35TH CONGRESS, 1st Session. } SENATE. { REP. COM No. 82.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 18, 1858.—Ordered to be printed.

Mr. GREEN made the following

REPORT.

[To accompany Bill S. 161.]

The Committee on Territories, to whom was referred the message of the President, communicating a constitution for Kansas as a State, adopted by the convention which met at Lecompton, on Monday, the 4th of September, 1857, *having had the same under consideration, instruct me to report:*

By the treaty with France, made on the 30th day of April, 1803, known as the Louisiana treaty, Kansas was acquired, with a special stipulation for the protection of the rights of the inhabitants, and for the admission of such States as might be formed out of that territory into the Union on an equal footing with the original States. This solemn treaty obligation has been heretofore faithfully observed, and the States of Louisiana, Missouri, Arkansas, and Iowa have been respectively admitted into the Union; and another part of the territory acquired under that treaty, included in the proposed State of Minnesota, is now about to be likewise admitted. Kansas has the same right to expect the same treatment in the fulfillment of sacred treaty obligations, made with one of the first powers of the world.

In view of these obligations, and in strict conformity with the uniform practice of the government in fulfillment thereof, citizens of the United States have settled in Kansas, under the just expectation of having a State organization. And to protect the people and enable them to prepare for such an organization, Congress, on the 30th day of May, 1854, passed an act creating a government for that Territory.

That act, following up the constant practice of the government and in fulfillment of the treaty with France, contemplates a change of its form into that of a State, and for admission into the Union.

Under the act of Congress aforesaid, a regular territorial government was organized, and the people of the Territory were thereby constituted a political community, with full powers of government, subordinate only to the Constitution of the United States, and proceeded to pass laws for the protection of persons and property, the validity of which cannot now be called in question.

Soon after the territorial government went into operation, a party of disaffected persons formed combinations to resist the laws and to set at defiance both the territorial and United States governments.

To that end they proceeded to form an organization, and, although the population at that time amounted to less than twenty-five thousand inhabitants in the entire Territory, and *they*, constituting a small minority of that number, yet, in order to resist the legal authorities under the color of law, got up an illegal assembly at Topeka, and actually pretended to organize a State government; and this, too, without a congressional enabling act; without the assent of the territorial legislature; without a vote of the people authorizing the election of a convention; but in disregard of all. That same party has been persistent in its illegal efforts to maintain its own organization in violation of law, and to defeat and prevent the operation of all laws and the settlement of all questions affecting the peace of Kansas. To accomplish its ends they concocted and affected a secret military organization of their malcontents, pledged to resist the legal authorities and actually received Sharpe's rifles and other arms and munitions of war, which were sent out from Massachusetts and other States by the so-called emigrant aid societies, to enable them to maintain their forcible resistance to lawful authority. The societies had previously sent out the worst part of the spurious population of Kansas for the professed and avowed object of excluding slavery from the Territory. That attempt was justly regarded as offensive to the southern States. The people of the United States, through their representatives in Congress, established the principle of strict non-intervention on the subject of slavery in the Territories and States. The Supreme Court subsequently sustained, by a solemn decision, the same principle.

Therefore, for States, or societies chartered by States, or any other combinations, to undertake to effect an object that Congress, the Supreme Court and the American people have pronounced against, must, of necessity, have proved obnoxious.

The action of these societies, in conjunction with their affiliated organizations in the Territory of Kansas, created a general commotion throughout the country, as was to have been expected.

Charges and complaints were made on both sides, and the whole subject was subsequently brought before Congress for consideration. The matter was fully investigated and the regular, legal territorial government was completely sustained and endorsed. Every department of the federal government in which this question has been considered, has pronounced the same judgment in favor of the territorial authorities, and against the party resisting its laws.

A report was made in the Senate on this subject by Mr. Douglas, the chairman of the committee charged with the investigation, in which he says:

"The passage of the Kansas Nebraska act was strenuously resisted by all persons who thought it a less evil to deprive the people of new States and Territories of the right of State equality and self-government than to allow them to decide the slavery question for themselves, as every State of the Union had done, and must retain the undeniable right to do, so

long as Constitution of the United States shall be maintained as the supreme law of the land. Finding opposition to the principles of the act unavailing in the halls of Congress and under the forms of the Constitution, combinations were immediately entered into in some portions of the Union to control the political destinies and form and regulate the domestic institutions of those Territories and future States through the machinery of emigrant aid societies. In order to give consistency and efficiency to the movement, and surround it with the color of legal authority, an act of incorporation was procured from the legislature of the State of Massachusetts, when a powerful corporation, with a capital of five millions of dollars, invested in houses and lands, in merchandize and mills, in cannon and rifles, in powder and lead, in all the implements of art, agriculture, and war, and employing a corresponding number of men, all under the management and control of non-resident directors and stockholders, who are authorized by their charter to vote by proxy to the extent of fifty votes each, enters a distant and sparsely settled Territory with the fixed purpose of wielding all its power to control the domestic institutions and political destinies of the Territory, it becomes a question of fearful import how far the operations of the company are compatible with the rights and liberties of the people. Whatever may be the extent or limit of congressional authority over the Territories, it is clear that no individual *State* has the right to pass any law or authorize any act concerning or affecting the Territories which it might not enact in reference to any other State. It is a well settled principle of constitutional law in this country, that while all the States of the Union are united in one, for certain purposes, yet each State, in respect to everything which affects its domestic policy and internal concerns, stands in the relation of a foreign power to every other State. Hence, no State has a right to pass any law, or do or authorize any act with a view to influence or change the domestic policy of any other State or Territory of the Union, more than it would with reference to France or England, or any other foreign State with which we are at peace. Indeed, every State of this Union is under higher obligations to observe a friendly forbearance and generous comity towards each other member of the Confederacy than the laws of nations can impose on foreign states.

"If our obligations, arising under the law of nations, are so imperative as to make it our duty to enact neutrality laws, and to exert the whole power and authority of the executive branch of the government, including the army and navy, to enforce them in restraining our citizens from interfering with the internal concerns of foreign states, can the obligations of each State and Territory of this Union be less imperative, under the federal Constitution to observe an entire neutrality in respect to the domestic institutions of the several States and Territories?"

These extracts prove the character of the resisting party in Kansas, and illustrate its purposes from the beginning to the present time; while the report also fully sustains the regular, legal government, as before stated. Under these circumstances, and in this condition of affairs, and with these express recognitions, the regular, legal territorial government continued to progress, and the population continued to increase, until it was believed the time had arrived for admission into the Union, in accordance with the provisions of the Louisiana treaty, the uniform practice of government, the provisions of the organic act, and the just expectations of the people. On the — day of July, 1855, the regular legislature of the Territory passed an act to take the sense of the people on the subject of forming a State government, preparatory to admission into the Union. The election was held, and a large majority voted in favor of having a convention to adopt a constitution; indeed, the vote was almost unanimous.

In pursuance of which vote the territorial legislature, on the 19th day

of February, 1857, passed a law for taking the census of the people, for making a registry of the voters, and for the election of delegates to the convention. This law is admitted to have been enacted by lawful authority, and to be regular, fair, and just in its provisions. Mr. Geary, then governor of Kansas, vetoed the bill calling the convention, for the reason that it did not require the constitution, when framed, to be submitted to a vote of the people for adoption or rejection.

The bill, however, was reconsidered in each House and passed by a two-thirds vote over the veto of the governor, and thus became a binding law in the Territory. The legislature, no doubt, considered it a solemn duty to leave the people of the Territory perfectly free, through their own delegates in convention assembled, to form and adopt their own constitution in *their own way;* and hence did not undertake to dictate any single act to be performed by the people's representatives, whose authority on such matters was greater than that of the legislature. If the legislature could direct the convention what they should do on *one* subject, it might, with equal propriety, have given commands on all other subjects. This would have been a flagrant violation of all rules of right and of justice to the people.

At the preceding election the people had directed the legislature to pass a law calling a convention of delegates, to be elected by the people for the purpose of adopting a constitution, and if the legislature had gone beyond the performance of that ministerial act, which the people required, it would have been justly regarded as a violation of the people's rights, and an attempt to coerce the convention, which the people were about to elect to reflect *their* own will. The republican institutions of the United States are all based upon the representative principle. Instead of meeting in person, as did the people of Athens, in large tumultuous assemblies, where no certain decision on anything could be had, and where liberty itself was ultimately lost, the people of the several States of our happy Union have chosen rather to delegate authority to representatives, who should act for, and in the name and behalf of the people, in public political matters, either in making constitutions or in the passage of laws for the regulations and government of society. This principle is observed in all our institutions, State and federal, and thus far in our history has proved faithful and efficient in protecting the rights of the people, and beneficial in avoiding the tumultuary mobs which disgraced the Grecian republics and some of our own larger cities. But whether the representative principle, or the personal association in assemblies, be the better system, it is not for the committee to decide. It is sufficient if either one be adopted and pursued by the people, as in the case of Kansas; and the selection of the representative American system can be no valid objection to the action of the people in that regard. That representative rule and principle has been perfected, in a great degree, under our institutions, and may almost be claimed as an *American* system.

That the law providing for the convention afforded equal opportunities to all the citizens of Kansas to have a voice on the constitution, in and through the convention, cannot be denied. It provided:

SEC. 1. Sheriffs are required, between the 1st of March and 1st of April, 1857, to make an enumeration; have power to appoint deputies, who shall take oath, &c.

SEC. 2. In case of vacancy in office of sheriff, the probate judge shall perform his duty; and in case of vacancy in both, the governor shall appoint some competent resident to perform said duty.

SEC. 3. Officers, as above, shall file in office of probate judge a complete list of all qualified voters resident in his county or district, on the 1st of April, 1857.

SEC. 4. Copies of said list to be posted in public places.

SEC. 5. Probate judge to continue court from receipt of said returns to 1st of May, for the purpose of correcting them.

SEC. 6. Lists of legal voters, as corrected, to be returned to the governor and secretary, and distributed generally.

SEC. 7. Upon completion of census, apportionment of members to be made by the governor and secretary, according to the registered voters. Number of representatives to be sixty.

SEC 8. Election for members of the constitutional convention shall be held on the third Monday in June, and no one, unless registered, shall vote.

SEC. 9. County-commissioners shall appoint the places of voting, judges of elections, &c.

SEC. 10. Judges of election are required to be sworn; also the clerks, and duplicate returns of election shall be made and certified by them.

SEC. 11. Every *bona fide* inhabitant of Kansas, on the third Monday of June, 1857, being a citizen of the United States, and over twenty-one years of age, whose residence in the county where he offers to vote shall have been three months next before said election, shall be entitled to vote.

SEC. 12. Persons authorized to take the census to administer oaths, &c.

SEC. 13 provides for the punishment of unlawful attempts to influence voters.

SEC. 14 provides punishment for illegal voting.

SEC. 15 provides punishment for those who fraudulently hinder a fair expression of the popular vote.

SEC 16. Delegates are required to assemble in convention at the capitol on the first Monday of September next.

SEC 17 provides for an election by the convention of its officers.

SEC. 18 in relation to the salaries of sheriffs and other officers.

SEC. 19 relative to the location of the election districts.

SEC. 20 requires all votes to be *viva voce*.

SEC. 21 gives a tabular form for the returns.

Above bill passed over governor's veto on the 19th of February, 1857.

A registry of the voters was accordingly taken, in pursuance of the act of the territorial legislature, so far as it was possible, under the peculiar state of things then existing, to do so. It appears that a portion of the inhabitants refused to be registered; some gave ficti-

titous names, and others prevented the officers from complying with the law.

Mr. Stanton, then acting governor of Kansas, says, on that subject:

"It is not my purpose to reply to your statement of facts; I cannot do so from any personal knowledge enabling me either to admit or deny them. I may say, however, I have heard statements quite as authentic as your own, and in some instances from members of your own party, (republicans,) to the effect that your political friends have very generally, indeed, almost universally, refused to participate in the pending proceedings for registering the names of the legal voters. In some instances they have given fictitious names, and in numerous others they refused to give any names at all. You cannot deny that your party have heretofore resolved not to take part in the registration, and it appears to me that, without indulging ungenerous suspicions of the integrity of officers, you might well attribute any errors and omissions of the sheriffs to the existence of this well known and controlling fact."

But notwithstanding all these difficulties in making the registry of voters, 9,251 names were legally returned in the following counties and districts, viz: Doniphan, Brown, Nemaha, Atchison, Leavanworth, Jefferson, Calhoun, Marshall, Pottawatomie, Johnson, Douglas, Shawnee, Lykins, Linn, Bourbon, McGee, Dorn, Allen.

In the following counties, Richardson, Davis, Franklin, Weller, Breckenridge, Wise, Madison, Butler, Coffey, Anderson, Woodson Wilson, Godfrey, Greenwood, Hunter, no registry was taken on account of the facts above stated. All of the last named counties together contained but a very small population or vote. It is believed, from the statement made by General Calhoun, now before the committee, that many of these counties did not contain *ten votes*, and all of them together not so many as 1,500. The counties were marked out by a description of boundaries and named; but some of them were without inhabitants, and many of them were attached to adjacent counties for civil and military purposes.

All of them were equally provided for by the law calling the convention, and any omissions that may have occurred resulted from causes not in the control of the majority of the people.

The largest vote ever had in the Territory up to 21st December last is about 12,000. So that it appears from the facts before the committee, notwithstanding the refusal to comply with the law on the part of those opposed to it, only about 3,000, or less, could possibly have been omitted in the registration; and even that omission was the result of their own acts.

One whole month was afterwards allowed under the law, as before stated, for the correction of the lists after due notice to the public, by adding to or striking off names improperly inserted or omitted; to be determined on legal evidence submitted by any parties concerned, before a legal tribunal. In addition to which, it appears that the governor of the Territory made every effort to induce the people to comply with the law calling the convention, and to give full force and effect to all its provisions.

Thus, every opportunity was afforded to *all* the people of Kansas, to register their names, as legal voters, if they possessed the requisite qualifications. After the registration was closed, according to the law, Mr. Stanton, then governor of Kansas, made the apportionment of delegates amongst the several districts. The election was legally held, pursuant to the law. At the time this apportionment was made the governor knew as much concerning the counties and people not registered, in consequence of acts which no law could prevent, as since; and if the facts, as then presented, were fair enough to justify the apportionment, it is now too late to make any complaint against that action. The law allowed but sixty members for the convention, and the governor, with the full knowledge of the registration before him, apportioned the whole number amongst the districts and counties when the registry had been made; leaving it impossible for other counties not included in the registration by their own misconduct, and not attached to registered counties, to have any separate and independent representation in the convention without a palpable violation of the law calling the convention. The people had legally demanded this call of a convention, and the proper tribunal had made provision for it on terms admitted to be fair, just, and equal for *all the people;* and if by refusal to act, or other misconduct, any portion feel aggrieved, they have no just cause of complaint; nor should Congress pay any regard to complaints consequent upon their *non-action.* Speaking of this call of the convention, and of the convention itself, Mr. Stanton said, in an official document, to the people of the territory:

"The government especially recognizes the territorial act which provides for assembling a convention to form a constitution with a view to making application to Congress for admission as a State into the Union. That act is regarded as presenting the only test of the qualification of voters for delegates to the convention, and all preceding repugnant restrictions are thereby repealed. In this light the act must be allowed to have provided for a full and fair expression of the *will of the people through the delegates* who may be chosen to represent them in the constitutional convention. I do not doubt, however, that in order to avoid all *pretexts* for resistance to the peaceful operation of this law the convention *itself* will in some form provide for submitting *the great distracting question* regarding their social institution, which has so long agitated the people of Kansas, to a fair vote of the actual *bona fide* residents of the Territory, with every possible security against fraud and violence. If the constitution be thus framed, and the *question of difference be thus submitted* to the decision of the people, I believe that Kansas will be admitted by Congress, without delay, as one of the sovereign States of the American Union, and the territorial authorities will be immediately withdrawn."

This was the legal notification of the governor to the people of Kansas BEFORE the election for delegates to the convention was had. Governor Walker, on the 27th May, still *before* the election, and with full knowledge of the registration and apportionment, said—

"Under our practice the preliminary act of framing a State constitution is uniformly performed through the instrumentality of a convention of delegates chosen by the people themselves. That convention is now about to be elected by you on the call of the territorial legislature, created and still recognized by Congress, and clothed by it, in the comprehensive language of the organic law, *with full power* to make such an *enactment.*

"The territorial legislature, then, in assembling this convention, were fully sustained by

the act of Congress; and the authority of the convention is distinctly recognized in my instructions from the President of the United States. * * *

"The people of Kansas, then, are invited by the highest authority known to the Constitution to participate freely and fairly in the election of delegates to form a constitution and State government The law has performed its entire appropriate functions when it extends to the people the right of suffrage, but cannot compel the performance of that duty."

Here, also, by Governor Walker, we have the distinct recognition of the legality of the convention to form the constitution, with a *special* invitation for all qualified to participate therein. But, notwithstanding all this, the same party which had sought to stir up strife and contention previously in the Territory, still continued their insurrectionary and revolutionary movements. Their conduct and their legal relation to the government may be understood from the following quotations made from the official papers of Governor Walker. Speaking of them he says:

"And on the other side in favor of what was regarded by me as open rebellion, even many violent men, headed by the principal delegates of the town of Lawrence, which is the great seat of all the agitation that has disturbed the peace of the Territory." * * *

"Lawrence is the hot-bed of all the abolition movements in this Territory. It is the town established by the abolition societies of the east; and whilst there are respectable people there, it is filled by a considerable number of mercenaries, who are paid by abolition societies to perpetuate and diffuse agitation throughout Kansas, and prevent a peaceful settlement of this question." * * * * * * * * * *

Again he says, 14th July: "I have received authentic intelligence that a dangerous rebellion has occurred in the city of Lawrence, in this Territory, involving an open defiance of the laws, and the establishment of an insurgent government in that city." * * *

He further says: "Under these circumstances, you have proceeded to establish a government for the city of Lawrence in direct *defiance* of the territorial government, and denying its existence and authority. You have imposed upon all those officers the duty of taking an oath to support this so-called State constitution, thus distinctly superseding, so far as n your power, the territorial government created by the Congress of the United States."

"You have caused these proceedings to be printed in handbill form, and have distributed them, as I am informed, throughout the Territory, with a view to incite the other cities, towns, and counties of Kansas to establish insurrectionary governments, thereby placing the people of this territory, so far as in your power, in open conflict with the government of the United States." * * * * * * * * * *

"Your evident purpose is thus to involve the whole Territory in insurrection, and to renew the scenes of bloodshed and civil war Upon you, then, must rest all the guilt and responsibility of this contemplated revolution." * * * "You have, however, chosen to disregard the laws of Congress and of the territorial government, and have proceeded to create a local government of your own, based upon insurrection and revolution. You are inaugurating rebellion and revolution." * * * "If the Lawrence *rebellion* is not put down, similar organizations, extending to counties as well as towns, will be carried into effect throughout the Territory; the object being to *overthrow the territorial government*, and inaugurate the Topeka State government even before the admission of Kansas as a State by Congress."

This party formed a military organization without authority of law, or even the semblance of law, and received their munitions from the abolition societies of the east. The military commander of this illegal organization directed the name of each person to be taken who refused

to be enrolled on his lists. In speaking of this, Governor Walker says, in his official letter:

"*The professed* object is to protect the polls at the election in August of the new insurgent Topeka State legislature. The object of taking the names of all who refuse enrollment is to terrify the free State conservatives into submission. This is proved by recent atrocities committed on such men by *Topekaites*. The speedy location of large bodies of regular troops here, with two batteries, is necessary; the Lawrence insurgents await the development of this new revolutionary military organization." o o

"You are aware that General Lane commanded the military expedition which made an incursion into this Territory last year, and that the officers of the staff are all leading *agitators* for the overthrow of the territorial government. The object of this last requisition is believed to be to mark for persecution and oppression all those persons, and especially free State democrats, who refuse to unite in this military organization. The purpose is universally regarded to be to establish *a reign of terror*." * * o

"A few weeks since one of these conservative democrats, who had committed no other offence than permitting the use of his name as a candidate for the constitutional convention, was abused and injured in the most shocking manner, and the most *most revolting atrocities were committed upon* HIS WIFE by some of the insurrectionary party." o * o "It will be perceived that this military organization embraces the whole Territory, being arranged into four divisions and eight brigades." o o o "I am well satisfied that a large portion of the insurrectionary party in this Territory do not desire a peaceful settlement of this question, but wish it to remain open, in order to agitate the country for *years to come*." * o * "August 18. The insurgent military organization under General Lane is still progressing. *Arms are being supplied* and his troops drilled for action. We are threatened with the seizure of the polls, at various points, by these insurgent forces. When it is remembered that the Topeka party *claim* to outnumber their opponents at least ten to one, the *pretext* for assembling these forces to protect the polls is *evidently* most fallacious."

It thus appears to the committee, from OFFICIAL evidence, that the opposition in Kansas to the Lecompton convention consisted of persons engaged in insurrection, rebellion, and revolution. Some few are known to be citizens of the United States. Whether the others are *citizens* or *aliens*, whether in *allegiance* or *not*, they are all known to be enemies of the government, and openly engaged in attempts against law and order in the Territory, and against the peace and quietude of society. Many have been shown by Governor Walker to be hired *mercenaries* sent out by the abolition societies of the east, and all working in concert to accomplish in Kansas what the Supreme Court, and public sentiment, have decided Congress has no power to do; that is, to prohibit slavery in the Territory of Kansas, and more than that, prevent the people of the Territory from exercising the privilege of deciding that question for themselves in *their own way*.

To do which they have gotten up military organizations of a rebellious character; have committed the most *revolting outrages* against persons and property; threatening to deluge the land in blood; alienating one section of the Union from the other, and endangering the existence of free government.

Such are the characters—such are the objects and dangerous results of the opponents of the Lecompton constitution.

But, without regard to this insurrectionary movement, the regular legal convention of Kansas, in pursuance of law, assembled and adopted the constitution now before the committee, which is thoroughly republican in form. Out of deference to those who might be opposed to African slavery, and to avoid all pretext of complaint on the part of opponents, the convention, accepting the suggestion of Governor Stanton, submitted the question of slavery or no slavery to a direct vote of the *bona fide* inhabitants of the territory. That election was ordered for the 21st December, 1857, when it was accordingly held, and resulted as follows:

Constitution with slavery	6,226 votes.
Constitution without slavery	569 votes.
Making an aggregate of	6,795 votes.

An opportunity has consequently been afforded to the people of Kansas to decide this question of slavery for themselves, and that decision is now before us with all the sanctions of law. No real or valid exception can be taken to any other part of the constitution. On this subject President Buchanan has well said, in his message:

"In fact, the general provisions of our recent State constitutions, after an experience of eighty years, are so similar and so excellent, that it would be difficult to go far wrong at the present day in framing a new constitution."

The constitution conforms precisely to what Governor Walker said would meet his most cordial approval, and that he should devote his whole time in addresses every day to the people of every county in the Territory to insure its adoption. He says:

"Adopt a constitution very similar to that of some of the southern States, securing the right to the slaves now in the Territory, numbering probably from two to three hundred, but prohibiting the introduction of any more, excluding all free negroes, enforcing by most stringent provisions the execution of the fugitive slave law; securing the right of appeal in all constitutional cases to the Supreme Court of the United States; and requiring all officers of the government, legislative, executive and judicial, the judges and inspectors of all elections, and the attorneys of all courts, to take an oath to support the constitution of the State and of the United States. Such a constitution, if submitted to a vote of the whole people, would, in my opinion, be adopted by a very considerable majority."

It will be seen that the convention at Lecompton has adopted just such a constitution, with the single exception of the clause prohibiting the introduction of any more slaves; and *that clause* has been submitted to a fair and direct vote of the people themselves, *registered and unregistered*, thus leaving no possible pretence for complaint.

It is well known that the only real matter of controversy in Kansas was the question of slavery. Evidence to that effect could be accumulated almost without limit, establishing the fact. But the committee deem this unnecessary, as the fact itself will hardly be disputed by any one. Such being the case, no reasonable ground of complaint can be found; for that question was submitted to all the *bona fide* inhabitants for decision, on the 21st December. There is no pretence that any districts, counties, or persons were disfranchised

at *that* election. Every qualified voter, whether *registered or not registered*, had the unrestrained privilege of voting for or against slavery. Here, then, was the opportunity to settle the only existing difficulty, if it was desired. Would it not be very extraordinary to permit a factious portion of the people, in total disregard of the law, to stay willfully from the polls, when, according to law, and according to the published notice of Governor Walker, they were equally bound as if they had voted, and then claim the privilege of having a *resubmission?*

If it were true, that they had, as they assert, a majority opposed to slavery, they could have voted out the clause sanctioning that institution. By their own act the clause is retained; and then they desire to reject the *whole* constitution, because of the so-called obnoxious slavery clause, left in by their own willful refusal to vote. Such willfulness is not to be conciliated or tolerated in a country governed by laws. Suppose twenty additional opportunities should be afforded to the same people to vote on all these questions, who can guarantee that they will act better in the future than they have in the past? Who can say they will vote at all? And if not, would not the same objection now made be as valid then as it is now, with reference to their *non-action?* It seems to be, however, but carrying out their known political design to prevent the peaceful settlement of the question.

