31st Congress, 1st Session. Rep. No. 400. Ho. of Reps.

IOWA CONTESTED ELECTION.

June 18, 1850.
Ordered to lie on the table, and be printed.

Mr. Strong, from the Committee of Elections, made the following

REPORT:

The Committee of Elections, to whom was referred the memorial of Daniel F. Miller, esq., contesting the seat of the Hon. William Thompson as a representative from the first Congressional district of the State of Iowa, respectfully submit the following report:

The official return of the votes polled in said district for a member of the House of Representatives of the thirty-first Congress, at the general election held on the 7th day of August, A. D. 1848, is as follows:

For William Thompson - - - - -	6,477
For Daniel F. Miller - - - - -	6,091
Official majority for William Thompson - -	386

This official return is alleged by the contestant to be erroneous in three several particulars. He alleges—

1. That in Monroe, one of the counties embraced in the said Congressional district, the clerk of the board of commissioners of said county, who was also by law a member of the board of canvassers, suppressed the vote of Kanesville, a precinct of the county, and certified a false return of the votes given; that the vote of Kanesville, thus suppressed, was: for Daniel F. Miller 493, and for William Thompson 30; and that these votes should be added to the number officially returned.

2. He alleges that the board of canvassers of Polk county, also one of the counties composing the district, counted and certified forty-two votes for William Thompson and six for the contestant, which were cast in Boone township, of said county. These votes the contestant claims should be deducted from the aggregates of the official return, because, as he alleges, Boone township was placed by the districting act in the second Congressional district.

3. The contestant claims to be allowed seven additional votes in Marion county, which is also within the first district. These votes were given for Daniel Miller, and were rejected by the canvassers on account of the omission of the initial of the middle name, though the christian and sirnames were correctly described.

Upon the other side, the sitting membe claims—

1. That there should be allowed and counted the votes in White Oak

township, Mahaska county, (another of the counties within said district,) which were rejected by the canvassers on the ground that the judges of the election in that township did not certify that they had been sworn, according to the requisition of the statutes of Iowa, although, in truth, such oath had been administered. The votes polled in said White Oak township were: 53 for William Thompson, and 16 for Daniel F. Miller.

2. The sitting member also claims that there should be added to the official return the votes given in Chariton township, Appanoose county, (also within the district,) rejected by the canvassers for the same reasons for which the votes of White Oak township were rejected; whereas, in truth, the officers of the election in Chariton were sworn. The vote of Chariton township was: for William Thompson 16, and for Daniel F. Miller none.

3. The sitting member claims that there should be added to the official return the vote of Wells township, in Appanoose county, also rejected by the board of canvassers, for reasons similar to those assigned in the case of Chariton township. The votes in Wells were: for William Thompson 11, and for Daniel F. Miller 3.

4. The sitting member also alleges that, in the township of Boone, in Dallas county, (which is one of the counties embraced within the Congressional district,) 56 votes were illegally received and counted for the contestant, under the following circumstances: The persons who thus voted were not qualified voters, under the constitution and laws of the State, in Dallas county. They were at the time non-residents of the county, and came, on the day next preceding the election, to the place at which it was held, from without the bounds of the county of Dallas, and from without the bounds of any district of country attached to Dallas for election purposes. These fifty-six votes, it is claimed by the sitting member, should be deducted from the number returned as having been given to the contestant.

The sitting member also assigns several reasons why the votes given at Kanesville should not be allowed and counted in ascertaining the result of the election. They are these:

1. That the persons who voted at Kanesville were unnaturalized aliens.

2. That they were non-residents of the State of Iowa, temporarily sojourning there, but having no domicil in the State.

3. That they had not resided six months in the State, nor twenty days within the county in which they claimed to vote, as the laws of the State required, to entitle them to the elective franchise.

4. That they were minors.

5. That the election at Kanesville was not conducted in accordance with the provisions of the statutes of Iowa.

6. That under the laws of the State there was no legally-authorized district which warranted the reception of any votes at Kanesville.

7. That neither Kanesvile nor the country in which those resided who voted at Kanesville was any part of Monroe county, or attached to it for election purposes, but was a part of another county, and at least six miles north of Monroe or any district of country attached thereto.

Your committee have thus stated in detail the allegations made by the parties, that the House may with less difficulty comprehend the application of the testimony submitted. Most of these allegations may be briefly dismissed.

The third averment of the contestant is satisfactorily proved, and the committee are unanimously of opinion that the seven rejected votes in Marion should be counted for him.

The committee are also of opinion that the votes in White Oak township, in Chariton township, and in Wells township, (described in the first, second, and third averments of the sitting member,) should be received and counted—his allegations in respect to them having been proved by the evidence submitted.

There remain but three questions for consideration, each of which will be examined in order:

1. Should the vote at Kanesville be received and counted?
2. Should the vote of Boone township, Polk county, be rejected?
3. Should the return of the votes of Boone township, Dallas county, be purged of the fifty-six votes alleged by the sitting member to have been illegally received there?

The committee dismiss the consideration of the 1st, 2d, 3d, 4th, and 5th objections urged by the sitting member against the allowance of the Kanesville vote, with the single remark that they are not sustained by the evidence which has been presented. The qualifications of voters in the State of Iowa, as defined in her constitution, are six months' residence in the State of any white male citizen of the United States, and twenty days' residence in the county in which the vote is claimed, next preceding the election. It is doubtless true, that, to constitute residence within the constitutional meaning of the term, there must be the "intention to remain;" but this intention is entirely consistent with a purpose to change the place of abode at some future and *indefinite* day. Actual abode is "*prima facie*" residence; and we are unable to perceive anything in the evidence submitted which removes the presumption of qualification arising from the actual abode of the Kanesville voters within the State.

More grave and important are the questions, whether those persons who voted at Kanesville had any right to vote *at that place;* whether Kanesville was a place at which votes could legally be received; whether the commissioners of Monroe county had any such authority as they exercised to lay out a township and appoint a place of holding an election there; or, in other words, whether the residents of Kanesville and its vicinity could vote at any other place than in the county to which they had been attached by law.

By the constitution of the United States, the *times, places,* and *manner* of holding elections, and the *qualifications of voters,* are left to the control of the States. The elective franchise is a political, not a natural right, and can only be exercised in the *way,* at *the time,* and *at the place* which may be designated by law. If by the constitution and laws of Iowa, therefore, it was required that electors should vote *only* in the counties in which they resided, and at designated places within those counties, it cannot be doubted that votes given in other counties, or at other than the designated places, must be treated as nullities. To deny this, is to deny to the State the power expressly reserved in the constitution to prescribe the place and manner of holding the elections—a power essential to the preservation of the purity of elections. Assuming, then, that those who voted at Kanesville were qualified voters, it remains to be considered whether they voted at the place prescribed by law.

