

the Territory, \$3,000; the United States district judge, \$5,000; the United States marshal, \$2,000; the United States district attorney, \$2,000. And the governor shall receive annually, in addition to his salary, the sum of \$500 for stationery, postage, and incidentals; also his traveling expenses while absent from the capital on official business, and the sum of \$2,000 annually for his private secretary.

Mr. KNOX. Mr. Chairman, I have an amendment I desire to offer to that section.

The Clerk read as follows:

On page 83, section 83, in line 6, after the word "dollars," add the words "and the chief justice of the supreme court of the Territory, \$5,500, and associate justices, \$5,000."

The question was taken, and the amendment was agreed to.

Mr. ROBINSON of Indiana. I offer an amendment to follow the last amendment. I would like to have the attention of the gentleman from Massachusetts to this amendment.

The Clerk read as follows:

Add, after the word "judge" of the last amendment, "salaries of the said chief justice and associates of the supreme court and the judges of the circuit court, as above provided for, shall be paid by the Territory of Hawaii."

Mr. ROBINSON of Indiana. That provides that the salaries of the United States courts, the stenographer, and clerk shall be paid by the United States, and the salaries of the Territorial judges shall be paid by the Territory of Hawaii.

Mr. KNOX. What salaries?

Mr. ROBINSON of Indiana. The salaries of the Territorial judges shall be paid by the Territory.

Mr. KNOX. The circuit court judges?

Mr. ROBINSON of Indiana. And the judges of the supreme court of Hawaii.

Mr. KNOX. Well.

The question was taken, and the amendment was agreed to.

The Clerk read as follows:

#### PROCEEDINGS FOR OPENING FISHERIES TO CITIZENS.

SEC. 97. That any person who claims a private right to any such fishery shall, within two years after the taking effect of this act, file his petition in a circuit court of the Territory of Hawaii, setting forth his claim to such fishing right, service of which petition shall be made upon the attorney-general, who shall conduct the case for the Territory, and such case shall be conducted as an ordinary action at law.

That if such fishing right be established, the governor of the Territory of Hawaii may proceed, in a manner provided by law for the condemnation of property for public use, to condemn such private right of fishing to the use of the citizens of the United States, upon making just compensation, which compensation, when lawfully ascertained, shall be paid out of any money in the treasury of the Territory of Hawaii not otherwise appropriated.

Mr. GILBERT. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amend section 97 by striking out the last five words, to wit—

Mr. GILBERT. Mr. Chairman, I withdraw it. There was a break in the section. When I drafted the amendment it occurred to me that that was not the section. What I meant to offer as an amendment is this: In line 23, section 97, the last five words are, "an ordinary action at law." I want to insert in lieu of those words "ordinary actions at law or in equity." The committee seem to assume that—

The CHAIRMAN. The gentleman will please suspend and send the amendment to the desk. It will then be reported to the committee.

The Clerk read as follows:

Amend section 97 by striking out the last five words in line 23, to wit, "an ordinary action at law," and substitute these words: "ordinary actions at law or in equity."

Mr. GILBERT. Now, Mr. Chairman, as I said, the amendment is not very material, but it ought to be inserted, because the report of the committee seems to assume that in settling controversies in the court upon questions of that sort it is always a purely legal issue. Lawyers know that that sort of question is very frequently by equity suit, and it ought to be ordinary actions at law and actions in equity.

Mr. FINLEY. Will the gentleman permit me to ask him a question?

Mr. GILBERT. Certainly.

Mr. FINLEY. If I understood the gentleman's amendment, it is this: If in the settlement of property rights condemnation proceedings were necessary, it should be in courts of law or in courts of equity. Is that correct?

Mr. GILBERT. It is.

Mr. FINLEY. I would like to ask the gentleman this question: Does he not think that the provision of the Constitution of the United States providing that no property shall be taken for public use without due process of law means a trial by jury, and therefore is an action at law?

Mr. GILBERT. In the Kentucky practice in a proceeding for the condemnation of property for public uses we do not necessarily have a jury. I think this means process by due course of law in the courts. We do not necessarily have a jury trial.

