

Supreme Court, U.S.

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No. 106, Original

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A.D., 1986

STATE OF ILLINOIS,

Plaintiff,

v.

COMMONWEALTH OF KENTUCKY,

Defendant.

1. MOTION FOR LEAVE TO FILE COMPLAINT.
2. COMPLAINT.
3. BRIEF IN SUPPORT OF MOTION FOR LEAVE TO
FILE COMPLAINT.

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**IN THE
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OCTOBER TERM, A.D., 1986

STATE OF ILLINOIS,

Plaintiff,

v.

COMMONWEALTH OF KENTUCKY,

Defendant.

MOTION FOR LEAVE TO FILE COMPLAINT

The State of Illinois, by its Attorney General, Neil F. Hartigan, respectfully asks leave of the Court to file its complaint against the Commonwealth of Kentucky, submitted herewith.

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No. , Original

**IN THE
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OCTOBER TERM, A.D., 1986

STATE OF ILLINOIS,

Plaintiff,

v.

COMMONWEALTH OF KENTUCKY,

Defendant.

COMPLAINT

The State of Illinois, by its Attorney General, Neil F. Hartigan, brings this suit against the Commonwealth of Kentucky, and for its cause of action states:

I.

The Jurisdiction of this Court is invoked under Article III, Section 2, Clause 2, of the Constitution of the United States and Section 1251(a), Title 28, United States Code.

II.

Plaintiff, the State of Illinois, was admitted to the Union on December 3, 1818 and has been from that day to the present a State of the United States.

III.

Defendant, the Commonwealth of Kentucky, was admitted

to the Union on June 1, 1792 and has been from that day to the present a State of the United States.

IV.

The State of Illinois and the Commonwealth of Kentucky were formed from territory originally claimed by the Commonwealth of Virginia.

V.

On December 20, 1783, the legislature of Virginia passed "An Act to authorize the delegates of this State in Congress to convey to the United States, in Congress assembled, all the rights of the Commonwealth to the territory northwestward of the river Ohio." XI Hening's Va. St. at Large, 326.

VI.

Pursuant to this Act, the Virginia delegates in Congress executed a formal Deed of Cession on March 1, 1784, transferring to the United States all the right, title and claim which Virginia had to the territory "situate, lying and being to the northwest of the river Ohio" (XI Hening's Va. St. at Large, 571), which transfer is known as the Cession of Virginia.

VII.

Pursuant to "An Act to enable the people of the Illinois territory to form a constitution and state government, and for the admission of such state into the Union on an equal footing with the original states" [the Illinois Enabling Act], enacted by Congress on April 18, 1818 (3 Stat. 428 (1818)), Plaintiff, the State of Illinois, was created from part of the territory ceded to the United States by Virginia.

VIII.

Pursuant to the Illinois Enabling Act, the boundary between the State of Illinois and the Commonwealth of Kentucky is a line running from the confluence of the Mississippi river and

the Ohio river, "up the latter river, along its north-western shore, to the [mouth of the Wabash River]."

IX.

The Commonwealth of Kentucky was created by the separation of the district of Kentucky from the Commonwealth of Virginia as authorized in "An Act concerning the erection of the district of Kentucky into an independent state" (XIII Hening's Va. St. at Large, 19), passed by the Virginia legislature on December 18, 1789. This Act is known as the Virginia-Kentucky Compact.

X.

The Commonwealth of Kentucky, upon becoming a State, acquired no greater territorial rights along the Ohio river than those retained by Virginia between the Cession of Virginia and June 1, 1792, the date of Kentucky's admission to the Union.

XI.

The northern boundary of the Commonwealth of Kentucky, as established from the Cession of Virginia, the Virginia-Kentucky Compact and decisions of this Court, is the low-water mark on the northerly shore of the Ohio river as it existed in 1792.

XII.

During this century dams have been constructed in the Ohio river which have permanently raised the level of the river above its level in 1792.

XIII.

As a result of the raising of the level of the Ohio river, the present low-water mark on the northerly side of the river is farther north than the 1792 low-water mark.

XIV.

Plaintiff, the State of Illinois, asserts that its boundary with

the Commonwealth of Kentucky follows the 1792 low-water mark on the northerly side of the Ohio river.

XV.

The Commonwealth of Kentucky, through the acts and statements of its officials, claims that Kentucky's boundary with Illinois is along the present low-water mark on the northerly shore of the Ohio river, rather than the 1792 low-water mark.

XVI.

By claiming the present low-water mark as its boundary with Illinois, Kentucky seeks to exercise sovereignty over territory to the north of the 1792 low-water mark, which territory Illinois asserts is within its boundaries.

XVII.

The assertion of jurisdiction by the Commonwealth of Kentucky over territory north of the 1792 low-water mark is a direct infringement upon the sovereignty of the State of Illinois.