We submit a brief statement of the facts, as they appear in evidence:

Monroe county, the county in which the vote is alleged to have been but partially returned, is situated about midway between the eastern and western boundaries of the State. Kanesville, the alleged rejected precinct, lies about four miles from the Missouri river, which is the western boundary of the State, and about one hundred and fifty miles from any part of Monroe county proper. Prior to and up to August, 1848, the greater portion of the western half of Iowa had never been organized into counties. The elective franchise was, however, secured to the residents of that territory, both by the constitution of the State and by a legislative act passed July 28, 1840. By various statutes, the country was attached to the organized counties lying directly east, for revenue, judicial, and election purposes. On the 11th of June, A. D. 1845, an act was passed providing for the organization of Kishkekosh (now Monroe) county. This was one among a number of frontier counties bounded on the west by the unorganized territory of the State. By the 17th section of the act, it was enacted "that the territory west of said county be, and the same hereby is, attached to the county of Kishkekosh, (now Monroe,) for election, revenue, and judicial purposes." The northern line of Monroe county is the line dividing United States townships 73 and 74 north; and it adjoins Mahaska county, the southern boundary of which is the northern line of Monroe. On the 5th of February, A. D. 1844, the country west of Mahaska county was attached to it, for election, judicial, and revenue purposes, by an act of the legislature. The northern boundary of Mahaska is the line dividing townships 77 and 78 north, which is also the southern boundary of Dallas county. On the 16th of February, 1847, an act of the legislature attached to Dallas county, for election and other purposes, the country west of it. Thus it appears that only the country *directly* west of each of these counties was attached to and made a part of it, for election purposes. Any other construction of these acts would involve the absurdity of considering the unorganized territory as contemporaneously attached to two or more different counties.

It may admit of doubt whether the Pottawatomie country, in which Kanesville was situated, was intended to be attached either to Monroe or to Mahaska county by the acts of June 11, 1845, or February 5, 1844. At those times, the country belonged to the Pottawatomie Indians, whose title was not extinguished until by the treaty of 1846. During the continuance of that title, the jurisdiction of Iowa did not extend over the country. In the case of Worcester against the State of Georgia, (6 Peters, 515,) the Supreme Court decided that the Cherokee nation was a distinct community, occupying its own territory, with boundaries accurately defined, in which the laws of Georgia could have no force, and which the citizens of Georgia had no right to enter but with the assent of the Cherokees themselves, or in conformity with treaties and with the acts of Congress. The principle upon which that decision rests seems to be equally applicable to the Pottawatomies.

But, without discussing this question further, we proceed to inquire how the elective franchise of those resident in this attached county could be exercised. Under the constitution and laws, they could vote at any place of holding an election within the county proper to which they were attached. But what power had the commissioners of the organized counties to provide places for holding elections within the country thus attached? By an act of the legislature of Iowa passed January 21, 1847, it was enacted "that the board of commissioners of each county which shall

not be divided into townships when this act takes effect, and of any county to which any county or counties not so divided shall at that time be attached, for election or judicial purposes, shall, at any regular or called session, as early as practicable, divide such attached county or counties into townships of size and shape most convenient to the inhabitants, giving to each such name as the inhabitants thereof may prefer, and shall appoint a central and convenient place in each township for holding the first township election; and the clerk of the board shall record the name of each township, with a particular description of its boundaries; and every county afterwards established or organized shall be divided into townships, in like manner, at any regular or called session of the board of commissioners thereof, or of the county to which the same may be attached." Presuming, probably, that under this act they had sufficient authority, the board of commissioners of Monroe county, on the 3d day of July, 1848, made the following order:

"Ordered by the board of commissioners of Monroe county, and State of Iowa, that that portion of country called Pottawatomie county, which lies *directly* west of Monroe county, be organized into a township; and that Kanesville be a precinct for election purposes in said township; and that the election be held at the council-house in said village; and that Charles Bird, Henry Miller, and William Huntington be appointed judges of said election; and that the boundaries of said township extend east as far as the east Nishnabotna."

Acting under this order, Charles Bird, Henry Miller, and William Huntington opened a poll at the council-house in Kanesville, at the general election on the 7th of August, 1848, at which 493 votes were given for Daniel F. Miller for a representative from the first Congressional district, and thirty votes for William Thompson. A certified copy of the poll-book was forwarded to the clerk of the board of commissioners of Monroe county, in the manner and within the time prescribed by the statutes of the State for election returns; but the clerk refused to receive it and submit it to the board of canvassers, as required by law. The poll-book was then taken from the clerk's office, and retained by some persons not entitled to its custody until after this investigation was in progress. Your committee would not be understood as justifying the conduct of the clerk of the board of commissioners of Monroe county, or of those who abstracted the poll-book and subsequently detained it: on the contrary, we think it merits the severest censure. The clerk had, under the law, no authority to refuse to receive that which purported to be a return from an election district. It was his duty to receive the return and lay it before the legally-constituted board of canvassers, of which he was a member. But his act, censurable though it be, does not affect the decision of the question whether the board of commissioners of Monroe county acted with or without legal authority in organizing a township, appointing judges of the election, and directing a poll to be opened at Kanesville, and whether the votes there received can be legally counted in ascertaining the result of the election in that Congressional district.

Waiving, for the present, the consideration that Kanesville was not in any country attached to Monroe county, and that a majority of those who voted there were residents of territory attached to Mahaska county, we proceed to inquire, 1st, whether the order made by the board of commissioners was authorized by law; and 2d, whether, even if it was, it author-

