purpose of preventing the Crown from having the power to unseat members of Parliament, so as to give to the House of Commons the power to determine its own membership. When we arrived at the proposition here to set up an independent government, those provisions were in almost all of the old continental constitutions, or, as we called them, and they were insisted upon in the Constitution of the United States. I have no disposition to change the provision that each House of the Congress of the United States shall be the sole and exclusive judge of the elections, returns, and qualifications of its own membership; but at the same time, when we are called upon to consider a government in this great imperial affair, we have got here, republics united into a confederation, I think it is a wise thing to have the provision that is inserted in the fifteenth section of this bill. If it goes out, I do not know that it would ever make any difference in Hawaii or that it would in Alabama or in the State of the Union, but I believe the principle of it is correct.

Mr. SPONNER. Mr. President, I move to strike out the fifteenth section of the bill and to insert in lieu of it:

Each house shall be the judge of the elections, returns, and qualifications of its own members.

I have listened to the statement of the Senator from Alabama [Mr. MORGAN], but I cannot persuade myself that this departure from our theory in this instance, or in any other, as to the government of a Territory is a wise one. Our theory is that the several departments of the Government should be independent of each other—the executive, the judicial, and the legislative—each, of course, being supreme within its own sphere. I am too old-fashioned to like the proposition that the courts shall become involved in any way in the constitution of the legislature. I do not believe in very small senate provided for here, a senate of thirteen, if I recollect.

Mr. MORGAN. Fifteen.

Mr. SPONNER. Fifteen. Under the provisions of this bill the chief justice and the two associate justices who constitute the supreme court of the Territories are to be appointed by the President of the United States. They are to be chosen over there; and they are impeachable. They are not to be removed by the President of the United States, but they are subject to impeachment. They are subject to impeachment before the Senate. The Senate is the impeaching court, and it is the court of trial, if conviction, presents the articles of impeachment. I do not myself take kindly to the notion that the judges of the supreme court, who may be tried, one or more of them, should be given power to decide who should be or who should not be, in a contest, members of the Senate. Under this it might be possible that the leading members of the Senate at least would owe their seats in that body to a decision of the supreme court. The supreme court are not only to pass upon the validity of the election, but they are also to be the sole judge as to who has been elected. To give it this power is by no means out of harmony with our theory. It does not maintain the independence absolutely of the three departments of the government, and no reason has been given, at least none that I have heard, which ought, I think, to commend it to the judgment of the Senate. I say this is, if they have not only ca
gent people, I do not see how the Senate itself can interfere for self-government, but for a fine government, I could conceive of no reason why each house should not be, as the houses here at all, are, from the Congress down, the judges of the election, returns, and qualifications of their own members. It seems to me to be rather a vicious departure from our theory that the people who are to be tried by a senate should have had a voice in the selection of the members of that body. I am willing to take the judgment of the Senate up to.

The SECRETARY pro tempore. The Secretary will state the amendment proposed by the Senator from Wisconsin.

It is proposed, on page 9, line 17, to strike out section 15, as follows:

SUPREME COURT JUDGE OF QUALIFICATIONS OF MEMBERS.

SEC. 15. That in case any election to a seat in either house is disputed and has not been determined by the court of last resort in the Territory of Hawaii, an independent sole judge of whether or not a legal election for such seat has been held, and, if it shall find that a legal election has been held, it shall be the sole judge and final arbiter of the same.

And in lieu thereof to insert:

SEC. 15. Each house shall be the judge of the elections, returns, and qualifications of its own members.

The amendment was agreed to.

Mr. CLARK of Wyoming. I propose, as an amendment, to strike out all of section 56 and insert in lieu thereof:

That the legislature at its first session shall create counties for the Territory of Hawaii and provide for the government thereof.

Mr. HALLETT. Wisconsin. We have counties ever been counties there?

Mr. MORGAN. No. The entire group of islands is governed by the legislature, of course, from Honolulu, and that has led to some jealousy, particularly on the part of Hawaii, which is the largest island and the richest in the group. The town of Hilo is an aspiring town, and some of these closed the gates, and I think in a very good anchorage in front, and there is a great deal around it to give promise of great success as a town. I have no doubt the legislature will organize counties there and they will probably do it at the first session, but to do that they have to reorganize a great deal of the administrative system of the island, and the first thing, they have no magistrates, no justices of the peace, in Hawaii. The district judge has all the jurisdiction and functions that we give to a justice of the peace and certain larger ones. I forget the number of districts. There are some ten or twelve, perhaps fifteen, in the islands. Some times two islands are put in one district. Those courts, as I understand, are courts of record and have the power to accept
the registration of deeds. In that I may be mistaken, but I think not.

Now, in regard to the sheriff, there is a head sheriff, we call him, in the proposed act a high sheriff, who has under his jurisdiction a number of deputy sheriffs, or sheriffs of the different judicial districts in the islands. There is a sheriff for each judicial district, and so there is a clerk for each of these districts and clerks for the circuit courts at each of these courts. The clerk of the circuit court has the clerks of the circuit courts and the district courts under his jurisdiction, not as to appointment, but as to keeping up the functions and dispatching the business of his office. The system in regard to sheriffs was found to be too valuable indeed, because the sheriffs have a right of the highest possible comitatus whenever it is necessary in any part of the islands.

The whole force of the sheriff's office in the islands can be brought to bear at once upon any particular part of those islands, and sometimes it has been found absolutely necessary to move some of the property from the insular government, especially in the quarrels that are continually fomented and are sometimes exceedingly bitter and fierce between the Japanese and the Chinese and sometimes the Portuguese. That is part of the police establishment. The sheriff's office is a very important one for the preservation of the peace, and it is estimated of course there must be a sheriff for each county, and this unity of power, which, up to the present time, has been effective in preserving peace and order in Hawaii will be broken up.

I think we had better give a little show about this and not force them to the first session of the legislature, otherwise they will give the masses of the people the first session of the legislature will have a great deal to do. Its time is limited. It will require a very able and very industrious body of men in that first session of the legislature to provide for all the wants of the islands. Here, for instance, is the sum of money, which is already upon hand, which has not been divided among the public welfare, among the people of Hawaii. I have a letter on my table here now from a lady in Hawaii, who was then with her husband on guard for the purpose of protecting the country against the spread of bubonic plague, which was brought in there on ships from China.

In the existing system of administration in Hawaii will be changed whenever counties are established, and there will be a great multiplication of offices and a great addition to the expense of Hawaii. Up to the present time it has been, and according to the estimates of this commission, for all time to come Hawaii will be a self-sustaining community, and it must assume, or do so whenever this bill is passed, it is still a self-sustaining community; and I must say that I think the burdens of taxation in Hawaii seem to rest as lightly upon those people as any country I ever was in. There is no complaint of any taxation in Hawaii. Is it not the fault of our people that the government upon those people. On the contrary, they are a happy, decent, well-ordered, cleanly, nice-appearing people.

I do not remember ever to have seen a patch on the garment of a Hawaiian, great or small, and I do not remember to have seen one whose clothes were out of order, except a workman employed about a ditch, or something of that sort. I do not remember ever to have seen a beggar there. I am satisfied there is not one in the islands. They are all cared for. There are no exhibitions of persons in penury or in distress on the streets of the islands, and everybody there seems to be prosperous and contented, and as far as I know, in Hawaii was not to be happy. The burdens of government, therefore, are not heavy upon those people, and they are perfectly self-sustaining and will be self-sustaining. Those are very fertile islands; there is great prosperity in all industries, and there is a great invitation for new industries to go there, and a great invitation for the people to come to Hawaii. I think there have been thirty or forty thousand people added to the population of Hawaii since the act of annexation.

Under these circumstances I think we ought not, for the purpose of getting deeds registered, if they are not authorized now to be registered, to compel them at the first session of the legislature to amount to about a million dollars or something of that sort. I do not remember ever to have seen a patch on the garment of a Hawaiian, great or small, and I do not remember to have seen one whose clothes were out of order, except a workman employed about a ditch, or something of that sort. I do not remember ever to have seen a beggar there. I am satisfied there is not one in the islands. They are all cared for. There are no exhibitions of persons in penury or in distress on the streets of the islands, and everybody there seems to be prosperous and contented, and as far as I know, in Hawaii was not to be happy. The burdens of government, therefore, are not heavy upon those people, and they are perfectly self-sustaining and will be self-sustaining. Those are very fertile islands; there is great prosperity in all industries, and there is a great invitation for new industries to go there, and a great invitation for the people to come to Hawaii. I think there have been thirty or forty thousand people added to the population of Hawaii since the act of annexation.

Under these circumstances I think we ought not, for the purpose of getting deeds registered, if they are not authorized now to be registered, to compel them at the first session of the legislature to amount to about a million dollars or something of that sort. I do not remember ever to have seen a patch on the garment of a Hawaiian, great or small, and I do not remember to have seen one whose clothes were out of order, except a workman employed about a ditch, or something of that sort. I do not remember ever to have seen a beggar there. I am satisfied there is not one in the islands. They are all cared for. There are no exhibitions of persons in penury or in distress on the streets of the islands, and everybody there seems to be prosperous and contented, and as far as I know, in Hawaii was not to be happy. The burdens of government, therefore, are not heavy upon those people, and they are perfectly self-sustaining and will be self-sustaining. Those are very fertile islands; there is great prosperity in all industries, and there is a great invitation for new industries to go there, and a great invitation for the people to come to Hawaii. I think there have been thirty or forty thousand people added to the population of Hawaii since the act of annexation.

Under these circumstances I think we ought not, for the purpose of getting deeds registered, if they are not authorized now to be registered, to compel them at the first session of the legislature to amount to about a million dollars or something of that sort. I do not remember ever to have seen a patch on the garment of a Hawaiian, great or small, and I do not remember to have seen one whose clothes were out of order, except a workman employed about a ditch, or something of that sort. I do not remember ever to have seen a beggar there. I am satisfied there is not one in the islands. They are all cared for. There are no exhibitions of persons in penury or in distress on the streets of the islands, and everybody there seems to be prosperous and contented, and as far as I know, in Hawaii was not to be happy. The burdens of government, therefore, are not heavy upon those people, and they are perfectly self-sustaining and will be self-sustaining. Those are very fertile islands; there is great prosperity in all industries, and there is a great invitation for new industries to go there, and a great invitation for the people to come to Hawaii. I think there have been thirty or forty thousand people added to the population of Hawaii since the act of annexation.
the Senator will allow me, so that I think it will meet all his objections. It will then read:

That the legislature at its first regular session shall create counties, and may, from time to time, create town and city governments within the Territory of Hawaii and provide for the government thereof.

Mr. CULLOM. I myself have no objection to that. I think it is tolerably important that the people of the island of Hawaii, on which the town of Hilo is located, shall have some records there, so that they will not be required to go to the island of Oahu or to the city of Honolulu, taking a day by water, in order to record deeds or transact such business as the people of every county have to transact. I have no objection to the amendment as the Senator now offers it.

The PRESIDENT pro tempore. The Secretary will state the amendment of the Senator from Wyoming as proposed to be modified.

The SECRETARY. In section 56, page 23, line 10, after the word "measurement," it is proposed to strike out "may and insert "at its first regular session shall," and before the word "town," in line 11, insert "may from time to time;" so that if amended the section will read:

SEC. 56. That the legislature at its first regular session shall create counties, and may, from time to time, create town and city governments within the Territory of Hawaii and provide for the government thereof.

The PRESIDENT pro tempore. The question is on agreeing to the amendment of the Senator from Wyoming as modified.

The amendment was agreed to.

Mr. CLARK of Wyoming. I should like to ask if any amendment was offered or adopted or rejected yesterday to section 75. The matter was up for discussion, but I think it was not determined.

Mr. CULLOM. There has been no amendment to that section.

The PRESIDENT pro tempore. The Chair is informed that no amendment was made to that section.

Mr. CLARK of Wyoming. I desire to offer an amendment to section 75.

I regret, Mr. President, that I feel compelled to propose this amendment. I believe it is right. It is with no desire to interfere with the passage of the bill or the object of the committee, but I think it will cover the matters. The section provides that an amendment shall be appropriated to allow the Secretary of Agriculture to investigate the laws of Hawaii relating to public lands, agriculture, and forestry. Now, so far as agriculture and forestry are concerned, I think it quite proper that the Secretary of Agriculture should have that investigation under his charge, but so far as any law relating to the public lands are concerned, which is going to be the great question in that country, a question which is going to be harder than the labor question, they ought to be investigated by the department of the Government which is especially charged with the administration of the land laws. It seems to me that the only proper way is for the investigation, if any, into the law of Hawaii to be made under the land department of our Government. This section, perhaps, might be divided, so that two investigations should be had.

What I want is for the laws of Hawaii, which constitute and constitute the greatest problem over there, if they are to be investigated, should be investigated under the department of Government which should have and will have the administration of those laws afterwards and has in every other Territory.

Mr. CULLOM. I did not understand the amendment of the Senator from Wyoming. If the Senator simply proposes for the present that the Secretary of the Interior instead of the Secretary of Agriculture shall make the investigation, and stops there, I have no objection to his amendment.

Mr. CLARK of Wyoming. I do not desire that we shall adopt a land system for those islands until we know more about them.

Mr. CULLOM. Of course. Mr. CLARK of Wyoming. That is all I want.

Mr. CULLOM. The fact is that surveys such as we have in this country are not applicable to the conditions over there, as the Senator knows.

Mr. CLARK of Wyoming. That is right.

Mr. CULLOM. I have no particular concern as to who makes the examination, but I do object to any thing beyond that being done at the present time.

Mr. TILLMAN. But the provision as you presented it in the original bill provided that this survey or reconnaissance should be under the Department of Agriculture.

Mr. CULLOM. That is to be stricken out.

Mr. TILLMAN. But the provision as you presented it in the original bill provided that this survey or reconnaissance should be under the Department of Agriculture.

Mr. CULLOM. That is true.

Mr. TILLMAN. And I can not see any reason why you should change it.

Mr. CLARK of Wyoming. Because the Department of Agri-
Mr. TILLMAN. I understand that.

Mr. CLARK of Wyoming. If the Senator will read my amendment or have it read, he will find that it refers only to the public-land laws of Hawaii and an investigation into them, with certain recommendations to be made as to what laws of ours should be applied there; and it contemplates, not in words but in that report, the formation of some system of laws by which those lands can be brought into cultivation. It does not propose surveying them.

Mr. TILLMAN. As I gather the meaning of the clause as it was in the bill, it provided for a kind of reconnaissance which would give us some definite information as to what kind of land the public domain there consists of.

Mr. CULLOM. That was the meaning of the provision.

Mr. TILLMAN. But the Senator from Wyoming is providing for a survey or reconnaissance by the Land Office here for an entirely different purpose.

Mr. CLARK of Wyoming. The amendment provides for one of the purposes, I will state to the Senator, that was provided by the committee. It leaves out some of the others, and is for one particular purpose.

Mr. TILLMAN. It seems to me that the disposition of these lands in the future might well be left to the Land Office here, and they might, therefore, investigate the land laws of Hawaii and provide some scheme by which those lands should be open for preemption or homesteads in whatever other method of disposition may be determined.

Mr. CLARK of Wyoming. Yes, sir; and that is exactly what my amendment proposes to do.

Mr. TILLMAN. I know, but I want the other information as to what they are.

Mr. CLARK of Wyoming. That may not be the Secretary of Agriculture nor any other person.

Mr. SPOONER. If the Senator from Wyoming will permit me, why not draw an amendment which will cover both.

Mr. TILLMAN. Why not let the Secretary of Agriculture, Secretary of Agriculture, who deals with agriculture and is supposed to know something about farming, being a farmer himself, send over there and tell us what kind of lands those are and what kind of farm products they produce, and let the land laws governing the disposition of those lands be left to the Secretary of the Interior?

Mr. CLARK of Wyoming. I have no objection to that.

Mr. SPOONER. Mr. President—

The PRESIDENT pro tempore. The Chair is uncertain as to who has the floor.

Mr. CLARK of Wyoming. I do not know; we all have it, apparently.

Mr. FORAKER. Mr. President—

Mr. CULLOM. I want to say a word about the amendment.

Mr. FORAKER. Allow me to suggest to the Senator, who wants information about agriculture and forestry, that this bill provides for a commissioner of agriculture as one of the officers of Hawaii and that commissioner is to establish there, and if it should happen that some of our people ought to be able to get from him all the information that it is necessary to have to enable us to know what those lands are worth or what they can be used for.

Mr. TILLMAN. The only trouble I have in this matter is in trusting everything to the United States. They are a very enlarged and educated people, so the Senator from Alabama [Mr. MORGAN] tells us; but still they are not thought worthy to manage their own affairs, and we have limitations as to property in voting there and other conditions which point to the creation or maintenance of an existence condition of which the happy family over there has no right to be disturbed by outside interlopers. I think it is very well for the United States to have some say-so in this business and send somebody over there from whom we will report back the facts. But this change does not propose to give us the facts. The Senator from Ohio tells us that the commissioner of agriculture will give us the facts here. Why, some of our people might want to emigrate over there and not have all these good things left in charge of the little coterie of capitalists who have gone over there and preempted and taken everything that is good in sight.

Mr. FORAKER. No objection to the Secretary of Agriculture being authorized by the bill to make an investigation and report, but I supposed that we should rely upon the commissioner of agriculture to be appointed as a part of this governing affair, to give us all the information that the Senator wanted. I was only suggesting it to save time and avoid further amendment.

Mr. President. Mr. President—

Mr. TILLMAN. Mr. President. I think Senators have entirely mistaken the purport of the seventy-fifth section. No one has referred to what it ought to be or what it really is, except the remark of the Senator from South Carolina, that our people need information upon this question. There is a disposition among some of our farmers, laboring men, to emigrate to Hawaii, and they could do exceedingly well by going there and cultivating a small farm in coffee and make very large profits. It is quite a beautiful industry and a very convenient one in every respect. It occurred to the commission that the situation in Hawaii was very difficult to be understood by a person who had never seen it and who did not know what the situation was. Where this provision was put in here for the purpose of enabling the Secretary of Agriculture to do what? "To examine the laws of Hawaii relating to public lands, agriculture, and forestry"—for there are laws relating to all of them—"the proceedings thereunder and all matters relating to public lands, forests, agriculture, and forestry, and all roads bearing upon the prosperity of the Territory, and to report thereon to the President of the United States, which duties shall be performed with all convenient speed."

That is all of it. It is to get a report of a certain situation or state of facts there relating to agriculture, the laws upon the disposal of public lands, which words are perhaps too broad, but I will not go into that.

Public roads is perhaps one of the most important of the elements of investigation that are presented here, for the reason that until you have built a road through one of those forests you cannot establish coffee plantations or any other kind of plantations, because agriculture is to go on, and the Secretary of Agriculture is in charge of the information for whose ability and enterprise and industry and scientific knowledge I have the greatest possible respect. He would love to undertake a matter of this kind and have it carried through in a proper way; and when he made his report, Congress and the people also could understand exactly what the situation was. It would be necessary merely to get information. Can it make a matter of very great difference as to whether it is done by the Secretary of Agriculture or the Secretary of the Interior, except that the Secretary of Agriculture is to deal with the most important part of it? We are not undertaking to know what changes ought to be made in those laws, and if the Senator from Alabama made a mental change in those laws, and what they are, what the system is, how a man can go and make an entry, and the methods through which he can get possession.

Mr. TILLMAN. If the Senator from Alabama will permit me, can not that investigation be made right here on the spot by the Secretary of Agriculture? That is all that is asked for. The Secretary of Agriculture is to have all the information, and the Land Office, and all the information to be obtained that we can obtain in Hawaii? What we want is an investigation by trained farmers and agriculturists—men who are familiar with that business—as to the possibilities of those lands. The laws and the method of the disposition of these things will be found by the right hand of the Secretary of Agriculture or the Secretary of the Interior to report to Congress the present laws in regard to public lands in Hawaii and what change, if any, he suggests and the disposition of those lands, we can get it without a dollar being expended. What is it that this bill asks for?

Mr. CLARK of Wyoming. If the Senator has ever been to Hawaii, he will know from the right hand of the Secretary of Agriculture what can be done on it, and I do not know whether there will be any change in those laws unless he had gone there and investigated the matter.

Mr. TILLMAN. So I am confronted with a man who has been on the ground and says he knows something about it. I am willing to accept his information.

Mr. CLARK of Wyoming. I do not know anything about it, and that is the reason why I want the information.

The PRESIDENT pro tempore. The Senator from Alabama is entitled to the floor.

Mr. MORGAN. I concur in the proposition that it is necessary to have that information, and if this investigation complete and really reliable, that an investigator should be appointed to go there and examine that country. It is not like any other country in the world. It may be, but it is very peculiar. To group all the different items together, you see that the sea level is one of the things that they want to know, so far as they can ascertain it, what Hawaii is and what it can contribute to your country, from a careful investigation of what the lands are—that is to say, the elevation above the sea, which is an important matter, because you start at the level of the sea there and for 4 or 5 miles or 6 or 7 miles out you have rice farms and sugar estates. Then, as you go higher and you come to a corn and wheat country—a country that in the early settlement of California furnished flour
1992

for the Californians, as well as education for their children, when
the gold diggers went out to California.

When you get still above that you have got a grazing country.
When you get still above that you have got a country that abounds
in berries and ground fruits, such as raspberries, strawberries,
and huckleberries, and the like of that, and a number of kona-
berries and various kinds of very delicious fruits that grow sponta-
neously on the earth. So, as you ascend to a height of 15,000
feet, in some places, you have several latitudes in the different
altitudes producing different kinds of crops.

Well, I can say that it would take an expert agriculturist to ex-
amine into this subject and present to the people the facts that
would induce them to go there and raise sugar, bananas, rice,
maize, corn, melons. Fruits, of course, of various kinds grow all
the year through. The chia apple is wild there and grows on a
tree as large as an ordinary oak. It bears a delicious apple and is
in great abundance all through the country. There are many
other fruits that grow spontaneously in the country, such as
oranges, lemons, and limes. It is a country which abounds in
fruits.

I think our people would like to know exactly the situation there,
and I think Congress would like to know it, because when proposi-
tions are brought in for the disposal of the public lands,
when we have to enact laws to dispose of those public lands, we
want to know what is the best system on which to proceed; whether
the gridiron system of rectangular surveys which obtains here or
surveys that accommodate themselves to the particular business
in hand. An area of land that is sufficient for a coffee plantation
would not be enough, for instance, for a wheat farmer or a corn
farmer. But all of these particulars are of such a peculiar char-
acter that it occurred to the committee that it was better to have
the Agricultural Department take charge of it than the Interior
Department, which would deal with nothing, as has been observed
here, but the land and perhaps something about its quality and
the method of survey and disposal. That is the whole matter.

Mr. TELLER. Mr. President, it seems to me that all this mat-
ter touching the land laws ought to be left to the Interior Depart-
ment. We can not afford to begin to divide up these questions
in different Departments. Unless we are disposed to turn over
the lands to the Agricultural Department all these things ought
to be left to the Secretary of the Interior.

Then, I suggest, if I may be allowed, to the Senator who has
just taken his seat, who knows all about this subject, if he will
draft a provision that will cover his suggestion, I shall be very
glad to vote for it, and let that go to the Secretary of Agriculture
and let him do those things which he can do. Let us confine the
question of the laws to the proper Department, and it certainly
will be proper then to turn over those questions of the character
of the lands and the products that the country will raise and all
that to the Secretary of Agriculture.

I believe if the Senator will draft by-morrow morning a pro-
vision of that kind, there will be no trouble about adopting it.
There is money enough here, because, as the Senator from South
Carolina says, the work of the Secretary of the Interior can be
practically done here so far as the law is concerned, and then the
Secretary of Agriculture can carry out the other idea on the
ground.

Mr. CULLOM. I merely want to say in connection with the
Senator's remark that it is very important that the Secretary of
Agriculture should report on the condition of those islands, the
possibilities of the land.

Mr. TELLER. That is exactly what I want him to do; but I
do not want him to invade the province of the Secretary of the
Interior.