XVIII.

Plaintiff, the State of Illinois, has no adequate remedy at law and the questions of sovereignty and jurisdiction herein presented have not been resolved by this Court between the State of Illinois and the Commonwealth of Kentucky.

WHEREFORE, Plaintiff, the State of Illinois, prays that the Commonwealth of Kentucky be required to answer the matters herein set forth and that, upon a final hearing on the merits, this Court enter an order and decree:

1. Declaring the boundary line between the State of Illinois and the Commonwealth of Kentucky to be the low-water mark on the northerly shore of the Ohio River as it existed in 1792;
2. Perpetually enjoining the Defendant from disturbing in any manner the State of Illinois or its citizens from the peaceful

use, and enjoyment of all land, water and jurisdiction within the boundaries of Illinois as established by the Court; and

3. Granting such other relief as this Court may deem just and proper.

/s/ Robert V. Shuff
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July 21, 1986

No. , Original

**IN THE
SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM, A.D., 1986

STATE OF ILLINOIS,

Plaintiff,

v.

COMMONWEALTH OF KENTUCKY,

Defendant.

**BRIEF IN SUPPORT OF MOTION FOR
LEAVE TO FILE COMPLAINT**

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QUESTIONS PRESENTED

1. Does a dispute between two States of the United States over their mutual boundary present a justiciable case or controversy for this Court?
2. What is the boundary line between the State of Illinois and the Commonwealth of Kentucky?

No. , Original

**IN THE
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OCTOBER TERM, A.D., 1986

STATE OF ILLINOIS,

Plaintiff,

v.

COMMONWEALTH OF KENTUCKY,

Defendant.

**BRIEF IN SUPPORT OF MOTION FOR
LEAVE TO FILE COMPLAINT**

JURISDICTION

The jurisdiction of this Court is invoked under Article III, Section 2, Clause 2 of the Constitution of the United States and under Title 28, United States Code, Section 1251(a).

**CONSTITUTIONAL PROVISIONS AND
STATUTES INVOLVED**

U.S. Const., art. III, § 2, cl. 2.

In all cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the Supreme Court shall have original Jurisdiction.

28 U.S.C. 1251(a). Original Jurisdiction.

The Supreme Court shall have original and exclusive jurisdiction of all controversies between two or more States.

XI Hening's Va. St. at Large 326. Cession of Virginia.*

XI Hening's Va. St. at Large 571. Deed of Cession.*

3 Stat. 428 (1818). Illinois Enabling Act.*

XIII Hening's Va. St. at Large 19. Virginia-Kentucky Compact.*

* The text of these provisions may be found in the Appendix to this Brief.

STATEMENT

This is a suit under the Court's original and exclusive jurisdiction seeking to resolve a dispute between the State of Illinois and the Commonwealth of Kentucky as to the location of their mutual boundary along the Ohio river.

The State of Illinois and the Commonwealth of Kentucky were created from territory originally claimed by the Commonwealth of Virginia. During the Revolutionary War, a dispute arose over the claims made by various states to the vast areas of unsettled land in the west, including that claimed by Virginia north and west of the Ohio river. In order to resolve the matter, Congress, in 1780, passed a resolution urging the various claimants to these western lands to relinquish to the United States any claim they might have.

In response to this request, the legislature of Virginia, on December 20, 1783, authorized the cession to the United States of its claim to all territory "situate, lying and being, to the northwest of the river Ohio." This transfer, known as the Cession of Virginia,¹ was formalized by a Deed of Cession ex-

1. "An Act to authorize the delegates of this State in Congress to convey to the United States, in Congress assembled, all the rights of the Commonwealth to the territory northwestward of the river Ohio." XI Hening's Va. St. at Large, 326.

cuted by Virginia's delegation to Congress on March 1, 1784. XI Hening's Va. St. at Large, 571.

Pursuant to the Illinois Enabling Act, enacted by Congress on April 18, 1818,² Plaintiff, the State of Illinois, was formed from part of the territory ceded by Virginia. According to the terms of the Illinois Enabling Act, Illinois' boundary with Kentucky was to run along the "north-western shore" of the Ohio river.

The Commonwealth of Kentucky was created from the District of Kentucky, a portion of the territory retained by Virginia after the Cession of Virginia. The formation of the new state was originally authorized by the Virginia-Kentucky Compact, passed by the Virginia legislature on December 18, 1789.³ In admitting Kentucky to the Union, Congress adopted as its boundaries those of the district of Kentucky as they existed on December 18, 1789. (See 1 Stat. 189 (1791)). Therefore, Kentucky's northern boundary is the Ohio river, that being the northern boundary of the territory retained by Virginia after its cession of 1784 and the northern boundary of the district of Kentucky as it existed on December 18, 1789.

