Mr. ROSS. I wish to ask the Senator another question, if he will yield for that purpose.

Mr. FORAKER. Yes, certainly; with pleasure.

Mr. ROSS. Does the court in a Territory get its jurisdiction from the act of Congress or does it get it from the Constitution?

Mr. FORAKER. It gets it from the act of Congress.

Mr. ROSS. Then, is it not a legislative court instead of a constitutional court?

Mr. FORAKER. It is a legislative court.

Mr. ROSS. It seems to me the Senator is confounding the matter, because the tenure is for life and the judge is given the same jurisdiction by the act of Congress that he gets under the Constitution. It is not a constitutional court, but it is merely a legislative court, and gets its whole jurisdiction and term of office from the act of Congress.

Mr. FORAKER. The Senator did not follow me closely in the remarks I just made or he would not ask that question. I stated at the time that the decisions which have been cited, in which it has been held that the court under consideration was a territorial court, were each and all cases where the Congress had evidenced by the character of the legislation creating the court that it did not intend a constitutional court, but only a legislative court; and I told the Senator that that intention is derived from the fact, first in the Canner case, and in all the other cases, I believe, without exception, that there was a limited instead of a life tenure. In other cases they pointed out the jurisdiction was different, and they have said, not being a constitutional court, the court was incapable of taking the jurisdiction conferred by the Constitution.

I do not know any reason why, therefore, where we extend the Constitution to a Territory, we may not there create a district court. We have here extended the Constitution of the United States, beyond the scope of this bill, to Hawaii. I do not know of any reason why there should not be a district court established there, if we see fit to adopt the policy of establishing such a court, which of course remains after the question of power has been settled.

There is much to be said in favor of making the court in Hawaii a United States district court, and conferring upon it all the jurisdiction which belongs to district and circuit courts of the United States, because, as I was about to remark a moment ago, that is differently situated from any other Territory that we have yet legislated for. It has need for an admiralty jurisdiction, which does not belong to any interior Territory at any rate, and certainly not in the general sense in which it belongs to that of Hawaii, and there is an abundance of work there for a court with that kind of jurisdiction to exercise.

What I rose to suggest was that a court that is given a clean-cut constitutional jurisdiction in a Territory belonging to the United States, to whom we have extended the Constitution, and the judges of which have been given a life tenure, as is the case here, ought not to be confounded with Territorial courts which have been under consideration in the decisions of the Supreme Court of the United States, which have been relied upon.

I now yield with pleasure to the Senator from Vermont.

Mr. ROSS. I was simply going to ask the Senator if he was not confounding the difference between the source from which the power comes in so characterizing the court, rather than the court itself, or the name of the court. The Senator called it a constitutional court.

Mr. FORAKER. Will the Senator define to me what jurisdiction a United States constitutional court gets from the Constitution proper?

Mr. ROSS. It gets just what is named in the Constitution, and it can have nothing else given to it.

Mr. FORAKER. I will ask if it is not necessary to legislate with respect to the jurisdiction of constitutional courts just as much as it is with respect to Territorial courts; and if the term "constitutional court" means anything more than it is a court created by Congress, with whom the Constitution confers power to legislate in the field of the Constitution, which authorizes Congress to establish courts?

Mr. ROSS. I understand a constitutional court, within the meaning of the decision, extends to the States only. When you go into the Territories and legislate, then with unlimited power you can give the same term of office to the judges of a court in the Territories and the same jurisdiction, or more or less of it, as Congress may please.

Mr. FORAKER. I do not agree with the Senator that a United States court cannot be created except within the States. I do not know of any reason why a United States court may not be created outside the States, to sit and have jurisdiction outside of the States, in the Territories of the United States, to which we extend the Constitution. I do not agree with the Senator that Congress can legislate for the Territories outside of the States without any limitation whatever.

I should like to ask the Senator what he would do were a measure proposed here prohibiting the freedom of speech or the freedom of the press in Hawaii? Would he, because it is outside of the States, vote for it in view of the fact that the first clause of the Bill of Rights says no law shall be passed by Congress doing any such thing?

I call the Senator's attention to that only to show that there are some positive prohibitions in the Constitution which rest upon us as Senators sitting under the Dome of the Capitol, which we can not disregard, which accompany all legislation that we enact, no matter for whom it may be or whether they are in the Union as an integral part of it or not.

I agree with the general proposition that we are unlimited in our power when legislating for Territories to which we have not extended the Constitution particularly, except only by the positive prohibitions which are laid by the Constitution upon every man who sits here as a legislator, no matter what his view upon the general subject may be. Therefore I say when we come to create courts, we simply say, by virtue of the authority conferred on us by the Constitution, there shall be a court here, and it shall have the jurisdiction we give it, or the jurisdiction of a United States district court proper, and we give it a tenure, which belongs to the judge. I do not know why it is not competent for us to do it. If it is competent for you to say that it is not a constitutional, but only a Territorial court, because it is outside of the States which constitute the Union, you can say that just as well with it having one jurisdiction and one tenure, as you can if it be given another tenure and another jurisdiction.

Mr. GALLINGER. If the Senator will permit me, it is evident that this interesting discussion can not be completed to-night; and, with the Senator's consent, I will move that the Senate proceed to the consideration of executive business.