The only legal rule is, to adhere to the uniform practice of all the consititutional governments in the Union; and an opportunity having been afforded to all of registering their names and voting, *then*, to decide according to the majority thus cast, whether some of the people have voted, or neglected, or refused to vote. Governor Walker said to the people of Kansas in his official address:

"Throughout our whole Union, and wherever free government prevails, those who abstain from the exercise of the rights of suffrage, authorize those who do vote to act for them in that contingency, and the absentees are as much bound under the law and constitution—when there is no fraud or violence—by the majority of those who do vote, as though all had participated in the election. Otherwise, as voting must be voluntary, self-government would be impracticable, and monarchy and despotism would remain as the only alternative."

Admitting the truth of the proposition of Governor Walker, that those who abstain from voting authorize those who do vote to vote for them, it necessarily follows that the abolitionists of Kansas, if they are the majority of the people, as they claim to be, are directly responsible for the establishment of slavery in that Territory. And whether they constitute the majority or minority, the decision made is equally binding upon all.

"Popular sovereignty" has been invoked by some to defeat the Lecompton constitution. It is even alleged by those objectors that nothing but a submission of the whole constitution to a direct vote of the people would be a compliance with the provisions of the Kansas-Nebraska act, which declares the people of that Territory shall be perfectly free to form their domestic institutions in *their own way*. With this view of the subject the committee cannot agree.

Surely it will not be contended that this provision of the Kansas

organic law *diminished* the previous rights of the people in creating a State government. In all time past, since the declaration of independence, it has been uniformly admitted, without a single exception, that the people had the right of choice either to form their constitutions by their agents elected for that purpose, or to reserve the right to ratify the constitution by a subsequent direct vote of the people. In either case, and in both cases, it is the act of the people, and a full exercise of "popular sovereignty." If, therefore, the Kansas act had taken away the right of the people to act through their agents, it would be a *limitation* of their rights rather than an increase and improvement, as the friends of that measure have heretofore boasted. The people would, in that case, be confined to *one way only* in which to make a constitution, and would not be at liberty to choose *their own way*. Such a construction of the organic act is manifestly erroneous.

Having thus given a historical account of the matter referred for their consideration, your committee will briefly review the whole subject, unembarrassed by details. They will look at the subject as it originated, as it has been for three years, and as it now is.

The population of our country four years ago was principally confined by treaty and by law to the comparatively small region lying to the east of the river Mississippi. Iowa, Missouri, Arkansas, and part of Louisiana were found on the western bank. Also, on the extreme southern flank Texas; and Minnesotaon the northern. California and the settlements of Oregon were upon the Pacific coast; in the centre, New Mexico and Utah. The immense country lying between our scanty settlements upon the Pacific and the western boundaries of Iowa, Missouri and Arkansas, may be said, in general terms, and with the above exceptions, to have been unoccupied. Guarded by the Indian non-intercourse act and by Indian treaties, and without territorial organization, the country was rendered, by statutory prohibitions, an inaccessible solitude, which pioneer settlers might not legally disturb. Further extensions of settlement to the westward were thus arrested by law. The western border of three or four States was the western border of the United States until we reached the top of the *Sierra Nevada*, and looked down upon the long and narrow settlements upon the shores of the Pacific. The border States had become dissatisfied, and clamored for western expansion over the beautiful and fertile wilderness which, though extending for a continuous distance of a thousand miles, approached within three hundred miles of the Mississippi, was abandoned by the government to the exclusive *use* of wild, semi-civilized and vagrant Indian tribes. Unable longer to resist the demands of the west for the opening up to settlement of a country so contiguous, important, and valuable, and which had been neglected so long as to become a just cause of reproach to the government, Congress, in 1854, took into its serious consideration the justice and policy of organizing it into Territories.

But two difficulties were in the way of an organization: one was the question of Indian occupancy, the other that of African slavery. The first was easily adjusted; the second was the subject of long, heated, and angry discussion. More than one hundred speeches were

delivered in Congress at that session npon the slavery question. At length the whole country lying west of Missouri, Iowa, and Minnesota, east of Utah, Oregon, and Washington Territories, and north of the 37th and south of the 49th parallels of latitude was organized into *two* Territories, and named KANSAS and NEBRASKA.

The law organizing these Territories settled the slavery controversy, by providing that the people of them might form their domestic institutions in their *own way*, subject only to the Constitution of the United States; and to enable the people to do so without hindrance of any kind, there was inserted in the act a clause repealing all laws establishing, regulating, or prohibiting slave holding.

This settlement greatly pleased one party, and greatly displeased the other. The defeated anti-slavery party professed to believe that Congress had power, and ought to exercise it, to exclude slave property from territory which had been acquired by the joint efforts and at the common expense of *slave holders and non slave holders*.

The victorious democratic party believed that Congress had no such power under the Constitution, and that it would be *inequitable* to exercise it if it had; and, also, that in this particular case, such an exercise of power would be a flagrant violation of the third article of the treaty with France, by which the country was acquired.

Immediately after the passage of the act, people living in Missouri, upon the borders of Kansas, being well acquainted with the country, poured into that Territory in large numbers, and appropriated many of the most fertile, best watered, and best timbered tracts. Many of these carried their *slaves* with them. On the other hand, prior to the final passage of the Kansas-Nebraska bill, but after its passage became evident, certain members of Congress formed a secret association, which ultimately became public, to incite and aid the emigration into Kansas of persons opposed to the existence of slavery, for the express purpose of so carrying out its provisions as to cause an exclusion of the slave property of the southern States from the Territory. This secret combination of politicians to perpetrate sectional injustice was promptly followed by public ones, and moneys were collected in numerous places for the express purpose of aiding an effort to exclude southern property from Kansas. This sectional and fanatical purpose was, in practice, generally coupled with some one or more schemes of money making of a highly speculative character. This effort very naturally provoked counter efforts, and violent controversies between the assailants and the assailed followed.

The creators of *strife*, as often is the case, were worsted. Of the voters on that occasion this may be said: *many were bad men*. The scenes were, if possible, as disgraceful as those which have been such a scandalous reproach to the large cities of the Atlantic and Pacific States in violent, contested elections.

Immediately after the very first election, *many* of the voters belonging to each of the contending parties, and among them the *defeated candidate for delegate to Congress*, left the Territory, NEVER TO RETURN. Few of the emigrants from the various States, *other* than those from the adjacent State of Missouri, who alone had easy and early facilities for making themselves comfortable, passed the first winter in

Kansas, and many of the settlers in Kansas from *Missouri* passed the *winter* out of the Territory. But with the spring emigrants and disturbances returned to Kansas. During the whole of the second year (1855) it is believed the majority of the actual settlers in Kansas *were emigrants from the adjoining State.* But as the mass of the emigrants sent out to Kansas under the *inspiration of the abolitionists* were poorly fitted for labor in *unbroken* fields, and had to draw *largely* upon the aid of absent and fanatical friends for support, and as both the supported and the supporters were accustomed to *wrangling* and *disputation*, the Territory was quickly filled with *strife.* And as local contention and violence increased, so did the heat and the contributions of the remote supporters, until the turmoil in Kansas on one side matured into open defiance of all the laws of the Territory. The mere handful of emigrants were ostentatiously furnished, even by *religious men, amid prayers and hymns*, with destructive weapons, and encouraged to set up an independent government. This was only not put into *actual* operation, probably, but for the firmness of the government officers, backed by the troops of the United States. For near three years these turbulent spirits, thus encouraged by the restless and fanatical elsewhere, have kept the Territory in a state of anarchy and disorder. They have uniformly disregarded the laws, so far as it has been possible for them to do so. When elections were held, instead of peacefully participating in them, they disturbed and annoyed the voters in every conceivable way, and ended in holding elections upon days, and in a manner, unauthorized by law, and expressly to contravene the law.

When, at last, to end, if possible, these disorders and strifes, the legislature made provision for a vote of the people upon the question whether a State government should be formed by the making and adopting of a constitution, these organized disturbers *combined to prevent a full and fair vote.* So, likewise, when the convention had been ordered by a regular vote of the people to be called, the *armed mischief makers* threw every obstacle in the way of a full registration of the settlers legally entitled to vote for members of the convention; and then, when their violent, illegal, and bloody efforts had been partially successful, they filled the country with their *complaints* that the registration, *which they had resisted with arms*, had not been full and fair! And as the registration was not *absolutely* full and complete, they wished the people of the United States *to infer* that the election of the members of the convention was neither legal nor fair!! The people having, by direct vote, ordered the calling of a convention to form a constitution, the abolition agitators and disturbers refused to vote at the election of members of said convention, and then, after an obstinate refusal, raised an outcry that the convention was unjustly constituted inasmuch as they were not represented therein. After the formation of a constitution, they cried out against the constitution upon the ground that they had not been allowed to vote for its ratification, though they knew, before the election of the convention, that the convention had been clothed with full authority to make a constitution; they well knew that the bill providing for the election of members of the convention had been vetoed

by the governor upon the express ground that it enabled the convention to *make* a constitution, and that it had been made a law after a full consideration of such veto. They knew that the governor and the officers of the Territory, in various ways, had made great exertions to induce them to go to the polls like honest law-abiding citizens and vote for men who would respect their wishes, and that they had refused to heed these solicitations.

They also knew that the convention had not only afforded an opportunity for the good citizens who had registered themselves as voters according to law to decide whether slavery should or should not be established in Kansas as a legal institution, but had also allowed even those bad men who had disobeyed the laws, and who had combined to prevent a full registration, to vote with the registered voters upon this vital question; and they also knew that they refused to vote, even under such circumstances, upon this proposition!

The convention was called by a direct vote of the people in direct pursuance of law; the people, in pursuance of law, subsequently elected a convention to make a constitution; and, in strict pursuance of all the forms observed by such conventions, that convention, thus legally called and thus legally elected, did make a constitution. That constitution, thus legally created, is, if recognized by Congress, the supreme law of Kansas, and can only be changed by the people of Kansas who, through their legal representatives, have thus formally created it. No legislature of Kansas, after the people had, in pursuance of all the forms of law, called and elected a constitutional convention to make a constitution, could legally interfere with it either to increase or to lessen its powers. The convention, being the direct official representatives of the sovereignty of the people, could no more be restricted in its legitimate action by a legislature than could the people themselves be restricted had they been assembled, in person, in one great mass meeting, to make a constitution for their own government. Hence the work of that convention was final and complete, and must so remain, in all its parts, until changed by the people that called and elected the convention that made it. The vote on the single clause submitted on the 21st December, 1857, was a final vote; the convention itself, if reassembled, could neither change the constitution nor order a second vote. The power with which it was intrusted by the people is exhausted. Its members are now only private citizens, and, like other private citizens, must obey each and every requirement of the constitution which they severally helped to create. Far less can a thereto unauthorized executive, judiciary, or legislature change, alter, modify, or nullify the constitution made by the people through their selected representatives—representatives elected by the people themselves, and clothed with special, direct, and positive authority for that, and for no other purpose.

Good citizens, and representatives of good citizens, cannot, consistently, do anything expressly to uphold violators of law and known disturbers of the public peace. It is alike impolitic and unjust to grant the turbulent demands of the disorderly, be they few or many; it is wrong to aid them to overturn a constitution made by the law-abiding supporters of the government and laws of Kansas.

The more especially, when the habitual disturbers would not have any cause of complaint of any kind, *as they themselves loudly assert*, if they had listened to the earnest counsels of the President of their country, and the governor of their Territory, and exercised their right, and honestly performed their duty by voting upon either of three occasions—1st, when the vote was taken upon calling a convention; 2d, when the convention was elected; 3d, when the question was submitted whether the slavery clause should or should not be retained in the constitution. If the abolitionists were in a majority, as they so loudly boast, *and would not vote* against the establishment of slavery in Kansas, but allowed those who would vote to establish it, they have no just cause of complaint. If they were in a minority, as there is reason to believe, they have no cause of complaint; for the majority of the people voting, in accordance with the theories of all, ought to rule. Notwithstanding the noisy and incessant claims of the abolitionists to be considered a majority of the people of Kansas, the truth of those claims remains to be shown. Having been abundantly supplied with superior arms, such as Sharpe's rifles, Colt's revolvers, and bowie knives, and been trained for two or three years to their use, and to move in concert and in masses, the idle and the lawless men sent into Kansas by the fanatics of New England have become dangerous and formidable. But *their numbers* have been, it is believed, greatly exaggerated; their power consists in their superior organization and arms, and in their being supported in idleness. When called upon to vote for or against the calling of a convention to form a constitution, these mercenaries of political priests did not venture to measure strength at the polls with the democratic party of Kansas, but allowed the election to go by default.

So, again, when the members of the convention were elected, *the abolitionists shrunk from the contest.* So, also, when the question came up whether there should or should not be a clause retained in the constitution allowing slavery to be established in Kansas, *they again shrunk from the contest*, conscious of their weakness, or from sinister political design. It is possible there may be a majority of the citizens of Kansas from the non-slaveholding States, but all of them are not abolitionists or fanatics on the slave question. Why this continued absence of the abolitionists from the polls if they had the real strength with which to take possession of the legislature, and thus peacefully end all difficulties by having everything their own "way?"

At the late election of State officers thay exerted their strength in union *with certain favoring elements*, and so close was the contest, even when thus aided, that the result is as yet unknown.

The only election they ever carried was that which was held last fall, and their success is readily accounted for without resorting to the supposition that the abolitionists compose a majority, or even a fourth, of the voters of Kansas.

As to their vote upon the constitution, given upon the 4th of January last, two weeks after the day appointed by the only competent authority to appoint a day, little need be said, for it was utterly irregular, and was thrown upon a day other than the legal one, for the purpose of casting contempt upon the government. Votes cast

without lawful authority upon a question decided, and with a purpose to unfavorably affect what is lawful, orderly, and right, are entitled to no consideration at the hands of those who do not claim to favor lawlessness and anarchy.

That men who habitually set all law at defiance, and who consider all restraint upon their wishes as tyranny, should report that they have cast ten thousand votes against a constitution, when upon the same day, and at the same places, they were able to rally in favor of their candidates for office not so many voters by three or four thousand, will surprise no one, and influence no one. As good citizens, it was their duty to have voted on the lawful election day; as turbulent persons, they chose to vote *two weeks afterwards;* hence, had they numbered *millions*, their *numbers* would not conceal nor palliate, far less justify, their open disregard and contempt of law.

Some consider the submission of a constitution to a vote of the people for ratification as *necessary* to its validity. In this opinion the committee do not concur. The people may assemble, as in ancient days, in mass meeting, and make a constitution; they may elect representatives to make one for them; or they may elect representatives to draft one to be submitted to them for approval or rejection. The last method is most approved of during the past few years, though formerly the second method was very generally resorted to.

The calling of the constitutional convention of Kansas is generally conceded to have been strictly legal. The election of its members is also admitted to have been legal. Is it not logical to infer that a convention legally called, legally elected, and clothed with authority to make a constitution, can no more be interfered with by governor, judge, or legislator, either to increase or to diminish its powers, or to alter, modify, or nullify its acts, than the people could be interfered with had they assembled *en masse*, instead of by representatives? The legislature of a State may not alter or annul the constitution thereof unless thereto specially authorized by the people.

No election of officers under a constitution, no vote on the adoption of a constitution, held on a day prior, or on a day subsequent, to the day fixed by the lawfully constituted authorities, is considered valid in any State, or in any Territory, or in any city, county, or town in the United States, no matter how few or how many persons may engage in the lawless proceeding. No man can be chosen President, or governor, or mayor, or justice of the peace, but upon the days appointed by law; and, except by lawless and shameless desperadoes in Kansas, nowhere in the United States has this doctrine been *practically* controverted. If the monstrous practices of the bold, bad men of Kansas, now an exception, *are to be erected into a rule*, how long will it be ere some audacious sectional faction will find a pretence for holding a Presidential election on a day other than that appointed by the law? And when elections are held without law by factionists, and on a day subsequent to the day appointed by law, *their* candidates will always have most votes; the legal candidates will by them be pronounced the "minority candidates," and the irregular and illegal ones will be called the "majority candidates." Then will follow strife, bloodshed, and civil war. *Rights*, it must ever be borne in

mind, can be best and most surely upheld by strict adherence to law; outrages and crimes are easiest committed and best protected in the midst of civil commotion. There is no real and true safety to our liberties and institutions but in a strict adherence to the spirit and the letter of our constitutions and laws; and there is no danger to our peace and our Union that we cannot easily escape if we will conscientiously adhere to them. Who ever heard of a legislature, other than that of Kansas, which had the presumption to appoint a day, open polls, and request the people to vote for or against a constitution which had been finally adopted by the people two weeks before, and which nobody could change but the people, and they only by a formal action to that direct end? The action on the constitution on the 21st December, 1857, was final action, and that instrument was, on that day, a completed one; it can be changed, as all State constitutions can be; but, until formally and lawfully changed, it is valid; and its turbulent opponents will find that the validity of that fundamental law cannot be affected by a town meeting harangue, or by an irregular vote ordered by a rash body of heated partizans.

Many generous persons who are quite indisposed to countenance the violence and contumacy of the abolitionists sent into Kansas for the purpose of excluding therefrom all property not pleasing to them and their abettors, urge that *something* might be done to *lessen* the hardships that will fall upon them in the event of the admission of Kansas into the Union with the constitution made at Lecompton; that, although it is true the abolitionists violently opposed registration, would not vote at elections, held sham elections on days subsequent to those appointed by law, and even refused to vote against the establishment of slavery at a time when they professed to believe their doing so would have excluded it, and thus have peacefully settled the question to their own satisfaction, yet, they consider it would be too severe to compel such contumacious citizens, even though it is their own fault, to live under a constitution which, however grievous its provisions may prove to be, they cannot change, *without resorting to revolution*, until the year 1864.

To such, without resorting to the ready answer that Congress has no power to modify or alter a State constitution, and has expressly stipulated that the people of Kansas *shall be permitted to form their own institutions*, subject ONLY to the Constitution of the United States, two replies may be given. The first one is this: The clause complained of in the Lecompton constitution, in this connexion, is in these words:

"SEC 14. After the year one thousand eight hundred and sixty-four, whenever the legislature shall think it necessary to amend, alter, or change this constitution, they shall recommend to the electors at the next general election, two-thirds of the members of each house concurring to vote for or against calling a convention, and if it shall appear that a majority of all citizens of the State have voted for a convention, the legislature shall at its next regular session call a convention, to consist of as many members as there may be in the house of representatives at the time, to be chosen in the same manner, at the same places, and by the same electors that choose the representatives; said delegates so elected shall meet within three months after said election, for the purpose of revising, amending, or changing the con-

stitution, but no alteration shall be made to affect the rights of property in the ownership of slaves."

That this provision is not objectionable to the abolitionists, *in fact*, and is now urged by them and their friends *only for popular effect*, is proved by the overwhelming fact that the abolitionists of Kansas inserted in their "Topeka Constitution" the following more objectionable provision, viz:

"AMENDMENTS TO THE CONSTITUTION.—ARTICLE XVI.

"SECTION 1. All propositions for amendments to the constitution shall be made by the general assembly.

"SEC. 2. A concurrence of two-thirds of the members elected to each house shall be necessary, after which such proposed amendments shall be entered upon the journals with the yeas and nays; and the secretary of state shall cause the same to be published in at least one newspaper in each county in the State where a newspaper is published, for at least six months preceding the next election for senators and representatives, when such proposed amendment shall be again referred to the legislature elected next succeeding said publication. If passed by the second legislature by a majority of two-thirds of the members elected to each house, such amendments shall be republished, as aforesaid, for at least six months prior to the next general election, at which election such proposed amendments shall be submitted to the people for their approval or rejection, and if the majority of the electors voting at such election shall adopt such amendments, the same shall become a part of the constitution.

"SEC. 3. When more than one amendment is submitted at the same time, they shall be so submitted as to enable the electors to vote upon each amendment separately.

"SEC. 4. No convention for the formation of a new constitution shall be called, and no amendment to the constitution shall be, by the general assembly, made before the yea 1865, nor more than once in five years thereafter."

The second reply is this: Suppose the grievance *real*, and that it *ought* to be redressed, it is unnecessary for Congress to unlawfully interfere for that purpose, inasmuch as the Lecompton convention has provided a full, lawful, and perfect remedy for every conceivable grievance, and placed that remedy in the unrestricted hands of the majority of the people, by inserting in the constitution of Kansas the following distinct and unequivocal recognition of power, viz:

"All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit, and therefore they have at all times an inalienable and indefeasible right to alter, reform, or abolish their form of government in such manner as they may think proper."

The abolitionists of Kansas have thus far sought power by methods unknown to the law and by violence, and not through the peaceful agency of the ballot-box. Claiming to have a majority of the voters of the Territory, and therefore able to elect legislatures and conventions, they yet ask Congress to wrongfully do for them what they may, at legal times and legal places, rightfully do for themselves, that is, change or abolish their constitution. And in case Congress refuse to comply with their unconstitutional demand, they threaten to afflict the country with an attempt at bloodshed and revolution. Unless Congress will do for them what they assert they are

numerous enough to do for themselves, but which they wilfully refuse to do, they threaten to plunge the country into civil war. This conduct is so exceedingly unreasonable as to force the conviction upon the mind that they are conscious of being in a hopeless minority, and only expect to be able to compass their unwarrantable ends by *extorting* them from the general love of peace and quiet. If your committee are not greatly mistaken, those reckless men misjudge the American people, and will be required to seek peaceful methods for the redress of all their grievances, whether they be real or imaginary.

The committee do not approve the ordinance accompanying the constitution, and report against its allowance; but they do not regard it as any part of the constitution, nor will its approval or disapproval by Congress affect the validity of that constitution if the State be admitted into the Union as recommended.

In conclusion, this committee is of opinion that when a constitution of a newly formed State, created out of our own territory, is presented to Congress for admission into the Union, it is no part of the duty or privilege of Congress either to *approve* or *disapprove* the constitution itself, and its various provisions, *or any of them*, but simply to see whether it be the legal constitution of the new State; whether it be republican in form; whether the boundaries proposed be admissible; and whether the number of inhabitants be sufficient to justify independent State organization.

Believing that the paper presented is the legal constitution of Kansas, that it is republican in its form, that the boundaries proposed by it are admissible, and conceding the sufficiency of the population, the committee recommend the admission of Kansas into the Union upon the constitution presented, and report a bill accordingly.

APPENDIX.

AN ACT to provide for the call of a convention to form a State constitution.

Be it enacted by the governor and legislative assembly of the Territory of Kansas as follows:

SECTION 1. That there shall be, at the first general election to come off in October, 1856, a poll opened at the several places of voting throughout this Territory, for taking the sense of the people of this Territory upon the expediency of calling a convention to form a State constitution.

SEC. 2. It shall be the duty of the judges at the several election precincts in this Territory, at the election aforesaid, to cause a poll to be opened, which poll shall contain two columns, one to be headed "convention," the other "no convention;" and they shall cause the vote of each individual voter to be set in the appropriate column.

SEC. 3. All persons qualified by the laws of the Territory to vote for members of the general assembly shall be entitled to vote for or against said convention.

SEC. 4. At the close of said election, at the several precincts in this Territory, the judges thereof shall cause an abstract of the votes given for and against a convention to be made out and certified to by the secretary of the Territory.

SEC. 5. The secretary of the Territory shall, from the abstract of votes certified to him to be cast "for" and "against" "convention" by the said judges of elections, make a full report of the same to the next legislature thereof.

SEC. 6. If a majority of persons shall vote in favor of "convention" at said election held therefor, then it shall be the duty of the legislature held next after the said election, to provide for and make all necessary provisions for an election of members to said convention, defining their duties, &c.

This act to take effect and be in force from and after its passage.

AN ACT to provide for the taking a census, and the election of delegates to a convention.