The State of Illinois asserts that its boundary with the Commonwealth of Kentucky, as has been determined with respect to the other States bordering Kentucky to the north, is the low-water mark on the northerly shore of the Ohio river as it existed at the time of Kentucky's admission to the Union in 1792. The Commonwealth of Kentucky, however, claims that the boundary is the present low-water mark on the northerly shore of the Ohio river.

During the course of this century, dams have been constructed on the Ohio river which have caused the level of the

2. "An Act to enable the people of the Illinois territory to form a constitution and state government, and for the admission of such State into the Union on an equal footing with the original states." 3 Stat. 428 (1818).

3. "An Act concerning the erection of the district of Kentucky into an independent state." XIII Hening's Va. St. at Large, 19.

river to rise significantly over the level of the river in 1792. As a result, the northerly low-water mark of 1792 has been submerged and the present low-water mark is to the north of the 1792 low-water mark.

The Commonwealth of Kentucky by the actions of its officials and employees has sought to assert the present low-water mark as its boundary with Illinois. For example, Kentucky has attempted to require all Illinois residents who desire to fish in the Ohio river to obtain Kentucky fishing licenses, regardless of whether they are fishing to the north or south of the 1792 low-water mark. Further, Kentucky wardens have ignored even the present low-water mark by seeking to enforce the hunting and fishing laws of Kentucky up to the northerly shore, regardless of the river's level.

Similarly, Kentucky has attempted to require all Illinois residents who own boats docked along the northerly shore of the Ohio river to have Kentucky boating licenses, without reference to the location of such boats vis-a-vis the 1792 low-water mark.

Kentucky by claiming and asserting jurisdiction up to the present low-water mark and beyond has sought to divest Illinois of territory properly belonging within its boundaries. Furthermore, Kentucky's attempted exercise of police, regulatory and taxing powers over the area to the north of the 1792 low-water mark is a direct denial of the sovereign rights of the State of Illinois over its own territory.

SUMMARY OF ARGUMENT

1. A justiciable "case" involving a State exists for purposes of Article III, Section 2, clause 2 of the United States Constitution if the complaining State has suffered a wrong at the hands of a second State or asserts a right against another State which furnishes grounds for judicial relief under accepted principles of common law or equity. *Massachusetts v. Missouri*, 308 U.S.

1, 15, 60 S. Ct. 39, 84 L. Ed. 3 (1939). A boundary dispute between States presents such a case requiring the exercise of the Court's original jurisdiction. *Rhode Island v. Massachusetts*, 37 U.S. 657, 9 L. Ed. 1233 (1838).

2. The boundary line between the State of Illinois and the Commonwealth of Kentucky is the low-water mark on the northerly shore of the Ohio river as it existed in 1792, upon Kentucky's admission to the Union. This has been clearly established by prior decisions of this Court in *Handly's Lessee v. Anthony*, 18 U.S. 374, 5 L. Ed. 113 (1820), *Indiana v. Kentucky*, 136 U.S. 479, 10 S. Ct. 1051, 34 L. Ed. 329 (1890), and *Ohio v. Kentucky*, 444 U.S. 335, 100 S. Ct. 588, 62 L. Ed. 2d 530 (1980).

The State of Illinois takes the position that the same reasoning which led this Court to find Kentucky's boundary with Indiana and Ohio to be the 1792 low-water mark is equally applicable to the determination of its boundary with Illinois. In this regard, Illinois notes that the Court in *Ohio v. Kentucky*, 444 U.S. at 339 rejected Kentucky's argument that the Court's earlier adoption of the 1792 low-water mark in *Indiana v. Kentucky* did not support the selection of the same boundary between Kentucky and Ohio.

ARGUMENT

I.

THE BOUNDARY DISPUTE BETWEEN ILLINOIS AND KENTUCKY PRESENTS A JUSTICIABLE CASE OR CONTROVERSY REQUIRING THE EXERCISE OF THE COURT'S ORIGINAL JURISDICTION.

The language of Article III, Section 2, Clause 2 of the Constitution of the United States gives original jurisdiction to this Court "In all cases * * * in which a State shall be a Party * * *." In order to determine if a particular dispute constitutes a justiciable "case" within the meaning of the Constitution, the Court has found that the complaining State must suffer an apparent

wrong as a result of the second State's action which furnishes grounds for judicial redress or that it asserts a judicially enforceable right under accepted principles of common law or equity. *Massachusetts v. Missouri*, 308 U.S. 1, 15, 60 S. Ct. 39, 84 L. Ed. 3 (1939).

Plaintiff, the State of Illinois, submits that a boundary dispute such as that involved in this case is, without doubt, a Constitutionally justiciable "case" between States, requiring the exercise of the Court's original jurisdiction. Indeed, there has been no serious doubt on this score since the Court first addressed this question in *Rhode Island v. Massachusetts*, 37 U.S. 657, 9 L. Ed. 1233 (1838).

