The bill (S. 2708) to amend an act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes, approved March 3, 1899, was considered as in Committee of the Whole. It proposes to amend section 1 of the act by adding at the end of the paragraph making an appropriation for the improvement of Pearl Harbor, Hawaii, the following language:

To be expended under the direction of the Secretary of the Navy.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

Senate Bills & Resolutions Referred - S. R. 76. Joint Resolution withdrawing certain lands on the island of Oahu, Hawaii, from the public domain - to the Committee on the Territories.

Mr. KNOX, from the Committee on the Territories, to which was referred the bill of the House (H. R. 2972) to provide a government for the Territory of Hawaii, reported the same with amendment, accompanied by a report (No. 305); which said bill and report were referred to the Committee of the Whole House on the state of the Union.

By Mr. Wilson of Arizona: A bill (H. R. 8355) to amend an act entitled "An act to amend an act to prohibit the passage of local or special laws in the Territories, to limit Territorial indebtedness," and so forth - to the Committee on the Territories.

TERRITORY OF HAWAI'I.

Mr. CULLOM. I move that the Senate proceed to the consideration of the bill (S. 222) to provide a government for the Territory of Hawaii.

Mr. CHANDLER. I move that the Senate do now adjourn.

Mr. WOLCOTT. I move that the Senate proceed to the consideration of executive business.

Several SENATORS. Oh, no.

Mr. WOLCOTT. I withdraw the motion for the present.

Mr. CHANDLER. I move that the Senate proceed to the consideration of executive business.

Mr. CULLOM. My motion is pending.

The PRESIDENT pro tempore. The Senator from Illinois moves that the Senate proceed to the consideration of a bill the title of which will be stated.

The SECRETARY. A bill (S. 222) to provide a government for the Territory of Hawaii.

Mr. CHANDLER. Pending which motion, I move that the Senate proceed to the consideration of executive business.

Mr. THURSTON. Will the Senator yield to me for morning business?

Mr. CULLOM. I hope the Senator from New Hampshire will withdraw his motion until the Hawaiian bill can be placed before the Senate.
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meet my approbation and some might not. I should like to know whether it is intended to go further to-day than the reading of the bill and the amendments which the committee proposed. I also suppose that when the bill passes the House and that the amendments which have been voted on will, when the bill comes into the Senate, be still open to consideration.

Mr. CULLOM. I understand that Senators are a little anxious

for a tolerably early adjournment to-day on account of some matters that have arisen.

Mr. TELLER. They are rather corrections of the chapter

that I have read; that is, putting in the word “inclusive” in certain places where it ought to be inserted in order to make sure just what is meant.

Mr. PLATT of Connecticut. I wish to know that the bill will not be open to amendment in the Senate.

Mr. TELLER. Oh, it is not likely to pass to-day.

Mr. PLATT of Connecticut. There are some matters, as we come along in the bill, which, it seems to me, should receive more careful attention than has been given. This may all be future, and I will not propose that I would be able to get the Senate to consider the bill much beyond the reading and adoption of the amendments of the committee, and then some little amendments that I desire to offer myself in behalf of the committee, that will not be disputed, I think.

Mr. CULLOM. That is all at this time.

Mr. TELLER. I have several amendments that I propose to offer.

The PRESIDENT pro tempore. It was agreed that the committee amendments should be acted upon as they are reached in the reading of the bill.

Mr. JONES of Arkansas. The bill will be read for action by the Senate.

Mr. TELLER. I should like to know what are the committee amendments.

Mr. CULLOM. Certain.

Mr. TELLER. What are the committee amendments that we are to consider at this time? Are any amendments to be considered that did not come from the committee?

Mr. MALLORY. All the amendments of the committee are printed in italics.

Mr. CULLOM. The committee itself reported some amendments when they brought the bill back.

Mr. TELLER. There are no committee amendments except what the bill contains.

Mr. CULLOM. No, except—

Mr. TELLER. That is all right.

Mr. PLATT of Connecticut. There are other amendments, I understand, from the committee besides those which are printed in italics. Mr. CULLOM. I have stated that in the chapter which the Secretary has just been reading a number of sections have pleased the local laws, and there are places—

Mr. HALE. The local laws will be open to amendment.

Mr. CULLOM. Yes, the Hawaiian laws.

Mr. CULLOM. That is all.

Mr. PLATT of Connecticut. There are other amendments, I understand, from the committee besides those which are printed in italics.

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Mr. TELLER. The local laws will be open to amendment.

Mr. CULLOM. Yes, the Hawaiian laws.

Mr. CULLOM. That is all.

Mr. PLATT of Connecticut. There are other amendments, I understand, from the committee besides those which are printed in italics.

Mr. CULLOM. I wish to say that I am very anxious to get this bill passed as quickly as we can, and yet I do not desire to interfere with our friends on the other side this afternoon, who I understand wish to have a conference on this subject.

Mr. TELLER. I wish to say a word to the Senator who has the bill in charge. I do not want to delay the passage of the bill, but there are some provisions in it that I am going to suggest some changes in.

Mr. CULLOM. The Senator will have ample opportunity to move to amend the bill.

Mr. TELLER. I have had some experience in living under Tor-}

ritorial law, and there are some things in the bill that I do not think ought to be enacted.

Mr. CULLOM. The Senator will have an opportunity to propose the changes he desires to make.

Mr. TELLER. If the Senator is not going to road the bill through there will be time to examine it.

Mr. CULLOM. I am not seeking any special haste about it be-}

cause what is reasonable in the premises, and I have not mani-}

fested any such disposition.

Mr. TELLER. No.

Mr. FORAKER. The understanding is simply that the bill shall be read and the amendments, as they appear in print before us, shall be acted upon as reached. That is as far as we shall get this afternoon.

Mr. CULLOM. I apprehend that by the time we get the bill read and the few amendments are acted upon which were made in the committee, the Senate will be adjourned, and I was not agreed, so far as I was concerned, to allow the Senate to adjourn.

Mr. WARREN. I desire to offer an amendment to the pending bill. I wish to offer it at this time, so that it may be printed and what is reasonable in the premises, and I have not mani-}

fested any such disposition.

Mr. TELLER. That will be the case if the bill passes in that shape. It is section 150.

Mr. PLATT of Connecticut. We have already passed the provision of section 150, and it will not apply to the Territory of Hawaii.

Mr. TELLER. Will the Senator allow me to make an inquiry?

Mr. PLATT of Connecticut. Certainly.

Mr. TELLER. I should like to inquire whether this bill is on its passage. I understood that it was simply the formal reading of the bill.

Mr. TELLER. That is all at this time.

Mr. PLATT of Connecticut. I wish to have several amendments that I propose to offer.

The PRESIDENT pro tempore. It was agreed that the committee amendments should be acted upon as they are reached in the reading of the bill.

Mr. JONES of Arkansas. The bill will be open for action by the Senate.

Mr. TELLER. I should like to know what are the committee amendments. This is a Senate bill.

Mr. CULLOM. Certainly.

Mr. TELLER. What are the committee amendments that we are to consider at this time? Are any amendments to be considered that did not come from the committee?

Mr. MALLORY. No. All the amendments of the committee are printed in italics.

Mr. CULLOM. The committee itself reported some amendments when they brought the bill back.

Mr. TELLER. There are no committee amendments except what the bill contains.

Mr. CULLOM. No, except—

Mr. TELLER. That is all right.

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Mr. HALE. The local laws will be open to amendment.

Mr. CULLOM. Yes, the Hawaiian laws.

Mr. CULLOM. That is all.

Mr. PLATT of Connecticut. There are other amendments, I understand, from the committee besides those which are printed in italics.

Mr. CULLOM. I wish to say that I am very anxious to get this bill passed as quickly as we can, and yet I do not desire to interfere with our friends on the other side this afternoon, who I understand wish to have a conference on this subject.

Mr. TELLER. I wish to say a word to the Senator who has the bill in charge. I do not want to delay the passage of the bill, but there are some provisions in it that I am going to suggest some changes in.

Mr. CULLOM. The Senator will have ample opportunity to move to amend the bill.

Mr. TELLER. I have had some experience in living under Ter-
Mr. HANSBROUGH. I desire to ask the Senator from Illinois in charge of the bill if he does not think it would be more appropriate for the Senate to pass the bill to the House of Representatives, rather than to the Secretary of the Interior, than the Secretary of Agriculture?

Mr. CULMEN. One or two Senate members have made inquiries regarding the provisions of the bill, but I will say to the Senator from New Mexico that there was an understanding that the bill should only be read this afternoon and not be referred. I should prefer to refer any explanation of the provisions of the bill until the reading shall have been completed and the Senate is more fully attended than it is at the present time.

Mr. HANSBROUGH. I just came into the Chamber, and was not aware the bill had been read.

The reading of the bill was resumed. The next amendment of the Committee on Foreign Relations was in section 81, page 36, line 18, after the word "office," to strike out "during good behavior" and insert "for a term of nine years and until their successors are appointed and qualified," unless sooner removed, except in the case of the chief justice and justices of the supreme court, who shall hold office for a term of nine years or until the President shall have appointed a successor, and in the case of the commissioner of public instruction and the members of the board of regents, whose terms of office shall be six years, and except the commissions of public instruction and the members of the board of regents, whose term of office shall be as provided by law of the territory of Hawaii.

Mr. PLATT of Connecticut. I ask that the amendment may be passed over. This whole section proposes to introduce a Territory which we are creating an entirely new system of appointment and tenure of office. It is of course an amendment of the territorial statutes as well as United States statutes. We believe it is wise to allow the judges of the local courts to have entire local and jurisdiction over the local statutes of the Territory and a United States judge to administer the United States laws. I do not know whether in any of our States there is a life tenure. I do not remember any; but there are in different States different laws controlling the terms and qualifications of the officers. I believe that our amendment is different from any yet introduced in New Mexico or Arizona, yet it is more beneficial to recognize the situation there as nearly as we can rather than tear up the whole system of their local government and create it anew. I think the United States judges here, who are appointed to go to the Territories, in performing their duties there administer the local laws of the Territories as well as the United States statutes generally. But as to Hawaii, it seemed to the commission that we ought to adopt the law and practice in this territory, and it is not the function of a United States judge. The plan is to constitute the different islands into a Territory and give a judge administering United States laws, pure and simple, and officers to execute and administer them. That is all I want to say now. I did not care to discuss the matter.

Mr. FORAKER. Would it not be better to allow the amendment to be passed over, as the Senator from Connecticut suggested, until we can take up together all the points that are objected to, as we may in that way be able to conclude the reading of the bill.

Mr. CULMEN. The Senator from Connecticut insists upon discussing it, and I was trying to answer him a little.

Mr. FORAKER. I understood the Senator from Connecticut to say that he did not care to discuss the matter now. He merely said to call attention to the point and to have the amendment passed over.

Mr. CULMEN. He has been discussing it.

Mr. PLATT of Connecticut. I was giving reasons why I thought the amendment should be passed over.

Mr. FORAKER. That was all.

Mr. PLATT of Connecticut. If the Senator from Illinois thought I was really discussing the matter, I will try to enlighten him hereafter as to why I think no such provision as he has inserted is necessary.

Mr. PLATT of Connecticut. Section 81, to which I refer, contains a provision about judges in that Territory.

Now, one single thing more. We have provided that the judges of all our legislative courts should have a tenure of office for four years only. This bill not only takes away the President and the Senate of the present courts, but it also changes the judicial system. The Committee on Foreign Relations, in charge of the bill, is, in my judgment, correct. We have provided for a new system of judges, to be appointed by the President with the advice and consent of the Senate, and to hold office for a term of nine years. The Senate and the House are the only bodies that can have anything to say about judges in that Territory.

Mr. CULMEN. Mr. President, I merely wish to say a word, inasmuch as the Senator from Connecticut is disposed to discuss the bill as it now stands, and as we go along, I have tried to avoid as we are only having it read now.

The commission which was sent to Hawaii found there a very good civil government. Of course there were many things not entirely satisfactory and which we propose to change, but the plan of the commission is to introduce a good system of government, as we could, consistently with the interests of the United States, and which, harmonious with the spirit of the Government of the United States, should continue.

We found a supreme court there, not to administer the United States laws, which are preserved in the code and which is in harmony, as we thought, with the general principles and interests of the Government of the United States as well as of that Territory.

The plan of the bill is to retain the legislature, the system of local government, and to provide for a United States judge to administer the United States laws. The commission believe that the wisest course for us to pursue is to retain in force the laws, so far as they are consistent with our ideas of government, and the courts to administer them; and we intend to do that.

Mr. CULMEN. Section 85, page 39, line 1, after the word "have," strike out the words "either directly or through such relative," so as to make the section read:

SEC. 85. That the following officers shall receive the following annual salaries, to be paid by the United States: The Governor, $5,000; the Secretary of the Territory, $4,000; the United States district attorney, $3,000; and the governor shall receive annually, in addition to his salary, the sum of $2,000 for stationery, postage, and incidental charges; also his traveling expenses while absent from the capital on official business, and the sum of $2,000 annually for his private secretary.

The amendment was agreed to.

Section 84 in the last paragraph of section 89, page 45, line 10, after the word "the," strike out "governor" and insert "attorney-general;" in line 11, after the word "Hawaii," strike out "and" and insert "shall;" in line 12, after the word "in," strike out "a" and insert "such;" and in the last sentence, strike out "be provided," to insert "as may be," so as to make the paragraph read:

That if such fishing right be established, the attorney-general of the Territory of Hawaii shall proceed, in such manner as may be provided by law of the Territory, in the execution thereof, to convey such property to the use of the citizens of the United States upon making the necessary provision for the payment of the debt due thereon, and that the proceeds shall be paid out of any money in the Treasury of the Territory of Hawaii not otherwise appropriated.

The amendment was agreed to.

The reading of the bill was concluded.

Mr. CULMEN. I desire, in behalf of the committee, to move to strike out sections 104 and 105 and to insert in lieu of those sections:

Sect. 104. That this act shall take effect sixty days after and upon the date of the approval thereof.

The adoption of this amendment I will state is very important.
Mr. PETTUS. Is not the phrase "on and after the date" misleading?
The PRESIDENT pro tempore. It is wrong. If the Senator from Illinois will look at it he will see that it is wrong.
Mr. CULLOM. I took it out of the House print. Let it read "from and after its passage."
The PRESIDENT pro tempore. The Secretary will read the amendment as modified.
The SECRETARY. It is proposed to strike out sections 104 and 105, in the following words:
Sec. 104. That the legislature of the Republic of Hawaii may enact laws not inconsistent with the foregoing provisions prior to the taking effect thereof.
Sec. 105. That this act shall take effect on the 4th day of July, 1900, except section 104 hereof, which shall take effect immediately after the approval of this act.
And in lieu thereof to insert:
Sec. 104. That this act shall take effect sixty days from and after the date of the approval thereof.
The amendment was agreed to.
Mr. CULLOM. I believe it was understood that on the completion of the reading of the bill there would be an adjournment.
The PRESIDENT pro tempore. The Senator gave notice that he wished to insert the word "exclusive" in two or three places.
Mr. CULLOM. There are quite a number of those places, and as I think Senators are a little anxious that the Senate shall now adjourn, I will defer that for a future day. I move that the Senate adjourn.
The motion was agreed to; and (at 3 o'clock and 20 minutes p. m.) the Senate adjourned until Monday, February 19, 1900, at 12 o'clock meridian.

February 17, 1900
House
v. 33 (2)
p. 1893

Under clause 2 of Rule XXIV, Senate bills of the following titles were taken from the Speaker's table and referred to their appropriate committees as indicated below:
S. 2708. An Act to amend an act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes, approved March 3, 1899 - to the Committee on Military Affairs.

February 19, 1900
Senate
v. 33 (2)
p. 1918-1934

TERRITORY OF HAWAII.
Mr. CULLOM. It is so nearly 2 o'clock that in the absence of anything else apparently that is ready for consideration, I will call up Senate bill No. 222, to provide a government for the 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. I ask leave to make a few formal amendments to the bill which I did not have made on last Friday. I ask that they be made now. These are simply to connect the statutes which are repealed.
On page 3, line 21, after the words "sections thirty to thirty-three," I move to insert "inclusive."
On page 4, line 1, after the words "sections one hundred and fifty to one hundred and fifty-six," I move to insert "inclusive."
On page 5, line 4, after the words "eleven hundred and seventy-eight," I move to insert "inclusive."
On the same page, line 8, after the words "thirteen hundred and fifty-four," I move to insert "inclusive."
On the same page, line 9, after the words "fifteen hundred and fourteen," I move to insert "inclusive."
On the same page, line 15, after the words "seventeen hundred and fifty-eight," I move to insert "inclusive."
On the same page, line 17, after the words "eighteen hundred and thirty-two," I move to insert "inclusive."
On the same page, line 19, after the words "sixty-seven," I move to insert "inclusive."
On the same page, line 21, after the words "three hundred and seventy-one," I move to strike out "to" and insert "and."
On the same page, line 23, after the words "four hundred and thirteen," I move to insert "inclusive."
On page 6, line 1, after the words "six hundred and five," I move to insert "inclusive."

On the same page, line 6, after the words "seven hundred and fifty-five," I move to insert "inclusive."

On the same page, line 7, after the words "eight hundred and nine," I move to insert "inclusive."

On the same page, line 10, after the words "eight hundred and fifteen," I move to insert "inclusive."

On the same page, line 12, after the words "nine hundred and six," I move to insert "inclusive."

On the same page, line 15, after the words "eleven hundred and seventy-nine," I move to insert "inclusive."

On the same page, line 16, after the words "twelve hundred and nine," I move to insert "inclusive."

On the same page, line 17, after the word "seventy-six," I move to insert "inclusive."

These amendments are simply to make certain the chapters or sections that are to be repealed.

The amendments were agreed to.

Mr. CULLOM. Mr. President, I did not intend, when this bill was last before the Senate, to make any remarks at all, except as they might be called forth in the consideration of the different sections of the bill. But since that time I have concluded that perhaps I ought to say a few words in a general way in reference to the measure as a sort of introduction to the consideration of the bill itself. It is perhaps expected that some member of the Committee on Foreign Relations of the Senate should say something, in advance of its consideration by the Senate generally, about the bill reported to the Senate and which is now before this body; and as the distinguished Senator from Alabama [Mr. MORGAN] and myself were on the commission appointed by the President to recommend to Congress such legislation concerning the Hawaiian Islands as the commission should deem necessary or proper, it is perhaps expected of us especially to explain the bill.

Going back to a period beyond the passage of the joint resolution annexing the islands, it might be well to say that the joint resolution recited the language in part of the treaty of annexation concluded at Washington on the 10th of June, 1897, where the preamble to the resolution states that the Republic of Hawaii ceded absolutely and without reserve to the United States of America all rights of sovereignty of whatsoever kind in and over the Hawaiian Islands and their dependencies, and also ceded and transferred to the United States the absolute fee and ownership of all public, government, or crown lands, public buildings, harbors, etc.

I desire to say that the language used in the joint resolution was the same language substantially as that used in the treaty which was ratified by the Hawaiian government, but finally not ratified by the Senate of the United States; but the joint resolution was taken up and passed in place of the treaty; so that when the joint resolution in its whereas recites what the Hawaiian government did, it relates to the treaty which had been ratified by the Hawaiian government.
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The joint resolution declared also that said cession is accepted, ratified, and confirmed and that the islands and their dependencies were annexed as part of the territory of the United States and subject to the sovereign dominion of the United States. The joint resolution also provided that the laws of the United States relative to public lands shall not apply to such lands as the islands and dependencies of the United States and that the laws of the United States shall be enacted for their management and disposition, and that all revenue from such lands should be used solely for the benefit of the inhabitants of the Hawaiian Islands for educational and other public purposes.

The PRESIDING OFFICER (Mr. Perkins in the chair). Does the Senator from Illinois yield to the Senator from Kentucky?

Mr. CULLOM. Certainly.

Mr. LINDSAY. With the Senator's consent, I will ask him whether the provisions of the joint resolution, as embodied in the two Houses of Congress, were ratified or accepted by any legislative action on the part of the government of Hawaii?

Mr. MORGAN. They were.

Mr. CULLOM. I think they did accept it.

Mr. LINDSAY. The treaty failed?

Mr. CULLOM. The treaty failed here.

Mr. LINDSAY. I supposed the joint resolution was the treaty.

Mr. CULLOM. As far as the joint resolution went, it was the treaty as far as the Hawaiian government was concerned, as expressed in the treaty which we failed to ratify.

Mr. LINDSAY. The treaty failed.

Mr. CULLOM. The treaty failed here.

