

Aug. 11, 1848.

CHAP. CL. — *An Act to carry into Effect certain Provisions in the Treaties between the United States and China and the Ottoman Porte, giving certain judicial powers to Ministers and Consuls of the United States in those Countries.*

The commissioner and consuls of the United States appointed to reside in China vested with judicial authority.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That, to carry into full effect the provisions of the treaty of July third, eighteen hundred and forty-four, with the Chinese empire, the commissioner and the consuls of the United States, duly appointed to reside in China, shall, in addition to the other powers and duties imposed upon them by the provisions of said treaty, be vested with the judicial authority herein described, which shall appertain to the said office of commissioner and consul, and be a part of the duties belonging thereto.

May arraign and try all citizens of the United States charged with offences against law in the dominions of China, and upon conviction, sentence the offenders.

1850, ch. 65.

Their jurisdiction in regard to civil rights.

SEC. 2. *And be it further enacted,* That in regard to crimes and misdemeanors, the said public functionaries are hereby fully empowered to arraign, and try, in the manner herein provided, all citizens of the United States charged with offences against law, which shall be committed in the dominions of China, including Macao, and, upon conviction, to sentence such offenders in the manner herein authorized; and the said functionaries and each of them are hereby authorized to issue all such processes as are suitable and necessary to carry this authority into execution.

SEC. 3. *And be it further enacted,* That in regard to civil rights, whether of property or person, the said functionaries are hereby vested with all the judicial authority necessary to execute the provisions of said treaty, and shall entertain jurisdiction in matters of contract at the port where, or nearest to which, the contract was made, or at the port at which, or nearest to which, it was to be executed; and in all other matters at the port where, or nearest to which, the cause of controversy arose, or at the port where, or nearest to which, the damage complained of was sustained — any such port above named being always one of the five mentioned in the treaty; which jurisdiction shall embrace all controversies between citizens of the United States or others provided for by said treaty.

Laws of the United States extended over the citizens of the United States in China; and when they are deficient, the common law extended in like manner.

SEC. 4. *And be it further enacted,* That such jurisdiction in criminal and civil matters shall, in all cases, be exercised and enforced in conformity with the laws of the United States, which are hereby, so far as is necessary to execute said treaty, extended over all citizens of the United States in China, (and over all others to the extent that the terms of the treaty justify or require,) so far as such laws are suitable to carry said treaty into effect; but in all cases where such laws are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies, the common law shall be extended in like manner over such citizens and others in China; and if defects still remain to be supplied, and neither the common law nor the statutes of the United States furnish appropriate and suitable remedies, the commissioner shall, by decrees and regulations which shall have the force of law, supply such defects and deficiencies.

Where these are insufficient, the commissioner shall, by decrees and regulations, supply such defects.

The commissioner, with the advice of the several consuls, to make the necessary regulations, decrees, &c., for carrying the provisions of this act into effect.

SEC. 5. *And be it further enacted,* That, in order to organize and carry into effect the system of jurisprudence demanded by said treaty, the commissioner, with the advice of the several consuls for the five ports named in said treaty, or so many of them as can be conveniently assembled, shall prescribe the forms of all processes which shall be issued by any of said consuls; the mode of executing and the time of returning the same; the manner in which trials shall be conducted, and how the records thereof shall be kept; the form of oaths for Christian witnesses, and the mode of examining all other witnesses; the costs which shall be allowed to the prevailing party, and the fees which shall be paid for judicial services to defray necessary expenses;

the manner in which all officers and agents to execute process, and to carry this act into effect, shall be appointed and compensated; the form of bail bonds, and the security which shall be required of the party who appeals from the decision of a consul; and generally, without further enumeration, to make all such decrees and regulations from time to time, under the provisions of this act, as the exigency may demand; and all such regulations, decrees, and orders shall be plainly drawn up in writing, and submitted, as above provided, for the advice of the consuls, or as many of them as can be consulted without prejudicial delay or inconvenience, who shall each signify his assent or dissent in writing, with his name subscribed thereto; and after taking such advice, and considering the same, the commissioner may, nevertheless, by causing the decree, order, or regulation, to be published with his signature thereto, and the opinions of his advisers inscribed thereon, [make it] to become binding and obligatory until annulled or modified by Congress, and it shall take effect from the publication or any subsequent day thereto named in the act.

