3-6-1896

Criminal jurisdiction of the Supreme Court.

54TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 666.

CRIMINAL JURISDICTION OF THE SUPREME COURT.

MARCH 6, 1896.—Referred to the House Calendar and ordered to be printed.

Mr. BAKER, of New Hampshire, from the Committee on the Judiciary, submitted the following

REPORT:

[To accompany S. 1448.]

The Committee on the Judiciary, to whom was referred the bill (S. 1448) to withdraw from the Supreme Court jurisdiction of criminal cases not capital and confer the same on the circuit courts of appeals, have considered the same, and report it to the House with the recommendation that it be passed.

It is probable that the act of March 3, 1891, which established the circuit courts of appeals, inadvertently enlarged the right of appeal in criminal cases so as to include those not capital. However that may be, the practical result has been antagonistic to the general purpose of that act, as the following letter from the clerk of the Supreme Court, stating the criminal cases now pending in that court, will abundantly show:

OFFICE CLERK SUPREME COURT OF THE UNITED STATES,
Washington, D. C., March 4, 1896.

SIR: In compliance with your request in regard to the amount of criminal business on the docket of this court, I have to say that on the docket for 1894 there were 65 criminal cases, of which 17 were capital cases.

Since the close of the last term and during the present term there have been docketed 28 criminal cases, of which number 16 are capital cases.

There are now pending on the docket undisposed of 42 criminal cases, of which 14 are capital cases.

Very truly,

JAMES H. MCKENNEY,
Clerk of the Supreme Court of the United States.

Hon. HENRY M. BAKER, M. C.,
Washington, D. C.

As the act of 1891 provides a court to which appeals from the circuit courts can be taken, and generally limits the cases appealable to the Supreme Court, it is reasonable to suppose that it was not its intention to greatly enlarge appeals to that court in criminal cases. The practice under it has greatly increased the business before the Supreme Court; and, in the opinion of your committee, the personal rights involved are not of such a nature as to justify a rehearing after an appeal to the circuit courts of appeals.

Your committee adopt the report of the Committee on the Judiciary of the Senate and appends it hereto.

[Senate Report No. 265, Fifty-fourth Congress, first session.

The Committee on the Judiciary, to whom was referred the bill (S. 1448) to withdraw from the Supreme Court jurisdiction in criminal cases not capital and confer the same on the circuit court of appeals, have given the same consideration, and report it to the Senate with the recommendation that it be passed.

The entire purpose and the entire effect of the bill are to transfer appellate jurisdiction in criminal cases not capital from the Supreme Court to the several circuit courts of appeals in their respective circuits, saving only jurisdiction to determine cases already at its passage pending in the former.

Until the act of March 3, 1891, creating the circuit court of appeals, the Supreme Court possessed no appellate jurisdiction in criminal cases as such. By the act of September 24, 1789, no review whatever of any sentence of the circuit courts in criminal cases was provided, and for nearly one hundred and two years that wisdom of the fathers was accepted to govern and give efficacy and vigor to the criminal procedure of the Federal courts. By the act for the establishment of the circuit courts of appeals the appellate jurisdiction of the Supreme Court was extended to convictions "of a capital or otherwise infamous crime," thus suddenly going to the other extreme. This was not the carefully digested result of committee consideration, but was effected in the debate on the floor. It disregarded rather than profited by the experience of the century. It seriously hinders one of the best purposes sought through the creation of the new tribunals. Instead of relieving the Supreme Court, so that it may bestow on the great questions assigned to it the leisurely study, unvexed by the importunity of delayed and pressing business, which is essential to their wisest resolution, no matter what the learning or ability of the judges, the act of 1891 has cast upon this bench a large and increasing class of cases never before within its range, out of keeping with the nature of its jurisdiction otherwise, and involving points which by no means require for the safety of the citizen the labors of such a court, but which may as well be left to other courts.

As cases of the Government, and as involving life or liberty, they must also be advanced for hearing under the rule, and thus the beginning of every term finds an obstructing barrier of these appeals in the forefront of the docket.