Be it enacted by the governor and legislative assembly of the Territory of Kansas as follows:

SECTION 1. That for the purpose of making an enumeration of the inhabitants entitled to vote under the provisions of this act, an apportionment, and an election of members of a convention, it shall be the duty of the sheriffs of the several counties in Kansas Territory, and they are hereby required, between the first day of March and the first day of April, eighteen hundred and fifty-seven, to make an enumeration of all the free male inhabitants, citizens of the United States, over twenty-one years of age, and all other white persons actually residing within their respective counties, and for this purpose shall have power to appoint one or more deputies to assist in such duties, not to exceed one in each municipal township, each of whom, before entering upon his office, shall take and subscribe an oath or affirmation to support the Constitution of the United States and faithfully and impartially discharge the duties imposed on him by this act, according to the best of his skill and judgment, which oath or affirmation shall be administered to them severally, and be duly certified by a judge or clerk of the district court of the United States, or judge or clerk of the probate court for the several counties, or by a justice of the peace, and filed and recorded in the office of the secretary of the Territory.

SEC. 2. In case of any vacancy in the office of sheriff, the duties imposed on such sheriff by this act shall devolve upon, and be performed by, the judge of the probate court of the county in which such vacancy may exist, who may appoint deputies, not to exceed one in each municipal township; and in case the office of both sheriff and probate judge in any county shall be or become vacant, the governor

shall appoint some competent resident of such county to perform such duty, who shall have the same right to appoint deputies, take and subscribe the same oath, and perform all the requirements of this act, as applied to sheriffs.

SEC. 3. It shall be the duty of the sheriff, probate judge, or person appointed by the governor as herein provided, in each county or election district, or before the tenth day of April next, to file in the office of the probate judge for such county or election district, a full and complete list of all the qualified voters resident in his said county or election district, on the first day of April, eighteen hundred and fifty-seven, which list shall exhibit in a fair and legible hand the names of all such legal voters.

SEC. 4. It shall be, and is hereby made, the duty of each probate judge, upon such returns being made, without delay to cause to be posted at three of the most public places in each election precinct in his county or district one copy of such list of qualified voters, to the end that every inhabitant may inspect the same, and apply to said probate judge to correct any error he may find therein, in the manner hereafter prescribed.

SEC. 5. Said probate judge shall remain in session each day, Sundays excepted, from the time of receiving said returns until the first day of May next, at such places as shall be most convenient to the inhabitants of the county or election district, and proceed to inspection of said returns, and hear, correct, and finally determine according to the facts, without unreasonable delay, all questions concerning the omission of any person from said returns, or the improper insertion of any name on said returns, and any other questions affecting the integrity or fidelity of said returns, and for this purpose shall have power to administer oaths and examine witnesses, and compel their attendance in such manner as said judge shall deem necessary.

SEC. 6. That as soon as the said list of legal voters shall thus have been revised and corrected, it shall be the duty of the several probate judges to make out full and fair copies thereof, and without delay furnish to the governor of the Territory one copy, and to the secretary of the Territory one copy; and it shall be the duty of the governor to cause copies thereof, distinguishing the returns from each county or election district, to be printed and distributed generally among the inhabitants of the Territory, and one copy shall be deposited with the clerk of each court of record, or probate judge, within the limits of said Territory, and one copy delivered to each judge of the election, and at least three copies shall be posted up at each place of voting.

SEC. 7. It shall be the duty of the governor and secretary of the Territory, so soon as the census shall be completed and returns made, to proceed to make an apportionment of the members for the convention among the different counties and election districts in said Territory, in the following manner: the whole number of legal voters shall be divided by sixty, and the product of such division, rejecting any fraction of a unit, shall be ratio or rule of apportionment or members among the several counties or election districts; and if any county or election district shall not have a number of legal voters then ascer

tained equal to the ratio, it shall be attached to some adjoining county or district, and thus form a representative district; the number of said voters in each county or district shall then be divided by the ratio, and the product shall be the number of representatives apportioned to such county or district: *Provided*, that the loss in the number of members, caused by the fraction remaining in the several counties in the division of the legal voters thereof, shall be compensated by assigning so many counties or districts as have the largest fraction an additional member for its fraction, as may be necessary to make the whole number of representatives sixty.

SEC. 8. An election shall be held for members of a convention to form a constitution for the State of Kansas, according to the apportionment to be made as aforesaid, on the third Monday in June next, to be held at the various election precincts established in the Territory, in accordance with the provisions of the law on that subject; and, at such election, no person shall be permitted to vote unless his name shall appear upon said corrected list.

SEC. 9. The board of county commissioners shall appoint the places of voting for their respective counties or election districts; they shall appoint three suitable persons to be judges of the election at each place of voting; they shall cause a notice of the places of holding elections in their respective counties or districts to be published and distributed in every election district or precinct ten days before the day of election. If any judge of election so appointed shall fail or refuse to perform the duties of his said office, the legal voters assembled at the place, and on the day appointed for said election, shall have the power to fill such vacancy by election among themselves.

SEC. 10. The judges of election shall each, before entering on the discharge of his duties, make oath or affirmation that he will faithfully and impartially discharge the duties of judge of the election according to law, which oath shall be administered by any officer authorized to administer oaths; the clerks of election shall be appointed by the judges, and they shall take the like oath or affirmation, to be administered by one of the judges, or by any of the officers aforesaid. Duplicate returns of election shall be made and certified by the judges and clerks, one of which shall be deposited with the board of county commissioners for the county or district in which the election is held, and the other shall be transmitted to the secretary of the Territory; and the one having the highest number of votes in his county or election district shall be the representative for such county or district; and in case of a tie, or a contest in which it cannot be satisfactorily determined who was duly elected, the convention, when assembled, shall order a new election as herein provided.

SEC. 11. Every *bona fide* inhabitant of the Territory of Kansas on the third Monday of June, one thousand eight hundred and fifty-seven, being a citizen of the United States, over the age of twenty-one years, and who shall have resided three months next before said election in the county in which he offers to vote, and no other person whatever shall be entitled to vote at said election; and any person qualified as a voter may be a delegate to said convention, and no other.

SEC. 12. All persons hereby authorized to take the census, or to

assist in the taking thereof, shall have power to administer oaths and examine persons on oath, in all cases where it may be necessary to the full and faithful performance of their duties under this act.

SEC. 13. If any person by menaces, threats, or force, or by any other unlawful means, shall directly or indirectly attempt to influence any qualified voter in giving his vote, or deter him from going to the polls, or disturb or hinder him in the free exercise of his right of suffrage at said election, the person so offending shall be adjudged guilty of a misdemeanor, and punished by a fine not less than five hundred dollars, or by imprisonment not less than three months nor more than six, or by both.

SEC. 14. That every person, not being a qualified voter according to the provisions of this act, who shall vote at any election within said Territory knowing that he is not entitled to vote, and every person who at the same election shall vote more than once, whether at the same or a different place, shall be adjudged guilty of a misdemeanor, and punished by a fine of not less than one hundred dollars nor exceeding two hundred, or by imprisonment not less than three months nor exceeding six, or both.

SEC. 15. Any person whatsoever who may be charged with holding the election herein authorized, who shall wilfully and knowingly commit any fraud or irregularity whatever, with the intent to hinder, or prevent, or defeat a fair expression of the popular vote in the said election, shall be guilty of a misdemeanor, and punished by fine not less than five hundred dollars, nor more than one thousand dollars, and imprisonment not less than six months nor more than twelve months, or both.

SEC. 16. The delegates thus elected shall assemble in convention at the capitol of said Territory on the first Monday of September next, and shall proceed to form its constitution and State government, which shall be republican in its form, for admission into the Union, on an equal footing with the original States in all respects whatever, by the name of the State of Kansas.

SEC. 17. Said convention, when assembled, shall elect a presiding officer, and also other officers necessary for the transaction of their business; and the members and officers of said convention shall be entitled to receive the same compensation as the members and officers of the legislative assembly of Kansas Territory, to be paid out of any money in the treasury not otherwise appropriated.

SEC. 18. All sheriffs and other officers, for the discharge of the duties required of them by this act, shall be entitled to receive four dollars for each day they are necessarily employed.

SEC. 19. Doniphan county shall constitute the first election district; Brown and Nemeha the second; Atchison, the third; Leavenworth, the fourth; Jefferson, the fifth; Calhoun, the sixth; Marshall, the seventh; Riley, the eighth; Johnson, the ninth; Douglas, the tenth; Shawnee, Richardson, and Davis, the eleventh; Lykins, the twelfth; Franklin, the thirteenth; Weller, Breckenridge, Wise, and Madison, the fourteenth; Butler and Coffey, the fifteenth; Linn, the sixteenth; Anderson, the seventeenth; Bourbon, McGee, Donn, and Allen, the

eighteenth; Woodson, Wilson, Godfrey, Greenwood, and Hunter, the nineteenth.

SECTION 20. All votes given at the election herein provided for shall be *viva voce*.

SECTION 21. Returns of said enumeration shall be according to the following tabular form:

No.	Names of voters.	Heads of families and others.	Males.	Females.	Total.

This bill having been returned by the governor, with his objections thereto, and, after reconsideration, having passed both houses by the constitutional majority, it has become a law, this the 19th day of February, A. D. 1857.

PROCLAMATION OF THE ACTING GOVERNOR OF KANSAS.

UNITED STATES OF AMERICA,
Territory of Kansas.

To the legal voters and elective officers of Kansas:

Whereas, the following returns of the census taken under the act of the legislative assembly entitled "An act to provide for the taking of a census and election of delegates to a convention," passed the 19th February, 1857, have been made to me, to wit:

Districts.	Counties.	No. of legal voters.	Whole population.
1.	Doniphan	1,086	4,120
2.	Brown	206	no returns
2.	Nemeha	140	612
3.	Atchison	804	2,807
4.	Leavenworth	1,837	5,529
5.	Jefferson	555	no returns
6.	Calhoun	291	885
7.	Marshall	206	415
8.	Riley	353	no returns
8.	Pottawatomie	205	no returns

Districts.	Counties.	No. of legal voters.	Whole population.
9.	Johnson	496	890
10.	Douglas	1,318	3,727
11.	Shawnee	283	
11.	Richardson		
11.	Davis		
12.	Lykens	413	1,352
13.	———	no returns	
14.	———	no returns	
15.	———	no returns	
16.	Linn	413	1,821
17.	———	no returns	
18.	Bourbon, McGee, Dorn, and Allen	645	2,622
Total		9,251	

Now, therefore, I, Frederick P. Stanton, secretary and acting governor, do hereby proclaim that, according to the provisions of the said act and the census returns made in pursuance thereof, and upon a proper apportionment among the legal voters of the several districts aforesaid, they are respectively entitled to elect to the convention provided for in said law the number of delegates herein assigned to them—that is to say:

To the 1st district—Doniphan county, 7 delegates.
To the 2d district—Brown and Nemeha, 2 delegates.
To the 3d district—Atchison county, 5 delegates.
To the 4th district—Leavenworth, 12 delegates.
To the 5th district—Jefferson, 4 delegates.
To the 6th district—Calhoun, 2 delegates.
To the 7th district—Marshall, 1 delegate.
To the 8th district—Riley and Pottawatomie, 4 delegates.
To the 9th district—Johnson, 3 delegates.
To the 10th district—Douglass, 8 delegates.
To the 11th district—Shawnee, Richardson and Davis, 2 delegates.
To the 12th district—Lykens, 3 delegates.
To the 16th district—Linn, 3 delegates.
To the 18th district—Bourbon, McGee, Dorn and Allen, 4 delegates.

The proper officers will hold the election for delegates to the said convention on the third Monday of June next, as directed by the law aforesaid, and in accordance with the apportionment herein made and declared.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the Territory, at Lecompton, this the 20th May, 1857.

[L. S.]

FRED. P. STANTON.

[Received on Saturday night, 30th ultimo, from Colonel Clarkson.—J. B.]

LECOMPTON, K. T., *January* 14, 1858.

SIR: The bearer of this, Colonel J. J. Clarkson, will deliver to you an authentic copy of the constitution recently framed by the convention which assembled at Lecompton on the 5th day of September, 1857. By the terms of that constitution, and the action of the people under it, it is made my duty to have the same submitted to the action of the Congress of the United States, with the view of the admission of Kansas into the Union as an independent State. It is hoped, therefore, that it will be presented by you to the consideration of Congress, with such suggestions as you may think advisable to submit.

The question whether this constitution should contain a clause making Kansas a slave State or not was submitted to a vote of the people of the Territory on the 21st day of December, 1857, and resulted as follows:

For the constitution with slavery.....	6,226
For the constitution with no slavery.....	569
Total vote for the constitution..	6,795

The votes for the two sides of the constitution is a majority over any vote previously given at any election holden in the Territory.

The constitution is, therefore, by its own requirements, presented to the consideration of Congress, and Kansas asks for admission into the Union as a sovereign State.

I am, very respectfully, your obedient servant,

J. CALHOUN,
President of the Constitutional Convention.

His Excellency JAMES BUCHANAN,
President of the United States.

CONSTITUTION OF THE STATE OF KANSAS.

PREAMBLE.

We, the people of the Territory of Kansas, by our representatives in convention assembled at Lecompton, in said Territory, on Monday the fourth day of September, one thousand eight hundred and fifty-seven, and of the independence of the United States of America the eighty-second year, having the right of admission into the Union as one of the United States of America, consistent with the federal Constitution and by virtue of the treaty of cession by France to the United States of the province of Louisiana, made and entered into on the thirtieth day of April, one thousand eight hundred and three, and by virtue of, and in accordance with, the act of Congress passed March the thirtieth, one thousand eight hundred and fifty-four, entitled "An act to organize the Territories of Nebraska and Kansas," in order to secure to ourselves and our posterity the enjoyment of all the rights of life, liberty, and property, and the free pursuit of happiness, do mutually agree with each other to form ourselves into a free, independent, and sovereign State by the name and style of the State of Kansas, and do ordain and establish the following constitution for the government thereof:

ARTICLE I.—*Boundaries.*

We do declare and establish, ratify and confirm the following as the permanent boundaries of the said State of Kansas, that is to say: Beginning at a point on the western boundary of the State of Missouri where the thirty-seventh parallel of north latitude crosses the same; thence west on said parallel to the eastern boundary of New Mexico; thence north on said boundary to latitude thirty-eight; thence following said boundary westward to the east boundary of the Territory of Utah, on the summit of the Rocky mountains; thence northward on said summit to the fortieth parallel of latitude; thence east on said parallel to the western boundary of the State of Missouri; thence south with the western boundary of said State, to the place of beginning.

ARTICLE II.—*County Boundaries.*

No county now established which borders upon the Missouri river, or upon either bank of the Kansas river, shall ever be reduced by the formation of new counties to less than twenty miles square; nor shall any other county now organized, or hereafter to be organized, be reduced to less than five hundred square miles.

ARTICLE III.—*Distribution of Powers.*

The power of the government of the State of Kansas shall be divided into three separate departments—the executive, the legislative, and the judicial; and no person charged with the exercise of powers pro-

perly belonging to one of these departments shall exercise any functions appertaining to either of the others, except in the cases hereinafter expressly directed or permitted.

ARTICLE IV.—*Executive Department.*

SECTION 1. The chief executive power of this State shall be vested in a governor, who shall hold his office for two years from the time of his installation.

SEC. 2. The governor shall be elected by the qualified electors of the State. The returns of every election for governor shall be sealed up and transmitted to the seat of government, directed to the secretary of state, who shall deliver them to the speaker of the house of representatives at the next ensuing session of the legislature, during the first week of which session the speaker shall open and publish them in the presence of both houses of the legislature. The person having the highest number of votes shall be governor; but if two or more shall be equal, and having received the highest number of votes, then one of them shall be chosen governor by the joint ballot of both houses of the legislature; contested elections for governor shall be determined by both houses of the legislature in such manner as may be prescribed by law.

SEC. 3. The governor shall be at least thirty years of age, shall have been a citizen of the United States for twenty years, shall have resided in this State at least five years next preceding the day of his election, or from the time of the formation of this constitution, and shall not be capable of holding the office more than four years in any term of six years.

SEC. 4. He shall, at stated terms, receive for his services a compensation which shall be fixed by law, and shall not be increased or diminished during the term for which he shall be elected.

SEC. 5. He shall be commander-in-chief of the army and navy of this State, and of the militia, except when they shall be called into the service of the United States.

SEC. 6. He may require information in writing from officers in the executive department on any subject relating to the duties of their respective offices.

SEC. 7. He may, in cases of emergency, convene the legislature at the seat of government, or at a different place, if that shall have become, since their last adjournment, dangerous from an enemy or disease; and in case of disagreement between the two houses with respect to the time of adjournment, adjourn them to such time as he may think proper, not beyond the next stated meeting of the legislature.

SEC. 8. He shall, from time to time, give to the legislature information of the state of the government, and recommend to their consideration such measures as he may deem necessary and expedient.

SEC. 9. He shall take care that the laws be faithfully executed.

SEC. 10. In all criminal and penal cases, except in those of treason and impeachment, he shall have power to grant reprieves and pardons and remit fines; and in cases of forfeitures, to stay the collection until the end of the next session of the legislature, and to remit for

feitures by and with the advice and consent of the senate. In cases of treason he shall have power to grant reprieves by and with the advice and consent of the senate, but may respite the sentence until the end of the next session of the legislature.

SEC. 11. All commissions shall be in the name and by the authority of the State of Kansas, be sealed with the great seal, and signed by the governor, and attested by the secretary of state.

SEC. 12. There shall be a seal of this State, which shall be kept by the governor and used by him officially, and the present seal of this Territory shall be the seal of the State until otherwise directed by the legislature.

SEC. 13. All vacancies not provided for in this constitution shall be filled in such manner as the legislature may prescribe.

SEC. 14. The secretary of state shall be elected by the qualified electors of the State, and shall continue in office during the term of two years, and until his successor is qualified. He shall keep a fair register of all the official acts and proceedings of the governor, and shall, when required, lay the same and all papers, minutes, and vouchers relative thereto, before the legislature, and shall perform such other duties as may be required by law.

SEC. 15. Every bill which shall have passed both houses of the legislature shall be presented to the governor. If he approve, he shall sign it; but if not, he shall return it, with his objections, to the house in which it shall have originated, which shall enter the objections at length upon their journals, and proceed to reconsider it. If, after such reconsideration, two-thirds of the house shall agree to pass the bill, it shall be sent, with the objections, to the other house, by which it shall likewise be reconsidered; if approved by two-thirds of that house, it shall become a law; but in such case, the votes of each house shall be determined by yeas and nays, and the names of the members voting for and against the bill shall be entered upon the journals of each house, respectively. If any bill shall not be returned by the governor within six days (Sundays excepted) after it shall have been presented to him, the same shall become a law in like manner as if he had signed it, unless the legislature, by their adjournment, prevent its return, in which case it shall not become a law.

SEC. 16. Every order, resolution, or vote, to which the concurrence of both houses may be necessary, except resolutions for the purpose of obtaining the joint action of both houses, and on questions of adjournment, shall be presented to the governor, and, before it shall take effect, be approved by him; or, being disapproved, shall be repassed by both houses, according to the rules and limitations prescribed in case of a bill.

SEC. 17. A lieutenant governor shall be elected at the same time and for the same term as the governor, and his qualifications and the manner of his election shall be the same in all respects.

SEC. 18. In case of the removal of the governor from office, or of his death, failure to qualify, resignation, removal from the State, or inability to discharge the powers and duties of the office, the said office, with its compensation, shall devolve upon the lieutenant gov-

ernor, and the legislature shall provide by law for the discharge of the executive functions in other necessary cases.

SEC. 19. The lieutenant governor shall be president of the senate, but shall have no vote except in the case of a tie, when he may give the casting vote; and while acting as such shall receive a compensation equal to that allowed to the speaker of the house of representatives.

SEC. 20. A sheriff, and one or more coroners, a treasurer and surveyor shall be elected in each county by the qualified electors thereof, who shall hold their office for two years, unless sooner removed, except that the coroner shall hold his office until his successor be duly qualified.

SEC. 21. A state treasurer and auditor of public accounts shall be elected by the qualified electors of the State, who shall hold their offices for the term of two years, unless sooner removed.

ARTICLE V.—*Legislative Department.*

SECTION 1. The legislative authority of this State shall be vested in a legislature, which shall consist of a senate and house of representatives.

SEC. 2. No person holding office under the authority of the United States, except postmasters, or any lucrative office under the authority of this State, shall be eligible to or have a seat in the legislature; but this provision shall not extend to township officers, justices of the peace, notaries public, or militia officers.

SEC. 3. No person who has been, or may hereafter be convicted of a penitentiary offence, or of an embezzlement of the public funds, shall hold any office in this State; nor shall any person holding public money for disbursement or otherwise have a seat in the legislature until he shall have accounted for and paid such money into the treasury.

SEC. 4. The members of the house of representatives shall be elected by the qualified electors, and shall serve for the term of two years from the close of the general election and no longer.

SEC. 5. The senators shall be chosen for the term of four years at the same time, in the same manner, and at the same places as are herein provided for members of the house of representatives.

SEC. 6. At the first session of the legislature the senate shall, by lot, divide their senators into two classes; and the seats of the senators of the first class shall be vacated at the expiration of the second year, and of the second class at the expiration of the fourth year, so that one half, as near as may be, may be chosen thereafter every two years for the term of four years.

SEC. 7. The number of senators shall not be less than thirteen nor more than thirty-three; and at any time when the number of senators is increased, they shall be annexed by lot to one of the two classes, so as to keep them as nearly equal in number as possible.

SEC. 8. The number of members of the house of representatives shall not be less than thirty-nine, nor more than one hundred.

SEC. 9. The style of the laws of this State shall be, "Be it enacted by the legislature of the State of Kansas."

SEC. 10. Each house may determine the rules of its own proceedings, punish its members for disorderly behaviour, and, with the consent of two-thirds, may expel a member; but not a second time for the same offence. The names of the members voting on the question shall be spread upon the journal.

SEC. 11. Each house during the session may, in its discretion, punish by fine, imprisonment, or both, any person not a member, for disrespectful or disorderly behavior in its presence, or for obstructing any of its proceedings: provided such fine shall not exceed two hundred dollars, or such imprisonment shall not extend beyond the end of the session.

SEC. 12. Each house of the legislature shall keep a journal of its proceedings, and cause the same to be published as soon after the adjournment as may be provided by law.

SEC. 13. Neither house during the session of the legislature shall, without consent of the other, adjourn for more than three days, (Sundays excepted,) nor to any other place than that in which they may be sitting.

SEC. 14. The senate when assembled shall choose its officers, and the house of representatives shall choose a speaker and its other officers, and each branch of the legislature shall be the judge of the qualifications, elections, and returns of its members.

SEC. 15. A majority of each house of the legislature shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members in such manner as each house may prescribe.

SEC. 16. Each member of the legislature shall receive from the public treasury such compensation for his services as may be fixed by law; but no increase of compensation shall take effect during the term for which the members are elected when such law passed.

SEC. 17. Bills may originate in either house, but may be altered, amended, or rejected by the other, and all bills shall be read by sections on three several days, except on an extraordinary occasion; two-thirds of the members may dispense with such reading, but in no case shall a bill be passed without having once been read; and every bill having passed both houses shall be signed by the speaker and president in the presence of their respective houses.

SEC. 18. The legislature shall provide by law for filling all vacancies that may occur in either house by the death, resignation, or otherwise, of any of its members.

SEC. 19. The doors of each house shall be open, except on such occasions as, in the opinion of the house, the public safety may require secrecy.

SEC. 20. Every law enacted by the legislature shall embrace but one subject, and that shall be expressed in its title, and any extraneous matter introduced in a bill which shall pass shall be void; and no law shall be amended by its title, but in such case the act or section amended shall be re-enacted and published at length.

SEC. 21. Every act and joint resolution shall be plainly worded, avoiding, as far as practicable, the use of technical terms.

SEC. 22. The legislature shall meet every two years at the seat of government.

SEC. 23. The legislature shall provide for an enumeration of inhabitants by law. An apportionment of representatives in the legislature shall be provided by law according to population, as nearly equal as may be.

SEC. 24. The legislature shall have no power to grant divorces, to change the names of individuals, or direct the sales of estates belonging to infants or other persons laboring under legal disabilities, by special legislation, but by general laws shall confer such powers on the courts of justice.

SEC. 25. It shall be the duty of all civil officers of this State to use due diligence in the securing and rendition of persons held to service or labor in this State, either of the States or Territories of he United States; and the legislature shall enact such laws as may be necessary for the honest and faithful carrying out of this provision of the constitution.

ELECTION DISTRICTS.

