come to consider whether it is within the restrictive clause in the 2d section, declaring that no claim accruing prior to July 1, 1865, shall be considered unless it was allowed or was pending prior to the passage of the act. To a better understanding of this clause and the preceding one in the same section it is well to recall that there was an existing limitation of time upon the prosecution of claims against the government (Rev. Stat. § 1069, U. S. Comp. Stat. 1901, p. 740, and that there had been and were then various statutory and treaty provisions regulating the manner of presenting claims for Indian depredations, by whom they were to be examined, and the evidence required to sustain them. 4 Stat. at L. 731, chap. 161, § 17; 11 Stat. at L. 401, chap. 66, § 8; 12 Stat. at L. 120, Res. No. 26; 16 Stat. at L. 360, chap. 296, § 4; 17 Stat. at L. 190, chap. 233, § 7, U. S. Comp. Stat. 1901, p. 254; Rev. Stat. §§ 466, 2098, 2156, 2157, U. S. Comp. Stat. 1901, p. 264; 23 Stat. at L. 376, chap. 341; 13 Stat. at L. 674, art. 6; 15 Stat. at L. 620, arts. 5 and 6. Both clauses must be read in the light of those limitations and provisions, and when this is done, it is apparent that Congress, while disposed to be very liberal in waiving prior restrictions upon the time and mode of presenting such claims, deemed it unwise to open the door so wide in respect of claims accruing prior to July 1, 1865, and therefore declared that the court should not consider them, save where they had been allowed or had been pending prior to the passage of the act.

The present claim accrued in 1857, was never allowed, and was not a pending claim before the date of the act; unless it can be said that it was pending before Congress in 1877 and 1878. We think this cannot properly be said. The claim to which the attention of Congress was invited in those years was not for an act of depredation by Indians, but, as was stated in the petitions and accompanying affidavits and in the bills introduced in response thereto, was for a depredation by Mormons. No one could understand from the petitions and affidavits or from the bills that there was any purpose to claim indemnity from the government on the ground that the depredation was committed by its Indian wards, or to obtain reparation from the latter through the exertion of the government's control over them. Rightly speaking, it was merely an appeal to the bounty or generosity of Congress, and probably was so regarded by the latter. At all events it was not an assertion or presentation of the claim which is the subject of this suit, for the latter is for an act of depredation by Indians, not by Mormons. We are accordingly of opinion that the claim is one jurisdiction of which is expressly withheld from the Court of Claims by the act of 1891.

Judgment affirmed.

(232 U. S. 442)

UNITED STATES, Plf. in Err.,
v.
SAM PELICAN and Tony Ponterre, alias Alex Licomte.

INDIANS (§ 12*)—OPENING RESERVATION TO SETTLEMENT—EXCEPTED LANDS—INDIVIDUAL ALLOTMENTS.

1. Lands allotted in severalty to individual Indians under the act of July 1, 1892 (27 Stat. at L. 62, chap. 140), were excepted from that part of the Colville Indian Reservation which was restored to the public domain by that act "subject to the reservations and allotment of lands in severalty to the individual members of the Indians of the Colville Reservation," for which such act provided, and which was thrown open to settlement by the President's proclamation of April 10, 1900 (31 Stat. at L. 1963), which saved and excepted such tracts as had been or might be "allotted to, or reserved or selected for, the Indians, or other purposes," under the governing statutes.

[Ed. Note.—For other cases, see Indians, Cent. Dig. §§ 27, 28; Dec. Dig. § 12.*]

INDIANS (§ 36*) — FEDERAL CONTROL — CRIMES IN INDIAN COUNTRY.

2. Land allotted to an Indian under the act of July 1, 1892 (27 Stat. at L. 62, chap. 140), and therefore excepted from that part of the Colville Indian Reservation which was restored to the public domain by that act, is, during the trust period, "Indian country," within the meaning of U. S. Rev. Stat. § 2145, extending to the Indian country certain general laws of the United States as to the punishment of crime.

