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Federal and Cherokee Courts. Message from the President of the United States, communicating papers relative to a conflict of jurisdiction between the Federal and Cherokee Courts

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FEDERAL AND CHEROKEE COURTS.

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES,

COMMUNICATING

Papers relative to a conflict of jurisdiction between the Federal and Cherokee courts.

JUNE 24, 1856.—Referred to the Committee on the Judiciary, and ordered to be printed.

To the Senate and House of Representatives of the United States :

I herewith communicate a letter, of the 26th instant, from the Secretary of the Interior, and accompanying papers, relative to the conflict of jurisdiction between the federal and Cherokee courts, and the inadequacy of protection against the intrusion of improper persons in the Cherokee country, and recommend the subject to the consideration of Congress.

FRANKLIN PIERCE.

WASHINGTON, June 3, 1856.

DEPARTMENT OF THE INTERIOR,
Washington, May 26, 1856.

SIR: I have the honor to transmit, herewith, a communication dated the 22d instant, from the Commissioner of Indian Affairs, and accompanying papers, on the subject of conflict of jurisdiction between the federal and Cherokee courts; and also in relation to the inadequacy of protection against the intrusion of improper persons into the Cherokee country; and recommend that the subject-matter be laid before Congress, for such legislation as may be deemed necessary.

I am, sir, very respectfully, your obedient servant,

R. McCLELLAND, *Secretary.*

To the PRESIDENT.

DEPARTMENT OF THE INTERIOR,
Office Indian Affairs, May 22, 1856.

SIR: In conformity with the suggestion contained in your communication of the 16th instant, I herewith transmit copies of two letters from superintendent Dean, of April 16th, and copies of two from agent Butler, of April 9th and 12th, of the present year, upon the subject of conflict between the federal and Cherokee courts, in relation to jurisdiction, and also in regard to the inadequacy of protection against the intrusions of improper persons into the Cherokee country; with a view that the subject-matter be laid before the Committees on Indian Affairs of the two houses of Congress, that such legislative steps may be taken as may be deemed requisite to provide a remedy against the evils of which the Indians complain.

The first point relative to the conflict of jurisdiction, as above indicated, was made the subject of a special report from this office of the 7th of October, 1853; and it was also presented in my annual report of the same year, respecting a similar conflict with the authorities of the Creek nation of Indians.

Upon the second point, in connexion with the alleged impossibility of preventing intrusions of persons of bad character among the Cherokees, it is manifest that certain sections of the intercourse act of 1834, providing for the removal from the Indian country of such individuals as are deemed unfit to reside therein, cannot be regarded as penal provisions, but they are merely declaratory enactments, which inflict no punishment to prevent the return of persons expelled by military force. The law in this respect has become inoperative and void, by reason of the absence of an adequate penalty to secure obedience to its requirements.

The consideration of this last question naturally suggests some amendment to the act referred to, as the evils incident to its defects are the cause of complaint, not only among the Cherokees, but throughout the Indian country; and, in my opinion, the importance of the subject demands the attention of Congress.

Very respectfully, your obedient servant,

GEO. W. MANYPENNY,
Commissioner.

Hon. R. McCLELLAND,
Secretary of the Interior.

OFFICE SUPERINTENDENT INDIAN AFFAIRS,
Fort Smith, Arkansas, April 16, 1856.

SIR: I respectfully ask leave to call the immediate attention of the department to the enclosed communication from George Butler, esq., United States agent for the Cherokees.

The questions therein involved have, on several occasions, been presented for consideration; but, I am not advised that any determinate expression of opinion has been given by the department.

The practice complained of by agent Butler, to wit: the interfer-

ence of the functionaries of the federal courts with the officials of the Cherokee tribunals, is universally regarded by the Cherokees as an invasion of privileges and rights guarantied them by the United States; and it is among the very class, the more educated, refined, and wealthy of the tribe, and whom it is most desirable to attach by sentiments of friendship and cordial good-will to our government and institutions, that the grievance is most deeply felt, and the irritation the strongest.

I do not venture to discuss the question; I could throw no light upon it. I briefly state the facts, and beg the department to communicate its opinion at an early day.

Very respectfully, your obedient servant,
C. W. DEAN,
Superintendent, &c.

Hon. GEO. W. MANYPENNY,
Commissioner, &c., Washington city, D. C.

