# KANSAS CONTESTED ELECTION.

## SPEECH

OF

# HON. A. H. STEPHENS, OF GEORGIA,

DELIVERED

IN THE HOUSE OF REPRESENTATIVES, MARCH 11, 1856,

*On the Resolution from the Committee of Elections asking for power to send for persons and papers in the Kansas Election case.*

Mr. STEPHENS said:

Mr. SPEAKER: It is not my desire to prolong this debate, nor do I expect to present any new points on the merits of the question before the House. I wish, and intend only in what I have to say, to enlarge upon and enforce some of the points made in the minority report on your table. I wish, too, in what I have to say, to have the ear of the House rather than the ear of the country; not that I do not want the country to hear what I say, but my main object is to address myself this morning particularly, especially, and emphatically, to the attention of the House and upon the questions before us. These, sir, are grave questions. They are questions involving principles of the first magnitude. They are questions of a judicial as well as political character of the highest order, far above the small consideration of which of two men shall have a seat as a Delegate here. In deciding them, we sit not as legislators, but as judges. Our decision upon this resolution, whatever it may be, will be an important precedent in the future history of this country. We should, therefore, not act without due deliberation, careful reflection, and a full understanding of the principles involved; and we should also be stripped, as far as possible, of all party bias and all political prejudice.

The proposition before us is one of an unusual character. It is for this House to exercise one of its extraordinary powers; that is, the power to send for persons and papers in a case before us, sitting as a court judging of the qualifications, election, and return of one who occupies a seat as a territorial Delegate upon this floor. Now, sir, I do not question the power of the House to exercise the authority invoked. The gentleman on my right from Pennsylvania, [Mr. KUNKEL,] in his remarks yesterday, spoke as if he thought those of us who oppose the resolution now pending denied the power to send for persons and papers in cases of contested elections; and he cited cases in which it has been done. On this point I wish to be distinctly understood; I do not deny the power in a proper case. Though no instance of its exercise has occurred since the act of Congress of 1851, regulating the mode of taking testimony in cases of contests for seats here; and no case need ever occur, as far as I can see, so long as that law remains on the statute-book. Its provisions are full and ample. But should the case occur where it may be necessary, in order to get proper and competent testimony to establish any fact that the House can legitimately and properly inquire into in such investigations, to send for persons and papers, I do not question their power to do it. What I maintain is, that the power can be rightfully exercised only when it is done to procure testimony which is in itself relevant, pertinent, competent, and admissible, to prove such facts as the House can properly consider and look into. Nor do I wish to be understood as being inclined in the slightest degree to oppose investigation in this case to the fullest extent that can be properly gone into by us. Within these limits, I am in favor of the House taking the widest range and greatest latitude of investigation. But is the question before us such a one as would allow a hearing of the testimony sought to be obtained, even if it were at hand? I think it is not. It is to this point I now speak.

What, sir, is the character of the testimony which is asked to be sent for? And what is the object of it if obtained? Sift the whole matter—get rid of the rubbish—go through both reports; and does not the real gist of this application amount to this: The memorialist wishes witnesses sent for to prove the *invalidity* of the law of a Territory of the United States, under which a sitting Delegate was elected, on the ground that the members of the Legislative Assembly of that Territory which passed it were not properly and legally elected. Is not this a fair statement of the proposition as it now stands before us? It was to get this clear view of its merits before the House that I moved, when it was here before, to refer the proposition back to the committee, to have their reasons and grounds for making it reported to the House. We now have their reasons; we now know what is their object; and have I not stated it fully and fairly? Then, sir, is the

testimony competent if it were here? Mark you; we sit as a court. Would it be admissible in the trial of any cause in any court—in a criminal case, for instance—to permit a party to offer evidence to impeach the validity of the law under which the accused was arraigned, by showing that the Legislature that passed the law was not properly elected and legally constituted? The *validity* of a law may be inquired into and judged of by a court, on some grounds which might be stated. The constitutionality of a law may be decided upon—that I do not question—but never upon this ground. The rules governing all courts in passing upon laws and construing statutes, I need not here state. But no court, in judging of the *validity* of a statute on any of the grounds they take cognizance of, will ever allow an inquiry into the legality of the election of the members of the Legislature that passed it. No case can be found of this character in the whole history of civil jurisprudence.

