

LETTER

FROM

THE GOVERNOR OF THE STATE OF MISSOURI,

TRANSMITTING

An act of the General Assembly of the State of Missouri for ascertaining and settling the northern boundary line of that State; together with a memorial of the Legislature of said State on the same subject.

JANUARY 5, 1841.

Referred to the Committee on the Judiciary, and ordered to be printed.

EXECUTIVE DEPARTMENT,
City of Jefferson, December 20, 1840.

SIR: I have the honor herewith to enclose to you a copy of an act of the General Assembly of the State of Missouri, entitled "An act for ascertaining and settling the northern boundary line of the State of Missouri," and request that you lay the same before the House over which you preside.

I am, sir, very respectfully, your obedient servant,

TH. REYNOLDS.

Hon. R. M. JOHNSON,

President of the Senate of the United States.

AN ACT for ascertaining and settling the northern boundary line of the State of Missouri.

Be it enacted by the General Assembly of the State of Missouri, as follows:

§ 1. That, for the purpose of finally and peaceably settling the northern boundary line of this State, a commissioner shall be appointed by the Governor of Missouri, by and with the consent and advice of the Senate, who, in conjunction with a commissioner who may be appointed by the President of the United States, by and with the consent and advice of the Senate of the United States, and in pursuance to an act of Congress which may be passed for that purpose, and in conjunction with a third commissioner, to be chosen by the two others, shall be authorized to decide all the points in dispute as to the true northern boundary line of this State; and to cause the said line, when ascertained, to be run and marked, and plats thereof to be returned to the offices of the Secretary of State of the United States, the Secretary of State of Missouri, and the Secretary of State of Iowa Territory: and the line so decided upon shall be the northern boundary line of this State.

Blair & Rives, printers.

§ 2. The said commissioners shall have power and authority to appoint a surveyor, and engage the necessary assistants and laborers, to enable them to ascertain and mark the said line.

§ 3. The compensation of said commissioners, and of the surveyors employed by them, shall be at the rate of eight dollars per day (if agreed to by the United States) for so many days as they shall be necessarily from home in attending to the said business; and the pay of the laborers and assistants shall be fixed by the commissioners, and paid out of the contingent fund which may be provided for that purpose.

§ 4. That the compensation and expenses of said commissioners be borne equally (if the United States agree to it) by the United States and by the State of Missouri; and that the sum of five thousand dollars, out of any money in the Treasury of the State of Missouri, be, and the same is hereby, appropriated towards paying the one-half of the compensation of the said commissioners and surveyors; to be paid to each of them, on his certificate of services, at the Treasury of the State of Missouri: and that a contingent fund of three thousand dollars be created (if the United States agree to it) for defraying the expenses of assistants and laborers, and procuring subsistence, and meeting other incidental expenses, to be placed in the hands of said commissioners: the one-half of which shall be paid to them, on their application to the Auditor and Treasurer of this State, out of any money in the Treasury not otherwise appropriated, immediately on their arrival in this State.

§ 5. That no person appointed or employed under this act shall be a citizen or inhabitant of the State of Missouri, or the Territory of Iowa.

§ 6. In the event of a vacancy, by death, resignation, or otherwise, of the commissioner appointed by the Governor of the State of Missouri, in the recess of the Senate, he shall have power to fill such vacancy.

§ 7. The Governor is hereby requested to forward copies of the foregoing law—one to the President of the Senate, and one to the Speaker of the House of Representatives, in Congress; with a request to lay them before their respective Houses.

This act to take effect from and after its passage.

STERLING PRICE,

Speaker of the House of Representatives.

M. M. MARMADUKE,

President of the Senate.

Approved December 19, 1840.

TH. REYNOLDS.

