
 Missouri v. Iowa.

ORDER.

On consideration of the motion to dismiss this cause, made by *Mr. Fendall*, on a prior day of the present term of this *660] court, to wit, on Friday, the 2d instant, and of the *arguments of counsel thereupon had, as well in support of as against the motion, it is now here ordered by this court, that the said motion be and the same is hereby overruled.

THE STATE OF MISSOURI, COMPLAINANT, *v.* THE STATE OF IOWA, RESPONDENT.

THE STATE OF IOWA, COMPLAINANT, *v.* THE STATE OF MISSOURI, RESPONDENT.—*Cross-Bill.*

The western and northern boundary-lines of the State of Missouri, as described in the first article of the constitution of that State, were as follows:—from a point in the middle of the Kansas River, where the same empties into the Missouri River, running due north along a meridian line, to the intersection of the parallel of latitude which passes through the rapids of the River Des Moines, making said line correspond with the Indian boundary-line; thence east from the point of intersection last aforesaid, along the said parallel, to the middle of the channel of the main fork of the said River Des Moines; thence, etc., etc.

The constitution of the State of Missouri was adopted in 1820. But in 1816, an Indian boundary-line had been run by the authority of the United States, which in its north course did not terminate at its intersection with the parallel of latitude which passed through the rapids of the River Des Moines, and in its east course did not coincide with that parallel, or any parallel of latitude at all.

Missouri claimed that this north line should be continued until it intersected a parallel of latitude which passed through certain rapids in the River Des Moines, and from the point of intersection be run eastwardly along the parallel to these rapids.

Iowa claimed that this Indian boundary-line was protracted too far to the north; that by the term “rapids of the River Des Moines” were meant certain rapids in the Mississippi River, known by that name, and that the parallel of latitude must pass through these rapids; the effect of which would be to stop the Indian boundary-line in its progress north, before it arrived at the spot which had been marked by the United States surveyor.

There being a bill and a cross-bill, each State is a defendant, and this court can pass such a decree as the case requires.¹

The southern boundary-line of Iowa is coincident with, and dependent upon, the northern boundary-line of Missouri.

Iowa is bound by the acts of its predecessor, the government of the United States, which had plenary jurisdiction over the subject as long as Iowa remained a Territory; and the United States recognized the Indian boundary-line,—1st. By treaties made with the Indians; 2d. By the acts of the general land-office; 3d. By Congressional legislation.

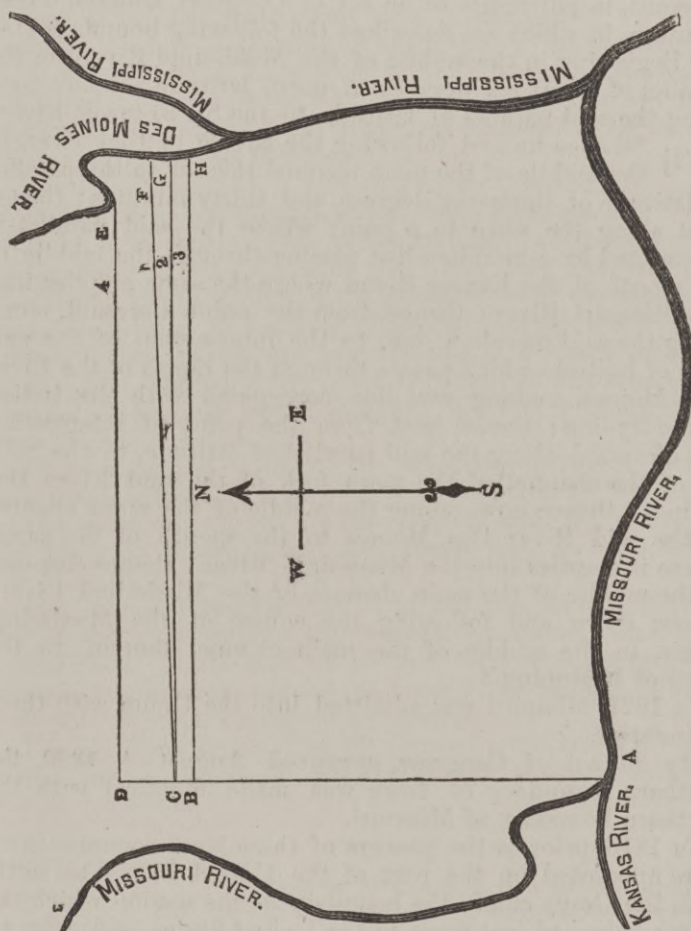
¹ CITED. *Virginia v. West Virginia*, 11 Wall., 54.

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On the other hand, there are no rapids in the River Des Moines so conspicuous as to justify the claim of Missouri.

This court therefore adopts the old Indian boundary-line as the dividing line between the two States, and decrees that it shall be run and marked by commissioners.¹

THE State of Missouri filed a bill against the State of Iowa, in the Supreme Court of the United States, with the consent of the State of Iowa, in order to settle a controversy which



had arisen respecting the true location of the boundary-line which divided the two States.

¹ See *Freeholders of Union v. Freeholders of Essex*, 14 Vr. (N. J.), 399.

The origin of the controversy is so fully stated by Mr. *661] *Justice Catron, in delivering the opinion of the court, that it is only necessary for the Reporter to explain the pretensions of the respective parties according to the map, without which they cannot be understood. This map or diagram is only intended to be illustrative of these claims, without pretending to be geographically accurate.

