

## Journal of the House of Representatives of the Territory of Kansas

### Section 1, Pages 1 - 30

This printed document reported upon the actions of the First Territorial House of Representatives when it first met at the town of Pawnee near Fort Riley on Monday, July 2, 1855. On July 6, 1855, the House of Representatives approved a resolution sent to them by the Council (Senate) that moved the meeting of the Legislature to Shawnee Manual Labor School beginning July 16, 1855. This first session of the House of Representatives concluded on August 30, 1855. Included in the volume were various messages from the Governor and Acting Governor. The appendix contained reports of various committees--judiciary, a special committee on exempting slaves from execution, bounds of counties and districts, elections, convention, and public printing. The appendix also included the "opinion of the Supreme Court in regard to the legality of the present session" by Samuel Lecompte and Rush Elmore, a memorial from the legislature of Kansas to the President of the United States requesting the removal of Andrew Reeder, and the Rules and Orders under which the House of Representatives conducted business. The last 31 pages are an index to the volume.

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Journal of the House of Representatives of the Territory of Kansas

## JOURNAL

OF THE

HOUSE OF REPRESENTATIVES

OF THE

KANSAS STATE  
HISTORICAL SOCIETY

## Territory of Kansas,

AT THE FIRST SESSION OF THE FIRST TERRITORIAL LEGISLATIVE ASSEMBLY  
BEGUN AND HELD AT THE TOWN OF PAWNEE, ON MONDAY, THE 2D  
DAY OF JULY, IN THE YEAR OF OUR LORD ONE THOUSAND  
EIGHT HUNDRED AND FIFTY-FIVE.

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# JOURNAL.

At the first session of the first Territorial Legislative Assembly, begun and held at the town of Pawnee, on Monday, the 2d day of July, in the year of our Lord one thousand eight hundred and fifty-five.

MONDAY, July 2d, 1855.

The Honorable Daniel Woodson, Secretary of the Territory, called the names of the members holding certificates of election, when the following gentlemen presented their certificates:

From the 1st Representative District—Alexander S. Johnson.  
From the 2d Representative District—John Hutchison, Erastus D. Ladd.  
From the 3d Representative District—Augustus Wattles, William Jessee.  
From the 5th Representative District—A. J. Baker.  
From the 6th Representative District—Joseph C. Anderson, S. A. Williams.  
From the 7th Representative District—W. A. Hieskill, Allen Wilkinson.  
Henry Younger, Samuel Scott.  
From the 8th Representative District—S. D. Houston.  
From the 9th Representative District—Franklin J. Marshall.  
From the 10th Representative District—Wm. H. Tebbs.  
From the 11th Representative District—John H. Stringfellow, R. L. Kirk.  
From the 12th Representative District—Joel P. Blair, Thomas W. Waterman.  
From the 13th Representative District—H. B. C. Harris, J. Weddle.  
From the 14th Representative District—William G. Mathias, Archy Payne, D. McMeekin.

On motion of Mr. Marshall,  
Joseph C. Anderson, of the Sixth District, was called to the Chair.  
On motion of Mr. Harris,  
James M. Lyle was appointed Chief Clerk, *pro tem*.  
On motion of Mr. Weddle,  
John Martin was appointed Assistant Clerk, *pro tem*.  
On motion of Mr. Marshall,  
Thomas J. B. Cramer was chosen Sergeant-at-Arms, *pro tem*.  
On motion of Mr. Hieskill,  
Benjamin P. Campbell was chosen Doorkeeper, *pro tem*.

The several members who had presented certificates of election were duly sworn by the Hon. Sanders W. Johnson, Associate Justice of the Supreme Court.



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The deliberations of the House were opened by prayer by the Rev. Mr. Stateler.

On motion of Mr. Mathias,

The House proceeded to organize by the election of Speaker, Chief Clerk, Sergeant-at-Arms, and Doorkeeper.

Nominations for Speaker being in order,

Mr. Mathias nominated John H. Stringfellow, from the Eleventh District.

The vote being taken, there appeared:—

For Mr. Stringfellow,	- - - - -	18 votes.
For John Hutchison,	- - - - -	2 "
For Joseph C. Anderson,	- - - - -	1 "
For Cyrus K. Holliday,	- - - - -	1 "

The members voting for Mr. Stringfellow were—

Messrs. Anderson,	Baker,
Blair,	Harris,
Hieskill,	Johnson,
Kirk,	Marshall,
Mathias,	McMeekin,
Payne,	Scott,
Tebbs,	Williams,
Waterson,	Weddle,
Wilkinson,	Younger—18.

The members voting for Mr. Hutchinson were—

Messrs. Houston, Jesse—2.

For Mr. Anderson—Mr. Stringfellow—1.

For Mr. Holliday—Mr. Wattles—1.

Mr. Stringfellow having received a majority of all the votes cast, was declared duly elected Speaker.

On motion,

Mr. Harris was appointed a committee of one to conduct the Speaker to the Chair.

The Speaker took the oath of office required, and entered immediately upon the discharge of his duties.

Nominations for Chief Clerk being in order,

Mr. Mathias nominated James M. Lyle.

Mr. Wattles nominated R. G. Elliott.

The vote being taken there appeared—

For James M. Lyle,		19 votes.
For R. G. Elliott,		4 "

The members for Mr. Lyle were—

Messrs. Anderson,	Baker,
Blair,	Harris,
Hieskill,	Johnson,
Kirk,	Marshall,
Mathias,	McMeekin,
Payne,	Scott,
Tebbs,	Waterson,
Weddle,	Williams,
Wilkinson,	Younger,
Mr. Speaker.—19.	



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The members voting for Mr. Elliott were—

Messrs. Houston,	Ladd,
Jessee,	Wattles.—4.

Mr. Lyle having received a majority of all the votes cast was declared duly elected Chief Clerk.

Nominations for Assistant Clerk being in order,

Mr. Marshall nominated John Martin.

The vote being taken, there appeared for Mr. Martin:—

Messrs. Anderson,	Baker,
Blair,	Harris,
Hieskill,	Johnson,
Kirk,	Marshall,
Mathias,	McMeekin,
Payne,	Scott,
Tebbs,	Waterson,
Weddle,	Williams,
Wilkinson,	Younger,
Mr. Speaker—19.	

Mr. Martin having received all the votes cast was declared duly elected Assistant Clerk.

Nominations for Sergeant-at Arms being in order,

Mr. Harris nominated Thomas J. B. Cramer.

Mr. Jessee nominated Mr. Huttleson.

The vote being taken, there appeared:—

For Mr. Cramer,	19 votes.
For Mr. Huttleson,	4 "

The members voting for Mr. Cramer, were—

Messrs. Anderson,	Baker,
Blair,	Harris,
Hieskill,	Johnson,
Kirk,	Marshall,
Mathias,	McMeekin,
Payne,	Scott,
Tebbs,	Waterson,
Weddle,	Williams,
Wilkinson,	Younger,
Mr. Speaker—19.	

The members voting for Mr. Huttleson, were—

Messrs. Houston,	Jessee,
Ladd,	Wattles—4.

Mr. Cramer having received a majority of all the votes cast was declared duly elected Sergeant-at-Arms.

Nominations for Doorkeeper being in order,

Mr. Wilkinson nominated Benjamin P. Campbell.

The vote being taken, there appeared:—

For Mr. Campbell,	19 votes.
For Mr. Blackman,	4 "

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The members voting for Mr. Campbell were—

Messrs. Anderson,	Baker,
Blair,	Harris,
Hieskill,	Johnson,
Kirk,	Marshall,
Mathias,	McMeekin,
Payne,	Scott,
Tebbs,	Waterson,
Weddle,	Wilkinson,
Williams,	Younger,
Mr. Speaker—19.	

The members voting for Mr. Blackman were—

Messrs. Houston,	Jessee,
Ladd,	Wattles,

Mr. Campbell having received a majority of all the votes cast was declared duly elected Doorkeeper.

Nominations for Speaker, *pro tem.*, being in order,

Mr. Johnson nominated Joseph C. Anderson.

The vote being taken, there appeared for Mr. Anderson :

Messrs. Baker,	Blair,
Hieskill,	Harris,
Johnson,	Kirk,
Marshall,	Mathias,
McMeekin,	Payne,
Scott,	Tebbs,
Waterson,	Weddle,
Williams,	Wilkinson,
Younger,	Mr. Speaker—18.

For Mr. Johnson, Mr. Anderson—1.

Mr. Anderson having received a majority of all the votes, was declared duly elected Speaker, *pro tem.*

The Chief Clerk, Assistant Clerk, Sergeant-at-Arms and Doorkeeper were duly sworn by the Hon. Rush Ellmore, Associate Judge of the United States District Court.

Mr. Hutchison moved the appointment of a committee of three to prepare rules for the permanent organization of the House.

Mr. Mathias moved, as a substitute, that a special committee be appointed to inquire into the credentials of the members of the House.

