Dr. Samuel Grant Rodgers, Gentleman From Ness

MINNIE DURBS MILLBROOK

In 1872 western Kansas was virtually empty. The Indians, however restless and discontented, were mostly on reservation in what is now Oklahoma. The remaining buffalo were being rapidly hunted down, skinned and the bones left for later pickers. The Kansas Pacific railroad (now Union Pacific) was like a thin bridge, stretched across an enormous empty sea, and although little settlement had followed its building, still another railroad, the Santa Fe, was pushing out across that same great vacant land. Here was an unprecedented opportunity—free land and convenient transportation to it—open to that restless, always westward-pushing, always land-hungry American. And yet the settler was reluctant. The reputation of the land was not good; it was dry and the crops might not grow.

But other men, who had learned that profit and power attend the settlement of new territory, were ready and anxious. They had dreams far beyond a home and a farm for themselves; they would build towns and counties. In the best sense, these men were planners and creators, building unselfishly for a good community. In many cases they were exploiters of their fellows, hoping to control the settlement to their own personal gain. In their worst form they were outright thieves, faking the establishment of counties and towns, secure in the knowledge that no one would come west to investigate the phantom populations for which they projected phantom courthouses and bridges, only to sell the bonds to Eastern financiers for real hard cash.

In the 1870’s nearly every town and county organized in western Kansas had such a sponsor and it was not always easy to determine

MRS. RAYMOND H. (MINNIE DURBS) MILLBROOK, of Detroit, Mich., native of Kansas who was educated at Kansas State College, Manhattan, is a housewife and editor of The Detroit Society for Genealogical Research Magazine.

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in which category each might belong. Ness county had Dr. Samuel Grant Rodgers, who was unsuccessful with his organization and has ever since been regarded as a rascal and a cheat. As a consequence, for many years Ness countians have chosen to ignore historically, what seemed to them, the dishonorable beginnings of the county. But when at last the skeleton of these beginnings has been taken from the closet, dressed in some long-neglected facts and set in a proper contemporary background, the whole affair proves to have been not only most interesting but of comparative respectability.

What has not been generally understood, is that Ness county was not the first of Dr. Rodgers’ promotions. He served an apprenticeship in Pawnee county where his plans for a model community were defeated. Adopting the more successful, more unscrupulous techniques of his adversaries, he tried again in Ness county and again failed. For all his efforts he got neither an established colony nor any monetary reward. A failure rather than a thief would be the truer word for Dr. Rodgers.

In order to understand Dr. Rodgers’ first promotion, some of the early conditions in Pawnee county must be explained. Pawnee was not an organized county in 1872, although its boundaries had been drawn in 1867, when the Kansas legislature had laid out three tiers of western counties— all the unoccupied land in Kansas up to Range 26 West—with the provision that when these counties had attained sufficient population (600 inhabitants) they could be organized into political units. These 21 counties were uniformly laid out, 30 miles by 30 miles, five townships square. Pawnee consisted of townships 21, 22, 23, 24, and 25 in ranges 16, 17, 18, 19, and 20 West.

In the northeast corner of Pawnee county was Fort Larned, an important army post during the Indian wars and still occupied by troops in 1872. Among the innumerable tales of earlier events about the fort, was one involving Capt. Henry Booth, who in 1864 was inspecting officer of the military district in which the fort lay. Driving from Fort Zarah with another officer in an ambulance, he was attacked by Indians and barely escaped with his life. Earlier that same year Captain Booth had commanded an expedition from

1. Judge Loria T. Peters of the 38th judicial district of Kansas, intensely interested in western Kansas history, has made a thorough search into the organization of Ness and other western counties. This article is based on his research, as communicated to the writer by Mrs. G. N. Raffington, Ness City.
Fort Riley to the relief of Ft. Larned reportedly infested by Indians. Before the war, Booth had been a resident of Riley county and after the close of his service in the army, he returned to his home there. In 1867 he served as legislator from Riley county in the Kansas house. In 1869 he received an appointment as postmaster at Fort Larned and moved there with his family, establishing a sutler’s store at the fort.

When the Atchison, Topeka & Santa Fe railroad ran its survey through Pawnee county in 1871, Booth and several associates began planning a new town over on the railroad, six miles east from the fort, to be named Larned. In January, 1872, the directors of the Larned Town Co., including ex-Governor Samuel Crawford, president, and E. Wilder, secretary, met at the home of Booth and selected the exact site of the town. There is no doubt that Booth, with his wide experience in the war and in Kansas affairs, was well-fitted to be the leader in the bright future that the railroad would bring to Pawnee county. Neither was there any doubt that he had excellent political connections and many friends in Topeka.

The first house was “brought bodily from Fort Larned on wheels” to the new town by Booth in April. Several other houses were built that summer and a number of settlers came in. The railroad was completed into Larned on July 20, 1872. With it came the railroad construction gang under John D. Criley, who had previously built part of the Kansas Pacific across western Kansas, and who now located his laborer’s camp near Larned at a place called Camp Criley. F. C. Hawkins is said to have come with this crew only to remain in Larned indefinitely when he found a fine growing town that offered possibilities to a man of his talents. Everything was going well when Dr. Samuel Grant Rodgers arrived in Pawnee county as one of a committee to locate a site for the Chicago workingman’s colony.

The railroad was completed to the then, barren plain, where Kinsley now stands, in the summer of 1872. In August of that year C. N. Pratt and Dr. Samuel G. Rodgers (the gentleman from Ness), representing the “Chicago workingmen’s colony,” (the work was to be done by the men who were to follow, like all colonies you know,) visited the upper valley and selected the present

5. Capt. Henry Booth, “Centennial History of Pawnee County,” read by Captain Booth at a centennial celebration, July 4, 1876, and printed beginning November 3, 1890, in the Larned Eagle Optic. The history was contributed to the newspaper by Mrs. Isabel Worral Ball, historian of the old settlers’ association. Clippings are now in the State Historical Library, Topeka.
6. Ibid.
site of Kinsley as their objective point, and named it Petersburg, in honor of T. J. Peters of the Santa Fe railroad.  

In his history of early Pawnee county, Henry Booth gave August 10 as the day of the location of Petersburg, 24 miles southwest from Larned on the railroad. He named in addition to Rodgers and Pratt as the committee of the Chicago Workingmen’s Co-operation colony, F. W. Neye, J. Trumbull, and Robert McCanse. He stated further that the place was selected on account of the fertility of the soil, the healthfulness of the climate, and the abundance of pure water. This colony, it would seem, would offer only the best of advantages to its colonists.

This, then, was the entrance of Dr. Rodgers upon the Pawnee county scene—one of a committee to locate and promote a co-operative colony of workmen from Chicago. To establish such a colony was his ambition and his dream and there is no evidence throughout his experience in western Kansas that he ever wavered from this primary objective. Organized colonies of this type were actively advocated by the social idealists of that day in the hope of relieving the pressure of poverty on the working class of the cities. Many such colonies were planned and begun in Kansas, several in the vicinity of what is now Kinsley. Needless to say, they were regarded with ridicule and hostility by the hard-bitten realists of the Western country, and particularly those whose personal plans might be endangered by such altruistic ideas.

It is to be regretted that all our judgment of Dr. Rodgers must be based on the few newspaper clippings and official records that now remain to tell of his work, since nothing has been found concerning his life prior to August, 1872, or after the spring of 1874. One of his colonists said that he was an Englishman, a dark, slender, genteel looking, fellow. He was 40 years old in 1874 and he was from Chicago. A check of the directories of that city, show him listed as a resident only in 1872 and 1873, the same years in which he was

8. Kinsley Republican, January 4, 1879. This is a rewrite with interpolations, from J. A. Walker’s “Early History of Edwards County,” which was edited by James C. Malin and published in The Kansas Historical Quarterly, v. 9, pp. 259-264. This particular quotation is used here since it shows the local contemptuous attitude toward Rodgers and his colony. It also reflects the fact that even in Kinsley, Rodgers was better remembered as of Ness county.

9. In the Kinsley Republican, January 4, 1879, there is a characterization of a co-operative colony “as an institution founded upon the principle that to secure a quarter of land was to transform a poor mechanic into a wealthy prince.” An editorial in the Kinsley Graphic, May 4, 1878, stated of such colonies, “As a rule they are successful failures. That is, as failures they are a success.”

10. Farm Cook interviewed William Lenihan, one of Rodgers’ Ness county colonists in 1853. The article to be written from this interview was never completed, but her notes were lent to the writer.

promoting his Kansas colony, and it is therefore assumed that he was resident there only for the purpose of recruiting settlers.\textsuperscript{12} The advent of Rodgers and his town of Petersburg probably brought some misgivings to Capt. Henry Booth in Larned. Rodgers must have talked busily as was his wont, with anyone who would listen, about the model community,\textsuperscript{13} he and his associates would build, where workingmen of great cities like Chicago, might attain independence and a great future. While to the more experienced Booth, the Chicago doctor must have seemed naive and an all round tender-foot, still the doctor’s appeal to prospective settlers in Chicago and points east, would conceivably be compelling. At least his arrival was a warning that the railroad would bring others with similar dreams of building towns and if Larned’s lead was to be preserved, time was of the essence.

So in October, Henry Booth, D. A. Bright and A. H. Boyd secured signatures to a petition or memorial, asking for the organization of Pawnee county. The law passed in 1872 by the legislature, specifying the procedure for organizing new counties (ch. 106) required that such a petition be signed by 40 householders who were legal electors of the county. Evidently, there were not 40 legal electors in Pawnee county at that time. According to one report,\textsuperscript{14} “An immigrant train came toiling by and the men in Larned rode out, held it up and forced the men in the party to sign the petition . . . .” Notwithstanding the way the signatures were obtained, Henry Booth, D. A. Bright and A. H. Boyd, on October 7, 1872, swore under oath before George B. Cox, a justice of the peace, that “the above signatures are the genuine signatures of householders and legal electors of the County of Pawnee.”\textsuperscript{15} Henry Booth also on October 7 wrote Gov. James M. Harvey a letter and the first sentence of the letter contains the following: “I send you herewith a petition of 40 householders and legal electors of this county.” The letter also bears a postscript in which Henry Booth recommended “F. C. Hawkins as a good man to take the census and would be pleased to see him appointed.”\textsuperscript{16}

If there were not 40 householders or legal electors in the county, there scarcely could have been 600 inhabitants as were by law re-

\textsuperscript{12} Dr. Rodgers was listed as a physician at 277 Clark St., and 318 Clark St. One of his colonists said he had an office on State St.
\textsuperscript{13} In practically every existing letter or direct quotation of Dr. Rodgers, his model colony is mentioned.
\textsuperscript{14} Great Bend Tribune, December 24, 1934. From an article written by Dwight B. Christy, who was the third sheriff of Pawnee county.
\textsuperscript{15} Records of the secretary of state, Topeka.
\textsuperscript{16} \textit{Ibid.}
quired for the organization of a county. But if the first step in the conspiracy succeeded, how much more confidently might the second misrepresentation be compounded! According to the law of 1872, upon receipt of the petition for organization, the governor should appoint some "competent person who was a bona fide resident of the county to take the census." At this point the governor, however uninformed he may have been of the true facts in the case, could have stopped this fraudulent organization and set up a precedent that would have prevented many subsequent ones. He could have diligently investigated the qualifications of his appointee—his census taker—and made sure that the census was correctly taken. In this manner, as was the plain intent of the law, the whole process of organizing the new counties would have been safe-guarded. But Governor Harvey did not bother, he appointed F. C. Hawkins, the man recommended by Booth. In the Norton county organization of the same year he also appointed without investigation the locally recommended census-taker. Governor Osborn followed this same loose practice with Harper, Ness, Barbour, and Comanche counties in 1873. Thus the door was opened to the fraudulent organizers.

Since the census of F. C. Hawkins is typical of what occurred in all these fraudulent organizations, let us therefore consider it somewhat in detail. On October 19, 1872, F. C. Hawkins took an oath before George B. Cox, a justice of the peace in Pawnee county, to "take the census of Pawnee county to the best of my knowledge and ability. So help me, God." On October 28, 1872, F. C. Hawkins finished the census and sent it to the governor with this certification: "I certify that the foregoing schedule of bona fide inhabitants of Pawnee county is correct. Signed: Francis C. Hawkins, Census taker for Pawnee county." The census report showed 674 inhabitants in Pawnee county—18 women, 48 children and 618 men—a rather strangely assorted population.

All this had been done in the absence of Dr. Rodgers, who apparently was in Chicago drumming up settlers. When he returned to Pawnee county on October 28, he was shocked and surprised at what he saw and heard had been going on in his absence. He wrote indignantly to W. H. Smallwood, secretary of state, at Topeka:

Oct. 28, 1872

TO THE HONORABLE SECRETARY OF STATE W. H. SMALLWOOD—

Dear Sir

On my arrival here I found that the most dishonest means are being taken

17. Ibid.
to organize this county. Inhabitants of Hodgeman and other counties are upon the list. Even persons who are merely travelling by rail have been taken.

And the names of the workmen from the pay list the A.T. & S.F.R.R. have been taken while many of them are discharged months since.

Also all the Soldiers names are taken contrary to law. Will you please stay all proceeding in the matter till I return to Topeka on Wednesday or Thursday first. I am now with two men taking the census.