CHEROKEE AGENCY, *April 9, 1856.*

SIR: Mr. Eli Sanders, the sheriff of Going Snake district, has laid in a complaint against Mr. Russell, the deputy marshal, on the following grounds: It appears from Mr. Sanders' statement, that some time last fall, a Cherokee named Peak was indicted for stealing two horses in Going Snake district. That the said Peak could not be arrested until a short time since. He was brought to trial, but the trial was put off for one week for the want of an important witness. During the recess of the court, while the said Peak was a prisoner, under Sanders and guard, Mr. Russell and guard arrested prisoner from the hands of Sanders on a writ issued by the United States court for stealing a mule from a white man living in the nation; the last offence was committed a few weeks since. Mr. Sanders thinks, as the writ issued by the nation was of a prior date to the one issued by the United States, as he had the prisoner in possession, that the marshal should have waited until the Cherokee nation was satisfied. Sanders was perfectly willing to turn the said Peak over to the United States authorities, after the courts of the nation took the regular course, &c.

My object in calling your attention to this matter, is to learn whether the marshal has the *authority* to take a prisoner from the hands of a regular officer of the nation; and while the court is taking cognizance of the case, it does seem to me that the Cherokee authorities should be treated with respect. I know Mr. Sanders well, and he is one of the best citizens and officers of the nation. Instead of improving the Cherokees, as was the intention of the intercourse law, the course pursued, in many cases, is calculated to embitter the good Cherokees against the United States; and if these people have no privileges as freemen, and are to be treated as degraded slaves, it is useless for government officers to attempt to give them encouragement. They have been promised protection time and again under their own laws, but what avail is such promises? There are many things that occur

from day to day that lead me to believe that the Indian is an accursed being.

Very respectfully, your obedient servant,

GEORGE BUTLER,
Cherokee Agent.

Dr. C. W. DEAN,
Supt. of Indian Affairs, Fort Smith, Ark.

OFFICE SUPERINTENDENT OF INDIAN AFFAIRS,
Fort Smith, Arkansas, April 16, 1856.

SIR: I enclose herewith for the information of the Commissioner of Indian Affairs a communication dated the 12th instant, addressed to me by agent George Butler, in regard to white intruders in the Cherokee country, and the need of more effectual means than exist for their removal therefrom.

The circumstances that gave rise to agent Butler's letter were these: Two dangerous and disreputable white men, residing without authority or permission in the vicinity of Fort Gibson, and whose evil practices and dispositions were a constant source of annoyance and danger to that community, were reported by the commanding officer of the fort to the agent, with the request that he would issue an order for their removal from the nation. The order was issued by the agent, and to execute it it was found necessary to call upon the military. The persons were arrested and brought to this place by a lieutenant and guard of men, and here, as there was no specific charge against them, but only that of general bad character, the prisoners were released.

At the time of the arrest one of the parties told the officer in charge that he was taking a useless trouble; that as soon as he was brought to the border and was released, he would at once return to the nation; and that as often as removed he would return. This man's threat was not an idle one; for I learn he at once returned to the neighborhood of Fort Gibson, arriving there even before the return of the guard that removed him. The lieutenant in charge of the party, anxious to prevent the execution of the avowed purpose of the man, or to punish him, as the case might be, consulted agent Butler, and on his arrival here the commanding officer of this post and myself, and at Van Buren the officers of the United States district court for the western district of Arkansas, as to whether the law attached a penalty to such a return to the Indian country; and if so, with the intention of re-arresting the man and turning him over to the civil authorities to "be dealt with according to law," but the opinion was that the law had failed to provide a remedy.

What then? Is the power of government to be brought into contempt? is it unable to enforce its own decrees? Such a state of things is as demoralizing as it is absurd.

The pressing necessity that an adequate remedy be provided is so apparent and glaring, that comment is uncalled for.

Very respectfully, your obedient servant,

C. W. DEAN,
Superintendent, &c.

Hon. GEORGE W. MANNYPENNY,
Commissioner, &c., Washington, D. C.

CHEROKEE AGENCY, *April 12, 1856.*

SIR: I call upon you for information in reference to white men who are in the Cherokee nation. Most of them are good citizens; but I regret to say that some who are living in the nation as citizens with Indians families, and others as intruders, are a great disadvantage to the Indian by selling whiskey indirectly, and otherwise keeping a disorderly house. I have found it necessary to have some of these men removed from the country. They were reported to me by the commanding officer of Fort Gibson as bad men; but these fellows put law and order at defiance. They boastingly say that they will return and stay in the nation as long as they please. I have examined the intercourse law, and can learn no way by which they can be kept out of the country. The law says they must be put out, but makes no penalty for their return. I would be glad, if there is no penalty in such a case, if you would call the attention of the department to it, in order that the department may make some regulation that will apply to them. These men sell whiskey through their wives, get drunk, gamble, ride about the country with revolvers, double-barrel guns, knives, &c., in company with the young Cherokees, &c., committing many other offences against morality and good order. I am determined to put a stop to it if possible, and would be glad to have a law that will apply to these cases.

Very respectfully, your obedient servant,

GEO. BUTLER,
Cherokee Agent.

Dr. C. W. DEAN,
Superintendent of Indian Affairs.