3-16-1896

Petition of the Ardmore Bar Association

54TH CONGRESS, 1st Session. SENATE. DOCUMENT No. 173.

IN THE SENATE OF THE UNITED STATES.

MARCH 16, 1896.—Laid on the table and ordered to be printed.

Mr. VEST presented the following

PETITION FROM THE MEMBERS OF THE ARDMORE BAR ASSOCIATION OF THE INDIAN TERRITORY PROTESTING AGAINST THE REPEAL OF EXISTING LAW WHICH GIVES EXCLUSIVE JURISDICTION TO THE COURTS OF THE INDIAN TERRITORY OVER ALL CRIMINAL PROSECUTIONS IN SAID TERRITORY.

"ALL GOVERNMENTS DERIVE THEIR JUST POWERS FROM THE CONSENT OF THE GOVERNED."

ARDMORE, IND. T., *March 2, 1896.*

Senators HENRY M. TELLER, JOHN T. MORGAN, GEORGE G. VEST, and ORVILLE M. PLATT,
Washington, D. C.

GENTLEMEN: The undersigned, members of the Ardmore Bar Association, with feelings of grateful remembrance for the invaluable services which you have heretofore rendered in the United States Senate to the noncitizen residents of the Indian Territory, as well as to the best interests of the Indians and to the causes of progress, civilization, justice, humanity, and the true principles of American freedom, and believing that your courage, integrity, and patriotism will cause you to resist any attempt to perpetuate an un-American and unjust system of enforcing the law upon any portion of the people of our common country, it matters not how helpless the people may be at whose heads the injustice is aimed, or how powerful the authors of the wrong, respectfully invite your attention to a consideration of the following statement of facts and principles, and earnestly invoke a continuance of the courageous and statesman-like interest which you have heretofore taken in our affairs.

As is well known to you, the noncitizen residents of this Territory are not intruders. They came here by express invitation, and their right to be here is not questioned by the United States Government or by any well-informed person. It would be a useless consumption of time to enumerate the acts of Congress, as well as the conduct of the Indians, which recognize their right. These things are well known to you. The people are here; they have a right to be here. They must have law enforced among them for the protection of life, liberty, and the pursuit of happiness. The questions are: Have these people a right to be heard? Have they a right to complain of wrong and injustice and of a violation of the fundamental principles of American freedom by the

Government in its dealings with them; or are they but so much clay in the potter's hands, to be traded off at the whim and caprice of politicians and in order that influential constituents of some Senators or Representatives may prosper and fatten and grow rich by reason of the wrongs and injustice which may be practiced upon the people of this Territory?

We feel that we are citizens of the United States; that the people of our common country are our friends and brethren; that while some who are interested in perpetuating the present un-American and wholly unjustifiable system of enforcing the law among us, may, for the purposes of self-interest, turn a deaf ear to our complaint, and others, knowing our helplessness and fearing to antagonize those whose interest it is that these things shall remain as they are, will be deterred from following the natural promptings of their hearts and coming to our relief and to the relief of right, justice, freedom, and common humanity; yet we also feel that your treatment of our people in the past, as well as your entire course in public and private life, authorizes us to appeal with confidence to you, and through you to the Congress of the United States, and through Congress to the entire people of the Union for justice.

We are informed and believe that an organized effort is now being made to repeal that portion of the act of March 1, 1895, which was to go into effect on September 1, 1896, which gives to the United States courts in the Indian Territory exclusive jurisdiction of all offenses committed here.

Our contention is that the law giving the courts of this Territory full and complete jurisdiction of all offenses committed here was but an act of long-delayed justice; that its passage was demanded by existing conditions, and that it could not be defeated without violating the fundamental principles of freedom and the dictates of common justice and humanity. The Declaration of Independence says that the Colonies threw off the British yoke because, among other things, England sent among us "swarms of officers to harass our people and eat out their substance;" because we were "subject to a jurisdiction foreign to our Constitution;" because our people were subject to be transported "beyond the seas to be tried for pretended offenses."

The spirit of every one of these declarations applies to our condition to-day. If this spirit still lives, if it has moral, vital power beyond its name, we invoke that spirit and that power; we repeat these declarations that our fathers and your fathers made in 1776 and for which they pledged their lives, their fortunes, and their sacred honor. If these things were right then they are right now. Men may change, but principles are as eternal as the God from whom they emanate. Our contention is that they are the birthright of every American citizen, and that patriots and statesmen can not and dare not refuse them to us because we may be weak and helpless, or because those who would violate these principles may be strong and influential.

