55TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1482.

PUNISHMENT OF CRIMES IN THE DISTRICT OF ALASKA, ETC.

JUNE 2, 1898.—Referred to the House Calendar and ordered to be printed.

Mr. WARNER, from the Committee on Revision of the Laws, submitted the following

REPORT.

[To accompany H. R. 8571.]

The Committee on Revision of the Laws, to whom was referred the bill (H. R. 8571) to define and punish crimes in the District of Alaska and to provide a code of criminal procedure for said District, after full consideration thereof report the same to the House with the following amendments, viz:

Amend section 207 of Title I so that it shall read:

SEC. 207. That the commencement and termination of a sentence of imprisonment in a county jail is to be ascertained by the rule prescribed in section two hundred of Title I, and the manner of such confinement and the treatment of the persons so sentenced shall be governed by whatever law may be in force prescribing the discipline of county jails: *Provided*, That the governor of said District may, under such regulations as he may prescribe, employ or cause to be employed upon public works any or all persons sentenced to imprisonment in the jails or the penitentiary within said District, and may make regulations for their government while so employed, which regulations shall be observed by the United States marshal and all deputies, jailors, keepers, or others having charge of such prisoners: *And provided further*, That for the purpose of satisfying any judgment which may be given against a prisoner for any fine, or for the costs and disbursements in the proceedings against him, such prisoner shall be credited with two dollars for every day's labor performed by him in pursuance hereof.

Amend section 471 of Title II by striking out the words "property of the" in line 2 of said section and insert in lieu thereof the word "private," so as to make the section read:

SEC. 471. That the justice may, in his discretion, require the private prosecutor in a criminal action to give security for costs and disbursements before filing or receiving a complaint therein.

Amend No. 19 of appendix, page 231 of the bill, so as to make it read:

Having a wife (or husband) then living, unlawfully married one C D, or simultaneously, or on the same day, unlawfully married C D and E F.

With the proposed amendments your committee recommend that the bill be passed.

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

The act of Congress entitled "An act providing a civil government for Alaska," approved May 17, 1884, provides (sec. 7) that—

> The general laws of the State of Oregon now in force are hereby declared to be the law in said District, so far as the same may be applicable and not in conflict with the provisions of this act or the laws of the United States.

Upon examination it was ascertained that no revision or codification of the laws of Oregon had been made between the year 1872 and the year 1887, and it followed that to ascertain what laws of Oregon were in force and became the laws of the District of Alaska on the date of the passage of the act mentioned it would be necessary to consult the revision of 1872 and the laws of the legislative assembly of Oregon passed in 1874, 1876, 1878, 1880, and 1882, as well as the laws of the United States, which have not been revised since 1878. Even if copies of the six volumes of the laws of Oregon referred to and the Revised Statutes of the United States and the session laws of the United States since that revision could be procured in sufficient numbers, it would be a matter of serious difficulty and expense to supply them to all local magistrates and the other officers within the District, and it would require no slight professional skill to gain from that mass of legislation an accurate knowledge and understanding of the provisions in force on the 17th of May, 1884, and of the laws now governing that District.

By the act of June 4, 1897, it was provided that the President, with the advice and consent of the Senate, should appoint three commissioners, whose duty it should be, under the direction of the Attorney-General, to revise and codify the penal laws of the United States, and that they should proceed with the work as rapidly as might be consistent with thoroughness, and should report the result of their labors to the Attorney-General when completed, to be by him laid before Congress; and that they should make such other reports during the progress of their work as they should see fit to the Attorney-General, to be by him laid before Congress at his discretion. In accordance with that act, the President appointed as such commissioners the Hon. A. C. Thompson, Alex. C. Botkin, and D. B. Culberson; and such commissioners, in compliance with that act, under the direction of the Attorney-General, prepared this bill and reported the same to the Attorney-General, who submitted it to the House through its Speaker.

The Attorney-General in submitting the report to the House forwarded the following letter from the commissioners in relation to it:

WASHINGTON, D. C., *January 12, 1898.*

SIR: The law under which the undersigned were appointed commissioners to revise and codify the criminal and penal laws of the United States provides that they "shall report the result of their labors to the Attorney-General when completed, to be by him laid before Congress, and shall make such other reports during the progress of their work as they may see fit to the Attorney-General, to be by him laid before Congress at his discretion."