In July, 1820, the people living in the then Territory of Missouri, in pursuance of an act of Congress, adopted a constitution, in which are described the following boundaries:—

“Beginning in the middle of the Mississippi River, on the parallel of thirty-six degrees of north latitude; thence west along the said parallel of latitude to the St. François River; *662] *thence up and following the course of that river, in the middle of the main channel thereof, to the parallel of latitude of thirty-six degrees and thirty minutes; thence west along the same to a point where the said parallel is intersected by a meridian line passing through the middle of the mouth of the Kansas River, where the same empties into the Missouri River; thence, from the point aforesaid, north along the said meridian line, to the intersection of the parallel of latitude which passes through the rapids of the River Des Moines, making said line correspond with the Indian boundary-line; thence east from the point of intersection last aforesaid, along the said parallel of latitude, to the middle of the channel of the main fork of the said River Des Moines; thence down along the middle of the main channel of the said River Des Moines to the mouth of the same, where it empties into the Mississippi River; thence due east to the middle of the main channel of the Mississippi River; thence down and following the course of the Mississippi River, in the middle of the main channel thereof, to the place of beginning.”

In 1821, Missouri was admitted into the Union with these boundaries.

By an act of Congress, approved August 4, 1820, the southern boundary of Iowa was made identical with the northern boundary of Missouri.

In 1816, prior to the passage of these laws, commissioners were appointed on the part of the United States to settle with the Osage chiefs the boundary of the session which the Osage tribe had just made to the United States, and John C. Sullivan was appointed surveyor to run the line which should be thus agreed upon.

Beginning on the bank of the Missouri, opposite the mouth of the Kansas, at A in the diagram, he ran north just 100

miles to the point *C*; and thence pursued what he thought was a due east course, (but which was in fact to the north of east,) until he struck the River Des Moines at the point *F*. This line is marked No. 1, and runs from *C* to *F*; the true parallel of latitude being afterwards ascertained to be from *C* to *G*.

The State of Missouri alleged, that, at the point *E* in the River Des Moines, there existed rapids which answered the call in the constitution, and that the parallel of latitude spoken of in that instrument must consequently be a line running from *E* to *D*, and the north line, which commenced at *A*, must therefore be protracted to *D*, where it intersected the parallel of latitude called for; that the phraseology used required the "rapids of the River Des Moines" to be in that river, and not in the Mississippi.

*On the other hand, it was alleged by the State of Iowa, that in the Mississippi River, at the place marked [*663 *H*, there were rapids which were commonly called and known by the name of "the rapids of the River Des Moines," long anterior to the formation of the constitution of the Missouri; that the parallel of latitude must run through the head or centre of these rapids, and that the line *H B* would therefore be the true boundary, the point *B* being the spot where this parallel of latitude would intersect the line running north from *A*.

These were the claims of the respective parties. To sustain them, a great mass of evidence was taken on both sides.

The cause was argued by *Mr. Gamble* and *Mr. Green*, for the State of Missouri, and *Mr. Ewing* and *Mr. Mason*, for the State of Iowa.

The Reporter regrets that he cannot give an extended notice of the arguments of the respective counsel. But he is admonished, by the size which this volume has already attained, that he must reduce the cases which are yet to be reported to as small a compass as possible.

The positions assumed by the counsel respectively are thus stated in the briefs of *Mr. Green*, for Missouri, and *Mr. Ewing*, for Iowa.

Mr. Green.

On the part of the State of Missouri it is insisted,—

1st. That the words "rapids of the River Des Moines" constitute the controlling call to determine the northern boundary, and that the natural and obvious import of these words is "rapids of and in the River Des Moines itself."

2d. That the evidence establishes the fact, that there are rapids in the River Des Moines.

3d. That there is no ambiguity in reference to the river of which the rapids are spoken, and none as to the rapids, unless more rapids than one are found in the River Des Moines.

4th. That having established the fact that there are rapids in the River Des Moines, thus satisfying the call of the constitution, no evidence can be introduced to contradict or vary the meaning of the constitution, or to prove that rapids of some other river were intended, different from that which the language indicates and describes.

5th. That the evidence offered does not prove the rapids in the Mississippi River to have been commonly known and called by the name "rapids of the River Des Moines," as alleged by Iowa.

6th. That if it were true that the rapids of the Mississippi were commonly known and called "rapids of the River Des *664] ^{*Moines,}" still these rapids could not be taken as the rapids called for, as they do not answer to the description, while those *in* the Des Moines fulfil exactly the description, and none others will.

7th. But if the constitution be considered ambiguous, as between the rapids of the River Des Moines and rapids of the Mississippi, it serves only to let in proof of intention beyond what the language indicates. And on this point the evidence is clear in favor of Missouri.

From a full examination of all the facts and circumstances, as established by the evidence in connection with the language of the constitution, and by giving to each the weight to which it is entitled, we contend, in behalf of Missouri,—

1st. That the old Indian boundary-line (marked as line No. 1 on the diagram) cannot be the true northern boundary of Missouri, and the terms of the descriptive call do not allow the adoption of that line.

2d. That the parallel of latitude passing through the old northwest corner of the Indian boundary (marked on the diagram as line No. 2) is neither legally nor equitably the northern boundary of Missouri.

3d. That the parallel of latitude passing through the rapids of the Mississippi River (marked on diagram as line No. 3) will not fulfil the descriptive call of the constitution, and cannot be the northern line of the State.

4th. That the parallel of latitude passing through the rapids of the River Des Moines, at the Big Bend, in latitude 40 degrees 44 minutes 6 seconds north, (marked on the diagram

as line No. 4,) will precisely and accurately satisfy the descriptive call of the constitution, and is the true northern boundary of the State of Missouri, as established by her constitution.

Mr. Ewing, for Iowa.

We will endeavour to show by the evidence, that, at the time of the adoption of the constitution, there was one object, and one only, namely, the rapids of the Mississippi, a few miles above the mouth of the Des Moines River, which was called in English "the rapids of the River Des Moines," and in French "les rapides de la Rivière Des Moines," which object had notoriety by that name; and that its position is every way adopted to satisfy the locative call.

We shall also expect to show by the evidence, that there were no rapids in the River Des Moines, then called, or entitled to be called, on account of position or magnitude, "the rapids of the River Des Moines."

