

IN THE SENATE OF THE UNITED STATES.

AUGUST 11, 1856.—Ordered to be printed, together with the views of the minority.

MR. DOUGLAS made the following

REPORT.

[To accompany bill H. R. 75.]

*The Committee on Territories, to whom was referred a bill from the House of Representatives, for "An act to reorganize the Territory of Kansas, and for other purposes," beg leave to report:*

The first section of the bill provides, "That all that part of the Territory of the United States which lies between the parallels of thirty-six degrees and thirty minutes and forty degrees of north latitude, and which is east of the eastern boundary of the Territory of Utah to the southeast corner thereof, and east of a line thence due south to the said parallel of thirty-six degrees thirty minutes north latitude, and is bounded on the east by the western boundary of the State of Missouri, shall constitute one Territory, and shall be, and hereby is, constituted and organized into a temporary government, by the name of the Territory of Kansas."

By reference to the map it will be perceived that, in addition to all the country embraced within the limits of the present Territory of Kansas, it is proposed to include in the new Territory all the country between the southern boundary of the Territory, as now defined by law, and the parallel of  $36^{\circ} 30'$ , extending from the western boundary of the State of Missouri across more than twelve and a half degrees of longitude, and being about thirty-five miles in width at the eastern, and one hundred and five at the western extremity. The eastern portion of this strip of country, which it is now proposed to incorporate within, and render subject to the jurisdiction of, the Territory of Kansas, was ceded with other territory to the Cherokee Indians, by the treaties of the 6th of May, 1828, April 12th, 1833, and May 23, 1836, for "*a permanent home, and which shall, under the most solemn guaranty of the United States, be and remain theirs forever—A HOME THAT SHALL NEVER, IN ALL FUTURE TIME, BE EMBARRASSED BY HAVING EXTENDED AROUND IT THE LINES, OR PLACED OVER IT THE JURISDICTION OF A TERRITORY OR STATE, nor be pressed upon by the extension in any way of any of the limits of any existing Territory or State.*"

In view of this "most solemn guaranty of the United States" to the Cherokees, your committee cannot refrain from the expression of the hope and belief that the House of Representatives, in passing a

bill to extend around this Indian country the lines of Kansas, and render it subject to the jurisdiction of that Territory, acted without due consideration, and probably without a full knowledge of these treaty stipulations. When the organic act of Kansas was passed in 1854, the parallel of thirty-seven was fixed upon as the southern boundary of the Territory instead of the line of thirty-six degrees and thirty minutes, with the view to the preservation of faith on the part of the United States towards these Indians; and lest injustice might be done to other Indian tribes who held their lands under treaties with the United States, it was expressly provided, "That nothing in this act contained shall be construed to impair the rights of persons or property now pertaining to the Indians in said Territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to include any territory which, by treaty with any Indian tribe, is not, without the consent of said tribe, to be included within the territorial limits or jurisdiction of any State or Territory; *but all such territory shall be excepted out of the boundaries, and constitute no part of the Territory of Kansas.*" In these considerations your committee find insuperable objections to that portion of the bill from the House of Representatives which proposes to include within the limits, and render subject to the jurisdiction of the Territory of Kansas, any part of the country which is thus secured to the Indians by solemn treaty stipulations.

Nor are the objections less formidable to incorporating within the limits of Kansas that portion of the Territory of New Mexico which lies north of the line of  $36^{\circ} 30'$ , and east of the Rio Grande, and subjecting it to the operation of the other provisions of the bill. That part of New Mexico, containing about 15,000 square miles, was purchased from Texas by one of the acts known as the compromise measures of 1850, and formed a part of the territory for which the United States paid the State of Texas ten millions of dollars. The second section of the act of Congress which contains the terms and conditions of the compact between the United States and Texas for the purchase of that Territory, incorporates the same in the Territory of New Mexico, with the following guarantee: "*And provided further, that when admitted as a State, the said Territory, or any portion of the same, shall be received into the Union with or without slavery, as their constitution may prescribe at the time of their admission.*"

After asserting this great principle of State equality as applicable to every portion of New Mexico under the Constitution, and as guaranteed in the compact with Texas, by fair intendment, so far as the country was acquired from that State, the seventh section of the same act provides that the legislative power of the said Territory shall extend to all rightful subjects of legislation, consistent with the Constitution of the United States and the provisions of this act"—thus leaving the people perfectly free to form and regulate their domestic institutions in their own way, subject only to the Constitution. It is now proposed in the bill under consideration to repudiate these guarantees and violate these great fundamental principles, by annexing to Kansas all that portion of the country acquired from Texas which lies north of  $36^{\circ} 30'$ , and imposing upon it a prohibition of slavery for-

ever, from and after the first day of January, 1858, regardless of the rights and wishes of the people who may inhabit the Territory.

