Now, there is by this bill left of the body of the laws which have been enacted under the republic of Hawaii, as I understand it, those not expressly repealed, and such of those laws as shall not be inconsistent with the Constitution and laws of the United States. The Senator from Massachusetts, construing this language—

Mr. HOAR. I am inclined to think, on further examination, that the Senator from Massachusetts construed properly the language “not locally inapplicable” to include a few subjects of legislation; but the general laws of the United States as to alien labor, contract labor, and immigration just as certainly pertain not now over the Territory of Hawaii as they extend to any other Territory under the jurisdiction of the United States.

I am not to rail about the act of Congress annexing this Territory, although I was not in favor of it. It was done. It has been made part of the United States, and I wish to aid as fast as may be in the future, or as best I can, in being a member of the Senate in providing for that people a good government and adequate laws; and whatever my friend the Senator from Nebraska may say about it in the heat of debate, I venture to say that he has the same purpose and the same desire.

Mr. President, for the moment upon the amendment offered by the Senator from Colorado. I wish the Senator from Alabama were present. I do not think it changes at all in legal effect, although I agree it ought to be made plain, and it is made plain by his amendment, section 88 as it stands in the bill. That section is as follows:

"The judicial power of the United States—shall be vested in the Supreme Court, in and in inferior courts as the Congress may from time to time ordain and establish."--Mr. ALLEN. The Senator will permit me. These Territorial courts are extra constitutional courts.

Mr. SPOONER. I think that is quite right. As I was saying a moment ago, the test to my mind is this: As to Territorial courts, we may make the tenure of the judges of the Territorial courts what we choose. We may make it one year; we may make it four years; we may make it ten years, or we make it, if we adopt a bad and, I think, a vicious policy, during good behavior; but with the tenure of the office of the judge of the inferior courts mentioned in article 3 we have nothing whatever to do. Once we create the court and the Constitution fixes the tenure. It is not possible for Congress to make it any less than during good behavior.

That is not all there is to it. The judge of the constitutional court can not be removed by the President of the United States. He can only be removed by the Senate of the United States upon an impeachment. We have the power to provide that the judge of the Territorial court—and that power has been often exercised—and I think it has been well exercised; the Supreme Court of the United States in the McAllister case and other cases—may be removed by the President of the United States. It is beyond our power to make any such provision for the removal of a judge of a constitutional court.

So I say, if my friend, the Senator from Alabama, will give me for a moment his attention, that in my opinion this section, as it is drawn, providing no limit to the tenure, saying nothing, in fact, as to the tenure of the judge, will be governed by the general provisions of the Revised Statutes as to Territorial judges, and will make the tenure of the judge of this Territorial court the same as that of the inferior courts from the beginning this fact has been recognized, that there is a distinction under the Constitution between the Federal court in a State and the Territorial courts. We may clothe the Territorial court with the powers of a Federal judge; in other words, we have the law side of the court and the equity side of the court, we may so frame our legislation that the court shall have the Territorial or local side on one hand, and on the other hand the Federal side; but in my view we can not make the court a constitutional court with the tenure of the judge fixed by the Constitution.

Mr. BACON and Mr. NELSON addressed the Chair.

The PRESIDENT pro tempore. Does the Senator from Wisconsin yield to the Senator from Georgia?

Mr. SPOONER. I yield to both Senators.

Mr. NELSON. I thought the Senator from Wisconsin was through.

Mr. SPOONER. No.

The PRESIDENT pro tempore. The Chair recognizes the Senator from Georgia.

Mr. BACON. I quite agree with the Senator from Wisconsin as to the purpose which he favors in support of the amendment offered by the Senator from Colorado. I quite agree with almost all he has said, and I do not wish to go as far as he does in the practical question which he raises, or the point which he suggests. I do so for the purpose of getting his views.

Section 1 of Article III is in these words: The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish.

The Senator in reading that draws the conclusion that refers, in the use of the "United States," to the Union of States, and from that he deduces the conclusion that it would be unconstitutional for the Congress to establish one of these constitutional courts in a Territory. Did I understand the Senator correctly?

Mr. SPOONER. I say it has always been the theory upon which our legislation has proceeded that the constitutional court was the federal court in the United States.

Mr. BACON. I quite agree with that. I understood the Senator to go further and to say that in his opinion it would be beyond the power of Congress to establish in a Territory one of these constitutional courts.

Mr. SPOONER. I think that is true.