These facts being established, we will insist that the *notorious object bearing the name used in the locative call, and every way satisfying the call, must be taken [*665 in law to be the object called for; and that the centre of "the rapids of the River Des Moines" in the Mississippi is the point over which the line of latitude marking the boundary of the State of Missouri must run.

1st. We will show by public acts, and by numerous witnesses, the position of "the rapids of the River Des Moines"; that they are the same with the lower or Des Moines rapids of the Mississippi, and that those rapids were in 1820, and prior thereto, well known by the name of "the rapids of the River Des Moines" in English, and "les rapides de la Rivière Des Moines" in French.

2d. We will infer from the language of the constitution itself, and the then existing knowledge of the country, that "the rapids of the River Des Moines" were called for in the constitution merely to fix the parallel of latitude on which the boundary-line was to run, and were not supposed to be touched by that line.

3d. We will show by actual survey, as well as by general evidence, that there are no rapids in the Des Moines entitled to the general descriptive appellation of "the rapids of the River Des Moines."

4th. And we will insist that in 1820 there were no rapids in the Des Moines River known as "the rapids of the River Des Moines."

5th. We will contend, that the State of Missouri has failed to prove a general understanding or opinion in Congress and

in the convention counter to what we have shown to be the obvious construction of the act of Congress and of the constitution of Missouri, when taken in connection with the well-established facts.

6th. We will contend, that the evidence on the part of Missouri shows that all, or nearly all, of the members of the convention, and other witnesses who supposed, or now think they supposed, the rapids named in the constitution were in the Des Moines River, knew nothing of any particular rapids to which the constitution referred; but that their impression was vague and general, fixing on no actual known or existing object.

7th. We will show that the evidence which tends to give to rapids in the Des Moines River a distant locality and name is insufficient and unsatisfactory, and that in the aggregate it applies as well to the Sweet Home or the Farmington rapids, as to the rapids of the Big Bend.

8th. We will insist that the rapids at St. Francisville and the rapids at Farmington are each and either of them better *666] entitled to the appellation of "the rapids of the River Des Moines," than the rapids at the Great Bend,—the first because of its position, the second because it is the greater rapid. And that the rapids at Sweet Home conform better than those at the Great Bend to the locative calls in the constitution, and to contemporaneous opinion and usage. Fall at Great Bend, in 87 rods, 1.80 feet. Fall at Farmington, in 87 rods, 2.05 feet.

9th. If we succeed in maintaining these propositions, we establish as matters of fact, that the lower rapids of the Mississippi were the object, and the only object, which, in 1820, bore in English the name used in the constitution, "the rapids of the River Des Moines," and in French the name used in the translation, "les rapides de la Rivière Des Moines." And that, at that time, they had notoriety in both languages by those names, and that they every way satisfy the locative call.

10th. And these facts being established, we will contend that those rapids are, and must be held in law to be, the object called for; and that the centre of that object, namely, the centre of "the rapids of the River Des Moines" in the Mississippi, is the point over which the line of latitude must be drawn which shall mark the northern boundary of the State of Missouri.

Mr. Justice CATRON delivered the opinion of the court.
On the tenth day of December, A. D., 1847, the State of

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Missouri filed her original bill in this court, according to the third article and second section of the Constitution, against the State of Iowa, alleging that the northern part of said State of Missouri was obtruded on and claimed by the defendant, for a space of more than ten miles wide and about two hundred miles long; and that the State of Missouri is wrongfully ousted of her jurisdiction over said territory, and obstructed from governing therein; that the State of Iowa has actual possession of the same, claims it to be within her limits, and exercises jurisdiction over it, contrary to the rights of the State of Missouri, and in defiance of her authority.

And the complainant prays, that, on a final hearing, the northern boundary-line of said State of Missouri (being the common boundary between the complainant and defendant) be, by the order of this court, ascertained and established; and that the rights of possession, jurisdiction, and sovereignty to all the territory in controversy be restored to the State of Missouri; that she be quieted in her title thereto; and that the defendant, the State of Iowa, be for ever enjoined and restrained from disturbing the State of Missouri, her officers and people, *in the full possession and enjoyment of said territory, thus wrongfully held by the [*667 State of Iowa.

To this bill the State of Iowa answers. She denies the right claimed by Missouri; alleges that Iowa has the sovereign authority to govern and hold the territory in dispute as part of her territory, the common line dividing the States being the southern part thereof; and also prays, that the rights of the parties may be speedily adjudicated by this court, that the relief prayed by complainant may be denied, and that her bill be dismissed.

To the bill of Missouri Iowa files her cross-bill, charging Missouri with seeking to encroach on the territorial limits of Iowa to the extent aforesaid, and more; prays, that, on a final hearing, a decree be made by this court, settling for ever the true and rightful dividing line between the two States; that Iowa may be quieted in her possession, jurisdiction, and sovereignty up to the line she claims; and that the State of Missouri be perpetually enjoined from exercising jurisdiction and authority, and from disturbing the State of Iowa, her officers and people, in the enjoyment of their rights on the north side of the true line.

To this bill the State of Missouri answers, and sets up in defence the same matters set forth by her original bill.

Replications were filed to both answers. On these issues

depositions were taken, on which, together with much of historical and documentary evidence, the cause was brought on to a hearing, and was heard with a most commendable spirit of liberality on both sides. And we take occasion here to say, on a matter of practice, that bill and cross-bill is deemed the most appropriate mode of proceeding applicable to cases like the present, as it always offers an opportunity to the court of making an affirmative decree for the one side or the other, and of establishing by its authority the disputed line, and of having it permanently marked by commissioners of its own appointment, if that be necessary, as in this cause it is.