How advice shall be taken.

SEC. 6. *And be it further enacted*, That all such regulations, orders, and decrees shall, as speedily as may be after publication, be transmitted by the commissioner, with the opinions of his advisers, as drawn up by them severally, to the President, to be laid before Congress for revision.

Such regulations, decrees, &c., to be transmitted to the President, to be laid before Congress.

SEC. 7. *And be it further enacted*, That each of the consuls aforesaid, at the port for which he is appointed, shall be competent, under the authority herein contained, upon facts within his own knowledge, or which he has good reason to believe true, or upon complaint made, or information filed in writing and authenticated in such way as shall be prescribed by the commissioners, to issue his warrant for the arrest of any citizen of the United States charged with committing in China an offence against law; and when arrested, to arraign and try any such offender; and upon conviction, to sentence him to punishment in the manner herein prescribed; always meting out [punishment] in a manner proportioned to the offence; which punishment shall, in all cases, except as is herein otherwise provided, be either fine or imprisonment.

Powers and duties of consuls.

SEC. 8. *And be it further enacted*, That any consul, when sitting alone for the trial of offences, shall finally decide all cases where the fine imposed does not exceed one hundred dollars, or the term of imprisonment does not exceed sixty days, and there shall be no appeal therefrom, except as provided in section eleven of this act.

Mode of punishment.

SEC. 9. *And be it further enacted*, That when sitting alone he may also decide all cases in which the fine imposed does not exceed five hundred dollars, or the term of imprisonment does not exceed ninety days; but in all such cases, if the fine exceeds one hundred dollars, or the imprisonment exceeds ninety days, the defendant may, by complying with the requirements in cases of appeal, carry the case before the commissioner by appeal.

No appeal from the decision of a consul in certain cases.

SEC. 10. *And be it further enacted*, That whenever in any case the consul shall be of opinion that, by reason of the legal questions which may arise therein, assistance will be useful to him, or whenever he shall be of opinion that a severer punishment than those above specified will be required, he shall, in either case, summon one or more citizens of the United States, not exceeding four in number, but in capital cases not less than four, who shall be persons of good repute and competent to the duty, to sit with him in the trial, and who, after so sitting upon the trial, shall each enter upon the record his judgment and opinion, and sign the same. The consul shall, however, decide the case; but if his decision is opposed by the opinion of one or more of his associates, the case, without further proceedings, together with the evidence and opinions, shall be referred to the commissioner for

Cases in which the defendant may appeal to the commissioner.

Cases in which the consul may summon one or more American citizens for assistance and advice.

his final adjudication, either by entering up judgment therein, or remitting the same to the consul with instructions how to proceed therewith; but in all such cases, except capital offences, if the consul and his associates concur in opinion, the decision shall be final.

Extent of jurisdiction of consuls.

SEC. 11. *And be it further enacted*, That the consuls aforesaid, and each of them, at the port for which he is appointed, shall have jurisdiction, as is herein provided, in all civil cases arising under said treaty, wherein the damage demanded does not exceed the sum of five hundred dollars; and if he sees fit to decide the same without aid, his decision thereon shall be final; but if in his judgment any case involves legal perplexities, and assistance will be useful, or if the damage demanded exceeds five hundred dollars, in either such case it shall be his duty to summon to his aid not less than two nor more than three citizens of the United States, of good repute and competent to the duty, who shall with him hear any such case; and if the consul and his associates concur in opinion, the judgment shall be final; but if the associates, or any of them, differ from the consul, the opinions of all shall be noted on the record, and each shall subscribe his name to his assent to, or dissent from, the consul, with such reasons therefor as he thinks proper to assign, and either party may thereupon appeal, under such regulations as may exist, to the commissioner; but if no appeal is lawfully claimed, the decision of the consul shall be final and conclusive.

Evidence in all cases to be taken down in writing.

SEC. 12. *And be it further enacted*, That, in all cases, criminal and civil, the evidence shall be taken down in writing in open court, under such regulations as may be made for that purpose; and all objections to the competency or character of testimony shall be noted down, with the ruling in all such cases, and the evidence shall be part of the case.

Jurisdiction of commissioner.

