Mr. BACON. I want to ask the consideration by the Senator of this question. The language is:

The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as Congress may from time to time ordinance.

The Senator says that that refers to the Union of States by the use of the words "United States." The question I desire to ask the Senator is this: I presume there will be no question about the fact that the jurisdiction of the Supreme Court in its appellate capacity would cover the Territories, although it would be beyond the territorial limits of the United States. Mr. SPOONS. It covers the territory if we provide for the act for writs of error from the territory.

Mr. BACON. The Senator does not catch the point of my inquiry. I presume it will be conceded that the jurisdiction of the Supreme Court would extend beyond the territory represented by the United States. Now, the question I desire to ask the Senator, not for the purpose of taking issue with him, but for the purpose of asking his consideration of the point, is this: If the language used would extend the jurisdiction of the Supreme Court beyond the territorial limits of the Union of States, would not the same language, in case it was seen proper by Congress under this clause to establish one of these inferior courts in the territory, also authorize the extension of the jurisdiction?

It is simply, if the Senator will pardon me, a suggestion in connection with what I understood to be his proposition, that the Congressional power to establish a court having the same constitutional powers as recognized in section 1 of Article III in a Territory, if it saw fit to establish a judicial circuit there. I repeat, I do not do this for the purpose of taking issue with the general conclusion to which the Senator comes. I think the amendment of the Senator from Colorado is a good one, and I think that amendment will very largely remove one of the principal objections I have to the bill.

Mr. FORAKER. Mr. President—

The President pro tempore. Does the Senator from Wisconsin yield the floor to the Senator from Ohio.

Mr. SPOONS. Certain.

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

Mr. President. I have already said in the consideration of this bill as much as I care to say upon the question now raised by the proposed amendment. I rise, therefore, not for the purpose of again debating or arguing the proposition so raised, but only to express my dissent from what I understand to be the proposition of the Senator from Wisconsin, that the Congress of the United States cannot establish a constitutional court in the Territories of the Union.

Mr. SPOONS. I yield for a question to the Senator from Georgia. Did the Senator from Ohio suppose I had yielded the floor?

Mr. FORAKER. I thought the Senator had concluded—

Mr. SPOONS. I have not.

Mr. FORAKER. If I shall not have proceeded. If you will all allow me, I say all I want to in a moment, and then you can proceed, or I will give way to you now, as you prefer.

Mr. SPOONS. No: go ahead.

Mr. FORAKER. I should not have presumed to interrupt you, but I thought you were through.

By the act creating a Territorial government for Louisiana, passed in 1804, Congress did create, as I understand it, a constitutional court. Clearly the Congress so understood its own action at that time, for after providing for Territorial courts and conferring upon them their jurisdiction and fixing the tenure of the judges, the act made the Territory of Louisiana a district, and provided a court for the district, and to provide a judge for the court, and Congress did not undertake to say what should be the tenure. Evidently Congress was proceeding upon the theory that the tenure would be a life tenure; and if you will examine the Constitution, you will find, I am informed, that pursuant to that legislation a judge was appointed who held for quite a long term of years—until after the State was incorporated into the Union. It was not for four years, nor ten years, nor for any number of years, but evidently intended to be a tenure for good behavior, as the Constitution provides.

Mr. President, what shows conclusively to my mind that Congress thought they were establishing a constitutional court, and were intending to establish a constitutional court, is the fact that the tenure so conferred upon the court is the same jurisdiction that was conferred by the judiciary act of 1789 on the court of the Kentucky district.

Mr. HOAR. May I ask the Senator from Ohio one question?

Mr. FORAKER. Certainly.

Mr. HOAR. I desire to know if the Senator think that Congress could establish in the same Territory, if saw fit, a constitutional court and a court not constitutional?

Mr. FORAKER. I am using the term "constitutional" in contradistinction to the term "Territorial" or "legislative." All courts must be constitutional in the sense that they are authorized by the Constitution.

Mr. HOAR. I understand.

Mr. FORAKER. I say this, if the Senator will allow me: It is competent for Congress, and Congress has usually so proceeded, to establish a circuit court in a Territory, proceeding under the section of the Constitution, authorizing Congress to legislate for the Territories; and the Supreme Court, in probably every instance in which it has passed upon that question, has said that it appears that Congress was undertaking to establish a Territorial court in contradistinction to a constitutional court. I do not, of course, mean that Congress has conferred a local jurisdiction that does not properly belong to a constitutional court of the United States.

Mr. HOAR. The Senator does not quite apprehend my question. I wish to understand him. The Senator says that Congress can’t establish a court having a life tenure, a court of a Territorial nature. Of course no one doubts that. In the next place the Senator says, as I understand him, that Congress may establish a constitutional court, by which I suppose he means because everything Congress does gets its own power from the Constitution.

Mr. FORAKER. X.

Mr. HOAR. I suppose he means a court which is one of the courts described in the Constitution, and he must therefore have a life tenure, a tenure during good behavior. Now, does the Senator claim that both kinds of courts—because that will be the true distinction—will be able to be established by Congress in the same Territory? That is what we are doing now if we are going to have a constitutional court. Mr. FORAKER. I do not so understand it. What we are doing now is to establish certain Territorial courts for Hawaii. Mr. HOAR. But I understand, if the Senator will allow me, that the debate is upon the proposition suggested by the Senator from Colorado. Having provided the ordinary courts, with their four years’ tenure, and divided the Territory of Hawaii among them, now the Senator from Colorado moves another court, which he proposes to call the district court, which does not have its tenure provided for by the enactment which creates it, and which is claimed by him, or at any rate by some Senator in the debate, I do not say by him, to be a constitutional court. I understand the Senator from Ohio is defending the right to do that thing in the Territories as well as the States. But if it is conceded that the constitutionality of this act, as to establish the district court for Territories with a four-years tenure: and I wish to know whether in the Senator’s judgment, he having given me his opinion in favor of the validity of the constitutionality of this amendment, he thinks that a constitutional court and a Territorial court may be established with authority over the same Territory.

Mr. FORAKER. Well, Mr. President, I do not think I fully comprehend what it is the Senator wants me to make answer to. If he will only allow me to conclude what I was undertaking to say, I know he can understand what is in my mind.

Mr. HOAR. If the Senator will allow me to make myself clear, then, by one further question.

Mr. FORAKER. I would rather the Senator would wait until I get through.

Mr. HOAR. I do not want to talk; I want to learn; and I am applied to one of the highest authorities I know of, who was expressing his opinion on the very question.

Mr. FORAKER. I am trying to give my opinion to the Senator, and I will take great pleasure in giving it for whatever it may be worth; but the Senator, by interrupting me before I had concluded, has stated precisely to my opinion some things that are not exactly accurate.

Mr. HOAR. I only asked a question with the Senator’s leave.

Mr. FORAKER. Certainly; I appreciate that: and I wanted to conclude a sentence; and that would perhaps convey to you all the information that I have a right to offer. I do not object to an answering to say that reference to a provision that is found in the bill, as I have already said before in this debate, and that is one reason why I have been less particular to go over it carefully now. Whether you call it a constitutional court or a Territorial court, it is within the power of Congress to create exactly what we have undertaken to create here, if we want to do it. It is a question of policy and not of power; and I say that be-