[Ed. Note.—For other cases, see Indians, Cent. Dig. §§ 63, 65; Dec. Dig. § 36.*

For other definitions, see Words and Phrases, vol. 4, pp. 3545-3549.]

INDIANS (§ 38*)—FEDERAL COURTS—JURISDICTION—CRIMES IN INDIAN COUNTRY.

3. The killing of an Indian allottee during the trust period by persons not of Indian blood, when committed upon land allotted to him by the act of July 1, 1892, within that part of the Colville Indian Reservation which was restored to the public domain by that act, is cognizable in the Federal courts, under U. S. Rev. Stat. § 2145, which extends to the Indian country certain general laws of the United States as to the punishment of crime.

[Ed. Note.—For other cases, see Indians, Cent. Dig. §§ 22, 64, 66; Dec. Dig. § 38.*]

[No. 787.]

Argued January 13, 1914. Decided February 24, 1914.

IN ERROR to the District Court of the United States for the Eastern District

of Washington to review a judgment sustaining a demurrer to an indictment for the murder of an Indian allottee. Reversed and remanded for further proceedings.

The facts are stated in the opinion.

Assistant Attorney General **Wallace** for plaintiff in error.

No appearance for defendant in error.

*444 *Mr. Justice **Hughes** delivered the opinion of the court:

The defendants were indicted for the murder, on August 30, 1913, of Ed Louie, a full-blood Indian and a member of the Colville tribe. It was charged that the crime was committed "at a point about 9 miles northwest of the town of Curlew, in the county of Ferry, state of Washington, in the Indian country, to wit, upon the allotment of one Agnes, an Indian, being lot 3 of section 26, and lot 9 of section 35, in township 40 north, or range 32 E. W. M., in the northern division of the eastern district of Washington, said land being then held in trust by the United States for the said Agnes for the period of twenty-five years from the date of the trust patent; to wit, from the 6th day of December, A. D., 1909."

The indictment was based upon § 2145 of the Revised Statutes, which provides that, save as stated, "the general laws of the United States as to the punishment of crimes committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to the Indian country" (see Rev. Stat. § 5339, U. S. Comp. Stat. 1901, p. 3627; Criminal Code, 35 Stat. at L. 1088, chap. 321, U. S. Comp. Stat. Supp. 1911, p. 1588, §§ 272, 273, 341).

A demurrer was filed upon the ground that it did not appear that the crime had been committed within "the Indian country," and hence that the court was without jurisdiction. In connection with the hearing upon the demurrer the parties stipulated that the land described in the indictment as the place of the crime had been allotted to the Indian Agnes under the act approved February 8, 1887 [24 Stat. at L. 388, chap. 119], and the act in amendment and extension thereof approved February 28, 1891 [26 Stat. at L. 794, chap. 383], and that this land was situated on that part *445 of the Colville Indian Reservation which had been opened to settlement and entry by the act of Congress. See act of July 1, 1892, 27 Stat. at L. 62, chap. 140. The district court, holding that the Agnes allotment was not a part of the Indian country within the meaning of the statute, sustained the demurrer; and the government brings this writ of error under the criminal appeals act, March 2, 1907 (34 Stat. at L. 1246, chap. 2564).

There can be no doubt that the Colville Reservation, set apart by Executive order on July 2, 1872 (Exec. Ord. Ind. Reserv. [1912 ed.], 194, 195; 1 Kappler, 915, 916), and repeatedly recognized by acts of Congress,† was a legally constituted reservation. Re Wilson, 140 U. S. 575, 577, 35 L. ed. 513, 514, 11 Sup. Ct. Rep. 870. As such it was included in the "Indian country" to which § 2145 of the Revised Statutes refers, and it was none the less embraced within that description because it had been segregated from the public domain. Donnelly v. United States, 228 U. S. 243, 269, 57 L. ed. 820, 831, 33 Sup. Ct. Rep. 449, Ann. Cas. 1913E, 710. The inquiry then, is whether, with respect to the part of the original reservation that is comprised in the described allotment, the United States has lost the jurisdiction which it formerly had. The authority of Congress to deal with crimes committed by or against Indians upon the lands within the reservation was not affected by the admission of the state of Washington into the Union (act of February 22, 1889, chap. 180, 25 Stat. at L. 676, 677; Draper v. United States, 164 U. S. 240, 242, 247, 41 L. ed. 419, 420, 421, 17 Sup. Ct. Rep. 107; Donnelly v. United States, 228 U. S. 243, 271, 272, 57 L. ed. 820, 832, 33 Sup. Ct. Rep. 449, Ann. Cas. 1913E, 710); and we pass to the consideration of the effect of the Federal legislation by which the reservation was diminished.