ized opening a poll at the August election. We think they had authority to establish townships in any country attached to Monroe. The country attached was a part of the county. The constitution of the State declares that "any country attached to any county for judicial purposes shall, unless otherwise provided for, be considered as forming a part of such county for election purposes;" and, by an act of the legislature of July 28, 1840, it was provided as follows: "All the country that is at present, or may be hereafter, attached for revenue, election, or judicial purposes, and the inhabitants thereof, shall be entitled to and enjoy all the rights and privileges of the county or counties to which they are attached that they would be entitled to were they citizens proper of some organized county." Township divisions are, in part, for "election purposes;" and the act last cited gives every right and privilege which the citizens of Monroe county proper had. It would seem to follow, then, that the act of January 21, 1847, gave to the commissioners of Monroe the power to establish townships in the country attached to it. But the power to erect a township there was limited to fixing its boundaries, giving it a name, and appointing a central place within it for holding the first *township* election. They had no authority to appoint judges; and any persons appointed by them to act as judges would act, if they acted at all, without any legal sanction. In all cases of townships, the first section of the act of June 5, 1845, requires that the electors present shall, at their first meeting, elect, by ballot, three persons to act as judges of the election, and, at all subsequent elections, the third section of the same act directs that the township trustees shall be the judges. In this view of the case, the order of the board of commissioners of Monroe county was entirely unauthorized, and in contravention of the plain provisions of the law. It is argued, however, that the power to appoint judges was vested in the commissioners by the 3d section of "an act providing for and regulating general elections," passed in 1843. The third section of that act provides "that the county commissioners shall, respectively, at their regular annual session in July preceding the general election, *where the counties are not organized into townships*, appoint three capable and discreet persons, possessing the qualifications of electors, to act as judges of the election at any *election precinct*, and for each of the polls of the election, as provided for in the act setting off towns or districts," &c. The same section provides that, "in all organized townships, the trustees of said townships shall act as judges of all elections held under the provisions of this act." It is obvious, however, that the appointment of judges for which provision was made in this act could only be for election *precincts*, as distinguished from *townships*; and this conclusion is rendered inevitable by reference to the act of June 5, 1845, already cited, which devolves upon the electors in each township the duty of electing judges at their first election. It is true that the act of January 21, 1847, directs the commissioners of counties to which unorganized *counties* are attached to lay out townships in these attached *counties*. If unorganized *country* is not intended, if that is not to be considered as *part* of the county proper and subject to municipal division, then the commissioners of Monroe could not establish a township in the attached country, and the right to create *election precincts* there and appoint judges was vested in them, under the act of 1843. We have already submitted our reasons for the belief that the act of January 21, 1847, embraced all attached *country*. So the board of commissioners of Monroe understood it. Their order purported to create

a *township*, fixed its boundaries, and designated Kanesville as the place of holding the election. They acted, therefore, under the law of 1847, and not under that of 1843. We repeat, therefore, that the appointment of judges of the election in that township was unauthorized by law, and that judges thus appointed could not legally act. But if this were not so, neither the act of January 21, 1847, nor the order of the commissioners, warranted any other than a *township* election, as contradistinguished from a *general* election. The duties of the commissioners are declared in the act to be preliminary to the "*first township election.*" By the laws of the State, all township elections are to be held on the first Monday of April in each year; and therefore any election in this new township, thus established, was entirely unwarranted until the first Monday of April, 1849.

A more serious objection to the reception of the vote at Kanesville still remains. The evidence which has been submitted conclusively establishes the position that Kanesville, the place designated in the order of the commissioners, is at least six miles north of any part of Monroe county, and in a district which never was attached to Monroe, for election or any other purposes. This is shown beyond doubt by the statement of Charles Mason, (page 55,) admitted by the contestant as evidence, (pages 55 and 56)—by the testimony of John W. Webber (pages 58, 59) and Jonathan F. Strattan, (pages 112, 113.) It is also admitted by the contestant (page 35) that a majority of those who voted at Kanesville in August, 1848, resided north of a line running due east from the Missouri river, five miles south of Kanesville. Consequently, they resided north of the north line of Monroe county. Of course, they had been attached to Mahaska county, and, under the constitution of the State, they could vote only in Mahaska county. How, then, can it be asserted that their votes could be legally counted, except in violation of the constitutional provision expressly restricting the right to vote to voting in that county in which the elector was resident? It is not pretended that Kanesville was an election district of Mahaska. The votes are claimed as belonging to Monroe. In many of the States, the right to vote is confined by law to voting in the ward or township in which the elector resides; and, even under this more stringent provision, votes in other wards or townships have, it is believed, been uniformly adjudged illegal.

And again: Kanesville being proved to have been in a country which was neither a part of nor attached to Monroe, it is perfectly obvious that the board of commissioners of that county had no more authority to establish an election district there than they had to establish one in Mahaska county proper. The board was a court of limited jurisdiction. Beyond the prescribed limits of its jurisdiction, its acts were, of course, nullities, and neither gave nor took away any right. Nor can it be said that by these views the voters at Kanesville are disfranchised. The act of the Monroe commissioners did not affect them. They might have voted, as before, in any election district of Mahaska, to which they were attached. Nor is their belief that they were rightly voting at Kanesville at all material, though it may have been their misfortune. Their right to vote was a political right, restricted by their *actual* residence, and not by what they may have supposed it to be. The opposite doctrine would convert the constitutional provision into a declaration that the voter should vote in the county in which he supposes he resides, and make his franchise depend-

ent upon his own conjecture. The vote at Kanesville was therefore unwarranted and illegal, and cannot properly be counted.

The next question presented in the case is, whether the vote of Boone township, Polk county, should be rejected, as is claimed by the contestant. The vote of this township was: forty-two for William Thompson, and six for Daniel F. Miller. The contestant claims that these votes should be rejected, because, as he alleges, Boone township was in the second, and not in the first Congressional district.

By the act of the legislature of Iowa of February 22, 1847, the State was divided into two Congressional districts; and the first district was declared to embrace "the counties of Lee, Van Buren, Jefferson, Wapello, Davis, Appanoose, Henry, Mahaska, Monroe, Marion, Jasper, Polk, Keokuk, *and all of the country south of a line from the northwest corner of the county of Polk running west to the Missouri river.*" The second district was declared to embrace the "counties of Clayton, Dubuque, Delaware, Jackson, Clinton, Jones, Linn, Poweshick, Benton, Iowa, Johnson, Cedar, Scott, Muscatine, Washington, Louisa, Desmoines, *and all the country north of a line from the northwest corner of the county of Polk running west to the Missouri river.*" By an act of the legislature of January 13, 1846, section 8, the boundaries of Boone county were established, and the south line was declared to be the division line between townships 81 and 82—it being an extension of the north line of Polk county. Prior to the Congressional election in August, 1848, although its boundaries had been thus established, it had never been organized; and by an act of January 17, 1846, "the counties of Story, Boone, and Dallas, (afterwards organized,) and the territory of country north and west of said counties" was "attached to the county of Polk, for revenue, election, and judicial purposes." In pursuance of this legislative provision, the commissioners of Polk county, in 1847, established a township in this attached country, embracing the whole of it, and called the township Boone. In 1848, they divided this township, calling the southern half Jefferson, and the northern half Boone. This division could not, however, take effect until the township elections, which were fixed by law, in the spring of 1849. The electors resident in this Boone township voted at the Congressional election, and their votes were returned and counted in Polk county, to which the township had been thus attached. For all election purposes—for all the purposes of this investigation, Boone county, or Boone township, was as much a part of Polk county as was any township within the county proper. The constitution of Iowa declares that any country attached to any county for judicial purposes shall, unless otherwise provided for, be considered as forming a *part* of said county for election purposes. But, unless the vote of Boone township be received and counted as a part of Polk county, this constitutional provision becomes a nullity, and the voters of Boone are entirely disfranchised. Their vote could be received and counted at no other place. No provision was ever made for their voting in any other county than Polk. The electors at Kanesville could have voted, had they chosen to do so, in the county lying east of them, to which they had been attached; but these voters could have had no voice in the choice of a representative, unless their votes had been received as a portion of the vote of the first district, of which Polk county was declared to be a part. It is, however, objected, that the constitution also contains the following provision: "No county shall

