47TH CONGRESS, 1st Session. SENATE. REPORT No. 773.

IN THE SENATE OF THE UNITED STATES.

JUNE 28, 1882.—Ordered to be printed.

Mr. MILLER, of California, from the Committee on the Revision of the Laws of the United States, submitted the following

REPORT:

[To accompany bill S. 2100.]

The Committee on the Revision of the Laws, having had under consideration the resolution of the Senate of March 27, 1882, instructing them to "inquire what further legislation is necessary, if any, to define the meaning of the words 'Indian country,' as used in the Revised Statutes and other laws of the United States," beg leave to report:

That in revising the statutes of the United States in 1873, the first section of the act of June 30, 1834, commonly known as the "trade and intercourse act," was dropped or omitted from the laws as revised; that the said section so omitted defined the meaning of the words "Indian country" as they occurred in the statutes, and that nowhere else in the laws of the United States has it ever been attempted to define this meaning; that on at least one occasion a United States court has decided that by this omission of the section referred to it was repealed; that under the circumstances, there being numerous laws, criminal and otherwise, passed by Congress, applicable to and referring in general terms to the "Indian country," which laws are necessary and ought to be enforced, legislation is necessary and ought to be had to define the meaning of the words "Indian country."

The committee, therefore, beg leave to submit a bill which was prepared by the Commissioner of Indian Affairs, upon the request of the committee to the Secretary of the Interior, to define the meaning of the words referred to. With the verbal concurrence of the Secretary of the Interior the committee have stricken out of the bill as originally drawn by the Commissioner of Indian Affairs the words "lands to which the original Indian title has never been extinguished, but which have not been specially reserved by treaty, act of Congress, or otherwise, for the use of the Indians, or for other purposes," because they believe that there are no such lands within the limits of the United States, and they recommend that the bill, thus amended, be passed.

The committee submit herewith draft of bill above referred to, letter from the Secretary of the Interior dated May 1, 1882, transmitting the said bill, with the report of the Commissioner of Indian Affairs upon the necessity of the legislation recommended (which said report is also herewith), and letter from the Hon. George W. McCrary, United States judge for the eighth judicial circuit, dated March 25, 1882, and addressed to Hon. G. F. Hoar, upon the subject of the necessity of such legislation.

DEPARTMENT OF THE INTERIOR,
Washington, May 1, 188[illegible]

SIR: I have the honor to acknowledge the receipt of your letter of the 3d ultimo, inclosing a resolution of the Senate of 27th March last, instructing your committee to inquire into the necessity for further legislation defining the meaning of the words "Indian country" as used in the Revised Statutes and other laws of the United States; and a letter of Hon. George W. McCrary, United States circuit judge of the eight judicial circuit, dated Saint Louis, Mo., April 8, 1882, addressed to Senator Hoar, upon the same subject; also, concurring in the views of Judge McCrary, and requesting an expression of the views of this department.

The subject having been referred to the Commissioner of Indian Affairs, I inclose herewith a copy of his letter of reply of the 25th ultimo, together with a draft of a bill which it is believed will cure the defect existing in the case.

The bill is respectfully presented for the consideration of your committee, and the resolution of the Senate and the letter of Judge McCrary are respectfully returned.

Very respectfully,

H. M. TELLER,
Secretary.

Hon. JOHN F. MILLER,
Chairman Committee on Revision of the Laws, United States Senate.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, April 25, 1882.

SIR: I have the honor to acknowledge the receipt, by department reference for report, of a communication from Hon. John F. Miller, chairman of the Committee on the Revision of the Laws, United States Senate, dated the 3d instant, in which he incloses a letter from Hon. George W. McCrary, United States circuit judge for the eighth judicial circuit, to the Hon. George F. Hoar, in which he states that he has recently had occasion to decide that section 1 of the act of Congress of June 30, 1834, known as the trade and intercourse act (4 Stat., 729), is repealed by the Revised Statutes, portions of that act being embraced in the revision, and section 1 altogether omitted; that, therefore, there is no law defining or locating the "Indian country" as referred to in numerous statutes, which may leave the courts powerless to enforce many of the criminal statutes intended for the protection of the Indians and other inhabitants of what has heretofore been known as the "Indian country," and suggesting whether some action of Congress is not desirable in the premises; and also a resolution of the United States Senate, instructing the Committee on the Revision of the Laws to inquire what further legislation is necessary, if any, to define the meaning of the words "Indian country" as used in the Revised Statutes and other laws of the United States.