It will be much to the interest of the state to do so as I am afraid our Colony will not come if this proceeds as we want to have a Model Colony in regard to Education, taxation and all else which will benefit them.

We will contest this matter if they persevere in their fraudulent attempts to organize the county.

Most Respectfully
Your Obedient Servant

SAMUEL GRANT RODGERS M.D.

N. B. Hawkins says here in public that he takes the census by Governor Harvey's request in order to get two men to the legislature to vote for a certain purpose this winter. SGR 18

Since the date of this letter is the same as that on the census report, the letter must have reached the secretary of state at the same time as the census report, furnishing to the governor, evidence that his appointed officer, F. C. Hawkins, was guilty of fraud and perjury in the census report that he had submitted. But fearful perhaps that his letter would not arrive in time, Dr. Rodgers sent a telegram to the secretary of state, which was received in Topeka, October 29, at 11 A. M.:

Dated Great Bend Ks 28 1872
Received at Oct. 29 11 am
To Hon W. H. Smallwood
Sec. of State
Great fraud in taking census please stop all proceedings till I reach Topeka
S. G. Rodgers M D 19

From this telegram it is certain that the governor in Topeka knew that the census of Pawnee county was not above suspicion. Notwithstanding this, Governor Harvey, on November 4, appointed the commissioners for Pawnee county and proclaimed the county organized. Was there fraud in the census of F. C. Hawkins—an officer of the governor? Of this there is no doubt. On May 8, 1873, A. L. Williams, attorney general of the state of Kansas, filed a quo warranto proceedings in the supreme court, to set aside the organization of Pawnee county and in his petition alleged in detail that

18. Correspondence of the secretary of state. Archives division, Kansas State Historical Society. As there is no address given in this letter to show from where it was written, it has been carelessly attributed to Rodgers' Ness county adventure. The date and the reference to Hawkins, place it without question as referring to the Pawnee county organization.

19. Ibid.
the organization "was procured by fraud and perjury and the census
taken of said county was false and fraudulent." The board of county
commissioners and the county clerk in their answer to the petition
admitted all the allegations of fraud. (State vs Commissioners,
Pawnee County, 12 Kan. 426.)

Why did the governor ignore this evidence of fraud? Here again
an honest courageous stand by the governor might have preserved
the intention of the organization law, rendered helpless the self-
seeking organizers and protected the future citizens of western Kan-
sas from the monstrous debts that were loaded onto them without
their consent and knowledge as a consequence. Timid, intimi-
dated, complaisant, or corrupt—the governor ignored the evidence
and proceeded with the organization of Pawnee county.

The record is silent, but considering his telegram, Dr. Rodgers
must have gone to Topeka. It would be interesting to know what
Governor Harvey and the secretary of state told him. Did they
tell him that it was important for counties to be organized now that
the railroad had come through? Did they tell him that settlers
would come more readily if organized law had already been estab-
lished for their protection? These were the arguments later used
by Rodgers when he was under attack for his organization of Ness
county.20 Did they also tell him that as long as the legal formalities
were fulfilled, they had no power to refuse the organization? In
1875, Governor Osborn, in his message to the legislature asked for
a new county organization law claiming that the 1872 law was
defective in that the governor's "functions are ministerial only,"
and he had no power to deny an organization if the preliminaries
were observed in the counties and the proper papers presented to
him. This was the political alibi of gross neglect of duty on the
part of the governors, in the face of the scandal that broke late in
1874, which concerned the fraudulent organizations of Comanche,
Harper, and Barber counties with their $200,000 bonded indebted-
ness. However, the claim was a misstatement of the law. From
State vs Sillon, et al, 21 Kan. 207, we quote the following, with
respect to the fraudulent organization of Pratt county: "Fraud
and falsehood poison the proceedings throughout, and notwith-
standing the regularity of the records, . . . all of these pro-
ceedings, being in violation of law, are void, and the pretended or-
organization is consequently void."

True it was that Governor Harvey was merely a ministerial offi-

cer of the legislature in the organization of Pawnee county, yet when he obtained information that one of his appointees, F. C. Hawkins, had committed fraud and perjury in the census, no law required the governor to perform a void act. It was the duty of the governor to investigate the matter and, if the evidence warranted it, lay the matter before the attorney general for investigation and prosecution of his guilty appointee. The intention of the legislature of 1872 was plainly manifest by the act itself. It determined that there should be 600 bona fide inhabitants before a county could be organized and, in order to safeguard this requirement, it provided that the governor should appoint a "bona fide, competent census taker," thus guarding at every step the 600 requirement, and hedging it with a precaution that would have insured such a result if the governor had diligently performed his duty.21

While in the light of history, there seems to have been no excuse for the governor's ready compliance with fraudulent procedures, still at the time, Dr. Rodgers was apparently convinced of the validity of the governor's action. He later stated before the legislature of 1874, that he had found it impossible to do anything about the Pawnee county organization.22 It follows also that he was persuaded that nothing could stop any other county organization along similar lines.

Besides appointing temporary county commissioners and declaring the county of Pawnee organized on November 4, 1872, the governor also designated Larned as the temporary county seat. In this regard the law stated that the governor should "designate such place as he may select, centrally located, as a temporary county seat." Larned was located in the extreme northeast corner of the county. Although the organization papers and official appointments could not possibly have arrived, the temporary county commissioners acted immediately and on the very next day held an election,23 first dividing the county into two townships, a voting precinct in each, in strict observation of the organization law. These two precincts were located, one at Fort Larned and one at Larned, within six miles of each other, in the northeast part of a county 30 miles long and 30 miles wide. This action practically excluded

21. The citations of the supreme court and their applications were furnished to the writer by Judge Laura T. Peters who, in 1943, was appointed by the supreme court to try the Morton county-seat case—probably the last county seat fight in the state. Dunn vs Morton County, 165 Kan. 814.


23. November 5 was the regular general election day of 1872. In defending the Pawnee county organization before the supreme court, 12 Kan. 428, the defendants claimed that a 30 day notice of the election was not necessary as everyone was bound to know the general election date.
the bulk of the county from participation in the election. In the first place there was no notice of the election and second, no polling place, at which residents in the more remote parts of the county, could vote.

However. Captain Criley and his railroad workers, together with members of the Chicago Workingmen’s colony, did not accept this action passively. Hawkins had listed the railroad workers and the members of the colony as inhabitants of the county so they decided they had a right to vote and they proceeded to do so. Unfortunately we have no unbiased account of this action. Captain Booth recites it in detail in his history and his supporters in the legislature presented virtually the same story when the election was later being considered in the house:

That on the day of said general election, a large number of men were in the employ of the Atchison, Topeka & Santa Fe Railroad Co., upon the line of its road through said county of Pawnee; that the said persons were not legal residents of said county at the date of the general election, being there temporarily, and with the intention of moving westward with said road; that no families were with them, and they have since moved westward; that the said persons had their headquarters at a place called Camp Criley, which place was situated in Larned City, the township voting place being at Larned City; that on the day of said general election, about eleven o’clock A. M., certain of aforesaid persons in the employ of the Atchison, Topeka & Santa Fe Railroad Co., pretended to organize themselves into an election board . . . and received the votes of others of said employees or railroad hands until about 4 o’clock P. M. of said day, when the persons who were acting as judges and clerks of said pretended election, got aboard of a railroad train without ballot boxes and poll books, and proceeded west twelve miles to a locality called “Siding No. 2,” at which place they opened the ballot box and received votes of other railroad hands, and did not return to Camp Criley until 9 P. M. . . .

The county commissioners proceedings concerning this election, written up later, shows only that the county was divided into two precincts for convenient townships with the Larned township polling place at Cox & Boyd Hotel in Larned and the Pawnee township polling place at Booth’s sutler store. While the votes were tabulated by townships for state officers, only the total votes were recorded for the county offices, indeed the votes for county officers seems to have been an afterthought. F. C. Hawkins was elected sheriff,

24. There is some confusion as to the location of Camp Criley at this time. Booth himself states that the camp was moved when the railroad reached a point about 12 miles west of Larned, which would have been around the latter part of July or first of August. But other sources seem to indicate that the camp was not moved until after the election when Criley quarreled with Booth over his refusal to allow the county commissioners to canvass the votes of the Criley faction.

While it is impossible to know how long these railroad men had been in the county, it is reasonable to believe that some of them had been there since the railroad came into the county. Hawkins himself came with this railroad gang. The Booth faction claimed that only four of the electors who voted in this “outlaw” fashion were legal electors.

but the election tally omitted any mention of Henry Booth’s election as representative. Thirty-eight votes were cast and no mention was made of the voting of the other faction. Although Booth said, “There was no clamoring for office—there were more than enough to go around . . . .”, he does in the end become more factual and names the parties voted for at Camp Criley and points west. Among the county commissioners was Captain Criley.26 Other candidates for office were A. D. Clute, F. V. Neye and Robert McCanse, all known to have been members of the Chicago workingmen’s colony. Dr. Rodgers was entered as candidate for representative to the state legislature. It is easy to conjecture that the Petersburg faction with help from the railroad camp, being excluded or lacking a polling place out in the county, took matters into their own hands, provided their own polls and did their own voting. It was a blundering, straightforward action that would naturally arouse the scorn of Booth who, ostensibly at least, appreciated the legal niceties. He saw to it that the county commissioners refused to canvass these spontaneous votes.

Later others were not so scornful of the effort of Criley, Rodgers, and followers to cast their votes. The state board of canvassers confronted by the two sets of election returns for representative from Pawnee county, solicited the advice of the attorney general of the state and was advised to canvass neither of them.27 Hence when the legislature of 1873 convened, the matter was turned over to the house itself for a decision.

But when the house gathered in January, 1873, the contest for representative of Pawnee county was overshadowed by a much greater problem. The constitution of the state of Kansas provided that the house should be composed of not more than one hundred members and that each county should be represented by at least one member.28 As the representation had been apportioned earlier and a number of the eastern counties had several representatives, each according to population, 99 of the seats were already taken, leaving only one seat open to the new counties that had been organized since the legislature met in 1872.29 This seat was to go to Norton county30 as it had been the first of the four new counties

26. Captain Criley, construction boss of the Santa Fe, was a man of great resource and no emergency daunted him. This election episode was undoubtedly of his planning although there is now no evidence to prove it.
28. Kansas Constitution, Article 2, Section 2. Also, Article 10, Section 1. Also, The Laws of the State of Kansas, 1871, p. 32.
29. At that time, an election was held every year and the legislature met every year.
30. Norton county, organized on August 22, 1872, with presumably 600 inhabitants, cast 32 votes for representative on November 5, 1872. Another fraudulent organization?
now coming and asking seats. If the others were to be admitted, then some of the larger counties would have to give up some of their representatives, as they were not disposed to do. This dilemma was gotten around by refusing seats to either of the contestants from Pawnee county, the Rooks county representative and the Ford county representative, this last having been adjudged illegally elected anyhow. Therefore, Henry Booth was correct when he stated in his history, "The constitutional limit having been reached as to number of representatives, the member from Pawnee, after eleven days, was voted out together with members from two other counties."

The committee on elections did, however, make some investigation and a report in the matter of the Pawnee county election. Their report of February 13, stated:

The organization of the county of Pawnee was made and completed in the city of Topeka on the fourth day of November, 1872, and the pretended election held in said county . . . shows that the will of the people could not have been fully and properly expressed at the said election, occurring the day after the organization.

And hence your Committee reports that neither of the persons claiming seats, under said pretended election are entitled to be admitted as members or delegates in this Legislature. But should this House decide to respect the will of the people as so expressed in said election, then your Committee would recommend that Mr. Rodgers be entitled to the seat for the reason that he, (Mr. Rodgers,) received 108 votes, and Mr. Booth but 35 votes.

The minority report of the committee was presented by Simeon Motz of Ellis county and as previously stated, retold the Booth version of the election. There was some support in the house for this minority report but as related above both the majority and minority reports were more or less ignored, due to the preoccupation of the house with the problem of keeping the size of the house to its constitutional limit. It is perhaps indicative of the character of that house, that they respected the 100 member limit set by the constitution and maintained the status quo, preferring to ignore that other provision of the constitution that no organized county should be without representation. In this case, the will of the people desiring

32. There was no consistency in the decisions of the house as to the admission of members. In the report here quoted, the statement is made that the will of the people could not possibly have been expressed in so sudden an election and yet goes on to say that if the house decided to respect the will of the people. These reports so often started out with expressions concerning the purity of election laws and ended up with a recommendation of admitting or rejecting members on entirely different grounds. Rooks county was organized January 6, 1871, and the election held January 8, and yet the representative was allowed to sit.
33. This alignment of the Ellis county representative against Dr. Rodgers marks the beginning of the Ellis county animosity that was to harass the docto later.
expression received scant consideration. Both Rodgers and Booth were sent home.