be divided in forming a Congressional, senatorial, or representative district." It is urged that, if Boone is to be considered as forming a part of Polk county, then a county has been divided in forming a Congressional district, and therefore the districting act must be considered as repealing the antecedent act, attaching Boone to Polk. To this it may be answered, that if, within the meaning of the constitution, the districting act did divide Polk county by separating Boone township from it, the act itself is unconstitutional and inoperative, so far as it aims to sever Boone from the county of which, under the constitution and law, it forms a part. Nor does there appear to be the least reason for asserting that it repealed the act attaching Boone to Polk. It does not purport to repeal any law; and it might with equal force be contended, had it run the line dividing the two districts directly through the centre of Polk county proper, that it repealed the law by which the boundaries of Polk were established. But such is not the true meaning of the constitutional provision. Unquestionably, its design was to guard against the division of the votes of the inhabitants of any county—to provide that all the votes of the electors of each county should be counted together, and certified as an entirety, not in fragments. The commissioners of each county are required by law to certify an abstract of the vote of each county to the secretary of state. The abstract, thus certified, is a record of the entire vote of the county, including all which is appurtenant to it. That abstract may not be divided; and the design of the constitutional provision would ill be answered by severing from the remainder the votes of a constituent part of Polk county, though only an adjunct.

There seems, therefore, to be no satisfactory reason why the vote of Boone township should not be counted in Polk, and in the first Congressional district.

It remains to consider the third and only other question which has been contested in the case: Should the fifty-six which were received and counted in Boone township, Dallas county, be rejected from the aggregate, as officially reported? The facts in regard to this question may be briefly stated, as follows: From the official return of the election held in that township, (pages 92 and 93,) seventy-two votes appear to have been received. Of these, fifty-six whose names are given are alleged to have lived out of the county, and to have had no right to vote there. The testimony of Reuben Oaks (page 31) and Hiram Oaks (page 35) proves that they and more than fifty others went, immediately before the August election of 1848, from Pottawatomie county (a distance of one hundred and forty miles, and more than sixteen days' journey) to Dallas county, and voted there. The persons went from the Mormon settlements west of the Nishnabotna. Nor is this all. The exact place of residence of most of these persons is shown; and they are the persons whom the poll-books show to have voted at Boone, in Dallas county. *One* is proved to have resided in the neighborhood of Kanesville; *nine* are proved to have resided at Honey Creek settlement, fifteen miles northward from Kanesville; ten at Bybe settlement, two miles east of Honey Creek; six at Big Pigeon, ten miles east of north from Kanesville; two at Key Creek, fifteen miles northeast of Kanesville; two at Drun's Mill, eleven miles northeast of Kanesville; and seven at Harris Grove, a place said by Reuben Oaks to be near forty miles east of northeast from Kanesville. The place of residence of the others who went in this company is not

proved, though five others are recognised by Reuben Oaks, Hiram Oaks, and E. M. Greene as having been in the party. The House is left to infer the place of residence of the others from the fact that all went in a body from Pottawatomie county; and it is but a fair presumption that they all resided in the same neighborhood. Of all the places named at which these persons resided, Harris Grove seems to have been most distant from Kanesville, and most northward. But the testimony satisfactorily shows that Harris Grove was at least two miles south of the south line of Dallas county, and, therefore, that alike Harris Grove and all the other places at which these persons resided were south of any portion of country which had been attached to Dallas for election purposes. The records of the land office, and the testimony of James M. Marsh, (page 53,) as well as that of Charles Mason (page 54) and John W. Webber, show that, under authority of the United States, and in prosecution of the public surveys, a correction line was run to the Missouri river in the fall of 1848, between townships 78 and 79 north, and west of the 5th principal meridian. It is also agreed by the contestant (page 78) that Harris Grove is "eight miles south of the correction line run through to the Missouri river by the United States surveys in the fall of 1849." It will be observed that this agreement speaks of a correction line run in 1849, while that between townships 78 and 79 was run in the year 1848. It cannot be doubted, however, that reference is made to the same line. The records of the land office show no other correction line run in that vicinity than that run by Mr. Marsh in the fall of 1848; and it would be extraordinary if there were, for it is of unfrequent occurrence, and useless in prosecuting the public surveys, to run correction lines within less than about sixty miles from each other. It being admitted, then, that Harris Grove lies eight miles south of this correction line dividing townships 78 and 79, it necessarily follows that it is south of the south line of Dallas county, and consequently that all the persons referred to in the depositions of Reuben Oaks, Hiram Oaks, and E. M. Greene could not legally vote in Dallas county. The act of the legislature of Iowa approved January 17, 1846, defines the boundaries of Dallas county, as follows: "Beginning at the northwest corner of Polk county; thence west on the line dividing townships 81 and 82 to the northwest corner of township 81 north, of range 29 west; thence south to the southwest corner of township 78 north, of range 29 west; thence east to the southeast corner of township 78 north, of range 26 west; and thence north to the place of beginning." From this it appears that the south line of Dallas county is the line dividing townships 77 and 78. As the townships are all six miles square, the correction line, being between townships 78 and 79, is only six miles north of the southern boundary of the county. Harris Grove, therefore, was not within the country attached to Dallas for election purposes, but was attached to Mahaska—a county in the next range south; and in Mahaska only could the persons referred to by Oaks and Greene vote.

Why they attempted to vote in Dallas, it is not very material to inquire. It is worthy of observation, that they went from the vicinity of Kanesville, and, therefore, must have known either that that place was not west of Monroe, or that their places of residence were not west of Dallas. But how many of these votes should be discarded? More than fifty went in the company. Only forty-two, however, have been recognised

by Reuben Oaks, Hiram Oaks, and E. M. Green. These, it is agreed by the contestant, with the exception of four, voted for him, (page 92.) It follows that he received at least thirty-eight illegal votes; and we are of opinion that that number should be deducted from the number returned as having voted for him.

