of Thirty Years in the United States Senate as to the origin of the doctrine that the Constitution extends to newly acquired territory ex proprio vigore. I need not, I am sure, in making answer to the Senator from Missouri, go beyond that one authority. Surely it is sufficient, especially after the encomium he has spoken upon Mr. Benton, for me to say that according to the authority of Mr. Benton the doctrine that the Constitution extended ex proprio vigore to newly acquired territory was not an ancient doctrine, but a newly invented doctrine in 1850 to meet the exigencies of the slave interest at that time.

They wanted the Constitution extended to the Territories in order that slavery might be there recognized according to the Constitution and be permitted under it; and when, in the emergency of that debate, Mr. Calhoun brought forward that doctrine nobody opposed it any more vigorously than did Mr. Benton himself. Mr. Benton tells us that this was the beginning of that doctrine, that such was its purpose, and that it was but a vagary of a diseased mind. This authority is sufficient, and I shall treat it as conclusive until Mr. Benton is answered and overthrown. Until the time of which Mr. Benton speaks the Constitution had never been extended in a single instance by Congressional action beyond the limitations of the Union itself. The Territory in every instance had been governed directly by such laws as Congress might see fit to enact, or authorize a local legislature to enact.

In several instances, instead of extending the Constitution, Congress compromised by extending the Ordinance of 1787, extending it without any limitation at all, in all its provisions, as to the territory that was designed to come in as free States, and extending it as to the territory in the South that it was expected would come in as slave States, excluding the eighth article, which prohibited slavery. The Ordinance of 1787 and not the Constitution was thus extended to Mississippi and Alabama and became a part of the Territorial organic law of all that territory.

So, Mr. President, I say there is not anything new either in the denunciation that is indulged in or in the proposition upon which we rely for the legislation that is now being proposed. There is abundant precedent for both. Having said that much, I want now to turn to the bill we have under consideration, and speak very briefly as to the proposition embodied therein, to which objection has been made, providing for a Federal court.

We had some debate on this subject a few days ago. There were some inaccuracies of statement in that debate. They are to be excused by reason of the fact that the debate was unexpectedly precipitated and no one had had an opportunity, except only those Senators who perhaps were contemplating bringing it up, to make any investigation. I recall one inaccuracy of my own. It was asserted in the debate by some one that we had never before in creating a Territorial government undertaken to establish a court with United States jurisdiction, except only with a limited tenure and with a mixed jurisdiction.

I assented to that. I did it thoughtlessly, for when I had time to think of it I recalled what I should have recollected at the time, for I was perfectly familiar with it, that when we came to establish a Territorial government for Louisiana we provided not only a complete system of Territorial courts, with limited tenures and with such jurisdiction as we saw fit to confer, but in addition thereto we also provided that Louisiana should be a judicial district and should have a district court, the judge of which should be appointed by the President, and that he should have the same powers, the same jurisdiction precisely, and the same tenure of office as belonged to the court of the Kentucky district.

The court for the Kentucky district was provided for by the act of 1789, the judiciary act. No courts were created by that act except only what are called constitutional courts. When, therefore, in legislating for the district of Orleans, as it was called, the Congress saw fit to provide that there should be a district court, a district judge with life tenure, and with the same jurisdiction as the Kentucky district, they were making a constitutional court in the sense that they were at least making precisely the same kind of a court in point of jurisdiction and tenure as they had a right to make in the exercise of their power to create a constitutional court under the judicial article of the Constitution.

In pursuance of that act a judge was appointed, the court was put into operation, and pretty soon a case arose that found its way to the Supreme Court of the United States—the case of Serè and Laralde *vs.* Pitot and others, reported in 6 Cranch, page 332. The decision was announced by Chief Justice Marshall. The question in the case was as to the jurisdiction of that court, as to whether or not the parties who had brought suit had the right to invoke its jurisdiction. It was an action by the assignee of a chose in action. Chief Justice Marshall commenced by saying:

> This suit was brought in the court of the United States for the Orleans Territory.

