

PROBATE COURT, OKLAHOMA.

FEBRUARY 16, 1891.—Referred to the House Calendar and ordered to be printed.

MR. STRUBLE, from the Committee on the Territories, submitted the following

REPORT:

[To accompany H. R. 13377.]

The Committee on the Territories, to whom was referred House bill 13377, after considering the same, make the following report:

During the late session of the Oklahoma assembly an act extending the jurisdiction of the probate court in civil and criminal cases, and prescribing the procedure therein and providing for appeals therefrom, was passed, and was as follows:

Be it enacted by the legislative assembly of the Territory of Oklahoma:

SECTION 1. Probate courts in their respective counties shall, in addition to the powers conferred upon them by the probate code of the Territory, have and exercise the ordinary powers and jurisdiction of justices of the peace, and shall in civil cases have concurrent jurisdiction with the district court in all civil cases in any sum not exceeding one thousand dollars exclusive of costs, and in actions of replevin where the appraised value of the property does not exceed that sum and the provisions of the code of civil procedure relative to justices of the peace and to practice and proceedings in the district court shall apply to the proceedings in all civil actions prosecuted before said probate courts; provided that probate courts shall not have jurisdiction:

First. In any action for malicious prosecution.

Second. In any action against officers for misconduct in office except where like proceedings can be had before justices of the peace.

Third. In actions for slander and libel.

Fourth. In actions upon contracts for sale of real estate.

Fifth. In any matter wherein the title or boundaries of land may be in dispute nor to order or decree the sale or partition of real estate.

SEC. 2. In all cases commenced in said probate courts wherein the sum exceeds the jurisdiction of justices of the peace, the pleadings and practice and proceedings in said court both before and after judgment shall be governed by the code of civil procedure of the Territory governing pleadings and practice and proceedings in the district court.

SEC. 3. In all cases commenced in said probate courts that are within the jurisdiction of justices' courts the practice and proceedings, and pleadings, both before and after judgment, provided for in the justices code of the Territory, shall be applicable to the practice, pleadings, and proceedings of said probate courts.

SEC. 4. The probate judge shall on the first day of each term, prepare a calendar of the cases standing for trial at said term, placing the causes on said calendar in the order in which the same are numbered on the docket, and setting the cases for trial in such order upon convenient days during said term; and the provisions of the code of civil procedure of the Territory relative to the docket in district courts shall so far as they are applicable apply to said calendar.

SEC. 5. The probate courts of the Territory shall be deemed to be always open for the filing of papers and the issuance of processes in civil actions, and for the purpose of taking and entering judgments by confession, and for the purpose of trying all actions commenced therein that are triable under the justice code of the Territory, and for all probate business of their respective counties.

SEC. 6. Appeals from the final judgment of said probate courts shall be allowed and taken to the supreme court of this Territory in the same manner as from the district court and with like effect when only questions of law are involved in the appeal. If questions of fact are to be retried in the appellate court the appeals shall be taken to the district court of the county in manner and form as appeals are taken from judgments of justices of the peace.

SEC. 7. In all cases pending or to be brought in the probate court the probate judge shall have power and jurisdiction to allow injunctions, mandates, writs of prohibition, and to make all other and further orders as may be necessary in cases pending in said court, and to hear and determine motions made to vacate or modify the same, and generally to do as to actions pending in said courts any and all acts which the judges of the district courts are by law authorized to do. He may also, in case of the absence of the district judge from his county, allow injunctions in matter about to be brought or pending in the district court, but he shall not have power to vacate or modify the same. He shall have power to allow writs of habeas corpus in all cases provided by law and to hear and to determine the same.

SEC. 8. All criminal actions prosecuted in the probate court shall be brought in the same manner as similar actions in the justices' courts, or shall be upon information of the county attorney, based upon a sworn complaint, and shall be under his direction and control, and warrants shall issue the same as in the justices' courts: *Provided*, If the complaint or information be adjudged defective or insufficient it may be amended to any extent and sworn to until it is sufficient, and if the evidence fails to prove the crime charged, but tends to prove any other crime, the information may be amended to charge the crime which the evidence tends to prove; and if that be a felony, the trial shall be suspended and the accused shall be proceeded against by preliminary examination and bound over or discharged as the court shall deem just under the evidence. If the information or complaint be amended the court shall see that the defendant is not prejudiced thereby, and, if justice requires it, shall grant to the accused time to prepare his defense to the information or complaint as amended.

SEC. 9. The probate judges for any services performed by or in any matter within the jurisdiction of a justice of the peace shall be allowed the same fees as are allowed by law to justices of the peace for like services, and in all civil actions triable in a probate court of which a justice of the peace has no jurisdiction, the probate judge shall be entitled to receive the same fees as are allowed to a clerk of the district court for like services, and shall be allowed further fees as follows: For each day's attendance upon trial of a case after the first day, two dollars; taking and approving bail bond, twenty-five cents; for entering voluntary appearance of defendant, twenty-five cents; commission on money collected on judgments without execution, one per cent. on the amount.

SEC. 10. This act shall be in force and take effect from and after its adoption and legalization by act of Congress.

ARTHUR N. DANIELS,
Speaker of the House of Representatives.
G. W. GARDENHIRE,
President of the Council.
GEO. W. STEELE,
Governor.

DECEMBER 24, 1890.

It will be seen that by the last section of the act the same is not to be in force and effect until adopted and legalized by act of Congress.

The bill, H. R. 13377, proposes to ratify, adopt, and legalize this act of the Oklahoma Territorial assembly.

The business of the district courts of Oklahoma Territory had increased to a great extent before the adjournment of the legislative assembly, partly because of the accumulation of such business prior to the establishment of said courts and also because of the fact that the Indian reservations of other parts of the Indian Territory have been attached to the various counties of Oklahoma Territory for certain judicial purposes.

This business continued to increase and was further augmented at the time of the adjournment of the Territorial assembly, by transfers to the district courts of the causes remaining undisposed of in the respective county courts as constituted under the laws of Nebraska made applicable to said Territory, under the organic act. The accumulation of business in the said district courts has resulted in serious delay

in the disposition of causes, and to relieve the hardship and provide additional facilities for the transaction of the legal business of the Territory the Territorial Assembly enacted the law above set forth.

Your committee regard the purpose of the statute commendable, and therefore recommend the passage of the bill.

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