To the Senate and House of Representatives of the United States of America in Congress assembled:

Your memorialists, the General Assembly of the State of Missouri, represent to your honorable bodies: That the peace of our northern counties is interrupted by a conflict of jurisdiction growing out of the conterminous limits of this State and the Territory of Iowa; that a dispute as to the inter-territorial boundary, long since originated, has within a short time past been violently carried on between the State and Territory; that the State, claiming its territorial limits on the north to extend to a certain line, has exercised jurisdiction to that line; and the Territory, denying the claim, has re-

sisted the exercise of that jurisdiction : that the claim has been supported on one side, and resisted on the other, by military force : that the collector of revenue for the State, in the county of Clark, peaceably exercising his official duties, was interrupted and resisted under the authority of an act of Assembly of Iowa. The Governor of Iowa, in a proclamation issued by him, denied the title of this State to jurisdiction over a portion of country claimed by the State as within her boundaries ; claiming the same within the boundaries of Iowa ; authorizing the arrest and trial, before the judicial tribunals of Iowa, of all persons who shall within such portion of territory attempt to exercise any official function not granted or secured by the laws of the Territory of Iowa ; and calling upon all the citizens of Iowa to be vigilant in the detection and arrest of all such alleged offenders. The Governor of Missouri, in a counter-proclamation, insisted that the jurisdiction claimed by the Territory of Iowa was unwarranted ; that the exercise of the duties by the officers of Clark county was in conformity to the laws of Missouri, enacted after diligent examination of its title—an examination made with the full knowledge of the Territorial authorities, and in perfect accordance with the constitutional and ceded limits of the State. Instructions were also issued by the Governor of Missouri, to the civil officers of the counties of this State adjoining the northern boundary, to proceed in the discharge of their duties, and, in case of any interruption by persons claiming not to be citizens of this State, and denying its jurisdiction, to call to their aid the power of their county, and act in other respects in accordance with the laws of this State in relation to riots and unlawful assemblies. While proceeding under these instructions, and in the peaceable exercise of his legal functions, the sheriff of the county of Clark was resisted, and preparations were made for his arrest by the people of the Territory of Iowa ; he retreated, and called on the militia for support. It so happened, however, that the sheriff of Clark county was seized by an armed force while engaged peaceably in collecting the revenue in the district of country then in dispute, and carried into the Territory of Iowa, and imprisoned by its legally constituted authorities. Hostilities were begun and continued on both sides. Pending this state of war, a series of resolutions were adopted by the Territorial Council of Iowa, requesting the Executive of this State to authorize a suspension of hostilities on the part of Missouri till the first day of July last past, with the view of having the difficulty adjusted by the action of Congress. Hostilities were consequently suspended, and peace at present prevails ; while, at the same time, the Executive of this State made known to the proper authorities of Iowa that he had no authority to suspend the execution of any law, and that by his authority no suspension of the civil and military functionaries, under the laws of this State, could be allowed within its rightful limits. Such is the history of the commencement, continuance, and termination of the territorial dispute between this State and the Territory of Iowa.

From the above brief statement, the importance of the final settlement of this dispute will be apparent to your honorable bodies. This General Assembly are aware that the dispute is a matter of judicial cognizance ; that no law of Congress can take from this State, without her consent, any portion of the territory within her boundaries as defined by the constitution ; but, at the same time, they believe it competent to Congress to ratify and confirm, as the northern boundary of this State, the line which has been run under the authority of the State, and declared by an act of her Legislature to be the

true northern boundary. Your memorialists call your attention to the survey of the line made under the authority of this State.

It may be known to your honorable bodies, that by an act of the General Assembly of this State, approved 21st December, 1836, it was made the duty of the Governor, by and with the advice and consent of the Senate, to nominate and appoint the commissioners to ascertain, survey, and establish the northern boundary line of the State, and ascertain the point of the commencement and termination thereof, as the same is fixed and described by the constitution of this State, and the acts of Congress of 6th March, 1820, and 7th June, 1836. It was further made his duty to open a correspondence with the President of the United States, and with the Governor of the Territory of Wisconsin, and request the appointment of commissioners to act in conjunction with the commissioners on the part of this State, and to request the services of an engineer from the department of civil engineers of the United States, for the purposes aforesaid. The act provided that, whenever it should be known to the Governor of this State that one or both of the Governments had appointed commissioners for the purpose aforesaid, he should direct the commissioners on the part of this State to meet and act in conjunction with the commissioners appointed by the other parties. If, however, the United States and the Territory of Wisconsin should fail or refuse to appoint commissioners for the space of six months after the passage of this act, the Governor should notify the commissioners of this State of that fact, and they should immediately proceed to discharge their duties under this act.