Congress is estopped from denying the correctness of our contention. If these things are not so, why was the act of 1895 passed? If it was an act of justice then, what change has taken place since that calls for its repeal? The law giving our courts exclusive jurisdiction has not been shown to be defective, unjust, or injurious. The people have made no complaint. If there has been complaint, it has been secret and dared not show its head in the light of public knowledge. It is not child's play for Congress to enact a law at one session and then, when that law meets with the approval of the great body of the people to be affected thereby, when that law is demanded by the most elemen-

tary principles of our Government, to repeal it without consulting those for whose benefit it was enacted?

It can not be said that our people are incapable of enforcing the law. By the act of 1895, Congress, after a full investigation, said that we were. There has been no retrogression among us. The records of the United States courts in Kansas, Arkansas, and Texas, when compared with the courts in this Territory, will show a much smaller per cent of convictions, in proportion to the cases tried, than has been obtained in the courts in the Territory. In other words, when cases are tried here, there is a much larger per cent of convictions than are obtained in the other courts referred to. The reports now on file with the Department of Justice will fully sustain this assertion. This shows conclusively that our people make as good jurors as do the people of Kansas, Arkansas, and Texas. It is a groundless and cruel reflection upon the intelligence and integrity of the people of this Territory to say that they can not be trusted to enforce the law. The man who makes such a charge is either grossly ignorant of our condition, a fool, or a knave; and may be all three.

The people of this Territory in intelligence, integrity, law-abiding disposition, and devotion to the principles of liberty are the equals of any people to be found anywhere upon the face of the earth. They have built towns, placed hundreds of thousands of acres of land in cultivation, developed mines, organized and operated banks, established all branches of industry, built churches, schoolhouses, Masonic lodges, Odd Fellows' halls, and other lodge buildings in every community all over this country. As a class, they are hard-working, moral, progressive and law-abiding people. They appeal to those who are their brethren, and who should be their friends, for justice.

If a man has been a good man—if he has led a moral, honest, truthful life—it is his right as an American citizen to be tried among those with whom he has lived and where the accusation and evidence against him may be heard and considered in the light of his past life. If a man has been a bad man—a thief, a liar, or a murderer—he has no cause to complain if he is compelled to be tried in a community where his true character is known. The good man is damaged, the bad man is benefited, by the change. Thus the ends of justice are thwarted. Where a person is tried beyond the Territory for an offense committed here, the jury have no personal interest in the enforcement of the law. It is merely an abstract proposition with them. They have no knowledge as to the character or want of character of the witnesses for or against the accused. Brazen-faced perjury stands before them on equal footing with modest, unassuming truth. Where a person is tried here for an offense committed here he is tried before a jury who are personally interested in the enforcement of the law, who understand existing conditions, and who feel a just pride in their country. He is tried before a jury who have some knowledge of the character of the witnesses for and against him, and who are therefore much better prepared to give credence to that to which credence is due than a jury would be who are strangers to all of the parties.

Thus truth is more apt to be vindicated and justice more apt to be done. The fundamental idea of freedom is that the people are capable of self-government. That while they may make mistakes, yet that when opportunity is given them for information and time for reflection they may safely be trusted to do right. If this is not true, then our form of government is not only a failure and a fraud, but it is founded upon a lie. If this is true, if the people are capable of self-government—that is, if

they can be trusted to make laws and enforce them—upon what principle can Congress deny to the people of this Territory the right to enforce the law among themselves? Where are the teachings of our fathers that require that our people should be subject to foreign jurisdictions; that they should be transported out of their country to be tried before strangers for either real or supposed offenses? Both by precept and example they condemned each and all of these things. It matters not how innocent a man may be, unless he is also a man of wealth, it simply means financial ruin for him to be indicted and tried in one of these foreign jurisdictions. We all know that no system of law is perfect. It is an infirmity of human nature and human law that the innocent, as well as the guilty, are frequently indicted; sometimes because the witnesses are honestly mistaken; sometimes through a misunderstanding of the evidence by the grand jury; sometimes because the grand jury did not have all of the evidence before them, and sometimes as the result of malice and perjury.

