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THE JUDICIAL CODE OF MARCH 3, 1911.

NEAR the close of its last session, the Sixty-first Congress passed an act entitled "An Act to codify, revise and amend the laws relating to the judiciary." Approved March 3, 1911, which, by its own terms, Sec. 296, is to be designated and cited as "THE JUDICIAL CODE." This act is to become operative on and after Jan. 1, 1912. The act is brief, considering the extent of the subject matter of which it treats, and the number and importance of the courts with which it deals. It is embraced within a compass measured by ninety-three pages of the regulation size of congressional public documents. It is a substitute for preceding enactments creating the courts of the United States and distributing jurisdiction among them, and furnishes in compact form a complete code defining the jurisdiction and procedure of the nisi prius and appellate courts. The significant provision of the act is the abolition of the Circuit Court and of the office of the Circuit Court Clerk, and the assignment of the jurisdiction conferred by previous acts upon the Circuit Court, to the District Court. The fact that two clerks' offices and two sets of records were maintained in each district without public necessity for their existence, and the fact that since the Circuit Courts of Appeals were established the District Judges have almost exclusively done the work assigned to the Circuit Courts, and prior to that time had done the most of such work, prompted, probably, more than any other circumstance, the enactment of this statute. The act preserves all the essential features of the general plan of the creation, organization and jurisdiction of the Federal Courts ordained by the Judiciary Act of 1789, a plan which has endured from the day of its adoption to the present time in spite of the changes, expansion and development during the century and a quarter of the Commonwealth's life. The general plan has not been departed from during our entire judicial history, and is not departed from in this latest act relating to the judiciary.

The Judiciary Act of 1789, from every point of view, is one of the great acts of Congress, and stands, and always has stood, a monument to the great foresight and distinguished legal ability of that band of eminent lawyers of our early governmental history, who, under the leadership of Oliver Ellsworth, framed, without precedent, without analogies and without other guide than their own great ability, the splendid system of jurisprudence, jurisdiction and procedure of the national courts, which, with slight changes from time to time, has met the demands of ninety millions of people

as well as of three millions; which has been found adequate to the requirements of a territory of the proportions of an empire as well as of a territory of limited area, and which has proved itself suited to the complex business and social life of the opening years of the twentieth century, as well as to the closing years of the eighteenth century.

With the Judiciary Act of 1789, and the amendments thereto adopted from time to time to meet the changed conditions of advancing years, and increasing population and business, as their guide, the Sixty-first Congress had little to do save to eliminate the obsolete and to reject what was unnecessary to present requirements, without it for their guide, the Sixty-first Congress would have been confronted with a task from which the wisest among them would have shrunk. It is no disparagement of the originality or wisdom of the Sixty-first Congress that it followed in the footsteps of the First Congress. The experience of a century was appealing for a preservation of the system and was suggesting a revision of previous acts limited to the requirement and accommodation of present conditions. That Congress heeded the appeal and suggestion is manifest from the act itself. It creates little, if anything. It revises and amends with moderation. Its main feature is codification. It contains fourteen chapters.

Chapter I deals with District Courts and their organization. The provisions of this chapter are little more than re-enactments of statutes with which the practitioner has been familiar.

Chapter II deals with District Courts and their jurisdiction. The clause conferring jurisdiction is adapted from previous enactments conferring jurisdiction upon the Circuit Courts. In one respect the language conferring the jurisdiction upon the District Court formerly conferred upon the Circuit Court is an improvement on previous enactments; particularly in respect to arrangement and perspicuity. No question could arise under the provisions of this clause such as arose formerly as to the jurisdictional amount. The particular jurisdiction here referred to is embraced in the first paragraph of Section 24 of the act: "The District Courts shall have original jurisdiction as follows:

"First. Of all suits of a civil nature, at common law or in equity, brought by the United States, or by any officer thereof authorized by law to sue, or between citizens of the same state claiming lands under grants from different states." It will be observed that this provision is clear on the proposition that no jurisdictional amount is required. The suits to which the jurisdictional amount under former enactments was applicable became the subject of controversy

and was settled by the Supreme Court in *United States v. Sayward*, 160 U. S. 493. Continuing, the First Section makes it clear to what matters in controversy the jurisdictional amount applies. The language is: "Or, where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of three thousand dollars, and arises under the Constitution or laws of the United States, or treaties made, or which shall be made, under their authority, or between citizens of different states, or is between citizens of a state and foreign states, citizens, or subjects." It is important to note that the jurisdictional amount has been raised by the Judicial Code to three thousand dollars, as compared with two thousand dollars under the last preceding act.