The twenty-fourth section of the bill is in the following words:

SEC. 24. *And be it further enacted*, That so much of the fourteenth section, and also so much of the thirty-second section, of the act passed at the first session of the thirty-third Congress, commonly known as the Kansas-Nebraska act, as reads as follows, to wit: "Except the eighth section of the act preparatory to the admission of Missouri into the Union, approved March 6, 1820, which, being inconsistent with the principles of non-intervention by Congress with slavery in the States and Territories, as recognized by the legislation of 1850, commonly called the compromise measures, is hereby declared inoperative and void; it being the true intent and meaning of this act not to legislate slavery into any Territory or State, nor to exclude it therefrom, but to leave the people thereof perfectly free to form and regulate their domestic institutions in their own way, subject only to the Constitution of the United States: *Provided*, That nothing herein contained shall be construed to revive or put in force any law or regulation which may have existed prior to the act of 6th March, 1820, either protecting, establishing, prohibiting or abolishing slavery—be and the same is hereby repealed; and the said eighth section of said act of 6th March, 1820, is hereby revived and declared to be in full force and effect within the said Territories of Kansas and Nebraska: *Provided, however*, That any person lawfully held to service in either of said Territories shall not be discharged from such service by reason of such repeal and revival of said eighth section, if such person shall be permanently removed from such Territory or Territories prior to the 1st day of January, 1858; and any child or children born in either of said Territories, of any female lawfully held to service, if in like manner removed without said Territories before the expiration of that date, shall not be, by reason of anything in this act, emancipated from any service it might have owed had this act never been passed: *And provided, further*, That any person lawfully held to service in any other State or Territory of the United States, and escaping into either the Territory of Kansas or Nebraska, may be reclaimed and removed to the person or place where such service is due, under any law of the United States which shall be in force upon the subject."

In the opinion of your committee there are various grave and serious objections to this section of the bill. In the first place, it expressly repudiates and condemns the great fundamental principles of self-government and State equality which it was the paramount object of the Kansas-Nebraska act to maintain and perpetuate, as affirmed in the following provision: "It being the true intent and meaning of this act not to legislate slavery into any Territory or State, nor to exclude it therefrom, but to leave the people thereof perfectly free to form and regulate their domestic institutions in their own way, subject only to the Constitution of the United States."

Not content with repealing this wise and just provision, and condemning the sound constitutional principles asserted in it, the bill proceeds to legalize and establish, for a limited time, hereditary

slavery, not only in the Territory of Kansas, (where there is no other local or affirmative law protecting it than the enactments of the Kansas Territorial legislature, which have been alleged to be illegal and void, and which the House of Representatives, by amendments to the appropriation bills, have instructed the President not to enforce,) but also in all that part of New Mexico which it is proposed to incorporate in the Territory of Kansas, and where slavery was prohibited by the Mexican law, and it is not pretended that there is any territorial enactment recognizing or establishing it. Having thus asserted and exercised the power of introducing and establishing slavery in the Territories by act of Congress, and declaring children hereafter born therein to be slaves for life and their posterity after them, provided they shall be removed therefrom within a specified period, the bill proceeds to affirm and exercise the power of prohibiting slavery in the same Territories forever from and after January 1, 1858, by enacting and putting in force the following provision, being the 8th section of the act passed March 6, 1820, to wit:

“SECTION 8. *And be it further enacted*, That in all that territory ceded by France to the United States, under the name of Louisiana, which lies north of thirty-six degrees and thirty minutes north latitude, not included within the limits of the State contemplated by this act, slavery and involuntary servitude, otherwise than in the punishment of crime, whereof the parties shall have been duly convicted, shall be, and is hereby, forever prohibited: *Provided always*, That any person escaping into the same, from whom labor or service is lawfully claimed in any State or Territory of the United States, such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her labor or service as aforesaid.”

It will be observed that this 8th section of the Missouri act (commonly called the Missouri compromise) by its terms only applied to the territory acquired from France, known as the Louisiana purchase, the western boundary of which was defined by the treaty with Spain in 1819, and subsequently by treaties with Mexico and Texas, to be the 100th meridian of longitude, while the bill under consideration, under the guise of reviving and restoring that provision, extends it more than seven degrees of longitude further westward, and applies it to that large extent of territory to which it had no application in its original enactment. Nor can it be said with fairness or truth that this provision was applied to any portion of the territory in question by the “joint resolution for annexing Texas to the United States,” for the reason that the whole territory embraced within the limits of the republic of Texas was admitted into the Union as one State, with the privilege of forming not exceeding four other States out of the State of Texas, “by the consent of said State,” with the condition that “in such State or States as should be formed out of said territory, north of said Missouri compromise line, slavery or involuntary servitude (except for crime) shall be prohibited.”