Mr. Harris moved that the original motion be laid upon the table.

The Chair decided the motion out of order, whereupon

The vote was taken upon the substitute, and adopted.

Mr. Mathias moved the appointment of a committee of five to inquire into credentials, which was decided in the affirmative; whereupon

The Chair appointed Messrs. Mathias, Waterson, Hieskill, Houston, and Johnson.

Mr. Wilkinson offered the following resolution, which was adopted :

*Resolved by the House,* That the Council be now informed that the House has organized by electing John H. Stringfellow, Speaker; James M. Lyle, Chief Clerk; John Martin, Assistant Clerk; T. J. B. Cramer, Sergeant-at-Arms; B. P. Campbell, Doorkeeper, and Joseph C. Anderson, Speaker *pro tem.*; and is now ready to proceed to business.

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On motion by Mr. Tebbs,  
The committee on credentials were instructed to report by eight o'clock on Tuesday morning, the 3rd day of July.

Mr Hutchison moved that a committee of two be appointed by the House to act in conjunction with a similar committee appointed by the Council, to wait upon his Excellency, Gov. A. H. Reeder, and inform him that the two Houses have organized, and are ready to receive any communication which he may desire to make.

Which motion was lost.

The following message was received from the Council, by Mr. Grove Assistant Clerk:

MR. SPEAKER:

I am instructed by the Council to inform the House of Representatives that the Council is organized, and is now ready to proceed to business, and that the following officers have been elected:

Thomas Johnson, President,	R. R. Rees, President, <i>pro tem.</i> ,
John A. Halderman, Chief Clerk,	Charles H. Grover, Assistant Clerk,
C. B. Whitehead, Sergeant-at-Arms,	Wm. J. Godfroy, Doorkeeper.

Mr. Mathias offered the following resolution:

*Resolved*, That a committee be appointed by the Speaker to act with a committee of the same number of the Council, to wait on his Excellency, A. H. Reeder, Governor of the Territory of Kansas, and inform him that the Legislative Assembly of said Territory is now organized and ready to proceed to business, or to receive any communication which he may have to make.

On motion by Mr. Anderson,  
The resolution was adopted; whereupon  
The Chair appointed Messrs. Mathias and Anderson as the committee.

Mr. Waterson offered the following resolution:

*Resolved*, That those members who desire to contest the seats of any members of this House be required to file their protest by eight o'clock this evening,  
Which was adopted.

On motion by Mr. Anderson,  
The House reconsidered the last mentioned resolution; whereupon  
Mr. Waterson withdrew his resolution.

The following message was received from the Council, by Mr. Grover, Assistant Clerk:

MR. SPEAKER:

I am instructed by the Council to inform the House of Representatives that the following resolution has been adopted:





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*Resolved*, That a committee of two be appointed to join such committee as the House may appoint, to wait on the Governor, and inform him that the two houses of the Kansas Legislature are organized, and are now ready to proceed to business, and to receive such communications as he may deem necessary.

Mr. Anderson offered the following resolution :

*Resolved*, That all persons who may desire to contest the seats of any persons now holding certificates of election as members of this House may present their protests to the committee on credentials, and that notice thereof shall be given the persons holding said certificates.

Adopted.

Mr. Anderson moved the appointment of a committee of five to draft rules for the government of the House,

Which was adopted ; whereupon

The Chair appointed Messrs. Anderson, Mathias, Tebbs, Marshall and Houston.

Mr. Mathias moved an adjournment until to-morrow morning at eight o'clock, which was agreed to.

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TUESDAY MORNING, JULY 3, 1855.

House met pursuant to adjournment.

The journal of yesterday was read.

Mr. Wilkinson moved that the journal be corrected by changing District recorded as Seventh Representative District on journal to Fifth Representative District.

Agreed to.

Mr. Mathias, chairman of the committee on credentials, asked further time of the House to report.

Granted.

Mr. Anderson, from the committee on rules, asked further time to report, which was granted.

Mr. Mathias offered the following resolution, which was adopted :

*Resolved*, That no member of this House shall be permitted to speak more than once upon any motion or proposition of any character whatever before this House, and that he shall not consume more than fifteen minutes in his remarks unless he be the mover of the motion or proposition, or unless he has the especial leave of the House.

Messrs. Hutchinson, Jesse, Wattles and Ladd presented a protest to the





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House against any member being ousted from his seat, and denying the right of the Legislature to go behind an election ordered by the Governor, and moved that it be placed upon the journal of the House.

Which motion was lost.

Mr. Anderson, from the committee on rules for this House, made the following report:

The committee appointed to draft rules for the government of this House would recommend for the present the adoption of the rules of the House of Representatives of the United States, so far as they are applicable.

J. C. ANDERSON, *Chairman*.

On motion by Mr. Hieskill,

The report of the committee was adopted.

Mr. Wilkinson introduced the following resolution, which was adopted:

*Resolved*, That the Secretary of the Territory be requested to furnish to each member of this House a copy of the act of Congress establishing governments for Kansas and Nebraska, if he can conveniently procure them.

On motion by Mr. Mathias,

The House adjourned until half-past two o'clock in the evening.

### EVENING SESSION.

House met pursuant to adjournment.

Mr. Houston offered the following resolution:

*Resolved*, That this House designate the hours of nine o'clock in the morning and half-past two o'clock in the afternoon as convenient hours to resume business generally.

Decided in the affirmative.

Mr. Marshall moved that the House now proceed to the election of Enrolling and Engrossing Clerks.

Mr. Wilkinson moved its postponement until Monday next, at the regular hour of meeting.

Lost.

Mr. Tebbs moved that we adjourn to five o'clock this afternoon, to hear the Governor's message read in the Council.

Which was agreed to.

Pursuant to adjournment, the House met again at five o'clock.

The vote being taken on the motion of Mr. Marshall, was decided in the affirmative.

The Chair announced that nominations for Engrossing Clerk would be in order.

Mr. Wilkinson moved to postpone the election of Engrossing and Enrolling Clerk until to-morrow morning.

Lost.

On motion by Mr. Mathias,

The roll was called and a quorum was present.

Mr. Anderson moved to dispense with further call of the roll, and to proceed immediately to an election.

Agreed to.

Mr. Anderson nominated Joseph M. Fox.

Mr. Kirk nominated James Christian.

Mr. McMeekin nominated Benjamin F. Simmons.

The vote being taken, stood as follows:

For Mr. Fox—Messrs. Anderson, Harris, Johnson, Marshall, Scott, Weddle, Williams, Wilkinson, and Mr. Speaker.—9.

For Mr. Christian—Messrs. Hutchinson, Kirk, Ladd, Wattles and Younger.—5.

For Mr. Simmons—Messrs. Baker, Blair, Hieskill, Mathias, McMeekin, Payne, Tebbs, and Waterson.—8.

No one having received a majority of all the votes given, the House proceeded to vote a second time, which resulted as follows:

For Mr. Fox—Messrs. Anderson, Harris, Houston, Johnson, Marshall, Mathias, Payne, Scott, Tebbs, Weddle, Williams, Wilkinson, and Mr. Speaker.—13.

For Mr. Christian—Messrs. Hutchinson, Jesse, Kirk, Ladd, Wattles, and Younger.—6.

For Mr. Simmons—Messrs. Blair, Hieskill, McMeekin, and Waterson.—4.

Mr. Fox, having received a majority of all the votes given, was declared duly elected Engrossing Clerk.

Nominations for Enrolling Clerk being in order,

Mr. Marshall nominated John C. Thompson.

Mr. Weddle nominated Benjamin F. Simmons.

Mr. Kirk nominated James Christian.

The vote being taken, resulted as follows:

For Mr. Thompson—Messrs. Anderson, Hieskill, Houston, Kirk, Marshall, Mathias, Tebbs, Williams, and Mr. Speaker.—9.

For Mr. Simmons—Messrs. Baker, Blair, Harris, Johnson, McMeekin, Payne, Scott, Waterson, Weddle, Wilkinson, and Younger.—11.

For Mr. Christian—Messrs. Hutchinson, Jesse, Ladd, and Wattles.—4.

No one having received a majority of all the votes given, the House proceeded to vote a second time, which resulted as follows:



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For Mr. Thompson—Messrs. Anderson, Hieskill, Houston, Hutchinson, Jesse, Kirk, Ladd, Marshall, Mathias, Wattles, Williams, and Mr. Speaker—12.

For Mr. Simmons—Messrs. Baker, Blair, Harris, Johnson, McMeekin, Payne, Scott, Tebbs, Waterson, Weddle, Wilkinson, and Younger—12.

No one having received a majority of all the votes given, the House proceeded to a third vote, which resulted as follows :

For Mr. Thompson—Messrs. Anderson, Hieskill, Houston, Hutchinson, Jesse, Kirk, Ladd, Marshall, Mathias, Wattles, Williams, and Mr. Speaker—12.

For Mr. Simmons—Messrs. Baker, Blair, Harris, Johnson, McMeekin, Payne, Scott, Tebbs, Waterson, Weddle, Wilkinson, and Younger—12.

