

The PRESIDENT pro tempore. Will the Senator from Alabama yield to the Senator from Wyoming?

Mr. MORGAN. I should like very much indeed to be permitted to state my case before I am interrupted.

Mr. CLARK of Wyoming. I beg the Senator's pardon.

Mr. MORGAN. Here is a judge of the supreme court of the District of Columbia and judges of the appellate court of the District of Columbia. Who would be more surprised than the Senator from Colorado if one of these judges should go over to Baltimore and sit on the bench in an appellate court or a circuit court or a district court of the United States? Nobody; and yet his tenure is for life. He has got all the powers of a circuit judge and a circuit court; but he is not a Federal officer, or at least the contention is that he is not a Federal officer, that he does not belong to the Federal judiciary. He is an outsider; he is a legislative construction, and not a constitutional fabric. That is the difference between the two people.

Now, who would be more astonished than the Senator from Colorado if one of the judges of the supreme court—Judge Cole or anyone else on that bench—should be invited to go to Baltimore to sit on the Federal bench there in the Federal court in the State of Maryland? And yet Judge Cole has got all the powers of a district judge of the United States; every one, both those that are exercised while he is on the bench as the judge of a court and those that are exercised while he is off the bench as a district judge of the United States; and he has a life tenure, too. At the same time, Mr. President—

Mr. TELLER. Mr. President—

The PRESIDENT pro tempore. Will the Senator from Alabama yield to the Senator from Colorado?

Mr. MORGAN. Certainly.

Mr. TELLER. Does the Senator mean to say that I want this judge to sit in a California court?

Mr. MORGAN. No; I do not suppose you would want him to do it.

Mr. TELLER. That is the very purpose I have, that he shall not attempt it. I know he has not any right to do it. I know you can not give any right to one man in that Territory, under the conditions we propose, to go to California and sit. I do not want him to go there.

Mr. MORGAN. Then the language is too broad, for the language carries him there.

Mr. TELLER. No; in my judgment it does not carry him there.

Mr. MORGAN. Well, that is a difference of opinion between the Senator and myself that I hope can be reconciled without any personal difficulty at least.

Mr. TELLER. I do not want the Senator to assume that I am endeavoring to do such an absurd thing.

Mr. MORGAN. No; the Senator has an amendment here—

Mr. TELLER. I am willing to give this man just the jurisdiction that we have given to judges, a hundred of them, and they have exercised it for a hundred years. I will show when the Senator gets through that that is true.

Mr. MORGAN. If you will give me a chance to get through, then you can go ahead; there is no trouble about that. The absurdity of which the Senator speaks is not in his mind at all, but it is in his amendment. You have got it all in the amendment, every bit of it, for the amendment as it stands now attempts to confer upon this district judge in Hawaii all of the powers, rights, and privileges of a district judge of the United States. Well, it is one of the powers of the district judge of the United States that he can sit in a court of appeals, if you please. He can sit in the circuit court, if you please, when the occasion arises; or he can go and occupy the bench when there is a vacancy, or when there is a necessity for it under the laws of the United States. A district judge of the United States can do all that. But the Senator, while conferring upon a district judge of the Territory all the powers of a district judge of the United States, says: "I do not mean that he should do that thing; I am against his doing that thing." Then, if you are against it, you must qualify it by saying: "All the powers are conferred upon the judge of the district court, except that he shall not sit on a circuit bench or an appellate bench or another district bench in any State of this Union."

Mr. CLARK of Wyoming. Mr. President—

The PRESIDENT pro tempore. Does the Senator from Alabama yield to the Senator from Wyoming?

Mr. MORGAN. Yes, sir.

Mr. CLARK of Wyoming. I hope the Senator will not consider me discourteous, because I am very much interested in this discussion; but I should like to ask him what he considers the powers of the Territorial judges as they have been heretofore appointed by the President of the United States in the various Territories in relation to this very question that he is discussing.

Mr. MORGAN. I do not think that any Territorial judge who now holds a commission has any right to go and hold a district court in any State.

