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Conference report on the amendments of the House to the bill (S. 2173) to amend an act entitled "an act to establish a United States court in the Indian Territory, and for other purposes," approved March 1, 1889.

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IN THE SENATE OF THE UNITED STATES.

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FEBRUARY 27, 1895.—Ordered to be printed.

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Mr. VILAS presented the following

**CONFERENCE REPORT ON THE AMENDMENTS OF THE HOUSE TO THE BILL (S. 2173) TO AMEND AN ACT ENTITLED "AN ACT TO ESTABLISH A UNITED STATES COURT IN THE INDIAN TERRITORY, AND FOR OTHER PURPOSES," APPROVED MARCH 1, 1889.**

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The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 2173) to amend an act entitled "An act to establish a United States court in the Indian Territory, and for other purposes," approved March 1, 1889, and an act entitled "An act to provide a temporary government for the Territory of Oklahoma, to enlarge the jurisdiction of the United States court in the Indian Territory, and for other purposes," approved May 2, 1890; to provide for the redistricting of the Indian Territory for judicial purposes, for an additional judge and more United States commissioners, and to prescribe the jurisdiction, duties, and authority of such judges and commissioners, and for other purposes," having met, after full and free conference have agreed to recommend, and do recommend, to their respective Houses as follows:

That the Senate recede from its disagreement to the amendments of the House, and agrees to the same with an amendment, as follows:

Strike out all after the enacting clause and insert:

That the territory known as the Indian Territory, now within the jurisdiction of the United States court in said Territory, is hereby divided into three judicial districts, to be known as the northern, central, and southern districts, and at least two terms of the United States court in the Indian Territory shall be held each year at each place of holding court in each district at such regular times as the judge for such district shall fix and determine.

The northern district shall consist of all the Creek country, all of the Seminole country, all of the Cherokee country, all of the country occupied by the Indian tribes in the Quapaw Indian Agency, and the town site of the Miami Townsite Company, and the places of holding courts in said district shall be at Vinita, Miami, Tahlequah, and Muscogee.

The central district shall consist of all the Choctaw country, and the places of holding courts in said district shall be at South McAlester, Atoka, Antlers, and Cameron.

The southern district shall consist of all the Chickasaw country, and the places of holding courts in said district shall be at Ardmore, Purcell, Pauls Valley, Ryan, and Chickasha.

SEC. 2. That there shall be appointed by the President, by and with the advice and consent of the Senate, two additional judges of the United States court in said Indian Territory, who shall hold their respective offices for the term of four years from the date of their appointment, unless sooner removed as provided by law, one of whom shall be the judge of the northern district and the other shall be the judge of the southern district; and the judge of the United States court now in office shall, from and after said appointments, be the judge of the central district, and shall hold his office for the term for which he was appointed; and during the period of their service said judges shall reside in the judicial districts for which they are appointed; and said judges of the northern and southern districts shall each take the oath of office required by law to be taken by the judges of the district courts of the United States. The judge for each district shall be paid a salary of five thousand dollars per annum, and allowed his necessary expenses when holding court away from home, the same to be paid from the Treasury of the United States in like manner as the salaries and allowances of the judges of the United States district courts. If the appointment of said judges, or any of them, shall not be made during the present session, the President of the United States shall be, and is hereby, empowered to make such appointment during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

The judges shall have, within the judicial districts for which they are appointed, all such authority, both in term time and vacation, as to all matters and causes, both criminal and civil, pending or that may be brought in said districts, and shall have the same superintending control over commissioners' courts therein, and the same authority in the judicial districts, to issue writs of habeas corpus and prohibition, injunction, mandamus, certiorari, and other remedial and final process as is now by law vested in the judge of the United States court in the Indian Territory, or in the circuit and district courts of the United States. The judge of each district is authorized and empowered to hold court in any other district, for the trial of any case which the judge of said other district is disqualified from trying, and the disqualifications under this act shall be the same as are provided by the laws of the State of Arkansas to disqualify the circuit judges of that State, except that no judge shall be disqualified by the filing of an affidavit of his prejudice. And whenever on account of sickness, or for any other reason, the judge of any district is unable to perform the duties of his office, either of the other judges may act in his stead, in term time or in vacation.

Until the appointment and qualification of said judges of the northern and southern districts, respectively, the judge of the United States court in the Indian Territory shall continue to perform all the duties and exercise all the authority that is now, or hereafter may be, conferred upon him as such judge.