No one having received a majority of all the votes given, the House proceeded to ballot a fourth time, which resulted as follows :

For Mr. Thompson—Messrs. Heiskill, Houston, Hutchison, Jesse, Kirk, Ladd, Marshall, Mathias, Wattles, Williams, and Mr. Speaker—11.

For Mr. Simmons—Messrs. Anderson, Baker, Blair, Harris, Johnson, McMeekin, Payne, Scott, Tebbs, Waterson, Weddle, Wilkinson and Younger—13.

Mr. Simmons having received a majority of all the votes cast, was declared duly elected Enrolling Clerk.

Mr. McMeekin introduced a bill entitled,

An act to remove the seat of government, temporarily, to the Shawnee Manual Labor School, in the Territory of Kansas.

On motion by Mr. Anderson,

The rule was suspended and bill read a first time.

Rule suspended and read a second time.

Considered as engrossed and put upon its third reading.

Mr. Mathias moved for the previous question

Withdrawn.

Mr. Marshall moved an adjournment,

Which was lost.

The question being upon suspension of rule and third reading of bill,

Mr. Anderson called for the ayes and noes.

The vote was as follows :

### AYES.

Messrs. Anderson,  
Harris,  
Johnson,  
Mathias,  
Payne,  
Tebbs,  
Weddle,  
Wilkinson,  
Mr. Speaker.—17.

Blair,  
Hieskill,  
Kirk,  
McMeekin,  
Scott,  
Waterson,  
Williams,  
Younger,

### NOES.

Messrs. Baker,  
Hutchinson,  
Ladd,  
Wattles—7.

Houston,  
Jesse,  
Marshall,

And so the rule was suspended and the bill read a third time.



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The bill being upon its passage,  
Mr. Waterson called for the ayes and noes.  
The vote stood as follows:

### AYES.

Messrs. Anderson,  
Harris,  
Johnson,  
Mathias,  
Payne,  
Waterson,  
Wilkinson,  
Younger,

Blair,  
Heiskill,  
Kirk,  
McMeekin,  
Scott,  
Weddle,  
Williams,  
Mr. Speaker—16,

### NOES.

Messrs. Baker,  
Hutchinson,  
Jessee,  
Marshall,

Houston,  
Ladd,  
Wattles.

The Chair excused Mr. Tebbbs from voting.  
And so the bill was declared passed.  
Mr. Houston moved that the House do now adjourn.  
Lost.

A message from the Governor, by Mr. Higgins, his private Secretary, transmitting his message, was received and ordered to be read:

*To the Honorable the Council and House of Representatives of the Territory of Kansas:*

Having been duly notified that your respective bodies have organized for the performance of your official functions, I herewith submit to you the usual executive communication relative to subjects of legislation, which universal and long continued usage in analogous cases would seem to demand, although no express requirement of it is to be found in the act of Congress which has brought us into official existence and prescribed our several duties.

The position which we occupy, and the solemn trust that is confided to us for originating the laws and institutions, and moulding the destinies of a new republic, in the very geographical center of our vast and magnificent confederation, cannot but impress us with a deep and solemn sense of the heavy responsibility which we have assumed, and admonish us to lay aside all selfish and equivocal motives, to discard all unworthy ends, and in the spirit of justice and charity to each other, with pure hearts, tempered feelings, and sober judgments to address ourselves to our task, and so perform it in the fear and reverence of that God who oversees our work, that the star we expect to add to the national banner shall be dimmed by no taint or tarnish of dishonor, and that when viewed from the trying and scrutinizing stand point of the future, we shall be subject to no reproach save that which springs from the inevitable fallibility of just and upright men.

In the business of legislation, the very first necessity is the ascertainment of the existing law, as it impossible to determine what we need in that respect until we ascertain what we already possess. It will be found, I think, upon slight investigation, that we are already provided with an ample and valuable store of laws for the redress of civil wrongs, and the punishment of criminal offenses, which will materially diminish your labors.

The present Territory of Kansas has been at various periods since the treaty of April 30, 1803, with the French republic, a portion of the District of Louisiana, of the Territory of Louisiana, the Territory of Indiana, and the Territory of Missouri; and it becomes necessary to take a brief review of the legislation of Congress relating to it during each of these periods. Immediately after the acquisition of the Territory of Louisiana by the treaty before mentioned, provision was made, by act of Congress passed 31st October, 1803, for its temporary government; which continued the civil, military, and judicial powers then existing, until the expiration of the first session of the eighth Congress. On the 28th of March, 1804, being the day before the close of said session, the





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said Territory was divided into the Territory of Orleans and the District of Louisiana; and the 33d parallel of north latitude, from the Mississippi river west, was designated as the boundary line between the two—thus including the present Territory of Kansas in the northern division; and by the same act this portion, by the name of the District of Louisiana, was subjected to the government of the Territory of Indiana, and became a part of it. The Territory of Indiana had been a portion of the old Northwestern Territory, which was first organized by the ordinance of July 13, 1787. This ordinance was subsequently adapted to the provisions of the constitution of the United States, by act of Congress of August 7, 1789; and by act of Congress, passed May 7, 1800, a portion of this Northwestern Territory was organized as the Territory of Indiana, to which, as already stated, the District of Louisiana was annexed. On the 3d of March, 1805, the District of Louisiana was again severed from the Territory of Indiana, and organized by the name of the Territory of Louisiana, and on the 4th day of June, 1812, was converted into the Territory of Missouri, with considerable modification of the rules for its government.

It will thus be seen, as I have stated, that the country composing our Territory has been successively subjected to the French code, existing at the acquisition of Louisiana, by the treaty of Paris—to the laws of Indiana, derived from the Northwestern Territory, as well as those enacted for Indiana after its severance—to the laws of the Territory of Louisiana, and the laws of the Territory of Missouri. The severance of a portion of the latter Territory, and its erection into the State of Missouri in the year 1821, did not, in my opinion, at all effect the laws in force outside of the bounds of the State, which remained as valid after that event as they were before.

Under the ordinance of 1787, amended in 1789, it was provided that a certain legislative power should be vested in the Governor and Judges, who were directed to adopt and publish such laws, criminal and civil, of the original States, as they might consider necessary, which were to remain in force unless altered by the Legislature. It was also provided by authority of Congress, among other things, that the inhabitants should "always be entitled to the benefit of the writ of habeas corpus and of the trial by jury, of a proportionate representation of the people in the Legislature, and of judicial proceedings according to the course of the common law."

By the act of May 7, 1800, erecting the Territory of Indiana, a government was provided "in all respects similar to that provided by the ordinance of Congress passed July 13, 1787, for the government of the territory of the U. States north of the river Ohio; and the inhabitants shall enjoy all and singular, the rights, privileges, and advantages granted and secured to the people by the said ordinance," and the same powers were conferred and duties enjoined upon its officers, as had been exercised by the officers of the Northwestern Territory under the said ordinance.

By the act of 26th March, 1804, annexing the District of Louisiana to Indiana Territory, power was given to the Governor and Judges "to make all laws which they may deem conducive to the good government of the inhabitants thereof," and it was also further provided, "that the Judges shall possess the same jurisdiction they possess in the Indiana Territory." This arrangement, however, was of short duration; for in less than a year the Territory of Louisiana was erected by a law which took effect on the fourth day of July following—and Congress then vested the entire legislative power in the Governor and Judges, securing trial by jury in all criminal prosecutions, and in all civil cases involving over one hundred dollars, if demanded, and saving all laws previously in force in the district and not inconsistent with the act of Congress.

The act of 1812, changing the name of the Territory to Missouri, and taking effect on the first Monday of December following, provided for a more efficient and thorough organization, and was much more comprehensive in its details, vesting the legislative power in a general assembly, but taking care to provide that the people should "always be entitled to judicial proceedings according to the course of the common law, and the laws and usages in force in the Territory; and that the laws and regulations in force in the Territory of Louisiana at the date of the act, and not inconsistent therewith, should continue in force until changed by the Legislative Assembly."

The act of Congress organizing the Territory of Kansas does not alter the Congressional legislation as left on the first Monday of December, 1812, and its results through the Territorial Legislature, except that it repeals all former laws recognizing or prohibiting slavery, and applies all laws of the United States not locally inapplicable, by which we are to understand all U. S. statutes enacted for other localities which are capable of being transplanted and adapted to our Territory.

The Legislatures of the Territories of Louisiana and Missouri enacted, of course, many general laws, and among them is a statute of January 19, 1816, adopting for the Territory of Missouri the common law and the English statutes in aid thereof, prior to the fourth year of James the first, with some qualifications.

