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Von Creel, Oklahoma City University School of Law

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A COURT OF ITS OWN: THE ESTABLISHMENT OF THE UNITED STATES COURT FOR THE INDIAN TERRITORY

VON CREEL*

The important part played by the United States District Court for the Western District of Arkansas, particularly during the tenure of Judge Issac J. Parker, in the life and times of Indian Territory has been well documented. At least in part because of the great attention visited upon the Western District of Arkansas, many are not aware, or are only vaguely cognizant, that for almost two decades Indian Territory also had a resident court, one sitting within the territory itself.

From the earliest days of the American Republic, Congress referred to lands held and occupied by Indian nations and tribes as Indian Country or Indian Territory. Unquestionably, the most famous Indian Territory was the land to which the Five Civilized Tribes, the Cherokees, Choctaws, Chickasaws, Creeks and Seminoles, were removed from their ancestral homes east of the Mississippi.

In the beginning, this domain was coextensive with present day Oklahoma excepting the Panhandle. After the Civil War, the Five Civilized Tribes, as the price for supporting the Confederacy, forfeited roughly half of their holdings on an east west division, the tribes retaining the eastern part of the original patrimony. Significant parts of the lands ceded were used for the settlement of tribes other than the Five Civilized Tribes, and the entire area continued to be referred to as Indian Territory until the formation of Oklahoma Territory in 1890.

Contrary to what the name suggests, Indian Territory was not created by act of Congress pursuant to its Article IV power to “make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.”1 As McReynolds, Marriott, and Faulconer have observed, “We could almost say that Indian Territory was a territory in

* B.A., J.D., The University of Oklahoma; Oklahoma City University School of Law, 1971-present.
1. U.S. CONST. art. IV, § 3, cl. 2.
name only, for it was not organized under the Territorial Organization Act at all. It had no appointed governor, no elected legislature, and no territorial supreme court.\textsuperscript{2}

As part of the Louisiana Purchase, Indian Territory came within the terms of the Act of October 31, 1803, authorizing the President to take possession of the newly acquired area, and extending to "the inhabitants of Louisiana in the free enjoyment of their liberty, property and religion."\textsuperscript{3} In 1804 Congress divided the Louisiana Purchase into two territories, the Territory of Orleans, and the Territory of Louisiana.\textsuperscript{4} Indian Territory fell within the boundaries of Louisiana Territory, and judicial power was vested in the judges of Indiana Territory who were to "hold annually two courts within the said district, at such place as will be most convenient to the inhabitants thereof in general."\textsuperscript{5}

In 1812, with the admission of Louisiana to the Union, the remainder of what had been Louisiana Territory was renamed Missouri Territory.\textsuperscript{6} Judicial power was exercised by a Superior Court, inferior courts, and justices of the peace. The Superior Court consisted of three judges, serving four year terms unless sooner removed, any two of whom could hold court.\textsuperscript{7} The Superior Court had jurisdiction of all criminal cases, its jurisdiction being exclusive in capital cases, and original and appellate jurisdiction in civil cases of the value of one hundred dollars or more.\textsuperscript{8}

Statehood for Missouri in 1819 led to the remaining part of Missouri Territory being designated as "Arkansaw territory."\textsuperscript{9} The judicial structure was akin with that provided in the legislation for Missouri Territory. One significant change was that only one judge had to sit when the Superior Court was exercising trial jurisdiction.\textsuperscript{10}

The acts of Congress relating to Louisiana Territory, Missouri

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  \item \textbf{2. Edwin C. McReynolds, Alice Marriott, \& Estelle Faulconer, Oklahoma: The Story of Its Past and Present 216 (University of Oklahoma Press 1961). In 1900, Congressman Moon of Tennessee introduced legislation to provide a territorial government for Indian Territory, and to rename it the Territory of Jefferson. The S. McAlester Capitol, May 10, 1900, at 6.}
  \item Act of Oct. 31, 1803, ch. 1 § 2, 2 Stat. 245.
  \item \textit{See} Act of Mar. 26, 1804 ch. 38, 2 Stat. 283.
  \item \textit{Id.} § 12 at 287.
  \item \textit{See} Act of June 4, 1812 ch. 95, 2 Stat. 743.
  \item \textit{See id.} at 746.
  \item \textit{See id.}
  \item Act of Mar. 2, 1819, ch. 49, § 1, 3 Stat. 493-94.
  \item \textit{See id.} at 495.
\end{itemize}
Territory, and Arkansas Territory had legislated for Indian Territory as part of a larger whole. In 1834 Congress began to legislate for Indian Territory as a separate and distinct entity notwithstanding its lack of formal legal status as a territory.

