

Republican Election Methods in Kansas

Section 3, Pages 61 - 90

This pamphlet presents the Populist perspective on the 1892 elections in Kansas. The results of the election were contested between the Republicans and the Populists and resulted in the "legislative" war. The pamphlet uses voting statistics to support the Populist contention that the Republicans, who were in control of election procedures, defrauded Populists out of seats in the Kansas Legislature. The pamphlet also lists legislation proposed by the Populists and other activities of the Populist or "Dunsmore" House of Representatives. The table of contents is actually an index to the volume.

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Republican Election Methods in Kansas

in this House (the necessity of which will appear from the facts herein-after stated), did usurp and arrogate unto themselves the right to organize said House, and did pretend to organize a House unto themselves, leaving to the Representatives of the people's party the only alternative of unjustly surrendering their rights, or to firmly assert and maintain by legal and proper means that they had duly elected a majority of the members of this House, the undisputed evidence of which can be found upon the journal of this House.

It must be remembered that this is not the first occasion that like conditions confronted a legislative body; we are, therefore, not without precedent in this case. At the organization of the twenty-sixth congress, the seats of five members from New Jersey were contested; they held the certificates. The contestants claimed to have been elected. The clerk, having called the roll until the names of these members were reached, refused to proceed further until the house should instruct him which set of names should be called as the New Jersey delegation. If the certified members should be set aside, the administration party would have a majority, and could organize the house; otherwise, the opposition could elect the speaker. Motion after motion was made, but the clerk refused to put any motion, because he could not decide who were members entitled to vote. There was a dead-lock for several days, during which occurred a memorable debate, participated in by some of the ablest men then known to the country. Finally the unorganized house, embracing both New Jersey delegations, organized as a meeting by choosing John Q. Adams as chairman; but a motion having been made, and the chair having appointed tellers, one of them inquired which set of members from New Jersey he should count, and the chair having stated that the certificated members should be counted, the struggle began again; and an appeal from the chair's ruling having been demanded, the chair declined to entertain the appeal, inquiring in his turn who should vote on the appeal. At last it was decided by a majority of undisputed members that neither set of members from New Jersey should be permitted to vote for the time being. (See Eighth Congressional Globe.)

It will be seen that the same identical proposition was submitted by Mr. Dunsmore for the people's party, and rejected by Mr. Douglass for the republican party.

Since the organization of the House and the appointment of the Committee on Elections, a thorough investigation has demonstrated the fact beyond question that the people's party did elect the constitutional majority of the House of Representatives, and to prove the character of testimony in support of the above declaration, we would most respectfully ask a candid and thinking constituency to examine journal records of the House, as follows:

Petition of O. M. Rice, claimant to a seat as Representative for the 32d district. (Page 50.)



ORGANIZATION OF THE HOUSE.

45

Petition of D. M. Howard, contestant for a seat as Representative from the 35th district. (Page 56.)

Petition of John Morrison, contestant for a seat as Representative from 122d district. (Page 58.)

CASE OF RICE vs. BALLINGER.

In the report of the Committee on Elections, the case of O. M. Rice against T. C. Ballinger, will be found undisputable evidence to prove that there *was no tie* in this district, as reported, but on the contrary *Mr. Rice had one majority*, notwithstanding Mr. Ballinger held the certificate.

THE CASES OF THE POSTMASTERS.

In the report of the Committee on Elections will be found the evidence and legal argument and precedents justifying the decision of this House in the following cases:

- 1st district, Doniphan county—J. W. Howard vs. James A. Campbell.
- 35th district, Shawnee county—D. M. Howard vs. A. C. Sherman.
- 99th district, Ness county—I. N. Goodvin vs. R. O. Elting.
- 120th district, Grant county—F. B. Brown vs. Peter Bowers.

CASE OF WHITE vs. RICHTER.

Report of Committee on Elections in the contest wherein W. H. White is contestor and H. E. Richter contestee for a right to a seat as a member for the fifty-seventh representative district, constituting the county of Morris. In this report will be found evidence to prove the most glaring frauds, although said Richter was granted a certificate of election. The evidence before the committee proves beyond all reasonable doubt that there were enough fraudulent and illegal votes cast for Mr. Richter to change the result and give Mr. W. H. White 14 majority.

CASE OF GOODVIN vs. ELTING.

The Election Committee, in the case of I. N. Goodvin vs. Richard O. Elting, for a seat as Representative for the ninety-ninth district, makes a supplementary report, which shows that although Mr. Richard O. Elting had been fraudulently "counted in" and granted the certificate of election, the ballots as actually cast in Center township, which were produced and counted by the committee, demonstrated that Mr. I. N. Goodvin had been elected by 10 majority.

CASE OF HAIR vs. DAVIS.

In the report of the Committee on Elections in the case of J. W. Hair vs. John W. Davis will be found affidavits of several witnesses, proving beyond question the purchase of votes by said Davis. The Election Committee was instructed to speedily inquire into the evidence and facts touching the relative right of John W. Davis and J. W. Hair to a seat in this House.

CASE OF MORRISON vs. DOUGLASS.

The Committee on Elections, to whom was referred the petition of John Morrison, claiming a right to a seat in this House as a Represent-

Republican Election Methods in Kansas

ative for the 122d representative district, Gray county, and alleging that frauds had been committed in several of the townships at the election held for Representatives on the 8th day of November last, sent a subpoena to the county clerk of Gray county, requiring him to bring before the committee the poll-books and the packages of tickets returned by the judges of election from certain townships to him as county clerk. This was done, and the committee counted the votes or ballots so produced, and found that the judges of election had fraudulently counted 18 blank ballots as if they had been cast for Mr. Douglass, and had counted five ballots for Mr. Douglass which had actually been cast for Mr. Morrison, thus giving Mr. Douglass 23 more votes than he received, and depriving Mr. Morrison of five votes actually cast for him, making a difference of 28 votes. The county canvass gave Mr. Douglass 15 majority, when in fact Mr. Morrison had 13 majority and was honestly elected. Upon finding these facts the House justly gave the seat to Mr. Morrison.

POSTMASTER CASES AGAIN.

With reference to the "postmaster cases" contested before the House, it should be remembered that section 5 of article 2 of the constitution of this state provides that no member of congress or officer of the United States shall be eligible to a seat in the legislature. The supreme court of California, in the case of *Searcy vs. Grow*, 15 Cal. 117, in passing on a similar proposition, in which one Grow was elected to the office of sheriff, and at the time of the election held the United States office of postmaster, but resigned prior to his being qualified and entering upon the duties of his office, the court used the following language in defining the word "eligible:" "We understand the word 'eligible' to mean capable of being chosen — the subject of selection and choice. The people in this case were clothed with this power of choice; their selection of the candidate gave him all the claim to the office which he has. His title to the office comes from their designation of him. But they could not designate or choose a man not eligible — that is not capable of being selected. They might select any man they choose, subject only to this *exception*, that the man they selected was capable of taking what they had the power to give. We do not see how the fact that he became capable of taking that office after they had exhausted their power of choice, can avail the appellant. We do not see how it can be argued that, by the acts of the candidate, the votes which were ineffectual when cast, because not given for a qualified candidate, became effectual to elect him to office."

It will be seen that the decision of the Elections Committee in the "postmaster cases" is sustained by high authority.

A REMEDY PROPOSED.

And be it further

Resolved, That, to avoid a reoccurrence of the possibility of a like controversy in the future, that it is the sense of this House, that section



ORGANIZATION OF THE HOUSE.

47

8 of article 2 of the constitution, which provides that each House shall be the judge of the election returns and qualifications of its own members, (which though handed down to us as emblematic of the great fight between the commons and the crown, is not adapted to the needs of to-day,) be so amended as to permit the settlement of all contests of members of the legislature prior to the time set for their *convening*, leading to which object a joint resolution has been introduced in the House proposing an amendment to section 8, article 2, of the constitution, so that said section may read as follows:

"SEC. 8. A majority of each house shall constitute a quorum. Each house shall establish its own rules, and all contests as to the election, returns and qualifications of the members of either house shall be determined in the county or district in which such election was held, in such manner as the legislature shall provide."

We, therefore, the Representatives of the several districts, the numbers of which are set opposite our respective names, appealing to the supreme judge of the world for the rectitude of our intentions, do hereby solemnly publish the facts hereinbefore stated to be a true history of the organization of the House of Representatives, and the rights for maintaining the same, and hereby *challenge all statements to the contrary*.

Dist.	Name.	Dist.	Name.	Dist.	Name.
1	J. W. Howard.	50	G. W. Crumley.	83	A. N. Whittington.
3	C. A. Woodworth.	52	Ed. F. Green.	84	Geo. H. McKinnie.
5	L. H. Gest.	54	Chas. M. Noble.	85	S. W. Hill.
9	J. J. McAleney.	57	W. H. White.	86	E. F. Barnett.
11	A. A. Burgard.	58	M. P. Kelley.	87	J. M. Helm.
15	R. H. Semple.	59	A. A. Newman.	88	P. C. Wagoner.
17	J. W. Tucker.	60	D. M. Watson.	90	B. F. Replogle.
21	J. A. Clark.	62	S. O. Everley.	92	A. H. Lupfer.
22	Hugh Bone.	63	Geo. McConkey.	93	J. J. Wright.
23	W. H. Ryan.	64	P. H. Dolan.	96	B. F. Morris.
24	M. L. Walters.	65	H. Helstrom.	99	I. N. Goodvin.
26	J. L. Humphrey.	67	H. W. Ruble.	101	Levi Pritchard.
27	P. A. Morrison.	69	F. G. Rawson.	102	W. L. Kerr.
29	J. M. Dunsmore.	71	J. M. Doubleday.	103	Daniel Caster.
32	O. M. Rice.	72	Geo. H. Coulson.	104	W. J. Barnes.
33	John Graham.	73	T. S. Benefiel.	106	J. A. Bucklin.
34	Thos. Chappell.	74	Wm. Garrison.	109	Fred. E. Yearick.
35	D. M. Howard.	75	W. F. Brown.	114	J. F. Pancake.
38	Ed. Shellabarger.	77	W. H. Mitchell.	119	T. M. Grissom.
41	R. D. McIlman.	78	W. M. Campbell.	120	F. B. Brown.
45	Dr. P. Daugherty.	79	M. W. Coburn.	122	John Morrison.
46	Joseph Treu.	80	W. M. Kenton.	125	A. H. Drew.
48	Chas. Moss.	81	Joseph Sekavec.		

