Mr. PLATT of Connecticut. Including Japanese?
Mr. CULLOM. Including Japanese and others.
Mr. PERKINS. And my friend, Mr. Hale, a year or more.
Mr. CULLOM. Last September.
Mr. PERKINS. My friend was there a year and a half ago.
Mr. CULLOM. But what I wanted to say is that the statement
made by those who seem to know about it is that about one-half
of the 60,000 have been brought there under contract, and
25,000 of the others, or a few more, have been brought there
since the annexation.
Mr. PERKINS. It seems to me the point made by the Senator
from Maine is worth our consideration. If this can only apply to
personal contracts, and not to emigrant companies, then we
will have in vain, with respect to this amendment, the
danger in our scheme of larger
benevolence of missing what is wanted in Hawaii, I have just
been called out by a representative of that people, who is here
with some official recognition, I do not know just what. He is an
active, practical, expert, and I think he is satisfied, as a lawyer familiar with their
statutes and provisions, that this language, personal labor, will not in any way affect the emigrant companies who have made these contracts and assigned them to time in time in bulk. So I think there are no difficulties there, but the question is whether the amendment is necessary.
Mr. CULLOM. I have all the respect for the gentleman named.
I do not know whether my honorable friend gave his name or not
in the Senate.
Mr. CULLOM. I have all the respect for him which is due to
the indorsement of the Senator from Maine, and that is very great respect indeed; but I must beg leave to suggest that the criticism comes from a very hasty and superficial notion of the matter.
Mr. CULLOM. We are talking about contracts for specific performance and punishments by criminal process. You ought not, I believe every Senator will agree, to have a remedy by specific performance or a criminal process for the failure by a man to keep his engagement for personal labor and service. That, as has already been said, is the policy of most or all of the States of the American Union. Now, then, that is said, does not interfere with one man's contract to deliver the labor of another.
Mr. CULLOM. Or of many others. But it certainly does if the man who has agreed to deliver the labor of a thousand coolies or a thousand Japanese could not have any remedy against the man whose contract is to be delivered. The latter man is left free for the other man, of course, can not have a remedy. There can not be a remedy for a specific performance against him that would be of any value, and there could not be before. There is no reason why he should not be liable in damages if he has made an inordinate contract of that kind which the man whom he undertakes to engage explicitly tells him he does not want in regard to these contracts for the delivery of a thousand workmen and furnishing their service for a certain fixed time after they arrive in the island than a provision that the men whose service is sought are absolutely free in the matter, so far as time and place go.
Mr. CULLOM. Now, let me tell what might be an actual occurrence. An emigrant company—they call them that—signs a contract with A B to furnish the labor of 500 coolies for three years or five years. The contract is signed by the society upon the one side, A B, who employs the society upon the other side, the emigrant society personally, or with A B, who is to get the benefit of the labor; but it is a general sweeping contract to furnish labor, not the personal labor of the emigrant society, for it has none, but the labor of 500 different persons. Now, if we include in the opening contract the word men as it would be necessary to understand the great authority and experience of the Senator from Massachusetts, I should doubt whether, upon a question coming up between A B, who takes this labor, and the emigrant society, who contracts for it, the courts would decide that that was, under the language here, a contract for personal labor.
Mr. HOAR. Suppose they will not. What harm would then happen?
Mr. HALE. Then we are doing nothing.
Mr. HOAR. You have made it absolutely impossible for this man to perform that contract by the voluntary consent of the men who want to be employed. Nobody objects to that.
Mr. HALE. It does not come up between the men who are employed and the society.
Mr. HOAR. Suppose it does not.
Mr. HALE. It comes up between the man who is to use the labor and get the benefit of it and the original society.
Mr. HOAR. Suppose it does; what happens?
Mr. HALE. He enforces it.
Mr. HOAR. How can you enforce it?
Mr. HALE. You have the power to do it.
Mr. HOAR. Yes; we have taken it out. The Senator fails to get my point, undoubtedly owing to my failure in stating it.
Mr. HALE. No; it is my failure to comprehend it.
Mr. HOAR. Suppose the States in the future, if they have said that these laborers are free from all legal constraint whatever except a suit against them for damages, which nobody thinks is worth the paper on which the writ was printed, how the whole of this mischief is then cut up by the roots. In other words, the contract of the man for the men is not binding on him; he is left utterly powerless to perform, and there is no remedy against him, of course, except the suit for damages.
Mr. HALE. But, like any process, there are other things and there are other results. It may be an entirely responsible company. Do you want the public to do? Just as I say, "Why, I have no trouble coming, in that I have exempted these persons and that nobody can trouble them, and these other parties may fight it out with the contract for a specific performance just as they choose," that is an answer; the Senator does not care anything about that.
Mr. HOAR. You have taken all. What is the mischief? Suppose the Senator from Maine and I make a contract that one shall furnish to the other 500 laborers in the State of Maine. Now, what is the mischief of that contract? The mischief is that 500 men, who are not free agents of themselves, I have put them where they have got to be compelled to labor by a civil or criminal process for the specific performance, by an indictment, against their will. Of course, if the contract between the Senator and myself is not enforced at all, it does not do any public harm or mischief; it is a suit to recover 500 men in the sum of damages due to the Senator, but men who are not laborers. That does not do any public mischief at all. Neither of us would undertake to enter into such a contract. He is only a public sufferer, but the public mischief is not having involuntary labor kept to its task in that way is utterly gone by the result of this amendment, and there is nothing left which can do any public harm. That is the answer to it.
Mr. HALE. In a contract such as I have stated I do not think that these 500 individuals would have anything to do with it anyway. They have not made any contract. The bill does not apply to it.
Mr. HOAR. They could if they had made the contract.
Mr. HALE. But they have not made it.
Mr. HOAR. The trouble is this: The Senator from Maine agrees with somebody to furnish 500 laborers for twelve months the 1st of next January; and thereupon when the 1st of next January comes, he goes and gets the 500 laborers in a condition of poverty and distress, and brings them across the sea; and he has got them where he can scourge them to that labor. I do not mean that he can literally scourge them by whip and rod; but he can compel them by the civil process both; and that is the mischief, that he should have 500 men compelled to labor at his terms in competition with 500 free laborers.
Mr. HALE. Now, that is the whole mischief. The fact that he has agreed to furnish me a certain amount of labor does not in any other words, the man who has made that contract with you shall have no legal power whatever to help him to keep it. You can only enforce it by the voluntary action, voluntary all through the time up until the twelve months are over, of the men whom he expects to do the work. Therefore, that being the case, anybody who is not to be enforced, and anything has happened except that one rich man has made a contract with another, which he can not keep by any legal power and which he ought to be permitted to keep if the workmen are free all through the time, because there is no constraint on them, if they are willing to keep it, the only mischief that is done is that one rich man, a well-to-do rich man, has got a claim for damages against another rich man, and we do not care anything about that at all. That is the whole of it.
Mr. HALE. I have been looking at this in a different way from what the Senator has. He has been looking at it at the end of the contract that is made by the party furnishing the laborers. The contractor brings them over here. I have been looking at it, and