There shall be appointed by the President an attorney and marshal for said court in each of said districts, who shall continue in office for four years, and until their successors shall be duly appointed and qualified, and they shall discharge the like duties as other United States attorneys and marshals. Each of said marshals shall appoint one or more deputies, who shall have the same powers, perform the like duties, and be removable in like manner as other deputy United States marshals; and said marshals shall give bond, with two or more sureties, to be approved by the judge for said district, in the sum of ten thousand dollars, conditioned as by law required in regard to the

bonds of other United States marshals. The United States attorney for the Indian Territory shall be the district attorney for the northern district as herein created, and the marshal in the Indian Territory shall be the marshal for said central district after this Act goes into effect.

Each of the district attorneys in said Territory shall receive a salary of four thousand dollars per annum, and each of the marshals shall receive a salary of four thousand dollars per annum; and each of his deputies, not exceeding four in number, unless a greater number be specially authorized by order of the district judge, entered of record, shall receive a salary of one thousand two hundred dollars per annum and his reasonable and necessary expenses of travel and subsistence while on duty, to be approved by the judge for the district for which he is appointed: *Provided*, That, in case of emergency, either of said judges may authorize the appointment of as many deputy marshals as he may deem necessary for the enforcement of law and the suppression of crime, and such deputies shall receive the same rate of pay and expenses of travel for the time they may serve as regular deputy marshals: *And provided further*, That the Attorney-General of the United States may, if in his judgment it shall be necessary, appoint an assistant attorney for each of said districts.

SEC. 3. That the clerk of the United States court, in the Indian Territory, now in office, shall be clerk of the southern district, and the clerks of the central and northern districts shall be appointed by the respective judges thereof, and the clerk of each district shall reside and keep his office at one of the places of holding court in his district. He shall perform the same duties and be subject to the same liabilities as clerks of district courts of the United States, and, before entering upon his duties, he shall give bond in the sum of five thousand dollars, with two or more sureties, to be approved by the judge of the district conditioned that he will faithfully discharge his duties as required by law. Each of said clerks shall appoint a deputy clerk for each court in his district where he himself does not reside. Such deputy clerk shall keep his office and reside at the place appointed for holding the court for which he is appointed and shall keep the records of said court and shall receive a salary of one thousand two hundred dollars per annum: *Provided*, That the appointment of such deputy shall be approved by the judge of the district, and may be annulled by said judge for cause, which shall be stated on the records of the court, and the clerk shall be responsible for the official acts and negligence of his deputies. Each of the clerks in said Territory shall receive a salary of three thousand dollars per annum, and in all cases where said clerks are authorized or required to perform duties other than those performed by the clerks of the district and circuit courts of the United States, they shall be entitled to retain, for their own use and benefit, such fees as may be allowed by law for such services.

SEC. 4. That each judge of said court shall have the powers conferred by law upon the United States circuit courts to appoint commissioners within the district in which he presides, who, at the time of their appointment, shall be duly enrolled attorneys of some court of record of the United States or of some State, and shall be competent and of good standing, and shall be known as United States commissioners, but not exceeding six commissioners shall be appointed for any district hereinbefore constituted: *Provided*, That the present commissioners shall be included in that number, and shall hold office under their existing appointments, subject to removal by the judge of the district

where said commissioners reside, for causes prescribed by law. The judge for each district may fix the place where, or the time when, each commissioner shall hold his regular terms of court.

The order appointing such commissioners shall be in writing, and shall be spread upon the records of one of the courts of the district for which they are appointed; and such order shall designate, by metes and bounds, the portion of the district for which they are appointed. They shall have all the powers of commissioners of the circuit courts of the United States. They shall be ex officio notaries public and ex officio justices of the peace within and for the portion of the district for which they are appointed, and shall have the power as such to solemnize marriages.

The provisions of chapter forty-five of Mansfield's Digest of the General Laws of Arkansas, entitled "Criminal law," except as to the crimes and misdemeanors mentioned in the proviso of this section, and chapter forty-six of said laws of Arkansas, contained in said digest, entitled "Criminal procedure," and chapter ninety-one of said general laws, regulating the jurisdiction and procedure before justices of the peace in civil cases, be, and they are hereby, extended to and put in force in the Indian Territory; and the jurisdiction to enforce said provisions is hereby conferred upon the United States court in the Indian Territory: *Provided*, That in all cases where the laws of the United States and the said criminal laws of Arkansas have provided for the punishment of the same offenses the laws of the United States shall govern as to said offenses, except for the crime of larceny, the punishment for which shall be that prescribed by the laws of the State of Arkansas, any law in force in said Indian Territory to the contrary notwithstanding.