The duties prescribed by said act, so far as the same is necessary here to be mentioned, were as follow :

1. To employ a skillful engineer, provided one should not be furnished by the United States.
2. To ascertain, by astronomical observations, the true latitude and longitude of the eastern point of termination of the north boundary line of this State in the rapids of the river Des Moines, and thence, passing west with the same parallel of latitude, to the point where the same strikes the Missouri river, to ascertain, by the same means, the true latitude and longitude of the point last aforesaid.
3. To ascertain, at the points of commencement and termination, by astronomical observation or otherwise, the true position, bearing, distance, and location of any prominent or permanent objects in the vicinity of the points aforesaid ; permanently mark the same, and all other information which may in all time to come most contribute to the certain ascertainment of the said points of commencement and termination.
4. On the first solid ground on the margin of said rivers, and at proper intervals along said line, (not to exceed five miles apart,) to cause to be erected mounds of stone or earth, at least eight feet long and five feet wide at the base, and five feet high, placed lengthwise on said line ; the line passing through the centre of same.
5. To make all necessary examination of the river Des Moines, so as to ascertain the true location of the rapids of said river.
6. To cause a map and report to be made of all the observations, measurements, surveys, and examinations made by them, with a particular note of the position and location of prominent objects, and the marks thereon, at the points of commencement and termination, or along the line ; and return the same to the Secretary of State.

By the same act, it was made the duty of the Secretary of State to lay before the General Assembly next thereafter, for its adoption or rejection, the report and proceedings of the commissioners. Pursuant to the provisions of said act of Assembly, a correspondence was opened for the appointment of commissioners and engineer with the President of the United States and the Governor of Wisconsin; but neither commissioners nor engineer were appointed to act in conjunction with the commissioners appointed on the part of the State. The survey, &c. under said act of Assembly were accordingly made in the months of July, August, September, and October, 1837, by commissioners on the part of Missouri, exclusively. The same, when finished, together with a full and minute report of their proceedings, were filed with the Secretary of State, and by him laid before the General Assembly of Missouri at its session in 1838-'9; and the line, as run and marked out by the commissioners appointed as aforesaid, was declared the northern boundary line of this State, by an act of the General Assembly, approved 11th February, 1839.

Such is the history of the survey of the northern boundary of this State, south of which the Territory of Iowa claims to exercise jurisdiction, and the State of Missouri resists the same.

Your memorialists are aware that a survey of same boundary was directed by an act of Congress approved 18th June, 1838; and they beg leave to call the attention of your honorable bodies to some facts connected with the execution thereof, if as yet executed—of which neither they nor any officer of this State has any official information, though a copy of the survey under said act of Congress has been repeatedly solicited by the Secretary of State of Missouri, from the Secretary of State of the United States; and though a map or plat thereof, with a description or survey-bill thereof appended, is directed by said act to be returned to the office of Secretary of State for the State of Missouri.

