KANSAS CONTESTED ELECTION.

SPEECH

OF

HON. W. W. BOYCE, OF SOUTH CAROLINA,

DELIVERED

IN THE HOUSE OF REPRESENTATIVES, MARCH 6, 1856,

On the Resolution reported by the Committee of Elections in the Contested-Election case from the Territory of Kansas.

Mr. BOYCE said:

Mr. SPEAKER: I have not had time, since the presentation of the majority and minority reports from the Committee of Elections, in reference to the Kansas contested-election case, to examine them carefully, and I shall therefore have to depend for a knowledge of their statements on what I heard of them yesterday when they were read from the Clerk's desk. It seemed to me that a great deal of irrelevant matter was introduced into the majority report. Instead of confining themselves strictly to the subject before them, the particular manner in which evidence should be taken in the case, the committee went into a detailed recital of outrages alleged to have been committed in the Territory of Kansas. It may not have been the purpose, but the effect was necessarily to inflame the public mind on this agitating question. I shall not follow the example set me; although I might reply, and very satisfactorily, to the historical recital which the majority of the committee have made. I might light up my subject with the fires of the burning habitations of southern emigrants in Kansas, who have suffered at the hands of lawless violence; but I do not think it proper to do this, because it does not belong necessarily to the question before the House. I propose to treat the question before us in its naked proportions, in reference to the mode in which the committee should proceed to take testimony for the determination of the right to a seat here, either of Mr. Whitfield or his contestant.

The majority of the committee seem to insist, so far as I could understand the report read yesterday, that they could not take evidence in Kansas, in the present condition of things in that Territory; that it was such an unsettled country, so wild, and so destitute of facilities for the examination of witnesses, that they could not take evidence there. But it seems to me they have overrated the difficulties in that respect entirely.

Why can they not take evidence in that new Territory, as well as they can in any of the Territories of the United States? They have roads; they have rivers; they have settlements. Why, then, cannot the witnesses be brought together there as well as elsewhere? Nobody imagines that witnesses could not be examined in Nebraska, Washington, or Oregon Territories. Then why not in Kansas? But it is said that such a course would produce great excitement. It seems to me that the committee over-estimates the extent of the excitement existing in Kansas. I have no doubt that these things are exaggerated. The committee wisely caution us not to listen to all the idle reports which we might hear, and at the same time they seem to me to give too much faith to these rumors, because they appear to believe that there is almost a state of war in Kansas. I have no doubt that the state of things in Kansas has been exaggerated. I have no idea that the taking of testimony there would be attended with the disastrous consequences anticipated by the committee. If I understand their report, they say there are no justices of the peace there; and there, I apprehend, is the place where the shoe pinches.

Mr. HICKMAN. Will the gentleman from South Carolina permit me to say a word?

Mr. BOYCE. Certainly.

Mr. HICKMAN. It is right that I should say that the majority of that committee rested no part of their report on rumor, or upon newspaper articles. They rested their report, and grounded it upon the statement of facts alleged by Governor Reeder, and the allegations contained in the proclamation of the President of the United States, and his special message to Congress in reference to Kansas.

Mr. BOYCE. They say that there are not sufficient justices of the peace in the Territory to take the testimony. Here I imagine is the real objection the majority of the committee have to going into an examination of this case in the usual manner. They are unwilling to do it in a form which might seem, in any sense whatever, to recognize the existing government in Kansas. But it seems to me that there is no necessity of going into this new mode of proceeding in order to avoid that difficulty. The House may guard

against that difficulty by declaring that the justices of the peace, *de facto*, shall have the right to take the testimony. The reasons, then, stated by a majority of the committee for this novel course of proceeding are not satisfactory. This is entirely a new course of proceeding. In the whole practice of the Government, so far as I have been able to ascertain, we have never before authorized the Committee of Elections to send for persons and papers in the case of a contested seat, except in the New Jersey case, and that was a precedent originated at a time of party delirium.

Mr. WASHBURN, of Maine. The gentleman will find, if he will examine the matter, that during the First or Second Congress, after the adoption of the Constitution, that the House expressly gave to the Committee of Elections the power to send for persons and papers.

Mr. BOYCE. But never since that time except in the case I have mentioned. The House doubtless found the practice a bad one, and repudiated it from the time of the Second Congress until the New Jersey case came up. Now, in reference to this new and unusual mode of taking testimony, if the question were between this or no other mode, there might be some reason in the proposition of the committee. But it is not so. We have the old mode authorized by the act of 1851, and we have another alternative, as suggested the other day, to send special commissions to Kansas. Therefore the question is not between this mode and no other, but between the old mode and this new mode.

