

No. 21.

OFFICE INDIAN AFFAIRS,
San Francisco, Cal., May 25, 1866.

Sir: I have the honor to inform the honorable Commissioner of Indian Affairs that I received from Agent Bryson, Smith River reservation, under date of April 24, a letter, a copy of which is enclosed, marked A, informing this office that a murder had been committed on the reservation by a Humboldt Indian on the person of another Indian of the same tribe, and that he had made his escape on committing the act; that efforts were being made for his arrest, and that he, the agent, was of the opinion that the Indian should be hung on being captured, but that he would await instructions from this office as to the action that would be taken as to his punishment.

Under date May 3, I advised Agent Bryson of the receipt of his letter, and instructed him by letter, a copy of which is enclosed marked B, that on the arrest of the Indian he must be delivered to the civil authorities for trial and punishment; that the superintendent nor Indian agent had any power or authority to inflict capital punishment on Indians for offences committed on reservations.

On the 19th instant I received from Agent Bryson a letter under date May 8, a copy of which is enclosed, marked C, stating that the Indian before mentioned who had committed the murder had been captured, and that he had been executed by hanging, in presence of all the Indians of the county, and concluded his letter by hoping that his action in this matter would meet with my approval.

In answer by letter under date of May 22, a copy of which is enclosed, marked D, I informed Agent Bryson that his action in this matter could not be approved by the superintendent, and that copies of the correspondence relating to this subject would be forwarded to the

100 REPORT OF THE SECRETARY OF THE INTERIOR.

honorable Commissioner of Indian Affairs. The enclosed copies of letters, marked A to D, inclusive, contain all the correspondence on the subject above referred to, and are respectfully submitted.

Very respectfully, your obedient servant,

CHARLES MALTBY,
Superintendent Indian Affairs, California.

Hon. D. N. COOLEY,
Commissioner Indian Affairs, Washington, D. C.

A.

SMITH RIVER RESERVATION,
April 24, 1866.

SIR: I have the honor to inform you that on Sunday morning, April 22, a fight occurred in the Humboldt Indian ranch, which resulted in the death of one Indian by the unjustifiable interference and act of a third Indian.

The circumstances were these: Some ten weeks ago an Indian and his squaw had a little fuss, and he was correcting her, I suppose a little roughly, when another squaw interfered and used some very unfriendly language to the Indian who whipped his squaw, which caused him to strike her and hurt her severely. I was in Crescent City when this occurred. Some days afterwards they had a general consultation, and agreed on terms of settlement, and I supposed it was all fixed up without my interference, but the squaw that interfered and got hurt was not willing to settle until her brother drew blood from the Indian that struck and hurt her. When, on Sunday morning last, her brother met this Indian and challenged him to fight, as he was unarmed, he told him he did not want to fight, when the Indian that challenged him made at him and struck him with a knife, inflicting a serious but not dangerous wound on the back. His friend, seeing that he was cut and the blood flowing down his back, took a knife in his hand and ran after this Indian, and came up to him when some others had caught him and were parleying over the matter, stepped up lightly behind him and struck him with a knife and killed him almost instantly; then ran away and made his escape to the woods, and has not yet been caught.

My own opinion, formed from experience, is that this Indian should be hung, and I believe that the peace, safety, and correct discipline on the reservation require it, but in the absence of law and instruction in cases of this nature, I do not feel inclined to take all responsibility upon myself. I think full instructions should be given me, and some precedent established for my guidance in the future in case similar events should occur.

The military are the proper ones to conduct the execution of an Indian, but General McDowell's order last year forbids any military officer to execute an Indian, and commands him to turn them over to the civil authorities. This order should be modified so as to allow commanders of posts established on Indian reservations to conduct the execution of an Indian when called upon by the Indian department so to do, if, in their judgment, the punishment is just.

Heretofore I have acted on my own responsibility in cases of this kind, the military concurring, and had in one case an Indian executed, and I know that it had a very soothing influence over the balance of them, and I believe it to be as essential to preserve order and discipline on the reservation to execute an Indian occasionally as it is to furnish them with food and clothing, but I prefer some authority on which to predicate my acts.

I shall not take any decisive action in this case until I hear from you, unless in my opinion our safety require it. The Indian has not yet been caught, (he is lying in the woods,) but I think he will be soon.

The idea of turning over Indians to the civil authorities for trial and punishment I think is wrong. The reservation Indian is under the protection of the general government. The reservation is his home, and there he should receive his rewards and punishments.

I am, very respectfully, your obedient servant,

WILLIAM BRYSON,
Indian Agent, Smith River Reservation.

Hon. CHAS. MALTBY,
Superintendent Indian Affairs, California.

B.

OFFICE INDIAN AFFAIRS,
San Francisco, California, May 3, 1866.

