

RESOLUTIONS

OF

THE LEGISLATURE OF INDIANA,

On the subject of the Boundary Line between Indiana and Michigan.

FEBRUARY 24, 1835.

Laid on the table, and ordered to be printed.

*A Joint Resolution on the subject of the Boundary Line between
Indiana and Michigan.*

Mr. Bigger, from the Select Committee to which was referred so much of the message of his excellency the Governor, and accompanying documents, as relate to the boundary between this State and the Territory of Michigan, made the following report:

The subject submitted to the consideration of the committee is one of great importance to the State of Indiana. A portion of territory, ten miles in width, extending across the entire breadth of our northern boundary, embracing a most fertile tract of country, and that part of Lake Michigan which we have been taught to prize as all important to the trade, commerce, and agricultural interests of the northern part of the State, and which we have always regarded as property secured to us by the ordinance of 1787, by the law of Congress authorizing us to form a State Government, and by the express acceptance and ratification of the terms of that law by the convention who met to form a constitution for the government of this State, has been claimed in positive terms by the Territory of Michigan. Duly impressed with a full sense of the importance of this question, the committee has endeavored to bestow all the attention upon it which its magnitude demands.

The various points relating to the boundary between Ohio and Indiana and the Michigan Territory have undergone much discussion; and numerous documents, containing the arguments and views of the contending parties, have been published and laid before us; but, in the opinion of the committee, it is unnecessary to waste time in even enumerating them. The committee, however, are induced to make an exact and connected recital of those parts of the several enactments of Congress and of the several States and Territories bearing on this subject, especially as it is found on an examination of what is said on both sides that, in reference to those enactments, words apparently of the same import are frequently used, but which, in their application, favor conclusions that the exact text does not warrant; believing at the same time that this recital will of itself furnish one of the strongest arguments in favor of the claims of Indiana.

The committee deem it unnecessary in the investigation of this subject, to go farther back than the ordinance of Congress, (approved July 13, 1787,) proposing to Virginia a change in the terms of the cession of the north-western territory. That part of it material to the present controversy is as follows:

“Article 5. There shall be formed in the said Territory not less than three, nor more than five States; and the boundary of the States, as soon as Virginia shall alter her act of cession and consent to the same, shall become fixed and established as follows, to wit: The western States in said territory shall be bounded by the Mississippi, the Ohio, and the Wabash rivers, a line drawn from the Wabash and Port Vincent due north to the territorial line between the United States and Canada, and by the said territorial line to the Lake of the Woods and Mississippi. The middle State shall be bounded by the said direct line, the Wabash from Port Vincent to the Ohio, by the Ohio, by the direct line drawn due north from the mouth of the Great Miami to the said territorial line. The eastern State shall be bounded by the last mentioned direct line, the Ohio, Pennsylvania, and the said territorial line: *Provided, however*, and be it further understood and declared, that the boundaries of these three States shall be subject so far to be altered, that if Congress shall hereafter find it expedient, they shall have authority to form one or two States in that part of said Territory which lies north of an east and west line drawn through the southerly bend or extreme of Lake Michigan. The State of Virginia, by act passed December 30, 1788, after reciting the aforesaid fifth article, assents to the proposed alteration, so as to ratify and confirm the said article of compact.

By an act of Congress approved May 7, 1800, it is provided in the first section, “that from and after the fourth day of July next, all that part of the territory of the United States northwest of the Ohio river, which lies to the westward of a line beginning at the Ohio, opposite the mouth of the Kentucky river, and running thence to Fort Recovery, and thence north until it shall intersect the territorial line between the United States and Canada, shall for the purpose of temporary Government constitute a separate Territory, and be called Michigan. In the year 1809 the Indiana Territory was divided into the Territories of Indiana and Illinois. In the year 1816 was passed the act of Congress to enable the Indiana Territory to form a constitution and State Government, and for the admission of such State into the Union on an equal footing with the other States, the second section of which provides that said State shall be bounded on the east by the meridian line which forms the western boundary of the State of Ohio, on the south by the river Ohio, from the mouth of the Great Miami to the mouth of the Wabash river; on the west by a line drawn along the middle of the Wabash river from its mouth to a point to where a due north line drawn from the town of Vincennes would touch the northwestern shore of said river, and from thence by a due north line until the same shall intersect an east and west line drawn through a point ten miles north of the southern extreme of Lake Michigan; on the north by said east and west line until the same shall intersect the first mentioned meridian line which forms the western boundary of the State of Ohio.”