It was left discretionary with Texas to remain forever one State, and to retain the whole of her territory as slave territory, or to consent to a division, in which case the prohibition would take effect, by virtue of the compact, from the date of the formation of a new State

within the limits of the republic of Texas, north of  $36^{\circ} 30'$ . If, on the contrary, Texas should determine to withhold her assent, no such new State could ever be formed, and hence the prohibition would never take effect. All difficulty, however, on this point, has been removed by the act of 1850, purchasing from Texas all that portion of her territory lying north of  $36^{\circ} 30'$ , and incorporating it in the Territory of New Mexico, with the guarantee that "when admitted as a State, the said Territory, or any portion of the same, shall be received into the Union with or without slavery, as their constitution may prescribe at the time of admission." Hence all that territory, to which it is now proposed to apply the Missouri restriction for the first time, under the plea of restoring the Missouri compromise of the 6th of March, 1820, is protected from any such invasion of the rights of the inhabitants to form and regulate their own domestic affairs in their own way, by the solemn guaranties contained in the compromise measures of 1850, which blotted out the geographical line as a dividing line between free territory and slave territory, and substituted for it the cardinal principle of self-government, in accordance with the Constitution. But it will also be observed, that the bill under consideration does not propose to limit the restriction to the territory acquired from Texas, nor the country on the east side of the Rio Grande, but extend it across that river over a portion of the territory acquired from Mexico, which was never claimed by Texas nor embraced within the Louisiana purchase, and to which there is no pretext for asserting that the Missouri compromise ever applied. If, in the application of the 8th section of the act of the 6th of March, 1820, (commonly called the Missouri compromise,) over so large a district of country to which it never had any previous application, it be the policy of the House of Representatives to return to the "obsolete idea" of a geographical line as a dividing line in all time to come between slave territory and free territory, a perpetual barrier against the advancement of slavery on the one hand and free institutions on the other, the measure falls short of accomplishing the whole of their object in not extending the line to the Pacific ocean. Your committee can perceive many weighty considerations founded in policy, although wanting the sanction of sound constitutional principles, which might be urged in favor of such a measure, inasmuch as the barrier once erected from ocean to ocean—permitting slavery on the one side and prohibiting it on the other—if universally acquiesced in and religiously observed as a patriotic offering upon the altar of our common country, would put an end to the controversy forever, and form a bond of peace and brotherhood in the future. But, unfortunately, when this expedient was proposed by the Senate in 1848, it was indignantly repudiated by the House of Representatives, and as a consequence the whole country was plunged into a whirlpool of sectional strife and angry crimination, which alarmed the greatest and purest patriots of the land for the safety of the republic, and was only rescued from the impending perils by the adoption of the compromise measures of 1850, which abandoned the policy of a geographical line, and substituted for it the great principles of self government and State equality, in obedience to the federal Constitu-

tion. In view of the history of the past, your committee can perceive no safety in the future except in a strict and religious fidelity to the true principles of the Constitution as embodied in the adjustment of that unfortunate controversy, and adopted by the whole country as rules of action, to be applied in all future time, when in the progress of events it should be necessary to organize Territories or admit new States. The Kansas-Nebraska act was the logical sequence of the compromise measures of 1850, and rendered imperatively necessary in order to establish and perpetuate the principles of self-government and State equality in the organization of Territories and admission of new States. For these reasons your committee cannot concur with the House of Representatives in the proposition to blot out from the organic act of Kansas and Nebraska those essential provisions and cardinal principles, the faithful observance of which can alone preserve the just rights of the inhabitants of the Territories and maintain the peace, unity, and fraternity of the republic. The great object is to withdraw the slavery question from the halls of Congress and remand its decision to the people of the several States and Territories, subject to no other conditions or restrictions than those imposed by the Constitution of the United States. Those provisions of the bill under consideration which introduce and establish slavery, together with those which abolish and prohibit it, are alike obnoxious on the score of principle, inasmuch as they assert and exercise the right of Congress to form and regulate the local affairs and domestic institutions of a distant and distinct people without their consent and regardless of their rights and wishes. To avoid all misconception, however, upon this point, your committee deem it proper to remark that their objections do not apply to that part of the bill which extends the provisions of the fugitive slave law to the Territories of Kansas and Nebraska, and provides "that any person lawfully held to service in any other State or Territory, and escaping into either the Territory of Kansas or Nebraska, may be reclaimed and removed to the person or place where such service is due, under any law of the United States which shall be in force upon the subject." In this clause your committee are rejoiced to find a frank and conscientious acknowledgement of the duty of Congress to provide efficient laws for carrying into faithful execution the provision of the Constitution of the United States which provides for the rendition of fugitive slaves as well as all other obligations imposed by that instrument.

