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Boundary between Missouri and Iowa. Letter from the Secretary of State, transmitting the information required by the resolution of the House of Representatives of the 28th ultimo, in relation to the boundary line between the State of Missouri and territory of Iowa.

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BOUNDARY BETWEEN MISSOURI AND IOWA.

LETTER

FROM

THE SECRETARY OF STATE,

TRANSMITTING

The information required by the resolution of the House of Representatives of the 28th ultimo, in relation to the boundary line between the State of Missouri and the Territory of Iowa.

MARCH 19, 1842.

Referred to the Committee on the Territories.

DEPARTMENT OF STATE,

Washington, March 11, 1842.

To the House of Representatives:

In compliance with a resolution of the House of Representatives of the 28th ultimo, directing the Secretary of State to furnish that House with all information on file in the State Department relating to the boundary line between the State of Missouri and the Territory of Iowa; with copies of all correspondence with the late and present Governor of Iowa Territory on the subject; to include all communications, letters, and documents, that may have been forwarded by Governor Lucas to the State Department, on the subject of the boundary line, or the clashing jurisdiction between the authorities of the State of Missouri and the authorities of the United States, within the Territory of Iowa, with regard to said line; also, a copy of all correspondence between the State Department and the authorities of Missouri on the subject: I have the honor to transmit the accompanying papers, a list of which is annexed. The rest of the papers called for by the resolution having been already communicated to the House of Representatives, it has not been deemed necessary again to transmit copies.

Respectfully submitted.

DANIEL WEBSTER.

LIST.

- Mr. Forsyth to General Atkinson, June 28, 1838.
 Mr. Forsyth to Governor Boggs, June 28, 1838.
 Governor Boggs to Mr. Forsyth, July 28, 1838.
 Mr. Conway to Mr. Forsyth, August 14, 1838.
 Governor Lucas to Mr. Forsyth, September 5, 1838.
 Mr. Linn to the President, January 14, 1840, with enclosure.
 Mr. Linn to Mr. Forsyth, January 22, 1840.
 Mr. Forsyth to Governor Lucas, January 22, 1840.
 Governor Lucas to Mr. Poinsett, February 12, 1840, with enclosures.

DEPARTMENT OF STATE,

Washington, June 28, 1838.

SIR: I transmit to your excellency the copy of an act of Congress, approved on the 18th instant, "to authorize the President of the United States to cause the southern boundary line of the Territory of Iowa to be ascertained and marked." The President, acting under authority of that act, has, with the advice and consent of the Senate, appointed Mr. Albert M. Lea commissioner on the part of the United States for the purposes therein mentioned; who is instructed, with as little delay as possible, to repair to the spot, notify your excellency of the place where any communication you may have to make can be addressed to him, and proceed, in conjunction with such commissioners as may be appointed on the part of the Territory of Iowa, and by the State of Missouri, or otherwise, as directed by the act, to run, mark, and ascertain the boundary line.

Should it be your excellency's intention not to appoint a commissioner to act with Mr. Lea, on the part of the Territory of Iowa, you are requested to make the fact known to him, in order that he may, without unnecessary delay, proceed in the discharge of his duty, as otherwise pointed out by the act.

I have the honor to be your obedient servant,

JOHN FORSYTH.

His Excellency HENRY ATKINSON,
Governor of Iowa.

DEPARTMENT OF STATE,

Washington, June 28, 1838.

SIR: I transmit to your excellency the copy of an act of Congress, approved on the 18th instant, "to authorize the President of the United States to cause the southern boundary line of the Territory of Iowa to be ascertained and marked." The President, acting under authority of that act, has, with the advice and consent of the Senate, appointed Mr. Albert M. Lea commissioner on the part of the United States for the purposes therein mentioned; who is instructed, with as little delay as possible, to repair to the spot, notify your excellency of the place where any communication you may have to make can be addressed to him, and proceed, in

conjunction with such commissioners as may be appointed by the State of Missouri, and the Governor of the Territory of Iowa, or otherwise, as directed by the act, to run, mark, and ascertain the boundary line.

Should it be your excellency's intention not to appoint a commissioner to act with Mr. Lea, on the part of the State of Missouri, you are requested to make the fact known to him, in order that he may, without unnecessary delay, proceed in the discharge of his duty, as otherwise pointed out by the act.

I have the honor to be your obedient servant,

JOHN FORSYTH.

His Excellency LILBURN W. HOGGS,
Governor of the State of Missouri.

EXECUTIVE DEPARTMENT,
City of Jefferson, (Mo.) July 28, 1838.

SIR: I have the honor to acknowledge the receipt of your communication of the 28th ultimo; enclosing a copy of the act of Congress authorizing the President of the United States "to authorize the southern boundary line of the Territory of Iowa to be ascertained and marked," and informing me of the appointment of Mr. Albert M. Lea, as a commissioner on the part of the United States, to carry into effect the provisions of that act.

In reply to which, I have to say that, at the last session of the General Assembly of this State, an act was passed, approved 21st of December, 1836, to cause the northern boundary of the State to be surveyed and marked out. In pursuance of the provisions of said act, commissioners were appointed, and a communication was addressed by the undersigned to the President of the United States, with the view of opening a correspondence on the subject with the authorities of the General Government, and requesting the appointment of a commissioner or commissioners, on the part of the United States, to act in conjunction with those appointed on the part of the State of Missouri. To this communication no reply whatever was ever received. The provisions of the act being imperative on the commissioners appointed by the State to proceed to the discharge of the duties assigned them, if the United States should fail, for the space of six months after the passage of the act aforesaid, to appoint commissioners on her part, and none having been appointed, they were accordingly directed to proceed to run and mark the line, in accordance with the provisions of said act.

Having completed the same, the report and map of survey were filed in the office of the Secretary of State of this State, to be laid before the next General Assembly, for their approval or rejection.

Entertaining the opinion (which is affirmed by that of the Attorney General of the State) that all the powers vested in the Executive in relation to this matter have been exercised, the undersigned respectfully declines (notwithstanding the importance that Missouri should be represented) the appointment, on the part of this State, of a commissioner to act in conjunction with Mr. Lea and such commissioner as may be appointed by the Territory of Iowa, for the purposes contemplated by the act of Congress referred to.

Could the survey be postponed until the meeting of our Legislature, which will be early in November next, that body will doubtless take some early action on the subject, and probably appoint a commissioner or commissioners, on the part of the State, to carry the measure into effect; in which case you will please advise me as early as your convenience will permit.

I cannot conclude this communication without remarking that it is a little singular that the action of the authorities of the State of Missouri on this subject, heretofore, has not been noticed at all—neither in the act of Congress nor in the communication of the Secretary of State.

I have the honor to be, very respectfully, your obedient servant,
LILBURN W. BOGGS.

HON. JOHN FORSYTH,
Secretary of Stat

BURLINGTON, TERRITORY OF IOWA,

August 14, 1838.

DEAR SIR: Owing to some deplorable mismanagement of the mails in this quarter, (of which the undersigned intends to advise Mr. Kendall,) your communication to the Governor, or, in his absence, to the Secretary of the Territory of Iowa, enclosing an act of Congress, approved on the 18th of June, 1838, relating to the adjustment of the disputed boundary line between this Territory and the State of Missouri, was not received until this day. The communication to which reference has been made is addressed to his excellency Henry Atkinson, of whose declination your Department has already been advised.

The undersigned has also received and acknowledged the receipt of a communication from Mr. Albert M. Lea, the commissioner on the part of the United States, in relation to the question already stated, and dated at Washington city, on the 5th day of July, 1838, setting forth that he would be at St. Louis on or before the first day of August instant, prepared to receive any communications, relating to the object of his appointment, which the Governor of Iowa should think proper to transmit.

In presence of the acknowledged importance of the question at issue between the State of Missouri and this Territory, the undersigned cannot satisfy himself of the propriety of appointing a commissioner on the part of the Territory of Iowa, without having sufficient time to make a judicious choice. It is the earnestly expressed wish of the people of this Territory, in which the undersigned as earnestly participates, that a commissioner on the part of Iowa should be appointed, and be present at the adjustment of the disputed boundary. And inasmuch as your letter of instruction of the 28th of June is understood to exclude only the idea of "*unnecessary delay*," Mr. Lea has been duly advised by the undersigned in a letter of this date, and the same information is hereby communicated to the Department of State, and a similar assurance (also of this date) has been given to the Governor of Missouri, that a commissioner on the part of the Territory of Iowa *will be appointed* without unnecessary delay, by the undersigned, should Governor Lucas, (of whom we have yet no tidings,) or any other successor, not arrive; of which appointment all the parties just named shall be duly informed.

Mr. Lea has therefore been requested to suspend his operations, as a commissioner on the part of the United States, for a short while, until a commissioner shall have been appointed in this Territory, which is intended without the least desire to occasion unnecessary delay.

With respectful consideration, the undersigned has the honor to subscribe himself your very obedient servant,

WM. B. CONWAY,

Acting Governor of the Territory of Iowa.

HON. JOHN FORSYTH, *Secretary of State.*

P. S. Letters, despatches, &c., will be addressed to the over-written, at "Davenport, Scott county, Iowa," for his residence is there.

EXECUTIVE DEPARTMENT, IOWA TERRITORY,

City of Burlington, September 5, 1838.

SIR: Your communication of the 28th of June last, transmitting a copy of an act of Congress, approved 18th June, 1838, to "authorize the President of the United States to cause the southern boundary line of the Territory of Iowa to be ascertained and marked," was handed to me a few days since by Mr. Conway, who informed me that he had acknowledged its receipt previous to my arrival in the Territory.

I have now the honor to report to you, that, on the 1st instant, James Davis, Esq., of this city, was appointed and commissioned to act on the part of the Territory of Iowa, under the provisions of the act of Congress aforesaid. I this day received a letter from A. M. Lea, Esq., the United States commissioner, dated at St. Louis, the 1st inst., informing me of his arrival at that city. Mr. Lea has been informed of the appointment, of a commissioner on the part of Iowa Territory, and that he would be ready to meet the other commissioner at such time and place as might be designated.

With sincere respect, I am your obedient servant,

ROBERT LUCAS.

HON. JOHN FORSYTH, *Secretary of State.*

[UNOFFICIAL.]

WASHINGTON CITY,

January 14, 1840.

MY DEAR SIR: I send you the enclosed proclamation, for fear it may escape your attention.

I regret most sincerely that the authorities of Iowa have not set at liberty the sheriff of Clark county, Missouri, inasmuch as that act would have gone far to indispose the people of Missouri from proceeding to extremities with their brethren of Iowa.

If you can interfere so as to have the sheriff discharged from custody, it is my opinion it would have a decided influence in restoring tranquillity.

Yours, truly,

L. F. LINN.

TO M. VAN BUREN,

President of the United States.

PROCLAMATION.

By the Governor of the State of Missouri.

STATE OF MISSOURI, EXECUTIVE DEPARTMENT,
City of Jefferson, December 24, 1839.

