

A
0
0
8
7
3
8
7
7
5



UC SOUTHERN REGIONAL LIBRARY FACILITY

nia
l



UNIVERSITY
OF CALIFORNIA
LOS ANGELES

SCHOOL OF LAW
LIBRARY

SIoux INDIAN COURTS

AN ADDRESS DELIVERED BY

DOANE ROBINSON
OF PIERRE, SOUTH DAKOTA

BEFORE THE

SOUTH DAKOTA BAR ASSOCIATION

AT PIERRE, SOUTH DAKOTA

JANUARY 21, 1909

SIoux INDIAN COURTS

AN ADDRESS DELIVERED BY

DOANE ROBINSON
OF PIERRE, SOUTH DAKOTA

BEFORE THE

SOUTH DAKOTA BAR ASSOCIATION

AT PIERRE, SOUTH DAKOTA

JANUARY 21, 1909



H. C. SESSIONS & SONS
SIOUX FALLS S. D.

T
R 56155
1909

Digitized by the Internet Archive
in 2007 with funding from
Microsoft Corporation

Gift
1-27-59
LSTH

6-11-1959

SIoux INDIAN COURTS

In their primitive life the Sioux Indians of North America had an intelligent system of jurisprudence, varying somewhat in the different bands, as our court practice varies in the several states, but nevertheless recognizing the same general principles throughout the confederacy. (1).

It is not an easy thing to determine the laws or the practices of an unlettered people, who have abandoned the wild and primitive life to live under regulations prescribed by their conquerors, and who must depend upon tradition and recollection for the practices of the old life; but fortunately intelligent observers have from time to time, during the past two and one half centuries, noted their observations, and these, supplemented by the recollections of the older men now living, give to us a fairly clear understanding of the courts and the legal practices of these people.

Primarily the Sioux government was by clans,—patriarchal; but within the clan it very nearly approached the representative republican form. The council was the representative body which gave expression to the will of the people. True the council was selected by the chief of the clan, but his very tenure of office depended upon his using the nicest discretion in inviting into his cabinet the men of character, valor and influence, so that the body was almost invariably entirely representative of popular views and interests. Caste cut a considerable figure; indeed it has been said by those most intimate with Sioux life that there is as much caste among the Dakotas as among the

(1). Most writers upon Indian life have noted the existence of these courts. Since undertaking this paper, I have consulted Hump, One Bull, Wakutemani and Simon Kirk, all intelligent Sioux and, save as otherwise noted, they are my authorities for the statements herein contained.

Hindus. (2). Only high caste men of course would be permitted to sit in the deliberations, but when a council was to be convened the ordinary practice was for the chief's crier to go out and announce to the camp that a matter was to be considered in council, and the head men at once assembled and seated themselves in the council circle as a matter of course and of right. (3). The chief, unquestionably a man of courage and physical power, was an executive officer who rarely asserted arbitrary rule, particularly in civil affairs, for the Sioux were too high spirited a people to tolerate anything savoring of despotism. Usually he was suave, diplomatic and tolerant, and enjoyed the affection and veneration of his people. Most public affairs were determined in the general council, including many subjects naturally falling within the jurisdiction of courts of justice, but aside from the council were two distinct courts, one exercising jurisdiction in matters civil and criminal in times of peace; the other taking the broadest and most comprehensive jurisdiction of all things military, and in time of war assuming jurisdiction in all of the affairs of the people, arbitrarily placing the camp under martial law.

The judges of these courts were usually twelve in number and held their places by hereditary right, though occasionally some low caste man, through some brilliant exploit would break into this exclusive and aristocratic circle and sometimes even exercised dominating influence which the aristocrats dared not oppose, though he was still regarded as a plebian upstart, and was despised by the upper ten, and his rank died with him. Ordinarily from seven to twelve judges sat for the trial of causes, but sometimes even a greater number were permitted. The civil court in time of peace took cognizance of civil and criminal matters arising in the band. Civil actions usually grew out of disputes about the ownership of property and the court patiently heard the testimony of the parties and wit-

(2). Miss Mary C. Collins, for thirty-three years missionary among the Tetons, especially the Hunkpapa and Blackfoot bands.

(3). Letter of Dr. Thomas L. Riggs, to writer, June, 1903.

nesses and at once determined the ownership of the article, delivered it to the successful litigant and the decision was never reviewed or questioned. A majority of the court determined the judgment.

