

Sec. 20. All votes given at the election to be valid.

Sec. 21 (and last.) Provides a formula for the returns.

Gov. Geary's Veto Message—The Census Act should be Submitted to the People.

GENTLEMEN OF THE COUNCIL OF KANSAS TERRITORY: After mature consideration of the bill entitled "An act to provide for the taking of a census, and election for delegates to Convention," I am constrained to return the same without my approval.

Passing over other objections, I desire to call your serious attention to a material omission in the bill. I refer to the fact that the Legislature has failed to make any provision to submit the Constitution, when framed to the consideration of the people, for their ratification or rejection.

The position that a convention can do no wrong, and ought to be invested with sovereign power, and that its constituents have no right to judge of its acts, is extraordinary and untenable.

The history of State constitutions, with scarcely an exception, will exhibit a uniform and sacred adherence to the salutary rule of popular ratification.

The practice of the Federal and State Governments, in the adoption of the respective constitutions, exhibiting the wisdom of the past, will furnish us with a safe and reliable rule of action.

The Federal Constitution was first proposed by a convention of delegates from twelve States, assembled in Philadelphia. This Constitution derived no authority from the first convention. It was submitted to the various States, fully discussed in all its features, and concurred in by the people of the States in conventions assembled; and that concurrence armed it with power and invested it with dignity.

Article seven of the Constitution makes the ratification of nine States, three-fourths of the number represented in the Convention, essential to its adoption.

In the adoption, not only of the Federal Constitution, but of nearly all the State Constitutions, the popular ratification was made essential, and all amendments to those of most of the States are required to pass two Legislatures, and then be submitted to the people for their approval.

In Kentucky, especially, all amendments to the Constitution must pass two Legislatures, and for two years be submitted to the vote of the people, upon the question of convention or no convention, on the specific amendments proposed.

Treaties made by Ambassadors are not binding until duly ratified by their respective Governments, whose agents they are.

Members of the Legislature or of Conventions are but the agents of the people, who have an inherent right to judge of the acts of their agents, and to condemn or approve them as in their deliberated judgment they may deem proper.

The fundamental law of a commonwealth, so inseparably connected with the happiness and prosperity of the citizens, cannot be too well discussed and cannot pass through too many ordeals of popular scrutiny.

What delegates to conventions may do, or what omit, cannot be known until they have assembled and developed their action. If the whole power be vested in them without recourse over to the people, there is no guarantee that the popular wishes will be fairly and fully expressed.

Although the people may have voted for a convention to form a State Constitution, yet they have by no just rule of construction voted away the usual and universal right of ratification.

Special instructions covering every point arising in the formation of a Constitution, cannot be given in the elections preliminary to a convention, and it is therefore proper that the action of the convention, necessarily covering new ground, should be submitted to the people for their consideration.

The practical right of the people to ordain and establish Governments is found in the expressive and beautiful preamble to the Federal Constitution, "We, the people, &c., do ordain and establish this Constitution."

Let the Constitution of Kansas be ratified and established by the solemn voice of the people, surrounded by such safeguards as will insure a fair and unbiased expression of the actual bona fide citizens, and it will remain inviolably fixed in the affections of the people.

In his report upon the Toombs' bill, its distinguished author thus logically enumerates the various steps in the formation of a Constitution: "The preliminary meeting, the calling of the Convention, the appointment of delegates, the assembly of the Convention, the formation of the Constitution, the voting on its ratification, the election of officers under it."

In the same report the author most justly remarks: "Whenever a constitution shall be formed in any Territory, preparatory to its admission into the Union as a State, justice, the genius of our institutions, the whole theory of our republican system, imperatively demand that the voice of the people shall be fairly expressed, and their will embodied in that fundamental law, without fraud, or violence, or intimidation, or any other improper or unlawful influence, and subject to no other restrictions than those imposed by the Constitution of the United States."

The voice of the people fairly expressed, and its embodiment in the fundamental law, should be the earnest desire of every citizen of a republic.

But how can the voice of the people be fairly expressed, and their will be embodied in the organic law, unless that law, when made, be submitted to them to determine whether it is their will which the convention has proclaimed.

The leading idea and fundamental principle of our organic act, as expressed in the law itself, was to leave the actual bona fide inhabitants of the Territory "perfectly free to form and regulate their domestic institutions in their own way." The act confers almost unlimited power upon the people, and the only restriction imposed upon its exercise is the Constitution of the United States.

The great principle, then, upon which our free institutions rest, is the unqualified and absolute sovereignty of the people; and constituting, as that principle does, the most positive and essential feature in the great charter of our liberties, so is it better calculated than any other to give elevation to our hopes and dignity to our actions. So long as the people feel that the power to alter the form, or change the character of the government abides in them, so long will they be impressed with the sense of security and of dignity which must ever spring from the consciousness that they hold within their own hands a remedy for every political evil, a corrective for every government abuse and usurpation.