Information has been received at this Department, that the exercise of the rightful jurisdiction of the State of Missouri has been suspended over that portion of the domain of said State, (which it is pretended belongs to the Territory of Iowa,) by the adoption of the following preamble and resolutions, on the part of the Council and House of Representatives of Iowa, and the county court of Clark county, in this State:

Preamble and resolutions relative to the difficulties between the Territory of Iowa and the State of Missouri.

Whereas an unfortunate crisis has arrived, in the difficulties heretofore existing between the State of Missouri and the Territory of Iowa, in relation to the boundary line between the two Governments: and whereas the Territory of Iowa, under any circumstances, would deprecate any military collision between the forces of said State and Territory, fully believing that the most friendly feelings exist between the great mass of the citizens of the respective parties: and whereas the organic law of said Territory renders it impossible for the constituted authorities of said Territory to accede to the proposition hitherto made by the citizens of Missouri, although they fully reciprocate the kind feelings evinced by the late delegation from the county court of Clark county: therefore,

Resolved by the Council and House of Representatives of the Territory of Iowa, That the officers now on duty, on the part of the State of Missouri, be requested to suspend all further military operations, on the part of the said State, until these resolutions can be submitted to his excellency Governor Boggs.

Resolved, That his excellency Governor Boggs be requested to authorize a suspension of hostilities, on the part of the State of Missouri, until the first day of July next, with a view of having the unfortunate difficulties now existing between the State of Missouri and the Territory of Iowa adjusted by the action of Congress.

Resolved, That his excellency the Governor of Iowa be requested to suspend all further military operations until the decision of his excellency Governor Boggs may be obtained, relative to the propositions herein contained.

Resolved, That the Governor be requested forthwith to forward a copy of these resolutions to the Governor of Missouri, one to the county court of Clark county, and copies to the officers in command on the disputed ground, to be by them presented to the officers of the Missouri forces.

EDWARD JOHNSTON,

Speaker of the House of Representatives.

S. HEMPSTEAD,

President of the Council.

Information has also been received at this Department, from the sheriff of Clark county, that he is at this time imprisoned within the limits of the

said Territory of Iowa; that an indictment has been found against him, and the day appointed for his trial, for the just and proper exercise of the duties of his office in a district of land over which, by the legislative action of this State, its jurisdiction has been declared. The Executive of this State has heretofore officially expressed his personal regret that this controversy should ever have arisen, and that any collision of feeling should have been engendered between the citizens of this State and their neighbors of Iowa, between whom, for mutual interest, the ties of friendship and harmony should ever remain inviolate. This regret is still entertained, in a degree heightened by the conviction, from all the evidence presented, that it is the general wish that this unpleasant difficulty should be terminated. Yet, as the Executive head of this State, I feel that by concurring in the foregoing resolutions, even conceding that I had the power, I would do manifest and flagrant injustice to the wisdom of the Legislature of this State, in the enactment of those laws which have established its jurisdiction, and, in relation thereto, have prescribed the duties of its Executive.

The resolutions request that the Governor of this State "authorize a suspension of hostilities, on the part of the State of Missouri, until the first day of July next, with a view of having the unfortunate difficulties now existing between the State of Missouri and the Territory of Iowa adjusted by the action of Congress." I have therefore expressed my conviction that the law gives me no such authority; that I am not clothed with power to authorize a suspension of military operations, when they are rightfully and legally demanded, to aid in the distribution and faithful execution of the laws throughout the State. It is unnecessary to repeat that that conviction remains the same; and I cannot consider a concurrence in the resolutions in any other light than a palpable encroachment on the exercise of the powers of that department of this Government to which, by the wisdom of our Constitution, the suspension of any law is wholly intrusted; and I should feel equal repugnance to approve the resolutions, because thereby I am requested to concede the power that the Congress of the United States has the right to decide upon the question of boundary between the sovereignty of Missouri and the Territory of Iowa. I must be excused from approving any act which, by any construction, can, for one moment, admit or concede to the Congress of the United States the right of exercising any authority, not expressly derived from the Constitution, over a territory to which has for ever been relinquished the title of the General Government, which has been unalterably conveyed to the State of Missouri, and which is described by metes so distinct that none but the wilfully perverse can mistake them. The constitutional and declared limits of this State Congress has no power to alter; for the General Government has irrevocably transferred to this State, by the act of its admission, the exercise of all sovereign power over its included territory. The General Government has no right to take from the State of Missouri one inch of its declared limits; and, in my estimation, has no course left but to approve the legislative action of this State, by which its boundaries have been finally and openly decided. The right of Missouri, in this case, is paramount; and the interference of any power in the exercise of her local administration is a gross and palpable violation of her individual sovereignty. With the action of the General Government, beyond the limits of this State, Missouri has no other than a general concern. Congress may, in its discretion, attach one half of the Territory of Iowa to this State, or any other State or Territory.

of the United States, because, by the act establishing the Territorial Government of Iowa, it has expressly reserved to itself that power; but even this it cannot do, in relation to this State, unless with the declared consent of the State of Missouri. This power it may exercise; but to admit that it has a right to detach any portion from the constitutional limits of this State, is an acknowledgment that strikes at the essence of the mutual compact, and at the fundamental principles of our confederation.

I deem it unnecessary to enlarge upon this principle; for it is one so clearly defined and universally acknowledged, that, in all the dissensions that have at different times distracted the harmony of the States of this Republic, it has never been thought sufficiently dubious to warrant a controversy. For these reasons, I do not conceive that I have any power, nor if I had, could I, in the conscientious discharge of my executive duties, concur in the resolutions submitted to me. I am, however, constrained to regard their adoption by the county court of Clark county as an evidence of the sincere desire of that body for the preservation of peace and the maintenance of friendly feeling with their frontier neighbors; and this expression of the collected will of "the great mass of the citizens" of that county deepens my regret that the Constitution and my oath compel me to disregard their declared voice, in order to maintain inviolate the supremacy of the law.

Now, therefore, I, Lilburn W. Boggs, Governor of the State of Missouri, do hereby express my dissent from the foregoing resolutions, which have been this day submitted to me, and hereby order that no suspension of civil or military functions, under the laws of this State, be allowed within its rightful limits, as declared by the law thereof. And I do, furthermore, call upon all the officers of the State of Missouri, civil and military, that they use all legal power to prevent any violation of law or exercise of foreign jurisdiction within the limits aforesaid, and that therein, to the full extent, they exercise their respective duties, in conformity with the laws of this State.

In testimony whereof, I have hereunto set my hand, and caused to be affixed the great seal of the State of Missouri. Done at the city of

[L. s.] Jefferson, this 25th day of December, in the year of our Lord one thousand eight hundred and thirty-nine, of the independence of the United States the sixty-fourth, and of this State the twentieth.

LILBURN W. BOGGS.

By the Governor:

JAMES L. MINOR, *Secretary of State.*

DECEMBER 28.

DEPARTMENT OF STATE,

Washington, January 22, 1840.

SIR: The enclosed copy of a letter from one of the Senators of Missouri is sent to you by the direction of the President, with a suggestion, for your consideration, whether the discharge of the sheriff of Missouri, now in confinement for a violation of the laws of Iowa, might not serve to allay present and prevent future excitement. Without departing from the ground taken by the territorial authority, he may be released by your excellency's

pardon, on the entry of a nolle prosequi by the proper officer of the Territory. The President thinks such a step would be proper and useful.

I have the honor to be your obedient servant,

JOHN FORSYTH.

His Excellency ROBERT LUCAS,
Governor of Iowa Territory.

SENATE CHAMBER, *January 22, 1840.*

SIR: The Missouri delegation in Congress have addressed a letter to the Governor of Missouri, recommending great forbearance and moderation in relation to the existing boundary difficulties between Iowa and Missouri. In our communication he was exhorted, in strong terms, to refrain from shedding the blood of our brethren and neighbors, unless driven to it by the strictest necessity.

Hoping that those difficulties may soon happily be settled by the interference of the General Government, I remain your obedient servant,

L. F. LINN.

HON. J. FORSYTH.

EXECUTIVE DEPARTMENT, IOWA TERRITORY,
Burlington, February 12, 1840.

SIR: I received last evening your communication of the 22d ultimo, enclosing a copy of a letter of the same date to you, from Dr. L. F. Linn, one of the Senators of Missouri.

In reply to your suggestions relative to the discharge of the sheriff of Missouri, I will state that he has been discharged several weeks since, on his individual recognisance, (as I have been informed,) to attend the district court in Van Buren county, which will be held on the second Monday in April. Should he fail to attend, and his recognisance be forfeited, the penalty can be remitted by the Executive; and should he appear and stand his trial, (which I think it probable he would prefer doing,) any sentence that may be pronounced against him by the court, for the violation of the laws of the Territory, may be remitted by the Executive of the Territory; but, should he be convicted for a violation of the laws of the United States, a reprieve can only be granted by the Executive of the Territory until the decision of the President of the United States can be made known, as required by the second section of the organic law of the Territory. The sheriff of Missouri never was in confinement. After the process of the law was served on him by the sheriff of Van Buren county, in this Territory, he came with him to this city. I had some conversation with him, and advised him to enter into recognisance, and return home. I informed him at the same time that the authorities of Iowa did not wish to inflict punishment upon any of the citizens or officers of Missouri; that our only object was to maintain the jurisdiction of the United States within the organized boundaries of the Territory as it had been transferred to us at the organization of the Territory, and as it had been formally exercised by

Wisconsin, previous to the organization of this Territory. This we consider to be our duty until Congress definitely establishes the line. I also told him, at the same time, that, should he be convicted for a violation of the laws of the Territory, as Executive, I should feel disposed to remit the penalty. The district judge at the same time proposed to discharge him on his individual recognisance, but he objected to such discharge. He stated that his counsel in Missouri had advised him not to enter into recognisance, and that he preferred remaining in custody of the laws for the time being. Having made this selection, the sheriff of Van Buren county, in whose custody he still remained, removed him to Bloomington, some distance from the seat of excitement, and transferred him to the care of the sheriff of Muscatine county, where he remained in custody of the sheriff (but was never put in confinement) until the Missouri troops withdrew from the boundary; immediately after which, the marshal of the United States dismissed his posse comitatus, as will be seen by his report to me of the 14th of December last, and my general order, issued upon the reception of said report, announcing such dismissal; copies of which are herewith transmitted for the information of the Department, (marked A and B.) A few days after the date of said general order, the sheriff of Missouri (as I have been informed) gave his individual recognisance to the district judge, was discharged thereon, and returned home. Subsequently, every thing has appeared tranquil upon the borders, and I trust will continue so until a final quietus is put upon the matter in dispute by Congress. To the decision of that body the authorities and citizens of the United States within the Territory of Iowa will yield a willing acquiescence; and I trust, in a sober second thought, that the authorities and people of Missouri will do the same, notwithstanding the declaration of the Governor of that State in his proclamation of the 25th of December last.