At the first election holden under this constitution for members of the State legislature, the representative and senatorial districts shall be as follows: The first representative district shall consist of Doniphan county, and be entitled to four representatives; the second, Atchison, four representatives; the third, Leavenworth, eight representatives; the fourth, Brown and Nemaha, one representative; the fifth, Calhoun and Pottawatomie, one representative; the sixth, Jefferson, two representatives; the seventh, Marshall and Washington, one representative; the eighth, Riley, one representative; the ninth, Johnson, four representatives; tenth, Lykins, one representative; the eleventh, Linn, two representatives; the twelfth, Bourbon, two representatives; the thirteenth, McGee, Dorn, and Allen, one representative; the fourteenth, Douglas, five representatives; the fifteenth, Anderson and Franklin, one representative; the sixteenth, Shawnee, two representatives; the seventeenth, Weller and Coffee, one representative; the eighteenth, Woodson, Wilson, Godfrey, Greenwood, and Madison, one representative; the nineteenth, Breckenridge and Richardson, one representative; the twentieth, Davis, Wise, Butler, Hunter, and that portion of country west, one representative. In all, forty-four representatives. The first senatorial district shall be Doniphan county, and be entitled to one senator; the second, Atchison, one senator; the third, Doniphan and Atchison, one senator; the fourth, Leavenworth, three senators; the fifth, Brown, Nemeha, and Pottawattomie, one senator; the sixth, Riley, Marshall, Dickinson, and Washington, one senator; the seventh, Jefferson and Calhoun, one senator; eighth, Johnson, two senators; the ninth, Lykins, Anderson, and Franklin, one senator; the tenth, Linn, one senator; the eleventh, Bourbon and McGee, one senator; the twelfth, Douglas, two senators; the thirteenth, Sawnee, one senator; the fourteenth, Dorn, Allen, Wilson, Woodson, Godfrey, Greenwood, Madison, and Coffee, one senator; the fifteenth, Richardson, Davis, Wise, Brecken-

ridge, Butler, Hunter, and all west of Davis, Wise, Butler, and Hunter, one senator. The entire number of senators, nineteen.

ARTICLE VI.—*Judiciary.*

SECTION 1. This judicial powers of this State shall be vested in one supreme court, circuit courts, chancery courts, courts of probate, and justices of the peace, and such other inferior courts as the legislature may, from time to time, ordain and establish.

SEC. 2. The supreme court, except in cases otherwise directed in this constitution, shall have appellate jurisdiction only, which shall be co-extensive with the State, under such restrictions and regulations, not repugnant to this constitution, as may from time to time be prescribed by law: *Provided*, That the supreme court shall have power to issue writs of injunction, mandamus, quo warranto, habeas corpus, and such other remedial and original writs as may be necessary to give a general superintendence and control of inferior jurisdictions.

SEC. 3. There shall be held annually, at the seat of government, two sessions of the supreme court, at such times as the legislature may direct.

SEC. 4. The supreme court shall consist of one chief justice and two associate justices.

SEC. 5. The supreme court may elect a clerk and reporter, who shall respectively receive such compensation as the legislature may prescribe.

SEC. 6. The State shall be divided into convenient circuits, and for each circuit there shall be elected a judge, who shall, at the time of his election, and as long as he continues in office, reside in the circuit for which he has been elected.

SEC. 7. The circuit courts shall have original jurisdiction of all matters, civil and criminal, within this State not otherwise excepted in this constitution; but in civil cases only where the matter in controversy shall exceed the sum of one hundred dollars.

SEC. 8. A circuit court shall be held in each county in the State twice in every year, at such times and places as may be prescribed by law; and the judges of the several circuit courts may hold courts for each other when they may deem it advisable, and shall do so when directed by law.

SEC. 9. The legislature may establish a court or courts of chancery with original and appellate equity jurisdiction, and until the establishment of such court or courts the said jurisdiction shall be vested in the judges of the circuit courts respectively; but the judges of the several circuit courts shall have power to issue writs of injunction returnable to the court of chancery.

SEC. 10. The legislature shall establish within each county in the State a court of probate for the granting of letters testamentary of the administration, and orphan's business, and the general superintendence of the estates of deceased persons, and such other duties as may be prescribed by law; but in no case shall they have jurisdiction in matters of civil or criminal law.

SEC. 11. A competent number of justices of the peace in and for each county shall be elected in such mode and for such term of office as the

legislature may direct. Their jurisdiction in civil matters shall be limited to cases in which the amount does not exceed one hundred dollars; and in all cases tried by justices of the peace the right of appeal shall be secured under such rules and regulations as may be prescribed by law.

SEC. 12. The chief justice and associate justices of the supreme court, and judges of the circuit court, and courts of chancery, shall, at stated times, receive for their services a compensation which shall be fixed by law, and shall not be diminished during their continuance in office; but they shall receive no fees, no perquisites of office, nor hold any other office of profit or trust under this State, the United States, or either of the other States, or any other power during their continuance in office.

SEC. 13. The chief justice and associate justices of the supreme court shall be elected by the qualified voters of the whole State, the judges of the circuit courts by the qualified voters of their respective circuits, and the judges of the chancery courts shall be elected by the qualified voters of their respective chancery divisions, at such times and places as may be prescribed by law; but said election shall not be on the same day that the election of members of the legislature is held.

SEC. 14. All vacancies in the office of chief justice and associate justices of the supreme court, and judges of the circuit court, court of chancery, and probate court, shall be filled by appointment made by the governor for the time being, but the governor shall, immediately upon the receipt of information of a vacancy aforesaid, order an election to fill such vacancy, first giving sixty days' notice of such election.

SEC. 15. The chief justice and associate justices of the supreme court shall hold their offices for and during the period of six years from the date of their election, and until their successors shall be qualified, and provision shall be made by law for classifying those elected, so that the chief justice or one of the said associate justices of the supreme court shall be elected every two years. The judges of the circuit, chancery, and probate courts shall hold their offices for and during the term of four years from the date of their election, and until their successors shall be qualified.

SEC. 16. Clerks of the circuit courts and courts of probate shall be elected by the qualified electors in each county, and all vacancies in such office shall be filled in such manner as the law may direct.

SEC. 17. The chief justice and associate justices of the supreme court, by virtue of their offices, shall be conservators of the peace throughout the State, the judges of the circuit court throughout their respective circuits, and the judges of the inferior courts throughout their respective counties.

SEC. 18. The style of all process shall be, the State of Kansas, and all prosecutions shall be carried on in the name and by the authority of the State of Kansas, and shall conclude against the peace and dignity of the same.

SEC. 19. There shall be an attorney general of the State, who shall be elected by the qualified voters thereof, and as many district attornies as the legislature may deem necessary, to be elected by the

qualified voters of their respective circuits, who shall hold their offices for the term of four years from the date of their election, and shall receive for their services such compensation as may be established by law, which shall not be diminished during their continuance in office.

SEC. 20. Vacancies occuring in the office of attorney general, district attornies, clerk of the circuit court, clerk of the court of probate, justices of the peace, and constables, shall be filled in such manner as shall be provided by law.

SEC. 21. The house of representatives shall have the sole power of impeachment.

SEC. 22. All impeachments shall be tried by the senate; when sitting for that purpose the senators shall be on oath or affirmation, and no person shall be convicted without the concurrence of two-thirds of the members present.

SEC. 23. The governor and all civil officers shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall not extend further than to removal from office, and of disqualification to hold any office of honor, trust, or profit under the State; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, and punishment according to law.

ARTICLE VII.—*Slavery.*

SECTION 1. The right of property is before and higher than any constitutional sanction, and the right of the owner of a slave to such slave and its increase is the same, and as inviolable as the right of the owner of any property whatever.

SEC. 2. The legislature shall have no power to pass laws for the emancipation of slaves without the consent of the owners, or without paying the owners previous to their emancipation a full equivalent in money for the slaves so emancipated. They shall have no power to prevent emigrants to the State from bringing with them such persons as are deemed slaves by the laws of any one of the United States or Territories, so long as any person of the same age or description shall be continued in slavery by the laws of this State: *Provided*, That such person or slave be the bona fide property of such emigrants: *And provided, also*, That laws may be passed to prohibit the introduction into this State of slaves who have committed high crimes in other States or Territories. They shall have power to pass laws to permit the owners of slaves to emancipate them, saving the rights of creditors, and preventing them from becoming a public charge. They shall have power to oblige the owners of slaves to treat them with humanity, to provide for them necessary food and clothing, to abstain from all injuries to them extending to life or limb, and, in case of their neglect or refusal to comply with the direction of such laws, to have such slave or slaves sold for the benefit of the owner or owners.

SEC. 3. In the prosecution of slaves for crimes of higher grade than petit larceny, the legislature shall have no power to deprive them of an impartial trial by a petit jury.

SEC. 4. Any person who shall maliciously dismember, or deprive a

slave of life shall suffer such punishment as would be inflicted in case the like offence had been committed on a free white person, and on the like proof, except in case of insurrection of such slave.

ARTICLE VIII.—*Elections and Rights of Suffrage.*

SECTION 1. Every male citizen of the United States, above the age of twenty-one years, having resided in this State one year, and in the county, city, or town in which he may offer to vote, three months next preceding any election, shall have the qualifications of an elector, and be entitled to vote at all elections. And every male citizen of the United States, above the age aforesaid, who may be a resident of the State at the time that this constitution shall be adopted, shall have the right of voting as aforesaid; but no such citizen or inhabitant shall be entitled to vote except in the county in which he shall actually reside at the time of the election.

SEC. 2. All voting by the people shall be by ballot.

SEC. 3. Electors, during their attendance at elections, going to and returning therefrom, shall be privileged from arrest in all cases except treason, felony, and breach of the peace.

SEC. 4. No elector shall be obliged to do militia duty on the days of election, except in time of war or public danger.

SEC. 5. No elector shall be deemed to have lost his residence in this State by reason of his absence on business of his own, or of the United States, or of this State.

SEC. 6. No person employed in the military, naval, or marine service of the United States stationed in this State shall, by reason of his services therein, be deemed a resident of this State.

SEC. 7. No person shall be elected or appointed to any office in this State, civil or military, who shall not be possessed of the qualifications hereinbefore prescribed for an elector.

SEC. 8. The legislature shall have power to exclude from the privilege of voting, or being eligible to office, any person convicted of bribery, perjury, or other infamous crimes.

SEC. 9. The first general election in this State shall be held on the day and year provided by this constitution, and all general elections thereafter on the day and year provided by subsequent legislative enactment.

ARTICLE IX.—*Finance.*

SECTION 1. The rule of taxation shall be uniform, and taxes shall be levied upon such property as the legislature shall from time to time prescribe.

SEC. 2. The legislature shall provide for an annual tax sufficient to defray the estimated expenses of the government for each year; and whenever the expenses of any one year shall exceed the income, the legislature shall provide for levying a tax for the ensuing year sufficient, with other sources of income, to pay the deficiency as well as the estimated expenses for such ensuing year.

SEC. 3. For the purpose of defraying extraordinary expenditures,

the State may contract public debts; but such debts, in the aggregate, shall never exceed five hundred thousand dollars. Every such debt shall be authorized by law for some purpose or purposes, to be distinctly specified therein, and a vote of a majority of all the members elected to both houses shall be necessary to the passage of such law, and such law shall provide for an annual tax to be levied sufficient to pay the interest of such debt created, and such appropriation shall not be repealed, nor the taxes postponed, until the principal and interest of such debt shall have been wholly paid.

SEC. 4. The legislature may also borrow money for the purpose of repelling invasion, suppressing insurrection, and defending the State in time of war; but the money thus raised shall be applied exclusively to the purposes for which it was raised.

SEC. 5. No scrip, certificate or other evidence of State debt shall be issued, except for such debts as are authorized by the third or fourth sections of this article.

SEC. 6. The property of the State and counties, both real and personal, and such other property as the legislature may deem necessary for school, religious, or charitable purposes, may be exempted from taxation.

SEC. 7. No money shall at any time be paid out of the treasury except in pursuance of an appropriation by law.

SEC. 8. An accurate statement of the receipts and expenditures of the public money shall be published with the laws of each regular session of the legislature.

ARTICLE X.—*Revenue.*

SECTION 1. All bills for raising revenue shall originate in the house of representatives.

SEC. 2. Taxation shall be equal and uniform, and all property on which taxes shall be levied shall be taxed in proportion to its value, to be ascertained as directed by legislative enactment, and no one species of property shall be taxed higher than another species of property of equal value on which taxes shall be levied.

SEC. 3. The legislature shall have power to levy an income tax, and to tax all persons pursuing any occupation, trade, or profession.

SEC. 4. The legislature shall provide for the classification of the lands of this State into three distinct classes, to be styled respectively Class One, Two, Three, and each of these classes shall have a fixed value in so much money, upon which there shall be assessed an *ad valorem* tax.

SEC. 5. The legislature shall provide for a capitation or poll tax, to be paid by every able bodied male citizen over twenty-one years and under sixty years of age, but nothing herein contained shall prevent the exemption of taxable polls in cases of bodily infirmity.

SEC. 6. The legislature shall levy a tax on all railroad incomes proceeding from gifts of public lands at the rate of ten cents on the one hundred dollars.

SEC. 7. No lotteries shall be authorized by law as a source of revenue.

SEC. 8. Whatever donations of lands or money that may be received from the general government by this State shall be regarded as a source of revenue subject to a compact made with the United States by special ordinance.

ARTICLE XI.—*Public Domain and Internal Improvement.*

SECTION 1. It shall be the duty of the legislature to provide for the prevention of waste and damage of the public land now possessed or that may hereafter be ceded to the Territory or State of Kansas, and it may pass laws for the sale of any part or portion thereof, and, in such case, provide for the safety, security, and appropriation of the proceeds.

SEC. 2. A liberal system of internal improvements being essential to the development of the resources of the country, shall be encouraged by the government of this State; and it shall be the duty of the legislature, as soon as practicable, to ascertain by law proper objects of improvement, in relation to roads, canals, and navigable streams, and to provide for a suitable application of such funds as may be appropriated for such improvements.

ARTICLE XII.—*Corporations.*

SECTION 1. Corporations may be formed under a general law, but the legislature may by special act create bodies politic for municipal purposes, where the objects of the corporations cannot be attained under it; all general laws or special acts enacted under the provisions of this section may be altered, amended, or repealed by the legislature at any time.

SEC. 2. No corporation shall take private property for public use without first having the consent of the owner, or where the necessity thereof being first established by a verdict of a jury, and the value thereof assessed and paid.

SEC. 3. It shall be the duty of the legislature to provide for the organization of cities and incorporated villages, and to restrict their power of taxation, borrowing money, contracting debts, and loaning their credit, so as to prevent abuses.

SEC. 4. The legislature may incorporate banks of deposit and exchange, but such banks shall not issue any bills, notes, checks, or other paper as money.

SEC. 5. The legislature may incorporate one bank of discount and issue, with not more than two branches, provided that the act incorporating the said bank and branches thereof shall not take effect until it shall be submitted to the people at the general election next succeeding the passage of the same, and shall have been approved by a majority of the electors voting at such election.

SEC. 6. The said bank and branches shall be mutually liable for each other's debts or liabilities for all paper credits or bills issued representing money; and the stockholders in said bank or branches shall be individually responsible to an amount equal to the stock held by them for all debts or liabilities of said bank or branches, and no

law shall be passed sanctioning directly or indirectly the suspension by said bank or its branches of specie payment.

SEC. 7. The State shall not be a stockholder in any bank, nor shall the credit of the State be given or loaned in aid of any person, association, or incorporation, nor shall the State become a stockholder in any corporation or association.

ARTICLE XIII.—*Militia.*

SECTION 1. The militia of this State shall consist of all the able-bodied male citizens of the State between the ages of eighteen and forty-five years, except such citizens as are now, or hereafter may be, exempted by the laws of the United States or of this State.

SEC. 2. Any citizen whose religious tenets conflict with bearing arms, shall not be compelled to do militia duty in time of peace, but shall pay such an equivalent for personal services as may be prescribed by law.

SEC. 3. All militia officers shall be elected by the persons subject to military duty within the bounds of their several companies, battalions, regiments, brigades and divisions, under such rules and regulations as the legislature may, from time to time, direct and establish.

ARTICLE XIV.—*Education.*

SECTION 1. A general diffusion of knowledge being essential to the preservation of the rights and liberties of the people, schools and the means of education shall be forever encouraged in this State.

SEC. 2. The legislature shall take measures to preserve from waste and damage such lands as have been, or hereafter may be, granted by the United States, or lands or funds which may be received from other sources, for the use of schools within this State, and shall apply the funds which may arise from such lands, or from any other source, in strict conformity with the object of the grant.

SEC. 3. The legislature shall, as soon as practicable, establish one common school (or more) in each township in the State, where the children of the township shall be taught *gratis*.

SEC. 4. The legislature shall have power to make appropriations from the State treasury for the support and maintenance of common schools whenever the funds accruing from the lands donated by the United States, or the funds received from other sources, are insufficient for that purpose.

SEC. 5. The legislature shall have power to pass laws for the government of all common schools within this State.

ARTICLE XV.—*Miscellaneous.*

SECTION 1. Lecompton shall be the seat of government until otherwise directed by law, two-thirds of each house of the legislature concurring in the passage of such law.

SEC. 2. Every person chosen or appointed to any office under this State before entering upon the discharge of its duties shall take an

oath or affirmation to support the Constitution of the United States, the constitution of this State, and all laws made in pursuance thereof, and faithfully to demean himself in the discharge of the duties of his office.

SEC. 3. The laws, public records, and the written, judicial, and legislative proceedings of the State, shall be conducted, promulgated, and preserved in the English language.

SEC. 4. Aliens who are or who may hereafter become *bona fide* residents of this State, shall enjoy the same rights, in respect to the possession, inheritance, and enjoyment of property, as native born citizens.

SEC. 5. No county seat shall be removed until the point to which it is proposed to be removed shall be fixed by law, and a majority of the votes of the county voting on the question shall have voted in favor of its removal to such point.

SEC. 6. All property, both real and personal, of the wife, owned or claimed by marriage, and that acquired afterwards by gift, devise, or descent, shall be her separate property, and laws shall be passed more clearly defining the rights of the wife, in relation as well to her separate property as to that held in common with her husband. Laws shall also be passed providing for the registration of the wife's separate property.

SEC. 7. The privilege of free suffrage shall be supported by laws regulating elections, and prohibiting, under adequate penalties, all undue influence thereon from power, bribery, tumult, or other improper practice.

SEC. 8. Treason against the State shall consist only in levying war against it, or adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or his own confession in open court.

BILL OF RIGHTS.

That the great and essential principles of liberty and free government may be recognized and established, we declare—

1. That all freemen, when they form a social compact, are equal in rights, and that no man or set of men are entitled to exclusive separate public emoluments or privileges, but in consideration of public services.

2. All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit; and therefore they have at all times an inalienable and indefeasible right to alter, reform, or abolish their form of government in such manner as they may think proper.

3. That all persons have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience, and no person can of right be compelled to attend, erect, or support any place of worship, or maintain any ministry, against his consent. That no human authority can in any case whatever interfere with the rights of conscience, and that no preference shall ever be given to any religious establishment or mode of worship.

4. That the civil rights, privileges, or capacities of a citizen shall in nowise be diminished or enlarged on account of his religion.

5. Thall all elections shall be free and equal.

6. That the right of trial by jury shall remain inviolate.

7. Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right.

8. The people shall be secure in their persons, houses, papers, and possessions from unreasonable seizures and searches, and no warrant to search any place, or to seize any person or thing, shall issue without probable cause, supported by oath or affirmation. In all criminal prosecutions the accused has a right to be heard by himself or counsel; to demand the nature and cause of the accusation, and have a copy thereof; to be confronted by the witness or witnesses against him; to have compulsory process for obtaining witnesses in his favor, and in all prosecutions by indictments or informations a speedy public trial by an impartial jury of the county or district in which the offence shall have been committed. He shall not be compelled to give evidence against himself, nor shall he be deprived of his life, liberty, or property, but by due course of law.

9. That no freeman shall be takon or imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed or exiled, or in any manner destroyed or deprived of his life, liberty, or property, but by the judgment of his peers or the law of the land.

10. No person, for the same offence, shall twice be put in jeopardy of life, limb, or liberty, nor shall any person's property be taken or applied to the public use, unless compensation be made therefor.

11. That all penalties shall be reasonable, and proportionate to the nature of the offence.

12. No person shall be held to answer a capital or otherwise infamous crime, unless on the presentment or indictment of a grand jury, or by impeachment, except in cases of rebellion, insurrection, or invasion.

13. That no conviction shall work corruption of blood or forfeiture of estate.

14. That all prisoners shall be bailable by sufficient securities unless in capital offences, where the proof is evident or the presumption great, and the privileges of habeas corpus shall not be suspended unless when in the case of rebellion, insurrection, or invasion the public safety may require it.

15. That excessive bail shall in no case be required nor excessive fines imposed.

16. That no "*ex post facto*" law, nor any law impairing the obligations of contracts shall ever be made.

17. That forfeitures and monopolies are contrary to the genius of a republic, and shall not be allowed, nor shall any hereditary emolument, privileges or honors ever be granted or conferred in the State.

18. That the citizens have a right, in a peaceable manner, to assemble together for their common good; to instruct their representatives, and to apply to those entrusted with the power of government for redress of grievances or other purposes, by address or remonstrance.

19. That the citizens of this State shall have a right to keep and bear arms for their common defence.

20. That no soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war but in a manner prescribed by law.

21. The military shall be kept in strict subordination to the civil power.

22. Emigration to or from this State shall not be prohibited.

23. Free negroes shall not be permitted to live in this State under any circumstances.

24. This enumeration of rights shall not be construed to deny or disparage others retained by the people, and to guard against any encroachments on the rights herein retained, or any transgression of any of the higher power herein delegated, we declare that everything in this article is excepted out of the general powers of government, and shall forever remain inviolate, and that all laws contrary thereto, or to the other provisions herein contained, shall be void.

SCHEDULE.

SECTION 1. That no inconvenience may arise by reason of a change from a territorial to a permanent State government, it is declared that all rights, actions, prosecutions, judgments, claims, and contracts, as well of individual as of bodies corporate, except the bill incorporating banks by the last territorial legislature, shall continue as if no such change had taken place, and all processes which may have issued under the authority of the Territory of Kansas shall be as valid as if issued in the name of the State of Kansas.

SEC. 2. All laws now of force in the Territory of Kansas which are not repugnant to this constitution, shall continue and be of force until altered, amended, or repealed, by a legislature assembled under the provisions of this constitution.

SEC. 3. All fines, penalties, and forfeitures, to the Territory of Kansas shall enure to the use of the State of Kansas.

SEC. 4. All recognizances heretofore taken shall pass to, and be prosecuted in, the name of the State of Kansas, and all bonds executed to the governor of the Territory, or to any other officer of the court in his or their official capacity, shall pass to the governor and corresponding officers of the State authority and their successors in office, and for the use therein expressed, and may be sued for and recovered accordingly; and all the estates or property, real, personal, or mixed, and all judgments, bonds, specialities, choses in action, and claims or debts of whatever description, of the Territory of Kansas, shall enure to, and rest in, the State of Kansas, and be sued for and recovered in the same manner, and to the same extent, as the same could have been by the Territory of Kansas.

SEC. 5. All criminal prosecutions and penal actions which may have arisen before the change from a territorial to a State government, and which shall then be pending, shall be prosecuted to judgment in the name of the State of Kansas. All actions at law and suits in equity which may be pending in the courts of the Territory of Kansas, at the time of a change from a territorial to a State government, may be

continued and transferred to any court of the State which shall have jurisdiction of the subject matter thereof.

SEC. 6. All officers, civil and military, holding their offices under authority of the Territory of Kansas, shall continue to hold and exercise their respective offices until they shall be superseded by the authority of the State.

SEC. 7. This constitution shall be submitted to the Congress of the United States at its next ensuing session, and as soon as official information has been received that is is approved by the same, by the admission of the State of Kansas, as one of the sovereign States of the United States, this president of this convention shall issue his proclamation to convene the State legislature at the seat of government, within thirty-one days after publication. Should any vacancy occur, by death, resignation, or otherwise, in the legislature, or other office, he shall order an election to fill such vacancy: *Provided*, however, in case of removal, absence or disability of the president of this convention to discharged the duties herein imposed on him, the President *pro tempore* of this convention shall perform said duties, and in case of absence, refusal, or disability of the president *pro tempore*, a committee consisting of seven, or a majority of them, shall discharge the duties required of the president of this convention.