On motion, the rules were suspended, and said resolution was adopted.



House Journal, February 1st—(page 163).

KIOWA COUNTY BRIBERY CASE.

HAIR vs. DAVIS—94TH DISTRICT.

Mr. A. H. Lupfer, chairman of the Committee on Elections, submitted the following report:

MR. SPEAKER: Your Committee on Elections, having had under consideration the relative rights of John W. Davis and J. W. Hair to a seat in this House as representative from the ninety-fourth representative district, comprising Kiowa county, have instructed me to report as follows:

By the returns in the office of the secretary of state, the said John W. Davis is shown to have received, as a candidate for the office of representative from said ninety-fourth district, at the last general election, 401 votes, and J. W. Hair received for said office 369 votes—thus showing a majority for Davis of 32 votes.

Said Davis and said Hair were the only candidates for that office in said district at said election. As will be seen by reference to the report of this committee (*), made on the 24th day of January last, to the House with reference to this case, within 30 days after the declaration of the state board of canvassers awarding to said Davis a certificate of election upon the above-stated vote, said J. W. Hair prepared and signed a statement and notice to said Davis, reciting that he (Hair), being a duly-qualified elector in Union township, in said Kiowa county, would contest before the House of Representatives the right of said Davis to a seat as Representative of that district, upon the grounds, among others, that Davis had given some of the electors who voted for him, and had offered to give to sundry other electors voting at the said election, bribes and rewards, in money and other things of value, for the purpose of procuring his election to said office, which grounds of contest specified in said notice were duly verified by the affidavit of said Hair, made December 21, 1892, before J. T. Canfield, a notary public of said Kiowa county, who duly certified the same.

It was shown to the committee, by the affidavit of said Hair, that said J. W. Davis had left his usual place of residence, taking his family with him, and had so absented himself that his whereabouts could not be ascertained, leaving his usual place of residence closed. A copy of said notice was therefore by the sheriff left at the office of said Davis, in said Kiowa county, on the 21st day of December, 1892, said Davis being an attorney, and having a regular law office and place of business in the county. Said notice was on the next day filed in the office of the county clerk of said Kiowa county, who, under his official seal, has certified a copy of the same, and of the indorsement of the sheriff thereon, to this committee, and the same is now before us.

* ANTE, page 35.

Republican Election Methods in Kansas

KIOWA COUNTY BRIBERY CASE.

49

In addition to these facts, it was shown to the committee that, immediately after such attempted service of notice on said J. W. Davis, the fact of the contest and the alleged grounds thereof were publicly remarked upon in the two newspapers published at Greensburg, the county seat of Kiowa county, and the matter was of general and public notoriety in that community, so that your committee have no doubt that Mr. Davis had actual and adequate knowledge of the same; and, by public resolution of this House, adopted January 24, 1893, your committee were specially instructed to speedily inquire into the evidence and facts in the case, and to report the same with their recommendations. After timely written notice by the chairman of this committee to said Davis had been duly served upon him by the sergeant-at-arms of this House, specifying the time and place when the case would be taken up and testimony heard, and inviting and notifying him to be present, your committee proceeded to hear the evidence in the absence of Mr. Davis, who chose to ignore the notice of this committee, and remain away.

R. B. Treadway, a resident of Greensburg, in Kiowa county, and whom your committee believe to be a credible person, was sworn and examined as a witness, and testified that, on the 8th of November last, as he was going along the street in Greensburg, he saw, standing in front of a store, Mr. J. W. Davis, who engaged the witness in conversation, and, stepping up to him, pushed into his vest pocket a small parcel of rolled-up paper, and at the same time handed witness a republican ticket, on which was printed the name of said J. W. Davis as a candidate for Representative of said ninety-fourth district, and said to the witness, "Let's go vote." The witness started with Davis toward the election polls, Davis leading the way; in that relative position, the witness put the ticket which he had so received from Davis into his pocket, and took therefrom a people's party ticket which did not contain the name of said Davis, and deposited the people's party ticket in the ballot-box, as his vote at that election. Shortly afterwards the witness examined the parcel which Davis had thrust into his pocket, and found it to be money—a five-dollar bill, rolled up. The witness further testified, that when he had voted Davis immediately indicated symptoms of anger toward him; that it had been their custom to meet almost daily, and Davis was very cordial toward him, and would come across the street to shake hands with him, but now their relations were entirely changed; that Davis had, since the election, sought to avoid him, and would go around a block to keep out of his way; since the election the witness and Davis have had one conversation only, and that was while they were on the cars together while the witness was coming to testify in this case, in obedience to the subpoena which had been served on him. Davis came to witness on the car, and asked him where he was going, and what his purpose was; and after the witness had answered him, Davis retorted: "You will not get back in 10 years." The witness

further said, that at the time Davis gave him the money, Davis was owing him nothing, and there was no reason why Davis should give him the money, and the witness had no other thought or understanding from what was said or done at the time but that the money was given him (the witness) to vote for him (Davis) as such candidate for said office; and your committee find that said Davis did offer and give the said five dollars to said witness as a bribe to procure his election.

And further, at the same time and place, and in the same manner, your committee examined another duly-sworn and credible witness, John Derly, who testified that he has for six years last past been a resident of Kiowa county, living on his farm, some 20 miles northeast of Greensburg; that the said J. W. Davis came to his farm about one week before the general election in November last and offered to the witness \$2 to vote for him and work for his election at the polls. The witness answered that he had no capacity for electioneering, and could not do it, and would not take the \$2; thereupon Davis offered him the \$2 to go to the polls and vote for him on election day, and, holding the money, the two-dollar bill, between his thumb and finger, thrust it into the witness's vest pocket. The witness took the money out and gave it back to Davis, saying: "I do n't want anything in that way."

Your committee find the fact to be, that said Davis did, at the time and place stated, give and offer to the witness Joseph Derley said \$2 as a bribe to procure the election of said J. W. Davis to the office of Representative in this House from said district. And because of the facts aforesaid, your committee find that said J. W. Davis is disqualified from holding said office.

Three other witnesses have been duly subpoenaed at the request of the contestant in this case who have refused to answer the command of the subpoena, viz.: Frank Leard, David Bright, and Willits L. Smith, the last of whom has given his voluntary affidavit of another like act showing a constitutional disqualification, a synopsis of which affidavit appears in the report which this committee made to the House on January 24th last (*), with reference to this case; but we believe that no good purpose can be served by a further postponement of this case to obtain additional evidence of these matters, sufficient proof having been already developed to demand the action of this House, and to open the way for fuller investigation in the proper criminal courts. The language of the constitution applicable to this case is as follows:

"Every person who shall have given or offered a bribe to procure his election shall be disqualified from holding office during the term for which he may have been elected."

So far as declaring J. W. Davis to be disqualified to hold the office of Representative from the ninety-fourth district, our duty is clear; but this brings us to the question, whether J. W. Hair, the only opponent of Davis at the election, and who received 32 votes less than Davis,

* ANTE, page 35.



KIOWA COUNTY BRIBERY CASE.

51

should be seated as the Representative of that district instead of Davis. We should approach this question with a less degree of confidence were it not for the legislative precedent which was established in Kansas as early as 1865. In the contest case then before the legislature from Woodson county, of Joel Moody, contestant, against Jonathan Foster, contestee, made upon the ground that Foster was ineligible because of his being a postmaster by appointment under the United States, Foster, the postmaster, was ousted, and Moody, who had 11 votes less than Foster, was seated (*). The case was a vigorously-contested one, and the decision was sustained by a vote of 59 yeas against 11 nays, and there was numbered in the majority many of the very most eminent and able lawyers who have adorned the history of the state.

It would be difficult to find a substantial basis for a distinction between the case in 1865, above referred to, and the one now under consideration. A general statement of the authorities respecting the seating of the minority candidate will be found in the report which was submitted to the House by this committee on January 19, and need not here be repeated. Many cases may be found decided by the courts of this country with respect to offices not legislative, wherein the declaration of the disqualification of the incumbent merely creates a vacancy and requires a new election or appointment. There is substantial justice in saying, that a candidate or constituency which is defeated by bribery on the part of the opposing party ought not so to be defeated. Our constitution provides that questions of the election, returns and qualifications of legislative officers shall not be subject to the decisions of the courts nor bound by their precedents. A rule which would be right with respect to other offices might be unjust and wrong when applied to legislative offices. A member of the legislature cannot be appointed. The brief session of the legislature may terminate before a new election could be held. A district ought not to be unrepresented. The whole matter is designedly left to the exclusive decision of the respective houses.

