Mr. HOAR. Did not the statute the court was expounding contain the power of removal?

Mr. STEWART. No; the statute is entirely silent on that point, and precisely that very question arises, and it was ably discussed and adjudicated by the Supreme Court that Congress could not provide a judge for a Territory whom the President could not remove; that it could not fix a term, against the wishes of the President, to remove the judge. That has been the practice, and it is sanctioned by the Supreme Court. Congress can fix the term of the judge at any years or twenty years, but that will not make it so if the President sees fit to remove him.

Mr. NELSON. Mr. President, the argument of the Senator from Nevada [Mr. STEWART], as well as the argument of the Senator from Wisconsin [Mr. Spooner], failing to make the proper distinction. There is in every Territory, as there is in every State, a double jurisdiction. There is a local jurisdiction in our organized Territories arising under local laws of their own legislatures and the common-law system which has been applied to such Territories, as territorial jurisdiction. Neither was created to take jurisdiction over subject-matter, which is akin to the jurisdiction that the State courts have in the States, it is a Territorial court, and exercises Territorial jurisdiction, and is created under that clause of the Constitution which gives Congress the power to regulate and to control the Territories.

The decisions which the Senator from Wisconsin has quoted say that the Territorial courts are legislative courts. True; and why are they legislative courts? Because those courts are given that peculiar jurisdiction which is local to the Territories and is the jurisdiction given it in the third article of the Constitution to the Congress of the United States. In all those instances where we have created Territorial courts we have equipped them and given them, first of all, jurisdiction of their local jurisprudence. Then, in addition to that, that we have given them, to a limited extent, jurisdiction of Federal jurisprudence. If we have a right to establish federal courts a part of our jurisprudence, we have a right to extend it and give it to other courts. There can be no trouble. The court established in this bill is, in one sense, a constitutional court. Article III, section 1, of the Constitution reads as follows:

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.

Technically, there is only one court established by the Constitution in terms, and that is the Supreme Court of the United States; and Congress can establish inferior courts under this article; and what are those inferior courts? The second section of this article mentions them:

Sec. 2. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;—to all cases affecting ambassadors, other public ministers and consuls;—to all cases of admiralty and maritime jurisdiction;—to controversies to which the United States shall be a party;—to controversies between two or more States;—between a State and citizens of another State;—between citizens of different States;—between a State and citizens of other States;—between citizens of the same State, claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens or subjects.

These measures and determines what is a Federal court or not—a court that has given to it that jurisdiction; and that is precisely the jurisdiction referred to in the judiciary act. A court that has no other jurisdiction than that is a constitutional court. Section 88 of this bill gives the court provided for here no other jurisdiction. That is exact power to jurisdiction that is given to the United States district court in the States, and that is precisely the jurisdiction here given by the Constitution. So this court is purely a constitutional court, and the only part of the argument of the Senator from Wisconsin that I can agree with is the judge of such a court, and his office for life, provided by the Constitution.

The other question which the Senator from Massachusetts [Mr. HOAR] injected into this debate—Mr. SPONNER. The Senator is wrong in the statement he made a moment ago.

Mr. NELSON. Allow me to say to the Senator—and then I will answer him—none of the decisions has quoted is germane to this question, for the reason that in every one of those cases the courts were properly legislative courts and not constitutional courts, because they had the local territorial jurisdiction given to them. The point in this bill is the exercise of that jurisdiction, and hence it is not a legislative court in the sense laid down in those decisions. Now I will hear the Senator.

Mr. SPONNER. I hope the Senator did not understand me as saying that the Territorial courts, no matter what the jurisdiction given them, are constitutional courts.

Mr. NELSON. Is this a legislative court provided in this section of the bill? Let me ask the Senator, does this section in this bill give this court any other jurisdiction than is given by section 2 of Article III of the Constitution?

Mr. SPOONER. Of course not.

Mr. NELSON. If it has no other jurisdiction, why is it not treated a court of the United States as a similar court in a State?

Mr. SPOONER. If the Senator wants me to answer that question, I will do so. I admit that it is within the power of Congress to confer all this jurisdiction upon Territorial courts. I do not dispute that at all.

Mr. NELSON. This can not be a legislative court.

Mr. SPOONER. It is a legislative court.

Mr. NELSON. It is a legislative court in the sense that the district courts and the circuit courts in the Territories are. They have been created by Congress.

Mr. SPOONER. But the district courts and the circuit courts of the United States are in some sense legislative courts.

Mr. NELSON. Certainly.

Mr. SPOONER. But the term or tenure of the judges of those courts is not for life. Is it not here? Would not this tenure be for life? I say, then, we agree that this tenure is for life.

Mr. SPOONER. We have the right to make the tenure of the Territorial judge what we choose.

Mr. NELSON. Not where you give him nothing but Territorial jurisdiction. Let me read the Constitution and see:

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 judges, both of the Supreme and inferior courts, shall hold their offices during good behavior.

When this court is created, if at all, it will owe its existence its jurisdiction, and its life to Article III of the Constitution.

Mr. SPOONER. Not at all.

Mr. NELSON. Yes, sir; because it has none of that local jurisdiction that is given in the case of the others. The decision in reference to the Territory of Minnesota bearing upon this, and then the Senator will be able to see the difference. By the organic act of the Territory of Minnesota, the local Territorial courts were established—the district courts and the supreme court—and then, in connection with it, there is this clause:

and each of the said district courts shall have and exercise the same jurisdiction, in all cases arising under the Constitution and laws of the United States, as is vested in the circuit and district courts of the United States.

That is, conferring Federal jurisdiction on local Territorial courts. How this bill extends the reach of the National and Territorial court, and this court there has nothing of territorial jurisdiction. No case arising under the local law, under local statutes, or under local jurisprudence could be tried in this court, but only cases that would come under the judiciary act, or under Article III of the Constitution would be within the pale of the jurisdiction of this court.

Mr. ALLISON. Did those judges hold for life?

Mr. NELSON. I think, under this clause of the Constitution, they would.

Mr. ALLISON. But did they? They were Territorial judges.

Mr. NELSON. They were Territorial judges because they had a double jurisdiction, but this court has not such jurisdiction. In all these cases that you have referred to and which are cited in the courts they had a double jurisdiction. They had a Territorial jurisdiction and a Federal jurisdiction. They were not pure Federal courts. But the court established by this section is a pure Federal court, with no jurisdiction of the local jurisprudence in the Territory of Hawaii. Hence, if we have the power to create it at all, it must be under this third article of the Constitution: and if it is a court under that clause and under that power, then there will be life tenure.

Mr. TELLER. Will the Senator allow me? I want to modify my amendment by making it clear. It reads:

 Said court shall have, in addition to the ordinary jurisdiction of district courts of the United States, jurisdiction of all cases cognizable in a circuit court.

I desire to add after that of the United States, so that there shall be no question about it.

The PRESIDENT pro tempore. The Senator from Colorado has a right to modify his amendment.

Mr. TELLER. I have a right to modify it, and I modify it as I have already done.

Mr. BACON. Without detaining the Senate, if the Senator will pardon me, I wish to call the attention of the Senator from Ohio [Mr. FORAKER] to the fact that the act creating the Louisiana court, upon which he has commented, required that the salary of the judge should be paid out of the estimated annual revenues of that Territory. It was not the purpose of Congress to make it a constitutional court. Otherwise the salary would certainly have been paid out of the Treasury of the United States.

Mr. FORAKER. I do not see in that any conclusive argument.

Mr. BACON. I simply suggest that as a fact.

Mr. FORAKER. I do not see any reason why in a Territory we