Your memorialists remark, that by the act of Congress of 18th June, 1838, the President of the United States was authorized to cause to be surveyed, ascertained, and distinctly marked, the southern boundary line of the Territory of Iowa, which divides said Territory from the State of Missouri; and for that purpose to appoint a commissioner, who should unite or act in conjunction with a commissioner to be appointed by the State of Missouri, and a commissioner to be appointed by the Governor of the Territory of Iowa, in running, marking, and ascertaining said boundary line. That by same act it was provided that, if either or both of said commissioners to be appointed on the part of the State of Missouri and Territory of Iowa should fail to attend to the aforesaid duty, after reasonable notice by the commissioner on the part of the United States; or if the State of Missouri and Governor of Iowa, or either of them, should fail to appoint such commissioners on their part, respectively, after reasonable notice from the President of the United States, then and in that case the commissioner appointed on the part of the United States should proceed to execute the duties enjoined by said act, with either of said commissioners who may attend, or without the attendance of either or both of said commissioners, as the case may be. That by same act it was provided that the line to be so run, ascertained, and marked, should not be deemed to be finally established and ratified by the United States, until the map or plat and description aforesaid, and also the said report of commissioners, should be submitted to, and the boundary, as thus ascertained and marked, approved and ratified by the Congress of the United States.

The Legislature of Missouri was not in session at the time of the passage of said act of Congress, and did not sit till the third Monday of November following; and in the mean time its Executive had no authority to appoint a commissioner on the part of this State. On the 28th June, 1838, the Secretary of State for the United States advised the Governor of Missouri of the appointment of a commissioner on the part of the United States, under said act, accompanying his advice with a copy of the act of Congress; to which the Governor of Missouri replied, that the General Assembly of Missouri, on the 21st December, 1836, passed an act to cause the northern boundary of the State to be surveyed and marked out, and detailed in part the provisions of same act, and the proceedings under it, and informed the President of the completion of the survey; that he had no power to appoint a commissioner to co-operate with the commissioner of the United States, under said act of Congress; and asked the survey to be postponed till the meeting of the General Assembly in November, 1838. It may be here observed, that the action theretofore had by the authorities of this State on the subject had not been noticed, either in the act or the communication of the Secretary of State for the United States. What has been done on the part of the United States, and the commissioners on the part of the Territory of Iowa, of whose appointment the Governor of Missouri was officially advised, no official information has been given to this State, except what is contained in a letter from the commissioner on the part of the United States, dated 7th December, 1838, wherein he informs the Executive of this State "that the unavoidable delays and the early winter had prevented him from ascertaining all the facts necessary to so full a report as he intended; that he should make to the Secretary of State of the United States a report of his proceedings in the premises, as far as he had gone, and of such information as he had already collected." In the same letter he states* that he had intended to ascertain all the local facts bearing upon the just determination of the line in question, and report fully on the subject to the Secretary of State of the United States; and concludes by expressing his opinion, "that it is probable that Congress would provide for the continuance of the survey of the line, according to the provisions of the act of 18th June, 1838, but it is not for him to say what will be the future action of the Government on the subject."

This General Assembly do therefore remonstrate against the ratification, by Congress, of the survey under the act of Congress of 18th June, 1838—seeing that it was done without any co-operation on the part of this State; that it was incomplete, and acknowledged so to be by the commissioner on the part of the United States; and that no map of the same has ever been furnished to this State, as required by said act of Congress.

Your memorialists will now call the attention of your honorable bodies to the grounds whereon they base the correctness of the survey made under their authority.

The act of Congress of 6th March, 1820, authorizing the people of the Territory of Missouri to form a constitution and State government, provides that the inhabitants of that portion of the Territory included within the boundaries thereafter designated, be, and they are thereby, authorized to form for themselves a constitution and a State government, and that said State shall consist of all the territory included within these boundaries, to wit: "Beginning in the middle of the Mississippi river, on the parallel of thirty-six degrees of north latitude; thence, west, along that parallel of latitude, to the St. François river; thence up, and following the course

of that river, in the middle of the main channel thereof, to the parallel of latitude 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 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; 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;" provided the said State shall ratify the boundaries aforesaid. Under this act of Congress, the constitution of Missouri was ordained and established. The people of Missouri, convened by and under this act, declared, established, ratified, and confirmed 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 the St. François river; thence, up and following the course of that river, in the middle of the main channel thereof, to the parallel of latitude 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 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."