In consideration of the premises, your committee submit the following resolutions, and recommend their adoption:

1st. *Resolved*, That J. W. Davis is not entitled to represent the ninety-fourth legislative district, embracing the county of Kiowa, in the legislature of Kansas, and is not entitled to a seat in the House of Representatives of the state as a member thereof.

2d. *Resolved*, That J. W. Hair is entitled to represent the ninety-fourth legislative district, embracing the county of Kiowa, in the legislature of Kansas, and is entitled to a seat in the House of Representatives as a member thereof. Respectfully submitted,

A. H. LUPFER, *Chairman*.

The undersigned member of the Elections Committee concurs in the

* ANTE, pages 16 and 17.

52 *MAJOR HUDSON VS. GOVERNOR HUMPHREY.*

entire report above, except the recommendation of the second resolution, submitted by the majority of the committee.

WM. GARRISON.

On February 2d, House journal, page 176, the said resolutions were adopted, declaring that J. W. Davis was not, and that J. W. Hair was, entitled to a seat as Representative of said ninety-fourth district; and thereupon said J. W. Hair came forward and was duly sworn, and took his seat as a member of the House from Kiowa county.

HUDSON SAYS HUMPHREY WAS NOT HONEST!

PUBLIC MONEY USED FOR POLITICAL PURPOSES.

A REPUBLICAN CONDEMNS REPUBLICAN PRACTICES!

On the 2d of February — House Journal, page 174 — Mr. Newman, of Clay, offered the following resolution:

WHEREAS, Maj. J. K. Hudson, the editor of the *Topeka Daily Capital*, a republican newspaper printed in the city of Topeka, and then and now the official state paper, did in the issue of his paper of April 26, 1892, make serious charges and reflections against the then republican Governor of the state of Kansas, in which article, among other things, Major Hudson said: "Governor Humphrey has shown such a sympathy with violators of the prohibitory law in Atchison, Leavenworth, Kansas City, and Wichita, that to-day, with the Governor's implied sanction, his unwillingness to demand the enforcement of the law, the saloons are run with a fine representing a license;" and

WHEREAS, In the same article Major Hudson made other and further charges against said republican Governor, in which charges were the following: "There is another reason why Governor Humphrey should not be indorsed by a nomination to Congress: For six months he has had borne on the rolls of the adjutant general Lewis Hanback, at \$100 per month, who has not in the past six months done one hour's work in the adjutant general's office. He has been kept traveling about looking after the Governor's political fences, for which services the Governor has drawn orders on the contingent fund, which is under his personal control, for \$280. These orders, given by the Governor, may be examined by any tax-payer, in the state auditor's office, as they are among the public records open to all citizens. From December 16, 1891, to April 25, 1892, Mr. Hanback drew, on five vouchers of the Governor, \$280 for 'special services,' 'extra services,' etc., to each of which vouchers was attached the following certificate signed by Governor Humphrey: 'I do certify that the within was contracted by me for the state under authority of law, and that the amount therein claimed is correct, according to such contract, and is unpaid.' When Governor Humphrey signed

Republican Election Methods in Kansas

MAJOR HUDSON VS. GOVERNOR HUMPHREY. 53

those vouchers he knew Lew. Hanback was receiving \$100 per month from the state, not one [dollar] of which he earned. He knew, also, that the private political work Lew. Hanback was doing and is doing to-day for him on the \$50 he drew on Monday, April 25, was not an expenditure of the money of the state warranted by exigencies of the public service, or contemplated by law. *It was not honest towards taxpayers, nor was it just towards the party that has honored Governor Humphrey overmuch already. Talk about serving the republican party with such shystering politics as this!*" And

WHEREAS, Charges so serious ought not to be made even by an irresponsible newspaper against any high state officer unless the facts charged are true; and

WHEREAS, The people of Kansas have a right to be informed whether or not the charges made as aforesaid by Maj. J. K. Hudson against Mr. Lyman U. Humphrey were in fact true, and whether any legislation is needed to prevent any public officer from using public moneys of the state to pay for political services, and whether moneys so paid unlawfully cannot be recovered back by proper action: now, therefore, be it

Resolved, That a committee consisting of five members of this House, be appointed by the speaker to inquire into the truth of the charges made as aforesaid by Maj. J. K. Hudson against said Lyman U. Humphrey, and that such committee, if they shall deem it necessary, be authorized to send for persons and papers, and to take testimony in the premises, and to report the facts and conclusions found by them to this House, together with such recommendations as they may deem necessary and proper for amending existing laws or supplying omissions in any existing law which may be found necessary to protect the state treasury against the perpetration of such wrongful acts as Major Hudson alleges were committed by Mr. Humphrey.

Said preamble and resolution were laid over until February 3, and were then taken up, again read, and unanimously adopted; and Speaker Dunsmore appointed as such committee Messrs. Newman, Crumley, and Grissom. (House Journal, pp. 168, 187, and 201.)



House Journal, February 6—(page 195).

REPUBLICANS ELECT A CITIZEN OF OKLAHOMA—AND
HIGGINS "CERTIFICATES" HIM!

CONTEST BETWEEN ROSS AND CHRISMAN—51st DISTRICT, CHAUTAUQUA
COUNTY.

REPORT OF COMMITTEE ON ELECTIONS.

Mr. Luffer, from the standing Committee on Elections, made the following report:

MR. SPEAKER: Your Committee on Elections, pursuant to the resolution of the House of Representatives adopted January 18, 1893, reciting, among other things, that the relative rights of sitting members of said House, and other persons who claim to have been elected thereto, ought to be inquired into, and instructing the standing Committee on Elections to examine and report to said House, among others, in the case of A. M. Ross vs. M. B. Chrisman, upon the questions involved in relation thereto, have had said case and matter of the relative rights of A. M. Ross and M. B. Chrisman to a seat in said House as Representative of the fifty-first district under consideration, and instruct me, in relation thereto, to report as follows:

On the 3d day of February, instant, your committee fixed upon Monday, the 6th instant, at 2 o'clock P. M., to take up and consider the said case and matter, and on the same day a written notice signed by the chairman of said committee and addressed to said M. B. Chrisman was prepared and delivered to the sergeant-at-arms of this House for service, of which notice the following is a copy:

HOUSE OF REPRESENTATIVES, TOPEKA, February 3, 1893.

Hon. M. B. Chrisman:

SIR—Pursuant to the resolution adopted by the House of Representatives on the 18th day of January, 1893, instructing the standing Committee on Elections of said House to inquire into and report to the House upon the facts and questions involved in the relative rights of yourself and A. M. Ross (among other cases) to a seat in said House of Representatives, you are hereby notified that said committee will, at 2 o'clock P. M., on the 6th day of February, 1893, at the committee room south of the speaker's gallery, in the capitol building in Topeka, take up your case for hearing, and the consideration of the evidence in relation to the same; at which time and place you are hereby notified and invited to be present.

Very respectfully,

Attest: ED. S. WATERBURY,

Clerk of Committee.

A. H. LUFFER,

Chairman House Committee on Elections.

The foregoing notice was duly served upon said M. B. Chrisman, by the said sergeant-at-arms, on the 4th day of February, instant, in Chautauqua county, by the delivery to him of a duplicate thereof, and the certificate of the sergeant-at-arms, upon the duplicate of said notice, showing such service, has been duly returned to your committee.

At the time and place stated in the above-mentioned notice, said case and matter were taken up and heard by your committee, and the



evidence in relation to the same considered, in the absence of said M. B. Chrisman, he having chosen to ignore said notice and invitation, and remained absent.

The committee finds that the returns in the office of the secretary of state show that at the general election of November 8, 1892, in said 51st district, embracing the county of Chautauqua, the said M. B. Chrisman received 1,373 votes, and that A. M. Ross received 1,314 votes—showing a majority for Chrisman of 59 votes for the office of Representative in the legislature from said district.

There were placed before your committee copies of the homestead papers of Morton B. Chrisman for certain lands in the territory of Oklahoma, to which were attached the certificate of the commissioner of the general land office, which certificate is under the signature of W. M. Stone, the commissioner, with the seal of the general land office attached, and is in the words and figures following, to wit:

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
WASHINGTON, D. C., January 23, 1893.

I, W. M. Stone, commissioner of the general land office, do hereby certify that the annexed copies of the homestead papers of Morton B. Chrisman for lots 8, 9, and 10, and S. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$, section 23, and lots 5 and 6, section 22, T. 18 N., R. 8 W., and application for leave of absence therefrom, also such portion of the abstract of declaratory statements for the month of April, 1892, as relates to H. D. S. No. 604, by Morton B. Chrisman for same land, are true and literal exemplifications of the originals on file in this office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.]

W. M. STONE, Commissioner of General Land Office.

From the abstract of the declaratory statement, which is referred to in the foregoing certificate, and is appended thereto, it is shown that the soldier's declaratory statement No. 604, of Morton B. Chrisman, was filed in the land office at Kingfisher, in the territory of Oklahoma, for certain lands not exceeding a quarter-section, in sections 22 and 23, township 18, range 8, on the 27th day of April, 1892, said abstract having been duly certified to the United States general land office by the register and receiver of the district United States land office at Kingfisher, Oklahoma territory.

The provisions of the federal statute: (Revised Statutes of 1878) under which such declaratory soldier's statements were made, are as follows:

SEC. 2287. Every person who is the head of a family . . . shall be entitled to enter one quarter-section or a less quantity of unappropriated lands, to be located in a body, in conformity to the legal subdivisions of the public lands. . . .