A person living in the Indian Territory who is depraved and who may be actuated by malice can go before a grand jury of one of these foreign jurisdictions and procure an indictment against an innocent man, which should not have been obtained and which would in many instances not have been obtained had the place of the pretended offense been sufficiently near to admit of thorough investigation. The result is that the defendant is compelled to travel hundreds of miles and carry his witnesses with him. The distance of the point of trial from the place of the supposed offense makes it more difficult to obtain the attendance of the witnesses and renders the continuance of the cases necessarily more frequent. Consequently there is a liability of being forced to make repeated trips to court. The inevitable result of this loss of time and expense is to break the poor fellow up, no matter how complete his vindication may be upon trial. Many parties who know of the commission of crimes or who are the sufferers from crimes, when they think of the time lost and the trouble and distance of traveling to and from these foreign jurisdictions and the liability of the cases being continued, fail to report the offenses to the officers when they would gladly do so if the trial could be had at a point near to their homes. Again, it is much easier for perjury to be committed in and fraud practiced upon these foreign jurisdictions, because the means of detection are so remote and the time is too short to allow investigation during a trial.

We understand that the object of punishing violations of law is twofold: First, to reform the criminal; second, to protect society against a repetition of similar offenses. We also understand that it is an accepted truism that it is the nearness and the certainty of punishment, and not its severity, that deters the criminal. If we are correct in these conclusions, it follows without saying that for the reasons above given the present system does not meet the objects of the law.

Our people have the same sentiments of pride and the same inherent love of fair play, justice, and liberty that has always characterized the American people. They regard the present system as un-American and unjust. They will suffer wrongs rather than appeal to foreign courts.

It matters not how faithful the officials may be, the present system is an outrage upon the people of this Territory, and unjustifiable by existing conditions, violative of every principle of right, justice, and freedom, and which can not be perpetuated without inflicting an outrage upon these people amounting to an absolute iniquity.

Furthermore, it is incontestably true that the present system of dual

jurisdiction over this Territory increases the cost of administering the criminal law incredibly, while at the same time impairing the efficiency of the executive force. That it increases the cost must be plain upon a moment's consideration. Remember, now, that there are three United States marshals for the courts in the Indian Territory, with nearly forty deputies; that there are in addition marshals and a great force of deputies to execute the processes of the courts at Paris and Fort Smith and Wichita, in the offenses of which those courts have jurisdiction. It must be true that if there existed a single jurisdiction, an officer going into a neighborhood for the service of process upon witnesses, or for the arrest of parties charged with crime, could serve all the processes of the court then issued upon everyone residing in that particular community. But, with a double jurisdiction, though an officer of the Indian Territory court travel 60 miles, at great expense to the Government, to serve the process of his court, and meet a witness in a case pending at Paris, Fort Smith, or Wichita, an officer from one of those courts must travel those 60 miles after reaching the Territory, and probably 100 miles before reaching it, to serve this same witness. When the great distances that have to be traveled in the country for these purposes are recollected, and bearing in mind how innumerable are the occasions for the service of process upon witnesses, or the arrest of parties upon warrants, a slight idea of the increase of officer's fees and the expense of mileage and subsistence arising under the working of the present system can be formed. In addition, dual grand juries, with all their expenses of organization, bailiffs, attendance, subsistence, and witness fees, investigate crime committed in the Indian Territory.

While this illogical and unprecedented dual system thus increases the expenses of administering the law to an aggregate that staggers belief, save to those who have watched its operation, its existence at the same time cripples the effectiveness, for the suppression of crime, of every officer in either jurisdiction. It does so in innumerable ways that can be made plain If a crime be committed which is within the jurisdiction of the Territorial courts, and the marshal of the Paris, Fort Smith, or Wichita courts be in the locality of its commission at the time, there is neither obligation nor incentive for him to pursue the criminal, though he be in a position to do so the most effectively, for the reason that the offense is not within the jurisdiction of the court whose process he serves, and whatever he might voluntarily do would be at a risk of losing his time and expenses. So, vice versa, if an offense be committed which is within the jurisdiction of Paris, Fort Smith, or Wichita, a train robbery or murder, and an officer of the courts in the Territory be nearest to the offense, and have the best opportunity of arresting the criminal, neither obligation nor incentive exists for him to exert himself in apprehending the wrongdoer, for by so doing he not only takes the risk of losing his time and expenses incurred, and the danger of attempting the arrest, but also of subjecting himself to possible trial in other courts for some act wherein he has exceeded his authority and trespassed upon the other jurisdiction.

Thus it is that under the present system the force of men required to do the work must necessarily be doubled or trebled, the expense of such force increases in corresponding ratios, while to the extent that the jurisdiction over the same territory is divided into fractions, the men enforcing the law in these fractional parts have their efficiency in all ways crippled and impaired. Harmonious action against every grade of crime is impossible when the head of the executive force and all the men under him act within a limited field of jurisdiction, and are

compelled, at the same time, to be ever scrupulous lest their acts trench upon a different jurisdiction and they become subject to the pains and penalties of the law.

