

Education-
Law and Order
99808-1911
E H D

Plural
marriages.

Mr. Charles H. Dickson,
Superintendent Leupp Indian School,
Leupp, Arizona.

FILED BY C. R. F.

Sir:

The Office has before it for consideration your letter of November 15, wherein you report the facts in connection with the marital relations of Joe Williams, an Indian under your jurisdiction.

From the statutes of Arizona it would appear that Williams is guilty of several offenses and should be prosecuted not only as a matter of justice, but as an object lesson for the other Indians under your jurisdiction.

Section 230 of the Penal Code defines rape as an act of ~~sexual~~ intercourse accomplished with a female not the wife of the perpetrator under either of the following circumstances:

1. Where the female is under the age of seventeen years.
2. Where she is incapable, either through lunacy or other unsoundness of mind, whether temporary or permanent, of giving legal consent.
3. Where she resists, but her resistance is overcome by force or violence.

4. Where she is prevented from resisting by threats of great bodily harm, accompanied by apparent power of execution, or by any intoxicating, narcotic or anesthetic substance administered by or with the privity of the accused.

5. Where she is at the time unconscious of the nature of the act and this is known to the accused.

6. Where she submits under a belief that the person committing the act is her husband, and this belief is induced by any artifice, pretense or concealment practiced by the accused, with intent to induce such belief.

This girl, who was twelve years of age, was not the wife of Joe Williams in view of Sections 3088, 3090 and 3093 of the Civil Code of Arizona, which reads as follows:

3088. Males under eighteen and females under sixteen years of age shall not marry.

3090. No clerk of the Probate Court shall issue a license without the consent of the parents or guardians of the parties applying, unless the parties so applying shall be, in the case of the male, twenty-one years of age, and in the female, eighteen years of age, provided that when both parents are living the consent of the father alone should be sufficient, except in cases where the parents are living apart, and then the consent must be given by the one who has the custody of the minor.

3093. All marriages between parents and children, including grand-parents and grand-children of every degree, between brothers and sisters of one-half as well as of the whole blood, between uncles and nieces, aunts and nephews, and between first cousins, are declared to be incestuous and absolutely void. This section shall extend to illegitimate as well as legitimate children and relations.

As will be noted under Section 3093 of the Civil Code, this marriage is declared absolutely void, so that

W-99808-3

in view of the definition of rape as above given, Williams would be guilty of that offense.

Williams would also be guilty of the crime of incest, which is defined by Section 252 of the Penal Code, as follows:

Persons being within the degrees of consanguinity, within which marriages are declared by law to be incestuous and void, who shall intermarry with each other or commit fornication or adultery with each other are punishable by imprisonment in the territorial prison not exceeding ten years.

It is also possible to prosecute Williams on the charge of bigamy, but this is doubtful, because Section 3093 declares said marriage to be absolutely void.

Section 246 provides:

That any person having a husband or wife living who marries any other person excepting in the cases specified in the next section, is guilty of bigamy.

Section 247:

The last section does not extend;

1. to any person, by reason of any former marriage, whose husband or wife of such marriage has been absent for five successive years without being known to such person, within that time to be living; not

2. to any person by reason of any former marriage which has been pronounced void, annulled, or dissolved by the judgment of a competent court or other lawful authority.

Section 248..

Bigamy is punishable by fine not exceeding \$2,000 and by imprisonment in the Federal prison not exceeding ten years.

Williams might also be prosecuted on the charge of seduction, as covered by section 236 of the Penal Code:

E-99808-4

Every person who takes away any female under the age of eighteen years from her father, mother, guardian, or other person having the legal charge of their person, without their consent, for the purpose of prostitution, is punishable by imprisonment in the territorial prison not exceeding five years, and a fine of not exceeding \$1,000.

You should take immediate steps to present the facts in the case of Joe Williams to the local authorities for prosecution under such sections of law as are applicable to his case.

The Office notes that you are of the opinion that it would probably not be advisable to take any stringent action to punish violations in the past.

As a general proposition the Office agrees with you, but in this case, the offense being such an aggravated one, prosecution should be brought about.

It is believed to be high time that the Indians throughout the United States should realize what is meant by, and recognize the laws and other regulations for the government of mankind.

Where the Indians offend against the laws of either the State or Federal government, they should be punished the same as other persons.

If you are successful in securing a conviction in the case of Williams, it will do more good for the Indians than any amount of moral suasion.

E-99808-5

In other cases that may arise you should take the steps necessary to present evidence to the proper officials for such action as they may deem advisable.

Keep the Office fully posted with reference to this and all other cases that you may take up.

Respectfully,

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Commissioner.