SEC. 2290. Any person applying under the preceding section shall first make and subscribe before the proper officer, and file in the proper land office, an affidavit that he is the head of a family, or is over twenty-one years of age, and that such application is honestly and in good faith made for the purpose of actual settlement and cultivation, and not for the benefit of any other person, persons, or corporation, and that he or she will faithfully and honestly endeavor to comply with all the requirements of the law as to settlement, residence and cultivation necessary to acquire title to the land applied for; . . . that he does not apply to enter the same for the purpose of speculation, but in good faith to obtain a home for himself. . . .



SEC. 2291. No certificate, however, shall be given, or patent issued therefor, until the expiration of five years from the date of such entry; and if, at the expiration of such time, . . . the person making such entry proves by two credible witnesses that he has resided upon and cultivated the same for the term of five years immediately succeeding the time of filing the affidavit, . . . he shall be entitled to a patent as in other cases provided by law.

SEC. 2304. Every private soldier and officer who has served in the army of the United States during the recent rebellion for ninety days, and who was honorably discharged, . . . shall, on compliance with the provisions of this chapter, as herein-after modified, be entitled to enter upon and receive a patent for a quantity of public lands not exceeding a quarter-section; . . . but such homestead settler shall be allowed six months after locating his homestead and filing his declaratory statement within which to make his entry and commence his settlement and improvement.

On the 18th day of July, 1892, said Chrisman transmuted said soldier's declaratory to a homestead entry on the same lands, under section 2289 of the revised statutes quoted above, and on that day filed in the United States Land Office at Kingfisher his homestead application, which, with the certificate of the register attached, is in the words and figures following, to wit:

HOMESTEAD APPLICATION.

No. 8759 Ex. R. 717.

LAND OFFICE AT KINGFISHER, O. T., July 18, 1892.

I, Morton B. Chrisman, of Wauneta, Kas., do hereby apply to enter, under section 2289, revised statutes of the United States, the lots 8, 9, 10, and S. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ of section 23, and lots 5 and 6, section 22, in township 18 of range 8, containing 165 $\frac{1}{2}$ acres.

MORTON B. CHRISMAN.

LAND OFFICE AT KINGFISHER, O. T., July 18, 1892.

I, J. C. Roberts, register of the land office, do hereby certify that the above application is for surveyed lands of the class which the applicant is legally entitled to enter under section 2289, revised statutes of the United States, and that there is no prior valid adverse right to the same.

J. C. ROBERTS, Register.

Said transcript contained also the following affidavits:

LAND OFFICE AT KINGFISHER, O. T., July 18, 1892.

I, Morton B. Chrisman, of Wauneta, Kas., applying to enter (or file for) a homestead, do solemnly swear that I did not enter upon and occupy any portion of the lands described and declared open to entry in the president's proclamation dated April 12, 1892, prior to 12 o'clock, noon, of April 19, 1892.

MORTON B. CHRISMAN.

Sworn to and subscribed before me, this 18th day of July, 1892.

J. V. ADMIRE, Receiver.

LAND OFFICE AT KINGFISHER, O. T., July 18, 1892.

I, Morton B. Chrisman, of Wauneta, Kas., having filed my application, No. 8759, for an entry under section 2289, revised statutes of the United States, do solemnly swear that I am not the proprietor of 160 acres of land in any state or territory; that I am a married man, the head of a family, and native-born citizen of the United States; never before made a homestead entry (he filed H. D. S. 604); that my said application is honestly and in good faith made for the purpose of actual settlement and cultivation, and not for the benefit of any person, persons, or corporation, and that I will faithfully and honestly endeavor to comply with all the requirements of law as to settlement, residence and cultivation necessary to acquire title to the land applied for; that I am not acting as agent of any person, corporation or syndicate in making such entry, nor in collusion with any person, corporation, or syndicate, to give them the benefit of the land entered, or any part thereof, or the timber thereon; that I do not apply to enter the same for the purpose of speculation, but in good faith to obtain a home for myself, and that I have not directly or indirectly made and will not make any agreement or contract, in any way or manner, with any person or persons, corporation or syndicate



THE CHRISMAN FRAUD.

57

whatsoever, by which the title which I might acquire from the government of the United States should inure in whole or in part to the benefit of any person except myself; and further, that since August 30, 1890, I have not entered under the land laws of the United States, or filed upon, a quantity of land, agricultural in character and not mineral, which, with the tracts now applied for, would make more than 320 acres.

MORTON B. CHRISMAN.

Sworn to and subscribed before me, this 18th day of July, 1892.

J. V. ADMIRE, Receiver.

And on said day, July 18th, 1892, the receiver of said land office issued to said Chrisman the following receipt:

Receiver's Receipt No. 8759.

Homestead Application No. 8759.

RECEIVER'S OFFICE, KINGFISHER, July 18, 1892.

Received of Morton B. Chrisman the sum of fourteen dollars eighty cents, being the amount of fee and compensation of register and receiver for the entry of lots 8, 9, 10, S. W. $\frac{1}{4}$ S. W. $\frac{1}{4}$ sec. 23, lots 5, 6, of section 22, in township 18 of range 8, under section No. 2290, revised statutes of the United States.

J. V. ADMIRE, Rec^r.

\$14.80.

On the 10th day of December, 1892, there was filed in the United States land office at Kingfisher, Oklahoma territory, the affidavits of said M. B. Chrisman and of Isaac Chrisman and W. D. Chrisman, which, with the certificate of the officer before whom said affidavits were made, is in words and figures following:

U. S. LAND OFFICE, KINGFISHER, O. T., December 10, 1892.

Morton B. Chrisman, being duly sworn, on oath says: He is the same person who made homestead entry No. 8759, on lots 8, 9, 10, S. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ sec. 23, and lots 5, 6, sec. 22, township 18 N., range 8 W., July 18, 1892, at Kingfisher, O. T.; that he has built on said land a one and one-half story frame dwelling-house, 14 x 26 ft., dug a well, and broken out 10 acres of land; that all of his improvements are of the aggregate value of about two hundred dollars; that he has established his personal residence on said land, and has resided thereon since December 3, 1892, to the present time; that his wife is quite old and in feeble health, and to remove from her home, in Chautauqua county, Kansas, to his homestead, at this season of the year, would endanger her health; and that he has corn crops in the field to be gathered, and other matters at his old home in Kansas that demand his personal attention during the winter months and until opening of the spring.

Affiant asks that a leave of absence be granted him for eight months, to July 10, 1893, at which time he desires to return, with all of his family, and resume his residence on his lands. His present P. O. address will be Wauneta, Chautauqua county, Kansas.

MORTON B. CHRISMAN.

Subscribed and sworn to before me, this 10th day of December, 1892.

[SEAL.]

P. C. HUGHES, Notary Public.

Also, at same time and place, personally came Isaac Chrisman and M. D. Chrisman, who, being duly sworn, on their oaths say they have heard read the foregoing affidavit of Morton B. Chrisman for a leave of absence from his homestead, and from their personal knowledge of facts therein stated does corroborate his statement in the same as true. Their addresses is Dover, Kingfisher county, Oklahoma territory.

ISAAC CHRISMAN.

M. D. CHRISMAN.

Subscribed and sworn to before me, this 10th day of December, 1892.

[SEAL.]

P. C. HUGHES, Notary Public,
Kingfisher county, Territory of Oklahoma.

The documents shown above, when certified in the manner stated, are made evidence both by federal and state enactment, and the facts shown in said documents must be taken as proven. M. B. Chrisman,

Republican Election Methods in Kansas

who holds the certificate of election to membership in this House, had, as early as April 27, 1892, declared under oath his good faith and intention to become a permanent resident and citizen of Oklahoma territory, and to cultivate and personally occupy and make his home upon the land which he then laid claim to in that territory. Under the sworn declaration which he then made, his actual settlement upon the land might be postponed until six months later; but on the 18th day of July, 1892, there being no prior adverse right to the land, said Chrisman, under oath, declared that such permanent residence and citizenship of Oklahoma, and such occupation of said land, should commence at that date. So far as the evidence goes, this was the condition at the time of the election, November 8, 1892, and there is a note indorsed on the back of his application indicating that he had obtained a leave of absence on the 2d day of November, 1892. But there is no uncertainty as to the conditions on December 10, 1892. On that day he was before an officer of Kingfisher county, in the territory of Oklahoma, where he made an affidavit of facts, which were corroborated by Isaac Chrisman and M. D. Chrisman, whose address was Dover, Kingfisher county, Oklahoma territory. In this affidavit the contestee, Morton B. Chrisman, swears that his present post-office address will be Wauneta, Chautauqua county, Kansas, (the same as that given him in the secretary of state's report;) that he was the identical person who, on the 18th day of July, 1892, made the homestead entry on the land mentioned; that he had built on said land a one and one-half story frame dwelling-house, had dug a well, and broken out 10 acres of the land; that his improvements thereon aggregated \$200 in value; that he had established his personal residence on said land, and resided there continually since December 3, 1892; and he wanted leave of absence to gather his corn crops in the field, and to give his personal attention to other matters at his "old home in Kansas," desiring to return with his family and resume his residence on the land after his temporary absence.