Senator Miller states that the committee concur with Judge McCrary in the opinion "that there is no act of Congress now in force defining the meaning of the words 'Indian country' or the locality or boundaries of the 'Indian country,'" and requests that you will advise them of your views in the premises, and, if you concur with them, will cause a bill to be prepared and forwarded drawn to meet the requirements of the public service, together with such suggestions as you may wish to advance.

The meaning of the term "Indian country" has been the subject of judicial inquiry and determination both before and since the revision of the statutes of the United States.

In the opinion of Judge Hillyer, United States district court for the district of Nevada, in the case of the United States *vs.* Leathers (6 Sawyer, 17), which will be noticed more fully hereafter, there is a very thorough review of legislation relating to the "Indian country," the substance of which is here given.

In the first act, "to regulate trade and intercourse with the Indian tribes" (act of July 23, 1790, 1 Stat., 137), this expression is used. No definition of it is given, but the tenor of the act shows that it was used as meaning country belonging to the Indians, occupied by them, and to which the government recognized them as having some kind of title and right. In the act of 1793 (1 Stat., 329) "Indian country" and "Indian territory" are used as synonomous.

The act of 1796, section 16 (1 Stat., 469), speaks of the country over and beyond a boundary line from Lake Erie down to Saint Mary's River as "Indian country."

The act of 1799 (1 Stat., 743) fixed the same line and called the territory beyond "Indian country." In some sections "territory" belonging to Indians is spoken of.

The act of 1802 (2 Stat., 139) uses the words "Indian country" and "Indian territory" as meaning the same thing, and in both instances it is the country set apart by treaties or otherwise for the Indians.

By the act of 1816 (3 Stat., 382) foreigners are excluded from any country allotted to Indian tribes, secured to them by treaty, or to which the Indian title has not been extinguished.

By the act of 1822 (3 Stat., 682) the President was authorized to cause to be searched the packages of traders suspected of carrying ardent spirits into the Indian countries.

Then comes the act of 1834 (4 Stat., 729), defining the "Indian country" to be "all that part of the United States west of the Mississippi, and not within the States of Missouri and Louisiana or the Territory of Arkansas, and also that part of the United States east of the Mississippi River, and not within any State to which the Indian title has not been extinguished." Certain acts of Congress referring to the Indian Territory, meaning the country known by that name south of Kansas, when incorporated into the Revised Statutes, change the term to Indian country (R. S. 2–127, 2–138). Chapter 4, of title 28, Revised Statutes, is headed "Government of Indian country," not *the* Indian country.

In the act of 1863 (12 Stat., 793) this occurs: Treaties may be made with the tribes residing in the country south of Kansas and west of Arkansas, commonly known as the Indian country.

There are several statutes extending the provisions of the act of 1834 to territory not included in the first section of that act (see 9 Stat., 437, 9 Stat., 587, and 17 Stat., 530).

In the case of the United States *vs.* Seveloff (2 Sawyer, 311), Judge Deady held that the "Indian country," within the meaning of the act declaring it to be a crime to introduce spirituous liquors therein, is only that portion of the United States which has been declared to be such by act of Congress; and country which is owned or inhabited by Indians in whole or in part, is not, therefore, a part of the "Indian country."

August 12, 1873, the honorable Attorney-General of the United States rendered an opinion to the effect that "it is unquestionable, both as regards the region west of the Mississippi, originally included within the Indian country by the act of 1834, and as regards the region formerly included within the Territories just mentioned (Oregon, New Mexico, Utah, and Alaska), that all Indian reservations occupied by Indian tribes, and also all other districts so occupied to which the Indian title has not been extinguished are Indian country within the meaning of the intercourse laws and remain (to a greater or less extent, according as they lie within a State or Territory) subject to the provisions thereof." (14 Opinions, 290.)

In the case of the United States *vs.* Winslow (3 Sawyer, 337), it was held that the effect of the fifth section of the act of June 5, 1850 (9 Stat., 437), extending the provisions of the act of 1834 over the Indian tribes in the Territory of Oregon was to make Oregon, so far as the disposition of spirituous liquors to Indians is concerned, "Indian country."

The case of Bates *vs.* Clark (5 Otto, 204), decided at the October term, 1877, of the Supreme Court of the United States, was tried subsequent to the revision of the statutes, but arose before the revision. The act of 1834 was therefore in force, and governed that decision.

It was held that "in absence of any different provision by treaty or by act of Congress, all the country described by the first section of the act of June 30, 1834, as Indian country, remains such only as long as the Indians retain their title to the soil."

In the case of Waters *vs.* Campbell (4 Sawyer, 121), the United States circuit court, district of Oregon, held that Alaska was not "Indian country" in the technical sense of that term, any further than Congress has made it so, but that it was Indian country so far as the introduction of spirituous liquors was concerned.

