purpose of preventing the Crown from having the power to unseat members of Parliament, so as to give to the House of Commons the power to determine its own membership. When we arrived at the proposition here to set up an independent government, those provisions were in almost all of the old continental constitutions, or, as we called them, and they were inserted in the Constitution of the United States. I have no disposition to change the provision that each House of the Congress of the United States shall be the sole and exclusive judge of the elections, returns, and qualifications of its own membership; but at the same time, when we are asked to consider the establishment of this great imperial affair, we have got here, republics united into a confederation, I think it is a wise thing to have the provision that is inserted in the fifteenth section of this bill. If it goes out, I do not know that it would ever make any difference in Hawaii or that it would in Alabama or in the State of the Union, but I believe the principle of it is correct.

Mr. SPONNER. Mr. President, I move to strike out the fifteenth section of the bill and insert in lieu of it:

Each house shall be the judge of the elections, returns, and qualifications of its own members.

I have listened to the statement of the Senator from Alabama [Mr. MORGAN], but I cannot persuade myself that this departure from our theory in this instance, or in any other, as to the government of a Territory is a wise one. Our theory is that the ordinary organs of the Government shall be independent of each other—the executive, the judicial, and the legislative—each, of course, being supreme within its own sphere. I am too old-fashioned to like the proposition that the courts shall become involved in any way in the constitution of the legislature. I think in a very small senate provided for here, a senate of thirteen, if I recollect.

Mr. MORGAN. Fifteen.

Mr. SPONNER. Fifteen. Under the provisions of this bill the chief justice and the two associate justices who constitute the supreme court of the Territory of Hawaii are to be appointed by the President of the United States. They are to be chosen over there; and they are impeccable. They are not to be removed by the President of the United States, but they are subject to impeachment. They are subject to impeachment before the Senate. The Senate has the impeccable judges of each country, presents the articles of impeachment. I do not myself take kindly to the notion that the judges of the supreme court, who may be tried, one or more of them, should be given power to decide who should or should not be, in a contest, member. Under this it is said that the leading members of the Senate at least would owe their seats in that body to a decision of the supreme court. The supreme court are not only to pass upon the validity of the election, but they are also to be the sole judge as to who has been elected.

I have it that the theory of this bill is very much out of harmony with the whole theory. It does not maintain the independence absolutely of the three departments of the government, and no provision has been given, at least none that I have heard, which ought, I think, to commend it to the judgment of the Senate. The Senate is an intelliggent people, and it says it is, if they have not only carried these things for self-government, but for a fine government, I can conceive of no reason why each house should not be, as the houses here are here, and are, from the Congress down, the judges of the election, returns, and qualifications of their own members. I think they have not any departure from our theory that the Senate has. They have a right to be tried by a senate should have had a voice in seating the members of that body. I am willing to take the judgment of the Senate upon it.

The PRESIDENT pro tempore. The Secretary will state the amendment proposed by the Senator from Wisconsin.

It is proposed, on page 9, line 17, to strike out section 15, as follows:

SUPREME COURT JUDGE OF QUALIFICATIONS OF MEMBERS.

§ 15. That in case any election to a seat in either house is disputed and has not been determined by the respective house of representatives, the sole judge of whether or not a legal election for such seat has been held, and if it shall find that a legal election has been held, it shall be the sole judge to determine who are to be seated in either house.

And in lieu thereof to insert:

§ 15. Each house shall be the judge of the elections, returns, and qualifications of its own members.

The amendment was agreed to.

Mr. CLARK of Wyoming. I propose, as an amendment, to strike out all of section 56 and insert in lieu thereof:

That the legislature at its first session shall create counties for the Territory of Hawaii and provide for the government thereof.

Mr. HALE. Why?

Mr. CLARK of Wyoming. Section 56.

I will say in explanation of the amendment that a very peculiar condition of affairs exists within the republic of Hawaii. There is there a central government, consisting of a president and his cabinet. There are no municipalities. There are no county or organizations. There is no place, as I understand—and if I am wrong I hope I will be corrected—in the island of Hawaii where even a deed, or a mortgage, or a bill of sale, or any other legal instrument can receive registry except at the city of Honolulu.

