can not, if we see fit, provide that the judge shall be paid out of the revenues of the Territory out of its treasury.
Mr. HOAR. Should not the amendment of the Senator from Colorado as modified be read?
Mr. CHIVERTON. I ask that the amendment of the Senator from Colorado as modified be read.
Mr. HOAR. I ask that the amendment of the Senator from Colorado as modified be read.

The PRESIDENT pro tempore. The amendment as modified will be read.

The same.

On page 43 it is proposed to strike out all of section 88 down to and including the word "court," on line 5 of page 44, and insert in lieu thereof the following:

That there shall be established in said Territory a district court, to consist of one judge, to be styled "the judge of the district court," and be called the district judge. The President of the United States, by and with the advice and consent of the Senate, shall appoint a district judge, a district attorney, and a marshal of the district. The district judge shall hold office for four years, unless sooner removed by the President. Said district judge shall be appointed by the President of the United States, and shall hold office for four years, unless sooner removed by the President. Said district court shall have appellate jurisdiction of the United States, jurisdiction of all cases cognizable in a circuit court of the United States, and shall proceed therein in the same manner as a circuit court of the United States. Its judgments shall be final, and all penalties and costs allowed to the circuit court of appeals in the Ninth judicial circuit, in the same manner as writs of error and appeals are allowed from circuit courts to circuit courts of appeals as provided by law.

Mr. HOAR. I should like to ask the Senator if he does not intend to insert a provision also as to the method of impeaching judges, etc.?

Mr. MORGAN. Yes; I will do that later.

Mr. MORGAN. Mr. President, we have enough questions now before the Senate, I believe, to engage our attention for a while, at least. The judicial power of the United States under our Federal Constitution and our State constitutions is divided into two branches: one is the Federal or Federal jurisdiction, exercised exclusively by the authority and power of the Federal Government, the Government located at Washington; the other a State jurisdiction, which is local, which has nothing to do with the enforcement of Federal law, and not expected to be engaged in the exercise of that part of the judicial power. It is perfectly distinct.

The Congress of the United States, being in supreme sovereign authority over the Territories, has the right to establish in these Territories courts that combine the local powers that belong to State courts with the Federal power. That is in virtue of the power of the Congress to extend the jurisdiction of Congress over the subject. It has the power of the States to establish local courts or courts of local jurisdiction, applicable to local affairs, and also the power of Congress to establish Federal courts with Federal jurisdiction over Federal affairs. This bill is intended to establish in the district of Hawaii a pure Federal district court. Of course, a pure Federal district court is a court of life tenure, fixed by the Constitution. Hitherto, in the organization of Territories, Congress has exercised the dual power of conferring upon the supreme courts of the Territories the jurisdiction of Federal affairs; over local affairs, and also a certain jurisdiction in respect of Federal affairs. That is perfectly legitimate. Congress has the right to do it. Equally, I contend, Congress has the right to separate the jurisdictions there and establish one jurisdiction for Federal affairs and another for local affairs. It has the same right to do that in Hawaii that it has in any State of the American Union. It has as much power to do it.

The argument on the other side of that question, as I understand it, is that the court established by an act of Congress for a Territory can not be a Federal court under the Constitution. It is not there. It is a Federal district court. It is a court established by the Congress of the United States under the Constitution, and a Federal constitutional court. That is legitimate. That is not disputed. So the only question between us all is whether the Congress of the United States has the power to establish a Federal district court in a Territory. That is the question, and that is the only question in this whole business.

Mr. HOAR. The power to exercise this power, in one case directly and in another case indirectly. They are very conspicuous cases. The District of Columbia is not a State, neither is it a Territory, and yet, on referring to the statutes giving jurisdiction to the District of Columbia, we find that the supreme court of the District of Columbia is described as the supreme court of the United States of America. The jurisdiction that the circuit courts of the United States have; that is to say, the jurisdiction of the circuit court of the District of Columbia can exercise every power which can be exercised by circuit courts of the United States. There is the establishment of a court that is Federal, full Federal in its jurisdiction, in the District of Columbia. So there is no restriction in the Constitution against the establishment of a circuit court of the United States or a supreme court of the District of Columbia with full circuit-court powers outside of a State and inside the District of Columbia. That is by direct provision of the Constitution.

We have also more lately established a court of appeals in the District of Columbia which has a jurisdiction precisely coordinate in all respects with the jurisdiction of the circuit courts of appeals of the United States. We have established also district courts in the District of Columbia, which have the jurisdiction of the Supreme Court of the United States, and the jurisdiction is the same, but the location is not in a State or in a Territory, but it is in the District of Columbia.

Is there, therefore, a constitutional objection against the location of a Federal district court in the District of Columbia, at any other place than within a State? Is there some prohibition of that sort? The Constitution is absolutely silent upon the question as to where the court shall be located, and the point, in determining whether it is a Federal court or a Territorial court, is ascertained by two facts: One is the appointment of the Federal judge, and the leading one—and the other the tenure of office and the fact that it is created by act of Congress, although all those courts are, created by act of Congress. I admit that.

Now, there is another case—an indirect case. I have cited one thing that is positive and direct. I refer now to the district court of the United States in Alaska, or if you please, to the Federal court there, the Federal laws of the United States in Alaska, which is a Territory, and in the Pribiloff Islands, which are islands out in the bossom of the sea. Now, let us see what has been done by Congress on that subject: Congress has otherwise provided by law, all violations of this chapter and of the several other chapters, and the several other sections of the Constitution thereof, committed within the limits of the same, shall be prosecuted in any place within the several Territories of the United States in California or Oregon in the district courts of Washington.

Offenses against the United States committed in Bering Sea and Alaska, that mere chrysalis formation up there yet of a Territorial government, may be prosecuted in the district court of the United States in California or Oregon, or, as it was when the law was passed, in the Territory of Washington. Here, then, is comprehended the Federal jurisdiction of a very important character indeed; a jurisdiction under which the arrest of British ships has been made and the vessels brought into port and condemned as privateers, and sold to parties, right through court, as if they had been captured and condemned in a prize court in time of war. The jurisdiction of the United States, its power to punish offenses against its laws, and against all of the laws that were then or now in force, was made to include Alaska, to trim into Alaska, a part of the Territory of Alaska, the jurisdiction thereof, committed within the limits of the same, shall be prosecuted in any place in the district court of the United States in California or Oregon in the district courts of Washington.

Having done all this with respect of this most important and difficult jurisdiction and power to enforce our laws in Bering Sea and Alaska, we pass to consideration of this Federal jurisdiction—offenses against these provisions of proposed law that they are unconstitutional? The Supreme Court of the United States, at the suit of Great Britain—not by that name, but in fact—tested the question on a writ of prohibition of the jurisdiction of these courts to come to final decrees in causes in which ships had been captured for violations of the federal act. Are we to hold here that there was no power on the part of Congress to extend the jurisdiction of the United States into the waters and over Territories which had no organized government at all or one that was the mere simulacrum of an organized Territory in Alaska?