

TERRITORY OF HAWAII.

Mr. CULLOM. I ask the Senate to resume the consideration of the Hawaiian bill.

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. CLARK of Wyoming. I understand an amendment is pending offered by the Senator from Colorado [Mr. TELLER].

The PRESIDING OFFICER (Mr. HANSBROUGH in the chair). The pending amendment is the one offered by the Senator from Colorado.

Mr. CULLOM. I think the Senator from Alabama [Mr. MORGAN] has the floor if he desires to occupy it.

The PRESIDING OFFICER. The amendment proposed by the Senator from Colorado will be stated.

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

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

Mr. MORGAN. Has the amendment which has just been read been printed?

Mr. TELLER. Mr. President—

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

Mr. MORGAN. Certainly.

Mr. TELLER. I think the extension of the laws over Hawaii will extend the jury law; but as some Senators have doubt about it, I desire to add at the close of my amendment:

And the laws of the United States relating to juries and jury trials shall be applicable to said district court.

That is the court we are discussing.

Mr. CULLOM. With the United States judge.

Mr. TELLER. The United States judge.

Mr. PLATT of Connecticut. It is called a district court.

Mr. TELLER. It is called a district court.

The PRESIDING OFFICER. The modification proposed by the Senator from Colorado will be stated.

The SECRETARY. It is proposed to modify the amendment by adding at the end thereof the following:

And the laws of the United States relating to juries and jury trials shall be applicable to said district court.

The PRESIDING OFFICER. The amendment will be modified as indicated by the Senator from Colorado.

Mr. MORGAN. I do not find a printed copy of the amendment of the Senator from Colorado. I should like to see it before I proceed with my remarks.

Mr. CULLOM. It has been printed, I think.

Mr. MORGAN. Mr. President, in the effort here to cut down the term of office—for that is the only question that is in the matter, I believe—possibly the salary of the judge who is to execute the laws of the United States in Hawaii, I think the Senator from Colorado has dug a pit on the constitutional question and has fallen into it. I understand that it is the purpose of the amendment of the Senator from Colorado to give this district court in the island of Hawaii all the powers of the circuit court and of the district court of the United States. That would include all civil and all criminal jurisdiction of every kind.

The bill does not provide, however, that the judge of this district court shall have the powers and privileges that belong to the judges of the district courts of the United States. They are not properly jurisdictional, conferred upon the court as a court, but they are conferred upon the judge who oftentimes exercises them at chambers, in vacation, and at various places.

The part which relates to the powers of the district judge is not embraced in this act; it is only the court. A judge construing this statute would be obliged to say, "I do not find any authority here to exercise any of the powers that are conferred by the statutes of the United States upon a judge sitting in chambers or a judge who grants interlocutory orders of any kind; I find none of

those powers." Obviously they can not be conferred upon this judge when he occupies a position that has been denominated here as a judge over a legislative court. For instance, that judge could not sit in the district court of California. If by any chance at all any district court of California, Oregon, or elsewhere should not have a presiding officer and it was necessary under the rules of law, which are so plain about it, to have a judge assigned to the district to hold the court, this judge could not do it. He is not a judge of a district court of the United States so far as the amendment of the Senator is concerned. He is the legislative judge of a court created for the Territory and holding functions not under the Constitution of the United States strictly, but holding such functions as the Congress of the United States has bestowed upon him. So he could not go and occupy a seat on the bench of California like a district judge of the United States in Oregon could do.

More than that, it is a legislative court, as constituted by this act of Congress, in which a circuit judge or a district judge of the United States could not preside. If that judge in Hawaii was dead, or if his office was vacated in any way, a circuit judge or a district judge of the United States could not preside in that court. In other words, you can not make the functions and powers of the two courts identical unless you make this a Federal court, deriving its authority from the Constitution of the United States, as the district and circuit judges derive them.

I do not deny that this judge or this court may be empowered by this act of Congress to exercise the functions and jurisdiction that belong to the circuit and district courts of the United States. I do not deny that, but I do deny that when he does that it is in any sense a court with the plenary, full powers of a Federal court organized under the Constitution of the United States, and I have just pointed out some reasons which obviously show that that result can not take place.

Now, Mr. President, to my mind it is very doubtful whether the Congress of the United States can confer upon a judge of a district court in Hawaii created by an act of Congress, which is not a district court of the United States, all of the powers that belong under the Constitution to a district court or a circuit court of the United States. I am quite sure that that could not be done if the tenure of office is changed.

Whenever this judge is appointed under this act, of course he is removable at the will of the President. The other judges hold their offices during good behavior and are liable only to impeachment, and by impeachment to be removed from office. It is the only legal way of taking a judge from his office. So the want of legal identity is very plain between the court that is sought to be created by this amendment and the courts created by the statutes of the United States as inferior tribunals under the Constitution of the country.

I believe that whenever the question is made, it will be held that this court, created by this statute as a legislative court, has not and can not exercise all of the necessary powers of a district or circuit court of the United States unless there is conferred upon that court by a special statute a sweeping provision that it shall have the jurisdiction of a circuit court out and out.

I have pointed out that conferring jurisdiction upon the court does not confer the powers upon the judge which the statutes of the United States confer upon a judge of a district court or a circuit court. So we are creating there an abnormal tribunal for the purpose only of gratifying a particular idea, which is that the terms of office of the judges of the district courts and circuit courts of the United States are too long. They are for life.

Mr. BACON. The Senator has the statute before him. Will he kindly read the clause which relates to the jurisdiction conferred upon the circuit or district judge, so as to see whether the discretion is so broad? I only ask him in case he should have the statute before him.

Mr. MORGAN. I have it not before me.

Mr. BACON. I saw the book open and I thought the Senator had it. I saw that the Senator had the Statutes at Large before him and I thought he had that statute. I withdraw the request.

Mr. MORGAN. I was referring in the course of my remarks to the amendment proposed by the Senator from Colorado.

Mr. BACON. I understood that, but the Senator said that that amendment fell short from the fact that it did not confer certain powers upon the judge relating to certain acts in chambers. I simply desired, if he had the statute as to United States judges, that that be read in order that we might see how far it did fall short in that particular.

Mr. MORGAN. I think the Senator must be aware that there are quite a number of powers in the statutes of the United States that the judges of the circuit and district courts may exercise; that they have authority to make interlocutory orders and the like of that. In combining the power of a local court, as was done in the cases of the other Territories, and the power of a Federal court, we create a new tribunal that is scarcely akin to a circuit or district court of the United States, although it may have the same general jurisdiction, for the judges of these different