Mr. CULLOM. The Secretary of the Interior ought to look
into the question of how the best interests of agriculture can be
served by dividing those lands, parceling them out so as to suit
the conditions of agriculture. If a man wants to raise coffee or
if he wants to raise taro he has got to have an opportunity of
selecting coffee or taro land, if you please. I think it would be
proper and right for the Secretary of Agriculture to look into the
condition of the surveys over there and determine whether they
are made in harmony with the necessities of agriculture.

Mr. TELLER. That is exactly what I think the Secretary of
Agriculture may properly do. But I think whenever this land is
to be surveyed, if we are to survey it, it will have to be surveyed
under the direction of the Secretary of the Interior.

Mr. CULLOM. I myself think so.

Mr. TELLER. And the Interior Department will avail itself
of the information. Now, we shall have to survey that country
on the rectangular system unless we should find, when the report
comes in, that the character of the country is such that we must
introduce a different system and cut it up into smaller
lots, 40 acres being the smallest subdivision of the Government
surveys. I learn that 20 acres there is a very respectable farm,
in some places. In some places you might need a hundred.

Mr. CULLOM. And 2 acres make a respectable patch or farm
for a native, for instance, who is raising taro. That would be all
he would want and no more.

Mr. TELLER. I am sure if we confine the legal question and
those things to the Interior Department and turn the other things
over to the other Department we shall get at it in better shape
than if we were to have either Department do it alone.

Mr. CULLOM. After this discussion with the Senator from
Colorado, it is left to the Senator from Alabama to prepare an
amendment.

Mr. PLATT of Connecticut. Some Senators desire an execu-
tive session and there are some amendments to be proposed to the
bill which will take some time in discussion. The Senator from
Alabama is to prepare an amendment on the subject which he has
just been discussing. I therefore move that the Senate proceed to
the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the con-
sideration of executive business. After 8 minutes spent in execu-
tive session the doors were reopened, and (at 5 o'clock and 10
minutes p.m. the Senate adjourned until to-morrow, Wednesday,
February 21, 1900, at 12 o'clock m.
February 21, 1900
Senate
v. 33 (3)
p. 2022-2033

TERRITORY OF HAWAII.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. 222) to provide a government for the Territory of Hawaii.

Mr. CULLOM. The Senator from Alabama [Mr. MORGAN] has, I think, an amendment which has been substantially agreed upon as to the subject immediately under consideration before we adjourned yesterday.

Mr. MORGAN. Some objection was made yesterday to section 75 of the bill, and there was controversy, it appears, between the Agricultural and the Interior Departments about it, at least among the friends of those Departments. I have agreed to offer the following substitute, which I believe represents the views of all concerned.

Mr. CULLOM. I think it is right.

The PRESIDING OFFICER. The amendment will be read.

The SECRETARY. Strike out section 75 and insert:

That the sum of $15,000, or so much thereof as may be necessary, is hereby appropriated out of any money in the Treasury not otherwise appropriated, to be immediately available, to enable the Secretary of the Interior to examine the laws of Hawaii relating to public lands, the proceedings thereunder, and all matters relating to public lands, and to enable the Secretary of Agriculture to examine into all matters concerning agriculture and forestry and public roads in said Territory, which duty shall be performed with all convenient speed; and each of said officers shall report to the President of the United States with recommendations upon the matters concerning which they are herein charged. The appropriation herein provided for shall be divided equally between the Department of Agriculture and the Department of the Interior as the necessities of the investigations of each shall demand.

The amendment was agreed to.

Mr. SPOONER. Is there a committee amendment pending?

Mr. PLATT of Connecticut. Yes; there is a committee amendment pending, one that was passed over.
At the present time, the Secretary said, the Senate will read the
amendment to the committee.

The Secretary. In section 61, on page 36, line 15, after the word "office," strike out the words "during good behavior" and
insert "for a term of nine years."

Mr. PLATT of Connecticut. I wish to amend this section 61.
In the first line of the section, line 32, on page 33, I move to strike out "governor" and insert "President," and to strike out "of the Territory of Hawaii," in lines 23 and 24; to insert a semicolon after "circuit courts," in line 25, and after "courts" to insert "and the
"and the governor shall appoint a circuit judge as soon as shall be consistent with the advice and consent of the Senate of the Territory of Hawaii, appoint;" in line 11, on page 30, after the word "may," may, to insert "by and with the advice and consent of the Senate of the Territory of Hawaii."

Now, I propose to strike out, in line 19, including the proposed amendment, the following:

That no other than judges of the superior court, who shall hold office during good behavior for a term of nine years, and the judges of the circuit courts, whose terms of office shall be six years.

That will leave the section so that the President shall nominate and, by and with the advice and consent of the Senate of the Territory of Hawaii the chief justice and justices of the supreme court and the judges of the circuit courts;" and the governor of the Territory, by and with the advice and consent of the Senate of the Territory, shall appoint the other officers mentioned in the section, and then all the officers to hold office for four years, or until their successors shall be appointed and qualified, unless sooner removed, and the removal of all officers, except the chief justice and justices of the supreme court and judges of the circuit courts, shall be by the governor, by and with the advice and consent of the Senate of the Territory of Hawaii.

Mr. President, I do not want to keep going on this, but it does seem to me that we ought not to depart so widely as we do in this bill, from the usual practice which Congress has adopted with regard to the appointment of Territorial officers. I want this bill to pass and to pass as speedily as it can. I want to give the people of the Territory of Hawaii to the privileges which we have granted to any Territory that has been incorporated or created by Congress. But, Mr. President, I see no reason for giving to the Territory and its governor the extraordinary powers which are conferred upon him in this bill. I know that this Territory is peculiar.

Now, we have there a very large population mingled with the inhabitants of the Territory. Of course I cannot give the exact figures of the different races and nationalities in the Territory, but, as I remember, the white people are less than 2,000, except Portuguese.

Mr. PLATT of Connecticut. There are more than that.

Mr. CULLOW. No, 4,000.

Mr. PLATT of Connecticut. More than four and five thousand—2,500 British and 1,500 Germans, perhaps.

Mr. PLATT of Connecticut. I had in mind the voting population.

Mr. CULLOW. Yes.

Mr. PLATT of Connecticut. However that may be, yes. However that may be, the voting population, exclusive of the Portuguese, is very small compared with the rest of the population of the islands, and whether the British and Germans are going to become American citizens we do not know. The probability is that they will not. So, whether the voting population or the population which we may think it advisable to constitute the governing population, consisting of some 4,900,

I do not complain of the bill, Mr. President, in that it proposes, and deliberately proposes, to put the government of the Territory into practical hands of those 4,900 people. I know that the Senator from South Carolina [Mr. TILLMAN] will ask me how that is that I reconcile the fact that I am in favor of a property qualification which shall put the government of the islands into the hands of those 4,900 people, but I do not think that question arises here.

The question about the rights of the blacks to vote is not a new question. We are not determining now whether, if it were a new question, we should extend suffrage to the black population of this country. We did do that; and the difference which exists now between Senators from different sections of the country is merely the difference of opinion as to whether the white and black races are equal in the eyes of God; and I do not think we should do it if it were a new question. So I say that I do not complain of this bill because it proposes in its provisions to commit the government of those islands practically into the hands of those 4,900 people. I know that the President from South Carolina [Mr. TILLMAN] will ask me how it is that we should do it if it were a new question. I do not complain of this bill because it proposes in its provisions to commit the government of those islands practically into the hands of those 4,900 people. I say that I do not think it is equal to the black people to vote, to have the same rights that are given to the white people in Hawaii.

Mr. PLATT of Connecticut. We are dealing with a new question; we are dealing with the question in the new possessions which we have acquired outside of what has hitherto been our boundaries, in the islands of the South Sea, or in the Sandwich Islands, or in the Philippine Islands. That is a new departure in our history. We all know that the decision of that question requires the closest and most careful thought and examination.

Mr. TILLMAN. Mr. President, The PRESIDING OFFICER. Does the Senator from Connecticut consider the Senate shall have any influence in the presidency of the Territory of Hawaii from South Carolina?

Mr. PLATT of Connecticut. Yes.

Mr. TILLMAN. I hope the Senator from Connecticut will not confuse the Hawaiian question with the Philippine question, because they are entirely different. The Hawaiian people were
2024

brought under our flag by a joint resolution which incorporated them as having all the rights under our Constitution that any other people in the United States have. They are not the subjects of conquest; they are not the accidents of war; and I maintain the President can not differentiate those people from any other people who now are under the protection of the United States Constitution and flag.

Mr. PLATT of Connecticut. Well, Mr. President, they differ certainly from any Territories to which we have heretofore given a form of government, in that they are one of our States; they are not, as the Territories hitherto conceded our rights; and this is a new departure, and the question—right upon us—I shall discuss it under another amendment—as to whether we ever intend to erect those Territories, or those new countries or possessions, those islands, into States. I do not say it is good policy to do so; and it was in that respect that I said they differ from the other Territories and from the other possessions in which we have heretofore established Territorial governments. They differ in the character of their population. We have never had any such population in the United States, when we have set out to erect a Territorial government within our former boundaries, as exists in Hawaii, much less in the Philippines and Puerto Rico. We must to some extent consider these questions; and in considering to whom suffrage shall be given we must consider the question as to whether it shall be given to people who have little or no capacity for government.

That is not a new principle, Mr. President, although we are taking this amendment. We have always adopted and agreed to at the time of the Declaration of Independence and the enactment of our Constitution. All suffrage in the United States—united it was in the State of New York; I think it was not so as the State of New Jersey was at the time the adoption of the Declaration of Independece, and so continued at the time of the adoption of the Constitution and for many, many years after that, and it has been only within a few years that the property qualification has been removed in all the States. It is not a new doctrine. It is an old doctrine. It is the doctrine of the Declaration of Independence, and it is the doctrine of the Constitution that suffrage should be participated in only by the persons who are qualified to exercise it.

Mr. President, in this bill—and, as I said, I do not object to it—we give unlimited suffrage to the citizens of Hawaii, who are to elect the members of the house of representatives. I believe that is a mistake.

Mr. CULLOM. Yes. Mr. PLATT of Connecticut. We provide a qualified and limited suffrage for the people who are to elect the senators. Mr. CULLOM. As to the representatives there is only the educational qualification.

Mr. PLATT of Connecticut. Only an educational qualification is required as to the members of the house of representatives. The object of that—and I do not propose to disguise it—is, as I have said, to perpetuate the government in the hands of the people already in power.

When I was interrupted I was saying that they were the people who had redeemed the islands from savagery and barbarism, from its original cannibalism, and who have brought it up, step by step, to a position where a republican form of government had been established and is now stable and maintained, and maintained by those who are best qualified to administer it. But, Mr. President, when we have done that—and I agree to that limited suffrage for senators—I think we have done all that is necessary. I do not think we ought to go beyond that.

Mr. LINDSAY of Indiana. Mr. President, because we have done that, we have not, to my mind, been justified in the position which shall in effect give arbitrary power, despotic power, to the officers who are to be appointed there.

Mr. UNITED STATESchaars. The PRESIDING OFFICER. Does the Senator from Connecticut yield to the Senator from Kentucky?

Mr. PLATT of Connecticut. Yes, sir.

Mr. LINDSAY of Indiana. I wish to ask the Senator, if his amendment be adopted, would the President under this bill the President be authorized to appoint those judges from any of the citizens of the United States, or would he be confined in his selection to the residents of the Hawaiian Islands?

Mr. PLATT of Connecticut. I think there is nothing in the bill which confine his selection to the residents of the Hawaiian Islands.

Mr. BEVERIDGE. I think there is.

Mr. PLATT of Connecticut. I think not. I think he would be at liberty to select those judges from the United States or from the islands themselves; and I have no doubt any President would act in that respect.

Mr. President, I think, by and large, we have organized fifty Territories in the United States, and in none of them in recent years have we given to judges a tenure exceeding four years. I am aware that in the organization of some of the earlier Territories judges were appointed during good behavior, but in recent years, I think I may say in the recent half century, we have not appointed judges to sit during good behavior, but only during the pleasure of Congress, and most of the time for a term of four years' tenure. There is more reason, in my judgment, why we should insist upon that rule with regard to Hawaii than there is with regard to any other Territory we have ever organized.

The same as it came from the committee took away from the President, or did not give to the President, the right to appoint judges at all, except for what is called the Federal court. So far as the Territorial court proper is concerned, the judges are to be appointed by the governor, by and with the advice and consent of the Senate. But here I think the title—by the president or by the Senate—has been given with a property qualification. It continued the present judges—Mr. Platt, I think that was the effect of it—the chief justice and all the justices of the supreme court, during good behavior; that is, it continued them with a life tenure, and continued the present circuit judges for a term of years. It made their decision final, and annulled all the decision which I have offered changes that. Here, then, we had a governor with arbitrary power to appoint the judges, by and with the advice and consent of this aristocratic senate—if I may be permitted to use the word, not in its bad sense but in its government as such; the president in the executive branch of the government, in office, the chief justice and the associate justices of the supreme court during life, and we continued the judges of the circuit courts for six years. Then we made their decision final, and no matter what they might decide, we entirely lost power or control over the courts in Hawaii. In other words, we surrendered to the States the executive branch of the government and the right to review any decision which they might make.

Mr. President, that is not necessary to perpetuate the government in the hands of the ruling class there; it is not wise. What complications will arise in that island no human being can foresee. It may be that the people will arise and demand that the President appoint 145,000 of the nongoverning class; we know that the government class to-day is largely opposed to the people who are administering the government, and that in only this last there has a very decided sentiment arisen on the part of the white people of Hawaii to demand the right of self-government.

I insist that it is better to stand by the rules which we have adopted for the creation of Territories at home than it is to extend them to those far-off and distant islands.

There can be no harm come from this limited tenure of the judges, and if it does not do anything else it is better that they should not have the long terms of office; it is better that they should be subject to the power of removal by the President if you want to keep the judiciary of those islands pure and honest and upright. If it should happen that the 145,000 of the nongoverning class should override the 4,000 of the government class, the President who would be exceedingly sorry, Mr. President, that judges whom they elected should be beyond the reach of removal by the President of the United States, and has a term of nine years, removable only by impeachment of the senate and house of Representatives of Hawaii. There is no need of going to that extreme, but it is good to have the government getting into hands into which we do not think it wise that it should be committed.

In the section which I have proposed to amend there was another extraordinary power given to the governor—that he might remove any of the officers whom he might appoint, and not just the judges, but the other officers whom he had the power to appoint, and who can not under this bill be elected by the people, but must be appointed by the governor—he has the power, without any act of Congress, to remove any of the officers whom the President and the senators have put into the hands of the President, and I think it likely that President Dole demonstrated against that arbitrary power being placed in the hands of the governor. I want to read some things which he said in his minority report of this commission. He says:

While with some misgivings, I have assented to the provisions of the major clause, which appoint the executive power of the Territory in the hands of one individual and do away with the executive council, I am unable to accept those which exempt the territorial officers from the power of removal by the executive branch, which, while giving him the appointment of heads of departments, with the approval of the senate, permit him to remove them with such approval, a power not enjoyed by the executive of the United States.

I think perhaps President Dole is wrong in that.

Nor can I agree to the absence of any provisions whatever limiting or controlling the absolute power of the executive branch to appoint their agents from the United States, the removal of any or all heads of departments immediately after the termination of the regular session of the legislature and filling their places with persons appointed in his own discretion. It might be the case that the next session of the senate, which might not occur for nearly two years.
That thing was undertaken a little while ago practically and substantially in one of our own Territories, the Territory of Arizona.

Mr. WOLCOTT. Did the governor of Arizona have power to remove at will?

Mr. PLATT of Connecticut. He thought he had. He raised the question. I do not know how it came out. But there was a controversy there, a serious controversy, growing out of his attempt to remove immediately after the adjournment of the legislature.

By this means a governor, acting within his authority, could substantially evade the provision requiring these appointments to be approved by the Senate.

Performances of like character under the monarchy are too fresh in the minds of the Hawaiian community to permit them to contemplate without disadvantage the possibility of similar conduct.

The governor, under the provisions of the act recommended by the commission, will have less to do with his administration, and the appointments of offices, excepting only in the matter of tenure of office. Moreover, the provisions of the existing Hawaiian civil system, which require the approval of the Supreme Court of the United States, are swept away, and the governor may act in absolute secrecy, or, if he shall be so inclined, with the advice and under the influence of any person he may choose to admit to his confidence.

The feature of the proposed executive status, it will be seen, might expose the government to the charge of self-government, and possibly to constant recurring temptations to subvert public to private interests.

The provision of the Hawaiian system which compels the president to consult with the commission on important matters loses this danger.

Besides, this beneficial result of the existing system is the safeguard that it guarantees the administration of public affairs through the dimension of the best of men to make mistakes when assisted by the judgment of others.

So President Dole, himself, with all his desire to perpetuate American government in those islands, thought this bill went very much too far.

Now, my amendment does not correct the bill in many of the respects of which he spoke, but I do insist that as to the judges who are to have final jurisdiction in those islands and from whose decisions there is to be no appeal, either to the Supreme Court of the United States or to the circuit court of appeals in the United States, shall not be beyond the power of the President of the United States to appoint or remove. Their terms ought to be like the terms of all other judges in our Territories—for four years. That is a wise provision, and, as I said, it is wise in my judgment. It has been for the other Territories which we have heretofore created.

Mr. CLARK of Wyoming. I simply wish to ask the Senator from Connecticut if it would not be well to add to his amendment by striking out the last four lines of the section which present difficulties of construction?

Mr. PLATT of Connecticut. I intended to do that. The last three lines.

Mr. CLARK of Wyoming. Yes; the last three lines.

Mr. PLATT of Connecticut. Lines 13, 14, and 15, on page 37.

Mr. TELLER. I should also have the amendment stated.

The PRESIDENT. The amendment will be stated.

The SECRETARY. In section 81, page 35, line 22, after the word "the," it is proposed to strike out the word "government" and insert the word "President;" after the word "senate," in line 23, to strike out "of the Territory of Hawaii;" after the word "court," in line 22, to strike out "of the Supreme Court of the United States, or to the circuit court of appeals in the United States, shall not be beyond the power of the President of the United States to appoint or remove.

Mr. MORGAN. What is the amendment on page 38?

The SECRETARY. In line 11, page 38, after the word "may," it is proposed to insert "by and with the advice and consent of the President of the Territory of Hawaii," and, on the same page, line 16, after the word "removed," to strike out the chief justice and associate justices of the supreme court, who shall hold their offices during good behavior, and the judges of the circuit courts, whose terms of office shall be six years, and.

Mr. TELLER. I want to say to the Senator from Illinois that those of us who sit in the rear can not understand what the amendment means. What is the substance of this one?

Mr. CULUM. As I understand the amendment and the explanation of his purpose by the Senator from Connecticut himself, the substance of what he is trying to accomplish is to secure the appointment of the supreme and circuit judges by the President of the United States.

Mr. PLATT of Connecticut. And a term of office of four years.

Mr. CULUM. And a term of office of four years. I refer to the Territorial judges, not the United States judges whom we are undertaking to create.
Mr. CULLOM. I do not wish to be the occasion of any excitement on the part of my friend the Senator from South Carolina, because he is generally a pretty good-natured man and I wish to keep him so. I want to be perfectly serious about this thing and to express my judgment simply that the best thing to do for the present in the adoption of a bill is to allow the status there as to theTerritorial courts, to be what it is, and to let the legislature to remain, with the modifications that the committee have made. We found, it is true—and we are disturbing it to that extent—a supreme court appointed for life or during good behavior, and we thought that, perhaps, for a Territorial court, was going beyond what ought to be allowed, and so this is added to a nine-year term for the supreme court judges and a six-year term for the circuit court judges, there being three judges of the supreme court and five judges of the circuit courts. If it is thought that that is a dangerous thing to do, of course the Senate has a right to change it and make their appointment for a given term of years and by the President.

Now, there was something said upon the question of the elective franchise, and I think some inquiries were made. I have a statement here somewhere—

Mr. FORAKER. Mr. President.

The PRESIDENT pro tempore. Does the Senator from Illinois yield to the Senator from Ohio?

Mr. CULLOM. I do.

Mr. FORAKER. Before the Senator leaves that point, if I am not mistaken he was in error in one answer he gave to a Senator concerning a question who propounded an inquiry as to whether or not it was supposed by the Senate to continue in office the present incumbents. I do not so understand the bill.

Mr. CULLOM. If I am mistaken in that respect, how does the Senator construe it?

Mr. FORAKER. At the beginning of section 81 it is expressly provided that the supreme court shall consist of a chief justice and not less than two associate justices, and it is further provided, in the same section, I believe, or the following one—

Mr. PLATT of Connecticut. The last part of the section—

Mr. FORAKER. It is somewhere there that they shall be appointed not anywhere that the present incumbents shall be continued in office.

Mr. PLATT of Connecticut. Read the last three lines.

Mr. FORAKER. If it does, I have overlooked it.

Mr. PLATT of Connecticut. The last three lines of that section, on page 37—lines 13, 14, and 15.

Mr. FORAKER. Ah, I beg pardon.

Mr. PLATT of Connecticut. I contemplate in my amendment striking that out.

Mr. FORAKER. Were the lines stricken out?

Mr. PLATT of Connecticut. My amendment contemplates striking them out.

Mr. CULLOM. I had here a statement of what the vote would be in the election of the legislature or in any other election. I do not seem to find it. Somebody has evidently picked it up by mistake, but I remember the vote was something like in the Territory under this bill for the house of representatives and between forty-five hundred and five thousand for senators.

Mr. TILLMAN. Where does the Senator get that information?

Mr. CULLOM. It was furnished me by somebody who ought to know.

Mr. TILLMAN. Well, that is a remarkable statement to come from the Senator in charge of the bill, that he gives us the ipse dixit of some man whose name he will not even mention.

Mr. CULLOM. It is not extraordinary at all. I made an inquiry of gentlemen here from the islands.

Mr. TILLMAN. Lobbying this bill through?

Mr. CULLOM. Not at all. The Senator always seems to be scared for fear somebody is standing around trying to do something he does not want done.

Mr. TILLMAN. I find the puritans of this Capitol chock full of men who are always trying to get something done that is against the people.

Mr. CULLOM. Then they find the Senator and nobody else, apparently.

Mr. TILLMAN. I said I found them.

Mr. CULLOM. Did you go after them?

Mr. TILLMAN. No. I have seen them in the committee, where you and I have had some investigations.

Mr. CULLOM. Most of them were invited there by the committee itself.

Mr. TILLMAN. They invited themselves there, and asked the chairmen to give them a hearing.

Mr. CULLOM. I think the Senator is entirely off on that question.

Mr. WOLCOTT. Mr. President, I hope we can have order.

Mr. CULLOM. This is a statement prepared by a gentleman at my request, so that I might have as much definite information as I could as to the property qualifications of the people and the
educational qualifications of the people. Now, if the Senator objects to me or anybody else trying to find out in that way how many people are capable of voting over there under this law if it should pass, I do not understand the reason for it.

Mr. TILLMAN. I simply asked the Senator to give the source of his information.

Mr. CULLOM. I am giving it.

Mr. TILLMAN. He seems to think that I impeach that information as being untrue or unworthy of credence.

Mr. CULLOM. If the Senator attacks the proposition that I should get it from an authority, not an authority.

Mr. TILLMAN. No, sir; I asked the Senator where he got that information.

Mr. CULLOM. I told him.

Mr. TILLMAN. You said from some man who sought to know.

Mr. CULLOM. From a man who sought to know.

The PRESIDENT pro tempore. The Chair desires to call attention to the rule—a rule which it is absolutely necessary for the decorum of debate to be strictly observed:

When a Senator desires to speak, he shall rise and address the President, and shall not proceed until he is recognized.

No Senator shall interrupt another Senator in debate without his consent, and to obtain such consent he shall first address the President.

He must not address the President, but he must wait until the President has obtained the consent of the Senator to whom he desires to speak. This rule, for the last several days and for a considerable time, has been absolutely neglected, and it is very important, in my judgment, for the decorum of debate that it should be strictly observed.

Mr. TILLMAN. Mr. President, with the consent of the Senator from South Carolina, who has the floor, I will simply say that it has never been enforced since I have been a member of this body. The PRESIDENT pro tempore. Does the Senator from Illinois yield to the Senator from South Carolina?