By the act of July 1, 1892, chap. 140, 27 Stat. at L. 62, a specified tract or portion of the reservation—with certain exceptions —was "vacated and restored to the public domain,"* and it was provided that this tract *446 should be open to settlement and entry by the proclamation of the President, and should be disposed of under the general laws applicable to the disposition of public lands in the state of Washington. The exceptions were made by Congress in order to care for the Indians residing on that portion of the reservation. Every such Indian was entitled to select therefrom 80 acres which were to be allotted to the Indian in severalty (§ 4). The titles to the lands selected were to "be held in trust for

†July 4, 1884, chap. 180, 23 Stat. at L. 76, 79; February 8, 1887, chap. 119, 24 Stat. at L. 388; February 28, 1891, chap. 383, 26 Stat. at L. 794; July 1, 1892, chap. 140, 27 Stat. at L. 62; February 20, 1896, chap. 24, 29 Stat. at L. 9; March 6, 1896, chap. 42, 29 Stat. at L. 44; June 18, 1898, chap. 465, 30 Stat. at L. 475; July 1, 1898, chap. 545, 30 Stat. at L. 571, 593; March 22, 1906, chap. 1126, 34 Stat. at L. 80.

the benefit of the allottees, respectively, and afterwards conveyed in fee simple to the allottees or their heirs," as provided in the acts of February 8, 1887 (24 Stat. at L. 388, chap. 119), and February 28, 1891 (26 Stat. at L. 794, chap. 383). Further, certain school and mill lands within the described tract were reserved from the operation of the statute, unless other lands were selected in their stead (§ 6).

The evident purpose of Congress was to carve out of the portion of the reservation restored to the public domain the lands to be allotted and reserved, as stated, and to make the restoration effective only as to the residue. The vacation and restoration which the statute accomplished (§ 1) was thus expressly made "subject to the reservations and allotment of lands in severalty to the individual members of the Indians of the Colville Reservation" for which the act provided. In 1898, in furtherance of the same object, Congress required the completion of the allotments as soon as practicable, and not later than six months after the President's proclamation (act of July 1, 1898, chap. 545, 30 Stat. at L. 571, 593). Accordingly the President issued his proclamation on April 10, 1900, declaring that the restored portion of the reservation would be open to settlement and entry on October 10, 1900, and an appropriate clause was inserted which saved and excepted such tracts as had been or might be "allotted to or reserved or selected for the Indians, or other purposes," under the governing statutes. 31 Stat. at L. 1963, 1965. The government presents extracts from the records of the Department of the Interior which purport to show that the actual allotment to the Indian Agnes, of the land described in the indictment, had been made prior to the date of this proclamation, and we are asked to take notice of that fact. We find it to be unnecessary to pass upon this, but we shall assume, in view of the grounds of the decision below, that the allotment was duly made under the statutory provisions to which we have referred, and it follows that these allotted lands must be demed to be among those excepted from the portion of the reservation which was thrown open to settlement.