The reason courts of law will not allow such inquiries to be made before them is, that the decision of all such questions properly belongs to another tribunal—to the Houses respectively of the law-making power itself; and their decision, when made, is considered as the judgment of a court of competent jurisdiction, which no other court will inquire into. And this House, sitting as a court as it now does, cannot inquire into any fact invalidating or impeaching the validity of any law either of the United States, a State, or Territory, which any other court could not inquire into. I assert this as a principle that cannot be successfully assailed. I call upon gentlemen who occupy a contrary position to show a case, if they can, in this or any other country, where the validity of a law in any court of justice was ever allowed to be impeached by inquiring into the legality of the election of the members of the Legislature that passed it. That is what we are now called upon to do; and that is what I assert we have no right to do. Why, sir, it is a fundamental maxim of the English law, laid down by Sir Edward Coke, illustrated by Sir William Blackstone, and enforced by every writer on the subject, both English and American, that it is an inherent right of the High Court of Parliament—from which, as a model, all our legislative parliamentary bodies have sprung—to settle for itself all questions touching its own organization; and when such questions are thus settled, they cannot be inquired into elsewhere.

What is the question now before us? Under that clause of the Constitution which secures to this House the right and power to judge of the qualifications, elections, and returns of those who may be entitled to hold seats on this floor, we have brought to our consideration the right of the sitting Delegate of the Territory of Kansas. into his qualifications, election, and return, we have full power to go, and to determine all questions pertaining either to his qualifications, his election, or return. But in doing this, we are asked to take a step further, and to judge not only of his election, return, and qualifications, but to go into an investigation and judge of the qualifications, elections, and returns of the members of the Legislative Assembly of Kansas, which passed the law under which it is admitted he was elected. I say, sir, according to the principle which I have laid down, no case in the parliamentary history of England, from which all our institutions have sprung, or in this country, can be adduced to justify or warrant it. I beg leave to call attention to some authority on this point. I read from Sir Edward Coke, (4 Inst., p. 15;) in speaking of the High Court of Parliament, he says:

"And as every court of justice hath laws and customs for its direction, some by the common law, some by the civil and common law, some by peculiar laws and customs, &c., so *the High Court of Parliament, suis proprüis legibus et consuetudinibus subsistit.* It is *lex et consuetudo parliamenti.*

"And this is the reason that the judges ought not to give any opinion of a matter of Parliament, because is not to be decided by the common laws, but *secundum legem et consuetudinem parliamenti;* and so the judges in divers parliaments have confessed."

On any matter relating to the constitution, organization, rights or privileges of the members of the House of Lords, the Commons cannot interfere. In like matters, relating to the organization of the House of Commons, the Lords cannot interfere. No other court in the kingdom can interfere. The highest court of the realm—the King with the prerogatives of the Crown—cannot interfere. On all these matters each House is a court with full, ample, absolute jurisdiction over the whole subject. And when they are determined by that court, with full and competent jurisdiction over the subject-matter, its judgment cannot be inquired into by any other tribunal. Sir Edward Coke says further, on page 50, same volume:

"Thus much have we thought good to set down concerning knights, citizens, and burgesses; because much time is spent in Parliament concerning the right of elections, &c., which might be more profitably employed *pro bono publico.*"

This latter remark is not very inapplicable to our condition. But the author goes on:

"Now, to treat more in particular (as it hath been desired) of the laws, customs, liberties, and privileges of this *court* of Parliament, which are the very heart-strings of the Commonwealth," * * * "would take up a whole volume of itself. Certain it is, as hath been said, that *curia parliamenti suis propriis legibus subsistit.*"

And he goes on to say that it does not belong to the Justices of England, or the Barons of the exchequer, to judge of any of these matters coming within the jurisdiction of this court of Parliament. Now, sir, I invite attention to what Sir William Blackstone says on this subject in his Commentaries, with which all of us ought to be familiar. After referring to these remarks of Coke, and affirming them, he says, in vol. I. p. 163:

"It will be sufficient to observe that 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."

All such matters are to be decided by the Houses of Parliament, respectively, not arbitrarily, but according to the usages, customs, and precedents in like cases, which constitute the *lex parliamenti*, or law of Parliament; but when decided, whether right or wrong, there is no power to reverse the decision. Just so, sir, with us; when this House passes judgments upon the qualifications or election of a member here, it is final and conclusive. Here the matter is to be examined, discussed, and *adjudged;* and, when

adjudged, it cannot be inquired into elsewhere. So with every legislative body. On this point, I now call the attention of the House to what Mr. Justice Story says upon the same subject in speaking of this clause, in his treatise upon the Constitution of the United States. After quoting the clause of the Constitution which provides that each House shall judge of the qualifications, elections, and returns of its own members, he says, in vol. II, p. 295.

