6-8-1892

Amendments to Revised Statutes.

52D CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1598.

AMENDMENTS TO REVISED STATUTES.

JUNE 8, 1892.—Referred to the House Calendar and ordered to be printed.

Mr. LYNCH, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany S. 1988.]

The Committee on Indian Affairs, to whom was referred Senate bill 1988, have had the same under consideration and hereby report same back with the following amendments, and, when so amended, recommend that it be passed:

Amend line 9 on page 1, engrossed bill, by inserting after the word "country" the following: "Shall be guilty of a misdemeanor and."

Amend line 10 on page 1 by striking out the word "two," where it occurs after the word "than," and inserting in lieu the word "one." Also strike out the word "and" after the word "years" in the same line, and insert the word "or."

Amend line 11 on page 1 by inserting after the word "offence" the following: "Or by both fine and imprisonment, in the discretion of the court."

Add after the word "witnesses," in line 11 on page 2, the following:

All complaints for the arrest of any person or persons made for violation of any of the provisions of this act shall be made in the county where the offense shall have been committed; or if committed upon or within any reservation not included in any county, then in any county adjoining such reservation; and if in the Indian Territory, before the United States court commissioner, residing nearest the place where the offense was committed, who is not for any reason disqualified; but in all cases such arrests shall be made before any United States court commissioner residing in such adjoining county, or before any magistrate or judicial officer authorized by the laws of the State in which such reservation is located to issue warrants for the arrest and examination of offenders by section 1014 of the Revised Statutes of the United States. And all persons so arrested shall, unless discharged upon examination, be held to answer and stand trial before the district court of the United States, according to law.

Wherever any person charged with any offense against sections 2139, 2140, or 2141 of the Revised Statutes, as hereby amended, shall have been arrested and held to bail as in said sections provided he may go before any United States commissioner in the district in which such offense is alleged to have been committed, or the district judge of the district at chambers, and enter a plea of guilty, and in all such cases such United States commissioner or district judge at chambers shall be, and is hereby, vested with full jurisdiction, power, and authority to receive such plea and to pronounce sentence in accordance with provisions of said sections with the same force and effect as though such plea had been made and sentence pronounced at a term of a district court. In all such cases it shall be the duty of such commissioner or district judge to forthwith make a record of conviction and file the same with the clerk of the district court, or court having jurisdiction as aforesaid, and such record of conviction shall, upon filing, be and become a record of such court and shall have the same force and effect and the proceedings thereunder shall be the same as in cases of conviction in said court.

The committee are of the opinion that the punishment inflicted was unnecessarily severe for the offense, and that its severity in many cases deterred courts and juries from convicting or punishing at all. Therefore the committee recommends that the term of imprisonment be changed from two years to one, and that the fine and imprisonment shall not, in all cases, be inflicted as one penalty. Hence the amendment leaving it to the discretion of the court when to impose a fine, when a penalty, and when to impose both. This is the usual language of penal statutes vesting a wholesome discretion in the court, and we think it ought to be applied in this case.

It is further recommended because by reducing the penalty from two years to one, according to the practice in some States, it relieves the prosecution from presenting the case to a grand jury and proceeding by indictment, permitting the same thing to be accomplished by information, because it reduces the grade of the offense to a misdemeanor. This will be a great saving of expense to the Government by avoiding the necessity for a grand jury, and in many cases, as will appear by a subsequent amendment, avoiding a trial by affording the defendant an opportunity to plead guilty if he so chooses.

The next amendment, requiring that all arrests be made in the county where the offense was committed, or in a county adjoining the reservation, will prevent one of the most flagrant abuses of the processes of the United States court that prevails anywhere.

Usually the reservations are in remote parts of the State, while the district court is held in the largest and most populous city, in most cases from one to three hundred miles distant.

The practice has invariably been to procure a warrant from some court commissioner residing where court is held. Armed with that warrant and subpœnas, the marshal proceeds to arrest the defendant and bring him and the witnesses from one to three hundred miles for the purpose of examination. If not guilty, the defendant must bear his own expenses home and pay his witnesses in most cases, if he had any. If held to bail, he is among strangers and unable to furnish it. The costs are always heavy.

This amendment will make the practice in those cases conform to the State practice, and will to a great extent, as was said before, prevent the abuse of processes. We believe it necessary to make this provision mandatory. Under the United States statutes it has always been proper and competent to institute criminal proceedings before any magistrate or justice of the peace in any State, but we have been unable to learn of a single instance where an arrest was made otherwise than before a court commissioner residing at the place of holding court, and we believe it has always been done in the interest of the United States marshal and his deputies, whose fee bills in those cases are usually exorbitant.

The next amendment proposed by the committee is intended to further facilitate the punishment of offenders and save to the Government a vast amount of unnecessary cost and expense. It provides that any person held to bail for either of the offenses may, in his discretion, appear before any United States court commissioner or the district judge at chambers, and by his own voluntary act plead guilty to the offense charged, and authorizes the court commissioner or district judge at chambers to impose the penalty of the law upon such person with like force and effect as if convicted by the verdict of a jury.

This provision will enable this class of cases to be disposed of promptly and without great cost to the Government. It will, in a majority of

cases, avoid the necessity of presenting the case before a grand jury in the first instance, and, in a majority of cases, will obviate a trial of the case in court, and thus, we venture to say, will be a saving of many thousands of dollars a year to the Government by reducing the fees of the marshal, saving the expense and travel of witnesses, and fees of jurors in the trial of those cases.

Those two last amendments, as to the place of trial and enabling the defendant to plead guilty, were submitted to J. S. Stanley, an attorney from Atoka, in the Indian Territory; H. H. Hibbard, attorney at Vinita, in the Indian Territory; A. P. McKellop, delegate from the Creek Nation, Muscogee, and J. T. Hill, attorney for the Kickapoo Nation at Guthrie, Okla., each of whom has had a large and extensive experience in the prosecution of the offenses stated in this bill, and they all not only recommend but urge the passage of these two amendments in the interest of justice and the welfare of the Indians.

Their experience in the prosecution of those cases accords entirely with the experience of many members of the committee, as to the abuse of the process of court as a means of earning large fees. It is within the knowledge of many members of the committee, and fully corroborated by those gentlemen, that in perhaps a majority of those cases hundreds of miles of travel have been made and charged that was wholly unnecessary, and that wherever the defendant was responsible the penalty of the court was the least part of the punishment. And in the other cases where the defendants are guilty, but unable to pay, and where the defendants are acquitted, and the expenses paid by the Government, the costs are always about double, if not treble, what they would be if these amendments prevail.

Under those amendments the prosecuting officer may make the complaint before any judicial officer and thus protect the prosecution by bringing the case before an officer in whom he has confidence, and the defendant, on the other hand, if he elects to plead guilty, must go before a court commissioner appointed by the district judge who, it is presumed, will appoint competent and reliable men to that position.

Your committee desire to protect the prosecution in all cases, and to provide for a speedy and fair trial of the defendants in those cases in the same manner as like offenses against the laws of the State.