The present controversy originated in 1837, between the United States and the State of Missouri, and was carried on for ten years before Iowa was admitted as a State. Previous to the controversy, and after Missouri came into the Union, in 1821, many acts had been done by both parties most materially affecting the controversy, and tending to compromit the claims now set up, on the one side as well as the other. The new State of Iowa came into the Union, December 27, 1847, and up to this date she was bound by the acts of her predecessor, the United States, forasmuch as the latter might have directly conceded to Missouri a new boundary on the north, as was done on the west; and so, likewise, Iowa is *668] bound by the acts and admissions of the United States, tending indirectly to confirm and establish a particular line as the northern boundary of Missouri. And to ascertain how far the United States government was committed by acts to a particular line, a brief historical notice is necessary, showing how jurisdiction has been exercised in the country west of the Mississippi River. It was acquired in 1803, and in 1804 the Territory of Orleans and the District of Louisiana were divided, the latter then embracing what is now the State of Missouri, and much more. In 1805, the District of Louisiana was erected into a separate territorial government, the name of which was changed to Missouri, on the State of Louisiana being created, in 1812, that State having adopted the name of Louisiana. In 1819, the Territory of Arkansas was formed from the southern part of the Missouri Territory; the lines of division being the same that now divide the States of Missouri and Arkansas.

In 1818, the inhabitants of Missouri Territory petitioned Congress that it might be admitted into the Union as an independent State. They set forth the boundaries which they desired that the new State should have, with the rea-

sons favorable to the boundaries desired. They alleged that the petitioners resided in that part of the territory which lies between thirty-six degrees and thirty minutes and forty degrees north, and between the Mississippi River east, and the Osage boundary-line west; and they prayed to be admitted into the Union of the States within these limits. The petitioners further declared, that "the boundaries which they solicit for the future State they believe to be the most reasonable and proper that can be devised. The southern limit will be an extension of the line that divides Virginia and North Carolina, Tennessee and Kentucky. The northern will correspond nearly with the north limit of the territory of Illinois, and *with the Indian boundary-line, near the mouth of the River Des Moines*. A front of three and a half degrees upon the Mississippi will be left to the South, to form the Territory of Arkansas, with the River Arkansas traversing its centre. A front of three and a half degrees more, upon a medium depth of two hundred miles, with the Missouri River in the centre, will form the State of Missouri. Another front of equal extent, embracing the great River St. Pierre, will remain above, to form another State at some future day. The boundaries, as solicited, will include all the country to the north and west to which the Indian title has been extinguished. They will include the body of the population."

The two Indian boundary-lines referred to (as "the Osage or Indian boundary") were run in pursuance of a treaty made *in 1808, between the United States and the [*669 Great and Little Osage nations, by which it was stipulated that the Osage boundary should begin at Fort Clark, standing on the south bank of Missouri River, about twenty-three miles below the mouth of the Kansas, thence running due south to the Arkansas River, and with it to its mouth; thereby ceding to the United States all lands lying east of said line, and north of the southwardly bank of the Arkansas. The treaty also ceded "all lands belonging to the Osages situated northwardly of the River Missouri." The boundary-lines were to be run and marked as soon as the circumstances and convenience of the parties would permit. And the Great and Little Osages promised to depute two chiefs from their respective nations to accompany the commissioner or commissioners who might be appointed by the United States to settle and adjust the said boundary. The war of 1812 seems to have hindered a survey of the lines, as, in 1815, by another treaty, peace was reëstablished between the contracting parties, and former treaties were renewed,

and in 1816 John C. Sullivan was sent by the United States to run the lines north of the Missouri River. The Osages, by the treaty of 1808, having surrendered all claim to territory north of the Missouri River, it became necessary that they should show to the United States what part of that country they owned, so that it might be separated, by a defined boundary, from other Indian territories. Sullivan, the surveyor, commenced his first line on the north bank of the Missouri, opposite to the middle of the mouth of the Kansas, and ran north one hundred miles, made a corner, and then ran east to the River Des Moines, about one hundred and fifty miles more, west of the first line, and north of the second. The entire country was then claimed, and partly occupied, by different nations of Indians. In 1816, also, Joseph C. Brown ran the line from Fort Clark south to the Arkansas River, in execution of the treaty of 1808. And the lines run by Brown and Sullivan are "the Indian boundary" referred to in the foregoing petition of the inhabitants of Missouri Territory.

In March, 1818, the petition was referred to a select committee; and on March 6th, 1820, an act of Congress was passed, pursuant to the petition, authorizing the people of Missouri Territory to form a constitution and State government within the limits designated by the act; that is to say, — "Beginning in the middle of the Mississippi River, on the parallel of thirty-six degrees of north latitude; thence west along the said parallel of latitude to the St. François River; thence up and following the course of that river, in the middle of the main channel thereof, to the parallel of latitude *670] of thirty-six degrees and *thirty minutes; thence west along the same to a point where the said parallel is intersected by a meridian line passing through the middle of the mouth of the Kansas River, where the same empties into the Missouri River; thence, from the point aforesaid, north along the said meridian line, to the intersection of the parallel of latitude which passes through the rapids of the River Des Moines, making said line correspond with the Indian boundary-line; thence east from the point of intersection last aforesaid, along the said parallel of latitude, to the middle of the channel of the main fork of the said River Des Moines; thence down along the middle of the main channel of the said River Des Moines to the mouth of the same, where it empties into the Mississippi River; thence due east to the middle of the main channel of the Mississippi River; thence down and following the course of the Missis-

issippi River, in the middle of the main channel thereof, to the place of beginning."

According to this law, the people of the Territory, in 1820, proceeded to form a constitution, by which the boundary prescribed by the act of Congress was adopted; and by resolution of March 2, 1831, the State was admitted to enter the Union on certain conditions, to which she assented in June, 1821. On the north and west, as already stated, the new State bordered on Indian territory, over which the general government exercised that modified jurisdiction which existing Indian rights would allow, and had the exclusive power to extinguish the Indian title. The boundaries were therefore common to the two governments, and the acts of either, when exercising jurisdiction with respect to the common boundary, become proper subjects of consideration in the present controversy, as either government might bind itself to a practical line, although not a precisely true one, within the foregoing description. And in pursuing this branch of the subject, our first inquiry will be, how far the general government has committed itself to the old Indian boundary. Its action has been, first, through the Indian department; secondly, through the surveyor's department; and thirdly, by the exercise of civil jurisdiction in the territorial form of government on the north of Sullivan's line, embracing the territory now in controversy.