It seems to me there are grave objections to this mode. What witnesses will you have brought here, if you send to Kansas for persons? They will be willing witnesses—swift witnesses. Those are the very men we do not want here. We want men who have been attending to their own business: who have not been excited to fever heat by affairs in that Territory; and who have something to do besides coming here upon a crusade to furnish evidence. It seems to me that the proposed method is the worst possible mode of obtaining evidence. We should have here only partisans; while we want the evidence of that portion of the community which is calm and dispassionate. Besides, this mode involves immense expense. There is no estimating what the cost of it will be. Probably $200,000 or more. Once open the door for everybody to enlist in this army of witnesses, and under the zeal of partisan feeling there is no telling where the matter will end. Every man in Kansas who wants to take a trip to Washington at Government expense will have a budget of news to unfold.

It seems to me that this mode of obtaining evidence is not the proper one, in examining who is entitled to a seat as Delegate from Kansas. It would be much more appropriate if it were a general examination of all the affairs of Kansas. If you desire that sort of an investigation, appoint a special committee, and refer to it the special message of the President, and confer upon it power to send for persons and papers to make such examination: but let them not take this special election case to hinge this indefinite exploration upon.

I think, then, that the committee have failed to give sufficient reasons why we should adopt this new plan which they have proposed. The recommendation of the committee, if adopted, leaves them at liberty to examine the whole history of Kansas, and everything which has taken place there, from the inception of the government down to this time. I do not think that this case should give them that unbounded license. It is confined in a narrow compass. We have not a boundless sea of discovery upon which to take a voyage. Our limits are narrow, as I conceive the question. It seems to me, sir, there is perhaps only one question in the case; and that is as to whether legality of the action of the Legislature of Kansas was affected by the Legislature removing from the town of Pawnee to the Shawnee Mission.

When this question was taken up the other day, different opinions were expressed as to the rule which should guide the House in the investigation of the case; and I apprehend that there ought to be some rule. We ought not to pursue this matter vaguely and without any landmarks. The chairman of the Committee of Elections, if I understood him correctly, seemed to think that we had the power to proceed in this matter under the Constitution, giving us power to determine the qualifications of members, &c.; but it seems to me that this is an entire misconception of the matter, because Delegates of the Territories are not, accurately speaking, members of this House.

Again: it was insisted by some other gentleman that, in the investigation of this case, we are absolutely bound to pursue the directions of the act of 1851. That, perhaps, is not strictly correct either. My own impression is, that the act of 1851, though not absolutely binding upon the House in this case—because it merely relates to the election of *members* of the House—is to a certain extent binding as a persuasive authority, as a parliamentary precedent, as the sense of the House on the important subject as to how these elections are to be investigated. It is not merely a question of form as to what rule the House should be guided by in its attempt to investigate the case; it is in reality a question of substance; because on the rule which you adopt in the investigation of the case will depend important consequences, whether we adopt the rules laid down by the act of 1851 or by the parliamentary precedents. Either standard of investigation will limit the range of inquiry.

What does the act of 1851 prescribe? The act of 1851 is, it occurs to me, an act founded in eminent wisdom—an act which will stand the closest scrutiny. That act provides, in the first place, that the contestant shall "*specify particularly* the grounds upon which he relies in the contest." Why does it say "specify particularly?" Because Congress understood the evil effects which would arise from allowing these matters to be based upon general objections; and like every other court called upon to investigate a subject, Congress required the matter to be stated specifically, so that it could proceed understandingly. Again: The act further goes on and requires the person claiming the seat, in his answer to the contestant's protest, if he affirm any new facts, to state them "specifically." The result is, then, that, by these two provisions of the act, the pleadings are made specific and the parties brought to issue. They do not, then, come here at large, disputing everything, but a

few points are developed for examination. And the House can understand, the importance of this rule at once, because it is obvious that the Committee of Elections are facilitated in their investigations when the issue is clearly made; otherwise, it would be an endless task. If the contestant had the right allowed him to plead at large, the Committee of Elections would never be able to get through the examination of objections made without definiteness or specification. The act further goes on, and provides how evidence is to be taken. It provides means for the examination of witnesses, and provides a certain time within which witnesses are to be examined, leaving it to the discretion of the House to extend that time. These are the leading provisions of the act of 1851; and it seems to me that it would be a great blunder in this House to depart from the principles of that act. It seems to me that though this act is not, in the present case, technically binding on this House, as it speaks only of members of the House—not meaning Delegates in a strict sense—yet it would be unwise in this House to depart from the rules and principles and mode of investigation pointed out by it.

