50TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 942.

JURISDICTION OF THE COURTS OF THE UNITED STATES.

MARCH 7, 1888.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. ROGERS, from the Committee on the Judiciary, submitted the following

REPORT:

[To accompany bill H. R. 8190.]

The Judiciary Committee, having had under consideration House bills 1176, 1199, 1297, 4932, and others on the same subject, report the same back unfavorably and ask that they lie on the table, and report favorably a substitute for H. R. 1199, which they ask to go on the Calendar and be favorably considered and passed by the House.

The committee deem it proper to submit briefly the changes proposed in existing law by this bill, and to present some of the advantages which will be secured by its passage.

The first section withdraws all original jurisdiction now vested in the circuit courts of the United States, and vests the same in the district courts, except the power to issue writs of error, mandamus, prohibition, scire facias, habeas corpus, and other remedial writs, as will appear by reference to the third section of the bill.

By the second section of the bill it is provided that for the time being the circuit courts shall consist of a justice of the Supreme Court, assigned to the circuit, and of the circuit judges thereof, and that in the absence of the justice of the Supreme Court the senior circuit judge shall preside; that in the absence of a quorum the court may be adjourned from day to day, or without day; but the number necessary to make a quorum at any time at which the justice of the Supreme Court or the requisite number of circuit judges are unable to attend may be supplied for the time by a district judge of the same court, to be designated in the manner provided in the second section of the bill.

The district judge, however, who may be designated shall not sit in a case on appeal in the trial of which he presided in the district court.

Provision is also made by this section for the appointment of nine additional circuit judges, one for each circuit.

Section 3 provides for a review of the final judgments of the district courts by the circuit courts in all cases where a writ of error may be sued out, and in other cases by appeal, and in causes of admiralty and maritime jurisdiction as now provided by law. This section also provides that interlocutory orders of the district courts granting injunctions in equity cases may be appealed from to the circuit court, and pending such appeal the other proceedings in the district court are not stayed thereby.

This section also provides that all existing provisions of law regulating the mode and manner of taking appeals and issuing writs of

error, etc., shall continue and apply to similar proceedings under this act.

By the fourth section of the bill, a writ of error from the circuit court or an appeal to the circuit court may be had in all criminal cases wherein the circuit court may now exercise jurisdiction by writ of error. This section also provides that in capital cases a circuit judge, to be designated by the circuit justice, shall sit with the district judge in the district court, and that judgments of the district court in such cases may be reviewed by the supreme court upon writ of error or upon appeal, and pending appeals or writs of error, judgments of the district court in all criminal cases are stayed until the case is finally determined by the appellate court.

Section 5 provides that civil causes, now removable from State courts into the circuit courts of the United States, may be removed into the district court of the United States in the territorial jurisdiction of which they were commenced.

By section 6 circuit courts are given appellate jurisdiction, by writ of error or appeal, to review the judgments and decrees of the supreme courts of the several Territories, or is provided for the review of judgments and decrees from the district courts, and to facilitate the exercise thereof it is provided that the several Territories shall be assigned to particular circuits by orders of the Supreme Court of the United States.

Section 7 relates to matters of detail, and is as follows:

SEC. 7. That the decision of the circuit court upon questions of fact shall in all equity cases be final and conclusive, except as otherwise provided in this section, the facts to be specially found if requested by either party; and the rulings of the court occurring during the trial or hearing, upon the admission or rejection of evidence, or upon its legal effect, may be brought into the record by a bill of exceptions duly allowed and signed, according to the practice in cases at law and a review upon all questions of law, upon the record, may be had, upon writ of error or appeal in the manner now provided by law, in the Supreme Court of the United States, of every final judgment or decree of the circuit court, where the matter in controversy exceeds the sum or value of ten thousand dollars, exclusive of costs, or where the adjudication involves a question upon the construction of the Constitution, or the construction or validity of a treaty or a law of the United States, or where the circuit court shall certify that the adjudication involves a legal question of sufficient importance to require that the final decision thereof should be made by the Supreme Court; but in the last-mentioned two cases the circuit court shall state the question arising upon the construction of the Constitution or the construction or the validity of such treaty or law, or the question that the adjudication involves, with the facts upon which the same arises, and such questions only shall be certified to and finally decided by the Supreme Court; and its decisions thereon shall be enforced in like manner as is now provided by law in cases where a question is certified to the Supreme Court upon which the judges of a circuit court are divided in opinion. But in patent and copyright cases in equity a review by the Supreme Court may be had, without regard to the sum or value in dispute upon the questions, both of law and fact, affecting the validity or the infringement of the patent or copyright. Such writ of error or appeal shall be sued out or taken within one year after the entry of the judgment or the decree sought to be reviewed. The Supreme Court may affirm, modify, or reverse the judgment or the decree brought before it for review, or may direct a judgment or a decree to be rendered or such further proceedings to be had as the justice of the case may require. The judgment or the decree shall be remitted to the proper circuit or district court, to be enforced according to law. If, within the year after the entry of the judgment or the decree sought to be reversed, any party shall die, the personal representative or heir, as the case may require, may, within one year next after the proof of the will or appointment of the administrator, or within one year next after the death of the ancestor in the case of an heir, sue out or be made a party to a writ of error, or take an appeal or be made a party thereto, without reviving the judgment or decree in the court in which the same was entered. But appeals taken to and writs of error from the Supreme Court under existing laws before this act takes effect shall not be affected by this act.

