

SUPREME COURT FOR THE INDIAN TERRITORY, ETC.

FEBRUARY 23, 1904.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. THOMAS, of Iowa, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 12647.]

The Committee on the Judiciary, to whom was referred the bill (H. R. 12647) to establish a supreme court for the Indian Territory and to provide for additional United States judges therein, and for other purposes, having had said bill under consideration, beg leave to submit the following report:

The judicial power in the Indian Territory is vested in the United States district court, held in four judicial districts into which the Territory is divided. There is one United States judge for each district and twenty-five places for holding court in the Territory.

These judges also sit as a court of appeals for the Territory and when sitting as a court of appeals have general appellate jurisdiction in both civil and criminal cases.

The district courts have general jurisdiction in criminal cases and in all civil cases where the amount in controversy exceeds \$100.

In addition to these courts there are 26 United States commissioners within the Territory who are also judicial officers and have jurisdiction in the minor criminal cases and have exclusive jurisdiction as justices of the peace in all civil cases where the amount in controversy does not exceed \$100 and concurrent jurisdiction with the district courts where the amount in controversy exceeds \$100 and does not exceed \$300.

These several courts constitute the judiciary of the Territory, and through them the Territory is governed, except so far as the authority of the Secretary of the Interior is extended over the Territory. It is practically a court-governed Territory without a legislature and without an executive.

The Territory comprises the country occupied by the Five Civilized Tribes of Indians. These Indian tribes have maintained a kind of tribal government and tribal courts, but they have proven wholly inadequate to meet the conditions in the Territory and their influence has not been very potent in the prevention of crime. With a heterogeneous population as exists in the Indian Territory, made up of people going in there from the several States and freedmen from the South and the Indians, the tribal governments and tribal courts have been entirely inadequate to meet the conditions found in the Territory. At present there is but a very limited jurisdiction remaining in the tribal courts, they being confined entirely to citizens of the respective Indian nations.

The population of the Indian Territory is estimated as being between 500,000 and 700,000 people, and from the best information obtainable it can not be less than 550,000, a large majority of whom are people

from the States who have gone into the Territory for the purpose of going into business of various kinds and to make it their permanent residence.

The legal business in the Territory, both criminal and civil, has been and is now very extensive, as will be seen from an examination of the reports of the Attorney-General, tabulated schedules of which are herewith submitted, and from reports made by the judges of the several courts in the Territory of the business actually transacted and pending.

Under the laws applicable to the Indian Territory, and treaties made with the Indians, the lands in the Territory are being allotted to the citizens of the respective tribes and the freedmen adopted into the tribes as citizens. Under the system prevailing every person belonging to the tribe, including minors as well as adults, is entitled to a separate allotment of land. It is not definitely ascertained how many minors in the Territory in this way acquire the ownership of land, but it can not be less than 15,000. In order to protect the rights and interest of these minors, it is necessary that guardians be appointed for them by the court, and that the court, through the guardians, exercise supervision and control of their respective estates. This adds very largely to the probate business of the Territory, all of which is under the jurisdiction of the United States district courts.

The following schedule taken from the Report of the Attorney-General of the United States for the fiscal year ending June 30, 1903, shows the business of the several United States courts in the eighth judicial circuit, in which the Indian Territory is situated, for the fiscal year ending June 30, 1903:

*Statement showing the number of civil cases and criminal prosecutions pending in the district and circuit courts of the United States in the eighth judicial circuit, on July 1, 1903, with the number terminated during the fiscal year ending June 30, 1903, and the number of civil cases commenced during the year.*

District.	Number of civil cases commenced during fiscal year ending June 30, 1903.	Number of civil cases terminated during year ending June 30, 1903.	Number of civil cases pending July 1, 1903.	Number of criminal cases pending July 1, 1903.	Number of criminal cases terminated during fiscal year ending June 30, 1903.
Arkansas:					
Eastern division .....	64	63	92	74	207
Western division .....	32	52	68	76	127
Colorado .....	162	217	236	51	49
Iowa:					
Northern division .....	89	79	134	22	36
Southern division .....	78	57	121	19	31
Kansas .....	134	173	257	40	61
Minnesota .....	144	104	464	103	127
Missouri:					
Western division .....	120	118	108	54	149
Eastern division .....	139	133	196	39	145
Nebraska .....	174	139	216	100	158
New Mexico .....				40	52
North Dakota .....	23	21	106	152	22
Oklahoma .....	15	10	10	212	282
South Dakota .....	29	18	129	40	94
Utah .....	62	98	63	4	20
Wyoming .....	9	5	18	5	21
Indian Territory:					
Northern district .....	521	366	544	929	643
Central district .....	830	661	645	631	667
Southern district .....	1,042	965	955	945	802
Western district .....	799	583	772	774	655
Total for the Indian Territory .....	3,192	2,575	2,916	3,276	2,767

In addition to the cases in the Indian Territory named in the foregoing schedule there were also 140 civil cases pending July 1, 1903, in which the United States was a party, and 80 cases of this class were disposed of during the year, making in all 184 cases to be added to those named in the schedule.