Meantime, down in Petersburg, progress had been made:

Undismayed, Dr. Rodgers proceeded with his improvements and on the 5th day of December 1872 the corner stone of the Buffalo House, (the structure now known as the Kinsley Hotel,) was laid in ample form by Dr. Rodgers and Robt. McCanse,34 between where now is Parker's blacksmith shop and the railroad track, and the building approached completion as rapidly as the Dr. could get trusted for material.35 About this time the railroad company established a telegraph office at the tank three miles west of Petersburg . . . , also A. D. Clute was prospecting about Petersburg, having become a member of the "Workingmen's Colony." 36

There were several towns in Pawnee county by early 1873; a government supply point on the railroad southwest of Larned; Garfield, established near Camp Criley by a colony from Ohio; and Fitchburg farther down the line. Dr. Rodgers’ town continued to improve. In February the telegraph office and operator had been moved into Petersburg, the Buffalo House had been sided, by March 10 it was occupied as a hotel and the railroad trains stopped at the town for meals. A colony from Illinois and one from Boston, Mass., had come into the community.37 This Massachusetts colony was also a co-operative and since it had much the same ideals and objectives, seems soon to have merged itself with the workingmen’s colony. There had been bad luck too. A party of Germans, who had come to Chicago bound for Kansas, had been persuaded to settle in Petersburg. In the end though, they stopped in Barton county and settled on the Walnut and Cheyenne bottoms, about six miles from Great Bend.38 There were 16 families in this party and it would have been a sizable addition to the Petersburg community. The report of the settlement of this group contains the terms offered by the Chicago colony—a town lot 50 x 140 for $50 and a quarter section of land for $218.

Another statement of the ambitions of Dr. Rodgers and his colony is given in the Kansas Daily Commonwealth of March 13, 1873:

34. According to his own account in the Kinsley Graphic, June 14, 1901. Robert McCanse was a member of the Chicago workingmen’s colony. He paid $25 for this membership.

Robert McCanse was appointed census taker in Edwards county in 1874, as a preliminary to that county’s organization. However, he could find but 301 inhabitants and standing firm on his census, the organization was stalled, until the governor appointed another census taker. The second census taker was able to find one month later, 611 inhabitants in Edwards county, which goes to show what the governors might have accomplished had they been more discriminating in their appointments of census takers.

35. The Italics are not those of the original writer but of this copyist. They emphasize the fact that Dr. Rodgers had little money with which to back his plans.

36. Edwards County Leader, Kinsley, March 14, 1878, a history by J. A. Walker. Walker, himself, was a member of the Massachusetts colony.

37. Ibid.

Dr. S. C. Rodgers, of Chicago, who had returned from a trip over Atchison, Topeka & Santa Fe road to the southwest for the purpose of selecting a location for a colony of six hundred families, says that he has traveled over Europe and America and testifies that Kansas, and especially the Arkansas valley, is the most beautiful country he ever saw. He and Messrs. Nye and Redsell had received from the directors of the A. T. & S. F. railroad, passes to carry them from Chicago and back in order to select the location for six hundred families—colonist; and he says he never dreamed of such a garden of Eden as that valley presents to the settler. He says the vegetable mould is from four to ten feet deep; is inexhaustible, and would, if cultivated, raise food for all Europe. He thought the people of Kansas were selfish or they would have told the world of the great beauty and fertility of the state, but he said it would be a secret no longer, as he and Capt. Nye had begun and would not stop until the valley is filled with families from Europe and all parts of America.

He said that from the governor to the railroad constructors at the end of the road, every one had vied with each other as to who would show them the most kindness, and he would go home to tell the people of Chicago that not only is Kansas the most beautiful and healthy and fertile state in the union, but her people are the kindest he ever met.

He said they would bring a steam plow and brick machine, and dig an artesian well, and make their colony a model for America.—Atchison Guide Board.

Despite the discouragements suffered in his contest with Booth on the county organization and the diversion of his colonists to Barton county, Rodgers here still seems brimming with enthusiasm. His words, read today, seem astonishingly prophetic. The steam plow or its gasoline counterpart did come to western Kansas, the Arkansas valley presently did help abundantly to feed Europe and truly the inexhaustibility of the soil became the wonder of scientists everywhere.

But at the time Rodgers was making his glowing appraisal of Kansas and her kind people, Booth and his associates had already counted another coup on the doctor and his supporters. A bill re-arranging the boundaries of a number of counties, among them several along the Santa Fe railroad, was quietly passed by the Kansas legislature on March 5, the day before adjournment. As new settlers had come into these new counties, the town planners became increasingly aware that a central location was the determining factor when the voters came to choose the county seat. County seats, already located, might even lose that honor, if the situation was deemed too inconvenient. So the more politically influential town planners had the county lines redrawn, a process much simpler to accomplish than moving their town and much less painful than losing the county seat.

Henry Booth intimated that he got this idea from the managers of the Chicago colony, who instructed Rodgers to go down to Topeka and get the lines changed so as to eliminate Larned from Pawnee county. This is hard to believe since in the whole course of rivalry between Booth and Rodgers, Rodgers seems to have been continually several jumps behind the more agile Booth. But however the idea originated, Booth, according to his own admission, was one of those who implemented it. Although eliminated from a seat in the legislature himself, he remained to look after his interests and so potent was his influence that “the county lines were changed by cutting twelve miles off the south—leaving Petersburg out—and adding six miles on the north, which were taken from Rush county, and six miles on the east, which were taken from Stafford county.” This as Booth said frankly, “brought Larned nearer the center of the county and strengthened it as the county seat.” He failed to add that Larned was the stronger, too, because not only Petersburg but every other town, was by this same action, cut off and cast out of Pawnee county entirely.10

More graphically than words, the accompanying map tells the story of this rearrangement of county lines and the ensuing benefit to county seats of that area.41

On January 25, 1874, the Topeka Commonwealth reported that two petitions had been presented to the legislature asking that the original county lines of Pawnee county be restored. One petition was signed by inhabitants living in Pawnee county; the other was signed by the inhabitants of the detached part of Pawnee county.42 The result was that the legislature again saved Booth and his county seat by returning one township to Pawnee—the one containing Garfield—and creating Edwards county out of the orphan townships.

Whether by design or unwittingly, the legislature of 1873 did Booth and Pawnee another good turn. A law was passed detaching Pawnee from Ellis county for judicial purposes and authorizing district courts to be held in Pawnee.43 This recognition by the legislature of Pawnee as an organized county caused the supreme court to declare in March, 1874 (12 Kan. 426), that since the legislature had the exclusive power to provide for the organization of new coun-

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40. Booth’s history, loc. cit.
41. The Laws of the State of Kansas, 1873, pp. 146-156.
42. Booth could not afford to have the original county reconstituted. Although Larned was voted the county seat at a special election on October 7, 1873, he was worried about the county lines and on November 14 wrote to W. H. Smallwood, secretary of state, who seems to have been the special friend of all the county organizers, “I wish you would do all you can consistently for me and our County. We are in a condition that renders it absolutely necessary for us to have someone to watch our interests especially our County lines.”
43. The Laws of the State of Kansas, 1873, pp. 165-167.
ties, the fraudulent organization of Pawnee was cured of its defect and rendered valid by this recognition of the county organization. All in all the legislature of 1873 could not have done more for Henry Booth even if it had admitted him to membership.

Properly for this story, the chronicle of Henry Booth should end with the casting out of Petersburg and Dr. Rodgers from Pawnee county, but as a contribution to an understanding of the political climate of that day, the manipulations of Henry Booth are important. Henry Booth never suffered any loss of honor or prestige on account of his actions and maneuvers in organizing and maintaining his hold over the political affairs of Pawnee county. He became clerk of the house in the legislature of 1875 and 1876, later speaker of the house, and in 1878 was appointed district land agent at Larned. Historians have never classed him with the other fraudulent county organizers of his time, although he used exactly the same methods.
with the exception that he did not perhaps load his county with a great burden of bonds as did some of the other organizers. In Pawnee and Edwards counties his tactics were expressed, summed up and possibly also judged by the phrase, he "out-generated" his opponents. And it is quite likely that his success encouraged other opportunists to go and do likewise.

And what of Dr. Rodgers? Apparently a sincere, well-meaning man, obsessed with the dream of founding a model colony in the west for workingmen, he had been frustrated and beaten at every turn. He had not attracted enough colonists to retain his leadership after the more numerous Massachusetts colony had coalesced with the few settlers from Chicago. Although he retained his equity in the Buffalo House and it was on its way to become one of the most important dining stops along the Santa Fe railroad, it had capable managers. While we can only conjecture, Rodgers' actions suggest that he still retained his faith in the country and his project; that he believed that having learned the tactics of the day in organizing counties and being given a clear field, where old animosities would not interfere, he could apply his hard-won knowledge and still build a successful colony. Dr. Rodgers sought a new field for his operations.

Now other less scrupulous men, desirous of organizing counties in 1873, also sought places well off the beaten path, where they might, unobserved, complete their plans, vote their bonds and depart to cash them, leaving the payment to the future citizens of the luckless county. Some of these conspirators scarcely bothered to go into the county which they were prepared to victimize. While Dr. Rodgers' organization in Ness county has always been classed along with these others in 1873, there were several important differences. For one thing, he insisted on having a population and went to great trouble to recruit it from among workingmen of

44. Walker's history, Edwards County Leader, March 14, 1878.
45. Harper and Comanche counties were particularly notorious for their illegal organizations in 1873. A special session of the state legislature in September, 1874, alarmed by the great number of bonds that had been issued in these counties, appointed an investigating committee of which A. L. Williams, the attorney general, was one. His report (House Journal, 1875, p. 72) states: "It is not pretended that Harper county ever had an inhabitant; it is doubtful even if the bond-makers of that county ever were in the county." Of Comanche, he said: "I visited the county myself, and declare, as the result of actual observation, that there are no inhabitants in the county, and that there never was a bona fide inhabitant there."
46. It is believed that much of the ill repute of Dr. Rodgers and his Ness county organization is due to the scandals connected with the other counties that were organized at the same time. Since practically every county that was organized in the decade of 1870-1880 was attended by fraud in some particular or degree, the study of any one specific county is really a study in the variations and contrast among these several counties. Ness county has always been bracketed with Harper and Comanche, but the details of the organizations differ greatly, as can be shown.
Chicago and take it to Ness county. He was even rather particular about who was to belong to the colony, enlisting workmen of various crafts so the colony would have within itself the skills necessary to actually build a model community. It is believed that he still held to the co-operative organization, envisioning the group working together to build the public buildings the community would need. If Dr. Rodgers had larceny in his heart, and that alone, he certainly went to a lot of trouble that was totally unnecessary.

While we have no direct information that Rodgers ever visited Ness county to locate a site for his proposed colony, it seems likely that he did. For by June, 1873, the plans were laid. In that month William Lenihan, one of the colonists, who remained in the West afterwards and has been one of our principal sources of information concerning the colony, met Rodgers at Rush street bridge in Chicago where boys were scattering literature, and became interested. Later he went to Rodgers’ office where he purchased a town lot in the town-to-be for $30, paying $10 down and being trusted for the rest. The depression of 1873 was already so severe in Chicago, that Lenihan was able to draw only a few dollars a week from his bank account. Acquaintances in Chicago thought he was crazy to consider going way out west to a place no one knew anything about.

The Maguires and John Shannon became members of the colony later. They stated:

That in the month of September 1873 and for some time thereto, they were residents of the city of Chicago . . . that their attention was attracted by divers advertisements appearing in the public prints of that city.

47. There is but little information on this point. The colony was so short-lived that there remains few details of its community structure. However, there were evidences that the colonists were to function in some respects as a group and had certain expectations as members of the group that would imply some co-operative organization. None of the colonists was ever questioned on this point as far as is known because Dr. Rodgers’ interest in co-operative colonies has been but recently discovered, too late to question any of the colonists who remained in the west.

48. George Strong, a Ness county settler in July, 1873, near whose home the Rodgers colony located its town, met the first contingent when it arrived in Hays. Hence there must have been some communication between him and Rodgers previously.

49. William Lenihan, a young man of 21 years, was from a farm near Cooperstown, N. Y., and had been a carpenter in Chicago only a few months. He remained in Ness county a number of years, then moved to Leno county and died in Scott county in 1942. Fern Cook interviewed Lenihan in 1935 and he stated at that time that he still had his receipt for his town lot. Other garbled, inaccurate interviews with Lenihan on the subject of the Rodgers’ colony were reported in The News Chronicle, Scott City, September 21, 28, and October 5, 12, 19, 1879. Also in the Hutchinson Herald, May 28, 1940. Lenihan was reluctant to talk about the organization because he did not share the common belief in Rodgers’ rascality and that was what the interviewers asked about.

50. As far as can be ascertained this was the only charge for becoming a member of the Rodgers colony.

51. The Maguires were a family group from Ireland composed of the mother with a number of her children, grown, several with families. John Shannon also was a family man from Ireland.

52. The Chicago Tribune of May, June, July and August, 1873, and the Chicago Journal of June, July and August, 1873, were searched in the hope of finding Rodgers’ advertisement but there was none that could be definitely attributed to him.
and in other ways, to a certain scheme of colonizing a portion of the State of Kansas which was known under the name of the Rodgers' Colony.53

Rodgers enlisted some 20 or more members for his Ness county colony—some were young single men and some were men with families, about two-thirds of them of Irish extraction.54 By the middle of August the plans neared completion and Rodgers asked the U. S. army headquarters in Chicago to arrange for an army escort from Hays to Ness county upon the arrival of the colonists in Kansas.55 However, the first group of about 15 families did not leave Chicago until September. They occupied one whole car of the train, thus getting a cheaper ticket rate for the group. It is not known whether Dr. Rodgers accompanied this group or not. On September 20, 1873, he wrote the Kansas secretary of state from an undisclosed location:

**HON. W. H. SMALLWOOD**

Dear Sir I tried to see you before you left here. Will you please have James Lee appointed Justice for Ness Co. at your earliest convenience.