The convention which met to form a constitution for the State of Indiana passed an ordinance June 29, 1816, accepting the terms proposed in the last mentioned act of Congress, and ratifying, confirming, and establishing the boundaries therein prescribed and laid down for the State of

Indiana. Michigan founds her claim to the Territory in dispute between her and Indiana upon the authority of the 5th article of the ordinance of 1787 and the act of Congress of 1805, insisting that what she calls the 'fundamental' line running east and west through the *southerly bend or extreme* of Lake Michigan shall be recognized as the true line of division between her in her right as the *State* of Michigan and the States of Indiana and Ohio. This brings us at once to the discussion of the question, through what point this 'fundamental' line should pass.

These inquiries are first presented for our consideration: Did Congress, in the ordinance of 1787, in describing the boundary between what now constitutes the States of Indiana and Ohio on the one side, and the Territory of Michigan on the other, establish that boundary on a fixed, determinate, and immoveable line? or does not the very language which is used in the ordinance, and in the subsequent enactments on this subject, expressly convey the idea that the exact point was left to be fixed at some future period? and has it not been established *through* a point warranted by the express terms of the ordinance itself?

In the opinion of the committee, the ordinance of Congress, giving it that fair and liberal construction which is given to all laws and compacts of a corresponding character, left the question where the boundary should be definitely established, open to be settled by future compact and legislation. The alternative terms found in the following proviso, contained in the above recited fifth article of the ordinance, to wit, "*Provided, however, and it is further understood and declared*, that the boundary of these three States shall be so far altered, that if Congress shall hereafter find it expedient, they shall have authority to form one or two States in that part of said Territory which lies north of an east and west line drawn through the *southerly bend or extreme* of Lake Michigan," certainly cannot be tortured to mean that it was the positive intention of Congress to require the dividing line between these States to pass through the extreme southern point of the Lake. The committee understands the expression "*southerly bend*" to apply to all that curve or bend in the margin of the lake from its extreme southern termination, extending in a northwestern direction, until, assuming its full breadth, it bears off towards the north. Upon an examination of the map, it is strikingly apparent that no more appropriate name could be given to that portion of Lake Michigan than "southerly" or "southern" bend. It is well known, that those who first visited the unexplored part of the western country were constantly in the habit of giving names to a stream, or lake, or to a particular part of either of them, in consequence of some event associated with it or themselves at the time of its discovery, or as descriptive of its appearance or situation. On the south of Lake Michigan is a bend of the shore extending for many miles, and no name would strike the hunter or emigrant as more expressive of its appearance than "southerly," or "southern bend;" and in bestowing on it that appellation, he would only be doing what has been the common practice of his class throughout the west. A name thus bestowed is seldom lost, except where an aboriginal appellative intervenes. It would seem preposterous to suppose that the phrase "southerly bend" would be applied and confined to one single point of a bend extending around the whole southern part of the lake. In fact, its use alternately with the word "extreme," in the ordinance itself, and in all the subsequent enactments until the passage of the law making provisions for the introduction of

Indiana into the Union, is conclusive in the minds of the committee, that this boundary between the contemplated States was left to be definitively settled between the different parties, as might be found expedient. It is admitted on all sides, that at the time Congress passed the ordinance respecting the Territory ceded by the State of Virginia, but little, comparatively speaking, was known of its rivers, its lakes, and its actual extent. So utterly destitute were they of correct information relative to these matters, that the southern extremity of Lake Michigan itself, so often named in this controversy, has been found to extend forty or fifty miles further south than at that time it was supposed. Congress, it is reasonable to be concluded, when speaking of the boundaries of any of the proposed divisions of this country, where the knowledge of their extent and situation was not accurate, and where it had not been necessary to establish their boundaries definitely, would employ such terms and expressions in describing them as their want of knowledge would naturally suggest.