It was said in behalf of this jurisdiction that it was a greater duty to protect the life and liberty of the citizen than his property. Not disputing the proposition, no good reason can be given why the circuit courts of appeals may not fully discharge the duty. They are of equal dignity with the highest courts of the States, and are the final arbiters in the Federal system of by far the greater number of causes arising within the limits of the Constitution. Besides, until their creation this full duty was done well and sufficiently by the circuit courts without review.

This argument overlooks, also, it seems to the committee, as do all invoked to the same end, the true place and service of the Supreme Court in our system of national judicature. It is not and ought not to be regarded merely as a tribunal of justice to determine causes between litigants, but rather as the expositor of the jurisdiction, laws, and principles of our system of Government as between the Union, the States, and the people, the judicial spokesman of the nation in causes resting upon international law and the interpretation of treaties, the restraining power against invasion of the Constitution by Congress or State legislature, the overruling guide and regulator of the Federal judiciary, suppressing differences and insuring continuing stability of doctrine, the head of one of the three departments which every free government must recognize and possess.

Except for the interposition of this criminal jurisdiction, out of character, the limits of appellate authority defined in the act of 1891 are in complete harmony with this place of the Supreme Court in our Government. Section 5 of that act reads as follows:

"SEC. 5. That appeals or writs of error may be taken from the district courts or from the existing circuit courts, directed to the Supreme Court, in the following cases:

"In any case in which the jurisdiction of the court is in issue, in such cases the question of jurisdiction alone shall be certified to the Supreme Court from the court below for decision.

"From the final sentences and decrees in prize cases.

"In cases of conviction of a capital or otherwise infamous crime.

"In any case that involves the construction or application of the Constitution of the United States.

"In any case in which the constitutionality of any law of the United States or the validity or construction of any treaty made under its authority is drawn in question.

"In any case in which the constitution or law of a State is claimed to be in contravention of the Constitution of the United States.

"Nothing in this act shall affect the jurisdiction of the Supreme Court in cases appealed from the highest court of a State nor the construction of the statute providing for review of such cases."

Contrasting this with the following section, which assigns the appellate authority in other cases to the circuit courts of appeals and by which the superintending control of the Supreme Court is preserved *in every case, civil or criminal*, either by certification by the circuit courts of appeals or by certiorari issued from the upper court, and the great care taken to set apart this court for service of supreme public import

is made very manifest. There is nothing of personal right in any aspect, either as affecting property, life, or liberty, which enters into its jurisdiction. It is the public character of the question only which may justly invoke its judgment.

True though it be that its duty is to interpret and apply the Constitution and the law as they are, it is no less true that such a court is necessarily a lawgiver, expounding the law as it lies in and arises from most intricate and abstruse conditions, resolvable only by the lights of history and philosophy, together with the written words and unwritten doctrines which constitute our law.

To such a service free, ample argument at the bar, abundant, unvexed ease of consideration, not less than learning and wisdom, are indispensable. There is nothing in the nature of criminal causes that gives rise to questions specially worthy to engage the attention of such a court, save only when, as may sometimes happen in our system, a criminal case may involve some point of constitutional or Federal law. All such cases will remain within the jurisdiction of the court, being directly appealable for that reason; and even if they shall be first determined by the circuit court of appeals, they continue subject to the review of the Supreme Court upon certiorari.

Some of the committee think this all that need be preserved of this jurisdiction, even in capital cases. But out of deference to the sentiment which secured the enactment of the present law, and in hope sufficient relief may be gained, the bill is limited to other cases only.

Appended is a communication from the Attorney General to the chairman of the committee, which exhibits the nature of the criminal cases not capital which have been imposed on the court since the act of 1891, and from the continuance of which only this bill will relieve. It is highly probable the full comprehension of the term "infamous," as applied to statutory crimes, was not fully considered when it was adopted.

DEPARTMENT OF JUSTICE,
Washington, D. C., February 1, 1896.