The Court undertook a lengthy jurisdictional analysis in that case, concentrating on the derivation of the judicial power under the Constitution in conjunction with a discussion of those attributes of sovereignty retained and surrendered by the States under the Constitution. 37 U.S. at 720-731. The Court noted that the power to resolve a boundary dispute in the manner normally available to sovereigns had been surrendered by the States and concluded that an original action before this Court was the only Constitutional means available for legally resolving such a dispute between States. 37 U.S. at 726.

In the case at bar, Plaintiff, the State of Illinois, relying on the decisions of this Court, asserts that its boundary with Defendant, the Commonwealth of Kentucky, is the 1792 low-water mark on the northerly shore of the Ohio river. Defendant, the Commonwealth of Kentucky, claims the present low-water mark, despite the decisions of this Court.

Plaintiff, therefore, submits that a boundary dispute clearly exists between the parties and the case and can only be resolved by the exercise of this Court's original jurisdiction.

II.

THE BOUNDARY BETWEEN ILLINOIS AND KENTUCKY IS THE LOW-WATER MARK ON THE NORTHERLY SHORE OF THE OHIO RIVER AS IT EXISTED IN 1792.

The first case in which this Court dealt with the issue of Kentucky's northern boundary was *Handly's Lessee v. Anthony*, 18 U.S. 374, 5 L. Ed. 113 (1820). In that case Chief Justice Marshall first recognized that the Ohio river boundary between Kentucky and its northerly neighbors was not a usual river boundary between States, involving the so-called thalweg doctrine and the principles of accretion and avulsion. (See e.g., *Nebraska v. Iowa*, 143 U.S. 359, 12 S. Ct. 396, 36 L. Ed. 186 (1892)). In his opinion, Chief Justice Marshall stated:

“When a great river is the boundary between two nations or states, if the original property is in neither, and there be no convention respecting it, each holds to the middle of the stream. But when, as in this case, one State is the original proprietor, and grants the territory on one side only, it retains the river within its own domain, and the newly-created State extends to the river only. The river, however, is its boundary.” 18 U.S. at 379.

Since Virginia had claimed title to the territory on both sides of the Ohio river, the Court concluded that, when Virginia ceded the area to the northwest of the river, it retained the river up to the northerly low-water mark within its domain.

The first original action between States involving Kentucky's Ohio river boundary was *Indiana v. Kentucky*, 136 U.S. 479, 10 S. Ct. 1051, 34 L. Ed. 329 (1890). Interestingly, it was Kentucky in that case which took the position being espoused by Illinois in the present controversy: that Kentucky's boundary along the Ohio river is the low-water mark as of the date of its admission to the Union in 1792.

At issue in *Indiana v. Kentucky* was ownership of an island

which at the time of litigation was located north of the low-water mark on the north shore of the Ohio river. The Court examined in great detail the legislative actions which ultimately led to the creation of the Commonwealth of Kentucky and the State of Indiana, as well as its own earlier decision in *Handly's Lessee v. Anthony* and the decisions following that case. The Court concluded from this authority that:

“If when Kentucky became a State on the 1st of June, 1792, the waters of the Ohio River ran between that tract, known as Green River Island, and the main body of the State of Indiana, her [Kentucky's] right to it follows from the fact that her jurisdiction extended at that time to low-water mark on the northwest side of the river. She succeeded to the ancient right and possession of Virginia, and they could not be affected by any subsequent change of the Ohio River * * * Her domain and jurisdiction continue as they existed at the time she was admitted into the Union, unaffected by the action of the forces of nature upon the course of the river.” 136 U.S. at 508.

Thus, the 1792 low-water mark was adopted as Kentucky's border to the north, and the Court concluded that Green River Island belonged to Kentucky since it was south of the 1792 low-water mark.

The latest case in this Court addressing the issue of Kentucky's Ohio river boundary is the recent decision in *Ohio v. Kentucky*, 444 U.S. 335, 100 S. Ct. 588, 62 L. Ed. 2d 530 (1980). In that case, Kentucky repudiated the stance it had taken in *Indiana v. Kentucky* and instead argued that the present low-water mark constituted its boundary along the Ohio. The practical reason for this turnabout is easily discerned.

Subsequent to the decision in *Indiana v. Kentucky* a series of dams were built along the Ohio which had the effect of raising the general level of the river — and necessarily the low-water mark — considerably. Thus, by arguing for the present low-water mark, Kentucky was arguing for a decision that her boundary should be advanced northward at the expense of

Ohio and, implicitly, the other two States bordering Kentucky along the Ohio river.