Mr. CULLOM. I do.

Mr. TILLMAN. Mr. President, I will repeat that since I have been a member of this body, the latitude of debate has never been tied down to any such iron-bound rule as that; but we have usually risen, as I have done to-day, saying, "Mr. President," and objecting to the Senator with the usual license of debate, give and take, and I think the Chair will find that no Senator here will agree with him, that it has only begun within the last three months, or the last three weeks, either.

Mr. CULLOM. I am not going to quarrel with the Senator from South Carolina, interrupting me.

Mr. TILLMAN. Oh, warn not quarrel.

Mr. CULLOM. I hope I may be allowed to go on now for a little while.

I have found the paper which I tried to find a while ago. It is an estimate of the qualified voters under this bill for the first year. According to the last United States, a Portuguese, 2,800: Americans and Europeans, 3,000. The total is more than I thought it was, 15,000. That is for the house of representatives under the intelligence provision. Under the property qualification, 4,500 will vote for senator, divided as follows: Americans and Europeans, 3,800; Hawaiians and part Hawaiians, 1,100; Portuguese, 600. That is a statement designed to read, not to bypass this debate, but simply because I happen to have it and I thought it might be of some information to the Senate.

Mr. TILLMAN. Mr. President, will the Senator from Illinois permit me?

PRESIDENT pro tempore. Does the Senator from Illinois yield to the Senator from South Carolina?

Mr. CULLOM. I yield.

Mr. TILLMAN. Will the Senator give us the name of the man who furnished this information?

Mr. CULLOM. I do not know whether or not I am at liberty to tell you. The information was furnished to me by Judge Hartwell and Mr. Smith, late attorney-general. Is that satisfactory?

Mr. TILLMAN. Perfectly, although I know nothing about either of them, but I suppose they are perfectly reliable.

Mr. CULLOM. I know a good deal about both of them.

Mr. TILLMAN. May I ask the Senator from Illinois another question?

Mr. CULLOM. Certainly.

Mr. TILLMAN. I see no provision in this bill, at least I have not come across it yet, for the registration of voters prior to voting.

Mr. CULLOM. There are provisions providing for registration:

Mr. TILLMAN. For registration under the property qualification and the educational qualification?

Mr. CULLOM. A registration of qualified voters.

Mr. TILLMAN. It is in the bill?

Mr. CULLOM. In the bill.

Mr. TILLMAN. It is provided for?

Mr. CULLOM. In the law of Hawaii also.

Mr. TILLMAN. I must make it clear; if I may interrupt him again, that we who have not been studying this question as he has are familiar with it as he is, and when we try to get some light on the intricate problems presented here in this new-fangled idea of government, he presents our inquiries, apparently. I have no other purpose, and I do not have any idea that the Senator from Illinois, for example, who has been studying this people the best government they can get under the circumstances.

But I confess, Mr. President, that there are anomalies here, and contradictions, and extraordinary provisions that need interpretation and explanation. I have not had the time, and very few others, I believe, even read the bill through consecutively; but we have seen so many instances in amendments that have been accepted by the Senator from Illinois which is in charge of the bill that it shows he himself is not certain whether this is the best law that could be framed. When the President gets through I will elaborate a little on some of the points that he has just raised because I do not want to cut him off too long, and I am afraid he would consider that I was trespassing on his courtesy too far.

Mr. CULLOM. I never so consider it. It is perfectly evident without the Senator stating it, that he has not read the bill. My information is different. This has been the bill for the registration of legal voters, and of course when a man comes and register he will be cross-examined as to what he has and whether he can read and write, and all that sort of thing, and finally he is registered.

Mr. SPENCER. What is provided in section 18.

Mr. BELL. I look at section 18.

Now, Mr. President, I am sure I do not want anything done by the Senate with reference to this bill that is not satisfactory to the public. The commission framed and the committee reported the bill, and believed that it was substantially right. I said in the opening speech I made here that there are some things in it that I did not favor, but that I had no hesitation in regard to some provisions; and I might say that I opposed for a time the property qualification of senators. I am standing here advocating the bill generally, with the statement that so far as I am concerned, I have doubt whether that property qualification would be necessary.

But here is a community of people who have been living under a republic for three or four years, and somewhat under a strain. Not knowing exactly what the public sentiment of the masses was, and feeling all the time that we ought to give them a government at the start that would enable them to hold control in the hands of the colored people, and not have the question of loyalty to the United States could be a little more thoroughly tested, and to see, also, whether it was safe to go beyond what they have been doing and liberalize the government there more than even we have done, we reduced the property qualification from $1,500 to $1,000 (section 18) and the educational qualification was $3,000, and we reported that sort of a bill.

There was something said about the voters in this country. I do not want to stir up my friend from South Carolina when I refer to that. I voted in the House of Representatives for both the fourteenth and fifteenth amendments. I have nothing to take back at any time hereafter, so far as I know. I do not want to bring the subject into this discussion except to say that in the time those amendments were adopted it seemed to the country that it was the best and the only thing that it could do. The colored people had been given their civil rights, and we gave them the right of property, and it might defend their civil rights and their personal property and all that. So I voted for both amendments, and I have yet to be made to believe that I made a mistake in doing it. Without my vote on the subject, I would vote for them again to-day if the question came before the country.

Mr. President, I hope we shall go on with the bill and perfect it as quickly as possible, so that we may get something passed for the benefit of those islands.

Mr. MORGAN. Mr. President, the precise amendment that is under discussion at this time relates to the judicial establishment in the Hawaiian Territory. Will the Senator yield to me for a moment? I desire to offer an amendment to the bill, and I should like to present it now, so that the Senator may consider it in his remarks.

Mr. MORGAN. Very good. Let it be read.

The PRESIDENT pro tempore. Does the Senator from Utah desire to have his amendment read?

Mr. RAWLINS. Yes, sir. I propose to amend by adding to section 82, chapter 4, what I send to the desk.

The PRESIDENT pro tempore. The Secretary will read the amendment.
The purpose of this statute is to give the President such power over that country as the laws of nations conferred, except so far as it was constrained by the statute itself.

Until Congress shall provide for, the government of said islands all the civil, military, or naval powers exercised by the officers of the existing government in said islands shall be vested in such person or persons and shall be exercised by the President of the United States in the name of the President and shall be subject to the removal by the President and to the appointment by the President.

Now, the President gave his direction on that. I assure you that it is constitutional law. I think there is no person here who will dispute it who has ever considered the fact that the laws of nations are a part of the law of the land. They are recognized in every country that has a government, and the government of the United States in this Union as being a part of the law of the land.
2029

familiarize themselves almost perfectly with the Hawaiian tongue, they have to listen to the trials where the Hawaiians themselves are witnesses, the men and the women who do not speak the language and art not conversant with the extant code of laws. Thus, the incessant acquaintance with the customs of the country, with the origin and source of the law in that country, a great deal of which is customary law, traditional law, not based upon printed or written statutes at all. I do not know any county in the world where a judge can be expected to know more than a judge in Hawaii. The judges in Hawaii also have had the administration of all questions of maritime and international law in which that republic is concerned. They have had very extensive training in that regard, and the judges have at all times been chosen among the most intelligent men and women. The judges in Hawaii are judges in the United States where a learned admiralty judge is so conspicuously required. If we look at the constitu tion of Hawaii, we see there is no place in this Union where a court of competent jurisdiction to be administered by such a judge can be established with greater profit and convenience. To the country itself, and to the General Government of the United States in Hawaii, I refer to these matters as I pass along merely for the purpose of showing the important that we attributed to our action in dealing with those courts. The plan of the committee was correspondingly with that of the republic there, its constitution, to require the judges in the supreme court to have tenure of office fixed in the constitution of Hawaii. But we saw that that had to give way; and the Committee on Foreign Relations, in reporting the bill that is now before the Senate, instead of having a life tenure for the judges of the supreme court, provided a tenure of nine years. The judges of the United States had a tenure of six years, I believe it was, for the circuit judges before that time and that still remains.

We thought, Mr. President, that it was just to that bench and just to those people that the supreme court judges, who were in those foreign courts, should have the same tenure of office that we saw to it that those judges in the circuit and district courts had, that we were sent out there for the purpose of butchering the republic, exaucering it, and taking from it those qualities and powers and properties which the people there so cheerfully have vested in that court or in the judges and have profited so greatly by the services rendered to them. And in the treaty of 1842, all of their rights, for the court is a very enlightened one. We did not think so, and we made a report in which those judges were retained in office until their successors were qualified. But that will now pass out of this bill by amendment. This bill, when it passes, will legitimize the tenure of office that those judges will be vacant until their places are supplied by a new source of appointing power. There will be a hiatus there necessarily.

Mr. TELLER. Will the Senator from Alabama allow me to ask him a question?

Mr. MORGAN. Certainly.

Mr. TELLER. Do I understand that the bill as reported by the committee legislate those judges out of office?

Mr. MORGAN. Necessarily so, when, on page 37, lines 13, 14, and 15 are stricken out, as I understand they are to be.

Mr. TILLMAN. That is the amendment of the Senator from Connecticut.

Mr. MORGAN. When we reported the bill I think the Committee on Foreign Relations inadvertently left in those provisions there, because it is inconsistent with the nine years’ tenure. The object of the amendment was to leave those judges in office for their life tenure; but when the bill was reported back from the Committee on Foreign Relations the life tenure was reduced to nine years, and the committee omitted to strike out lines 13, 14, and 15, on page 37, which would retain them until their successors were qualified. That is stricken out. I speak of the six years, not the nine years.

Mr. President, you now have the reasons which influenced the commission in presenting the supreme court with this life tenure of office; but we did not continue that as an organic part of the law of the Territory. We provided that the terms of the present judges, as the expiration of their terms, if they are reappointed, should take a limited term of office. So the new judges coming in to take the place of these—for instance, to take the place of Chief Justice Judd, who has resigned since annexation took place—would have to take a shorter term, a fixed term, not a life tenure. We held them in their positions, and the Senate has stricken all life tenure and has made the positions now dependent upon the provisions of the bill as amended, which limit the term to nine years, and which, when enacted, if it shall be enacted in its present form, will simply vacate the place of Judge Judd, refer the appointment power to the President of the United States instead of the governor of the Territory.

Was it wrong, was it unjust, was it anti-republican, was it anti-American, was it against the spirit of the American people, when we were dealing with this grand republic, that we should permit wave of the storm to come to the bench to discharge its functions? Is there any violence done to anybody’s principles, except some demagogue, who wants to appeal to the people against the life tenure? But that provision is out, and there is no use of discussing it any longer.

The provision is between a nine years’ term and a four years’ term. I think that I can undertake to say, from my experience and observation as a lawyer, that there is not a man outside of Hawaii, to say the least of it, who can qualify himself in four years to be a judge of the supreme court in those islands; he is not a judicious person there, who can understand their laws, their institutions, their customs, their language, their people; he would be a foreigner presiding upon that bench, and that is the kind of man you propose to crowd in there, I suppose from the State of Connecticut, or somewhere else, whom the politicians can pick out and send down there. I do not think there are any powers in the credit of the system is on the Hawaiian side and not on our side, as a part of the amendment.

Mr. TELLER. I want to ask the Senator a question, if he will allow me.

The PRESIDING OFFICER (Mr. KEAN in the chair). Does the Senator from Alabama yield to the Senator from Colorado?

Mr. MORGAN. Yes, certainly.

Mr. TELLER. I did not understand from reading this bill that we were leaving those judges in office.

Mr. MORGAN. As amended, I will say, if the Senator will allow me, by striking out lines 13, 14, and 15, on page 37.

Mr. TELLER. I do not think I have read the Senator from Colorado to page 35, at the beginning of section 81, which reads:

That the governor shall nominate and, by and with the advice and consent of the Senate of the Territory of Hawaii, appoint the chief justice and judges of the supreme court, and in his absence the associate judges of the supreme court. It seemed to me that that language meant that the governor should appoint, and of course he could appoint others than the present judges. I agree with the Senator, if I may be allowed to say a word further, that those men ought not to be fixed in life tenure, but that we could preserve that office somewhat less than a life tenure, although it would not scare me if the judges had a tenure; but it did not seem to me that this bill contemplated that. I confess I do not know very much about it, though I have tried to study it, but it seems to me that you have voted against that amendment.

Mr. MORGAN. I am arguing the proposed amendment submitted by the Senator from Connecticut [Mr. PLATT].

Mr. TELLER. I want to say to the Senator that I am not going to vote for that amendment. I want to know what the bill will be when it gets to the President. I want to know whether the amendment of the Senator from Connecticut, I shall be voting for the amendment that the governor shall nominate, or whether I am voting for the fact that the President himself may do, disturb those people in their offices.

I want to explain so that the Senator from Colorado, I think, can not be misled about it. The bill as reported from the committee containing the amendments in it provides for the appointment of the supreme court judges by the governor and limited the term of office after the amendment to nine years, but in lines 13, 14, and 15, on page 37, it was provided that the present incumbents should continue in office. That was the bill as reported. It has been amended; it is proposed to be amended again; and now I am speaking to the proposed amendment. That amendment takes the place of the present bill. I do not know, if the Senator from Colorado, I shall be voting for the amendment to the President of the United States.

Mr. WOLCOTT. May I ask the Senator a question?

The PRESIDING OFFICER. Does the Senator from Alabama yield?

Mr. MORGAN. I do.

Mr. WOLCOTT. I ask if the amendment of the Senator from Connecticut should be carried, would the existing judges serve out their terms?

Mr. MORGAN. No; they would not.

Mr. WOLCOTT. If I may ask the Senator a further question, would they serve out their term under the nine years’ provision, as it is at present in the bill?

Mr. MORGAN. They would by keeping in the bill the language contained in lines 13, 14, and 15, on page 37.

Mr. WOLCOTT. Does the amendment of the Senator from Connecticut strike out those lines?

Mr. MORGAN. Yes; that amendment strikes out those lines.

Mr. TELLER. I want to call the attention of the Senator to page 37, section 81, commencing with line 8, which reads:

All persons holding office in the Hawaiian Islands at the time this act takes effect shall, except as herein otherwise provided, continue to hold their respective offices until such offices become vacant—

If it stopped there, I should have no trouble, but the provision continues—

but not beyond the end of the first session of the Senate, unless reappointed as herein provided.
Mr. President, I do not know that those officials would be reappointed: but I take it that the purpose of the bill as originally drafted was that they should not hold office beyond that period.

Mr. MORGAN. Except the judges. The Senator will notice that the creation does not mention the judges. It reads:

Except the chief justice and associate justices of the supreme court and the judges of the circuit courts, who shall continue in office until their respective offices become vacant.

Mr. TELLER. Are they all life terms?
Mr. MORGAN. No; they are not. The terms of the judges of the supreme court are for life, but not the judges of the circuit court.

Mr. TELLER. Only the judges of the supreme court?
Mr. MORGAN. That is all.

Mr. TELLER. I did not notice the last part of the section.

Mr. MORGAN. I hope I have now placed the question clearly before the Senate. The first proposition that the Senator from New York (Mr. Morgan) has announced is that the power of appointment shall be taken away from the governor and given over to the President of the United States. The second proposition is that the term shall be limited to four years, instead of nine years, as the Senate voted when we adopted that amendment here the other day.

Mr. PLATT of Connecticut. It has not been adopted.

Mr. MORGAN. The third proposition, resulting naturally or necessarily from the Senator's amendment, is that these men shall go out of office at once on the passage of this bill, because the appointing power is changed from the governor to the President. The two points which are clear enough, I think, for almost anybody to understand.

It has been stated here, Mr. President, that we never before had a Territorial judge appointed by anybody but the President of the United States. We never have had. It is not in the interest of local self-government that the people of a Territory should have the power to appoint their own judges; that they should have the power to elect their judges or to have them appointed by the local authorities.

Mr. PLATT of Connecticut. Mr. President.

The PRESIDING OFFICER. Does the Senator from Alabama yield to the Senator from Connecticut?

Mr. MORGAN. Very well.

Mr. PLATT of Connecticut. Certainly, it seems to me, the President is as well qualified to appoint the judges as is the governor whom the President may appoint.

Mr. BEVERIDGE. It is even more important.

Mr. MORGAN. Not by any means in the world is the President as well qualified. The governor of the Hawaiian Islands knows every man who is there. The President does not know the politicians who surround him and upon interested parties for his information. He has to do that very disagreeable thing, which he does every day of his life, guess at the best man upon the best information he can get; whereas the governor, being a local officer, knows exactly whom to elect and if he makes a misnomer he is responsible to the President, who has the power of removing him at any time. The theory of this thing was that the responsibility of the governor to the President, both of them being executive officers, was direct and immediate, and that that was the right way to get control of the judiciary and all other establishments through the popular will.

But, it is said, we have never had appointments made in that way.

Well, Mr. President, if we never hereafter have anything we have not had heretofore, we had better stop and sit down and quit trying to grow or to progress. A great many things have come about, and some by accident and some by design, that have helped us out of very serious and depraving difficulties in the past—many—and I am in favor of that kind of progress, whether you call it "expansion" or whatever you may call it. I am in favor of lifting this Government, every step we take, upon a higher plane; and if we have mistaken it in the past it is not the first time by any means that we have ever done this in the United States.

Here are some treaties with the Five Civilized Tribes, two of which I knew very well when I was a boy, and spoke the language of the Creek Nation. We went off to the Seminoles, the Creeks, the Chickasaws, the Choctaws, and the Cherokees to the west. By a treaty we gave them authority to organize a civil government, of course under our protection, but not under the reserved power to repeal their constitutions. Not only so, but the Congress of the United States to repeal a law which was enacted by the legislatures of either of those five tribes, and he never will hear of it.

What did they do under that authority, which is supported also by statutes in the same language as the treaty? They issued five laws, went off there and each of them adopted its own written constitution. The constitutions of the Choctaw, Chickasaw, and the Cherokee tribes are admirable documents of organic law, and they were framed by lawyers as good as those who practices at the bar of the Supreme Court of the United States; and, besides that, they were better lawyers. We have, in the Cherokees, i.e., some of them calling him king—and both houses of their general assembly; and, according to their constitution and laws, they made all the appointments that were necessary to habilitate civil government out there. They have administered without stint, without reproach, and without reservation or question. In the Cherokee Nation the statutes are printed in English and also in the original alphabet of the Cherokee tribe. Mr. Guess invented an alphabet of 38 letters, the most remarkable that has ever been produced, I think, in the annals of time. These governments have gone on.

Mr. WOLCOTT. Who did the Senator say invented the alphabet?

Mr. PRESIDENT. Mr. WOLCOTT. Who did the Senator say invented the alphabet? I should like to hear his name. I did not understand it.

Mr. MORGAN. Mr. WOLCOTT. Sequoia is the Indian name for him; and the big trees upon the mountains in the great forests on the Pacific coast were named after him. There are five distinct constitutional governments, all republican in form, within the precincts and limits of the United States, all subject to our jurisdiction. They have elected their own governors, or kings, or rulers, and their legislatures; they have appointed their own judges; they have exercised all the power of the government and done it to-day, except to the extent that we have invaded that country with judicial officers and judicial authority and have established United States courts within the territory of those Five Civilized Tribes.

I should like to know, Mr. President, what harm has ever come to the Indians from this? Why, you know that they are the most cultivated people amongst them as you will find anywhere. You will find their houses—very many of them—very handsomely furnished, sumptuously furnished, with pianos and instruments of music and other things of that kind. Those governments have all grown up without any assistance from the government of the United States. We have done nothing except to pay the annuities to them that we owe them under treaties for land we obtained from them; we have voted them no money. They have had no representative in Congress—an unheard-of and an unknown thing. They have remained there, keeping the peace, and doing away with a great many people, until they have grown into a prosperous and very patriotic community. We are now seeking, Mr. President, to coordinate those in some way into a Territorial government, a provision against which was put into the treaty. It was provided that they should not be made members of a Territorial government.

I should like to know why we can not be as friendly toward the Hawaiians as we have been toward these Five Civilized Tribes? That is what I should like to know. Is there some reason for going down there and butchering those people, tearing up their institutions and their arrangements of government? Can any conspiracy or conspiracy of that government, to a failure, or anything approaching it, that justifies a total revolution...
in their civic system? Unless that can be done, we are without reason for this unnecessary act.

Mr. TILLMAN. Mr. President, will the Senator from Alabama allow me to answer your question?

Mr. PRESIDING OFFICER. Does the Senator from Alabama yield to the Senator from South Carolina?

Mr. MORGAN. I do.

Mr. TILLMAN. Is there any analogy between the government of the Creeks or the Seminole Indians in the Indian Territory and the Hawaiian government?

Mr. MORGAN. The analogy is this, Mr. President: They both have written constitutions; they both have officers appointed under their own authority; they both have a judicial as well as a legislative system; they both have the supreme court published in authentic form; they both have their legislative proceedings published in like manner, and conduct absolutely and without question all of the powers and functions of civil government, republican in form. I think that is analogous enough.

Mr. TILLMAN. Will the Senator allow me another question? The PRESIDING OFFICER. Does the Senator from Alabama yield to the Senator from South Carolina?

Mr. MORGAN. I do.

Mr. TILLMAN. All of this work in the Indian Territory, I presume, is under Indian and half-breeds, whereas in the Hawaiian Islands all of it is the work of Americans, Englishmen, and Germans who have gone into those islands, have acquired property rights, have seized the government and now control it, have formed a government which the Senator finds so admirable, and have formulated laws to that end. Is there any analogy whatever between the little band of four or five or seven thousand Anglo-Saxons in the Hawaiian Islands and two or three hundred thousand Cherokees, Creeks, and Cherokees, I cannot see it.

Mr. MORGAN. Mr. President, if the Senator from South Carolina could dispute his views of the prejudices which evidently exist in it, he would be able to see this subject in a somewhat proper light. The idea of saying that the people in Hawaii have taken things into their own hands and have ruled the native people, without any restriction to their right is entirely a mistake.

Mr. TILLMAN. Will the Senator allow me to ask another question?

Mr. MORGAN. Yes.

Mr. TILLMAN. How many legal voters are there now under the so-called Hawaiian republic?

Mr. MORGAN. The Senator from Illinois Mr. CULLOM to-day states the number.

Mr. TILLMAN. Oh, but the Senator from Illinois said that would be the number when those who are eligible under this bill which is proposed to enact into a law takes effect; but I mean the voters to-day, those who are the component parts of the Hawaiian government which now exist and which he would permit?

Mr. MORGAN. I do not know the number, Mr. President; I do not think the number has been given.

Mr. TILLMAN. I have seen it stated at least 4,000.

Mr. MORGAN. Voters?

Mr. TILLMAN. Probably so.

Mr. MORGAN. I will ask the Senator from Illinois, with the permission of the Senator from Alabama, how many votes there are?

Mr. CULLOM. If the Senator will allow me to refer to the official paper as to whose authenticity he was anxious, I will read the number. In 1890 the total number of registered voters was 13,933; total vote cast, 11,671; voters for noble, upper house, number about 8,800; votes cast, 8,187. That is all the information I have about the matter.

Mr. TILLMAN. Mr. President — The PRESIDING OFFICER. Does the Senator from Alabama yield to the Senator from South Carolina?

Mr. MORGAN. I do.

Mr. TILLMAN. I am trying to get the two members of the commission who have investigated the subject by a personal visit to tell us the number of voters who are now eligible to vote under the existing conditions. There is a clause in this bill which requires any man who wishes to register under the provisions of the bill to take the oath of allegiance to the United States.

Mr. MORGAN. No, there is not.

Mr. TILLMAN. Here is the provision:

Sec. 18. That no person shall be entitled to vote at any general election in the Territory of Hawaii prior to 1890 who, having been entitled to qualify and vote under the constitution and laws of Hawaii prior to October, 1887; and all such voter, unless he shall take the oath of allegiance to the Constitution of the United States.

Mr. MORGAN. That shows how inaccurately the Senator will read things.

Mr. TILLMAN. I have read everything that is here.

Mr. MORGAN. No oath is required of any voter in Hawaii, except of those voters who, having heretofore had the privilege of registration, refused to register in order to break down the government and make it more difficult for the people to support the Constitution of the United States—only that class.