The Act of June 30, 1834, defined Indian Country as that part of the United States west of the Mississippi River, and not within the states of Louisiana or Missouri, or the Territory of Arkansas. The statute was not purely jurisdictional, for it contained substantive provisions as well. Trading in Indian Country without a license was prohibited, and foreigners could not enter Indian Country without a passport.\textsuperscript{11} Hunting or trapping for other than subsistence was prohibited, and any person communicating with an Indian for the purpose of “disturb[ing] the peace and tranquillity of the United States” was subject to a fine of two thousand dollars.\textsuperscript{12} The selling or giving of spirituous liquor or wine to an Indian carried a fine of five hundred dollars. Any white person convicted of taking or destroying the property of a “friendly” Indian was to pay the injured party twice the “just value” of the property taken or destroyed,\textsuperscript{13} and in trials between an Indian and a white person involving the ownership of property the white person bore the burden of proof if the Indian could establish previous possession or ownership.\textsuperscript{14} In addition to these specific provisions, the laws of the United States applying to the punishment of crimes committed at any place within the sole and exclusive jurisdiction of the United States were made applicable to Indian Country. There was, however, one very important limitation on the application of federal law in Indian Territory, a limitation that would continue almost as long as Indian Territory existed. Jurisdiction did not lie for crimes committed by one Indian against the person or property of another Indian.\textsuperscript{15}

For judicial purposes Indian Territory was attached to Arkansas Territory.\textsuperscript{16} This part of the 1834 statute was a watershed event in the history of the land, beginning the long, and sometimes controversial, suzerainty of the Arkansas federal courts over their neighbor to the west, a suzerainty that would last for more than six decades.

\textsuperscript{11} See Act of June 30, 1834, ch. 161, 4 Stat. 729.
\textsuperscript{12} Act of June 30, 1834, ch. 161, § 13, 4 Stat. 731.
\textsuperscript{13} Id. § 16 at 731.
\textsuperscript{14} See id. § 22, at 732.
\textsuperscript{15} See id. § 25, at 733.
\textsuperscript{16} The 1834 act’s definition of Indian Territory included some lands west of the Mississippi River that were not within the boundaries of present day Oklahoma. That part of Indian country was attached to the District of Missouri for judicial purposes.
Arkansas was admitted to the Union in 1836, and the next year Congress granted the federal court for the District of Arkansas the same jurisdiction enjoyed by other federal district courts under the various statutes relating to crimes committed against the laws of the United States in Indian lands.\textsuperscript{17} Then, in 1844, Congress expressly attached Indian Country as defined in the 1834 act to the District of Arkansas.\textsuperscript{18} Arkansas was one federal judicial district until 1851, when it was divided into the Eastern and Western Districts, Indian Territory being assigned to the Western District.\textsuperscript{19}

During the middle part of the nineteenth century, Congress continued to legislate for Indian Territory in a piecemeal fashion. In 1854, for example, in a statute dealing with the situs of imprisonment for defendants convicted in the Western District of Arkansas, and changing certain counties from one district to another, Congress also made it a felony for a white person to burn, or attempt to burn, any building or structure in Indian Territory; or for an Indian to burn, or attempt to burn, any building or structure owned by a white person in Indian Territory; or for a white person to assault an Indian, or for an Indian to assault a white person, with a deadly weapon.\textsuperscript{20}

The 1851 statute did not increase the number of judgeships for Arkansas, meaning that court was held in the Eastern and Western Districts by the same judge until 1871, when Congress created a second Arkansas federal judgeship, assigned the new judgeship to the Western District, and provided for the holding of court at Fort Smith.\textsuperscript{21} It was this judgeship to which Issac J. Parker, fairly or unfairly “The Hanging Judge,” was appointed in 1875, and it was to his court that all prosecutions involving crimes against the United States committed in Indian Territory were brought for trial.\textsuperscript{22}

And crimes aplenty there were in Indian Territory. The jail at Fort Smith had a perpetual “no vacancy” sign. Court sat from early morning to late evening. It sat most days of the year. Rarely was court not in session. And still the docket grew and grew. In addition to the burden on the court,