From this summary, the length of which has been unavoidable, it appears that the





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laws of the United States not inapplicable to our locality—the laws of the Territory of Indiana made between the 26th March, 1804, and the 3d March, 1805, enacted for the District of Louisiana—the laws of the Territory of Louisiana—the laws of the Territory of Missouri—the common law, and the law of the province of Louisiana at the time of the cession, except so far as the later have superseded the former, still remain in force in the Territory of Kansas. As the common law, to a considerable extent, was adopted for the Territory by Congress as late as 1812, and by the Missouri Legislature as late as 1816, and as it is perhaps the most complete and comprehensive system in the world, it has without doubt superseded and supplied a great amount of the law previously existing. In this mass of conflicting legislation, however, it will impose upon your courts much embarrassment and trouble to decide the questions of implied repeal which will continually arise, and I would therefore call your attention to the necessity of curing this evil by some legislation which will declare distinctly which of these previous laws are in force, and which are not.

There are many specific subjects of legislation, some of which are expressly referred to you by the bill organizing our Territory, and others spring from the necessity of our community. Prominent among them is the question whether we shall build our government upon the basis of free or of slave labor. Claiming as we do the same capacity for self-government as our fellow citizens of the States, with a far greater, if not an exclusive interest in the institutions and laws which are to exist among us; compelled alone to bear their burdens, and entitled alone to claim their benefits; wisdom, justice and fairness would dictate that those laws and institutions inside of the Constitution of the United States should be moulded by ourselves, stimulated by the absorbing interest we must feel in them, rather than by the representatives or citizens of other States who are no more competent to the task than we—who have no stake with us in their results, and who would most indignantly repel any offer of reciprocity from us in assisting to manage their affairs. The provisions of our Territorial organic act secures us this right and is founded in the true doctrines of republicanism. It may be exercised in various degrees and in various ways, and whenever it is called into action it cannot legitimately be attended with that excitement which is incident to the agitation of the slavery question in the direction of an attack upon constitutional rights. An agitation of that kind; such as we have seen industriously prosecuted in the past history of our country by the destructive spirit of abolitionism, can never be productive of aught but evil, and is calculated in an eminent degree to obscure the glories of the past, to evoke the foulest spirit of discord among the citizens of our common country, and also to mar our brilliant future, if not to endanger the existence of our cherished Union. A want of fidelity to the solemn compacts of the constitution and an attack upon the rights of the States which are guaranteed by it, can have no justification or excuse. This view of the case, however, is not to be confounded with the discussion and settlement of the slavery question in our Territory in its bearings upon the formation of our institutions. That has been referred to us as an open question by the legitimate action of the nation, and here it is not only the privilege but the duty of every man to speak his opinions freely and enforce them peaceably and fairly. Advocate and opponent stand on the same ground, and must mutually concede to each other the identical measure of right which they claim for themselves. Freedom of opinion and freedom of discussion without licentiousness, are of the very essence of republicanism at all times, are peculiarly to be respected here. The permanent character and high authority of a State Constitution and the fact of its submission to a direct vote of the people of the Territory indicate that event as a signal occasion for the decision of that peculiar question. In the meantime, however, a Territorial Legislature may undoubtedly act upon the question to a limited and partial extent, and may temporarily prohibit, tolerate or regulate slavery in the Territory, and in an absolute or modified form, with all the force and effect of any other legislative act, binding until repealed by the same power that enacted it.

Among the several objects of legislation which are referred to your action by the act organizing the Territory is the creation and defining of counties. The non-completion of the surveys would seem at first to require a resort to natural boundaries in the performance of this work, but from a map of projected surveys made in the office of the Surveyor General, and kindly furnished me for the purpose, it is probable the county lines may be designated in advance at least over a portion of the Territory. You will decide whether it is expedient to provide that the said designation shall be made before the lines are run on the ground. Of the eighteen ranges east on the base line, and the thirty-five townships south, the lands lying within townships one to fifteen south of range nine to eighteen east, and continuing on to the Missouri river and State line, will be first surveyed. Outside of these limits it perhaps would be premature to adopt the projected lines of survey as boundaries of counties. The map alluded to is submitted with this communication.

The census of the Territory taken under the provisions of the act of Congress, exhibits





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a return of two thousand nine hundred and four qualified voters, and an entire population of eight thousand five hundred and twenty-one persons, exclusive of Indians and officers, soldiers and employees of the army of the United States not residing in the Territory. The census returns, which are submitted for your inspection, contains a considerable amount of statistical information, such as the place of emigration, ages; occupations, &c. This population consists of five thousand one hundred and thirty-eight males, and three thousand three hundred and eighty-three females; and it is a fact worthy of remark, as peculiar to a great extent to this Territory, that they are not, as usual, collected about one point or along a frontier line, but are dispersed over a district of more than 15,000 square miles. This state of things, although it has its inconveniences at present, is nevertheless highly gratifying, as it indicates that our Territory has many points of strong interest, and promises an early development of our resources.

In obedience to the act of Congress, I have, until otherwise provided by law, divided the State into Judicial Districts, designated the places for courts, and assigned the Judges, as stated in my proclamation of the 26th of February last, which, together with all the other proclamations from the Executive department, will be submitted to you. The designation of terms of the Supreme Court was purposely omitted, for the reason that my action was only provisional until the subject could be committed to your charge, and the jurisdiction of the court as yet being probably only appellate, there could be for some time no business to evoke its action.

The provisions for County Courts and the officers connected with them, and the other officers of the Territory which you may consider necessary, the laws for regulating and holding elections, the qualifications of voters, the jurisdiction of the Supreme and District Courts, the election or appointment of Justices of the Peace and Constable, their powers and jurisdiction, the means of settling decedents' estates (so far as their several matters are unprovided for by existing laws,) together with other obvious subjects, need no special comment from me. In regard to Constables and Justices, however, I desire to state that I have issued a number of commissions throughout the Territory, which, under the act of act of Congress, will expire at the end of the present session, and it would probably prevent public and private detriment to authorize them to complete any proceedings which may then be pending before them. If, as is probable, you shall provide for filling these offices by election, I would suggest that some provision be made for the time that shall elapse between the expiration of the present commissions and qualifications of new incumbents.

The presence in our Territory of so large a number of Indians, interspersed as they are with the white population, adds a feature to the indiscriminate sale of intoxicating liquors, which does not exist in other communities. A portion of them indulge upon almost every opportunity in the excessive use of ardent spirits, and the friends and enemies of prohibition who are acquainted with the Indian character, and its frenzied developments under the influence of intoxication, will probably all unite in the admission that special precautions in this respect are necessary, as well for the protection of the Indian against degradation, as of the whites against violence. The more estimable members of most of the tribes are using their influence to check this evil, and we should second their efforts, as well for our sake as their own.

The cause of education I need scarcely recommend to your especial attention. It is always better to pay for the education of the boy than the punishment of the man. To enlarge upon the necessity of general education for producing a good government would be at this day a work of supererogation, and I leave the matter in your hands, confident it will receive the attention it deserves.

Levying public taxes at this time, at least to any considerable extent, before our people have secured title to their lands, or realized their products, would be undesirable, unless absolutely necessary; but if you should find it necessary to levy and collect taxes for county or other purposes, I have no doubt the pre-emptor who claims an inchoate title in his quarter section, could be assessed thereon for his share of the public burdens.

The location of the permanent seat of government is also referred to you by act of Congress making the appropriation, and in view of the large expenditure necessary for the erection of public buildings, and of the fact that in case of a removal the burden of new buildings will fall upon the people of the Territory, wisdom would seem to require that this duty should be performed with an eye to the future as well as the present, and the probable rapid progress of our Territory, and the probable bounds of a future State.

The organization of the militia of the Territory is another subject which will demand your attention; and in this connection I have to inform you that the Territory of Kansas is entitled to two thousand muskets, deliverable in kind, and also to one hundred and thirty-seven muskets, being the annual appropriation for 1855, from the General Government. The annual appropriation may be commuted for other arms or field artillery, at

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cost. These arms are deliverable at any accessible point in the Territory, on the requisition of the Governor, and will be called for whenever the legislation of the Territory shall make it necessary or expedient.

A. H. REEDER,  
Governor, &c.

EXECUTIVE DEPARTMENT, July 3, 1855.

Mr. Anderson offered the following resolution :

*Resolved*, That the message of his Excellency, the Governor, be referred to a select committee, with instructions to refer the various matters therein contained to the proper standing committees.

Carried. Whereupon

The Chair appointed Messrs. Anderson, Mathias, and Marshall as said committee.

Joseph M. Fox and Benjamin F. Simmons, elected Engrossing and Enrolling Clerks, were duly sworn in by the Hon. Sanders W. Johnson, Associate Judge of the Supreme Court.

Mr. Wilkinson offered the following resolution, which was adopted ;

*Resolved*, That ——— thousand copies of the Governor's message be printed for the use of the House.

Mr. Wilkinson moved that the blank be filled by "two thousand."

Lost.

Mr. Payne moved to insert "one thousand,"

Which was decided in the affirmative.

Message from the Council by Mr. Eastin, a member :

MR. SPEAKER :

I am instructed by the Council to inform the House that the House bill of the following title has passed the Council :

" An act to remove the seat of government temporarily to the Shawnee Manual Labor School, in the Territory of Kansas."