Inasmuch as the Governor of Missouri has copied in his said proclamation resolutions purporting to have been passed by the Legislature of this Territory, and upon which he has commented largely in his proclamation, dissenting from the propositions therein contained, protests against the right of Congress to decide against the pretensions of Missouri, and declares his determination to maintain the jurisdiction of the State of Missouri to the boundaries claimed by her, &c., I think it proper to observe that, as respects the resolutions of the Legislature of Iowa Territory, the Governor of Missouri must have been deceived by some body. No such resolutions were ever transmitted to him, or any other person in Missouri, by any of the constituted authorities of the Territory of Iowa. Such resolutions passed the Legislative Assembly, and were submitted to the Executive, but, being disapproved, were returned by him to the House of Representatives on the 16th of December, with his objections. A copy of the preamble and resolutions, as they passed the Legislature, with the objections of the Executive and votes of the House of Representatives thereon, is herewith transmitted, together with Governor Boggs's proclamation of the 25th of December, (marked C and D,) which show the true position and acts of the parties. I also transmit the report of Dr. James Davis, the commissioner appointed on the part of the Territory of Iowa to run and ascertain the southern boundary line. Dr. Davis accompanied A. M. Lea, the United States commissioner, in his survey; and I was not aware, until lately, that he had not made a report to the Department at Washington. I have therefore thought it my duty to

transmit a copy of his report to me, that the same may be filed in the Department at Washington with the other documents on the subject.

The foregoing, together with the documents heretofore transmitted, will give a full view of all the transactions of the constituted authorities of this Territory that are in any way connected with the boundary question.

Very respectfully, your obedient servant,

ROBERT LUCAS.

Hon. J. FORSYTH, *Secretary of State, Washington.*

A.

FARMINGTON, *December 14, 1839.*

SIR: I yesterday morning requested of General J. B. Brown to despatch an embassy to Waterloo, the seat of operations in Missouri; and, in pursuance thereof, General A. C. Dodge, Majors J. A. Clark and James Churchman, were ordered to proceed forthwith to that point. They left as required, and to-day returned, with the intelligence that, before their arrival, the troops of Missouri had been dismissed, in obedience to an order of the county court of Clark county; and an assurance was given them that all hostilities, on the part of Missouri, had been suspended; and that no effort would hereafter be made to enforce jurisdiction, upon or over that portion of Van Buren county forming the disputed territory, until a decision of the General Government can be had.

I have therefore notified each of the major generals that all further requisition for the assistance of the militia force, on my part, is at an end, unless some new event may compel me to require such aid.

With due respect, I remain, sir, your obedient servant,

T. A. HENDRY,

U. S. Dep. Marshal for I. T.

To his Excellency ROBERT LUCAS,
Governor of Iowa.

B.

[GENERAL ORDERS, No. 7.]

HEADQUARTERS,

Burlington, (I. T.,) December 17, 1839.

The commander-in-chief, having received a communication from T. A. Hendry, Esq., United States deputy marshal for Iowa, under date of Farmington, December 14, 1839, in which he is advised that the military force recently called out by the authorities of the State of Missouri, with the supposed design of invading the Territory of Iowa, has been disbanded, and an assurance given that all hostilities, on the part of Missouri, have been suspended, and that no effort will hereafter be made to enforce jurisdiction upon or over that part of Van Buren county, in the Territory of Iowa, forming the disputed territory, until a decision of the General Government can be had upon the subject; and being further informed, by the said marshal of the Territory, that he has advised the major generals, com-

manding the several divisions of Iowa militia, that the necessity for further aid on his part from the military force is at an end, unless some new event may compel him again to require it, embraces the opportunity to express the high gratification experienced by him in witnessing the alacrity and order with which the militia of the Territory have responded to the call recently made upon them, and to tender to both officers and privates his cordial and earnest thanks for the energetic and truly soldierlike manner in which they have demeaned themselves upon this trying occasion.

When it is considered under what circumstances this call has been made upon the militia of Iowa, and the promptitude with which it has been met, to aid the civil authorities in enforcing the laws of the Territory and of the United States; when the shortness of the notice, the comparatively unarmed and illy supplied condition of the troops, and the cause in which it has been required—for, just and true as that cause is, it was against their neighbors and fellow-citizens of an adjoining State, and not against a common foe, that it was to be defended—when these facts are remembered, too warm an expression of approbation can hardly be bestowed upon the citizen soldiers of Iowa, for the patriotic firmness with which they have borne themselves in the crisis through which they have just passed; and the commander-in-chief deems it due to them to say that, under different circumstances, as under those which have now presented themselves, with a common enemy to contend against, and with arms, ammunition, and supplies, such as they should be provided with, he desires no more reliable force to repel invasion, or to defend the rights of Iowa, than is to be found in her patriotic militia.

By order of the commander-in-chief.

VERPLANK VAN ANTWERP,
Adjutant General.

C.

EXECUTIVE DEPARTMENT, I. T.,
Burlington, December 16, 1839.

To the honorable the House of Representatives of the Legislative Assembly:

GENTLEMEN: On the 13th instant, there was presented to me, for my consideration, a preamble and resolutions, entitled "Preamble and Resolutions relative to the difficulty between the Territory of Iowa and the State of Missouri."

I have carefully examined this preamble and resolutions, and, being unable to concur with the Legislative Assembly, I herewith return them to the House of Representatives, in conformity to amendment of the organic law, with my objections to the same.

The title of the resolutions relates to the difficulty between the Territory of Iowa and the State of Missouri. I know of no difficulty between the Territory of Iowa and the State of Missouri; neither can the Territory of Iowa, as a Territory, be a party to the controversy. The territorial Government being entirely under the control of the United States, the controversy about the southern boundary of the Territory of Iowa is between the

State of Missouri and the General Government. I concur with the Legislative Assembly, in deprecating any collision between the citizens of the United States residing in the Territory of Iowa, and the citizens of Missouri; and also with the belief that the most friendly feelings exist between the great body of the citizens of Missouri and those of the United States within this Territory.

I know of no act, on the part of the citizens or authorities of the United States within the Territory of Iowa, that has in the least intruded upon the rights of the citizens of Missouri. We have given that State no cause of offence; and I have no reason to believe that the great body of the citizens of the State of Missouri are opposed to the rash proceedings of the authorities of that State, in their intrusion upon the citizens of the United States, residing within the organized limits of this Territory; and I am also of opinion, that the great body of the people of Iowa Territory would be unwilling to see a portion of their fellow-citizens residing in the southern part of Van Buren county surrendered to the authority of Clark county, Missouri, to be taxed and harassed by them at pleasure. I consider that the citizens of Van Buren county are entitled to the same protection that the citizens of Lee, Henry, or Des Moines county are; and I am not aware that there has been any military movements in the Territory of Iowa, further than was required by the marshal of the United States, to enable him to enforce the laws of the United States, and to protect the citizens of the Territory in their constitutional rights.

The organic law of the Territory declares, that the laws of Wisconsin should be extended over this Territory, until altered or repealed by the Legislative Assembly; and that the laws of the United States are extended over and should be enforced in this Territory, so far as the same may be applicable.

The organic law, in defining the duties of the Governor of the Territory, declares that "he shall take care that the laws be faithfully executed." Van Buren county was organized under the laws of Wisconsin Territory, and the jurisdiction of the United States, under the authority of that Territory, was exercised to the Indian boundary line. This jurisdiction was transferred to the Territory of Iowa at the time of its organization, and has been exclusively and peaceably exercised by her, under the authority of the United States, until the recent interruptions from Missouri.

I therefore consider that we are bound, by the solemn obligations we have taken, to be careful that the laws be faithfully executed within the boundaries of the Territory of Iowa, as it was transferred to us by the United States, at the time of its organization; and that there is no authority in the Territory, neither in the Executive nor Legislative Assembly, that can in any way or manner suspend the operations of the laws of the United States within the boundaries of any part of the Territory of Iowa, or to compromise or yield the jurisdiction of the United States, in any way or manner whatever, to any part of the territory over which Wisconsin exercised jurisdiction at the time of the organization of Iowa Territory, until Congress establish a different line.

I therefore cannot concur in any resolution or act that would make me a party to any transaction that would come in conflict with the solemn obligation I have taken, to take care that the laws of the United States be faithfully executed, which would be the case if I submitted to the requirements of the resolutions herewith returned.

For the information of the Legislative Assembly, I will state that on the 9th instant I despatched a special messenger to Washington city, and submitted the whole facts relating to the controversy between the State of Missouri and the United States, relative to the southern boundary of the Territory of Iowa, to the President of the United States, and solicited his interposition and instructions on the subject. So soon as instructions are received from the President of the United States on this affair, they will be promptly obeyed by the Executive of the Territory.

Very respectfully, your obedient servant,
ROBERT LUCAS.

PREAMBLE AND RESOLUTIONS.

Whereas an unfortunate crisis has arrived in the difficulties hitherto existing between the State of Missouri and the Territory of Iowa, in relation to the boundary line between the two Governments: and whereas the Territory of Iowa, under any circumstances would deprecate any military collision between the forces of said State and Territory, fully believing that the most friendly feelings exist between the great mass of the citizens of the respective parties: and whereas the organic law of said Territory renders it impossible for the constituted authorities of said Territory to accede to the propositions hitherto made by the citizens of Missouri, although they fully reciprocate the kind feelings evinced by the late delegation from the county court of Clark county: therefore,

Resolved, by the Council and House of Representatives of the Territory of Iowa, That the officers now on duty, on the part of the State of Missouri, be respectfully requested to suspend all further military operations, on the part of said State, until these resolutions can be submitted to his excellency Governor Boggs.

Resolved, That his excellency Governor Boggs be requested to authorize a suspension of hostilities, on the part of the State of Missouri, until the 1st day of July next, with a view of having the unfortunate difficulties now existing between the State of Missouri and the Territory of Iowa adjusted by the action of Congress.

Resolved, That his excellency the Governor of Iowa be requested to suspend all further military operations until the decision of his excellency Governor Boggs may be obtained relative to the propositions herein contained.

Resolved, That the Governor be requested to forward a copy of these resolutions to the Governor of Missouri, one to the county court of Clark county, and copies to the officers in command on the disputed ground, to be by them presented to the officers of the Missouri forces.

The preamble and resolutions were again considered, and passed by the following vote: yeas 14, nays 6.

Those who voted in the affirmative are, Messrs. Brewer, Clark, Cox, English, Fleenor, Hastings, Hawkins, Leffler, Mintun, Owen, Rich, Ross, Summers, and Johnston, Speaker.

Those who voted in the negative are, Messrs. Churchman, Langworthy, Lash, Myers, Walworth, and Wheeler.

D.

PROCLAMATION.

By the Governor of the State of Missouri.

STATE OF MISSOURI, EXECUTIVE DEPARTMENT,

City of Jefferson, December 24, 1839.

Information has been received at this department, that the exercise of the rightful jurisdiction of the State of Missouri has been suspended over that portion of the domain of said State, (which it is pretended belongs to the Territory of Iowa;) by the adoption of the following preamble and resolutions, on the part of the Council and House of Representatives of the Territory of Iowa, and the county court of Clark county in this State :

Preamble and resolutions relative to the difficulties between the Territory of Iowa and the State of Missouri.