This report does not show the bankruptcy cases or probate business within the Territory. The bankruptcy business is considerable and the probate business is very large in all of the districts of the Territory, growing out of the fact that it is necessary to appoint guardians for the minor allottees of lands, so that the interest of the minors may be protected in renting their lands and in taking care of the rents and profits thereof.

For the further information of the House, and as a further explanation of the business in the Territory, your committee here submits a report made by C. M. Campbell, clerk of the United States court for the southern district, to Judge Hosea Townsend, of the same district, showing the condition of the business of the courts in that district for the calendar year of 1903:

ARDMORE, IND. T., January 30, 1904.

HON. HOSEA TOWNSEND,

*Judge, United States Court, Southern District Indian Territory.*

SIR: I submit herewith a statement showing the condition of the business of the United States court, southern district Indian Territory, for the year ending December 31, 1903:

Number of civil cases pending January 1, 1904 .....	1,766
Number of criminal cases pending January 1, 1904 .....	767
Total number of cases pending January 1, 1904 .....	2,533
Number of civil cases commenced during the year .....	1,323
Number of criminal cases commenced during the year .....	756
Total number of cases commenced during the year .....	2,079
Number of civil cases decided during the year .....	891
Number of criminal cases decided during the year .....	832
Number of cases decided during the year .....	1,723
Number of civil cases tried on contest and their nature, default judgments, and divorce cases .....	290
Unlawful detainer .....	102
Injunctions .....	9
Actions for debt .....	88
Appeals from United States commissioner .....	74
Actions in replevin .....	12
Ejectment .....	6
Foreclosure .....	12
Attachment .....	9
Actions for damage .....	27
Applications for receiver .....	2
On contract .....	5
Landlord's lien .....	1
Probate .....	10
Usury .....	1
Total .....	648
Number of jury trials in civil cases during the year .....	95
Number of jury trials in criminal cases during the year .....	99

Nature of criminal cases tried during the year:	
Larceny .....	45
Murder .....	17
Manslaughter .....	2
Obstructing United States mail .....	1
Violating revenue laws .....	1
Introducing and selling liquor .....	9
Weapon .....	1
False pretense .....	3
Assault to kill .....	5
Burglary .....	1
Removing mortgaged property .....	1
Intercourse with female under 16 years .....	1
Embezzlement .....	3
Malicious mischief .....	3
Forgery .....	2
Abduction .....	1
Robbery .....	1
Seduction .....	1
Total .....	99
Number of convictions upon pleas of guilty .....	301
Number of cases dismissed (criminal) .....	432
Number of indictments returned during the year .....	756
For the following offenses:	
Removing mortgaged property .....	6
Disposing of mortgaged property .....	27
Assault to kill .....	44
Robbery .....	8
Bigamy .....	2
Kidnaping .....	1
Intercourse with female under 16 .....	7
Assault to rob .....	3
Introducing and selling liquor .....	115
Larceny .....	149
Receiving stolen property .....	6
Weapon .....	75
False pretense .....	44
Malicious mischief .....	7
Disturbing peace .....	38
Disturbing religious worship .....	10
Perjury .....	12
Subornation of perjury .....	2
Gaming house .....	24
Gaming .....	17
Permitting gaming .....	6
Aggravated assault .....	32
Assault .....	2
Resisting officer .....	2
Rape .....	2
Assault to rape .....	2
Murder .....	29
Manslaughter .....	2
Attempt to murder .....	1
Driving stock from range .....	3
Illegal cohabitation .....	1
Destroying inclosure .....	6
Embezzlement .....	13
Adultery .....	10
Bribery .....	1
Seduction .....	4
Counterfeiting .....	6
Incest .....	2
False imprisonment .....	1
Conspiracy .....	2
Making false claim against the United States .....	1
Slander .....	1

## Number of indictments returned during the year—Continued.

For the following offenses—Continued.

Concealing death of bastard .....	1
Intimidating witness .....	1
Forgery .....	6
Arson .....	2
Trespass .....	7
Obscenity .....	1
Harboring felon .....	1
Violating revenue law .....	2
Burglary .....	1
Violating postal laws .....	6
Rescue .....	2

It is not possible now to make a correct statement showing cases in which motions and demurrers are heard and decided, petitions for habeas corpus, certiorari, solvency of sureties, contempt proceedings, and other matters heard by the court and not embraced in the above statement.

I certify that the above statement is correct.

[SEAL.]

C. M. CAMPBELL,  
Clerk United States Court.  
By N. H. McCoy,  
Deputy.

No complete reports are available to give the condition of the business of the courts in the other three districts of the Territory at a later date than the report of the Attorney-General for the fiscal year ending June 30, 1903. But in this connection it is interesting to quote from a letter before the committee, written by Judge Raymond, of the western district, in which he gives a brief statement of the condition of the courts in his district, accompanying which he submitted an assignment of causes for trial at the January term, 1904, of court at Muscogee.