The Chair appointed Messrs. Wilkinson and Waterson as a committee on enrolled bills.

The committee on enrolled bills made the following report :

MR. SPEAKER :

The committee on enrolled bills have examined and found truly enrolled a bill of the following title :

An act to remove the seat of government temporarily to the Shawnee Manual Labor School, in the Territory of Kansas.

WATERSON, }  
WILKINSON, } Committee.

The report was adopted.

On motion.

The House adjourned until nine o'clock to-morrow morning.



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WEDNESDAY MORNING, JULY 4, 1855.

House met pursuant to adjournment.

The journal of yesterday was read, and,

On motion of Mr. Ladd,

The journal was amended by adding the names of all the protestants, and his own name, to the protest presented to the House on yesterday, and that their names be spread upon the journal.

Mr. Jessee moved an adjournment until to-morrow morning.

On motion of Mr. Mathias,

The ayes and noes were called.

The vote stood as follows:

AYES.—Messrs. Baker, Houston, Hutchinson, Jessee, Ladd, and Wattles.—6.

NOES.—Messrs. Anderson, Blair, Harris, Hieskill, Johnson, Kirk, Marshall, Mathias, McMeekin, Payne, Scott, Tebbs, Waterson, Weddle, Williams, Wilkinson, Younger, and Mr. Speaker—18.

So the motion to adjourn was lost.

On motion by Mr. Anderson,

The journal of yesterday was adopted.

On motion by Mr. Waterson,

The roll was called.

Mr. Mathias, from the committee on credentials, made the following majority report:

*To the Honorable the Speaker of the House of Representatives of the Territory of Kansas:*

The undersigned, a majority of the committee appointed by this House as a special committee on credentials, whose duty it was to inquire into and examine the evidence of membership of gentlemen who claim their seats as members of this House of Representatives of the Territory of Kansas, most respectfully beg leave to make the following report:

Having heard and examined all the evidence touching the matter of inquiry before them, and taking the organic law of Congress, passed on the 20th day of May, in the year 1854, organizing the territorial governments of the Territories of Nebraska and Kansas, as their guiding star, the only bright and shining light to the port of a true and correct conclusion in the premises, believe and declare, in the first place, that the Governor of the Territory of Kansas had not the exclusive right or power to prescribe the manner and form by which the first election for members of the first Territorial Legislative Assembly of the said Territory of Kansas should be conducted and passed upon; but that a fair construction of the 22nd section of the said organic act leads them—nay, drives a majority of your said committee, to the conclusion that no particular form of the oath which the judges of said election took was necessary, and that no particular form of the return of said election by the said judges was necessary in order to legalize the said election; but that such oaths and such returns as are usual for judges of elections in the several States to take, perform, and return, is all that the organic act requires. And a majority of your committee believe and are of the opinion—

H. J.—2





from the original papers filed in the office of the Secretary of the Territory, and other papers and evidence which were before them, that the oaths and returns, and all other acts taken, done, and performed by the judges appointed by his Excellency, A. H. Reeder, Governor of the Territory of Kansas, to hold and conduct the election for members of the first Territorial Legislative Assembly, were in the usual form, at all events as effectual and as legal and binding as if the said oaths and returns had been in the form prescribed by the Governor in his proclamation, *verbatim et literatim*.

Indeed, any other construction might lead to usurpation of power, never ending confusion, and wrong. And besides, it is not to be expected, nor is it required by any rule of law or courts of justice, in the United States or Great Britain, that oaths or affidavits taken and made promiscuously throughout the country shall be uniform: but that any oath or affidavit, taken or made by any officer of any branch of the government, clearly showing the intention of the party taking or making the same to the point at issue, or matter of fact to be established or procured, is all that the law requires.

In the second place, the undersigned, a majority of our said committee are of the opinion and declare that the said organic act, establishing the territorial governments of the Territories of Nebraska and Kansas, does not give to the Governor of the Territory of Kansas, power generally to set aside elections, nor does it confer upon him the right or power to set aside the election held on Friday, the 30th of March last, in any one or all of the election precincts, unless (in the language of the bill itself, section,) that in case two or more persons voted for shall have an equal number of votes, and in case a vacancy shall otherwise occur in either branch of the Legislative Assembly. In these events, and these events alone, has he power to order a new election.

And this, sir, appears to be a very liberal construction. Mark the words. "That in case two or more persons voted for shall have an equal number of votes," without any qualification. This language might deprive two or more persons, fairly elected by their constituents, of their privileges as members of this House; because, for instance, it is not impossible for A, who might be a candidate for a seat in this House for District No. 1, and B, a candidate also for a seat in this House in District No. 2, to have an equal number of votes; so that without liberality in construing this language, the election of both A and B might be set aside, on a mere pretense, however trivial. But it is conceded that the Governor of this Territory has the power, under the organic act of Nebraska and Kansas, to set aside the election in any Council or Representative District, where either of those contingencies arise.

But it is not pretended on the part of the Governor, or any gentlemen claiming seats in this House, that a tie occurred in any representative district, nor that any election in any one or more of the representative districts was set aside on that ground, yet it appears that the election in a number of the representative districts of this Territory were set aside, and certificates refused to gentlemen who claimed to be elected by a large majority of their constituents.

Upon what ground then were these elections set aside, and certificates refused? A majority of your committee, and they apprehend a majority of the members of this House, are at a loss to know.

It is pretended, however, that these elections were set aside and certificates refused, upon the ground of a non-compliance on the part of some of the judges of the election, with the manner and form prescribed in the proclamation of the Governor of this Territory. This, as it has already been shown, was not a legitimate reason for thus setting aside these elections; but nevertheless new elections were ordered to be held on the 22d May last, and a



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number of gentlemen are now holding their seats in this House by virtue thereof.

Can it be that Congress in its wisdom, having great experience and the history of the past before them, designed to delegate to one man the power to create a vacancy in the popular branch of this Legislature, for his own purposes, on any pretense whatever? Certainly not. But a majority of your committee emphatically deny that any vacancy in this branch had occurred at the time of the issuing of the Governor's proclamation, ordering a new election in the several districts of this Territory where new elections were held and conducted, under and by virtue of that proclamation, or at the time such elections were held and conducted, or at any time subsequent, until the organization of both branches of the first Territorial Legislative Assembly of the Territory of Kansas, and certainly none since, for every seat has been occupied from that moment until the present, whether rightfully or not is for this House to decide.

Now, sir, if this be a correct view of the subject, by what authority have the elections in the said several representative districts been set aside? By what authority have certain gentlemen been refused certificates of election? and by what authority has a new election been ordered and held on the 22d day of May last? Verily, none; at least none that a majority of your committee can see; and the election held in the several districts of the Territory on the 22d day of May last, is therefore, in the opinion of a majority of your committee, wholly and entirely illegal, unwarrantable, and not authorized by the organic act establishing the territorial governments of the Territories of Nebraska and Kansas, and have therefore disregarded the said election.

Upon the subject of certificates this committee would only remark, that a certificate of election in the hands of a party claiming a seat in this or any other house of a similar character, is only *prima facie* evidence of his right to sit until the House shall have passed upon the fact, and nothing more; and that a certified copy of the return of the judges of an election, or the original return filed in the office of the Secretary of State, is also *prima facie* evidence of his right to sit until otherwise ordered by the House of which he claims to be a member; and that it is competent and legal, and in accordance with the best parliamentary law and regulation, for this House, or any similar body constituted as this is, to oust, or in other words to turn out, and refuse to any person the privilege to sit as a member, notwithstanding he may have a certificate of election with the broad seal of a State or Territory, as the case may be. The precedents on this branch of our report are so numerous, and so well and generally understood, that to say more would be but taxing sounds and words wholly unnecessary now.

In regard to those gentlemen who are now sitting members of this House, and whose seats are not contested in this place, are passed without further comment.

But with regard to those whose seats are contested, the majority of your committee having already declared that the election held on the 22d of May was void *ab initio*, cannot entertain either the certificate of the Governor of this Territory, or a certified copy of the return of the judges of the said election, nor even the original return filed in the office of the Secretary of the Territory, and must therefore be governed entirely by the return of the judges who held and conducted the election held on the 30th of March last, in pursuance to and compliance with the just proclamation of the Governor of this Territory, ordering an election for members of the Territorial Legislative Assembly of the Territory of Kansas.

Accordingly it appears that Mr. A. S. Johnson, from the first Representative District, is entitled to his seat as a member of this House.



That Messrs. Joseph C. Anderson and S. A. Williams, from the sixth Representative District, are entitled to their seats as members of this House.

That Mr. S. D. Houston, from the eighth Representative District, is entitled to his seat as a member of this House.

That Mr. F. J. Marshall, from the ninth Representative District, is entitled to his seat as a member of this House.

That Mr. W. H. Tebbs, from the tenth Representative District, is entitled to his seat as a member of this House.