Your committee have thus presented all the questions the consideration of which is necessary to the adjudication of the case. Much testimony has been introduced by both the parties which, in our estimation, has no relevancy to the actual merits of the controversy. The conduct of the friends of the parties, or even of the parties themselves—the facts that electors acted under an honest though mistaken impression as to their rights; that the commissioners of Monroe were the political friends of one of the litigants; that the canvass was conducted by the friends of the candidates as if the election at Kanesville was regular and legal; or even that a majority of the legal voters resident within the district, in some mode, and at some place, expressed their preference for one of the candidates—are matters entirely foreign from a legitimate consideration of the question, Who is entitled to the seat? The House, in judging of elections, has no discretion to exercise. It acts in a judicial character; and the only thing to be adjudicated is this: *Who has received a majority of the votes of the electors in the district*, polled at the *time*, in the *manner*, and *at the places* prescribed by law?

Upon reviewing the conclusions thus submitted, the correct statement of the votes received by the sitting member and the contestant is as follows:

For William Thompson.

Official abstract as returned - - - -	6,477 votes.
White Oak, Mahaska county - - - -	53 "
Chariton, Appanoose county - - - -	16 "
Wells, Appanoose county - - - -	11 "
Total vote received by William Thompson -	6,557 "

For Daniel F. Miller.

Official abstract as returned - - - -	6,091 votes.
Rejected votes in Marion - - - -	7 "
White Oak, Mahaska county - - - -	16 "
Wells, Appanoose county - - - -	3 "
	6,117 "
Deduct illegal votes in Dallas given to contestant -	38 "
Total vote received by Daniel F. Miller -	6,079 "
	"
Majority for William Thompson - -	478 "

It is apparent, therefore, that, even if the vote at Kanesville be received

and counted, the result remains unchanged. The Kanesville vote was: 493 for Daniel F. Miller, and 30 for William Thompson. If this vote be added to the aggregate above stated, it stands:

For William Thompson.

Aggregate as above	6,557	votes.
Add Kanesville votes	30	"
Total	6,587	"

For Daniel F. Miller.

Aggregate as above	6,079	votes.
Add Kanesville votes	493	"
	6,572	"
Majority for William Thompson	15	"

In every aspect, therefore, in which the case can be justly considered, your committee are of opinion that William Thompson received a majority of the votes which were legally polled, and was duly elected a representative to the thirty-first Congress from the first Congressional district of Iowa.

They submit the following resolution:

Resolved, That William Thompson is entitled to the seat in this House which he now holds as the representative from the first Congressional district of Iowa.

The resolution appended to this report was adopted by the following vote:

AYES.—Ashe, I. G. Harris, Disney, S. W. Harris, and Strong.

NOES.—Van Dyke, Thompson, McGaughey, and Andrews.

The votes of White Oak and Chariton were unanimously ordered to be counted.

The vote of Wells ordered to be counted:

AYES.—Strong, S. W. Harris, Disney, Van Dyke, Thompson, I. G. Harris, McGaughey, and Ashe.

No.—Andrews.

Upon receiving the vote of Kanesville:

AYES.—Van Dyke, Thompson, McGaughey, Ashe, and Andrews.

NOES.—Strong, Disney, S. W. Harris, and I. G. Harris.

Upon rejecting the vote of Boone township, Dallas county:

AYES.—S. W. Harris, Van Dyke, Thompson, I. G. Harris, McGaughey, and Andrews.

NOES.—Strong, Disney, and Ashe.

Upon rejecting the voters in Boone township, Dallas county, proved to have resided south of the south line of Dallas:

AYES.—S. W. Harris, I. G. Harris, Disney, Van Dyke, Ashe, and Strong.

NOES.—McGaughey, and Andrews.

MINORITY REPORT.

Mr. VAN DYKE, from the minority of the Committee of Elections, made the following report:

The Committee of Elections, to whom was referred the memorial of Daniel F. Miller, praying to be admitted to a seat in the House of Representatives as a member from the first Congressional district in the State of Iowa, in the place and stead of William Thompson, the present sitting member from said State and district, have had the said memorial and the evidence relative to the same, taken pursuant to the order of the House, under consideration, and beg leave respectfully to report:

That the whole number of votes which were counted by the Congressional canvassers for the State of Iowa for the said contestant and for the said sitting member, in the said first Congressional district, was 12,568; of which number the contestant had 6,091, and the said sitting member 6,477—giving to the said sitting member a majority of 386.

It appears, however, by the statements and admissions of the parties and the evidence taken in the case, that the votes cast in a number of the election precincts in said district were not counted by the election officers, and did not in any way contribute to the result above stated. It further satisfactorily appears by the evidence, that, of all the votes cast in the said district by persons residing therein at the time, and who, for aught that appears, had an undoubted right to vote in the said district, the contestant has a majority of 59. It is insisted by the contestant that the sitting member received and had counted for him certain votes given by persons not then residing in the said first district, and who had no right to vote therein; and that a large number of legal votes were cast within the said district for the said contestant which were not in any way counted for him in the said district by the said Congressional canvassers, although they were counted and allowed by the officers holding the elections. On the other hand, it is insisted by the sitting member that the said contestant had counted and allowed to him, in the said first district, a number of votes which were illegally cast, and which, for that reason, should have been rejected by the said canvassers; and also that a number of lawful votes were cast for the said sitting member, in the said first district, which should have been counted and allowed to him, but which were rejected and not counted by the said canvassers.

The only questions of difficulty which present themselves are the proper admission or rejection of the votes thus placed in controversy and dispute; and although the committee has not been unanimous on many of the points presented for its consideration and decision, yet on each of the points thus presented there has been such a decision by a majority of the committee as to give to the contestant the seat which he claims.

In the first place, the contestant insists that seven votes which were cast for Daniel F. Miller in Pleasant Grove township, in the county of Marion, omitting the middle letter in the name of the contestant, and

which were not counted by the said canvassers, should be counted and allowed to him. If these votes were really cast for the contestant, and the omission of the middle letter arose from a want of knowledge of the use of such letter on the part of the voters, it would be extremely technical and harsh to disallow such votes; but it appears by the admission of the sitting member, through his counsel, that the only candidates nominated for representative were Daniel F. Miller—sometimes called Dan Miller or Daniel Miller—William Thompson, and Mr. Howe. The committee, therefore, are satisfied that the said seven votes were honestly intended for the contestant, and allow them accordingly—increasing the number of votes to be counted for the contestant to 6,098. These votes were allowed him by the officers holding the election, but not by the canvassers.