Mr. LINDSAY. I should like to know if there is any difference between the provisions of the joint resolution and the treaty, further than to say that the public debt of the Republic of Hawaii, existing at the date of the passage of the joint resolution, including the amounts due to depositors in the Hawaiian Postal Savings Bank, should be assumed by the Government of the United States, but that the United States in this respect should in no case exceed $4,000,000.

Mr. President, the commission charged with the duty of investigating and reporting to Congress undertook the duty imposed upon it by the act, and made their report, which was before the Senate and in the House of Representatives, the Commission on Foreign Relations, reported the Senate, and the House of Representatives, the Commission on Foreign Relations, and reported to the Senate, but not acted upon by the Senate during that session, which was re-introduced at the beginning of this session, acted upon by the Foreign Relations Committee, and reported again to the Senate.

The bill under consideration is the result, first, of the work in part by the commission, but subsequently amended in a number of particulars and reported to the Senate for consideration.

I will not undertake to call attention of the committee to each of the sections as they appear in the bill, because it would require more time than I deem necessary to claim at the hands of the Senate, and particularly, because I do not think there will be much opposition to many sections of the bill. The committee undertook to prepare a bill which would be most in the interest of the people of those islands and as near as possible, as we thought, satisfactory to the people of this country, and the result is shown in the bill. We have taken the islands as the Territory of Hawaii, the islands of Hawaii being the larger island of the group.

The bill under consideration provides substantially for a territorial government, very largely in harmony with the governments of our Territories as they have existed in this country. There is, first, a governor, a Senate, an Assembly, a territorial court, as well as a well-administered government, existing and which has existed for over many years. I desire that the Senate shall realize that the government of the Territory of Hawaii, now called the republic, has been very nearly as it is now for very many years, in other words, that the constitution as it now stands is almost the same constitution as it was when the islands became a part of the United States.

When the commission visited those islands we found that, according to their last census, the population numbered from 110,000 to 120,000 people and that there is about 7,000 square miles of territory, much the larger island being the island of Maui and the other islands ranging from 700 to about 100 square miles. The population of those islands is composed of about 31,000 native Hawaiians, about 8,000 half-castes, about 3,500 British, 1,400 or 1,500 Germans, between 3,500 and 4,000 Americans, 15,000 Portuguese, 24,000 Japanese, 21,000 Chinese, and about 1,500 Americans. It is believed now that there are perhaps 150,000 people in the Territory.

The bill is an act to make the Territory of Hawaii a part of the United States, and to submit it to the President and the Congress of the United States, for the admission of the Territory into the Union as a State, with the name of the State of Hawaii.

The bill provides for the admission of the Territory of Hawaii as a State of the Union, and for the appointment of a commission to prepare a constitution for the Territory of Hawaii. The commission shall consist of three members, one of whom shall be appointed by the President, one by the Senate, and one by the House of Representatives.

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deputy marshal of the republic of Hawaii. These offices were, of course, created as a part of the civil establishment of an independent government and, of course, ought to be abolished.

The bill provides for the Territory, consisting of two houses—senate and house of representatives—after the fashion of our three great departments of government. It also provides that the senate shall be composed of fifteen members, who shall hold office for four years, but that of the senators elected to fill the vacancies occasioned by death, resignation, or otherwise, only and the eight for four years each, and the districts in which they shall be elected are as they now exist in the Territory under the republic of Hawaii. The commission thought they ought not to be disturbed at present.

The commission found that under the constitution of the republic of Hawaii the qualification of voters for Territorial senators and representatives, as also the qualifications of senators and representatives, were not the same. The qualification of a voter for the Territorial legislature was that the citizen desiring to vote for a candidate for the senate should own real estate in the Territory of the value of $2,500—I think in the law it is $1,500—should pay his taxes on such valuation, etc., and that a candidate for the senate should also own the same amount of real property and pay his taxes, etc., while a voter for a candidate for the house of representatives should not be required to own any real estate, and the qualification of a voter for a senator or a representative was that he should, in addition to the property qualification named, be a male citizen, 21 years of age, and be able to speak, read, and write the English language.

Since I prepared this statement I have been furnished with a memorandum which I wish to have inserted. It is from the hearing before the commissioners, and is as follows:

Commissioner Dole. Voters for members of the house are not required to have property qualifications.

Mr. Cooper. It is practically a free franchise for native-born people for the house of representatives, but as far as income of $500 per annum, or real estate equal to $1,500, or personal property equal to $1,000.

This question of property qualification in addition to educational qualification, I confess, gave me some trouble, and yet the condition existing there and the appeals to the commission for a retention of a property qualification in the bill convinced the commission, and I think the judgment of the Committee on Foreign Relations agreed with it, that some property qualification should be required of senators and representatives, although it was deemed unnecessary to be required of voters for members of the house of representatives or of the representatives themselves.

Mr. TILLMAN. Mr. President, will you allow me to state that I am not going to interrupt the Senator, but it is a very important matter he is discussing, and most of the Senators present are absent, and I would like to get Senators here and have them listen to what is being said.

Mr. PLATT of Connecticut. I think that is a very good idea.

Mr. CULLOM. I think so, too.

Mr. PLATT of Connecticut. The absence of a quorum being suggested, the Senator will call the roll.

The Secretary called the roll; and the following Senators answered to their names:

Aldrich, Gallinger, McEnery, Rawlins,
Burrows, Harris, Martin, Keck,
Burton, Chilton, Money, Moore,
Clark, Wyo, Heitman, Morgan, Clay, Jones, Ark, Nelson,
Cookwell, Jones, Nev, Otis, Perkins, Petten,
Cutbush, Kean, Shoup, Turner, Platt, N. Y.
Cullom, Lindsay, Stewart, Swift, Platt, N. Y.
Deboe, McComas, Turner, Platts, N. Y.
Debow, McCumber, Vest, Wetmore.

The PRESIDING OFFICER. Forty-seven Senators have answered to their names. A quorum is present.

Mr. CULLOM. Mr. President, I am sorry that the Senate is not disposed to give attention to this subject. If we were permitted to do so, I should endeavor to have the bill passed in its abstract form if the Senators present would vote for it. The pending subject is one of very great importance, and it seems to me the Senate of the United States ought to give to it a little attention.

The commission and the committee agreed that the amount of property required, however, by the constitution and laws of the Territory, or to the amount of $600 income for the year previous to voting, and that the voter and senator should be required to pay their taxes, etc. This qualification, in the

judgment of the committee, was regarded as proper for the time being, in the belief that in a little while, after matters became somewhat more settled in the Territory, such property qualifications could be safety gotten rid of.

Mr. TILLMAN. I am somewhat inclined to the belief that it is not; but for the sake of being sure and safe I consented that this provision should be placed in the bill and retained for the present. The bill provides now for simply an educational qualification for voters while the act provides for members of the houses of representatives and a receipt showing that they have paid their taxes, while a property qualification is required of the voter who seeks to vote for any candidate for the senate, and the same property qualification shall be required of any man who becomes a senator.

This case is perhaps one of as much importance as any other in the bill, and as likely to produce a difference in the minds of Senators as to what is the proper course to pursue on that subject. I have a paper here, which was prepared by the late attorney general of the Territory of Hawaii, and which I intend, because I think it sets out as far as the commission went as far as the side of the question as it can be set out by anybody. It proceeds:

Mr. TILLMAN. Will the Senator state how long this property qualification, which now obtains, as I understood him to say, in the Territory of Hawaii?

Mr. CULLOM. There has been a property qualification there for very many years.

Mr. TILLMAN. For how long?

Mr. CULLOM. I do not remember the number of years, but about forty years.

Mr. TILLMAN. Did it exist under the former government?

Mr. CULLOM. It has always existed, under the monarchy as well as under the republic. The republic has only lasted, of course, for four or five years, as the Senator knows, but there was a property qualification before the law was passed different values.

Mr. TILLMAN. So that the innovation of a property qualification for voters is not new under the Dole administration?

Mr. CULLOM. No; it is not new.

Mr. CLARK OF WYOMING. It is very much less than formerly.

Mr. CULLOM. The property qualification which now exists is to the effect that a representative shall own property as well as a senator, but it does not provide—and I think there has been no such provision for some time back—that a voter for a representative shall own property, and I think that he shall simply be able to speak, read, and write the English language or the Hawaiian language.

Mr. PLATT of Connecticut. The members of the upper house were appointed by the monarchy?

Mr. CULLOM. They were.

Mr. SPONER. Will the Senator allow me to ask a question, not particularly pertinent, perhaps, to what he is saying?

Mr. CULLOM. I yield to the Senator.

Mr. SPONER. How many voters, if the Senator knows, are there in the Territory of Hawaii?

Mr. CULLOM. I can answer that in a moment, if the Senator will allow me.

Mr. SPONER. Certainly.

Mr. CULLOM. The statement continues:

Conceding that the foreign-born Chinese and Japanese will be hereafter, and are now, excluded from the elective franchise, as they are in the political problem the Americans, the British, the Germans, the Hawaiians, and the Portuguese.

Now I come to that which will answer in part the inquiry of the Senator from Wisconsin.

The last registration of voters under the monarchy was in 1891 as follows:

Hawaii, 9,554; Portuguese, 2,039; foreigners, 1,770; total, 13,315.

That answers the Senator's question partly.

Mr. SPONER. Yes, partly.

Mr. CULLOM. I do not know that I can answer it more definitely for the Territorial House.

Mr. SPONER. Is the Senator able to tell me in the last registration under the monarchy how many qualified voters there were in Hawaii?

Mr. CULLOM. I can not do so for the reason that when the republic was established upon the ruins of the monarchy there was required a more rigid registration, and there has been a very large vote of any kind since, nor a very large registration. Those who were not entirely satisfied to identify themselves fully were not required to register, and therefore could not vote. Besides that, when there is no opposition the vote is very light, as is the case everywhere else.

Mr. SPONER. Can the Senator tell me the largest vote under the republic?

Mr. CULLOM. I do not think I have the figures here, but I can furnish them to the Senator.

Mr. PLATT of Connecticut. Somewhere in the neighborhood of 3,000, was it not?

Mr. CULLOM. In the neighborhood of three or four thousand
Mr. SPOONER. I was aware of that; but I wish to know how many people who are capable so far as education is concerned would be disfranchised because of the want of property? Mr. CULLOM. I have not. Mr. TILLMAN. How many would be voters or eligible to vote for senators under the property qualification? Has he any data upon that point? Mr. CULLOM. I have not. Does the senator mean as to the number of voters?
Mr. TILLMAN. I simply want to know how many voters there would be who have the property qualification necessary to vote for senators, and I would like to know what their nativity is. Mr. CULLOM. So far as their nativity is concerned, I do not suppose I could very well answer the question.
Mr. TILLMAN. Or their nationality, I should have said.
Mr. CULLOM. Before we get through with this subject I shall furnish statistics on that point to the Senator or to the Senate, if the Senator desires them.

The attorney-general proceeds as follows:

The own experience, as well as that of others who took part in public affairs, convinces me and them that with an excessively large native vote without property qualifications, the government of the island would be in the control of the natives, to the great detriment of the interests of the whites and of the Territory.

The danger to be apprehended from the native voter: (1) They can cast about 4 votes to the Anglo-Saxon 1, and, under the new provisions of the bill regarding citizenship, may cast a larger vote in proportion.

That is under the educational qualification.
Mr. PLATT of Connecticutt. Natives? Mr. CULLOM. Yes; natives. I may say this is not appropriate here, because the attorney-general is referring to the bill pending in the House of Representatives.

The statement continues:

This enormous power is of itself liable to great abuses. A party of Polynesian natives, if they were enabled by 8,000 votes to 1,500 or less will not hesitate to use that power.

The native has lived for one generation under the American system of jurisprudence and American institutions owing to the strong influence of the Americans who have resided in the islands, the most of whom are known and respected. This was the case with the only generation removed from servitude, the despotic rule of the king and chiefs. He had little education, a simple and uncomputing element. More than all, he has not acquired the habit of self-government, which is the safety and staying power of the Anglo-Saxon. If Polynesians, recently "civilized," were now cast into the Legislative Council, the most remarkable example in the history of the rapid rise of a people, and utterly distance the Anglo-Saxon in that council.

(3) The natives yet remain "children of the tropics," and have hardly parted with the economic ideas which the race has held for over a thousand years. They have few wants and little time of the day.

I desire to say that so far as the natives are concerned they are a kindly, affectionate, docile, listless class of people, not desiring to give any trouble to anybody or to have any themselves, but wishing to be let alone; and if they could get rid of the demagogues they would always support the Government in its best interests.

The committee, I think, is in the right in not going any further from this paper, but the end of it is that the substantial people there, who have been intimately identified with the government in its struggle for independence, in the effort to get rid of the monarchy, and to assist in the establishment of good government, are not provided for in the bill, so that, as an experiment, if you please, they would feel that they were safe in not having their statutes overturned and their government and the prosperity of their people destroyed.

Mr. TELLER. I wish to ask the Senator from Illinois a question.

Mr. TILLMAN. I understand, if the Senator will allow me—

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

Mr. CULLOM. I want to say further—and then I will yield to the Senator—that what I have been stating is not my view, but the view of the ex-attorney-general of Hawaii.

Mr. TILLMAN. Was that the attorney-general under the republic?

Mr. CULLOM. Under the republic; yes, sir. He has resigned his office since the commission was in Hawaii, a year and a half ago.

Mr. TILLMAN. Is he an American?

Mr. CULLOM. No, sir; he is a native of one of the Hawaiian Islands, and his grandfather lived there before him, I think.

Mr. TILLMAN. I understand the Senator to say these are not his views, but yet he has adopted them in the bill he has presented.

Mr. CULLOM. No; I have not fully. I am giving the views, however, in harmony with the subject, so that the Senate may understand the whole case as it appears to a man who has identified himself with the islands and is now living in Honolulu. He was born on one of the other islands and is thoroughly interested in the prosperity of those people.

Mr. SPOONER. President, if it will not disturb the Senator, I should like to ask another question.

Mr. CULLOM. Certainly.

Mr. SPOONER. Is the Senator able to afford any estimate of the number of natives who would have the right to vote upon a future electoral law?

Mr. CULLOM. Nearly all of them who are of age. The fact is that the native Hawaiians, except the very old, are able to speak, read, and even write the English language, and substantially all of them speak, read, and write the Hawaiian language.

Mr. MONEY. If the Senator will allow me, I will say, in response to the Senator from Wisconsin, that they have had a compulsory system of education there for many years. Everybody was compelled to attend school.

Mr. SPOONER. Ordinarily it was about that many, and it has been about the same under the republic.

Mr. CLAY. Mr. President—

Mr. SPOONER. Has the Senator any estimate of the number of people who would be voters under the provisions of this bill, if passed?

Mr. CULLOM. I have no doubt myself that if those who were entitled to vote should register and vote under this bill there would be a very large voter in comparison with what it is now.
Mr. CULLOM. The council, which existed before the senators
who are to take its place, was appointed by the monarch himself.
Mr. TILLMAN. Was not the monarch himself largely under
the control of the British? He was associated?
Mr. CULLOM. Not at all.
Mr. CLARK of Wyoming. Not at all.
Mr. MORGAN. Does the Senator from Alabama wish to say something?
Mr. TELLER. I want to ask one more question.
Mr. PRESIDING OFFICER. The Senator from Illinois has
already yielded to the Senator from Colorado.
Mr. TELLER. The question is this: does he not think that
having an educational qualification for votes would enable them
dispose with the property qualification?
Mr. CULLOM. I answered them a moment ago.
Mr. TELLER. It must have been before I came in.
Mr. CULLOM. I said that personally I had been inclined so to do
before, but that the commission and the Committee on Foreign
Relations both thought a property qualification ought to be
required, and so it is in the bill.
Mr. TELLER. I wish to say to the Senator who has charge of this bill
that I will vote the same as they do very much to vote for this bill, but I
think some corrections ought to be made. I do wish to hear some
member of the Committee on Foreign Relations tell me why at
this hour we are to put in not only an educational qualification,
but a property qualification also. I myself am unable to
vote for the amendment, and I do not intend to.
Mr. PLATT of Connecticut. I am not on the Committee on
Foreign Relations, but I suppose the question which arises is just
this: Under the old régime there had been friction between the
native population and the American population, and bitterness
between them toward each other, and now, with the succession of
the American people, and the idea that they can run that
government, by votes against the Anglo-Saxon people and the Anglo-Saxon
idea, and that they will be liable to be influenced by demagogues,
the American people naturally think that there is a great danger that all Anglo-Saxon influence there may be
overthrown. I suppose that must be the situation.
Mr. CULLOM. That is the whole story.
Mr. TELLER. I should like to debate that when I can do it
without interrupting the Senator from Illinois.
Mr. CULLOM. Does the Senator from Alabama wish to say
something?
Mr. MORGAN. I thought I could clear up this question a little
by reading from the report of the committee made to the
concurrence on the subject, in which the facts as to suffrage are
stated.
Mr. CULLOM. Proceed, if you wish.
Mr. MORGAN. I will premise by saying that Kamehameha
III, who was an educated man, drew with his own hand and
wrote his will, and ordered by an assembly that he brought around him, which he called
the house of nobles and the commons or representatives. I have not
understood historically that any person assisted him in the
preparation of that draft of the constitution. Doubtless he advised
Mr. Judg. who was at that time his great friend and legal
advise, and who did not go out there as a missionary, but as a
physician. He may also have advised with an Englishman, whose
name I cannot call, who was then a member of his cabinet. But
Kamehameha wrote that constitution and ordained it, not by a
commission, but by his own hand. In that constitution he created two houses for legislation; one
was the nobles, and the other was the house of representatives. I
forget the particular names they gave to those houses.
Mr. CULLOM. A council and a house.
Mr. MORGAN. I mean the Hawaiian names.
Mr. CULLOM. I do not know, either.
Mr. MORGAN. The two houses sat together. The senators
held their appointments for life. The members of the house were
elected by the people after a while.
Mr. CULLOM. Both houses.
Mr. MORGAN. The members of the house.
Mr. TELLER. I thought the Senator said "houses."
Mr. MORGAN. The subject was referred to a subordinate of the
commission which was sitting there, and they prepared a
report on it. It is not long, and I think it will probably give the
Senators a better idea of the situation than perhaps could be
derived in any other way:
The question of the elective franchise and of representation in the legislative
body is a delicate and important question, as upon this depends the
general character of the local government. Two classes of qualifications have been relied
on chiefly in the past to preserve a fairly standard of membership in the legislature. These are the
educational and the property qualifications; and educational qualifications merely
requires members and voters for members of each branch of the legislature
in the United States to be able to read, write, and speak the English or Hawaiian language. This
qualification was well established in Hawaii, and no objection has been
offered to it from any quarter. Practically all the native Hawaiians possess
this qualification.
The property qualifications are more restrictive, and this subcommittee,
while believing that the time will come when these can be removed entirely,
has recommended that they should be retained for not less than
fifteen years. The property qualifications should not, however, be increased. They
might perhaps with safety be reduced. Conditions in this respect in Hawaii differ
from those of the United States. The Hawaiian population is scattered
throughout the islands, and has been subjected to restrictions in the matter of representation, especially in the upper branch of the legislature, and the recommendations of the commission are dictated in the
direction of extension rather than of restriction of the privilege of
representation. Under the present constitution of Hawaii members of the lower branch
of the legislative body are required to own property valued at not less
than $500. It is recommended that these figures be now reduced to $200 and $100, respectively.
I believe that these figures are the figures in the bill.
Under the present constitution members of the upper house are
required to own property valued at $1,000 or to have an annual income of $75.
It is now recommended that these figures be reduced to $200 and $100, respectively.
These restrictions upon membership in the two houses are good as far as
they go, and yet they are not as effective as might at first appear, for there
are many members of the legislative body who have been elected under these
qualifications, and the only effective way to obtain a fairly conservative legislature under conditions
such as exist at present in Hawaii is to require proper qualifications of
the kind prescribed by themselves.
That the committee has disregarded.
For many years, under the monarchy, voters for members of the lower house
were required to own property to the extent of $500, or to have an annual income of $75.
These restrictions were finally removed under the monarchy. There has
never been a regular statistical census of the population of the native Hawaiians. It is possible
that some of these restrictions to the effect that the native Hawaiians can vote in the
lower house under the republic, and it is recommended that there shall be none
in the future.
Mr. PLATT of Connecticut. And there are none in the bill.
Mr. MORGAN. There are only in the bill for the upper house.
Mr. TELLER. The native Hawaiians, the people, for many years
were not permitted to vote at all for their members. At first its members were appointed
by the king, and membership was hereditary. Afterwards they were appointed
by the king, or by the commission, and subsequently by the common council, the
monarchy, that they were elected by the people, and then the voters were required to own property, real or
personal, for the purpose of voting.
Under the present constitution of the republic the amount of real property required to be owned
by voters for the upper house was reduced from $1,500 to $200, and the annual
income of $75 was reduced to $100.
Mr. TELLER. Those figures are in the bill?
Mr. MORGAN. The figures are in the bill.
Under the present constitution there are no property qualifications for voters for the lower house, as stated earlier.
Under the present constitution, it is stated in the bill, the native Hawaiians can vote as citizens in the
lower house. In the present constitution of the republic the amount of real property required to be owned by voters for the upper house was reduced from $1,500 to $200, and the annual income of $75 was reduced to $100.
Those restrictions were finally removed under the monarchy. These restrictions
were finally removed.