SEC. 13. *And be it further enacted*, That the commissioner of the United States shall, in addition to his power to make regulations and decrees, as is herein provided, be fully authorized to hear and decide all cases, criminal and civil, which may come before him under the provisions of this act, and to issue all processes necessary to execute the power conferred upon him; and he is hereby fully empowered to decide finally any case upon the evidence which comes up with it, or to hear the parties further, if he thinks justice will be promoted thereby; and he may also prescribe the rules upon which new trials may be granted, either by the consuls or by himself, if asked for upon justifiable grounds.

Punishment, except in cases hereinafter mentioned, to be fine and imprisonment, and to be in proportion to the magnitude of the offence.

SEC. 14. *And be it further enacted*, That in all cases, except as is herein otherwise provided, the punishment of crime provided for by this act shall be by fine or imprisonment, or both, at the discretion of the functionary who decides the case, but subject to the regulations herein contained, and such as may hereafter be made. It shall, however, be the duty of each and every functionary to allot punishment according to the magnitude and aggravation of the offence, and all who refuse or neglect to comply with the sentence passed upon them shall stand committed until they do comply, or are discharged by order of the consul, with the consent of the commissioner.

Capital offences.

SEC. 15. *And be it further enacted*, That murder and insurrection, or rebellion against the Chinese government, with intent to subvert the same, shall be capital offences, punishable with death; but no person shall be convicted of either of said crimes unless the consul and his associates in the trial all concur in opinion, and the commissioner also approves of the conviction; but it shall always be lawful to convict one put upon trial for either of these crimes of a lesser offence, of a similar character, if the evidence justifies it; and when so convicted, to punish as for other offences, by fine or imprisonment, or both.

SEC. 16. *And be it further enacted*, That whenever any one shall

be convicted of either of the crimes punishable with death, as aforesaid, it shall be the duty of the commissioner to issue his warrant for the execution of such convict, appointing the time, place, and manner; but if the said commissioner shall be satisfied that the ends of public justice demand it, he may, from time to time, postpone such execution; and if he finds mitigatory circumstances which may authorize it, may submit the case to the President of the United States for pardon.

SEC. 17. *And be it further enacted*, That it shall be the duty of the commissioner to establish a tariff of fees for judicial services, which shall be paid by such parties, and to such persons, as said commissioner shall direct; and the proceeds shall, as far as is necessary, be applied to defray the expenses incident to the execution of this act; and regular accounts, both of receipts and expenditures, shall be kept and laid before Congress by the commissioner annually.

SEC. 18. *And be it further enacted*, That, in consideration of the duties herein imposed upon the commissioner, there shall be paid to him, out of the treasury of the United States, annually, the sum of one thousand dollars in addition to his salary; and there shall also be paid, annually, to each of said consuls, for a like reason, the sum of one thousand dollars in addition to consular fees.

SEC. 19. *And be it further enacted*, That, in all criminal cases which are not of a heinous character, it shall be lawful for the parties aggrieved or concerned therein, with the assent of the commissioner or consul, to adjust and settle the same among themselves, upon pecuniary or other considerations.

SEC. 20. *And be it further enacted*, That it shall be the duty also of the commissioner and the consuls to encourage the settlement of controversies of a civil character by mutual agreement, or to submit them to the decision of referees agreed upon by the parties, a majority of whom shall have power to decide the matter. And it shall be the duty of the commissioner to prepare a form of submission for such cases, to be signed by the parties and acknowledged before the consul; and when parties have so agreed to refer, the referees may, after suitable notice of the time and place of meeting for the trial, proceed *ex parte*, in case either party refuses or neglects to appear; and, after hearing any case, may deliver their award sealed to the consul, who, in court, shall open the same; and if he accepts it, he shall endorse the fact, and judgment shall be rendered thereon, and execution issue in compliance with the terms thereof: *Provided, however*, That the parties may always settle the same before return thereof is made to the consul.

SEC. 21. *And be it further enacted*, That the commissioner and the consuls shall be fully authorized to call upon the Chinese authorities to sustain and support them in the execution of the powers confided to them by said treaty, and on their part to do and perform whatever is necessary to carry the provisions of said treaty into full effect, so far as they are to be executed in China.