Accordingly we herewith present a special report in relation to the District of Alaska. The District of Columbia, the District of Alaska, and the Indian Territory are subject to the exclusive legislation of Congress. No organization of these Territories has been authorized by Congress which contemplates local self-government, such as is exercised by the States and the other Territories, and in our view of the law authorizing our appointment we are required to revise and codify the criminal and penal laws peculiar or exclusively applicable to these particular Territories, because they are laws of the United States, as distinguished from laws of the States or laws enacted by the Territorial legislatures.

The criminal and penal laws of the United States, which are coextensive in their operation with the boundaries of the United States, will form the body of the code which we are required to prepare, and the civil and criminal laws peculiar or exclusively applicable to the District of Columbia, the District of Alaska, and the Indian Territory, will form separate titles or other divisions of this code.

At an early stage of our labors we directed our attention to the condition of the

criminal laws for the District of Alaska. The circumstances that lend importance to this subject are of common notoriety. It was recently estimated from an official source that there will be 200,000 persons within that District during the present calendar year. Many will pass through parts of Alaska en route to the gold fields in British North America; but there will also be communities of considerable numbers formed within the District at places where there has heretofore been little or no population.

In contemplation of these conditions, we have deemed it desirable that the necessary agencies should be provided for the punishment and prevention of crimes by the civil authority, and that a penal code should be supplied adapted to the circumstances that are to be anticipated, clear and certain in its provisions and convenient in form for the purpose of distribution. We have therefore first prepared a chapter covering the criminal and penal laws peculiar to Alaska, and herewith submit the same for the consideration of Congress, and its adoption in advance of the completion of the remainder of the code, if Congress should approve of it.

The act of Congress entitled "An act providing a civil government for Alaska," approved May 17, 1884, provides (section 7) that "the general laws of the State of Oregon now in force are hereby declared to be the law in said District, so far as the same may be applicable and not in conflict with the provisions of this act or the laws of the United States." Upon examination it was ascertained that no revision or codification of the laws of Oregon had been made between the year 1872 and the year 1887. It follows that to ascertain what laws were in force on the date of the passage of the act mentioned, it is necessary to consult the revision of 1872 and the laws of the legislative assembly of Oregon passed in 1874, 1876, 1878, 1880, and 1882.

Assuming that copies of the six volumes referred to can be procured in sufficient numbers, it would be a matter of serious difficulty and expense to supply them to all local magistrates and other officers within the district, and it would require no slight professional skill to gain from this mass of legislation an accurate understanding of the provisions in force on the 17th of May, 1884. Again, premising that in communities of the character here concerned, officers will necessarily be selected in most instances from the laity, it would be a source of grave embarrassment to many to determine what provisions of the criminal laws of Oregon are applicable and not in conflict with the laws of the United States. This condition is recognized by Governor Brady in his annual report to the Secretary of the Interior, when he says "the district court, in endeavoring to administer the law, has had a difficult task in wrestling with the Oregon code to find out what is applicable to cases under consideration."

By virtue of the provisions of the act providing a civil government for Alaska which is above quoted, the laws of Oregon become laws of the United States; and we have felt justified in assuming that so far as they are criminal or penal in their character, their revision and codification is within the duties prescribed for this commission.

The laws which now exist in and over the district of Alaska may be classified as follows:

(1) The statutes of the United States extending over all the States and Territories.

(2) The statutes of the United States enacted expressly for said district.

(3) The laws of Oregon in force on the 17th of May, 1884, as found in The Organic and Other General Laws of Oregon, 1834–1872, The Acts and Resolutions of the Legislative Assembly of the State of Oregon, passed at the Eighth Regular Session, 1874, and the session laws of 1876, 1878, 1880, and 1882, so far as the same are applicable and not in conflict with the laws of the United States.

The laws embraced in the first of the above classes are not included in the accompanying codification, and are not affected thereby except as expressly stated in this report. They will form a part of the general criminal code hereafter to be submitted; but not being applicable exclusively to the district of Alaska, they have no proper place in this title.