The principle must be upheld and maintained at all hazards, and at every sacrifice maintained in all the power and fullness, in all the breadth and depth of its utmost capacity and signification. It is not sufficient that it be acknowledged as a mere abstraction, or theory, or doctrine, but as a practical, substantial, living reality, vital in every part.

The idea of surrendering the sovereignty of the Territories—the common property of the people of the several States—into the hands of the few who first chance to wander into them, is, to me, a political novelty. Is it just that the Territories should exercise the rights of sovereign States until their conditions and numbers become such as to entitle them to be admitted into the Union on an equality with the original States?

In speaking of the proper construction of the organic act, its distinguished author remarks: "The act recognizes the right of the people thereof, while a Territory, to form and regulate their own domestic institutions in their own way, subject only to the Constitution of the United States, and to be received into the Union so soon as they should attain the requisite number of inhabitants, on an equal footing with the original States in all respects whatever."

In the report before alluded to, the author says: "The point upon which your committee have entertained the most serious and grave doubts in regard to the propriety of endorsing this proposition, relates to the fact, that in the absence of any census of the inhabitants, there is reason to apprehend that the Territory does not contain sufficient population to entitle them to demand admission under the treaty with France, if we take the ratio of representation for a member of Congress as the rule."

In accordance with the foregoing views, I remarked, in my first message to your body, that "the durability and imperative authority of a State constitution, when the interests of the people require a State government, and a direct popular vote is necessary to give it sanction and effect, will be the proper occasion, once for all, to decide the grave political questions which underlie a well regulated commonwealth."

And in another portion of the same message I said: "Justice to the country and the dictates of sound policy require that the Legislature should confine itself to such subjects as will preserve the basis of entire equality; and when a sufficient population is here, and they choose to adopt a State government, that they shall be 'perfectly free,' without let or hindrance, to form all their domestic institutions in their own way, and to dictate that form of government which in their deliberate judgment may be deemed proper."

The expressions, "requisite number of inhabitants," "a sufficient population," and others of similar import, can have no other meaning than that given them by our leading statesmen and by the common judgment of the country, to wit: "The ratio of representation for a member of Congress."

The present ratio for a member of Congress is 93,420 inhabitants. What, then, is the present population of Kansas, or what will it be on the 15th of March next? as after that time no person arriving in the Territory can vote for a member of the convention under the provisions of this bill.

At the last October election the whole vote polled for delegate to Congress was four thousand two hundred and seventy-six (4,276) while the vote in favor of a convention to frame a State constitution was but two thousand six hundred and seventy (2,670.)

It is a well known fact to every person at all conversant with the circumstances attending the last election, that the question of a State government entered but little into the canvass, and the small vote polled for a convention is significantly indicative of the popular indifference on the subject.

No one will claim that 2,670 is a majority of those voting, and it is conceded that those not voting are bound by the act of those who did.

The bill under consideration seems to be drawn from the bill known as the Toombs bill; but in several respects it differs from that bill, and in these particulars it does not furnish equal guarantees for fairness and impartiality. The former secured the appointment of five impartial Commissioners to take and correct the census, to make proper apportionment among the several counties, and generally to superintend all the preliminaries so as to secure a fair election, while by the present bill all these important duties are to be performed by Probate Judges and Sheriffs, elected by and owing allegiance to a party. It differs in other important particulars. The bill of Mr. Toombs conferred valuable rights and privileges upon this Territory, and provided means to pay the expenses of the convention, while this bill does neither.

If we are disposed to avail ourselves of the wisdom of the past, we will pause some time before we throw off our Territorial condition, and present circumstances, by the adoption of a State Government.

The State of Michigan remained a Territory for five years after she had the requisite population, and so with other States; and when they were admitted, they were strong enough in all the elements of material wealth to be self-supporting. And hence they looked at the door of the Union with that manly confidence which is one of equality and self-reliance.

California was admitted under peculiar and extraordinary circumstances. Her rich mines of the precious metals attracted a teeming population to her shores, and her isolated position from the parent Government, with her superabundant wealth, at once suggested the experiment of self-government, and at the time her State Constitution was ratified by the vote of the people, the population of California entitled her to two representatives in Congress.

I observe by the message of the Governor of Minnesota that the population of that thriving Territory exceeds 180,000. The taxable property amounts to between thirty and thirty-five millions of dollars. And in view of these facts and of the large increase of agricultural products, cash capital, &c., the Governor favors a change from a Territory to a State Government. To this end he suggests that a convention be called to form a Constitution; that an act be passed for the taking of a census in April, and for such other preliminary steps as are necessary; and that if the Constitution be "ratified by the people" at the next October election it shall be presented to Congress in December following.

