Again, the court says in this case:

Cases of this kind, whether created by an act of Congress or a Territorial statute, are not, in strictness, courts of the United States: nor, in other words, the jurisdiction with which they are invested is not a part of the judicial power derived from the Constitution, but derived from the act of Congress, but invested in the executive of the general powers which the legislative department possesses to make all the necessary laws and regulations respecting the public territory and other public property.

Mr. HOAR. You can change that by act of Congress.

Mr. SPOONER. Of course, you can change that by act of Congress. Having fixed the tenure of the Territorial judge during good behavior, you may change it.

Mr. CILTON. You may abolish the office.

Mr. SPOONER. You may, as I was about to say, abolish the office, but you can not abolish the tenure nor limit the term. The distinction between the two courts, perhaps more theoretical than practical, is, to my mind, as clear as any proposition in law.

I am prepared to concede that there is very great force in the argument made by the Senator from Alabama [Mr. MORGAN] that the court which is to deal with admiralty questions over the islands and territorial waters of a State, (as far as the tenure of the judge is concerned), than the ordinary Territorial court, because of its isolation, because they are islands of the sea, and because, in the very nature of things, the admiralty jurisdiction in all its phases will be more often invoked than perhaps in some of the settled States of this Union.

Mr. STEWART. Will the Senator permit me to make a suggestion?

Mr. SPOONER. I think it is not important in the interests of that people—and we all want to serve the interests of that people, however we may have felt about their annexation—if it be important to give to the judges of that court a longer tenure than four years, it should be provided in the second section of the bill and not left to be determined, when the question of tenure, on the theory that we are creating a constitutional court.

Mr. MORGAN. The Senator appealed to me, and I suppose he will submit to an interruption.

Mr. SPOONER. Always.

Mr. NELSON. Mr. President, I can not agree with the views expressed by the Senator from Wisconsin [Mr. SPOONER]. I think—

Mr. SPOONER. I yielded to the Senator from Alabama [Mr. MORGAN], when he has concluded I shall then yield to the Senator from Minnesota [Mr. NELSON].

Mr. NELSON. I wish to reply to the Senator from—

Mr. STEWART. I hope the Senator will allow me to make a remark before he does so.

The PRESIDENT pro tempore. The Chair has recognized the Senator from Minnesota [Mr. NELSON].

Mr. NELSON. Mr. President, I wish to reply briefly to the Senator from Wisconsin [Mr. SPOONER].

Mr. STEWART. Will the Senator yield to me for one minute before he replies to him, and then he will have something more to reply to?

The PRESIDENT pro tempore. Does the Senator from Minnesota yield to the Senator from Nevada?

Mr. NELSON. Yes.

Mr. STEWART. Mr. President, from the foundation of the Government the practice has been to remove judges of the Territorial courts by the President on the ground that they were not provided for by the Constitution. That has never been questioned once it was once decided, but it was never intended that they were constitutional courts, and that the President, therefore, did not possess that power. You will find one of his dissenting opinions to that effect. But the court held that it was not in the power of Congress to create judges of the Territories whom the President could not remove; that they were not courts of record; that they were simply legislative judges, created by the legislatures of the Territories, and subject to removal by the President.