The original jurisdiction of such commissioners as justices of the peace in civil cases shall, in all those classes of cases where jurisdiction is by this act conferred upon the United States court in the Indian Territory, be exclusive where the amount or value of the demand or of the property or thing in controversy does not exceed one hundred dollars.

That said commissioners, acting as justices of the peace in criminal cases, shall have jurisdiction to hold preliminary examinations and discharge, hold to bail, or commit in cases of offenses which, under the laws applicable to the Territory, amount to felonies.

Appeals may be taken to the United States courts in the Indian Territory, in said districts, respectively, from the final judgment of said commissioners, acting as justices of the peace, in all cases; and such appeals shall be taken in the manner that appeals may be taken from the final judgments of the justices of the peace under the provisions of said chapter ninety-one in civil cases and chapter forty-six in criminal cases of the laws of Arkansas: *Provided*, That no appeal shall be allowed in civil cases where the amount of the judgment, exclusive of cost, does not exceed twenty dollars. Each of said commissioners in said Territory shall receive a salary of one thousand five hundred dollars per annum, and all fees collected by him shall be paid over to the clerk of the district.

SEC. 5. That the judge in each district may appoint a constable for each of said commissioners' districts so designated by the court, which appointments shall be in writing and spread upon the records of one of the courts in said district; and the constable so appointed shall perform all the duties required of constables by the laws of the State of Arkansas, chapter twenty-four of Mansfield's Digest. Each of said consta-

bles shall receive a salary of six hundred dollars per annum. Each of said commissioners and constables shall keep a careful account of all fees, fines, and costs collected by him, and shall settle with and pay the same to the clerk of the district at the end of every quarter, who shall pay the same into the Treasury of the United States. Said commissioners and constables, before entering upon the discharge of their duties, shall execute to the United States, for the security of the public, a good and sufficient bond in the sum of two thousand dollars, to be approved by the judge appointing him, conditioned that he will faithfully discharge the duties of his office and account for all moneys coming into his hands; and he shall take an oath to support the Constitution of the United States and to faithfully perform the duties required of him, which bond and oath shall be filed with the clerk in the district for which the appointment is made.

SEC. 6. That jurors for each term of said court in each district shall be selected and summoned in the manner provided by the statute laws of the State of Arkansas now in force in said Territory.

SEC. 7. That all prosecutions for crimes or offenses of which the United States court in the Indian Territory shall have jurisdiction shall be had within the district in which said offense shall have been committed, and in the court nearest or most convenient to the locality where it is committed, to be determined by the judge on motion to transfer the trial of the case from one court to another. All civil suits shall be brought in the district in which the defendant or defendants reside or may be found; but if there are two or more defendants residing in different districts the action may be brought in any district in which either of the defendants may reside or be found; and if a resident, in the court nearest to his residence. All cases shall be tried in the court to which the process is returnable, unless a change of venue is allowed, in which case the court shall change the venue to the nearest place of holding court, within the district; and any civil cause may be removed to another district for trial if the court shall so order, on the application of either party.

SEC. 8. That any person, whether an Indian or otherwise, who shall, in said Territory, manufacture, sell, give away, or in any manner, or by any means furnish to anyone, either for himself or another, any vinous, malt, or fermented liquors, or any other intoxicating drinks of any kind whatsoever, whether medicated or not, or who shall carry, or in any manner have carried, into said Territory any such liquors or drinks, or who shall be interested in such manufacture, sale, giving away, furnishing to anyone, or carrying into said Territory any of such liquors or drinks, shall, upon conviction thereof, be punished by fine not exceeding five hundred dollars and by imprisonment for not less than one month nor more than five years.

SEC. 9. That the United States court in the Indian Territory shall have exclusive original jurisdiction of all offenses committed in said Territory, of which the United States court in the Indian Territory now has jurisdiction, and after the first day of September, eighteen hundred and ninety-six, shall have exclusive original jurisdiction of all offenses against the laws of the United States committed in said Territory, except such cases as the United States court at Paris, Texas, Fort Smith, Arkansas, and Fort Scott, Kansas, shall have acquired jurisdiction of before that time; and shall have such original jurisdiction of civil cases as is now vested in the United States court in the Indian Territory, and appellate jurisdiction of all cases tried before said commissioners, acting as justices of the peace, where the amount of the judgment exceeds twenty dollars.