So much then on this point. There are other general features in the case, to which I would invite the attention of the House, because upon them depends, again, the extent of the investigation. What is the office of Delegate of a Territory? The delegateship of a Territory is a legal office. It is not an office which has arisen by custom or by the sanction of this House alone. It is an office which has arisen by force of the supreme law of the United States governing the subject. In England the king cannot originate a new office with fees. This House cannot originate a new general office, with or without fees. The office of Delegate from Kansas is a legal office. The particular office of territorial Delegate originated with the ordinance of 1787, and the ordinance was carried into effect in that particular by the act of Congress of 1789. By that ordinance it was provided that whenever the Northwestern Territory had a population of five thousand white male inhabitants, it should be entitled to a Delegate in Congress, and since that time Delegates have been assigned to the various Territories by act of Congress. In this particular case the office of Delegate from Kansas has been created by the Kansas-Nebraska bill. The office is a creation of that act. It does not arise by the mere will of this House, but by the will of all the departments of the Government. That I take to be beyond all dispute.

Again: the Kansas-Nebraska act, giving origin to this office, has defined how this officer shall be chosen. That question has an important bearing upon this case, because that, I take it, excludes all pretense of Mr. Reeder to a seat, and all questions which might be raised in that connection. The act of Kansas and Nebraska says on this subject, that a Delegate shall be elected by the people of the Territory of Kansas. How? It assigns to the people of the Territory a right to be represented in Congress by a Delegate. But how are they to exercise that right? The Delegate is to be chosen by the will of the people. But how is their will to be manifested? Their will is to be manifested under the law—under a preëxisting law, not a vagrant, wandering, irregular, licentious will, but a will to be exercised under the forms of the law, under the regulations of the ballot-box, carried out at a particular time and under specified forms. That is the only way, under the Kansas-Nebraska act, by which the office of Delegate of Kansas arises. That is the only way in which the office is created, by force of the public will of Kansas speaking under the law.

Congress in inserting that principle in the Kansas bill has not done anything new. It has only implanted in that bill a great American principle—that principle which has existed throughout all of our history, and on which our institutions rest—the principle that the public voice and the public will are to be obeyed and respected, under the forms of law—the principle that the people are everything while they speak under the law, and that they are nothing while they speak against or over and above the law. It was the peculiar boast of our ancestors that they brought with them from England the institutions of the mother country, and the chief of these institutions was the right of the people to be heard under the forms of law—not the right to licentious liberty, but that they should be allowed to govern themselves under forms of law. Our ancestors, sir, might have made a greater boast than that—that they not merely brought from the mother country the institutions of the mother country, but that they brought with them the capacity for free institutions—the power to live, not under licentious liberty, but under the law.

It is a peculiarity of the Anglo-Saxon race, and a peculiarity of the American people, that they are the only people who have demonstrated their capability for self-government—who are able to live under and in subjection to the law. There is no other race that can make their own laws, and then live under the laws they have themselves made.

The people of France have, four or five times during the present century, had the opportunity to govern themselves, but they have, in every instance, failed, because they have never been able to live under their own laws. Look at the miserable spectacle of the South American Republics. Do they not present a wretched parody on free institutions? They have never been able to govern themselves, because they have never learned to carry out the great principle of the people speaking only in obedience to law.

Why, sir, we have a memorable instance of the unwillingness of the American people to go beyond the law, in the conduct of the Puritan fathers of Massachusetts. After the battle of Lexington, while their blood was fevered with the wounds of battle—while their ears were daily vexed with British drums, beating their arrogant reveilles with every recurring sun, on Boston Common, what did they do? They applied to the Congress of the Confederacy, then assembled at Philadelphia, to ask their advice as to what step they should take in the modeling of their government. So tenaciously did they adhere to the law, so reluctant were they to violate the law, that even in that extremity, when their blood was up and the sword drawn, they paused, in the sincerity of their republican simplicity, and applied to the national Congress for advice. It was a sublime spectacle. Massachusetts nourished no factious disorganizers then. I say this was

a sublime spectacle. It showed what manner of men they were; it showed that they were men made of the right stuff—stern, earnest men—of intense convictions—bold, fearless, rugged as their own granite hills, but with a remarkable humility, simplicity, and conservatism of character, worthy of all admiration, above all praise. This conduct of the men of Massachusetts in the olden time furnishes an example that their descendants would not do amiss to follow.