"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 perpetuate and preserve 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.*"

If more authority is desired on this point, I refer to Kent's Commentaries, Tucker's, and to all writers on the subject. It is the uniform practice of this country, adopted from England, to leave the adjudication of all questions touching the elections and returns of members of legislative bodies to those bodies themselves. The principle runs through all our State Legislatures. It lies at the foundation of all our representative institutions. It is recognized even in all our voluntary associations and conventions, whether civil or ecclesiastical. There can be no efficient political legislative organization without it; and when the legislative body, to which the question belongs, has made its decision, there is no appeal to any other power. It is a final judgment rendered. It is so with the decision of this House on such questions. It is so with the decisions of the Senate on like questions. It is so with the State Legislatures, and it should be so in Kansas. If the election of any members of the Legislature there, either of the House or the Council, was illegal, the proper place for an inquiry into it was there. And if any person wishing to contest those elections failed to present their case there before the proper tribunal, they cannot come here to do it. If we inquire now into the legality of those elections for the purpose of disregarding or invalidating the law passed by the Legislature under which the sitting Delegate was elected, why may we not inquire into the validity of the law of Congress organizing that territorial government, upon the grounds that some of the members of this House who voted for it in the last Congress were not properly elected? Or on the ground that some of the Senators who voted for it were chosen by members of State Legislatures not properly elected? And, this, too on the still further ground that some of the sheriffs or returning officers in the State elections for members of the Legislature perhaps were not legally elected or qualified? If you open the door to such an investigation as that now sought, where are we to stop? Who can see the end of this beginning? Whose vision can take in the wide extent of that vast region of uncertainty, insecurity, abounding in hidden unseen dangers and perils, your course may lead to? I hold, sir, that if a law should be passed by the votes of members now upon this floor who may hereafter be turned out because of the illegality of their election, the validity of such law so passed can never be inquired into either by any court of the land, or even by ourselves, on the ground of its having been so passed. And though a law may be passed in a State or Territorial Legislature by the votes of members who may afterwards be turned out, because of the illegality of their election, yet the validity of such a law can never be questioned in consequence of that fact. But if the principle, now advocated for the first time in our history, shall be established, and the precedent be followed up, you unhinge all legislation; you bring everything like law amongst us into uncertainty, doubt, and confusion; you cut the "heart-strings," as Coke says, of our whole system of Government; you take the first step, and, if it be pursued, that which will prove to be a fatal step towards political and social anarchy. I enter my protest here this day against it.

I repeat, sir, these are grave questions. I give you, Mr. Speaker, and the members of the House, as my fellow-judges in this matter, my views of the rules which should govern us in the judgment we are to render in this case. Weigh them as they deserve, and give them such consideration as they merit.

But, the gentleman at my right, [Mr. KUNKEL,] who addressed us yesterday, asked, if the allegations be true as here made, that a set of usurpers assumed to be the Legislature of the Territory, are we to be bound by that assumption? I say to him, no. The countenance of any usurpation and the exercise of prerogatives, not duly belonging to any body of men, even ourselves, is what I am against. There must be something more than a bare assumption of legislative authority to entitle the acts of any body of men to be recognized as emanating from a body clothed with power to make laws. The law-making power of this country must rest upon some better showing than bare assumption. It must come into being in the proper and legally constituted way. This is well understood in America. We are not by any means legitimists, in the European sense of the word; but we recognize that government as legitimate which springs into existence by the will of the people, as expressed under the forms of law passed by the regularly-constituted authority of the land. A government so presenting itself we regard not only as the government of the people *de facto*, but *de jure*.

And now, sir, how is it with regard to this Legislature of Kansas? We have a law of Congress authorizing it. It is familiar to all. That law organized the Territory of Kansas; that law permitted the people there, under the direction of the Governor, to hold elections for members of the Territorial Legislature, with power to pass laws regulating the election of a Delegate to Congress. This organic law of the Territory emanated from ourselves. This law we are bound to recognize. A Governor was appointed in pursuance of it. The Governor, the judiciary, the whole machinery of the government there was legally constituted by ourselves, by Congress; and the forms prescribed, through which this territorial body exercising legislative functions came into existence, emanated from the highest authority known to us under the Constitution. These facts are admitted. No person questions the public law creating the Territorial Legislature. Nobody questions the legal appointment of Governor

Reeder. Nobody questions the proclamation he issued to hold an election on the 30th of March, 1855, for a Territorial Legislature in pursuance of our law. These are all admitted facts. If anything irregular, then, attended the election of its members, it presented a question to be inquired into and adjudged by the proper authority just as similar matters are inquired into and settled in other elections of legislative bodies—just as we inquire into such matters pertaining to our own organization. When, therefore, it is admitted that an election for members of the Territorial Legislature was held in Kansas on the 30th of March, as stated in pursuance of law, under the direction of the legally-constituted authorities of the country, we are bound to recognize the body so coming into life as legitimate in its origin. It certainly did not spring from usurpation; nor does it rest its claims of legitimacy upon bare assumption. It had its birth in a legal way.