Section 4, article 2, of the constitution of Kansas, declares: "No person shall be a member of the legislature who is not, at the time of his election, a qualified voter of and a resident in the county or district for which he is elected." In view of this provision, there can be no doubt that it is the plain intendment of the constitution that Senators and Representatives are chosen for the purpose of representing a particular district in which he resides, and for which he was chosen, and that whenever he removes from such senatorial or representative district he can no longer legally represent the people of such district. It necessarily follows that Mr. Chrisman, whether he was a legal resident of the fifty-first representative district on the 8th of November last or not, has acquired and now has a *bona fide* residence in the territory of Oklahoma, according to his affidavits aforesaid, and that whatever right he had acquired, if any, under his supposed election on the 8th of November last, was lost to him; and that he cannot legally hold a seat as a Representative in this House.



Without conceding that Mr. Chrisman was a qualified voter of and a resident in the fifty-first legislative district at the time of his supposed election, still, in the condition of the evidence and under the circumstances of this case, we scarcely feel warranted in recommending that A. M. Ross, the minority candidate at the election for the office, should be seated in his place. This case is distinguishable from the case of Hair against Davis, and the four postmaster cases, decided at this session of the legislature. Mr. Ross is not shown to have been defeated by bribery on the part of his opponent; and the ineligibility of Mr. Chrisman, which doubtless existed at the time of his election, may have been unknown to the voters of Chautauqua county who voted for him as their Representative. Because of these considerations, we believe that the seat occupied by him should be declared vacant, and the Governor informed thereof, to the end that an election may be ordered to fill such vacancy.

In consideration of the premises, therefore, your committee submits the following resolutions and recommends their adoption:

Resolved, 1st, That M. B. Chrisman is not qualified to hold the office of Representative of the 51st legislative district of Kansas, in the House of Representatives; that he is, and at the time of his supposed election thereto on the 8th day of November, 1892, was, ineligible to a seat in said House of Representatives, and that the seat occupied by him be and hereby is declared vacant.

Resolved, 2d, That the Governor be notified of such vacancy; and that the chief clerk of this House be instructed to furnish to the Governor a certified copy of this and of the foregoing resolution.

Respectfully submitted,

A. H. LUPFER,

Chairman of Committee on Elections.

On motion of Mr. Lupfer, the rules were suspended, and the foregoing report and resolutions were adopted. (House Journal, page 199.)

House Journal, February 16—(page 283).

BRIBERY AND OTHER FRAUDS IN MCPHERSON COUNTY.

CONTEST OF HELSTROM vs. STROMQUIST, 65TH REPRESENTATIVE DISTRICT.

REPORT OF COMMITTEE ON ELECTIONS.

Mr. Lupfer, from the standing Committee on Elections, submitted the following report:

MR. SPEAKER: Your standing Committee on Elections, to whom, by resolution of the House of date January 18, was referred the contest case of H. Helstrom, contestant, against Charles J. Stromquist, contestee, for a seat in this House as Representative from the sixty-fifth representative district, comprising the county of McPherson, having

had the same under consideration, instruct me to make the following report:

The records in the office of the secretary of state show that at the last general election, November 8, 1892, C. J. Stromquist, H. Helstrom and one H. C. Zinc were the only persons who received votes in that district for that office. The number of votes cast for each of said candidates, as returned by the judges and clerks of the several election precincts, and canvassed by the county board, and by them certified to and canvassed by the state canvassing board, was as follows: For C. J. Stromquist, 2,324 votes; for H. Helstrom, 2,316 votes; for H. C. Zinc, 93 votes.

Upon the returns a certificate of election was issued to Mr. Stromquist, upon which he now claims to be the duly-elected Representative of that district, and entitled to a seat in the House of Representatives as such.

The contestant, Mr. Helstrom, prepared and signed a written notice to the contestee that, being a qualified elector of said county, he would contest before the House of Representatives the right of said Stromquist to a seat as Representative of said district, upon the grounds, among others, that illegal votes were cast for said Stromquist at said election, sufficient to change the result thereof, because of error and mistakes committed by the judges of election in certain specified townships and precincts, and by the board of county canvassers in the counting and declaring the results of the election, materially affecting the results. This notice was duly served on the contestee December 31, 1892, by the delivery of a copy to him personally by one J. F. Berry, and a duly-certified affidavit of such service was indorsed on the notice, which was returned to the secretary of state with the depositions hereinafter mentioned.

Pursuant to a notice fixing the time and place, the contestant commenced the taking of depositions in his behalf on the 6th day of January, 1893, before Fred. P. Hale, a notary public of McPherson county, both parties being present in person and assisted by attorneys—the contestant by Frank Harold, Esq., and the contestee by W. P. Simpson and D. P. Lindsay, Esquires; and the taking of the same was concluded January 7, 1893, when, having been duly certified, they were, with the above-mentioned notice of contest, duly sealed and indorsed and forwarded by mail to the secretary of state, who afterwards delivered the same to the speaker of the House of Representatives, by whom they were referred to your committee, pursuant to the resolution of the House above referred to.

On the 21st day of January, 1893, other depositions in behalf of contestant were taken before J. A. Regnell, a notary public of McPherson county, and laid before your committee; but these last-mentioned depositions have not been used or considered by the committee, because the contestee does not appear to have been present, nor has your com-



MCPHERSON ELECTION FRAUDS.

61

mittee been furnished with proof that notice was given to Mr. Stromquist of the time and place of the taking of the same.

Afterwards, your committee caused a written notice, signed by its chairman, to be personally served upon the contestee, C. J. Stromquist, by the sergeant-at-arms of this House, and due return of service thereof has been made, that the committee would, at 10 o'clock A. M., on the 27th of January, 1893, at the room of the committee, in the capitol building, take up said case, and commence the hearing of evidence therein, and notifying said Stromquist to then appear. In response to said notice, Mr. Stromquist came before the committee, and objected to said depositions taken before said Notary Public Fred. P. Hale, upon the ground that he had not received sufficient length of notice of the same. Upon this objection, the committee decided, and then notified Mr. Stromquist, that the witnesses should be subpoenaed before the committee for re-examination, if he so ordered; otherwise, their depositions would be read. Thereupon Mr. Stromquist retired, and has made no further appearance before your committee, nor had any further conference with the committee. The examination of witnesses brought before the committee has proceeded from time to time, pursuant to adjournments ordered by the committee, up to the 14th of February, at which time this report was ordered.

A subpoena *duces tecum*, signed by the chairman of this committee and attested by the speaker and chief clerk of this House, to Otto Hawkinson, county clerk of McPherson county, commanding him to appear before the committee to testify as a witness in said case, at 4 o'clock P. M., on Thursday, February 9, at the committee room in the capitol building, and to bring with him all the poll-books and tally-sheets and packages containing the ballots of the general election of November 8 last, in that county, which were returned into the county clerk's office from nine of the townships and precincts of that county, was issued and delivered to the sergeant-at-arms of this House, and duly and personally served on said clerk in said McPherson county on the 7th of February by said sergeant-at-arms, who has certified such due return of such service on said subpoena, and the same is now in the hands of the committee; but said Otto Hawkinson has ignored said subpoena, and wholly failed and refused to obey the same, and is in contempt of this House; and your committee has acted without the information which would have been furnished by an inspection of the ballots under resolution adopted by the House on January 21, 1893, and has not investigated alleged errors in the count of the ballots by the several township boards of election.

The evidence heard and read in the case shows: There were three regular tickets which were used by the voters at the general election held on November 8, 1892, in the sixty-fifth district, namely: The republican ticket, on which was printed the name of C. J. Stromquist for Representative; people's party ticket, on which was printed the name

Republican Election Methods in Kansas

of H. Helstrom for Representative, and a prohibition ticket, on which was the name of H. C. Zinc for that office.

John Frantz was a citizen, resident and elector of Superior township, in McPherson county, until 10 days before the election. At that time he removed and became a resident of another township, but came back on election day and voted in Superior township. He voted for C. J. Stromquist for Representative, and his vote was illegal.

James Lofield became a citizen of McPherson county some 20 years ago. He resided with his family in Lone Tree township, in the spring of 1891, at which time he removed with his family to Oklahoma territory, and took a homestead on government land, and remained there until August, 1892, when he returned with his family, and, on August 7, 1892, located in and became a resident of Canton township, where he now resides. He voted at the election on November 8, 1892, in Canton township, McPherson county, and voted for C. J. Stromquist for Representative. His vote was illegal.

A Mr. Brown, who, at the spring election, 1892, in the city of McPherson, was defeated as a candidate for constable, shortly thereafter removed with his family and household goods to the state of Colorado, where he resided until within less than 30 days before the last election, when he came back to the city of McPherson, and some 10 days later was followed by his family; and he, with his family, now lives in McPherson. He voted at the last election, in the third ward of the city of McPherson, for C. J. Stromquist for Representative. He gained a residence in Colorado by his removal to that state, and he had not regained his residence in Kansas a sufficient length of time before the election to be a qualified voter; and his vote was illegal.

A man named — Lee, a printer, had lived in McPherson city some years until about a year ago, when he broke up housekeeping there, sold part of his household goods and shipped the balance, and removed with his family to Olathe, in Johnson county, where he and his family have ever since resided. Two or three days before the last election he returned to the city of McPherson with his wife, and stopped at the house of his mother-in-law. He voted at the election in the first ward of McPherson, and the night after the election he went away again. He voted for C. J. Stromquist for Representative. His vote was illegal.

John Hill has lived in McPherson county for the past 15 or 20 years. He has a farm in McPherson township, where he has resided up to about three years ago, when he rented his farm and moved into the city of McPherson, and, with his family, has continued to reside in the city ever since. His proper voting place is the second ward of the city of McPherson. He went out of the city and voted at the last election in McPherson township, in McPherson county, and his vote was illegal. He voted for C. J. Stromquist for Representative.