This great principle, that the will of the people is only potential under the law, came under the consideration of the Supreme Court of the United States, in a case arising out of the memorable proceedings connected with the Dorr rebellion. In that case the question was as to the right of the people to speak outside the law, or whether they should be confined to speaking under and through the law. We are all familiar with the decision of the Supreme Court on that occasion. I refer to it for the purpose of alluding to the position of Mr. Webster on that occasion; a voice which Massachusetts should always be willing to hear, as his is the greatest name emblazoned on the pages of her history. Mr. Webster, in his argument in that great case, laid down the position which I have been contending for, that the voice of the people could only be heard through the regular forms of law. But I will let Mr. Webster speak for himself. Men of Massachusetts, listen to his great voice! though dead, he yet liveth:

Mr. Webster, in the Rhode Island case, said:

"This being so, then follow two other great principles of the American system:

"1. The first is, that the right of suffrage shall be guarded, protected, and secured against force and against fraud; and

"2. The second is, that its exercise shall be prescribed by previous law, its qualifications shall be prescribed by previous law, the time and place of its exercise shall be prescribed by previous law, and the manner of its exercise and under whose supervision (always sworn officers of the law) is to be prescribed. And then again the results are to be certified to the central power by some certain rule, by some known public officers, in some clear and definite form, to the end that two things may be done: first, that every man entitled to vote may vote; second, that his vote may be sent forward and counted, and so he may exercise his part of sovereignty in common with his fellow-citizens.

"In the exercise of political power through representatives we know nothing—we never have known anything, but such an exercise as should take place through the prescribed forms of law. When we depart from that we shall wander as widely from the American track as the pole is from the track of the sun."

These are noble words; they have the ring of true metal; they sound like Massachusetts of the olden time. Mr. Webster, on that occasion, took no new position. He only took that position which he struggled for throughout life; for if there was anything peculiar in the philosophy of Mr. Webster's statesmanship, it was his obedience to the law, inculcating, on all occasions, that the will of the people, though it is omnipotent, must be a will expressed under law, and by forms of law. A great truth; and it is in that aspect only that we can justly say, *Vox populi vox Dei*.

Now, I say this is no new principle applied to the Territory of Kansas, requiring the people of that Territory, when they elect a Delegate, to make their will known under the forms of law. The last Congress, taking the same position which the American people and the American statesmen have taken, at all times and upon all occasions, that the will of the people is to be expressed under forms of law, and utterly repudiating that licentious liberty which would trample all law under foot—the last Congress required that the people of Kansas, in declaring who should be their Delegate, must make their will known under forms of the law. This is the great principle upon which our theory of government rests: to lose it is perdition. When we divorce ourselves from it, we embrace anarchy and quick-recurring despotism—we canonize the sword, and prepare the way for ourselves and our posterity to pass through fire to the grim idols of civil discord.

I take it that those two propositions are as clear as the noonday sun. The delegateship from Kansas is a legal office, and the Delegate must have had his election under law. It is idle for any man to pretend to claim his seat here in violation of these principles.

The claim of the sitting Delegate [Mr. Whitfield] seems to me very plain—*prima facie*, at least. How does he claim a seat? He claims it under the certificate of the Governor, by virtue of an election held under the authority of the Legislature, which Territorial Legislature was elected in pursuance of an act of Congress, and deriving their authority to act from Congress—going back, therefore, to the fountain-head for his commission. His title, therefore, is what the lawyers call a good paper title, unexceptionable, unless it can be attacked by evidence outside of the record.

What are the objections raised to his title? The objections are twofold. First, the invalidity of the law under which he was elected; and, second, that he was elected by illegal votes. I will commence with the last first. The first point I make is, that this objection is not sufficiently specific. It does not comply with the act of 1851, which requires the contestant to "*specify particularly*" the grounds of his objections. It is not a compliance with that act to-day, that A B, or C D, got illegal votes. But the act of 1851, justly interpreted, requires that the names of the illegal voters should be set forth. If, then, the act of 1851 is to be binding and operative upon this question, that objection which Mr. Reeder raises is at an end, because it is not sufficiently specific; and I think, as I have said before, that we ought to be guided by that act. But if we are not to be guided by that act, we are not, therefore, to be guided by our own vain imaginings. We are to be guided, then, by parliamentary law—by the general law of Parliament; for there is a general law of Parliament, as Blackstone says, known but to few, but yet known to the Parliament—a law existing in precedents. What are the precedents on this subject? You will find, by referring to the Contested Election Cases, that this very point has been considered and determined. In the case of John C. Varnum, (page 112,) it was held that "the allegation that votes were given by persons not qualified to vote is defective, unless it show the names of such persons." Again: in the case of Easton *vs.* Scott, Delegate from Missouri, (Contested Elections, 272,) it was held that "a general averment in the notice contesting an election that the votes are illegal, is not sufficient, and the *names of the persons* excepted to must also be stated."

The objection was, as it is here, the illegality of votes. But the House, upon the adoption of the report of the committee, held that a general

specification was insufficient; and I hold, without referring further to authorities, that the general specification in this case is also insufficient.