\textsuperscript{17} See Act of Mar. 1, 1837, ch. 16, 5 Stat. 147.
\textsuperscript{18} See Act of June 17, 1844, ch. 103, § 1, 5 Stat. 680.
\textsuperscript{19} Congress used both the terms Indian Country and Indian Territory.
\textsuperscript{20} See Act of Mar. 27, 1854, ch. 106, §§ 4-5, 10 Stat. 270.
\textsuperscript{22} J. GLADSTON EMERY, COURT OF THE DAMNED (Comet Press Books 1959); GLENN SHINLEY, LAW WEST OF FORT SMITH (University of Nebraska Press 1968).
litigants and witnesses were in many instances oppressed as well. Long distances had to be traveled to attend court at Fort Smith. Transportation could be both time-consuming and expensive, even dangerous. And having made the long and difficult journey, a party or witness might find the case continued, and have to make the peregrination again.

Congress first acted to ameliorate this situation in 1883, when it placed parts of Indian Territory in the District of Kansas and the Northern District of Texas. However, all of the lands occupied by the Five Civilized Tribes were left in the Western District of Arkansas.

Beginning in December 1887 and continuing well into 1889, Congress was presented with an abundance of proposals for handling the torrent of litigation cascading from Indian Territory. Typically the proposals fell into one of three categories. Some, as with the 1883 legislation, sought simply to redistribute part of the Western District caseload to other federal districts. Some sought to establish a complete judicial system for Indian Territory, akin to what one would find in an organized territory preparatory to statehood. And some sought to create a specialized federal territorial court for Indian Territory with greater or lesser jurisdiction as the author deemed wise and prudent.

In January 1888, the House passed H.R. 1204 without roll call vote. Interestingly, given the attention accorded the criminal cases coming from Indian Territory, the focus of H.R. 1204 was civil litigation. The bill was simplicity itself. It gave jurisdiction of civil cases from Indian Territory to whatever court or courts had jurisdiction of criminal cases from Indian Territory. Excepted from the jurisdiction conferred were cases between Indians. H.R. 1204’s life span was short. On April 16, 1888, the judiciary

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23. The District of Kansas was given jurisdiction of "all that part of the Indian Territory lying north of the Canadian [R]iver and east of Texas and the one hundredth meridian not set apart and occupied by the Cherokee, Creek, and Seminole Indian tribes." Act of Jan. 6, 1883, ch. 13, § 2, 22 Stat. 400. The District of Kansas sat at Wichita and Fort Scott. The Northern District of Texas was given jurisdiction of "all that portion of the Indian Territory not annexed to the district of Kansas by this act, and not set apart and occupied by the Cherokee, Creek, Choctaw, Chickasaw and Seminole Indian tribes." Id. § 3. The Northern District of Texas sat at Graham. See id.
25. Id. at 483 (H.R. 4919).
26. Id. at 316 (H.R. 3285).
27. Id. at 683.
28. Id.
committee of the Senate reported the measure unfavorably, and consideration was postponed indefinitely. 29

The House then turned its attention to H.R. 1874. Authored by Congressman D. B. Culberson of Texas, H.R. 1874 put part of the Choctaw Nation in the Eastern District of Texas, and another part of the Choctaw Nation, and the Chickasaw Nation, in the Northern District of Texas. 30 The two Texas districts were given exclusive jurisdiction of all criminal offenses against the laws of the United States committed in those parts of the Indian Territory attached to their respective districts. The purpose of the bill, Culberson said, was simply to redistribute some of the caseload of the Western District of Arkansas to the Eastern and Northern Districts of Texas. 31

It has no other effect whatever. That change will make it more convenient for the people of the Chickasaw Nation and that part of the Choctaw Nation which is taken away to attend the courts in Texas than to go to Fort Smith, and it will relieve the court at Fort Smith of a large amount of business; and that court, if not overloaded, is certainly now oppressed by the amount of its business. 32

The bill passed the House the same day without roll call vote. 33

While the House was considering H.R. 1204 and H.R. 1874, the Senate had not been idle. In December 1887, Senator George Vest of Missouri introduced S. 270 to establish a federal court in Indian Territory with jurisdiction of all offenses committed against the laws of the United States in the land. 34 S. 270 was reported favorably by the judiciary