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Although the lands were allotted in severalty, they were to be held in trust by the United States for twenty-five years for the sole use and benefit of the allottee, or his heirs, and during this period were to be inalienable. That the lands, being so held, continued to be under the jurisdiction and control of Congress for all governmental purposes relating to the guardianship and protection of the Indians, is not open to controversy. United States v. Rickert, 188 U. S. 432, 437, 47 L. ed. 532, 536, 23 Sup. Ct. Rep. 478; McKay v. Kalyton, 204 U. S. 458, 466, 468, 51 L. ed. 566, 570, 571, 27 Sup. Ct. Rep. 346; Couture v. United States, 207 U. S. 581, 52 L. ed. 350, 28 Sup. Ct. Rep. 259; United States v. Celestine, 215 U. S. 278, 290, 291, 54 L. ed. 195, 199, 200, 30 Sup. Ct. Rep. 93; United States v. Sutton, 215 U. S. 291, 54 L. ed. 200, 30 Sup. Ct. Rep. 116; Marchie Tiger v. Western Invest. Co. 221 U. S. 286, 315, 316, 55 L. ed. 738, 749, 31 Sup. Ct. Rep. 578; Hallowell v. United States, 221 U. S. 317, 55 L. ed. 750, 31 Sup. Ct. Rep. 587; United States v. Wright, 229 U. S. 226, 237, 57 L. ed. 1160, 1166, 33 Sup. Ct. Rep. 630. Thus, in the act of January 30, 1897, chap. 109, 29 Stat. at L. 506, relating to the introduction of intoxicating liquor "into the Indian country," it is expressly provided that this term "shall include any Indian allotment while the title to the same shall be held in trust by the government, or while the same shall remain inalienable by the allottee without the consent of the United States." This statute was upheld in United States v. Sutton, 215 U. S. 291, 54 L. ed. 200, 30 Sup. Ct. Rep. 116, as a valid exercise of Federal power with respect to allotments made under the act of February 8, 1887, within the Yakima Reservation in the state of Washington. Again, in Hallowell v. United States, 221 U. S. 317, 55 L. ed. 750, 31 Sup. Ct. Rep. 587, the Federal jurisdiction under the same statute was sustained with respect to an allotment to an Omaha Indian in Nebraska, the title being held in trust by the government under the act of August 7, 1882 (22 Stat. at L. 341, chap. 434). There it appeared that practically all the lands in the Omaha Reservation had been allotted, and that many of the allotments of deceased Indians had passed into the hands of the whites, without restrictions, under the provisions of the act of May 27, 1902 (32 Stat. at L. 275, chap. 888). Further, the Omaha Indians were exercising the rights of citizenship within the state, and the defendant himself, who was charged with taking liquor to his own allotment, was a citizen and had served as a public officer. The question certified to this court was, in effect, whether the fact that the allotment was held by the government in trust authorized Congress to regulate or prohibit the introduction of liquor. This question was answered in the affirmative, the court saying (p. 324): "In the case at bar, the United States had not parted with the title to the lands, but still held them in trust for the Indians. In that situation its power to make rules and regulations respecting such territory was ample. . . . While for

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many purposes the jurisdiction of the state of Nebraska had attached, and the Indian as a citizen was entitled to the rights, privileges, and immunities of citizenship, still the United States, within its own territory and in the interest of the Indians, had jurisdiction to pass laws protecting such Indians from the evil results of intoxicating liquors as was done in the act of January 30, 1897, which made it an offense to introduce intoxicating liquors into such Indian country, including an Indian allotment." It cannot be doubted that the power of Congress was quite as complete to punish crimes committed by or against Indians upon allotted lands of this character as to prohibit the introduction of liquor. The present question, then, is not one of power, but whether it can be said that the descriptive term "Indian country," as it is used in § 2145 of the Revised Statutes, is inadequate to embrace these allotments, or, if it is adequate for that purpose, whether Congress, in providing for the allotments, has excluded them from the purview of that statute.