And, first, as to Indian treaties. The earliest one materially bearing on the question was that of August 4, 1824, with the Sac and Fox tribes. They ceded to the United States all the title and claim that they had to any lands within the limits of the State of Missouri, "which are situated, lying, and being between the Mississippi and Missouri Rivers, and a line *running from the Missouri, at the entrance of the Kansas River, north one hundred [*671 miles to the northwest corner of the State of Missouri, and from thence east to the Mississippi; reserving to the half-breeds of said tribes the small tract in the fork between the Mississippi and Des Moines Rivers, and south of the said line." The Indian tribes admitted that the land east and south of the given lines belonged to the United States, and that none of their people should be permitted to settle or hunt on it. Although the Osages had, in part, ceded the same country in 1808, still the Sacs and Foxes set up a claim to part of it, and the treaty of 1824 was made to quiet their claim.

June 3, 1825, the Kansas tribe also ceded to the United States all claim they had to any lands in the State of Mis-

souri, and further ceded and relinquished all other lands which they then occupied, or to which they had title or claim, "lying west of the said State of Missouri, and within the following boundaries: beginning at the entrance of the Kansas into the Missouri River; from thence north to the northwest corner of the State of Missouri," thence north and west. Of course, the northwest corner here referred to was the one made by Sullivan in 1816, as none other was then claimed by Missouri herself, nor known to the United States or the Indians.

In February, 1831, the State of Missouri, by a memorial from the legislature to Congress, petitioned the United States for an addition of the country west of the line running from the mouth of the Kansas north, and between said line and the Missouri River, alleging that it was a small slip of land that had been acquired, by the treaty of June 3d, 1825, from the Kansas Indians. The petition declared, that the line from the mouth of the Kansas north was about one hundred miles long; that the country was settled, and rapidly settling, to its utmost verge; and that, as the Missouri River was the only great highway of this region, and could not be reached through a country inhabited by Indians, and being without roads, a cession of it to that State was necessary and proper.

June 7, 1836, Congress acceded to the request of Missouri, and granted to that State all jurisdiction over the lands lying between its then western line and the Missouri River, making the river the western boundary. But the accession was not to take effect until the Indian title to the country was extinguished.

By the treaty of July 15, 1830, ten confederated tribes conjointly ceded a large tract of country to the United States, the boundary of which began near the head of the Des Moines River, and passed westwardly to the north of the principal rivers falling into the Missouri, and down Calumet River to the Missouri, and down the same to the Missouri State line at the *mouth of the Kansas; thence along *672] said State line to the northwest corner of the State; and then northwardly and eastwardly various courses to the place of beginning. And within this boundary the tribes were to be located and superintended by the United States, pursuant to a policy now generally prevailing, and by which the Indians east of the Mississippi River had been removed west of it. By this treaty, the neck of land between the Missouri River and the then western line of Missouri was appropriated for the benefit of these tribes. To remove this impediment, and gratify the request of the State to have her

limits enlarged, a treaty was made on the 17th of September, 1836, with the Iowas, Sacs, and Foxes, reciting the facts, so far as the Indians were interested, and also that it was desirable and necessary that the country should be attached to the State of Missouri; and thereupon these Indian tribes (being part of the ten) did cede and relinquish to the United States all their right and interest to the lands lying between the State of Missouri and the Missouri River; and the United States were exonerated from the guaranty imposed on them by the treaty of 1830, known as the Treaty of Prairie du Chien. And on the 27th of September, 1836, another band of the Sac and Fox tribes made a similar cession. And on the 15th of October, 1836, various bands of the Sioux, by another treaty, also assented to the cession, but in more definite terms: they gave a quitclaim to the United States of their interest in the lands "lying between the State of Missouri and the Missouri River, and south of a line running due west from the northwest corner of the State to the Missouri River." The country having been disencumbered of the Indian title, the President, by proclamation of March 28, 1837, declared that the act of Congress of June 7, 1836, should take effect; and thereby the ceded territory became a part of the State of Missouri.

There are, in all, fifteen Indian treaties referring to the Osage boundary of 1816, as run by Sullivan, each of which recognizes that boundary as the Missouri State line; and all of which treaties were made after Missouri was admitted into the Union, and before Iowa became a State. And as the treaties were drawn by authority of the United States, they must be taken as recognitions, on the part of the general government, that the Missouri boundary and the old Indian boundary are identical.

In the second place, it is proper to inquire how far the general government has recognized the Indian boundary-line of 1816 in its land department. By the act of February 17, 1818, the Howard District was established. This extended west to the old Indian boundary, and ran with it from the *mouth of the Kansas north, through its whole length, [*673 and thence east with Sullivan's line to where it intersected the range line ten west from the principal meridian; extending on the east line about four fifths of its length.

In 1823 this district was divided, and a western one established fronting on the two lines.

To the eastern part of Sullivan's line, next to the Des Moines River, the St. Louis District extended until 1824, when the Salt River District was established, running west

to the range line between ranges 13 and 14; thence north to the northern boundary-line of the State of Missouri; thence east with the State line to the River Des Moines, and down the same with the State line.

By the act of August 29, 1842, the western land district was divided, and that part of it lying north of the Missouri River had attached to it the Platte country; that is to say, the country annexed to Missouri by the act of Congress of 1836, lying west of the old Indian boundary, and next to the Missouri River.

When acting through the surveyor's department of public lands, on the Missouri side, the general government has never recognized on the north, nor, until the Platte country was attached, on the west, any boundary as belonging to that State other than the two Indian lines run by Sullivan in 1816, so far as they extended.