But I do not rest upon this objection. I approach now the very marrow of the case on this point. What is the objection? That there were illegal votes given. Is it not obvious, from the slightest examination, that that objection has no validity in it, and that it is unnecessary to go into a minute examination of it? Why? Because it is not pretended that all the votes cast for Whitfield on that occasion were illegal votes. Well, suppose fifty, or one hundred, or five hundred, or even one thousand of the votes cast were illegal, that does not alter the case, unless those who did not vote, being equal in number to the legal voters actually voting, were kept away by force. If they were restrained by duress or reasonable apprehensions of violence from going to the polls, and the opposite party did go, then the election under those circumstances would be void.

But, the case does not stand on that ground. They did not stay away from apprehension of violence; they stayed away on the calculation that the law fixing the election was void. They placed their case on that cast, and they must stand the hazard of the die. They stayed away because they would not acknowledge the validity of the law. Therefore, let them stand to their own ground; which was, that the law was invalid, and not that the votes were illegal. There is nothing in this point which merits investigation.

I now approach what is considered the debatable ground in the case, but I think I see my way clear.

It is said that the election law under which Whitfield was elected was invalid, and this on two grounds: 1st, because the Legislature was elected by illegal votes; and, 2d, because they moved to Shawnee Mission.

In reference to the first ground, I object to the jurisdiction of this House to determine the validity of the election of the members to the Territorial Legislature, because I say that the Kansas bill appointed a special forum to determine that question—the Territorial Legislature itself. I do not say that the act expressly, in so many words, confers this power; but that it is a power naturally implied and necessarily flowing from the formation of a legislative power, in the absence of restraining words.

All of our parliamentary history in the mother country and in America, the practice of all of our Legislatures—Federal, State, and Territorial—without a single exception that I am aware of, shows that the invariable rule has been for every legislative body to judge of the returns and qualifications of its members. It is the common law of all our legislative bodies, and inheres in them as naturally as it does in a woman to say who shall be her husband. The authorities upon this subject are numerous. I annex a few:

"It is obvious that a power must be lodged somewhere to judge of the elections, returns, and qualifications of the members of each House composing the Legislature; for otherwise there would be no certainty as to who were legitimately chosen members: indeed, elections would become under such circumstances a mere mockery; and legislation the exercise of sovereignty by any self-constituted body. The only possible question on such a subject is as to the body in which such a power shall be lodged. If *lodged in any other than the legislative body itself*, its independence, its purity, and even its existence and action, may be destroyed, or put into imminent danger. No other body but itself can have the same motives to preserve and perpetuate these attributes; no other body can be so perpetually watchful to guard its own rights and privileges from infringement, to purify and vindicate its own character, and to preserve the rights and sustain the free choice of its constituents. *Accordingly, the power has always been lodged in the legislative body by the uniform practice of England and America.*"—*Story.*

"The whole of the law and custom of Parliament has its original from this one maxim, 'that whatever matter arises concerning either House of Parliament ought to be examined, discussed, and adjudged in that House to which it relates, *and not elsewhere.*' Hence, for instance, the Lords will not suffer the Commons to interfere in settling the election of a Peer of Scotland; the Commons will not allow the Lords to judge of the election of a burgess; nor will either House permit the subordinate courts of law to examine the merits of either case. But the maxims upon which they proceed, together with the method of proceeding, rest entirely in the breast of Parliament itself, and are not defined and ascertained by any particular stated laws."—2 *Blackstone, sec.* 163.

"The two Houses must decide according to the established law of Parliament."—*Ibid.*

"Each House is made the sole judge of the election, returns, and qualification of its members. The same power is vested in the British House of Commons, and in the Legislatures of the several States; and there is no other body known to the Constitution to which such a power might be safely intrusted. And as each House acts in these cases in a judicial character, its decisions, like the decisions of any other court of justice, ought to be regulated by known principles of law, and strictly adhered to for the sake of uniformity and certainty."—*Kent.*

Such being the common law of legislative bodies under our system, we must suppose that Congress acted under this knowledge, and intended to confer, and did confer, this power on the Territorial Legislature of Kansas. I assume this to be a fact, and I submit that the legality of the elections of the Territorial Legislature has been authoritatively passed upon by the appropriate and exclusive tribunal, and that it is not competent for us now to go into this question.

But it seems to me, of all objections, this is the last Governor Reeder should have raised. Did he not give certificates to two thirds of this very Territorial Legislature? It strikes me I have heard so. Why, sir, is it not the most extraordinary spectacle that we have ever been called upon to behold? Is there a spectacle in the history of party politics in the mother country, or in our own country, equal to it? Was not Governor Reeder the Governor of Kansas? Was he not bound by his oath—an oath registered in heaven—to exercise and perform his duty justly? And did he not, in the execution and performance of that duty, give certificates to two thirds of the members of the Kansas Legislature? Does it, then, lie in his mouth now to undo all that? Why, sir, he must have estimated the intelligence of members of this House very low indeed, if he thinks we can take the excuse from him, that he did not know then the illegality of this election, and that he only acquired the knowledge afterwards. Why and how was it that he did not know it? Was he not on the ground? Had he not cognizance of everything? Where was he that he did not know of the invasion of the Missouri army, of which we hear so much now? And if he did know these things which he now testifies to, he was a traitor to his country, to his mission, to history, in giving these men their certificates, knowing that they were not entitled to their seats. He should rather have dared every extremity, have retired under the guns of Fort Leavenworth, or perished by the swords of assassins, than thus

to have ignored his high trust. In charity, I must presume these things did not exist, but that Governor Reeder has since lent too facile an ear to the tales of inflamed partisans.