But here comes the argument from the other side that it was spurious, because the members who constituted it were not properly elected in conformity to the laws under which it was created. Well, sir, that was a judicial question to be settled and determined by the *lex parliamenti*, according to the authorities I have cited, and the universal practice of this country in like cases. It does not come within the purview of the powers of this House to settle that question. It was an inherent right in the Houses of the Kansas Legislature to judge and decide upon the qualifications, elections, and returns of their own members respectively. This power, says Story, "by universal practice in England and in this country, is lodged in every legislative body to determine for itself. It is, indeed, one of the vital functions of the organism. The question was a judicial one, which somebody was to determine; and what body was it? The courts of the country (say all the authorities) cannot take cognizance of it. Governor Reeder, as it appears from the papers before us, insisted that it was his right, under the law empowering him to prescribe the rules governing the election, to decide it; and the two Houses of the Legislature insisted that it was their parliamentary and legal right to decide it. My opinion is, that the Houses were correct in their position. But, be that as it may, the merits of the question before us are not affected by it either way; for, if Reeder, as Governor, had the right, it is an admitted fact that, out of twenty-six members composing the House of Representatives of Kansas, he, as Governor, claiming the right to judge of this matter, did *judicially*, and not *ministerially*, award certificates to seventeen of these members, as having been duly and properly elected on the 30th March, in pursuance of his proclamation duly and legally made. And like certificates he gave to ten out of the thirteen members composing the Council. Thus a large majority of both branches of the Legislature were *adjudged* by him to be duly chosen and returned members thereof—members whose election, he now says, was carried by an invasion, and that they held the places which he assigned them by nothing but usurpation! I am not now upon the question of his estoppel; I am considering the question of his right to judge, and, in that view, the effect of his judicial judgment rendered in the case. Keep in mind that, upon every question before any tribunal which has the sole and absolute right to judge in the matter, when the final judgment is rendered, it is forever conclusive upon the points embraced in it. Elections were held in May, by order of the Governor, to fill the places of the nine members and six councilmen rejected by him at the March election. To those elected in May to fill those places he gave like certificates. Every man who took his seat in the Legislature at its organization was adjudged and certified by the Governor to be entitled to it. The Legislature, therefore, if the Governor had the right to judge, was legitimately and legally constituted; and their claims to be recognized as the proper law-making power of the Territory rests not upon bare assumption or usurpation. And, on the other hand, if the Houses had the right to settle these questions touching their organization, the result is the same; for they, too, settled the question the same way as to the original seventeen members of the House and ten councilmen, and their judgment must be conclusive upon the fact that a majority of both Houses were properly constituted. In either view, therefore, we may take as to the hands in which this power of judging was lodged, the question is a closed one; it is *res adjudicatæ*, and we have no right now to open it. I repeat, I am not now upon the point of Reeder's individual or personal estoppel in law. What I affirm is, that this question, from admitted facts, is closed; judgment has been rendered, and there is no appellate jurisdiction in this House, nor in any other tribunal. We can no more open this question than we can that of the proper organization of any State Legislature.

The gentleman on my right to whom I have alluded, [Mr. KUNKEL,] said, in the course of his remarks yesterday, that we, this House, have got a right to go, and have often gone, into an inquiry into the validity of the laws of the States in judging of elections to this House. Sir, I do not deny this. I admit that we may pass upon and judge of the validity of any law coming before us in such cases, just as any court may do, and upon just such grounds and such grounds only as courts may properly do. The grounds upon which this inquiry is sought courts will never inquire into, and we have no right to do it. There are some matters touching legislation and the rules governing the law-making power which must be considered as closed; and when judgment is rendered in them it must stand until the great day of judgment.

Mr. SIMMONS. Will the gentleman allow me to ask him a question?

Mr. STEPHENS. With pleasure.

Mr. SIMMONS. I ask whether a judgment is valid for any purpose whatever, until it be shown that the party in whose name it is is the true party?