The country north of the State of Missouri was for a time attached to the Territory of Michigan, and then to the Territory of Wisconsin. By the act of June 12, 1838 (ch. 96), it was formed into a separate territorial government, by the name of Iowa. And by another act of the same date (ch. 100), the territory was formed into two land districts, the southern one embracing the country in dispute.

And on the Iowa side, the public surveys were executed, and lands were sold, up to Sullivan's northern line. Nor had the Surveyor-General of Illinois and Missouri any jurisdiction to go beyond it north; nor the surveyor's department of Iowa, to cross it by surveys to the south. From the time that Missouri became a State to this day, Sullivan's line has been recognized by the United States as the true northern boundary of Missouri, so far as it could be done through the department of public lands.

And thirdly, Congress, as early as 1834, organized a territorial government bounded by said line; laid off counties bounded by it on the south, as early as 1836; and governed the territory for ten years up to that line,—all the time recognizing it as the proper northern boundary of Missouri.

*674] *From these facts it is too manifest for argument to make it more so, that the United States were committed to this line when Iowa came into the Union. And, as already stated, Iowa must abide by the condition of her predecessor, and cannot now be heard to disavow the old Indian line as her true southern boundary.

The State of Iowa, by her cross-bill, alleges that Missouri also treated the old Indian boundary as her true northern line, until about the year 1836; and that said line, at its

western extremity, is about six miles north of the parallel of latitude which is the proper dividing line between the two States, and that, at its eastern extremity, it is about ten miles north of the same; that the parallel of latitude on which the line should run is found at a point opposite the *middle* of the rapids in the Mississippi River known as "the Des Moines Rapids." This rapid begins about three miles above the mouth of the Des Moines River, and extends up the Mississippi about fourteen miles. It is a highly notorious geographical object, and a very proper one to govern a national boundary; but the name called for in the act of Congress of 1820, and in the constitution of Missouri, is "the rapids of the River Des Moines." Then, and ever since, the great rapid in the Mississippi River has been known by a different name. It is therefore left uncertain whether the rapid in the Mississippi was the one referred to; and the obscurity is greatly increased by a most embarrassing disagreement among the witnesses testifying on this head.

The name given in the act of Congress, taken in connection with its context, would assuredly apply to a rapid in the Des Moines River, if a notorious one existed, as the Mississippi River is not mentioned in the call, and the Des Moines is; nor was the Mississippi River to be reached by that line. Then, again, the rapid is fourteen miles long, and no part of it is called for as an opposite point to found the line upon.

It therefore follows, that the claim of Iowa to come south to the middle of the rapid throws us on a doubtful and forced construction of the instrument under consideration; and such a construction we are not willing to adopt, even if Iowa could at this day set up a claim to its adoption, which, for the reasons above stated, we think she cannot be allowed to do.

The State of Missouri, by her bill, disavows the old Indian boundary, and utterly denies that the great Des Moines rapid in the River Mississippi is the object called for in her constitution. She insists that the true rapids are found in the Des Moines, and that her northern line has been run and marked *from the true rapids, west to the Missouri River. [*675 The history of this line is as follows:—In December, 1836, the legislature of Missouri passed an act requiring the northern boundary of that State to be surveyed and marked under the direction of the executive; and in June, 1837, the governor appointed three commissioners to execute the law, who acted under special instructions from the executive. The commissioners appointed Joseph C. Brown their engineer and surveyor, and commenced the work in

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July following; and after having examined the Des Moines, from a point nearly one hundred miles up the river, downwards to its mouth, to ascertain the true rapids called for in the State constitution, determined on the proper place where, in their judgment, the line should begin; and from that place the line was run and marked due west to the Missouri River; and this is known as Brown's line. It lies about ten miles north of the old Indian boundary. And, by an act of the legislature of Missouri, passed 11th February, 1839, the line so run and marked by Brown was declared to be the northern boundary-line of said State, and has been claimed by her as such since that time.

On the rapids selected by the commissioners, and on Brown's line, the bill of complaint of the State of Missouri is altogether founded; and if she fails in establishing the proper place of beginning, she has no case, and must go out of court as a complainant, and can have no relief further than an injunction to restrain Iowa from obtruding on her jurisdiction south of the true line, wherever it may be found, should Iowa attempt to go south of such line.

The main question arising on the original bill of the State of Missouri therefore is, whether any rapid exists in the Des Moines River of such a prominent character as to correspond to the call in her constitution of "THE RAPIDS OF THE RIVER DES MOINES." On this branch of our inquiries we are furnished with highly satisfactory evidence. By the act of August 8, 1846, the Iowa Territory had granted to it, by Congress, every alternate section of land not then disposed of lying in a strip of five miles wide on each side of the Des Moines River, for the improvement of the same from its mouth to a long distance up, and which grant was to accrue to the benefit of the State when she should come into the Union. To carry into effect the act of Congress, a board of public works was organized for the improvement of the river. They employed an engineer to survey and level it with a view to slack-water improvements, and it was surveyed from its mouth for ninety-three miles upwards. The engineer had every advantage of suitable instruments, low water, and ice in the *676] winter, and no doubt exists of his accuracy when performing the field operations and in making the levels.

The first ripple he came to, worthy of notice here, was twenty-four miles from the mouth of the river; and, on eighty rods of its greatest descent, he found .73 foot fall.

On the 26th mile is "Sweet-home Ripple." There was found a fall of .85 foot in eighty rods.

On the 34th mile, at Farmington, he found a fall of 2.27 feet in ninety-six rods, and in eighty rods 1.89 feet.

On the 42d mile, he found a ripple (near Benton's Port) of 1.26 feet fall in sixty rods, and 1.68 in eighty rods.