31. Id. at 2353.
32. Id. David Browning Culberson was born in Georgia, attended Brownwood College, read law, and practiced in Alabama before settling in Texas. He was a member of the Texas legislature, served in the Confederate Army, and served in the House of Representatives of the United States Congress 1875-1897, when he declined to seek reelection. He died in 1900, and is interred in Oaklawn Cemetery, Jefferson, Texas. CQ Staff Directores, Inc., Biographical Directory of the American Congress 1774-1996 889 (1997) (Joel D. Truse, ed., 1997) available at http://bioguide.congress.gov/biosearch/biosearch.asp.
34. See 19 Cong. Rec. 24 (1888) (S. 270). George Graham Vest was born in Kentucky, graduated from Centre College, and received his law degree from Transylvania University. Moving to Missouri, he practiced law, was a state legislator and Democratic presidential
committee, and placed on the calendar. Then H.R. 1874 was reported as amended by striking all after the enacting clause, and substituting S. 270 for the stricken language. However, Congress adjourned before the Senate could act on the measures.

After Congress convened again in December 1888, Vest, on February 8, 1889, moved that the Senate consider H.R. 1874 as amended by S. 270. At this time, Senator James K. Jones of Arkansas moved to amend H.R. 1874 by striking the Senate language, and creating a federal court in Indian Territory with limited criminal jurisdiction.

Jones proposed to establish a federal court in Indian Territory that would have jurisdiction of all offenses committed in the land against the laws of the United States, "except cases of rape, murder, manslaughter, assault with intent to kill, arson, robbery, burglary and horse or mule stealing, and other crimes punishable by imprisonment at hard labor." In sum, the criminal subject matter jurisdiction of the court would extend only to minor offenses.

The debate on the Jones's amendment evinced some very stark differences of opinion regarding life in Indian Territory, and the capacity of the inhabitants to maintain the rule of law. The principal supporters of the Jones's approach were his Arkansas colleague, Senator James H. elctor in 1860, served in the Confederate Army, and was a member of the Confederate Congress. Vest resumed the practice of law in Missouri after the Civil War. In 1879 he was elected for the first of four terms in the United States Senate. He voluntarily retired at the end of his fourth term. Vest died in 1904, and is buried in Bellefontaine Cemetery, St. Louis, Missouri. BIOGRAPHICAL DIRECTORY OF THE AMERICAN CONGRESS 1774-1996, supra note 32, at 1900.

36. See id. at 2287.
37. See id. at 2989.
38. See 20 Cong. Rec. 1644 (1889) (S. 270).
39. James Kimbrough Jones was born in Mississippi, and moved to Arkansas with his father while a small child. He was educated by a private tutor in the classics, served in the Confederate Army, and was admitted to the bar. Jones served in the Arkansas Senate, and as chairman of the Democratic National Committee. After two terms in the House of Representatives of the United States Congress, Jones served three terms in the United States Senate. Defeated for a fourth term, he died in 1908, and is interred in Rock Creek Cemetery, Washington, D.C. BIOGRAPHICAL DIRECTORY OF THE AMERICAN CONGRESS 1774-1996, supra note 32, at 1303.
40. 20 Cong. Rec. 1645 (1889).
Berry, and the two senators from Texas, Richard Coke and John H. Reagan.\footnote{41}

While Jones argued that the problem of docket congestion would not be alleviated simply by transferring the cases from one court to another, his main objection to conferring full criminal jurisdiction on an Indian Territory court was that fair, competent, and impartial jurors could not be obtained. The fundamental issue, Jones told his colleagues, was “that in the state of society in the Indian country it is a question of juries.”\footnote{42} Curiously, the jury qualification section in both S. 270 and Jones’s amendment were the same. Bona fide male residents of Indian Territory over the age of 21, and having a sufficient understanding of English to understand court proceedings, were competent to serve as jurors. Under the Senate language, jurors possessing those qualifications could try all criminal cases, but Jones would allow them to sit only on cases not punishable by imprisonment at hard labor. There were ancient feuds in Indian Territory which reminded “one of the times of the Highlanders in Scotland,”\footnote{43} and Jones doubted “whether you will be able to get juries in

\footnote{41. James Henderson Berry was born in Alabama, and moved while a child to Arkansas. He served in the Confederate Army, and lost a leg at the Battle of Corinth, Mississippi. He then read law, was admitted to the bar, served as speaker of the Arkansas House of Representatives, and as governor, before being elected in 1885 to fill an unexpired term in the United States Senate. Berry then won three full terms, before being defeated. He died in 1913, and is buried in the Knights of Pythias Cemetery, Bentonville, Arkansas. \textit{See Biographical Directory of the American Congress} 1774-1996, supra note 32, at 656.}

