going to violate it. It is idle to talk about what Congress might do. Any power might do many wrong things; but in view of the constitutional precedents we have, in view of the custom that has grown up, we have the free government Congress is not going to change its policy and become a monster and do wrong. It can not do wrong with regard to them unless we violate the unwritten constitution of which that has governed this country from its foundation. There is no danger of Congress violating it. It makes a departure from that which we shall hear from the people.

Mr. FORAKER. I am much obliged to the Senator for the question, but he has so prolonged it I do not know just how to answer it.

Mr. SPOONER. Will the Senator allow me to ask him a question?

Mr. FORAKER. Certainly. I want to complete my reading, however.

Mr. SPOONER. I only want to get at the right of this thing.

Mr. FORAKER. Certainly.

Mr. SPOONER. There are some reasons why, if we can create a constitutional court in Hawaii, I think it might be wise to do it. I want to ask the Senator this question, if he will permit me. I suppose he will admit that in creating a constitutional court we shall not hold their offices, the same as what to do with the tenure of the judge.

Mr. FORAKER. No, sir.

Mr. SPOONER. It is fixed by the Constitution?

Mr. FORAKER. It is fixed by the Constitution.

Mr. SPOONER. And it can not be other than the constitutional tenure for life or during good behavior?

Mr. FORAKER. Certainly not.

Mr. SPOONER. Now, does the Senator think that court a constitutional court as to the tenure of the judge of which we are not restricted by the constitutional provision at all, but are left entirely to the discretion of the Congress, for 0 or 0 years or ten years or during good behavior?

Mr. FORAKER. I beg the Senator’s pardon; I did not catch the point of his question, if he asked me one. I do think what?

Mr. SPOONER. Does the Senator regard that court a constitutional court as to the tenure of the judge which Congress is entirely free?

Mr. FORAKER. Yes.

Mr. SPOONER. To fix it at two years, or ten years, or during good behavior?

Mr. FORAKER. I think if Congress fixes it at anything less than a life tenure that is evidence that Congress did not intend to create a constitutional court. That is the very point I have been making. But if Congress wants to create a court and give the judge a life tenure it is within the power of Congress to do it.

Mr. SPOONER. Nor; but my point is this: Congress can not create a constitutional court without a life tenure.

Mr. FORAKER. Certainly not. That is what I have been contending.

Mr. SPOONER. Now, is any court as to which Congress may create a shorter than a life tenure a constitutional court?

Mr. FORAKER. Certainly not.

Mr. SPOONER. Is not this a court in regard to which we may make the tenure four years or ten years, if we choose?

Mr. FORAKER. Certainly it is; undoubtedly. Mr. President, after a very careful consideration of this question, and that is the reason why I am particular about it here, we propose in the bill providing a civil government for Puerto Rico that there shall be a United States district court; we call it by that name, but the tenure is only for four years. We limited the tenure for the sole reason that we do not intend to constitute a constitutional court, but only a territorial court within the meaning of all these decisions.

Now, Mr. President, there is no ground for controversy here, because in the case to which I have already alluded, at page 188, the Supreme Court expressly say as follows:

"The whole subject of the organization of Territorial courts, the tenure by which they hold their offices, and the salary they are to receive, and the manner in which they may be removed or suspended from office, was left by the Congress under its plenary power over the Territories of the United States.

And then, as I called attention a while ago, they say in effect, further on, that in all cases it will be regarded as an evidence that a constitutional court was not intended when the tenure comes under consideration unless Congress has seen fit to give the life tenure."

This is clear evidence, too, He undoubtedly would have a vested right of some kind; I do not know to what extent.

Mr. PETTUS. The question I designed to ask was, could not Congress repeal the act after it was enacted and the judge have been appointed? Undoubtedly it could repeal the law.

Mr. SPOONER. Could Congress do that as to the judge of a constitutional court?

Mr. FORAKER. I am not speaking of what the effect would be on such a constitutional officer; but unquestionably Congress could repeal the law. Whether he has a vested right in his office or not, the court would have a vested right of some kind; he undoubtedly would have a vested right of some kind; I do not know to what extent.

Mr. PETTUS. The question I designed to ask was, could not the Congress abolish the office in a week after the judge was given a life tenure by Congress?

Mr. FORAKER. I think so. I do not think the creation of an office and the appointment of an official to hold it binds Congress for the life of the official who has been appointed and who has become the incumbent.

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