Mr. STEPHENS. To ascertain the true and proper party is part of the proceedings before judgment. That is one of the matters to be settled by the judgment, and when once settled by judgment finally rendered by a court of competent jurisdiction over the subject-matter, it is settled forever. Whether the party in whose favor it be rendered be the true party or not, cannot be inquired into afterwards or elsewhere. And so in this instance persons presented themselves as the

elected representatives of the people of Kansas, in their Legislature. They presented their credentials: the Governor claiming the right to pass judgment judicially in their favor, certified that they were the proper and true party. They then took up their own credentials in the usual way of Legislatures, and came to a similar judgment, as to a large majority in both Houses. That judgment, viewed either way you please, is final on that question. That is my answer to the gentleman.

But the gentleman from Pennsylvania, in speaking of the inconsistency of Governor Reeder's course—for even he seemed ready to admit his great inconsistencies——

Mr. KUNKEL. No, sir; I said it was not necessary to my argument to prove that Governor Reeder was consistent.

Mr. STEPHENS. And the gentleman added that he could not speak for his consistency. Now, what I was about to submit to the House is, whether anybody can defend his course? I intend to speak of the facts as they are detailed before us in these reports, and as we know them to be. He was duly appointed Governor of Kansas. He accepted the trust and was in office, when, according to his own showing, the election which took place in that Territory on the 30th of March was held in pursuance of his own proclamation. Twenty-six members of the House of Representatives, and thirteen members of the Legislative Council, were elected. These were the numbers of which the Houses were respectively composed. He assumed the right to judge of the election returns of these members. The rules governing the elections were prescribed by himself, and very rigid ones they were. The judges of elections were required not to allow any non-resident to vote, and to take an oath that they would not. These returns were submitted to him, and he examined them. He ratified the returns, and gave certificates to seventeen members of the House, and rejected but nine. He gave certificates to ten members of the Council, and rejected three. He ordered a new election to be held, to fill the places of those vacated by himself, but the two Houses, as I have stated, assuming the right to judge of the qualifications of their own members after they met, decided in favor of those who had the highest number of votes on the first election.

But, sir, it was three months and upwards from the holding of this March election until the Legislature met. He then said nothing of what we now hear of the manner of this election. But he, as Governor, upon being notified that they were organized in obedience to his own call, addressed them as the legally-assembled and constituted Legislature of the Territory. As late as the 21st of July, *after the Houses had acted upon the subject of the contested seats in the cases of the nine members and three councilmen rejected by him*, he again addressed them in a message, and in it he says nothing of an invasion. He says nothing of subjugation—nothing of "martial music" and "artillery"—nothing of "border ruffianism"—*nothing of their action in the cases of contest referred to.* But he addressed them *then* as the legally-constituted Legislature of the Territory. If, therefore, Governor Reeder had the right to judge of the election returns, as he claimed, was not his *acquiescence* in the decision of the Houses on matters pertaining to their organization an *affirmance* on his part of their *judgment* in those cases? And at his instance shall we now go behind, not only the judgment of the Houses of the Legislature on these questions, but his affirmance of that judgment by an official act of Governor Reeder himself?

But, sir, I wish to notice some other matters that have dropped in this debate. Another gentleman from Pennsylvania, on my right, [Mr. CAMPBELL,] gave as a reason why this investigation should be gone into—why we should set aside Governor Reeder's own judgment in this case—that he was a gentleman of high character—a man of worth, standing high in the estimation of the people of his State, and that this investigation was due him as such. Well, Mr. Speaker, I say to the gentleman that, if what Governor Reeder now says be really true, he certainly has forfeited and lost all just claims he may have had to the high and exalted opinions of his countrymen; he certainly shows himself guilty of the most flagrant and gross dereliction of duty that any public officer in the whole history of the country was ever guilty of. The gentleman from Pennsylvania must admit that if the Territory committed to his chargewas invaded by an armed force, by which the legally-qualified voters of the Territory were driven from the polls in every district save one, and the polls seized by non-residents, who by violence carried the election—if that be true which Governor Reeder now affirms to be true—if that took place which he now says did take place, and he silently sat by and saw all, and afterwards recognized these invading hordes as the duly-elected Legislature of the people, as he certainly did, then he was guilty of a base disregard of his official duty, without a parallel in our history, and one that no depth of infamy and degradation would be too low to assign him to, for.

Mr. CAMPBELL, of Pennsylvania. If the gentleman from Georgia will allow me, I desire to ask him, if these things can be substantiated, why deny to Governor Reeder this investigation? Governor Reeder is ready to prove that his course was consistent, honorable, and proper. I ask that the gentleman will hear him, and then decide.