That Messrs. J. H. Stringfellow and R. L. Kirk, from the eleventh Representative District, are entitled to their seats as members of this House.

That Messrs. Joel P. Blair and Thomas W. Waterson, from the twelfth Representative District, are entitled to their seats as members of this House.

That Messrs. H. B. C. Harris and J. Weddle, from the thirteenth Representative District, are entitled to their seats as members of this House.

That Messrs. W. G. Mathias, H. D. McMeekin, and A. Payne, from the fourteenth Representative District, are entitled to their seats as members of this House.

The foregoing gentlemen are those whose seats have not been contested.

And it appears that Messrs. John Hutchinson, Philip P. Fowler, and Erastus D. Ladd, from the second Representative District; Messrs. Augustus Wattles and William Jessee, from the third Representative District; and Mr. Cyrus K. Holliday, from the fourth Representative District—have received certificates of their election from the Governor, declaring them duly elected as members of this House, on the 22d of May last. But inasmuch as a majority of your committee have declared that that election was void from beginning to end, and that the Governor was not authorized or empowered to order that election, by the organic act establishing this territorial government, they are not entitled to their seats as members of this House.

But that Messrs. James Whitlock, A. B. Wade, and John M. Banks, from the second Representative District, are entitled to their seats as members of this House, having received a majority of the votes polled in their said Representative District, at an election held therein on the 30th day of March, 1855.

Messrs. G. W. Ward, and O. H. Browne, from the third Representative District, are entitled to their seats as members of this House, having received a majority of the votes polled at an election held in their Representative District, on the 30th day of March, 1855.

Mr. D. L. Croysdale, of the fourth Representative District, is entitled to his seat as a member of this House, having received a majority of the votes polled in his said Representative District, at an election held therein on the 30th day of March, 1855.

In the fifth Representative District it appears the A. J. Baker received a certificate of election from the Governor of this Territory, declaring that the said A. J. Baker was duly elected a member of this House, said certificate bearing date the 6th day of April, 1855.

It appears from all the facts in this case of Mr. A. J. Baker, that in his (the fifth) Representative District there are two precincts. A. J. Baker received twenty-five votes, and M. W. McGee, the contestant in this case, received twelve votes, at one precinct; and at the other precinct, A. J. Baker received one vote, and M. W. McGee received two hundred and ten votes. The returns of the judges of election from both these precincts are equally effective and equally legal in our judgment, and therefore declare that A. J. Baker, from the fifth Representative District, is not entitled to his seat in this House, but that M. W. McGee, from the said fifth Representative district, having received a majority of all the votes polled in that Representative



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District, on the 30th day of March, 1855, is entitled to his seat as a member of this House.

The foregoing, your committee know, is very imperfect; but the shortness of the time allowed to investigate the subject referred to them did not admit of a more thorough and comprehensive report thereon.

All of which is most respectfully submitted.

WM. G. MATHIAS, *Chairman.*

A. S. JOHNSON.

WM. A. HIESKILL.

THOS. W. WATERSON.

On motion by Mr. Houston,

The following minority report from committee on credentials was read:

### *Minority Report on Contested Seats in the House of Representatives of Kansas Territory.*

The minority of the committee appointed on the second instant by this House, for the purpose of examining credentials in certain contested election districts, beg leave to present the following protest:

The government of Kansas Territory, in the opinion of your committee, is an official and progressive one, or in other words it is a government whose successive steps of progression is dependent on official action. Congress passes a law designating the President and Senate of the United States as the means to a Governor, and the Governor, when thus appointed, becomes the organizing authority from which the Legislative body emanates.

Congress, through the Governor, organizes the Territory, and through him continues to retain its connection, and hold and exercise such control as it may from time to time direct.

In the 20th section of the organic act, it declares that he shall—not that he may, but that he shall—commission all officers who shall be appointed to office under the laws of the Territory.

In the 22d section of the same act the organizing steps which the Executive shall take are definitely pointed out. He is there ordered to take the census, call an election, specifying the time, place, and manner of conducting it. It also requires him to appoint the judges who shall superintend it, and makes him the sole judge of the returns when made out by the judges. It requires him to declare the person or persons having the highest number of legal voters to be duly elected, and confines his commissary power to members thus elected. And in the 23d section the Governor is further specifically and definitely instructed how to judge of legal voters. It positively decides that no man but a white man, and that one an actual resident, shall be entitled to a vote.

Taking this view, which so clearly appears to be the obvious meaning of the organic law, your committee would respectfully beg leave to enter his protest against the report of the majority, in the following particulars:

First, the Governor, in whom the organizing power is vested, has, in accordance with his instructions specifically pointed out in the law, declared, by giving certificates of election to John Hutchinson, Erastus D. Ladd, Philip P. Fowler, Augustus Wattles, and William Jessee, that they are duly elected members of this House; and consequently those persons claiming seats, to whom the executive power has not given certificates of election, are not entitled to seats in this House.

I cannot agree that this body has the right to go behind the decision of the Governor, who, by virtue of his office, is the organizing federal arm of the general government to evolve and manage a new government for this



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Territory, for the obvious reason that Congress makes him the sole judge of qualifications for membership.

It makes him the channel to, and the organized means of, the existence of this body.

To assume the contrary proposition, is to assert that this legislative body exists before it can have a legal existence. Whatever latitude may be taken in State legislation with reference to contested elections, they can form no precedent for us, for the plain reason that while their governments are formed and complete, ours is in a forming state, and therefore incomplete.

In the second place, from the evidence before the committee, great deficiencies appear, not in the form of conducting the election, but in the manner of holding them, both as to the qualifications of judges who presided, and the returns made out by them.

In some cases it does not appear that the judges were legally sworn into office; and in other instances they actually presumed to change the law, by striking out the words "legal voters" and "actual residents," and inserting such words as suited their fancy. It is also further evident, on comparing the census just taken with the election returns, and making all the allowances which extravagance would suggest, that in some districts a great many more votes were actually polled than there were resident voters belonging to said districts.

No doubt but these illegal proceedings on the one hand induced the Governor to withhold certificates from some who, from the number of votes returned in their favor, might at the same time appear to have been properly elected; and on the other to have been the ground on which he presented a certificate in one instance, and in another ordered a new election in reference to other districts.

In regard to the right of the Governor to order a new election, the organizing object to be accomplished, the intention of Congress which pervades the bill, together with the express language of the bill declaring that when a vacancy shall otherwise occur he shall call a new election—make it perfectly clear that he possesses the right to order a new election, and compelled him to do so. Hence the members holding certificates by virtue of that election have a clear right to their seats in this House.

The idea that a seat is not vacant until it has been previously filled, though a specious one, is a mere play on words. All over the land the term is used with reference to all unfilled positions, and no doubt Congress uses it in the same sense.

With these facts before me, and my oath to support the organic law to guide me, I feel compelled to wholly dissent from, and protest to, the majority report of the committee on credentials, appointed by this House.

We would respectfully request that this House extend time to gentlemen holding the Governor's certificate, in order to enable them to procure the necessary evidence to make good their claim, and we would further request that the protest be entered on the journal of the House, according to a long established custom in legislative action.

S. D. HOUSTON, *Committee.*

Message from the Council, by Mr. Halderman, Chief Clerk:

MR. SPEAKER:

I am instructed by the Council to inform the House that the President of the Council has signed enrolled House bill of the following title:





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An act to remove the seat of government temporarily to the Shawnee Manual Labor School, in the Territory of Kansas.

On motion by Mr. Mathias,  
The House adjourned until 11 o'clock.

House met at 11 o'clock.

On motion by Mr. Anderson,

*Resolved*, That the report of the majority of the committee on credentials be adopted, and in accordance therewith Messrs. James Whitlock, A. B. Wade, John M. Banks, of the second Representative District; G. W. Ward, O. H. Browne, of the third Representative District; D. L. Groysdale, from the fourth Representative District; and M. W. McGee, from the fifth Representative District—having been duly elected on the 30th day of March, 1855, are declared entitled to their seats as members of this House.

On motion by Mr. Tebbs,  
The House adjourned.

### — EVENING SESSION.

House met, pursuant to adjournment.

Mr. Hutchinson moved that the majority report of the committee on credentials be laid on the table.

On motion by Mr. Anderson,  
The ayes and noes were called.

AYES.—Messrs. Baker, Houston, Jessee, Ladd, and Wattles—5.

NOES.—Messrs. Anderson, Blair, Harris, Hieskill, Johnson, Kirk, Marshall, Mathias, McMeekin, Payne, Scott, Tebbs, Waterson, Weddle, Wilkinson, and Younger—16.

Absent, Messrs. Hutchinson and Williams—2.

So the House refused to lay the report on the table.

On motion by Mr. Mathias,

The previous question was called for upon the final passage of the resolution of Mr. Anderson.

Mr. Anderson called for the ayes and noes.