Criminal matters of which the court took cognizance were assaults, rapes, larceny and murder; all crimes against persons; and if committed against a member of the tribe were severely dealt with. Sometimes it was necessary to prove the crime by competent witnesses, and the court was the judge of the credibility of these who testified, but rarely, however, was it necessary to summon witnesses, for if the accused was really guilty it was a point of honor to admit the offense and take the consequences. Thus the real responsibility resting upon the court in most cases was to determine the penalty. Usually a severe penalty was imposed which could be satisfied by the payment of a certain number of horses or other specific property to the injured party, or his family, but if the offense was peculiarly repellent to the better sentiment of the camp the court might insist upon the summary infliction of the sentence imposed. This might be the death penalty, exile or whipping; or it might be the destruction of the teepee and other property of the convict. These latter penalties were, however, usually reserved for another class of offenses; crimes which were against the community rather than against an individual. These offenses were generally violations of the game laws and the offender could expect little mercy. How reasonable this policy was will be readily understood when we recall that the subsistence of the entire nation depended almost entirely upon the preservation of the wild game. The individual, who would wantonly kill game fit for food, or frighten it away needlessly from the vicinity of the camps was a public enemy and was treated accordingly. He was fined, his property destroyed, he was whipped, or if a persistent offender, he was reduced from his position as a hunter and made to do the menial duties of a squaw; the latter being the most humiliating and terrible sentence which could be imposed, deemed much worse than death and if the convict was

a man of ordinary spirit he usually chose to commit suicide in preference. (4).

For some offenses a convict was exiled from the camp, given an old teepee and a blanket, but no arms, and was allowed to make a living if he could. Sometimes he would go off and join some other band, but such conduct was not considered good form and he usually set up his establishment on some small hill near the home camp and made the best of the situation. If he conducted himself properly he was usually soon forgiven and restored to his rights in the community. If he went off to another people he lost all standing among the Sioux and was thereafter treated as an outlaw and a renegade. The entire band of Inkpaduta, once the terror of the Dakota frontier, was composed of these outlaws. (5).

The camp policeman was a most important officer of the court and he frequently took upon himself the adjudication of petty quarrels and the summary punishment of small offenses committed within his view. He was appointed by the chief for one or more days' service and he made the most of his brief span of authority. In addition to executing the orders of the court he was always on watch to preserve the tranquility of the camp during the day and he stood upon guard at night. When ordered to do a thing it was a point of honor to accomplish it or die in the attempt. He was a peace officer, delighting to fight for peace' sake at any time. (6).

While the civil court was composed of the "elder statesmen" the military court was composed of the war chief and his most distinguished braves, and, as has been before suggested herein, exercised unlimited power in time of war and was implicitly obeyed. It took jurisdiction of all matters growing out of infractions of the "Articles of War" and of all the civil and criminal affairs of the tribe as well. There was no appeal

(4). Interview with Joseph LaFramboise of Veblen, a Sisseton, at Sioux Falls, in October, 1900.

(5). Flandreau's Minnesota.

(6). Journal of Lewis and Clark September 26th and 27th, 1804.

from its judgments and its sentences were summarily executed. An anecdote will illustrate something of its practice: In the campaign of 1876, after the affair at Little Big Horn, Grey Eagle, a Hunepapa headman of good family and with a good military record, was charged with stealing a horse from another warrior of the Sioux forces. He denied the charge but the property was in his possession and he could not satisfactorily explain his connection with it. He was placed upon trial, witnesses summoned and he was convicted of the theft and sentenced to be whipped, a punishment most befitting the mean estate of a squaw. The sentence was executed in full view of the entire camp. Grey Eagle continued in the campaign, fighting valiantly at every opportunity, but he was filled with an intense desire for revenge against the court and particularly against Sitting Bull, a plebian who had compelled recognition from the aristocrats, and whom the convict believed to be especially responsible for his humiliation. Though not apropos to this discussion it may be of interest if I shall add that after the lapse of fourteen years, one December morning in 1890 when a party of native policemen, inspired very largely by the aristocratic hatred for the presumptuous plebian, came down upon the home of Sitting Bull and effected his arrest and were taking him away through an excited throng of his friends, the voice of Grey Eagle, from out in the darkness shouted: "Sitting Bull is escaping, shoot him, shoot him!" whereupon began the outbreak which within the moment resulted in the death of the old medicine man and seventeen of the police and Indians. (7). It, too, may be of further interest to relate that at the present time Grey Eagle is the Chief Justice of the native court at Bullhead Station, South Dakota.