Whereas an unfortunate crisis has arrived in the difficulties heretofore existing between the State of Missouri and the Territory of Iowa, in relation to the boundary line between the two Governments: and whereas the Territory of Iowa, under any circumstances, would deprecate any military collision between the forces of said State and Territory, fully believing that the most friendly feelings exist between the great mass of the citizens of the respective parties: and whereas the organic law of said Territory renders it impossible for the constituted authorities of said Territory to accede to the proposition hitherto made by the citizens of Missouri, although they fully reciprocate the kind feelings evinced by the late delegation from the county court of Clark county: therefore,

Resolved by the Council and House of Representatives of the Territory of Iowa, That the officers now on duty, on the part of the State of Missouri, be requested to suspend all further military operations, on the part of said State, until these resolutions can be submitted to his excellency Governor Boggs.

Resolved, That his excellency Governor Boggs be requested to authorize a suspension of hostilities, on the part of the State of Missouri, until the first day of July next, with a view of having the unfortunate difficulties now existing between the State of Missouri and the Territory of Iowa adjusted by the action of Congress.

Resolved, That his excellency the Governor of Iowa be requested to suspend all further military operations until the decision of his excellency Governor Boggs may be obtained relative to the propositions herein contained.

Resolved, That the Governor be requested forthwith to forward a copy of these resolutions to the Governor of Missouri, one to the county court of Clark county, and copies to the officers in command on the disputed ground, to be by them presented to the officers of the Missouri forces.

EDWARD JOHNSTON,

Speaker of the House of Representatives.

S. HEMPSTEAD,

President of Council.

Information has also been received at this department, from the sheriff of Clark county, that he is at this time imprisoned within the limits of the said Territory of Iowa, that an indictment has been found against him, and the day appointed for his trial, for the just and proper exercise of the duties of his office, in a district of land over which, by the legislative action of this State, its jurisdiction has been declared.

The Executive of this State has heretofore officially expressed his personal regret that this controversy should have arisen, and that any collision of feeling should have been engendered between the citizens of this State and their neighbors of Iowa, between whom, for mutual interest, the ties of friendship and harmony should ever remain inviolate. This regret is still entertained in a degree heightened by the conviction, from all the evidence presented, that it is the general wish that this unpleasant difficulty should be terminated. Yet, as the Executive head of this State, I feel that by concurring in the foregoing resolutions, even conceding that I had the power, I would do manifest and flagrant injustice to the wisdom of the Legislature of this State, in the enactment of those laws which have established its jurisdiction, and, in relation thereto, have prescribed the duties of its Executive.

The resolutions request that the Governor of this State authorize a suspension of hostilities, on the part of the State of Missouri, until the first day of July next, with a view of having the unfortunate difficulties now existing between the State of Missouri and the Territory of Iowa adjusted by the action of Congress. I have heretofore expressed my conviction that the law gives me no such authority; that I am not clothed with power to authorize a suspension of military operations, when they are rightfully and legally demanded, to aid in the distribution and faithful execution of the laws throughout the State. It is unnecessary to repeat that that conviction remains the same; and I cannot consider a concurrence in the resolutions in any other light than a palpable encroachment on the exercise of the powers of that department of this Government to which, by the wisdom of our constitution, the suspension of any law is wholly intrusted; and I should feel equal repugnance to approve the resolutions, because thereby I am requested to concede the power that the Congress of the United States has the right to decide upon the question of boundary between the sovereignty of Missouri and the Territory of Iowa. I must be excused from approving any act which, by any construction, can, for one moment, admit or concede to the Congress of the United States the right of exercising any authority, not expressly derived from the Constitution, over a territory to which has for ever been relinquished the title of the General Government, which has been unalterably conveyed to the State of Missouri, and which is described by metes so distinct that none but the wilfully perverse can mistake them. The constitutional and declared limits of this State Congress has no power to alter; for the General Government has irrevocably transferred to this State, by the act of its admission, the exercise of all sovereign power over its included territory. The General Government has no right to take from the State of Missouri one inch of its declared limits; and, in my estimation, has no course left but to approve the legislative action of this State, by which its boundaries have been finally and openly decided. The right of Missouri in this case is paramount; and the interference of any power in the exercise of her local administration is a gross and palpable violation of her individual sovereignty. With the action of the General Government,

beyond the limits of this State, Missouri has no other than a general concern. Congress may, in its discretion, attach one-half of the Territory of Iowa to this State, or any other State or Territory of the United States, because, by the act establishing the territorial Government of Iowa, it has expressly reserved to itself that power; but even this it cannot do to this State, unless with the declared consent of the State of Missouri. This power it may exercise; but to admit that it has a right to detach any portion from the constitutional limits of this State, is an acknowledgment that strikes at the essence of the mutual compact, and at the fundamental principles of our confederation. I deem it unnecessary to enlarge upon this principle, for it is one so clearly defined and universally acknowledged, that, in all the dissensions that have at different times distracted the harmony of the States of this Republic, it has never been thought sufficiently dubious to warrant a controversy. For these reasons, I do not conceive that I have any power, nor, if I had, could I, in the conscientious discharge of my executive duties, concur in the resolutions submitted to me. I am, however, constrained to regard their adoption by the county court of Clark county as an evidence of the sincere desire of that body for the preservation of peace and the maintenance of friendly feeling with their frontier neighbors; and this expression of the collected will of "the great mass of the citizens" of that county deepens my regret that the constitution and my oath compel me to disregard their declared voice, in order to maintain inviolate the supremacy of the law.

Now, therefore, I, Lilburn W. Boggs, Governor of the State of Missouri, do hereby express my dissent from the foregoing resolutions which have been this day submitted to me, and hereby order that no suspension of civil or military functions, under the laws of this State, be allowed within its rightful limits, as declared by the law thereof; and I do furthermore call upon all the officers of the State of Missouri, civil and military, that they use all legal power to prevent any violation of law, or exercise of foreign jurisdiction, within the limits aforesaid; and that therein, to the full extent, they exercise their respective duties, in conformity with the laws of this State.

In testimony whereof, I have hereunto set my hand, and caused to be affixed the great seal of the State of Missouri. Done at the city of Jefferson, this twenty-fifth day of December, in the year of our Lord [L. s.] one thousand eight hundred and thirty-nine, of the independence of the United States the sixty-fourth, and of this State the twentieth.

LILBURN W. BOGGS.

By the Governor :

JAMES L. MINOR,

DECEMBER 28.

Secretary of State.

E.

Report of Doctor James Davis, Commissioner to ascertain the southern boundary of the Territory of Iowa.

SIR : Having been appointed by your excellency, on the 1st of September last, a commissioner on the part of the Territory of Iowa, under the

provisions of an act of Congress, passed June 18th, 1838, entitled "An act to authorize the President of the United States to cause the southern boundary line of the Territory of Iowa to be ascertained and marked," I proceeded, in company with Mr. A. M. Lea, the commissioner appointed by the President on the part of the United States, (Missouri failing to appoint one on her part,) to perform the duties required. The time of the appointment, and the necessary and consequent delay in the organization of a proper surveying corps, dictated the impossibility of running and completing the line the present season; and our operations were confined to the collection and perfection of documentary evidence on the subject; which is respectfully submitted in this report.

It is unfortunate that, in the organization of most Territories or States, there is not that identity or particularization of boundaries and limits which prudence would dictate; but it does appear to me that there is no want of identity or particularization in the organization of the State of Missouri, either in the act of Congress or the constitution of the State—as the one prescribes, so does the other. The controversy between the Territory of Iowa and the State of Missouri is relative only to the line between the two—the northern boundary of the one, and the southern boundary of the other. Disregarding the fact, which is of no little importance, that, until within a few years, Missouri has never claimed the extension of her northern boundary, the documentary evidence hereunto annexed must convince the most sceptical on this point of the fallacy of her claim, and of the validity of the claim of Iowa.

The act of Congress, which fixes the limits of the State, describes that portion of them which is of any importance in the present controversy as extending north, along a meridian line which passes through the mouth of the Kansas river, 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, along said parallel of latitude, to the middle of the channel of the main fork of the river Des Moines, thence down said river to the Mississippi, &c. The Indian boundary line above referred to is a part of the limits of a purchase made of the Osages by a treaty made in 1808; this line was run and permanently marked in 1816 by Col. Sullivan. It extended one hundred miles north of the mouth of the Kansas river, thence due east to the Des Moines river, thence down said river to the Mississippi, &c. By comparing the acts of Congress, the first article of the constitution of Missouri, and the article of the Osage treaty above cited, there appears to be no doubt that they must all contemplate and mean the same limits and boundary lines.

If the line run by Col. Sullivan in 1816, four years before the adoption of the constitution of Missouri, was not intended as the northern boundary of Missouri, why was the line run and marked by him adopted in the constitution as her northern boundary? The letters of the Solicitor and Commissioner of the General Land Office, hereunto annexed, (and marked A and B,) furnish a fund of instruction on this subject sufficient to satisfy the most fastidious caviller of the injustice of Missouri's claim, and of the justice of that of Iowa. A close and critical examination of this subject must result in the conviction that the rapids spoken of in the first article of the constitution of Missouri are the lower rapids in the Mississippi river, a short distance above the mouth of the river Des Moines. As an impor-

tant proof of this fact, I refer to a copy of a letter from General William Clark, of St. Louis, Missouri, heretunto appended, (marked C.) It may not be improper to remark here, of General Clark, that no man possessed more knowledge on this subject than himself. He was an old Indian trader, one of the first settlers of the Territory of Missouri, and a commissioner who made most of the treaties of the Territory and State, and consequently must have possessed as much knowledge of the boundaries of water-courses of the State of Missouri as any other man. In the letter above referred to, General Clark uses the following language: "I have always been of opinion, that the rapids of the Mississippi just above the mouth of the river Des Moines, which were, at the period when the convention was held, as they still are, called the Des Moines rapids, were the rapids contemplated by the convention; it being understood, as I presume, that the line run by Col. Sullivan, east from a point one hundred miles north of the mouth of the river Kansas, if continued, would strike some point in these rapids." But it has recently been asserted by the Missouri claimants that the rapids of the river Des Moines is an appellation that cannot with propriety be applied to rapids in the Mississippi river; and hence it is contended that the parallel of latitude forming the northern limits of Missouri must pass through some rapids in the Des Moines river. It should be observed that they are not called *the rapids in* the river Des Moines, but the rapids *of* the river Des Moines.

It does not follow, as a natural consequence, that, because the rapids are called *the Des Moines rapids, or the rapids of the Des Moines river*, they should be *in* that river. The names of rapids, like many other names or appellations, are frequently arbitrary or conventional; and if, by common consent, or long-established custom, they are known and spoken of by a particular phrase, (though the name may be inappropriate,) yet that cannot be set up to change the meaning of an act of Congress, or the article of a constitution, in which that improper name or phrase may be used. There are Frenchmen and Indian traders who have been acquainted with this section of the Mississippi for the last twenty or thirty years, all of whom state that the lower rapids of the Mississippi have been called "*the Des Moines rapids, and the rapids of the Des Moines,*" promiscuously. There is more, and some would say higher, authority than that above cited, that the rapids alluded to were called and known by the name of "*the rapids of the river Des Moines.*" In the reports of Mr. Clayton, of the Senate, and Mr. Huntsman, of the House of Representatives of the United States, from Committees on Private Land Claims, in favor of the heirs of Thomas S. Reddick, (the report of Mr. Clayton was made in January, 1835, and that of Mr. Huntsman was on the 12th of June, 1836,) the claim of the heirs of Reddick was predicated on a warrant issued to Lewis (Tessan) Honore, by the Lieutenant Governor of Upper Louisiana, dated 30th March, 1799, in which warrant the rapids of Des Moines river were recognised as being in the Mississippi river, just above the mouth of the Des Moines river. A minute of the same claim may be found in Bates's report, page thirty-three, now in the office of Mr. Conway, at St. Louis, Missouri.