The preservation of our free institutions depend upon a faithful observance of the Constitution in all its parts; and the assurance thus furnished that the representatives of the people are ever ready to provide new and additional guarantees when supposed to be necessary for the faithful performance of that constitutional obligation, which has been the subject of the severest criticism in some portions of the country, cannot fail to gratify every true friend of the Union. In this case, however, no such legislation is necessary, inasmuch as the organic act of Kansas and Nebraska extended the provisions of the fugitive slave law to both of those Territories.

The fifteenth and sixteenth sections of the bill under consideration read as follows:

SEC. 15. *And be it further enacted,* That all suits, process, and proceedings, civil and criminal, at law and in chancery, and all indictments and informations which shall be pending and undetermined in the courts of the Territory of Kansas or of New Mexico, when this act shall take effect, shall remain in said courts where pending, to be heard, tried, prosecuted, and determined in such courts as though this act had not been passed: *Provided, nevertheless,* That all criminal prosecutions now pending in any of the courts of the Territory of Kansas, imputing to any person or persons the crime of treason against the United States, and all criminal prosecutions, by information or indictment, against any person or persons for any alleged violation or disregard whatever of what are usually known as the laws of the legislature of Kansas, shall be forthwith dismissed by the courts where such prosecutions may be pending, and every person who may be restrained of his liberty by reason of any of said prosecutions shall be released therefrom without delay. Nor shall there hereafter be instituted any criminal prosecution in any of the courts of the United States, or of said Territory, against any person or persons, for any such charge of treason in the said Territory prior to the passage of this act, or any violation or disregard of said legislative enactments at any time.

SEC. 16. *And be it further enacted,* That all justices of the peace, constables, sheriffs, and all other judicial and ministerial officers, who shall be in office within the limits of said Territory when this act shall take effect, shall be, and they are hereby, authorized and required to continue to exercise and perform the duties of their respective offices as officers of the Territory of Kansas, temporarily, and until they, or others, shall be duly appointed and qualified to fill their places in the manner herein directed, or until their offices shall be abolished.

It will be observed that these two sections recognize the validity and binding force of the entire code of laws enacted at the Shawnee Mission, by the legislature of Kansas Territory, and provide for the faithful execution of all those enactments except the criminal code. All justices of the peace, constables, sheriffs, and all other judicial and ministerial officers, now in office, are required to continue to exercise and perform the duties of their respective offices. All these officers, with the exception of the governor, three judges, secretary, and marshal, and district attorney, were elected or appointed under the laws enacted by the legislature of Kansas, while their powers, functions, and duties, are all prescribed by those laws and none others. These officers are all required to continue to perform the duties of their respective offices, by observing and enforcing all the laws enacted at the Shawnee Mission, except the criminal code. "All suits, process, and proceedings, civil and criminal, at law and in chancery, and all indictments and informations which shall be pending and undetermined in the courts of the Territory of Kansas or New Mexico, when this act shall take effect, shall remain in said courts where pending, to be heard, tried, prosecuted, and determined, in such courts, AS THOUGH THIS ACT HAD NOT BEEN PASSED." The election laws, and the laws concerning slaves and slavery, and all laws protecting the rights of persons and property, and affecting all the relations of

life, are recognized as valid and required to be enforced, EXCEPTING CRIMINAL PROSECUTIONS, BY INFORMATION OR INDICTMENT, for violating or disregarding the laws of the legislature of Kansas, all such prosecutions are required to be forthwith dismissed, and the prisoners set at liberty, and no new prosecutions are to be commenced for "any violation or disregard of said legislative enactments at any time. Such is the legislation provided for in these two sections of the bill. They recognize the validity of the laws enacted at Shawnee Mission, and provide for the enforcement of all of them except in cases of criminal prosecution. Your committee are unable to perceive how the passage of such a bill would restore peace, quiet, and security, to the people of Kansas. It has been alleged that there are in that Territory organized bands of lawless and desperate men, who are in the constant habit of perpetrating deeds of violence—murdering and plundering the inhabitants, stealing their property, burning their houses, and driving peaceable citizens from the polls on election day, and even from the Territory. The remedy proposed in the bill is to grant to the perpetrators of these crimes a general amnesty for the past, and a full licence in the future to continue their bloody work.