Mr. MORGAN. Why did the Senator say that the native Hawaiians could vote?
Mr. CULLOM. Because the native Hawaiians are entitled to vote.
Mr. MORGAN. Is that right?
Mr. CULLOM. Yes.
Mr. MORGAN. Mr. TILLMAN. Has the Senator ever visited Hawaii?
Mr. TILLMAN. I have been for years chief justice of the
supreme court of Hawaii and is one of the ablest lawyers, I think,
I ever knew.
Mr. CULLOM. Is the Senator from Alabama through?
Mr. MORGAN. I merely wished to read the extract I have
read; that is all.
Mr. TILLMAN. Mr. Frear is not chief justice, but he is one of the
associate justices of the supreme court.
Mr. MORGAN. I thought he was chief justice.

Mr. CULLOM. No; Judge Judd was chief justice and recently resigned. Judge Frear may be chief justice now, perhaps, since I understand the chief justice tendered his resignation on account of ill health.

Mr. President, this goes upon all fours with what is talked here all the time, that these governments must be set up, so far as the United States has anything to do with them, as nearly as we can on a basis which will result in conserving the best interests of the people of that country as well as the United States generally. Hence, if it is thought best to impose a property qualification it is on the ground that the government in civil government is sufficiently to be trusted entirely with the control of the legislative department of the government. That is all I desire to say on that branch of the subject.

Mr. TILLMAN. Before the Senator leaves that part, I suppose the thought that the white people in Hawaii must be protected in their property and in their civilisation against the ignorance of the majority of colored people meets his hearty approval?

Mr. CULLOM. The Senator need not suppose anything about it. I do my own supposing.

Mr. TILLMAN. I thought that was a fair interpretation of the bill which the Senator has presented here and which he is advocating.

Mr. CULLOM. I can not prevent the Senator's placing his own interpretation upon it. I will answer the Senator by saying I am sorry to see any condition occur as the result of the passage of any act relating to that Territory which would result in confusion and the destruction of property and breaking down the great business interest of that country, which is as prosperous today as any Territory in the country.

Mr. TILLMAN. In other words, the Senator would object, and he is endeavoring to object, by legislation, to having ignorance and vice control intelligence and property.

Mr. CULLOM. I do not say that I want ignorance or vice to control, or that that is wrong. What I say is that the commission and the Committee on Foreign Relations took into consideration everything they thought of connected with this subject, and that the majority of the commission and the majority of the Committee on Foreign Relations believed that the provisions of this bill were the best suited to the business interest of the country and the welfare of the white people.

Mr. TILLMAN. I hope the Senator does not understand that I am arguing in favor of ignorance and vice controlling the white people over here.

Mr. CULLOM. I do not say I understand anything of the sort.

Mr. MONEY. If the Senator from South Carolina will permit me, the Senator from Illinois, on behalf of the committee, submits the bill here which presents the best thought of the Committee on Foreign Relations as to the proper government to be provided for the native inhabitants of the islands, and that committee has been read. The Senator has presented here a bill which, in the opinion of the committee, is necessary in its provisions to secure good government and order in those islands, and to attain that there is a necessity of making certain restrictions on account of the small labor force.

The Senator from Connecticut says there are seventeen hundred Anglo-Saxons. There are seventeen hundred white people, but a large number of them are Germans and French, as well as English and American; Anglo-Saxons from America as well as from England. The Senator from South Carolina says the commission and the committee say there is a dominant influence there even under the monarchy. It was the white influence that dominated them. Everybody will recollect that in the time of Kalakaua it was American interests for Kalakaua against the English interests, which advocated the election of Queen Emma to the throne, and that this has been dominant. It led to the treaty and finally to the act of annexation.

So I take it the Senator from Illinois has presented here what the committee believe to be the very best thing to be done for these islands, and that the restrictions in the bill are not necessary that were put in the bill. But something had to be done under the peculiar circumstances surrounding that country, this small body of white men owning the land and the large number of natives—about 9,000—who have diverted themselves of all they had, and 2,001 foreigners owning a mixed race from the Madeira Islands, hardly equal to the natives in character. So it was necessary that this provision should be put in.

Mr. TILLMAN. I will only interject here the remark that I should like to have the Senator from Illinois give us some information as to how far it applies. The fifteenth amendment to the Constitution reads:

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

It looks to me like that is a very sweeping provision and covers all these people.

Mr. CULLOM. Does the Senator want to ask a question?

Mr. TILLMAN. Yes, sir. I should like to know whether this act applies to those Kanakas and others who are now being discriminated against?

Mr. CULLOM. There is no discrimination in this bill against any race of people. It simply provides a property qualification in addition to the intelligence qualification which there is in the bill.

Mr. PLATT of Connecticut. That applies to all races and all colors.

Mr. CULLOM. To all colors and all conditions. Section 10 provides that all obligations, contracts, rights of aliens at law and in equity, proceedings, and judgments existing prior to the taking effect of this act shall continue to be as effectual as if the act had not been passed, etc.

I assume that Congress can not invalidate contracts, but Congress can prohibit the personal enforcement of labor contracts, and certainly I am in favor of doing so; but I think the extension of our labor laws over the Territory will prohibit any criminal proceedings or penal proceedings for the enforcement of labor contracts that exist in that island to-day. The law of Hawaii permitting the securing of labor under contract has been enforced for thirty years, and that in labor for forty or fifty years and none from the shipping of whaling shallop going to Hawaiian ports, enabling masters to secure sailors for a definite period, to whom they paid an advance in view of a contract for service to be rendered. As we all know, sailors throughout the world are not similar restrictions to demand and to whom that is not according to the law to compel fulfillment of seamen's contracts, even to the extent of imprisonment or other punishment. When the labor laws are extended over the Territory, of course there will be no further right to make contracts to bring in laborers by sugar planters or anybodyelse.

Mr. PLATT of Connecticut. I should like to ask one question for information. We commit the subject of making laws to the legislature of the Territory of Hawaii. Of course all our laws prohibiting the importation of alien laborers under contract will be enforced there, but will they have the right to continue their present contracts?

Mr. CULLOM. Certainly not. If our labor laws are extended over that Territory, they will prohibit bringing in labor under contract.

Mr. PLATT of Connecticut. But will that prohibit the passing of their legislature after the laborers are there?

Mr. CULLOM. I should think so. If it does not, it ought to; I will say that. I think it does.

Mr. FORAKER. I understand section 6 of the bill contains the provision the Senator from Connecticut inquires about. The provisions extend and apply to Hawaii all the laws of the United States not locally applicable.

Mr. PLATT of Connecticut. Exactly; but there has been a great deal of talk here as to their laws regarding laborers after they get there, by which, if they refuse to labor, they may be punished.

Mr. CULLOM. What is the law of our country on that subject, now in force?

Mr. PLATT of Connecticut. We have no such law. We have no laws relating to it, I understand.

What I want to inquire about is this: is there anything which prohibits the Hawaiian legislature from making laws with reference to contracts which may be entered into in Hawaii between the laborer and his employer containing provisions which we would not think were in accordance with the spirit of our institutions?

Mr. CULLOM. The treaties with the foreign islands in force now are respected by this proposed act in so far as it may be inconsistent with the laws or Constitution of the United States. I suppose that will answer the Senator.

Mr. SPOONER. No; it is totally inapplicable.

Mr. FORAKER. I think there is still another provision.

Mr. PLATT of Connecticut. It ought to, if it does not.

Mr. CULLOM. If it does not, it certainly ought to do so; and I shall be favorable to any amendment that will make it absolutely certain, if it is doubtful, that no such contracts shall be made as now provided for.

Mr. TELLER. The Senator says he thinks the bill will do that. I have been over the bill with all the care I could bestow upon it. That is one of the things I want to inquire about. If he will indicate that provision, it will relieve me.

Mr. CULLOM. I had the assurance that when we extended
Mr. PLATT of Connecticut. Well, if they are to be preserved, I certainly want to know that the penal laws which they have passed punishing these contract laborers for not fulfilling their contracts shall in some way be abrogated and annulled. I desire to say that I have an amendment now attached to the bill, which I propose to insist upon being adopted, as to the penal portion of the law or the contract. Whether we could annul a civil contract by an act of Congress is more than I know. I have no doubt we could. Whether we ought to do it or not, whether it is policy to do it, or right and justice demand it, I do not know; but I suppose we can interfere with the obligations of contracts if we choose to do so.

Mr. FORAKER. I suggest section 10, which provides that any contract of 10 years or more and subsequent to the vested rights, it seems to me, by excluding that class of contracts—certainly all such contracts belonging to that class that may have been entered into since the date when Hawaii was annexed—because if any such contracts were to be made now, they would have to be made with knowledge to everybody concerned that they were in violation of the laws of the United States, which were shortly to be extended. They are certainly in violation of the spirit of our institutions, and such contracts ought to be abrogated if it is possible.

Mr. PLATT of Connecticut. I did not understand the Senator. I think he is quite right.

Mr. FORAKER. That is the point I make.

Mr. CULLEN. I have an amendment right here that I intended to offer. I will read it. It is to add to section 6, I believe, the following:

Provided, That none of said laws nor the decisions of any of the courts of the Republic of Hawaii shall be in force or effect so as to allow imprisonment for debt or the nonfulfillment of a labor contract.

Mr. FORAKER. Is there anything in this act to the contrary notwithstanding, in view of section 10, that ought to be added?

Mr. CULLEN. The amendment is there, I think, as far as I have read.

Mr. PLATT of Connecticut. I think that is right.

Mr. CULLEN. Now, if Senators are satisfied—

Mr. NELSON. I suggest that the amendment ought to be inserted in section 10, that all obligations, contracts, etc., are ratified. There ought to be an amendment in that section that the contract for labor entered in languages the Sen-ator apprehends. I think that is the section to which we should turn our attention when we take that up.

Mr. CULLEN. I should like to ask the Senator from Connecticut certain questions to see what answer he, as a lawyer, will give. There are contract-labor laws there now existing, made perhaps a year ago, to run for three years. Now, what I should like the Senator to answer is, whether such a contract as that exists and has not yet terminated, when this law takes effect, it abolishes or prohibits all such labor contracts. It would prevent the prosecution or punishment of a contract laborer who violated it, but whether it annuls the contract civilly, absolutely, has been a question in my mind. I should like to have the Senator make a statement as to what he thinks about that.

Mr. PLATT of Connecticut. If there is anything in its acts inconsistent with the laws of the United States, then their laws are so far repealed and modified.

Mr. CULLEN. Yes.

Mr. PLATT of Connecticut. But we have laws on that subject.

Mr. CULLEN. Why have we not? Do we not prosecute people for—

Mr. FORAKER. We have laws prohibiting the importation of contract laborers.

Mr. PLATT of Connecticut. Exactly, and their laws of that sort are undoubtedly repealed.

Mr. FORAKER. But I ask the Senator, would it repeal such a law in view of the provisions of section 10, that every contract that shall be entered into after this bill shall pass shall remain in full force and effect as though this act had not been passed? That is a specific reference to that particular subject, and it seems to me it would control as against the general provision that the laws of the United States should take effect.

Mr. PLATT of Connecticut. If the contracts they have entered into, running three years, with alien laborers brought into under contract are to be preserved to the end of the term—

Mr. CULLEN. Now, can they be annulled by a statute?
Mr. FORAKER. I suppose he would have a right to do so.
Mr. SPOONER. It certainly would do away with the right to imprison him for violating a contract. It would do away with the contract labor.
Mr. FORAKER. It would do away with the penal part of it.
Mr. CULLOM. That is what I said.
I was referring to the labor-land business. The authorities there supposed that as the annexation act provided that until Congress shall provide for the government of such islands all the civil, judicial, and military powers of the United States should be vested in such officers or agents and should be exercised in such manner as the President of the United States should direct, and the Government of the United States took substantially the same view, but upon closer investigation the President came to the conclusion that there was nothing whatever in the nature of a government of the republic of Hawaii to deal with the question of the disposition of the public lands.
Senators will see upon reading the joint resolution of annexation that every vestige of power apparently (and that was the construction the Attorney-General and the President gave to it) was removed to the full extent, and the United States did not assume anything more than a power to prevent the sale of land for any purpose, so that they could not under the annexation law do anything looking to the disposition or use of them even. So the whole territory there is held up by the condition that exists, so far as dealing in the lands is concerned, either for homesteads or for leases or in any other way. Therefore it is important that something shall be done, in the first place, to pass a bill getting an organization there and establishing the Territory and putting somebody in authority, as well also as to validate the transactions that have been in good faith carried on there while the authorities in the island supposed that they had the power to go on and sell or lease land or make agreements about them as they chose.
Under this provision the President continued the establishment as it existed when the annexation act passed, and the result was that the authorities supposed that they could go right on as before in the disposition of lands as the situation might require.
I do not understand that sales of land were made, though not to any very large extent, agreements were made, leases were made, contracts for homesteads were made, and on the date I have indicated—the 11th of September—an Executive order was made by the President notifying the Hawaiian government that the United States would veto any further sale or disposition of the public lands in the islands; and that all contracts or agreements for such sale or other disposition of public lands should be discontinued, and that the purchaser should be notified that the same were null and void, and any consideration paid to the legal authorities on account of contracts of that kind.
This order put a sudden stop to all transactions touching in any way the public lands or realty of the islands, and greatly embarrassed the people thereof, so that the representatives of that government have strongly appealed to Congress to pass some act giving relief, and the desire of the President was placed in the bill under consideration which reads as follows:

That all sales, grants, leases, and other disposition of the public domain and agreements concerning the same, and all franchises granted by the Hawaiian government in conformity with the laws of Hawaii prior to the 11th day of September, 1898, are hereby regarded as null and void, and that no claim shall be made for any land or other property on account of any sale, grant, gift, lease, or other disposition, and the government is authorized to recover from the grantors and lessees and all other persons, legal or equitable, any consideration paid therefor.

That is made for the purpose of curing the situation and confirming the contracts that have been made. Senators will find the document in the Document Room, I suppose, which gives in detail every single transaction that has been made by that government or its officers in reference to the lands referred to.

This provision is believed to be right for the reason that every transaction, as the President has said, was supposed to be the will, unless all the testimony is contradicted, the law of the people. But there have been somewhere between 35,000 and 80,000 Japanese who were brought into that country or who came in; I do not know whether they were brought in or not.
Mr. PLATT of Connecticut. And we have no law against the coming of Japanese?
Mr. CULLOM. They could come here just as freely as they go there, if they choose.
One of the important provisions of the bill which makes some legislation necessary without long delay is the fact that under the annexation act the President, on the 11th of September last, that the authorities in the Republic of Hawaii had no power whatever to dispose of or make any agreements touching the disposition of the public lands in those islands.
Mr. President, before going on again with my remarks regularized attention has been called to the thirteenth amendment of the Constitution of the United States, and I call the attention of the Senator from Connecticut to it. It would seem to prohibit the sort of punishment that is provided over there for contract laborers in case they violate their contracts. It reads:

Now, whether that would do away with it or not, I do not know.
Mr. FORAKER. I do not understand that that would do away with contract labor if a man wants to contract to labor for a term of years.
Mr. CULLOM. But it would do away, I think, with the penal portion.
Islands for educational and other purposes, and while the Government has control of the subject whatever may be realized from the lands disposed of to the United States generally, but to the islands, for the purposes of education or other public use.

There is no land to be sold for the benefit of the United States Treasury generally, because all the proceeds of it are to go into the treasury there for educational and other public purposes, determined, by the same law, by that government when we set it up.

I have heard inquiry whether there are any lands really belonging to descendants of the crown. All the lands called crown lands, not now actually owned by individuals, obtained by deed or other conveyance, have been treated and that purpose will be, according to the record I have no doubt of the fact that whatever title to lands once belonging to the king existed, that title passed to other parties, and that there are no lands in the islands to-day subject to just claim by any descendant of the crown. Whoever may suppose he has a claim will have to go to court for his adjudication.

In my judgment, when in 1843 the monarchy ended, the lands reverted to the provincial government and then to the republic. A word about the leases in connection with the real estate in the island. As the leases expire it is the policy of the Government to dispose of the lands as homesteads for the people as rapidly as it can be done. A large proportion of the sugar plantations belong to the corporation or individual in fee. The general impression seems to be that the great sugar plantations were all government lands, but that is not correct. Some of them have been owned by some individuals or corporations having an actual title to them.

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

Mr. CULLOM. Certainly.

Mr. WARREN. I wish to ask the Senator what it is to be the final disposition of the public lands and where the proceeds are to be applied. Are they, like the lands of the public-land States and Territories, the property of the United States, and are the proceeds to go into the General Treasury or are they to be the property of the Hawaiian island?

Mr. CULLOM. I have just been stating, if the Senator will allow me, that under the annexation act, the joint resolution, all the public lands of those islands go to the islands for educational and other public purposes. I think the general impression there is that the great body of the money would be for educational purposes and for the construction of highways over the island, so that the people can get from one section to another.

Mr. HALE. Is there a special segregated fund provided for that absorbs this money?

Mr. CULLOM. How does the Senator mean?

Mr. HALE. From the sales of public land for the purpose of education. Where will it actually go?

Mr. CULLOM. It will go into the Hawaiian treasury, I suppose.

Mr. SPOONER. As a school fund?

Mr. CULLOM. As a school fund.

Mr. HALE. As a separate fund?

Mr. CULLOM. As a fund separate and distinct from anything else.

Mr. HALE. The Senator is pretty certain about that?

Mr. CULLOM. The annexion act requires it.

Mr. HALE. It provides for that?

Mr. CULLOM. It provides that it shall go for educational and other public purposes; that to be determined, as I suppose, by the authorities of the islands themselves.

Mr. HALE. That would not be an educational fund? However, I have not examined that act, and I do not know.

Mr. CULLOM. I will read the clause which refers to it.

Mr. HALE. Let us see what that says.

Mr. CULLOM. It is as follows:

"The proceeds of the bonds of the United States relative to public lands shall not apply to such lands in the Hawaiian Islands; but the Congress of the United States shall enact special laws for their management and disposition; provided, the United States has also power, as respects such part thereof as may be used or occupied for the military, naval, or other public purposes of the United States, or may be assigned for the use of the local government;"

That is, portions of the land—shall be used solely for the benefit of the inhabitants of the Hawaiian Islands for educational and other public purposes.

I suppose under that provision the Congress of the United States might perhaps control the use of the fund, provided it kept within the islands. We do not know whether that is so or not. It is a matter of construction.

Mr. HALE. The provision as to the educational funds does not seem to be very carefully guarded. I do not see but what that fund might be spoliated for almost any purpose, and under emergencies it might be used for a great many other purposes. We have not examined as to that.

Mr. CULLOM. That is the joint resolution we passed for annexation.

Mr. HALE. My question led to this point: Whether this bill which the Senator has reported carries out what is evidently the intention and purpose of that act, and whether in form it guards and establishes an educational fund that shall not be spoliated for other purposes?

Mr. CULLOM. There may be some additional legislation necessary to what is in this bill or in the annexation act.

Mr. HALE. I should say so, for that purpose.

Mr. CULLOM. I am inclined to think there ought to be some additional legislation.

Mr. PLATT of Connecticut. The bill has this provision—

Mr. HALE. From what is the Senator reading?

Mr. PLATT of Connecticut. From the Hawaiian bill.

Mr. HALE. What page?

Mr. PLATT of Connecticut. Page 32, line 23:

All funds arising from the sale or lease or other disposal of such lands shall be appropriated by the laws of the government of the Territory of Hawaii for the purposes of education and other public purposes for the benefit of the people of the Territory of Hawaii as are consistent with the joint resolution of annexation, approved July 7, 1898.

The joint resolution says that Congress shall legislate with reference to such funds.

Mr. SPOONER. But the joint resolution does not dedicate the proceeds of the public lands to educational purposes.

Mr. HALE. It does not.

Mr. SPOONER. It says "for educational and other public purposes." It may all be devoted to educational purposes, or none of it.

Mr. PLATT of Connecticut. I think this provision needs some amendment.

Mr. HALE. I think so, too.