In the effort to sustain its argument that the Court in *Ohio v. Kentucky* should adopt the present low-water mark, Kentucky was necessarily forced to argue that the Court's decision in *Indiana v. Kentucky* was not applicable. Among the difficulties of this position was the fact that Ohio, like Indiana — and Illinois — was created from a part of the territory ceded by Virginia to the United States in 1784. Thus, the Court's reasoning in *Indiana v. Kentucky* was equally compelling in *Ohio v. Kentucky*, as the Court duly noted:

“The fact that *Indiana v. Kentucky* concerned a portion of the Ohio River in its Indiana-Kentucky segment rather than a portion in its Ohio-Kentucky segment, is of no possible legal consequence; the applicable principles are the same, and the holding in *Indiana v. Kentucky* has pertinent application and is controlling precedent here.”
444 U.S. at 339.

All of the factors relied upon by this Court in both *Indiana v. Kentucky* and *Ohio v. Kentucky* are equally compelling here. To paraphrase the Court's language in the latter decision, the fact that the present dispute concerns a portion of the Ohio river in its Illinois-Kentucky segment, rather than a portion in its Ohio-Kentucky or Indiana-Kentucky segment, is of no possible legal consequence. All three states bordering Kentucky on the Ohio were created from territory forming part of the Cession of Virginia, and the Court's conclusion as to the boundary of one of the three with Kentucky is controlling precedent as to the others.

Therefore, Plaintiff, State of Illinois, respectfully submits that its boundary with Kentucky is the low-water mark on the northerly shore of the Ohio river as it existed in 1792.

CONCLUSION

This Court has original and exclusive jurisdiction of this boundary dispute between the State of Illinois and the Commonwealth of Kentucky. The dispute should be resolved by finding the boundary between the parties to be the low-water mark on the northerly shore of the Ohio river as it existed in 1792.

Respectfully submitted,

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APPENDIX

LAWS OF VIRGINIA,
CHAP. XVIII.

An act to authorize the delegates of this state in congress, to convey to the United States, in congress assembled, all the right of this commonwealth to the territory north westward of the river Ohio.

I. WHEREAS the congress of the United States did, by their act of the sixth day of September, in the year one thousand seven hundred and eighty, recommend to the several states in the union, having claims to waste and unappropriated lands in the western country, a liberal cession to the United States of a portion of their respective claims for the common benefit of the union.

II. And whereas this commonwealth did, on the second day of January, in the year one thousand seven hundred and eighty one, yield to the congress of the United States, for the benefit of the said states, all right, title, and claim, which the said commonwealth had to the territory north-west of the river Ohio, subject to the conditions annexed to the said act of cession.

III. And whereas the United States in congress assembled, have by their act of the thirteenth of September last, stipulated the terms on which they agree to accept the cession of this state, should the legislature approve thereof, which terms, although they do not come fully up to the propositions of this commonwealth, are conceived on the whole, to approach so nearly to them, as to induce this state to accept thereof, in full confidence that congress will, in justice to this state for the liberal cession she hath made, earnestly press upon the other states claiming large tracts of waste and uncultivated territory, the propriety of making cessions equally liberal for the common benefit and support of the union: *Be it enacted by the General Assembly,* That it shall and may be lawful for the delegates of this state to the Congress of the United States, or such of them as shall be

assembled in congress, and the said delegates, or such of them so assembled, are hereby fully authorized and empowered, for and on behalf of this state, by proper deeds or instrument in writing, under their hands and seals, to convey, transfer, assign, and make over unto the United States in congress assembled, for the benefit of the said states, all right, title, and claim, as well of soil as jurisdiction, which this commonwealth hath to the territory or tract of country within the limits of the Virginia charter, situate, lying, and being to the north-west of the river Ohio, subject to the terms and conditions contained in the before recited act of congress of the thirteenth day of September last, that is to say: Upon condition that the territory so ceded shall be laid out and formed into states, containing a suitable extent of territory, not less than one hundred, nor more than one hundred and fifty miles square, or as near thereto as circumstances will admit; and that the states so formed, shall be distinct republican states, and admitted members of the federal union, having the same rights of sovereignty, freedom, and independence, as the other states; that the necessary and reasonable expences incurred by this state in subduing any British posts, or in maintaining forts or garrisons within and for the defence, or in acquiring any part of the territory so ceded or relinquished, shall be fully reimbursed by the United States; and that one commissioner shall be appointed by congress, one by this commonwealth, and another by those two commissioners, who, or a majority of them, shall be authorized and empowered to adjust and liquidate the account of the necessary and reasonable expences incurred by this state, which they shall judge to be comprized within the intent and meaning of the act of congress of the tenth of October, one thousand seven hundred and eighty, respecting such expences. That the French and Canadian inhabitants, and other settlers of the Kaskaskies, St. Vincents, and the neighbouring villages, who have professed themselves citizens of Virginia, shall have their possessions and titles confirmed to them, and be protected in the enjoyment of their rights and liberties. That a quantity not