Will [you] also send me to (Hayes City) in care of postmaster, the exact form necessary to the organization of our county. I mean the form of application. Please send it on by first mail if possible, and in due time I will thoroughly reciprocate.

Most truly

S. G. Rodgers M. D.57

Here we have the first intimation that there might have been some understanding between Smallwood and Rodgers. While this is the only letter remaining of the correspondence of the secretary of state that shows Rodgers to have suggested appointments, undoubtedly he suggested others.58

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53. This statement is from an affidavit made to the officers at Fort Hays when later these people were destitute and asking for help.—Records of the War Dept., U. S. Army Commands, National Archives.

54. Ellen Maguire, daughter of Charles Maguire, a colonist, compiled and read a brief history of Ness county before a Ness County Teachers' Association at Cleveland school house, Saturday, January 20, 1894, which gives some details on the Rodgers' colony. This history remains in the collection of the Ness County Historical Society. Ellen Maguire stated that there were 20 families in the colony. Lenihan seems to have implied that there were more.

55. Forn Cook's interview of Lenihan.

56. According to the Fort Hays letter book, now in the National Archives, the commander at Fort Hays wrote to the Chicago headquarters in August:

"Referring to your letter of the 20th relative to sending a corporal and five or six men for a limited time to the colony of Mr. Rodgers, in order to give confidence to his immigrants, he pleased to say that the wishes of the general will be complied with as soon as Mr. Rodgers expresses a wish to that effect. Up to this time, we have no information that any colony under his charge has been established on Walnut Creek."

57. Correspondence of the secretary of state, Archives division, Kansas State Historical Society.

58. The correspondence files of Secretary of State Smallwood now remaining in the Archives division of the Kansas State Historical Society are plainly incomplete. The letter book containing the replies of the secretary to his correspondents has disappeared. When the conduct of this office was investigated in 1875, the committee stated, "Your committee desires to say they believe there had been no intentional wrong done the State on the part of Mr. Smallwood but that the administration of this office has been permitted to become inefficient, through usages not positively prohibited by law which have become, in some instances scandalous. The office should be completely reorganized by statute."—*House Journal*, 1875, p. 917.
When the group of colonists arrived in Hays City, their departure for Ness county was delayed because there were insufficient wagons and teams in the colony to transport them and their belongings. Then the commander at Ft. Hays provided them with some wagons as well as with the promised escort of soldiers and they started overland for their destination, many of them walking. The weather was warm and pleasant and they enjoyed the journey, stopping the first night on the Smoky, the second in what is now the McCracken vicinity, the third night at John Farnsworth's (near what is now Bazine) and finally arriving at the forks of the Walnut on the fourth day out. Here they proceeded to immediately establish the town of Smallwood and begin the construction of their sod houses. One street was laid out with houses alongside, the sod for them being dug with a spade. The houses had fireplaces and Dutch ovens beautifully laid by the Maguires, from a red stone peculiar to the Smoky river region. The town was splendidly located on Section 16, Township 19, Range 23, near the creek with an abundant supply of wood and water. There was a large building, the store, where elections and other meetings were held. There was also a blacksmith shop.

There remains no record evidence that the colony was to be operated in a co-operative manner although there is direct testimony that the townsite was to be jointly owned and that in the beginning at least, work, tools and, provisions were to come from a common pool. A near-by settler, not of the colony, wrote many years afterwards:

We are told that during the colonization in Chicago, Rodgers and Smallwood charged each family quite a sum of money to become members of this colony, and that they were promised to be located where land was cheap and plentiful and would be given an equal share in the townsite, which would become the county seat; that in two or three years it would become a city of ten thousand or more; they would all become wealthy and they would live a luxurious life on the income from the sale of their land and city property.

The Maguires later, when destitute and making a good case of their necessity for relief, made the following statement:

That Rodgers at the time of their subscribing themselves as members and at various other times did make the following assurances and promises to each

59. Ellen Maguire's history.
60. Reminiscences of Claude Miller, who as a boy played among the ruins of Smallwood.
61. James Litton lived along the Walnut not far from Smallwood. He left Ness County in the early 1890's and moved to Oregon. Some 50 years later he wrote his Ness county reminiscences which were printed May 31, 1930, in The Ness County News.
62. Litton names a C. A. Smallwood as Rodgers' right hand man, describes him as a tall man and says he heard of him later in Sprague, Wash. Lethun also seems to remember such a person. But since no such name appears in any of the records pertaining to the colony, it is believed that there may have been some confusion of names in this instance.
of them, viz: that during the first year of their occupancy of the lands which he would provide he would furnish them with plow, teams and seed for getting the same into cultivation; that money for other necessary articles would be provided by him; that groceries and provisions for their sustenance and that of their families he would furnish as needed; that any of the colonists who so desired after their arrival on the lands would be hired by him (Rodgers) at the rate of Thirty ($30.00) Dollars per month for the first month and afterwards he would pay any such hired laborers at the rate and wages paid in the nearest town or village in the vicinity of the colony . . . that he would see that themselves, their household goods and baggage were safely transported to said lands . . .

While this statement is undoubtedly a magnification of the hopes and plans of Rodgers, given by the Maguires in a moment of stress and disillusionment, still it probably contains an inkling of what Rodgers might have planned to accomplish by co-operative effort. The doctor himself apparently had little financial resource. William Lenihan stated positively that his membership in the colony cost but $30 with a town lot thrown in. He stated further that the trip on the railroad was cheap because they came in a group in one car. It seems unlikely that any colonist paid either to Rodgers or any community fund, an amount sufficient to provide the services that the Maguires seem to have expected. Certainly Dr. Rodgers could not have promised all these things to Lenihan without, in the end, disillusioning that young man too. And yet Lenihan, a quiet, reliable man, insisted all his life that Dr. Rodgers treated him fine and that any short cuts Dr. Rodgers took in the details of organizing Ness county were but the necessary expediences that often confronted Western pioneers. Perhaps Dr. Rodgers actually believed that the county could be organized and the bonds voted, the colony could employ itself for a time at building the schoolhouse. The make-work idea was not unknown even in those days. The Maguires had taken a most active and important part in the building of the houses for the community and, as masons, they could expect to be employed in any public building that might be done.

Upon his arrival in Hays City, Dr. Rodgers received the organization application which he had requested from the secretary of state. It was all written up in the form of a memorial to the governor and read in part,

Respectfully pray your excellency to appoint a bona fide census taker to make census of Ness County as required by law. We have reason to believe there are 600 inhabitants. If the enumeration made by said census taker shall be satisfactory to your excellency, then we, your petitioners would further

63. Maguire-Shannon affidavit, Records of the War Dept., National Archives.
64. His Buffalo House in Petersburg was loaded with liens.
65. The News Chronicle, Scott City, September 21, 1939.
pray for the immediate organization of the county of Ness as provided by law. To this end we pray for the appointment of three temporary county commissioners as provided by law, and we would recommend for county seat—Smallwood.66

To this memorial 40 signatures were appended, the number required by law. Since these names include probably all the Rodgers colonists, which are to be found nowhere else, they are listed here.

Samuel G. Rodgers  W. S. Grieve  George Hayes
John M. Rodgers  Jeremiah Hickel  Patrick O'Donel (mark)
Henry Maguire  Patrick  O'Donnell  Patrick McCleary
(by mark)  Robert Donlop  John McBride
Bernard R. Maguire  O. H. Perry  Alexander McBride
Henry Maguire  George Morris  Patrick Hays
Charles Maguire  William Sultzer  James Hayden
William Meyers  Andrew Carrick  John Kilfoil
Henry Myers  (mark)  Michael (or Nicholas) Carman
John Shannon  John Shannon  Anson Carman
Andrew Carrick  (mark)  S. Casselman
Andrew Carrick  E. Maroney  Erastus Casselman
Charles Myers  James Lee  Buck Carman 67
D. N. Hadden  John Lee
W. H. Gage  John O'Toole

Since there were a number of other families in the county, the total of householders in the county was certainly more than 40. But here we find Rodgers modeling closely on the pattern he had observed in Pawnee county where the whole matter was kept within the one tight little group. So it is possible that this list of householders was stretched a bit.

The petition was taken to Hays and there before D. C. Nellis, notary,

Samuel G. Rodgers, Henry Maguire, and Edward Maroney being duly sworn, depose and say that they are householders of the county of Ness of the state of Kansas and that the signatures subscribed to the above and foregoing petition are the genuine signatures of bona fide householders of the unorganized county of Ness; and that they verily believe there are six hundred inhabitants in said county.

In due time, John Maroney was appointed census taker, taking oath on October 14 to "faithfully discharge the duties of census taker for the unorganized county of Ness." On October 22, he made

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66. Records of the office of the secretary of state, Topeka. The memorial seems to have been written up in the secretary of state's office since the paper bears the same stationer's mark as the sheet on which the governor's proclamation was later written.

67. It will be noted that Andrew Carrick's name appears three times and John Shannon twice. In the first instance it was the last name at the bottom of the sheet and the first at the top of the next page. Checked with the later census there seems to have been two Andrew Carricks, a father and a son. There were also two John Shannons in the census. The last ten names seem to have been added without much care—the two McBride names are in the same hand, the next four in another, and the last four in yet another hand. Still the Hayden name also appears in Ellen Maguire's history so there must have been a colonist by that name.
his census return showing 643 names of residents of Ness county.68 Tradition has it that most of these names were copied from a Chicago directory.69 On October 23, 1873, Governor Osborn proclaimed Ness county temporarily organized and appointed John Rodgers, O. H. Perry, and Thomas Myers as temporary commissioners, Charles Maguire as county clerk and designated Smallwood as temporary county seat.

Grateful and bursting with further plans for his colony, Rodgers wrote to Smallwood:

**Smallwood City**
**Ness Co.**
**28 Oct 73**

**Hon W. H. Smallwood**

My Dear Friend

I did not get your telegram till today, although I got the organization papers on arrival.

Ten thousand thanks to you & Gov. Osborne I shall try to reciprocate the very great kindness you have shown me & my Colony.

I will in due time render you good service in Several ways. We are going to make this the nicest Town in Kansas and next autumn when we have got up some good buildings, we will have in September a pleasure excursion of Gentlemen & Ladies from Chicago We will then ask you to go along & make the opening speech, and then you will see our progress, in the city of your own name,70 and I will interest you in it thoroughly.

Please convey my heartfelt thanks to Gov Osborne also Receive my Kindest & best thanks till they are substantially conveyed.

Most truly yours

S. C. Rodgers M.D.

68. Strangely enough this figure is backed up by the assessor’s report of Ness county in June, 1873. According to a law of that year, the county assessor was instructed to take a census of any unorganized county attached to an organized county for judicial purposes. Although this annual report could not be found in the original, it was quoted in the agricultural report of that year on Ellis county. This report gave Ness county 642 people. The listing of 643 people in this census of October seems a most unusual coincidence. It would seem almost impossible for Rodgers to have influenced that report and he did not use it as backing when he later insisted that there was a much larger population in Ness county in the summer than in the fall later. In certain other respects also, there would seem to have been some more astute intelligence pulling strings that Rodgers scarcely could have had access to. But as is made plain in the later stages of his adventures Rodgers had no political backing or influence and when the chips were down in the end, whatever hand that had seemed to help, was discreetly withdrawn.

69. In all the fraudulent organizations of 1873, hotel registers and directories were supposed to have supplied names for padded censuses. Wherever some of the names came from, the Ness county census was quite carefully made up. Although residents outside the Rodgers colony were clearly not consulted directly, their names were all there, and the proper number of children were included in families, but the ages and given names were guessed. The John Farnsworth family appeared as Robert Farnsworth 88, Mary Farnsworth 88, and Jane Farnsworth six. The Nelson Fickham family appeared as David Fickham with wife and nine children ranging in age from 30 to four years of age.

70. There is an interesting side light on the naming of the town Smallwood. In Comanche county, which Andrew J. Mowry was organizing at almost exactly the same time, the county seat was also called Smallwood. The secretary of state evidently thought too many nameakes were inadvisable and wrote suggesting that Mowry change the name of his town. Mowry’s answer to Smallwood remains in the Archives division of the Kansas State Historical Society:

"Sun City, Harrodt Co. KANSAS"

"Oct. 5, 73."

"Friend Smallwood:"

"I got your letter when I came here. I did not understand you fully in regard to changing the name of my town in Comanche Co."