Mr. CULLOM. As a matter of fact, I think the authorities now in control of the islands regard education and the public roads and highways as the most important subjects for attention, and the probabilities are that, if left alone, they will divide that fund for those purposes.

Mr. HALE. That is quite likely; but I do not think we should leave this in the realm of probabilities. Here is to be a very considerable fund. It seems to be the purpose and the expectation that it shall be devoted to education. It consists of valuable tracts of land; and everybody knows if you leave the disposition of any fund to the authorities of the island and if they decide it shall be done for a special purpose, in emergencies it may be taken for anything, and the design will be thwarted.

Mr. SPOONER. Will the Senator from Illinois allow me to interrupt him?

Mr. CULLOM. Certainly.

Mr. SPOONER. It is perfectly plain from the provisions of the bill that that whole subject is remitted by Congress to the local legislature.

Mr. CULLOM. To their direction.

Mr. PLATT of Connecticut. But the resolution of annexation retains it in Congress.

Mr. SPOONER. Yes. The bill reads:

All funds arising from the sale or lease or other disposal of such lands shall be appropriated by the laws of the government of the Territory of Hawaii; and the revenues and principal of the bonds of the Territory of Hawaii as are consistent with the joint resolution of annexation, approved July 7, 1898.

The joint resolution of annexation did not dedicate these funds or the proceeds of the sales of public lands to educational purposes.

Mr. CULLOM. Not fully.

Mr. SPOONER. Not at all.

Mr. HALE. But "to educational and other public purposes." Mr. SPOONER. Under this bill we have the Senator from Maine is perfectly right, it seems to me, in saying that the legislature of Hawaii may appropriate the proceeds of the public lands to any public purpose.

Mr. CULLOM. I am not raising any question on that.

Mr. PLATT of Connecticut. But there is an unreported act of Hawaii that repeats by this bill:

Sec. 202. All proceeds of sales of public lands shall be set apart as a special fund for the payment of the bonded indebtedness of the government or for the purchase of other public lands.

Mr. CULLOM. That has been repealed.

Mr. PLATT of Connecticut. That has not been repealed.

Mr. CULLOM. It is repealed by the fifth and sixth sections of this bill, if in conflict with its provisions.

Mr. PLATT of Connecticut. It is not repealed specially, and may remain as a special fund for educational purposes, and not be subject to any previous determination.
Mr. CULLOM. And by that means amend the annexation act.
Mr. HALE. The annexation act is not so specific; and it is important that this matter should be provided for here.
Mr. CULLOM. It says, "for educational and other public purposes."
Mr. HALE. Even that is simply amending by way of limitation. I would add a provision which would make the intention of Congress certain.
Mr. WARREN, Mr. President—Mr. PRESIDENT. The Senator from Wyoming [Mr. WARREN] is entitled to the floor, the discussion having proceeded for some time by his courtesy.
Mr. WARREN. Mr. President, I have obtained some of the information I wanted to get. I should like to know something about the final disposition of these lands, and that there will be some amendments offered, because we seem to be badly out of line in the proposition contained in the bill, whichever way we turn it, with our own land policy. Take our Territories, and even our States. Local legislation as to public lands is not considered either safe or desirable, notwithstanding we have unrestricted suffrage.
If I understand the measure before us, the disposition of those lands will lie with the local legislature. I should like, before we get through with this discussion, to know just what the proposition is. Is the legislature of Hawaii to dispose of the lands, and that, if there are such, for such a different departure from our present land laws, and why it is that the public lands there are to be handled so differently from the manner in which they are handled here. In that connection I hope Senators will consider the subject of the Crown lands, and if we are going to sell them to our own United States Government for public lands to relieve the situation between the United States and the several States and Territories.
Mr. TILLMAN. With the consent of the Senator from Illinois [Mr. CULLOM], I call the attention of the Senator from Wyoming [Mr. WARREN] to the provisions in the joint resolution for the annexation of Hawaii which is as follows:
The existing laws of the United States relative to public lands shall not apply to such lands in the Hawaiian Islands, but the Congress of the United States shall enact special laws for their management and disposition.
Therefore, we are not going to turn to the Hawaiian legislature to handle these lands; the implied contract we made with those people when we annexed them. We are doing, however, what we think is right in not turning them over to the selfish fellows there, who are going to steal the balance of the lands.
Mr. MORGAN. Mr. President, I like to interrupt the Senator from Illinois, even for a moment, because he has been interrupted until his speech is now scattered over many pages of the Record.
Mr. CULLOM. That does not make any difference. We want to get at the facts.
Mr. MORGAN. The question suggested by the Senator from Missouri [Mr. GRAY] and also by the Senator from South Carolina [Mr. TILLMAN] seems to make it necessary for me to enter into an explanation of some things which I think escaped the attention of the Senator from Illinois [Mr. CULLOM]
When the commission got to Hawaii they found a land system there which was entirely different from the customs of the Hawaiian people, the chiefs, who are the owners of all the soil. Some time after Kamehameha I established his dynasty there—I think it was in the time of Kamehameha II or III—the government undertook to divide the lands into three parts; one part for the Crown lands; the second for the homesteads, plots that were made known to the Crown; and the third for titles, which were only the mere right of occupancy at the will of the feudal lord; another for the Crown lands—lands that belonged to the Crown as an emolument of the Crown and descended with the Crown upon the royal family, or whoever might be induced into the ruling family. The King, upon his accession to the Throne of Hawaii, surveyed the lands that went to the people, and included in those surveys the homesteads on which they resided.
A Hawaiian plantation, a very good one, ranges all the way from 8 acres up to 30. A 30-acre Hawaiian plantation is a very large one. The people cultivate taro, a little root which grows in the water and furnishes them with bread. So a man with an acre of taro plant can keep a family of five or six persons supplied with food through the year, hire a Chinaman to do the work for him, and pay him out of the profits of the crop.
The homesteads were made upon the Crown lands, and it was connected with those families a separate provision was made. That left, then, the residue of the land to the government—that is to say, to the King and to the nobles and the chieftains.
A later provision the King was prohibited from alienating the Crown lands, because speculators were going in there, getting the King drunk sometimes, and getting deeds from him for lands that ought not to be sold. So the people demanded of him, and he conceded very readily to that demand, that none of the Crown lands should ever be alienated. The nobles holding their land in fee simple alienated them to different persons. Out of those lands have come the larger amount of the sugar estates in Hawaii—the lands that belong to the chieftains. Some of the smaller holders, the homestead holders, have sold their lands also; but the larger body of the people of Hawaiian blood, about 20,000 living as they did originally, having a fee simple title, each one of them, to his own tract of land. The government was benevolent and just in the distribution of the land among the people, and they have always been entirely satisfied with it.
Now if we look at that situation and look at the fact that each one of these respective homesteads and all of those princely estates held by the chieftains had to be surveyed, mapped, and plotted, and when we come to the fact that all have been regularly surveyed, mapped, and plotted, we find that a very great number have not been sold, so that they are there in their midst in distributing the land and giving them for the first time homes upon their own property and in their own country.
The government of Hawaii, commencing with the King, not having the right to alienate them, leased the Crown lands to sugar planters. The chiefs, however, sold their lands to the sugar planters; there are two classes of owners of sugar lands in Hawaii—those who have leased from the government the Crown lands and those who have titles in fee simple derived from the chieftains.
Those Crown lands are assumed by the act of Congress annexation to belong to the government and to have passed from the Crown when royalty was banished out of the island, to have passed from that royal government into the hands of the republic.
Mr. DAVIS. And became public domain.
Mr. MORGAN. Yes; became public domain. Off of that public domain, Hawaii has been selling lands in small quantities to actual settlers. It has not sold any land in large bodies at all, unless it may be a few pieces of land very far up on the heights of Mauna Loa, where there is nothing to be raised except cattle—sold in large bodies for grazing purposes—but the vast majority of the lands that have been sold would fall into very small bodies, particularly the coffee lands, to actual settlers, and they had not exactly a homestead right there, but one very similar to it. That was a very just and wise law.
In consequence of this, the number of titles, and the number of the Crown lands, there has been a great deal of legislation in Hawaii upon which titles are now based. The Congress of the United States has, since its attention has been called to the subject by the Senator from South Carolina [Mr. TILLMAN], reserved to this Government the final right of the disposal of those lands and of the proceeds, with the proceeds from the homesteads should be given for the benefit of the people of Hawaii, but in what particular way is not designated in that statute.
There were some funds in the treasury when we got there, derived from the sale of the public lands, and the commission supported, under an arrangement with the King, that the local government there, having a general right of legislation and the powers of government, would proceed to sell those smaller parcels of this land and realize funds from those sales. The commission concluded, therefore, that the money that was received from such sales and the money that was in the treasury in Hawaii should be disposed of by the local government; but they provided in section 75 for the investigation of all of these land questions, hoping that Congress would provide for the investigation in this bill, and that it could be sooner accomplished and that we could have a thorough statement of the situation there, which, I think, is covered by section 75, which reads:
Sec. 75. That the sum of $5,000, or so much thereof as may be necessary, is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to be immediately paid to the public officials of the Territory of Hawaii relating to public lands, agriculture, and forestry, for the purposes of this section, and all matters relating to public lands in the Territory of Hawaii, and shall be appropriated to the use of the Executive, Judges, and other public officials of the Territory, and to report thereon to the President of the United States, which duties shall be performed with all convenient speed.
The first question that arises in the mind of everyone who hears this language is, Why do you propose to confer this power upon the President? Secretary of the Interior? The main reason is that the cultivation of trees in Hawaii is a necessary pursuit for the good of the people. That government now is cultivating large orchards of trees upon the heights of the different ranges of mountains and hills, where the climate is far from high, and distributing those trees there, the idea being that trees have been grown on the islands at places that were hitherto entirely barren.
I will give an illustration. There is a tree that is well known
in Texas, called the chaparral plant, or the chaparral bean. That
need in Hawaii was introduced from Peru. It is not precisely
like the Texas tree, but very like it, and is called the calgaroba.
It is called the tree of gold in Brazil, because of the gold
in the tree itself, and all of its contents are as sweet as sugar.
Trees are very abundantly, =these =oaks =every morning
during the entire year, there being no frost in that country,
and furnishes a large supply of most excellent forage for all kinds
of railroad animals.
Mr. CULLOM. I am not objecting to the Senator's question.
Mr. TILLMAN. The Senator seems to think that I am hyper-
critical.
Mr. CULLOM. I have not objected to any question of the
Senator up to this minute, and I hope to continue in the same
spirit.
Mr. TILLMAN. The Senator has always been courteous. I
simply wanted to have some light on this remarkable matter.
Mr. CULLOM. I hope the Senator will secure the document
to which I have referred and investigate it. I shall be glad to
give him any information I have that will throw further light
upon the subject.
Mr. CULLOM. I thank the Senator, and I will avail myself
of his kindness to ask him a great many more questions about
this bill before we get through with it.
Mr. CULLOM. I have no doubt of it.
There have been questions raised as to the court system of those
islands; that is what they are. We found in the republic
a system of courts which seemed to be satisfactory to the
substantially people of those islands and to everyone else, so far as
I know. They have there a supreme court, composed of three
members, who are appointed for life or during good behavior.
The judges in that country desire that the court system should not
be disturbed, nor should the tenure of office of the judges.
The committee, however, felt that a life tenure of office of a Territorial
judge was not in harmony with our ideas in this country, and we
determined to fix the term of the judges of the supreme court at
nine years.
Mr. PLATT of Connecticut. If the Senator will permit me, as
he submits to interruptions kindly, I should like to ask him a
question.
Mr. CULLOM. Certainly.
Mr. PLATT of Connecticut. While the Senator is on this point,
I should like to ask him how long a term the justices or
judges of the supreme court will have after the nine years' term
for which they are continued?
Mr. CULLOM. The purpose of the bill was to fix the term at
nine years.
Mr. PLATT of Connecticut. But it does not do it, I think.
Mr. CULLOM. If it does not, it ought to do it. The further
fact is, as I understand, that one of the judges of the supreme
court, the chief justice—who is an American, by the way, I believe
an American born—on account of ill health, has resigned, so
that there may be another judge, a vacancy.
Mr. PETTUS. Mr. President, on that very subject I desire to
call the attention of the Senate to the last clause in that section,
which seems to me to give the judges a life tenure; and that is in
conflict with the other part of the section, which gives them a
nine years' term, as the Senator will see if he will read the section.
Mr. CULLOM. There may be some little amendments necessary
to that provision in the bill, so as to make it precise entirely.
Mr. PETTUS. The bill says the judges are to hold office until
there is a vacancy. I suppose it was intended mean until their
successors should be appointed and qualified.
Mr. CULLOM. Certainly.
Mr. PETTUS. That is what I informed was the intention; but
if you will look at the bill, you will see it reads "until there
is a vacancy." Mr. CULLOM. It ought to be until their successors are
appointed and confirmed.
The committee believed, as I said, that it was in the interest of
good government and in harmony with the wishes of the people
of that Territory that we should not overturn their system of
government either in the courts or otherwise where it could be
avowed consistent with our ideas of republican government.
I want Senators to bear in mind that we are dealing now
with an old government, a well-established government of a people,
which has existed for many years, and not dealing with a few
scattered settlements over the oases of a land which has not
been settled, but with a government existing, which has been run
under a government which desires order and honesty and everything of that kind can make it so.
Mr. SPOONER. Will the Senator allow me to ask him a
question while he is dealing with the subject of the judiciary in
Hawaii?
Mr. CULLOM. Certainly.
Mr. SPOONER. Is any appeal provided by this bill from any
judgment of the supreme court?
Mr. CULLOM. Of the Territory?
Mr. SPOONER. Yes.
Mr. CULLOM. None whatever. There is a system of courts there.
Mr. SPOONER. That is peculiar, is it not?
Mr. CULLOM. It is peculiar to that country. It does not exist in our Territories, either in Arizona or anywhere else. There we have an appeal. But the theory of this bill is that they have a supreme court, a circuit court, and other inferior courts, and there are appeals from one to another of the territorial courts, and those judges, either of the circuit or supreme court, have nothing to do with decisions on other statutes than those local to the islands. They exist just as in a State.
Mr. SPOONER. The trouble is Hawaii is not a State.
Mr. CULLOM. No; it is not a State.
Mr. SPOONER. They have in the Territories, of course, the nisi prius judges in the courts, and then they have a supreme court, but there is in certain cases an appeal to the Supreme Court of the United States.
Mr. CULLOM. Yes.
Mr. SPOONER. In capital cases. For instance, a man is tried for a capital crime, and he believes that errors have intervened in the trial, or that he has been deprived of some rights under the Constitution, and he has a right to appeal. Why should not that right be given as to this Territory as well as to all the rest of the Territories?
Mr. CULLOM. Possibly it ought to be; but still there is a government which has existed with this system of courts for very many years. Perhaps it will be better to get out of the hands of the people in civil suits as well as in criminal proceedings.
Mr. SPOONER. The same thing may be said of some of our own Territories.
Mr. CULLOM. Possibly it may; but why is it necessary to put outside of the Supreme Court or a circuit court of the United States where there is a system which already provides for appeals from one court to another and which seems to be satisfactory? The commission thought that all that was necessary was to maintain the condition as it exists there, it being thoroughly established and satisfactory to the people?
Mr. SPOONER. Will it not make the observation, that the difficulty is we are dealing with this as a Territory and at the same time as an independent government.
Mr. CULLOM. That is true, in a sense. Yet is there any reason in the Constitution why we should not have a system of courts in Hawaii just as there now exists?
Mr. SPOONER. Is there any reason in the Constitution why we should have a right of appeal from the courts in our Territories?
Mr. CULLOM. I do not know whether it is needed or not, but there is a system, and the people are familiar with it. They have been living under it for years and years, and they understand it, and it seems to answer all their purposes. Now, why upset that and establish a new system when that is entirely satisfactory to the people?
Mr. SPOONER. My suggestion does not contemplate upsetting it, but simply giving in the case of Hawaii as in other Territories the right of appeal in certain cases to the Supreme Court of the United States.
Mr. CULLOM. If it is the desire of the Senator to add that, I have no objection; but I do not think we ought to incur any additional expense unless it is necessary to good government.
Mr. TILLMAN. Will the Senator permit me to interrupt him again, to remark right here that so long as Hawaii was an independent government of course it was not going to appeal to any other jurisdiction, but now that those islands have become a Territory of the United States it is obvious that their laws were so perfect and are so perfect now and their administration is so just and righteous that we would deny even our own citizens who go there the right to appeal to our courts of last resort here.
Mr. CULLOM. When our citizens go there and identify themselves with that country they do not want any, so far as I know, they are very happy as they are, with their present system of courts.
Mr. TILLMAN. That must certainly be the garden of the gods. If it is such a happy place, we ought to emigrate there.
Mr. CULLOM. When the Senator go there and see if they do not convert him to that system.
I am not going to take up the time of the Senate much longer. The fact is it is pretty difficult to speak here at all with any continuity of thought. I have been disposed to yield to everyone, because I want to bring out as a matter of fact whatever objection there are to the bill, so that we may know how to deal with it.
Mr. President, I believe an amendment is pending here to be offered, the purpose of which is to delay the extension of our customs laws over the Territory to some future time, and in meantime keep the present relation as to customs laws, treaties, and regulations to remain as they are. I am opposed to any such amendment to the bill. There has existed substantial free trade between the United States and the Hawaiian Islands for several years. The sugar which comes from the islands is sugar and has been for many years. Common sugar comes to the United States free under the reciprocity treaty.
Mr. CULLOM. It is declared to be reenacted.
Mr. VEST. Yes; for that purpose. I have never seen any such provision as that, and it seems to me it is liable to serious objection, because there may be very large appropriations during one year which are not necessary in the next year.
Mr. CULLOM. That provision, as the Senator will observe, can only be brought into requisition after the Appropriations Committee, as I remember, has actually reconvened or made proclamation reconvening the legislature, and only for the time, after there is exhausted the appropriation which was made by a previous legislature, until a new legislature or the same legislature can make an appropriation it has been exhausted.
Mr. VEST. There can be no question of exhaustion about it, because it goes on specifically to provide that the treasurer shall advance the money—that is, take it out of the treasury—on the basis of the preceding year's appropriation, and expend it.
Mr. CULLOM. That, on the contrary, is to say, is to having this extraordinary power, which ought to be exercised alone by the legislature, vested in the treasurer, with the advice of the governor.
Mr. CULLOM. That power is in their constitution now, and it was insisted upon by the commissioners from Hawaii and finally yielded on the part of the commissioners from this side. It has been guarded as well as we could do, so that it will only be used when the governor convenes the legislature and until they can come together and make an appropriation.
Mr. PLATT of Connecticut. But it is until the legislature shall have acted?
Mr. CULLOM. Of course.
Mr. PLATT of Connecticut. If they never act, the treasurer will go on and expend the money.
Mr. VEST. Yes; the government has to live in some way.
Mr. CULLOM. That is the ordinary practice of Congress. It is entirely different from this.
Mr. CULLOM. I know it is.

Mr. VEST. Suppose we were to permit the Treasurer of the United States, or even the Secretary of the Treasury, when Congress had adjourned, and for good reasons to itself had made no appropriation, and had adjourned and stood himself, and with the advice of the President go on and expend the tax money of the people on the basis of a year which was gone, and when certain circumstances prevailed and Congress had in its discretion made appropriations. Here is a case where the legislature fails or refuses to act, and the Treasurer go on and expend the money. He does not know whether that extra session is about to make appropriations or not. And, without waiting for that legislature to act at all, the treasurer comes to the governor and says, "The legislature adjourned without making an appropriation, and I want to know if you will have the case of exhaustion about it. He goes on and spends what is in the treasury. The governor says, "All right." The legislature meets and again refuses to appropriate. It may think that the condition of affairs does not justify an appropriation, and the treasurer in turn, to take the money and expend the money.

Mr. FORAKER. Now, conceding that all the Senator from Missouri suggests would occur in the contingency he supposes, would not that be better than a suspension of government? Would not the latter be the absolute consequence otherwise?

Mr. VEST. If the Senate will not act, it will have occurred frequently in Congress and in State legislatures, and there has been no suspension of government. If the government has credit and is a stable government, there is no trouble about exhausting the credit or obtaining supplies upon credit. That occurs every year.

Mr. FORAKER. I make this inquiry because when this matter was considered in committee the same ideas occurred to me that have been expressed by the Senator from Missouri; but I thought it was better to incorporate this provision than to have the consequences which would inevitably result if there were not some way to meet the necessary expenses of the government. It did not seem to me a very dangerous provision, because it relates only to the current expenses of government.

Mr. VEST. I do not think it would stop the government. The government can always get money enough to pay.