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AYES.—Messrs. Anderson, Blair, Harris, Hieskill, Johnson, Kirk, Marshall, Mathias, McMeekin, Payne, Scott, Tebbs, Waterson, Weddle, Williams, Wilkinson, Younger, and Mr. Speaker—18.

NOES.—Mr. Houston.

The resolution was declared passed.

On motion by Mr. McMeekin,

*Resolved*, That the Speaker of the House appoint an additional assistant clerk, with the same pay as Assistant Clerk.

Whereupon,

The Chair appointed Mr. S. A. Lowe, Assistant Clerk.

On motion by Mr. Anderson,

Messrs. James Whitlock, A. B. Wade, John M. Banks, G. W. Ward, O. H. Browne, D. L. Croysdale, and M. W. McGee were duly sworn in, and took their seats as members of this House.

Moved by Mr. Anderson,

That the House reconsider the vote given on yesterday, by which the protest of certain gentlemen holding seats in this House was not allowed to be spread upon the journal.

Read and passed.

Moved by Mr. Anderson,

That the protest be spread upon the journal.

Agreed to.

### PROTEST.

We, the undersigned, members of the House of Representatives of Kansas Territory, believing the organic act organizing the said Territory gives this House no power to oust any member from this House, who has received a certificate of his election from the Governor; that this House cannot go behind an election called by the Governor, and consider any claims based on a prior election. We would therefore protest against such a proceeding, and ask this protest to be spread upon the journal of this House.

JOHN HUTCHINSON.

WILLIAM JESSEE.

AUGUSTUS WATTLES.

E. D. LADD.

On motion by Mr. Mathias,

A committee on accounts, consisting of Messrs. Mathias, Blair, and Kirk, were appointed.

On motion by Mr. Mathias,

The House adjourned.

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THURSDAY, JULY 5, 1855.

The House met pursuant to adjournment.

On motion by Mr. Mathias,  
The House dispensed with the reading the journal of yesterday, until evening.

On motion by Mr. Waterson,  
The roll was called.

On motion

Mr. McMeekin introduced a bill entitled  
An act to establish the statutes of the Territory of Kansas.

Mr. Wilkinson moved to lay the bill on the table,  
Lost.

Mr. Anderson moved to suspend the rules and that the bill be read by its title,

Mr. Wilkinson called for the ayes and noes.

The vote stood as follows:

AYES—Messrs. Anderson, Banks, Croysdale, Johnson, Mathias, McGee, McMeekin, Scott, Tebbs, Wade, Ward, Whitlock, Williams, Younger and Mr. Speaker—15.

NOES—Messrs. Blair, Harris, Heiskell, Houston, Kirk, Marshall, Payne, Waterson, Weddle and Wilkinson—10.

ABSENT—Mr. Browne.

So the rules were not suspended, and the bill was laid over.

On motion by Mr. Mathias,

The bill introduced by Mr. McMeekin was referred to a committee of five, Whereupon the chair appointed Messrs. Mathias, Tebbs, Waterson, Marshall and McMeekin.

Mr. Browne gave notice of his intention to introduce a bill of the following title:

A bill granting to A. B. Wade & Co., the privilege of establishing a ferry across the Kansas river at the town of Lawrence.

On motion, by Mr. Speaker,  
Mr. Anderson in the chair,  
The House took recess for one hour.

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The House being met after recess,

The committee to whom the House bill entitled

An act to establish the statutes of the Territory of Kansas, was reported the bill back with amendment.

Mr. Mathias moved the suspension of the rule, and that the bill be second time, as amended.



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On motion by Mr. McMeekin,  
The ayes and noes were called,

AYES—Messrs. Anderson, Banks, Croysdale, Johnson, Kirk, Marshall, Mathias, McGee, McMeekin, Scott, Tebbs, Wade, Ward, Waterson, Whitlock, Williams, Younger and Mr. Speaker.—18.

NOES—Messrs. Blair, Browne, Harris, Heiskell, Houston, Payne, Weddle and Wilkinson.—8.

So the rule was suspended, and the bill read a second time.

On motion by Mr. Mathias,  
The bill was ordered to be engrossed.

It was moved by Mr. Speaker,  
Mr. Anderson in the chair,

That the motion of Mr. Mathias ordering bill to be engrossed, be reconsidered.

Mr. Harris called for the ayes and noes.

The vote stood as follows :

AYES—Messrs. Anderson, Banks, Johnson, Mathias, McGee, McMeekin, Tebbs, Wade, Ward, Waterson, Whitlock, Williams, Younger and Mr. Speaker.—14.

NOES—Messrs. Blair, Browne, Croysdale, Harris, Heiskell, Houston, Marshall, Payne, Scott, Weddle and Wilkinson.—11.

So the motion to reconsider was decided in the affirmative.

Mr. Speaker Stringfellow,

Mr. Anderson in the chair,

Moved the bill be considered engrossed, rules suspended, and bill be read a third time.

On motion of Mr. Mathias,  
The ayes and noes were called.

The vote stood as follows :

AYES—Messrs. Anderson, Banks, Blair, Croysdale, Harris, Johnson, Kirk, Mathias, McGee, McMeekin, Scott, Tebbs, Wade, Ward, Waterson, Williams, Wilkinson and Mr. Speaker.—19.

NOES—Messrs. Browne, Hieskill, Houston, Marshall, Payne and Weddle.—6.

So the bill was considered engrossed, and rule suspended, and bill read a third time.

The question being upon the final passage of the bill.

On motion by Mr. Wilkinson,

The following amendment was offered by way of rider:

Amend by way of rider, by striking out the "statutes of Missouri," and insert in lieu thereof, "Nicholson's Revised Statutes of Tennessee."

Mr. Wilkinson moved a suspension of the rules, and that amendment be read a second time.

Which motion was lost.

The vote being upon the final passage of the original bill,

On motion by Mr. Weddle,

The ayes and noes were called.

The vote stood as follows :

AYES—Messrs. Anderson, Banks, Blair, Browne, Johnson, Kirk, Marshall,

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Mathias, McGee, McMeekin, Payne, Scott, Tebbs, Wade, Ward, Waterson, Whitlock, Williams, Younger and Mr. Speaker—20.

NOES—Messrs. Harris, Hieskill, Houston, Weddle and Wilkinson—5.

Majority of the members voting aye, the bill was passed.  
On motion by Mr. Payne,

*Resolved*, By the House of Representatives of the Territory of Kansas, the Council concurring therein, that the two Houses go into joint session for the election of a Public Printer, on Friday, the 6th day of July, 1855, at the hour of ten o'clock.

On motion by Mr. Marshall.

The rules were suspended, the bill read first and second time and passed.

On motion by Mr. Waterson,  
The House adjourned.

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### AFTERNOON SESSION.

The House met, pursuant to adjournment.

Journal of yesterday was read and approved.

On motion by Mr. Anderson,  
The House adjourned, subject to the call of the Speaker.

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House met.

Message from the Council by Mr. Rees; a member:

MR. SPEAKER:

I am instructed by the Council to inform the House that the Council has concurred in House resolution to go into the election of a Public Printer.

On motion by Mr. Mathias,  
The House adjourned.





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FRIDAY MORNING, JULY 6, 1855.

The House met pursuant to adjournment.

The journal of yesterday was read and approved.

On motion by Mr. Waterson,

The roll of the House was called.

Mr. Harris gave notice of his intention to introduce bills of the following titles:

An act to regulate the firing of Prairies,

An act to incorporate the city of Kickapoo,

An act for the destruction of prairie wolves.

An act to establish a road from Fort Leavenworth, to some point on Big Walnut Creek, running up the Missouri river, and passing through the town of Kickapoo,

Also, another road from the town of Kickapoo to the California and Santa Fe road,

Also, another from the town of Kickapoo to the California and Oregon road.

Mr. Weddle gave notice of his intention at some subsequent day to introduce a bill of the following title:

A Bill for the surveying and making of a road from Kickapoo city by way of Lecompton, on the Kansas river to the Council Grove, intersecting the Great Western Road to Santa Fe, at said Grove.

Mr. Weddle also presented the following petition:

*To the Hon. General Assembly of the Territory of Kansas:*

We, the undersigned petitioners would request your honorable bodies to pass an act to establish a Ferry upon the Missouri river, at or near the bend of said river, above Kickapoo city, upon the land claimed by William Thompson, for the benefit of said Thompson, upon which he now has a Ferry in successful operation.

Signed      DAVID G. ROSS,      NELSON PULLEN,  
                 JOHN GROFF,      JOHN B. JONES,  
                 D. E. JONES, and others.

Message from the Council by Mr. Rees, a member:

MR. SPEAKER:

I am instructed by the Council to inform the House of Representatives that the Council has adopted Rules for the government of the Legislative Assembly in Joint Session, and ask the concurrence of the House therein.

Mr. Anderson from the Committee on Rules reported Rules for the government of the House.

On motion by Mr. Mathias,  
The report was received.

On motion by Mr. Mathias,  
The Rules as reported by the committee were adopted.