These facts furnish an additional argument why the Constitution should be submitted to the people, as the majority, preferring a Territorial Government, and thinking a State Government premature, may desire to avail themselves of that opportunity to vote against any State Constitution whatever. Bothered with heavy liabilities, without titles to our lands, our public buildings unfinished, our jails and court-houses not erected, without money even to pay the expenses of a convention, and just emerging from the disastrous effects of a most bitter civil feud, it seems unwise for a few thousand people, scarcely sufficient to make a good county, to discard the protecting and fostering care of a Government ready to assist us with her treasures and to protect us with her armies.

JOHN W. GEARY, Governor of Kansas Territory. Lecompton, K. T., Feb. 19, 1857.

Miscellaneous News.

SEVERE STORM IN KANSAS—CRIMES AND ARRESTS—MURDER AT LEAVENWORTH.

Correspondence of the New-York Daily Times.

LAWRENCE, Friday, Feb. 13, 1857.

The storm of Friday last was one of the most severe that has happened in Kansas since its organization as a Territory. On the evening of Thursday it commenced raining, accompanied by heavy thunder and sharp lightning, which continued all through the night. The rain continued to fall all day Friday. The Kansas River rose eight feet; the ice broke, and in a few days the river was clear. The most damage was done in Southern Kansas, the Osage River rose forty feet, overflowing the land for miles. The lower portion of the town of Ossawatimie was completely submerged. Many families were forced to leave their cabins by the flood.

The settlers up and down the creek experienced great suffering and the loss of stock. Their houses were surrounded, and many were forced to flee for a place of safety. Others remained with the water a foot deep on the floor of their cabin, and every moment expecting a higher rise and their complete submersion. The flood surrounded the residence of one Houser, a settler on the creek near Ossawatimie, before he was aware of it. His stock gathered about his house, where the water was about eighteen inches deep, and remained standing there for nearly two days, when the tide shrank back to its bed, and allowed the settlers who were perched upon tables, beds, &c. in their cabins, to walk out and feed their cattle. At last accounts the Osage was high, preventing communication with the people on the Southern bank. The sawmill at Ossawatimie was nearly under water for two days. The amount of damage done in Southern Kansas has not yet been ascertained.

A United States Deputy Marshal, named PARBER, was in town this morning and arrested Capt. WALKER on a warrant issued at Lecompton. PARBER was alone, and the Free-State captain concluded to go with him up to Lecompton before the Judge for examination. On his arrival, he waived an examination, and gave \$15,000 bonds for his appearance at next term of Court, to answer to the charges alleged in four indictments against him. One for murder, one for arson, robbery and for assault "with intent to kill. These indictments were found by the Grand Jury for the Captain's connection with the destruction of Fort Titus last Summer. The Bogus Legislature at Lecompton passed an act giving the Judges discretionary power to admit bail on all charges. The bill was vetoed by the Executive and afterwards adopted by a two-thirds vote over his veto.

The first persons arrested after the passage of the act was CLARK and STINGFELLOW, both on an indictment for high crimes. They were promptly released on bail, and to have a show of fairness, Captain WALKER was treated in the same manner. THOMAS SHOEMAKER, ex-Land Receiver of this Territory, was murdered at Leavenworth by an Irishman last week. The murderer was arrested and acquitted. SHOEMAKER died on Sunday last. He was removed from office about a year ago by the President for being a Free-State man. When he received the appointment from PIERSON, at the organization of the Territory, he was to make Kansas a Slave State, but he never could endorse the means used by the Missourians to secure that object, and finally joined the Free-State Party, and with them, and lost his office for it. He leaves a family to mourn his loss. SIGMA.

IMPORTANT FROM KANSAS.

THE NEW CENSUS BILL.

GOV. GEARY'S VETO.

PASSAGE OF THE BILL OVER THE VETO.

A Constitutional Convention Ordered.

The Constitution Not to be Submitted to the People of the Territory.

Special Correspondence of the N. Y. Daily Times.

LECOMPTON, Saturday, Feb. 21, 1857.

Day before yesterday, after mature consideration, Gov. GEARY returned to the Territorial Legislature, without his approval, the bill to provide for taking the census of the Territory and for calling a Constitutional Convention. The Governor bases his objections to the bill on the ground that it is intended to take effect as the act of the Legislature only, without reference to the people of the Territory—the bill making no provision for submitting the Constitution, when framed, to the approval of the people. The Legislature, however, has passed the bill over the Governor's veto.

THE CENSUS BILL.

The bill is entitled as follows: "Territory of Kansas.—An act to provide for the taking of a census and election for delegates to convention. Introduced by Mr. ——. Ordered to be printed, Jan. 29, 1857.

