

## JUDICIAL SYSTEM OF MONTANA.

MARCH 10, 1880.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. BOUCK, from the Committee on Territories, submitted the following

### REPORT:

[To accompany bill H. R. 1319.]

*The Committee on Territories, to whom was referred the bill (H. R. 1319) to reorganize the judicial system of the Territory of Montana, report:*

That we find that the said Territory is about 600 miles long and 300 miles wide.

The western or mountainous portion was first filled with a mining and agricultural population, is divided into three judicial districts, all very large, and having such an amount of business before the courts as can scarcely be disposed of.

The eastern counties of the Territory, more recently organized, and now being more rapidly settled than any other portion, have no judicial facilities but have been temporarily attached to the older districts.

It was at one time contemplated to create a new Territory out of this portion of Montana and the western part of Dakota, but it was deemed more economical to give an additional judge to Western Dakota, which has been done, and one to Eastern Montana, which this bill proposes.

This would maintain order and administer justice quite as well and save the expense of a new Territorial government.

Miles City, the county-seat of Custer and the nearest county town in the eastern counties, is 433 miles distant from Virginia City, the only point in the judicial district to which these counties are temporarily attached where a United States court can be held.

The fees and mileage of marshals, witnesses, and jurors over this great distance amounts to a very large sum; so much so that it is clear that to establish a court for these eastern counties is not only a matter of necessity, but of economy.

The letter of Hon. Henry N. Blake, late judge of the first judicial district, shows that Territorial business cannot be transacted under present conditions.

We call attention to the letter of the Attorney-General, and other communications hereto attached, and recommend the passage of the bill.

DEPARTMENT OF JUSTICE,  
Washington, February 6, 1880.

SIR: I have the honor to inclose a copy of a communication from Hon. Henry N. Blake, late associate justice of Montana Territory, relative to the necessity of the appointment of another associate justice for that Territory.

In my opinion the reasons stated are sufficient to render it proper that such an office should be created.

Very respectfully,

CHAS. DEVENS,  
*Attorney-General.*

HON. MARTIN MAGINNIS,  
*House of Representatives.*

VIRGINIA CITY, MONT., *January 23, 1880.*

SIR: I wish to call your attention to the necessity of passing a bill, similar to that pending in Congress, creating another associate justice for this Territory. As my successor has been appointed, I cannot be accused of selfish motives in making the following suggestions. If another justice is provided for he would be assigned to Custer County. A glance at the map of Montana will show more readily than these remarks the extent of this section.

1. Custer County is now in the first judicial district. Its county-seat is Miles City, which is 433 miles from Virginia City, the residence of the judge. A person must go between these places in stages, which consume from five to ten days and nights in making one trip. During the past year I spent four weeks in traveling upon the road to hold two terms of court. There are four counties in this district, and the supreme court meets twice in each year. The inconvenience of this mode of conveyance over 1,700 miles annually is evident.

2. The population of Custer County will increase rapidly, and litigation must thrive in the same ratio. The Northern Pacific Railroad will cut the east boundary of the Territory during the summer and be completed to the Yellowstone River. Steamboats ascend this stream in the season of navigation above the mouth of the Bighorn. People can thus arrive at any point in this county without difficulty. It is a rich country and must attract thousands of settlers within a brief period. One judge will be unable to attend properly to the business of the district. Summary remedies, such as injunctions, are now of little value. The papers would be about two weeks or more in the mails and might be rendered worthless by this delay. If the judge is in Custer County the other parts of the district are deprived of these remedies. If the judge is in one of the other counties of the district then Custer County suffers to this extent.

3. The business of the United States will be promoted by the proposed change. Under the law, the United States courts must be held in only one place in the district. Virginia City is in the most populous county and therefore this business is now transacted there. But the chief portion of the United States causes arises in Custer County, on account of its Indian reservations and extensive military posts. The fees allowed witnesses by the government are far below the actual cost of traveling from Custer County to Virginia, and it is difficult, if not impossible, to procure their attendance. Most of the criminal prosecutions are failures through this reason. The government cannot transport a witness who is too poor to pay his expenses upon the road, and courts cannot punish a person who is willing but not able to appear before juries. Guilty parties escape for want of proof, which could be obtained if the place of trial was in Custer County. The interests of the United States are injured by this state of affairs. Its property will be rendered more secure if criminals knew that conviction will surely follow evil deeds.

4. The terms of court must be held in Custer County in May and September on account of the condition of the roads. At any other time the journey is more difficult and hazardous. The terms are too near together in the warm months, and too far apart in the remainder of the year. No change can be made without interfering with the terms in the other counties of the district.

5. The population of Madison, Jefferson, and Gallatin, the other counties in the district, will increase in the approaching years. The Utah and Northern Railroad will enter Madison this summer, and more lawsuits will be the result. A judge who discharges his duty in this part of the Territory will be compelled to neglect Custer County, which is now suffering many inconveniences in the enforcement of law.

6. About 200 miles of the road are liable to raids by hostile Indians. Small bands from Sitting Bull's camp cross the British line very often and seek their old hunting grounds for the purpose of stealing horses and committing other crimes.

A feeling of danger attends the traveler over this route, and affects all persons having any connection with the courts of the United States. It is needless to observe that the creation of a new district will cause the United States business to be transacted at Miles City for Custer County.