I am not vindicating the propriety of giving such a name to the rapids in the Mississippi river; that is not necessary for my present purpose. Whenever, by common consent, a word or phrase is used to convey or express a particular idea, such is its actual meaning. It matters not if the

rapids in question had been denominated the rapids of the north pole. Once let them be universally known as such; let *voyagers* and *settlers*, private citizens and public functionaries, concur in the appellation, and I doubt whether its absurdity could be taken advantage of or made a just ground for extending the northern boundary line of Missouri to the arctic region. Admit that there are rapids in the Des Moines river, the questions arise, were these rapids known in 1820? and how far from its mouth were these rapids? Were they at any reasonable point that the line contended for by Missouri would touch? I think the above questions may be answered with great propriety in the negative; and, as a strong evidence in support, it is only necessary to remark that those who contend for the rapids in the Des Moines river differ very materially among themselves—some fix them at the Great Bend of the Des Moines, some below, and others far above. Commissioners were appointed for the first time last year, by the State of Missouri, to survey the Des Moines river, and to ascertain, if practicable, the rapids in said river corresponding with their idea of the northern boundary of that State.

They fixed upon one in the Great Bend of that river as the rapids intended by the act of Congress. No reason can be assigned for such a conclusion or location, except *cupidity*; for there are places in said river, far below the one designated by the Missouri commissioners, equally as prominent and deserving of the appellation of the rapids of the Des Moines river. The rapids, about two miles below Lexington, and twelve below the rapids in the Great Bend, and the rapids at Farmington, within a short distance of the place where the Indian boundary line strikes the river, are equally entitled to the same consideration and importance as those selected at the Great Bend. I have been informed, by undoubted authority, that, in the neighborhood of the forks of the Des Moines river, and some seventy or eighty miles above the rapids of the Great Bend, there are rapids worthy of that appellation; and they are the only rapids in that river known to the oldest settlers and Indian traders by the name of the rapids in the Des Moines. If the act of Congress and constitution of Missouri designed the great rapids of that river as the northern boundary of the State of Missouri, certainly the Missouri commissioners have done their State great injustice by not extending their location thus far. Why did they not do so? For the best of reasons; because such a claim would be too great an absurdity. The legislative action of Missouri, and the organization of her northern counties, (some of which counties have been organized ten years,) refer particularly to the northern boundary of the State, which goes far to show that that boundary was considered permanently fixed by the old Indian line, known as Sullivan's survey.

The foregoing views appear to me to be sustained by reason and the strongest documentary facts; and, upon unprejudiced minds, will be irresistible in creating a conviction of the right of Iowa to what she contends for. In opposition to the above views and facts, I have been enabled to obtain two letters from citizens of Missouri. The writer of one of these letters, Mr. Milbourn, (letter appended, marked D,) states that, when a clerk in the surveyor general's office, he executed a map, wherein the northern boundary of Missouri was represented as passing through rapids in the Des Moines river. That such a map was furnished by Mr. Milbourn, I am not disposed to doubt; but it matters little, in this controversy, whether the map was furnished or not. It is known that it was an unofficial map, and,

as acknowledged by Mr. Milbourn in his letter, sunk, with the rubbish of other legislative trash, into obscurity. The map of Mr. Milbourn was, doubtless, thrown aside for its imperfections; and I think it very probable that this marking on that map rapids in the Des Moines river was one of the imperfections for which it was condemned. Had the map been such a one as the convention were satisfied with, instead of having sunk into obscurity, it would have been engraved, and would exhibit at this day what was then considered the northern boundary of the State. It may be fortunate, for the present claim of Missouri, that she had not a correct map drawn at the period of her convention, delineating what was then considered her boundaries. She would now have no chance to cavil about and claim territory to which she has not the most foreign right. If the map of Mr. Milbourn had been perfect, would not the maps of the State, since published, have corresponded in the northern line, by marking rapids in the Des Moines river? They certainly would; but, so far from being correct was the surveyor general's clerk's map, that no other map of Missouri, or of the United States, has ever been drawn or published, marking rapids, as he contends for, in the Des Moines river. Probably the map of the surveyor general's clerk was drawn up in accordance with the views and desires of some of the members of the Missouri convention, who wanted to extend the northern boundary line of Missouri as far north as a line drawn on a parallel of latitude passing through Rock island. In answer to that part of Mr. Milbourn's letter which asserts that the northern boundary was understood "as striking the rapids in the river Des Moines, which rapids were understood, without either doubt or contradiction, (so far as I heard,) to be the rapids intended by the act of Congress," I would respectfully refer you to the letter of General Clark, before cited. The circumstances of General Clark's having made several Indian treaties, and being acquainted with the northern line of the State, certainly gave him greater advantages than those possessed by a surveyor general's clerk. The other letter, from John Scott, Esq., (marked E,) appears more inconsistent and unreasonable than that of Mr. Milbourn. He differs, in almost every particular, with almost every member of the Missouri convention that framed the constitution. This fact alone is calculated to throw a suspicion over his whole statement, and, at least, attribute it to treachery of memory. The matter stated by him, if correct, must have been known to the most of the other members of that convention, and, being known, would not have been forgotten. As an evidence of the inaccuracy of Mr. Scott's recollection, you are referred to *his* relation of General Clark's opinions, and to the letter of General Clark, before referred to, and hereunto appended. In the letter of General Clark, there are calm and disinterested answers given to inquiries made by Mr. Harris. He says he has always considered the old Indian boundary line as marking the northern as well as part of the western boundary of Missouri, and refers to the treaties wherein he acted as one of the commissioners with several different tribes of Indians, in all of which particular reference is made either to the northwest corner or the northern boundary of Missouri. But how different is the whole tenor of Mr. Scott's letter. Every line of it appears to me to show interested motives. On the subject of the rapids of the Des Moines river, Mr. Scott remarks: "I applied to several for information, but more particularly to General William Clark, Major A. L. Langham, and General William Reector, then surveyor general. They all concurred that the Indian boundary line on the west extended north, so that an east line would pass through the

rapids of the river Des Moines, and ought to be the northern line of the State of Missouri, making the Missouri river run through the centre of the State, from west to east; and they all concurred that there were rapids in the Des Moines river itself, some sixty miles from the mouth."

The following is an extract from William Clark's letter, which is so particularly referred to in the above extract from Mr. Scott's letter: "I have always been of opinion that the rapids of the Mississippi, just above the mouth of the river Des Moines, which were, at the period when the convention was held, as they still are, called the Des Moines rapids, were the rapids contemplated by the convention, it being understood, as I presume, that the line run by Colonel Sullivan, east from a point one hundred miles north of the mouth of the Kansas; if continued, would strike some point in those rapids."

The following is also an extract from Mr. Scott's letter: "I am entirely sure that the rapids spoken of in the bill, and intended by the committee, were the rapids in the river Des Moines itself, and not rapids in the Mississippi river, called, from their proximity to the mouth of the Des Moines river, the 'Des Moines rapids.'"

Compare the two following extracts on the subject of the Indian boundary: Mr. Scott says: "They (General Clark and others) all concurred that the Indian boundary line on the west extended north, so that an east line would pass through the rapids of the river Des Moines, and ought to be the 'north line of the State of Missouri.'"

General Clark says: "The impression was very generally prevalent, after the adoption of the State constitution, that the survey of Colonel Sullivan not only designated a part of the western, but also the northern line of the State, and, in fact, that both were synonymous with the *Indian boundary line*. How these views came to be so generally entertained, if the convention really did not intend to adopt the survey in question throughout, it is, perhaps, now impossible to determine."

It appears to me that, when the letters of Mr. Scott, Mr. Milbourn, and General Clark, are compared, they require no comment. There is one other remark made in the letter of Mr. Scott that is worthy of notice, more for its absurdity than for any other light in which it can be viewed. In speaking of the boundaries and the Des Moines rapids, he finishes that part of the letter thus: "making the Missouri river run through the centre of the State, from west to east." What his object could have been for making such remarks, I am totally at a loss to know. It cannot be that he is ignorant of that part of the State through which the Missouri river runs; nor could he have expected to impose on Mr. Lea by such an assertion. It is only necessary to glance the eye over the map of Missouri, to see that, even had the northern boundary been extended to the rapids selected by the Missouri commissioners, very near two-thirds of the State would still lie south of the river Missouri. A line run east and west through Rock island would place but little, if any, more than half of that State north of that river. But this assertion is about as correct as his remarks in relation to the opinions of General Clark. Governor Dodge, of the Territory of Wisconsin, was a member of the convention that framed the constitution of Missouri; and his testimony is as high authority as could be given on this subject, and his memory is in total opposition to that of Mr. Scott. In his message to the Legislative Assembly of the Territory of Wisconsin, in November, 1837, he uses the following language, when speaking of the southern boundary of that Territory: "It was well understood by the members of the convention of that

State, that the rapids of the river Des Moines were the rapids on the Mississippi, near the mouth of that river."

In addition to the above facts, there is an abundance of evidence, all going to establish the fact, clearly, that the northern boundary of the State of Missouri was fixed in 1820, and intended by the convention, and understood by the public functionaries and people of the State, as corresponding with the Indian boundary line on the north as well as on the west. In the year 1824, when the boundaries of Missouri must have been fresh in the memory of every intelligent man in the State, a treaty was concluded with the Sac and Fox nations of Indians, wherein General William Clark was commissioner on the part of the United States, in which the following language may be found, (see copy of the treaty hereunto appended, marked F :) "And do, in behalf of their said tribes or nation, hereby cede, relinquish, and forever quit claim unto the United States, all right, title, interest, and claim to the lands which the said Sac and Fox tribes have or claim 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 Kansas river, north one hundred miles, to the northwest corner of the State of Missouri."

In this treaty the Sac and Fox Indians say they cede all their lands within the limits of the State of Missouri to the United States; and they doubtless understood that, in making that cession, it was to extend "one hundred miles, to the northwest corner of the State of Missouri;" and since that treaty, the same tribes of Indians have sold that part of the Territory of Iowa which lies adjoining the *old Indian boundary line*. The treaty of 1824 was made by one of the most distinguished citizens of Missouri, (Gen. W. Clark,) and was ratified in the Senate of the United States, in the presence of the Senators of the State of Missouri, and goes very far to prove that not only Gen. Clark, but also the two Senators of that State, were satisfied the northern boundary only extended "one hundred miles" north from the mouth of the Kansas river. There were several other treaties between the years 1824 and 1836, in all of which, one excepted, Gen. Wm. Clark was one of the commissioners on the part of the United States, and which were ratified in the Senate of the United States, in presence of the Missouri Senators, and in all of which the northwest corner or the northern boundary of the State of Missouri is mentioned, and which must have been understood at that time as being permanently fixed, or such references never would have been made by the commissioners, nor have been permitted to be ratified by the Senators of that State. (See articles of these treaties hereunto appended, marked G, H, and I.) After examining all the facts connected with this subject, we are led to inquire for the reasons which have so lately enabled the people of Missouri to discover how far north their northern boundary extended. In my opinion, the whole matter may be traced to one single circumstance.