It is insisted, secondly, by the contestant, that the votes given at Kanesville, an election precinct near the Missouri river, established as such by the board of commissioners of the county of Monroe, and supposed to be attached to that county for election purposes, and which votes, although allowed by the officers holding the election there, were illegally suppressed and never allowed to reach the said Congressional canvassers, should now be counted and adjudged to be a part of the legal vote of the said first Congressional district. The whole number of votes cast at the Kanesville precinct was 523; of this number, 493 were cast for the contestant, and 30 for the sitting member. This is a question of much importance. It is not a matter of a few illegal votes, but it is one of the admission or destruction of the vote of an entire township or precinct, and that one of the largest in the State. It is fully established, as well as admitted, that the persons voting at this precinct had a perfect right to vote in the first Congressional district, and to vote for either the contestant or the sitting member. It is not pretended that any fraud, injustice, or unfairness was practised by either the voters or the election officers towards any one, but everything seems to have been done honestly, fairly, and in good faith, and that the persons voting were legal voters in the district; while the whole proceedings touching the election were assented to and participated in by all men and all parties there, and were objected to by none. And in view of these facts, and in view of the great principle in our institutions which seeks to afford to all the citizens of the Union the right of suffrage, the committee believe that the reasons for wholly setting aside the election in this precinct should be exceedingly strong. These reasons are strictly and purely technical in their nature; and, although they are entitled to a proper consideration, yet they ought not, in the opinion of the committee, in the absence of all improper conduct, to be allowed to destroy the votes of so large a portion of the citizens of Iowa, whose right to vote in the first district, and for either of the two candidates, is, since the taking of the testimony, unquestioned.

The State of Iowa lies between the Mississippi and Missouri rivers. The counties in the eastern part of the State were first organized, and, as the organization of counties proceeded, there always remained unorganized country lying westward of them of from one hundred to two hundred miles in extent. By a number of acts of the legislature of the Territory as well as of the State of Iowa, all the country lying west of certain organized counties was attached to such counties, for "election, revenue, and judicial purposes;" and the inhabitants of such attached

country were "entitled to enjoy all the rights and privileges of the counties to which they were attached that they would be entitled to were they citizens proper of some organized county." And in accordance with this practice, the legislature of Iowa, on the 11th day of June, 1845, passed an act organizing the county of Kishkekosh, and attached to it the territory west of said county, "for election, revenue, and judicial purposes." On the 19th day of June, 1846, the legislature of said State, by an act for that purpose, changed the name of this county from Kishkekosh to Monroe.

By an act of the legislature of Iowa approved February 15, 1843, a board of county commissioners was required to be organized in each of the counties "for transacting county business." This board was made a body "corporate and politic" by the act. And by another act of February 17, 1842, "for the organization of townships," these boards are authorized to "divide counties into townships," "and appoint the place where the first meeting of the electors shall be holden." But by another act of the legislature, entitled "An act providing for and regulating general elections," which went into operation July 1, 1843, these boards of county commissioners are required, "at their regular sessions in July preceding the general election, where the counties are *not* organized into townships, to appoint three capable and discreet persons to act as judges of the election at any election precinct." And under this authority these boards of commissioners have always been in the practice and habit, in the unorganized country, of appointing not only the judges of election, but of fixing also the precinct or place where the election should be held wherever they supposed the convenience of voters required it. And accordingly we find by the evidence that, at the term of July of these boards of commissioners immediately preceding the general election in 1848, a number of election precincts in unorganized territory were created, and a number of townships in organized territory were organized, and judges of election appointed for them all, respectively.

Among the number of election precincts created at the said July term of the said boards of commissioners was the one at Kanesville, which was established, and the judges of election appointed, by the board of commissioners of the county of Monroe. Kanesville was some 125 miles from the western limit of Monroe proper, and was in a wild and unsurveyed country; but everybody, it seems, both in Monroe county proper and at Kanesville, and elsewhere, supposed and believed that it was within the country attached to the county of Monroe for election, revenue, and judicial purposes. There had not at that time been any lines run fixing the boundaries of counties in that part of the country, and no one could possibly tell the precise place of such boundaries.

It turns out, however, by surveys made since the election of 1848, that Kanesville lies some five or six miles north of the northerly line of Monroe county, as run due west from the northwest corner thereof; and the question is, whether this fact should be permitted to annul the whole election, when all the persons voting had a perfect right to vote for either of the two candidates on one side or the other of the line. If it were a question of conflicting jurisdiction between two adjacent counties, it might be entitled to more weight; but no such question arises here. Nor can the sitting member complain that this mode of voting does him any injustice; for if these votes had been cast on different sides of the line, as

he insists they should have been, they would with still more certainty have defeated his election, if that election depends upon these votes.

But, although there was at the time no governmental line run between the county of Monroe and the county lying north of it, yet there was an understood line, a claimed line, an admitted line. That line ran north of Kanesville, and according to that line the authorities of Monroe claimed and exercised jurisdiction over Kanesville as a part of that county. This jurisdiction was assented to by the people of Kanesville, and has never been resisted by the county of Marion, in which Kanesville is now alleged to be situated; and, although it is now said by persons who have recently run a line, that a course due west from the north line of Monroe will place Kanesville north of that line, yet there has never, up to this time, been any such settlement or adjudication of the question as to this line as to overturn or shake the jurisdiction which Monroe county exercised over Kanesville. It is a well-known historical and judicial fact, that, as between the State of Iowa and the State of Missouri, the latter claimed and exercised jurisdiction for a long time over territory to which she had in fact no legal right, and which, in truth, formed a part of Iowa. Yet the State of Missouri, like the county of Monroe, assumed that the line between her and Iowa ran north of certain inhabitants there residing, and accordingly extended her laws over them, and brought them within her jurisdiction for all purposes. This claim was resisted by Iowa; and, upon an after investigation of the facts and law of the case before the Supreme Court of the United States, it was decided by that tribunal that the line did not run where Missouri claimed it to be, but —— miles south of it; and such decision must also have determined that Missouri never had any legal right to exercise jurisdiction over the disputed territory or its inhabitants, at the time she exercised it. But does this decision and determination of the Supreme Court necessarily annul and destroy all the acts of jurisdiction which the State of Missouri exercised over the territory while she adversely held it in actual possession? Are all the taxes she collected of those people now to be returned to them? Has every punishment of an offender now become a crime against the public functionaries who inflicted it? Is the service of every process by a sheriff or constable now become a trespass on the part of such officer, and the service good for nothing? Certainly not. The jurisdiction of Missouri over the part in dispute is at an end; but the legislative, judicial, and executive acts which she exercised over it while in her custody, so far as all citizens are concerned, are as valid as any other of her acts. So with the county of Monroe. She assumes that the line between her and Marion runs north of Kanesville, and extends her jurisdiction accordingly over the people, and enforces her laws among them. This assumption is unresisted; and, admitting it to be altogether wrong in law and in fact, yet, if it is continued, and never determined to be otherwise, can it be contended with truth that all such exercise of jurisdiction is absolutely void—and that, too, when the question is raised, not directly, but in a collateral way, and before the most equitable and least technical of all tribunals, the House of Representatives? The committee think not.