Be it enacted by the Governor and the Legislative Assembly of the Territory of Kansas: "The following is a full abstract of its provisions:

SEC. 1. Requires the Sheriff of the several counties in the Territory, between March 1 and April 1, 1857, to make an enumeration of all the free male inhabitants, citizens of the United States, over 21 years of age, and all other white persons actually residing within their respective counties; each Sheriff to have power to appoint deputies, not to exceed one in each municipal township.

SEC. 2. In case of a vacancy in the office of Sheriff, the duty devolves upon the judge of the Probate Court in the same county; and in case both the offices of the Sheriff and Probate Judge shall be vacant, the Governor is empowered to appoint some resident of the county.

SEC. 3. A complete list of all the qualified voters in each county to be filed on or before the 10th of April next, in the office of the Probate Judge.

SEC. 4. The Probate Judge, upon receiving such return, is to cause a copy of such list, of qualified voters to be publicly posted in three places in each election precinct.

SEC. 5. From the time of receiving these returns, the Probate Judge is to remain in session each day, Sundays excepted, until May 1, to inspect the returns, determine all disputed questions, and decide upon matters of fact; having power to administer oaths and compel the attendance of witnesses.

SEC. 6. After correction and revision, copies of the lists to be forwarded to the Governor and the Secretary of the Territory; the Governor being then required to cause copies, classified into election precincts, to be printed and distributed generally among the inhabitants of the Territory; one copy to be deposited with the Clerk of each Court of Record or Probate Judge; one copy delivered to each Judge of the Election; and at least three copies posted at each place of voting.

SEC. 7. Makes it the duty of the Governor and Secretary of the Territory, so soon as the census shall be completed and the returns made, to make an apportionment of the members for a convention, among the different counties and election districts in said Territory; the apportionment to be made in the following manner: The whole number of legal voters shall be divided by sixty, and the product of such division, rejecting any fraction of a unit, shall be the ratio or rule of apportionment of members among the several counties or election districts; and if any county or election district shall not have a number of legal voters thus ascertained equal to the ratio, it shall be attached to some adjoining county or district, and thus form a representative district; the number of said voters in each county or district shall then be divided by the ratio, and the product shall be the number of representatives apportioned to such county or district, provided that the loss in the number of members, caused by the fractions remaining in the several counties in the division of the legal voters thereof, shall be compensated by assigning to so many counties or districts as have the largest fractions an additional member for its fraction as may be necessary to make the whole number of representatives sixty.

SEC. 8. An election for members of a Constitutional Convention to be held on the third Monday of June next; no person to be permitted to vote at such election unless his name shall appear upon such corrected list.

SEC. 9. Three Judges of Election to be appointed, and ten days' notice to be given.

SEC. 10. Prescribes the usual regulations regarding the administration of the oath to Judges and Clerks of Election.

SEC. 11. Declares the qualifications of a voter; every bona fide inhabitant of the Territory of Kansas on the third Monday of June, 1857, being a citizen of the United States over the age of twenty-one years, and who shall have resided three months next before said election in the county in which he offers to vote, and no other person, whatever, shall be entitled to vote at said election; and any person qualified as a voter may be a delegate to said convention, and no others.

SEC. 12. All persons authorized to take the census to have power to administer oaths and examine persons.

SEC. 13. Punishes attempts to influence voters, or to deter them from voting, by a fine of \$500, or by imprisonment for not less than 3, nor more than 6 months; or both.

SEC. 14. Unqualified voters under this act, or persons who vote more than once, to be adjudged guilty of a misdemeanor, punishable by a fine of not less than \$100 nor exceeding \$200, or by imprisonment for not less than 3, nor more than 6 months; or both.

SEC. 15. Election frauds to be punished by a fine of \$500 to \$1,000, or imprisonment of 3 or 12 months; or both.

SEC. 16. The delegates elected shall assemble in convention at the capital on the first Monday of September next, and shall proceed to form a Constitution and State Government, which shall be Republican in form, for admission into the Union, on an equal footing with the original States in every respect whatever, by the name of the State of Kansas.

SEC. 17. The officers and members of the Constitutional Convention to receive the same compensation as the members of the Legislature.

SEC. 18. Allows the Sheriffs \$4 per diem for making the enumeration.

SEC. 19. Defines the boundaries of Election Districts, as follows: Doniphan to constitute the First Election District; Brown and Nemaha the Second; Atchison the Third; Leavenworth the Fourth; Jefferson the Fifth; Calhoun the Sixth; Marshall the Seventh; Riley the Eighth; Johnson the Ninth; Douglas the Tenth; Shawnee, Richardson and Davis the Eleventh; Lykins the Twelfth; Franklin the Thirteenth; Well-er, Breckinridge, Wise and Madison the Fourteenth; Britton and Coffey the Fifteenth; Linn the Sixteenth; Anderson and Reventenah; Bourbon, McPherson, Dorn and Allen the Eighteenth; Woodson, Wilson, Godfrey, Greenwood and Hunter the Nineteenth.