Mr. KNOX. I wish to say that this question does not deal with the right but with the method of procedure. Some method of procedure must be provided, in the same way as taking lands for a public highway. When you condemn property for a public use

and compensation is made according to a certain method of procedure, we provide the method by which it shall be done, the same as an action at law. If you include equity in it, then no method of procedure is provided.

Mr. GILBERT. The gentleman does not catch the force of my amendment. The bill restricts the procedure to common-law cases. By the terms of your bill the vested right is destroyed unless the party can vindicate it in court by a common-law issue, by a trial by ordinary proceedings at common law. Now, by this amendment I merely broaden the rights of the man who is claiming the vested right, so that if he can show the courts that he has a vested right in the property, as the issue is an equitable one, he can maintain it. His right to property is none the less if it is an equitable one, but upon the terms of this bill he is confined to a common-law action as contradistinguished from an equitable proceeding.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Kentucky [Mr. GILBERT].

The amendment was disagreed to.

Mr. KNOX. Mr. Chairman, I have an amendment which I send to the Clerk's desk.

The CHAIRMAN. The Clerk will report.

The Clerk read as follows:

On page 94, section 97, line 34, strike out the words "the governor" and insert in lieu thereof "the attorney-general."

The amendment was agreed to.

Mr. ROBINSON of Indiana. Mr. Chairman, I will ask unanimous consent to return to the amendment adopted on the question of salaries of judges being paid by the Territory of Hawaii, and ask to add an amendment.

Mr. KNOX. What section is it?

Mr. ROBINSON of Indiana. I will ask the Clerk to read the original amendment.

The Clerk read as follows:

The salaries of said chief justice and associate justices of the supreme court and the judges of the circuit court as above provided shall be paid by the Territory of Hawaii.

Mr. ROBINSON of Indiana. That was the amendment adopted. Now, I propose an amendment to that.

The CHAIRMAN. The gentleman asks unanimous consent to return to section 93 for the purpose of offering an amendment. Is there objection? [After a pause.] The Chair hears none. The Clerk will report the amendment.

The Clerk read as follows:

The judges of the circuit courts, of whom the two judges for the first circuit shall each receive an annual salary of \$4,000, and the judges for the second, third, fourth, and fifth circuits, respectively, an annual salary of \$3,000 each.

The amendment was disagreed to.

The Clerk, proceeding with the reading of the bill, read as follows:

SEC. 99. That all vessels carrying Hawaiian registers, permanent or temporary, on August 12, 1898, together with the following-named vessels claiming Hawaiian register, *Star of France*, *Euterpe*, *Star of Russia*, *Falls of Clyde*, and *Wilcott*, shall be entitled to be registered as American vessels, with the benefits and privileges appertaining thereto.

Mr. GROSVENOR. Mr. Chairman, I want to hear from the chairman of the committee some explanation of this section of the bill, which, in my judgment, ought not to be in the bill at all, because of the superior jurisdiction of the maritime laws of the United States over the Territorial law, and particularly because of certain dangerous provisions in the bill, or rather the lack of a careful provision, in my judgment.

Mr. KNOX. Mr. Chairman, this section provides that Hawaiian ships—ships that had a Hawaiian register at the time of annexation—are given a United States register. They could have no other register; they would be sailing without a flag and without a nationality. The Hawaiian flag went down upon the government building in Hawaii on August 12, 1898, and the American flag was raised with proper ceremonies. No flag of Hawaii from that moment means anything, and a vessel sailing under a Hawaiian flag is sailing under no flag and no nationality.

Now, there were brought to the attention of the committee by many gentlemen claims that there were other vessels than those which had a Hawaiian register that were entitled to a Hawaiian register upon this ground; that they had been bought in good faith by Hawaiians and intended for a Hawaiian register, but sailing under a temporary register, or sea letter, and without any notice of this transfer of sovereignty or of the annexation resolution. Now, if that were so, then they should be entitled to the benefits of this register; but there were statements made that there were very many vessels that would claim the benefit of this American register, and you can see that it would be a matter of thousands of dollars in the pockets of anyone who could obtain an American register by claiming that they were purchased and intended for a Hawaiian register.

So the committee, fearing the result of a general provision, and the number who would claim that they owned vessels intended