Among the duties of this court was to determine the limits of each day's march when out upon a campaign, and to regulate the camping places. This was an important function, for the army subsisted off the country and unless the utmost care

(7). Related by Miss Mary C. Collins, April, 1908.

was exercised "the base of supplies" would be frightened away and the band subjected to starvation.

A court very similar to the military court was likewise organized for each great hunting expedition and given absolute control of the general movement, but this hunting court did not interfere with the ordinary jurisdiction of the civil court in matters of personal disputes, personal injuries and the like. In 1841, General Henry H. Sibley, of Minnesota, proposed to the Indians residing about his home at Mendota that they go down to the "Neutral Strip" in Northern Iowa for a long hunt. The Sioux were agreeable, and to get the matter in form Sibley made a feast to which all of the natives were invited. After eating and smoking several hundred painted sticks were produced and were offered for the acceptance of each grown warrior. It was understood that whoever voluntarily accepted one of these sticks was solemnly bound to be of the hunting party under penalty of punishment by the soldiers if he failed. About one hundred and fifty men accepted. These men then detached themselves from the main body and after consultation selected ten of the bravest and most influential of the young men to act as members of the hunting court. These justices were called soldiers. Every member bound himself to obey all rules made by the court. A time was then fixed for the start. At the appointed time and place every one appeared but one man who lived twelve miles distant. Five of the court at once started out to round him up. In a few hours they returned with the recalcitrant and his family, and with his belongings packed upon his horses. He was duly penitent and not subjected to punishment, though he was severely threatened in case he again failed. General Sibley thus tells the story. (8). "We," Sibley and his white friends, "became subject to the control of the soldiers. At the close of each day the limits of the following day's hunt were announced by the soldiers, designated by a stream, grove, or other natural object. This limit was ordinarily about ten

(8). Minnesota Historical Collections, Vol. III.

miles ahead of the proposed camping place and the soldiers each morning went forward and stationed themselves along the line to detect and punish any who attempted to pass it. The penalty attached to any violation of the rules of the camp was discretionary with the soldiers. In aggravated cases they would thresh the offender unmercifully. Sometimes they would cut the clothing of the man or woman entirely to pieces, slit down the lodge with their knives, break kettles and do other damage. I was made the victim on one occasion by venturing near the prohibited boundary. A soldier hid himself in the long grass until I approached sufficiently near when he sprang from his concealment and giving the soldiers' whoop rushed upon me. He seized my fine double barreled gun and raised it in the air as if with the intention of dashing it to the ground. I reminded him that guns were not to be broken, because they could be neither repaired or replaced. He handed me back the gun and then snatched my fur cap from my head, ordering me back to camp, where he said he would cut up my lodge in the evening. I had to ride ten miles bareheaded on a cold winter day, but to resist a soldier while in the discharge of duty is considered disgraceful in the extreme. When I reached the lodge I told Faribault of the predicament in which I was placed. We concluded the best policy, would be to prepare a feast to mollify them. We got together all the best things we could muster and when the soldiers arrived in the evening we went out and invited them to a feast in our lodge. The temptation was too strong to be resisted." They responded, ate their fill, smoked and forgave the "contempt of court," which indicates that the judiciary, even in that primitive time, was not wholly incorruptible.

The modern Sioux Courts, organized under the authority of federal law and in accordance with the rules of the Indian Department, are perhaps of more interest to lawyers than the courts of the primitive tribes. The modern courts were first proposed by General William S. Harney, in 1856 and were pro-

vided for in the treaty made at Fort Pierre in March of that year, which unfortunately was not ratified by the senate. (9). It can scarcely be doubted that had Harney's scheme for making the Sioux responsible to the government for the conduct of their own people been adopted, much bloodshed and treasure would have been saved.

It was not until after the Red Cloud war ended in 1868 that the courts for Indian offenses, equipped by the Indian themselves, began to be tried at some of the agencies in a small way. The Sissetons and Santees were first to give them a trial and eventually they were supplied to all the Reservations except the Rosebud, which, for some reason of which I have been unable to secure information, has never had them.

The following general rules governing courts of Indian Offenses pursuant to the statute have been adopted by the Indian Department: (10).

First: When authorized by the Department there shall be established at each agency a tribunal consisting ordinarily of three Indians, to be known as "the Court of Indian Offenses," and the members of said court shall each be styled "judge of the Court of Indian Offenses."