Then he proceeds to dispose of the case. That is all I care to read from that decision. I read enough, however, to show, in view of what I have already stated, that Congress not only made a United States court with a life tenure and constitutional jurisdiction, but that that court was recognized by Chief Justice Marshall as a United States court in contradistinction to the term "Territorial" or "legislative" court.

In the case of McAllister (141 U. S. Reports), referred to in debate a few days ago—cited, I believe, by the Senator from Connecticut [Mr. PLATT]—the question was whether or not the court in Alaska, which had been given United States jurisdiction by Congress, was a United States court within the meaning of the tenure of office act, and the court there, after a very lengthy review of all the decisions, held that it was not a United States court; that only those courts could properly be said to be United States courts which were constitutional courts in the sense in which that term is ordinarily employed. That decision was undoubtedly correct.

Now, Mr. President, the point I wish to make with respect to this is that, taking that definition of a United States court, and taking the statement of Chief Justice Marshall in the case to which I have referred, and from which I have quoted, it certainly does appear that we had a United States court, a constitutional court, if you please, in the Territory of Orleans, outside the States, and therefore that we have approved precedent for the creation of such a court in a Territory and consequently not within a State of the Union.

But it does not matter in such a case whether you call it a "constitutional court" or a "Territorial court." It is a court created by Congress, as all courts must be; and if it be given all the constitutional jurisdiction and the judge be given the life tenure, I do not know why we may not assume that Congress in creating the court proceeded under the judicial article of the Constitution rather than under the provision authorizing it to legislate for the Territories. But however that may be, it will remain that Congress has plenary power to create in a Territory such courts as it may see fit, and confer such jurisdiction as it sees fit, and give the judge such tenure as it may see fit. This power is not exceeded by what is here proposed. So that if there is any valid objection to section 88 of the bill it must be solely on the ground of policy.

I think the Senator from Alabama [Mr. MORGAN] made it clear, in his most admirable presentation of this matter this afternoon, that we ought to have in the Hawaiian Islands a Federal court, with a life tenure, and all the jurisdiction that can be given to it under the Constitution; for it is, as has been said, a court that must have, in the most pronounced sense, an important admiralty jurisdiction and a very extended jurisdiction of almost every character to make it proper for us to distinguish it from a purely local court.

There are a great many other things which I should be glad to say in regard to this matter before taking my seat, but the whole day has been spent in this debate, it is now very late, and I do not wish to detain the Senate.

Mr. CULLOM. I rise to move that the Senate adjourn, but before making that motion, I desire to say to the Senators who are here that I am very anxious to get along with this bill as rapidly as possible, because the condition of affairs in those islands especially requires that some legislation be had, so that they can protect themselves from plagues and diseases and be able to live at all.

With this remark, and with the understanding that we are to meet to-morrow, I move that the Senate adjourn.

Mr. MORGAN. I ask the Senator to withdraw the motion for a moment.

Mr. CULLOM. I withdraw it for a moment in order to suggest that we agree to vote on the bill to-morrow at 4 o'clock.

Mr. MORGAN. On the bill and amendments?

Mr. CULLOM. Yes. I hope the Senate will agree to that.

The PRESIDENT pro tempore. The Senator from Illinois asks unanimous consent that the Hawaiian bill and the pending amendments may be voted upon to-morrow at 4 o'clock. Is there objection?

Mr. TELLER. I shall have to object, Mr. President.

Mr. CULLOM. Then I move that the Senate adjourn.

Mr. BATE. I move that the Senate adjourn until Monday.

Mr. CULLOM. I hope that will not be done.

Mr. BATE. I think it was the expectation of many Senators that an adjournment over would be had.

Mr. CULLOM. I am sure it was not expected by the Senate. I do not think anyone has been justified in entertaining any such expectation.

Mr. BATE. I do not wish to make the motion if a session is desired to-morrow.

Mr. CULLOM. I very much desire a session for the consideration of the Hawaiian bill to-morrow.

Mr. BATE. Very well; I withdraw my motion.

Mr. CULLOM. I move that the Senate adjourn.

The motion was agreed to; and (at 5 o'clock and 20 minutes p. m.) the Senate adjourned until to-morrow, Saturday, February 24, 1900, at 12 o'clock m.