All laws heretofore enacted conferring jurisdiction upon United States courts held in Arkansas, Kansas, and Texas, outside of the limits of the Indian Territory, as defined by law, as to offenses committed in said Indian Territory, as herein provided, are hereby repealed, to take effect on September first, eighteen hundred and ninety-six; and the jurisdiction now conferred by law upon said courts is hereby given from and after the date aforesaid to the United States court in the Indian Territory: *Provided*, That in all criminal cases where said courts outside of the Indian Territory shall have, on September first, eighteen hundred and ninety-six, acquired jurisdiction, they shall retain jurisdiction to try and finally dispose of such cases. Every case, civil or criminal, pending in the United States court in the Indian Territory shall be tried and disposed of by the court where the same is pending unless the venue therein be changed, as herein provided.

SEC. 10. That it shall be the duty of the marshals appointed under this act to provide, under the direction and with the approval of the judge of the district, suitable buildings and rooms for holding said courts in their respective districts. They shall also procure suitable offices for the clerks and marshals. Any contract for these purposes shall be approved by the judge only after personal inspection of the premises leased, and any contract for a period longer than six months shall be reported to the Attorney-General for his approval. Said marshals shall also provide suitable prisons in each district at the places of holding said court for the confinement and safe-keeping of all prisoners committed by said court and the commissioners appointed under this act, and all other prisoners in legal custody.

SEC. 11. That the judges of said court shall constitute a court of appeals, to be presided over by the judge oldest in commission as chief justice of said court; and said court shall have such jurisdiction and powers in said Indian Territory and such general superintending control over the courts thereof as is conferred upon the supreme court of Arkansas over the courts thereof by the laws of said State, as provided by chapter forty of Mansfield's Digest of the Laws of Arkansas; and the provisions of said chapter, so far as they relate to the jurisdiction and powers of said supreme court of Arkansas as to appeals and writs of error, and as to the trial and decision of causes, so far as they are applicable, shall be, and they are hereby, extended over and put in force in the Indian Territory; and appeals and writs of error from said court in said districts to said appellate court in criminal cases shall be prosecuted under the provisions of chapter forty-six of said Mansfield's Digest, by this act put in force in the Indian Territory. But no one of said judges shall sit in said appellate court in the determination of any cause in which an appeal is prosecuted from the decision of any court over which he presided. In case of said presiding judge being absent, the judge next oldest in commission shall preside over said appellate court, and in such case two of said judges shall constitute a quorum. In all cases where the court is equally divided in opinion, the judgment of the court below shall stand affirmed.

Writs of error and appeals from the final decision of said appellate court shall be allowed, and may be taken to the circuit court of appeals for the eighth judicial circuit in the same manner and under the same regulations as appeals are taken from the circuit courts of the United States. Said appellate court shall appoint its own clerk, who shall hold his office at the pleasure of said court, and who shall receive a salary of one thousand two hundred dollars per annum. The marshal of the district wherein such appellate court shall be held shall be marshal of

such court. Said appellate court shall be held at South McAlester, in the Choctaw Nation, and it shall hold two terms in each year, at such times and for such periods as may be fixed by the court.

SEC. 12. That there shall be allowed to said attorneys, marshals, and clerks of the court of appeals and district courts the same fees as are allowed to like officers in chapter sixteen, title judiciary, of the Revised Statutes of the United States, and as are allowed in chapter sixty-three of the Laws of Arkansas, in all cases where such fees or taxed costs are paid by individuals or corporations, and they shall each keep careful account of all such fees collected by him, and account to the clerk of the court of appeals for all of the same in excess of their respective salaries, making settlement therefor with said clerk at the end of each quarter of the fiscal year. And the said clerk of the court of appeals shall at the end of each quarter pay the moneys or fees so received by him to the assistant treasurer of the United States in Saint Louis, Missouri.

SEC. 13. That none of the provisions of any other acts, or of any of the laws of the United States, or of the State of Arkansas, heretofore put in force in said Indian Territory, except so far as they come in conflict with the provisions of this act, are intended to be repealed, or in any manner affected by this act, but all such acts and laws are to remain in full force and effect in said Territory.

And the House agree to the same.

Change the title so as to read: "An act to provide for the appointment of additional judges of the United States court in the Indian Territory, and for other purposes."

And the House agree to the same.

WM. F. VILAS,  
H. M. TELLER,  
O. H. PLATT,

*Managers on the part of the Senate.*

D. B. CULBERSON,  
J. W. BAILEY,  
GEO. W. RAY,

*Managers on the part of the House.*