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# Condition of Affairs in Indian Territory

IN THE SENATE OF THE UNITED STATES.

APRIL 27, 1894.—Referred to the Committee on the Judiciary and ordered to be printed.

Mr. TELLER presented the following

# MEMORIAL FROM THE MEMBERS OF THE BAR OF THE SECOND JUDICIAL CIRCUIT OF THE INDIAN TERRITORY AS TO CONDITION OF AFFAIRS IN THAT TERRITORY.

*To the U. S. Senate and House of Representatives:*

The committee of the Senate, Messrs. Teller, Platt, and Roach, having been in our midst and taken careful note of the condition of affairs existing in the Indian Territory, and upon a protracted conference with the undersigned, members of the bar for the second judicial division, having recommended that we memorialize Congress, pointing out defects and deficiencies in the judicial system in operation here, and indicating such amendments of and additions to the existing statutes as might seem most desirable, we would, therefore, respectfully but earnestly request that you give the matters referred to in this memorial your immediate and serious attention.

Outside of the Indian tribunals there is only one court of record in this Territory, known as the United States Court for the Indian Territory. This court has original civil jurisdiction in all cases where the matter in controversy exceeds $100, and appellate jurisdiction in all civil cases originating in the commissioner's court. On the criminal side the act creating the court gives it jurisdiction over most of the misdemeanors and certain felonies provided for in Mansfield's Digest of the Arkansas Statutes, down to and including those of the year 1884; also certain offenses designated in the U. S. Statutes, such as introducing intoxicating liquors, selling same to Indians, unprovoked assaults with dangerous instruments, and a few others; but the graver crimes, affecting life and property, punishable under the U. S. Statutes, are triable exclusively in the U. S. district courts at Paris, Tex., and Fort Smith, Ark. There is, likewise, unlimited appeal in all cases, civil and criminal, to the U. S. circuit court of appeals for the eighth circuit at St. Louis, Mo. The Territory is divided into three judicial divisions, and two terms a year of the U. S. court are held in each division. It may be well to remind you that the area of each of these divisions is equal, and even superior, to that of some of the States. It goes without saying that the amount of business, civil and criminal, in all of these divisions is more than any judge (and our present judge is an unusually pushing one) can fully and satisfactorily dispose of. The consequence is that he is compelled to dispatch business with a haste which renders impossible the patient, judicial investigation often so essential to the elimination of truth in complex cases.

When it is stated that at the January term, 1894, of the court in this, the second division, the docket showed 589 criminal and 260 civil cases, many of the latter involving very large values, and that the docket in this division is the smallest of any of the three, you can form a conception of the magnitude of the task imposed upon one judge.

In addition to the U. S. court, the law provides for nine U. S. commissioners, three for each judicial division. These commissioners have the jurisdiction of justices of the peace in Arkansas, in civil cases, where the amount of the controversy does not exceed $100. In criminal cases their powers are merely those of an examining magistrate, with no authority whatever to finally try any offense.

The second judicial division, comprising the entire Choctaw Nation, even when equally divided between three commissioners, leaves the territory of each so large that the expense and inconvenience of attending court in a great many instances constitutes an embargo upon litigation, the expense to litigants in going to court and procuring the attendance of witnesses being greater than the amounts in controversy could possibly justify.

When we come to the criminal jurisdiction of the commissioners, the defect in the law appears still more glaring. In all the minor cases of misdemeanor, simple assault, disturbing the peace, violating the Sabbath, gambling, etc., defendants', as well as the Government's witnesses, are brought distances all the way from 1 to 150 miles. These witnesses receive from the Government full mileage and per diem for their attendance before the commissioner, and if the prisoner is bound over to court, this witness account is duplicated, and not unfrequently triplicated. The commissioner and marshal, of course, receive their fees, which are generous, and when the case comes to the U. S. court, the various court officials, including the U. S. attorney, receive large compensation for the final trial. A moment's reflection must convince any mind of the ruinous prodigality of this system, besides the outrage it entails of having persons dragged long distances from their home and friends to answer in so roundabout and troublesome a way for trifling infractions of the laws, which, in the States, are summarily disposed of by the justice of the peace or police magistrate. We think there is a crying necessity for several changes affecting both the U. S. court and the commissioner's court.

The more important of those relating to the commissioners are as follows:

First. An increase in the number of commissioners in each division, so that the people in every section of the Territory shall have a tribunal of easy access for the settlement of all their lesser grievances, civil and criminal. We are of opinion that not less than six commissioners in each division would be required to bring about this result; that the law at present governing commissioners should be so modified as to require that pleadings and practice in the commissioner's court be the same and governed by the same rules as obtain in the U. S. court.