There is no law in force in Kansas by which murder, robbery, larceny, arson, and other crimes known to the criminal codes of all civilized States, can be punished, except under the code enacted by the legislature of Kansas at the Shawnee Mission. The provisions of "an act for the punishment of crimes against the United States," approved April 30, 1790, is, by its terms, confined in its application to such crimes as shall be committed "within any fort, arsenal, dock yard, magazine, or any other place or district of country under the sole and exclusive jurisdiction of the United States," and "upon the high seas and navigable waters out of the jurisdiction of any particular State," but has never been held or construed to apply to the Territories of the United States. The act of the 3d of March, 1817, "to provide for the punishment of crimes and offences committed within the Indian boundaries," extends the provisions of the said act of 1790 to the Indian country, but expressly restricts its application, as its title imports, to crimes committed "within any town, district, or territory *belonging to any nation or nations, tribe or tribes of Indians.*" Hence, the moment the Indian title is extinguished, and the country placed under the jurisdiction of a territorial government, it ceases to be "under the sole and exclusive jurisdiction of the United States," and is no longer subject to the provisions of either of the above cited acts. Thus it will be seen that if the bill from the House of Representatives should become a law with the provisions granting a general amnesty in respect to all past crimes, and unlimited license in the future to perpetrate such outrages as their own bad passions might instigate, there would be no law in force in Kansas to punish the guilty or protect the innocent.

Inasmuch as the House of Representatives, by the passage of the bill under consideration, and the Senate, by its bill for the admission of Kansas into the Union, have each recognized the validity of the laws enacted by the Kansas legislature at Shawnee Mission, so far as they are consistent with the Constitution and the organic act, and



affirmed the propriety and duty of enforcing the same, except in certain specified cases, it becomes important to inquire into the extent of the differences of opinion between the House of Representatives and the Senate, in respect to the particular laws which ought not to be enforced. The Senate has already declared in the bill for the admission of Kansas into the Union that all laws and enactments in said Territory which are repugnant to, or in conflict with, the great principles of liberty and justice, as guaranteed by the Constitution of the United States and the organic act, and embodied in the 18th section of that bill, shall be null and void, and that none such shall ever be enforced or executed in said Territory.

The said eighteenth section is in the following words :

“ SEC. 18. *And be it further enacted,* That inasmuch as the Constitution of the United States and the organic act of said Territory has secured to the inhabitants thereof certain inalienable rights, of which they cannot be deprived by any legislative enactment, therefore no religious test shall ever be required as a qualification to any office or public trust ; no law shall be in force or enforced in said Territory respecting an establishment of religion, or prohibiting the free exercise thereof ; or abridging the freedom of speech, or of the press ; or of the right of the people peaceably to assemble, and petition for the redress of grievances ; the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated ; and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized ; nor shall the rights of the people to keep and bear arms be infringed. No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury ; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb ; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law ; nor shall private property be taken for public use without just compensation. In all criminal prosecution, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation ; to be confronted with the witnesses against him ; to have compulsory process of obtaining witnesses in his favor, and to have the assistance of counsel for his defence. The privilege of habeas corpus shall not be suspended unless, when in case of rebellion or invasion, the public safety may require it. In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury shall be otherwise re-examined in any court of the United States than according to the rules of the common law. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. No law shall be made or have force or effect in said Territory which shall require a test oath or oath to support any act of Congress or other legislative act as a qualification for any civil office or public trust, or for any em-

ployment or profession, or to serve as a juror or vote at an election, or which shall impose any tax upon or condition to the exercise of the right of suffrage by any qualified voter, or which shall restrain or prohibit the free discussion of any law or subject of legislation in the said Territory, or the free expression of opinion thereon by the people of said Territory.”

By this provision of the bill, which has twice passed the Senate, and now remains on the Speaker's table of the House of Representatives unacted upon, and only awaits the favorable action of the House to enable it to become a law with the President's approval, all the obnoxious laws, which have been the subject of so much censure and complaint, are swept out of existence, leaving none in force in said Territory except such as are usual, proper, and necessary in all civilized communities for the protection of life, liberty, and property. Your committee have not yet relinquished the hope that the House of Representatives will concur with the Senate in the passage of that bill, and thus restore peace and security to the people of Kansas, by declaring all those obnoxious laws null and void, and providing for the faithful enforcement of the Kansas code, the validity of which has thus been frankly and solemnly acknowledged by the votes and action of each House of Congress. The two Houses of Congress having, by their action, each arrived at the conclusion that the Kansas code is valid, and that the obnoxious laws referred to ought to be declared inoperative and void, as being repugnant to the principles of liberty and justice intended to be secured by the Constitution of the United States and the Kansas-Nebraska act, it would seem, that the most serious and material point of difference between the two Houses which remains to be adjusted, is whether that part of the Kansas code which provides for the punishment of murder, robbery, larceny, and other criminal offences shall be enforced, or, whether all persons guilty of those offences shall be turned loose to prey upon the community with legalized impunity. It is true that there is, apparently, another point of difference between the two Houses, arising out of the question whether the people of Kansas shall be authorized to elect delegates to a convention, (with proper and satisfactory safe-guards against fraud, violence and illegal voting,) and form a constitution and state government preparatory to their admission into the Union, or whether the Territory shall be reorganized in accordance with the provisions of the bill from the House and left, for some years to come, in that condition. While the House of Representatives has recently expressed its preference for the latter proposition, by the passage of the bill under consideration, your committee are not permitted to assume that they have insuperable objections to the admission of Kansas at this time, for the reason that a few weeks previous they passed a bill to admit that Territory as a State, with the Topeka constitution. Hence the change of policy on the part of the House, in abandoning the State movement with the Topeka constitution, and substituting for it the proposition to reorganize the Territory and leave it in that condition, must be taken only as a strong expression of a decided preference on the part of the House for the bill under consideration, and not as conclusive evidence of insuperable objections to a fair bill, with proper