\footnote{42. \textit{20 Cong. Rec.} 1710 (1889).}

\footnote{43. \textit{Id.}}
the court which can be relied upon to enforce rigidly the orders of the court and to enforce justice in every case.\textsuperscript{44}

His Arkansas colleague, Senator James H. Berry, had the same concerns. He acknowledged that “there are good men and intelligent Indians in the nation,”\textsuperscript{45} but it was well known “that in the Indian Territory, there are many men of bad character, men who have escaped from the States, who have acquired citizenship there by various means, who are wholly incompetent and disqualified for jury duty in any State in this Union and would not be allowed to sit upon a jury.”\textsuperscript{46} Any person familiar “with the Indian character there knows how difficult it will be to convict any man of a serious crime there,”\textsuperscript{47} and he wondered,

[i]f when citizens are passing through the Indian Territory, traveling upon a railroad train, a murder should be committed, a train should be derailed and wrecked by some lawless Indian, . . . [i]f justice would be administered, and [the] Indian[ . . . ] would be punished in the same way that [he] would be punished at Fort Smith for an offense of that kind?\textsuperscript{48}

Senator Richard Coke of Texas did not “believe that a court should be established there with powers to adjudicate the rights of white people until that Territory ha[d] erected over it a Territorial government.”\textsuperscript{49} Unquestionably, “[t]hose people are not in a condition for such a court.”\textsuperscript{50} His fellow Lone Star State senator, John H. Reagan, could not have agreed more. Yes, there were “some very intelligent people, mixed-bloods mainly, in these nations.”\textsuperscript{51} But the majority were “pure-bloods, and out of the pure-bloods I suppose it would be almost impossible to find a single man qualified with intelligence to perform the duties of a juryman. It would be almost impossible to find one that could speak the English language or understand it when spoken.”\textsuperscript{52} Court proceedings were to be

\begin{footnotesize}
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  \item \textsuperscript{44} Id.
  \item \textsuperscript{45} Id. at 1711.
  \item \textsuperscript{46} Id.
  \item \textsuperscript{47} Id.
  \item \textsuperscript{48} Id. at 1713.
  \item \textsuperscript{49} Id. at 1711.
  \item \textsuperscript{50} Id.
  \item \textsuperscript{51} Id. at 1714.
  \item \textsuperscript{52} Id.
\end{itemize}
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in English, and among "the full-blood Indians this would be all a dull mummery."53

Supporters of giving the Indian Territory court full criminal jurisdiction included Senator George F. Edmunds of Vermont.54 Edmunds said that the purpose of the bill was "to move the august majesty of a court of the United States with a visible presence into the heart of that Territory."55 Regarding the jury question, Edmunds would "rather prefer to be tried by a jury of Vermont or South Carolina—on the average, understand—than by a jury selected in the Indian country."56 But the essence of jury trial was being tried by one's peers, and "if I were a peer there, I should not think that I had a right to complain if I were tried by a body of men who were just like me and engaged in the same pursuits."57 Asked by Jones if this reasoning extended to Utah, Edmunds said that it did. "If I were a polygamous Mormon in Utah I should want to be tried by a jury of polygamous Mormons."58

Edmunds then addressed Berry's concern about the train derailment caused by a "lawless Indian" resulting in loss of life.59 Edmunds thought that the possibility "of a just verdict . . . would be just as great of a conviction by a jury of residents of that Territory impaneled at Muscogee as it would be of a jury of residents impaneled at Fort Smith, Ark[ansas]."60

Senator John T. Morgan of Alabama was perhaps the most eloquent and impassioned defender of the ability and willingness of Indians to serve.

