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CLAIM OF STATE OF TEXAS.

FEBRUARY 10, 1888.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. CULBERSON, from the Committee on the Judiciary, submitted the following

REPORT:

[To accompany bill H. R. 4375.]

The Committee on the Judiciary have considered House bill No. 4375, "to create a board of arbitration to settle and determine the controversy between the United States and the State of Texas relating to certain territory by them respectively claimed," and recommend that it do pass, with the following amendments:

Strike out the word "five" in line 2, section 2, and insert "three;" strike out the word "two" in line 2, section 2, and insert "one;" strike out the word "two" in line 3, section 2, and insert "one;" strike out the word "fifth" in line 4, section 2, and insert "third," in order that the proposed board of arbitration shall consist of three persons instead of five.

The object of the bill is the ascertainment and settlement of the boundary line between a part of the Indian Territory and the State of Texas by a board of arbitration. There was passed in the Forty-eighth Congress (January 31, 1885) an act providing for the creation of a commission on the part of the United States and the State of Texas to settle this question of boundary. In pursuance of the provisions of said act of Congress and a similar act by the legislature of Texas eight commissioners were appointed, four by the President and four by the governor of Texas, who met and organized in the State of Texas during the summer of 1886. These commissioners made investigation into the matter, and during the progress thereof heard and received a large amount of testimony, consisting of depositions, maps, and other documents, as will appear from Executive Document No. 21, first session Fiftieth Congress.

The said commission failed to agree, and the commissioners on the part of the United States made their report of the full proceedings, embracing the evidence taken on the part the United States and Texas, to the Secretary of the Interior, all of which will appear from said executive document. The most important practical result growing out of the labors and investigation of said commissioners seems to be the collection and publication of the evidence on both sides of the controversy.

It is believed that the failure to provide for an umpire, as well as the uncertainty growing out of different constructions given to the terms of said act of Congress, may in some measure account for the disagreement of said commissioners, and their inability to reach any common and

definite conclusion. However that may be, it is the opinion of the committee that the board of arbitration which the bill proposes to create will be an improvement on the former act, and that the power given to and qualification required of its members, as well as the fact of the wholly disinterested and non-partisan character of the third member, or umpire, will insure a final and satisfactory decision of the question.

The reasons and necessity for a final settlement of this dispute are more important and imperative now than ever before. The territory in dispute embraces over 2,000 square miles; it has been and is being occupied and peopled, as stated by Governor Ross, of Texas—

almost exclusively by settlers from Kansas and the Northwestern States, who have come to make their homes there. They are, as a class, people of humble means, who are willing and ready to brave the hardships of a frontier life for the purpose of establishing homes for themselves and families. * * * These people have organized into communities, built their churches and school-houses, submitted themselves and their property to taxation for the support of the Government and the protection of society, and are ready to abide the decision as to territorial rights, no matter in whose favor such decision will result. * * * This land has been redeemed to civilization and social order by the sacrifice and labor of these people.

There is an estimated population of from 4,000 to 5,000 souls in said disputed territory. Serious jurisdictional conflicts between the authorities of the United States and those of the State of Texas have occurred and will from the nature of the case continue.

While it is not the purpose of the committee to express any opinion as to the relative merits of the conflicting claims to this territory, or to declare in favor of the title of either party, believing as they do that the action of the board of arbitration to be appointed ought to be free and untrammelled, still, by way of formulating the nature and importance of the controversy and emphasizing the necessity for its adjustment, it is considered not improper to submit the following statement, designed as evidence of the existence and magnitude of the question. For years, by the executive, legislative, and (in part) judicial authority of Texas, this territory has been claimed as being within the jurisdiction of that State.

In 1860, General Sam. Houston, who was then governor of Texas, in speaking of this matter said:

The traditionary history of Indian tribes along its banks, the evidence of Marcy's survey, and the prominent features laid down in Melish's map alike established the fact that the North Fork is the main prong of Red River. (Letter to Wm. H. Russell, 28th of April, 1860.)

E. M. Pease, ex-governor of Texas, who began his investigations upon this subject in 1853, said:

From a review of all the facts and circumstances, I am forced to the conclusion that Greer County (territory in dispute) rightfully belongs to Texas. (Letter to John M. Swisher, October 3, 1882.)

Ex-governor O. M. Roberts, and ex-chief-justice of the supreme court of Texas, said:

When the line may be run, * * * and with a knowledge of all the facts, the territory of Greer County, between the forks of the two streams, will be found to belong to Texas. (Special message to Texas legislature, January 10, 1883.)

Governor John Ireland, among other things, says:

Inasmuch as this State feels that she has a perfect title to the territory (Greer County), I respectfully and earnestly urge such steps on the part of the United States as will enable the joint commission to be raised. * * * I am aware that the Secretary of the Interior holds that the territory belongs to the United States; we are no less confident that the territory belongs to Texas. (Letter to President Arthur, August 24, 1883.)

By the legislature of Texas this territory has been indicated as an integral part of the State, defined and designated as Greer County (Revised Statutes of Texas, p. 132); it has been placed in land districts (*Id.*, 548); its vacant and unappropriated public domain has been set apart one-half for public free schools for the education of children in Texas without reference to race or color, and the other half for the payment of the State debt (Acts Sixteenth Legislature, p. 16); it has been placed in judicial districts (Acts Sixteenth Legislature, p. 23; Acts Seventeenth Legislature, p. 8); it has been included in State senatorial and representative districts, and is a part of the eleventh Congressional district of that State.

In August, 1881, one James S. Irwin was indicted in the (State) district court of Wheeler County, Tex. (to which county the territory now in dispute had by statute been attached for judicial purposes), for the murder of one Bryson, committed in Greer County. The defendant was brought to trial. A plea to the jurisdiction of the court was by him entered, upon the ground that Greer County was not a part of Texas, nor subject to its jurisdiction. The said district court, Hon. Frank Willis, judge, overruled the plea, held that Greer County was a part of Texas, and that her courts had cognizance of offenses therein committed. Bryson was convicted of murder in the first degree, his punishment assessed by the jury at imprisonment in the penitentiary for life, was sentenced accordingly, and is now serving a life term in the State prison of Texas.

In a still more recent case before the same judge, it was sought by parties owning property in Greer County to resist the payment of taxes to the authorities of Texas, and, by injunction, to restrain the collection thereof, because it was alleged that Greer County was a part of the Indian Territory. The court upon hearing dissolved the injunction, and held that the assessment and collection of taxes in the said Territory by the officials of Texas was legal, thus again deciding in favor of the jurisdiction and dominion of Texas over the tract of country in controversy. (Letters of Judge Willis to Mr. Lanham, dated October 19, 1883, and December 27, 1883.)

This will serve to show with what earnestness the claim of Texas is asserted.

On the other hand it is maintained with equal earnestness by the Secretary of the Interior that the territory in controversy is a part of the Indian Territory, and much has been recited by the Department of the Interior in support of the claim of the United States. (Senate Ex. Doc. No. 70, Forty-seventh Congress, first session; extract from report of the Secretary of the Interior for 1877 on Texas boundary.) Much interesting information on this subject can also be had by consulting Senate Doc. No. 54, Thirty-second Congress, second session, which contains the exploration of the Red River of Louisiana, in the year 1852, by Randolph B. Marcy.

It will be seen from the provisions of the bill that the expense, labor, and time required by the board of arbitration will be reduced and shortened by allowing them to use the testimony already taken by the boundary commission, and it is believed that a decision will be more speedily reached in consequence. The conclusion arrived at is to be certified and filed in the respective general land offices of the United States and Texas, and is to be final and conclusive of the controversy.