Mr. SPOONER. If the Senator from Ohio will not yield to me, I will yield to the Senator from Ohio.

Mr. FORAKER. I can say it in a moment, and I will be careful to take a moment about it. I, for my part, and the way we are about the thing. It seems to me that a complete answer to all that is involved in the question of the Senator from Massachusetts, if I rightly understand the question, is found in simply reciting the office of a court. What the court is called upon to do is to decide legal propositions that arise and are brought before it.

Mr. HOAR. To support the Constitution.

Mr. FORAKER. For instance, the judge who was appointed and who qualifies by taking an oath of office to support the Constitution of the United States is to decide all cases in law and equity arising under the Constitution, the laws of the United States, and treaties made or which shall be made under their authority. His jurisdiction shall extend to all cases affecting ambassadors, other public ministers, and consuls, etc. The Senator is familiar with it all.

Mr. NELSON. Will the Senator from Ohio allow me to interrupt him a minute?

Mr. FORAKER. Yes, certainly.

Mr. NELSON. I wish to call his attention to the fact that the question of the Senator from Massachusetts was intended to raise an entirely different question. The question was intended simply to settle controversies arising under the Constitution and the laws: and if two citizens of the United States have a question arising between them in Ohio or elsewhere they can litigate it in any court that has jurisdiction of the subject-matter and of the parties, no matter where that court may be situated. But the Constitution nowhere gives any jurisdiction to pass judgment in such a case would not have anything to do with the political or governmental operation of the Constitution, either one way or the other.

It would be perfectly competent for this court to try a matter in Hawaii, if it had jurisdiction of the parties and of the subject-matter arising here or arising elsewhere under the Constitution and laws of the United States, and render its decision in accordance therewith, without regard to whether the Constitution was in force there as an organic law or not, the sole question in that respect being whether the case was one arising necessarily there, but anywhere under the Constitution or the laws or the treaties, etc., of the United States.

Mr. HOAR. May I ask the Senator one more question?

Mr. FORAKER. Certainly.

Mr. HOAR. Is there, in his judgment, any part of the Constitution which the court, so appointed and so sworn, would not be bound to support?

Mr. FORAKER. No.

Mr. SPOONER. Will the Senator take that up in the discussion of the Puerto Rican case?

Mr. FORAKER. Yes; I am sorry I cannot follow this out to the end with the Senator from Massachusetts now, but I recognize, under the Constitution and laws of the United States, the right of the Territory to judge a matter that has come within the jurisdiction of the Constitution, or the laws or the treaties, etc., of the United States.

Mr. SPOONER. If I may be permitted to use a slang phrase, I have been "lost in the shuffle." I have no regret for the interpretations of the Senator from Ohio, except for the statement that he has interjected into my observations a great deal of judicial error.

The Senator from Ohio says, as I understood him, that if we are creating under section 1 of Article III a constitutional court for the Territory, we can create a national judge there. Well, if we were relying upon section 1 of Article III a constitutional court for the Territory, of course we would create a constitutional judge there.

I understood the Senator to admit that if we were proceeding under the general sovereignty of the United States over these Territories, and that Congress had the power to make rules and regulations respecting the Territory and other property of the United States, we could not create a constitutional court in the Territory, the tenure of which would be fixed by the Constitution rather than by the act of Congress. That is a non sequitur. That, I suppose, would call a petitio principii. It begs the entire question in dispute between that Senator and myself. He assumes that we may, under section 1 of Article III, create a constitutional court in the Territory the tenure of whose judge is fixed by the Constitution at life and whose tenure is beyond the legislative jurisdiction.

That is precisely the proposition which I deny. That is precisely the proposition which is in dispute between us. The Supreme Court of the United States oftentimes has declared that in creating courts in Territories we did not proceed under section 1 of Article III, but under section 2, which gives Congress the power to legislate or to make rules and regulations respecting the Territory and other property of the United States. Chief Justice Marshall says in the case of the Insurance Company vs. Carter that they are legislative courts.

Mr. SPOONER. If the Senator will permit me, I have the city tomorrow, and I am anxious to get through.

Mr. FORAKER. I am called out of the Chamber now. Will the Senator allow me just one word?

Mr. SPOONER. Of course I have allowed the Senator.

Mr. FORAKER. Certainly you have, and you have been so generous and so kind that we keep on interrupting you when we ought not to do so. What I want to say is that it was true, as said in the Canter case and in all the cases to which the Senator refers, that the courts under consideration were Territorial or legislative courts, but they point out where they were fixed by tenure or jurisdiction, were shown to be such. The court, in other words, in all those cases was considering what Congress had done—not what Congress might do.

Mr. SPOONER. The Senator from Ohio—

Mr. FORAKER. I have to go now.

Mr. SPOONER. The Senator from Ohio has fallen into the strange position that the only reason why the Supreme Court of the United States has decided that the Territorial courts were Territorial courts in contradistinction from constitutional courts was that the term of the judges of those courts was fixed by the Constitution. The Senator may make the tenure of the judges of a Territorial court for life, but the test is whether we can do anything else. That is the question.

As I said a few moments ago, Congress may, proceeding under the Territorial clause of the Constitution, if I may say that, decide these courts and give them such jurisdiction as Congress sees fit. We may fix the term of the court and of the judge at four years or ten years or during good behavior; and we may provide that those judges may be removed by the President.

But Congress has no more to say about the tenure of office of a court than to say whether it has jurisdiction or not; whereas the Constitution fixes the tenure of the judge. You have no more power to provide that the President may remove the judge of a constitutional court (by that I mean one of the inferior courts mentioned by that constitutional provision in which is vested the judicial power of the United States) than the Constitution fixes the tenure of the judge. You have no more power to provide that the President may remove the judge of a constitutional court (by that I mean one of the inferior courts mentioned in that section and article of the Constitution) than you have the power to take my life without a trial or giving me my day in court.

As I have pointed out before in this House, the President may not dispute that. To say that under the other clause of the Constitution we have the power to confer whatever jurisdiction we please upon the Territorial court, to make the term of the judge what we please, is not at all consistent with my contention that we can not make a constitutional court in the Territory, because with the jurisdiction of the Territorial court and with the tenure of office of the Territorial judge we have the power to do precisely what we please.

It is said here by Chief Justice Marshall, speaking of those Territorial courts:

The acts of Congress respecting proceedings in the United States courts are concerned with and confined to those courts, considered as parts of the Federal system,

and as invested with the judicial power of the United States expressly conferred by the Constitution, and to be exercised in correlation with the presence and jurisdiction of the several State courts and governments.

That has been the theory of all our legislation from the beginning.

They were not intended as exceptions of that plenary municipal authority which has been over the District of Columbia and the Territories of the United States.

The power to create the constitutional court comes not from that clause of the Constitution, but it comes from section 1 of Article III, which fixes the tenure of the judges.