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We find no inadequacy in the statutory description. The lands, which, prior to the allotment, undoubtedly formed part of the Indian country, still retain during the trust period a distinctively Indian character, being devoted to Indian occupancy under the limitations imposed by Federal legislation. The explicit provision in the act of 1897, as to allotments, we do not regard as pointing a distinction, but rather as emphasizing the intent of Congress in carrying out its policy with respect to allotments in severalty where these have been accompanied with restrictions upon alienation or provision for trusteeship on the part of the government. In the present case, the original reservation was Indian country simply because it had been validly set apart for the use of the Indians as such, under the superintendence of the government. Donnelly v. United States, 228 U. S. 243, 271, 272, 57 L. ed. 820, 832, 33 Sup. Ct. Rep. 449, Ann. Cas. 1913E, 710. The same considerations, in substance, apply to the allotted lands which, when the reservation was diminished, were excepted from the portion restored to the public domain. The allottees were permitted to enjoy a more secure tenure, and provision was made for their ultimate ownership without restrictions. But, meanwhile, the lands remained Indian lands, set apart for Indians under governmental care; and we are unable to find ground for the conclusion that they became other than Indian country through the distribution into separate holdings, the government retaining control.

It is said that it is not to be supposed that Congress has intended to maintain the Federal jurisdiction over hundreds of allotments scattered through territory other portions of which were open to white settlement. But Congress expressly so provided with respect to offenses committed in violation of the act of 1897. Nor does the territorial jurisdiction of the United States depend upon the size of the particular areas which are held for Federal purposes (Criminal Code, § 272 [35 Stat. at L. 1142, chap. 321, U. S. Comp. Stat. Supp. 1911, p. 1671]). It must be remembered that the fundamental consideration is the protection of a dependent people. As the court said in United States v. Rickert, 188 U. S. 432, 437, 47 L. ed. 532, 536, 23 Sup. Ct. Rep. 478, where allotments had been made under the conditions provided by the act of February 8, 1887 (and it was found that the agreement with the Indians, 26 Stat. at L. 1035–1038, chap. 543, did not indicate any different relation of the United States to the allotted lands from that created or recognized by that act): "These Indians are yet wards of the nation, and a condition of pupilage or dependency, and have not been discharged from that condition. They occupy these lands with the consent and authority of the United States; and the holding of them by the United States under the act of 1887, and the agreement of 1889, ratified by the act of 1891, is part of the national policy by which the Indians are to be maintained as well as prepared for assuming the habits of civilized life, and ultimately the privileges of citizenship." It is true that by § 6 of the act of 1887 it was provided that upon the completion of the allotments and the patenting of the lands to the allottees under that act, every allottee should "have the benefit of and be subject to the laws, both civil and criminal, of the state or territory" in which he resided. See Re Heff, 197 U. S. 488, 49 L. ed. 848, 25 Sup. Ct. Rep. 506. But, by the act of May 8, 1906, chap. 2348 (34 Stat. at L. 182), Congress amended this section so as distinctly to postpone to the expiration of the trust period the subjection of allottees under that act to state laws. The first part of the section, as amended, is: "That at the expiration of the trust period, and when the lands have been conveyed to the Indians by patent in fee, as provided in § 5 of this act, then each and every allottee shall have the benefit of and be subject to the laws, both civil and criminal, of the

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state or territory in which they may reside." And, at the same time, there was added to the section the explicit proviso: "That until the issuance of fee-simple patents all allottees to whom trust patents shall hereafter be issued shall be subject to the exclusive jurisdiction of the United States." We deem it to be clear that Congress had the power thus to continue the guardianship of the government (United States v. Kagama, 118 U. S. 375, 383, 384, 30 L. ed. 228, 231, 6 Sup. Ct. Rep. 1109; United States v. Celestine, 215 U. S. 278, 290, 291, 54 L. ed. 195, 199, 200, 30 Sup. Ct. Rep. 93; Marchie Tiger v. Western Invest. Co. 221 U. S. 286, 315, 316, 55 L. ed. 738, 749, 750, 31 Sup. Ct. Rep. 578; Hallowell v. United States, supra; Heckman v. United States, 224 U. S. 413, 437, 56 L. ed. 820, 829, 32 Sup. Ct. Rep. 424; Ex parte Webb, 225 U. S. 663, 683, 56 L. ed. 1248, 1256, 32 Sup. Ct. Rep. 769; United States v. Wright, 229 U. S. 226, 237, 57 L. ed. 1160, 1166, 33 Sup. Ct. Rep. 630; United States v. Sandoval, 231 U. S. 28, 46, 58 L. ed. —, 34 Sup. Ct. Rep. 1; Perrin v. United States, decided this day [232 U. S. 478, 58 L. ed. —, 34 Sup. Ct. Rep. 387]); and these provisions leave no room for doubt as to the intent of Congress with respect to the maintenance of the Federal jurisdiction over the allotted lands described in the indictment.