Critically examining the boundaries as specified in the act of Congress and in the constitution, verbal discrepancies will be found. Instead of the word "that" next after the words "thence along" in the act, the words used in the constitution are "the said;" the word "to" in the phrase "making the said line to correspond" as it reads in the act, and the word "and" in the phrase "thence down and along the middle of the main channel of the said river Des Moines," as it reads in the act, are omitted in the constitution.

It is not perceived that these discrepancies make any difference in the boundaries as prescribed in the acts of Congress and in the constitution. If they did, any uncertainty arising therefrom is obviated by the resolution of Congress of 2d March, 1821, providing for the admission of the State of Missouri into the Union on a certain condition; the solemn public act of the General Assembly, approved 26th June, 1821, declaring the assent of this State to the fundamental condition contained in said resolution; and the proclamation of the President of the United States, dated 10th August, 1821,

announcing the fact that the State of Missouri had assented to the fundamental condition required by the resolution aforesaid.

In virtue of these, Missouri was admitted into the Union, with the boundaries prescribed in the constitution. With these boundaries the State of Missouri came into being, and exists a free and independent republic; and no authority, Territorial, State, or Federal, can constitutionally curtail or limit them. Whatever may have been the subsequent legislation of Congress, in establishing the boundaries of the Territories of Wisconsin and Iowa, it cannot change the boundaries of Missouri established by the constitution. But the acts of Congress of 20th April, 1836, establishing the former, and of 12th April, 1838, establishing the latter Territory, do not interfere therewith. In each act, the northern boundary of Missouri is called for as a boundary of those Territories respectively. The northern boundary of Missouri is, in fact, the southern boundary of Iowa. What, then, is the northern boundary of Missouri? The only authoritative evidence of that northern boundary is the description thereof in the constitution of this State. Much extrinsic matter has been invoked to aid in the construction of that instrument, distorting its plain import, and rendering uncertain what was and is plain and unambiguous. Without adverting to or arguing upon the plain import of the words, Indian treaties, maps, surveys, and acts of Congress have been pressed into service to obscure and confound.

It is the first rule of construction, not to construe that which has no need of construction. In other words: where the words are plain, and the intention obvious, no rules of construction apply. The words of the constitution upon which the dispute in part arises, are: "thence, from the point aforesaid, (that is, the point where the parallel of latitude of thirty-six degrees and thirty minutes 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,) 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." A meridian line is any north and south line; the meridian line here intended as the western boundary is the north and south line passing through the middle of the mouth of the Kansas river. It is added, "making the said line correspond with the Indian boundary line;" that is, the meridian line to correspond. If there is an Indian boundary line passing north and south through the middle of the mouth of the Kansas river, all the words used in the description of the western boundary are satisfied: the meridian line and the Indian boundary line correspond; they are one and the same, so far as both extend; that is, they both agree. If, however, there be no Indian boundary line, there can be no correspondence between the "meridian line" and "the Indian boundary line;" that is, there can be no agreement or correspondence between what is and what is not. Yet, in such case, it will not be pretended that Missouri has no western boundary; and such must be the reasoning, if it is necessary to have the meridian line to correspond with an Indian boundary line. To avoid any such absurdity, whatever is known stands; and what is unknown, is rejected as unmeaning and void. Suppose another case: that there is an Indian boundary line passing through the middle of the mouth of the Kansas river, but, instead of passing in a direction north and south, it passes at an angle of forty-five degrees: it is evident that no correspondence can exist between a north and south line, and a line