By section 8, the appellate or revisory power of the Supreme Court of the United States, over causes determined by the supreme court of the District of Columbia, is limited to cases where the United States or some officer thereof is a party, or where the adjudication involves a question upon the construction of the Constitution or the construction or validity of a treaty or a law of the United States. The effect of this section is to put the supreme court of the District of Columbia substantially on a footing with the supreme courts of the several States, and relieve the Supreme Court of the United States of very considerable unimportant litigation.

Section 9 is intended to remedy an evil in the present system, which will be readily seen by reading the case of Stewart *vs.* Dunham, 115 United States Supreme Court Reports, page 62.

Section 10 preserves the law now providing for appeals in cases of prize from the district courts, and for appeals in cases of admiralty and maritime jurisdiction from the circuit courts to the Supreme Court of the United States.

Section 11 provides for the transfer of all cases pending when this act takes effect in the circuit courts to the district courts for final trial and determination.

Section 12 preserves existing law with reference to district judges who perform duties in other districts than their own. The advantages in part sought to be obtained by the passage of this measure may be briefly stated as follows:

(1) To unload the docket of the Supreme Court. To show its present condition, I quote from a speech recently delivered by Associate Justice Harlan, of that court:

> Occasionally I have seen it stated in the public prints that the Supreme Court ought to clear its entire docket during each term. Those who thus complain are without accurate information as to the amount of its business. They have no conception of the extent to which that business has increased since the organization of the Government, especially within the past thirty years. Think of it; in 1803 the whole number of cases on the docket of the Supreme Court was fifty-one. In 1819, when the court determined the great cases of Sturges *v.* Crowninshield, McCulloch *v.* State of Maryland, and Dartmouth College *v.* Woodward, there were one hundred and thirty-one cases, of which fifty-three were disposed of during the term. But in 1860, the number on its docket had increased to 310, of which 91 were determined during the term. In 1870, the docket contained 636 cases, of which 280 were decided during the term. In 1880, the whole number was 1,202, of which 365 were disposed of during the term. In 1886, the docket had increased to 1,396 cases, of which 451 were disposed of during the term. Is it just to litigants that this condition of things continue? The remedy is not with the Supreme Court. After a service of ten years as a member of that court, I am able to say that it moves with all the rapidity that is physically possible. Its members can do no more than they are doing. With rare exceptions, the court decides, each term and before its members start for their respective circuits, every case reached and submitted during that term. If the court had twice the number of justices it now has, no more business could be done by it than has been done, unless the court were divided into sections, a scheme which, it is to be hoped, will never be adopted. The Constitution makes provision for one Supreme Court. Without expressing any opinion as to whether its division into sections would be admissible under the Constitution, I may say that it would be unfortunate for the country if that court should ever be so enlarged in the number of its members as practically to convert it into a town-meeting upon questions of constitutional or general law.

The above statistics have been verified. At this date there are on the Supreme Court docket, awaiting determination, 1,381 cases, and the court is over three years (about three years and two months) behind its work. This bill increases the minimum sum giving appellate jurisdiction to the Supreme Court from five to ten thousand dollars. It is believed that this will withdraw a very large mass of business from

that court, chiefly commercial business, and litigation for lands between citizens, and the like, and at the same time provide for its determination an appellate court of almost equal dignity, and this observation applies with equal force to the Territories and the District of Columbia.

(2) It destroys the "judicial despotism" of the present system by creating an intermediate appellate court, with power to revise the final judgments of the district courts in all cases, civil and criminal, except in the lowest class of misdemeanors, where the fine is not over three hundred dollars, and does not involve imprisonment.

(3) It grants appeals in all capital cases direct to the Supreme Court of the United States, the accused having first had a trial in the district court presided over by a district and circuit judge.

(4) It simplifies the whole judicial establishment by modeling the system largely after the systems in the several States, making certain and easily understood the questions relating to jurisdiction, and in some important questions of practice conforming as far as may be the practice to that in the several States with which the bar in the several States will be familiar.

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