The act of Congress prescribing our duties provides that our "report shall be so made as to indicate any proposed change in the substance of existing law, and shall be accompanied by notes which shall briefly and clearly state the reasons for any proposed change." In compliance with this requirement we submit the following:

Chapter II. Section 5339 of the Revised Statutes of the United States provides that "Every person who commits murder * * * within any fort, arsenal, dockyard, magazine, or in any other place or district of country within the sole and exclusive jurisdiction of the United States * * * shall suffer death."

This provision is lacking in a definition, and also in a division into degrees distinguished by the presence or absence of premeditation. This distinction is recognized by the criminal codes of nearly all the States, and is justified by abundant considerations. Accordingly we have substituted for this section provisions defining murder in the first and in the second degree, and imposing the capital penalty only as to

the former. A section is also inserted making the malicious derailing of trains, when the death of a human being results, murder in the first degree.

Section 5343 provides that "The punishment of manslaughter shall be imprisonment, with or without hard labor, not more than three years, and by a fine of not more than one thousand dollars, except as otherwise specially provided by law." This was amended by the act of Congress approved March 3, 1875, so that the penalty is now imprisonment not exceeding ten years and a fine as before. It is respectfully suggested that the great variety of circumstances and degrees of criminality that may attend this offense calls for a liberal elasticity of penalties, and we have accordingly substituted a minimum term of one year and a maximum term of twenty years. Sections have been added specifically designating certain acts that shall be deemed to constitute manslaughter.

Section 5345 fixes the penalty of death for rape. This is qualified by the act of Congress, entitled "An act to reduce the cases in which the penalty of death may be inflicted," approved January 15, 1897, so that the jury may by their verdict determine whether the punishment shall be death or imprisonment at hard labor for life. Nevertheless, it is the spirit of modern criminal legislation that the ends of justice can be best subserved by prescribing imprisonment for this offense.

As to mayhem, the definition given in section 5348, Revised Statutes of the United States, is amplified, and the maximum penalty increased to imprisonment for twenty years. It will not be overlooked that this crime may assume a very grave character, and may be characterized by circumstances of wanton or malicious cruelty deserving of severe punishment.

It may here be stated generally that in the case of crimes as to which the Revised Statutes and Statutes at Large of the United States contain no provision, the laws of Oregon, in force May 17, 1884, obtain; nevertheless, the latter have not in all cases been inserted in the accompanying codification. Other sections have been substituted where sufficient reason was found in behalf of a greater precision or succinctness of definition or a juster apportionment of penalties, and it is not regarded as necessary or profitable to call attention specifically to changes of the character thus indicated.

Chapter III. Section 5357, Revised Statutes of the United States, which comes down to us from the crimes act of 1790, provides for the punishment of larceny without respect to the value of the property stolen. We have regarded it as desirable to observe the division of the crime, now universally recognized, into grand and petit larceny, and also to follow the practice of later codes in further subdivisions of this crime.

Chapter IV. The laws of the United States contain provisions addressed to the counterfeiting of the coins and currency of our own and foreign governments, and also the forgery of their securities and obligations, and certificates, warrants, letters patent, and other instruments issued, or purporting to be issued, by the United States or under its authority. These laws do not cover all offenses that partake of the nature of forgery and counterfeiting, and are supplemented in the code here reported by such provisions as seemed necessary to embrace all crimes of this character.

Chapter V. Section 5392, Revised Statutes of the United States, provides for the punishment of perjury in cases "in which a law of the United States authorizes an oath to be administered." There may be instances in which this limitation would obstruct the ends of justice; and it is also deemed desirable that a higher penalty should be attached to the offense when committed upon a trial for a crime punishable with death or imprisonment for life than in other cases. We add a section for the punishment of any person attempting to procure another to commit perjury, though no perjury be committed.

The legislation of Congress concerning bribery is widely separated in the dates of the passage of the several acts, and is consequently somewhat fragmentary. Provisions are here reported which, it is confidently believed, will be found comprehensive and efficient.