crossing the former obliquely in the degree mentioned ; and if not, what is to be done in such case ? It is clear that the southwest corner of the State is ascertained by the intersection of the parallel of latitude of thirty-six degrees and thirty minutes with the meridian (or north and south) line which passes through the middle of the mouth of the Kansas river, where the same empties into the Missouri river. This, then, being the corner from which starts the western boundary of the State, how can you ever ascertain it, if the "meridian line" and "the Indian boundary line" are to correspond ? It is impossible. In such case, the law requires no impossibility ; the meridian line is the western boundary of the State, though it may not correspond with the Indian boundary line. Again : if this Indian boundary line is a north and south line, but, instead of passing through the middle of the mouth of the Kansas river, passes across the Kansas river ten miles, or more or less, above its mouth ; what is the consequence ? The western boundary is to begin at the point above mentioned, and is to run north ; hence a correspondence between the "meridian line" and "the Indian boundary line" is impossible, unless by correspondence be meant running parallel ; and as the point of beginning, or the "meridian line," is ascertained and fixed, the correspondence is to be rejected as an impossibility, and the "meridian line" becomes the western boundary. From this view of the correspondence required in the constitution, it is evident that there was understood to be an Indian boundary line running north and south through the middle of the mouth of the Kansas river, existing antecedently to the act of Congress of 6th March, 1820 ; and if it did not run north and south through the middle of the mouth of the Kansas river, then Congress was misled or mistaken, and the words "making the said line correspond with the Indian boundary line" must be rejected as vain and impossible.

It is said by the Executive of Iowa, that the expression "making the said line correspond with the Indian boundary line" was used as a qualifying expression, and intended to control the parallel of latitude that forms the northern boundary of Missouri. This is mere assertion—an assumption without argument, and against the words of the constitution. The words are, "making the said line correspond with the Indian boundary line ;" and no line had previously been spoken of, but the meridian line : hence it is evident, if words are to be received in their usual import, that the line to be made to correspond with the Indian boundary line, was the meridian line, or the western boundary of the State, and not the parallel of latitude forming the northern boundary ; and in proof of this is the history of the country, that there was an Indian boundary line passing north and south through the middle of the mouth of the Kansas river. Having disposed of the western boundary, and showed the application of the words "making the said line correspond with the Indian boundary line," we proceed to examine the remaining words which give rise to the dispute, and, in doing so, to fix the northern boundary.

The northern boundary begins at the point of intersection of the parallel of latitude which passes through the rapids of the river Des Moines with the meridian line passing through the middle of the mouth of the Kansas river, or the western boundary as above mentioned, and runs "thence, east, from the point of intersection last aforesaid, along the said parallel of latitude, (the parallel of latitude which passes through the rapids of the river Des Moines,) to the middle of the channel of the main fork of the said river Des Moines." The first inquiry here is, what is meant by the "rapids of the

river Des Moines?" The words are plain; and, where that is the case, construction is unnecessary, and cannot on sound principles of logic be allowed. We ascertain their meaning by the obvious import of the words. "The rapids of the river Des Moines," is a phrase as significantly expressing the rapids in the river Des Moines, as the phrases "the falls of the river Potomac," "the falls of the river Niagara," do the falls in the rivers Potomac and Niagara, respectively. To resist this obvious meaning, we are told there are rapids in the Mississippi called the Des Moines rapids. The Des Moines rapids, and the rapids of the river Des Moines, are different phrases. If the former had been used in the constitution, proof of the fact that there were rapids in the Mississippi called the Des Moines rapids would raise a latent ambiguity; and then it would be necessary to show by evidence which rapids were intended—the rapids of that name found in the Mississippi, or those found in the Des Moines. It however happens that this is not the phrase. That used is unambiguous, and expresses, as strongly and plainly as language can convey, the idea of the rapids existing in the river Des Moines. If the effort were made to express this idea in the most unequivocal language, no phrase more appropriate (considering the instrument wherein the same is inserted) could be used. If, however, we look at facts extrinsic to the constitution, to ascertain what was thereby intended, the letter of the Hon. John Scott, delegate in Congress from the Territory of Missouri at the time of the passage of the act of 6th March, 1820, who draughted the same, and member of the convention which framed the constitution; and the letter of Gen. William Milburn, Surveyor General of the United States for the States of Missouri and Illinois, who, at the time of framing the constitution of Missouri, was a clerk in the office of William Rector, Surveyor General of the United States for the Territories of Missouri and Illinois, and under the direction of same, (who was also a member of the convention, and made the map which was used by the convention in defining the boundaries of the State,) conclusively fix the construction to be given to the phrase "the rapids of the river Des Moines." These letters show that thereby was intended the rapids in the river Des Moines. (The letters are to be found in Executive Document number 128, of 3d session of 25th Congress.) The writers agree in the fact, that the rapids situate in the river Des Moines were then known, and were the rapids contemplated and intended by the convention in describing the northern boundary; and give reasons and state circumstances which preclude all cavil, and leave not a loop to hang a doubt upon. The letter first mentioned also shows that the correspondence meant in the act of Congress, and the constitution, was between the western boundary of the State and the Indian boundary line, so far as the latter extended north; and the letter last mentioned is express, that in the map made by the writer, for the use of the convention, the northern boundary of the State was represented as running some distance north of the Indian boundary line run by Colonel John C. Sullivan, and as striking the rapids in the river Des Moines. It is further said (at least was said, previous to its falsehood being ascertained by actual examination) that there were no rapids in the river Des Moines. To this point, hear what the engineer who, with the commissioners, ran the northern boundary under the authority of the State, says:

"At the rapids in the Des Moines river, at the big bend, a little below the town of Van Buren, on the night of 10th August, 1837, observed the north star, for variation of the needle," &c.

"On the 12th August, 1837, at the rapids at the village of Openoose's band of Indians, on the river Des Moines, observed, for ascertaining the index error of the instrument, the sun's diameter," &c.

"14th August, 1837, levelled a space of about twelve or fifteen chains, at the rapids of the big bend in Des Moines river, just below the town of Van Buren."

"These levels are taken on the left bank of the river, where the fall is least abrupt; on the right bank the fall is shorter."

"Hence I run square to the left, into a line that, being run east, will pass through the middle of the rapids, to wit: south, 2.54 chains to a point on the left bank of the river Des Moines, from which a line run east will pass through the middle of the rapids here in said river," &c.

"I now returned to the post set on the right bank of the river, at the southeast end of the bar, at the rapids; thence, to a point on the right bank of the river, east of the point on the left bank of the river, being the continuation east of the line which passes through the middle of the rapids."

To the same point, hear what the commissioners say:

"We proceeded in the latter part of July, 1837, and during part of the month of August following, to make the necessary examination to ascertain the true location of the rapids of the Des Moines river, first by going to the point on said river which seemed to be known and called by the inhabitants of that region of country as the rapids of the Des Moines river; from thence we travelled across the country, up said river, passing Keokuck's village, to the Openoose village of Indians, a distance of sixty or seventy miles, where we found and examined rapids in the said river; we then procured a canoe of the Indians, in which we descended the river to its junction with the Mississippi river, passing another rapid a few miles above Keokuck's village; and after having carefully examined the river, and finding nothing therein below the rapids first named, deserving the appellation of rapids, and none, in the whole distance examined by us, so plainly and distinctly marked as the first mentioned, and being also the first rapid in the river Des Moines above the mouth of the same, the commissioners unanimously came to the conclusion that the rapids above named was the point in said river intended by the constitution, and the several acts of Congress in relation thereto; at which place we ascertained, by astronomical observation, the latitude to be 40 degrees 44 minutes 6 seconds; on which parallel of latitude we run, measured, and marked the line from the said Des Moines river, west to the Mississippi river, and making the whole distance two hundred and three miles thirty-two chains and forty links from the Des Moines river to the Missouri river; and found the longitude at the east end to be 90 degrees 46 minutes 40 seconds, at the west end 95 degrees 39 minutes 13 seconds west of Greenwich. All which will appear in the report, field notes, and map of said northern boundary."