Mr. STEPHENS. Governor Reeder can never show that his course was proper and becoming an officer in his position, if what he states be true. I am not for this investigation, because I do not think it is right to make it. I do not regard it as a part of my duty to make improper investigation to sustain a man who, by his own statement, shows himself to have been guilty of a gross disregard of his official duty. So far as he is concerned, his showing makes no favor with me. When a man comes here, and on his own statement, out of his own mouth, makes it appear, if his statement is to be credited, that he was guilty of the grossest neglect of duty, it does not commend him to my favor. Such statements or calls for investigation have not much force in inducing me to follow his example in the commission of a wrong, or in disregarding my official duty. But what I was about to say was, that if his statement be true, he is not now entitled to that high encomium which the gentleman pronounced upon him. If he, as Governor of a Territory, per-

mitted such unheard-of outrages to be committed there without a word of complaint, but giving his sanction to the whole of them—which, upon his own showing, you must admit he did—then he is not entitled to that high position which the gentleman says he occupied in the estimation of the people of Pennsylvania before he left that State.

It may be true that Governor Reeder, while in Pennsylvania, was a gentleman of good character and high standing. That does not show that he is entitled to be held in the same estimation now. His course, by which he may have justly forfeited that character, we have before us. Neither is his present position, contrasted with his former, an isolated or singular one. A gentleman once occupied a position in this country second to no one then living. For thirty-six ballots he held the votes of this House, in even balance, for the Chief Magistracy of the country. He stood shoulder to shoulder with a head quite as high as that of Jefferson himself. Who stood higher then than he? Who shone brighter then than these two men? Twin-brothers in politics, as two morning stars they appeared rising together in the day-dawn of our nation's glory; but disappointed hope, and blasted ambition, caused Aaron Burr—like Lucifer—like the archangel, standing high in heaven, next to the Throne itself, to fall, and from his fall to rise no more. It may be so with Governor Reeder. A man he may have been of high character, fair fame, and high ambition; but his ambition has "overleaped itself," and fallen on the other side. History, I dare say, will assign him his true position. There let him rest. We are to deal with the facts as they appear before us.

The gentleman from Ohio, [Mr. BINGHAM,] the other day, said the legislation of the Territory of Kansas was null and void upon its face. He wished no better evidence of the invalidity of the laws than that which is to be found upon their inspection. He read one of their acts, which makes it penal for any individual to steal a slave, or to induce him to run away from his master, or to harbor such slave. Such a code he pronounced more infamous than that of Draco, and asked whether we were bound to recognize as valid any such law as this, and some others he mentioned. Why, sir, there is a law in the gentleman's own State, Ohio, that punishes any person who entices an apprentice to run away, or who harbors him after he has run away. Whoever harbors an apprentice escaping from the tyranny, perhaps, of his master—an orphan boy, it may be—whoever gives him bread in his wanderings—as the gentleman was very pathetic, I must follow him—under the Ohio law is subject to indictment and punishment. The man that would give one, thus in distress, shelter and a cup of water——

Mr. BINGHAM. Did Ohio law make it a felony?

Mr. STEPHENS. No, sir; but it makes it a crime. The only difference between your law and that of Kansas is as to the grade of crime and the extent of punishment.

Mr. BINGHAM. What law does the gentleman refer to?

Mr. STEPHENS. I refer to the law in reference to apprentices, and the enticing them away. I am not complaining of the law, but only showing how the gentleman's declamation can be answered. Every community, sir, must judge for itself in all such cases, both as to the grade of the crime and the punishment to be inflicted. But to the gentleman, in this case, I would say as Scotland's poet said to the "unco guid" of his day—

> "Oh, ye who are so good yourself,
> So pious and so holy;
> Ye've nought to do but mark and tell
> Your neighbor's faults and folly.
>
> * * * * * *
>
> "Ye see your state with theirs compared,
> And shudder at the niffer;
> But, cast a moment's fair regard,
> What makes the mighty differ!"