William Harry lived in McPherson county until about one year ago. He was a widower, and left his daughter with his father, and became a commercial traveler with headquarters first at the city of McPherson,

Republican Election Methods in Kansas

MCPHERSON ELECTION FRAUDS.

63

and afterward at Hutchinson. On the 10th of October, 1892, he married a second wife, and thereafter continuously resided with her in Wichita. On the day before the election, William Harry came with his wife to his father's home in Jackson township, McPherson county, and on the next day, November 8, 1892, he voted in that township. His vote was cast for C. J. Stromquist for the office of Representative of the 65th district. On the same day he left. His wife followed him a few days after. Their coming to Jackson township was for a visit only, and has since been repeated, but they always return to Wichita, which now is, and on the 8th of November last was, their home and residence. His vote in Jackson township, McPherson county, was illegal.

J. C. Meyers was born in Canada, of Canadian parents. His father died in Canada, and his mother afterward there married a widower, a native of Munich, Germany, and the two families came as one to the United States when Meyers was about 13 years old. J. C. Meyers never filed any declaration of his intention to become a citizen of the United States in any court, and never took out or obtained any naturalization papers. He voted in Jackson township, McPherson county, for C. J. Stromquist as Representative. He was examined as a witness on this contest, and claimed to justify his right to vote on the ground that his step-father had taken out naturalization papers; but he had no personal knowledge of the naturalization of his step-father, nor could he state where or in what court his step-father was naturalized, if at all. His vote was illegal.

Ed. Hawthorn, a married man, the head of a family, was formerly a resident of McPherson county. About the month of August, 1891, he broke up housekeeping in that county, and packed up his household effects and shipped them, and his family moved to Kansas City, Mo. He went to housekeeping there, and has while there attended medical college, and engaged in the practice of medicine, and Kansas City has been his home and residence every since his removal, his occasional returns to McPherson county being visits only. On the 7th day of November last he returned to McPherson county, and on the next day voted at the election in Jackson township in that county. He voted the republican ticket containing the name of C. J. Stromquist for Representative of the 65th district. His vote was illegal.

Jacob Holmes, a native of Russia, who had never been naturalized, and never filed a declaration of his intention to become a citizen of the United States, voted at the election on November 8, last, in Superior township, in McPherson county, and voted for C. J. Stromquist for Representative. No fact has been shown to the committee to justify this vote, and in the condition of the evidence the committee feel bound to report that this vote was illegal.

On the 7th day of November last, Reuben Hazlette, who voted in Jackson township, in McPherson county, stated to Walter McCoy, who was examined as a witness, that he (Hazlette) had been informed that

Republican Election Methods in Kansas

he could get money for his vote; that he had been talking with Frank Hawthorne, and that he (Hazlette) had to work hard for his living, and he had decided to take the money. The next day, when Hazlette came into the polling place, he was led aside by Frank Hawthorne, and engaged for some minutes in conversation, at the conclusion of which Hawthorne handed Hazlette a ticket, and went out. Hazlette voted the ticket which had been so handed to him by Hawthorne, and which was seen by the witness to be a republican ticket; and a few minutes later Hazlette went out, and was followed by the witness, who asked Hazlette whether Hawthorne had given him any money. Hazlette answered, "No, but he promised me some." Hawthorne then met Hazlette on the street, and conducted him toward his (Hawthorne's) office. Later in the day, witness met Hazlette, and questioned him whether he had received any money for his vote. Hazlette answered that he had been cautioned by Hawthorne not to tell about it, because it would put them both in the penitentiary. The conversation was renewed the next day, and the two consulted the statutes, and Hazlette expressed himself satisfied that he could not be criminally punished if he should make the facts known. Hazlette then took witness to a stable and procured a pocket-book which he had concealed there. The pocket-book contained a five-dollar bill, wrapped in a piece of paper. Hazlette told witness that what Hawthorne had said about being put in the penitentiary had scared him so that he was afraid to carry the bill, and had hid it in the stable; that he had picked up the piece of paper in which the bill was wrapped in the office where Hawthorne gave him the money. This piece of paper had Hawthorne's name on it, and the witness gave the number of the bill.

Frank Hawthorne was examined as a witness on this matter, and his version is, that the money "was promised and paid for the hauling of corn," a small part only of which had been hauled, "in order to get Hazlette to vote the republican ticket." In either case, the money was paid corruptly; but the committee finds the version of Hawthorne to be wholly inconsistent with the facts and circumstances, and that the case was one of unmitigated bribery. Hazlette told the witness, McCoy, that his home was in Lincoln county, Kansas; that he was waiting in McPherson county only on account of the election; and that he should go home to Lincoln county as soon as the election was over. He is now living in Lincoln county, and witness has received letters through the mail from him there. Hazlette's vote was given for C. J. Stromquist for the office of Representative of the sixty-fifth legislative district. It was clearly illegal.

From the total number of votes certified by the several returning boards to have been given for C. J. Stromquist, namely, 2,324, deduct the above-mentioned 10 unlawful votes counted in his favor, and there is left, as having been given for him, 2,314 votes only; so said C. J. Stromquist did not receive the largest number of votes lawfully cast for any person for the office of Representative of the sixty-fifth district,

Republican Election Methods in Kansas

MCPHERSON ELECTION FRAUDS.

65

and was not duly elected to that office, and he is not entitled to a seat in the House of Representatives of Kansas as the Representative from that district. H. Helstrom, having received 2,316 votes, being by two votes the largest number of votes cast in the sixty-fifth representative district for any person for that office, was duly elected thereto, and is entitled to a seat in the House of Representatives of Kansas as the Representative from that district. The premises considered, your committee submit the following resolutions, and recommend their adoption:

Resolved, 1st, That C. J. Stromquist be and hereby is declared to be not entitled to a seat in this House as the Representative of the sixty-fifth representative district, he not having received the requisite number of votes lawfully given in that district for that office, and not having been duly elected thereto.

Resolved, 2d, That H. Helstrom, having received the highest number of votes lawfully given in the sixty-fifth representative district, for the office of Representative of said district in the legislature, he is hereby declared to have been lawfully elected thereto, and is entitled to a seat in the House of Representatives of Kansas as the Representative of said sixty-fifth district.

Resolved, 3d, That a warrant of arrest for Otto Hawkinson, county clerk of McPherson county, and to bring him to the bar of this House to show cause why he should not be punished for the contempt stated in the foregoing report, be and the same is hereby ordered.

Respectfully submitted, A. H. LUPFER, *Chairman.*

On motion of Mr. Lupfer, said report and resolutions were taken up for consideration, and the rules were suspended, and the report and resolutions were adopted.

And thereupon Mr. H. Helstrom came forward, and again took and subscribed the oath of office as a member of the legislature, and took his seat as the Representative for the sixty-fifth district, McPherson county. (House Journal, page 289.)



ELECTION OF UNITED STATES SENATOR.

JUDGE MARTIN CHOSEN BY THE POPULISTS.

THE "DOUGLASS" OR REPUBLICAN HOUSE TAKE NO PART.

That the Dunsmore House of Representatives, and not the "Douglass House" of Representatives, so-called, was the legal and constitutional body, recognized by the Senate and by the Governor of this state, and by the senate of the United States, is conclusively shown in the election of Hon. JOHN MARTIN as United States senator, and his recognition as such senator by the United States senate. It will be well to remember a few facts.

Sections 3 and 4 of article 1 of the constitution of the United States provide as follows:

SEC. 3. The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof. If vacancies happen, by resignation or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

SEC. 4. The times, places and manner of holding elections for senators and representatives shall be prescribed in each state by the legislature thereof, but the congress may at any time by law make or alter such regulations, except as to place of choosing senators.

Pursuant to the last clause of said section 4, the congress of the United States in 1866 prescribed the manner of electing United States senators. (Act of 25th of July, 1866, chapter 245, volume 14, United States Statutes at Large, page 243.) This statute in substance is as follows:

The legislature of the state which may choose a senator to represent such state in congress, shall, on the second Tuesday after the meeting and organization thereof, proceed to elect a senator in congress as follows: Each house shall, by the *viva voce* vote of each member present, name one person for senator in congress from such state. The names of persons voted for for senator in each house shall be entered on the journal of that house. At 12 o'clock meridian of the following day, the members of the two houses shall convene in joint assembly, and the journal of each house (showing the vote thereof of the day preceding) shall be read. If the same person has received a majority of all the votes in each house, he shall be declared duly elected senator; but if the same person has not received a majority of the votes in each house, or if either house has failed to take proceedings as required by this section, the joint assembly shall then proceed to choose, by a *viva voce* vote of each member present, a person for senator, and the person who receives a majority of all the votes of the joint assembly, a majority of all the members elected to both houses being present and voting, shall be declared duly elected.