exceeding one hundred and fifty thousand acres of land, promised by this state, shall be allowed and granted to the then colonel, now general George Rogers Clarke, and to the officers and soldiers of his regiment, who marched with him when the posts of Kaskaskies and St. Vincents were reduced, and to the officers and soldiers that have been since incorporated into the said regiment; to be laid off in one tract, the length of which not to exceed double the breadth, in such place on the north-west side of the Ohio as a majority of the officers shall choose, and to be afterwards divided among the said officers and soldiers in due proportion, according to the laws of Virginia. That in case the quantity of good lands on the south-east side of the Ohio, upon the waters of Cumberland river, and between the Green river and Tenisee river, which have been reserved by law for the Virginia troops upon continental establishment, should, from the North Carolina line bearing in further upon the Cumberland lands than was expected, prove insufficient for their legal bounties, the deficiency should be made up to the said troops in good lands to be laid off between the rivers Scioto and Little Miami, on the north-west side of the river Ohio, in such proportions as have been engaged to them by the laws of Virginia. That all the lands within the territory so ceded to the United States, and not reserved for or appropriated to any of the before mentioned purposes, or disposed of in bounties to the officers and soldiers of the American army, shall be considered as a common fund for the use and benefit of such of the United States as have become, or shall become members of the confederation or federal alliance of the said states, Virginia inclusive, according to their usual respective proportions in the general charge and expenditure, and shall be faithfully and *bona fide* disposed of for that purpose, and for no other use or purpose whatsoever. *Provided*, that the trust hereby reposed in the delegates of this state shall not be executed unless three of them, at least, are present in congress.

Letter from delegates in Congress.

ANNAPOLIS, MARCH 22, 1784.

Sir,

We inclose to your Excellency by the bearer, Mr. McAlister an exemplification of the deed of cession executed according to the directions of the act of assembly transmitted us, and have the honour to be with very high respect,

Your Excellency's

Most obedient and most humble servants.

TH. JEFFERSON,
S. HARDY,
JOHN FR. MERCER,
ARTHUR LEE,
JAMES MONROE,

His excellency governor Harrison.

Exemplification of the deed of cession.

TO ALL TO WHOM, these presents shall come;

KNOW YE, that among the archives of the United States in congress assembled, is lodged a deed or instrument in the words following:

TO ALL WHO SHALL SEE THESE PRESENTS,

We, Thomas Jefferson, Samuel Hardy, Arthur Lee, and James Monroe, the underwritten delegates for the commonwealth of Virginia, in the congress of the United States of America, send greeting:

WHEREAS, the general assembly of the commonwealth of Virginia, at their sessions begun on the twentieth day of October, one thousand seven hundred and eighty-three, passed an act, entitled "An act to authorize the delegates of this state in congress, to convey to the United States in congress assembled,

all the right of this commonwealth to the territory northwestward of the river Ohio," in these words following, to wit:

"WHEREAS the congress of the United States did, by their act of the sixth day of September, in the year one thousand seven hundred and eighty recommend to the several states in the Union, having claims to waste and unappropriated lands in the western country, a liberal cession to the United States, of a portion of their respective claims, for the common benefit of the union: and whereas this commonwealth did, on the second day of January, in the year one thousand seven hundred and eighty one, yield to the congress of the United States, for the benefit of the said states, all right, title and claim, which the said commonwealth had to the territory northwest of the river Ohio, subject to the conditions annexed to the said act of cession. AND WHEREAS the United States in congress assembled have, by their act of the thirteenth of September last, stipulated the terms on which they agree to accept the cession of this state should the legislature approve thereof which terms, although they do not come fully up to the propositions of this commonwealth, are conceived, on the whole, to approach so nearly to them, as to induce this state to accept thereof, in full confidence, that congress will, in justice to this state, for the liberal cession she hath made, earnestly press upon the other states claiming large tracts of waste and uncultivated territory, the propriety of making cessions equally liberal, for the common benefit and support of the union. *Be it enacted by the General Assembly*, That it shall and may be lawful for the delegates of this state to the congress of the United States, or such of them as shall be assembled in congress, and the said delegates, or such of them, so assembled, are hereby fully authorized and empowered, for and on behalf of this state, by proper deeds or instrument in writing, under their hands and seals, to convey, transfer, assign, and make over, unto the United States in congress assembled, for the benefit of the said states, all right, title, and claim, as well of soil as jurisdiction, which this com-