In the year 1824 a treaty, heretofore referred to, and appended to this report, (marked F,) was concluded with the Sac and Fox nations of Indians, from which the following is an extract: "Said tribes or nations hereby cede, relinquish, and forever quit claim unto the United States, all right, title, interest, and claim to the lands which the said Sac and Fox tribes have or claim 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 Kansas river, north one hundred miles.

to the northwest corner of the State of Missouri, and from thence east to the Mississippi—it being understood that the small tract of land lying between the rivers Des Moines and the Mississippi, and the section of the above line between the Mississippi and the Des Moines, is intended for the use of the half breeds belonging to the Sac and Fox nations; they holding it, however, by the same title and in the same manner that other Indian titles are held.”

It will be seen that the small tract of land lying between the Mississippi and the Des Moines, on a line running east from the northwest corner of the State of Missouri, is reserved for the use of the half breeds of the Sac and Fox nations of Indians. This tract of land has been purchased from the half breeds within the last three or four years, by gentlemen, most of whom I believe are citizens of the State of Missouri; and the words “said tribes or nations hereby cede, relinquish, and forever quit claim, unto the United States, all right, title, interest, and claim to the land which the said Sac and Fox tribes have or claim, within the limits of Missouri,” being used in that treaty, those gentlemen have come to the conclusion that, if the northern boundary of Missouri could be extended to any rapids in the Des Moines river, whether found in the Great Bend or at the forks of that river, their claim to all the lands between the Mississippi and Des Moines would be coextensive.

And, in my opinion, from this circumstance alone the claims of Missouri have originated: This conclusion is a plausible one, from the fact that the claims of Missouri to the extension of her northern boundary line, and the purchase of the half-breed lands, are simultaneous. I have had frequent opportunities to converse with gentlemen who are claimants of the half-breed lands; and I have yet to find the first one who does not believe the extension of the northern boundary of Missouri would entitle them to an equal extension of the half-breed lands. Should the extension of the northern boundary of Missouri, as she now claims, be granted, and the half-breed claims allowed to be coextensive, great injustice would be done both to the General Government and the citizens of Iowa; for, at a recent public sale of the lands in this territory, the greater part of the lands in the disputed territory, that would be claimed by the half breeds, were purchased by citizens of Iowa, and many valuable farms would consequently fall into the hands of the half-breed claimants. Should it happen that the half-breed claimants could substantiate their claims to this territory, so much would be lost to the Government of the United States. On the 26th of May, 1824, Congress passed a law to establish an additional land office in the State of Missouri, which office was located at Palmyra. In that act the following language is used: “thence north to the northern boundary line of the State of Missouri; thence east, with the State line, to the river Des Moines, and the State line to the Mississippi river,” &c. (See the act, hereunto appended, marked J.) This act was passed more than fourteen years ago, and was doubtless drawn up and reported by one of the Senators or Representatives from that State; and if the northern boundary was not considered fixed, why was such particular reference made to it? This fact alone shows clearly that the northern boundary was considered as permanently fixed as either the boundaries of the south or the west. By reference to the organization of the land office in the southern and western sections of the State, it will appear that similar language is used in defining their boundaries as in the case of the Palmyra land office. The same may be said of the or-

ganization of the counties of the north, the south, and of the west, the boundaries being called for in each portion in a like manner.

“SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the sum of fifteen hundred dollars, to be paid out of any money in the Treasury not otherwise appropriated, and to be applied under the direction of the Secretary of the Treasury, be, and the same is hereby, appropriated to complete the payment for surveying the southern boundary line of the State of Missouri, and so much of the western boundary line thereof as lies south of the Missouri. Approved 26th May, 1824.”

The above act of Congress may be found in the laws of the United States, (vol. 7, page 316.)

This, like every other act of Congress for the last twenty years in relation to Missouri, or which has had any bearing on the subject of the boundary of that State, goes far to show that Sullivan's line was considered as a part of the western boundary, and marked the entire northern boundary of Missouri. If this is not a fair inference to be drawn from this act of Congress, and if the northern boundary of Missouri, and that part of the western boundary which lies north of the mouth of Kansas river, was not, in 1824, considered as permanently fixed, why did not the Senators and Representatives in Congress at that time, from Missouri, and who doubtless drew up and reported the above law, continue that survey along the balance of the western boundary, and then east to the Des Moines river? Had this been done in 1824, it would have forever put the question of the northern boundary of that State at rest.

Were the people of Missouri, in 1824, less mindful of the northern boundary, and that part of their western boundary that lies north of the Kansas river, than they were of their southern, and that part south of the Kansas river? It would seem so, if they did not consider that Sullivan's line fixed the remaining portions of their boundary.

In concluding this report, I have to remark that I have given no account of the operations on the line during the fall.

Nothing further was done than to ascertain the latitude of the Des Moines rapids in the Mississippi river, the rapids in the Great Bend of the river Des Moines, and that of the old northwest corner of Missouri. I have not seen the report of Mr. Lea, but I presume he has given a full report of the astronomical observations made at all these points. All of which is respectfully submitted.

I am, very respectfully, your obedient servant,

JAMES DAVIS.

To his Excellency ROBERT LUCAS,
Governor of the Territory of Iowa.

A & B.

GENERAL LAND OFFICE,

Solicitor's Bureau, August 8, 1838.

SIR: Pursuant to your request, I have examined the act of Congress of 1820, authorizing the people of Missouri to form a constitution and State Government, &c., the act extending the western boundary of the State, pass

ed January 7, 1836, and the act of June 18, 1838, authorizing the running, &c., of the southern boundary of the Territory of Iowa, and beg leave to submit the following as the result of my reflections upon the points to which you have particularly directed my attention.

The act of June, 1838, directs the line to be run, ascertained, and marked, *in all respects*, according to provisions of the said acts of 1820 and 1836, wherein the said boundary line is described.

By the act of 1836, the line of Iowa, west of the old western boundary of Missouri, will be a parallel of latitude drawn through the old northwest corner of the State, and be extended to the Missouri river.

The difficulty, if any exists, will be found in ascertaining the true position of the old northwest corner of the State of Missouri.

The guide to the commissioners in ascertaining this point is the act of 1820. The description gives, as a starting point, so far as concerns this part of the boundary, the point where a parallel of latitude is intersected by a meridian line passing through the middle of the mouth of Kansas river, where the same empties into the Missouri river; thence, from the point aforesaid, north, along said meridian line, to the intersection of the parallel of latitude which passes through the rapids of the river Des Moines, *making the said line to correspond with the Indian boundary line*; thence east, from the point of intersection last aforesaid, along the said parallel last aforesaid, to the middle of the channel of the main fork of the said river Des Moines.

The map and papers so long searched for, and yesterday transmitted from the War Department, show that an Indian boundary line was run in 1816, by direction of General William Rector, from the Kansas river, at its junction with the Missouri, due north one hundred miles, thence easterly to the main fork of the *Des Moines*.

This line was for many years supposed to be the true boundary of Missouri.

A line run one hundred miles north of the Kansas is spoken of as the northwest corner of the limits of the State of Missouri in the Iowa treaty, August 4, 1834, which was concluded on the part of the United States by Governor Wm. Clark, one of the commissioners, with whose advice Surveyor General Rector caused said line to be run and marked.

The question to be solved is, will the description in the act of 1820 justify Governor Clark in treating the northern termination of that line as the old northwest corner of the State, especially if it shall be found that the parallel drawn through the rapids of the river Des Moines intersects the meridian line, drawn from the mouth of the Kansas, at a point either north or south of the termination of the Indian boundary line? I have to state that the judicial tribunals, in settling questions of disputed boundary, uniformly hold that permanent natural objects, or artificial marks made upon the earth's surface, called for in the description of a boundary line, when clearly identified, control both the courses and distance, which may also be called for in the same description. (9 Cranch, 173; 6 Wheaton, 58; 1 Cook, 146.) The reason of the rule will be perceived with scarce a moment's reflection. A natural object or fixed mark upon the earth, at a given point, more clearly ascertains the position of that point than any other mode.

In a certain contingency, this rule may be deemed applicable to the descriptive calls for old northwest corner of the State of Missouri, and, if so,

should govern the action of the commissioner. If, for instance, the Indian boundary line can be found, and the mark at the point at its northern termination identified, and it be also determined that the words of the act of 1820, "*making it correspond with the Indian boundary line,*" require an identity of correspondence, as well in the length as in the the direction of the two lines, and it shall also be found that the point of intersection of the parallel and meridian named in the description of the boundary does not correspond therewith, the former should be regarded the true point, and not the latter.

It may, perhaps, be claimed that the "rapids of the river Des Moines" is a call for a natural, and therefore controlling, object in the description of the north boundary line. My opinion is adverse to such a claim. I consider it as a natural object, given as a bearing point, from which it was supposed the true position of the northwest corner could be ascertained, either by taking its latitude, and then finding the same latitude on the meridian of the mouth of the Kansas, or by tracing a line due west from the rapids to the point of intersection. It is evidently so; for we find that the act, in proceeding to state the course and termination of the north boundary of Missouri, does not name said rapids as a point situate upon the line, but terminates the line at the middle of the channel of the main fork of the river Des Moines. A map of the surveys of this section of country also corroborates my conclusion. Supposing the rapids of the Des Moines, as claimed by Missouri, to be the point whose parallel of latitude constitutes the northern boundary, you will find that, by tracing this parallel from west to east, it will (owing to a southern bend in the Des Moines) strike the main fork some distance above the rapids. After striking the main fork, the course of the line changes, and runs down "the middle of the main channel of the Des Moines," forming not a part of the northern, but a part of the eastern or northeastern boundary of the State; thus showing that said rapids is a mere call for a bearing point, and not a call for boundary. A question connected with the subject, legal in its character, and eminently material, is, does the act of 1820 require an identity of correspondence in the *length*, as well as the direction, of the Indian boundary line, and the former west line of the State? Can we say, using language according to its general acceptation, that two lines correspond with each other where there is no agreement between them other than the course they both run, and the point from whence they start, especially when the object, in describing either line, is to give the point of termination as well as the point of the commencement and the course? Do lines correspond with each other when, as to material points, they are unlike?