Mr. CLARK of Wyoming. But is not the Senator aware of the fact that upon one side of the court those Territorial judges can deal with all the Federal questions that may arise within their jurisdiction? That is, when I say jurisdiction, I mean within their Territorial jurisdiction.

Mr. MORGAN. I am perfectly aware of that fact; and that provision in the Territorial laws is an extremely dangerous one. It is very irregular and quite unnecessary. Here is a Territorial legislature, if you please, enacting laws. I am going to make an illustration. They enact laws which permit contract labor, or what amounts to contract labor, to come in there from Japan under certain circumstances. The judge on the bench, as a judge of the Territory of Hawaii, for instance, says, "Well, this law appears to me to be constitutional; it is within the purview of the powers of the Hawaiian government; it is sustained by public opinion here; my friends are interested in the enactment of this law, and I will sustain it." He turns to the next docket, the criminal docket of his court, and he will find one of these men indicted as violating the laws of the United States for making a contract and bringing that man in. He determines, for we place the duty upon him of determining, whether he will sustain the Territorial law or whether he will sustain the other law.

Now, Mr. President, that is too great a temptation to put before any judge, and there is no necessity for it. To divide up a court into two separate jurisdictions, one of them Federal exclusively and the other local exclusively, is to divide the house against itself and to make the decisions of such a tribunal as that extremely unworthy of confidence. We have resorted to that system heretofore, and Senators who have practiced under that system at the bar and elsewhere, I have no doubt, found it convenient, but I think it would be a very sore place in a country that is as far from our coast as is Hawaii if we had down there a judge who had full Federal jurisdiction and exercised it on the same bench where he exercised full Territorial jurisdiction.

I do not know of any man in my acquaintance who I think is great enough to do that anyhow; I do not know of any man in my acquaintance who could sit on the supreme court bench of Alabama and do his duty on that bench, for instance, and at the same time hold a district court of the United States, if that were permissible, or a circuit court, and perform the duties of a circuit and district court of the United States. To take a man and give him a four-years' term, to appoint him under political influences, with a tenure of office dependent entirely upon the will of the President, so that he trembles upon his seat at every decision he makes; then to give to that man plenary jurisdiction in all local matters, all matters arising under the laws of the Territory; and then to turn around and give to him plenary jurisdiction in all local matters that arise under the laws of the United States, and make him as broad and as powerful in the exercise of jurisdiction as a judge of the circuit court and a judge of the Federal court, is a solecism, an absurdity; and no matter how well these gentlemen in the West, who have been practicing before those courts, found it to work there, we ought not to be invited to accept any such situation now.

This is the first time an opportunity has been distinctly presented and the necessity has become urgent for having a distinct and separate Federal power of judiciary and judicial administration in a Territory of the United States. Nobody pretends to deny that it will be necessary to have it. It will be necessary, if this court should be created under the eighty-eighth section of this bill, to have one of the very ablest judges we can secure to take a seat on the district or circuit bench to go down there and occupy that seat, and he will have his hands full. He would have the marine contracts, maritime jurisdiction, admiralty, and what not. The whole great breadth of that vast jurisdiction will go into his hands and he will need to be a very able and a very learned man if he performs his whole duty to the Government of the United States in that new situation.

To take that vast sweep of jurisdiction, all of it, and confer it upon a judge who holds a political office for four years, liable to removal by the power that put him in, or by the man who is elected next time because he does not suit his politics, and to burden that man with his little four-years' tenure with this vast jurisdiction, and then full jurisdiction, plenary jurisdiction in regard to all local matters, it is not within reasonable expectation that you will find a man who is able to discharge the duties of the office with this vast incumbency of jurisdiction piled upon him.

It has been intimated here that this was the wish of the people of Hawaii. The intelligent men, the merchants, particularly the men connected with foreign commerce, the shipowners, and all of that class are interested in having a tribunal of that sort there. The great body of the people of Hawaii do not ask for it at all, but they need it, and they ought to have it.

The judicial power of the United States ought to be just as prominent and just as certainly present in all of its majesty in the islands of Hawaii as the Executive power or the Congressional power. We send two of our departments there, clothed with all