On the 51st mile, being at the great bend, where Brown's line commences, the engineer found a fall of 1.75 feet in eighty rods,—that is to say, twenty-one inches. Brown had also taken a level there of a space of some sixty rods, in August, 1837, and found a fall in that distance of 1 foot 9 $\frac{3}{8}$ inches; but his instruments were not so reliable. The bottom of the river is rock at that place, and there is a thin stratum at one point, over which the water breaks when the river is low.

On the 53d mile, a fall was found in eighty rods of 1.75 feet by the engineer of Iowa.

On the 55th mile, a fall of 1.81 feet was found in eighty rods.

On the 93d mile, a fall was found in eighty rods of 2.10 feet.

A line extended due west from this greatest fall would lie about twenty miles north of Brown's line, the river being very crooked. From this point downwards, it was examined by the commissioners of Missouri in 1837.

The shoals on the 34th mile, at Farmington, on the 42d, at Benton's Port, and at the great bend at Van Buren, on the 51st mile, where Brown's line begins, and the descents on the 53d and 55th miles, are of about equal magnitude; neither reach to so much as two feet ascent in eighty rods, and are not perceptible at all when the water is three feet higher than when at its lowest stage in dry weather. In 1820 these shoals were nameless, and are so slight that some of them are now nearly obliterated by the accidents of dams thrown across the river for milling purposes. Either one of the five might have been selected by the commissioners of Missouri for the proper place of beginning with almost equal propriety. They searched the river from the Appannoose Fall, at the 93d mile, to its mouth, in a pirogue, before they selected their starting-point, obviously depending on such examination for a selection of the particular place of beginning, and not on any notorious rapid pointed out by public reputation. There is none such in the Des Moines River, and therefore Brown's line cannot be upheld, nor the claim of Missouri be supported.

*This court is, then, driven to that call in the constitution of Missouri which declares that her western boundary shall correspond with the Indian boundary-line; and, treating the western line of a hundred miles long as a unit, and then running east from its northern terminus, it

will supply the deficiency of a call for an object that never existed. Nor has Missouri any right to complain. She herself, for ten years and more after coming into the Union, recognized the Indian lines west and north as her proper boundary; her counties were extended up to these lines before the present controversy arose; and so counties in the territory north were established up to this recognized line without objection on the part of Missouri. And when Congress ceded to Missouri the country west of Sullivan's line, both parties to that cession acted on the assumption, that the ceded territory next the Missouri River was bounded on the north by a line that should be run due west from the northwest corner of the old Osage boundary. To this extent the Indian title was extinguished, and to no other extent did the United States cede that country. Nor could this court act otherwise than to reject the claim of Missouri, without doing palpable injustice to the United States on the western part of the line.

We are, therefore, of opinion, that the northern boundary of Missouri is the Osage line, as run by Sullivan in 1816, from the northwest corner made by him to the Des Moines River; and that a line extended due west from said northwest corner to the Missouri River is the proper northern boundary on that end of the line. And this is the unanimous opinion of all the judges.

Decree.

On this 13th day of February, A. D., 1849, the cause of the State of Missouri against the State of Iowa, on an original bill, and also on a cross-bill of the State of Iowa against the State of Missouri, constituting part of said cause, came on to be heard before the honorable the judges of the Supreme Court of the United States in open court, all the judges of said court being present. And said cause was heard on the original bill, and the answer thereto, and the replication to said answer; and also on said cross-bill, and the answer thereto, and the replication to said answer; and on the proofs in said cause, consisting of depositions, documents, and historical evidences; when it appeared to the court, that, in the year 1816, the United States caused to be run and marked two lines, as part of a boundary between the United States and the Great and Little Osage nations of Indians, in execution of a treaty made *with said Osages in 1808, the first line of the two beginning on the eastern bank of the Missouri River, opposite the middle of the mouth of the

Kansas River, and extending north one hundred miles, where a corner was made by John C. Sullivan, the surveyor and commissioner, acting on behalf of the United States and the Osage nations; and that from said corner a second line was then run and marked by said surveyor, under said authority, which was intended to be run due east, on a parallel of latitude, but which line, by mistake, varied about two and one-half degrees towards the north of a due east and west line. And it further appeared, that the first-named line is the one to which the descriptive call in the constitution of the State of Missouri refers as the Indian boundary-line, and to which the western boundary of said State was to correspond. And it also appeared, that said two lines had, at all times since Missouri came into the Union as a State, been recognized by the United States as the true western and northern boundaries of the State of Missouri, as called for in her constitution; and that the State of Missouri had also recognized these lines as a part of her boundary for the first ten years of her existence, if not more; but that, in the year 1837, she caused another line to be run, and marked as her northern boundary, from the River Des Moines due west to the Missouri River, lying about ten miles north of said line run by Sullivan in 1816, which line of 1837 embraced part of a territory then governed by the United States, and which was inhabited by citizens of the United States, and which territory continued to be so governed by the United States until the 29th day of December, 1846, when the jurisdiction over the same was conferred upon the State of Iowa. It further appeared, that the State of Missouri claims to exercise jurisdiction up to said line, as run and marked in the year 1837, on an assumption that the descriptive call in her constitution for a parallel of latitude "passing through the rapids of the River Des Moines" was gratified by a rapid found in said river, at a place known as the Great Bend, and from which said line was begun and extended west. And this court finds that there is no such rapid in the River Des Moines as that called for in the constitution of the State of Missouri; and that she was not justified in causing the line run and marked in 1837 to be extended as her northern boundary.

And the court further finds, that the State of Iowa is estopped from setting up claim to a line south of the old Indian boundary, known as Sullivan's line, as said State, by her cross-bill, assumes to do; because her predecessor, the United States, by many acts, and by uniform assumptions, up to the time when *Iowa was created, in December, [1846, recognized and adopted Sullivan's line as the

proper northern boundary of the State of Missouri; and that the State of Iowa is bound by such recognition and adoption.