If we cannot give affirmative answers to both questions, the true construction of this part of the act will require it to be treated in the same manner that a court would treat a description of boundary reading thus: "*Beginning* at a stake standing one rod north of the junction of the Scioto and Little Miami rivers, thence north 15° east to the point where a line, drawn between the lower bridge of the Miami and the lower bridge of the Scioto, intersects the same, making the said line terminate at a stake standing on the south side of a white oak tree blazed on four sides, two feet distant; thence, on the line drawn between said bridges, to the Scioto bridge above mentioned." In directing a surveyor to run such a line, a court would instruct him to run from the stake first named to the stake near the white oak tree; thence to the Scioto bridge, notwithstanding the course of

the first line might vary from north 15° east, and the stake near the white oak might not stand in the line drawn between the two bridges. In my opinion, the Indian boundary line marked on the west line of Missouri is made the true western line of that State by the act of 1820, the point of its northern termination being the northwest corner of the State. Consequently, the marks of that line are marks called for in the description of the boundary, which legally control the boundary, if susceptible of identification; and I advise you so to instruct the commissioners.

I am aware that a line run upon these principles due east, or on a parallel of latitude, may strike the "*main fork*" of the Des Moines at a point approximating the latitude of the Des Moines rapids of the Mississippi more nearly than the rapids of the river Des Moines, and possibly will cut from Missouri a triangular portion of territory, over which her jurisdiction has been, for a long time, undisputed, equal in length to the former length of the north boundary of the State, and about five miles in width at the eastern end; but that will be a subject for the consideration of Congress, who, having the control over the boundaries of Iowa, may give to Missouri all that she formerly claimed or now claims. The commissioner is bound to construe the act of 1820 legally, and to survey the line accordingly, inasmuch as it may be found that the line given by the act of 1820 is south of the Indian boundary line run by Sullivan in 1816, up to which, as to her northern boundary, Missouri has exercised jurisdiction for many years. I would suggest the propriety of authorizing Major Lea, on discovering that fact, to run an experimental line only, without fixing permanent marks; for it occurs to me that Congress in such event may establish the Indian boundary line as the southern boundary of Iowa, which is precisely what the Legislative Council of Wisconsin requested might be done; and, if done, the permanent marks in this line will, at least, be useless.

I am, very respectfully, your obedient servant,

M. BIRCHARD, *Solicitor.*

To JOHN M. MOORE, Esq.,

Acting Commissioner of the General Land Office.

NOTE.—During the operations of Mr. Lea and myself, in October last, through his politeness, I obtained the following copy of instructions from Mr. John M. Moore, acting Commissioner of the General Land Office. There are several references made to documents in these instructions which I did not obtain, but which, I presume, may be found accompanying and in the report of Mr. Lea. The propriety of appending these instructions to this report appears to me manifest, when I consider its imbodyed facts—facts that show, beyond a doubt, the groundless claim of Missouri to the extension of her northern boundary line beyond "*the old Indian boundary line.*"

Application (copy marked A) having been made to the Secretary of War on the 30th ultimo, for the plat and field notes of survey of the Indian boundary line north of the Missouri river, which was surveyed in the year 1816 by John Sullivan, in conformity with instructions from William Rector, surveyor of the lands of the United States in the Territory of Illinois and Missouri, I herewith transmit the reply of the acting Secretary of War, dated August 7, (copy marked B,) with a plat of the line therein referred to, (copy marked C,) which is believed to be *the Indian boundary*

line alluded to in the act of 6th March, 1820, above quoted. The instructions of General Rector, and the field notes of the line run by Mr. Sullivan, said to have been run in pursuance of such instructions, are to be sought for by you in the office of the surveyor general at St. Louis, as they cannot be found at the seat of Government. It is impossible to give you definite directions as to the best way of proceeding to enable you to determine and decide all the points and conflicting questions which may arise in executing your trust. It is only practicable to offer such suggestions as occur to this office in connexion with the laws under which you are called upon to act, and furnish such information as may be within reach, leaving to your sound discretion to decide from them and the additional facts which you may collect by personal attendance on the spot.

With these views, your particular attention is directed to the second section of the act of Congress, approved the 6th March, 1820, above referred to, wherein the boundary to be run is in part defined and described; and conformable to which you are distinctly required to ascertain, run, and mark the same. This description, commencing "at the southeast corner, makes the fourth call, or southwest corner of the State," a point where the said parrallel (the parallel of $36^{\circ} 30'$ north latitude) is intersected by a meridian line passing through the middle of the mouth of Kansas river, where the same empties into the Missouri river. The description then reads: "thence, from the point aforesaid, (the southwest corner of the State,) 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 the said line to 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."

The above description will constitute the basis of all your operations; for, whatever construction may be given thereto, the same will also determine the section of the line which forms the northern boundary of the northwest addition to the State, made by the act of the 7th of June, 1836, every word and every expression of which should be most carefully examined, in order to arrive at the true meaning and intention. It will be perceived that the northern boundary, as described, is a line to be run from the northwest corner of the State to the Des Moines river. Hence, your first operation should be, in my opinion, to establish the beginning of the line or old northwest corner of the State; and, for this purpose, particular reference must be had to the call for that corner—that call, it will be seen, is described as the point of "intersection of the parallel of latitude which passes through the rapids of the river Des Moines," by a meridian line passing through the middle of the mouth of Kansas river, where the same empties into the Missouri river, making the said line to correspond with the Indian boundary line." Had the description ended with the words "rapids of the river Des Moines," it seems to me the proper and only course would have been for you to ascertain the precise latitude of the rapids referred to; and a point of the same latitude, ascertained in the Indian line, or in that line continued north, if necessary, would be the true northwest corner of the State; but, by the addition of the words "making the said line (that is, western boundary of the State) to correspond with the Indian boundary line," it becomes a question whether any other point than that ascertained to be the north end of the Indian line, as actually surveyed and marked upon the field, to be taken as the true northwest corner of the State; and

it will remain to be determined by the authorities to whom the decision of the question is intrusted, whether by the term "correspond," as applied in the law to the line in question, was meant identity, in all respects, both as to length and direction. It is also worthy of remark that the call of the northern boundary line is not to the *rapids of the river Des Moines*, or of any other river, but "to the middle of the channel of the main fork of the river *Des Moines*"; thus leaving it free to strike that river at any point, whether the same shall happen to be situated below, above, or at any point along the rapids, that being a matter, so far as this call is concerned, perfectly immaterial. And here it may be also remarked, that circumstances of this case not specifying the rapids, which might naturally have been the language had the rapids referred to as a bearing, by which the said northwest corner could be ascertained, been situated in the river *Des Moines*. May it not have been intended to refer to rapids situated upon some other river beyond the point of the intersection of the line with the *Des Moines*? For your information on this point, I herewith furnish a report of the solicitor of this office, (paper marked D.)

In view of the foregoing provisions of the several laws herein quoted, having ascertained the true point *from which to commence* your survey, and establish a suitable monument thereat; you carefully observe and note the latitude thereof, by a series of the most critical observations you can make, not fewer than three, taking the *mean result* as the true one. You will then proceed with an *experimental line*, as near as practicable, on the same parallel of latitude, due west, to the *Missouri river*, marking the same in the usual manner, as you progress; and, on reaching the *Missouri river*, you will, by another series of critical observations as aforesaid, taking the mean thereof as the true result, ascertain and establish, by a suitable monument, the precise point of latitude corresponding with that which you will have previously determined for the position of the old northwest corner of the State; and it will be also proper to ascertain, and show on the field notes, the connexion between the point of latitude on the *Missouri*, which you will determine as the true point of termination on that river, which you will have arrived at on your *experimental line*. From the proper point on the *Missouri river* you will proceed to run a due east line, on the same parallel with the point aforesaid, to the old northwest corner as before ascertained; thence, according to the words of the law, proceed "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*." In case you shall find it impracticable to complete the survey of the line, and make report thereon, before or at a seasonable period during the ensuing session of Congress, it will be proper that your operations be such as to enable you to make satisfactory report of progress in time to be submitted to that body at as early a period of the session as circumstances will admit. It is deemed advisable that the line you will run should be defined by the most certain distinctive marks, not to be confounded with any previous marks of survey, as much as possible identified by reference to *natural objects*, all of which to be carefully noted in your field book. In open fields or prairies, suitable mounds should be raised, at distances not exceeding five miles apart, to be identified by a deposit of charcoal therein, with a squared stake charred below the surface planted in the centre, with the initials M marked on the south side, and I on the north; and objects of a less permanent nature, as stakes or posts, should be planted at intervals of

one mile, and at the points of the termination of the line on the western bank of the river Des Moines. You will ascertain the latitude by the most careful observations, as heretofore mentioned, and establish at the same a suitable monument. You will extend your observations and measurement in such manner as will enable you critically to delineate on your map the relative positions of the several lines and points in dispute.

I have the honor to be, sir, your obedient servant,

JOHN M. MOORE,
Acting Commissioner.

ALBERT MILLER LEA, Esq.,
Commissioner for running the southern boundary line of Iowa.

C.

SUPERINTENDENCY OF INDIAN AFFAIRS,

St. Louis, January 13, 1838.

SIR: I have received your letter of 23d of December, and the copies of letters therewith of the 9th and 10th of October, 1837, to Governor Boggs and myself. In your letter of the 10th of October, you request me to communicate all the information I may possess or can collect respecting the construction placed on the first article of the constitution of the State of Missouri, relating to the boundaries, at the time it was formed; and also my views as to the true construction of the same, and of the meaning of the words used therein, "making it correspond with the Indian boundary line." Since the receipt of this letter, I have endeavored, from my own recollection, and such information as was within reach, to answer satisfactorily on the matters to which you refer, but apprehend I can afford little positive information on the point in question. In the year 1816 (I think it was) Colonel John C. Sullivan was employed by the United States surveyor general, William Rector, to run, and he did run and mark, the line which has since been used in most, if not all, the maps, as the western and northwestern boundary of the State of Missouri, (whether properly or not I cannot undertake to say,) commencing at the mouth of the Kansas river, and running north one hundred miles, and thence east to the Des Moines river. The language in the first article of the constitution expressly refers to so much of this line as runs north one hundred miles from the mouth of the Kansas river; and the impression was very generally prevalent, after the adoption of the State constitution, that the survey of Colonel Sullivan not only designated a part of the western, but also the northern line of the State, and, in fact, that both were synonymous with the *Indian boundary line*. How these views came to be so generally entertained, if the convention really did not intend to adopt the survey in question throughout, it is perhaps now impossible to determine. I have always been of opinion that the rapids of the Mississippi, just above the mouth of the river Des Moines, which were, at the period when the convention was held, as they still are, called the Des Moines rapids, were the rapids contemplated by the convention, it being understood, as I presume, that the line run by Colonel Sullivan, east from a point one hundred miles north of the mouth of the Kansas, if continued, would strike some point in those rapids. As early as the year

1824, four years after the constitution was framed, and when the subject of boundaries was still fresh in recollection, treaties were made with the Iowas and Sacs and Foxes, in which the northwest corner of this State is expressly referred to, and in one of them Colonel Sullivan's survey is mentioned. In 1825 the treaty with the Kansas again refers to the northwest corner of the State; and, so late as 1830, the same term is used in the treaty made with various tribes at Prairie du Chien. From all which, whether erroneously or otherwise, it is evident an impression existed that Colonel Sullivan's survey of 1816 marked a part of the boundaries of the State in the north as well as the west.

Respectfully, your obedient servant,

WM. CLARK, S. I. A.

C. A. HARRIS, Esq.,

Commissioner Indian Affairs, Washington.