"I see the point now & if you are perfectly willing that the change should be made I will readily consent to change to the name of Wilder I have the Proclamation can return"
The first election in Ness county was held on November 4, 1873, the regular election day of that year. The county had been divided into precincts, perhaps townships—this again in accordance with the laws governing the organization of new counties. "They had regular voting precincts all over the county—but only on paper." Apparently residents outside the colony took part in the election, and John Farnsworth ran for sheriff. He stated that he was at the polls at Smallwood all day and 48 votes were cast. The same commissioners that had been initially appointed by the governor, were elected as was Charles Maguire for county clerk. Dr. Rodgers was elected representative and a certified abstract of 263 votes cast for representative was made on November 7, and signed by the commissioners and the county clerk and sent to the secretary of state in Topeka. Overlooked perhaps was the vote on the amendment which was not reported until November 11. This was an amendment to the state constitution increasing the number of representatives in the house to 125. It was an amendment very important to Rodgers, since the limitation of the members of the house to 100 had resulted in his being sent home in 1873. In this amendment there was also a provision that would in effect, make necessary a larger population in a county before it could be represented, i.e., "the House of Representatives shall admit one member from each county in which at least 250 legal votes were cast at the next preceding general election." Another important propo-

"P. S. Steps are being taken to organize Clarke Co. I understand it and hope the Parties will succeed. I will look out for the Governor interest there the same as in Comanche. A. J. M."

What could the governor's interest in Comanche have been? Comanche county turned out to be nothing but a base for the issuance of thousands of dollars in bonds. And why if the governor's duty was only ministerial in this matter was it so necessary to take care of his interests at all times and thank him so devotedly for his help. Here too, it sounds as if Mowry already had on October 5 the proclamation of organization of Comanche which was dated October 28 and presumably not issued until after the census had been received in Topeka. If this letter means what it seems to mean, this most flagrant of rigged county organizations was rigged in the state capital and the governor's interest provided for.

72. James Lilton stated that the other residents did not take part in the election, but John Farnsworth in a sworn affidavit said he had been at the polls and Dr. Rodgers in a sworn statement said Farnsworth ran for sheriff and was defeated. Hence at least one of the other residents took part in the election.
73. Records of the office of the Kansas secretary of state. This report consisted of a hand-written note to Smallwood stating that the vote at the election for the constitutional amendment was 265. It was signed only by Charles Maguire, county clerk.
74. It is interesting to note that in all the new counties where organizations had just taken place, the reported vote was over 250. What guardian angel saw to that? In many of the older western Kansas counties a lower number of votes were reported: Pawnee 80, Reno 105, Ford 219.
sition that the Ness county voters approved was the issuance of $5,000 in bonds for the building of a school house.\textsuperscript{75}

It was chiefly in this matter of voting bonds, that Rodgers failed to live up to the pace set in 1873 by his fellow organizers in Barbour county, Comanche county and Harper county. In Comanche bonds to the amount of $72,000 were voted. In Harper the amount was $40,000. In Barbour the total was $141,300.\textsuperscript{76} The improvements to be built in these counties ranged from courthouse, bridges and several schools in Comanche to a courthouse and a railroad in Barber county.\textsuperscript{77} It is to wonder that historians have thought fit to put Ness county with her $5,000 schoolhouse in such a financially superior class.

The county organized, the election held and the bonds voted, Rodgers soon left Ness county. By November 18, he was in Chicago and applying again to his friend Smallwood:

\begin{quote}
206 Twenty Sixth Street  
CHICAGO ILL.  
Nov 18 -73
\end{quote}

Hon. W. H. Smallwood

Dear Friend

I have sent you the vote on the amendment. I am anxious to hear whether it is carried or not.

I came here to Negotiate Some School Bonds which we voted for the purpose of erecting a School House in Smallwood. I will likely have to go to New York as money is yet hard to get since the crash. If it necessary I will refer the parties who purchase to you. Or if you would please drop me a few lines stating what School Bonds sell for in Kansas generally. So that I may use it if necessary as I am a stranger in New York.

I would like to know How the Amendment has resulted also. A reply at your earliest convenience will oblige.

Your Friend truly  
S. G. Rodgers \textsuperscript{78}

Here again Rodgers looks the awkward amateur among his fellow county organizers. W. H. Horner, chief organizer of Harper county sold his $40,000 worth of bonds in St. Louis for $30,000

\textsuperscript{75} Ellen Maguire said that $15,000 was voted for the construction of a courthouse, schoolhouse and a bridge across the Walnut, but no such bonds are mentioned anywhere else. The Hays Sentinel, May 11, 1878, in speaking of Ness county bonds, reported the sum as $5,000. There is every reason to believe that this newspaper was well informed on this matter since D. C. Nollis, the editor in 1878, as a notary in 1873, notarized various documents having to do with the Ness county organization and also in 1874, as Ellis county attorney pressed the criminal case against Dr. Rodgers.

\textsuperscript{76} Laws of the State of Kansas, Special Session, 1874, p. 5. These were the amounts of bonded indebtedness reported by the state auditor to the special session of the legislature called in September, 1874. This session was called for the purpose of voting relief to the people of the state whose crops had been destroyed by grasshoppers. But by that time the bond scandal was so great that the special session voted for an investigation.

\textsuperscript{77} House Journal, 1875, pp. 70, 71.

\textsuperscript{78} Kansas State Historical Society, Archives division, Topeka.
without any need of help or recommendation from the secretary of state. The Comanche county bonds seem to have been passed out generously to anyone who might happen to think he could sell a few bonds. However, the Comanche county group, captained by A. J. Mowry, lured by the ease and size of their profits, began issuing school bonds and thereby came to grief. Mowry took $2,000 worth to Topeka and sold them for $1,750 to the permanent state school fund. W. H. Smallwood, secretary of state, and the state superintendent of education both approved this purchase and it was planned to load the school fund with more had the attorney general not stopped it.

On the other hand, Rodgers had no connections through which he could sell his comparatively modest Ness county bonds. Perhaps he tried in New York but even there as far as can be ascertained he could not sell the bonds. While there is no record of any statement by Rodgers that he did not sell the bonds, they were certainly never registered at the state auditor’s office nor were they ever presented for payment to Ness county. In all other counties with so-called “bogus organizations,” the bonds had to be paid by later settlers of the county and the courts upheld the purchasers in their right to collection. It is impossible to believe that the bonds of Ness county were sold and then not presented for payment.

But this is getting ahead of our story. While Rodgers was away trying to sell the bonds, the colony was getting along as best it could. As the winter deepened in Ness county and Rodgers did not come back to provide the work and assistance expected, the colonists began to believe that he had deserted them. They were city people, carpenters, masons, and blacksmith and probably people of no great resources. They had arrived too late in the fall and had had no chance to sow and reap a crop. The loneliness and emptiness of western Kansas must have been frightening to these city dwellers. Under these conditions it is remarkable that so many were able to take care of themselves. Some went buffalo hunting, others found employment in Hays or elsewhere. When the army, keeping its customary eye on the frontier settlements, made a trip to Smallwood on December 20, only the Maguire and Shannon

Mill, treasurer of Comanche county, told Williams that he did not know exactly how many bonds were outstanding. Some men had taken bonds to sell but returned them unsold.
81. T. A. McNeil, op. cit., pp. 63, 64.
82. Hays Sentinel, May 11, 1878. Also a letter to R. J. McFarland of Ness, September 13, 1878, from Governor Anthony: “There is no evidence in the auditor’s records of the existence of any bonded indebtedness in your county.”—Governor’s correspondence, Archives division, Kansas State Historical Society.
families were found, "shirtless, shoeless and nearly destitute of clothing, their appearance cadaverous and very emaciated apparently from hunger." 83 When this was reported to Col. James Oakes at Fort Hays, it was decided by a board of officers called for the purpose, to issue rations to these people for 12 days. When the 12 days were past and Rodgers had not returned, the troops came with wagons and removed the Maguire and Shannon families to Hays. These families comprised six men, six women and nine children and were not the whole colony by any means. 84 A number of the other families were still in Ness county on January 12 when John Farnsworth took his census. William Lenihan, who spent the winter in the county, said that the settlers lived mostly on game which was plentiful enough but tiresome. There was never much at the colony store but flour, coffee, and sugar and that only in the beginning.

The Maguires, in all appearances the most whole-hearted supporters of Rodgers in the beginning, were his most bitter detractors when things went wrong. If the organization of Ness county was a conspiracy with intent to defraud, then the Maguires were in it up to their necks. But when their hopes were blasted, they laid all their troubles onto Rodgers. In their statement to the army officers at Hays they accused Rodgers not only for failing to keep his many promises but stated that he had acted "dishonestly in that he failed to pay over to the Railroad company, a certain sum of money which was paid into his hands by a colonist," 85 for the purpose of paying freight on certain baggage still held by the railroad company. This seems to be a duplicate accusation as Rodgers had already been accused of being responsible for transporting their baggage to Ness county for the sum of money paid to him when they joined his colony. If the colonist had already paid, why was he paying a second time? When the army investigated the matter, baggage was found held for non-payment of freight. This inconclusive accusation is the only definite charge of dishonesty made against Rodgers. Another rather unreasonable Maguire grievance was that lumber had not been furnished them and they had "been compelled to dig dug-outs to protect themselves from the inclemency of the winter." 86 There was at that time no single stone,
brick or frame house in Ness county or in any adjoining county. Everybody lived in sod houses or dug-outs, as did the Rodgers colonists.

Other forces in Hays besides the army, were interested in Rodgers and his colony for reasons not so altruistic as that of the army. The composition and motives of these antagonistic forces are not clear. Perhaps the "crowd" at Hays had intended some day to organize Ness county as they had organized Ford county. If so, such intent would explain certain previous actions in regard to Ness, that have remained inscrutable to the historian. In 1873 when the boundaries of other counties were changed, why was the western line of Ness county also pushed over one whole row of townships? 87 Who could have arranged that assessor's census report of 642 inhabitants in Ness county in June, 1873, but some one in the county clerk's office in Hays? While there were probably more Ness residents in June than in October, all sources indicate that the population could scarcely have been 642. What these two preparatory moves presaged, we can only guess. But that Rodgers' organization of Ness county was deeply offensive to someone, we now know.

On November 13, when Rodgers had scarcely left the colony, an attorney, A. D. Gilkeson, of Hays City, wrote to W. H. Smallwood, "Will you be kind enough to inform me what parties were appointed by the Governor to act as County Commissioners and County Clerk of Ness County (newly organized) and also who took the census of said county upon which Proclamation of Organization was made." 88 The next inquirer was N. Daniels, agent for the land department of the Kansas Pacific railway, who wrote on November 17, 1873, to the "Hon. Sec. of State," "Please send me a certified copy of the papers from Ness County sent by Doctor Rogers for the organization of Ness County with your fees and I will properly remit the amount." 89

On December 9, 1873, N. Daniels swore to a complaint against Dr. Rodgers. The case was filed before George R. Jones, a justice of the peace in and for Big Creek township in Ellis county and in

87. In March, 1875, when the county lines were rearranged, Ford county received not only a row of townships on the west from unorganized territory but also a row of townships on the north taken from unorganized Hodgeman. Since Hodgeman was deprived of townships on the south, it seemed only reasonable that the county should in lieu, acquire the townships of Range 26 on the west. But why Ness county should also have been gifted with that same range of townships on the west, has never been understood.—Lines of the State of Kansas, 1873, p. 148.

88. Secretary of state's correspondence, Archives division, Kansas State Historical Society. Gilkeson was later an attorney in the case for perjury against Rodgers. He was elected representative to the state legislature in 1876.

89. On this letter, found in the correspondence files of the secretary of state, is written "Sent Nov. 26 See Letter Book." It is this letter book, stayed or stolen, that prevents a complete appraisal of Smallwood's part in these various organization intrigues.
the appearance docket of the justice of the peace we have the following:

N. Daniels personally appeared before me, who being duly sworn deposes and says:

That on the ___ day of ____ A. D. 187___ at the county of ____ and state of Kansas, Samuel G. Rodgers did then and there unlawfully and feloniously commit the crime of perjury, the same being contrary to law made and provided against the peace and dignity of the state of Kansas and deponent prays that process may be issued against the said S. G. Rodgers and that he be dealt with according to law.

N. Daniels

A warrant was issued on that same day for the arrest of Dr. Rodgers.

The files in the case are missing, likewise files in the district court are missing. Since neither the complaint nor the information can be found, the exact charge of "perjury" made by Daniels cannot be obtained. It will be remembered that the only papers Dr. Rodgers signed in the process of organizing Ness county, was the memorial stating that the signatures attached were those of householders of Ness county and that he believed there were 600 inhabitants. This memorial was also signed by Henry Maguire and Edward Maroney, both of whom were on December 9 residing in Ness county and easily available to plaintiff, N. Daniels or anyone else, who wished to establish that the county had been fraudulently organized. The census taker, who had undoubtedly padded the census, was also in Ness county. Too, there was Charles Maguire, the county clerk, who had certified to 263 votes that had not been cast in the election.

It is plain, however, that it was not so much the fraudulent organization that bothered N. Daniels and the other interested Hays men as it was Rodgers. So they made ready for him if and when he should return.