We now return to the construction of the words defining the north boundary of the State. To ascertain the western beginning of this line, we must determine the point where the western boundary or meridian line, passing through the middle of the mouth of the Kansas river, is intersected by the parallel of latitude which passes through the rapids of the river Des Moines. The rapids are ascertained; the parallel of latitude passing through them is also ascertained, and found to be 40 degrees 44 minutes 6 seconds. Wherever, then, this parallel of latitude intersects the meridian line or western boundary, there is the northwestern corner of Missouri, as defined by the

constitution, or the point whence is to be extended eastward the north boundary of the State. The words of the constitution are, "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 fact of the existence of rapids in the river Des Moines, and the parallel of latitude passing through them, ascertained, should, it would seem, remove all uncertainty. It is, however, said that this parallel of latitude must correspond with an Indian boundary line, which it is said is known to run east and west in the neighborhood of that parallel of latitude. We have before endeavored to show that the correspondence contemplated is between the meridian line and the Indian boundary line, running north and south, and said to pass through the mouth of the Kansas river.

Grant that there is an Indian boundary line running east and west, in the neighborhood of that parallel of latitude, and surveyed prior to the 6th March, 1820, and that the correspondence contemplated is between it and the parallel of latitude passing through the rapids of the river Des Moines;—to state the proposition more clearly: suppose the northern boundary was thus defined in the constitution, "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, making the said parallel to correspond with the Indian boundary line." Following the example of the Executive of Iowa, we consult Webster's Dictionary, and find the meaning of the word "correspond" to be, 'to suit,' 'to answer,' 'to agree,' 'to fit,' 'to be congruous,' 'to be adapted to.' If, then, the parallel of latitude passing through the rapids of the river Des Moines, does not suit or answer to the Indian boundary line—does not agree with, or fit it, and is not congruous or adapted to it—which is to prevail: the parallel of latitude, or Indian boundary line? Their want of correspondence is the cause of dispute; and this, upon the supposition that the constitution contemplates and requires their correspondence. The Indian boundary line is found upon survey to be distant, (due south of the parallel of latitude passing through the rapids of the river Des Moines, and at the point where the said parallel passes through the rapids,) eight miles sixty-three chains and twenty links; and at the west end of that line to be distant due south of same parallel eleven miles. These facts demonstrate the impossibility of making the parallel of latitude passing through the rapids of the river Des Moines, and the Indian boundary line, to correspond. It is an impossibility—as much so as to make two parallel lines meet. The parallel of latitude in no sense corresponds with the Indian boundary line; it neither suits it, answers to it, agrees with it, fits it, is congruous to it, nor adapted to it; the former and the latter, both, cannot be the northern boundary; they do not, and never can, in any sense, be made to correspond; if extended, they cross each obliquely. Legislate as much as you please, no legislation can reconcile contrarieties. The point of the beginning of the northern boundary is fixed; it is ascertained by the intersection of the parallel of latitude passing through the rapids of the river Des Moines, and the meridian line or western boundary: thus determined, the northern boundary runs "thence, east, along the said parallel of latitude," &c. This is plain and intelligible; and it is not until it is assumed that the parallel of latitude is to correspond with the Indian boundary line, that any difficulty arises. This correspondence does not and cannot be made to exist. The parallel of latitude is given as the boundary in the constitution; and then it is added, "making it correspond with the Indian boundary line;"

which is impossible. And as the law does not require impossibilities, the parallel of latitude remains the northern boundary, and the impossible requisition is rejected.

Your memorialists, having pointed out the propriety of some action on this subject, having given the survey of the northern boundary of the State, detailed the circumstances attending its actual execution, and presented a view of the reasons in favor of the line being fixed as it has been surveyed, pray your honorable bodies to pass a law declaring the northern boundary between Missouri and Iowa to be as ascertained by the survey made under the authority of this State, and as it has been recognised and established by the act of the General Assembly of this State approved 11th February, 1839.

Resolved by the General Assembly of the State of Missouri, That the foregoing memorial be forwarded to the representation of this State, in Congress, to be by them laid before the Congress of the United States ; and that a copy of the report of the commissioners on the northern boundary, of the map of the same, of the field notes of the engineer who surveyed the same, and of the acts of the General Assembly of 21st December, 1836, under which the survey of the northern boundary was made, and of 11th February, 1839, establishing said boundary, accompany said memorial, and, with it, be laid before the same body.