D.

SURVEYOR'S OFFICE,

St. Louis, September 12, 1838.

SIR: I have read yours of the 5th instant, on the subject of a "map which I had told you in conversation I aided in preparing for the use of the convention that formed the constitution of Missouri, showing the boundaries of the new State, as understood to be fixed by act of Congress, and requesting me to inform you—

"1st. By what authority and under whose direction was that map made?"

"2d. Where can that map, or a copy of it, be obtained?"

"3d. What was the northern boundary of the State, as delineated on that map; that is, was it the same as the old Indian boundary run by Sullivan in 1816; or did it pass through the Des Moines rapids in the Mississippi river; or did it pass through other rapids in the Des Moines river; if the latter, what was the position of those rapids in regard to Sullivan's line; how was that position ascertained, and by whom; why were the particular rapids situated as the 'rapids of the river Des Moines' so chosen in preference to other rapids now known to exist in the Des Moines river?"

In reply to your first inquiry, I have to say that, at the time of the sitting of the convention, I was employed as a clerk in the United States surveyor's office for Illinois, Missouri, and Arkansas; that General William Rector, then surveyor general, was a member of that body from the county of St. Louis; and that the map was constructed in the surveyor's office, under my superintendence, by direction of the surveyor general; and, as I believe, either at the request of the convention or the members, or a portion thereof, in their individual and unofficial capacity. The journals will show whether there was a resolution of the convention to that effect or not.

To your second inquiry, I can only reply, that I am uninformed as to what became of that map, and do not know that it ever was copied. I cannot therefore put you on the track for getting either the original or a copy thereof.

To the third inquiry, I have to answer that my recollection is distinct relative to the northern boundary of the State, as delineated on the map. It was represented [as being] at some short distance north of the Indian

boundary line by Colonel Sullivan, in 1816, and as striking the rapids in the river *Des Moines*; which rapids were understood, without either doubt or contradiction, (so far as I heard,) to be the rapids intended by the act of Congress.

The position of said rapids was assumed from the general understanding at the time; and from the particular information of Colonel Sullivan, who was a member of the convention, and was also the surveyor of the Indian line in 1816.

Why these particular rapids were selected as the "*rapids of the river Des Moines*," in preference to other rapids now known to exist in that river, I am unable to say. If there was any contrary opinion at the time, it never came to my knowledge, and I was in company with some of the members of the convention every day during their deliberations.

Very respectfully,

WILLIAM MILBOURN.

To ALBERT MILLER LEA, Esq.,

Commissioner on the part of the United States for ascertaining and marking the southern boundary line of the Territory of Iowa.

E.

St. Louis, Missouri, September 7, 1838.

DEAR SIR: I have just received yours of the 4th instant, asking information in regard to the northern line of the State of Missouri, &c. I hasten to put you in possession of such as I have, and can furnish you from recollection. At the time the act of the 6th March, 1820, was passed by Congress, authorizing the people of Missouri to form a constitution and State Government, &c., the general geography was but little, and the topography of that part of the State still less, known. I, who represented the county, knew so little, that I had to rely on the information of others in regard to the lines. I applied to several for information, but more particularly to General William Clark, Major A. L. Langham, and General William Rector, then surveyor general. They all concurred that the Indian boundary line on the west, extended north so that an east line would pass through the rapids of the river *Des Moines*, ought to be the north line of the State of Missouri, making the Missouri river run through the centre of the State, from the west to the east; and they all concurred that there were rapids in the *Des Moines* river itself, some sixty miles from the mouth; and they all concurred that it would be useless to embrace that part of the country that would lie between the river *Des Moines* and the *Mississippi*, as it was but a gore, a low willow bar, the *Mississippi* and the *Des Moines* river, as they said, running nearly parallel for some sixty miles; and General Rector made me out a map of the boundaries of the contemplated State, which was the only map before the committee who reported the bill, and which map I believe I still have in my old Congress papers, and will try, on my return home, to furnish you with.

I would here remark, that the northern Indian boundary line had then been run by Sullivan, and was deemed incorrect and badly done. I was chairman of the committee who reported the bill that passed into a law on

the 6th of March, 1820. Judge Baldwin, now on the bench of the Supreme Court, and Arthur Livermore, were with me on the committee. The others I do not now remember; and should not these, probably, but for the fact that they suggested, and particularly Livermore, the propriety to report a bill with restrictions as regards slavery, &c.

After the bill had passed the House of Representatives and went to the Senate, it was attacked by Rufus King, of New York, on the ground of want of certainty in the lines. He contended that the description was not mathematically (*his own expression*) correct; that lines to correspond must be either the same or parallel; and I was sent for to explain that part of the law which speaks of the corresponding lines. I went and explained thus: that the western Indian line was to be extended north to the parallel of latitude that passes through the rapids of the river Des Moines, and that the meaning and *correspondence intended* was, that the extension of the western line north was to correspond in *direction* with the Indian line already established. This seemed satisfactory; and opposition was withdrawn. I am entirely sure that the rapids spoken of in the bill, and intended by the committee, were the rapids in the Des Moines itself, and not the rapids in the Mississippi river, called, from their proximity to the mouth of the Des Moines river, the Des Moines rapids.

I am satisfied that the committee who reported, and the convention who formed and adopted, the State constitution, and who assembled on the 12th of June, and signed that instrument the 19th of July, 1820, had reference, in forming the northern line, to the rapids in the Des Moines river, and not those in the Mississippi river called the Des Moines rapids.

The words used in the act of Congress of the 6th of March, 1820, and those used by the convention who framed the constitution, are the same; and I am not aware that there is any discrepancy or difference of intention as to the point in both named. I have already stated we had no map but the one made for me by General Rector, then surveyor general; nor does the act of the 6th of March, 1820, in the heading of the constitution of the State, appear to me to be of doubtful character or construction. From the northwest corner you are to start east, on the parallel of latitude which passes *through* the rapids of the *Des Moines river*, or rather "river Des Moines," and to follow that parallel (not to the Mississippi river, which would have been the wording, without reference to the crossing the Des Moines river if you were to run straight out to the Mississippi river) to the middle of the main channel of the main fork of the said river Des Moines; and there you stop, and change the course of the line down the Des Moines to its mouth, and thence resume your course east to the middle of the main channel of the Mississippi, which will make the line for the first time strike the Mississippi, and consequently leave the State line unclosed. The law speaks of the rapids of *the river Des Moines*, and not the Des Moines rapids. I am satisfied that the committee and Congress and the convention all meant and intended the rapids in the *river Des Moines* itself, which were then known to exist and spoken of, and not the rapids in the Mississippi river, called, by way of distinction from the upper rapids, the Des Moines rapids.

Very respectfully, your obedient servant,

JOHN SCOTT.

Major A. M. LEA.

F.

William Clark, commissioner on the part of the United States, concluded a treaty with the chiefs and headmen of the Sac and Fox tribes of Indians at Washington city, August 4, 1834; and the first article reads as follows:

“ART. 1. The Sac and Fox tribes or nations of Indians, by their deputation, in council assembled, do hereby agree, in consideration of certain sums of money, &c., to be paid to the said Sac and Fox tribes by the Government of the United States, as hereinafter stipulated, to cede and forever quit claim, and do in behalf of their said tribes or nations hereby cede, relinquish, and forever quit claim, unto the United States, all right, title, interest, and claim, to the lands which the said Sac and Fox tribes have or claim 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 Kansas river, north one hundred miles, to the northwest corner of the State of Missouri, and from thence east to the Mississippi—it being understood that the small tract of land lying between the river Des Moines and the Mississippi, and the section of the above line between the Mississippi and the Des Moines, is intended for the use of the half breeds belonging to the Sac and Fox nations; they holding it, however, by the same title and in the same manner that other Indian titles are held.”

G.

The following is an extract from the 1st article of a treaty concluded at Bellevue, Upper Missouri, October 15, 1836, between John Dougherty and Joshua Pitcher, commissioners on the part of the United States, and the chiefs, braves, &c., of the Otoes and Missourias, (E. T. C., page 689.)

“ART. 1. Whereas it has been represented that, according to the stipulations of the 1st article of the treaty of Prairie du Chein, of the 15th of July, 1830, the country ceded is to be assigned and allotted, under the direction of the President of the United States, to the tribes now living thereon, or such other tribes as the President may locate thereon, for hunting and other purposes.”

“And whereas it is further represented to us, the chiefs, braves, and headmen, of the tribes aforesaid, that it is desirable that 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 said State, until said line strikes the Missouri river, should be attached to and become a part of said State.”

In the same article the following is also found: “And willing, moreover, to give the United States a renewed evidence of our attachment and friendship, do hereby, for ourselves, and on behalf of our respective tribes, (having full power and authority to this effect,) forever cede, relinquish, and quit claim to the United States, all our right, title, and interest, of whatsoever nature, in and to 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, as hereinbefore mentioned,” &c.

H.

In a treaty concluded at Prairie du Chien, by William Clark and Willoughby Morgan, commissioners on the part of the United States, and the Sac and Fox Indians, the following may be found in the first article:

"Art. 1. The said tribes cede and relinquish to the United States forever all their right and title to the lands lying within the following boundaries, to wit: Beginning at the upper fork of the Des Moines river, and passing the sources of the Little Sioux and Floyd's rivers, to the fork of the first creek which falls into the Big Sioux, or Calumet, on the east side; thence down said creek and Calumet river to the Missouri river; thence down said Missouri river to the Missouri State line, above the Kansas; thence along said line to the northwest corner of the said State; thence to the highlands," &c.

I.

In a treaty concluded at St. Louis, June 3, 1825, between William Clark, commissioner on the part of the United States, and the chiefs of the Kansas tribe of Indians, the following is found in the first article:

"Art. 1. The Kansas do hereby cede to the United States all the lands lying within the State of Missouri, to which the said nation have title or claim; and do further cede and relinquish to the said United States all other lands which they now occupy, or to which they have title or claim, lying west of the said State of Missouri, and within the following boundaries: Beginning at the entrance of the Kansas river into the Mississippi river, from thence north to the northwest corner of the State of Missouri, from thence westwardly," &c.

J.

AN ACT to establish an additional land office in the State of Missouri.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That so much of the public lands of the United States included in the present district of St. Louis, in the State of Missouri, as lies within the following boundaries, to wit: "Beginning on the Mississippi river, between townships numbered forty-eight and forty-nine, thence west to the range line between ranges ten and eleven, thence north to the township line between townships numbered fifty-two and three, thence west to the range line between ranges thirteen and fourteen, thence north to the northern boundary line of the State of Missouri, thence east with the State line to the river Des Moines and the State line to the Mississippi river, thence with and down the Mississippi river to the place of beginning, so as to include all islands within the limits of the State of Missouri," shall be formed into a new land district, to be called "the district of Salt river;" and for the sale of public lands within the district hereby constituted, there shall be a land office established at such place within the said district as the President of the United States may designate.

Passed May 26, 1824.

K.

The first article of the constitution of the State of Missouri :

Art. 1. We do declare, establish, ratify, and confirm the following, as the permanent boundaries of said State, 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 St. Francis river ; 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 the 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' and 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."