On January 7, John Farnsworth, who Rodgers claimed was a defeated candidate for sheriff, made an affidavit in Hays before the notary, D. C. Nellis, testifying in part:

That he has been a resident of Ness county for ten months past; that on December 22d and 23d, 1873, he took a census of all the inhabitants of Ness county and that the number ... did not exceed one hundred forty, including men, women and children; that he was at Smallwood City, the temporary county seat, on the evening of the day of the election, ... and saw the record of votes cast, and the poll books showed 48 votes cast; that he was well acquainted with all the legal voters of the county of Ness, and that

90. City clerk's records, Hays.
on the 4th day of November, 1873, there were but 14 legal voters in the
county who had resided in said county for thirty days or more.91

On January 10, 1874, J. W. Hickel of the Rodgers' colony also
made affidavit, stating,

That he is a resident of Ness county and has resided there for four months
last past; that he is well acquainted with all the inhabitants of said Ness
county and knows the number does not exceed 200; that he knows all the
legal voters who were in the county at the election of November 4, 1873,
and that the number does not exceed fifteen.92

A week later, John Farnsworth took another census in two days
finishing on January 13, listing the heads of families by name and
finding 79 inhabitants.93 This census was also furnished to the
interested men at Hays, whose representative, John McCaffigan,
was preparing to confront the legislature and Dr. Rodgers with
all these documents in case he should come back to sit in the legis-
slature when it convened in January, 1874.

Rodgers did come back to sit in the legislature. Perhaps he did
not know of the measures taken against him. And even had he
known, he probably could not imagine that they would matter.
Had not practically every county in western Kansas been organized
in the same way he had organized Ness and had not the organizers
earned thereby a reputation of shrewd maneuver? He had but fol-
lowed others' footsteps with the co-operation of the secretary of
state and the governor and just like his fellows, he could expect to
be taken into the house even if there were objections. He had not
been able to sell the bonds, but that was no offense to anyone except
his poor workingmen who had been deprived of the work they had
expected.

The legislature assembled on January 13, 1874, and
the member from Ness Co., S. C. Rodgers, was duly sworn in but had no
more than got his seat warmed nicely before he was summoned before Sheriff
Ramsay, Sheriff of Ellis County at the door who informed him that his county
had only 23 voters and upon his signing certain papers for its organization and
election returns he had laid himself liable for arrest.94

This report from the Hays newspaper continues, stating that
Rodgers secured a lawyer and "endeavored, we understand, to en-
list the sympathy of the candidates for Senator but they would not

91. House Journal, 1874, p. 442.
92. Ibid.
93. This census is particularly interesting to the historian trying to compile a list of the
first settlers of Ness county. There were 26 heads of families, only five of which are
identifiable as members of the Rodgers colony. Several were not included that are believed
to have settled in the county earlier, notably the Nelson Peckham family and James Litton.
Probably these settlers had gone east or to Hays for the winter as was customary with many
early settlers. They went to find work and to send their children to school.
94. Hays Sentinel, January 22, 1874.
listen to him." The *House Journal* shows Rodgers present on January 13, 14, and 15, but absent for several days thereafter. Apparently he went to Hays with Sheriff Ramsay. The warrant for Rodgers was returned to the issuing court on January 15 with the notation that it had been served and S. G. Rodgers was in court. On the 16th a preliminary hearing took place. Rodgers waived a hearing and was bound over to answer in the district court.

And now, to wit: on the 16th day of January 1874, this cause being called for hearing, the defendant waived examination and in lieu of bail, which was fixed at $1,000, S. G. Rodgers was committed to the county jail of Saline County, there to remain until discharged by due course of law.

George R. Jones
Justice of the Peace

<table>
<thead>
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<th>Serving the warrant</th>
<th>0.75</th>
</tr>
</thead>
<tbody>
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<td>Bring prisoner to court</td>
<td>1.60</td>
</tr>
<tr>
<td>Mileage 666</td>
<td>66.00</td>
</tr>
<tr>
<td>Total</td>
<td>$67.75</td>
</tr>
</tbody>
</table>

The Hays newspaper adds detail to this incident:

In default of $3,000.00 bail he was remanded to jail and brought to Saline county. There was another good reason for his coming to Saline county. Just before the time for his departure, his constituents in Ness county . . . assembled about the hotel where he was lodged and proclaimed that they had been swindled by their representative to the amount of their entire cash and that he had left them to winter in the plains without food nor the wherewith to purchase food. Being in this condition, some of his constituents had nearly starved to death. It was to avenge this wrong that they had assembled and made some demonstration which indicated that they thought hanging was his just desert.

That this account is exaggerated in the amount of the bail we know. Other details may also be exaggerated. The Maguire and Shannon families were in Hays and this report seems to repeat their complaint. But there has remained no tale or tradition in Ness county that Rodgers ever came back to Hays. Ellen Maguire says nothing about it in her history nor did John Farnsworth apparently leave any word-of-mouth story of such an occurrence. This seems strange as certainly this return of Rodgers under guard, and the threat of mob action by the colonists would have added much drama to the story of the "bogus" organization.

Once in Salina, Rodgers attempted to arrange bond, the deputy sheriff going around town with Rodgers for this purpose. After several days, due perhaps to the persuasiveness of Dr. Rodgers, the two embarked by train for Topeka. Sheriff Going then went to

95. Records, clerk of the court, Ellis county. The cost of bringing Rodgers back to Ellis county is an interesting item of this record.

Topeka to look into the matter and being dissatisfied with the bond that had been put up there by Rodgers, he rearrested the doctor. Rodgers thereupon asked for a writ of habeas corpus and was immediately freed by the district judge. Sheriff Going of Saline county, then took the bond back to Sheriff Ramsay of Ellis county.97

Meantime, the house of representatives was going through its usual contortions deciding who was eligible to sit as representatives in that eminent but strangely inconsistent body. At this distant time, it is impossible to know or gauge the cross currents that agitated and influenced this group. Particularly difficult circumstances surrounded this meeting. Decisions in the suits asking the dissolution of fraudulent Pawnee and Ford county organizations were announced by the supreme court in January. The new amendment to the constitution had passed, thus allowing 125 members in the house but specifying, that “from and after the adoption of the amendment the House of Representatives shall admit one member from each county in which at least two hundred fifty legal votes were cast at the next preceding general election.” A number of the counties among them Pawnee, Norton, Rooks, and Ford had reported less than 250 votes in that next preceding general election.98 What should be done about them? Under the amendment, they should be sent home. The charges of fraud against Dr. Rodgers in his Ness county organization had been spread over the newspapers for all to see. And there must have been some bad odors seeping into Topeka about the recent Comanche and Harper organizations.

As early as January 15, a resolution was introduced in the house to investigate the “settlement, organization and rights of Representatives in this House of the counties of Harper, Comanche and Ness.”99 But this was laid over under the rules until January 20 when it was taken up and referred to the judiciary committee.100 This was the committee that was also defining the intent of the amendment which if taken literally “would practically disenfranchise all members of this House in excess of one hundred.” The report of the committee came in on January 27 and stated:

97. The Commonwealth, Topeka, January 25, 1874; Saline County Journal, Salina, January 29, 1874.
98. Amendment of Article II, Sec. 2. In order to comply with the provision of the constitution that each organized county shall have at least one representative, this amendment also provided that “each organized county in which less than two hundred legal votes were cast at the next preceding election shall be attached to and constitute a part of the Representative District of the county lying next adjacent to it on the east.” The 200 figure was believed to be an error but so it was passed and published. This left counties with from 200 to 250 votes with no provision for representation. At it turned out this part of the amendment was ignored at this session.
100. Ibid., p. 91.
It is the opinion of the committee that all members now occupying seats in this House, in excess of one hundred, and holding certificates of election from counties in which two hundred and fifty legal votes were cast at the general election held in November A.D. 1873, are entitled to seats as members of this House.

The committee further report that from the official records, it appears that the counties of Comanche, Harper and Ness were regularly and properly organized; and the committee are of the opinion that the question the fraudulent organization of said counties, and whether two hundred and fifty legal votes were cast in either of these counties at the last general election, are matters of fact, which your committee deem proper subjects of investigation upon evidence.

And we therefore recommend the questions of the fraudulent organization of each of said counties, and as to the number of legal votes cast in each of them at the last general election, be referred to the Committee on Elections, together with the petition and affidavits in relation to said county organizations and elections now in possession of your committee; and that said Committee on Elections examine said matters, take evidence in relation thereto, and report thereon to this House at the earliest possible day.

Despite this report, some were not content to let the committee on elections decide this matter. On February 3, 1874, Mr. McGaffigan, gentleman from Ellis, offered this resolution:

Resolved, that a special committee of three be appointed to inquire into the organization of Ness county, and that said committee be authorized to administer oaths, send for persons and papers, and to visit Ness county if deemed necessary for the prosecution of this inquiry.

This resolution did not pass. On the same day, Mr. A. J. Mowry, gentleman from Comanche, offered a resolution. At that time it was not known that his county had no residents whatsoever, and he did not therefore anticipate any such difficulties as had befallen the gentleman from Ness.

Resolved, That this House will not consider any question of the rights of members to seats in this House, unless there is a contest filed or some good evidence of fraud produced from the county where a member was elected,

101. Ibid., pp. 296-298.
102. It would seem that Mr. McGaffigan was not exactly a fair knight battling for right against wrong in this instance. A short time before, the supreme court of the state had handed down a decision that the Ford county organization was void because of a fraudulent petition and census. (State vs Ford County, 12 Kan. 441. See footnote.) And yet at the moment McGaffigan was making his proposal, the gentleman from Ford county, James Hannah, was still sitting in the house and voting. The potent group at Hays that kept a feebler finger in all western Kansas affairs, was not at all alarmed about Ford county's fraud. Under these circumstances, the limitation of McGaffigan's concern to Ness county was a measure of his honesty of intention.

McGaffigan came with the famous or infamous "Judge Joyce" from Leavenworth county to Hays and was active in the organization of Ellis county in 1887. He served at one time and another in most of the early offices of the county. It was as probate judge of Ellis county that he found the site of Dodge City to be worth just One Dollar—that being the price he decreed the government should be paid for the quarter section of land on which Dodge City was located. James Hannah lived at Hays first but later made the first settlement in Dodge City—he opened a saloon in a tent—and was a prominent citizen from then on. Ford county was attached to Ellis county for judicial purposes at the time.

believing it to be unwise to contract expense to the State upon mere assumption alone.\textsuperscript{104}

Suspension of the rules being necessary for the consideration of this resolution, it was not considered. Later in the day, these matters again came up for discussion and the following report of the action that ensued is taken from Topeka\textit{ Commonwealth} for February 4, since it follows closely the report of the\textit{ House Journal}\textsuperscript{105} but adds certain detail that is not given in the\textit{ House Journal}:

Mr. Mason\textsuperscript{106} offered a resolution that the committee on elections be authorized to take testimony by deposition in relation to the number of inhabitants in the counties of Harper, Comanche and Ness.

Mr. Horner\textsuperscript{107} offered an amendment that the committee also inquire into the organization of the counties of Reno, Pawnee, Ford, Rooks, Phillips, Barber, Billings and Labette.

Mr. A. H. Horton offered an amendment that the investigation should only be had where a sworn statement, or affidavit, is made of some fraud in the organization of such counties. He said his object was to save expense, and only in cases where there was some charge made, should this door be opened, which would entail a vast expense on the state.

Mr. Mason proceeded to say that the question before the judiciary committee in relation to this matter, was one of law, and they had decided that question.

The question now is whether there were actually in the counties of Ness, Harper and Comanche, 250 legal voters, and this is what the committee on elections have to decide on the evidences that may be presented to them. He did not believe that the committee had any right to inquire into the organization of any county unless on some sworn statement. In regard to these three counties there are some complaints and he protested against adding to the burden already on the committee, and he hoped the amendment by Mr. A. H. Horton would prevail.

Mr. Horner wanted the facts in relation to the county of Harper judged fairly and calmly. It was not his intention to call up the question of the organization of any of the counties of the state; but if it should be gone into \textit{he was certain that many of them would be found improperly organized}. Many false reports have been circulated about him and his county and he believed it was done to influence in some way the vote for U. S. senator. He occupied some time and went into the question of organization of several of the older

\textsuperscript{104} Ibid.
\textsuperscript{105} Ibid., beginning p. 334.
\textsuperscript{106} Mr. Mason was from Franklin county and was chairman of the committee on elections.
\textsuperscript{107} Mr. Horner was the gentleman from Harper county, whose fraudulent organization of the county was later revealed by investigation and subsequent suit in the supreme court. At this moment his guilt was not known. He says here in effect, if the house is sincere in this matter, it should investigate all the fraudulently organized counties and he named a number of them. Some of these were subsequently investigated, \textit{e.g.}, Barber. Others not investigated, need but a casual look at the record to demonstrate their probable fraudulences: Reno, organized January 1, 1871; election, January 8, 1871; 61 votes cast. Norton or Billings, organized August 22, 1872; election November 5; 32 votes cast. Pawnee and Ford had already had their fraudulence spread before the world by cases before the supreme court.
counties, and insisted that under the usage which has heretofore prevailed no investigation should be permitted.\textsuperscript{108}

Mr. S. G. Rodgers had no objection to any committee making a full investigation of the county of Ness. He had tried last year to disorganize Harper [Pawnee] \textsuperscript{109} but he found it impossible to do so. He was proceeding to give a history of the whole business, but was decided to be out of order, the question being on Mr. Horton’s amendment.

Mr. A. J. Mowry rose to a question of privilege and asked that the journal be read showing where the question had been taken from the judiciary committee and given to the committee on elections.