And it further appeared, that that portion of territory lying west of Sullivan's first line, and between the same and the Missouri River, was added to the State of Missouri by force of an act of Congress of June 7th, 1836, which took effect by the President's proclamation of March 28th, 1837; and that a line prolonged due west from Sullivan's northwest corner, on a parallel of latitude, to the middle of the Missouri River, is the true northern boundary of the State of Missouri, on this part of the controverted boundary.

And this court doth therefore see proper to decree, and doth accordingly order, adjudge, and decree, that the true and proper northern boundary-line of the State of Missouri, and the true southern boundary of the State of Iowa, is the line run and marked in 1816, by John C. Sullivan, as the Indian boundary, from the northwest corner made by said Sullivan, extending eastwardly, as he run and marked the said line, to the middle of the Des Moines River; and that a line due west from said northwest corner to the middle of the Missouri River is the proper dividing-line between said States west of the aforesaid corner; and that the States of Missouri and Iowa are bound to conform their jurisdictions up to said line on their respective sides thereof, from the River Des Moines to the River Missouri.

And it is further adjudged and decreed, that the State of Missouri be, and she is hereby, perpetually enjoined and restrained from exercising jurisdiction north of the boundary aforesaid dividing the States; and that the State of Iowa be, and she hereby is, also perpetually enjoined and restrained from exercising jurisdiction south of the dividing boundary established by this decree.

And it is further ordered, that Joseph C. Brown, of the State of Missouri, and Henry B. Hendershot, of the State of Iowa, be, and they are hereby, appointed commissioners to find and re-mark the line run by said Sullivan in 1816, extending eastwardly from said northwest corner to the Des Moines River; and especially to find and establish said northwest corner, and to mark the same as hereinafter directed; and also to run a line due west, on a parallel of latitude, from said corner, when found, to the Missouri River, and to mark the same as hereinafter directed.

And said commissioners are hereby commanded to plant at said northwest corner a cast-iron pillar, four feet six inches
*680] long, and squaring twelve inches at its base, and eight inches at its top; such a pillar to be marked with the

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word "Missouri" on its south side, and "Iowa" on the north, and "State Line" on the east side; which marks shall be strongly cast into the iron. And a similar pillar shall be by them planted in the line near the bank of the Des Moines River, with the mark of "State Line" facing the west. And also a similar one, near the east bank of the Missouri River, shall be planted by the said commissioners in the said line, the mark of "State Line" facing the east.

And it is further ordered, that pillars or posts, of stone or of cast-iron, shall be planted at every ten miles in the line extending east, from the northwest corner aforesaid to the Des Moines River; and also at the end of every ten miles on the due west line, extending to the Missouri River from said corner. These latter line-posts to be of such description as the commissioners may adopt, or as the parties to this suit, acting jointly, may direct the commissioners to use, except that said line-posts shall be of stone or iron.

And it is further ordered, that a duly certified copy of this decree shall be forwarded to the chief magistrate of the State of Missouri, forthwith, by the clerk of this court; and that a similar copy shall, in like manner, be forwarded to the chief magistrate of the State of Iowa. And the commissioners of this court hereby appointed are directed to correspond with said chief magistrates respectively, through their secretaries of state, requesting the coöperation and assistance of the State authorities in the performance of the duties imposed on said commissioners by this decree.

And it is further ordered, that the clerk of this court forward to each of the said commissioners a copy hereof, duly authenticated, without delay.

And it is further ordered, that said commissioners make report to this court, on or before the first day of January next, of their proceedings in the premises, with a bill of costs and charges annexed.

And it is further ordered, that, should either of said commissioners die, or refuse to act, or be unable to perform the duties required by this decree, the chief justice of this court is hereby authorized and empowered to appoint other commissioners to supply vacancies; and, if it be deemed advisable by the chief justice, he may increase the commissioners, by appointment, to more than two; and he is authorized to act on such information in the premises as may be satisfactory to himself.

And should any other contingencies arise in executing this *decree, the chief justice, in vacation, is further and generally authorized to make such orders and give [*681

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such instructions, as this court could do when in session. Copies of all orders and instructions and acts done in the premises by the chief justice shall be filed by the clerk of this court, together with the petitions, papers, and documents on which they are founded. And reports of the commissioners, if made in vacation, shall be filed with the clerk also, for safe-keeping thereof, until presented in open court for its action thereon.

And it is further ordered and adjudged, that the costs of this suit, including the original bill, cross-bill, and the proceedings thereon, and all costs incident to establishing and marking the dividing line, and all other costs and charges of every description, shall be paid by the States of Iowa and Missouri equally.

In the case of *Missouri v. Iowa*, and of *Iowa v. Missouri*, in the Supreme Court of the United States:

Having received information of the death of Joseph C. Brown, one of the commissioners appointed by the decree of the Supreme Court in the above-mentioned cases to run and mark the boundary-line between the States of Missouri and Iowa, I hereby, pursuant to the duty enjoined upon me by the said decree, appoint Robert W. Wells, of the State of Missouri, a commissioner for the purposes aforesaid, in the place of the said Joseph C. Brown, deceased.

R. B. TANEY,

Chief Justice of Supreme Court of U. S.

Baltimore. April 6, 1849.

THOMAS AP CATESBY JONES, PLAINTIFF IN ERROR, v. THE UNITED STATES.

Where a running account is kept at the Post-Office Department between the United States and a postmaster, in which all postages are charged to him, and credit is given for all payments made, this amounts to an election by the creditor to apply the payments, as they are successively made, to the extinguishment of preceding balances.¹

This the creditor has a right to do in the absence of instructions from the debtor.

The English decisions and those of this court examined.

The act of Congress of 1825 (Stat. at L., 102), which exonerates the sureties if balances are not sued for within two years after they occur, does not apply to this case, because, by this mode of keeping the account, the balance due from the postmaster is thrown upon the last quarter.²

¹ CITED. *Schuelenburg et al. v. Martin*, 1 McCrary, 351.

² CITED. *State of Texas v. Middleton's Sureties*, 57 Tex., 190.