of this office for the past year, I referred to the insufficiency of existing laws relating to intruders upon Indian reservations in the following terms:

"Existing laws (intercourse act June 30, 1834; act of August 18, 1856, sections 2147, 2148, Revised Statutes) are, in the changed order of things, entirely insufficient for the purpose. Under these laws an intruder must first be removed from the reserve, and then if he returns he is liable to a penalty of \$1,000.

"As a general rule intruders are of a class having no property subject to execution, and as the penalty can only be collected by an action of debt, the result is invariably a barren judgment, and the delinquent goes scot free, only to renew his attempts at settlement at a later date, and perhaps in some other direction.

"A notable illustration of the inadequacy of the law is found in the case of the notorious Captain Payne, of Oklahoma fame, who, after repeated attempts at settlement in the Indian Territory, and removal therefrom by the military, was finally arrested July 15, 1880, and taken to Fort Smith, Ark., where he was released on bail to appear at the ensuing November term of court. At the subsequent May term of said court a civil suit in the nature of an action of debt brought against Payne in the name of the United States, to recover the statutory penalty of \$1,000, was tried and judgment rendered against him. It is altogether improbable that the judgment can now be collected from Payne, and the result is that he is at large, organizing another scheme for invasion of the Territory.

"I suggest an amendment of the law so that an intruder on Indian lands shall be liable to prosecution for the first and every subsequent offense, and, upon conviction, be punishable, not simply by fine, but by fine and imprisonment, and provision should also be made in the act for confiscation and sale by the government of the entire outfit of an intruder or party of intruders."

I also beg leave to call your attention to the remarks of Inspector Pollock in his report to the department upon the condition of the five civilized tribes in the Indian Territory, under date of October 10, 1881.

"The greater portion of the troubles that arise here are occasioned by white intruders—American citizens—whom the United States are obligated to, and should promptly, remove from the Territory.

"These intruders do not come here because there are no other unoccupied lands; millions of acres better than this are to be found in our Western States and Territories, against the settlement of which there is no inhibition; they come here from an inherent disposition to transgress, to evade the payment of taxes, and to escape the restraints of law.

"To them the Indian laws do not apply. By regularly enacted laws of the 'Five Nations' their members are inhibited from carrying deadly weapons, but these white intruders—pale-faced cut-throats, the terrors of the country—go armed to the teeth continually.

"The United States should keep their own trespassing citizens out of this Territory, and should sacredly keep and perform every other obligation entered into with these people. No excuse can be made current for a failure to do so.

"The cutting or stealing of timber, hay, or stone, the grazing or raising of stock, and all other wanton and willful trespassing by United States citizens upon lands held in common or in severalty by these people, should be made a criminal offense, punishable not only by fine (which is usually not collectable) but also by imprisonment."

In furtherance of these views, I have the honor to submit for your consideration the draft of a bill, which if enacted will, I think, prove a wholesome check to intruders, and, subject to your approval, I respectfully recommend that it be transmitted to Congress to be offered as a substitute for H. R. 2867, which simply amends the existing statute in regard to a second offense, and does not, in my judgment, go far enough.

Duplicate copies of this letter and of the bill prepared in this office are herewith submitted.

Very respectfully, your obedient servant,

H. PRICE,  
*Commissioner.*

A BILL to amend section twenty-one hundred and forty-eight of the Revised Statutes of the United States, in relation to trespassers on Indian lands.

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That section twenty-one hundred and forty-eight of the Revised Statutes of the United States be amended to read as follows, namely:*

"Every person who without authority of law enters and shall be found upon any Indian lands, tribal reservation, or lands specially set apart for Indian purposes, shall, for the first offense, upon conviction thereof, pay a fine of not more than five hundred dollars, and be imprisoned at hard labor for not more than one year; and for every subsequent offense, shall, upon conviction thereof, pay a fine of not more than one thousand dollars and not less than five hundred dollars, and be imprisoned at hard labor for not more than two years, nor less than one year; and the wagons, teams and outfit of such person or persons so offending shall be seized and delivered to the proper United States officer, and be proceeded against by libel in the proper court, and forfeited, one-half to the informer, and the other half to the United States, and in all cases arising under this act, Indians shall be competent witnesses: *Provided, however,* That the provisions of this section shall not apply to emigrants or travelers peaceably passing through such Indian lands, tribal reservations, or lands especially set apart for Indian purposes, without committing any willful trespass or injury to person or property."