53. Id.
54. George Franklin Edmunds was born and educated in Vermont. Admitted to the bar, he practiced, served in both houses of the Vermont legislature. Appointed to fill a vacancy, Edmunds was then elected four times to the United States Senate. He resigned during his fourth full term to resume the practice of law. He died in 1919, and is buried in Green Mount Cemetery, Burlington, Vermont. See BIOGRAPHICAL DIRECTORY OF THE AMERICAN CONGRESS 1774-1996, supra note 32, at 983. See also H. WAYNE MORGAN, FROM HAYES TO MCKINLEY, NATIONAL PARTY POLITICS, 1877-1896, at 73 (Syracuse University Press 1969).
55. 20 CONG. REC. 1712 (1889).
56. Id.
57. Id.
58. Id.
59. Id. at 1713.
60. Id. The principal group of the Creek tribe was the Maskoke or Muskoke, rendered in English Muscogee or Muskogee. See OKLAHOMA ALMANAC, GOLDEN ANNIVERSARY EDITION, 1957-58 (112 H.L. Fitzpatrick ed., 1958). Congressional enactments and congressional speeches used both spellings.
as jurors in even the most serious of criminal cases.\textsuperscript{61} Morgan was convinced "that amongst the full-blooded Indians out there many of them speak the English language, and speak it well, and some of the very best lawyers in this whole country are full-blooded Indians in that part of the world."\textsuperscript{62} Morgan was very impressed by the court systems of the Indian nations, and he thought that the opinions of their appellate courts "compare favorably with any other opinions I know of in the State courts for their intelligence."\textsuperscript{63} Indians were "not only capable of being jurors, but they are capable of being judges, and very excellent judges."\textsuperscript{64} Create the court, and "it would be obeyed and observed with religious fidelity."\textsuperscript{65} Fail to create the court, and justice would be denied to the inhabitants of Indian Territory, for it is a "denial of justice . . . to say to these people that they shall not participate in the administration of the laws of the land when the argument can not be correctly made against them that they are either too corrupt to participate in it or that they are too ignorant to do it."\textsuperscript{66}

The Jones's amendment was rejected, the Senate amendment giving the new court full criminal jurisdiction was adopted, and the bill as amended was passed. All these actions occurred without roll call vote.\textsuperscript{67} The opponents of full criminal jurisdiction did not give up the fight, however.

The House refused to concur in the Senate amendment, and the matter went to conference. In the conference committee report, Indian Territory was defined as that land bounded on the north by Kansas, on the east by Missouri and Arkansas, on the south by Texas, and on the west by Texas and the Territory of New Mexico, that is, present day Oklahoma excepting the panhandle.\textsuperscript{68}

\textsuperscript{61} John Tyler Morgan was born in Tennessee, and moved to Alabama while a child. Admitted to the bar, he practiced law, was a Democratic presidential elector in 1860, and a member of the state secession convention. He served in the Confederate Army, and in 1876 was elected for the first of six consecutive terms in the United States Senate. He died in 1907, and is buried in Live Oak Cemetery, Selma, Alabama. See Biographical Directory of the American Congress 1774-1996, supra note 32, at 1551.

\textsuperscript{62} 20 Cong. Rec. 1714 (1889).

\textsuperscript{63} Id.

\textsuperscript{64} Id. at 1715.

\textsuperscript{65} Id.

\textsuperscript{66} Id.

\textsuperscript{67} See id. at 1716.

\textsuperscript{68} Id. at 2317.
The conference committee report rejected the approach of simply redistributing some of the business of the Western District of Arkansas to federal courts in Kansas and Texas, and created a court for Indian Territory solely. The court was to be held by one judge, appointed by the President with the advice and consent of the Senate, for a term of four years.\textsuperscript{69} He was to receive a salary of $3,500 yearly. The President was also to appoint, again with the advice and consent of the Senate, an attorney and a marshal. These officers were to receive the same salaries and fees as the United States Attorney and United States Marshal for the Western District of Arkansas. Two terms of court were to be held yearly at Muscogee, beginning on the first Monday in April and the first Monday in September.\textsuperscript{70} Procedure and practice were to conform as nearly as practicable to procedure and practice in the circuit courts of Arkansas. Final judgments and decrees where the amount in controversy exceeded $1,000 were subject to review by the Supreme Court of the United States in the same manner as judgments and decrees of a federal circuit court.\textsuperscript{71}

The jury qualification language was the same as that in S. 270 and the Jones's amendment: male residents of Indian Territory, over the age of 21 years, and capable of understanding the English language sufficiently to comprehend court proceedings, were competent to serve as jurors.\textsuperscript{72} However, in criminal cases, if the defendant was a citizen of the United States only citizens of the United States were competent to serve as jurors. Reasons for exemption from jury duty, and grounds for challenge, were to be the same as those in the District Court for the Western District of Arkansas.