7. All the justices of the supreme court of Montana and a large majority of the attorneys support this measure. When there are four members of the supreme court, the judge who tried the cause cannot sit upon the hearing of the appeal from his decision, and arguments can be submitted to three justices without bias or prejudice. The bill now pending provides for this matter.

I have thus stated briefly my views of the situation. I have furnished the points without trying to make the elaborate argument which might convince Congress of the importance of this bill. Hoping that you will express to the appropriate committee your approval of this measure,

I am, very respectfully,

HENRY N. BLAKE.

Hon. CHARLES DEVENS,  
*Attorney-General.*

*To the honorable the Senate and the House of Representatives of the United States in Congress assembled:*

Your memorialists, residents and practicing attorneys of the eastern part of the Territory of Montana, in view of the necessity of obtaining additional facilities for the administration of justice and the enforcement of the laws of the United States and of the Territory, would most respectfully represent:

That according to its present boundaries the Territory of Montana embraces an area some six hundred miles in length by about two hundred and seventy-five miles in breadth. The first settlements were made in the extreme western parts, and until within the past three years all subsequent settlers have sought homes within the limits of the few counties which were organized soon after the first establishment of our Territorial government. Hitherto no railroads have been built, and until recently few settlers have occupied that part which must soon be appropriated for agricultural and grazing purposes, and which comprises the eastern two-thirds of the whole Territory. Within the limits referred to there is a large proportion of arable land, and the anticipated advent of the Northern Pacific Railroad has already brought among us many families from the older States, while thousands of others are certain to come as soon as more ready means of communication with the East shall be established.

Within the past three years it was found that there had arisen a necessity for the immediate establishment of courts of justice and a county government in Eastern Montana, and Custer County was organized, with its seat of justice at Miles City. The county thus organized comprises an area of about four hundred miles in length by about one hundred and fifty in breadth. But experience has since demonstrated, if it were not evident before, that the administration of justice at a place so far removed from the center of either of the three judicial districts of the Territory, as they have long been established, is a matter of extreme difficulty and often an impossibility.

Custer County has been included in the first judicial district of the Territory, but the associate justice assigned to that district resides at Virginia City, the only place for holding a United States court within the district, and at a distance of about 450 miles from Miles City, the center of the settled portion of Eastern Montana.

There are within the limits referred to four different Indian reservations and three large military posts, and, as a consequence, a very large number of causes are constantly arising which are cognizable only by a court for the trial of causes arising under the Constitution and laws of the United States. In criminal causes of the class referred to, defendants are of necessity held to appear at a place hundreds of miles distant, and often at times when in the absence of railroads all means of travel and communication are practically suspended. Witnesses in these cases have of necessity to be recognized to appear at a time and place when and where an appearance involves a great outlay and sacrifice of time, expense, and personal interests. For a witness to spend a month of time and a hundred dollars or more over and above the compensation allowed by law is so great a sacrifice that any court must find it difficult and often impossible to compel attendance. While the United States is of necessity incurring a large expense in an effort to enforce its laws at a place so far removed from any of its courts—an expense which would be sufficient to maintain an additional court in this Territory—it is evident that such effort must in many cases prove abortive, and that offenders against its laws should go unpunished.

As the judicial districts of the Territory are at present constituted the people within the limits referred to are practically without a court of justice except at two short terms, in the months of May and September, when the facilities for travel, then the best during the year, are such that the associate justice assigned to the district can only attend at a greatly disproportionate outlay of time and money. At all other times there is not usually any within a distance of four hundred and fifty miles who can perform the duties of a judge at chambers or grant the relief so often imperatively and immediately necessary in the progress of suits, and which is usually obtainable in courts of equity.

The inhabitants of this part of the Territory being very largely of a class accustomed to the due and orderly administration of justice in the older States, cannot but feel that the present judicial arrangements of the Territory are wholly inadequate, and that the defect must of necessity become more and more apparent in the near future.

Your memorialists would further represent that the appointment of an additional associate justice for Montana would make practicable a better organization of the supreme court of the Territory than is possible under existing laws. That court is practically a court of last resort in the great majority of cases. As is always the case in a newly settled country, the amounts in controversy are usually small, and but few cases arise in which there is a right of appeal to the Supreme Court of the United States, even if litigants could afford to submit to the additional delay and expense. Under the present system the judge who tried the cause below sits as a member of the court when it is heard on appeal, an arrangement which has always proved a source of dissatisfaction and distrust whenever it has been adopted in any of the older States, and which experience has always had occasion to condemn.

In view of the facts above set forth, your memorialists pray that action be taken by your honorable bodies authorizing the appointment at an early day of an additional associate justice of Montana, and requiring that in the supreme court of the Territory, when a cause is heard on appeal, the judge who sat upon the trial below shall be excluded.

J. W. STREVELL,  
A. C. SWIFT,  
J. H. GARLOCK,  
T. P. McELRATH,  
J. F. WARNER,  
HIRAM BLAISDELL,  
W. D. O'TOOLE,  
JOHN McBRIDE,  
W. H. COOK,  
CHAS. WALKER,  
W. H. ROSS,

*Attorneys of Eastern Montana and Custer County.*