and suitable guarantees against fraud and illegal voting, to authorize the people of Kansas to form a constitution and State government at this time. While the Senate bill, now pending before the House, is fair and impartial in all its provisions, with ample and satisfactory safe-guards against illegal and fraudulent voting, the bill from the House to reorganize the Territory contains no such provisions and affords no such assurances. It leaves the qualifications of the voters at the first election the same as they were under the Kansas-Nebraska act, with this difference, that it denies the privilege of voting and holding office to all men of foreign birth who shall have declared on oath their intention to become citizens, and who shall have taken an oath to support the Constitution of the United States, but who shall have failed from any cause to have completed their naturalization. The provision is, "that any white male inhabitant, being a citizen of the United States, above the age of twenty-one years, who shall have been a resident of said Territory at the time of the passage of this act, shall be entitled to vote at the first election." No penalties or punishments are provided for illegal voting; none for fraud in conducting the elections; none for violence at the polls; and none for destroying the ballot-boxes. All these things may be done with impunity; for, while the election must be held in pursuance of the existing laws of the Territory, which are recognized as being in force, the bill expressly provides that *no criminal prosecution shall hereafter be instituted in any of the courts of the United States or of said Territory for any violation or disregard of said legislative enactment at any time.* Under this bill any number of persons from Missouri or Iowa, from South Carolina or Massachusetts, or from any other part of the world, may enter the Territory on election day and take possession of the polls, and vote as many times as they choose, and drive every legal voter from the polls with entire impunity; for the bill declares that no criminal prosecutions shall ever be instituted in the courts of the United States or of said Territory for violating or disregarding the ONLY LAW which provides penalties and punishments for such outrages in the Territory of Kansas.

No measure can restore peace to Kansas which does not effectually protect the ballot-box against fraud and violence, and impart equal and exact justice to all the inhabitants. Under existing circumstances, your committee are unable to devise any measure which will more certainly accomplish these desirable objects than the bill which has twice passed the Senate, and now only awaits the concurrence of the House of Representatives, with the approval of the President, to become the law of the land.

For these reasons your committee recommend that the bill from the House of Representatives be laid on the table, as a test vote on its rejection, inasmuch as the objections apply to all the leading features and material provisions of the bill, and renders it incapable of amendment without preparing an entire new bill.

## IN THE SENATE OF THE UNITED STATES.

AUGUST 11, 1856.

## VIEWS OF THE MINORITY.

*Mr. Collamer, from the Committee on Territories, to whom was referred a bill from the House of Representatives, "An act to reorganize the Territory of Kansas and for other purposes," submits the following views:*

In all legislation, the true, actual condition of the country to which it is to apply, should be, and must be, regarded, in order to ascertain what will be the probable effect of such legislation. What is the present condition of Kansas, for which legislation is now proposed, and what is the legislation adapted to that condition? If its condition is peaceful and prosperous, let it proceed under the laws which has produced, and is advancing, such prosperity. If, on the other hand, it is convulsed with violence, confusion and blood, then it must be equally clear that legislation should change and correct the measures and causes which have produced this condition.

A brief and summary statement of affairs will be amply sufficient for the present purpose. The Territory, on the 30th of March, 1855, the day for the election of the territorial legislature, was invaded by armed bands of men from Missouri, who dispersed themselves into the different election districts, and by force, violence, and intimidation, drove the inhabitants from the polls, and by their own votes, elected the members of the legislature in all of the election districts but one. This legislature, so elected by force and fraud, by the people of Missouri, convened and presumed to legislate for the Territory of Kansas, and to appoint officers to execute their laws. The object of this atrocious invasion and usurpation was open, avowed, and well-known to all; that is, to establish and sustain the institution of domestic slavery in that Territory, thus acknowledging that, if left to themselves, the inhabitants would not receive and promote it. The laws adopted by this usurping legislature were framed, in all their aspects, to secure the same purpose for which it had been elected—to oppress, harass, and exclude all those opposed to slavery then in said Territory, to procure their departure, and to deter all others, entertaining such views, from entering the Territory for settlement.