monwealth hath to the territory or tract of country within the limits of the Virginia charter, situate, lying, and being, to the northwest of the river Ohio, subject to the terms and conditions contained in the before recited act of congress of the thirteenth day of September last; that is to say, upon condition that the territory so ceded shall be laid out and formed into states, containing a suitable extent of territory, not less than one hundred, nor more than one hundred and fifty miles square, or as near thereto as circumstances will admit: and that the states so formed shall be distinct republican states, and admitted members of the federal union; having the same rights of sovereignty, freedom, and independence, as the other states. That the necessary and reasonableness expenses incurred by this state, in subduing any British posts, or in maintaining forts or garrisons within, and for the defence, or in acquiring any part of, the territory so ceded or relinquished, shall be fully reimbursed by the United States: and that one commissioner shall be appointed by congress, one by this commonwealth, and another by those two commissioners, who, or a majority of them, shall be authorized and empowered to adjust and liquidate the account of the necessary and reasonable expenses incurred by this state, which they shall judge to be comprised within the intent and meaning of the act of congress, of the tenth of October, one thousand seven hundred and eighty, respecting such expenses. That the French and Canadian inhabitants, and other settlers of the Kaskaskies, St. Vincents, and the neighbouring villages, who have professed themselves citizens of Virginia, shall have their possessions and titles confirmed to them, and be protected in the enjoyment of their rights and liberties. That a quantity not exceeding one hundred and fifty thousand acres of land, promised by this state, shall be allowed and granted to the then colonel, now general George Rogers Clarke, and to the officers and soldiers of his regiment, who marched with him when the post of Kaskaskies and St. Vincents were reduced, and to the officers and soldiers that

have been since incorporated into the said regiment, to be laid off in one tract, the length of which not to exceed double the breadth, in such place, on the northwest side of the Ohio, as a majority of the officers shall choose, and to be afterwards divided among the said officers and soldiers in due proportion, according to the laws of Virginia. That in case the quantity of good land on the southeast side of the Ohio, upon the waters of Cumberland river, and between the Green river and Tennessee river, which have been reserved by law for the Virginia troops, upon continental establishment, should, from the North Carolina line bearing in further upon the Cumberland lands than was expected, prove insufficient for their legal bounties, the deficiency should be made up to the said troops, in good lands, to be laid off between the rivers Scioto and Little Miami, on the northwest side of the river Ohio, in such proportions as have been engaged to them by the laws of Virginia. That all the lands within the territory so ceded to the United States, and not reserved for, or appropriated to, any of the before-mentioned purposes, or disposed of in bounties to the officers and soldiers of the American army, shall be considered as a common fund for the use and benefit of such of the United States as have become, or shall become members of the confederation or federal alliance of the said states, Virginia inclusive, according to their usual respective proportions in the general charge and expenditure, and shall be faithfully and bona fide disposed of for that purpose, and for no other use or purpose whatsoever. Provided, that the trust hereby reposed in the delegates of this state, shall not be executed unless three of them at least are present in congress.

AND WHEREAS, the said general assembly, by their resolution of June sixth, one thousand seven hundred and eighty-three, had constituted and appointed us, the said Thomas Jefferson, Samuel Hardy, Arthur Lee, and James Monroe, delegates to represent the said commonwealth in congress for one year, from the first Monday in November then next following, which

resolution remains in full force: NOW, THEREFORE, KNOW YE, that we, the said Thomas Jefferson, Samuel Hardy, Arthur Lee, and James Monroe, by virtue of power and authority committed to us by the act of the said general assembly of Virginia, before recited, and in the name, and for and on behalf, of the said commonwealth, do, by these presents, convey, transfer, assign, and make over, unto the United States, in congress assembled, for the benefit of said states, Virginia inclusive, all right, title and claim, as well of soil as of jurisdiction, which the said commonwealth hath to the territory or tract of country within the limits of the Virginia charter, situate, lying, and being, to the northwest of the river Ohio, to and for the uses and purposes and on the conditions of the said recited act. In testimony whereof, we have hereunto subscribed our names and affixed our seals, in congress, the first day of March, in the year of our Lord one thousand seven hundred and eighty-four, and of the independence of the United States the eighth.

TH. JEFFERSON, (L.S.)
 S. HARDY, (L.S.)
 ARTHUR LEE, (L.S.)
 JAMES MONORE, (L.S.)

Signed, sealed, and delivered in presence of

CHA. THOMPSON,
 HENRY REMSEN, Junr.
 BEN. BANKSON, Junr.

IN TESTIMONY WHEREOF, the United States have caused their Great Seal to be affixed to this exemplification. WITNESS, Charles Thompson, esquire, their secretary and keeper of their Great Seal.

CHA. THOMPSON.

[From the original, in the clerk's office of the house of delegates, among the governor's communication of 1784.]

ENABLING ACT

ACT OF CONGRESS, APRIL 18, 1818

3 U.S. St. at Large, 428

An Act to enable the people of the Illinois territory to form a constitution and state government, and for the admission of such state into the Union on an equal footing with the original states.

§ 1. *Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That the inhabitants of the territory of Illinois be, and they are hereby, authorized to form for themselves a constitution and state government, and to assume such name as they shall deem proper; and the said state, when formed, shall be admitted into the union upon the same footing with the original states, in all respects whatever.