Mr. FORAKER. It does not cover appropriations that may be made for extraordinary purposes, but only the necessary current expenses of the government.

Mr. CULLOM. The provision reads:

That in case of failure of the legislature to pass appropriation bills providing for payments of the necessary current expenses of carrying on the government, the then existing laws, the governor shall, upon the adjournment of the legislature, call for an extra session for the consideration of appropriation bills, and until such session shall have adjourned, the treasurer may, with the advice of the governor, make such payments, for which purpose the amounts appropriated in the last appropriation bill shall be deemed to have been reappropriated.

The treasurer will have no right to go outside of the lines specified and spend the money for a purpose for which an appropriation has not heretofore been made, so that if the provision is allowable at all, which I have always doubted a little, it is pretty well secured by that, so that there is no probable danger in allowing it to be done.

Mr. VEST. Mr. President, one objection to it, if the Senator will permit me, is that the money is to be expended by the treasurer in this emergency upon the basis of a former appropriation and not in view of the necessity of the government at the time the emergency occurs.

But the serious objection to it is that you take the power of appropriation away from the legislative department, where it ought always to rest, and put it into the hands of one man who is advised, not directed even, by another. It is hardly necessary to say that this power of appropriation and taxation has convulsed the country. We will not go back to trench blood in 1868 over this very question of the power of the King in a monarchy to take the tax money of the people and spend it without the consent of Parliament. But I do not want to go into that.

It is quite a departure from the American system of appropriations. Instead of the legislature fixing the amount to be expended, and whether anything shall be expended or not, if they in their legislative discretion refuse to appropriate and adjourn, here is a treasurer who may be the tool of the governor, and the governor himself not a very reliable person—such might happen. They are both in the same hands and on the basis of a former year exhaust the treasury.

My friend the Senator from Alabama says it is the same power that we exercise. I do not see that we exercise any such power. Has the Secretary of the Treasury ever had it or has the President ever had it?

We have a provision that no money shall be taken out of the Treasury by an act of Congress—not a dollar—and it is one of the wisest provisions we could possibly have.

Mr. MORGAN. What I referred to, if the Senator will allow me, is the fact that we have a number of permanent appropriations.

Mr. VEST. There is no doubt about that.

Mr. MORGAN. And whether Congress meets or does not meet, the Secretary of the Treasury can pay the money out on those appropriations, although they are not renewed.

Mr. VEST. But that is where Congress has acted.

Mr. MORGAN. That is all this provides for. It is only where Congress has acted. Here there has been no such action.

Mr. MORGAN. Oh, yes; the legislature has acted and fixed the basis of appropriations.

Mr. VEST. But for a different year, and have made no appropriation for the next year.

Mr. MORGAN. It makes no difference what year it is for. It is a permanent appropriation.

Mr. VEST. I do not understand it.

Mr. SPOONER. Mr. President—

Mr. TILLMAN. Please pardon me once more. Does the provision giving the governor and the treasurer the power to expend money as though it had been reappropriated carry with it the power to relieve taxes? We know that the power to appropriate money is vested in the legislature, and if there is no money in the treasury, and if there is no more there, this provision can do no harm; but I wish to know whether this gives the autocratic government by one man the power to levy taxes as well as appropriating money?

Mr. CULLOM. There is no power to levy extra taxes. So the Senator is safe in the provision.

Mr. TILLMAN. The treasurer can go no further than the bottom of the strong box.

Mr. CULLOM. Mr. President, the condition of affairs now in Hawaii is most deplorable. Unfortunately for these people, they are not able to purchase the在我所知，这是唯一的条款。
Mr. CULOM. Certainly.
Mr. PLATT of Connecticut. But we ought at least to scrutinize it with a good deal of care. I know that is the intention of the committee, and therefore he will pardon me for referring to the matter to which I am about to refer.
Mr. CULOM. I hope the Senator will realize from what has happened to this matter that this is not a matter for criticism, but for critical investigation and discussion of the bill, so as to make it as nearly right as we can before it goes out of this Chamber.

Mr. PLATT of Connecticut. I do appreciate that. But section 88 proposes to establish a court there which I do not think we have any power under the Constitution of the United States to establish. We have been providing governments for Territories now for a hundred years, nearly. It is nearly a hundred years since we acquired Louisiana, and at an earlier period than that we provided a government for the Northwest Territory. But we have never yet established a court in a Territory. I have supposed that the reason why we did not was because we could not under the Constitution.

The Constitution says:

The judicial power of the United States shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the Supreme and inferior Courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

It has been the universal acceptance of judges and lawyers and legislators that that section of the Constitution referred to courts to be established in the States. Subsequently we have one Supreme Court and we have our circuit courts, more recently our circuit courts of appeal, and our district courts in the States. We have never established a constitutional court in a Territory. The courts which we have established in the Territories have been established under the provision of the Constitution which provides that—

Congress shall have power to make all needful rules and regulations respecting the territory or other property belonging to the United States.

Those courts have repeatedly been adjudicated to be not constitutional courts, but legislative courts. It has been the practice in constituting the legislative courts of the Territories to give them jurisdiction over cases arising under the laws of the United States and to the States. I think it is clear that the privilege of one to have a court has been conferred upon them, and a variety of jurisdictions, as relating to the laws of the United States. But I am very firm in my opinion that we can not do that which it is proposed to do in section 88. That proposes to establish a court in the Territory of Hawaii, in the district and circuit courts of the United States in the Territories, and consequently says nothing about the tenure of the judge, as by the Constitution a judge of such a court has to be appointed during good behavior and with life tenure.

But I read the section to show how completely it is such a court as is contemplated by the Constitution, and called there an inferior court, and how completely it resembles and is like the district and circuit courts of the United States. Now listen. There is no escape from it. If it be said that the giving a term of office during good behavior makes it out of the category of constitutional courts, I refer to other language here which makes it impossible to take it out of that category.

That a judicial district of the United States is established for the Territory of Hawaii—

The judicial districts of the United States are the judicial districts referred to or authorized by article 3. They are judicial districts within the States, not within the Territories.

That a judicial district of the United States is established for the Territory of Hawaii, to be called the district of Hawaii, which shall be included in the judicial district of the United States.

It never has been supposed before that you could extend a judicial circuit under the Constitution beyond the limits of the States.

The President of the United States, by and with the advice and consent of the Senate, shall appoint a district judge, a district attorney, and a marshal of the district, the compensation of each, shall be in the discretion of the President of the United States. The district shall have, in addition to the ordinary jurisdiction of district courts of the United States, jurisdiction of all cases cognizable in a circuit court, and shall proceed therein in the same manner as a circuit court.

So it gives the power both of the district and circuit courts of the United States as organized in the States.

The laws of the United States relating to appeals, writs of error, removal of causes, and other matters and proceedings between the courts of the United States and the courts of the Territory of Hawaii. Regular terms of said court shall be held, etc. Mr. President, I do not wish to go into a further argument of this matter at the present time. I desire to point it out simply for the purpose of the consideration of the committee.

Mr. FORAKER. Mr. President, I have listened with very great interest and appreciation to what the Senator from Connecticut has said as to section 88. It is true, as the Senator has stated, that we have never yet in legislating for a Territory seen fit to create a constitutional court in a Territory.

Mr.Spooner (in his seat). We can not do it.

Mr. FORAKER. I do not understand that there is any prohibition in the Constitution against doing it. The practice has been that we have not. If the Senate will allow me to conclude the sentence I was about to utter, then he can interrupt me if he so desires.

Mr. SPONNER. I did not interrupt the Senator by rising, did I?

Mr. FORAKER. No; but the Senator did by a very proper interjection. It was a true one, as stated by him, that we have no power under the Constitution to do it. But where does the Senate get authority to say that we have no power in legislating for a Territory to create a United States district court proper there if we see fit to do so?

Mr. SPONNER. Does the Senator mean by that question the phrase as used in the Constitution, in which shall be vested the judicial power of the United States?

Mr. FORAKER. I do.

Mr. SPONNER. I get it from several decisions of the Supreme Court of the United States.

Mr. FORAKER. I have read the decisions of the Supreme Court of the United States, and I do not get any such conclusion therefrom. On the contrary, the decisions of the Supreme Court of the United States are simply to this effect, as stated by the Senator from Connecticut, that we have never yet seen fit to create a constitutional court, but only legislative courts, for the Territories. The case of the American Insurance Company v. Canter (1 Peters, 211) is a case advised, that it would not be competent for Congress to do so if Congress should see fit.

Mr. SPONNER. Will the Senator allow me?

Mr. FORAKER. Certainly.

Mr. SPONNER. I will not for just a moment from the decision of the Supreme Court of the United States in the American Insurance Company v. Canter (15 Peters, 211).

Mr. FORAKER. Yes, sir; I have it before me.

Mr. SPONNER. The Supreme Court said:

These are not constitutional courts.

Mr. FORAKER. Certainly not.

Mr. SPONNER (reading)—

These are not constitutional courts in which the judicial power conferred by the Constitution on the general Government can be vested. They are other courts, as before mentioned, by the Constitution, in the United States to be established, or in the several States to be established, or in the Territories of the United States; or in virtue of that clause which enables Congress to make all needful rules and regulations respecting the Territories, the jurisdiction of the courts of the United States is extended to the Territories by implication, and not a part of the judicial power defined in this article of the Constitution.

Mr. FORAKER. Mr. President, that is true; but what the Senator asks is whether Congress may create courts there which are in fact constitutional courts, courts with a limited tenure of office for the judge, and the courts was also a jurisdiction that did not belong to the interpretation of the Constitution of the United States and the laws of the United States, and the local legislation as well. The Supreme Court said these are not constitutional courts, because they are in fact, are they are incapable of receiving the jurisdiction that belongs to a constitutional court of the United States. Then they comment on the fact that they were not intended to be constitutional courts, because they were given a limited tenure instead of a tenure during good behavior, and that was conclusive in that case. The courts as established in Florida which were under consideration in the Canter case have been continued with respect to our Territories, as the Senator from Connecticut said. Their tenure has always been restricted. It has never been a life tenure.

The Supreme Court has simply said from that fact it is to be inferred that they are limited courts. I invite the Senator's attention to the case which is the leading case on the subject, McAllister v. United States, reported in 14 U. S., at page 244 and et seq. All the decisions of the Supreme Court of the United States arise only in this case and the decisions are there reviewed, and the point I make with respect to their recognition throughout in all that the courts say.

I find that the courts in Utah and the courts in various Territories were not constitutional courts, because Congress had not intended to make them other than limited courts.

Mr. President, I do not wish to go into a further argument of this matter at the present time. I desire to point it out simply for the purpose of the consideration of the committee.
Mr. TELLER. Then the quotes from Marshall, who declared they were not entitled to think, very emphatically.

Mr. FORAKER. In the Canter case the court decided and gave the reason why they were not constitutional courts, assigning as the reason that they were given a different jurisdiction from that which belonged to United States courts and because the tenure was limited to a term of years.

If the Senator from Ohio will allow me, I agree the court gave the reason, but it did not by any means give the reason the Senator is giving.

Mr. TELLER. I so understand it.

Mr. FORAKER. The court said they were not appointed under the Constitution to legislate, to appoint courts, but they were appointed under another power.

Mr. FORAKER. What the court said was that these were courts created by Congress in the exercise of the power conferred upon Congress to legislate for the Territories, and that Congress in the exercise of that power is not so far bound as to make it different jurisdiction from that which belonged to United States courts, and with a tenure limited to a number of years instead of a life tenure, and that was a conclusive fact to show that Congress did not design to make them constitutional courts.

Mr. STEWART. Mr. President, does the Senator from Ohio yield to the Senator from Nevada?

Mr. FORAKER. Certainly.

Mr. STEWART. I thought the Senator was through. I just wanted to say a word upon this subject. It seems to me to be too ridiculous.

The constitutional courts provide a limited jurisdiction; the state courts exercise large jurisdiction. It is a peculiar jurisdiction that is conferred upon the constitutional courts. The constitutional court is a peculiar court. It is a special court. Congress does not derive the power to legislate for the Territories with the United States courts.

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Mr. FORAKER. Certainly.
going to violate it. It is idle to talk about what Congress might do. Any power might do many wrongs; but in view of the constitutional precedents we have, in view of the custom that has grown up in our system, Congress is not going to change its policy and become a monster and do wrong. It can not do wrong with regard to them unless we violate the unwritten law, the unwritten constitution that has governed this country from its foundation. There is no danger of Congress violating it. It makes a departure from that which we shall hear from the people.

Mr. FORAKER. I am much obliged to the Senator for the question, but he has so prolonged it I do not know just how to conclude it.

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

Mr. FORAKER. Certainly. I want to complete my reading, however.

Mr. SPOONER. I only want to get at the right of this thing.

Mr. FORAKER. Certainly.

Mr. SPOONER. There are some reasons why, if we can create a constitutional court in Hawaii, I think it might be wise to do it. I want to ask the Senator this question, if he will permit me. I suppose he will admit that in creating a constitutional court we have nothing whatever to do with the tenure of the judge.

Mr. FORAKER. No, sir.

Mr. SPOONER. It is fixed by the Constitution?

Mr. FORAKER. It is fixed by the Constitution.

Mr. SPOONER. And it can not be other than the constitutional tenure for life for the court or court?

Mr. FORAKER. Certainly not.

Mr. SPOONER. Now, does the Senator think that court a constitutional court as to the tenure of the judge of which we are not restricted by the constitutional provision at all, but are left entirely to the caprice of Congress.

Mr. FORAKER. Certainly.

Mr. SPOONER. Now, does the Senator regard that court a constitutional court as to the tenure of the judge of which Congress is entirely free?

Mr. FORAKER. Yes.

Mr. SPOONER. To fix it at two years, or ten years, or during good behavior?

Mr. FORAKER. I beg the Senator's pardon; I did not catch the point of his question, if he asked me one. Do I think what?

Mr. SPOONER. Does the Senator regard that court a constitutional court as to the tenure of the judge of which Congress is entirely free?

Mr. FORAKER. I think if Congress fixes it at anything less than a life tenure that is evidence that Congress did not intend to create a constitutional court. That is the very point I have been making. But if Congress wants to create a court and give the judge a life tenure it is within the power of Congress to do it.

Mr. SPOONER. No; but my point is this: Congress cannot create a constitutional court without a life tenure.

Mr. FORAKER. Certainly not. That is what I have been contending.

Mr. SPOONER. Now, is any court as to which Congress may create a shorter than a life tenure a constitutional court?

Mr. FORAKER. Certainly not.

Mr. SPOONER. Is not this a court in regard to which we may make the tenure four years or ten years, if we choose?

Mr. FORAKER. Certainly it is; undoubtedly, Mr. President, after a very careful consideration of this question, and that is the reason why I am particular about it here, we propose in the bill providing for a civil government for Puerto Rico that there shall be a United States district court; we call it by that name, but the tenure is only for four years. We limited the tenure for the sole reason that we do not intend to constitute a constitutional court, but only a territorial court within the meaning of all of these decisions.

Now, Mr. President, there is no ground for controversy here, because in the case to which I have already alluded, at page 188, the Supreme Court expressly say as follows: The whole subject of the organization of Territorial courts, the tenure by which they hold their offices, the control which Congress exercises over them, the tenure of their offices, does not extend to the tenure of the judges of the courts of the United States. There is not, in my opinion, any question but that the Congress can constitute a court in a Territory and call it what it sees fit, and give the life tenure to that judge and invest him with such jurisdiction as Congress may see fit to give him.

Mr. President, there is a controlling reason in my mind why this court should be different from the ordinary Territorial court and should have the jurisdiction that belongs under the Constitution and the laws of the United States to district and circuit courts. That Territory is peculiarly situated from any other Territory that we have. It is away off yonder in the sea and must have an admiralty jurisdiction in its most pronounced sense.

I have only another word to add, and that is, conceding that the power is given, that Congress could create such a court there as it may see fit, the question of policy remains. The Supreme Court has had it to consider and even then Congress has had occasion to say it. I have had some misgivings about the question of policy, and I yielded to my associates in the committee as to this bill, but when the committee considered this question in regard to Puerto Rico a few days ago, they took a different view of the State of policy. There is no question about the matter of power to do it.

We thought it would be better to give to that judge in Puerto Rico but a four years' tenure and make it clearly a Territorial and not a constitutional court; but if we had seen fit to give it the jurisdiction that belongs to United States courts, and then to make the tenure whatever Congress saw fit, the reason why we should not have made a United States court and judge within the meaning of the Constitution.

Mr. ROSS. Will the Senator allow me a question?

Mr. FORAKER. Certainly.

Mr. ROSS. I understand the Senator to concede that if the tenure of a judge has been for four years, six years, twenty years, or forty years, it would not be a constitutional court, but a legislative court.

Mr. FORAKER. I do not concede any such thing. That is a truism under the Constitution, and there can be no argument about that. The Constitution says what it says.

Mr. ROSS. That is true; and it is true, is it not, because the legislature so fixes it?

Mr. FORAKER. No; it is true because the Constitution so fixes it.

Mr. ROSS. The Constitution so fixes it, and it becomes a legislative court. Now, if Congress in an act relative to a Territory fixes the term of office of the judge at life, it is no less fixed by Congress than it would be if it fixed it for two years or four years or ten years, and is it not just as much a legislative court within the terms of those decisions as if it had been fixed at two years or four years or ten years?

Mr. FORAKER. Not at all; not necessarily so, because the jurisdiction conferred might be such as to show it was designed to make only a Territorial court. There are two things to be taken into consideration, one of tenure and the other of jurisdiction. If Congress creates a court which it creates jurisdiction which does not belong to a constitutional court, for the United States, that is one evidence that it was intended within the meaning of the decisions to be only a legislative court; and if Congress saw fit, giving it the same jurisdiction as a United States court, it would have, to limit the tenure to less than life, that would be another conclusive evidence that it was intended to be only a legislative court; and so the courts have held in every one of these cases, as I understand.

Mr. PETTUS. Could not Congress repeal the act the next day after the judge was appointed and the judge still be in office?

Mr. FORAKER. Doubtlessly.

Mr. ROSS. What was the question?

Mr. FORAKER. Could not Congress repeal the act after it was enacted and the judge had been appointed? Doubtlessly it could repeal the law.

Mr. SPOONER. Could Congress do that as to the judge of a constitutional court?

Mr. FORAKER. I am not speaking of what the effect would be on such a constitutional officer; but unquestionably Congress could repeal the law. Whether he has a vested right in his office or not, I do not know. He undoubtedly would have a vested right of some kind; I do not know to what extent.

Mr. PETTUS. The question I designed to ask was, could not the Congress abolish the office in a week after the judge was given a life tenure by Congress?

Mr. FORAKER. I think so. I do not think the creation of an office and the appointment of an official to hold it binds Congress for the life of the official who has been appointed and who has become the incumbent.
Mr. ROSS. I wish to ask the Senator another question, if he will yield for that purpose.

Mr. FORAKER. Yes, certainly; with pleasure.

Mr. ROSS. Does the court in a Territory get its jurisdiction from the act of Congress or does it get it from the Constitution?

Mr. FORAKER. It gets it from the act of Congress.

Mr. ROSS. Then, is it not a legislative court instead of a constitutional court?

Mr. FORAKER. It is a legislative court.

Mr. ROSS. It seems to me the Senator is confusing the matter, because the tenure is for life and the judge is given the same jurisdiction by the act of Congress that he gets under the Constitution. It is not a constitutional court, but it is merely a legislative court, and gets its whole jurisdiction and term of office from the act of Congress.

Mr. FORAKER. The Senator did not follow me closely in the remarks I just made, or he would not ask that question. I stated at the outset that the decisions which have been cited, in which it has been held that the court under consideration was a Territorial court, were each and all cases where the Congress had evidenced by the character of the legislation creating the court that it did not intend a constitutional court, but only a legislative court, and I told the Senator if that intention is derived from the fact, first in the Canter case, and in all the other cases, I believe, without exception, that there was a limited instead of a life tenure. In other cases they pointed out the jurisdiction was different, and they have said, not being a constitutional court, the court was incapable of taking the jurisdiction conferred by the Constitution.

I do not know any reason why, therefore, where we extend the Constitution to a Territory, we may not there create a district court. We have here extended the Constitution of the United States, as this bill, to Hawaii. I do not know of any reason why there should not be a district court established there, if we see fit to adopt the policy of establishing such a court, which of course remains after the question of the power has been settled.

There is much to be said in favor of making the court in Hawaii a United States district court, and conferring upon it all the jurisdiction which belongs to district and circuit courts of the United States, because, as I was about to remark a moment ago, that is differently situated from any other Territory that we have yet legislated for. It has need for an admiralty jurisdiction, which does not belong to any interior Territory at any rate, and certainly not in the geographical sense in which it belongs to that of Hawaii, and there is an abundance of work there for a court with that kind of jurisdiction to exercise.