Agents may select from among the members of the tribe persons of intelligence and good moral character and integrity and recommend them to the Indian Office for appointment as judges; provided, however, that no person shall be eligible to such an appointment who is a polygamist.

Second: The court of Indian Offenses shall hold at least two regular sessions in each and every month, the time and place for holding said sessions to be agreed upon by the judges, or a majority of them, and approved by the agent; and special sessions of the court may be held when requested by three reputable members of the tribe and approved by the agent.

(9). This treaty was not ratified because of the large expenditure which would be demanded to uniform and subsist the police force. Afterwards we spent in a single year for the subjugation of the Sioux sufficient money to subsist the police for a century.

(10). Rules and Regulations of the Indian Office governing Indian Reservations. Letter of Hon. John R. Brennan, agent at Pine Ridge, April, 1908.

Third: The court shall hear and pass judgment upon all such questions as may be presented to it for consideration by the agent, or by his approval, and shall have original jurisdiction over all "Indian offenses" designated as such by rules 4, 5, 6, 7 and 8 of these rules. The judgment of the court may be by two judges; and that the several orders of the court may be carried into full effect, the agent is hereby authorized and empowered to compel the attendance of witnesses at any session of the court, and to enforce, with the aid of the police, if necessary, all orders that may be passed by the court or a majority thereof; but all orders, decrees, or judgments of the court shall be subject to approval or disapproval by the agent, and an appeal to and final revision by the Indian Office; *Provided*, that when an appeal is taken to the Indian Office, the appellant shall furnish security satisfactory to the court, and approved by the agent, for good and peaceful behavior pending final decision.

Fourth: The "sun dance," and all other similar dances and so-called religious ceremonies, shall be considered "Indian offenses" and any Indian found guilty of being a participant in one or more of these offenses shall, for the first offense committed, be punished by withholding from him his rations for a period not exceeding ten days; and if found guilty of any subsequent offense under this rule, shall be punished by withholding his rations for a period of not less than fifteen days nor more than thirty days, or by incarceration in the agency prison for a period not exceeding thirty days.

Fifth: Any plural marriage hereafter contracted or entered into by any member of an Indian tribe under the supervision of a United States Indian Agent shall be considered an "Indian offense" cognizable by the court of Indian offenses; and upon trial and conviction thereof by said court the offender shall pay a fine of not less than twenty dollars, or work at hard labor for a period of twenty days, or both, at the discretion of the court, the proceeds thereof to be devoted to the benefit of the tribe to which the offender may at the time belong; and so long as the Indian shall continue in this unlawful relation he shall forfeit all right to receive rations from the government. And whenever it shall be proven to the satisfaction of the court that any member of the tribe fails, without proper cause, to support his wife and children, no rations shall be issued to him until such time as satisfactory assurance is given to the court, approved by the agent, that the offender will provide his family to the best of his ability.

Sixth: The usual practices of so-called "medicine men" shall be considered an "Indian offense" cognizable by the court of Indian offenses, and whenever it shall be proven to the satisfaction of the court that the influence of a so-called "medicine man" operates as a hindrance to civilization of a tribe, or that said "medicine man" resorts to any artifice or device to keep the Indians under his influence, or shall adopt any means to prevent the attendance of children at the agency schools, or shall use any of the arts of the conjurer to prevent the Indians from abandoning their heathenish rites and customs, he shall be adjudged guilty of an "Indian offense," and upon conviction of any one or more of these specified practices, or any other, in the opinion of the court, of an equally anti-progressive nature shall be confined in the agency guardhouse for a term not less than ten days, or until such time as he shall produce evidence satisfactory to the court, and approved by the agent, that he will forever abandon all practices styled "Indian offenses" under this rule.

Seventh: Any Indian who shall wilfully destroy, or with intent to steal or destroy, shall take and carry away any property of any value or description, being the property free from tribal interference, of any other Indian or Indians, shall, without reference to the value thereof, be deemed guilty of an "Indian offense," and, upon trial and conviction thereof, by the court of "Indian offenses," shall be compelled to return the stolen property to the proper owner, or, in case the property shall have been lost or destroyed, the estimated full value thereof, and in any event the party or parties so found guilty shall be confined in the agency guardhouse for a term not exceeding thirty days; and it shall not be considered a sufficient or satisfactory answer to any of the offenses set forth in this rule that the party charged was at the time a "mourner," and thereby justified in taking or destroying the property in accordance with the customs or rites of the tribe.