Nor do the committee see that either the contestant or any of his friends can be charged with any unfairness in this matter. The entire board of commissioners of the county of Monroe were the political friends of the sitting member. A majority of the election officers at Kanesville were

also his political friends. A number of other influential friends of his went a long distance to Kanesville prior to the election on an electioneering campaign in his behalf; while the actual sheriff of Monroe county, a political friend of his, did the same thing, and was at Kanesville and voted there on the day of election. The contestant, it seems, had political friends at Kanesville; but it does not appear that either he or any of his friends from a distance ever visited Kanesville at or before the election for political purposes. No question was raised at any time by any one against the correctness of the proceeding, until after the election. The balloting seems to have been conducted, and the poll-book kept, with more than usual care and regularity.

The poll-book in this case was duly made up and delivered by the proper officer to the clerk of the board of commissioners of the county of Monroe, as the law requires, whose duty it was to receive it, and at the proper time, with the assistance of two justices of the peace, to open it, and make an abstract of the votes of that and other precincts, and transmit them to the secretary of state, to be counted and canvassed by the board of canvassers. But the clerk of the board of commissioners of Monroe county, without calling to his aid the two justices of the peace, as the law requires, but under the advice of J. C. Hall, esq., one of the attorneys of the sitting member, (and who travelled a hundred miles to give such advice,) refused to receive or take care of the Kanesville poll-book; and it was actually carried away by some one, but no one knows who or how, except that through some unknown agency it was found in the carpet-bag of Mr. J. C. Hall before he got home, as he now tells us in his evidence. Mr. J. C. Hall gave the poll-book to the sitting member in the spring of 1849, who, in the winter of that year, disputed the existence of such a poll-book before the committee; but, on the 19th day of February last, Judge Mason, another of the attorneys of the sitting member, in attempting to serve, at his own office, a notice on the contestant to take testimony in the case, accidentally, as is supposed, served on him the original poll-book of the Kanesville precinct!—which the contestant, after duly examining it in the presence of several other persons, returned. This poll-book was, of course, never before the Congressional canvassers; but the committee think that, under all the circumstances of the case, the vote of this precinct should be received and counted, which will increase the number of votes given to the contestant to 6,591, and the number given to the sitting member to 6,507.

It is also insisted by the contestant, that the vote cast in the township of Boone, in the county of Boone, but counted in and added to the vote of the county of Polk, was improperly counted and allowed by the board of canvassers, and should now be deducted from the general result or aggregate of votes counted in and for the first district. The votes given in this township were: for the contestant six, and for the sitting member forty-two. This township of Boone, and the county of Boone, in which it is situated, are, in fact, not in the first but in the second Congressional district of Iowa, and all the persons who voted in this township of Boone actually resided in the second Congressional district at the time they voted. About this there is no dispute, as the districting line of Iowa places the whole of Polk county in the first district, and the whole of Boone county in the second district; and the only ground on which it is claimed that these votes given in Boone were correctly counted in Polk county is, that, by an

act of the legislature of Iowa approved January 17, 1846, Boone county was attached to Polk county, for election, revenue and judicial purposes, and that the constitution of that State prohibits the division of counties in making Congressional districts. But, by an act of Congress approved June 25, 1842, every State that is entitled to more than one representative is required to vote by district—each district is to elect one representative, and no more; and in pursuance of this act of Congress, the State of Iowa, on the 22d of February, 1847, divided herself into two Congressional districts, denominated the first and second districts. Now, it seems impossible that Congress, when it passed this districting act, confining each district to one representative, could have intended that, for Congressional purposes, the inhabitants and residents of one district could lawfully vote in another. And can it be supposed that the State of Iowa, when, subsequently to all these other laws, she ran a line across her territory dividing it into two districts, meant to say that after all that line meant nothing, and that the inhabitants living in one district, when voting for representatives in Congress, might still vote in the other district? Such supposition, the committee believe, cannot be admitted. If this principle be once allowed to prevail, where is it to end? Will it not entirely destroy the whole district system?

And further: If the construction insisted on by the sitting member be correct, it will carry the votes of one-half of the second district into the first; for the same act and the same section which attaches Boone to Polk county, for election purposes, also attaches, for the same purposes, the counties of Story and Dallas, and likewise all the country lying north and west of the said three counties of Story, Boone, and Dallas, which, according to the map of the State, will take in nearly if not quite half of the territory of the second district; and the voters in all that section of the second district thus included within the first had the same right to have their votes counted in the first district as those living and voting in the township of Boone. Such a principle, if allowed, would at any time enable a strong district that had votes to spare to turn the scale in a neighboring district that needed aid. But such, the committee believe, is not the law of the land, nor its intention; and, as the voters in Boone township did not reside at the time in the first district at all, but in the second district, in which, if anywhere, they had a right to vote for a representative in Congress, and as, in consequence, they certainly had no right to vote for either the contestant or the sitting member at any place, the committee think that this vote of Boone township should be excluded, which being done will reduce the number of votes given to the contestant to 6,585, and the number given to the sitting member to 6,465.

On the other hand, the sitting member claims that in the township of White Oak, in the county of Mahaska, 69 votes were polled at the election in August, 1848; that 53 of these votes were given for the sitting member, and 16 for the contestant; that these votes were rejected on the ground that it did not appear that the judges of election had been sworn. A copy of the poll-book is before the committee, and it satisfactorily appears by the evidence taken that the judges were in fact sworn; and the committee are unanimous that the votes should be received and counted, which being done will increase the number of votes given to the contestant to 6,601, and the number given to the sitting member to 6,518.