It is only on the point as to the extent of the punishment that the Ohio laws, in this instance, differ from those of Kansas. Now what I maintain is, that if any of these laws of the Territory be not good laws or wise laws suited to the people there, let them be changed by the people in the regular legislative way. We belong, sir, to a government of law; and it is the duty of every good citizen to sustain the law as it exists, until it is changed and modified by the proper authority, or until he is ready for revolution. What characterizes the United States and distinguishes us above all other nations more distinctively than this—that here we have a government of laws emanating from those who are controlled and governed by written constitutions? If our laws are wrong we have but to go to the polls—to the ballot-box—to have them amended, corrected, and suited to the public wants. To the ballot-box, and not the cartridge-box, the people should go to settle questions touching the character of their laws. "*Inter arma silent leges.*" If, by the Kansas law regulating the election of a Delegate on this floor, any person is allowed to vote who were not entitled to vote under their organic law, and any such person in the late election did so vote, and Governor Reeder had gone into the contest, and had come here showing us that such illegal and improper votes had been polled for the sitting member, and that he had received a majority of the legal votes of the Territory, I should not have hesitated in doing what I could to give him the seat. But he did no such thing. He and his friends set themselves up in opposition to the law, denied its force and validity, and are now attempting to overthrow the only government and system of laws in that Territory to which the people can look with confidence and security for the protection of their lives, liberty, and property.

This clamor, sir, about a majority of the people of Kansas being opposed to General Whitfield's election here will not do: it will not bear the test of notorious facts. If it were so, why had he no competitor at the polls? Where was Reeder that he did not show his relative strength with him before the people? This is not the first time that General Whitfield was a candidate before them. He was elected in November, 1854. At that time he had competition. I have before me the official poll made out and entered upon the executive minutes by Governor Reeder himself. Here are the entries:

"*December* 4, 1854.—The judges of the several election districts made return of the votes polled at the election held on the 29th day of November last, for Delegate to the House of Representatives of the United States, from which it

appeared that the votes in the said several districts were as follows:

| Districts. | J. W. Whitfield received— | J. A. Whitfield received— | R. P. Flenniken received— | Jno. B. Chapman received— | Charles Robinson received— | S. C. Pomroy received— | P. Blood received— | W. L. Garrison received— |
|---|---|---|---|---|---|---|---|---|
| First | 46 | 188 | 51 | 9 | 2 | 2 | 1 | 1 |
| Second | 235 | 20 | 6 | - | - | - | - | - |
| Third | 40 | - | 7 | 1 | - | - | - | - |
| Fourth | 140 | 21 | - | - | - | - | - | - |
| Fifth | 63 | 4 | 15 | - | - | - | - | - |
| Sixth | 105 | - | - | - | - | - | - | - |
| Seventh | 597 | - | 7 | - | - | - | - | - |
| Eighth | 16 | - | - | - | - | - | - | - |
| Ninth | 9 | - | 31 | - | - | - | - | - |
| Tenth | 2 | 6 | 29 | - | - | - | - | - |
| Eleventh | 237 | - | 3 | 5 | - | - | - | - |
| Twelfth | 31 | 9 | - | 1 | - | - | - | - |
| Thirteenth | 69 | - | 1 | - | - | - | - | - |
| Fourteenth | 130 | - | 23 | - | - | - | - | - |
| Fifteenth | 267 | - | 39 | - | - | - | - | - |
| Sixteenth | 223 | - | 89 | - | - | - | - | - |
| Seventeenth | 49 | - | 13 | - | - | - | - | - |
| | 2,258 | 248 | 305 | 16 | 2 | 2 | 1 | 1 |

"*December* 5, 1854.—On examining and collating the returns, J. W. Whitfield is declared by the Governor to be duly elected Delegate to the House of Representatives of the United States; and same day certificate of the Governor, under the seal of the Territory, issued to said J. W. Whitfield of his election."

Here the number of votes appear officially and in full, in all the election districts in that Territory, numbering from one to seventeen. There is the poll, examine it—for J. W. Whitfield, 2,258; for J. A. Whitfield, which was by mistake for his name, 248; making his real, entire vote 2,506; and for Flenniken, his highest opponent, only 305. The whole number of votes polled were 2,833; so that Whitfield in that contest received more than eight times the number of votes polled for Flenniken, his highest opponent, who was the candidate of Reeder and his party, and who now pretend to be a majority in the Territory. At the last election Whitfield got 2,936 votes, without opposition.

Mr. CRAIGE. What has become of Flenniken?

Mr. STEPHENS. Flenniken flunked! The last I heard of him he was on his way back east, where he came from. [Great laughter and applause upon the floor and in the galleries.] He has never been in the Territory since, as I have been informed.