A cognate question is presented as to the status of the person with whose murder the defendants are charged. It is not alleged in the indictment that the defendants were Indians, and we assume that they were not. But the court below had jurisdiction if the deceased was an Indian ward. Donnelly v. United States, 228 U. S. 269–272, 57 L. ed. 831, 832, 33 Sup. Ct. Rep. 449, Ann. Cas. 1913E, 710. It is alleged, as already stated, that the deceased was "a full-blood Indian, a member of the Colville tribe," and, further, that he had received an allotment of land under the act of 1887, as amended in 1891, and under the act of July 1, 1892, the land being held in trust by the United States for twenty-five years from the date of the patent, July, 31, 1900. Upon this statement, the deceased must be regarded as one who was still under
*452 the government's care. Congress had not terminated that relation, and the *commission of a crime against his person upon Indian lands, such as we have found the allotted lands in question to be, was punishable under the laws of the United States.

The order sustaining the demurrer is reversed and the cause is remanded to the District Court for further proceedings in conformity with this opinion.

It is so ordered.

CHICAGO, MILWAUKEE, & ST. PAUL RAILWAY COMPANY, Plff. in Err.,
v.
CITY OF MINNEAPOLIS.

CONSTITUTIONAL LAW (§ 291*)—DUE PROCESS OF LAW — IMPOSING SPECIAL BURDEN ON RAILWAY COMPANY.

The expense of constructing and maintaining the necessary bridge over the gap in a railway right of way made by the municipal construction across it of a canal or water way with footpaths on each side connecting two lakes used for public recreation may be cast upon the railway company without denying it the due process of law guaranteed by the Federal Constitution.

[Ed. Note.—For other cases, see Constitutional Law, Cent. Dig. §§ 870-876; Dec. Dig. § 291.*]

[No. 150.]

Argued December 19, 1913. Decided February 24, 1914.

IN ERROR to the Supreme Court of the State of Minnesota to review a judgment which affirmed a judgment of the District Court for Hennepin County, in that state, in a controversy submitted upon an agreed statement of facts presenting the question as to the right of a railway company to compensation for bridging the gap in its right of way made by the municipal construction of a canal. Affirmed.

See same case below, 115 Minn. 460, — L.R.A.(N.S.) —, 133 N. W. 169, Ann. Cas. 1912D, 1029.

The facts are stated in the opinion.

Messrs. F. W. Root and Burton Hanson for plaintiff in error.

Mr. Chelsea J. Rockwood for defendant in error.

*436 *Mr. Justice Hughes delivered the opinion of the court:

This is a writ of error to review a judgment of the supreme court of the state of Minnesota, which affirmed a judgment entered in a controversy submitted upon an agreed statement of facts. The statement, in substance, shows:

Within the limits of the city of Minneapolis are Lake Calhoun, Lake of the Isles, and Cedar lake, lying in close proximity to each other, and used by the public for pleasure boating and other recreations. The city, having acquired for park and parkway purposes the shores of Lake Calhoun and Lake of the Isles, and a portion of the shores of Cedar lake, together with large tracts of land in the vicinity, is engaged in constructing two canals which will connect the lakes and will greatly enhance their usefulness to the public. Between Lake Calhoun and Lake of the Isles