SIR: Your letter of yesterday, requesting me to send you a statement of the number and character of criminal cases which have been brought to the Supreme Court of the United States since the court of appeals act became a law, distinguishing between the capital and the noncapital, has had my attention. In reply I beg to say that the whole number of criminal cases taken to the Supreme Court since the passage of the act named is 123. Of these 51 are capital cases, 49 being indictments for murder and 2 for rape, leaving 72 cases less than capital.

You ask that I give the number of each class of cases noncapital, but, as you will see from the inclosed memorandum, the cases are miscellaneous in character, and can hardly be classified.

Respectfully, yours,

JUDSON HARMON,
Attorney-General.

Hon. GEORGE F. HOAR,
United States Senate.

Noncapital cases docketed in the Supreme Court of the United States since March 3, 1891.

Docket Nos.*

611. Use mails to defraud.
1076. Larceny as postmaster.
1241. Conspiracy to interfere with operations of mines.
1284. Depositing in mails letter as to obscene matter.
916. Breaking into post-office, intent to commit larceny.
872. Introducing beer into Indian country.
922. Abstracting funds of bank.
1001. Perjury in land case.
1007. Using mails to defraud.
1035. Conspiracy to defraud Government of land.
1102. Illegal voting.
1165. Pension fraud.
378. Violation of sec. 5438; false claim expenses; illness pensioner.
102. 5518; conspiracy to prevent internal-revenue deputy collector from discharging his duties.
424. Sending letter saying where obscene matter could be obtained.
186. Embezzlement of letters by postal clerk.

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* Different terms.

Docket Nos.*

234. Violation interstate commerce law; conspiracy to make false weights of cars.
219. False entries in reports to Comptroller of the Currency.
512. Interfering with officers' election.
531. 5208; falsely certifying checks.
246. Perjury in land case.
569. Counterfeiting United States coin.
294. Mail robbery.
335. Using mails to defraud.
661. Making false entries in books and reports of bank.
692. 5431; passing counterfeit money.
693. Smuggling and concealing opium.
698. Pension fraud.
397. Bribery of customs officers to permit Chinese to land.
741. Aiding and abetting bank president to misapply funds of bank.
746. Conspiracy to defraud; sec. 5480, Revised Statutes.
755. Receiving and selling smuggled cattle.
424. 3893; sending obscene matter through mails.
770. Possession and passing of counterfeit money.
775. Misapplying funds of bank.
807. Smuggling Chinese into United States.
811. Taking unlawful fee in pension case.
815. Making false report to Comptroller of the Currency.
822. Conspiracy to intimidate and injure United States witnesses.
466. Assault with intent to kill.
479. Perjury in land case.
842. Manslaughter.
532. Mailing obscene letter.
517. Conspiracy to obstruct United States mails.
528. Using mails to defraud.
544. Perjury in pension case; sec. 5392.
547. Charging illegal pension fee.
549. Possession counterfeit coin.
558. Illegal dumping in harbor.
557. Forgery and presenting false claim for pension.
567. Mailing alleged obscene newspaper article.
573. Embezzlement bank funds.
980. Taking illegal fees as United States commissioner.
987. Using mails to defraud (green goods).
696. Conspiracy to defraud by use of mails.
989. Receiving more than legal fee in pension case.
998. Robbery.
616. Stealing of letter and contents by carrier.
637. Embezzlement by assistant postmaster of money-order funds.
655. Conspiracy to obstruct and impede United States witnesses in case *v.* him.
694. Subornation perjury in land case.
719. Embezzlement of money-order funds.
733. Making false affidavit to aid pension claim.
744. Mailing obscene letter.
747. Manslaughter.
778. Perjury.
798. 5438, Revised Statutes; attempt to defraud United States.
801. Aiding and abetting misapplication of funds of bank.
834. Assault with intent to kill.
837. 5440; conspiracy.
846. Assault with intent to kill, and arson.
865. (?)

* Different terms.