The Kansas legislature met on Tuesday, January 10, 1893, at the capitol, in Topeka. The Senate was duly organized, and was presided over by Lieutenant Governor Daniels. Two "Houses of Representatives," so-called, were organized. The republicans claimed to have 64 members holding "certificates of election." The people's party had 58 members who held "certificates of election." There were three demo-

ELECTION OF UNITED STATES SENATOR. 67

cratic members, two of whom held "certificates," while *one*, Mr. Rosenthal, had no "certificate," but his *election* was conceded by all. All these members or claimants met in the hall of the House of Representatives, and, failing to agree respecting the rights of certain persons to seats, two distinct organizations were made, one which was afterward known as the "Douglass House," and the other which was afterward known as the "Dunsmore House." Before either of these organizations was effected, members of both sides participated in the general discussion respecting the rights of certain claimants to take part in the organization as members. On the republican side of the chamber were five persons who were clearly ineligible at the time of their election, and ineligible to hold seats as members of the legislature, namely: James A. Campbell, of Doniphan county; A. C. Sherman, of Shawnee county; R. O. Elting, of Ness county; and Peter Bowers, of Grant county; each of whom held the office of United States postmaster, and, under the constitution of this state, was, by reason of such fact, ineligible; and the fifth ineligible person was M. B. Chrisman, of Chautauqua county, whose actual and legal residence was in the territory of Oklahoma, and not in the state of Kansas. (Respecting the postmasters named, see *ante*, pages 10 to 18; and respecting Mr. Chrisman's citizenship and right to a seat, see *ante*, pages 54 to 59.)

There were, also, on the republican side, six other persons whose rights to seats were disputed by the people's party, namely: T. C. Ballinger, of Coffey county; Nick Kline, of Jackson county; J. W. Dix, of Reno county; H. E. Richter, of Morris county; C. J. Stromquist, of McPherson county; and Ora B. Douglass, of Gray county. Mr. Ballinger was not elected, but was fraudulently and corruptly counted in by the commissioners of Coffey county. (*Ante*, pages 1, 2, and 3.) Mr. Kline and Mr. Dix were not elected in or by the votes of the electors of the representative districts created by law, and had no more right to seats in the House of Representatives than they would have had if their pretended majority had been given them by votes cast in another state. (*Ante*, pages 7 to 10.) Mr. Richter was not elected by the voters of Morris county, but was corruptly and fraudulently canvassed into office by dishonest republican judges of election, who knowingly received illegal votes, and deliberately robbed the ballot-box of votes honestly and legally cast, and substituted republican Richter votes in their place. (*Ante*, pages 20 to 27.) Mr. Stromquist was not elected by the legal voters of McPherson county, but was in like manner canvassed into office upon the strength of illegal votes cast for him sufficient to change the result. (*Ante*, pages 59 to 65.) Mr. Ora B. Douglass, of Gray county, was not elected by legal votes, nor was he, in fact, elected at all, but was fraudulently and corruptly counted in by dishonest republican judges of election, who knowingly and intentionally miscalled the ballots actually cast by the voters, by which fraudulent acts 23 more votes were counted for Douglass than he actually received. The judges of election did this by counting 18 votes for Mr. Douglass which did not

contain the name of any person for Representative, and by giving Mr. Douglass five votes actually cast for Mr. Morrison. By this means, Douglass's vote was increased 23, and Morrison's vote was reduced five. By correcting these frauds, Mr. Morrison was fairly elected by 13 majority. (*Ante*, pages 37 to 40.)

The 11 persons above named, who claimed seats as members on the republican side of the chamber, had no right there whatever. The people's party members insisted that the 11 persons should not participate in the organization of the House, but should simply occupy the position of *claimants to seats*, until their right to seats as members could be determined after the organization. The republican side of the House refused to accept this proposition, or to organize the House upon the basis of such understanding. The result was, that the republicans organized the "Douglass House," so-called; but such House never had a constitutional quorum of *legally-elected members*; and to permit them to organize by the aid and with the votes of men who had no legal right to occupy seats in the legislature, but who by their own votes could declare themselves legally elected, was to perpetrate an outrage unparalleled in the history of republican government.

The people's party members of the House, numbering 58, whose rights to seats were never questioned, contended that Mr. O. M. Rice, of Coffey county, was a duly-elected member; and that Mr. Ed. Shellabarger, of Jackson county, and Mr. W. H. Mitchell, of Reno county, had been elected by a majority of the votes in their respective districts as such districts were created by law, and that these three were as justly entitled to occupy seats in the House at the commencement of the session as was Mr. Rosenthal, who was fraudulently counted out, and whose opponent was "certificated" by Mr. Higgins. They admitted at all times that more than 50 of the republican claimants to seats had been legally elected, and were entitled to seats as members of the House, and that of these, Messrs. Cubbison, of Wyandotte; Douglass, of Sedgwick; Hoch, of Marion; Remington, of Miami, and Troutman, of Shawnee, had participated in the preliminary part of the organization, and were present at the organization of the "Dunsmore House," making 63 actual participants, including the 58 people's party members who held certificates (and not including Messrs. Rice, Shellabarger, or Mitchell); and with such membership they effected their organization, electing Hon. J. M. Dunsmore as speaker, Hon. R. H. Semple as speaker *pro tempore*, Ben. C. Rich, of Trego county, as chief clerk, and Leroy F. Dick, of Labette county, as sergeant-at-arms. From this time forward, and upon the organization thus made, which was valid beyond all honest, fair controversy, the Dunsmore House proceeded to business. It was recognized by the Senate, to which body it sent messages and communications, and from which it received messages and communications. It was recognized by the Governor, to whom it sent committees, and from whom it received executive communications and messages. It passed bills, which were received and considered by the Senate, and



ELECTION OF UNITED STATES SENATOR. 69

it received, and considered, and passed sundry Senate bills, several of which duly enrolled and sent to the Governor. These bills received the executive approval, and were published in the official state paper as laws duly passed by a legal and constitutional legislature.

The Dunsmore House also appointed its committees, including a standing Committee on Elections. This Committee on Elections proceeded to inquire respecting the rights of claimants to seats. Reports made by this committee, and the action of the House thereon, will be found in the official journal, and in the preceding pages. At page 3, *ante*, it is conclusively shown that Mr. Ballinger was not elected, and that Mr. O. M. Rice was elected as member from Coffey county. At pages 7 to 10, it is shown that Mr. Kline and Mr. Dix were not elected, and that Mr. Shellabarger and Mr. Mitchell were elected as Representatives from Jackson and Reno counties. At pages 16 to 19, it is shown that the four postmasters already mentioned were not eligible, and upon the strength of a *republican precedent* established by the Kansas House of Representatives in 1865, the persons receiving the next highest number of votes, being themselves eligible, were seated as Representatives; and it is shown that J. W. Howard, of Doniphan, D. M. Howard, of Shawnee, and F. B. Brown, of Grant, were duly qualified as members, and took their seats as such on January 20. At pages 20 to 28, it is shown conclusively that Mr. Richter was not elected, and that Mr. W. H. White was elected Representative from Morris county; and Mr. White duly qualified and took his seat as a member on the morning of January 25. (House Journal, page 121.) At pages 28 to 33, *ante*, it is shown by an additional report that Mr. Goodvin, of Ness county, was actually elected by a majority of 10 votes over the "certificated" Postmaster Elting, who, in addition to being ineligible, had been fraudulently canvassed in by republican judges of election; and Mr. Goodvin duly qualified as a member on January 25. At pages 34 and 35, *ante*, it is shown by an additional report that Mr. Mitchell did in fact receive a majority of the votes cast in the seventy-seventh district, Reno county, including the city of Nickerson, and he was adjudged the duly-elected member, and he qualified and took his seat on January 23. At pages 37 to 40, *ante*, it is shown that John Morrison was duly elected as Representative from Gray county, instead of Ora B. Douglass, who was corruptly "counted in," and "certificated" by Mr. Higgins; and Mr. Morrison duly qualified as Representative on the 24th of January.

It is thus shown conclusively, that before the election for United States senator was held, that the lawful House of Representatives had in an orderly, legal and proper manner vacated the seats of Messrs. Campbell, of Doniphan, Ballinger, of Coffey, Sherman, of Shawnee, Kline, of Jackson, Richter, of Morris, Dix, of Reno, Elting, of Ness, Bowers, of Grant, and Ora B. Douglass, of Gray; and in like manner had ascertained and determined that Messrs. Howard, of Doniphan, Rice, of Coffey, Howard, of Shawnee, Shellabarger, of Jackson, White,

of Morris, Mitchell, of Reno, Goodvin, of Ness, F. B. Brown, of Grant, and John Morrison, of Gray, had been legally elected, and had admitted them to seats, thus giving the people's-party House nine additional members, upon conclusive proof of an honest and fair election by the people of their respective districts; and these nine members, and the 58 members whose seats were never questioned, made a House of 67 members—four more than a constitutional quorum. (At the time of the senatorial election, the contest cases of Helstrom against Stromquist, Ross against Chrisman, and Hair against Davis, were still undetermined.)

Such was the organization of the Kansas legislature that elected the United States Senator. Pursuant to the provisions of the United States constitution and laws above mentioned, on Tuesday, January 24, the State Senate and the Dunsmore House voted separately for a United States Senator. On January 25, the two houses met in the hall of the House of Representatives "in joint assembly." Lieutenant Governor Daniels, president of the Senate, presided over such joint assembly. The roll of the Senate being called by its secretary, and 25 members of the Senate voted—24 for John Martin, and one for M. W. Cobun. The following is the vote in detail, all being people's party men, except Senators Dillard and O'Bryan:

Senators voting for John Martin were: Messrs. Armstrong, Baldwin, Bowling, Cook, Dennison, *Dillard*, Dumbauld, Forney, Helm, Helmick, Householder, Jumper, King, Landis, Leeds, Leedy, *O'Bryan*, Reid, Reilly, Rodgers, Shearer, Smith, True, and Taylor—24.

Senator Senn voted for M. W. Cobun—1.