Under the color of the laws, thus made, the officers of the Territory, and people under their countenance and direction, have performed acts of violence and atrocity shocking to every sentiment of justice and humanity. The Executive of the nation declares that

those laws shall be enforced with the whole power of the government, and the people are informed by the commander of the army there that he cannot protect them even from the lawless acts of the territorial militia and the marshal's and sheriff's posse, because they act under color of law, at the same time it is insisted that if they attempt to protect themselves, it must be treated as resistance to lawful authority.

A large part of the people there justly regard the acts of that usurping legislature as utterly void, and they formed a State constitution to present to Congress for admission as a State, which was adopted by the votes of a large majority of the inhabitants of said Territory, and measures were taken to organize a provisional government under the same, subject to the action of Congress thereon. Congress having yet taken no definitive action, when the people attempted again to hold a meeting, peaceably and unarmed, further to forward that object, they were forcibly dispersed by the United States dragoons. The men who were most active in this matter of a State constitution have been arrested and indicted, and are now held in durance as guilty of treason, or *constructive* treason, and guarded by United States soldiers, under the command of the President of the United States. These proceedings have naturally led to some violent acts of resistance and retaliation, and bad men from a distance have gathered there to take advantage of these scenes of violence to gratify their lawlessness and cupidity. Those laws, and the acts done under color of them, have, in a great measure, had their designed effect, and driven large numbers of the free State and other peaceable people from the Territory. The people of Missouri and others uniting in their purposes, have forcibly turned back large parties of emigrants from the free States, attempting to enter the Territory by the national highway, the Missouri river, and large numbers, in armed bands, are now gathered along the borders of the Territory to guard it against the access of said emigrants by land.

From this condition of that country, so anomalous and unprecedented, so inconsistent with this enlightened age, so injurious to the government of this country, under whose jurisdiction it exists, and so dangerous in its continuance and tendencies, leads us to inquire what cause has produced it. Nothing of this kind has ever before existed in relation to any one of our numerous Territories. The cause is perfectly obvious to every man in our country. It is the novel attempt and experiment to invite people to settle that country under a proclamation to them that they should have it for free or for slave labor as they should themselves determine. In order to enter upon this experiment, Congress, in 1854, vacated the Missouri compromise line, which sequestered all the country north of  $36^{\circ} 30'$  to be free from slavery forever. They destroyed that statute of compromise and repose which was the bond of peace for more than the third of a century. They broke up that condition of quietness on the subject of slavery in the Territories, in relation to all which such arrangements had been made as that all parties had submitted to acquiesce. Congress, in the Nebraska-Kansas bill, not only provided that when admitted as States they should be admitted as free or slave States as they should desire,

as had been done in New Mexico, but they proceeded to repeal the Missouri compromise line, which prohibited slavery, and declared that the people should be "perfectly free to form and regulate their domestic institutions in their own way." This was the cause of all the trouble which has since transpired there. The invasion from Missouri, and all the violence and outrage done under color of the laws, so produced, as before stated, are but efforts to *establish slavery* as a domestic institution "*perfectly free and in their own way.*"

Palliation or excuse for this violence and lawlessness is much urged by the President and in the Senate by heaping unfounded execration on the Massachusetts Emigrant Aid Society; but southern emigrants, actually hired by slaveholders' associations, find no difficulty in entering the Territory, and are employed as marshal's posse, under pay. How little of ground existed for the excuses of Missouri violence in the efforts of the Massachusetts Aid Society now most fully appears, when it has been shown by the official census of the Territory, taken the month before the invasion, that of all the adult free-men then in the Territory, amounting to near three thousand, only 163 were from all the New England States.

The condition of the Territory is well calculated to convince every impartial and candid man that it is entirely preposterous to submit any matter affecting the subject of slavery to any vote to be taken by the people now in the Territory.

The free State people have, to a large extent, been driven off. They for some months have been, and they now are, prevented from entering or returning. Those now there may be, and probably will be, run out whenever it is ascertained that such is necessary to determine an election for slavery. Anything like a discussion of that subject is utterly impracticable there, with personal safety. Freedom of the press is prohibited, and the free State presses are, "under color of law," declared nuisances, and destroyed by the marshal and his posse.

The next inquiry is, what is the mode of redress? The President insists that he has no power to inquire into the origin of the Kansas laws, but will do his duty in executing them. He, however, in his message of the 24th of January last, on this subject, represents that matter as proper to be inquired into and decided by the House of Representatives, when deciding on the validity of the election of a delegate chosen under such laws.

The House of Representatives have, accordingly, inquired into the matter with great care, and having found the legislature was elected by a military invasion and fraud, have declared their acts void, and the delegate chosen in virtue thereof has been refused a seat. Still the President does not submit to the decision, nor does he recommend to Congress to make further inquiry. In the Senate it is insisted that these laws are *prima facie*, good and absolutely binding on the Executive and the courts until superseded or repealed by the territorial legislature or by Congress, and yet the Senate entirely decline or neglect to take any measures to inquire as to the truth, that they may afford relief.