Another suggestion will make plain how the present system increases the cost of judicial administration. There are thirteen places of holding United States court in the Indian Territory. The longest distance which a witness must travel in going to any of the courts is probably 70 miles. Whereas the distance which a witness must travel in going to Paris, Fort Smith, or Wichita is frequently 250 miles or more. When it is remembered that the officer must travel this distance in going from Paris, Fort Smith, or Wichita to serve the witness and in returning to his court, and that the witness must travel the distance in going to and coming from court—if the difference between 70 miles and 250 miles is multiplied by 4, an idea is had of the difference of the cost of mileage alone in the case of a single witness.

Now, bearing in mind that this witness must be taken before a commissioner of the Paris, Fort Smith, or Kansas court, and must then be carried before a grand jury at one or the other of these places, and then will probably be required to make more than one trip before the case is finally disposed of by trial, and that the officer will, in that case, have to serve him more than once, the difference between 70 and 250 miles should be multiplied by 8 or 12, in order to arrive at the difference in the way of mileage in the expense of the two cases. It must be borne in mind that much of this cost and expense to the Government is incurred for time spent and distance traveled on foreign soil. It matters not how near a defendant or a witness may live to a point in the Territory where a court is held—he may live right at the point—the officials from Wichita, Fort Smith, or Paris must spend days, incur heavy subsistence expenses, and will run up large fee bills for serving process, which could and should be served at a nominal cost to the Government by officials from courts located within the Territory.

Say that a defendant or attached witness lived at Chickasha; the officer from Paris would be forced to travel a distance of 250 miles to reach that point and the same distance in returning. If the Territorial courts had exclusive jurisdiction this expense would all be saved. In addition to this the expenses of the defendant or witness must also be computed.

The fact that all of these expenses may be incurred in a case where the defendant is only charged with the larceny of property of the value of $10, fully justifies us in denouncing the present system as an outrage and an iniquity.

It is just such unnecessary and wasteful extravagance as this of the money wrung by taxation from an already overburdened people that is rapidly causing the common people, who do the work, pay the taxes, and bear the heat and burden of the day, to complain loudly.

In the light of these undeniable facts, who can say but that here is a cause for just complaint? Is this the only case, or is it but a sample of the way in which the people's money is wasted and the people's burdens are increased?

It is believed that if the Government should pay a bonus of $75,000 a year to the towns of Paris, Fort Smith, and Wichita each, and divest their courts of the jurisdiction which they now exercise in the Territory, the result would be a handsome profit to the Government.

The Department of Justice and Congress have justly adverted to the great and growing expense of the Federal judiciary, and especially to administering the laws in the Indian Territory.

The ingenuity of man would be exhausted in the endeavor to devise

a system that could more successfully swell expense unnecessarily than the system which is sought to be perpetuated.

But those who favor a retention of the jurisdiction at Paris, Fort Smith, and Wichita profess great solicitude for our welfare. They say they would give us full jurisdiction, but for the fact that we are not prepared to take care of it; that the dockets of our courts are already crowded with civil cases, and that if we had full criminal jurisdiction it would interfere with the trial of our civil cases. If this be true, what does it amount to? Our country is new, and to a large extent our resources are not fully developed. Civil litigation will increase, and not diminish until our mutual rights and relations with each other are settled. This will be at some indefinite period in the future.

This, not now but some other time, promise of our opponents amounts to nothing. If allowed to have their way the convenient season, like the conversion of Felix, will never come. We are not deluded by their protestations of friendship. In our judgment a spear is concealed within the bouquet of flowers which they hand us; they are hugging us with one hand and stabbing us with the other.

If our courts are now inadequate the remedy is to make them adequate, and not put the Government to unnecessary expense, inflict wrong and injustice upon us, and violate principle by a continuance of the present inefficient system.

There are many other suggestions of a similar character which might be made. For fear of trespassing too much upon your patience and time, we will not further pursue this subject.

In consideration of these things, we respectfully submit that the present system of enforcing the law in the Indian Territory is without justification or excuse; that it is violative of every principle of freedom that is dear to the hearts of the American people; that it is a great and useless expense to the Government, and an outrage upon the people affected thereby.

We therefore appeal personally to each of you as patriots and statesmen and lovers of humanity, and through you we appeal to all such others in Congress, and in the name of our common brotherhood and of the principles of our fathers, we ask justice at your hands.

HENRY M. FURMAN.	CORNELIUS HARDY.
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