Before this constitution shall be sent to Congress, asking for admission into the Union as a State, it shall be submitted to all the white male inhabitants of this Territory, for approval or disapproval, as follows: The president of this convention shall, by proclamation, declare that on the twenty-first day of December, one thousand eight hundred and fifty-seven, at the different election precincts now established by law, or which may be established as herein provided, in the Territory of Kansas, an election shall be held, over which shall preside three judges, or a majority of them, to be appointed as follows: The president of this convention shall appoint three commissioners in each county in the Territory, whose duty it shall be to appoint three judges of election in the several precincts of their respective counties, and to establish precincts for voting, and to cause polls to be opened, at such places as they may deem proper in their respective counties, at which election the constitution framed by this convention shall be submitted to all the white male inhabitants of the Territory of Kansas in the said Territory upon that day, and over the age of twenty-one years, for ratification or rejection, in the following manner and form: The voting shall be ballot. The judges of said election shall cause to be kept two poll books by two clerks, by them appointed. The ballots cast at said election shall be endorsed, "constitution with slavery" and "constitution with no slavery." One of said poll books shall be returned within eight days to the president of this convention, and the other shall be retained by the judges of election and kept open for inspection. The president, with two or more members of this convention, shall examine said polls books, and if it shall appear upon said examination that a majority of the legal votes cast at said election be in favor of the "constitution with slavery," he shall immediately have the same transmitted to Congress of the United States, as hereinbefore provided; but if, upon such examination of said poll books, it shall appear that a majority of the legal votes cast at said election be in

favor of the "constitution with no slavery," then the article providing for slavery shall be stricken from this constitution by the president of this convention, and slavery shall no longer exist in the State of Kansas, except that the right of property in slaves now in this Territory shall, in no manner, be interfered with, and shall have transmitted the constitution, so ratified, (to Congress the constitution, so ratified,) to the Congress of the United States, as hereinbefore provided. In case of the failure of the president of this convention to perform the duties imposed upon him in the foregoing section, by reason of death, resignation, or otherwise, the same duties shall devolve upon the president *pro tem.*

SEC. 8. There shall be a general election upon the first Monday in January, eighteen hundred and fifty-eight, to be conducted as the election provided for in the seventh section of this article, at which election there shall be chosen a governor, lieutenant governor, secretary of State, State treasurer and members of the legislature, and also a member of Congress.

SEC. 9. Any person offering to vote at the aforesaid election upon said constitution shall, if challenged, take an oath to support the Constitution of the United States, and to support this constitution, under the penalties of perjury under the territorial laws.

SEC. 10. All officers appointed to carry into execution the provisions of the foregoing sections shall, before entering upon their duties, be sworn to faithfully perform the duties of their offices, and in failure thereof be subject to the same charges and penalties as are provided in like cases under the territorial laws.

SEC. 11. The officers provided for in the preceding sections shall receive for their services the same compensation as given to officers performing similar duties under the territorial laws.

SEC. 12. The governor and all other officers shall enter upon the discharge of their respective duties as soon after the admission of the State of Kansas, as one of the independent and sovereign States of the Union, as may be convenient.

SEC. 13. Oaths of office may be administered by any judge, justice of the peace, or clerk of any court of record of the Territory or the State of Kansas, until legislature may otherwise direct.

SEC. 14. After the year one thousand eight hundred and sixty-four, whenever the legislature shall think it necessary to amend, alter, or change this constitution, they shall recommend to the electors at the next general election, two-thirds of the members of each house concurring to vote for or against calling a convention, and if it shall appear that a majority of all citizens of the State have voted for a convention, the legislature shall at its next regular session call a convention, to consist of as many members as there may be in the house of representatives at the time, to be chosen in the same manner, at the same places, and by the same electors that choose the representatives; said delegates so elected shall meet within three months after said election, for the purpose of revising, amending, or changing the constitution, but no alteration shall be made to affect the rights of property in the ownership of slaves.

SEC. 15. Until the legislature elected in accordance with the provisions of this constitution shall otherwise direct, the salary of the

governor shall be three thousand dollars, and the salary of lieutenant governor shall be double the pay of a State senator, and the pay of members of the legislature shall be five dollars per diem, until otherwise provided by the first legislature, which shall fix the salaries of all officers other than those elected by the people at first election.

SEC. 16. This constitution shall take effect and be in force from and after its ratification by the people, as hereinbefore provided.

Done in convention at Lecompton, in the Territory of Kansas, on the seventh day of November, in the year of our Lord one thousand eight hundred and fifty seven, and of the independence of the United States of America the eighty-second. In testimony whereof, we have hereunto subscribed our names.

Atchinson County.

Jun. T. Hereford.
Isaac S. Hascal.
Jas. Adkins.

Bourbon County.

H. T. Wilson.
B. Little.

Leavenworth County.

Jesse Cormell.
John Dale Henderson.
Hugh M. Moore.
Jarret Todd.
Wilburn Christison.
Samuel J. Kookogee.
Lucian J. Eastin.
Wm. Walker.
John W. Martin.
Green B. Redmon.

Brown and Nemeha Counties.

Cyrus Dolman.
Henry Smith.

Douglas County.

W. S. Wells.
Alfred W. Jones.
Owen C. Stewart.
L. S. Boling.
W. T. Spicely.
H. Butcher.

Lykins County.

Jacob T. Bradford.
Wm. A. Haskell.

Jefferson County.

Thos. D. Chiles.
Alexander Bayne.
Wm. H. Swift.

Johnson County.

G. W. McKown.
Batt Jones.
J. H. Danforth.

Marshall County.

Wm. H. Jenkins.

Riley County.

John S. Randolph.
C. K. Mobley.

Doniphan County.

Thos. J. Key.
Samuel P. Blair.
James J. Rennolds.
William Mathews.
D. Vanderslice.
Harvey W. Forman.

Linn County.

Milton E. Bryant.

Shawnee County.

Samuel G. Reed.
Rusk Elmore.

Calhoun County.

Henry D. Oden.

J. CALHOUN,
President of the convention and representative from the county of Douglas.
CHARLES J. McILVAINE,
Secretary of the convention.

The within is a true and perfect copy, as compared by me, of the constitution of the State of Kansas, prepared and submitted by the constitutional convention at Lecompton, on the seventh day of November A. D. 1857.

J. CALHOUN,
President constitutional convention.

LECOMPTON, K. T., *January* 14, 1858.

ORDINANCE.

Whereas, the government of the United States is the proprietor, or will become so, of all or most of the lands lying within the limits of Kansas, as determined under this constitution; and whereas the State of Kansas will possess the undoubted right to tax such lands for the support of her State government, or for other proper and legitimate purposes connected with her existence as a State: Now, therefore, be it ordained by this convention, on behalf of and by the authority of the people of Kansas, that the right aforesaid to tax such lands shall be, and is hereby, forever relinquished, if the conditions following shall be accepted and agreed to by the Congress of the United States.

SECTION 1. That sections numbered 8, 16, 24, and 36, in every township in the State, or in case either of said numbered sections are or shall be otherwise disposed of, that other lands, equal thereto in value and as contiguous as may be, shall be granted to the State to be applied exclusively to the support of common schools.

SEC. 2. That all salt springs, and gold, silver, copper, lead, or other valuable mines, together with the lands necessary for their full occupation and use, shall be granted to said State for the use and benefit of said State; and the same shall be used or disposed of under such terms and conditions and regulations as the legislature of said State shall direct.

SEC. 3. That five per centum of the proceeds of the sales of all public lands sold or held in trust or otherwise lying within the said State, whether sold before or after the admission of the State into the Union, after deducting all expenses incidental to the same, shall be paid to the said State of Kansas for the purpose following, to wit: two-fifths to be disbursed under the direction of the legislature of the State for

the purpose of aiding the construction of railroads within said State, and the residue for the support of common schools.

SEC. 4. That seventy-two sections, or two entire townships, shall be designated by the President of the United States, which shall be reserved for the use of a seminary of learning, and appropriated by the legislature of said State solely to the use of said seminary.

SEC. 5. That each alternate section of land now owned, or which may hereafter be acquired by the United States, for twelve miles on each side of a line of railroad to be established or located from some point on the northern boundary of the State, leading southerly through said State in the direction of the Gulf of Mexico, and on each side of a line of railroad to be located and established from some point on the Missouri river westwardly through said State in the direction of the Pacific ocean, shall be reserved and conveyed to said State of Kansas for the purpose of aiding in the construction of said railroad, and it shall be the duty of the Congress of the United States, in conjunction with the proper authorities of this State, to adopt immediate measures for carrying the several provisions herein contained into full effect.

The within is a true and perfect copy of the *ordinance* adopted by the constitutional convention, and submitted as part of the constitution by the convention which assembled at Lecompton on the 5th day of September, A. D. 1857.

J. CALHOUN,
President Constitutional Convention.

LECOMPTON, K. T., *January* 14, 1858.

Statement under oath.

STATE OF MISSOURI, }
County of Jackson. }

Before me, H. Clay Pate, a notary public, appointed by the governor, and duly sworn and commissioned, among other things to administer oaths in the aforesaid county and State, comes George Wilson, of Anderson county, Territory of Kansas, who makes the ensuing statement under oath:

At the time when the census was taken under the law providing for the Lecompton convention, I was the acting judge of probate for Anderson county, Kansas, and am aware of the fact that the two wings of the free-State party in that county, composed of more moderate free-soilers and the adherents of Lane, threatened the life of any who should attempt to take the legal census; and I am can say, under oath, that the life of any one making the attempt to execute the law in that particular was in danger, and the foregoing threats were the cause which prevented the taking of the census in Anderson county within the prescribed time. Afterwards a census was taken informally, and an election held, and the delegation elected at such election were refused seats in the convention on account of its informality.

Believing that the informality of taking the census might and probably would be overlooked, I proceeded, by advice of Governor Walker, to arrange for holding courts, as required by law, for the correction of the returns.

My purpose was not executed, for the reason that I was compelled to desist from it on account of an attempt by the Lane party to take my life; and to save it, I fled the county under cover of night. Pistols were actually drawn on me by those who made the threats against my person.

In regard to Passmore Williams, judge of probate for Allen county, members of the so-called free-State party stated to me in person that if he attempted to execute the law, and did not leave, they would kill him; and I know the fact that he did not so execute the law, and left the county, because he believed his life in danger. Mr. Williams is from Illinois, and is a free-State man, but belongs to the democratic party.

In regard to Esquire Yocum, judge of probate for Franklin county, he left the county and the Territory on account of losing his negro property and having his life menaced. The office being vacant, the legislature which passed the census law appointed a new judge of probate and other officers, who refused to serve, alleging as a reason that they were afraid so doing would cost them their lives. Consequently, no census was taken, and no legal election held.

I will further state that I am now a notary public for Anderson county, but cannot exercise the functions of the office on account of threats against my life. Notice, verbally and in writing, has been served on me to the effect that I must leave the Territory or be killed. I have property in the Territory which I cannot control, because of the fact that it is dangerous for me to be present. Nearly all the pro-slavery people of Anderson, Franklin, and Linn have been notified, in writing, and by word of mouth, to leave, or take the consequences, and some have left on that account; as many as two hundred pro-slavery people having left Anderson for this reason. I act with, and belong to, the democratic party of Kansas.

GEORGE WILSON.

Subscribed and sworn to before me, this the 5th day of February, 1858. Given under my hand and seal of office, at Westport, in Jackson county, Missouri, this day.

[L. S.]

H. CLAY PATE, *Notary Public.*

STATE OF MISSOURI, }
County of Jackson. }

I, Samuel D. Lucas, clerk of the circuit court of Jackson county aforesaid, do certify that H. Clay Pate, whose genuine signature is attached to the foregoing certificate, is, and was at the time of signing the same, a notary public, duly commissioned and sworn, among other things, to administer oaths, and that his official acts, as such, are entitled to full credit.

Given under my hand and the seal of said court, this the 6th day of February, 1858.

[L. S.]

SAMUEL D. LUCAS, *Clerk.*

The undersigned, citizens of Westport, Missouri, and vicinity, and Kansas Territory, state that they are personally acquainted with Judge George Wilson, of Anderson county, Kansas Territory, and that he is a gentleman whose veracity cannot successfully be called in question.

Th. H. Rosser,
S. H. Smith,
Wm. W. Morrow,
G. W. McKown,
J. H. Danforth,
A. G. Boone,
V. D. Boon,
Chas. E. Kearny.

STATE OF MISSOURI, }
County of Jackson, town of Westport, and its additions. }

The undersigned, mayor of the said town and its additions, State and county, laid in the margin, hereby certifies that the persons whose names appear above are gentlemen of the first standing in this community as business men, and citizens of the highest respectability.

[L. S.] Given under my hand and official seal, at my office in said town, this the 6th day of February, 1858.

THOMAS J. GOFORTH,
Mayor of Town of Westport.

Statement of McKown and Danforth.

STATE OF MISSOURI, }
County of Jackson. }

Before H. Clay Pate, a notary public for Jackson county, Missouri, aforesaid, came George W. McKown and Joshua H. Danforth, ex-members of the Lecompton convention from Johnson county, Kansas Territory, who made the following statement under oath:

In regard to the matter of admitting to said convention the delegation from Anderson informally elected, I can say that the delegation sent in their petition by Judge Rush Elmore; the petition was referred to a special committee of five, Judge Elmore being chairman, and after examining thoroughly into the matter, by the aid of evidence and papers bearing on the affair, a majority of four reported favorably to their admission; but before any action by the convention was taken on the report, Judge Elmore, as attorney for the parties, withdrew their petition. The delegation from Franklin county were not rejected by a vote of the convention, but they withdrew their papers from the hands of the aforesaid committee.

J. H. DANFORTH.
G. W. McKOWN.

Subscribed and sworn to before me as aforesaid.

[L. S.] Given under my hand and official seal, at office, this the 6th day of February, 1858.

H. CLAY PATE, *Notary Public.*

[From the Kansas Crusader of Freedom.]

Another letter from Mr. Parrott.

WASHINGTON, *Monday, January*, 1858.

MY DEAR CAPTAIN: Your letter of the 4th has just reached me. We have news that our ticket is defeated. *It makes but little difference in the main chances of our cause.* The President has staked his *all* in the passing of the Lecompton constitution. I do not believe it can pass the House; others think it can. The law of the legislature for preventing frauds at elections does not seem to be *stringent* enough. What I advise is this, to make the penalty *death*. I do not want to go on the bench; but if anything could induce me to, it would be the satisfaction of sending some of these scoundrels to the scaffold they so richly deserve.

Yours,

MARK PARROTT.

Captain SAMUEL WALKER, *Lawrence.*

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 18, 1858.—Ordered to be printed.

Mr. DOUGLAS, from the Committee on Territories, submitted the following

MINORITY REPORT.

I am constrained to withhold my assent from the conclusion to which the majority of the committee have arrived, for the reason, among other things, that there is no satisfactory evidence that the constitution formed at Lecompton is the act and deed of the people of Kansas, or that it embodies their will. In the absence of all affirmative evidence that the Lecompton constitution does "meet the sense of the people to be affected by it," and in opposition to the overwhelming majority recorded against it at a fair and valid election held in pursuance of law on the 4th day of January, 1858, it is argued that the Lecompton convention was duly constituted with full authority to ordain a con titution and establish a government, and, consequently, the proceedings of that convention must be presumed to embody the popular will, although such presumption may be rebutted and overthrown by the most conclusive evidence to the contrary.

Inasmuch, then, as the right of Congress to accept the Lecompton constitution and impose it upon the people of Kansas, in opposition to their known wishes and recorded votes, rests solely upon the assumption that the proceedings were technically legal and regular, and that the regularity of the proceedings must be made to override the popular will, it becomes important to inquire whether the convention was duly constituted and clothed with full power to ordain a constitution and establish a State government, to the exclusion of the organic act and territorial government established by Congress.

It is conceded that, on the 19th day of February, 1857, the territorial legislature passed a law providing for the election of delegates to a convention to form a constitution and State government; and that the convention, when assembled in pursuance of said act, was vested with all the power which it was competent for the territorial legislature to confer, and which by the terms of the act was conferred on the convention, and no more. Did that territorial act have the legal effect to authorize the convention to abrogate or suspend the territorial government established by Congress, and substitute a State government in its place?

This committee, in their reports, have always held that a Territory is not a sovereign power; that the sovereignty of a Territory is in abeyance, suspended in the United States in trust for the people when

they become a State; that the United States, as the trustee, cannot be divested of the sovereignty, nor the Territory be invested with the right to assume and exercise it, without the consent of Congress. By the Kansas Nebraska act the people of the Territory were vested with all the rights and privilegesof self-government, on all rightful subjects of legislation, consistent with and in obedience to the organic act; but they were not authorized, at their own will and pleasure, to resolve themselves into a sovereign power, and to abrogate and annul the organic act and territorial government established by Congress, and to ordain a constitution and State government upon their ruins, without the consent of Congress.

It would seem, from his special message, that the President is under the impression that the Kansas-Nebraska act, from the date of its passage, on the 30th of May, 1854, when there were not five hundred white inhabitants in the whole country, authorized the people of those Territories, respectively, or "any portion of the same," at their own sovereign will and pleasure, "to proceed and form a constitution in their own way, without an express authority from Congress;" and to suspend the authority of the territorial legislature, at least to the extent of depriving it of the power to submit a constitution to the people for ratification or rejection before it should be deemed the act and deed of the people of Kansas. With the most profound respect for the opinions of the President, I must be pardoned for expressing my firm convictions that neither the provisions of that act, nor the history of the measure, nor the understanding of its authors and supporters at the time of its enactment, or at any period since, justifies or permits the construction which the President has placed upon it. It is certain that President Pierce, who signed and approved the Kansas-Nebraska act, and whose administration was a unit in support of the measure at the time of its enactment, did not understand that it authorized the people of each or either of those Terrritories "to proceed and form a constitution in their own way without an express authority from Congres," from the fact that on the 24th day of January, 1856, he sent a special message to Congress, in which he recommended an enabling act for Kansas as the appropriate legislative remedy for the evils complained of in that Territory. His recommendation is in these words:

"This, it seems to me, can be best accomplished by providing that, when the inhabitants of Kansas may desire it, and shall be of sufficient numbers to constitute a State, a convention of delegates, duly elected by the qualified voters, shall assemble to frame a constitution, and thus prepare, through regular and lawful means, for its admission into the Union as a State. *I respectfully recommend the enactment of a law to that effect.*

"I recommend, also, that a special appropriation be made to defray any expense which may become requisite in the execution of the laws or the maintenance of public order in the Territory of Kansas."

The message of President Pierce, containing this recommendation, was referred to the Committee on Territories by the Senate, and, after full examination and mature deliberation, this committee, on the 12th day of March, 1856, made an elaborate report in explanation and

vindication of the principles, provisions, and policy of the Kansas-Nebraska act, and arrived at the conclusion that "the recommendation of the President furnished the appropriate and legitimate mode of conducting the principles, provisions, and policy of the act to a successful and final consummation, by the passage of an act of Congress authorizing the people of Kansas to hold a convention and form a constitution and State government, when the inhabitants of Kansas may desire it, and shall be of sufficient numbers to constitute a State."

The committee, in their report, responded to the President's recommendation in the following language:

"In compliance with the first recommendation, your committee ask leave to report a bill, authorizing the legislature of the Territory to provide by law for the election of delegates by the people, and the assembling of a convention to form a constitution and State government, preparatory to their admission into the Union on an equal footing with the original States, as soon as it shall appear, by a census to be taken under the direction of the governor, by the authority of the legislature, that the Territory contains ninety-three thousand four hundred and twenty inhabitants, that being the number required by the present ratio of representation for a member of Congress."

Thus it appears that the committee who wrote and reported the Kansas-Nebraska bill, and the President who approved and imparted vitality to it by his signature, did not mean by that act to authorize or recognize the right of the people of a Territory, with a few hundred or even a few thousand population, whenever they pleased to form a constitution and State government, "without an express authority from Congress;" but, on the contrary, it clearly appears that the authors of the act understood, and intended it to be construed and executed as meaning, that while the people of those Territories remained in a territorial condition, they should exercise and enjoy all the rights and privileges of self-government, in conformity with the organic act, and that, when they should have the requisite number "to constitute a State," and should desire it, Congress would give its assent, in a subsequent act, to authorize them to form a constitution and State government, and to come into the Union on an equal footing with the original States in all respects whatever. President Pierce did not specify the number which he deemed necessary to constitute a State; nor did the Cincinnati convention, on the "celebrated occasion" referred to by the President in his annual message, designate the precise number which would entitle "the people of all the Territories, including Kansas and Nebraska," to "form a constitution with or without slavery, and be admitted into the Union upon terms of perfect equality with the other States;" but it is evident, from the language employed, that they did not understand the right of admission to have accrued from the date of the organization of each Territory, nor when there should be a few hundred or a few thousand inhabitants, nor at whatever time the people of the Territory should feel disposed to claim the privilege, without reference to numbers, but when, in the language of President Pierce, *they should "be of sufficient numbers to constitute a State;"* or, in the language of the Cincinnati platform, as appears in the extract copied into the annual message of the

President, "*whenever the number of their inhabitants justifies it;*" or, in the language of the Committee on Territories, in the report to which I have referred, so soon as it shall appear, by a census, "that the Territory contains ninety-three thousand four hundred and twenty inhabitants—*that being the number required by the present ratio of representation for a member of Congress.*" So it appears that each of these authorities (if I may be permitted to use such a term in this connexion) excludes the idea that a Territory may proceed to form a constitution and State government whenever it pleases without the consent of Congress, and irrespective of the number of its inhabitants, and sustains the position that a Territory is not entitled to admission, according to the principles of the Federal Constitution, until it contains population enough to constitute a State, and that it is the province of Congress, instead of the Territory, to determine what that number shall be. While the Constitution of the United States does not, in terms, prescribe the number of inhabitants requisite to form a State of the Union, yet, in view of the fact that representation in the House of Representatives is to be in the ratio of federal population, and that each State, no matter how small its population, is to be allowed one representatives, it is apparent that the rule most consistent with fairness and justice towards the other States, and in harmony with the general principles of the Federal Constitution, is that which, according to the ratio of population for the time being, is sufficient for a representative in Congress. A reference to the debates which have occurred in all the cases touching the sufficiency of population in the admission of a State will show that the discussion has always proceeded on the supposition that the rule I have indicated was the true one; and the effort has been, on the one side, to prove that the proposed State had sufficient population, and, on the other, that it had not the requisite numbers to entitle it to admission, in substantial compliance with that rule. In view of these facts, I respectfully but firmly insist that neither the principles nor the provisions of the Kansas-Nebraska act, nor of the Cincinnati platform, justifies the assertion that it was the intention to abrogate this wise and just rule, and establish in lieu of it the principle that "all the Territories, including Kansas and Nebraska," have a right, whenever they please, and with whatever population they may happen to possess, "to proceed and form a constitution, in their own way, without an express authority from Congress," and demand admission into the Union on the plea that the organic act was an enabling act. I do not insist that Congress, in the exercise of a sound discretion, may not depart from the rule to which I have referred, and make an exceptional case of a Territory under peculiar circumstances, as the Senate proposed and the House of Representatives refused to do with Kansas in July, 1856; but in such a case, if any can be shown in our history, it must be regarded as a concession by Congress, and not the recognition of a right in the Territory. That the Senate concurred with President Pierce and the Committee on Territories, that the Kansas-Nebraska act did not authorize the people of those Territories to proceed and form a State constitution, whenever they chose, without the consent of Congress; and that the passage of an enabling act by Congress was the appro-

priate and legitimate mode of carrying into effect the principles, provisions, and policy of the Kansas-Nebraska act, when those Territories, respectively, should have the requisite population to entitle them to admission into the Union as States, according to the principles of the Federal Constitution, as guarantied by the treaty acquiring the country from France, is made apparent by the fact that on the 2d day of July, 1856, in pursuance of the said recommendation of the President and report of the committee, the Senate passed an enabling act for Kansas, entitled "*An act to authorize the people of the Territory of Kansas to form a constitution and State government, preparatory to their admission into the Union on an equal footing with the original States.*"

I quote from Senate Journal, page 414:

"*Ordered*, That the bill be engrossed, and read a third time.

"The said bill was read the third time.

"On the question, Shall the bill pass?

"It was determined in the affirmative: yeas 33; nays 12.

"On motion by Mr. Seward,

"The yeas and nays being desired by one-fifth of the senators present,

"Those who voted in the affirmative are—

"Messrs. Allen, Bayard, Bell of Tennessee, Benjamin, Biggs, Bigler, Bright, Brodhead, Brown, Cass, Clay, Crittenden, Douglas, Evans, Fitzpatrick, Geyer, Hunter, Iverson, Johnson, Jones of Iowa, Mallory, Pratt, Pugh, Reid, Sebastian, Slidell, Stuart, Thompson of Kentucky, Tombs, Toucey, Weller, Wright, Yulee.