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Message from the Governor, by his Private Secretary, Mr. Higgins, returning House bill, entitled "An act to remove the seat of government temporarily, to the Shawnee Manual Labor School, in the Territory of Kansas," together with his objections.

*To the House of Representatives of the Territory of Kansas:*

I return to your House, in which it originated, the bill entitled "An act to remove the seat of government temporarily to the Shawnee Manual Labor School, in the Territory of Kansas," with my objections. I cannot give the bill my official sanction for several reasons. It provides "that until the seat of government is located by law, the Governor and Secretary of State (by which is doubtless meant the Secretary of the Territory) shall respectively keep their offices at the Shawnee Manual Labor School."

This permission seems to me peculiarly objectionable. The Legislative and Executive Departments, here, as elsewhere, are entirely independent of each other in the performance of their respective duties within their separate spheres, and must each be left to the discharge of their own proper functions, independent of the control of the other, in any way that would interfere with the exercise of that discretion which is properly confided to them. Under our organic law there is even yet another consideration bearing upon this well known doctrine which forces itself upon our attention.

The Executive Department is an emanation of the power of the Federal Government, represents the authority of that government and the incumbent is appointed by it. His duties are defined by Congress, who may at any time restrict or enlarge them, and prescribe the mode in which they shall be performed, and to the Federal Government alone, from which his power is derived, and by which his movements are directed is irresponsible for the manner in which his official functions are performed. This controlling power over the Territorial Executive can neither be taken away from Congress by the Territorial Legislature, nor can it be exercised by the latter, concurrently with the former, because this would involve the possibility of an irreconcilable conflict between the two. The control of the Executive is not parted with by Congress, under the 24th section of the organic law, because, as already shown, such control by others would be inconsistent with the spirit of the act. The General Government have legislated in various portions of the act, as to the general duties of the Executive and in reference to this point particularly, now involved, have gone as far as they then deemed expedient, by providing that the Governor and Secretary shall reside in the Territory. They may at any time go further and provide at what point of the Territory the offices shall remain; but we must await their action in the matter as that of the only power which can prescribe it, so long as they see proper to leave to the incumbent of the Executive Department, the privilege of locating his office anywhere within the Territory, that privilege cannot be taken away by the Territorial Legislature.

When the actual seat of government is fixed by competent authority it would certainly become the duty of the Executive to locate his office there, and this brings us to the inquiry whether the bill which I now return is within the rightful powers of the Legislature as conferred by Congress.

It professes to locate the Seat of Government temporarily as contradistinguished from a permanent location. This distinction is well founded and well understood, and is recognized as well in the organic law as in the act of Congress of March 3, 1855, and a temporary Seat of Government is recognized as one upon which none of the public money appropriated by Congress shall be expended in the erection of public buildings.

By the organic law, the Governor was vested with the power to fix the place for the meeting of the first Legislative Assembly. By the same law, Congress themselves fixed the temporary Seat of Government, and by act of March 3, 1855, they conferred upon the Legislature the right to fix a permanent Seat of Government. The power of the Legislature is thus clearly defined. Congress has chosen to confine one branch of this subject to the Governor, to retain another for themselves, and to commit the third to the Legislature.

The temporary Seat of Government may or may not be used, and this will depend upon whether the Legislature shall leave the place fixed for their meeting by the Governor, before they shall fix upon a permanent Seat of Government. Congress having already fixed a temporary Seat of Government for the Territory, the only effect of the bill which I now return to you, would be to repeal the 31st section of the Kansas Bill, which involves the exercise of a power far beyond the functions of the Legislature.

The Legislature may undoubtedly, by virtue of the act of Congress, passed March 3d, 1855, entirely supersede the temporary Seat of Government by a permanent location, upon which the public appropriation is to be expended for buildings; but in no other





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mode can the object be attained. Had Congress abstained from fixing a temporary Seat of Government, the Legislature might, perhaps, by implication, have had the power to do so; but when they exercise it themselves, and, in the same law, prohibit the Legislature from any legislation inconsistent with the provisions of the act, it would seem that the door is closed for any such legislation as contemplated by the bill which has been submitted to me.

It follows, then, that the Legislative Assembly have no right to prescribe where the office of the Executive shall be held, except by means of the establishment of a Seat of Government, and that they are confined to the fixing of a permanent, and not a temporary one; and it would seem equally clear, that as Congress have provided for the place of their first meeting, for the temporary Seat of Government, and also for the permanent Seat of Government, that it was their intention that the Legislature should sit only at one place of the three.

Conclusive as this view of the case appears, I may add that I cannot perceive the expediency of the bill. Its effect will be at once to adjourn your present session to the place mentioned, and whilst I am prepared to admit that the Legislative Assembly are satisfied of the existence of sufficient reasons for this step, those reasons are not apparent or convincing to me, and on the other hand, it is the loss of the time, (more valuable because limited) which our organic law allots to the Legislative Session, and because it will involve a pecuniary loss in view of the arrangements which have been made at this place for our accommodation.

EXECUTIVE DEPARTMENT, }  
July 6th, 1855.

A. H. REEDER,  
Governor, &c.

On motion by Mr. Anderson,

The Governor's message was received, and ordered to be placed on file.

Mr. Anderson moved to take up the bill entitled an act to remove the seat of government temporarily to the Shawnee Manual Labor School, in the Territory of Kansas, which has been returned by the Governor with his objections, and put it upon its passage, the objections of the Governor notwithstanding.

The question being upon the final passage of the bill.

Mr. Mathias called for the ayes and noes.

The vote was as follows:

AYES.—Messrs. Anderson, Banks, Blair, Browne, Croysdale, Harris, Hieskill, Johnson, Kirk, Mathias, McGee, McMeekin, Payne, Scott, Tebbs, Wade, Ward, Waterson, Weddle, Whitlock, Williams, Wilkinson, Younger, and Mr. Speaker—24.

NOES.—Messrs. Houston and Marshall.

So the bill passed.

On motion by Mr. Mathias,

The vote on the passage of the bill was reconsidered.

Whereupon,

Mr. Anderson withdrew his motion putting the bill upon its final passage.

On motion by Mr. Mathias,

The bill was read and put upon its passage.

On motion by Mr. Anderson,

The ayes and noes were called.

The vote stood as follows:

AYES.—Messrs. Anderson, Banks, Blair, Browne, Croysdale, Harris, Hieskill, Johnson, Kirk, Mathias, McGee, McMeekin, Payne, Scott, Tebbs, Wade, Ward, Waterson, Weddle, Whitlock, Williams, Wilkinson, Younger, and Mr. Speaker—24.

NOES.—Messrs. Houston and Marshall—2.



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So the bill passed.  
On motion by Mr. Anderson,

*Resolved*, By the House of Representatives of the Territory of Kansas, the Council concurring therein, that the Legislature of said Territory do adjourn on the 6th day of July, A. D. 1855, to meet again on Monday, the 16th day of July, A. D. 1855, at 2 o'clock P. M., at the Shawnee Manual Labor School, in the said Territory.

Mr. Mathias asked for a call of the House.  
On motion by Mr. Mathias,

*Resolved*, That two hundred copies of the rules adopted by this House be printed for the use of the members, and that two hundred copies of so much of the organic act establishing the territorial governments of the Territories of Nebraska and Kansas as refers to the Territory of Kansas, also be printed for the use of the members of this House, separate and apart from each other.

Mr. Williams gave notice that at some future day he would introduce a bill entitled an act to more effectually protect the squatter in his claim to 160 acres of land in Kansas Territory.

On motion by Mr. Mathias,

*Resolved*, That it shall not be necessary for the Clerk to spread upon the pages of the journal of the House the reports of standing committees, rules and orders of the House; but that said reports, &c., shall be carefully preserved by the Clerk, and printed as an appendix, to be attached to the proceedings of the House.

KANSAS STATE  
HISTORICAL  
SOCIETY

On motion by Mr. Mathias,  
The Speaker appointed Messrs. Mathias, Anderson, and Williams, as a special committee to have the rules of this House and the organic act published by the 16th day of July, 1855.

Message from the Council, by Mr. Rees, a member:

MR. SPEAKER:

I am instructed by the Council to inform the House that the Council has passed the House bill entitled an act to remove the seat of government temporarily to the Shawnee Manual Labor School, in the Territory of Kansas.

And also, that the Council has passed a resolution adjourning July the 6th, 1855, to meet again at the Shawnee Manual Labor School, in the Territory of Kansas, on Monday July the 16th, A. D. 1855, and ask the concurrence of the House therein.

On motion by Mr. Mathias,  
The rules were suspended, and the Council resolution read and put upon its passage.

Mr. Mathias called for the ayes and noes on the passage of the resolution.  
The vote stood as follows:

AYES—Messrs. Anderson, Banks, Blair, Browne, Croysdale, Harris, Hieskill, Johnson, Kirk, Marshall, Mathias, McGee, McMeekin, Payne, Scott,