Judge Raymond says:

This docket was prepared a week ago and shows 275 cases set. There are about 25 yet to be placed upon the docket, making 300 criminal cases to be tried at this term. There are about 400 cases to be considered by the grand jury, and we can expect something like 350 indictments at this term.

At the last October term there were 500 indictments returned by the grand jury in the two weeks following October 5. Since court convened here for the October term there have been about 1,400 indictments found by the different grand juries in the district at the six places of holding court. You can see at a glance that it is almost a physical impossibility for one man to try this criminal docket, to say nothing of the chancery, law, and probate cases.

There are pending upon the probate dockets of the six courts in this district, 2,200 cases. About 1,000 of them are at Muscogee. This of itself is enough to keep one man busy every day of the year if he does his work faithfully and carefully. There are pending upon the dockets to-day in the district about 600 suits at law and about 500 chancery cases. These law and chancery cases involve, many of them, the new questions which are continually arising in this formative period of our history—many complicated questions. \* \* \*

And besides these cases I am compelled as a member of the court of appeals to decide and write opinions in between 30 and 40 cases per year from the court of appeals. \* \* \*

I have worked since I came here every day, every night, every holiday, and every Sunday like a slave, because I promised that the dockets in this district should be kept up, but it is now increasing so rapidly on account of increase in population and increase in controversies which arise here from the leasing of the lands by the allottees until it is beyond one man's power to do the work. I do not dislike the work, but the number of cases is too great for one man to dispose of within a year.

Within the last two years, in order to keep up with the dockets, it has been necessary to move rapidly, and I have made it a rule to finish a murder case in a day, even if it took until past midnight to do so, and in living up to that resolution I have tried in that time 103 murder cases and 75 cases of assault with intent to kill, and in not a single instance has the trial in any of these important cases exceeded a day.

From information submitted to your committee, there is not as pressing need for relief in the northern and eastern districts of the Territory as in the western and southern districts; but in these districts the dockets are overcrowded, and it is practically impossible for the judges to perform the work required of them and give to it that consideration that the importance of the business and the interests of litigants require.

The foregoing statements give a fair understanding of the business of the district courts of the Indian Territory and the work required to be done by the judges. But in ascertaining the business of the courts and the work required of the judges it is necessary to include also the probate and bankruptcy business. And, in addition to this, the four district judges constitute a court of appeals. As a court of appeals they are required to decide and write opinions in about 100 cases in each year.

A few other facts are here worthy of consideration.

The fines and forfeitures imposed by the courts in the Territory during the fiscal year 1903 were \$57,571; fines and forfeitures realized, \$20,796.

The expenses for the fiscal year ending June 30, 1903, were as follows:

Jurors .....	\$85,500
Witnesses .....	160,750
Support of prisoners .....	114,100

Owing to the overcrowded condition of the docket in the Territory, prompt trials in criminal cases are impossible, and in many cases parties charged with crime are held in prison for an unreasonable length of time because their cases can not be reached for trial. It may be safely estimated that there are on an average 1,000 persons held in the jails of the Territory, at a very large expense to the Government, which can be very much reduced by affording additional court facilities, so that prompt trials may be had.

Prompt trials in criminal cases will relieve the crowded condition of the jails and will very materially reduce the expenses of keeping prisoners, and will also result in considerable saving in expenses for witnesses.

While the appointment of the additional judges called for by the bill under consideration will increase the expenses of the judiciary of the Territory in the amount of the salaries paid to the additional judges, yet it is believed that a recompense will be found for this in the saving of expenses for keeping prisoners and of witnesses and other delays caused by the crowded condition of the dockets.

The bill provides, among other things, for a supreme court, to be composed of three judges. Under existing law the court of appeals is composed of all the district judges—four in number. The system is an unsatisfactory one and consumes much of the time of the trial judges, that is imperatively demanded in their respective districts; and the increase in the number of trial judges, without a change in the court of appeals, would lead to additional confusion and loss of time.

Your committee is of the opinion that a supreme court is not only made necessary by the conditions of the business in the Territory, but the great amount of important litigation and the unsettled condition in the Territory demand a supreme court for the final determination and settlement of the many perplexing questions constantly arising in

the courts there, and it is believed that by the establishment of a supreme court and the addition of two district judges the courts can possibly dispose of the business with reasonable dispatch.

Your committee, therefore, reports said bill back to the House with a recommendation that it be amended by inserting, immediately after the word "said," in line 7, page 6, the word "supreme;" and by inserting after the word "said," in line 11, page 6, the word "supreme;" and by inserting after the word "said," in the thirteenth line of said page 6, the word "supreme," and that as amended the bill be passed.

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