Mr. TILLMAN. Well, Mr. President, that brings me back to the original proposition as to how many did take the oath of allegiance to the republic and how many did not. I have been able to show that there exists, and I will show—and I will find it somewhere in some of these documents—that it is less than 4,000, anyhow.

Mr. BEVERIDGE. Does the Senator mean as to the upper house?

Mr. TILLMAN. No; as to the lower house.

Mr. MORGAN. The Hawaiian Commission could not take a census of these people, and we did not undertake to do it. We relied upon the census taken by the authorities of the government being created, so far as we obtained it, for a guide to our legislative action.

Mr. WOLCOTT. Will it interrupt the Senator from Alabama if I call the attention of the Senator from South Carolina to a suggestion?

The PRESIDING OFFICER. Does the Senator from Alabama yield to the Senator from Colorado?

Mr. MORGAN. Yes.

Mr. WOLCOTT. I understand the Senator from South Carolina to criticise the bill and the measures proposed because the total vote is so innumerable in small proportion to the population.

Mr. TILLMAN. If the Senator will permit me to correct his impression, I did nothing of the kind. I was merely trying to get the Senator from Alabama to tell us what is the difference between the republican form of government which exists in the Creek Nation, which he has used by way of comparison, with that of the Hawaiian Islands.

Mr. WOLCOTT. Mr. President, being on my feet, I should like to call the attention of the Senator from South Carolina Mr. TILLMAN to the fact that at the last election in South Carolina the Representative of the First Congressional district was elected by a total vote of 3,900 out of a population of 178,000; that is the total vote was little over 4,000; that in the Second district, where there is a population of 146,000, the total vote was 4,600; that in the Fourth district, where there is a population of 200,000, the total vote was 4,500; that in the Fifth district, where there is a population of 149,000, one man was elected without opposition, and he only got 4,230 votes; that in the Sixth district, with a population of 158,000, less than 4,000 votes were cast, and that in the Seventh district, with a population of 178,000, the total vote was about 4,500.

Mr. TILLMAN. Will the Senator from Alabama allow me to pay my compliments to my friend from Colorado? [Laughter.]

The PRESIDING OFFICER. Does the Senator from Alabama yield to the Senator from South Carolina?

Mr. MORGAN. I think I had better turn these gentlemen off to the contest until after I get through.

Mr. TILLMAN. But the Senator surely would not allow that proposition to go without being answered on the spot.

Mr. MORGAN. I do not think it will hurt the Senator to let it wait an hour or so.

Mr. TILLMAN. But when the Senator gets into one of his interesting discussions on these questions —

The PRESIDING OFFICER. The Senator from Alabama declines to yield.

Mr. TILLMAN. Of course I will have to yield under such a process of gag law as that.

The Senator from South Carolina has not disdained to make an attempt to say that the two Senators have their fight out about this proposition.

Mr. WOLCOTT. I beg the Senator's pardon for having interrupted him.

Mr. MORGAN. I have yielded to the Senator from South Carolina a good deal, and have been trying to do it in a cheerful and good spirit.

I proceed now, Mr. President, to say that the analogy between the government of the Indian tribes that I have already spoken of, and the government of Hawaii was, of course, in regard to this matter, that the government of Hawaii, which was the government of the Indians, and the liberties that were involved in it. It did not have any reference to the people or their conduct. But it is quite a mistake, altogether a mistake, to suppose that the Hawaiian people have not been fully consulted by the white people, as they are called in Hawaii, many of whom are the natives of the islands, and a large number of whom have some
tincture of Hawaiian blood in them—it is quite a mistake to suppose that they have not been consulted. There has not been a cabinet from Kamehameha I down to the present time where the Hawaiians were not people associated together. The Hawaiians have sometimes held the chief positions, and sometimes the political position.

Mr. HOAR. May I ask the Senator one question in that connection? It is a practical question purely.

Mr. MORGAN. Certainly.

Mr. HOAR. That is, whether there is kept now and is preserved a record of the persons who registered prior to 1897—for those three years. I am speaking of the practical question. I make no criticism on the rule proposed, but I only wish to know whether there are the means in existence of enforcing it justly; that is, are the means and the power vested in the registering official to present that the record will show who did register and who did not in those three years?

Mr. MORGAN. My impression is entirely distinct that when this subject was under discussion before the commission we ascertained that those registers had been kept and that it was easy to determine who had been registered when the Constitution was framed. That was the question in the case. That is how we disposed of it, and my impression is there are between eight and nine hundred who were said to have stood out and refused to recognize the Hawaiian republic by registering upon the voting list.

Mr. HOAR. May I ask the Senator from Alabama another question?

Mr. MORGAN. Certainly.

Mr. HOAR. If I may, I suppose those Hawaiian people, then, who are to swear to support the Constitution of the United States are under that Constitution of the United States and it is applicable to them, in the judgment of the committee?

Mr. MORGAN. I do not think I caught the drift of the Senator's question.

Mr. HOAR. There has been a good deal of discussion in the Senate lately and elsewhere as to whether the Constitution of the United States is in force in regard to Territories and dependencies. Now, do I understand that, so far as the people of Hawaii are concerned, the committee hold that they are under the Constitution of the United States and are to render the same allegiance to them as those who are under the Constitution of the United States?

Mr. MORGAN. Not only do the committee.

Mr. HOAR. If the committee do not so understand it, of course the operation of an oath that the inhabitants shall support the Constitution of the United States would be out of the question.

Mr. MORGAN. That would be out of the question. I will inform the Senator for the committee what I have no doubt about that proposition at all; and more than that, the annexation, which is our guide, forced it upon us by saying—

Mr. HOAR. I think the answer is complete.

Mr. MORGAN. It says:

The municipal legislation of the Hawaiian Islands, not enacted for the full purposes of self-government, as distinguished, and not inconsistent with resolution nor contrary to the Constitution of the United States nor to any treaty, compact, or agreement that remains in force until the Congress of the United States shall otherwise determine.

Mr. FORAKER. Will the Senator from Alabama allow me?

Mr. MORGAN. Certainly.

Mr. FORAKER. The Senator from Massachusetts made one remark in reply to the answer to him to which I want to take exception, and that was that unless the Constitution is extended to the Hawaiian Islands, either by its own vigor or by this Congress acting, it would be inconsistent and incompetent to require the citizens or officials there to take an oath to support the Constitution of the United States. I say to the Senator that if he will examine the organic laws that have been from time to time enacted, he will find that, although the extension of the Constitution was withheld and the view obtained that the Constitution did not apply to the Territories, yet they did require the officials to take an oath to support the Constitution of the United States.

Mr. MORGAN. I may be pardoned one word in reply, I say that I do not believe the framers of the various provisions in regard to our Territories, or the men who voted for them in either House of Congress when such a provision was enacted, were of opinion that the Constitution did not extend to them. I think I know the great authority on one side and on the other of these questions, especially Mr. Webster. It seems to me, with great deference to my honorable friend the Senator from Ohio, that an obligation imposed on a man to support with life and fortune and disregard everything is quite a different thing from a Constitution in which he has no share and from which he receives not the slightest benefits is an unjust and unreasonable exaction.

I do not wish if I may say one thing further, to be understood in any way as questioning the doctrine advanced; if I understood him correctly, by the Senator from Ohio yesterday, I am merely speaking of the injustice, accepting that it is true, if we do accept it as true, of putting on anybody such an obligation.

Mr. FORAKER. Mr. President —

Mr. DAVIS. I shall be able to conclude my speech in a week if I am interrupted all the time by every question that suggests itself to the mind of any Senator.

Mr. FORAKER. I wish to say one word only in reply to the Senator from Massachusetts.

Mr. MORGAN. I do not rise to make any argument or to advance any view or to support in any kind of controversial spirit any particular contention. I merely wish to say to the Senator that as a matter of fact the case is as I stated, that although the Constitution was not extended to the Territories, but was expressly withheld, yet, they were required to take an oath, not the taking of an oath to support the Constitution of the United States.

Mr. HOAR. I think that is an unfair and unjust practice.

Mr. FORAKER. However that may be, it remains for us to discuss it later. I am only calling attention to the fact.

Mr. DAVIS. I think that is a case which, if it is concerned, I think I can put it all at rest by reading section 5:

That, except as herein otherwise provided, the Constitution and all the laws of the United States locally applicable—

"Not locally inapplicable," I believe it is going to read—shall have the same force and effect within the said Territory as elsewhere in the United States.

Mr. DAVIS. Mr. President —

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

Mr. MORGAN. I will yield in a moment. Allow me to state another point which I wish to discuss to-morrow.

I hope we have settled the question about the Constitution of the United States in its application to this Territory. I have already shown that the Government of the United States, in the case of the Five Civilized Tribes, has permitted republics to grow up, separate governments, under constitutions republican in form, and harm has come of it, but, on the contrary, a great deal of good.

I wish to state that to-day, under the act of Congress of annexation, the president of the republic of Hawaii is in his office executing all of the functions of the president of those islands except those which have been conveyed to this Congress. The consent to this has been collected by the Hawaiian authority. Taxes of every kind are being collected by the Hawaiian authority. The judiciary are under Hawaiian authority and under Hawaiian commissions, expounding the constitution and the laws of Hawaii, except so far as they conflict with those of the United States.

The President of the United States was consulted immediately after the commission arrived upon this question. It was understood that in the courts indictments would be demurred to or a motion to quash would be made on the ground that the constitution of Hawaii required all proceedings to be in the name of the republic of Hawaii; and had no longer the right to exercise its functions as such, and the country had become a part of the territory of the United States, that those motions could prevail and it would stop the administration of justice; there would be no indictments and no convictions.

Mr. MORGAN. Also as far as this is concerned. It is the first question that came before the commission, and the President of the United States issued an order that the process in Hawaii should run in the name of the republic of Hawaii as was provided in its constitution; and from that time to this every function of government in the Hawaiian Islands has been exercised by the republic of Hawaii, so to-day, in the elasticity of our laws upon this question, we have a full-fledged republic, without having lost any of its powers, except its foreign relations, within the bosom of this
imperial Government of ours and exercising its powers without restraint.

There is nothing unconstitutional about it. There is nothing any more wrong about it or irregular about it than there was in the annexation of Louisiana after the treaty of Mr. Jefferson, when it became necessary to extend the laws over that Territory; but instead of extending the laws of the United States over it we retained the laws that were in force there, whether they were of French origin or of Spanish origin. All the laws in force were retained, and the courts were compelled to administer them and did administer them until the Congress of the United States furnished to Louisiana a Territorial form of government, after several years.

Now, there we are, and that is the situation of Hawaii to-day. Therefore the question arises, Mr. President, and arises naturally and properly, not whether we shall create a government in Hawaii anew entirely, starting it from the ground, but how much of the powers of the republic ought we to take away in order to conform Hawaii to the institutions and the Constitution and the laws of the United States and the opinions of the American people. That is the question which is presented, and in the presentation of that question I wish to state just this: We thought it was proper to retain the courts that were in Hawaii and give them local jurisdiction, cutting away from them all jurisdiction of a foreign character or admiralty character, and everything of that kind, but giving them control of local affairs within the jurisdiction of the district, circuit, and supreme courts. Then a part of the bill is to establish within those islands for the first time a district court of the United States proper. That is the proposition before the Senate at this moment of time.
February 23, 1900

Senate
v. 33 (3)
p. 2122-2126

TERRITORY OF HAWAII.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. 222) to provide a government for the Territory of Hawaii.

Mr. MORGAN. Mr. President, when this matter was last before the Senate I had the floor, and, after a great many interruptions, I succeeded in getting before the Senate my views upon the particular amendment now under consideration. I desire, in order that we may understand exactly what the question before the Senate is, now to have the Secretary state the proposed amendment with the text as it will stand after it shall have been amended as proposed.

The SECRETARY. It is proposed to amend section 81, on page 35, as follows: In line 22, before the word "shall," to strike out "governor" and insert "President;" in line 23, after the word "senate," to strike out "of the Territory of Hawaii;" in line 23, after the word "courts," to insert "and the governor shall nominate and, by and with the advice and consent of the senate of the Territory of Hawaii, appoint;" in line 11, on page 36, after the word "may" and before the word "remove," to insert "by and with the advice and consent of the senate of the Territory of Hawaii;" in line 16, after the word "removed," to strike out:

Except the chief justice and justices of the supreme court, who shall hold office during good behavior, and the judges of the circuit courts, whose terms of office shall be six years, and;

and on page 37, after the word "provided," at the end of line 12, to strike out:

Except the chief justice and associate justices of the supreme court and the judges of the circuit courts, who shall continue in office until their respective offices become vacant;

so that, if amended as proposed, the section would read:

"Sec. 81. That the President shall nominate and, by and with the advice and consent of the Senate, appoint the chief justice and justices of the supreme court, the judges of the circuit courts, and the governor shall nominate and, by and with the advice and consent of the senate of the Territory of Hawaii, the attorney-general, treasurer, commissioner of public lands, commissioner of agriculture and forestry, superintendent of public works, superintendent of public instruction, auditor, deputy auditor, county and district attorneys, sheriff, members of the board of health, commissioners of public instruction, board of prison inspectors, board of registration and inspectors of election, and any other officers of a public character that may be created by law; and he may make such appointments when the Senate is not in session by granting commissions, which shall, unless such appointments are confirmed, expire at the end of the next session of the Senate. He may, by and with the advice and consent of the Senate of the Territory of Hawaii, remove from office any such officers except the chief justice and justices of the Supreme Court and the judges of the circuit courts, who shall be removable by impeachment only. All such officers shall hold office for four years and until their successors are appointed and qualified, unless sooner removed, except the commissioners of public instruction and the members of said boards, whose terms of office shall be as provided by the laws of the Territory of Hawaii. The manner of appointment and removal and the tenure of all other officers shall be as provided by law; and the government or the governor may appoint or remove any officer whose appointment or removal is not otherwise provided for.

The salaries of all officers other than those appointed by the President shall be as provided by the legislature, but those of the chief justice and the justices of the Supreme Court and judges of the circuit courts shall not be diminished during their term of office.

All persons holding office in the Hawaiian Islands at the time this act takes effect shall, except as herein otherwise provided, continue to hold their respective offices until such offices become vacant, except beyond the end of the first session of the Senate, unless reappointed as herein provided.

Mr. MORGAN. I would suggest to the Senator from Connecticut [Mr. PLATT] who offered this amendment that, after the changes he proposes to make in it, there ought to be a more distinct expression of the fact that the nomination of the officers appointed by the governor should be confirmed by the Senate of Hawaii. The words "the Senate" are used there instead of "the Senate of Hawaii," which might be confused with the Senate of the United States.

Mr. PLATT of Connecticut. Will the Secretary read the first part of the section as it will read if amended?

The Secretary read as follows:

"Sec. 81. That the President shall nominate and, by and with the advice and consent of the Senate, appoint the chief justice and justices of the Supreme Court, the judges of the circuit courts, and the governor shall nominate and, by and with the advice and consent of the Senate of the Territory of Hawaii, appoint the attorney-general, etc.

Mr. MORGAN. Mr. President, the first proposition that is presented here is this: The Government of the United States must assume the payment of all the salaries of the judges of the supreme
court and of the circuit courts. If we appoint the officers and appoint those judges, of course we have got to provide the salaries, because they become then officers of the United States Government. If I am mistaken, I believe, in regard to this point of difficulty; and I will suggest to the Senator from Connecticut, if his amendment shall prevail, that he bring in some provision for the purpose of ascertaining and declaring what the salaries of those judges shall be. The President is supposed to have legislative power, not while they are in office, but in respect to future legislation, to reduce them if it chooses to do so, or to increase them.

The government of Hawaii has maintained itself, and will continue to maintain itself, upon the basis of the expenditures that are provided for in this bill. The people of Hawaii, of course, own the land in the Territory. I have been careful in talking these burdens off of their hands, but they are quite willing to retain them, if they can have the privilege, which I think every community ought to be accorded, of having some voice in the selection of their judicial officers.

The other day, when I was discussing this subject, I adverted to the district court. I think it is an entirely correct one, that a judicial office is as much an office to be conferred with respect to the will of the people in a Territory or a State as any other office. If we break away from the system that is recommended here and assume the appointment of those officers by the Government of the United States, why not go further and have the President of the United States appoint them? The President is the head of the executive department of the Territory, and why not require the President to appoint the legislative officers also? Why should we retain the feature of representation in respect of the legislative and executive officers of that Territory, and abandon that feature in respect of the election of the judicial officers? I have heard in that direction is that we have not heretofore done it.

Well, Mr. President, we have heretofore permitted in a very large degree the people of the Territories, through their legislature or governor, or by election, to choose their judicial officers; and this bill, as it will be left after the amendment of the Senator from Connecticut, will provide that the president of the United States shall not leave the district judges of the islands under the power of appointment of the governor and confirmation by the Senate. These district judges have a more important jurisdiction, so far as the administration of justice is concerned, than the judges of the circuit courts or of the supreme court. There is no doubt that when I say the Territories, the Territories of the United States to the justice of the peace. They also have other and very important powers relating, for instance, to the probate of wills and the administration of estates. A number of important powers are left in the hands of the judges of the district courts. These powers reach the people in every neighborhood in Hawaii. Had I been in the House of Representatives, I would look to those judges as the conservators of the peace and the administrators of justice in respect of cases that do not involve certain very important constitutional or other questions or very large amounts of money and property.

So, if it comes to a comparison, it is much better to transfer the appointing power of the judges into the hands of the President of the United States, we ought to continue it, to be consistent with ourselves, as to the appointment of the judges of the district courts. There is, therefore, no logic in the proposition presented by the Senator from Connecticut. It is entirely unimportant, entirely illogical, except this respect, that the people of Hawaii have the right, as every other people have, to know the judges who are appointed amongst them and over them. No country can be described that is in a worse condition than a state where a foreign judge is seated in the seat of judgment. A foreign judicial rule is of all things the least to be approved, and it is the last thing that the people of any self-governing community in the United States or in the Territories would object to it, being deeply and unjust to the people of Hawaii. If we intend now to take the offices of the President and make them a part of the Presidential patronage, let us take them all, let us take the whole of the judges, including the judges of the circuit courts, and not only the members of the legislature, but all of the members of the executive department of the Territorial government.

Mr. President, this bill first received the consideration of five commissioners, all of whom agreed in respect of its provisions in this particular which I am now discussing, and made their recommendation to the Senate of the United States. During the last Congress, and was there considered and reported, retaining this provision. At the present session of Congress it has again gone before the Committee on Foreign Relations, and has been again reported with this feature in it, and now, at a time when Hawaii is already a state, a new contrivance is set up here which is entirely disorganizing and which destroys the scheme of the entire bill as to the judiciary.

I beg the attention of what few Senators have consented to linger in this body, for the purpose of attending to the public business, for a little while to the proposition that this bill contains a new proviso in respect of the election of the judges of the Territory of Hawaii. The first proposition is that the judges, the juries, and those functionaries who exercise judicial power in that Territory shall be elected so far as may be possible from the worthy people of those islands, people who are capable of filling those important places. In that view of the subject I am afraid that the committee have strayed away from any proper doctrine for the Government of the United States or its Territories.

Local self-government is as much included in the administration of justice as it is in the election of officers or in the execution of laws, and the principle of local self-government is the one to which the people of the Territories have appealed in this case as the basis upon which we predicate the entire frame of this bill.

It has been the custom heretofore—and a very bad custom, indeed—to appoint the judges of the Territorial courts for four years, and to designate the judges of the supreme court and of the circuit courts. There have been in the judicial administrations of the Territories so many changes that succession of persons have been in the practice, influenced, instead of a high sense of propriety in judicial administration, is that which quadrennially invades every government. We have had the case here, the administrator of justice who is acquainted with the people and with the laws of the Territory in which he resides. That system of itself is faulty in principle and it has been very injurious in its administration.

But there are other views of this question; there are other circumstances which have been forced upon the attention of Congress hitherto, chiefly by the sparsity of an educated and trained population in the Territories which we have heretofore organized. Heretofore, up to the present time indeed, except, I believe, in the case of Alaska, we have conferred upon what they call the United States courts in the Territories—the same courts the Senators are now about to confer upon the people of Hawaii—we have conferred upon them the power to enforce the laws of the United States, assuming under the decisions of the Supreme Court that Congress as the supreme sovereign over the Territories has the right to combine the powers of the State government and the powers of the Federal Government in the appointment of judicial officers for the Territories. We have conferred upon them the double duty, and sometimes the irrecusable duty, of passing upon questions that arise in the Territories themselves, and which concern private interests entirely, combining them with questions that arise under the laws of the United States and are tried in the circuit courts, and also under the laws of the Territorial or local laws. For instance, we have conferred upon those Territorial courts the power of admiralty in several cases.

Now, what greater inconsistency can there be than that of a Territorial court exercising all of the local jurisdiction that be comes Territorial courts, and only a small fraction of the admiralty jurisdiction? How are we to expect to find judges of sufficient breadth of learning, sufficient ability to manage these diverse and incongruous conditions? We have escaped herefore for the reason that we knew that such a court was not a court in the true sense of the word, but a court of equity in another form; and courts of equity have been called upon to administer admiralty jurisdiction, but I can conceive of nothing more unseemly in legislation to provide judicial jurisdiction and officers than to place in the hands, for instance, of a circuit judge of the State of Alabama the power to determine and execute the laws of the United States in Alabama.
why a circuit judge in Alabama can not exercise such power, how we can justify conferring double jurisdiction upon a Territorial court.

The Territorial court, under the decisions of the Supreme Court, derives from Congress, in view of its competent powers, all of the rights of a circuit court of Alabama or any other State, and also all of the rights, powers, and jurisdiction that belong to Federal courts. The power in the Territorial court is for the disposal of cases that are local in their origin and in their effect—purely local litigation. The other docket relates to cases of the Government of the United States or cases in which the Government of the United States is involved. This combination of judicial matter, undertaken to get rid of this incongruity, this unnecessary mixing of two jurisdictions in the mind of a man serving two masters upon the bench, and we first of all separated the local courts in Hawaii entirely from the courts of the United States, and gave to the Territorial court clear jurisdiction that a circuit court of the United States possesses.

Then, in order that the Government of the United States might have its rightful powers exercised judicially in the Hawaiian Islands, the committee recommended that a district court of the United States should be established in those islands having a jurisdiction of much difficult, that has been defined by statute and by judicial decisions so that there is no doubt or dispute about its powers at all, and that in that jurisdiction that judge, representing the Government of the United States, should preside in all cases where the laws and rights of the Government of the United States are involved.

Now, is there any serious objection, is there any constitutional objection, can there be any objection in practice or in theory to establishing in the islands of Hawaii the two separate jurisdictions just as they exist in the States? I can see no difficulty in establishing in the Hawaiian Islands a Territorial court, and it has never occurred to me or to any other member of the commission or to any other member of the Committee on Foreign Relations. The subject has been fully discussed, and the committee have been of the opinion that we had just as much right to establish a district court in any State in the American Union.

Now, if there is no such difficulty, it behooves us in providing a good government for those people there to keep those jurisdictions separate, and in order to keep them separate the appointing power ought to be kept separate. The appointing power of the local jurisdiction the Federal Government is the local government and of the Federal jurisdiction the Federal Government. Is there any collision between them? Is there a possibility of collision between them? No more in the islands of Hawaii than there is in the State of Alabama—not at all. They have separate systems of laws, separate systems of courts, separate systems of judges, and this will apply to the islands of Hawaii as well as it will apply to the States, without having some necessary repairs made at Honolulu. There are questions of liens upon tackle, apparel, and furniture for the payment of those repairs in the event that they are not paid according to the agreement between the parties, which must be determined by the courts.

If it is a State court, you can not give it to jurisdiction requisite for the decision of these cases. It is only in virtue of the fact that Congress has the supreme power to confer the jurisdiction of the State and the Federal Government upon a court of admiralty that the court proposed by the Senator from Connecticut can take any jurisdiction whatever of a lien for repairs of a ship. There is that vast sweep of maritime contracts, very important in themselves and involving questions of the greatest possible difficulty and interest, questions of seamen's wages and questions of collisions, to which I have already referred. I do not think it necessary to refer to any book of law or consider any of these questions, because I suppose the law as I have stated it here now upon the question of the jurisdiction of these courts will hardly be disputed. I am referring to it merely for the purpose of showing the necessity of having an independent separate district court of the United States located in the Hawaiian Islands.

