46TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 755.

TERRITORY OF OKLAHOMA.

APRIL 6, 1880.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

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

REPORT:

[To accompany bill H. R. 5634.]

The Committee on the Territories, to whom was referred the bill (H. R. 943) to establish the Territory of Oklahoma, respectfully beg leave to submit the following report:

The committee recommend as a substitute for the said bill Senate bill No. 1418, entitled "A bill to establish a United States court in the Indian Territory, and for other purposes," and they advise the passage of the same by the House of Representatives.

The chief features of Senate bill No. 1418 are as follows:

Sections 1 to 8, inclusive, establish a United States court, with a jurisdiction coextensive with the Indian Territory.

Section 5 defines the jurisdiction of the court, which shall, in regard to criminal cases, be the same as is now possessed by the United States district court for the western district of Arkansas. It further gives jurisdiction over all offenses committed by one or more members of any tribe or nation of said Territory against the person or property of a member or members of any other tribe or nation therein. Said court shall also have jurisdiction of a civil nature in all suits wherein a citizen or citizens of the United States shall be a party and the adverse party a member or members of one or more Indian tribes or nations in said Territory, or where one or more members of any Indian tribe or nation shall be a party and the adverse party shall be a member or members of any other Indian tribe or nation therein.

Sections 9 to 23, inclusive, provide for the selection of jurors and the practice and proceedings of said court.

Sections 24 to 35 provide for the establisment of a land-office, the survey of the lands, and the partition of the same among the Indians, so that every member of any of the Indian tribes, whether by birth or adoption, an adult or minor, male or female, shall be entitled to 160 acres of land, the remaining lands to be sold by the United States, and the proceeds to be held in trust for the Indians by the United States; and that the lands so taken up by the Indians shall be inalienable and free from any lien for the period of twenty-one years. There is a provision that none of these sections, 24 to 34, inclusive, shall take effect until the five civilized tribes shall assent thereto, either separately or in joint convention.

Section 35 provides that any Indian in the Territory, on compliance with certain requisites, may become a citizen of the United States; and section 36 entitles such an Indian to his proportionate share of the tribal fund.

Your committee, at the outset of their inquiry, are met by three questions:

1st. Whether the proposed legislation will be beneficial to the Indians.

2d. Whether it will be beneficial to the people of the United States.

3d. Whether it be in accordance with the treaty stipulations between the United States and the Indian tribes of the Territory.

All of these questions your committee does not hesitate to answer in the affirmative.

Before attempting an answer to these queries it will be appropriate to the subject-matter before the committee to present in brief a sketch of the present condition of the Indian Territory. The Territory is, in area, 64,214 square miles, or 41,097,027 acres, of the most fertile land on our continent, equally adapted to the cultivation of cereals and of cotton. It is well watered and free from drought, as well as from the grasshopper plague, so fatal to the prosperity of our western territory. The population is about 74,000, of which 57,000 are citizens of the so-called civilized tribes, to wit, the Cherokees, Creeks, Choctaws, Chickasaws, and Seminoles. Of these about 20,000 are citizens of the United States, being either negroes or white residents. About 46,000 of this number speak, and most of them read. the English language. This is a larger English-speaking population than resided in any of the organized Territories in 1870, with the exception of Utah and New Mexico. Each of these five nations is independent of the other, with a regularly organized form of government, with written constitutions and codes of laws modeled upon our own. The school system is remarkably good, and the attendance of children as large proportionately as in the States.

Under existing laws the only general jurisdiction exercised over these various tribes is vested in the United States Court at Fort Smith, Ark., and this is limited to cases of a criminal nature, wherein a citizen of the United States is a party plaintiff or defendant, or where the offense is committed upon the person of a citizen of the United States. All other causes, criminal, in which Indians only are parties, and all causes, civil, are triable only before the local tribal courts. The distance of Fort Smith from the inhabitants of the nations offers a very serious obstacle to the course of justice, and all the property of citizens of the United States in the Territory (amounting to about $12,000,000), as well as all cases of contract between these and the Indians, are adjudicable only before the same courts. No efficient system of extradition in criminal cases obtains between the tribes, and hence many crimes go unpunished. The system of land-tenure is decidedly opposed to any progress in agriculture. It is the tenure in common.

Your committee does not consider it necessary to enter into any lengthened discussion on the benefits of the tenure in severalty. Successive Presidential messages, reports of Commissioners of Indian Affairs, and numerous reports of committees both of the Senate and of this House all enforce the doctrine that civilization and its accompanying advantages have their origin and firmest foundation in the individual ownership of property. A striking illustration of the difference between the two systems may be found in the fact that Labette County, in Kansas, with an area not so large by 40,000,000 acres as the Indian Territory, and one-half the population, produces one million bushels more grain than the whole Territory.

Another anomalous condition of affairs is to be discovered in the legal status of the members of these civilized tribes. Any white man who marries an Indian woman becomes thereby a citizen of her tribe without forfeiting his citizenship in the United States. The offspring of such

a marriage are citizens of both the United States and the tribe of the mother; but a full-blooded Indian cannot become a citizen of the United States without sacrificing his tribal rights.

Your committee, in view of the above facts, conclude that the features of the bill which they offer as a substitute are most favorable to the interests of both the Indian and the white man, because they provide for a tribunal in which all may find ample protection for their personal and property rights—a tribunal they now seek in vain; because they open a way to the division of lands in severalty and thereby promise all the material advantages likely to result therefrom; because they will, if adopted, surely result in a large commercial intercourse between the States and the Territory which cannot fail to be mutually beneficial to both races.

The last question is whether this bill can be passed without a violation of treaty obligations, and here we must refer to the language of the various treaties. In 1866, treaties were made with the five civilized nations. In the treaty with the Cherokees, concluded July 19, 1866, article 13 sets forth: "The Cherokees also agree that a court or courts may be established by the United States in said Territory with such jurisdiction and organized in such manner as may be prescribed by law." There is then a provision that the jurisdiction of their local tribunals over their own subjects shall not be interfered with.

Article 20 of the same treaty prescribes that: "Whenever the national council shall request it, the Secretary of the Interior shall cause the country reserved for the Cherokees to be surveyed and allotted among them."

Article 10 of the Creek treaty of June 14, 1866 is as follows: "The Creeks agree to such legislation as Congress and the President of the United States may deem necesary for the better administration of justice and the protection of the rights of person and property within the Indian Territory." And section 7 of the same article reads: "The Creeks also agree that a court or courts may be established in said Territory with such jurisdiction and organized in such manner as Congress may by law provide."

Article 8, section 8, of the Choctaw and Chickasaw treaty, of same date, 1866, contains a similar provision with regard to the establishment of courts; and article 11 of the same provides for the division of lands in severalty upon consent of their respective councils.

Article 7 of the Seminole treaty of 1866 is similar in its provisions in relation to United States courts. The treaties, then, explicitly agree to the establishment of a United States court with a jurisdiction such as the bill under consideration confers; that is, such a jurisdiction as shall not infringe upon the domain of the local tribunals.

The other two features of the bill—1st. The one providing for the division of the lands in severalty; 2d. The conferring of citizenship upon the Indians—only take effect upon the consent of the latter, and, therefore, in nowise are inconsistent with the treaties.

In conclusion, your committee are of opinion that the past policy of the government towards the Indian tribes has been fraught with ill both to the savage and the white man, and that the future prosperity and even existence of the Indian demands that he should have—

a. A legalized standing in the courts of the United States.

b. Ownership of the land in severalty.

c. The full rights of American citizenship.

As an important step towards this great end, your committee recommend the passage of the substitute reported.