Mr. Speaker, I do not think that the investigation now sought is right, for the reasons I have given. I am opposed to it *in toto*. But if it is to be gone into, would it not be much better to send out a commission, as is suggested by the minority of the Committee of Elections? Nay, I go further. Would it not be much better to send a committee of the House—the Committee of Elections themselves, if you please? If we are to go through with this exceedingly complicated affair, would it not be better for the committee to go to the hundreds and thousands of witnesses that may have to be examined, than to bring such a "cloud" of them to the committee?—as the "mountain cannot conveniently come to Mohammed, is it not better for Mohammed to go to the mountain?" Send the committee out there if a full investigation is what you are determined on, with the same power in the premises; and let them make their investigations upon the "battle grounds," if they are to be found in the vicinage of the voters. If you are going a-fishing for all the facts in real earnest, why not make a complete drag of it at once? Send out the arms of your net far and wide, and make a thorough haul over the whole broad territory, and bring to land every thing, whether fish, eel, or serpent?

But, Mr. Speaker, in conclusion, I am against this resolution for another reason. I am against it because it is but a part and parcel of a policy now pursued by some men in Kansas and elsewhere, which cannot be looked upon in any other light than revolutionary in its character. Gentlemen cannot be mistaken in this particular. There are men in Kansas who seem to have resolved on rebellion. They were among the original enemies of the Kansas bill. When their leaders were beaten in this House and in the Senate, and that great measure of sectional and national equality was carried against and over their votes, they betook themselves to new schemes to prevent its potent influence in allaying agitation, and to make it the occasion of continued strife and discord. The Territory was not left to settlement by the people of all the States equally and fairly, as the laws of climate, soil, locality, production, and population might determine; but emigrants from distant points were stimulated, if not hired, to go there with no purpose but mischief. Their main object was not to become *bona fide* settlers, but to control the first elections. In this they were beaten, as fully appears in the present sitting Delegate's first election which I have shown. They were also beaten in the first election of members to the Legislature, as appears from the certificates before alluded to, given to the members of that body by Governor Reeder himself. And now, disappointed, discontented, and disaffected at these series of defeats in their designs and objects, they are about to betake themselves to the last resort of malcontents—a trial of physical force. Arms are collected—fortifications are built—munitions of war are provided—Sharpe's rifles are procured—volunteers are invoked—aid and assistance from a distance are looked for—money is raised, and hostility against the existing legally-constituted authorities is openly avowed. The telegraphic dispatches of this morning announce that the government proclaimed by the Topeka convention is to go into operation at all hazards. All these movements are lawless, insubordinate, and insurrectionary. Governor Reeder may be considered as at the head of them, the commander-in-chief of the whole of them; and his movement here can but be viewed as a part of his general plan of operations. Any countenance he may seem to receive, therefore, at our hands, can but favor his ulterior designs. This must be all he looks for. He cannot expect to be voted a seat on this floor.

Now, sir, let us pause and reflect. How far in this business do you intend to proceed? Are you going to back those deluded men in Kansas whom Governor Reeder represents here, while they stand with arms in their hands? We see by the President's proclamation that he intends that the laws of that Territory shall be executed, as it is

his duty to do. Now, which side are you going to take, when Sharpe's rifles and Federal artillery are brought in array against each other in this threatened conflict? Ought we to do anything calculated to inspirit or encourage any misguided portion of the people of this country to put themselves in open, hostile, armed resistance to the laws? What is this but treason, as expounded by our courts? Our history, as a united people, dates back for more than seventy years; and no conviction for this highest crime known to society has ever, as yet, marred that history. No nation perhaps ever existed in the world so long, of which the same can be said. I feel the prouder of my country because it is so; and long may the day be hence before, if ever, such a case shall occur. I trust that my eyes, at least, will never see the light of that day when American soil shall be stained with a traitor's blood. Some persons in Kansas may have, under their delusion, gone very far; but I trust that the *locus penitentia* in every such heart will be found before the last extreme step be taken. Let us be careful, at any rate, that we do nothing here in this matter which may tend to encourage them to take that step. Let it be our aim and our object rather to "pour oil on the troubled waters." Ours is a government of laws. Let us, then, in our action in this case, set a good example, not only to the people of Kansas, but to the whole country, by adhering strictly ourselves to the principles and precepts of the laws established for the government of all our deliberations and proceedings here. This investigation proposes to lead us into an inquiry into subjects over which I think I have clearly shown we have no proper or legitimate jurisdiction. Let us not, then, assume powers and prerogatives which do not belong to us, in our attempting to see if another body has not done it; and, particularly, let us not do it for bare party purposes, when the only effect of it may be to put in hazard the peace and quiet of the country. These, sir, are my views and opinions upon the proposition before us.

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