

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 this afternoon that I am anxious for a free, full, 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 in that 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 established a constitutional court in a Territory. I have always supposed that the reason why we did not was because we could not under the Constitution.

The Constitution says:

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 only. Consequently we have one Supreme Court and we have our circuit courts, more recently our circuit courts of appeal, 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 the 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 the Constitution of the United States. Admiralty jurisdiction 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 all respects like 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.

I will 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 takes it out of the category of constitutional courts, there is other language here 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 ninth judicial circuit 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 United States for the said district. The district court for the said 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 United States relating to appeals, writs of error, removal of causes, and other matters and proceedings as between the courts of 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 injection. If it were true, as stated by him, that we have no power to do it, that would be the end of this 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. But the Supreme Court has nowhere said, so far as I am 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 read for just a moment from the decision of the Supreme Court of the United States in the American Insurance Company vs. Canter (1 Peters, 511).

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 created by virtue of the general right of sovereignty which exists in the Government; or in virtue of that clause which enables Congress to make all needful rules and regulations respecting the Territories. The jurisdiction with which they are invested 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 reads does not meet the question at all. 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 plainly. 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 as 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.

The courts as established in Florida, which were under consideration in the Canter case, have been continued with respect to our Territories, as the Senator from Connecticut said. Their tenure has always been restricted. It has never been a life tenure. The Supreme Court has simply said from that fact it is to be inferred that it was not the intention of 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 vs. United States, reported in 141 U. S., at page 174 et seq. All the decisions of the Supreme Court of the United States made prior to the giving of this decision are here reviewed, and the point I make with respect to them is recognized throughout in all that the court says.

They find that the courts in Utah and the courts in various Territories were not constitutional courts, because Congress had not made them so, had not sought to make them so, and cited as 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 Territorial courts the courts were given not only the jurisdiction of the United States district and 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.