

BOUNDARY LINE BETWEEN A PORTION OF THE INDIAN TERRITORY AND THE STATE OF TEXAS.

JANUARY 22, 1884.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. LANHAM, from the Committee on the Territories, submitted the following

REPORT:

[To accompany bill H. R. 1565.]

The Committee on the Territories, to whom was referred the bill (H. R. 1565) to authorize the appointment of a commission by the President of the United States to run and mark the boundary line between a portion of the Indian Territory and the State of Texas, in connection with a similar commission to be appointed by the State of Texas, respectfully submit the following report:

The object of the bill is the ascertainment of the dividing line between a part of the Indian Territory and the State of Texas, through the instrumentality of a commission, the results of whose investigations are to be hereafter submitted to Congress, in order to settle a question of confusion of boundary.

The legislature of the State of Texas, on the 2d May, 1882, passed an act authorizing the governor of that State to appoint a commission to act in conjunction with a similar commission on the part of the United States for the purpose stated in this bill; and it is now proposed to raise the commission on the part of the United States, and to direct its action in the premises, affording thereby an opportunity to the State of Texas to co-operate with the United States in the determination of the facts out of which the controversy arises. For more than a quarter of a century it has been contended by the State of Texas that the boundary line between a portion of the Indian Territory and that State is what is now known as the North Fork of Red River up to the degrees of longitude 100 west from London and 23 west from Washington. It is claimed by the United States that what is now known as the South Fork of Red River is the boundary. The territory lying between these two streams is that which is in dispute. It is distinctively known in Texas as Greer County, and so designated on the maps of that State. If the North Fork be the boundary, this tract of country is a part of Texas; if the South Fork be the boundary, it is a part of the Indian Territory. In extent it is approximately 2,400 square miles. The dispute has its inception in the different constructions and understandings which obtain as to the true meaning and intention of the contracting parties in the treaties between the United States and Spain of date February 22, 1819, and the United States and Mexico of date January 12, 1828, with reference to the boundary line between the different countries as therein

2 BOUNDARY LINE BETWEEN INDIAN TERRITORY AND TEXAS.

designated. So much of said treaties as is here pertinent reads as follows:

The boundary line between the two countries, west of the Mississippi, shall begin on the Gulf of Mexico at the mouth of the river Sabine, in the sea, continuing north along the western bank of that river to the 32d degree of latitude, thence by a line due north to the degree of latitude where it strikes the Rio Roxo of Nachitoches, or Red River; then following the course of the Rio Roxo westward to the degree of longitude 100 west from London and 23 from Washington. * * * The whole being as laid down in Melish's map of the United States, published at Philadelphia, improved to the first of January, 1818. (*Vide* U. S. Stat. at Large, relating to public treaties, pp. 713, 474.)

Texas was admitted into the Union upon this boundary line (27th December, 1845). The said Melish's map is now on file in the State Department, and upon it only one stream is laid down as Red River, and that is shown to be a continuous stream, without fork or tributary, until after it passes far beyond the said meridian. At the dates of said treaties, but one stream was known as Red River. Subsequent explorations have discovered the fact that there exist two streams (North and South Forks of Red River) which flow together before said degree of longitude is reached, and the point of controversy is, which of these streams is the Red River contemplated and intended by said treaty "as laid down on Melish's map?" While it is not the purpose of this committee to express any opinion as to the relative merits of the conflicting claims to this territory, or to declare in favor of the title of either party, believing as they do that the investigations of the commission to be appointed ought to be free and untrameled, still by way of formulating the nature and importance of the controversy, and emphasizing the necessity for its adjustment, it is considered not improper to submit the following statement, designed as evidentiary of the existence and magnitude of the question. For years, by the executive, legislative, and (in part) judicial authority of Texas, this territory has been claimed as being within the jurisdiction of that State.

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

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

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

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

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

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

Governor John Ireland, among other things, says:

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

By the legislature of Texas this territory has been indicated as an integral part of the State, defined and designated as Greer County

(Revised Statutes of Texas, p. 132); it has been placed in land districts (*Id.*, 548); its vacant and unappropriated public domain has been set apart, one-half for public free schools for the education of children in Texas without reference to race or color, and the other half for the payment of the State debt (Acts Sixteenth Legislature, p. 16); it has been placed in judicial districts (Acts Sixteenth Legislature, p. 28; Acts Seventeenth Legislature, page 8); it has been included in State senatorial and representative districts, and is a part of the eleventh Congressional district of that State.

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

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

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

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

This bill may be regarded in the nature of a revival of an act of Congress passed June 5, 1858 (Vol. 11, U. S. Stat. at Large, p. 311), providing for a Texas Boundary Commission, and is really no new measure. In 1854 (11th February) the legislature of Texas passed an act authorizing the appointment of a commission to co-operate with a similar commission of the United States to ascertain the identical boundary-line now sought to be discovered, and in 1858, as above stated, Congress responded to the efforts of Texas by raising the commission; but no final report has ever been made in the premises, and the matter remains to all intents and purposes as if nothing had been done. This question has received some attention from the Forty-seventh Congress. In December, 1881, a bill (No. 1715) was introduced in the House to define

the boundary between the Indian Territory and the State of Texas, the purport of which was to affirmatively settle the question without the intervention of a commission, and to relinquish all claim by the United States to the territory in dispute. The committee to whom that bill was referred, while expressing an opinion adverse to the title of Texas to the disputed territory, still say:

It is manifest, therefore, that some means should be taken to settle this dispute as soon as possible. Conflicts are arising between the United States authorities and persons claiming to exercise rights on the disputed tract under the jurisdiction of the State of Texas; bloodshed and even death has resulted from this conflict. (H. R. Report No. 1282, Forty-seventh Congress, first session.)

But, inasmuch as the claim is disputed, and that with the earnestness of belief on the part of Texas, and, inasmuch as none of the surveys referred to have been made with the privity of the State of Texas, the joint commission appointed (act June 5, 1858) having failed to act in concert, your committee are of the opinion that that State should have a hearing in the matter, and should have an opportunity to co-operate with the United States in settling the facts upon which the question in dispute rests. A substitute is reported for the appointment of a joint commission, the passage of which is recommended. (*Id.* p. 4.)

No action was had at that Congress upon the joint resolution (No. 223) which accompanied the report from which the above extracts are made.

On the 24th January, 1882, there was introduced in the Senate a bill (S. 954) creating a commission as contemplated in the bill now under consideration. It passed the Senate, but has received no final attention upon the part of the House, so far as your committee is advised. Many important considerations suggest the necessity of the passage of this bill; questions of jurisdiction, of revenue and taxation, of title to real estate, of the settlement and development of the country, of public peace, and others of kindred nature, all combine in support of this measure. The question of title to the disputed territory is pretermitted in the bill, and its object is the raising of the commission for the ascertainment of facts as a basis for the future action of Congress. Your committee, therefore, recommend that the bill with the amendment hereinafter suggested do pass, and further, that it receive the consideration of the House at the earliest possible opportunity.

AMENDMENTS.

Correct certain typographical errors in the first section of the preamble as indicated in the copy of the bill herewith submitted.

In the fifteenth line, page 2, section 1 of the bill, strike out the word "said" and insert the word "that."

In the twenty-fourth line, page 3, section 1 of the bill, strike out the word "crossing" and insert the words "running due north strikes."

In the first line, section 3, page 4 of the bill, insert in the blank space the words "Ten thousand."

In the fourth line, section 3, page 4 of the bill, between the words "act" and "provided," insert the words "the same to be expended under the direction of the Secretary of the Treasury."