Eighth: Any Indian or mixed blood who shall pay or offer to pay any money or other valuable consideration to the friends or relatives of any Indian girl or woman, for the purpose of living or cohabiting with said girl or woman, shall be deemed guilty of an "Indian offense," and upon conviction thereof shall forfeit all right to government rations for a period at the discretion of the agent, or be imprisoned in the agency guardhouse for a period not exceeding sixty days; and any Indian or mixed blood who shall receive or offer to receive any consideration for

the purposes hereinbefore specified shall be punished in a similar manner as provided for the party paying or offering to pay the said consideration; and if any white man shall be found guilty of any of the offenses herein mentioned he shall be immediately removed from the reservation and not allowed to return thereto.

Ninth: In addition to the "offenses" hereinbefore enumerated, the court of "Indian offenses" shall also have jurisdiction (subject to the provisions of rule 3) of misdemeanors committed by Indians belonging to the reservation, and of civil suits where Indians are parties thereto; and any Indian who shall be found intoxicated, or who shall sell, exchange, give, barter or dispose of any spirituous, vinous, or fermented liquors to any other Indian, or who shall introduce or attempt to introduce under any pretense whatever any spirituous, vinous, or fermented liquors on the reservation, shall be punishable by imprisonment for not less than thirty days nor more than ninety days or by withholding of government rations, therefrom, at the discretion of the court and approval of the agent.

The civil jurisdiction of such court shall be the same as that of a justice of the peace in the State or Territory where such court is located, and the practice in such civil cases shall conform as nearly as practicable to the rules governing the practice of justices of the peace in such State or Territory, and it shall also be the duty of the court to instruct, advise and inform either or both parties to any suit in regard to the requirements of these rules.

Under these rules the courts are organized and hold their sittings at such times and places as will be most convenient for the people, as for illustration, upon the Cheyenne River Reservation one judge sits at each substation at each semi-monthly ration issue, and if for any reason a party is dissatisfied with his decision, he has a right to appeal his case to the entire bench which sits for the purpose at the agency at regular intervals. (11).

Persons convicted of such offenses as come within the jurisdiction of the court are committed to the guard-house for a stated

(11). Letter of Prof. C. W. Rastall, Superintendent at Cheyenne River, April, 1908.

period, and are required to work in keeping up the grounds about the agency or substation, as the case may be. They make very little trouble and rarely does one attempt to escape, though they work without guard. (12).

The Indian people generally have great respect for the judges of their courts and the latter show much wisdom and discretion in their decisions, though they do not always place the white man's estimate upon the relative enormity of offenses. I was present at a session of the Cheyenne river court in 1892, when two parties accused with crime were brought before it. One was charged with stealing a picket pin of the value of thirteen cents and he got thirty days in the guard-house, while the other, convicted of a rape, got ten days.

Formerly the judges were not compensated, but now they receive a nominal salary,—from five to ten dollars per month,—and their board while sitting. It is regarded as a great distinction to be chosen to the bench and the courts administer the law, as they understand it, with dignity and firmness. (13). There are no lawyers upon the reservations but a friend may appear for a party to an action, or one accused of an offense and the trials are conducted with much formality and the pleas are frequently shrewd and eloquent. Every Indian is an orator by nature, and the courts afford the best modern opportunities to display their gifts.

The police force upon all of the reservations is composed of the natives and they are highly efficient and render great assistance to the courts in preserving the peace and in bringing offenders to justice. It is a point of honor for a Sioux policeman to do his whole duty regardless of obstacle and neither kin nor friend can expect leniency if he stands in the way of duty, and this is equally true of the courts. It is not an infrequent thing for the judge to try his son or near relative and in such cases the accused is sure to get the limit of the law. (14).

Without exception the Indian authorities commend the native courts and policemen for fidelity and effective administration of justice.

(12). Letter of T. W. Lane, agent at Crow Creek, April, 1908.

(13). Letter of Major Brennan.

(14). Interview with Solomon Two Stars, hereditary chief of Sissetons, August, 1901. Monthly South Dakotan, December, 1901.

University of California
SOUTHERN REGIONAL LIBRARY FACILITY
405 Hilgard Avenue, Los Angeles, CA 90024-1388
Return this material to the library
from which it was borrowed.

UC SOUTHERN REGIONAL LIBRARY FACILITY



A 000 873 877 5

Univer
Sou
Li