SIR: Your letter of April 24th ultimo, giving information of the murder of a Humboldt Indian on the reservation under your charge by an Indian of the same tribe, is this morning received; and you further state that, in the absence of law and instructions in cases of this

REPORT OF THE SECRETARY OF THE INTERIOR. 101

nature, you do not feel inclined to take all the responsibility on yourself, and ask that instructions should be given you, and some precedent established for your guidance in the future should similar events occur, and, for the peace, safety, and correct discipline on the reservation, this Indian who committed the murder should be hung.

In answer, I would state that in cases of murder by an Indian or Indians in this State, capital punishment can only be inflicted by and through the civil authorities. The law must take the same course as in case a white man had committed the act, with this difference in case of the Indian—Indian evidence or testimony is admissible. The superintendent, agent on the reservation, nor the military authorities have any power or authority by law to inflict capital punishment in cases of this kind, and the civil authorities of your county should, on your complaint that a murder has been committed by an Indian, as you have stated, have him arrested, tried, and punished, or, if you have arrested him, he can be delivered to the civil authorities for trial.

The civil jurisdiction in cases of this kind may not be the best so far as the punishment of the Indian is concerned, but on Indian reservations in this State the civil laws of the State have jurisdiction, and for the agents to ignore that jurisdiction by taking a different course would subject them or him to penalties for a violation of the laws, which could not be advised or approved by the superintendent.

You must be the judge of the criminality and of the punishment which should be inflicted, and if justice and the safety and the preservation of good order on the reservation demand it, the criminal should be delivered to the officers of your county if in your custody; and if not, measures should be taken for his arrest and conviction. Indians located on lands of which the government has no title are subject to the laws of the State, although they may be under the care and charge of government agents, and for capital offences must be convicted and punished by said laws. In Indian territory, or on reservations located on government lands, they may be tried and convicted in United States courts.

Yours, respectfully,

CHARLES MALTBY,
Superintendent Indian Affairs, California.

WM. BRYSON, Esq.,
Indian Agent, Smith River Reservation, California.

C.

SMITH RIVER RESERVATION, CALIFORNIA,
May 8, 1866.

SIR: I have the honor to transmit herewith my report of Indians for the month of April, 1866.

The Indian referred to in my letter some days ago that committed the murder I have since executed. He declared his intention to kill any one that undertook to arrest him. As Mr. White and myself were walking out one evening we came upon him and tried to catch him. He got away from us and ran. White ran after him and overtook him; the Indian struck at him with a knife, cutting him on the neck over the artery; his shirt collar and cravat alone saved his life.

I then told the Indians they must catch him. The Smith River Indians volunteered to help. He was finally caught by the reservation Indians and brought in, and I hung him in the presence of all the Indians in the county, and restored peace to the reservation, which would have become much disturbed had I not pursued the course I did. Indians sometimes have to be dealt with severely and promptly. I made no mention of the execution in my report of Indians, as I did not know whether others could see the necessity for it that I did, and thought it as well to say nothing about it to the authorities at Washington.

I am convinced I did what was best for the service and the Indians generally, and had I not pursued the course I did, I am satisfied I would have had trouble.

Hoping my action in this matter will meet with your approval, I am, very respectfully, your obedient servant,

WILLIAM BRYSON,
United States Indian Agent, Smith River Reservation.

Hon. CHAS. MALTBY,
Superintendent Indian Affairs, California.

D.

OFFICE INDIAN AFFAIRS, CALIFORNIA,
San Francisco, May 22, 1866

SIR: I have to acknowledge the receipt of your communication under date of May 8th instant, in which this office is advised that you have executed, by hanging, the Indian guilty of murder referred to in your letter to this office under date of April 24th ultimo.

102 REPORT OF THE SECRETARY OF THE INTERIOR.

In your letter of above date you stated that you would take no action as to the punishment of the Indian until you were instructed from this office. I think you could not have received my instructions, judging from the action you have taken in this matter.

Your letter asking instructions was received May 3d instant, and instructions were forwarded by mail same date, advising you that the criminal must be delivered to the civil authorities for trial and punishment.

I have no doubt, from the statements and information contained in your letters of the 24th of April ultimo and 8th of May instant, that the Indian referred to was guilty and merited the punishment he received, but, in the absence of law and authority for the action and course you have taken in this matter, you have assumed a responsibility which I could not have advised, and which action cannot be approved by this office.

Copies of the correspondence relative to this subject will be forwarded to the honorable Commissioner of Indian Affairs by next steamer.

Very respectfully,

CHARLES MALTBY,
Superintendent Indian Affairs, California.

WILLIAM BRYSON, Esq.,
Indian Agent, Smith River Reservation, California.