Then we will take the internal revenue and the violations of the internal-revenue laws—the questions of illicit distilleries and the thousands of questions that arise continually under the internal-revenue laws of the United States. Are we going to confine all of these matters to the circuit courts? No. The bill provides for it. The bill constitutes the Hawaiian Islands an internal-revenue collection district. It also constitutes those islands a customs district of the United States, and we appoint there our custom-house officer, and all of the laws and all of the regulations that are applicable to that district.

Now, shall we have behind these powers that we carry into Hawaii no judge of the district court to control and regulate those matters as between the Government of the United States and the people of Hawaii? Shall we take away from a people who have already elaborated in their judicial decisions a splendid system of admiralty law all of that system and confer upon the district court a jurisdiction
which is mixed, consisting in part of a local Territorial jurisdiction for local affairs and also a broader jurisdiction to cover all the powers of the different courts of the United States in those islands.

For my part, Mr. President, I take great pride in the fact that this commission and the committee have introduced this subject into the bill and have brought forward and presented to the Congress of the United States a bill which has been taken up and developed in such a way that the United States will find itself compelled by these necessities to go into the Philippines and also into Puerto Rico with these district judges. Why is it that we are extending the whole constitutional authority and power of the Government of the United States, and the people of the United States, to the people or the Government of the United States the opportunity of having a full sweep of jurisdiction as provided for the States of the Union in our large and elaborate system of legislation and judicial decisions? Can we not understand it, Mr. President, and see to it that any objection to the real point of any objection that can be made to the introduction of these courts into the Hawaiian Islands.

It is urged or has been urged that it is unconstitutional to establish a district court of the United States anywhere within the world except within the borders of the State, and that we have made a very wise and justious breach of the Constitution, which is now in effect, that is nearly a hundred years old, in respect of the District of Columbia, for there we have a supreme court and a court of appeals of the District of Columbia, and exactly the same jurisdiction is conferred upon them as is conferred by the laws upon the district, circuit, and appellate courts of the United States.

We have judges who hold their constitutional tenure also during good behavior. Those courts in every possible respect, except in the mere name, have all of the courts of circuit and district courts of the United States, with one solitary exception, and that is where a plaintiff is in a district court of the United States, if he stand upon his character as a citizen merely without reference to the nature of the case he brings into court, it is the same as in the District of Columbia or the city of a Territory. That is the only difference. That, however, does not in the slightest degree operate as against the jurisdictional powers which he may invoke, no matter of what State or Territory he may be a citizen, if the question presented in the cause is one that arises under the laws or the treaties of the United States.

It is no argument against the constitutionality of this court that a man living in Hawaii can not sue another man who may live in California. A man living in California can sue a man who lives in Hawaii by this law, but he cannot sue a man who lives in any part of the United States. He would have to go into the local courts in order to have his redress. He is the only man who is excluded from that power or right. More than that, it is not quite settled—it was not settled in the first case decided upon this question, and it is not settled yet—whether the Congress of the United States could not upon a man who lives in a Territory or the District of Columbia the right to sue in a Federal court. Chief Justice Marshall kept that expressly as an open question in the first decision ever delivered on the subject.

Now, I do not care to elaborate this subject before a Senate so thin as this is, because when our colleagues come to vote upon this question, it will simply know nothing about it, unless we take the pains to go over the whole ground and explain it again, but I wanted to ask the Senator from Connecticut, unless he could state some real constitutional ground of objection to this legislation, to forbear his opposition to it in deference to the opinion of the majority of his State, and of others—who have carefully scanned this whole subject, and who have presented a system here which will be broken into and very badly injured, if not destroyed, by the effect of his amendment; and I hope the Senator from Connecticut, when he comes to consider the subject more maturely, will not insist upon his amendment.

I desire to reserve the right to say that we should proceed with this bill in a hurry for the reason that the bubonic plague is affecting the people of the Hawaiian Islands. It has now originated, as we are informed this morning by the newspapers, in the island of Kauai. In that connection, I should like to say that the news was not given to the newspapers, which gives the impression that the island of Kauai, according to the newspaper statements, which gave the only account we have, was introduced into that island by some Chinese sweetmeats, brought forward and eaten by the people. The island of Maui has no connection whatever with the island of Oahu, on which the city of Honolulu is situated. The strictest possible quarantine is kept up, and there is no possibility of getting from Honolulu to Maui otherwise than upon a ship, a seagoing vessel. The quarantine there has been absolutely perfect, and the origin of the bubonic plague in the island of Maui is not in any degree to be traced to the city of Honolulu. On the contrary, the measures taken by the people of Honolulu to stamp out the disease have been so effectual that it has been ten days, up to the latest account, since any new case originated in the city of Honolulu.

But I call attention to the fact that for the purpose of trying to quiet these rumors, some of our friends on the subject of the very hasty legislation in the United States, is it true that we have left the islands in the most peculiar and the most unsatisfactory condition that has ever existed in any part of the country over which we have any jurisdiction, of all the people of those islands up to this time, considering all of their antecedents, considering who they are, and what they are and what they have accomplished, is discreditable to the Government of the United States. There can be no another class of people in the United States, that is, the people of these islands, who, in the most heroic manner, when it comes to any question, that any people ever have, a great epidemic of disease.

The first was the leprosy, which they have conquered so far as concerns its being a contagious or infectious disease in any of those islands. Those people have done for the lepers, who were affected first of all from some persons who came across from China, as far as we can make out, the disease in the world has ever attempted to do for that most miserable and unfortunate class of people. They have established for them a home, a sanitarium, covering 10,000 acres of land in a beautiful situation, surrounded on three sides by the sea and on the fourth side by precipitous mountains, and, upon that plain, that was never cultivated, fifty beautiful streams, they have located homes for these lepers, where no man can turn to his neighbor and say, "Thou art defiled." It is the only place in the world where a leper has been provided with home comforts, the protection and care of excellent physicians, where the leper has all the necessary amusements, and with work at which they can make money, and with every possible facility for comfort that can be given to people in such an unfortunate condition.

In that respect the people of Hawaii have accomplished a triumph of medical sanitation that has drawn the admiration of all who have been to the scientific world, and no people have so greatly honored themselves as have those people in dealing with that terrible disease. There is no more danger of becoming a leper by contagion or infection in one of the Hawaiian Islands to-day than there is in the city of Washington, D.C., which is not half so much, because of the strict regimen and control that they have exercised over this trouble in their islands.

The second great battle they had to fight was with the cholera. They ascended through the skill of their physicians, whose skill is not inferior to that of any set of men in any part of the world, the cholera. It was communicated not from a ship which landed, because the ship that was suspected of having the cholera aboard of her was quarantined in such a way that no person went on board and no person came away. She did not enter the harbor except a very short distance from the harbor, and informed her passengers requisite to keep the ship absolutely, to inform her, requiring them to keep the ship absolutely, and then to leave, not to land any person. They washed the ship out, and the washing fell into the sea, and it was taken up by the fishes and communicated to the people through their food. The cholera broke out in the island against all possible prevention, and with the admonition what, in the case of any having landed of a person who was troubled with that disease; and it at once spread among the people. The authorities of the Hawaiian Government took the subject in hand and they crushed it out; and although there were hundreds and perhaps thousands of cases of the cholera, there were only 41 deaths in the island, and the whole disappeared.

Now they have the bubonic plague there, and the people of Hawaii have recourse to the old remedy that cleaned it out of London three centuries ago—fire. They have burned over 25 or 30 acres of valuable houses, in that fire, turning their making their occupant out on the world, but taking religious, Christian care of all of them, taking their purses and the receipts of their government to the last possible point of endurance. They have conquered the bubonic plague in Oahu; they have come across the sea in steamboat and railroads to the island of Oahu, and there it has broken out, and some eight or ten persons, Chinese and Japanese, have died, and one case has occurred in the island of Hawaii, at the town of Hilo.

We can not, Mr. President, afford to treat these people with any degree of neglect or injustice, with the impossible direction and for every reason that can be stated they have a right to our
careful and our affectionate consideration. They have a right to our trust and our confidence. There is no such thing in the government of Hawaii as fraud or robbery, failure to account, or anything of that kind. Those people have commended themselves to us by every consideration, so that it is our duty to reserve to them, or rather, I should say, to preserve to them, the establishments and institutions that they have built up. They have built them splendidly. They have administered them with purity and justice. The fruits of their administration and the effects of their laws are manifest on every side in Hawaii; and we ought not to take those people whom we have been inviting to come into the American Republic since the days of Franklin Pierce, who made the first treaty with them, thought not to take them, now that they have become annexed, with their consent, to the Government of the United States, and treat them either as if they were children or ignorant bands of Indians or early settlers in a wild country; but we ought to take them as we find them, people of developed institutions, who understand the very highest arts of civilization and who have in all of their establishments, both domestic and public, the strongest evidence of the highest possible culture.

So I insist, Mr. President, that there can be no harm, there can be no wrong, there is no invasion of the Constitution of the United States in our giving to those people that privilege of local self-government which relates to the selection of their own judicial officers. If there is any one part of local self-government that is more important to the people than any other, it is to have some control, some voice, in the selection of those men who have in their hands the issues of life and death and whose judgments dispose of all rights of persons and property.

I can see why it is that the President of the United States should have imparted to him the power to appoint judicial officers there, except merely that they may become an appanage or a part of the patronage of his office; and I detest the very idea of having men sent into the Hawaiian government who go there merely as the selected agents of a political party in the United States, but do not select the judges for Alabama or Connecticut or Ohio according to their political complexion. None of the people of the different States would tolerate the idea of having the Government of the United States appoint judges for them because, forsooth, they are not qualified to select their own judges through their own agents; and there is no reason for having that done.

You hear very much said, Mr. President, of late about imperialism. I do not know of any definition of imperialism as it is being used at the present time, and I have a difficulty in locating my own attitude in regard to imperialism because of the want of a definition of what that may mean. The imperialism that I am opposed to is that which takes away from the people of any part of the United States a proper participation in the right of local self-government. That is the imperialism I am opposed to. The imperialism that I am afraid of is not that of expansion of our influence in the world, for it was made to expand and it ought to expand, because it is good. No human being ever has been, and I hope that no human being ever will be, included in the power and jurisdiction of the United States who does not receive that blessing in consequence of the fact that he is placed within our jurisdiction. But the imperialism that I as a Democrat have always resisted, and I insist on it now, and will always resist it, is the magnifying of the power of the Federal Government and extending it into every cranny and corner of the United States that it may reap a harvest of political power or patronage or something of that kind.

If I were going to define the idea of imperialism I would take up the amendment of the Senator from Connecticut, and I would take away from that enlightened and splendid community in Hawaii the right through their governor and their senate to select their judges for local affairs and local jurisdiction and to put upon the President of this imperial Government at Washington. I could not find a better definition of imperialism, it seems to me, than that, and I am opposed to it with that definition in all of its phases and in all of its applications. I believe in the right of local self-government. I believe that there is not an intelligent community in the United States, I mean of white people, who are not entirely competent to select for themselves their local officers, whether they are executive, legislative, or judicial, and any bill which gives the selection of the legislative officers into the hands of Hawaii and denies to them all participation in the selection of their judicial officers I find a contradiction which is entirely illogical, and unless some necessity can be pointed out for it, I must be opposed to it.

Now, that is all I care to say now. I understand the Senator from Rhode Island proposes to make a report, perhaps a conference report, and I yield the floor.
February 23, 1900
Senate
v. 33 (3)
p. 2128-2133

TERRITORY OF HAWAII.

The Senate, in Committee of the Whole, resumed the consideration of the Senate bill (S. 232) to provide a government for the Territory of Hawaii.

Mr. VEST. Mr. President, no one opposes the annexation of Hawaii more intensely than I do, but that is now a dead issue, and there rests the duty of every Senator to secure the best possible government, the most equal and fair, for the inhabitants of those islands.

I shall vote for the pending bill, because in its general outlines it is beyond all constitutional criticism and raises none of the issues which led to the war with Spain, Puerto Rico and the Philippines. I think that the thanks of the country are due to the Senators who prepared this bill. There is no provision in it changing the tariff and, even by implication, publishing to the world that Hawaii is not a part of the United States, or, if a part of the United States, that it can be held as a colony, a province without the people of those islands having the slightest shadow of self-government.

I shall not repeat, Mr. President, my views at length in regard to the extraordinary assumption that any territory under the jurisdiction of the United States is not a part of the United States, if it is intended to be in any way a republic or an independent state. I undertook to show that by the historic argument, if I may so term it, it was impossible that the men who fought the Revolutionary war and made the Constitution of 1789 could ever have contemplated establishing a colonial system in this country. I said then and I say now—and it cannot be successfully contradicted, in my opinion—that the language of the Declaration of Independence was devoted to stating the outrages and wrongs committed upon us by the King of Great Britain, those wrongs being the acknowledged and established features of the colonial system as practiced by European nations.

I undertook to show that Declaration of Independence in the textbook of the Senate, the Manual and Rules, an old-fashioned edition, which I was compelled to search for in the Senate library, published in 1872. We have now a gaudy, morocco-bound, and gilt-edged edition, purporting to be the same work, from which the words of the Constitution have been eliminated. When the book came to the Senate, the Rules and Manual contained the Declaration of Independence and Washington’s Farewell Address. Both are now eliminated; I do not know why, unless they had become so old-fashioned and antiquated as to be considered ancient history and simply academic in the history of our country.

Mr. TELLER. Why, Mr. President?

The PRESIDENT pro tempore. Does the Senator from Missouri yield to the Senator from Connecticut?

Mr. VEST. Certainly.

Mr. PLATT of Connecticut. I hope the Senator is mistaken in supposing that the Declaration of Independence has been eliminated from our Manual, and I think he is, because on page 389 of the edition of the Manual published in 1899 the Declaration is to be found. I think the Senator must have overlooked it.

Mr. VEST. I do not think I did. I looked very carefully for it in the last edition, as I am not a part of this, of the Rules and Manual. But it is a matter of no importance. It might have been left out by inadvertence. I do not know how this book is prepared; but I was astonished not to find, or, I was unable to find, in the edition that was placed on my desk at the beginning of this session, any copy of the Declaration of Independence or the Farewell Address of Washington. I shall not undertake to say that it was done because the doctrines in those two great papers had become obsolete, or even that it was intentionally done.

Mr. TELLER. It was put in the back of the volume; that is all.

Mr. VEST. Mr. President, it does not matter whether it is published or not. I repeat that the Declaration of Independence is devoted, much the larger part of it, to an arraigning of the King of Great Britain for applying to the colonies in America the oppressive and despotic features of the colonial system as practiced by the nations of Europe.

It is true that in this Declaration of Independence the colonial system is not denounced specifically and co nomine, but all of its salient and essential features of despotism are singled out by Jefferson and denounced.

"He," says Jefferson, referring to the King of Great Britain, George III, "has oppressed the people of the colonies by denying them publick credit; has made war, and has committed and committed all the other wrongs that the monarchs of Europe under the colonial system inflicted upon their subjects."

If the men who fought the Revolutionary war could today take cognizance of the affairs of the living, they would be known that they suffered and died, half clothed, half fed, and half armed, for seven long years in order that their descendants might inflict upon other peoples, of any color, the wrongs and outrages which Jefferson denounced in this Declaration.

There was, and it can be seen in the original Declaration of Independence, was an event that stands besides those found in the Declaration of Independence as we now have it. In the archives of the Government can be found this original Declaration, and it shows upon its face that when Jefferson reported the Declaration it contained the most terrible outrages committed by the King of England for inflicting African slavery on this continent that ever came from the lips or pen of mortal man.

He has, says Jefferson, made war upon an innocent and helpless people in Africa, torn from them their homes, captivated them using the old Revolutionary war as an excuse, and then, when they brought them to this continent, inflicted them upon an unwilling people, and then attempted to incite servile insurrection in order that fire and sword might be put into the hands of the slaves against their owners and masters.

As a colony for years protested against the African slave trade, but in vain. The King of England had nullified in every instance the acts of the colonial assembly of Virginia endeavoring to prohibit the importation of slaves into her domain. Jefferson knew this; but when this indictment against the King of England was considered by the Convention, there was then, as always afterwards, a sensitive feeling in regard to the institution of slavery, and at the instance of John Adams and others this part of the Declaration was stricken out.

There is a curious history, Mr. President, in regard to the institution of slavery. The Convention of 1789 was one of the most remarkable features in the founding of this country. 1789. We can now afford to allude to it in this era of fraternal feeling, when our President says that the graves of our forefathers, who have died in slavery, should be decorated alike. The debates of the Convention of 1789 show that when the question of the importation of African slaves into this country came up for discussion, Mr. Madison of Virginia, the leading member of the Convention, denounced the African slave trade as inhuman, un-Christian, and unworthy to exist amid the shadows of Western culture. "It was a shame and disgrace that in a Republic African slavery should be instituted with the consent of its people."

Gouverneur Morris, a member of the Convention, alluding to what had been said by Mr. Madison, deprecated the existence of slavery in the United States, and said that in the same article was a provision to which New England greatly objected, and it was to the effect that the navigation laws could be abrogated by a bare majority of the members of both Houses of Congress. New England was then the great shipbuilding and ship-sailing power of the United States, and the bill was harshly received by the shipbuilders of the United States, no foreign-built ship being admitted to the coastwise or foreign trade in this country. "If," said Gouverneur Morris, "the navigation laws, in which New England is greatly interested, and the importation of African slaves can be sent to a committee, it is not a question that we will not be able to strike it down, or a compromise can be made agreeable to all sections." The motion was carried, and two days afterwards this committee of adjustment reported, requiring two-thirds of both Houses of Congress to repeal the navigation laws, which are yet upon our statute book, and providing that the African slave trade should be abolished by 1808.

Before the Convention, General Pinckney, of South Carolina, moved to extend the slave trade to 1808. The motion was seconded by Mr. Gorham, of Massachusetts, and, each State casting one vote, the motion was carried, South Carolina, North Carolina, Georgia, Maryland, and all of the New England States voting for it, but Virginia, Pennsylvania, New Jersey voting against it.

Mr. President, the African slave trade lasted until 1808 under this agreement. The institution of slavery, forced upon old Virginia, went out in tears and fire and blood, as Mr. Jefferson said that it would. The South paid a terrible price for this agreement in the Convention of 1789. Her best and bravest sons fell on the soil of the South with their blood, and New England, although the price she has paid has not been so terrible and disastrous, sees today the shipbuilding, which she endeavored to preserve as a monopoly to her people, almost extinct so far as the foreign trade
concerned; and the merchant marine of the United States under
these navigation laws is a nation of barbary, having run down
from 70 per cent carried in American ships in 1837 to less than
10 per cent to-day; and I take it that this Senate by a large majority—
leaving the navigation laws, the result of this bargain with the slave
trade in 1789, unaltered. We are about to give $80,000,000, in
subsidies to shipowners in order to do away with the disastrous
effects of the navigation laws, which I have had the honor
to mention. President, in vain the appeal is
now made to wipe out those laws, narrow and bigoted and disas-
trous to our people; and they are the subject of this book as if
they were some sacred institution, never to be attacked. We are
not to resort now to the unconstitutional project of subsidies to do
away with the laws with the Constitution.

Another curious thing, Mr. President, while I am in a re-
miniscent mood, is that in the Convention of 1789 a proposition
was made to give Congress the power to grant subsidies to agriculture,
manufactures, and commerce, which was refused without a di-
agnosis afterwards. I have no hesitation in saying that, in my opinion, there is no constitutional
power in Congress to tax the money of this people and give it as subsidies to any interest; and I am
informed that the men who made the Convention never intended that such subsidies should be given,
from the fact that the proposition to give them to agriculture, manufactures,
and commerce was allowed to sleep and was not even dignified by a debate in the Convention.

Mr. President, I had the temerity in the last Congress to quote
from the Dred Scott decision, the effect of that this Government
has no right to hold any people as subjects, and that no territory
is acquired under the Constitution as it now exists except
with the ultimate purpose of being admitted as a State within the
discussion of Congress. I offered a resolution to that effect, which was not even
an amended and it was rejected. I was not unprovoked in saying that I was an unrepentant
traitor to the country, and that my motives were of the most sinister and malingen
character.

I said at the time when I quoted from the Dred Scott decision
and I will not repeat the quotation but it is in the record that I was not unprovoked in saying that the aged, senile, and
unjustified by the Civil War. But I assert that, in the portion of it which related to the power of the United States to hold colonies had been
acquired by the treaty with the seven nations, but
justices in McClean's case delivering the opinion from what Chief Justice Taney said in regard
to the constitutional power to which I have adverted. In
answer to that the junior Senator from Connecticut [Mr. Platt], in
my letter to my argument, contended with himself with denouncing the
Dred Scott decision as a disgrace to the court and was
in the popularly believed to have contained the intimation that the negro had no right which the
white man was bound to respect.

Mr. President, I do not know that I would have addressed
the Senate to-day except that I want the opportunity to justice to the dead, to whom I have been made
by the resolution of the Senator from Connecticut. This is a
slander upon the seven judges who united in the opinion in the
Dred Scott case, and especially upon Roger B. Taney, whom a
purer man never lived in this or any other country. It has gone
uncontradicted for too long.

I am not in this able in that opinion which contains any
such statement as that to which the Senator from Connecticut
alluded. The Senator from Connecticut is an able lawyer, a
fair man, as my experience with him in this body has taught me to
believe. Chief Justice Taney's views upon the helpless race of Africans, that they
had been treated by the nations of Europe, and especially by
the English kings and queens, as having no rights that the white
man was bound to respect; but he deprecated that state of things.
He expressed sympathy for this most unfortunate race of all that united would be
and doubted the policy of its existence in this country, as
did Mr. Jefferson and Mr. Clay and Mr. Benton, but I repeat that
there is not one syllable, not one letter in that much malign
and slandered opinion in the Dred Scott case to justify this political
canard that was used to influence the election for President in 1860.

Mr. President, the feeling being that then existed was so intense
that William H. Seward, Senator from New York, after the deliv-
er of the Dred Scott decision, which was the day after Taney
had sworn in James Buchanan as President of the United States
in the eastern exposure of this Capitol, stated, in a speech to
be found in the CONGRESSIONAL RECORD, that Taney stepped and
whispered in the President's ear: "To-morrow the Supreme Court
will decide the Dred Scott case, and carry slavery into the Terri-
tories by virtue of the Constitution"—the monstrous statement
that Chief Justice of the United States would lean down and
whisper into the ear of the President the news that the Dred Scott
decision would be decided in the interest of slavery! That state-
manship was in the campaign of 1860, and went through the
North uncontradicted, a statement so monstrous as to be beyond
belief, even by one who was tainted and poisoned with political
works.

Mr. President, I am glad to be able to state that the Supreme
Court of the United States has unanimously, within a few years,
affirmed the doctrines laid down in the Dred Scott decision as
to the power of this Government to hold a slave in a Territory when I spoke during the last Congress. I have here
an opinion delivered by Justice Gray, with the unanimous assent
of his colleagues, a few years ago. Is there anyone here who will
say that the justice of that opinion is confined to this country or to the Repub-
lican party? He is a jurist of eminence, having been its Supreme
Judge in Massachusetts, and then, at the instance of the distinguished senior Senator from Massachu-
setts [Mr. Hoar], as he has understood, he was put forward for
the presidency for the United States. If he is not a Republican, if his judicial opinion on
slavery shall be attacked, just what shall be said to be true to the doctrines of the Republican
party? I will ask the Secretary now to read an extract from that
opinion as to the point I have made.

The Secretary read as follows:

In the case of Shively vs. Dred Scott (1875 U. S.) Mr. Justice Gray said:

"Mr. Justice Gray, Mr. Chief Justice, the language acquired by Congress, whether by deed or
acquired the original States or by treaty with a foreign country, are held by the
Court to be the same as those acquired by the Union as States upon an equal footing with the
original States in all respects: and the title and dominion which the
people of the United States have acquired in the Territories for the benefit of the
people of the United States, and the Court has often said in cases above cited, 'in trust
for the future.'"