It will be seen that at the time of the enactment of the Revised Statutes the boundaries of the "Indian country" had been largely changed since the passage of the act of 1834, but generally speaking, the provisions of that act had been extended to the various Indian reservations, and were held to be applicable to the several Indian tribes wherever located.

The question as to the country to which the provisions of chapter 4, title 28, of the Revised Statutes are applicable is fully discussed in the case of the United States *vs.* Leathers (6 Sawyer, 17), before referred to.

This case was a criminal one, in which the indictment charged the defendant with attempting to reside as a trader, and to introduce goods, and to trade in the Indian country without a license, in violation of section 2133 of the Revised Statutes, and also with introducing liquor into the Indian country contrary to section 2139. The indictment alleged this Indian country to be the Pyramid Lake Reservation in the State of Nevada.

In discussing the question as to whether the reservation mentioned in the indictment was Indian country within the meaning of the two sections of the Revised Statutes above named, the court says: "At the time the Revised Statutes were adopted all the country embraced by the definition of Indian country in the act of 1834 was organized into States and Territories, to which the world generally was invited to

come and settle. The same was true of all that portion of the United States lying west of the Rocky Mountains. So far as I can ascertain, all the tribes, certainly all the tribes of note within this vast territory, have been, either by treaties or agreement, dealt with by the government. The tribes, in consideration of money, goods, annuities, &c., have ceded their right to the occupation of the regions over which they had been roaming and hunting, and have had a specific portion of land or territory, or country, allotted to them for their exclusive use, called Indian reservations. On these it was and is the policy, so far as possible, to induce the tribes to settle permanently and cultivate the soil as a means of living, in lieu of their former roaming life, hunting and fishing.

"This is the general situation of Indian affairs.

"It follows that unless these various Indian reservations are Indian country, and if we are still bound by the definition in the act of 1834, there is little or no country to which the various sections of the Revised Statutes for the government of the Indian country can apply.

"But if we regard section 1 of the act of 1834 as repealed, and the portions of the public land allotted to the use and occupation of the Indians as Indian country, the sections of the Revised Statutes in which those words occur will have such operation as to carry out what I think Congress intended should be accomplished by their adoption. It is as important now as ever that the introduction of liquor into the reservations set apart for the Indians should be prevented, and trading and settling among them also. I am constrained to adopt this as the true construction of the present law, and therefore hold the Pyramid Lake Indian Reservation to be Indian country."

It is perhaps worthy of remark that this reservation was set apart for the use of the Indians by an executive order (March 23, 1874), and the right of the President to make such disposition of public lands is sustained.

This decision was affirmed by the circuit court on appeal. My own views in reference to this matter are in accord with those expressed by the court in this case. Following this opinion, there would seem to be no occasion to anticipate the difficulties feared by Judge McCrary, and, therefore, no actual necessity for the legislation suggested.

Should it be thought best, however, to define the meaning of the words "Indian country" as used in the Revised Statutes by legislative enactment, I see no objection, provided such definition corresponds with that given by the courts.

I have accordingly prepared a bill, as requested by the committee, which embodies the principles of the decision above quoted. I return herewith the letter of Senator Miller, with its inclosures, and inclose a copy of this report and of the proposed bill.

Very respectfully, your obedient servant,

H. PRICE,
Commissioner.

Hon. SECRETARY OF THE INTERIOR.

[United States circuit court, eighth judicial circuit, at chambers.]

SAINT LOUIS, MO., *March* 25, 1882.

MY DEAR SENATOR: I have recently, in a case tried before me in Minnesota, had occasion to decide that section one of the act of Congress of June 30, 1834, known as the "trade and intercourse act" (4 Stat., page 729) is repealed by the Revised Statutes of the United States, portions of that act being embraced in the revision, and section one altogether omitted.

If I am right in this ruling, there is no act of Congress now in force defining the meaning of the words "Indian country," or the locality or boundaries of the "Indian country." This, you will readily perceive, leaves a large body of legislation relating to the "Indian country," much of it criminal in character and very important, without a *situs*. There are numerous statutes referring in general terms to the "Indian country," but if the section above named is repealed there is no statute locating or describing the country thus referred to. This may leave the courts powerless to enforce many of the criminal statutes intended for the protection of the Indians and other inhabitants of what has heretofore been known as the "Indian country." As these criminal statutes must be strictly construed, it is difficult to see how any of them can be executed as the law now stands. I have thought it proper to call your attention to this subject, and to suggest whether some action of Congress is not desirable in the premises.

I remain yours, very sincerely,

GEO. W. McCRARY.

Hon. G. F. HOAR,
United States Senate Chamber, Washington, D. C.