"Those who voted in the negative are—

"Messrs. Bell of New Hampshire, Collamer, Dodge, Durkee, Fessenden, Foot, Foster, Hale, Seward, Trumbull, Wade, Wilson.

"So it was

"*Resolved*, That the bill pass, and that the title thereof be as aforesaid."

From this official record it appears that no senator voted against the enabling act for Kansas in 1856 who had either advocated or voted for the Kansas-Nebraska act in 1854. While it is proper to remark that those senators who did vote against this enabling act justified their opposition upon the ground that the provisions of the bill, and the time and circumstances under which it was proposed to press it, were not in accordance with their views of public policy and duty, and not upon the ground that the organic act was a sufficient enabling act to authorize the people of the Territory to ordain a constitution whenever they pleased. Greater significance and importance are imparted to these recommendations, reports, and votes in favor of an enabling act for Kansas, in view of the fact that, a few months previously, the territorial legislature had taken the preliminary step for calling the Lecompton convention, by ordering an election to be held a few months thereafter, for or against the convention; while the effect, as well as the design, of the enabling act thus recommended by the President and passed by the Senate would have been, if it had passed the House and become a law, to arrest and put an end to this irregular and unauthorized proceeding on the part of the territorial legislature, and to substitute in place of it a regular and legal

mode of proceeding under the authority of Congress. Had the enabling act become a law, whereby the people of Kansas would have been authorized to assume and exercise the sovereign power of establishing a constitution and State government, the proceeding would have been regular, lawful, and in strict conformity with the true intent and meaning of the Kansas-Nebraska act. Then the people of Kansas would have become a sovereign power, clothed with full authority to establish a constitution and State government in their own way, subject only to the Constitution of the United States. But if the proposition be true, that sovereign power alone can institute governments, and that the sovereignty of a Territory is in abeyance, suspended in the United States in trust for the people when they become a State, and the sovereignty cannot be divested from the hands of the trustee and vested in the people of the Territory without the assent of Congress, it follows as an unavoidable consequence that the Kansas legislature, by the act of February 19, 1856, did not, and could not, confer upon the Lecompton convention the sovereign power of ordaining a constitution for the people of Kansas in the place of the organic law passed by Congress. The convention seems to have been conscious of this absence of sovereign power on their part, and seeks to supply the deficiency by referring the constitution to the people at an election on the 21st of December last "*for ratification or rejection,*" with the further provision that "*this constitution shall take effect and be in force from and after its ratification by the people, as hereinbefore provided.*"

I will quote some of the provisions on this point:

"Before this constitution be sent to Congress, asking admission into the Union as a State, it shall be submitted to all the white male inhabitants of this Territory for approval or disapproval, as follows," &c.

And again:

"At which election the constitution formed by this convention shall be submitted to all the white male inhabitants of the Territory of Kansas in said Territory upon that day, and over the age of twenty-one years, for *ratification or rejection*, in the following manner and form," &c.

And further:

"SECTION 16. This constitution shall take effect and be in force from and after the ratification by the people, as hereinbefore provided."

From these provisions it is clear that the convention did not openly assert and exercise the authority to ordain and establish the constitution by virtue of any sovereign power vested in that body, but referred it to the people for ratification or rejection, under the supposition that the popular will expressed through the ballot-box might impart vitality and validity to it. But before the time arrived for holding the election on the ratification or rejection of the constitution, as provided by the convention, the territorial legislature interposed its authority by the passage of a law providing that said constitution should be submitted to the people for ratification or rejection at a fair election, to be held in conformity with the laws of the Terri-

tory, on the 4th day of January, 1858. The reasons for this legislative interposition, by which the vote on the constitution was in effect to be postponed from the 21st of December to the 4th of January, and then held and conducted and the returns made in the manner prescribed by law, may be deduced from the following facts:

1. That while the convention recognized the right of the people of Kansas to "*ratify*" or "*reject*" said constitution, and provided that it should not take effect, nor be submitted to Congress for acceptance, until so ratified at an election to be held for the purpose of "*ratification*" or "*rejection,*" yet the mode of submission prescribed by the convention was such as to render it impossible for the people to reject it at said election, even if there should be but one person offering to vote for it, and twenty thousand against; since no person was to be permitted to vote unless he would vote for the constitution, and those who should offer to vote against the constitution were to be excluded from the polls, and deprived of the privilege of voting at all at said election.

2. That the mode of submission prescribed by the convention did not fairly present the question to the people, to be decided at that election, whether Kansas should be a slaveholding or a non-slaveholding State, for the reason that while there was known to be many pro-slavery men residing in the Territory who were anxious to vote in favor of making Kansas a slaveholding State, but were at the same time irreconcilably opposed to that constitution; and while it was also known that there were many free-State men resident in the Territory who were equally opposed to the constitution, whether the slavery clause should be retained or excluded; yet the convention had provided, in effect, that no pro-slavery man should vote in favor of making Kansas a slaveholding State, unless he at the same time recorded his vote in favor of the constitution; nor should any free-State man vote in favor of making Kansas a free State, unless he at the same time would record his vote in favor of the constitution.

3. That, inasmuch as the convention did not possess any legislative power, it could not prescribe, and did not attempt to provide, any penalties or punishments for illegal and fraudulent voting, or for false and fraudulent returns, except by a vague and vain reference to the territorial laws.

4. That the schedule of the constitution had taken the whole management of said election out of the hands of the territorial officers, and placed it into the hands of commissioners, judges, and clerks, to be appointed by and under the authority of the president of the convention; and even if the territorial laws could be construed as applicable to the persons so appointed to conduct this election, yet fraudulent and spurious and forged returns could be made with impunity, as had been the case in other elections, for the reason that, by some singular omission or inadvertence, the election laws of the Territory failed to provide any penalties or punishment for such offences.

Do not these facts furnish sufficient reasons to justify the territorial legislature in interposing its authority, as it did on the 17th of December, in the passage of a law which, in effect, postponed the elec-

tion on the ratification or rejection of the constitution until the 4th of January, and provided that on that day a fair election should be held, at which every legal voter in the Territory might record his vote for or against the constitution, and for or against the slavery article, freely and unconditionally, and also made wise and effective provision to protect the ballot-box and returns from fraud and violence?

The result of the election of the 4th of January on the ratification or rejection of the Lecompton constitution was officially announced by the governor and presiding officers of the two houses of the legislature of the Territory, in the following proclamation:

"In accordance with the provisions of an act entitled 'An act submitting the constitution framed at Lecompton under the act of the legislative assembly of Kansas Territory, entitled An act to provide for taking a census and election of delegates to a convention,' passed February 19, A. D. 1857, the undersigned announce the following as the official vote of the people of Kansas Territory on the questions as therein submitted on the 4th day of January, 1858:

Counties.	Against the Lecompton constitution.	For the Lecompton constitution with slavery.	For the Lecompton constitution, without slavery
Leavenworth	1,997	10	3
Atchison	536	4	----------
Doniphan	561	1	2
Brown	187	2	----------
Nemaha	238	1	----------
Marshall	66	----------	----------
Riley	287	7	----------
Pottawatomie	207	2	----------
Calhoun	249	----------	----------
Jefferson	377	1	----------
Johnson	392	2	----------
Lykins	368	1	1
Linn	510	1	3
Bourbon	268	55	----------
Douglas	1,647	21	2
Franklin	304	----------	----------
Anderson	177	----------	----------
Allen	191	1	4
Shawnee	832	28	3
Coffee	463	----------	4
Woodson	50	----------	----------
Richardson	177	----------	1
Breckinridge	191	----------	----------
Madison	40	----------	----------
Davis	21	----------	----------
Total	10,226	138	24

"Some precincts have not yet sent in their returns, but the above is the complete vote received to this date.

"J. W. DENVER,
"*Secretary and Acting Governor.*
"C. W. BABCOCK,
"*President of the Council.*
"G. W. DEITZLER,
"*Speaker of the House of Representatives.*

"JANUARY 26, 1858."

From this official proclamation, it appears that the Lecompton constitution was repudiated and rejected by the people of Kansas at that election by a clear majority of ten thousand and sixty-four (10,064) votes.

It is proper, however, to remark, that, notwithstanding the legislature had provided by law that the vote on the ratification or rejection of the constitution should take place on the 4th day of January, the friends of that instrument, in disregard of the law, held an election on the 21st of December, under the pretended authority of the convention; and that it appears from a proclamation signed by C. W. Babcock, president of the council, and by G. W. Deitzler, speaker of the house of representatives of the Territory, who were present by invitation of John Calhoun, president of the convention, at the counting of the votes, that six thousand one hundred and forty-three (6,143) votes were returned for "the constitution with slavery," and that five hundred and eighty-nine (589) votes were returned for "the constitution with no slavery," showing a majority of five thousand five hundred and seventy-four (5,574) votes cast at that election for "the constitution with slavery," as presented to Congress for adoption.

It is also stated in the same proclamation that "more than one-half of this majority was cast at those very sparsely settled precincts in the Territory, two of them in the Shawnee reserve, on land not open for settlement, viz:

"Oxford, Johnson county	1,266
"Shawnee, Johnson county	729
"Kickapoo, Leavenworth county	1,017
"Total	3,012

"From our personal knowledge of the settlements in and around the above places, we have no hesitation in saying that the great bulk of these votes were fraudulent; and taking into view the other palpable but less important frauds, we feel safe in saying, that of the whole vote polled, not over two thousand were legal votes polled by the citizens of the Territory."

But assuming this election to have been fair and valid, although not held and conducted according to law, and assuming the returns to have been genuine, and the voters to have been all citizens of the Territory, notwithstanding the recent developments of the enormous frauds at the polls and in the returns—assuming all this, let us see

how the matter stands when we compare the result of the two elections:

At the election on the 4th of January, the majority against the constitution was	10,064
At the election on the 21st of December, the majority in favor of the constitution, as presented to Congress, was	5,574
Showing a clear majority against the constitution, on comparison of the returns of the two elections, and supposing each to have been fair and legal, of	4,490

If, from this calculation, we deduct the fraudulent votes, according to the statement of the presiding officers of the two houses of the legislature, who were present at the opening of the polls and the counting of the votes, by the invitation of the president of the convention, and we have a majority of more than eight thousand, or four to one of all the legal voters of Kansas in opposition to the constitution.

The manner in which the advocates of the Lecompton constitution hope to avoid the force of this overwhelming verdict against it by the people of Kansas is explained in the following passage from the recent special message of the President of the United States, which contains all that he says upon the subject:

"It is proper that I should briefly refer to the election held under an act of the territorial legislature, on the first Monday of January last, on the Lecompton constitution. This election was held after the Territory had been prepared for admission into the Union as a sovereign State, and when no authority existed in the territorial legislature which could possibly destroy its existence or change its character. The election, which was peaceably conducted under my instructions, involved a strange inconsistency. A large majority of the persons who voted against the Lecompton constitution were, at the very same time and place, recognizing its valid existence in the most solemn and authentic manner, by voting under its provisions. I have yet received no official information of the result of this election."

It is to be regretted that, on the 2d day of February, the President had received no official information of the result of the election held on the 4th day of January, which were published in the "proclamation" to which I have referred, and were republished in the newspapers of this city and of New York as early as the 30th of January, from which proclamation the President would have learned, if he had received it, that the people of Kansas had repudiated and rejected the Lecompton constitution by more than ten thousand majority at that election. It seems, however, that the President attaches no importance to this overwhelming vote of the people against the constitution, for the reason that he supposes "this election was held after the Territory had been prepared for admission into the Union as a sovereign State, and when no authority existed in the territorial legislature which could possibly destroy its existence or change its character." By what authority had the Territory been prepared for admission into the Union? Certainly not by the authority of Congress, for I have

already shown that Congress withheld its assent when asked by President Pierce, in a special message, to grant it. Was it by authority of the territorial legislature? It is a peculiar doctrine that a territorial legislature may assemble a convention without the assent of Congress, and empower the convention, when assembled, to abrogate or impair the authority of the territorial government established by Congress, of which the legislature is a constituent part. This question does not now arise for the first time in the history of our country. It arose under the administration of General Jackson, on the right of the territorial legislature of Arkansas "to prepare that territory for admission into the Union as a sovereign State, without any express authority from Congress;" and, after mature deliberation, General Jackson delivered the decision of his administration upon the proposition, through Mr. Butler, his Attorney General. I quote from the opinion:

"To suppose that the legislative powers granted to the general assembly include the authority to abrogate, alter, or modify the territorial government established by the act of Congress, and of which the assembly is a constituent part, would be manifestly absurd. The act of Congress, so far as it is consistent with the Constitution of the United States and with the treaty by which the Territory, as a part of Louisiana, was ceded to the United States, is the supreme law of the Territory; it is paramount to the power of the territorial legislature, and can only be revoked or altered by the authority from which it emanated. The general assembly and the people of the Territory are as much bound by its provisions, and as incapable of abrogating them, as the legislatures and people of the American States are bound by and incapable of abrogating the Constitution of the United States. It is also a maxim of universal law, that when a particular thing is prohibited by law, all means, attempts, or contrivances to effect such thing are also prohibited. Consequently, it is not in the power of the general assembly of Arkansas to pass any law for the purpose of electing members to a convention to form a constitution and State government, nor to do any other act, directly or indirectly, to create such new government. Every such law, even though it were approved by the governor of the Territory, would be null and void; if passed by them, notwithstanding his veto, by a vote of two-thirds of each branch, it would still be equally void."

Thus it appears that, under the administration of General Jackson, the doctrine obtained—and I have never heard its correctness questioned until the present session of Congress—that a convention assembled under the authority of a territorial legislature, "without an express authority from Congress," had no right or power to prepare the Territory for admission into the Union as a sovereign State, and thereby abrogate or impair the authority of the territorial legislature over all rightful subjects of legislation consistent with the organic act. If this view of the subject be correct, it follows, necessarily, that the Lecompton convention, in forming the constitution, did not by that act, and could not by any act, impair, diminish, or restrain the authority of the territorial legislature; and hence, that the constitution formed at Lecompton, and presented to Congress for acceptance, should

be considered and treated like any other memorial or petition, which Congress may accept or reject, or disregard, according to the facts and circumstances of the case. This point was also considered and decided by General Jackson's administration in the Arkansas case, as appears by the following extract from the same opinion of Attorney General Butler:

"But I am not prepared to say that all proceedings on this subject, on the part of the citizens of Arkansas, will be illegal. They undoubtedly possess the ordinary privileges and immunities of citizens of the United States. Among these is the right of the people 'peaceably to assemble and to petition the government for the redress of grievances.' In the exercise of this right, the inhabitants of Arkansas may peaceably meet together in primary assemblies, or in conventions chosen by such assemblies, for the purpose of petitioning Congress to abrogate the territorial government, and to admit them into the Union as an independent State. The particular form which they may give to their petition cannot be material, so long as they confine themselves to the mere right of petitioning, and conduct all their proceedings in a peaceable manner. And as the power of Congress over the whole subject is plenary and unlimited, they may accept any constitution, however framed, which, in their judgment, *meets the sense of the people to be affected by it.* If, therefore, the citizens of Arkansas think proper to accompany their petition by a written constitution, framed and agreed on by their primary assemblies, or by a convention of delegates chosen by such assemblies, I perceive no legal objection to their power to do so, nor to any measures which may be taken to collect the sense of the people in respect to it: provided, always, that such measures be commenced and prosecuted in a peaceable manner, *in strict subordination to the existing territorial government, and in entire subserviency to the power of Congress to adopt, reject, or disregard them at their pleasure.*

"It is, however, very obvious that all measures commenced and prosecuted with a design to subvert the territorial government, and to establish and put in force in its place a new government, without the consent of Congress, will be unlawful. The laws establishing the territorial government must continue in force until abrogated by Congress; and, in the meantime, it will be the duty of the governor, and of all the territorial officers, as well as of the President, to take care that they are faithfully executed."

If we apply the principles to Kansas which received the sanction of General Jackson and his administration in the Arkansas case, it becomes apparent that the Lecompton convention had the right to assemble under the protection of that clause of the Constitution of the United States which secures to the people the right "peaceably to assemble, and to petition government for the redress of grievances;" and, in the exercise of this right of petition, they might pray "Congress to abrogate the territorial government, and to admit them into the Union as an independent State," provided "they confine themselves to the mere right of petitioning, and the constitution enclosed in their petition *meets the sense of the people to be affected by it,*" and also that "such measures be commenced and prosecuted in a peaceable manner, in *strict subor-*

dination to the existing territorial government, and in *entire subserviency to the power of Congress to adopt, reject, or disregard them at their pleasure;*" but that said convention could not establish a government, or ordain a constitution, or do any other act, under pretense of "preparing the Territory for admission into the Union as a sovereign State," calculated or intended to abrogate, impair, or restrain the legislative power of the Territory over all rightful subjects of legislation consistent with the organic act. If these principles be sound—if the doctrine of General Jackson's administration in the Arkansas case be correct, the President is mistaken in supposing that the Lecompton convention did, or could do, any act depriving the territorial legislature of the power and right to pass a law referring the constitution to a vote of the people on the 4th of January, with the view of ascertaining the essential and all-important fact whether it "*meets the sense of the people to be affected by it.*" The power of the territorial legislature over the whole subject was as full and absolute on the 17th day of December, when the law was enacted providing for the submission of the constitution to the people at the election on the 4th of January, as it was on the 19th day of February, 1857, when the legislature passed the act calling the Lecompton convention into existence. The convention was the creature of the territorial legislature, was called into existence by its mandate, derived whatever power it possessed from its enactment, and was bound to conduct all its proceedings "*in strict subordination to the existing territorial government,*" as well as "in entire subserviency to the power of Congress to adopt, reject, or disregard them at their pleasure." Such being the case, whenever the legislature ascertained that the convention, whose existence depended upon its will, had devised a scheme to force a constitution upon the people without their consent, and without any authority from Congress, and which was believed to be repugnant to the feelings and hostile to the interests of the people to be affected by it, it became their imperative duty to interpose and exert the authority conferred upon them by Congress in the organic act, and arrest and prevent the consummation of the scheme before it had gone into operation. The legislature deserves credit for the promptness, wisdom, and justice which characterized its proceeding in this respect. The members were familiar with the wishes of the people, having been elected after the Lecompton convention assembled, and before it concluded its labors, and at the end of an exciting canvass, in which the origin and organization of the convention, the circumstances under which the delegates were elected, and their pledge to submit the constitution to the people for ratification or rejection, and the various provisions which were to be incorporated into the constitution, were all fully and freely discussed by both parties before the people. The legislature not only passed the act of the 17th of December authorizing the people to vote for or against the constitution before it should be sent to Congress for acceptance, but, in order to prevent any action by Congress before the people should have an opportunity of making their wishes known in an authoritative and legal form, the following preamble and resolutions were adopted, as published in the public prints, by the unanimous vote of the two houses:

"*Preamble and joint resolutions in relation to the constitution framed at Lecompton, Kansas Territory, on the 7th day of November*, 1857.

"Whereas a small minority of the people living in nineteen of the thirty-eight counties of this Territory availed themselves of a law which enabled them to obstruct and defeat a fair expression of the popular will, did, by the odious and oppressive application of the provisions and partisan machinery of said law, procure the return of the whole number of the delegates of the constitutional convention recently assembled at Lecompton:

"And whereas, by reason of the defective provisions of said law, in connexion with the neglect and misconduct of the authorities charged with the execution of the same, the people living within the remaining nineteen counties of the Territory were not permitted to return delegates to said convention, were not recognized in its organization, or in any other sense heard or felt in its deliberations:

"And whereas it is an axiom in political ethics that the people cannot be deprived of their rights by the negligence or misconduct of public officers:

"And whereas a minority—to wit: twenty-eight only of the sixty members of said convention—have attempted, by an unworthy contrivance, to impose upon the whole people of this Territory a constitution without consulting their wishes, and against their will:

"And whereas the members of said convention have refused to submit their action for the approval or disapproval of the voters of the Territory, and in thus acting have defied the known will of nine-tenths of the voters thereof:

"And whereas the action of a fragment of said convention, representing as they did a small minority of the voters of the Territory, repudiates and crushes out the distinctive principle of the 'Nebraska-Kansas act,' and violates and tramples under foot the rights and the sovereignty of the people:

"And whereas, from the foregoing statement of facts, it clearly appears that the people have not been left 'free to form and regulate their domestic institutions in their own way,' but, on the contrary, at every stage in the anomalous proceedings recited, they have been prevented from so doing:

"*Be it therefore resolved by the governor and legislative assembly of Kansas Territory*, That the people of Kansas being opposed to said constitution, Congress has no rightful power under it to admit said Territory into the Union as a State, and the representatives of said people do hereby, in their name and on their behalf, solemnly protest against such admission.

"*Resolved*, That such action on the part of Congress would, in the judgment of the members of this legislative assembly, be an entire abandonment of the doctrine of non-intervention in the affairs of the Territory, and a substitution in its stead of congressional intervention in behalf of a minority engaged in a disreputable attempt to defeat the will and violate the rights of the majority.

"*Resolved*, That the people of Kansas Territory claim the right,

through a legal and fair expression of the will of a majority of her citizens, to *form* and *adopt* a constitution for themselves.

"*Resolved*, That the governor of this Territory be requested to forward a copy of the foregoing preamble and resolutions to the President of the United States, the President of the Senate, the Speaker of the House of Representatives, and to the delegate in Congress from the Territory."

In the face of all these evidences that the Lecompton constitution is not the act of the people of Kansas, and does not embody their will; that it was formed by a convention elected under an act of the territorial legislature, without the consent of Congress; that the sixty delegates composing the convention were chosen by nineteen of the thirty-eight counties in the Territory, while the other nineteen counties were entirely disfranchised, without any fault of their own, by the failure or refusal of the officers, whose duty it was, under the law, to take a census and register the voters in order to entitle them to vote for delegates; that the mode of submission to the people for "ratification or rejection," as prescribed by the convention, was such as to render it impossible for the people to reject it, for it allowed no person to vote who would not vote for the constitution, and excluded from the polls all persons who desired to vote against it; that the only reason assigned or believed to exist for not allowing the people to vote *against* the constitution, as well as for it, is, that a large majority of the people were known to be opposed to it, and would have rejected it by an overwhelming majority, if they had been allowed an opportunity; that the mode of submitting the "slavery article" was such that no man was permitted to vote *for* making Kansas a slave State unless he would vote for the constitution at the same time, nor was any man permitted to vote *against* making Kansas a slave State unless he would also vote *for* the constitution; that by this system of trickery in the mode of submission a large majority, probably amounting to four-fifths of all the legal voters of Kansas, were disfranchised and excluded from the polls on the 21st of December; that in order to prevent the injustice and wrong intended to be perpetrated by the trickery resorted to in this mode of submission, and to secure in place of it a fair and honest election, the legislature, on the 17th of December, passed a law providing for such an election on the 4th day of January, at which the whole people should have an opportunity, freely and unconditionally, to vote for or against the constitution, and for or against the slavery article, as they pleased; that, at said election, a majority of more than ten thousand of the legal voters of Kansas repudiated and rejected the Lecompton constitution; that the election on the 4th of January was lawful and valid, having been fairly and honestly conducted, under and in pursuance of a valid law, which the President was not only bound to respect, but to see faithfully executed, the same as all other territorial laws which are not inconsistent with the Constitution of the United States and the organic act of the Territory; that the election on the 21st of December was not valid and binding on the people of the Territory, for the reason that it was not held in pursuance of any law of the Territory or of the United States, nor under the authority of any body of men duly authorized to make laws;—I repeat, that in

the face of all these facts, showing conclusively that the Lecompton constitution is not the act and deed of the people of Kansas, and does not embody their will, we are told by the President of the United States that "to the people Kansas the only practical difference between admission or rejection depends simply upon the fact whether they can themselves more speedily change the present constitution, if it does not accord with the will of the majority, or frame a second constitution, to be submitted to Congress hereafter."

There is a "practical difference" far more important than the mere question of time, and there are principles involved infinitely more important than the practical difference.

There is a serious difference in practice as well as in principle, whether the people of Kansas shall be permitted to make and adopt the constitution under which they are to live, and with which they are to be received voluntarily into the Union, or whether Congress will force them into the Union against their will, and with a constitution which they have repudiated by an overwhelming majority of their votes at a fair election held in pursuance of law, and then maintain it by federal bayonets.