What I rose to suggest was that a court that is given a clean-cut constitutional jurisdiction in a Territory belonging to the United States, to whom we have extended the Constitution, and the judges of which have been given a life tenure, as is the case here, ought not to be confounded with Territorial courts which have been under consideration in the decisions of the Supreme Court of the United States, which have been relied upon.

I now yield with pleasure to the Senator from Vermont.

Mr. ROSS. I was simply going to ask the Senator if he was not confounding the difference between the source from which the power comes in so characterizing the court, rather than the court itself, or the name of the court. The Senator called it a constitutional court.

Mr. FORAKER. Will the Senator define to me what jurisdiction a United States constitutional court gets from the Constitution proper?

Mr. ROSS. It gets just what is named in the Constitution, and it can have any other given to it.

Mr. FORAKER. I will ask if it is not necessary to legislate with respect to the jurisdiction of constitutional courts just as much as it is with respect to Territorial courts; and if the term "constitutional court" means anything more than it is a court created by Congress within the contemplation of the Constitution, which authorizes Congress to establish courts?

Mr. ROSS. I understand a constitutional court, within the meaning of the decision, extends to the States only. When you go into the Territories and legislate, then with unlimited power you can give the same term of office to the judges of a court in the Territories and the same jurisdiction, or more or less of it, as Congress may please.

Mr. FORAKER. I do not agree with the Senator that a United States court can not be created except within the States. I do not know of any reason why a United States court may not be created for the States, to sit and have jurisdiction outside of the States, in the Territories of the United States, to which we extend the Constitution. I do not agree with the Senator that Congress can legislate for the Territories outside of the States without any limitation whatever.

I should like to ask the Senator what he would do were a measure proposed here prohibiting the freedom of speech or the freedom of the press in Hawaii? Would he, because it is outside of the States, vote for it in view of the fact that the first clause of the Bill of Rights says no law shall be passed by Congress doing any such thing?

I call the Senator's attention to that only to show that there are some positive prohibitions in the Constitution which rest upon us as Senators sitting under the Dome of the Capitol, which we can not disregard, which accompany all legislation that we enact, no matter for whom it may be or whether they are in the Union as an integral part of it or not.

I agree with the general proposition that we are unlimited in our power when legislating for Territories to which we have not extended the Constitution particularly, except only by the positive prohibitions which are laid by the Constitution upon every man who sits here as a legislator, no matter what his view upon the general subject may be. Therefore I say when we come to create courts, we simply say, by virtue of the authority conferred upon us by the Constitution, there shall be a court here, and it shall have the jurisdiction we give it, or the jurisdiction of a United States district court proper, and we give it a tenure, which belongs to the judge. I do not know why it is not competent for us to do it. If it is competent for you to say that it is not a constitutional, but only a Territorial court, because it is outside of the States which constitute the Union, you can say that just as well with it having one jurisdiction and one tenure, as you can if it be given another tenure and another jurisdiction.

Mr. GALLINGER. If the Senator will permit me, it is evident that this interesting discussion can not be completed to-night, and, with the Senator's consent, I will move that the Senate proceed to the consideration of executive business.

Mr. FORAKER. I yield.}
Mr. Jones of Washington, from the Committee on the Merchant Marine and Fisheries, to which was referred the bill of the House (H. R. 5065) to extend the laws relating to commerce, navigation, and merchant seamen over the Hawaiian Islands ceded to the United States, reported the same with amendment, accompanied by a report (No. 375); which said bill and report were referred to the Committee of the Whole House on the state of the Union.

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The President pro tempore. The Chair lays before the Senate the unfinished business, which is the bill (S. 222) to provide a government for the 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. I desire to make two or three little formal amendments to the bill. On page 11, line 22, I move to strike out the words “ayes and noes” and insert “yeas and nays;” and in line 23, same page, I move to strike out “ayes and noes” and insert “yeas and nays.” That is the form that is used in this country more particularly.

The amendment was agreed to.

Mr. Cullom. On page 18, line 23, I move to strike out “ayes and noes” and to insert “yeas and nays;” and wherever those words occur I desire that they should be stricken out and the words “yeas and nays” inserted.

The amendment was agreed to.

Mr. Cullom. I move the same amendment on page 19, lines 22 and 23.

The amendment was agreed to.

Mr. Cullom. Mr. President, I have nothing further to say at this moment.

The President. The Committee on the Whole, and open to amendment.

Mr. Platt of Connecticut. There was an amendment passed over.

Mr. Cullom. Yes.

Mr. Nelson. I desire to offer an amendment in section 10, line 22, page 7, after the word “contracts,” by inserting “except contracts for labor entered into since Hawaii was annexed to the United States.” I desire to except all labor contracts which have been entered into since the Territory was annexed.

The President. The amendment submitted by the Senator from Minnesota will be stated.

The Secretary. In section 10, on page 7, line 22, after the word “contracts,” it is proposed to insert “except contracts for labor entered into since Hawaii was annexed to the United States.”

Mr. Nelson. I will briefly state the object of the amendment.

Mr. Cullom. I have no objection to the amendment.

Mr. Nelson. Very well.
The PRESIDING OFFICER. The question is on the amendment submitted by the Senator from Minnesota [Mr. NELSON].

Mr. FORAKER. I suggest to the Senator from Minnesota that, instead of the expression, "since Hawaii was annexed to the United States," he adopt the date which has been adopted in this bill, August 12, 1898.

Mr. NELSON. Very well; that is satisfactory.

The PRESIDING OFFICER. The amendment will be stated as modified.

The SECRETARY. On page 7, section 10, line 22, after the word "contracts," it is proposed to insert "except contracts for labor entered into since August 12, 1898."

The amendment was agreed to.

Mr. VEST. On page 23, in section 55, line 8, I move to insert:

Nor shall any such bonds or indebtedness be incurred until approved by the President of the United States.

This bill provides that 3 per cent upon municipal assets may be issued in the way of bonds—not exceeding 3 per cent. Three per cent is a very large indebtedness, and our experience in Missouri has been so fearful about municipal indebtedness that I am always anxious to curtail the power as much as possible. The people of Missouri to-day pay $20,000,000 on fraudulent bonds issued by county courts under old charters, which nobody had paid any attention to, for railroads that never were constructed and never will be constructed, and there is no more possibility of their being constructed than there is of me carrying off this Capitol. Under the decision of the Supreme Court of the United States in the Iowa cases, any bonds issued by lawful authority and negotiated before maturity to an innocent holder for value assume the status of commercial paper and must be paid.

Mr. CULLOM. Do I understand that the bonds are not to be issued beyond a certain per cent?

Mr. VEST. The percentage is already fixed in the bill at 3 per cent.

Mr. CULLOM. Does the Senator mean by that no indebtedness shall be incurred without the approval of the President or beyond such an amount?

Mr. VEST. I say "any such indebtedness." That retains the limitation of 3 per cent. I think that is too much. I think it ought to be 2 per cent. Any such indebtedness or loan, I assume, would retain the limitation of 3 per cent.

Mr. CULLOM. I am inclined to accept that amendment, so far as I am individually concerned.

The PRESIDING OFFICER. The amendment submitted by the Senator from Missouri will be stated.

The SECRETARY. It is proposed to insert, on page 23, line 8, at the end of section 10, after the word "thereof," the words "nor shall any such bonds or indebtedness be incurred until approved by the President of the United States."

The amendment was agreed to.

Mr. NELSON. I offer an amendment to section 10, page 8, line 7, after the word "offenses," to insert "except for violation of labor contracts." The clause so amended will read:

All offenses which by statute then in force were punishable as offenses, except for violation of labor contracts, against the Republic of Hawaii shall be punishable as offenses against the Government of the Territory of Hawaii.

It is to prevent the enforcement by criminal punishment or to prevent criminal punishment for the mere violation of labor contracts.

Mr. MORGAN. I will say to the Senator that all the laws of Hawaii relating to punishment predicated upon labor contracts are repealed by this bill.

Mr. CULLOM. In so many words.

Mr. MORGAN. They are all repealed.

Mr. CULLOM. I have the penal laws of Hawaii in my hand, and that particular provision in the repealing section repeals all of the statutes pertaining to labor, servants, masters, etc.

Mr. HALE. I wish the Senator would state that to the Senate.

The PRESIDING OFFICER. Does the Senator from Illinois yield to the Senator from Maine?

Mr. CULLOM. I yield, of course.

Mr. HALE. I thought we were considering the amendment.

Mr. CULLOM. We are.

Mr. HALE. I wish the Senator would state for our benefit the theory upon which this bill proceeds as to the entire question of
contracts for labor. The situation is and has been peculiar in Hawaii and in marked contract to our conditions here. I have not been able to find—because I have not examined the volumes of the statutes referred to—just what is the theory of the committee with reference to this subject, and what the bill contains and carries.

Mr. CULLOM. Mr. President, to begin with, as I stated yesterday, there are about 40,000 laborers in those islands, about half of whom are supposed to be under contract, and who were brought there under contract.

Mr. HALE. Under existing contracts?

Mr. CULLOM. Under contracts now in existence, the penal laws of the United States are extended over these islands by the passage of this bill nothing more can occur in the way of the importation of contract labor. Then, in addition to that, we go forward and repeal all the penal laws which justify the punishment of violation of labor contracts. So that, as the committee think, and as I think, the whole question is put beyond the control of the islands in undertaking to make any further labor contracts.

Mr. HALE. If the Senator will allow me, what troubled me was the repeal of all legislation which punishes the violation of the labor-contract provisions. As I understand the Senator, the bill proceeds upon this proposition, that there shall be no future contracts for the importation of foreign labor.

Mr. CULLOM. There can not be after our laws are extended over the islands.

Mr. HALE. The operation of this bill is to extend our laws, which provide, as they do for Illinois or for Maine, that there shall be no importation of foreign labor by contract.

Mr. CULLOM. Yes, under the law and those laws which make that provision also provide punishments for their violation. The Senator does not mean that there is anything in this bill which prevents the operation of the penal force of our laws or permits any violation of the labor-contract laws that we have.

Mr. HALE. Certainly not. We have just adopted a provision which I offered here—as I stated yesterday, and I desired to do so specifically—requiring by this bill that all prosecutions for violation of labor contracts should be prohibited. In addition to that, we repeal all the local laws which in any way authorize such things.

Mr. CULLOM. All prosecutions not for the violation of labor laws, but labor contracts, so that they can not be enforced. Mr. CULLOM. They can not be enforced.

Mr. HALE. Now, what does the Senator believe is the condition of the contract-labor system there?

Mr. CULLOM. That raises a constitutional question, I might say, as to whether Congress or any other body can legislate rightfully, thereby invalidating a civil contract.

Mr. PLATT of Connecticut. No doubt they can.

Mr. HALE. I think they can; but does this bill attempt to do that?

Mr. PLATT of Connecticut. No, it does not.

Mr. HALE. Then this bill excludes that in so many words. Mr. PLATT of Connecticut. I so understand. This bill in terms makes it a crime to bring in a laborer under contract. Now, from the Senator's examination, what does he think is the actual operation of existing contracts for labor upon persons who have been brought in under those contracts, as to what numbers and what time, and how long they will continue? I do not know any other body that I have.

Mr. CULLOM. These contracts run usually, I think, three years. That is my impression; but after the passage of this bill, the repeal of the laws authorizing labor contracts to be made, and the prohibition of an attempt to punish anyone for violating such contracts, what the result will be I do not know; but my judgment is it will result in the abolition of the contract system there.

Mr. HALE. The Senator believes that. Then, certainly in not more than three years it will all pass away.

Mr. CULLOM. My judgment is that it will pass away in less than one year, because they can not enforce such contracts by punishment or any form of contract. Mr. CULLOM. The Senator thinks that it is practically abolished by this bill?

Mr. PLATT of Connecticut. Yes. Mr. PLATT of Connecticut. Will the Senator read the laws which are repealed?

Mr. CULLOM. If I should read all the laws which are repealed by this bill, I would be reading nearly all day.

Mr. PLATT of Connecticut. I mean the penal laws with regard to the punishment of contract labor.

Mr. CULLOM. I have the chapter here before me. Here is the chapter with the title "Masters and servants." I shall not undertake to read all of that.

Mr. PLATT of Connecticut. That is repealed.

Mr. CULLOM. A part of that is repealed, I see. Here is one of the provisions:

SEC. 186. All contracts for service between masters and servants, where only one of the parties is a native Hawaiian, shall be written or printed in both the Hawaiian and English languages. No such contracts shall have any legal force or effect until the same shall have been signed, witnessed, and acknowledged in writing, by the party to be served in the Hawaiian language, and also acknowledged before the presiding judge of the county of the district in which the servant is to be employed. This acknowledgment shall be in the Hawaiian language only where both parties thereto are native Hawaiians.

SEC. 187. The minister of the interior is hereby authorized to prepare, in both said languages, model contracts, to be provided for in the foregoing section, in blank as to place, time, and service, wages, name, place where engaged, etc.

SEC. 188. Every contract for service authorized by section 1382 shall, in order to its validity, be acknowledged by the master or his duly empowered agent, before the taking of acknowledgment of such contracts, as hereinafter provided, and the certificate of acknowledgment shall be substantially as follows:

And so it goes on here for pages.

Mr. CULLOM. They are eliminated by the amendment offered by the Senator from Illinois.

Mr. TILLMAN. If you will read it, you will see that they are not eliminated.

Mr. CULLOM. I did not hear it read distinctly.

Mr. TILLMAN. They apply to contracts made since the islands have been in our possession, and not all the time.

Mr. NELSON. If the Senator from Illinois [Mr. CULLOM] will allow me a moment, I will read, in line 8 of the amendment I offered can do no harm. It covers the exact case which he intends to reach. Here is the phraseology of the bill, commencing in line 5, on page 8:

All offenses except for the violation of labor contracts.

There can be no harm in that, and it "makes assurance doubly sure" on this point.

Mr. MONEY. Will the Senator from Illinois allow me to say a word to the Senator from Minnesota?

Mr. CULLOM. Certainly.

Mr. MONEY. If the statute which defines the crime and provides the penalty is repealed, then how can it be in force?

Mr. NELSON. That may be true, technically.

Mr. MONEY. It is absolutely so.

Mr. NELSON. I have not had time to examine it.

Mr. MONEY. All statutes are repealed by this bill. If a part of a statute fails, everything else goes with it.

Mr. NELSON. Is the Senator sure that the repeal will affect all of those laws?

Mr. MONEY. They are named by sections in the bill itself; and then I will compare that—I suppose he has the penal statutes of Hawaii before him, has he not?

Mr. NELSON. No; I have not.

Mr. MONEY. I thought perhaps the Senator had a copy of the penal statutes. He will find that those statutes are repealed by this bill.

Mr. PLATT of Connecticut. I think they are.

Mr. MONEY. If they are repealed, there can be no offense and no punishment; and therefore the amendment would be entirely unnecessary.

Mr. CULLOM. The committee thought and believed that the bill as drawn so framed that it would get rid entirely of the contract-labor system which has prevailed in Hawaii.

Mr. PLATT of Connecticut. Chapter 78, if the Senate will permit me, which relates to masters and servants, reads:

If any person lawfully bound to service shall willfully absent himself from any lawful service, whereof he hath consented to be bound, any district magistrate of the republic, upon complaint made, under oath by the master or by anyone on his behalf, may issue a warrant to apprehend such person and bring him before such magistrate, who in his discretion shall be held on habeas corpus, and the said magistrate shall order such offender to be restored to his master, and he shall be compelled to serve the remainder of the time for which he originally contracted.

That has all been repealed, and those were the objectionable features, as I understand.

Mr. CULLOM. On page 6 of the bill the Senator will find that
chapter 76, in relation to masters and servants, will be repealed by the passage of this bill.

Mr. TILLMAN. But, if the Senator from Illinois will permit me, while they repeal those statutes which are for the punishment of contract laborers who break their contracts, section 10 provides that they be abolished, except in cases of actual or pretended breach of contract, if suits at law, etc., shall be continued as effectually as if this act had not been passed.

Mr. PLATT of Connecticut. Those are contracts.

Mr. TILLMAN. Is not a contract for labor a contract?

Mr. SPANIER. It is a contract.

Mr. CULLOM. I proposed yesterday the following amendment:

Provided, That no contract for labor or personal service shall be enforced either by injunction or by legal process.

Mr. TILLMAN. That applies to all contracts. Make it a little more specific. Let it apply either before or after annexation.

Mr. CULLOM. It applies back to the beginning of time, so far as that is concerned.

Mr. HALE. It applies to all contracts that are subsisting at the time of the passage of this bill.

Mr. CULLOM. To all contracts.

Mr. HALE. Yes. Is that in the bill?

Mr. CULLOM. It is in an amendment which I propose, and which I referred to yesterday.

Mr. TILLMAN. You have not put it in the bill.

Mr. CULLOM. No; it is not in the bill, but I will offer it.

Mr. SPONNER. Is there none entered into prior to 1898 still in force?

Mr. CULLOM. I suppose there are. I do not know about that; but if any Senator can draw an amendment which will close out those contract-labor importations and the enforcement of such contracts afterwards, and show that his proposition is constitutional, I shall be glad to vote for it.

Mr. SPONNER. I have not any doubt about the constitutionality of the passage of the laws impairing the obligation of contracts is upon the States. It is not quite enough to eliminate punishment by the court after the fashion of the violation of some criminal act. The provisions themselves may be of a character which are offensive to our sense of what is just, but it is not enough that you led me to ask the Senator if we are expressly affirming here and continuing any alien-labor contracts in Hawaii; and if so, to what extent? I wanted to follow that question by another, which perhaps I have not any need to ask, as to the general character of these contracts.

Mr. HALE. The statute covers that.

Mr. SPONNER. No; it does not.

Mr. CULLOM. I have a document which shows that. I have it not on my tablet at present, but I can get it in a little while. It shows copies of numbers of contracts, the exact contracts in letter and terms, I have not that here, but I will furnish it to the Senator.

Mr. SPONNER. My recollection of these contracts, growing out of the debates on the annexation of Hawaii, is that they were brutal contracts that would not be tolerated at all in this country.

Mr. TILLMAN. Here are some provisions which are on a par with the black codes of some of the Southern States, and you gentlemen of the Republican party are in honor bound not to leave the people of Hawaii in the same condition in which the former slaveholders wanted to put their ex-slaves. If it is intended to repeal the provisions regarding these contracts and to annul them, why not say expressly that the contracts for labor heretofore existing, whatever their character, are annulled, so as to make assurance double sure that you do not intend to leave those people over there in slavery?

Mr. CULLOM. That is just what we are trying to do, if the Senator will take notice. In the amendment which I propose to offer, he can see exactly what the terms of the contracts are.

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Mr. CULLOM. That is just what we are trying to do, if the Senator will take notice. In the amendment which I propose to offer, he can see exactly what the terms of the contracts are.

Mr. CULLOM. At the end of section 10.

Mr. TILLMAN. I hope the Senator will offer the amendment.

Mr. CULLOM. I will move to add to section 10 the following:

Provided, That no contract for labor or personal service shall be enforced either by injunction or by legal process.

Mr. NELSON. You ought to insert "criminal process."

Mr. CULLOM. This refers to any legal process. If the Senator thinks he can help the amendment or strengthen it in any way, I shall be glad to have him do so.

Mr. HAWEY. Would that forbid a citizen to bring a civil suit against a person who has broken his contract for labor?

Mr. CULLOM. It is a question with me whether that does not go so far as to interfere with civil contracts which are legitimate. There ought to be some way of enforcing contracts other than by imprisonment.

Mr. HALE. Does the Senator mean contracts for labor made before the person contracted for arrived in that Territory?

Mr. CULLOM. I mean contracts growing out of the importation of those men to that country.

Mr. HALE. That can be easily defined, so as to leave all innocent contracts under the law. In other words, the Senator proposes to leave the contracts as civil contracts existing and to strike out all penal regulations and laws for enforcing them.

Mr. PLATT of Connecticut. No; Mr. President,

Mr. HALE. Is not that so?

Mr. PLATT of Connecticut. The effect of the Senator's amendment is, I think, to prevent the enforcement by law of all contracts in the islands relating to labor.

Mr. HALE. Any kind of enforcement, not only the penal provisions and punishments, but a civil suit or a civil process can not be maintained.

Mr. CULLOM. Yes.

Mr. HALE. Well, that in effect abolishes it in toto, does it not?

Mr. PLATT of Connecticut. I think it goes too far.

Mr. CULLOM. As I said a while ago, my judgment is that if we repeal the penal provisions affecting such contracts the result will be that the whole business will break down, because it can not be enforced.