"Upon the acquisition of the territory by the United States, whether by treaty from the
original country or by discovery and settlement, the same title and dominion passed to the United States for the benefit of the
people of the United States, and for the benefit of the
people of the United States, and as such case has often said in cases above cited, 'in trust
for the future.'"

"The territory is (285) Mr. Chief Justice, the Court in speaking in the Shively case (257) the
court said:

"Upon the acquisition of the territory by the United States, whether by treaty or by discovery
and settlement, the same title and dominion passed to the United States for the benefit of the
people of the United States, and as such case has often said in cases above cited, 'in trust
for the future.'"

"The territory is (285) Mr. Chief Justice, the Court in speaking in the Shively case (257) the
court said:

"Upon the acquisition of the territory by the United States, whether by treaty or by discovery
and settlement, the same title and dominion passed to the United States for the benefit of the
people of the United States, and as such case has often said in cases above cited, 'in trust
for the future.'"

"The territory is (285) Mr. Chief Justice, the Court in speaking in the Shively case (257) the
court said:

"Upon the acquisition of the territory by the United States, whether by treaty or by discovery
and settlement, the same title and dominion passed to the United States for the benefit of the
people of the United States, and as such case has often said in cases above cited, 'in trust
for the future.'"
which the Constitution left in force, it had been agreed that States, not exceeding five, might be formed from the Northwest Territory and received into the Union. The constitutional provision contemplated that the territory then under the dominion of the United States, but not within the limits of any of them, was in due course of time to be divided into States and Territories. The provision for the District of Columbia or the territory west of the Missouri is not less than within the United States than Maryland under the Constitution, that uniformly in the imposition of imposts, excises, duties, and excises, should be levied upon the same rate throughout the States. Mr. VEST. Mr. President, the other day I called the attention of the distinguished Senator from Kentucky [Mr. LINDSAY] to the decision, which I have never heard explained or alluded to by any of my colleagues who favor what I call the construction of the Constitution of the United States. The question was what was the meaning of the term "United States." The contention made was that the term United States did not include the District of Columbia, and the technical assertion was made that when the power was given to Congress to lay imposts, excises, duties, and excises, without the consent of Congress, the District of Columbia could have no effect. Chief Justice Marshall sweeps that technicality away as if it were a cobweb, and says the meaning of the term "United States" in the Constitution is the empire of the United States, the sea over which the Federal Government has jurisdiction. That decision of the Supreme Court of the United States in nine opinions since without a dissenting justice has reiterated and reaffirmed the doctrine which Chief Justice Marshall then laid down.

My friend the senior Senator from Ohio [Mr. FORAKER] the other day read from Colonel Benton's Thirty Years' View of the Constitution of the United States. I have in the political history of this country the assertion that the Constitution, propria vigore applied to the Territories. This opinion of Marshall in Loughborough v. Blake was delivered in 1890 and had stood from then until Benton finished his Thirty Years' View, after his political career was over, in the last literary production of Colonel Benton, his essay upon the Dred Scott decision, he will find much stronger language. He will find it imperious so vitriolic that it could have emanated from no one else than Colonel Benton, who was the most extreme man in his opinions that ever appeared in Congress.

Mr. President, in order to escape the decision of the Supreme Court in the case of Loughborough against Blake in 5 Wheaton, and other opinions down to three years ago, it has become necessary for the advocates of imperialism, which means the imposition of a government upon people who are native to the soil and have been born and reared in the soil, to devise a new theory. From this decision in 5 Wheaton down to three years ago, as I have said, the doctrine of the Dred Scott decision and what is the same thing, that the Constitution applies propria vigore to the Territories and the District of Columbia, and if it is not worthy, in my judgment, of any better name? Is it not that the Constitution of the United States, by John Marshall to apply to all the territory over which the Government has jurisdiction, must be extended by act of Congress or by treaty stipulation in order to be proper? The question is, have we here decisions of the Supreme Court of the United States, which I will not inflict upon the Senate at this late hour, but will take the privilege of inserting them in the report of my remarks, in all of which, and I challenge contradiction, the Supreme Court, without one single dissent, has declared in the cases of the Territories and the District of Columbia all the rights, privileges, and immunities given to the people in any of the States.

In Mormon Church v. the United States, Mr. Justice Bradley delivered the opinion, and said:

Doubtless Congress in legislating for the Territories would be subject to the fundamental law of the United States, in favor of personal rights which are fortified in the Constitution and its amendments; but these limitations would extend only to those which Congress derives all its powers, by any express and direct application of its provisions.
In McAllister v. the United States, Mr. Justice Harlan delivered the opinion and explained the language of the court in the Mormon Church v. the United States.

In Thompson v. Utah, Mr. Justice Harlan, delivering the opinion of the court, said:

That the provisions of the Constitution of the United States relating to the right of trial by jury in suits at common law are not open to question. (Webster v. Reid, 11 How. 437, 440; American Publishing Company v. Fisher, 16 U.S. 463, 466; Springville v. McGirr, 32 Utah 28, 109 Pac. 832.) The Constitution declared that the Territorial legislature of Utah was empowered by the organic act of the Territory of September 9, 1850 (38 Stat. 582, 585) to establish courts of civil cases, but that the constitution of Utah was not necessary to a valid verdict. This court said: In our opinion the seventh amendment secured unan

In Murphy v. Ramsey, Mr. Justice Matthews, delivering the opinion of the court, said:

The personal and civil rights of the inhabitants of the Territories are secured by the same principles of constitutional liberty, which restrain all the agencies of government, State and national; their political rights are franchises which can be enjoyed only as privileges in the legislative discretion of the Congress of the United States.

In Reynolds v. United States, Mr. Chief Justice Waite, delivering the opinion of the court, said:

Congress cannot pass a law for the government of the Territories which shall prohibit the free exercise of religion. The first amendment to the Constitution expressly forbids a legislature to enact a law impairing the obligation of contracts in any case however general. Every law which seeks to disturb either the peace and order or the tranquility of the Territory of the United States, so far as Congressional interference is concerned.

In Callan v. Wilson, Mr. Justice Harlan, delivering the opinion of the court, said:

There is no history in the constitution of the Territory or of the original amendments to justify the assertion that the Constitution of the United States may be lawfully deprived of the benefits of any of the constitutional guaranties of life, liberty, and property, especially of the privilege of trial by jury.

In the draft of a constitution reported by the committee of five on the 6th of August, 1890, there is no provision for a trial by jury. In § 4 of the constitution the language is: "The trial of all criminal offenses (except in cases of impeachment) shall be by jury." (1 Elliot's Debates, 8th ed. 529.) 222. Nowhere do we find any law respecting the states of re

The object of the amending section, Mr. Justice Waite, says, was "to provide punishment for offenses committed out of any State." (3 Madison Papers, 114.) In Reynolds v. The United States (93 U.S. 146, 156) it was taken as the argument that the killing of a man in a Territory, by a resident of the people of the Territories the right of trial by jury in criminal prosecutions in the Territories; and it had previously been held by Webster & Robb (11 How. 675, 690) that the construction accorded them a like right in civil actions at common law. We cannot think that the people of this District have in that respect less rights than those accorded to the people of the Territories of the United States.

Justice Deady, in the case from Alaska (30 Fed. Rep., 150), said:

The power to enlarge the number and limits of the United States by the admission of new States into the Union is also expressly given to Congress. In the construction of this power it has been practically held to authorize the admission of any State, however qualified for such admission, and the government of the same by Congress in the meantime, and until it is deemed fit to assume it.

In the exercise of this power, however, Congress cannot do or authorize any act or pass any law forbidden by the Constitution, as the Constitution itself is the source of the power, and the Constitution itself is the rule of the exercise of the power. Congress cannot pass a law requiring the consent of the owner in time of war even by a decree of the President, or a treaty, contrary to the purpose for which territory may be acquired. Subject to these limitations the manner in which this power can be exercised rests in the courts.

I ask now—and I will not use the word "challenge"—any of my colleagues who have asserted this extraordinary doctrine that the Constitution is dead in the Territories until the breath of life is breathed into it by Congress or by treaty to find me single allusion in all these cases to the effect that Congress has appealed the Constitution to the Territories or that the territories have done the same thing.

What intelligent lawyer believes that the Supreme Court of the United States would have disposed of this great question without alluding to the fact that there was a treaty stipulation which extended the Constitution to the Territories? What intelligent lawyer believes that the Constitution was ceded by the United States to the District of Columbia, set apart for the seat of government?

Here are cases which I have collated, showing that the right of trial by jury could not be taken away from the inhabitants of the District of Columbia. Is there anything in these decisions stating that the right could not be taken away because the territory of the District of Columbia was ceded out of Maryland and Virginia or ceded by them to the National Government; that the Constitution having spread its jurisdiction over this territory, once a part of those two States, it must remain there for all time to come?

Is it possible that the nine eminent jurists upon the Supreme Bench did not see and know that this point disposed of the whole controversy? When was it ever heard that an act of Congress was necessary to carry into effect the Constitution? Why this new doctrine of materialism was brought before the people of the United States?

Why, Mr. President, if that be the law, in what a deplorable condition must have been the inhabitants of the Territory of Oregon, which we take over from the French, or the Oregon Territory, when Mr. Clay declared in his first speech in the United States Senate, when that controversy was before Congress, that he could take 10,000 Missourians and settle it in a fortnight? Colonel Benton believed in manifest destiny, and that the soil of the United States or of this continent belonged to the white men; and he laid down this proposition that the prize of this region races must give place to the white man, as the buffalo had give place to the domestic animal.

If this doctrine be true, as I said, then in Oregon, when it was a Territory and before its admission into the Union as a State, the people there could have been hung without a trial by jury; they could not have been made to pay tithes to an established church notwithstanding the Constitution of the United States forbade it; they could have had soldiers quartered upon them in time of peace; they could have been refused the right of the writ of habeas corpus, as in Padula v. Louisville & Nashville R. R., and as the Chairman of the Committee on Commerce has just said, as a part of the game law as a part of the natural right to obtain which the commoners of England made war upon their kings and baronies are extended to the people in these territories. In the Crown colonies this doctrine which is sought now to be applied to the Territory of Oregon becomes of its own nature, unless it comes to its full extent, but not so in Canada and Australia.

Mr. President, I now repeat that I heartily approve of this bill before the Senate. It contains no such unconstitutional provision as that in the Puerto Rico bill, declaring that 25 per cent of the customs duties levied upon Puerto Rican imports.

The Constitution says that Congress shall have power to lay and collect taxes, duties, imposts, and excises: all duties, impost, and excises shall be uniform throughout the United States.

Is Puerto Rico a part of the United States or not? Will some Senator on the other side answer me that question and remove any nebulousity about this argument? Is Puerto Rico a part of the United States or entirely outside of its domain and jurisdiction? If it is a part of the United States, where do you get the authority to place upon the imports from that country one-fourth of the revenue of this country? Upon what power do you make the right do you place an export duty, as is done in the bill pending in another portion of this Capitol, when the Constitution says expressly that no export duty shall be imposed either by the United States or any State? Where do you find the constitutional power to make this discrimination as to one part of the Territories of this country, oral least territory which is under our jurisdiction?

Mr. President, we are told that the people there are not citizens. What do you propose to do with the fourteenth amendment, which declares that all persons born or naturalized in the United States, and subject to the jurisdiction thereof, shall be citizens of the United States? You are driven to the alternative of saying that the Philippines are not within the jurisdiction of the United States, when you know that your Army and Navy are being used to day to enforce the Federal power in these islands.

President, I do not know, nor shall I pretend to prophesy, what is to be the end of these strange and monstrous doctrines. It may be that I have the pessimism of advanced years; but, it seems to me that we have come to the most critical period in all our history. The war between the States was not any covert attack upon the Constitution of the country. It was an open and honest fight, that the Federal authority would not be broken up by the declaration of war, that the people who fought the Federal authority honestly believed that they were fighting for the Constitution, and gave the highest evidence of their sincerity in laying down their lives in defense of what they believed.

"Eternal vigilance is the price of liberty," said Andrew Jackson. And now here, not with arms in our hands, but through the
insidious attacks dictated by political necessity, we are undermining the Constitution, and, like the deadly crevasse upon the Mississippi River, we are commencing with a minute but fatal assault upon the levee that defends the rights of the people.

To consider that the government is not entitled to refuse these people in the islands citizenship, and that they are not fit for it, why not content yourselves with saving the time has not come to give them self-government?

I heard the distinguished Senator, the young and brilliant Senator from Missouri, in his carefully prepared address, declare here that these people in the Philippine Islands could never become citizens of the United States. How, then, do you propose to hold them? Are they colonies? Are the people there subjects? The Republican party claims that it deserves the gratitude of all men for the amendments for personal and civil rights, declaring that slavery should no longer exist, that the immunities and privileges of every citizen shall be held sacred by the States.

How can you in the Republican party forget those things, and against our history, against our traditions, against the memory of the men who fought through the Revolutionary War to es cape this very thing, now impose upon the people of the United States the issue, Is this a republic or an empire? If you can ignore the Constitution, trample upon all that we have taught our people to believe for a hundred years, and, in order to have the votes to hold, and glory, Mr. President, our professions of republicanism and democracy are the meanest treachery in public life. I am no Cassandria shrinking calamity through the streets of Troy; but if the people of this country deliberately, next March, should in the name of your party assembly, then you should pass, or the State of New York should pass, an act taking down the Statue of Liberty at the mouth of New York Harbor, with the lamp in hand to guide the oppressed of all lands to this country. You should tear down the statue, extinguish the lamp, and leave us to the deliberations of the colonial despots.

Mr. FORAKER. Mr. President, at this late hour I shall omit to say much that I would say if I were to follow at an earlier hour in the day the Senator from Missouri [Mr. Vest] after such a speech as we have listened to. But it seems to me that, notwithstanding the language of the Senator, it will not be proper to charge it as anybody else, to ask the indulgence of the Senate until at least a few remarks may be made in answer to those to which we have just been listening.

The Senator from Missouri is always interesting, no matter how much he may be in error, and he is especially interesting in this constitutional discussion to take the time which under other circumstances I would take to follow him in the suggestions that have flown from the reminiscences in which he has indulged.

I do want to say, however, before passing to that which I have in mind, I do want to say, that with respect to his remarks in regard to the Dred Scott case, and all that was gone over fully in the last Congress; and, in answer to a speech somewhat like that which he has just now made, in respect to that decision it was then pointed out that all the judges of that court did not agree with Chief Justice Taney. Two judges said that national territory cannot be acquired by the United States only for the purposes of ultimate statehood; that a present purpose of statehood must accompany the acquisition.

It was pointed out at that time, by, I think, a very careful analysis of that case, that instead of the other judges agreeing when he court agreed with him in that regard, unless it was Mr. Justice Wayne. There is some ground for supposing that he was in accord with the Chief Justice. But there is not a line, I undertake to say, in the decision of any one of the other members of the court that would warrant any such claim. If there is I have not been able to find it.

That is all I care to say at the present time about the Dred Scott decision. The debate of last year will fully reveal the authorities relied upon for the statements I have made.

What I rise for more particularly to point of is to answer the question that has immediate relation to the question that is pending now before the Senate. We have been told by the Senator that the proposition of those who favor the character of legislation which we have pending here is iniquitous; that it is without precedent; that it is astounding; that it is a departure from the principles that have been maintained by the Constitution, in opposition of the Declaration of Independence, and in opposition of the Farewell Address of George Washington.

Now, Mr. President, all this declamation, all of it, that there is, in fact, nothing new under the sun. Neither the legislation proposed nor the criticisms of the Senator are new. Both are old, and very old at that. I hold in my hand McMaster's History of the People of the United States, and will read from page 24 of the third volume. At this place the author is giving the history of the legislation that was proposed and finally enacted creating a Territorial government for Louisiana. A bill was brought in and passed, under circumstances exactly similar to those that have always been understood, by James Madison and Thomas Jefferson. They surely understood both the Constitution and the Declaration of Independence. Here is what was said about the bill:

This bill, said its enemies, violates a treaty, the Constitution, and every principle of American republican government. It is an encroachment on the rights of Orleans; the obligations solemnly promised to the French by the treaty of purchase. It sets up a complete despoticism. The people have nothing to say in the laws of their territory. The Senate and the State council have nothing to say in the choice of laws. The President rames the governor, and the governor, in the language of the bill, is to make the laws. Mr. Jefferson's answer to that was, that the law was passed to say it before the council, but not for the purpose of debate, of amendment, of correction. No; with the air of one who was satisfied with the measure, he said:

Here is the law. Will you take it or reject it? There is no chance given them to suggest amendments. They must approve or disapprove, and nothing short of that. If the President choose to proscribe, they are to receive the law, and if they do not, they can not get any. Was it not the same government in this country since the days of the colonial governors? Was it not against just such government as this that the colonies rebelled?

Then the author goes on to call attention to the fact that another objection made by the Senate was that the people in the territory in which the constitution was proposed to be made by this bill were not members of the Senate by a trial by jury, one of the guaranties of the Constitution, in all criminal cases, except only those which were punishable capitally, and that it denied trial by jury in civil cases except when there was involved at least $100 instead of $20, as the Constitution provided.

I mention all this for the purpose of showing not only that the comments of the Senator from Missouri have a precedent, that he is not telling the Senate anything new, but that the legislation also has a precedent; that the authors of the Constitution, and the author especially of the Declaration of Independence, and another by Mr. Jefferson and Mr. Madison, as has been here expressed. Their proposition was denounced as ours is, and yet adopted as ours will be.

Enough as to that for the present. Now, one thing more. Instead of the authorities being to the effect claimed by the Senator, and the Senator and his colleagues in the State, a contrary effect, commencing with the Constitution itself.

What is it, Mr. President, the Constitution of the United States confers upon the Congress power to do with respect to the Territories? It is to prescribe all needful rules and regulations for the territory as to the manner in which it shall be managed and controlled by the United States, but the territory belonging to the United States.

The Constitution itself distinguishes between the territory that is comprised within the Union and territory which may be outside of the Union—which may be simply possessed by the United States. Thus the Constitution itself establishes, by its provision, in regard to the territories without being a part of the United States.

I have here also, to which I wish to call attention in this connection, a decision that I have not heard quoted in this debate, though doubtless it has been cited—the case of Snow vs. The United States of America. It is printed at page 317. Mr. Justice Bradley, speaking for the court, says:

The government of the Territories of the United States belongs primarily to Congress, and secondarily to such agencies as Congress may establish for that purpose. During the term of their passage as Territories they are more dependencies of the United States. Their people do not constitute a sovereign power. All political authority exercised therein is derived from the United States. It is, indeed, the practice of the Government to invest these dependencies with a limited power of self-government as soon as they have sufficient population to demand the management of the public affairs. It is recognized that it is an integral feature of the organic act of Congress in each case, and is at all times subject to such alterations as Congress may see fit to make.

Without stopping to read other authorities to the same effect, I shall content myself with saying that all the authorities of the Supreme Court, where the question has been directly under consideration, have recognized the fact that there is the United States proper, composed of the Union, for which the Constitution is the organic law, and territory outside of the Union, simply belonging to the United States, and to which Congress may extend the Constitution, or treat it as the organic law.

Ordinarily, almost without exception, heretofore in governing this outside territory, we have extended the Constitution as one of the first laws of the Territory; and having thus extended the Constitution, and having made it to apply there, we have taken that as our rule of action, and it has obtained as the organic law in the territory.

Only a few days ago I had occasion to read here—as the Senator from Missouri has just said—what Mr. Benton said in his History
of Thirty Years in the United States Senate as to the origin of the doctrine that the Constitution extends to newly acquired territory extra vi 
nostrum. I need not, I am sure, make an answer to the objection that one authority. 
Surely it is sufficient, especially after the encomium he has spoken 
upon Mr. Benton, for me to say that according to the authority of 
Mr. Benton the doctrine that the Constitution extended extra 
nostrum to newly acquired territory was not an ancient doctrine, 
but a recent invention. It was invented in 1850 to meet the exigencies of 
the slave interest at that time.

They wanted the Constitution extended to the Territories in 
order that slavery might be there recognized according to the 
Constitution and be permitted under it; and when, in the exercise 
of that power, and in the exercise of that doctrine, any power 
more vigorously than did Mr. Benton 
Mr. Benton tells us that this was the beginning of that 
doctrine, that was its purpose, and that it was but a vagary of 
a diseased mind. This authority is sufficient, and I shall treat it 
as conclusive until Mr. Benton is overthrown. Until the day Mr. Benton speaks the Constitution 
had never been extended in a single instance by Congressional action 
beyond the limitations of the Union itself. The Territory in every 
instance had been governed directly by such laws as Congress 
might see fit to enact, or authorize a local legislature to enact.

It seems to me, however, that the Constitution, 
Congress compromised by extending the Ordinance of 1787, 
extending it without any limitation at all, in all its provisions, as to 
the territory that was designed to come in as free States, and 
extending it as to the territory in the South that it was designed 
to be organized as slave States. And I am not going to argue 
any more of my article, which 
prohibited slavery. The Ordinance of 1787 and not the Constitution 
was thus extended to Mississippi and Alabama and became a 
part of the Territory organic law of all that territory.

So, Mr. President, I say there is nothing new either in the 
denunciation that is indulged in by the present day which 
we rely on the legislation that is now being proposed. There is 
abundant precedent for both. Having said that much, I want 
to turn to the bill we have under consideration, and speak 
very briefly as to the proposition embodied therein, to which 
objection has been made, providing for the non-slavery 

We had some of that act a judge was appointed, that 
acted for the act of 1789, the judiciary act. No courts were created by that act 
except only what are called constitutional courts. When, there-
fore, in legislating for the district of Orleans, as it was called, the 
Congress saw fit to provide that there should be a district court, a 
district judge with life tenure, that was to exercise jurisdiction over the 
entire Territory as to matters under the Constitution; that it 
should be the judge of which should be 
appointed by the President, and that he should have the same 
powers, the same jurisdiction precisely, and the same tenure of office 
as belonged to the court of the Kentucky district.

The court for the Orleans 
Territory is provided for by the act of 1789, the judiciary act. No courts were created by that act 
except only what are called constitutional courts. When, there-
fore, in legislating for the district of Orleans, as it was called, the 
Congress saw fit to provide that there should be a district court, a 
district judge with life tenure, that was to exercise jurisdiction over the 
entire Territory as to matters under the Constitution; that it 
should be the judge of which should be 
appointed by the President, and that he should have the same 
powers, the same jurisdiction precisely, and the same tenure of office 
as belonged to the court of the Kentucky district.

In pursuance of that act a judge was appointed, that court 
was put into operation, and pretty soon a case arose that found its way 
to the Supreme Court of the United States—the case of Seré and 
Larado vs. Pitot and others, reported in 6 Cranch, page 392. 
The decision was announced by Chief Justice Marshall. The question 
in the case was as to the jurisdiction of the court of the Orleans 
Territory, and whether that court had the right to invoke 
its jurisdiction. It was an action by the assignee of a 

Chief Justice Marshall commenced by saying:

This suit was brought in the court of the United States for the Orleans 
Territory.

Then he proceeds to dispose of the case. That is all I care 
to read from that decision. I read enough, however, to show, in view 
of what you already stated, that Congress not only made a

United States court with a life tenure and constitutional jurisdiction, but that that court was recognized by Chief Justice Marshall 
as a United States court in contradistinction to the term "Territory" or "legislative" court.

In the case of McAllister (141 U.S. Reports), referred to in de-
bate a few days ago—cited, I believe, by the Senator from Connec-
ticut [Mr. Platt]—the only mention of the court in the case which had been given United States jurisdiction by 
Congress, was a United States court within the meaning of the 
tenure of office act, and the court there, after a very lengthy 
review of all the decisions, held that it was not a United States 
court; that only those courts could properly be called legislative courts in the sense in 
which that term is ordinarily employed. That decision was un-
doubtedly correct.

Now, Mr. President, the point I wish to make with respect to 
this is, that, taking that definition of a United States court, and 
the case of Chief Justice Marshall in the case to which I 
have referred, and from which I have quoted, it certainly does 
appear that we had a United States court, a constitutional court, 
if you please, in the Territory of Orleans, outside the States, and 
therefore that we have approved precedent for the creation of 
such a court in a Territory and consequently not within a State of 
the Union.