I submit that Governor Reeder is estopped from raising this question.

But it is said that Governor Reeder should not be estopped because he presents himself in a representative capacity, speaking for certain of the people of Kansas. But I submit that, whatever force there might be in this idea, abstractly, it has no application to Governor Reeder's case, because those who sent him did not act under the law, but in violation of the law; and by such irregular action cannot impute any representative character to him.

As to the second objection, it is said that the law is void, because the Territorial Legislature removed their sessions from Pawnee City to Shawnee Mission. At the outset it is evident that this is only a technical objection, and is not the mode in which I think we should consider the question. We should not look at a great question of government, affecting, as this consequentially does, the entire political and social fabric of a new and rising community, in the same way that a lawyer would a demurrer to a special plea in abatement. We should look at it in the light of high statesmanship. I say this, not because I deprecate investigation, for I do not. I think the subject will bear the closest and most technical scrutiny.

What is the objection to the removal of the session of the Legislature from Pawnee City to Shawnee Mission? If gentlemen will examine, they will find the law bearing on the case in five or six paragraphs, which I annex:

"SEC. 22. The persons thus elected to the Legislative Assembly shall meet at such place as the Governor shall appoint."

"SEC. 21. The legislative power of the Territory shall extend to all rightful subjects of legislation, consistent with the Constitution and the provisions of this act."

"SEC. 31. The seat of government is hereby located temporarily at Fort Leavenworth."—*Nebraska and Kansas Act.*

"SEC. 6. In the event that the Secretary of War shall deem it inconsistent with the interests of the military service to furnish a sufficient portion of the military buildings at Fort Leavenworth for the use of the territorial government of Kansas, the sum of twenty-five thousand dollars shall be, and in that contingency is hereby, appropriated for the erection of public buildings for the use of the Legislature of the Territory of Kansas, to be expended under the directions of the Governor of said Territory."—*Act of* 1854, *p.* 582.

"Appropriation of $25,000 for the continuance and erection of public buildings for use of the Legislature of Kansas, to be expended under the direction of the Governor: *Provided*, that said money, and the money heretofore appropriated, shall not be expended until the Legislature of said Territory shall have fixed by law the permanent seat of Government."—*Act of* 1855, *p.* 635.

It is admitted that the Legislature had a right to establish a permanent seat of government; that it had a right to make a temporary seat of government unless such action was inconsistent with the Kansas-Nebraska act. Inconsistency is inferred; and it is contended that Fort Leavenworth was the only place where the Legislature could meet other than where the Governor might assemble them until a permanent seat of government was established. But this, it strikes me, is a great misconception. Why? Gentlemen overlook this important fact, that there was a government in Kansas for a year before the Legislature met—a government intended by the act. The Governor was the Executive and the Legislature. He was the government until the Territorial Legislature was called together. He had a great mission confided to him. To him, as to some modern Pygmalion, was given the high trust to bid a beautiful, social fabric rise out of chaos. He had a noble mission given to him—a mission which has made the names of Solon and Lycurgus immortal. It was a mission which, if well performed, gave the actor a place in the pantheon of history; but if falsified, subjected him to the reprobation of impartial history.

The Governor, then, was the government of Kansas. He was as effectually the State as Louis XIV., when he uttered those imperial words, "I am the State." There was devolved on him the duty of causing a census of the inhabitants and qualified voters, appointing the times, places, and manner of holding the first elections, declaring the number of the members of the Legislature, to certifying as to who might appear to be elected, and appointing the time and place of the first meeting of the Legislature. He had the doing of everything necessary to launch this young ship of State on its great historical voyage. Well, sir, it was obligatory on him to locate his seat of government at Fort Leavenworth—for how long? Forever? No; but temporarily. What does *temporarily* mean? A *short time.* It was the duty of the Governor of Kansas in the beginning to locate the seat of government temporarily, "for a short time," at Fort Leavenworth. He did so; and the seat of government was there for some two months. Not finding proper accommodations there it was removed by him to the Shawnee Mission. Now, if, when the Territorial Legislature was assembled, and while they were passing a law for the removal of the seat of government from Pawnee City to Shawnee Mission, it was objected that they had no right to pass such law—that it would be inconsistent with the provision of the Kansas-Nebraska act, making Fort Leavenworth a temporary seat of government, would it not have been a satisfactory answer, if it were shown that the seat of government had been temporarily at Fort Leavenworth, that the act had been obeyed in that particular—that it had had its full efficacy? It seems to me this view puts an end to all difficulty.