If it be true, as represented by the President, that "ever since the period of my (his) inauguration, a large portion of the people of Kansas have been in a state of rebellion against the (territorial) government;" that "they have never acknowledged, but have constantly renounced and defied the government to which they owe allegiance, and have been all the time in a state of resistance against its authority;" that "they would long since have subverted it, had it not been protected from their assaults by the troops of the United States;" that Governor Walker "considered at least two thousand troops, under the command of General Harney, were necessary for this purpose;" and that "I (the President) have been obliged, in some degree, to interfere with the expedition to Utah, in order to keep down rebellion in Kansas;"—I repeat, that if these statements be a fair and impartial representation of the character, feelings, and purposes of the people of Kansas, does it follow, as a logical and natural consequence from these premises, that "the speedy admission of Kansas into the Union" with a constitution to which they are unalterably opposed, and which they have repudiated by an overwhelming majority of their voters at a fair election held in pursuance of law, "would restore peace and quiet to the whole country;" that "domestic peace will be the happy consequence of its admission," and that "I (the President) shall then be enabled to withdraw the troops of the United States from Kansas, and employ them on other branches of service where they are much needed?" If it be true, as alleged, that "a large portion of the people of Kansas are in a state of rebellion against the government," and that the rebels so far outnumber the law-abiding citizens that they would "long since have subverted the territorial government, had it not been protected from their assaults by the troops of the United States;" and that "they have all the time been endeavoring to subvert it, and to establish a revolutionary government" in its place; and that "up till this moment the enemies of the existing government still adhere to their revolutionary plans

and purposes with treasonable pertinacity;"—if these allegations, so gravely set forth by the President in his special message, be true, do they furnish satisfactory evidence to authorize the belief or even grounds for hope that "the speedy admission of Kansas into the Union," with the Lecompton constitution, "would restore peace and quiet to the whole country," and that "domestic peace will be the happy consequence of its admission?"

It is to be lamented that the President does not seem to comprehend the nature and character of the controversies which have so unhappily disturbed the peace and marred the prosperity of Kansas, and the grounds upon which they claimed to be justified in the course they have pursued. During the whole period from the 30th of March, 1855, when the first annual election was held for members of the legislature and other officers in that Territory, until the general election on the first Monday of October, 1857, the free-State party, so called, did boldly, firmly, and persistently refuse to recognize the territorial legislature of Kansas as a legally and duly constituted legislative body, with authority to pass laws which were valid and binding on the people of Kansas, for the reason, as they alleged, that the members of that legislature were not elected by the people of Kansas, but were elected by four or five thousand citizens of the adjoining State of Missouri, who are said to have invaded the Territory on the day and a few days previous to the day of election, and, dividing themselves into small parties, and spreading over all the inhabited parts of the Territory, took possession of the polls and drove away the peaceable legal voters, and thus forced a legislature upon the people of Kansas against their will, and in violation of the Kansas-Nebraska act.

These are the allegations and grounds of justification urged by the free-State party in Kansas during the period to which I have referred. It is no part of my present purpose to inquire how far these allegations are sustained by the facts, nor what number of the election districts were controlled by these illegal votes, nor the principles of law applicable to the facts, or the legal conclusions properly resulting from them. These questions were all fully considered and elaborately discussed by me in a report from this committee on the 12th of March, 1856. I refer to them now, not for the purpose of re-opening that discussion, or of changing the conclusions to which I then arrived, but with the view of showing upon what grounds the free-State party claimed that they were justified in withholding their allegiance to the territorial government until a fair opportunity was afforded the people of the Territory to elect their own legislature, in pursuance of the organic law; and that from the day on which the members elected, in October, assembled and organized as a legislative body, all the opponents of the Lecompton constitution have recognized the territorial government as valid and legitimate, acknowledging their allegiance to it, and their determination and duty to sustain and support it. The October election becomes a memorable period in the history of Kansas, for the additional reason that it marks the date when the Lecomptonites changed their whole line of policy, and formed the scheme of forcing the constitution on the people without their consent, and of subverting

the authority of the territorial legislature without the consent of Congress. Up to this period it had been generally understood and conceded that the convention had been called for the purpose of framing a constitution and submitting it to the people for ratification or rejection, and of sending it to Congress for acceptance, only in the event it should be first ratified by a majority of all the legal voters of the Territory. Upon this point there is no room for doubt that the President and his cabinet concurred with the people of Kansas, that it was the duty of the convention to submit the constitution to the people fairly and unconditionally, for ratification or rejection, before it could be considered the act and deed of the people of Kansas, and that its ratification by the people must be a condition precedent to the admission of Kansas into the Union by Congress. The President, in his instructions to Governor Walker, through his Secretary of State, under date of March 30, said:

"When such constitution shall be submitted to the people of the Territory, they must be protected in the exercise of *their right of voting* FOR OR AGAINST *that instrument*, and the fair expression of the popular will must not be interrupted by fraud or violence."

Governor Walker, in an official despatch to the Secretary of State, under date of June 2, said: "On one point the sentiment of the people is almost unanimous—that the constitution must be submitted for ratification or rejection to a vote of the people who shall be *bona fide* residents of the Territory next fall." And in his inaugural address to the people of Kansas, Governor Walker said:

"With these views, *well known to the President and cabinet*, and APPROVED BY THEM, I accepted the appointment of governor of Kansas. My instructions from the President, through the Secretary of State, under date of 30th of March last, sustain the 'regular legislature of the Territory in assembling a convention to form a constitution,' and they express the opinion of the President, that when such constitution shall be submitted to the people of the Territory, they must be protected in the exercise of their right of voting for or against that instrument; and the fair expression of the popular will must not be interrupted by fraud or violence."

"*I repeat, then, as my clear conviction, that, unless the convention submit the constitution to the vote of all the actual resident settlers of Kansas, and the election be fairly and quietly conducted, the* CONSTITUTION WILL BE AND OUGHT TO BE REJECTED BY CONGRESS."

These official papers, containing the most solemn and unequivocal assurances on the part of the President, the cabinet, and the governor, that the constitution would be submitted to the people for "*ratification* or *rejection*," and that in the event it should not be submitted, it "*will and ought to be rejected by Congress*," were published and spread broadcast over the Territory, prior to the election of delegates to the convention, for the purpose of satisfying the people that although they had been unjustly and foully treated in the apportionment of delegates by the total disfranchisement of nineteen counties, and the imperfect and unfair registration of voters in the other nineteen counties, yet this great wrong would not produce any injury in the end, for the reason that the convention was compelled to submit the constitution to the people for "ratification or rejection," and that unless it

should be thus submitted at a fair election "*the constitution will be and ought to be rejected by Congress.*"

The people, relying on these solemn pledges of the President, the cabinet, and the governor, supported by the constant assurances of all the government officers in the Territory, and affirmed by the democratic party, unanimously, in their resolutions endorsing the policy of Governor Walker, and nominating Governor Ransom for Congress, and confirmed by senators and representatives in Congress who visited the Territory, and gave similar pledges in their speeches to the people, were lulled into a false and fatal security, under the belief that the great wrong perpetrated in the apportionment for the election of delegates would be corrected and rendered harmless by the submission of the constitution to a vote of the people at a fair election for ratification or rejection. Thus the matter stood when the election took place on the first Monday of October last, and resulted in the total defeat of the democratic party, and the triumph and election of free-State men for the legislature, for Congress, and for county officers. This election dissipated the last ray of hope on the part of the pro-slavery men of making Kansas a slaveholding State by a fair vote of the people on the ratification or rejection of the constitution, for the obvious reason that, while it was conceded that the whole of the free-State party (so called) would vote to a man against a pro-slavery constitution, it was well known that at least one-half of the democratic party would vote the same way on that question, thus proving by the data furnished by that election that four-fifths, if not nine-tenths, of the people were in favor of making Kansas a free State. The Lecompton convention assembled and organized on the first Monday in September, one month previous to the election, and, after appointing the committee and transacting some preliminary business, adjourned until after the election for the purpose of avoiding a division in the democratic party by disclosing the character of the constitution until they should ascertain the relative strength of parties in the Territory. The result of the election demonstrated, beyond all controversy, that an immense majority of the people of Kansas were opposed to making Kansas a slave State, and that if the convention framed and presented a slave State constitution for approval or disapproval, it would inevitably be rejected at the election.

Under these circumstances, the convention determined that, instead of conforming their action to the known wishes of the people of Kansas, they would form a slave State constitution, and submit it to the people in such a form as to render it impossible for them to reject it, by allowing those to vote only who would vote *for* it, and excluding from the polls all who proposed to vote against it. By this disreputable trick they hope to save themselves, the President and his cabinet, and all who co-operated with them, from the disgrace of violated pledges at the same time that they defrauded the people of Kansas of the sacred rights of self-government guarantied by the organic act, by forcing a constitution upon them without their consent and against their wishes. It is but just to remark, that the moment this scheme of trickery and fraud was promulgated, a large majority of the democratic party, including the better portion of the pro-slavery party, who had acted with the Lecomptonites up to that time, instantly withdrew

their confidence and support, and denounced the measure as a base betrayal of the rights of the people. The Lecomptonites were loyal to the territorial government so long as they filled the offices and controlled its power; but the moment they were defeated at the election, and the power passed into the hands of their opponents, they rebelled against it, defied its authority, and devised schemes to destroy its existence. Thus they provided: "This constitution shall take effect and be in force from and after its ratification by the people, as hereinbefore provided;" that is, from and after the election on the 21st of December, when the people were permitted to vote for it, but not against it. In this mode they proposed to abrogate and subvert the territorial government established by Congress, by putting in force a State constitution without the consent of Congress. What is this but rebellion—open, naked, undisguised rebellion? Where is the difference between this and the Topeka movement, which the President denounces as "revolutionary government," organized in defiance of the authority of the United States, which it was his duty to suppress with the federal troops? He says: "*This Topeka government, adhered to with such treasonable pertinacity, is a government in direct opposition to the existing government prescribed and recognized by Congress.*" Might not the President have said, with as much fairness and justice, that "this Lecompton constitution, adhered to with such treasonable pertinacity, is a constitution in direct opposition to the existing government prescribed and recognized by Congress?" If it be said that the Topeka constitution was framed and declared to be in force without the consent of Congress, and, therefore, "revolutionary," it may be answered, with equal truth, that the Lecompton constitution was framed and declared in force without the consent of Congress, and, consequently, "revolutionary" for the same reason. But we are told that the Lecompton convention assembled under the authority of the territorial legislature. It is true that it commenced its proceedings under the sanction of the legislature, and terminated its action in open rebellion against the authority of the legislature. When the legislature, on the 17th of December, interposed its lawful authority to prevent the Lecompton constitution from going into effect until ratified by the people on the 4th of January, and accepted by Congress, the Lecomptonites defied the authority of the legislature established by Congress, and treated the law with contempt, refusing to yield obedience to it, or respect its mandates, or abide by the decision under it.

Thus it will be seen that, from the time the Lecomptonites lost possession of the offices under the territorial government by a fair election on the first Monday in October last, in the language of the President, "they have all the time been endeavoring to subvert it, and establish a revolutionary government under the so-called Topeka (Lecompton) constitution in its stead. So it appears that the Lecompton constitution, as well as the Topeka constitution, was declared to "take effect and be in force," not only without the consent of Congress, but in defiance and contempt of the authority of the territorial legislature established by Congress. Hence, if it be true that the Topeka constitution was revolutionary, (and I have always held that it was so,) for the reason that it was declared to take effect and be in

force without the consent of Congress, and in defiance of the authority of the territorial legislature, it is undeniable that the Lecompton constitution was "revolutionary" for the same reason, and that the President of the United States was under the same official obligation to maintain the supremacy of the territorial law over the Lecompton constitution as he was over the Topeka constitution until Congress should otherwise order and direct. Upon what principles of fairness or justice, then, can it be urged that we should admit Kansas into the Union with the Lecompton constitution? Certainly not upon the ground that it is the act and deed of the people of Kansas, and fairly embodies their will, for it has been conclusively shown that it has been repudiated by the people by more than 10,000 majority at a fair election held in pursuance of a valid law. Not upon the ground that it was adopted "in strict subordination to the existing territorial government, and in entire subserviency to the power of Congress to adopt, reject, or disregard it at their pleasure," as was held by General Jackson in the Arkansas case to be necessary; for it has been shown, beyond all controversy, that it was declared to "take effect and be in force" in defiance of the authority of the territorial legislature, and without the consent of Congress. But the speedy admission of Kansas is urged by the President as "a question of mere expediency," in order to "restore peace and quiet to the whole country," and prevent "a revival of the slavery agitation." Upon this point the President addresses a plausible and ingenious argument to that portion of the anti-slavery feeling of the country, which, overlooking the great principle of self-government involved, opposes the Lecompton constitution mainly upon the ground that it recognizes and establishes slavery in Kansas, and is willing to adopt the shortest and quickest mode of abolishing slavery and making Kansas a free State. In order to reconcile this anti-slavery feeling to the admission of Kansas under the Lecompton constitution, the President presents and enforces, by argument, the following propositions:

1st. That "it has been solemnly adjudicated by the highest judicial tribunal known to our laws, that slavery exists in Kansas by virtue of the Constitution of the United States, and that Kansas is therefore, at this moment, as much a slave State as Georgia or South Carolina."

2d. That "slavery can, therefore, never be prohibited in Kansas, except by means of a constitutional provision, and in no other manner can this be done so promptly, if a majority of the people desire it, as by admitting it into the Union under the present constitution."

3d. That "the people will then be sovereign, and can regulate their own affairs in their own way. If a majority of them desire to abolish domestic slavery within the State, there is no other possible mode by which this can be effected so speedily as by prompt admission;" and that "the legislature already elected may, at its very first session, submit the question to a vote of the people, whether they will or will not have a convention to amend their constitution, and adopt all necessary means for giving effect to the popular will."

4th. Inasmuch as the Lecompton constitution provides a mode of amendment after the year 1864, and thereby excludes the possibility of any lawful change until that period, the President suggests that Congress may remove this obstacle, by inserting a clause in the act of

admission annulling so much of the constitution as prohibits any change until after the year 1864, and requires two-thirds of each house of the legislature to authorize the people to vote for a convention, and declaring the right of the legislature already elected to call a convention, by a majority vote, in violation of the constitution under which its members were elected, and which they were sworn to support. Let us read the President's language on this point:

"If, therefore, the provision changing the Kansas constitution, after the year one thousand eight hundred and sixty-four, could forcibly be construed into a prohibition to make such a change previous to that period, this prohibition would be wholly unavailing; and again: If a majority of them (the people of Kansas) desire to abolish domestic slavery within the State, there is no other possible mode by which this can be effected so speedily as by prompt admission. The will of the majority is supreme and irresistible when expressed in an orderly and lawful manner. They can make and unmake constitutions at pleasure It would be absurd to say they can impose fetters on their own power which they cannot afterwards remove. If they could do this, they might tie their own hands for a hundred as well as for ten years. These are fundamental principles of American freedom, and are recognized, I believe, in some form or other, by every State constitution; and *if Congress, in the act of admission, should think proper to recognize them, I can perceive no objection to such a course.*"

The President can perceive no objection to Congress inserting a provision in the act admitting Kansas into the Union, which abrogates and annuls an imperative provision of the constitution, and declares the right of the legislature already elected to take the initiatory steps to change it by a majority vote, in the face of the provision in the constitution that such steps shall not be taken unless *two-thirds of the members of such house* concur, and not even in that case until after the year 1864. What right has Congress to intervene and annul, alter, or even construe the provisions of a State constitution, and license the members of the legislature to disregard their sworn obligations to support the constitution under which they hold their offices? Where does Congress obtain its authority to tell the members of a State legislature that they are under no obligation to respect and obey the constitution with which such State was admitted into the Union, and that they may proceed to alter or abrogate it in a mode and at a time different from that authorized or permitted in the instrument? If the Lecompton constitution be the act and deed of the people of Kansas; and if it be accepted by Congress as such, and the State be admitted into the Union under it, I hold that there is no *lawful* mode on earth to change or amend it, except the one provided and authorized in the constitution itself. I agree that "the will of the majority is supreme and irresistible when expressed in an orderly and lawful manner." But the question is, when a constitution has once become the supreme law of a State, what "lawful manner" is there of changing it, except the one provided and permitted by the constitution? I agree with the President, also, that "the people can make and unmake constitutions at pleasure." But how—in what manner is this to be done? There are two modes—the one *lawful*, and the other *revolutionary*. When a constitution has once become the fundamental law of a State, there is no

"lawful manner," there can be no lawful manner of altering, changing, or abrogating it, except in pursuance of its provisions. It is true that the right of *revolution* remains—that great inalienable right to which our fathers resorted when submission was intolerable, and resistance a less evil than submission.

Hence, if the Lecompton constitution be accepted by Congress and the State admitted under it, while there will be no "lawful manner" of amending or abrogating it until after the year 1864, and then only by the concurrence of two-thirds of each branch of the legislature, in the first instance, followed by a majority vote of all the citizens of the State, and the concurrence of the two houses of the next legislature, all prior to the election of delegates and the assembling of a convention; yet the revolutionary right will remain to the people of Kansas, to be resorted to or not, according as they shall determine for themselves that it is a less evil to resist than to submit to a convention which was never their act and deed, and never did embody their will. It may be true that, under this terrible right of revolution, "if a majority of the people desire to abolish domestic slavery in the State, there is no other possible mode by which this can be effected so speedily as by prompt admission;" but if this "mode" be resorted to under the impression that it will abolish slavery in Kansas more "speedily" than any other possible mode, it must be understood to mean revolution if successful, and rebellion in case of failure. But suppose the line of policy indicated by the President should be pursued; that Kansas be admitted under the Lecompton constitution; that Congress, in the act of admission, recognize the right of "the legislature already elected at its very first session to submit the question to a vote of the people, whether they will or will not have a convention to amend their constitution, and adopt all necessary measures to give effect to the popular will;"—suppose all this to have been done, of what relief will it be to the oppressed people of Kansas, unless Mr. Calhoun shall set aside the fraudulent returns from Delaware Crossing, or go behind the returns and reject the fraudulent votes at Kickapoo, Shawnee, or Oxford, or at other precincts, in order to insure a majority in both branches of the legislature opposed to the Lecompton constitution, and in favor of an immediate change?

Unless the President is prepared to inform us that this is to be done, it is worse than mockery to talk about the right of the legislature, "at its very first session," to submit the question to the people, and to insert a void clause in the act of admission declaratory of a right which can be exercised only in violation of the constitution, and by revolution; and especially if it is understood that, by forged returns and fraudulent votes, a majority of members are to be declared elected in both branches of the legislature who are determined to maintain the Lecompton constitution, and resist any and all efforts to change it. By the express command of the constitution, the returns of that election were to be made to the president of the convention "within eight days" after the election. On the ninth day after the election—to wit: on the 13th day of January—the returns were opened and counted by Mr. Calhoun, as appears by the proclamation of the presiding officers of the two houses of the legislature, who were present, by his

invitation, to witness the opening and counting of the votes. More than a month has elapsed since the returns were opened and votes counted, and Mr. Calhoun being in this city, we are not permitted to know the result of his deliberations; whether the rumors of yesterday that the anti-Lecompton members were elected, or the rumor of to-day that the Lecompton party have triumphed, or whether the policy is to withhold the decision until the State shall have been admitted, and, leaving each party to infer that the decision is in their favor, compel Congress to act in the dark, and wait patiently to find out the result of its action. But suppose there should be a majority in both houses of the legislature opposed to the Lecompton constitution and in favor of a change, what can they do towards relieving the people of Kansas from a constitution they abhor, since it is well understood that, in consequence of a large number of votes cast for the anti-Lecompton ticket having been returned to Governor Denver instead of Mr. Calhoun, the Lecompton ticket for governor and State officers is to be declared elected, thus rendering it morally certain that any bill which the legislature might pass, having for its object a change in the constitution, would be defeated by the governor's veto, it not being anticipated in any contingency that the opponents of the Lecompton constitution would have a majority of two-thirds in each branch of the legislature? Hence, it must be apparent to all that, in the event that Kansas is admitted under the Lecompton constitution, every argument or proposition founded on the idea that the people of Kansas will have the opportunity of changing the constitution by peaceful means through the instrumentality of the legislature, must, in all probability, prove deceptive and delusive. In the event that the deed shall be consummated, their only alternative will be submission or revolution. Revolutions are, sometimes, peaceful and bloodless. Constitutions and governments have been changed by revolution without violence or bloodshed; but this is the case only where the public sentiment in favor of the change is unanimous, or approaches so closely to unanimity as to silence all opposition. If this should prove to be the case in Kansas, the people will be able to reassert their violated rights of self-government and form a constitution which will embody their will, without violence or force; but if, in the progress of the revolution, they should meet with determined resistance, civil war or unconditional submission must be the inevitable consequence.

Does the history of this Lecompton constitution, and the character and purposes of the men engaged in the movement, and the means employed to force it upon an unwilling people, furnish an assurance that, after they have realized all their hopes by making the constitution the fundamental law of the State, unalterable until after 1864, and then except by a two-thirds vote, they will, on the day they come into power under it, permit it to be subverted and abrogated by a revolutionary movement, when they will have acquired the right, under the Constitution of the United States, to demand of the President the use of the federal army to put down the insurrection, and protect the State "against domestic violence?"

When this demand shall be made upon the President by the "legislature already elected, at its very first session," or by the governor,

"when the legislature cannot be convened," will he not consider himself bound by his official oath, and in obedience to the Constitution of the United States, to use the federal troops to protect the State against domestic violence, by putting down the revolution, and suppressing insurrection, and maintaining the authority of the constitution, until lawfully changed in the manner prescribed in the instrument? Or, if it could be converted into a judicial, instead of a political question, and brought before the Supreme Court of the United States for adjudication, can any one doubt the decision? Would not the court be compelled to decide that the constitution, having once become the fundamental law of the State, must be respected and obeyed as such until changed or annulled, in pursuance of its own provisions?

Would not the court be compelled to declare, as an invariable and universal rule of interpretation, that when a constitution prescribes one mode of amendment it must be understood and construed as having thereby precluded all other modes, and prohibited all other means of accomplishing the same object? Suppose the people of Kansas should attempt to change the constitution in a mode and at a time different from that authorized in the instrument, and should proceed so far as to adopt a new constitution, and set up a State government under it by an overwhelming majority, in antagonism to the constitution and State government with which Kansas was admitted into the Union, which of these State governments would the President feel bound to recognize and "protect against domestic violence," when applied to in the manner provided in the Federal Constitution? Would he not be compelled to use the whole military power of the United States, or so much of it as shall be necessary, to put down the rebellion and "protect the State against domestic violence," when properly applied to for that purpose? Hence the question will arise, and it is important to know how it is to be decided, in the event there shall be two State governments in Kansas, in antagonism with each other—the one organized under the Lecompton constitution, and the other established by the people in opposition to the Lecompton constitution—which will the President recognize as valid and legitimate, and which will he denounce as a "revolutionary government, adhered to with such treasonable pertinacity" as to make it his duty, under the Constitution of the United States, to put down the insurrection and crush out the rebellion with the federal troops? It is important that this question should be determined, in order that the people of Kansas may know how they are to exercise that great indefeasible right of which the President speaks, when he says, "they can make and unmake constitutions at pleasure."

Does he mean that inalienable right of revolution to which every people may resort when their oppression is intolerable, and submission is a less evil than resistance? If so, I fear that the bright anticipations of the President would not be fully realized when he imagines that the speedy admission of Kansas into the Union under the Lecompton constitution "would restore peace and quiet to the whole country," and enable him "to withdraw the troops of the United States from Kansas, and employ them on branches of the service where they are much needed."

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 18, 1858.—Ordered to be printed.

Mr. COLLAMER, from the Committee on Territories, submitted the following as the

VIEWS OF THE MINORITY

On the Constitution of Kansas adopted by the convention which met at Lecompton on Monday, the 4th of September, 1857.

Congress has passed laws in relation to slavery in the Territories at all periods of its existence. When the territory was held by grant or treaty that in no way affected slavery, and where such an institution existed, if at all, to a very limited extent, there Congress entirely prohibited it. If slavery existed, and especially if the territory was holden by a title or treaty which forbade abolition, there slavery was suffered to continue; but even there Congress often adopted measures to prevent or to check further additions, and often, and before 1820, the taking of slaves into a territory for sale was forbidden.

It is most observable, however, that in no case was the condition of a Territory, as to slavery, ever left to be a matter of contention to the people therein. It was regarded as a question of too much interest to the whole country to be left to local legislation. At no period in our history has it ever, by any party, been insisted that the people were not at liberty to arrange this matter, like all others, in their own way, in the formation or alteration of their State constitution. In all the Territories north of the Ohio slavery was utterly forbidden by Congress from time to time, as they were formed, and in pursuance of the ordinance of 1787. In Mississippi, in 1798, Congress prohibited the importation of slaves, which they could not do in the States until 1808. This was direct intervention. In 1804, in Orleans Territory, (Louisiana,) Congress adopted three express provisions on slavery. Slaves were forbidden to be brought in, except with the owner's family, to settle. They were not to be imported from beyond the United States; and none were to be taken there, in any manner, if imported after 1798. For breach of either of these provisions the slaves were declared free. This was plenary intervention.

