Mr. CULLOM. Certainly.
Mr. PLATT of Connecticut. But we ought at least to scrutinize it with a good deal of care. I know that is the intention of the committee, and therefore he will pardon me for referring to the matter to which I am about to refer.
Mr. CULLOM. I hope the Senator will realize from what has happened in this matter the necessity of careful investigation and critical investigation and discussion of the bill, so as to make it as nearly right as we can before it goes out of this Chamber.
Mr. PLATT of Connecticut. I do appreciate that. But section 88 proposes to establish a court there which I do not think we have any power under the Constitution of the United States to establish a Territory. We have been providing governments for Territories now for a hundred years, nearly. It is nearly a hundred years since we acquired Louisiana, and at an earlier period than that we provided a government for the Northwest Territory. But we have never yet placed a court in a Territory. We have supposed that the reason why we did not was because we could not under the Constitution.
The Constitution says:
That the judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.
It has been the universal acceptance of judges and lawyers and legislators that that section of the Constitution referred to courts to be established in the States. Subsequently we have one Supreme Court and we have our circuit courts, more recently our circuit courts of appeals, and our district courts in the States.
We have never established a constitutional court in a Territory. The courts which we have established in the Territories have been established under the provision of the Constitution which provides that—
Congress shall have power to...make all needful rules and regulations respecting the territory or other property belonging to the United States.
Those courts have repeatedly been adjudicated to be not constitutional courts, but legislative courts. It has been the practice in constituting the legislative courts of the Territories to give them jurisdiction over cases arising under the laws of the United States and, I think, in my opinion, not to make express grants of power to the Courts to which it has been conferred upon them, and a variety of jurisdictions, as relating to the laws of the United States. But I am very firm in my opinion that we can not do that which it is proposed to do in section 88. That proposes to establish a court in the Territory of Hawaii, in the district and circuit courts of the United States in the States, and consequently says nothing about the tenure of the judge, as by the Constitution a judge of such a court has to be appointed during good behavior and with life tenure.
It is read the section to show how completely it is such a court as is contemplated by the Constitution, and called there an inferior court, and how completely it resembles and is like the district and circuit courts of the United States. Now listen. There is no escape from it. If it be said that the giving a term of office during good behavior makes it out of the category of constitutional courts, I reply that other languages there which makes it impossible to take it out of that category.
That a judicial district of the United States is established for the Territory of Hawaii—
The judicial districts of the United States are the judicial districts referred to or authorized by article 3. They are judicial districts within the States, not within the Territories.
That a judicial district of the United States is established for the Territory of Hawaii, to be called the district of Hawaii, which shall be included in the judicial districts of the United States.
It never has been supposed before that you could extend a judicial circuit under the Constitution beyond the limits of the States.
The President of the United States, by and with the advice and consent of the Senate, shall appoint a district judge, a district attorney, and a marshal of the district, who shall have the power and authority vested in the district shall have, in addition to the ordinary jurisdiction of district courts of the United States, jurisdiction of all cases cognizable in a circuit court, and shall proceed therein in the same manner as a circuit court.
So it gives it the power both of the district and circuit courts of the United States as organized in the States.
The laws of the States relating to appeals, writs of error, removal of cases between citizens of different States, and other matters, and the United States and the courts of the several States shall govern in such matters and proceedings as between the courts of the United States and the courts of the Territory of Hawaii. Regular terms of said court shall be held, etc.
Mr. President, I do not wish to go into a further argument of this matter at the present time. I desire to point it out simply for the purpose of the consideration of the committee.
Mr. FORAKER. Mr. President, I have listened with very great interest and appreciation to what the Senator from Connecticut has said as to section 88. It is true, as the Senator has stated, that we have never yet in legislating for a Territory seen fit to create a constitutional court in a Territory.
Mr. SPOONER (in his seat). We can not do it.
Mr. FORAKER. I do not understand that there is any prohibition in the Constitution against our doing it. The practice has been that we have not. If the Senator will allow me to conclude the sentence I was about to utter, then he can interrupt me if he so desires.
Mr. SPOONER. I did not interrupt the Senator by rising, did I?
Mr. FORAKER. No; but the Senator did by a very proper injunction. If it were true, as stated by him, that we have no power under the Constitution to do so, he had no right to bring it up for debate. But where does the Senator get authority to say that we have no power in legislating for a Territory to create a United States district court proper there if we see fit to do so?
Mr. SPOONER. Does the Senator mean by that question the phrase as used in the Constitution, in which shall be vested the Judicial Power of the United States?
Mr. FORAKER. I do.
Mr. SPOONER. I get it from several decisions of the Supreme Court of the United States.
Mr. FORAKER. I have read the decisions of the Supreme Court of the United States, and I do not get any such conclusion therefrom. On the contrary, the decisions of the Supreme Court of the United States are simply to this effect, as stated by the Senator from Connecticut, that we have never yet seen fit to create a constitutional court, but only legislative courts, for the Territories. If the Senator will read these decisions, he will be advised, that it would not be competent for Congress to do so if Congress should see fit.
Mr. SPOONER. Will the Senator allow me?
Mr. FORAKER. Certainly.
Mr. SPOONER. I will refer just for a moment to the decision of the Supreme Court of the United States in the American Insurance Company v. Canter (1 Peters, 111).
Mr. FORAKER. Yes, sir; I have it before me.
Mr. SPOONER. The Supreme Court said:
These are not constitutional courts.
Mr. FORAKER. Certainly not.
Mr. SPOONER (reading)—
These are not constitutional courts in which the judicial power conferred by the Constitution on the General Government can be vested. They are inferior to, and in their proceedings different from, the courts of the General Government; or in virtue of that clause which enables Congress to make all needful rules and regulations respecting the Territory, the jurisdiction which Congress may vest in them is not a part of the judicial power defined in this article of the Constitution.
Mr. FORAKER. Mr. President, that is true; but what the Senator from Connecticut means is that for the Territories. What the Senator reads has reference to the courts that were in fact created, but the Supreme Court does not say in the case of Canter that Congress might not have created a constitutional court in the Territory.
If the Senator will bear with me a minute, he will see the point. What Congress did there was to create a court with a limited tenure of office for the judge, and the court was also given a jurisdiction that did not belong to the interpretation of the Constitution of the United States and the laws of the United States, but local legislation as well. The Supreme Court said these are not constitutional courts, because created. They are they are incapable of receiving the jurisdiction that belongs to a constitutional court of the United States. Then they comment on the fact that they were not intended to be constitutional courts, because they were given a limited tenure instead of a tenure during good behavior, and that was conclusive in that case.
Mr. SPOONER. The Supreme Court has simply said from that fact it is to be inferred that Congress to create a constitutional court, but only a legislative court.
I invite the Senator’s attention to the case which is the leading case on the subject. McAllister v. United States, reported in 141 U.S., at page 641, et seq. All the decisions of the Supreme Court of the United States are decided on the decision of that case. The point is here reviewed, and the point I make with respect to them is recognized throughout in all that the courts say.
They find that the courts in Utah and the courts in various Territories were not constitutional courts, because Congress had given a limited tenure instead of a tenure during good behavior, and that was conclusive.
I cited as an illustration of a fact supporting that proposition that they had limited the tenure, which it was incompetent for Congress to do if it was a constitutional court, and they cited the further fact that in all of these cases, the courts were given not only the jurisdiction of the circuit courts but the jurisdiction of State courts as well.
Now, there is no objection to Congress giving a life tenure and creating a court with district and circuit jurisdiction alone.