The Kansas act designated Fort Leavenworth as the seat of government for a "short time;" that is, temporarily. The Governor did conform to the act in this particular. Fort Leavenworth was the seat of government for a short time, and thus the act having been obeyed, and had its active energy, was discharged, spent, complied with, exhausted, by the time the Legislature assembled, and they, therefore, in removing to Shawnee, did not trench on its provisions. I therefore put this part of the case upon the ground that the seat of government was at Fort Leavenworth for a "short time." There is nothing in that pretense, it strikes me, in a logical point of view.

But to advance: It will be found that there is an important modification made by Congress in reference to the seat of government being temporarily at Fort Leavenworth. That place was first designated. Congress afterwards appropriated money to provide accommodations for the Legislature there, in case the military buildings could

not, in the opinion of the Secretary of War, be spared for the use of the Territorial Legislature. Congress subsequently, at the next session, passed an act appropriating $25,000 additional to be expended in providing public buildings at the seat of government; but with a proviso, that no money should be expended except at the permanent seat of government. What, then, was the condition of things? The Legislature could not go to Fort Leavenworth, because the Secretary of War said there were no buildings there to spare, and Congress had subsequently passed an act forbidding the appropriation to be expended except at a permanent seat of government. Was not this a virtual abrogation of the clause establishing the seat of government "temporarily" at Fort Leavenworth?

Well, sir, when you go one step further you see that this very act gave the Governor power to call the Legislature together at "*such place*" as he should think proper. Does not that fact justify the construction which I put upon the act, that the seat of government was to be a short time at Fort Leavenworth, and that after that time it should be at such place as the Governor thought fit to call it together, and as the Legislature might then determine? It seems to me that that clause gives great force to my construction.

Again, in the same act, the Governor of Nebraska is authorized to call the Legislature for its "first session" at such place as he thinks proper. For its "first session!" An important difference. Why this difference between the two provisions, unless it was, that in the case of Kansas they intended to leave to the Legislature some latitude of action in case the Secretary of War should decide that there were no suitable buildings for their accommodation at Fort Leavenworth?

It is said that, in order to render legislation legal, the Legislature should remain at the seat of government. I repudiate that idea; I deny that the legislative authority is inoperative unless it is exercised where the seat of government is established. It is absurd in the nature of things, and it is contrary to all our practice and all our history. Even in England, where forms are so rigidly adhered to, Parliament, which regularly meets in London, has in some instances removed its sittings to other parts of England in cases of emergency. The Congress of the Confederation, upon two memorable occasions, left the city of Philadelphia, and continued its legislative functions at another point. Under the present Constitution, Congress met for years in Philadelphia. Instances in our State Legislatures are numerous. The Virginia Legislature, when the English army were present in great force, removed to Charlottesville. The Georgia Legislature were migratory in the Revolution; and, as the gentleman from Georgia [Mr. STEPHENS] said, a few days since, they went into North Carolina.

The principle contended for would vest the legislative power of the Government in the mere place. It is not so. It resides in the men composing the Legislature. I say there is nothing in the point. The law which governs this matter is the law of common sense, and that is, that it is the duty of the Legislature to meet at the seat of government, and not to leave it except for good cause. The matter of public convenience controls the subject. Now, sir, if you will take the trouble to look at the history of Kansas, you will find that the Territorial Legislature acted with the utmost discretion. The authority which I have in my possession shows that the place where they met was utterly unsuitable for that purpose. It had no press, no mail, even food and houses deficient, and the cholera was in their midst. Why, then, should they stay there? Why should they confine their sittings to Pawnee City? Was there any particular merit in Pawnee? I understand some gentlemen to say that Governor Reeder held lands there. I have no objection to Governor Reeder making as much money as he could; but is that a reason why the Legislature should confine its sessions there?

Well, sir, where did they go to? To the very place where Governor Reeder himself had gone after leaving Fort Leavenworth, the only suitable—almost the only possible—place, it is said, in the Territory. It seems to me, then, that there is nothing in the idea that the Territorial Legislature of Kansas was invalid because of the want of authority in the Legislature to change the place of meeting.

But, sir, we are not left alone to mere argument upon this subject. We have authority upon this point. The act of Congress gives to the President of the United States, in case of insurrection, power to determine which is the government. The President, in pursuance of that authority, has determined which is the government of Kansas; and, in so doing, necessarily recognized the validity of the laws of the Territorial Legislature.