Fifteen republican Senators were present in the hall, but refused to vote. They were as follows:

Senator Brown, of the 38th district.
 Senator Baker, of the 3d district.
 Senator Carpenter, of the 13th district.
 Senator Danner, of the 30th district.
 Senator McTaggart, of the 12th district.
 Senator Metcalf, of the 7th district.
 Senator Morgan, of the 23d district.
 Senator Sterne, of the 17th district.
 Senator Thacher, of the 5th district.
 Senator Willcockson, of the 39th district.
 Senator Williams, of the 1st district.
 Senator Parker, of the 6th district.
 Senator Price, of the 2d district.
 Senator Robbins, of the 18th district.
 And Senator Scott, of the 14th district.

The roll of the House of Representatives was then called by Chief Clerk Rich. The following is the vote of the Representatives in detail:

Members of the House who voted for John Martin were: Messrs. Barnes, Benefiel of Kingman, Bone, *Brown of Grant*, Brown of Pratt,

Republican Election Methods in Kansas

ELECTION OF UNITED STATES SENATOR. 71

Bucklin, Burgard, Caster, Chappell, Clark, Cobun, Crumley, Daugherty, Dolan, Doubleday, Everley, Garrison, Gest, *Goodvin*, Graham, Green, Grissom, Helm, [*Helstrom*], Hill, *Howard of Doniphan*, *Howard of Shawnee*, Humphrey, Kelley of Dickinson, Kenton, Kerr, Lupfer, McCliman, McConkey, McKinnie, *Mitchell*, Morris, Morrison of Labette, *Morrison of Gray*, Moss, Newman, Noble, Pancake, Pritchard, Rawson, Replogle, ROSENTHAL, Ryan, Sekavec, Semple, *Shellaberger*, Tren, Tucker, Wagoner, Walters, Watson, Wilson, *White*, Whittington, Woodworth, Yearick, and Mr. Speaker Dunsmore — 62.

Members voting for M. W. Cobun, were: Messrs. Campbell of Stafford, Drew, and Ruble — 3.

Mr. Barnett voted for Fred. Close — 1.

Mr. *Rice* voted for W. S. Hanna — 1.

Mr. Wright voted for S. H. Snider — 1.

Mr. McAleney voted for Frank Doster — 1.

Mr. Helstrom, of McPherson, had not yet been admitted to a seat, and calling his name was doubtless an oversight. The names of the *nine* members who had been seated as hereinbefore stated, are printed in *italic*. Of these, eight voted for Judge Martin and one for Mr. Hanna. The name of Mr. ROSENTHAL, democrat, is printed in SMALL CAPITALS. The whole number of Representatives (not counting Mr. Helstrom) who voted was 68.

There were 53 republican Representatives and two democratic Representatives who, like the 15 republican Senators, sat there in their seats and refused to vote! Their constituents, and all honest people in the state, will ask why they took no part in the election of a United States senator! Their refusal to vote was a neglect of duty to their constituents! It was a violation of their oaths as Representatives! They had been scheming with railroad and other corporation lobbyists and attorneys to prevent legislation demanded by the people, and they intended by some trick or villainy to secure the election of a railroad and corporation attorney to the United States senate. But they failed then, and afterward. Their neglect of public duty, and their betrayal of the people's cause, should forever stamp them as unworthy of public confidence.

But to return. It will be seen that 25 Senators and 68 Representatives (and one claimant to a seat who had not yet been admitted) were present and voted at this "joint assembly." The constitution fixes the number of Senators at 40, and the number of Representatives at 125 — making a total membership of the legislature of 165. Of this number, 83 constitute a majority. The number of Senators and Representatives "present and voting" in the "joint assembly" was 93 — 10 more than "a majority elected to both houses." Here are the figures:

Senators present and voting.....	25
Representatives present and voting.....	68
Making a total of.....	93

If the eight members seated by the Dunsmore House, who voted for Judge Martin, namely, Messrs. Brown, of Grant, Goodvin, of



72 ELECTION OF UNITED STATES SENATOR.

Ness, Howard, of Doniphan, Howard, of Shawnee, Mitchell, of Reno, Morrison, of Gray, Shellabarger, of Jackson, and White, of Morris, and Mr. Rice, of Coffey, who voted for Mr. Hanna (nine in all), be deducted 9

There will remain a total of 84

There then were 84 members of the legislature whose right to seats was never questioned, who were present in and constituted the "joint assembly," and who voted therein; and it was this joint assembly that elected Hon. John Martin to the United States senate. While the people's party insist that the nine members last above mentioned were as legally entitled to vote as any member of either house present at the time, yet the figures show that, even if they were excluded, there was not and is not any possible doubt about the validity of the election of Judge Martin. *And that election could not have been had at all except for the organization known as the Dunsmore House of Representatives, and except for the votes of the people's party members of that House.*

At the close of the joint assembly, the president of the Senate announced that Hon. John Martin had been duly elected to the office of United States senator for the state of Kansas for the unexpired term ending 4th March, 1895; and a certificate of such election was duly prepared and entered upon the journal of the Senate and of the House of Representatives, which certificate is as follows:

HALL OF THE HOUSE OF REPRESENTATIVES, }
TOPEKA, KAS., January 25, 1893. }

IT IS HEREBY CERTIFIED, That the legislature of the state of Kansas assembled in joint convention* in the hall of the House of Representatives on January 25, 1893, at 12 o'clock noon, to take such proceedings as may be necessary to elect or declare the election of a United States senator; that the journal of each house relating to the action and vote therein for United States senator was read, and it appearing therefrom that no choice was declared in either the Senate or the House of Representatives, the roll of the Senate was called by the secretary thereof, and the roll of the House was called by the chief clerk of that body, the result being that Hon. John Martin received a majority of the votes of each house in joint session assembled, and he was duly declared elected as United States senator for the unexpired term ending March 4, 1895.

PERCY DANIELS,
President of the Joint Convention.

W. L. BROWN,
Secretary of the Senate.

J. M. DUNSMORE,
Speaker of the House.

BEN. C. RICH,
Chief Clerk of the House.

Neither the proceedings of said joint assembly, nor the certificate issued by Percy Daniels, president of the joint assembly, and by J. M. Dunsmore, speaker of the House of Representatives, attested by W. L. Brown as secretary of the Senate, and Ben. C. Rich as chief clerk of the House, can be found in the journal of the body known as the "Douglass House" of Representatives. Not a single member of the legislature who at any time affiliated with the "Douglass House" of Representatives, except *Joseph Rosenthal* of Haskell county, and *James Wilson* of Meade county, prior to the promulgation of the unwarranted and illegal *political decision* made by the supreme court in the fraudulent

* "Joint convention" should read "joint assembly."



ELECTION OF UNITED STATES SENATOR. 73

"*Habeas corpus* case of L. C. Gunn," voted in the joint assembly which elected Judge John Martin to the United States Senate. To find the official record of that joint assembly, one must look into the journal of the Senate, and the journal of the Dunsmore House. The Senate and the Dunsmore House, acting in concert, and, constituting the "joint assembly" of the legislature within the meaning and intent of the act of congress, furnish a conspicuous public declaration by each of said bodies of the legality of both. That the Governor and secretary of state recognized the validity of the joint assembly, and the legality of the election of Judge Martin is shown by the certificate of election authorized and required by the act of congress already referred to, which certificate was duly issued by Governor Lewelling, and duly attested by Secretary of State Osborn, on the 27th day of January, 1893, in words and figures as follows:

STATE OF KANSAS, EXECUTIVE DEPARTMENT, }
TOPEKA, January 27, 1893. }

To the Honorable the President of the Senate of the United States:

I, L. D. LEWELLING, Governor of the State of Kansas, do hereby certify that, at 12 o'clock meridian, of the 25th day of January, instant, being the day next following that on which proceedings were duly had and taken in each house of the Kansas legislature separately for the election of Senator in Congress from the State of Kansas, the members of the two houses of the legislature convened in joint assembly in the hall of the House of Representatives pursuant to a concurrent resolution duly adopted by the respective houses of the legislature, and in accordance with the provisions of section 15 of chapter 1 of title 2 of the revised statutes of the United States, second edition, for the purpose of choosing a senator to fill the vacancy happening by the decease of Hon. PRESTON B. PLUMB, whose term would expire in March, 1895; that there were present and voting in said joint assembly a majority of all the members elected to both houses of the legislature, and that by a majority of all the votes of said joint assembly the Hon. JOHN MARTIN of the county of Shawnee, who is a citizen of the United States, and an inhabitant of said State of Kansas, was duly elected as such senator.

{ GREAT SEAL } IN TESTIMONY WHEREOF, I have hereunto set my hand and the great
OF seal of the State of Kansas, at the executive office in the city of
KANSAS. } Topeka, this 27th day of January, 1893.

L. D. LEWELLING, Governor.

BY THE GOVERNOR:

Countersigned and attested at the office of the Secretary of State, this 27th day of January, 1893. Witness my hand and the seal of my office, at Topeka.

[SEAL.]

R. S. OSBORN,

Secretary of State of the State of Kansas.

Judge Martin presented his certificate of election to the Senate of the United States, and was promptly admitted to his seat as a Senator from the state of Kansas. The political decision made by the pigmies on the bench of the supreme court of Kansas, to the effect, that the Dunsmore House of Representatives was an illegal body, was treated with utter contempt by the Senate of the United States. The members of that body know, and all other intelligent men everywhere ought to know, that a court is a judicial tribunal possessing power to determine *judicial questions*, and that it possesses no power whatever to determine any *political question*; and whether a legislature, or a congress, or either branch thereof, is a legally-organized and constitutional body, is a *question of a political nature and character*, which is to be determined