SEC. 22. *And be it further enacted*, That the provisions of this act, so far as the same relate to crimes committed by citizens of the United States, shall extend to Turkey, under the treaty with the Sublime Porte of May seventh, eighteen hundred and thirty, and shall be executed in the dominions of the Sublime Porte, in conformity with the provisions of said treaty, by the minister of the United States, and the consuls appointed by the United States to reside therein, who are hereby *ex officio* vested with the powers herein contained, for the purposes above expressed, so far as regards the punishment of crime.

SEC. 23. *And be it further enacted*, That the word commissioner, when used in this act, shall be understood to mean the persons vested

Commissioner to issue his warrant for the execution of persons convicted of capital offences.

May postpone such execution, and may submit the case to the President for pardon.

Commissioner to establish a tariff of fees, &c.

Annual Report to Congress.

Compensation of commissioner and consuls for services under this act.

In certain criminal cases the parties, with consent of commissioner, may settle the same among themselves.

Commissioner and consuls shall encourage the settlement of civil controversies by mutual agreement, &c., among the parties.

Consul may enforce the award.

May call on the Chinese authorities to support them in the exercise of the powers herein confided to them.

Provisions of this act extended to Turkey.

Meaning of words "com-

missioner" and "consul" as used in this act.

All officers herein referred to responsible to the United States and the laws thereof.

with and exercising the principal diplomatic functions in China; and the word minister, as meaning the person vested with the powers of chief diplomatic functionary of the United States in Turkey. The word consul shall be understood to mean any person vested by the United States with, and exercising, the consular authority in any of the five ports in China named in the treaty, or in any port in Turkey.

SEC. 24. *And be it further enacted*, That all such officers shall be responsible for their conduct to the United States and to the laws thereof, not only as diplomatic functionaries and commercial functionaries, but as judicial officers when they perform judicial duties, and shall be held liable for all negligences and misconduct as public officers.

APPROVED, August 11, 1848.

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CHAP. CLI.—*An Act for dividing the State of Georgia into two Judicial Districts, and organizing and establishing an additional District Court of the United States, with Circuit Court Powers and Jurisdiction.*

State of Georgia divided into two judicial districts.

Southern District.

Northern District.

Terms of court for the northern district.

Return days.

Certain causes pending in the courts at Savannah and Milledgeville to be transferred to the District Court for the northern district.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the State of Georgia shall be, and the same is hereby, divided into two judicial districts, in manner following, to wit: the counties of Harris, Talbot, Upson, Monroe, Jones, Putnam, Hancock, Warren, Columbia, and all the counties in said State south of them, shall compose one district, to be called the southern district; and the courts shall be held as heretofore, and at the times now authorized and required by law, at Savannah. The counties of Troupe, Merriwether, Pike, Butts, Jasper, Morgan, Greene, Taliaferro, Wilkes, Lincoln, and all the remaining counties in said State north of them, shall compose one district, to be called the northern district, and a court shall be held for the said district at Marietta, in the county of Cobb.

SEC. 2. *And be it further enacted*, That there shall be two terms of the District Court for the northern district, held at Marietta, in each and every year, to begin on the second Monday in March, and on the second Monday in September. And the district judge of the United States for the State of Georgia is hereby required to hold the courts aforesaid; and furthermore, he is authorized and required to hold one or more special terms at Marietta, in each year, if, in his opinion, the business of the court or the public convenience shall require it to be done.

SEC. 3. *And be it further enacted*, That the second Monday in March and the second Monday in September in each year shall be return days for writs and executions, returnable to the said District Court to be held for the northern district at Marietta; and the parties to such suits as shall be so returned shall make up their pleadings under such rules as the court shall prescribe, in order to have the causes so returned in a state of readiness for trial at the succeeding regular term.

SEC. 4. *And be it further enacted*, That all causes at law or in chancery pending in the said District Courts at Savannah, or in the Circuit Court of the United States at Savannah and Milledgeville, where the defendant or defendants resided in the northern district (as hereby established) at the time of serving process, shall be transferred for trial to the District Court for the said northern district, and be proceeded in, heard, adjudged, and determined in the same manner as though originally commenced or prosecuted in said court. And it shall be the duty of the clerks of the said courts at Savannah and Milledgeville safely to transmit to the clerk of the District Court at Mari-