Mr. MORGAN. I think there is. There is a registrar or a person that is mistaken about that. There are registrars in all the islands.

Mr. CLARK of Wyoming. Are there registrars in the islands who have the authority to register and keep records?

Mr. MORGAN. I so understand.

Mr. CLARK of Wyoming. I do not so understand. If I am mistaken, I should be glad if the Senator will correct me, because that is the sole object of this amendment, so that the people may have access to the records.

Mr. TILLMAN. Do you not provide for local punishment by local courts?

Mr. CLARK of Wyoming. There are local courts. There are circuit courts—five of them.

Mr. TILLMAN. What about warrants?

Mr. CLARK of Wyoming. They have means to get the people to refer, but the registration of deeds. There should be counties created there, so that within each county there would be a county clerk and register of deeds.

Mr. TILLMAN. And a sheriff.

Mr. CLARK of Wyoming. The establishment of whatever form of government that may be desirable, so that the Senator from South Carolina, for instance, if he lived on the island of Hawaii and wanted to register a deed, would not be compelled to put it off four or five days till he could take a vessel and go over to the city of Honolulu, on the island of Oahu.

Mr. MORGAN. Pro tempore. The Senator from Wyoming proposes an amendment, which will be stated.

The SECRETARY. On page 23, section 56, line 10, after the word "legislature," it is proposed to strike out "may" and insert "shall at its first session;" and after the word "shall" strike out "provisions for municipalities," so that if amended the section would read:

§ 56. That the legislature shall at its first session create counties within the Territory of Hawaii and provide for the government thereof.

Mr. PLATT of Connecticut. Please let me have it for a moment. I have no objection to having the Secretary read by his amendment to provide for the legislature from creating municipal governments there?

Mr. CLARK of Wyoming. No; I suppose they have the right to do that by virtue of being their being a legislative power. The only object I had in mind was that there should at least be counties created by the government at their first session.

Mr. SPONNER. As it is now it is only permissive.

Mr. CLARK of Wyoming. As it is now it is only permissive. They might go on as they are at the present time. Every State and every Territory here has county governments.

Mr. MORGAN. Mr. President, it is probably necessary to confer upon the legislature of Hawaii the power to create counties, because that is a part of the organic government there which would naturally come under the jurisdiction of the Congress to grant. For instance, before the proposed act to enable them to organize counties. I confess I have never heard any complaint made of the operation of the laws of Hawaii as they are, about the registration of deeds or anything of that kind; but the subject came up before the commission and was discussed there, and my understanding is that, although I may be in error about it, for I have not the statutes here and can not refer to them, that a registration system is provided in each county.

Mr. CLARK of Wyoming. There are no counties.

Mr. MORGAN. I mean in each island, and that it is connected with the district courts of the respective districts. I will explain it in the system there is.

Mr. SPONNER. Will the Senator from Alabama permit me to ask him a question as he goes along?

Mr. MORGAN. Certainly.

Mr. SIONE. Has there ever been counties there?

Mr. MORGAN. No. The entire group of islands is governed by the legislature, of course, from Honolulu, and that has led to some jealousy, particularly on the part of Hawaii, which is the largest island and the richest in the group. The town of Hilo is an aspiring town, and some of these other villages that have not plans are in a very poor anchorage in front, and there is a great deal around it to give promise of great success as a town. I have no doubt the legislature will organize counties there and they will probably do it at the first session, but to do that they must have some people to reorganize a great deal of the administrative system of the island. For instance, they have no magistrates, no justices of the peace, in Hawaii. The district judge has all the jurisdiction and functions that we give to a justice of the peace and certain larger ones. I forget the number of districts. There are some ten or twelve, perhaps fifteen, in the islands. Some times two islands are put into one district. Those courts, as I understand, are courts of record and have the power to accept