Mr. HALE. What does the Senator leave standing?

Mr. CULLOM. The Senator leaves, then, all in the bill, in the hope that the insertion of a provision preventing criminal prosecutions for violating contracts is all that is necessary to be done by the Senate.

Mr. PLATT of Connecticut. Mr. President, if I can have the attention of the Senator from Maine, it is proposed, at the end of page 8, to insert:

Provided, That no contract for labor or personal service shall be enforced either by injunction or by legal process.

If that means simply that no action shall be brought to compel a laborer to perform his contract either by injunction or application for specific performance, I do not know that I have any objection to it; but if it goes so far as to prevent an employer bringing a suit against a person who may have entered into a contract for labor to recover damages, I do not think that ought to be done. Mr. HALE. Will not the Senator read that again?

Mr. PLATT of Connecticut. Provided, That no contract for labor or personal service shall be enforced either by injunction or by legal process.

Mr. HALE. It seems to me that, in connection with the repeal of the penal provision, is extirpation of the whole thing, is it not? Does it not go to the root?

Mr. PLATT of Connecticut. It does.

Mr. HALE. It seems to me it does.

Mr. PLATT of Connecticut. I do not know but that it goes too far.

Mr. HALE. It seems to me it is extirpation of the whole thing, and there is under that proviso no process that anybody on the other side can invoke in criminal form, or any injunction or by suit for breach of contract, for damages.

Mr. CULLOM. I appreciate that, but it seems difficult to adopt an amendment that goes far enough and does not go too far. I think myself, and I believe everybody will agree, that if a business man, for instance, in this country or in Honolulu, makes a contract with another citizen there to perform work, building a house or whatever he may do, and before it is performed the other man ought to have the right to bring a suit against him, and I do not know but that this would interfere with that. If it does, it would go too far. If not, it does just what I want to have done.

Mr. HALE. I suppose the committee intended that it should apply to labor contracts, affecting the importation of foreign outside labor, and nothing more than that.

Mr. CULLOM. I am satisfied to have that adopted, and if on further investigation it seems to go too far, we can modify it.

Mr. FAIRBANKS. Read it again.

Mr. HALE. Have it read at the desk.

Mr. CULLOM. I propose to the Senator from Illinois that he change it to "criminal prosecution," so as to limit it to injunction and criminal prosecution. That would leave the matter of the validity of the contracts to stand.

Mr. CULLOM. The amendment which is being discussed more or less at present is as follows—

Mr. PLATT of Connecticut. No; it does not refer to that.
Mr. CULUM. It does not refer to it in so many words, but the purpose of this amendment, while its phraseology may not exactly state it, is to prevent a criminal prosecution against a man for a violation of the act to the extent that he is brought into Honolulu from Japan, if you please, under a contract, and then violates it. We do not want him sent to jail.

Mr. HALE. It goes much farther than that.

Mr. CULUM. Why do you not make it foreign labor?

Mr. HALE. That is not a contract for labor.

Mr. CULUM. It differs from the same thing, because they are all very much foreign who are laborers there.

Mr. PERKINS. I wish to ask the Senator from Illinois a question. While in the islands investigating the question of labor, did the commission hear any testimony as to the abuse of contracts in the case of laborers, the number in which labor was performed, and the penalties imposed for violations of their contracts? I should also like to inquire if they ascertained whether there were any large contracts for the construction of canals or railroads or aqueducts on the islands. We made every effort in the last session to extend to the islands our laws relating to contract labor and immigration, and it failed by reason of an objection upon this floor near the closing hours of the session. It is a notorious fact that since Congress adjourned many thousands of laborers have been brought into the islands of the Hawaiian group under contract for labor.

Mr. HALE. I think the question must be so framed that there can be no ambiguity whatever in its language and so that it will not require a judicial body to construe its meaning.

Both of the Senators on this floor who are members of the commission are thoroughly conversant with these great abuses, and I trust that we will act in the interest of the amendment that there can be no question or doubt about it.

Mr. HALE. Would the Senator make that apply to general contracts for labor?

Mr. CULUM. I think so.

Mr. HALE. Not only foreign labor, but ordinary contracts?

Mr. CULUM. We lived in Massachusetts without any remedy to compel the specific performance of ordinary labor contracts.

Mr. HALE. Why not, then, limit this by terms so that it shall only apply to such contracts which we have not had up to this time?

Mr. HALE. I do not understand that the committee intends to go into that large domain of regulating contracts and controversies about labor outside of foreign contract labor.

Mr. HALE. That is all.

Mr. HALE. Why not, then, limit this by terms so that it shall only apply to such contracts which we have not had up to this time?

Mr. HALE. I have an impression that we have passed, certainly through the Senate, and I think through both Houses, a general domestic statute containing that provision so far as the United States courts go. I do not believe, in other words, that it is expedient that labor contracts shall be enforced by specific performance. Any other contract where specific performance is enforced is discharged by the payment of a sum of money, by the making of a deed of conveyance, or something of that kind, but holding a man to labor or service by law is repugnant to the duties of the Constitution and the service of a slave or any other person. In the description of slavery in our Constitution by a euphemism they avoided the term "slave" or "slaveholding" or "slaveholder," and the Constitution speaks of it as a person held to labor or service.

Mr. HALE. As to the language, we have a form of government here, and has to Hawaii, he is to a certain extent rendered helpless if he has made an improvisation contract. It is taking the body for the supreme court to say to a man, "You go and work for A B on his farm and stay there six months." It seems to me that wherever we have the legislative power we should say that the right of a man to himself shall not be interfered with by law in consequence of any alleged or any actual contract. You may come upon him for damages, if you can, but you shall not take him by the ear and lead him out to a day's work under the order of any court.

Mr. CULUM. I will read it myself. It is proposed to add to section 10:

Provided, That no contract for labor or personal service shall be enforced by specific performance or by any legal process.

Mr. HALE. I think the bill allows it.

Several Senators. Say "personal labor." Mr. HOAR. Insert the word "personal," so as to read "personal labor." I intended to put that in.

Mr. CULUM. Question.

Mr. BEATTIE. The question is on agreeing to the amendment proposed by the Senator from Minnesota [Mr. NELSON].

Mr. NELSON. My amendment is to insert the following words:

Mr. SPOONER. On what page?

Mr. NELSON. On page 8. I think, however, that the amendment offered by the Senator from Massachusetts will cover it, and if that is adopted mine will be unnecessary.

Mr. CULUM. Withdraw it.

Mr. NELSON. With that amendment if the other amendment is to be adopted. I withdraw it for the time being at least.

Mr. CULUM. The amendment of the Senator from Minnesota is withdrawn.

Mr. NELSON. The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Illinois [Mr. CULUM].

Mr. HOAR. The Senator from Illinois has accepted my amendment to his amendment.

Mr. CULUM. I accept the amendment of the Senator from Massachusetts.

Mr. NELSON. The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Illinois [Mr. CULUM] as modified by the amendment of the Senator from Massachusetts [Mr. HOAR].

Mr. HALE. Let that as finally modified and offered by the Senator from Massachusetts be read, stating where it comes in.

The SENATE. It is proposed at the end of section 10 to insert:

Provided, That no proceeding shall be maintained for the specific performance of any contract for personal labor or service, and there shall be no criminal proceeding for the breach thereof.

Mr. HALE. Certainly that goes very far. It goes a great way beyond what the committee contemplated. It does not in any way confine itself to the evil which the committee sought to remedy, because it attempts to break up the importation of laborers and contracts with laborers.

Mr. HALE. That, of course, is foreign importation labor.

Mr. CULUM. I have no objection to the amendment to the amendment.

Mr. HALE. Now, the Senator from Illinois accepts this amendment to the amendment, and I think the Senate ought to understand that it is incorporating a very far-reaching, a very wide provision, touching not only labor imported by contract, which we have forbidden here and mean to forbid in Hawaii hereafter, but touching any kind of business that involves personal labor. It declares that no proceeding shall be instituted to enforce it. I think that is the language. What is the language?

Mr. HOAR. "Anything that involves personal labor." I beg pardon. I suggested to the Senator's ear, "No." I said it with reference to his statement, but his language was "any kind of business that involves personal labor." Mr. HALE. That has been accepted. "Personal" has been incorporated.

Mr. HALE. Mr. CULUM. "Anything that involves personal labor" is not the language. Mr. HALE. Let us have it exact.

Mr. HOAR. "Any contract for personal labor." Mr. HALE. Any contract that involves personal labor, and no proceeding—Mr. HOAR. The words "involving personal labor" are not there.

Mr. HALE. Well, for the enforcement of any contract for personal labor, it would apply to any large contract.

Mr. NELSON. Mr. President, will the Senator from Maine yield to me?
Mr. HALE. As a Senator suggests to me, it would apply not simply to a contract of a day laborer to perform work upon any building or any farm or any estate, but a contract for larger services, for the superintendence of an estate, of a plantation, or of a mill.

Mr. SPOONER. Will the Senator from Maine allow me one word here?

Mr. HALE. Certainly.

The PRESIDING OFFICER. Does the Senator from Maine yield to the Senator from Minnesota?

Mr. HALE. Certainly.

Mr. NELSON. Will the Senator allow me one word here?

Mr. SPOONER. I thought the Senator from Maine yielded to me.

Mr. HALE. I yield to all.

Mr. NELSON. I think the Senator from Maine misapprehends the extent of the bill.

Mr. SPOONER. The effect of the amendment of the Senator from Massachusetts is simply to prevent the enforcement of certain contracts by specific performance and to prevent criminal prosecution. That is exactly the law all over the country, in every State in this Union. It has always been enforced by specific performance and for personal labor in any case, from the President of the United States down to the commonest laborer. Neither can you prosecute it criminally. This leaves the law, I want to say to the Senator from Maine, just as it is in respect to remedies for breach of civil contracts. That is all.

Mr. HALE. I understand. I do not know so well as the Senator from Minnesota that there are not anywhere in any State provisions or laws or decisions which authorize the enforcement of a specific contract for labor of any kind. Certainly this strikes all that to me, and I want to understand that it is a very wide-reaching, far-reaching provision. It may be right. It may be that other States have such laws. I do not think we have in Maine. But it ought to be understood how far this provision goes.

There are plenty of things in this bill I can see as plain as day that will come up to perplex us hereafter. The relations are new. It is bringing into our system something about which none of us have any knowledge or experience—the application of laws to these people, the sustaining and upholding of certain ideas of justice in a system which has been in existence in development in the future. All the complications in this bill, as I see it and as I hear discussion upon it, grow in my mind, and I am afraid we will find, with all the care the committee has bestowed upon it and the scrutiny which Senators have given it, that when we get these laws on the statute book we will come back to trouble us in a great many ways, and that we are going very far in certain directions and not far enough in certain other directions. Therefore I call attention to this provision, which may be all right. It may be all right that every kind of contract involving personal labor shall only be enforced for a longer term if everybody knows that a statute of that kind in most cases is of no avail and has nothing on which it can base a judgment. But it may be better to apply it here. We ought to understand it, of course, and I think we do understand the extent of the amendment of the Senator from Massachusetts.

Mr. HOAR. Mr. President, as is very well known, I have not been in favor of undertaking the government of subject populations, and all the reflection I have given to the matter increases my opinion that it is not desirable, either for such populations or for us, that we should do it. But I am in favor of giving a code of laws to a people whom I hope and expect some time may become a prosperous and strong American State; and it seems to me that when we are legislating for Hawaii, in regard to which I have such a hope and expectation, we ought, when we deal with any subject, to make our legislation perfect as far as possible in that particular.

Now, if it be sound public policy, in the judgment of the Senate, to prohibit a court from ordering anybody, humble or not humble, to be taken by the power of a sheriff or a marshal and led out to his work in the next field, then he would not, not exactly like a galley slave, be dragged to his dungeon, but sent back, confined and bound, and held in durance, I cannot for the life of me see why that doctrine ought not to be applied now to the island of Hawaii by proper enactment while we are dealing with the specific subject. They are not going to me, for the subject this year or next year. We are dealing with a code which involves other relations and we are going to say something in that code about the legal remedy on contracts to labor. We have the subject up. The question is, having the subject up, whether we shall add to it for the whole or only half of the time that the work and not delaying which we have half done. As the Senator from Massachusetts has so well said, we are only enacting in this code what other States, some of which have codes and some have not, have for their law now.

Mr. CULLOM. Question.

The PRESIDING OFFICER. The question is on agreeing to the amendment proposed by the Senator from Illinois as modified by the Senator from Massachusetts.

Mr. RAWLINS. I ask that the amendment may be stated.

Mr. CULLOM. It is proposed at the end of section 10 to insert the following:

Provided, That no proceeding shall be maintained for the specific performance of any contract for personal labor or service, and there shall be no criminal proceeding for the breach thereof.

Mr. HALE. Would that description, no "contract for personal labor or service", mean the contracts that the committee originally intended to provide for—foreign labor? I do not know enough about it to know whether they are made with the persons who labor or whether they are made with parties who agree to furnish contract labor. In providing for a civil proceeding that the Senator for Minnesota said I should not want to have this enacted and that there should be a specific provision that we started to put in affecting contracts for imported foreign labor. I do not know whether the contracts are made with those persons or with agents.

Mr. CULLOM. If the Senator will allow me, I have before me a contract containing a clause which I will read.

Mr. HALE. The Senator from Illinois knows about that.

Mr. CULLOM. I will read a contract.

Mr. HALE. Read a portion of it.

Mr. CULLOM. Very well.

AGREEMENT BETWEEN JACOB COOPER AND CERTAIN JAPANESE WORKMEN.

This agreement made and entered into this 18th day of February, A. D. 1886, by and between Jacob Cooper, party of the first part, of Kahului, North Kona, Hawaii, and Koyaguchi (k), Iwama (k), Iwama (k), and Takakita (k), of North Kona, North Kona aforesaid, witnesseth:

That the said parties have agreed and do agree by these presents as follows, to enter into the employment of the said Cooper aforesaid, by and by the advice of said party of the first part, commencing within ten days from this day, that portion of land situate in Kahului 3, aforesaid.

Mr. HALE. The Senator need go not on. It appears that it is a contract made with each of the persons who are to perform the labor.

Mr. CULLOM. Who are to perform the labor.

Mr. HALE. And is signed by each of them personally?

Mr. CULLOM. It does not say how it is signed.

Mr. HALE. I suppose it must be.

Mr. CULLOM. I suppose it must be.

Mr. HALE. In some of the California contracts the persons who performed the labor never signed any contract.

Mr. CULLOM. The Senator will see that this contract is not only to labor, but it involves a sort of partnership which these men are in, and sugar is the figure, and so on. You can scarcely say, in fact, that it is a personal labor contract, because it is an agreement between these parties to raise sugar on certain terms.

Mr. HALE. The last observation of the Senator from Illinois, that this does not come up to the legal decision of a personal contract, raises a doubt. Has the Senator any doubt that the amendment which he has accepted does entirely cover the system of foreign-labor contracts?

Mr. CULLOM. I have no doubt it will destroy the business, and my own amendment that without this amendment, the Constitution and the laws of the United States being extended over those islands, it will break up the whole thing, and there will be no more of it than there is in the United States.

Mr. PERKINS. I should like to ask the Senator from Illinois if, in his opinion, the agents import the contract made by a certain Japanese company represented by its officers for a certain number of Japanese. As a matter of fact, thousands and thousands of Japanese workmen have been imported into the Hawaiian Islands. They come there under contract made with the managers of those companies. As evidence of that fact, perhaps you would read an extract from the report of Commissioner Powery, made one year ago to our committee:

Detailed information of a confidential nature has been received, showing that since the passage of the joint resolution annexing the Hawaiian Islands to the United States, suggestions have been made and some steps actually taken for the importation of laborers, many of whom, as many as 7,000 Japanese laborers prior to the passage of the joint resolution annexing the Hawaiian Islands to the United States, have been contracted for by residents and citizens of those islands. Those laborers were to be engaged by the in the work of sugar plantations. Those laborers were to be engaged by the said act, indicates that interested parties are exercising themselves to land in said islands as many immigrants as possible of such character so as to embrace arrivals in Hawaii.

It is a notorious fact that since this, one year ago—

Mr. JONES of Arkansas. I wish to ask the Senator what is the date of that report? I believe he said it was a year ago.

Mr. CULLOM. February 13th.

Mr. JONES of Arkansas. How many of these Japanese laborers have been imported into Hawaii since that time?

Mr. PERKINS. The report is dated February 13, one year ago. I was about to say—I have it unofficially—that there have been for some time immigrants into the islands since that time. Will the Senator allow me to interrupt him?

Mr. CULLOM. Certainly.

Mr. CULLOM. I stated yesterday what seemed to be as far as
I could learn the fact, that there are about 40,000 laborers in the Hawaiian Islands now.
Mr. PLATT of Connecticut. Including Japanese?
Mr. CULLOM. Including Japanese and others.
Mr. PERKINS. And my friends and I are named, a year ago or more.
Mr. CULLOM. Last September.
Mr. PERKINS. My friend was there a year and a half ago.
Mr. CULLOM. But what I wanted to say is that the statement made by those who seem to know about it is that about one-half of the 40,000 have been brought there under the cover of 25,000 of them, perhaps, or a few more, have been brought there since the annexation.
Mr. PERKINS. It seems to me the point made by the Senator from Maine is worth our consideration. If this can only apply to personal contracts, the views of the Senate and Congress will be frustrated. It is a question of great importance to the honor of this country and Congress in legislating.
Mr. HALE. The amendment proposed by the Senator from Massachusetts gives more nor no less to the islands than applies to labor in other States. The words "labor of the United States" embrace both the larger school for labor and also the plan that the committee had originally of striking at this destructive evil, so that it shall apply to personal labor and to all contracts involving imported foreign labor—something of that kind.
Mr. HOAR. I have the respect for the gentleman named. I do not know whether my honorable friend gave his name or not in the Senate.
Mr. HALE. I have his name.
Mr. HOAR. I have all the respect for him which is due to the indorsement of the Senator from Maine, and that is very great respect, indeed; but I must beg leave to suggest that the criticism comes from a very hasty and superficial notion of the matter. We are talking about contracts for specific performance and punishments by criminal process. You ought not, I believe every Senator will agree, to have a remedy by specific performance or a criminal process for the failure by a man to keep his engagement for personal labor and service. That, as has already been said, is the policy of most or all of the States of the American Union. Now, then, that is said, does not interfere with one man's contract to deliver the labor of another.
Mr. HALE. I have.
Mr. HOAR. Of many others. But it certainly does if the man who has agreed to deliver the labor of a thousand coolies or a thousand Japanese could not have any remedy against the man whose contract is to be delivered. The latter man is left free for the other man, of course, can not have a remedy. There can not be a remedy for a specific performance against him that would be of any value, and there could not be before. There is no reason why he should not be liable in damages if he has made an imprudent contract of that kind which the man whom he undertakes to serve would not be able to perform. What more do you want in regard to these contracts for the delivery of a thousand workmen and furnishing their service for a certain fixed time after they arrive in the island than a provision that the men whose service is sought are absolutely free in the matter, so far as this contract is concerned?
Mr. HALE. Now, let me see what might be an actual occurrence. An ungentrified society—they call them that—signs a contract with A B to furnish the labor of 500 coolies for three years or five years. The contract is signed by the society upon the one side, by A B, who employs the society, and by the emigrant society personally, or with A B, who is to get the benefit of the labor; but it is a general sweeping contract to furnish labor, not the personal labor of the emigrant society, for it has none, but the labor of 500 different persons. Now, if we include in the operation of this contract an understanding the great authority and experience of the Senator from Massachusetts, I should doubt whether, upon a question coming up between A B, who takes this labor, and the emigrant society, who contracts for it, the courts would decide that that was, under the language here, a contract for personal labor.
Mr. HOAR. Suppose they will not. What harm would then happen?
Mr. HALE. Then we are doing nothing.
Mr. HOAR. You have made it absolutely impossible for this man, for the performance by the voluntary consent of the men who want to be employed. Nobody objects to that.
Mr. HALE. It does not come up between the men who are employed and the society.
Mr. HOAR. Suppose it does not.
Mr. HALE. It comes up between the man who is to use the labor and get the benefit of it and the original society.
Mr. HOAR. Suppose it does; what happens?
Mr. HALE. He enforces it.
Mr. HOAR. How can you enforce it?
Mr. HALE. How can you not enforce it?
Mr. HOAR. Yes; we have taken it out. The Senator fails to get my point, undoubtedly owing to my failure in stating it.
Mr. HALE. No; it is my failure to comprehend it.
Mr. HOAR. If you have said that these laborers are free from all legal constraint whatever except a suit against them for damages, which nobody thinks is worth the paper on which the writ was printed, how the whole of this mischief is then cut up by the roots. In other words, the contract of the man for furnishing labor is with the society, and he is left utterly powerless to perform, and there is no remedy against him, of course, except the suit for damages.
Mr. HALE. But, like any process, there are other things and there are other results. It may be an entirely responsible company. Do you want them to be punished? If so, you say, "Why, I will give you a suit or a suit," in that I have exempted these persons and that nobody can trouble them, and these other parties may fight it out with the contract for a specific performance just as they choose," that is an answer; the Senator does not care anything about that.
Mr. HOAR. You have taken all. What is the mischief? Suppose the Senator from Maine and I make a contract that one shall furnish to the other 500 laborers in the State of Maine. Now, what is the mischief of that contract? The mischief is that 500 men, who are not free agents in the matter, are put them selves where they have got to be compelled to labor by a civil or criminal process for the specific performance, by an indictment, against their will. Of course, if the contract between the Senator and myself is not enforced at all, it does not do any public harm or mischief. We have a suit in the sum of damages due the Senator, but men who are not laborers. That does not do any public mischief at all. Neither of us would undertake to enter into such a contract. He is only a public sufferer, but the public mischief of having involuntary labor kept to its task in that way is utterly gone by the result of this amendment, and there is nothing left which can do any public harm. That is the answer to it.
Mr. HALE. In a contract such as I have stated I do not think that these 500 individuals would have anything to do with it anyway. They have not made any contract. The bill does not apply to that.
Mr. HOAR. They could if they had made the contract.
Mr. HALE. But they have not made it.
Mr. HOAR. The trouble is this: The Senator from Maine agrees with somebody to furnish him 500 laborers for twelve months the 1st of next January, and thereupon when the 1st of next January comes, he goes and gets the 500 laborers in a condition of poverty and distress, and brings them across the sea; and he has got them where he can scourge them to that labor. I do not mean that he can literally scourge them, but that he can compel them by civil or criminal process; and that is the mischief, that he should have 500 men compelled to labor at his terms in competition with 500 free laborers.
Mr. HALE. Now, that is the whole mischief. The fact that he has agreed to furnish me a certain amount of labor does not make it lawful. This law comes in and says in an open and direct words, the man who has made that contract with you shall have no legal power whatever to help him to keep it. You can only enforce it by the voluntary action, voluntary all through the time up until the twelve months are over, of the men whom he expects to do the work. Therefore, then, being that contract can not be enforced, and nothing has happened except that one rich man has made a contract with another, which he can not keep by any legal power and which he ought to be permitted to keep if the workmen are free all through the time, because there is no constraint on them, if they are willing to keep it. To the only point it is said that one rich man, a well-to-do man, has got a claim for damages against another rich man, and we do not care anything about that at all. That is the whole of it.
Mr. HALE. I have been looking at this in a different way from what the Senator has. He has been looking at it at the end of the contract, and I am concerned with what is happening in the middle of it, and the middle of it seems to be that the clause as it is seems to do the job that is wanted to be done.
I suppose the committee was looking at it, from the other end, whether the party in the island who hires the men to do his work can enforce it.