Section 5400, Revised Statutes of the United States, provides that "Every person who, by force, sets at liberty or rescues any person found guilty of any capital crime, while going to execution or during execution, shall suffer death." Section 5401 punishes the rescue of other prisoners by a fine of not more than $100 and imprisonment not more than one year. Reasons need scarcely be given for substituting sections prescribing other penalties, which are sought to be adjusted to the character of different offenses belonging to this class; at the same time, sections are added dealing with assaults in aiding the escape of persons in lawful confinement.

Chapter VI. Sections directed against the carrying of concealed weapons are embraced in this chapter which are found in a statute of Oregon enacted subsequently to May 17, 1884, but in the absence of other legislation on the subject, the considerations that dictated their insertion are obvious.

Chapter VII. With respect to adultery, we have distinguished between single acts of adulterous intercourse and lascivious cohabitation, and as to the former have

followed the Oregon law providing that prosecutions shall be commenced within one year, and only on the complaint of the husband and wife. The act of Congress, approved March 3, 1887 (Supp., p. 568), amendatory of the act of March 3, 1882 (Ibid., p. 331), contains a provision for the punishment of adultery which is common to all the Territories of the United States, and which, it is to be assumed, would be repealed as to the District of Alaska by the enactment of the sections which we report.

Chapter VIII. Sections from the laws of Oregon concerning the use of opium as an intoxicant and defining and punishing vagrancy have been inserted, notwithstanding they were not in force on the 17th of May, 1884, as the code would otherwise be without provisions against these offenses. A section forbidding the sale of liquor or firearms to Indians is substituted for the existing law on that subject.

The urgency of the conditions which have induced us to prepare at this time the chapter relating to Alaska justifies us in suggesting to Congress through you a code of criminal procedure, which we have prepared in the form of a bill. We present it in this form, because we do not feel authorized by the act prescribing our duties to deal with procedure, and it will not form a part of the code which we are required to prepare, but if it is enacted into law by Congress, together with the title of the criminal and penal laws of Alaska, it will furnish that District with a complete penal code.

In the preparation of this work it has been deemed of primary importance that means should be supplied by which magistrates may be constituted at such settlements as may come into existence from time to time before whom persons charged with crime may be taken for examination or trial, and also officers to execute their process. Under authority of existing laws the President has appointed commissioners to reside at nine designated places, who, with other powers and duties, are ex officio justices of the peace. It is to be presumed that other communities of considerable numbers will be formed as the population of the District increases, and to meet their needs we have inserted a provision authorizing the judge of the district court to appoint additional commissioners with the jurisdiction of magistrates in criminal proceedings. Provision is also made for the appointment of deputy marshals in excess of the number now authorized by law; and all the deputy marshals are given the authority of constables in the execution of criminal process.

All of which is respectfully submitted.

A. C. THOMPSON,
ALEX. C. BOTKIN,
D. B. CULBERSON,
Commissioners.

Hon. JOS. MCKENNA,
Attorney-General.

Hon. Charles S. Johnson, United States district judge of Alaska, writing to Hon. A. C. Thompson, chairman of the commission, under date of January 10, 1898, says:

Until such time as we can have a new code of laws, applicable to our conditions, the compilation of the criminal and penal laws of the State of Oregon in force May 17, 1884, which are applicable to Alaska and not in conflict with the laws of the United States, and their enactment into a law by the Congress, will be of infinite use to the Territory and to this court in administering the laws. Much doubt has always prevailed as to what laws are and what ones are not applicable to and not in conflict with the laws of the United States.

In a memorial of the Chamber of Commerce of Juneau, Alaska, to the Senate and House of Representatives it is stated:

From an examination of the criminal code reported to the Congress by the commission appointed for that purpose, we are satisfied that the act presented by the commission would as a whole prove very satisfactory, and, at all events, be a great improvement upon the laws now in existence relating to crimes, misdemeanors, and criminal procedure in this Territory, and we respectfully recommend that the bill do pass.

The amendments proposed by the committee have been submitted to and received the approval of the commissioners.

On account of the rapid development of the District of Alaska and the great increase of its population, your committee is of opinion that the bill as amended should be passed with the least possible delay, and to that end respectfully submit the same.