Second. An enlargement of the jurisdiction of the commissioners by giving them concurrent jurisdiction with the U. S. court in all civil cases where the amount in controversy, exclusive of costs, exceeds $100 and does not exceed $300; also, giving the commissioners full power to finally try all cases of misdemeanor, with a right of appeal in civil cases to the U. S. court and trial *de novo* where the amount in controversy, exclusive of costs, exceeds $25, and in all criminal cases finally triable by them.

Third. A provision conferring on the commissioner authority to instruct the jury, which shall be in writing, but forbidding any comment by him on the evidence.

Fourth. Authority in the commissioner to grant one new trial in any civil case where the amount in controversy is less than $25, his trial to be by court or jury. Under the present law the commissioner can not set aside the verdict of a jury and grant a new trial.

Fifth. The judge, on the appointment by him of such additional commissioners as may be provided for by law, shall divide each judicial division into as nearly equal portions as practicable according to the number of commissioners, and shall assign each commissioner to a specific division, within the limits of which he shall have exclusive jurisdiction of all civil cases triable by him arising therein.

Your attention is especially invited to the necessity of a change in the law relative to appeals from the U. S. court to the U. S. circuit court of appeals. As before stated, it is at present unlimited, and in many cases it works great hardship on litigants. For instance, there are three lines of railway running north and south through the Territory. A large number of cattle, horses, and other stock are constantly being killed by the trains, and in numberless cases payment is refused by the company. Suit is brought for an animal, say $30, before the commissioner, and judgment obtained. The case is invariably appealed to the U. S. court and plaintiff again obtains judgment in a trial *de novo*. Almost in every instance the railroad company takes the case to the court of appeals. The result is that parties losing stock are in nine cases out of ten deterred from bringing suit and accept inadequate remuneration for the reason that they can not pursue the case through all these courts. The hardship, it seems to us, is manifest and ought to be removed without delay. Another pernicious result of this unlimited privilege of vexatious appeal is to burden the docket of the court of appeals with a large number of frivolous cases, which consume time which that court should devote to more important litigation. We therefore recommend that appeals from the U. S. court for the Indian Territory in civil cases be limited to cases wherein the amount in controversy exceeds $300.

We find ourselves hampered in the practice by the lack of an efficient law of garnishment. The chapter of Mansfield's Digest on the subject, to wit, chapter 71 not being included in the former act of Congress, we ask that that chapter be put in force in the Indian Territory; while chapter 29, relating to corporations was adopted, it will require additional legislation to render the same operative in this Territory under the peculiar conditions existing here. This will enable our people to form legal associations for religious, educational, and benevolent purposes, as well as for business enterprises.

But a still more comprehensive and important recommendation remains to be added.

It is manifest to even a cursory observer that the proper administration of the laws, civil and criminal, in this Territory is an overtask for one judge. We think that the time of a separate judge in each judicial division could all be profitably employed, and we are certain that if Congress gives the matter attention it can not fail to recognize the reasonableness of our request that it provide two additional judges for the U. S. court in the Indian Territory, so that there shall be a judge for each division. It is equally manifest that justice to the residents of this Territory, and the interests of the Government as well, demand that the jurisdiction, civil and criminal, now exercised by the Federal

courts at Paris, Tex., and Fort Smith, Ark., in the Indian Territory should be taken away and given to the court or courts in the Territory. One of the great complaints of the Declaration of Independence, that the citizen was removed an unreasonable distance from his home and friends to be tried for crime, is one which confronts you in this Territory to-day.

We feel assured that the committee of the Senate now here, the Dawes commission, and indeed all the representatives of the Government who have been sent to report upon the condition of affairs within the past four years, will join with us in testifying that, with sufficient tribunals, there exists no obstacle in this Territory to the proper and satisfactory administration within its limits of law, civil and criminal. The old bugaboo so persistently paraded by interested parties in Paris and Fort Smith that juries could not be found to execute the criminal statutes has been most effectually exploded, and experience has shown that more reliable jury material can not be found anywhere.

While we think the welfare of the Government as well as the people of this Territory would be best subserved by the immediate enactment of the changes last indicated, still with the many important national questions demanding your attention you may find it impracticable at the present session of Congress in the face of the opposition likely to arise to pass a measure embodying them, in which event we respectfully urge that the other changes suggested, to which no one will likely object, may become laws at an early date.

Yours, truly,

J. G. HARLEY,
J. A. HALE,
H. L. HAYNES,
WM. COSTIGAN,
T. N. FOSTER,
*Committee of South MacAlester Bar*

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