But it does not matter in such a case whether you call it a 
"constitutional court" or a "Territorial court." It is a court 
created by Congress, as all courts must be; and if it be given all the 
constitutional jurisdiction and the judicial power of the States, it 
should be a court of the same dignity and importance as if it 
were a United States court. Congress, having power to create 
the court, proceeded under the judicial article of the Constitution 
rather than under the provision authorizing it to legislate for the 
Territories. But however that may be, it will remain that 
Congress has plenary power to create a Territory and confer 
upon it any power it may see fit, and give the 
judge such tenure as it may see fit. This power is not 
exceeded by what is here proposed. So that if there is any valid 
objection to section 88 of the bill it must be solely on the ground 
of policy.

and the Senator from Alabama [Mr. Morgan] made it clear, 
in his most admirable presentation of this matter this afternoon, 
that we ought to have in the Hawaiian Islands a Federal court, 
with a life tenure, and all the jurisdiction that can be given to it 
under the Constitution; for it is, as has been said, a court that 
must have, in the mere personal sense, the same jurisdiction 
and a very extended jurisdiction of almost every character to make it proper for us to distinguish it from a purely 
local court.

There are a great many other things which I should be glad to 
say in regard to this matter before taking my seat, but the whole 
and useless part of this debate, it is now very late, and I do not 
wish to detain the Senate.

Mr. CULLOM. I rise to move that the Senate adjourn, but be-
fore making that motion, I desire to say to the Senators who are 
here that I am very anxious to get along with this bill as rapidly 
as possible. The bill contains a provision in which it especially 
requires that some legislation be had, so that they can pro-
tect themselves from plagues and diseases and be able to live at 
all. 
With this remark, and with the understanding that we are to 
meet to-morrow, I move that the Senate adjourn.

Mr. MORGAN. I ask the Senator to withdraw the motion for 
a moment.

Mr. CULLOM. I withdraw it for a moment in order to suggest 
that we agree to vote on the bill to-morrow at 4 o'clock.

Mr. MORGAN. On the bill and amendments.

Mr. CULLOM. Yes. I hope the Senate will agree to that.

Mr. TEBLEAUX. The Senator from Illinois asks unanimous 
consent that the Hawaiian bill and the pending amendments 
may be voted upon to-morrow at 4 o'clock. Is there objection?

Mr. CULLOM. I shall have to object, Mr. President.

Mr. CULLOM. Then I move that the Senate adjourn.

Mr. BATE. I move that the Senate adjourn until Monday.

Mr. CULLOM. I hope that will not be done.

Mr. BATE. I think it was the expectation of many Senators 
that an adjournment over would be had.

Mr. CULLOM. I am sure it was not expected by the Senate. 
I do not think anyone has been justified in entertaining any such 
expectation.

Mr. BATE. I do not wish to make the motion if a session is 
desired to-morrow.

Mr. CULLOM. I would much rather have a session for the consideration 
of Hawaiian bill to-morrow.

Mr. BATE. Very well; I withdraw my motion.

Mr. CULLOM. I move that the Senate adjourn.

The motion was agreed to; and (at 5 o'clock and 20 minutes 
p.m.) the Senate adjourned until to-morrow, Saturday, Febru-
ary 24, 1900, at 12 o'clock m.
February 23, 1900

House
v. 33 (3)
p. 2172

By Mr. Gardner of New Jersey: A bill (H. R. 8874) to extend the anti-contract-labor laws of the United States to Hawaii - to the Committee on the Territories.

February 24, 1900

House
v. 33 (3)
p. 2179-2196

TERRITORY OF HAWAI'I.

Mr. CULLOM. I ask unanimous consent that the bill relating to the Territory of Hawaii may be taken up.

The PRESIDENT pro tempore. The Senator from Illinois asks unanimous consent that the Senate proceed to the consideration of the bill named by him. Is there objection? The Chair hears none.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. 222) to provide a government for the Territory of Hawaii.

The PRESIDENT pro tempore. The question before the Senate is on the amendment submitted by the Senator from Connecticut [Mr. PLATT].

Mr. TELLER. What is the amendment? I think it perhaps should be stated.
The President pro tempore. The amendment will be stated.

The Secretary. It is proposed to amend section 31, on page 35, as follows: In line 22, before the word "shall," to strike out "the governor" and insert "and the judge of the circuit court," and in line 23, after the word "court," to strike out "of the Territory of Hawaii." In line 23, after the word "court," to insert "and the governor shall nominate and, by and with the advice and consent of the Senate of the Territory of Hawaii, appoint;" in line 11, on page 36, after the word "may," and before the word "remove," to insert "by and with the advice and consent of the Senate of the Territory of Hawaii;" in line 16, after the word "removed," to strike out:

Except the chief justice and justices of the supreme court, who shall hold their offices during good behavior, and the judges of the circuit courts, whose terms of office are four years, and on page 37, after the word "provided," at the end of line 12, to strike out:

Except the chief justice and associate justices of the supreme court and the judges of the circuit courts, who shall continue in office until their respective offices are filled by appointment as herein provided.

So that, if amended as proposed, the section would read:

Section 31. That the President shall nominate and, by and with the advice and consent of the Senate, appoint: the chief justice and justices of the supreme court; the judges of the circuit court; the attorney-general, treasurers, commissioners of public lands, commissioners of parks, the auditor, superintendents of public instruction, the auditor, surveyor, the board of health, the superintendent of public instruction, and the members of the board of instruction, the director of public schools, superintendents of public instruction; the auditor; the superintendent of public instruction; the director of the criminal and civil courts; the members of the board of health; the superintendent of public instruction, and the members of the board of instruction, as they may be required by law, and he may make such appointments as he shall deem advisable.

And he may remove from office any and all officers other than those appointed by him and the members of the House of Representatives, and any and all officers other than those appointed by the President, and the members of the Senate, and the members of said boards, whose terms of office shall be as provided by the laws of the Territory of Hawaii.

And the manner of appointment and removal and the salaries of all such officers shall be as provided by law; and the governor may appoint or remove any officer whose appointment or removal is not otherwise provided for.

Mr. TELLER. It is rather difficult to understand what all these amendments are for. Mr. Chair.

Mr. TELLER. Will the Senator allow me to make a suggestion?

Mr. TELLER. Yes. Mr. CULUM.

Mr. CULUM. I think the substance of the amendments, which are scattered through three or four, amount to about the same as the proposed bill as presented by the committee provides that the judges of the supreme court and the circuit courts of the Territory shall be appointed by the governor and confirmed by the legislature of the Territory and paid by the Territory. Now, the substance of the proposed amendment is that the judges shall be appointed by the Senate of the United States; and I suppose, according to the usual theory, the United States would pay their salaries instead of the Territory of Hawaii.

Mr. TELLER. The amendment proposing to strike out the word "governor" would at least put the section in harmony with previous legislation. Of course, this is a departure from the usual legislation requiring the advice and consent of the Senate, and the way that I think we ought to be very careful in framing legislation of this character. It occurs to me it would be an improvement on the system to allow the governor to make the appointments, because you would then get a little nearer to the people than you do with the President making the appointment.

Mr. TELLER. The amendment proposing to strike out the word "governor" would at least put the section in harmony with previous legislation. Of course, this is a departure from the usual legislation requiring the advice and consent of the Senate, and the way that I think we ought to be very careful in framing legislation of this character. It occurs to me it would be an improvement on the system to allow the governor to make the appointments, because you would then get a little nearer to the people than you do with the President making the appointment.

Mr. TELLER. The amendment proposing to strike out the word "governor" would at least put the section in harmony with previous legislation. Of course, this is a departure from the usual legislation requiring the advice and consent of the Senate, and the way that I think we ought to be very careful in framing legislation of this character. It occurs to me it would be an improvement on the system to allow the governor to make the appointments, because you would then get a little nearer to the people than you do with the President making the appointment.
Mr. TILLMAN. And yet they are having a constitution.

Mr. TELLER. But to a large extent we are modifying it or repealing it. I should have liked to see a provision here—and that is all we want to do—to the effect that they are to have a national constitution and a national government of their own. I should then have been in favor of enlarging the suffrage in that community; but I am very much opposed to restrictions except where they are absolutely necessary.

Mr. MORGAN. I wish to correct the impression of the Senator from South Carolina about the constitution. This bill does not give Hawaii a constitution.

Mr. TELLER. No; I know it does not.

Mr. MORGAN. It wipes it out entirely; and the words to which the Senator from South Carolina refers are merely descriptive words, which I thought to be unnecessary.

Mr. TELLER. I was about to say that we have repealed the constitution and almost all the laws, and we are to reenact them here to some extent.

Mr. MORGAN. Yes.

Mr. TELLER. I would not be willing to apply to those people provisions which I would not be willing to apply to some of the other new possession we have acquired. We acquired those islands in fee by arrangement with the people. We are under some obligations to them that we are not under to other people, whether it be the people of Puerto Rico or the Philippines. I want to give them the same freedom, the same self control, self-government, over their affairs as is possible, and I believe it is in our power to give them absolute control over their affairs, if we see fit, except, of course, the general laws that govern States as to import duties, etc., would have to prevail there. For that reason we had better leave this provision in here and let the governor appoint the judges.

I have had some experience in a Territory, and I have seen, with the best of intention on the part of the President, very vicious and bad men appointed to places of that character. Once appointed, we always found it almost impossible to get them out. We might make just as many representations as we chose to the executive department, but the people who had secured their appointments always had more strength than we had, and we suffered immensely. Every Senator here who has lived in a Territory will bear me out. One of the great evils in Territorial life has been that we were not in condition either to get rid of them or get rid of them when they turned out to be bad. Is that not true?

Mr. PLATT of Connecticut. Mr. President, I am not able today to speak at any particular length or with any particular vigor, on account of my health, but my mind is made up, and the judgment of the President of the United States is, I believe, a reason which grows out of my desire that what we do here shall be best for the people of Hawaii. I believe it is much better for the people of those islands that the appointing power of the judges should reside in the President, rather than reside in the Senate. I will tell you why. President Cleveland says, and I suppose there are competent persons there for judges, but when I have been in Hawaii American citizens themselves that they shall be protected against the evils which I think are surely coming upon that people. It is a great experiment that we are entering upon, and it is well for us and for us that some power should still be retained and reside in the United States Government. The United States could turn it out in the future that everything was harmonious there, that the citizenship there became homogeneous and harmonious, and those dangers which I think I can see only imaginatively, it will be time enough then to give them larger power.

Mr. PLATT of Connecticut. It would be very difficult to frame a bill in which more power would be given to the people of that Territory than is given in this bill. Of course, we could allow them to elect their own governor and their own secretary of state, but with that except the power the power that can be given by a good and arbitrary power at that.

Mr. CULLOM. I referred more to the voting power, the legislature, and that sort of thing, than to any other point.

Mr. PLATT of Connecticut. If that time shall come, then it will be quite time enough, it seems to me, to extend their power. I do not think we have not extended to any people wherever we have organized a Territory.

Mr. PLATT of Connecticut. It is an entirely different case from the ordinary organization of a Territory; that ordinarily we have organized a Territory over large areas of land, sparsely settled. That is true. I should say that the Territory which has been in existence for three or four years, rescued from the queen and from monarchical institutions. That is true. But Senators overlook the fact that wherever we have organized a Territory heretofore we have organized it with its entire population, whether sparsely occupying the country or not, drawn from the queen and from monarchical institutions. That is true. We admit that the people now in control—President Dole and the judges—are men of high character, the time is coming when the judges, if left to the appointment of a governor there, will not be able to control them. It is because we want to protect the people of Hawaii against themselves and against the class of people who I think will finally get in control, of the politics of the islands that I want to retain a little control over the islands in the hands of the President of the United States.
the Territory of Wyoming a little while ago, and we were told that the proportion of illiteracy in it when we organized it as a Territory was less than in many and perhaps less than in any of the States. Mr. CULLOM. The same fact exists with reference to this Territory.

Mr. CAFFEY. Will the Senator from Connecticut allow me to make a single interjection, Mr. President? The TERRITORY pro tempore. Do the Senator from Connecticut ask the permission of the TERRITORY pro tempore to interject a remark?

Mr. PLATT of Connecticut. I want to say one word in reply to the Senator from Illinois. Nearly half of the population there are Chinese and Japanese.

Mr. CULLOM. Not of the voters. Mr. PLATT of Connecticut. Then the observation which the Senator made does not apply to all the people inhabiting the Territory.

Mr. CAFFEY. I will inquire of the Senator from Connecticut whether, if literacy is a qualification for citizenship, the Hawaiian, the original inhabitants of Hawaii, are entitled to the privileges of American citizenship, for I am told, and I think I have seen it stated, that 100 per cent of them can read and write.

Mr. CLARK of Wyoming. Pretty nearly.

Mr. CULLOM. It is true that the records show that so far as the Hawaiian people are concerned, nearly all of them read and write in the Hawaiian or English language.

The TERRITORY pro tempore. The Senator from Illinois has not been recognized by the Chair.

Mr. CULLOM. Excuse me, Mr. President.

Mr. PLATT of Connecticut. I was answering what had been said, that we could more safely intrust the entire management of affairs to the people of that Territory than we could intrust them to the people of the territory northwest of the Ohio River and the territory acquired from France. I think I have seen the figures.

Mr. PLATT of Connecticut. If I do not think so, because, as I said, half of that population, practically, are either Chinese or Japanese. If I remember the figures, 26,000 are Portuguese.

Mr. TILLMAN. I will give the Senator from Connecticut the figures. Mr. PLATT of Connecticut. I will.

Mr. TILLMAN. Will the Senator from Connecticut permit me? The TERRITORY pro tempore. Does the Senator from Connecticut yield to the Senator from South Carolina?

Mr. PLATT of Connecticut. I will.

Mr. TILLMAN. Mr. President, I will take occasion to notify you every time you allow any other Senator to do the same thing. I shall not have one rule apply to me and not have it apply to other Senators.

Mr. CULLOM. Mr. President, if the Chair will recognize me, I was called to order myself a moment ago, and I apologized to the Chair for violating the rule.

Mr. TILLMAN. I am perfectly willing to be called to order if the Chair will apply the rule impartially. I have no objection in the world to the rule of the Senate, and I will do it and always do it; but in the latitude of debate we have not observed the rule, and I will not allow the Chair, if he will permit me to speak so impudently, to apply one rule to me and to apply another rule to other Senators.

Mr. CULLOM. It is only fair to the Chair to say that in the last month he has repeatedly called attention of Senators to that rule. He has called my attention to it when I have violated it.

Mr. TILLMAN. I am not at all nettled with the Chair. I am rather amused. I think the Chair was rather inclined to have a little fun at my expense, as he did the other day. I have not the slightest ruffling of feeling on that score at all.

Mr. SPOONER. I think every Senator here must see, and that is the theory of the rule, that it is essential to proper debate that the rule shall be enforced.

Mr. TILLMAN. I recognize it and do not dispute it.

Mr. SPOONER. It is necessary to proper order in debate.

Mr. TILLMAN. I do not dispute the necessity of its enforcement in the interest of orderly debate. I simply insist that it shall not apply to me only.

The figures, if the Senator from Connecticut will permit me, taken from the report of the Hawaiian Commission, are: Hawaiians and mixed bloods, 39,000; Japanese, 25,000; Chinese, 21,500; Portuguese, 15,000; Americans, 4,000; British, 2,500; Germans and other Europeans, 2,000; Polynesians and miscellaneous, 1,200. In the report of the Hawaiian Commission, since, so that the total number of Japanese and Chinese would be 71,000, or thereabouts—more than half.

Mr. PLATT of Connecticut. It would be about half.

To resume what I was saying, Mr. President, there is an entirely different condition of population of citizenship, from that which we have ever organized in any Territory which we have ever organized in the United States, and it makes it much more dangerous to allow absolute control in those islands without any restraint to be exercised from what may be called the home Government of the United States. In the Northwest Territory, and I venture to say in the Territories of Wisconsin and Colorado and Minnesota and Dakota, and all those Territories, when a Territorial government was organized, although there may have been but few people there, they were all of them American citizens. So far as I have been able to learn, the President and Congress where we have such a mixed, and, I fear, to me, the gravest questions are likely to arise.

Mr. President, among those 4,000 American citizens there have grown up a class of wealthy men. There are millions out there who may be as tall as some of the Western States. A man with a million or two is not to be considered a wealthy man at all. There are multi-millionaires in Hawaii, and if there is any truth in what is said about corporate influence controlling legislation, there is the spot where we have the lesson of control by corporations. If there is any danger in the United States of corporate influence controlling legislatures and the judiciary, that danger is multiplied ten times in Hawaii; and I do think that, with all our experience in the appointment of judges for Territories—some of it has been bad, but upon the whole it has been good—we may safely believe that the judges to be appointed by the President of the United States would be as able men and less likely to be controlled by any improper influences in the islands of Hawaii than if appointed by a governor in the President should appoint. If the passing of the power be diluted through the governor whom the President shall appoint than if the judges are appointed directly by the President himself?

And so, Mr. President, notwithstanding this discussion, I still hold to the belief that it would be in the interest of the people of Hawaii that the judiciary should be appointed by the President, and I think I am permitted to say that that is coming, to some extent at least, to be the prevailing sentiment of the people of Hawaii, if their representatives here truly represent the people there.

They thought it best in 1848 that it was, the appointment to be in the hands of the governor, and a life term or a long term, in view of these grave questions that are ahead of them, they believe it is better that the power should reside in the President of the United States.

Something was said yesterday to the effect that we must provide for a large sum of salaries of these judges if we appoint them. That is true. And my belief is so strong that it is necessary that this power should be retained in the hands of the President and in the control of Congress that I would be entirely willing to pay a large sum of money on the part of the Government the payment of their salaries and the perquisites of the courts. I have been wondering a little who is going to pay the expenses of this Territory under the pending bill. All that the bill specifically provides is that we shall pay the salaries of the governor and the secretary and the attorney, as judge, as he is called, and the other officers of the District attorney, I suppose, and I should add that I believe it is the idea of the people of Hawaii that they are going to pay all the rest of the expenses of running that Territory. But there is nothing in the bill that provides for it. It is left open. One does not need to be gifted with any great insight to see that only at the last session of Congress they will come here asking for appropriations to carry on their Territorial government as other Territories are appropriated for.

Mr. MORGAN. Mr. President—

The PRESIDENT OFFICER (Mr. PARKINSON in the chair). Does the Senator from Connecticut desire to be heard from the Senator from Alabama?

Mr. MORGAN. Yes, sir.

Mr. MORGAN. I suggest to the Senator from Connecticut that the tax laws of Hawaii are preserved in this bill.

Mr. PLATT of Connecticut. I was coming to that.

Mr. MORGAN. Various other revenues are provided for; and they are quite ample to sustain the government under the provisions of this bill.

Mr. PLATT of Connecticut. I was coming to that. It will not be many years before they will want to relieve themselves of their local tax laws and the burdens of local taxation, and have the Government pay for the Territory of Hawaii the same as they pay for other Territories.

Mr. MORGAN. Will the Senator from Connecticut point out now any ground for that suspicion which he has just expressed?

Mr. PLATT of Connecticut. I think the form of the United States and extend the bill to make the provisions of this United States and extend the bill to make the provisions of this United States and extend the bill to the Territories, and we are, therefore, to collect on all goods imported there from foreign ports the same duties that we collect in our home ports. We are to put that in the Treasury of the United States. Then we extend our internal-revenue law there, and we are going to call upon them to pay all the internal-revenue
taxes which we pay here in the States; and we put that in the Treasury of the United States.

Mr. President, it will not be one year's time, if this Territory is admitted, before we shall be told by the people of Hawaii that it is not fair to appropriate the customs duties from the internal-revenue taxes which are collected through our customs-house, and the proceeds of internal-revenue taxes which are collected through the Territory, to the support of the internal-revenue collector station there, and put it into our own Treasury, and make them pay all, or practically all, of the expenses of running the government.

Mr. CLARK of Wisconsin. Will the Senator from Connecticut allow me to ask him a question about a provision in the bill?

Mr. CLARK of Connecticut. Certainly.

Mr. CLARK of Wisconsin. Would not that be a just contention in the view of the Senator?

Mr. PLATT of Connecticut. Mr. President, I do not see upon what principle we propose to tax the people of Hawaii tax themselves and pay the expenses of running the government which we give them here and tax them for the support of our Government. I do not see upon what principle that is done. There are a great many things in these laws that we do not understand.

Mr. TILLMAN. Mr. President—

Mr. PLATT of Connecticut. Will the Senator from South Carolina excuse me for a moment? If this bill passes, we are going to have two systems of internal-revenue taxation in Hawaii. Take the part of the bill which repeals the sections in the chapter referred to in the bill; that does not repeal the chapter about stamp duties, and then we have a schedule of stamp duties in Hawaii, the same as we have a schedule of stamp duties under our internal-revenue taxation, and they are both to go side by side in Hawaii.

Mr. President, I am not going to argue the delusion that we can make these people pay internal-revenue taxes into our Treasury and turn it into our Treasury all the customs duties that are collected there and not expect them to come here to Congress and ask that we should at least appropriate that amount of money toward the support of their Government, that we shall relieve them of the burden of taxation to that extent.

So I ask the question that we shall have to provide for the salaries of the judges, if they are appointed by the President, and for the expenses of the courts we must not alarm us all.

Mr. TILLMAN. Mr. President, I should like to ask the Senator from Connecticut what is the object of the bill, as he has been discussing it, whether the bill is for the benefit of the people of the United States, in that case, or whether it is for the benefit of the people of the United States, and South Carolina only.

Mr. PLATT of Connecticut. Is it not a fact that we send the mail to those people and distribute the the expense of the Federal Government through postage stamps?

Mr. CULLEN. Their postal system passes under the United States laws, if the Senator will excuse me.

Mr. TILLMAN. Then, with the permission of the Senator from Connecticut—or, rather, I believe it is the floor—I would ask, Is Hawaii in the United States or is it not; if not, why not?

Mr. CULLEN. It will be when this bill passes.

Mr. TILLMAN. If it was in the United States when we annexed it by joint resolution and extended the Constitution over it, and if it has a postal system of its own, do not you think it is worth while to do it anyway?

But, to come back down to the other question, I want to ask the Senator if there is not a very considerable expense by the Federal Government which has not been broached here, and that is the maintenance of a military post there for the protection of the people of Hawaii against the Chinese, Japanese, Portuguese, and Africans, and others who are dissatisfied with the government now given them.

Mr. PLATT of Connecticut. I do not know about that, Mr. President.

Mr. TILLMAN. I think the Senator can very easily refresh his memory, if he will, by finding out that our troops were there before we annexed the islands, and there are now, and will be there and are likely to be there for all time.

Mr. PLATT of Connecticut. There is nothing in the bill about it.

Mr. TILLMAN. There is nothing in the bill about it, of course, but it is a Federal expenditure. We are spending money to maintain those soldiers there for the protection of life and property. I do not believe in the principle of having people taxed and having the money spent elsewhere, because that is the kind of a thing that has been going on in my part of the country so long that we have got used to it and quit crying or complaining.

Take the expenditures of the Federal Government at an average of $500,000,000 a year, make all due allowances for our poverty and other things, and we pay at least $100,000,000 of that amount. How much is spent among us? This subject is entirely foreign to the subject of debate, but then, if Hawaii is to have a special claim upon the little among us, either the produce or the resources of our income there, and we are to give it to her, I want to ask you upon what basis of equality or equity or justice you would attempt to do it.

The Senator, of course, knows that he has merely presented a supposition of a question as to what would happen if the bill was passed and the people of the Territory were turned over to the oligarchy which we all acknowledge exists there and which is being perpetuated by this bill. We seek to give some measure of protection by supreme judges and other judges appointed by the President, supposed to be an impartial man, who would not put those judges in the power of the government, even though the government be appointed by the President, and let the governor be the head, the judges his tools and underlings, obliged to obey his orders or they will not be reappointed, and the whole machine to be so arranged that the President of the United States, or Senator from Connecticut in the effort to protect these people from any such deplorable condition as that.