The second subdivision of Section 24 gives to the District Court jurisdiction of all crimes and offenses cognizable under the authority of the United States.

The general jurisdiction conferred by the act upon District Courts is embraced in twenty-five clauses or subdivisions of Section 24. Sections 25, 26, and 27 confer appellate jurisdiction in a special case and original jurisdiction in some special instances.

"Sec. 25. The District Court shall have appellate jurisdiction of the judgments and orders of United States Commissioners in cases arising under the Chinese exclusion laws.

"Sec. 26. The District Court for the district of Wyoming shall have jurisdiction of all felonies committed within the Yellowstone National Park and appellate jurisdiction of judgments in cases of conviction before the commissioner authorized to be appointed under section five of an Act entitled 'An Act to protect the birds and animals in Yellowstone National Park, and to punish crimes in said Park, and for other purposes,' approved May seventh eighteen hundred and ninety-four.

"Sec. 27. The District Court of the United States for the district of South Dakota shall have jurisdiction to hear, try, and determine all actions and proceedings in which any person shall be charged with the crime of murder, manslaughter, rape, assault with intent to kill, arson, burglary, larceny, or assault with a dangerous weapon, committed within the limits of any Indian reservation in the State of South Dakota."

Chapter III deals with District Courts and removal of causes. It is a re-enactment of previous provisions concerning removal of causes to the Circuit Courts. The only substantial change is the necessary substitution of District Courts for Circuit Courts.

Chapter IV contains miscellaneous provisions relative to the District Courts.

Chapter V creates and defines the judicial districts into which the United States is divided. These districts severally include the territory embraced, on the first day of July, 1910, within designated counties.

Chapter VI re-enacts in substance, prior statutes concerning the Circuit Courts of Appeals.

Chapter VII deals with the Court of Claims. The first section of the chapter, Section 136 of the act, provides: "The Court of Claims, established by the Act of February twenty-fourth, eighteen hundred and fifty-five, shall be continued." It makes further provisions for the organization, composition and jurisdiction of the court, which provisions are re-enactments of previous statutes revised, however, to conform to the transfer of the jurisdiction, formerly vested in the Circuit Court, to the District Court.

Chapter VIII deals with the Court of Customs Appeals.

Chapter IX deals with the Commerce Court, and embraces the enactment establishing that Court.

Chapter X deals with the Supreme Court, and re-enacts the statutory provisions relating to that Court.

Chapter XI of the act deals with provisions common to more than one court and with certain miscellaneous matters respecting the oath of the United States Judges, their prohibition from practicing, the expenses of Circuit Justices and Circuit and District Judges, the salary of judges after resignation, and matters of practice and procedure.

Chapter XII deals with juries, petit and grand; the qualifications and exemptions of jurors; the manner of drawing them; their apportionment in the district; limitations on their exclusion, and the manner of their summoning.

Chapter XIII of the act abolishes the Circuit Courts; makes provision for the transfer of their records to the District Courts, and the disposal of suits pending therein, and their transfer to the District Courts, and makes this provision: "Sec. 291. Whenever, in any law not embraced within this act, any reference is made to, or any power or duty is conferred or imposed upon, the Circuit Courts, such reference shall, upon the taking effect of this act, be deemed and held to refer to, and to confer such power and impose such duty upon, the District Courts."

Chapter XIV deals with repealing provisions, and repeals specifically certain designated sections of the Revised Statutes, and certain other designated statutes, and concludes: "Also all other acts and parts of acts, in so far as they are embraced within and superseded by this act, are hereby repealed; the remaining portions thereof to

be and remain in force with the same effect and to the same extent as if this act had not been passed."

"The Judicial Code" will commend itself to practitioners by reason of the compact form in which the law relating to the Federal judiciary is expressed. The changes made in the law which has become familiar to practitioners will not, it is conjectured, be embarrassing to them. On and after the date when the Judicial Code becomes operative the general practitioner in the Federal Court will find himself in the District Court instead of in the Circuit Court. The change will be nominal, not substantial. The act has already been annotated by James Love Hopkins of the bar of the Supreme Court of the United States and author of "Hopkins on Unfair Trade" and "Hopkins on Trade Marks" and has just been issued by the publishers, Callaghan & Company, of Chicago. A copy of the act is set out in the publication together with notes based upon about two hundred fifty cases.

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