The boundaries of these divisions of the ceded territory, which would at some time constitute important members of the Union, were to be settled, and it would be irrational to infer that the Congress which adopted the ordinance of 1787 did not leave ample room for the exercise of such a discretion as might enable any future Congress, having a just regard for the interest of all, to establish the line of division between those States in such a manner as to secure to each an equal participation, as far as practicable, in the advantages of the two great lakes situated within their limits. It would have been partial legislation indeed to have given to Ohio so fair a portion of Lake Erie, and to Michigan a most important part of the same lake, and so much of Lake Michigan, as to entirely exclude Indiana. We think it would be detracting from the wisdom, sagacity, and impartiality of that Congress from which the ordinance on this subject emanated, to doubt for a moment that they intended any thing else than a just and equitable distribution of these great natural advantages among the contiguous States; and not knowing exactly through what point the boundary line necessary to produce so desirable a result should pass, we easily arrive at the conclusion that that mode of expression was adopted in framing the ordinance which would confer on any subsequent Congress a discretionary power in settling the question of boundary, and that those terms were selected which were adapted to the common understanding and language of the country, whether derived from a mode of designation used by individuals who were conversant with the localities of the ceded territory, or suggested by the mere inspection of the map.

From a full examination of this part of the subject, the committee cannot hesitate for a moment in asserting that, in their opinion, the territory claimed of Indiana by Michigan clearly belongs to the former, even by the most strict and rigid construction of the laws and compacts respecting it. The select committee of the executive council of Michigan, in their report upon this subject, although in their general argument they use the terms 'southerly bend' and 'extreme' as synonymous, yet in one part, towards the close of their report, place them in contradistinction to each other, where they use this language: "a line ten miles north of the extremity of the southern bend of Lake Michigan," &c. Now we ask nothing more than the boundary line between us and Michigan to remain as it is at present established, "ten miles north of the extremity of the southern bend;" insisting that our claim is in strict conformity with the ordinance itself, the

law separating Indiana and Michigan, the law authorizing Indiana to form a State government, and the acceptance and ratification of the boundaries prescribed in that law by our constitution.

Much has been said and written respecting the power which Congress possesses over the establishment of the disputed line, on the ground of expediency. The committee deem it unnecessary to spend much time in the examination of this part of the subject, especially as it has already been extensively and ably discussed on the part of the Ohio delegation, before the Judiciary Committee of the Senate of the United States, and which is appended to the printed report of that committee. Your committee would, however, here remark, that great and lasting injury would be done the State of Indiana, by stripping her of the territory claimed by Michigan. Her whole northern trade and commercial interests, so far as the same is connected with the possession of the lake, would be placed in the power of a strange jurisdiction. And again, Michigan already far exceeds Indiana in size, and surely it would not comport with the policy that conferred on Congress the power of forming five States, if it should be deemed expedient, instead of three, out of the territory ceded by Virginia, to increase that size. Michigan already possesses much more numerous facilities of navigation, in consequence of the lake with which she is surrounded, than is possessed by either of the other States with which she is carrying on this controversy. A portion of the ten miles in question, on account of the inducements held out for emigration, the excellence of the country, and the anticipated advantages of a prompt and constant market on the lake, has, within a few years, received an increase of population almost without a parallel. This has taken place under the full belief that the soil was to remain under the jurisdiction of the State of Indiana, and it certainly would not correspond with the spirit of our free and liberal institutions to transfer these people, and subject them and their property to the laws of another State, contrary to their will, and against the consent of the government to which they have hitherto been attached. The object which Congress had in view in making provisions for the formation of five instead of three states, if deemed expedient, was to prevent their admission into the Union with an extent of territory too great in proportion to that of the other members of the Federal Government. This discretionary power was subsequently exercised, and the two northern divisions contemplated in the proviso, contained in the fifth article¹ of the ordinance, were struck off *in* that part of the territory which lies north of an east and west line drawn through the southern bend or extreme of Lake Michigan. The ordinance does not provide that the one or two States which might be laid off in the north should be absolutely bounded on the south by this east and west line. It is worthy of remark that in describing the lines of the three first States, the expressions are positive that each State shall be bounded by given lines, leaving no room for a discretionary exercise of power. But the moment the dividing line between these and the northern State or States is introduced, the phraseology is changed. There is no question that the latter shall be bounded on the south *by* an east and west line passing through a given point; but simply that they shall be laid off *in* that part of the territory north of such line, leaving with Congress, as we think, to determine their boundaries, as might be found expedient. Suppose Congress had deemed it advisable to form four instead of five States out of the ceded Territory; do the terms of the ordinance require that the four of the States should