Now, Mr. President, as I have the floor, I will go on to take up some other phases of the subject, because I believe some of the provisions of this bill are of the subject any great amount of examination, and have contented myself with an occasional inquiry or a suggestion as I sat in my seat here and listened to the debate and the amendments that have been offered, of course, I have a feeling, and I shall express it in the name of Senator from Pennsylvania—Mr. MORGAN—that I have investigated it a little more fully, and I want to point out some of the enormities and outrages that are being perpetrated in this very act, or have been attempted to be perpetrated, and to call the attention of the Senate to certain phases of the question that no one has alluded to heretofore.

Before I answer that question, the Senator from Alabama—Mr. MORGAN. I wish to say—

Mr. TILLMAN. Mr. President, I decline to yield to the Senator from Alabama. He has put himself outside of the pale of courtesy so far as I am concerned, and I decline to call him any name.

I will say further, as an explanation of that to those who were not present, that the reason why I feel thus is that it is the second time since I have been a member of this body that I have been treated with indignity and discourtesy and rudeness by the Senator while he is an old and honored member of the Senate.

This is worthy of our admiration in a great many respects, I contend that he has not been as courteous and observant as he should have been of the amenities of debate and the politeness due from one member of this body to another.

Now, the reason why I say this is because the other afternoon, in debate, he asked a question that was a mere malicious to anyone, merely for the purpose of inquiry and enlightenment, to get the subject fairly before the Senate, I asked the Senator some questions and, well, we have since with a kind of a sneer at that was about all I knew concerning its nature, and the answers it did not occur to me that it had nothing to do with the subject.

Then later on he permitted the Senator from Colorado [Mr. WOLCOTT] to “make a suggestion,” in which there was an assault—a direct, positive assault upon my State. Very naturally, I rose after the Senator from Colorado got through and asked permission to explain—simply to explain—that that was the action of the Senator from Alabama. He said simply, "No; I cannot permit it; take some other time." It is the first time since I have been here that any man’s State has ever been mentioned by anyone in an opprobrious way, that a refusal was made to allow him, then there was none of his vote on the spot, and let it go. He then refused to qualify his vote or attack, to qualify or explain, if he asked permission to have it done.

The attack of the Senator from Colorado was that the vote in my State was suppressed, and he read figures from the Congressional Directory going to show that the vote in the last State election for Congress was lower than the number of registered voters. He then applied to the State of Alabama; to almost every other Southern State similarly situated to mine. It applies to Mississippi. It was not new. It had been brought up in debate on the PRITCHARD resolution, and the Senator from Mississippi [Mr. MORGAN] explained it in regard to his State in the very same explanation here. I was denied it. No Republican would have denied it to me, because there is no man on the other side so looking in courtesy and fairness and decency as to have permitted a State to be attacked in his time and then refuse to allow its Senate here to do the same.
can read and write or pays taxes on $300 worth of property is allowed to vote. There are in the State some fourteen or fifteen thousand colored voters registered. Of the balance of the vote, white, 97 per cent is Democratic.

Mr. CLARK of Wyoming. What is the total vote?

Mr. TILLMAN. The total registered vote is 114,000 or 115,000. I say 97 per cent of the white vote is Democratic. Well, now, at our Democratic convention this year, our candidates, held in the summer, at least 90 per cent of that vote turns out, and there is great interest and excitement, as some of you have heard in the papers in the campaign in which I have been interested down there for governor and Senator. There is no lethargy there in politics, nor being as much politics as some may imagine. We have not been any organized Republican party in the State since 1884. The Republicans do not hold any State convention; they do not nominate any candidates for governor and other State offices. In one Congressional district they did so up to this last election. In the last Congress, the annexation resolution, and what is known as the black district, where we strung the negroes together for the purpose of giving them one district, and then we turned around and took it away from them, having the usual greed of the Anglo-Saxon and his unwillingness to allow the colored race to dominate him or have any influence in government, just as you gentlemen northerners have done in the South.

I said there were no Republican nominations except for Congressmen in the black district. The Republican machine is composed of those who are appointed by the Republican President to the post-offices and the Federal posts in the States, the connection for collecting the post, and the district attorney. They control the patronage. They send delegates to the national convention for the Republican party. It is as rotten a borough as any other State in the Union so far as Republican influence is concerned, because there is no hope, no possibility, of any electoral vote for any Republican candidate in the State. We will have no candidates opposing our Democratic nominees at the legal elections in November, being merely a ratification of the primary elections or nomination in August, what object is there for men to turn out and vote? They simply do not go there. Therefore three or four thousand or four or five thousand in one Congressional district polls in November and ratify the action of the party in August.

The Senator from Colorado [Mr. WOOLCOTT] I see is absent from the Chamber. I think if he had known all the circumstances of the debate he would not have waited it in the way he did. If his State in the last election in one Congressional district had a larger percentage of men voting than this State of Mississippi had in the election of 1885, he would have known that the State of Mississippi and the State of Colorado together have the right to have any statute law or any illegality or any infamous proceedings in elections to cause a small vote.

In 1890 the State of Massachusetts, which has an educational qualification the same as my State, polled 283,000 votes. What is the total voting population of Massachusetts? It is 283,000. In Connecticut the same year the vote was 125,000, out of a total vote of 224,000. Nobody will contend that the vote of Massachusetts was suppressed; that there was interference with anybody. I presume that the Republicans had a full swing there, as they have almost always had, excepting those in occasional uprisings, but the people felt that they were safe, and enough Republicans went out, seeing that the Democrats were not active and were taking no interest, and voted to save the ticket and elected it. The Democrats feeling no interest in the election, knowing they could not carry it, remained at home. Nearly 400,000 voters in Massachusetts did not come out.

Why not allow other people to have the same rights and exercises them when you are indifferent in politics? Why accuse us of the South always of suppressing and oppressing the colored race? We do enough of it; I do not dispute it; but we are not doing in my State half the devilish, neither half as much as those to be done in this Hawaiian law that you are now enacting.

You said in 1887 and 1888, when you passed the constitutional amendments, that involuntary servitude in the United States and all the Territories thereof should cease, or in any territory under its dominion or control. You passed this law in Hawaii that there were 20,000 contract slaves there who were whipped when they refused to work and were driven to their work under the lash. What did you do? Did you put in a provision in the resolution of annexation annulling those contracts and protecting those people? No. What is the difference? Do you mean, or rather, what did this committee resolve colored voters do? The bill has been amended, but we have got to take it as the committee sent it here, as showing the latter-day Republican policy. Here is the way they brought it in. Here is the provision for which the committee stands sponsor and is responsible as far as its action goes. Any amendment or assistance or benefit to those people that will come from legislation will come from the Senate itself as proposed by the amendment of the Senator from Massachusetts.

This is the same as the contracts, rights of action, suits at law and in equity, prosecutions, and judgments existing prior to the taking effect of this act shall continue to be as effectual as if this act had not been passed.

In another section we refer the provision of the Hawaiian constitution and all the Hawaiian enactments or statutes which are being held unenforceable and unenforceable by the government and whipping, and then turn around and say that all existing contracts must be fulfilled, and that the law, so far as they are concerned, must continue in effect. It is to give three or five more years of slave labor to the sugar corporations which are behind this. It is a standing reminder to the people of Hawaii in a way, the 4,000 white men or white women, with young men and children, Americans, 7,000 all told. I do not want them massacred. I do not want them put under the domination of the Kanakas. They are not going to be. If you were to let them loose, they would hire enough or control enough to keep the whole thing down. They have been doing in some of the Southern States, to elect their government; or they would cheat them, as we used to do. What I object to, gentlemen, is the hypocrisy of those in this Chamber who stand up here and contend and contend and say that the South must be treated differently from the North, that the Filipinos and Filipinae are not treated the same in the Philippine Islands, Hawaii, and Puerto Rico from what they are treated in our States of Mississippi, Louisiana, Texas, Alabama, and South Carolina.

If it is good to have white supremacy in the Hawaiian Islands, why is it not in my State? We are Americans, gentlemen. The white people in that State are almost wholly English and French. Not a foot in the Revolution. There are but 9,000 foreign-born citizens in it; and if we are backward and old-fogyish in some things, we love liberty as well as you do. We know the inherent superiority of the Anglo-Saxon, and when we were forced by the Federal Government to submit to the oppressions of a majority of colored people, ex-slaves, from 1865 to 1875, when life had become not worth living on the terms you were giving it to us, we all rose in our manhood and, in spite of Grant and his army, we took the government away from those people. We have held it ever since, and we will hold it for all time.

I do not object to the colored men in Hawaii being protected, but I object to protect them with hypocrisy and cant. Be men! Stand up! Come out and say why you do this thing.

This provision in the bill providing for contract laborers—that is, for the contracts with contract laborers being carried out—has been amended. The Senate has endeavored, as I am sure the House has endeavored, in the amendment of the Senator from Massachusetts; but you still have all these judges appointed by the governor, with the governor recommended by the sugar planters to the President, with no means of communication between that country and this, with the large number of Americans over there who are not altogether favorable to the Bishop for the Senator, with the provisions of this bill looking to the perpetuation of the rule of wealth without regard to the old slogan of the Republican party, manhood suffrage, God, and morality, and brotherhood of man, and all of that stuff which you believed in once and fought for, but which you now reject.

Why do you not come out like men and say so if you have charged your position, if you no longer regard the colored races with the affection you once had for them, if you make no more move looking to the protection of them in Hawaii or in Puerto Rico? Poor Puerto Rico is not provided for at all. We have got out of the House, if it ever gets over; therefore I will not expatiate on that. But what I am contending for here is that you ought not, as decent men, as Christian men, as self-respecting men, to lend your assistance and your votes to any scheme of government which in its essence is a minority government with despots and all these wonderful qualities in a few thousand rich men manipulating and controlling the rest.

Here is a letter which the Senator from Idaho [Mr. FITZFEILD]
handed me a moment ago, dated Honolulu, January 26, 1900, which I will read for the information of the Senate:

Hon. Henry Heitfeld:

Dear Sir: Yours of January 8 was received two or three days since. Also received the copy of the Civil bill, for which I thank you. I have been in touch with the government officials who are now urging that the sugar bill should go into effect at once on the signature of the President. If that is not put off until the 4th of July, there will be very few of them left; and a million dollars of property and hundreds of thousands of dollars of wages due for 1899 have been lost. If the sugar bill comes into operation, several thousand Japanese laborers will have to be laid off; while millions of dollars of property have been destroyed by fire to eradicate the plague. The same two cases have been brought to the attention of the Secretary of State in Washington, as I have heard. But, as regards the sugar bill, I have been unable to discover anything specific in the Department of the Interior as to the position of the United States in the sugar business, and I am therefore unable to say whether the bill will be of use to the sugar plantations or not.

Mr. CLARK of Wyoming. Whom is the letter from? Will the Senator tell us?

Mr. TILLMAN. Did you hear it say, "Woe to him who has the temerity to do it openly"?

Mr. CLARK of Wyoming. This is the letter from the United States, Mr. President.

Mr. TILLMAN. It was the letter from Idaho [Mr. Heitfeld] who told me that the writer was a responsible man, and that he was a truthful man, but I would not undertake to give his name here without his consent.

Mr. CLARK of Wyoming. Mr. President, I do not know why the name should not be given, and a name of that kind is made.

Mr. TILLMAN. Are we going to send an investigating committee out there to see that the oligarchy of wealth there is put down and that justice is done to the American immigrant?

Mr. CLARK of Wyoming. May I be allowed a question?

Mr. TILLMAN. Do you not think it is not right, that a charge of that sort should be made in the Senate of the United States against any reputable body of citizens without having the source of the charge made known?

Mr. TILLMAN. I will consult with the gentleman who gave me the letter. If the writer were from my State, I would give his name without asking his permission.

But, at all events, you see that this gentleman has pointed out the very ills of our government under the guise of "the perfect bill," this paragraph of legislation brought in by the Committee on Foreign Relations in relation to a government which the Senator from Alabama [Mr. Morgan] has praised so highly as being a perfect government, the best government under the sun, almost: a government that is equal to that of any of the American States, and all that sort of thing. That government is the government of a governor under his thumb and control of a governor of a state, of a native or a resident; and, secondly, that governor is given all the business of the government, to be under his thumb and control and influence, if this bill goes through. The lower legislative branch of the government is to be elected by those who can read and write, for by nobody who has not a thousand dollars. Therefore, the wealthy classes in the Territory are to control its destiny; the "governing classes," as some Senator said the other day—a new phrase in America, by the way—"the governing classes!"

Mr. TILLMAN. We have a governing race just as you would have in Massachusetts if you had 750,000 negroes and only 50,000 white men. [Laughter.] I do not deny, and never have denied, that the white people in South Carolina control the State and intend to continue the control of it. We have a God-given right to govern our State. If the government was in jeopardy we rose and took the control, as I said a while ago.

Mr. Heitfeld entered the Chamber.

Mr. TILLMAN. I will say to the Senator from Idaho [Mr. Heitfeld] that I have read this letter with his permission, and the fact that I did not give the name of the gentleman who wrote the letter. I told Senator I had no authority to give the name of that gentleman, and I would refer him to you. The writer himself says that a man who dares openly to oppose the sugar barons out there and the corporations and their officers who control the sugar plantations is in jeopardy of his life. The Senator from Idaho can give the name if he desires to do so, but I am not at liberty to do it.

Mr. Heitfeld. Judging from the letter, I am satisfied the gentleman who wrote it does not wish his name to be known. I would, however, that I knew this gentleman in Idaho several years ago, when he was in the Government service—an entirely reliable man. I should like to give his name, but I do not know that, under the circumstances, I have a right to do so. I will give him the name to the Senator from Wyoming privately, if he so desires.

Mr. TILLMAN. If the Senator from Wyoming will move for a Senatorial investigating committee, or a joint committee, to go out there and investigate the devilment that has been going on, and is going on now, and will continue to go on after we have passed this bill, I will withdraw my amendment.

Mr. CLARK of Wyoming. I will say to the Senator from South Carolina that I do not need any investigating committee. I have been there myself.

Mr. TILLMAN. Then, will you go up and testify in your own behalf as to what the conditions are there? I notice that you have been endeavoring to liberalize this bill and protect the people there.

Mr. CLARK of Wyoming. If the Senator ever gets through, I will make my statement.

Mr. TILLMAN. Well, that is a left-handed compliment that I do not think comes with any good grace from the Senator.

Mr. CLARK of Wyoming. I have taken very little time of the Senator.

Mr. TILLMAN. The Senator is not in the habit of making long-winded speeches, and he does not bother us much with speech-writing. But, Mr. President, I think the facts are always lucid and forcible, and I always listen to them with instruction. I maintain, however, that I never tire the Senate. I never speak unless I have got something to say; and when I get through saying it I stop. [Laughter.]

I only point out this, and this long, rambling speech, which is cut into pieces, which makes it have, as it has not any logical connection or force, and what I wish to say is that this bill enacts and reenacts certain laws from the statute book of Hawaii, which none of us know anything about, and it repeals other laws of Hawaii which none of us know anything about. We are legislating in the dark and upon the black and unlighted paths, and I hope the Committee will not mislead us.

You have seen that committee bring in a proposition looking to the carrying out of contracts made since the islands were annexed and leaving laws in force regarding these existing contracts. That is the reason there was a necessity to rush in and get 25,000 slavers to the islands to carry out the bill and drive them to the sugar fields. Perhaps some Senator would dispute the proposition as to the wallowing, but here is the testimony before the committee as to the method pursued, from which I will read, as follows:

Q. Suppose a "contract" laborer is illing in the field, what do you do?

A. We take him off for a quarter or three-quarters of a day, and if he keeps up we resort to the law and have him arrested for refusing to work.

Q. What do you accomplish by putting him in jail?

A. For the first offense he is ordered back to work, and he has to eventually appeal to the court. He pays a fine, and a light fine is inflicted, which the planter can pay and take it out of his pay, or else he is put on the road to work. For the third offense he is likely to get six months' imprisonment.

Imprisonment with hard labor in the penitentiary, and liable to be whipped if he does not obey the orders of the wardens. We whip them in our penitentiary, and you whip them in yours; and you whip them when they are imprisoned for crime and will not obey. The only difference is that the laborer comes from Japan or from China under contract, and he gets tired after a while and wants to get away and get into the United States—the glorious and blessed country where the thirteenth, fourteenth, and fifteenth amendments are supposed to protect the colored man—with the result I have been speaking of. We annexed Hawaii, and imported 25,000 more of these contract laborers, and the committee propose to let them be made to carry out their contracts.

Another phase of this question I do not understand, but which perhaps the Senator from Alabama [Mr. Morgan] could enlighten me upon, is that there is some mention made in some of the documents I have read of the obligation on the part of the Hawaiian Government to the Japanese Government to pay the contract price of those laborers before they are brought away; and there is an obligation on the part of the Hawaiian Government that we pay him for the laborer who is taken in Japan is carried out, and that he receives his compensation. I do not know whether any such provision of law as that exists or not. But if it does, it simply means that the republic of Hawaii originated, and the Territory of Hawaii now, unless we by legislation prevent it—I cannot get any convictions about this bill, and it would take seventeen Philadelphia
lawyers to tell what it means in the way we have fixed it and what its effect will be—but, as I have said, unless we prevent the judicial tribunal to so interpret the law, and unless we prohibit such contracts, and unless we emancipate those contract laborers, they will be forced out of their contracts, and there is no hope for them outside of this Capitol.

I asked the Senator from Massachusetts [Mr. Hoar] this morning, a man who I know abhors this whole scheme, as I do, to have this bill reprinted with all the amendments he made it before a vote is taken, and they will take it and study it carefully. I know in some way will be found, some loophole through the judiciary to be appointed by that governor, by which they could enforce those contracts by some amendment of the provisions which have been put in here. It will certainly be done if we are not careful.

Mr. President, I have very little more to say. As I have tried to say a half dozen times in the Senate, I sympathize with the white people in Hawaii. I believe it is the only race there capable of self-government. I know that through their instrumental activity the islands have been made more wealthy, and that conditions are better for the few who are now there than they were formerly.

Is there any provision here by which any American who will want to go there and engage in the cultivation of coffee, or some other product which would promote the wealth of this nation, is invited there? Is that country to be open to the immigration of negroes? Is there any inducement for a man to go there to get a living where he has got to show that he owns a thousand dollars in clean cash or property before he can participate in the Government in any effectual way? Is that American?

Is it not wise to propose at the proper time—and I inquire of the Chair if there is an amendment now pending?

The PRESIDING OFFICER. There is a pending amendment, offered by the Senator from Connecticut [Mr. Platt].

Mr. TILLMAN. I am going to propose, at the proper time, to put a gentleman on your nits, so that the Senator from Colorado [Mr. WELCOTT], who is so solicitous about the suppression of the negro vote in South Carolina can upon record, that we incorporate as the suffrage provision of the Hawaiian Islands the constitution of South Carolina to-day; and if I dare not vote for it, I dare not vote for my daughter.

Mr. CLARK of Wyoming. I regret, Mr. President, that the attack on the Senator from Colorado [Mr. WELCOTT] is made in his absence.

Mr. TILLMAN. I notified him that I was going to reply to his speech. He caused a local amendment, offered by the Senator from Wyoming. The Senator from Colorado will undoubtedly be able, at the proper time, to take care of himself. Mr. President, I am in sympathy with the Senator from South Carolina on the pending amendment; but it seems to me to be quite right when he charges the Republican party with preparing this bill because of his previousRotations. 

In my opinion, there is no bad grace from a Senator who, in the same speech, declares that, by the Eternal God, the vote of South Carolina never shall be cast as it was registered.

Mr. TILLMAN. I have never declared anything of that kind. Mr. CLARK of Wyoming. The Senator declared that the white population of the South would always control that portion of the country.

Mr. TILLMAN. My language is capable of no such interpretation. I declared that our registered vote was always cast as it was registered, and is not now being used, to disfranchise the colored people of the South.

Mr. CLARK of Wyoming. Will the Senator from South Carolina declare on this floor to-day that every method has not been used, and is not now being used, to disfranchise the colored people of the South?

Mr. TILLMAN. I know nothing about other States; but I acknowledge openly and boldly in the sight of God that we did our level best to keep every negro in our State from voting. [Laughter.]

Mr. CLARK of Wyoming. So when the Senator charges the Republican party with hypocrisy, I ask him to first sweep his own doorstep. I did not intend to say anything of this character when I rose, but I am in sympathy with this amendment. I believe, as I said a few days ago, that the Hawaiian Islands should be made the last possible measure of self-government consistent with our interests. I do not believe there is any crying desire on the part of the people of the Hawaiian Islands for anything more than our Territorial form of government. Neither the Senator from South Carolina nor anybody else can accuse me of being especially interested in what he calls "the gang" or "the family compact." In fact, Mr. President, perhaps I am a little outside of their good will, because I have been much more interested in the people, in the inhabitants of the islands, than in those who control: but yet it will not do for any Senator of the United States, without information, upon mere hearsay, to rise in his place in the Senate of the United States and assail the government which now exists.

There is nothing in the Hawaiian Islands to-day which tends toward civilization, if there is anything in the islands of Hawaii to-day which tends toward republican institutions, if there is anything in the Hawaiian Islands to-day which tends toward education and good government, it can all be laid to the credit of the men from New England who, nearly one hundred years ago, went to the islands to spread the gospel of Christ and civilize them. The same character of men are in control of affairs there to-day. I do not agree with the system they have inaugurated there. I am in sympathy with the Senator from South Carolina in many particulars.

TILLMAN. Will the Senator allow me to ask him a question?

Mr. CLARK of Wyoming. Certainly.

Mr. TILLMAN. These missionaries, these God-fearing men, these men, inculcated and have practiced for years this system in those islands. Was that right?

Mr. CLARK of Wyoming. I am not here to defend that. Mr. TILLMAN. Was that in accordance with Republican theories and doctrines and provisions?

Mr. CLARK of Wyoming. I am not here to defend any contract-labor system. The Senator cannot put me in that position.

Mr. TILLMAN. Whenever you defend the government of Hawaii as such a high and noble type of government, you must shoulder the responsibility of defending all the acts of that government, or else pick out of the category those which you do not defend.

Mr. CLARK of Wyoming. When the Senator gets through with his bulldozing methods, I will proceed.

Mr. TILLMAN. I shall not interrupt the Senator any further.

Mr. CLARK of Wyoming. Wherever there was of Christian civilization, wherever there was of good government in the islands, whatever there was of republicanism in those islands, was due to the efforts of the men who went there from New England one hundred years ago; and the Senator himself knows it.

Mr. TILLMAN. Yes; I know it.

Mr. CLARK of Wyoming. Their whole system is not perfect; but the Senator cannot put me in the attitude of defending contract labor when he knows my position on this bill; when he knows I am antagonizing my own committee on this bill, he can do it, and I will not allow it, Mr. President; but I say it is not in the interest of the country to rise up and condemn those people on imperfect information.

Mr. FORAKER. The Senator having made the remark that he had been antagonizing his own committee in regard to the question of contract labor, or whatever it is termed, that he had been on Foreign Relations favor contract labor?

Mr. CLARK of Wyoming. I did not speak of contract labor especially. I spoke of various amendments which I had offered to the bill and which were submitted to the Committee on Foreign Relations.

Mr. FORAKER. Certainly nothing should be more distinctly understood, for such is the fact, than that it was the purpose of the committee in reporting the bill—at least I so understood it—to cut off contract labor; and we made an effort to have the bill passed on that ground at the last session of Congress.

Mr. CLARK of Wyoming. I speak the perfectly right on that point. I was speaking of offering amendments to the bill which it was being considered by a committee of which I am a member.

Mr. FORAKER. The Senator used the expression in connection with contract labor, and I thought he might be misunderstood.

Mr. CLARK of Wyoming. I did not intend to do anything of that nature.

But, Mr. President, to get to the point of the amendment which is now under consideration, it is whether or not the government of this proposed Territory of Hawaii shall appoint the judges of the circuit and supreme courts, or whether those appointments shall be vested in the President of the United States, as has been the case with all our other Territories.

We have provided in this bill that the government of the Territory shall be appointed by the President. Nobody, as I said to the Senator from South Carolina, can accuse me of being more than friendly toward the present government of Hawaii; nobody can accuse me of being inhimalic to the native population of Hawaii. I want those people to have the largest amount of local self-government possible. I do not believe that they should be granted