Mr. HOAR. We have cut off the other end altogether by this law.

Mr. HALE. I do not know whether you have. I have not been looking at rights on the part of the individual who brings the poor creatures over here and sells their labor. I do not care whether he is protected or not. I do not think he would come in. I think the committee has been looking, as I was, at the other side, at the laborer, who is conducting the works, who is running a manufactury or a plantation, who hires the men from the contractor. That is the side I have been considering, not the side the Senator from Massachusetts has considered.

Mr. TILLMAN. I ask the Senator from Maine, how would the contractor who had agreed to furnish 500 men have any hold on them unless he had a contract?

Mr. HALE. That is a contract which is made outside of this country; I do not know.

Mr. TILLMAN. But under the penal laws of Hawaii, which we are discussing, that contract made in Japan or China has been enforceable in Hawaii, and punishable by imprisonment and scourging, so to speak.

Mr. HALE. That entire provision has been abolished in another way.

Mr. TILLMAN. We have repealed the Hawaiian statutes, and now we are trying to let loose the people under contract.

Mr. HALE. Now we are dealing with the other end. We are dealing with the relation of this labor and the man who contracts to furnish the employment, as I understand it.

Mr. LINDSAY. I will ask the Senator from Maine whether, in the Hawaiian legislation statute made by either the contractor or the laborer could be specifically enforced under any principle of equity?

Mr. HALE. I do not know that it can.

Mr. LINDSAY. I do not think there can be any enforcement of either one of these contracts unless there be a statute, and I understand the Hawaiian statute is to be repealed.

Mr. HOAR. Will the Senator allow me?

Mr. LINDSAY. Certainly.

Mr. HOAR. Then this statute, to make it clear and plain, is an American law for Hawaii and cannot be enforced here; whether necessary or not is another question.

Mr. TILLMAN. I will call the attention of the Senator from Kentucky to the fact that this bill as framed and brought in here expressly except the existing contracts and only repealed the statute to take effect on the foot day and they are now provided for in the clauses from the contracts that have been made in the past.

Mr. SPOONER. I move to amend the amendment, if I may do so.

Mr. CULLOM. Yes.

Mr. SPOONER. I move to amend the amendment of the Senator from Massachusetts by inserting after the word "contract" the words "hereafter or hereafter entered into."

Mr. HOAR. I accept that amendment.

Mr. CULLOM. So do I.

The PRESIDING OFFICER. The Senator from Massachusetts accepts the proposed amendment. The amendment offered by the Senator from Massachusetts will be read as modified.

The SECRETARY. As modified the amendment will read as follows:

Provided, That no proceeding shall be maintained for the specific performance of a contract entered into for personal labor or service, and there shall be no criminal proceeding for the breach thereof.

The PRESIDING OFFICER. The question is on the adoption of the amendment of the Senator from Massachusetts.

Mr. RAWLINS. I ask if that would cover cases involving a relation of confidence—for instance, contracts with agencies where there might be embezzlement? Would that exclude a transaction of that kind?

Mr. TILLMAN. I think it would be like larceny, and that class of service is not usually spoken of in law. "Personal labor or service" is a well-understood legal term in the statutes.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. WARREN. I offer the amendment which I send to the desk.

The SECRETARY. The amendment will be stated.

The PRESIDING OFFICER. The amendment will be stated.

The SECRETARY. On page 35, after the word "language," in line 2, insert:

Provided, however, That the legislature of the Territory of Hawaii may at any time after January 1, 1908, submit to the lawfully qualified voters of such Territory such changes and modifications in the qualifications for electors as the President of the Senate may, by a majority vote, take in the mode prescribed by the legislature, shall be valid and binding as law.

Mr. CULLOM. I think that provision is entirely unnecessary.

I think the bill already provides for it; but I have no objection to it myself. They can have that privilege anyway.

The PRESIDING OFFICER. The question is on the adoption of the amendment of the Senator from Wyoming [Mr. Warrick].

The amendment was agreed to.

Mr. HALE. On page 39, line 3—

Mr. CULLOM. What section?

Mr. HALE. It is chapter 3, under the head "The executive." It is the appointment of a governor, the executive power; that the Governor shall be president of the Senate and have power to declare the existence of vacancies in the Senate and House of Representatives, governor, etc. He shall not be less than 35 years of age; shall reside within the Territory. If it is intended that a resident of the Territory shall be appointed, I should prefer the words "be a resident to the word "reside," because the governor may be appointed out of the Territory, and be a resident of the Territory. I suppose the design is to appoint an actual resident at the time of his appointment. How is that?

Mr. CULLOM. I think that is a fair construction of the language as it is in the bill.

Mr. HALE. Then there certainly will be no harm, and it would make it more clear, to strike out the word "reside" and insert the words "be a resident of."

Mr. CULLOM. I have no objection to that.

Mr. HALE. I move that amendment.

Mr. CLARK of Wyoming. The Senate from Maine will allow me, I have an amendment prepared upon that same line, which proposes to strike out all of the words "shall reside within the Territory and be a citizen of the Territory of Hawaii." I believe that all of these offices should be filled from citizens of Hawaii, but this is a limitation on the power of the President; to say that the President shall be a resident of the Territory and have power to declare the existence of vacancies in the Senate and House of Representatives. Both political platforms in late years have declared that it is the policy of both parties to appoint residents of the Territories to office, but oftentimes conditions have arisen when the President could not, with justice to the people or with justice to himself or the people of the whole country, appoint individuals resident of the particular locality.

I have no fear that the President of the United States would abuse his power of appointment, and I think there ought not to be a limitation upon him, but that he should be allowed to make these appointments from whatever part of the United States he should choose to do so, and I think that would be a very fair statement of the circumstances which might arise at that time. For one, having lived in a Territory, I have always insisted that appointments should be made from the citizenship of that Territory. But conditions, as I say, have often arisen in special cases where this limitation imposed on the President would make it impossible to fill these offices with the proper men, at large, but upon the particular Territory to which the appointment was made. I think the Senator from Maine can see circumstances and conditions which might arise where there might be a quarrel of factions and where the President could not appoint an officer from the locality in which he had never lived.

Therefore I have prepared an amendment to strike out even the part which the Senator from Maine seems to think is too weak.

Mr. HALE. Then I suggest to the Senator to let my amendment be adopted, which goes to a certain extent—it does not interfere with his—and then he may have the whole of his substitute. There is no objection to that.

Mr. CLARK of Wyoming. I certainly have some objection to that, because I think the committee provision goes far enough, and certainly the amendment of the Senator from Maine goes a great deal further. So I should prefer the committee provision; that is, if it is a part of the bill.

Mr. HALE. Well, let my amendment be voted down, if that is the view of the Senate. I have assumed that the intention was to appoint some one who at the time of the appointment is a resident. There might be some doubt under the language whether anybody might be appointed who is a resident of the Territory and yet move there and reside there afterwards. "The governor shall reside." I make it more certain, if it is the intention that he shall when appointed be a resident, by substituting the words "be a resident" for the word "reside." I move that amendment. If that feature is incorporated, then the Senator from Maine would have with a much larger proposition, which is better understood by anybody.

Mr. CLARK of Wyoming. It leaves it open to the discretion of the President.

Mr. HALE. Yes; it leaves it to the discretion of the President. Of course that is for the Senate to determine. It opens up much work. But the amendment does not open as wide a question. So I move that amendment.

Mr. CLARK of Wyoming. I hope the Senator will remember that this is going much further in the appointment of governors of this new Territory than the Senate or either House of Congress has ever ventured to go in regard to the appointment of governors of our own Territories. We have enacted in the platforms of both the political parties the same thing that is proposed here; but none of our political platforms in words have been enacted in the organic acts of any of the Territories.
Mr. HALE. No; but I offered the amendment under the impression I had gained from distinguished men, like the Senator, who for years represented a Territory in the other House, that it was not much better in all these cases that the officers should be taken from men residing in the Territories. That has so operated upon me; there were so many evils in the old arrangement, and so many men were licentious, who did nothing to the life or the prosperity of the Territories, that I think it has worked better where residences have been appointed; and while we have not crystallized that principle into law, it has been done with few exceptions by both parties appointing seats of residence. I think the President should be appointed by the Legislature, but I do not think anything about the intelligence of the people of Hawaii, their brightness, their capability of enacting and observing laws, we should do much better if we provided for the appointment of distinguished residents, actual residents, at the time in the case of some of our friends. I think there are Senators who have looked at this matter personally who are rather hopeless, and who say that we shall have to send our own people out to govern the people of Hawaii. I did not vote for the bill which interested the whole community, and I have not voted for it if I had had that opinion, but I should have said, "Wait a while." But, going on the proposition that those people are very intelligent, that we are going to restrict the franchise, that not much harm can come during the time of their remaining as a Territory, I still think that the appointment of their chief executive should be restricted to those who are actual residents of the Territory at the time of the appointment. It was with that view that I offered the amendment; but, of course, the Senate may vote it down.

Mr. WOOLSEY. I would like to have the amendment which has been offered read at the desk.

The SECRETARY. On page 29, line 3, after the word "shall," where it last occurs, it is proposed to strike out the word "reside" and insert the words "be a resident," so as to read "shall be a resident.

Mr. CLARK of Wyoming. Mr. President, I do not want the Senator from Maine or any other Senator to misunderstand my position in this matter. I believe and I know that the people of the proposed Territory of Hawaii are as capable of self-government as the people of any State in the Union, and if they are not given them self-government under this bill, it is because we are not giving them the right to select their governors. We are simply giving them the right to have a governor appointed by the President of the United States, and the appointment should be made in the same manner as appointments of the President of any other Territory or District.

Mr. HALE. We are giving them a very considerable measure of self-government.

Mr. CLARK of Wyoming. We are giving them more than we have given any other Territory ever admitted to the Union; and I am only asking that the President have the appointment of the governor of any other Territory.

But where we limit them, we ought not to limit the exercise of the discretionary power of the President. If they should go into elections and elect their governor, that would be one question; but here we have a condition of affairs arising where the President of the United States is called upon to make the selections.

As the Senator from Maine says, I have lived in a Territory; I have advocated home rule for the Territories, and have insisted that the officers of the Territories should be appointed from their citizenship, because I have always contended that the men who go to Washington and vote for the government of the government. But where we limit them, we ought not to limit the exercise of the discretion of the President. If they should go into elections and elect their governor, that would be one question; but here we have a condition of affairs arising where the President of the United States is called upon to make the selection.

Mr. HALE. I understand the committee intended that the governor should be a resident of the Territory, and that there was no part of my amendment, and therefore I did not make much point about enforcing it. Now, however, the Senator from Alabama comes in and says the committee meant the other thing, just the opposite—meant that the governor might not be a resident. I do not know about that, but I think it is the case, whether the senator from Illinois or the Senator from Alabama. It now seems that it means either.

Mr. CULLOM. I think the bill is all right as it is on that point. There is nothing before the Senate, I believe, in the way of an amendment, Mr. President?

Mr. CULLOM. He withdrew it, if he offered it.

Mr. CLARK of Wyoming. I withdrew it under the statement that was made.

Mr. TILLMAN. What was the statement of the Senator from Illinois?

Mr. CLARK of Wyoming. Under the statements of the Senator from Alabama and the Senator from Illinois, who are both
members of the committee and who cooperated in the preparation of the bill, that it meant exactly what I said and argued for, I withdrew the amendment.

Mr. SPOAKEN: Mr. President, there may be something peculiar in Hawaii and the situation of the people there which not only justifies, but requires a departure in some instances from the governmental methods which are fundamental in this country. If there be, I do not wish to make any motion to take out of the Territory of Hawaii the clause in Section 15; if that territorial legal election has been held, it shall be the sole judge of who has been elected.

Now, under our system of government, without any exception, so far as I remember, each house has been made, and is made, the sole judge of the qualifications of its members. This may be some situation in Hawaii which demands this change, this peculiar provision.

Mr. MORGAN. I do not know of any situation in Hawaii that makes it exceptional on this subject. I can only say that if Kentucky had such a provision in her constitution, we could not hard to throw that one on there, but we should have the means of settling the question in dispute as to the title to the office of representative or senator, to be determined by the supreme court of the State. I think it would be a great relief to the people here now if we could have the same method in the election of our senators from Illinois [Mr. CULLOM] can remind me—whether this provision was in the constitution of the republic. I rather think it was.

Mr. CULLOM. It was in that constitution.

Mr. MORGAN. I say, Mr. President, that it has been observed over here that a senator who knows all about Hawaii, who has studied the system very fully, that that is a government which is equal in all respects in its political economy, in the wisdom of all its constitutional and other provisions—and he might have added the fruits of government—to any State government in the United States.

When the commission went out there the circumstances under which they were required to act were altogether the reverse of those which attended the action of any committees of either House of Congress in the formation of the system of government of the territories. In the formation of the Territorial governments in the United States, which have been very numerous and very diverse, we have commenced with a community that was unorganized, speaking in a legal sense, and have undertaken to build up a government, especially in the State of New Mexico, which was never heard of territory where are on this continent. The purpose has always been distinct and perfect that the ultimate result of our work in giving them government republican in form, as was required by the fourth section of the fourth article of the Constitution of the United States, was to make it a part of the American Union. No such definite purpose as that was expressed in the act of annexation: and perhaps it is in the contemplation of Senators now that it will be a long time before Hawaii can be admitted into the Union, if ever. The honorable Senator from Connecticut [Mr. Pomeroy] and the Senator at large from California, would not be a long time before a great and prosperous State would be found there in the heart, I may call it, of the Pacific Ocean.

Mr. PLATT of Connecticut. The Senator is mistaken. It was the Senator from Massachusetts [Mr. HOAR] who said that.

Mr. MORGAN. I beg pardon. It was the Senator from Massachusetts.

Mr. PLATT of Connecticut. I entertain a different idea about it. Mr. MORGAN. When I went out there under commission from the President, in company with my colleagues, elected at the last one of the late sessions of Congress, and had at one time the honor of visiting two from Hawaii, after I had studied the system there during that visit and also the year previously, I became satisfied of the perfect truthfulness of the observation that those people had built up a government that was at least equal in all respects to any government in any of the United States. My first proposition was that we should recommend that the people of the Hawaiian Islands should adopt a constitution, adopt a constitution, and apply for admission into the American Union. None of my colleagues on the commission agreed with me about that. I still adhere to that as the opinion which I think is best founded.

But what work had we to do there? We were not prepared to build up a Territorial government step by step, through such processes as we are now carrying on, for instance, in Alaska; starting in a session of Congress to pass a law declaring there shall be a Territorial government, and then, after a session of Congress, when matters are a little advanced, to do another, and we have not yet in the case of Alaska got so far as to authorize the people there to have a legislature. They are governed by a code of laws which we borrowed from the State of Oregon, and by a United States court, or a Territorial court, that is now established there for the purpose of executing those laws and also the laws of the United States. Alaska is in a very nebulous point of the United States. As the States are in the Constitution, the people of the United States are not the direct objects of our efforts we have been making to ripen up a condition of affairs in the Territories, so that they can finally be prepared to attain to statehood.

When we got to Hawaii we found a state in full operation; we found a republic there. It had been an independent republic. We found that that republic had been ingrafted upon a monarchy; that it had excluded all of the monarchic features of government, but still retained many of the constitutional features which had been inaugurated there. The two and a half years after the President of the Hawaiian Islands, Mr. Kamehameha II and running down through that dynasty. Our duty was dangerous and disagreeable, the difficult duty of tearing down a state government, a perfect system of government, with its constitution and laws, with its supreme court and legislature, with its executive officers, with its public institutions. We have torn down a high grade of character, tearing all that fabric of government down, attended, as it was, with a great many institutions of renown really, such as colleges and hospitals, and the like of that, and substituting for it a Territorial government. Naturally our allies have had trouble in getting a Territorial government in the United States, which I may say now are possessed by Arizona and New Mexico.

Now, to describe those advantages for a moment, and to borrow from the Senator from Nevada a statement which I think is entirely pertinent and relevant to an amendment to the Arizona complete systems of Territorial government, in which they have their courts, their supreme court, their governors, appointed by the President, and some of the other officers appointed by the President; their legislature elected by the people, which is elected for a term of two years; and the United States, so far as United States jurisdictions are concerned, would be coextensive with that territory, with the government of the republic, but antecedent to that, during the time of the monarchy, with principles perfectly well settled; institutions thoroughly established; laws that were approved by the people, and the fruits of which have not been surpassed, I believe, by any country in the world. All that to tear down, and our natural disposition and our natural inclination was to preserve to those people as many of their own institutions and as many of their laws as we could that were consistent with the laws and institutions of the United States—those principles of government which obtain in the United States.

So that in going upon this very difficult work we had to take the entire code of laws—the civil code and the penal code, which are embodied in two volumes which I have upon my desk here, very comfortably, against any other provision; for the territorial statutes of 1868—and incorporate them into a new system. We naturally, as I observed before, left as much of those laws standing as we thought we could leave standing, to have the system there comport with the laws and public order of the United States. I arrived at the conclusion that what they had adopted in what is here presented in section 15, and which they had adopted in their constitution, was a wise provision of law and tended to prevent those outside controversies of a political kind which arise in Congress here, or in the States, and its security against those political controversies which arise in the legislatures of the States, and have reference, as I have observed, chiefly to the election of Senators of the United States. It is as follows:

Sec. 15. That in case any election to a seat in either house is disputed and legal election, not yet held, the committee of the Territory of Hawaii shall be the sole judge of whether or not a legal election for such seat has been held, and, if it be held, shall be the sole judge of who has been elected.

The contrary provision was put into the Constitution of the United States, and has been followed, I think, without any particular reason or necessity for it, by the different States of the American Union. It was originally adopted in England for the