The chair decided that the gentleman was too late—that the matter was referred to the committee on elections, in the regular order of business, and then would have been the time to object.

In reply to a question by A. J. Mowry, Mr. Mason said there was no sworn statement relative to any county but Ness; but that by a resolution of the house the committee on elections were directed to investigate the organization of Ness, Comanche and Harper.

The amendment offered by Mr. Horton was adopted. The resolution [Mr. Mason’s] as amended then was adopted.

Hence the matter went into the committee, which was authorized to take depositions in the matter of the number of inhabitants in the counties of Comanche, Harper and Ness only in case there was a sworn statement alleging fraud in the organization. This very neatly isolated Dr. Rodgers and restricted investigation to Ness county, should other statements not be presented.

C. B. Mason, chairman of the committee on elections, submitted his report on February 12, concerning Harper and Comanche, stating that they had awaited statements on these two counties and none having been presented they might return their papers without comment but would make certain conclusions for the information of the house. The organization and election papers from Harper were in perfect order and so far as anything contrary was shown, Mr. Horner was entitled to a seat as member of the house. In regard to Comanche the report was much the same except that the county was declared organized October 28, 1873, and the election was held December 3, 1873. The election being held on December 3, it did not appear that the necessary 250 votes recorded had been cast at the general election next preceding the present session, as required

\textsuperscript{106} Horner here undoubtedly presented the understanding that prevailed among all the later organizers of counties. “According to the usage which has heretofore prevailed no investigation should be permitted.” The portion of the above in italics was selected by the author for emphasis.

\textsuperscript{109} The newspaper reporter plainly made a mistake here. It was Pawnee not Harper. Dr. Rodgers must have embarrassed the governors and other officials when he tried to tell publicly how he had tried to stop the Pawnee organization. Although he was pulled up short before he could tell his story, here we have ample evidence that he was persuaded that under the law such organizations could not be prevented.
by the constitutional amendment. Therefore, Mr. Mowry was not entitled to a seat in the house.\textsuperscript{110}

The next day, however, this matter was regarded in a more tolerant light. Mr. Hodge offered a resolution that there being no evidence of fraud or corruption in the election of the representative from Comanche county but only a technical point of law in regard to his election, and since the previous legislature had set the precedent of allowing members under the same circumstances to hold their seats according to the expressed will of the constituents,\textsuperscript{111} the member from Comanche be entitled to his seat. There was some discussion of this resolution, Mr. Mason sticking to the letter of the law and other members stating they thought the election illegal but the resolution was adopted 31 to 30. Mowry, on his part, was so confident of the outcome, that he had already introduced a bill to organize two new counties, Webb and Wilder.

The election committee finally brought in its report on Ness county on February 17. The report included not only the affidavits by Farnsworth and Hickel\textsuperscript{112} concerning the number of inhabitants and electors in Ness county as already given earlier in this article, but also the statement offered in reply by Dr. Rodgers. This statement was made after Dr. Rodgers had been arrested and charged with perjury at Hays and was undoubtedly made with the advice of legal counsel and therefore may be depended on to contain only statements that could be proven.

I am the Representative from Ness county, Kansas, and was duly and lawfully elected to said office on the 4th day of November, A. D. 1873. At the time of my said election, the county of Ness contained, according to the oath of census taker, within its boundaries the lawful number of . . . voters duly qualified. At the time of the petition for organization, the said inhabitants desired to avail themselves of the benefits of county organization, and of police regulation for the better protection of their families and as a inducement for emigrants to settle upon the fertile lands of said county.

This affiant states that he has read the affidavits of Mr. Farnsworth and Mr. Hickel, filed in this matter, and now before this committee, and waiving the manifold objections which appear on the face of such papers, and the

\textsuperscript{110} For a few days it seemed Mowry had out-smarted himself. By waiting 30 days after the organization to hold the election, he had ignored the proviso that the 250 votes were to be cast on the general election date of November 4, 1873.

\textsuperscript{111} Atty. Gen. A. L. Williams commented on these constituents in his report on Comanche county, published in the \textit{House Journal}, 1875, p. 72.

\textsuperscript{112} "If Marcus sat amid the ruins of Carthage and wept, I camped upon the town site of Smallwood (the county seat), and feasted upon wild turkey; with no (white) man to molest or make me afraid. In Smallwood there are two log cabins (both deserted, of course), without doors, windows, sash or blinds; about a mile off is another deserted ranch; and their compose the houses of the 'householders' of the county. In this county there is not an acre of land or a dollar's worth of personal property subject to taxation; its sole inhabitants are the Cheyennes and the coyote, the wolf and the Arapahoes, and its organization is, and always has been, a fraud."
inconsistencies which are therein contained, he makes answer to them on their merits, and states: the said Farnsworth makes oath that he took the census of Ness county in two days, to wit, on the 22d and 23d of December, 1873. This affiant states that the county of Ness is 36 miles long by 30 miles wide, and states as his judgment that no man can ascertain what is here claimed in that short space of time. The census so alleged to be taken was not by authority nor was he duly qualified to take a census, and it is entitled to no consideration at the hands of this committee. This affiant states that at the time the census was taken, under the seal of this State, in Ness county, here were, as shown by census taker's returns, a requisite number present and resident householders therein. Deponent states that since that time many have removed to other localities to wit: some have removed to Denver, some to Illinois, some to Massachusetts, and some to other parts of Kansas, so greatly decreasing the number of bona fide residents there in October and November. This affiant further states that the polls were open at the first precinct from 9 A. M. to 6 P. M. and that said Farnsworth was there present but two or three hours, and was not able to, and in fact, did not, know the number of votes cast at the said precinct. Hickel was one of my colony, and shortly after coming to said county he received an injury which confined him to his bed, and so he was for nearly two months, and is, in fact, ignorant of the matters whereof he wishes to speak to the detriment of affiant and the residents of Ness county, who desire to retain the county organization. Said Hickel swears that the total number of inhabitants in Ness county on the 10th of January, 1874, is but 200; this affiant states that this was long after the lawful census was taken, and after numbers had gone away for the winter, as hereinbefore set out.

Mr. Farnsworth does not swear that the number of bona fide inhabitants in Ness county in October, 1873, was not a requisite number for organization as required by law, and this affiant knows that there were a requisite number.

This affiant further states that he verily believes that Farnsworth has been induced by malice to affiant to make these false statements. Affiant knows that said Farnsworth was a candidate for sheriff, and only received twenty-seven votes; affiant opposed his election, and on this account, he, Farnsworth, seeks to annoy affiant. Said Farnsworth before 4th of November worked hard at said precinct No. 1, to get the support of the colonists; but received only twenty-seven votes as aforesaid. This affiant has no other or further objection to the affidavit of J. W. Hickel, than has already been urged against that of Farnsworth, and he states that the matters averred herein are true of his own knowledge, and those things otherwise alleged he believes to be true; and affiant further saith not, except that this honorable committee weigh the matter in its proper light, and by the strict rules of evidence dismiss the papers of said Farnsworth and Hickel from their consideration, and restore to him, this affiant, all things lost by reason thereof.

S. G. Rodgers

Subscribed and sworn to before me this 13th day of February, 1874.

Elias Shull, Notary Public.

113. Rodgers apparently did not know of the Ellis county assessor's census report of June that might have been cited to support the census of October.
The report of the committee on elections was long and did not, except in a few instances, make much reference to the facts offered by Farnsworth and answered by Rodgers. The findings are important, however, in that they did make some inquiry into the fraudulence of the Ness county organization as well as determine whether 250 votes had been cast in the Ness county election of November 4, 1873. The findings are also important in that the committee was the only official body that ever in any way considered the organization of Ness county.

The report first took up the fact that there had not been a 30-day notice before the election, discussed it at great length but, after pointing out that there should have been a 30-day notice, made no finding that Rodgers was not entitled to his seat because of the lack of a 30-day notice.

The report next devoted one short paragraph to the clause in the Farnsworth and Hickel affidavits relating to the falsity of the sworn statement of Rodgers and others claiming 600 inhabitants. This is the only part that bears in any way on the accusation that the Ness county organization was fraudulent because the census was false in claiming 600 inhabitants in October, 1873. The Farnsworth statement was:

Deponent says he has seen the copy of the affidavits of S. G. Rodgers, Maroney and others, who testified as to the number of inhabitants of said Ness county, which were filed in the office of the Secretary of State. Deponent saith that the contents of the said affidavits, as to the number of inhabitants in said county, and the number of householders, is false, and an over-estimate, and were given he believes, to fraudulently obtain an organization of the said county of Ness.

The only affidavit that Rodgers signed pertaining to the organization of Ness county was the affidavit attached to the memorial or petition to the governor, which was also signed by Henry Maguire and Edward Maroney. The exact words were, "They verily believe there are six hundred inhabitants in the county." The petition requested the governor to appoint a census taker to find out if there were 600 inhabitants.

The election committee in its report disposes of this charge of fraud made by Farnsworth against Rodgers in the following words:

114. As has been explained before, this was often discussed by committees on elections, but as the house was the sole judge of the qualifications of its own members, seats were customarily not denied for this reason.
115. Apparently the reporter for the Topeka Commonwealth stayed only long enough to hear this part of the report as his newspaper stated the next day that Rodgers was denied his seat on this account.
116. One wonders if the charge of perjury entered in Ellis county against Dr. Rodgers was not on this same basis.
DR. S. G. RODGERS, GENTLEMAN FROM NESS

Both of the foregoing affidavits [Farnsworth and Hickel] also set forth that the sworn statements of S. G. Rodgers, John Maroney and others, claiming six hundred inhabitants and asking a census taker to be appointed, are false. These later statements concerning the application for organization being made merely upon belief of S. G. Rodgers and others, the committee have not attached any importance to the statements of Farnsworth and Hickel controv- 117 

erting them.

It is believed that this decision meant exactly what it said. It certainly was good legal judgment that prompted the committee to refuse to find fraud on the basis of nothing more than Rodgers’ sworn statement of his belief. Rodgers did not swear there were 600 inhabitants, he merely swore that he thought so, at the same time asking that they be counted. Farnsworth practically admits the weakness of his charge when he uses the word overestimate. An overestimate is not necessarily a proof of fraud, it may be only a proof of poor judgment or poor information. A charge of fraud was a very serious thing and no responsible court, attorney, or committee would countenance such a charge without very strong evidence. It is not surprising that the committee refused to consider such a charge on such evidence alone.118

After this pronouncement, the report took time out to state that the committee had informed Dr. Rodgers that any sworn statements he might produce would be received in evidence and that Dr. Rodgers had asked for authority to go to Ness county for the purpose of taking evidence. The committee had advised that a commission would be sent if desired to Hays City but declined to send to Ness for the purpose of taking evidence because the inquiry involved might be interminable in time and expense.119

Then finally the committee got down to what it evidently felt was its real task—were there cast at the general election on the 4th day of November, 250 legal votes in Ness county? Without stating any doubt of the 600 inhabitants that the census taker said was in

117. The italics have been inserted by this writer.

118. It is to wonder if Farnsworth might not have made a more effective charge of fraud against Rodgers or the organization. Tradition has said that there were not 40 householders in the Rodgers colony. Farnsworth saw all the names signed to the petition or memorial and yet he made no contention that any of these names were fraudulent and no such persons existed. Are we to conclude that there were there 40 householders resident in the Rodgers colony in October, 1873? This historian would like to know?

119. It has perhaps not been sufficiently emphasized in this account how ingenious and safe for the organizer was the fraudulent organization conspiracy. There was no easy way to connect him with the conspiracy although it was known to all that he was the instigator. Mowry of Comanche county was at one time indicted but the case was dropped on account of insufficient evidence. Conceivably the census taker could have been held for making a false census report but this was never done either perhaps because it was felt he was really not to blame and perhaps because those indictments would have reflected on the governor. The governor might have been fooled on the first appointment he made of a census taker but not on the succeeding ones. We stress here again the moral responsibility of the governor for these fraudulent organizations. They could not have happened had he done as the law provided—appointed competent, bona fide census takers.

119. Apparently Rodgers felt he still had friends in Ness county.
Ness county in October, the committee held that Dr. Rodgers, continuing to stand on the census report, had not offered any refutation to Farnsworth's and Hickel's claim that there were less than 250 legal voters on election day. Here Farnsworth had sworn to a positive fact, the "poll books showed forty-eight votes cast."\textsuperscript{120} Dr. Rodgers offered in reply only "Farnsworth was there present but two or three hours and was not able to, and, in fact, did not know the number of votes cast" and he did not deny Farnsworth's statement that the poll books showed only 45 votes.

\ldots the committee unanimously report, in their opinion, there were not two hundred fifty legal voters in Ness county at the last general election, and therefore that S. G. Rodgers is not entitled to a seat on the floor of this House.\textsuperscript{121}

It is to be regretted from an historical stand point, that this inquiry did not bring out some evidence on how many persons were resident in Ness county in 1873. As is well known 1873 was a terribly dry year and settlers left all the western counties. Farnsworth's two censuses prove that people kept leaving the county as the winter advanced. In his December census he enumerated 140 persons, while in January he could find but 79. There certainly were at least 200, the figure given in Hickel's affidavit and also in the petition for disorganization. It is quite possible that earlier there were more, but it is believed that the number could scarcely have ever reached 600 although that has never been proven one way or another and must always remain simple conjecture.