have comprised all that part of said territory north of said east and west line? It certainly could not have been the intention of the individual who framed the ordinance, nor of the Congress that adopted it, to allow a discretion as to the number of the States which might be established, and still make it absolutely requisite, in case only four were formed, that one of them should contain an extent of territory equal to the other three, as must have been the result if Congress were not vested with the power of prescribing the limits as well as the number of these additional States. It is the obvious meaning of the ordinance that they should not extend further south than the southern extremity of Lake Michigan, but is also losing sight of all views of sound policy, of expediency, and of the permanent interest of Indiana, and we might also say of Ohio, to contend that Congress is not clothed with a discretionary power in the formation of these States, with reference to the extent of territory that should be included within the limits of each, and the manner in which the great and important advantages of lake and river navigation should be distributed among them. We are not assuming a new position in contending that this is the true construction of the ordinance. Michigan is at best asserting but a doubtful right; and surely Congress will not discard that construction, sustained as it has been by a series of legislative enactments upon this subject, and wrest from Indiana a part of the territory bestowed and received in good faith, and which gives value and consequence to the whole northern quarter of the State.

Along with the documents referred to this committee, is a resolution of the House, containing instructions to inquire into the expediency of addressing a memorial to the State of Virginia, calling upon her to ratify the boundaries of Indiana, as designated by the act of Congress authorizing her to form a State government. The committee, from the examination they have given this part of the subject, are of opinion, that there would be an impropriety in requesting Virginia to ratify and confirm any proceedings of Congress, on the assumption that they were not warranted by the authority under which they were assumed to have been done. The General Government and the State of Indiana, as regards the question of boundary, may be considered as standing in the relation of contracting parties. If the terms of the grant of territory to the people of this State, conflict with the conditions of the cession by Virginia, it is to Congress we must look to procure from that State the confirmation of the grant of territory to Indiana, if it be necessary, or if it is susceptible of such confirmation. To urge this course, if found requisite and proper, belongs to our delegation in Congress; and we have no doubt they will avail themselves of every reasonable and justifiable means for securing an early adjustment of the point in controversy, in favor of the State they represent. The committee, in conclusion, recommend the adoption of the following joint resolutions:

Resolved by the General Assembly of the State of Indiana, That our Senators in Congress be instructed and our Representatives requested to resist the establishment of the southern boundary of Michigan, on a line drawn east and west from the southern extremity of Lake Michigan, and also that they insist on the present northern boundary of Indiana, as prescribed in the act of Congress of 1816, providing for her admission into the Union.

Resolved further, as the sense of this General Assembly, That having the fullest confidence in the wisdom and integrity of Congress, this General Assembly cannot believe that any measure will be adopted by that body

which, by seeking to deprive this State of any portion of her territory, as secured to her by the aforesaid act of Congress, and the ordinance of the convention of this State ratifying the same, would, without the consent of this State thereto obtained, be unauthorized, unconstitutional, and void, and only operate as a pretext for further controversy.

Resolved further, That our Senators in Congress be instructed, and our Representatives requested, in the event of the passage of an act of Congress for the formation of a State in the Territory of Michigan, to use their exertions to have incorporated in such act, a provision restricting the territory of such State from extending south beyond "an east and west line drawn through a point ten miles north of the southern extreme of Lake Michigan."

Resolved further, That his excellency the Governor be requested to transmit to our Senators and Representatives in Congress copies of the foregoing report and resolutions.

JAMES GREGORY,

Speaker of the House of Representatives.

DAVID WALLACE,

President of the Senate.

Approved 7th February, 1835.

N. NOBLE,

By order of the Governor, transmitted.

J. L. KETCHAM.