The decision of the President on this subject is conclusive, and ought to be to preserve peace. If one branch of the government disregard the decision of another branch, and urges one portion of the people to rebel, and put at defiance the government recognized by that branch of the government to which, under the general law of the United States, has been deputed that authority, can we have peace? The Executive of Kansas, the courts of Kansas, the judges, and the Attorney General, all recognize the validity of the legislative authority. The Senate of the United States, one of the most august legislative tribunals in the world, has recognized the validity of this Territorial Legislature indirectly by the confirmation of the appointment of Governor Shannon, who had sustained that legislation. Not only that, but it is deducible from the decision of the Supreme Court of the United States that it would be found ready to recognize it. Why? Because, in the celebrated case of Luther *vs.* Borden—the Rhode Island case—the Supreme Court of the United States said it was for the President, under the act of Congress, to determine which was the valid power in the State. The same principle applies to a Territory; and therefore I say that, in this case, the Supreme Court would necessarily acquiesce in the decision of the President as one of the great coördinate branches of the Government on whom this great power was devolved.

Not only that; but we have the authority—if I understand the matter correctly—of the Committee on Territories, at the head of which the gentleman from Pennsylvania [Mr. GROW] stands, on this point. Did he not, the other day, introduce an act in this House to repeal certain laws of the Territory of Kansas? Why repeal them unless

they were valid laws? The gentleman from Indiana, [Mr. DUNN,] with that quickness of perception which characterizes him, at once saw the point.

Mr. GROW, (interrupting.) Will the gentleman from South Carolina allow me?

Mr. BOYCE. By-and-by. We have, I say, all these combinations of authority. Now, who, with this array of authorities, and array of reason, would deny the validity of that legislation?

So much for this branch of the case. Now, in regard to the claim of Governor Reeder. I listened with great attention, Mr. Speaker, to the report of the majority of the Committee of Elections, and I was very glad that I did not hear anything in it which seemed to look as if the majority were disposed to sustain Governor Reeder's claim to a seat here. I was glad of it, because I thought it indicated a sense of justice on the part of the majority of the committee which I would be sorry to see them want. It shows that, although party zeal may inflame men's minds, yet there is a point at which all but the worst men will pause. If this were not such a serious matter, it would be absolutely amusing to think of the idea of Governor Reeder claiming a seat on this floor under the terms by which he claims it. But it is, perhaps, too serious a matter to laugh at. It was said by some one of antiquity, that he wondered how two of the augurs who prophesied in the Roman temples, could meet each other without laughing in each others' faces. And so, if there be members on this floor who urge that Governor Reeder is entitled to a seat—I say if there be such, I do not know how they can meet and restrain their laughter.

It is not necessary to go beyond the very memorial which Reeder presented, to show that he has no claim to a seat here. On what ground does he object to the right of Whitfield on this floor? On two grounds—the invalidity of the law, and the illegality of voters. Put in a logical form, the argument is this: No man, says Reeder, can have a right as Delegate from Kansas unless he be elected under a valid electoral law: Whitfield was [illegible] oral law; therefore, he has no right to a seat. But, sir, there is a stern logic in truth which no man can overcome—which appeals to the hearts of all honest men; and which cannot be denied, refuted, or trodden down. Apply that formula to Governor Reeder's case. Take his own logic: "No man has a right to a seat as a Delegate from Kansas unless he was elected under a valid election law: Governor Reeder was not elected under any law; therefore, Governor Reeder has no right to a seat on this floor." It would seem, sir, that no member could advocate Governor Reeder's right to a seat on this floor. So far as it may be supposed to be necessary to investigate Mr. Whitfield's right to a seat, and to take the proper course to obtain testimony, I shall have no objection. But, sir, as to Governor Reeder's right, it is wasting time to talk about it. Therefore, so far as it may be designed to examine witnesses on this point, it would be a waste of time.

I recollect in English history, when Lord Clive had subjugated some unfortunate prince in India, whose palace, full of barbaric gold, he occupied, that, from his alarmed and supplicating prisoner he only took for his private use a million of dollars. Afterward, when he returned to England, and when an investigation into his conduct was called for, some member of the committee brought up this charge against him. Clive, only remembering how much more he could have taken if he had wished, could not contain himself, but springing to his feet, exclaimed, with all earnestness and sincerity, "My God, Mr. Chairman! when I think of what I could have taken, I am only astonished at my own moderation."

But, sir, I very much apprehend, that when the excitement of the occasion passes off, and reflection and calm thought takes its place, that Governor Reeder will not have the same consolation Lord Clive had. Unlike him, when he looks back to the time and the circumstances under which he claimed a seat here, he will not be able to say that he was astonished at his own moderation.

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