The usurpers, therefore, continue in power in Kansas, sustained by the President, and again it is inquired what is the redress?

The Senate has passed a bill for pacification. Its essential features are that certain of the most obnoxious laws of Kansas shall cease, but those in power there shall remain, and the people now there, in the condition now existing, and after all the preparations before described shall, by vote, fix forever the condition of the Territory, as to slavery, by now making a State constitution. It must be obvious that this is but to give to violence, outrage, and atrocity, the reward of all its effort by the consummation of its wishes, domestic slavery forever.

The House of Representatives has passed a bill to admit Kansas under the State constitution adopted by a large majority of its people. This the Senate rejected, again insisting on submitting the matter to the people now there to vote on a constitution in the present condition of the Territory by those they may permit to remain until next November.

The House has now passed a bill, the leading and essential provisions of which are that the Missouri compromise line shall be restored, and the actual inhabitants in the Territory shall proceed to elect a legislature for the Territory.

These are its leading provisions, and all the other details and particulars which it includes are but collateral, and if they are unsatisfactory, they are only proper matter of amendment, but constitute no ground for rejecting the bill. This applies to a large part of the committee's report. It finds fault with provisions which are merely collateral details, and yet no amendment is proposed. If the now proposed boundaries include any part of the Cherokee lands or of New Mexico which ought not to be included, let it be amended. If the criminal laws of Kansas (which really have never been used but to promote the cause of slavery and prosecute and persecute pretended political offenders) should not all be declared inoperative, then adopt the proper amendments. If apparent inconsistencies or incongruities are found in the bill, it should be amended, not rejected on that account. If the bill contains no sufficient security against illegal voting, let them be inserted. If there be serious objection to the provisions in the bill in relation to permitting the slaves now in the Territory, and their children, to be held there or removed until January, 1858, let the same be stricken out or amended. It is no reasonable objection to restoring the Missouri compromise, which was agreed to because it was not, and is not, extended to the Pacific, which never was agreed to.

The essential principle of this bill is the restoration of the Missouri compromise line. Deprived of this it loses all vitality, is eviscerated, and becomes utterly valueless and detrimental. It proposes that the people now there shall proceed to the election of a legislature. This would appear to regard them as suitable to be entrusted with the power of election, and, if so, why not permit them to form a State constitution? The people there may safely be left to the election of a territorial legislature when Congress shall have re-established the law forever forbidding slavery in the Territory, but at the same time they are so conditioned as to be entirely unfitted to the fair and impartial decision of the question of slavery at this time.

The plausible experiment of settling the subject of slavery in a Territory by submitting it to the people who shall thereafter go in to

settle there, is incapable of a peaceful or satisfactory result, however it might be as to one already settled.

The settlement under such a proposition will be made with a view to this object, especially as political importance depends on it. These settlements will be advanced by extreme means and collisions will ensue. The agitation of this subject on the plains and prairies beyond the Mississippi, on the borders of civilized life, will be no more peaceful or conciliatory than in the rest of the country or in the halls of Congress. The application of popular sovereignty to this subject, to be exercised by the people in a Territory, while it is settling and while a Territory, is a delusion. This is what the Missouri compromise line was professedly repealed to try, and the experiment is either an intended duplicity, or it is a failure, and should be frankly and magnanimously abandoned, notwithstanding a national political convention may have endorsed it. It is, however, highly probable that the representatives of the slaveholding States, constituting a majority of the party in power, considering their people regard themselves as having secured an advantage in the Kansas bill, will not abandon the experiment, especially as the slaveholding power has already possession in Kansas, with a President to sustain it. It is true that *power* may, for a time, prevail. The experiment may proceed, the people in Kansas may be *dragooned* into submission, and power may, for a time, continue that vassalage which usurpation produced, but the end is not yet. Can it be expected that a slaveholding State, made such by such atrocities, can ever be admitted into this Union by any votes given by the representatives of a free people?

From the manifestations thus far presented by this experiment, we have full reason to expect that violence will continue so long as this apple of discord is continued in Kansas, and that any question involving it subjected to their solution will "suffer violence, and the violent will take it by force."

If this matter is not settled by Congress by the admission of Kansas as a free State, or the restoration of the compromise line, or some equivalent provision, then this experiment must proceed until the people will elect a President who will stop the execution of laws which usurpation has produced, and which the House of Representatives, in the exercise of a legitimate power and duty, have found to be void; even although of such usurpation the Senate decline to believe, and refuse or neglect to enquire.

J. COLLAMER.