A claim precisely similar is made by the sitting member to 16 votes

cast for him in the township of Chariton, in the county of Appanoose, which were rejected for the same reason as those in White Oak. It is also proved that the judges of election were in fact sworn; and the committee think the votes should be received and counted, which being done increases the number of votes given to the sitting member to 6,534. It is also insisted by the sitting member that he should be allowed 11 votes, and the contestant three votes, cast in the township of Wells, in the county of Appanoose. It appears that these votes were rejected for informality. It does not appear by the election proceedings that the officers of election were sworn, nor is it at all proved in any other way. And although it appears that *W. Thompson* and *D. F. Miller* were voted for for Congress, yet it does not appear how many votes either of them received; and the only mode of *inferring* that either of them received any votes at all is, that the poll-book states that, for "*superintendent of public instruction*," W. M. Thompson received 11 votes, and that for the same office D. F. Miller received 3 votes. No proof is brought to bear on this case to prove anything whatever about it; and if ever irregularity or illegality should set aside an entire poll, it should be such as this. But the committee, from a very strong indisposition to deprive the citizen of his right to vote in consequence of the errors and blunders of others, nevertheless allow this vote to be counted, which increases the number of votes cast for the sitting member to 6,542, and those of the contestant to 6,604.

It is further and lastly insisted by the sitting member that 52 votes were illegally cast for the contestant in the county of Dallas, and that they should now be deducted. If this whole number were deducted from the votes heretofore allowed to the contestant by the decisions of the committee, he would still have the largest number of votes, and would consequently be entitled to the seat. The whole number of votes given at this poll is: for the contestant 62, and for the sitting member 10. The county of Dallas, like other counties, had the country lying west of it attached to it, for election and other purposes; and it appears that a number of persons not living within the limits of Dallas county proper, but living westwardly thereof, voted in a precinct in that county. It is contended by the sitting member that the persons living south of the southerly line of Dallas were not legal voters in that county, and so a majority of the committee have determined. Two questions present themselves for consideration: first, How many of these persons voted for the contestant? and secondly, On which side of the southerly line of Dallas county did they reside? The only evidence as to whom they voted for is found in the admission of the contestant. He admits that the persons recognised by Oaks and Green in their testimony voted in Dallas and for him, except four. The whole number of persons recognised by Oaks and Green, jointly and severally, amounts to 40. Of these, the votes of three are unknown, and one did not vote—reducing the number of those who voted for the contestant, as proved or admitted, to 36.

These votes were all received as legal votes by the judges of election, who are presumed to have made all due inquiry and to have decided correctly, and must also be presumed to have had as much knowledge of the southerly line of Dallas as any of us, acting as we do without any evidence on the subject. These votes were also counted and allowed by the board of Congressional canvassers of the State of Iowa, and every presumption must be in favor of their legality, until the contrary be fully

established. The sitting member contends that these votes are illegal, because the voters resided on the south side of the southerly line of Dallas. In attempting to establish this, the burden of proof rests entirely on him. In undertaking to overthrow the decisions and adjudications of Iowa, he must not leave us to guess that those decisions may be wrong, but he is bound to *prove* it beyond all reasonable doubt.

Among the persons recognised by Oaks and Green are five whose places of residence at the time of election no one who has testified knows; and as their votes were duly received and presumed to be legal, and as no one locates them out of Dallas county, or in any way shows why they are illegal, they must be considered as legal votes; and, being so considered, it will reduce the number of those alleged to be illegal to thirty-one, (31.)

Of the remaining thirty-one voters, the residence of each in his particular settlement is given; and it was quite as easy for the sitting member, who objects to these votes, to have shown, by survey or otherwise, on which side of the southerly line of Dallas these settlements were, as it was to show on which side of the northerly line of Monroe Kanesville is situated. But he has done no such thing, and has not even attempted it; nor had there been at that time, nor has there been since, any line run through that section of country where these voters resided showing the southerly line of Dallas.

These voters all resided either in the country attached to Dallas county or in the country attached to Marion county—that being the county immediately south of Dallas, and lying between it and Monroe county. They had a right to vote in one county or the other, beyond doubt; and, according to the testimony of all the witnesses that have been examined on this part of the case, these voters all thought that their places of residence were in Dallas county, and that they were lawful voters there, and accordingly went there and deposited their votes. They might have done so quite as well and as easily in Marion county; but they were satisfied that their voting-place was in Dallas, and they went there accordingly. So far, therefore, as the persons living in that region of country were competent to prove the line between the counties, these witnesses prove it to have been south of those settlements.

Of the 31 voters last named, it appears from the testimony that ten of them resided within ten or twelve miles of Kanesville; and, under the evidence in relation to that precinct, it may not be unreasonable to suppose that these ten voters resided south of the line in question.

With regard to the remaining 21 voters, 14 of them, it is proved, resided at Honey Creek and Bybe settlements—*called* fifteen miles north of Kanesville. Now, if Marion county be twenty miles wide from north to south, then these voters all resided, in fact, in Dallas. If Kanesville has been properly located by the sitting member, and if Monroe be more than twenty miles wide, of which we have no certain evidence, then these voters are brought so near the line as to render it impossible for the committee to determine that they *certainly* lived south of the line; while the remaining seven voters resided at Harris Grove, forty miles from Kanesville, in a direction east of northeast therefrom. Now, it is perfectly certain that a line running east of northeast from Kanesville, and continued for forty miles, will bring you into the country attached to Dallas county for election and other purposes, so that there are but ten of the votes given for

the contestant in Dallas county that can, with any kind of propriety, be pronounced illegal; and if these be deducted from the number given to the contestant, his number will be 6,594, and the number of the sitting member 6,542. And if we now leave in or readd to the general result the votes cast in the township of Boone, in the county of Polk, in the second district, the contestant will still have the largest number of legal votes in the district. The committee, therefore, recommend the adoption of the following resolutions:

1. *Resolved*, That the seven votes cast at Pleasant Grove with the middle letter of the contestant's name omitted be allowed and counted for him.

2. *Resolved*, That the vote cast at Kanesville be allowed and counted as a legal vote.

3. *Resolved*, That the vote cast at White Oak be counted and allowed as a legal vote.

4. *Resolved*, That the vote cast at Chariton be allowed and counted as a legal vote.

5. *Resolved*, That the vote cast in Wells township be allowed and counted as a legal vote.

6. *Resolved*, That the vote cast in the township of Boone, in the county of Polk, in the second district, be disallowed and deducted from the votes counted for the first district.

7. *Resolved*, That the votes cast in the county of Dallas by persons proved to have been residing at the time south of the southerly line of Dallas be rejected and disallowed.