Congress focused primary attention on the criminal jurisdiction of the proposed court, but there was a civil side to the court's subject matter cognizance as well. The court was vested with jurisdiction of disputes between citizens of the United States who were residents of Indian Territory, or between citizens of the United States, or of any state or territory, and any citizen of, or any person residing, or found in, Indian Territory.\textsuperscript{73} For civil cases, the amount in controversy had to be at least

\textsuperscript{69} Id.
\textsuperscript{70} See OKLAHOMA ALMANAC, GOLDEN ANNIVERSARY EDITION, supra note 60, at 112.
\textsuperscript{71} 20 CONG. REC. 2317 (1889).
\textsuperscript{72} Id.
\textsuperscript{73} Id.
$100, and the civil jurisdiction conferred did not extend to disputes between persons of Indian blood only.\textsuperscript{74}

The civil jurisdiction section also repealed all laws prohibiting members of the Five Civilized Tribes as individuals from entering into contracts with citizens of the United States other than contracts for the conveyance of real estate, and repealed all laws prohibiting the Five Civilized Tribes from entering into leases or contracts for the mining of coal.\textsuperscript{75} The Indian Territory Court was given jurisdiction of controversies arising from mining contracts or leases if the sum at issue exceeded $100.\textsuperscript{76}

The criminal jurisdiction section was a complete reversal of the Senate version. The Indian Territory Court was to have original and exclusive jurisdiction of offenses against the laws of the United States committed in Indian Territory that were not punishable by death or imprisonment at hard labor.\textsuperscript{77} In sum, as to criminal cases, the Indian Territory Court was vested with jurisdiction of only minor offenses. More serious offenses, such as murder, were still to be tried in federal courts sitting without Indian Territory. Some relief was given to the Western District of Arkansas by attaching the Chickasaw Nation and part of the Choctaw Nation to the Eastern District of Texas.\textsuperscript{78} The victory that the proponents of full criminal jurisdiction had won in the Senate was completely nullified by the action of the conference committee.

The conference committee report also contained a number of substantive law provisions that shed light on what Congress perceived as major problems with law and order in Indian Territory. It was made illegal to obstruct a railroad track; to destroy railroad tracks, telegraph lines, or telephone lines; to disturb or disquiet religious worship; to commit assault with intent to rob; to mark or brand, or to alter the mark or brand, of any animal the subject of larceny; to wound, maim, or kill an animal belonging to another; to commit assault with a deadly weapon; or to set fire to woods, marshes, or prairies.\textsuperscript{79} The provisions relating to animals were classified under the rubric of malicious mischief, and if the animal was injured, or died, the jury in the criminal trial was to determine the damages.

\textsuperscript{74} Id.
\textsuperscript{75} Id.
\textsuperscript{76} Id.
\textsuperscript{77} Id.
\textsuperscript{78} Id. at 2317-18.
\textsuperscript{79} Id. at 2318.
sustained by the owner as the consequence of such injury or death. In addition to the jail time and/or fine imposed, the court was to render judgment against the defendant for treble the harm inflicted. 80

A final important qualification on the Indian Territory Court’s already limited criminal jurisdiction should be noted. Some offenses were excluded from the court’s cognizance if they were committed by an Indian against the person or property of another Indian. For example, assault with intent to commit robbery, malicious mischief involving animals, and assault with a deadly weapon could not be heard by the Indian Territory Court if committed by an Indian against another Indian or his property. 81

Those matters were subject to the exclusive jurisdiction of the tribal courts. 82

The Senate agreed to the report without roll call vote, but the House refused to concur. 83 The problem was with the court’s civil jurisdiction. The House objected to the language allowing members of the Five Civilized Tribes to enter into contracts with citizens of the United States, and wanted some limit on the power of the tribes as tribes to enter into contracts for the mining of coal. 84

In conference again, 85 the language dealing with members of the tribes contracting was stricken, and the power of the tribes to enter into leases and contracts for the mining of coal was limited to ten years. 86 This time both chambers agreed to the conference committee report. 87

On March 2, 1889, in the waning days of his first administration, President Grover Cleveland signed H.R. 1874. 88 At long last, Indian Territory had a federal court it could call its own.

80. Id.
81. Id.
82. The jurisdiction of the tribal courts included the trying of homicide cases, and the power to impose the death penalty. See, e.g., James C. Milligan & L. David Norris, The Last Chocotaw Execution, 73 THE CHRONICLES OF OKLAHOMA, 386 (1995-96).
83. 20 CONG. REC. 2318, 2371 (1889).
84. Id. at 2385.
85. 20 CONG. REC. 2371 (1889).
86. Id. at 2386.
87. See id. at 2387, 2459.
88. Id. at 2671.