In 1820 was passed the Missouri compromise, by which Missouri was admitted as a slave State, and all slavery was forever forbidden north of 36° 30′ in the country ceded to us by France. This was done by the southern vote by a large majority, with a small minority of the North, and so a southern measure. This settled the condition

of all the territory we then owned, and was the bond of peace on the subject for more than one-third of a century. When Texas was acquired the same provision, by a line on 36° 30′, was made for peace.

When, by arrangement with Great Britain, we obtained the exclusive right to Oregon, it was formed into a Territory, and slavery utterly prohibited. After our acquisition by the treaty of peace with Mexico, difficulty and trouble on this subject was renewed. In 1850 this was arranged by the admission of California as a free State, and forming New Mexico and Utah into Territories, with the right, when forming State constitutions, at the proper time, to be admitted either with or without slavery, as such constitution should provide. This was also a southern measure; and it, together with the former measures then in force, again settled the condition of all our territory as to slavery. It was claimed and sustained as a *finality* of this subject.

In 1854 a measure was adopted, at the claim of the slaveholding States, by which, in effect, both and all the settlements were broken up, and the whole policy of the government on this subject changed. The country south of 36° 30′—Missouri, Arkansas, Louisiana, and Florida—obtained from Spain, had been made into slave States; but the country north of that line was mostly unsettled, Iowa only having been formed therefrom. The Kansas-Nebraska act was passed, the Missouri compromise line declared inoperative, and the subject of slavery was professedly turned over to the people who should go and inhabit that country. This was an invitation to all men to enter this field of competition for free or slave institutions; and it was to be expected that the friends and promoters of these two systems would make vigorous exertions in the struggle, and that settlement, by friends of each, would be highly stimulated by all *lawful* means. Hence associations and societies have been put in operation, both north and south, to promote such settlement by their respective friends. This was, however, neither unlawful nor censurable. That provision of the Kansas act is as follows:

"The eighth section of the act preparatory to the admission of Missouri into the Union (which, being inconsistent with the *principle* of non-intervention by Congress with slavery in the States and Territories, as required by the legislation of 1850, commonly called the compromise measure) is hereby declared inoperative and void, it being the true intent and meaning of this act not to legislate slavery into said Territory, or to exclude it therefrom, but to leave the people thereof perfectly free to form and regulate their domestic institutions in their own way, subject only to the Constitution of the United States: *Provided*, That nothing herein contained shall be construed to revive or put in force any law or regulation which may have existed prior to the act of March 6, 1820, either protecting, establishing, prohibiting, or abolishing slavery."

Without now inquiring into the propriety, expediency, or moral justice of this law, clear it is that it contains the plighted public faith of this nation that the people of Kansas shall have the right of self-government consistent with the Constitution.

Plighted public faith and just laws, however, secure no rights to men. That is found only in the just and fair execution of such laws;

and we will now briefly inquire how that has been done in relation to that people. Have they been permitted to exercise their promised freedom, even in the initiation of the government provided for them?

The governor of Kansas having, in pursuance of law, divided the Territory into districts, and procured a census thereof, issued his proclamation for the election of a legislative assembly therein, to take place on the 30th day of March, 1855, and directed how the same should be conducted, and the returns made to him, agreeable to the law establishing said Territory. On the day of election, large bodies of armed men from the State of Missouri appeared at the polls in most of the districts, and, by most violent and tumultuous carriage and demeanor, overawed the defenceless inhabitants, and by their own votes elected a large majority of the members of both houses of said assembly. On the returns of said election being made to the governor, protests and objections were made to him in relation to a part of said districts; and as to them, he set aside such, and such only, as by the returns appeared to be bad. In relation to others, covering, in all, a majority of the two houses, equally vicious in fact, but apparently good by formal returns, the inhabitants thereof, borne down by said violence and intimidation, scattered and discouraged, and laboring under apprehensions of personal violence, refrained and desisted from presenting any protest to the governor in relation thereto; and he, then uninformed in relation thereto, issued certificates to the members who appeared by said formal returns to have been elected.

In relation to those districts which the governor so set aside, orders were by him issued for new elections. In one of these districts the same proceedings were repeated by men from Missouri, and in others not, and certificates were issued to the persons elected.

This legislative assembly, so elected, assembled at Pawnee on the 2d day of July, 1855, that being the time and place for holding said meeting, as fixed by the governor, by authority of law. On assembling, the said houses proceeded to set aside and reject those members so elected on said second election, except in the district where the men from Missouri had, at said election, chosen the same persons they had elected at the said first election, and they admitted all of the said first-elected members.

A legislative assembly, so created by military force, by a foreign invasion, in violation of the organic law, was but a usurpation. No act of its own, no act or neglect of the governor, could legalize or sanctify it. Its own decisions as to its own legality are, like its laws, but the fruits of its own usurpation, which no governor could legitimate.

That territorial legislature passed the following law:

"SEC. 11. If any person print, write, introduce into, publish or circulate, or cause to be brought into, printed, written, published or circulated, or shall knowingly aid or assist in bringing into, printing, publishing or circulating within this Territory, any book, paper, pamphlet, magazine, hand-bill or circular, containing any statements, arguments, opinions, sentiments, doctrines, advice or innuendo, calculated to promote a disorderly, dangerous or rebellious disaffection

among the slaves in this Territory, or to induce such slaves to escape from the service of their masters or to resist their authority, he shall be guilty of a felony, and be punished by imprisonment and hard labor for a term not less than five years.

"SEC. 12. If any free person, by speaking or by writing, assert or maintain that persons have not the right to hold slaves in this Territory, or shall introduce into this Territory, print, publish, write, circulate, or caused to be introduced into this Territory, written, printed, published or circulated in this Territory, any book, paper, magazine, pamphlet or circular, containing any denial of the right of persons to hold slaves in this Territory, such person shall be deemed guilty of felony, and punished by imprisonment at hard labor for a term of not less than two years." And further providing, that no person "conscientiously opposed to holding slaves" shall sit as a juror in the trial of any cause founded on a breach of the foregoing law. They further provided, that all officers and attorneys should be sworn not only to support the Constitution of the United States, but also to support and sustain the organic law of the Territory, and the fugitive slave laws; and that any person offering to vote shall be presumed to be entitled to vote until the contrary is shown; and if any one, when required, shall refuse to take oath to sustain the fugitive slave laws, he shall not be permitted to vote. Although they passed a law that none but an inhabitant, who had paid a tax, should vote, yet they required no *time of residence* necessary, and provided for the immediate payment of a poll-tax; so providing, in effect, that on the eve of an election the people of a neighboring State could come in, in unlimited numbers, and, by taking up a residence of a day or an hour, pay a poll-tax, and thus become legal voters, and then, after voting, return to their own State. They thus, in practical effect, provided for the people of Missouri to control elections at their pleasure, and permitted such only of the real inhabitants of the Territory to vote as are friendly to the holding of slaves.

They permitted no election of any of the officers in the Territory to be made by the people thereof, but created the offices and filled them, or appointed officers to fill them for long periods, and provided that the next annual election should be holden in October, 1856, and the assembly to meet in January, 1857; so that none of these laws could be changed until the lower house might be changed, in 1856; but the council, which is elected for two years, could not be changed so as to allow a change of the laws or officers until the session of 1858, however much the inhabitants of the Territory might desire it.

These laws, made by an assembly created by a foreign force, are but a manifestation of the spirit of oppression which was the parent of the whole transaction.

They were obviously made to oppress and drive out all who were inclined to the exclusion of slavery; and if they remained, to silence them on this subject, and subject them to the will and control of the people of Missouri. These are the laws which the President says must be enforced by the army and whole power of this nation.

The people of Kansas, thus invaded, subdued, oppressed, and insulted, seeing their territorial government (such only in form) per-

verted into an engine to crush them in the dust, and to defeat and destroy the professed object of their organic law, by depriving them of the "*perfect freedom*" therein provided; and finding no ground to hope for rights in that organization, they proceeded, under the guarantee of the United States Constitution, "peaceably to assemble to petition the government for the redress of (their) grievances." They saw no earthly source of relief but in the formation of a State government by the people, and the acceptance and ratification thereof by Congress.

It is true that in several instances in our political history the people of a Territory have been authorized by an act of Congress to form a State constitution, and, after so doing, were admitted by Congress. It is quite obvious that no such authority could be given by the act of the territorial government. *That* clearly has no power to create another government paramount to itself. It is equally true that, in numerous instances in our history, the people of a Territory have, without any previous act of Congress, proceeded to call a convention of the people by their delegates; have formed a State constitution, which has been adopted by the people, and a State legislature assembled under it, and chosen senators to Congress, and then have presented said constitution to Congress, who has approved the same, and received the senators and members of Congress who were chosen under it before Congress had approved the same. Such was the case of Tennessee; such was the case of Michigan, where the people not only formed a State constitution without an act of Congress, and without any act of the territorial government, but they also put the State government into full operation and superseded the territorial government, and it was approved by Congress by receiving it as a State.

This was then sustained in the Senate by the present President Buchanan, who there declared that any act of the territorial legislature for the calling a convention to form a constitution, would be an act of usurpation.

The people of Florida formed their constitution, without any act of Congress therefor, six years before they were admitted into the Union. When the people of Arkansas were about forming a State constitution without a previous act of Congress, in 1835, the territorial governor applied to the President on the subject, who referred the matter to the Attorney General, and his opinion, as then expressed and published, contained the following:

"It is not in the power of the general assembly of Arkansas to pass any law for the purpose of electing members to a convention to form a constitution and State government, nor to do any other act, directly or indirectly, to create such government. Every such law, even though it were approved by the governor of the Territory, would be null and void; if passed by them, notwithstanding his veto, by a vote of two-thirds of each branch, it would still be equally void."

He further decided that it was not rebellious or insurrectionary, or even unlawful, for the people peaceably to proceed, even without an act of Congress, in forming a constitution, and that the so forming a State constitution, and so far organizing under the same as to choose the officers necessary for its representation in Congress, with a view

to present the same to Congress for admission, was a power which fell clearly within the right of the people to assemble and petition for redress. The people of Arkansas proceeded without an act of Congress, and were received into the Union accordingly. If any rights were derived to the people of Arkansas from the terms of the French treaty of cession, they equally extended to the people of Kansas, it being a part of the same cession.

In this view of the subject the people assembled at Topeka, in said Territory, by delegates chosen in the several counties, in public meetings assembled for that purpose, in September, 1855, who formed a constitution which was submitted to the people for their ratification or rejection, and which was duly ratified by a large majority of all who thought proper to vote, being, as we believe, a majority of all the voters then in the Territory.

Under that constitution an election of a governor and legislature was made, and officers appointed, and an organization made, for the purpose of petitioning Congress for admission to the Union; and a memorial was made and presented to Congress, with said constitution, for that purpose.

That memorial or petition for the admission of Kansas as a State under the Topeka constitution, formed as before stated, and so presented to Congress, though agreed to by the House of Representatives, was rejected by the Senate. The investigation, the evidence, and the facts as to the invasion and subjugation of Kansas at the March election of 1855, as presented by the committee of the House of Representatives, appointed for such investigations, fully discloses its enormity and outrage, as before stated, and shows that the invasion extended to every election district but one, yet the Senate entirely refrained from investigation, and all redress for that people failed.

No provision was made to correct the wrong, and they were left to suffer under the oppression of the tyrannical laws, and usurped power of the unscrupulous minority which force and fraud had there installed in official position, with the power and army of the United States pledged to sustain them. Thus ended the session of Congress in the summer of 1856. In that summer this usurped power in Kansas was exercised over the people there in the same spirit in which it originated, and, as manifested in the laws before mentioned, to drive the free-State people from the Territory, and prevent their emigration thereto. Aided by the people in Missouri, who had first subjugated the Territory, and by others like-minded, under pretended color of the laws so made, freedom of speech was crushed, printing presses were destroyed, and pillage, conflagration, and murder spread over the land. Every attempt at self-defence by the free-State people was pronounced "*constructive treason*," and large numbers were long imprisoned and guarded by United States troops therefor.

Many of the people were compelled to flee, and the Missouri river, the usual means of access to the Territory, was blockaded, and emigrants prevented from proceeding. Thus closed the gloomy autumn of 1856, and during the succeeding winter a large part of the people were dependent for their necessary supplies on the charitable contributions of the people of distant States. In October, 1856, a

territorial election for members of its House of Representatives occurred; but persecuted, scattered, and imprisoned, and the oppression of the tyrannical statutes of test oaths and gag laws continuing, entirely deprived the free-State people from any participation therein, and so the usurpation continued.

The people who had formed the Topeka constitution for presentation to Congress, and which they presented to Congress, not despairing of the justice of their country, and yet hoping that Congress might accept it, continued from time to time their provisional organization under the same, in order again to present the same, and the same has again been submitted to the people for ratification, and all invited to participate therein; and the same was again ratified by the majority of all who thought proper to vote in August, 1857. But no government under the same has ever, in any respect, been attempted to be put in operation, or the same in any manner been asserted against the existing officers of the United States or its laws, including that establishing Kansas Territory. It was, and ever has been, preliminary and provisional, subject to the action of Congress. It is indeed true that a large part, and probably a large majority, of that people were attached to that constitution, which they have repeatedly requested Congress to accept, but that they have ever attempted, in any act or spirit of rebellion, forcibly to put in operation a government under it, is entirely untrue; although individual wishes or ultimate purposes to such an end, on some possible contingencies, have, at times, been expressed. It is, however, true that the people have ever regarded the acts of the territorial legislation, so usurped as aforesaid, as utterly without legal force, and have not held themselves bound in obedience thereto; and the same have been in effect generally inoperative in the Territory, except so far as enforced by United States troops.

In February, 1857, the territorial legislature passed a law for the election of a convention to form a constitution for Kansas, as a State, with a view to apply to Congress for admission. This was done without any act of Congress for that purpose, Congress having recently refused to pass such a law, though recommended by the President; and the proceeding was, therefore, though not unlawful, in no way authoritative, and its result entitled to the consideration of Congress only so far as it was sanctioned by the votes and expressed the free will of the people of the Territory, or a majority thereof, in a full election fairly conducted. Such a result could not be ascertained but by subjecting the constitution to the full and unconditional vote of the whole people, for ratification or rejection. This is more especially true when conflicting opinions on the subject are well known to exist, as was the case with this Territory. A large part of the people, and, from what subsequently occurred, it is apparent a large majority of the people, did not participate in the election of these delegates; and a sufficient reason for that course was found in these considerations:

1st. The supervision and returns of the election was in power of men appointed by a legislature in whose election a large part of the people never participated, in whom, for this cause, and from the manner in which they conducted elections, they had no confidence.

2d. The United States officers there, the governor and secretary, had no control over these judges of the election.

3d. The territorial legislature, in directing the election of delegates to the convention, had provided for the taking a census for the apportionment of delegates, and making a voting list in the several counties. This was, by accident or design, very imperfectly done in any county, and in almost one-half of the counties, some of which were among the most populous in the Territory, it was entirely neglected, and, therefore, a large part of the people were entirely prevented from acting.

4th. The people were often, repeatedly, and officially assured by the governor and secretary, whom they regard as the organs of the general government, that the constitution, when formed, must be and should be submitted unconditionally to the whole actual resident people for their ratification or rejection. Under these circumstances, relying on these official assurances, they awaited quietly that day, and promised opportunity to exercise their acknowledged inalienable right to vote on their own State constitution. The result has shown this was an unreliable security, for the constitution, as formed by the convention, was by them never so submitted to the people, but in the conditional and deceptive manner hereafter described. The convention, so elected, met in September, 1857, at Lecompton, and adjourned until after the territorial election of a legislature in October, 1857.

The mass of the people of that Territory have always placed confidence in the fidelity and integrity of the governors whom the President has appointed whenever the same have been long enough in the Territory, from personal acquaintance with its people and condition, to become disabused of the delusion in relation to them which seems to be entertained and cherished with so much pertinacity by the dominant power in Washington. When Governor Walker and Acting Governor Stanton had personally and clearly ascertained—as Governor Reeder and Governor Geary had done before them—that the great body of the people, including most of its worthy and reliable inhabitants of both political parties, truly regarded themselves as oppressed and domineered over by a small and unscrupulous minority, inaugurated by violence and perpetuated by fraud, backed and supported by United States dragoons, and that this great body of the people had, with long forbearance, waited for a fair opportunity peaceably, at the ballot-box, to manifest their opinions and their strength and reclaim their rights, then it was that they honestly resolved to endeavor to give to that people such an opportunity, as far as they were able. They proceeded industriously and faithfully to exhort the people to participate in the election of a territorial legislature in October, 1857, not under the territorial acts but under the laws of Congress, and gave the most authoritative assurances of freedom and fairness. That people knew, indeed, that the supervision and control of the election was in the hands of officers never appointed by them or the governor and not under their control, and that they were subject to being outvoted by voters, by such officers admitted to vote, from Missouri, or by the insertion of fictitious votes, or by false returns. Unwilling, however, to be longer taunted from abroad with the charge of cowardly or fac-

tious inaction, and relying on the assurances of the governor and their own well known superiority of numbers, they generally concluded to proceed to the polls and attempt once more to exercise their rights under the laws of Congress. And what does the result disclose? It shows that, notwithstanding many declined to vote, lest thereby they should impliedly recognize as lawful the existing usurpation, over 11,000 votes were cast and a free-State legislature elected. In the next place, the result showed that all the apprehensions of that people as to fraudulent voting and returns, under the auspices of these judges of the elections, were well founded. We are well informed by Governor Walker and Secretary Stanton that votes to the amount of 1,600 in one case, and over 1,000 in another, came certified from precincts where, from personal examination, they found a limited population of but a few hundred. A large part of these votes were obviously fictitious; and those returns were set aside, being informally certified. Had not this been done by the governor, the original usurpation would again have been renewed and perpetuated by fraud.

The result of this election was regarded by all candid men there as settling the condition of Kansas, and, accordingly, when the convention assembled at Lecompton, on its adjournment, it was difficult to obtain even a bare majority to constitute a quorum. A majority of this quorum, but not of whole elected delegates, proceeded, with the spirit of desperation to defeat and evade the well known and clearly expressed will of the people, and by ingenious devices and cunning forms to fasten upon them a State constitution abhorrent to their feelings, and at the same time redeem, in a delusive form only, the pledges which had been given that it should be submitted to the people. In order to evade and frustrate the will of that people thus impose upon them a constitution against their consent, five, apparently certain legal securities, were to be evaded or demolished. 1st. The constitution with slavery must not be submitted to the people in any such way that a majority could reject it; and yet it must be submitted to them to redeem pledges and keep up appearances of fairness. 2d. The conduct of Governor Walker having shown that he would not prostitute his official duty by aiding in the success of fictitious votes and illegal returns, a course must be taken to avoid any use of his official action. 3d. The use of the legal officers for conducting the elections and making returns must be avoided, as they might be subjected to penalties if guilty of fraud, and possibly the new territorial legislature might make appointment of honest men. 4th. In order to supersede the legislature, so recently elected by the people, and restore power to the usurpation it had overcome, it was necessary so to make the apportionment of representatives, under the proposed State government, as to overcome the actual free-State majority, now well known to exist, and keep the supervision of the election out of their hands. 5th. To so arrange it as to render any action of the new legislature unavailable, and to perpetuate the laws which the long continued usurpation had adopted.

To effect these purposes the convention addressed themselves with unscrupulous ingenuity, and whether with success, it remains for Congress to determine.

They framed a constitution establishing slavery in two forms: first, for perpetuating in slavery all slaves then in the Territory and their progeny, and prohibiting abolition. Second, allowing their unlimited introduction with their owners, for settlement. They then provided for submitting this constitution to the people, professedly for their approval or *rejection* on the 21st day of December, 1857; but in this form only, that they might vote "the constitution with slavery," or "the constitution with no slavery." If the former had a majority the whole constitution was adopted; if the latter had a majority it rejected only that clause allowing the further importation of slaves. They were not allowed to vote against the constitution; so it was to be adopted, however objectionable, and to be a slave holding State in any event. In this manner the *first* object was to be effected.

They provided that the election was to be conducted and returns made by men appointed by the president of the convention (Calhoun) after the convention had closed, and therefore he out of office, and the returns to be made to him. Thus was the governor got rid of, and the *second* object effected.

This mode of making and using supervisors, or judges of election, unknown to law, secured the *third* object. The provision by them that such men should be subjected to prosecution for frauds, &c., was an idle show of *legislation*, entirely inoperative. To secure the *fourth* purpose the convention based their apportionment of representatives in the State election, to take place in January, 1858, upon the same spurious, fraudulent and fictitious votes so returned and rejected in the late territorial election. To secure the *fifth* object, they provided that all laws *then* existing (not those existing when the State should be admitted) should remain in force until repealed by a State legislature, under the constitution. The great mass of the people, unwilling to be the dupes of such trickery, declined voting in the manner proposed on that constitution, December 21, 1857; and the territorial legislature was assembled by the call of Acting Governor Stanton. A vote was taken on the 21st December, by the men appointed by Calhoun, who returned to him that there was cast some 6,000 votes, adopting the constitution with slavery, as formed. What proportion of these votes, or of those cast for the delegates, were fraudulent and spurious, we have no certain means of determining, as the Senate has declined instructing or authorizing the committee to obtain full information, or clothing them with the means for that purpose. We have, however, the authority of the presiding officers of the two branches of the legislature, who were present at the counting of the votes on the constitution, by invitation of said Calhoun, for saying that not more than two thousand of these were cast by legal voters of the Territory.

The territorial legislature, so assembled by Acting Governor Stanton, passed an act providing that the people, on the 4th of January, 1858, should cast their votes on said constitution, either for it with slavery, for it without slavery, or against the constitution.

That vote was taken, and the vote against the constitution was more than ten thousand majority.

The convention provided for the election of State officers and a legis-

lature under the constitution on the 4th day of January, 1858, but it was to be conducted by the same men so appointed by said Calhoun, and the returns made to him. As to the voting at this State election the free-State people were much divided in opinion. A large number declined to vote, as they feared the so doing would be unfairly insisted on by their opponents as a ratification of the constitution to which they were opposed. A part of the free-State people, who had thus voted against the constitution, apprehending, more especially from what was contained in the President's annual message, that Congress might admit Kansas as a State under and with this constitution, even though contrary to the will of the majority of the people there; and unwilling, in that event, to leave the State officers and legislature in the hands of the minority who framed and adopted that constitution, proceeded to vote at the election of those State officers at the polls conducted by the men so appointed by said Calhoun.

The returns of this election have been made to said Calhoun, but, as the committee have received no power to institute inquiry into the true character of that election, we are unable to say how far the well prepared arrangements for successful imposition have been carried into execution with impunity

From what has been disclosed by the investigations before the territorial legislature, we feel authorized to believe that the preparations to defeat the will of that people have been extensively executed, and their ultimate results depends on the action of said Calhoun, in a capacity unknown as a legal officer, in no way subject to prosecution or impeachment. That he will be faithful to the ultimate purposes for which he has so long and unscrupulously labored—that is, the making of Kansas a permanent slave holding State, whether its people desire or not—we have little reason to doubt, so far as he can do it with impunity.

The territorial government of Kansas was never organized as provided in its organic act—that is, by its own people—but was usurped by a foreign force, conquered, subdued by arms, and a minority installed in power, which has ever since been sustained by the general government, instead of being examined into and corrected. This has been done and sustained to establish and perpetuate slavery.

The Lecompton constitution is the result of this proceeding, and is contrary to the will of a great majority of that people legally expressed; and the proceeding of Congress, *at its discretion*, to consummate this protracted atrocity, and especially for such a purpose, is a violation of the fundamental principle of republican government, and can produce no permanent repose and satisfaction.

The people of that Territory in the late territorial election have reclaimed their rights, and that territorial government is for the first time now moving peaceably on in its legitimate sphere of promised freedom.

This Lecompton constitution and its adoption was concocted and executed to supersede this triumph of justice. To admit it by Congress is but to give success to fraud and encouragement to iniquity; and to turn over that people, not to an election fairly and legally

conducted, but to such State officers and legislators as said Calhoun shall hereafter proclaim, and on such contingency as he shall determine; and his long, mysterious, and inexcusable indecision and reserve but encourages expectations in both parties, one of which is certainly doomed to disappointment.

J. COLLAMER.
B. F. WADE.