The report of the election committee was adopted by the house and Dr. Rodgers' tenure in the Kansas legislature ended and with it any further effort by him to encourage the settlement of working men in western Kansas.\textsuperscript{122}

\textsuperscript{120} It is at this point that the old tradition that Farnsworth was responsible for exposing and eliminating Dr. Rodgers and his organization, comes at last to a qualified verification. While the organization was not voided, it was Farnsworth's affidavit that supplied the basis for Dr. Rodgers' rejection by the house.

\textsuperscript{121} We mention in this connection that at the moment the committee was rejecting Rodgers because 250 votes had not been cast in Ness county, Booth was sitting, elected by a county that had cast but 80 votes. Hanrahon was also sitting although the supreme court had declared the Ford county organization void in January. The committee knew all this. But the seats of these representatives had not been challenged in the house. Rodgers' had, and that by a group that had real political power. This is not to say that there were not grounds to reject Rodgers. There were, and the lawyers on the committee made sure that he was rejected for a good valid reason. But it should be emphasized that this rejection of Rodgers by the committee did not in any way convict Rodgers of fraud or padding the census, regardless of what individuals might have thought of the situation.

We might also add that Hanrahon andFord county were saved from even going through the committee on elections, were saved from any discussion of the organization by a simple act passed by the legislature on March 7, of that year: "That the organization of Ford county be and the same is hereby legalized.\ldots" (Laws of the State of Kansas, ch. 15, p. 8.) We might also add that by this act Ford seems to have escaped the tarnished reputation that historians so generously bestow on Ness.

\textsuperscript{122} Technically speaking, Rodgers was in no worse situation than when he had been rejected by the house in 1873, except for the perjury charge in Ellis county. We
The case for perjury was still pending against Rodgers in Ellis county. Since Ness earlier had been attached to Pawnee county for judicial purposes, this case had no business in Ellis county. But if it were kept hanging over Rodgers, it would likely discourage any ideas he might have had of returning to Ness. This case came up at the April, 1874, term of court. Neither Dr. Rodgers or his sureties appearing, the bond was forfeited, bail was set and the case continued. Finally on April 1, 1875, the county attorney entered a "nolle prosequre" and the charge against Rodgers was terminated, the county paying the costs.

It is worthy to note here that on July 31, 1875, two promoters from Ellis county came down to Ness county and organized the Walnut Valley Town Company with the declared purpose of building a town by the name of Ness not more than a mile from the site of ill-fated Smallwood. The project included the building of a flouring mill on the Walnut and was capitalized at $50,000, this capital to be raised by selling shares at $25 each. This scheme never came to fruition either.

Among the papers in the hands of the election committee of the house in 1875 was a petition to the governor asking that Ness county be disorganized, because

The number of inhabitants is not large enough as the law requires, there being not over two hundred inhabitants in the whole county; that fraud has been used by one Samuel G. Rodgers and others to have said county organized; that the present organization is onerous and burdensome upon the people living in said county, who can ill afford to pay the taxes required to support a county organization.

This petition was signed by 22 Ness county residents including three of the Rodgers’ colony.

conjecture, however, that lack of money was a more serious deterrent to Rodgers than anything else. If he had sold the bonds as some may contended in spite of the fact that they were never presented for payment—Rodgers would have had money. He could then have prevented the loss of his Buffalo House at Petersburg (Kinsley), for on April 1, 1874, it was sold under "the foreclosure of the numerous liens for lumber and labor existing upon it." The price was $750 and it was paid by W. C. Edwards and A. D. Clute, their guarantor being no other than Henry Booth. A short time afterwards this property was insured for $5,000. There is no evidence that Rodgers was present or tried to prevent this foreclosure.

It is to wonder under these circumstances why—although he had been unable to sell them through regular channels—Rodgers did not now go out and sell the bonds with a suitable discount in that market, which chronicles of that time (T. A. McNeal) state was always open to bonds on the streets of Topeka. Considering the case with which other organizers sold their greater amounts of bonds at this very same time, it is impossible to believe that Rodgers could not have sold his bonds had he been willing to sell in this sly, under-cover market.

124. Clerk of the court, Ellis county, "Journal A," p. 84.
126. "Corporation Charters (official copybooks from office of secretary of state, now in Archives division, Kansas State Historical Society)," v. 7, pp. 38, 39.
Because in the end, Dr. Rodgers was denied his seat, the petitioners evidently thought their request for disorganization had been granted. This was not true. The governor had no power to disorganize a county. If suit had been brought, the supreme court could have tested the validity of the organization as was done in the case of Pawnee and other counties. But no such suit was ever brought.

The county organization after 1874, ceased to function and no other elections were held. This inaction did not however destroy the organization. A municipal organization once created continues to exist in an active state or in a dormant state until dissolved by law. Ness county after 1874 was subsequently mentioned as an organized county in various acts of the state legislature. In 1875 the legislature considering the case of organized counties where less than 250 votes were cast, listed Ness county as an organized one, along with some 11 others, although Ness had not held an election or reported any votes cast.

Early in 1876, the question as to whether or not Ness county was fraudulently organized became a moot question. On this date the legislature passed an act disorganizing Ness and other counties. Governor Osborn refused to approve the act and it did not become a law. The passage of the act by the legislature was a recognition of Ness county as an organized county. As the legislature said specifically here that Ness was an organized county, this cured any defect or fraud in the organization. This legal opinion follows the state supreme court decisions in the various cases on county organizations, Harper, Pawnee, and Stevens. It also follows two United States Supreme Court decisions that concerned county organizations of Harper and Comanche. The organization of Ness county before March 2, 1876, might only have been a de facto organization, but according to the above decisions on that date it became a de jure organization.

Inquiries to state officers in 1878 and 1879, when Ness county was again showing signs of wishing to take up county responsibilities, were invariably answered that the county had been organized and

128. *House Journal*, 1875, pp. 277-282. Although Dr. Rodgers was refused a seat in 1874 because 250 votes had not been cast in Ness county in November, 1873, and the constitutional amendment is clear, express and unambiguous on this point, still of the 12 counties concerned in 1873, the house seated five and declared vacant the seats of seven others.
130. State *ex rel* vs Pawnee Co., 12 Kan. 426; State *ex rel* vs Harper Co., 34 Kan. 302; State *ex rel* vs Robertson, 41 Kan. 200 (Stevens Co.).
131. Board of County Commissioners of Comanche Co. vs Lewis, 133 U.S. 604; Board of County Commissioners of Harper Co. vs Rose, 140 U.S. 71.
was still organized. On September 12, 1878, Gov. Geo. T. Anthony wrote R. J. McFarland a letter in part as follows:

That in order to set aside that organization or test its validity the readiest way is to have officers appointed or elected; if you have none, or if you have them, to bring an action directly in the Supreme Court . . . by Quo Warranto denying their authority to act. In this manner it may be promptly and inexpensively settled.132

Such an action was never filed, however, and a new governor, John P. St. John came into office in 1879. This governor also gave an opinion as to the organization of 1873.133 Unfortunately a careful search for the letter in which this opinion was written, did not discover it. We can only conjecture that St. John must have given some encouragement to the action that resulted in the organization of 1880.

On January 3, 1880, the following item was published in the Walnut Valley Times at Clarinda, Ness county, N. C. Merrill, editor:

SMALLWOOD THE COUNTY SEAT—COUNTY ALREADY ORGANIZED AND COUNTY SEAT QUESTION—HOW CAN THE GOVERNOR ORGANIZE AN ALREADY ORGANIZED COUNTY? Ness County stands on the books at Topeka an already organized county and Smallwood the county seat although we ignore it. Has the Governor [St. John] by virtue of his position the right to unorganize a county or is it the Supreme Court of the State of Kansas, that does such things? These are questions we would like to have answered.

The questions posed by the Walnut Valley Times have never been answered. We only know that in the spring of 1880 a petition of householders for the organization of Ness county was submitted, accepted and acted on by the governor and the following routine of county organization again gone through. The popular belief was that the first organization was fraudulent and the county had been disorganized by petition. The inhabitants of 1880 were much more hotly interested in whether there should be a functioning organization and who should control it and locate the county seat, than in any legalistic arguments. No one protested the method employed in reactivating the county and there remains to this day no actual legal opinion as to whether the method used was legal or not and whether the organization was a real one.134 Nevertheless, it is believed that on a legal basis the governor had no power to organize an already organized county. In the office of the secretary of state

132. Correspondence of the governor, Archives division, Kansas State Historical Society.
133. Letter dated June 23, 1879, written by Ross Calhoun to Governor St. John: "... the only communication Mr. Johnson produced, or could produce, was the one in which you gave your opinion as to the legality of the organization of Ness County in 1873, which letter we think does you great credit.
134. It is believed that the reactivation of Ness county might just as handily have been accomplished by petitioning the governor to appoint commissioners and set the county going again. The proclamation of 1890 did appoint commissioners who set the machinery in motion.
in Topeka are to be found the papers on which rests the lawful organization of each and every Kansas county. Among those for Ness county are deposited the memorial of 1873 signed by Dr. Rodgers and others, the census report of the governor-appointed census taker, John Maroney, and the proclamation of Governor Osborn organizing Ness county on October 23, 1873. The memorial of 1880 and the census of that year are placed in the archives of the State Historical Society. The proclamation of 1880 is in the secretary of state’s office.

Ignoring the wealth of source materials concerning the invariably irregular organizations of this period of Kansas history, historians have most generally continued to use Ness county as at least one of the horrible examples. Likewise the tradition that Rodgers was simply a crook who issued fraudulent bonds and then stole the money, has come down by word-of-mouth in the county itself. This article has been written in the hope of correcting some of these misconceptions. If the story of Rodgers is obscured by the story of the organization of Ness county, that is because the records that remain are chiefly legal and government records that can be cited with definiteness and authority. It can be said positively that the 1873 organization was legal and valid although procured perhaps by fraudulent methods. It is not so easy to make judgment of Dr. Samuel G. Rodgers. His time on our stage was short and his appearances were few and inconclusive. And yet in so many ways the man so stands out among his fellows that we can say with pride that he was “the gentleman from Ness.”

Any estimate of Rodgers must stand against the Kansas background of the 1870’s, and the nature of this background must be stressed. Political morality was low. If it seemed desirable to get things done, no one minded if a few corners were cut and a few laws evaded. As has been said before, probably every county organized in Kansas during this decade flouted in some way the strict letter of the organization law. In most cases, no one was sufficiently interested to even inquire into such evasion. Even when the supreme court handed down decisions excoriating these organizations, little attention was paid and the organizers went serenely on to public offices of trust, elective, or appointive. The singling


136. Judge J. K. Barnd, editor of the *Ness County News* for many years, was the first to doubt the traditional story of the 1878 organization and expressed his opinion in his newspaper, pointing out that the Rodgers organization differed from others in that Ness county did have a population and no bonds were sold. One such article was reprinted by his son in the historical edition of the *News* on August 17, 1959, without crediting the author. Nevertheless Judge Barnd’s style is unmistakable as was his opinion at that time.
out of Dr. Rodgers for employing the "tactics of his day" was clearly a political maneuver and undoubtedly his fellow organizers and his associates in the house recognized it as such. In their view, he was simply "outgenerated."

Where Dr. Rodgers seems to us to have differed from other county organizers, was in his purpose. Every evidence points to the fact that he wanted to found a colony for workingmen in western Kansas, and was so possessed with the idea that he scarcely spoke or wrote a letter without stating it. He could not have merely wanted to sell land because he charged almost nothing for membership in the colony and he deliberately recruited men of little means. If he had wanted a colony simply to vote the bonds, he need not have brought a large group of families to the county for that purpose. A few kindred souls would have been infinitely more manageable and the bonds would have been just as good. Perhaps his dream was too big for practical realization, but that does not mean that he deceived his colonists with any intent to defraud. Undoubtedly he was just as ignorant as they of the difficulties of settlement in western Kansas. Who knew the difficulties of western Kansas in 1873?

The final evidence of the essential honesty of Dr. Rodgers' purpose was that, faced with the impossibility of carrying out his original plan, he did not sell the bonds. The bonds were voted and issued. We can believe that there was no regular market for bonds in that panic-ridden winter of 1873-1874, as Dr. Rodgers indicated. But we cannot believe that the bonds could not have been sold in that furtive under-counter market where all the larcenous organizers sold theirs. And we cannot believe that the bonds might have been sold and then not presented for payment as they were in every other county. What we do know positively is that the bonds were never presented for payment and that Dr. Rodgers and his colony never cost Ness county one cent.

Essentially Dr. Rodgers seems a tragic figure. The very device that seemed to make his colony possible—the organization of the county and the voting of the bonds to carry it through the winter—was the instrument of his undoing. In the end the politicians destroyed him with the very weapon they taught him to use. His dream was broken and his hopes blasted. Surely he deserves a better memory than posterity has so far held for him. When the whole record is read and the bits of evidence put together, we cannot do better than to concur in the opinion of William Lenihan, his colonist, when he said of Dr. Rodgers, "I always thought he meant to do the right thing."