§ 2. *And be it further enacted,* That the said state shall consist of all the territory included within the following boundaries, to wit; Beginning at the mouth of the Wabash river; thence, up the same, and with the line of Indiana, to the north-west corner of said state; thence, east with the line of the same state, to the middle of Lake Michigan; thence, north along the middle of said lake, to north latitude forty-two degrees thirty minutes; thence, west to the middle of the Mississippi river; and thence, down along the middle of that river, to its confluence with the Ohio river; and thence, up the latter river, along its north-western shore, to the beginning: *Provided*, That the convention hereinafter provided for, when formed, shall ratify the boundaries aforesaid; otherwise they shall be and remain as now prescribed by the ordinance for the government of the territory north-west of the river Ohio: *Provided also*, That the said state shall have concurrent jurisdiction with the state of Indiana on the Wabash river, so far as said river shall form a common boundary to both, and also concurrent jurisdiction on the Mississippi river, with any state or states to be formed west

thereof, so far as said river shall form a common boundary to both.

§ 3. *And be it further enacted*, That all white male citizens of the United States, who shall have arrived at the age of twenty-one years, and have resided in said territory six months previous to the day of election, and all persons having in other respects the legal qualifications to vote for representatives in the general assembly of the said territory, be, and they are hereby, authorized to choose representatives to form a convention, who shall be apportioned amongst the several counties as follows:

From the county of Bond, two representatives:

From the county of Madison, three representatives:

From the county of St. Clair, three representatives:

From the county of Monroe, two representatives:

From the county of Randolph, two representatives:

From the county of Jackson, two representatives:

From the county of Johnson, two representatives:

From the county of Pope, two representatives:

From the county of Gallatin, three representatives:

From the county of White, two representatives:

From the county of Edwards, two representatives:

From the county of Crawford, two representatives:

From the county of Union, two representatives:

From the county of Washington, two representatives:

From the county of Franklin, two representatives:

And the election for the representatives aforesaid shall be holden on the first Monday of July next, and the two following

days, throughout the several counties in the said territory, and shall be conducted in the same manner, and under the same regulations, as prescribed by the laws of the said territory regulating elections therein, for members of the House of Representatives.

§ 4. *And be it further enacted*, That the members of the convention, thus duly elected, be, and they are hereby, authorized to meet at the seat of government of the said territory, on the first Monday of the month of August next, which convention, when met, shall first determine, by a majority of the whole number elected, whether it be, or be not, expedient at that time to form a constitution and state government for the people within the said territory, and, if it be expedient, the convention shall be and hereby is authorized to form a constitution and state government; or, if it be deemed more expedient, the said convention shall provide by ordinance for electing representatives to form a constitution or frame of government; which said representatives shall be chosen in such manner, and in such proportion, and shall meet at such time and place, as shall be prescribed by the said ordinance, and shall then form for the people of said territory a constitution and state government: *Provided*, That the same, whenever formed, shall be republican, and not repugnant to the ordinance of the thirteenth of July, seventeen hundred and eighty-seven, between the original states and the people and states of the territory northwest of the river Ohio; excepting so much of said articles as relate to the boundaries of the states therein to be formed: *And provided also*, That it shall appear, from the enumeration directed to be made by the legislature of the said territory, that there are, within the proposed state, not less than forty thousand inhabitants.

§ 5. *And be it further enacted*, That until the next general census shall be taken, the said state shall be entitled to one representative in the House of Representatives of the United States.

§ 6. *And be it further enacted*, That the following propositions be and the same are hereby, offered to the convention of the said territory of Illinois, when formed, for their free acceptance or rejection, which if accepted by the convention, shall be obligatory upon the United States and the said state.

First. That section numbered sixteen, in every township, and, when such section has been sold or otherwise disposed of, other lands equivalent thereto, and as contiguous as may be, shall be granted to the state, for the use of the inhabitants of such township, for the use of schools.

Second. That all salt springs within such state, and the land reserved for the use of the same, shall be granted to the said state, for the use of the said state, and the same to be used under such terms, and conditions, and regulations, as the legislature of the said state shall direct: *Provided*, The legislature shall never sell nor lease the same for a longer period than ten years, at any one time.

Third. That five per cent of the net proceeds of the lands lying within such state, and which shall be sold by Congress, from and after the first day of January, one thousand eight hundred and nineteen, after deducting all expenses incident to the same, shall be reserved for the purposes following, viz.: two-fifths to be disbursed, under the direction of Congress, in making roads leading to the state; the residue to be appropriated, by the legislature of the state, for the encouragement of learning, of which one-sixth part shall be exclusively bestowed on a college or university.

Fourth. That thirty-six sections, or one entire township, which shall be designated by the President of the United States, together with the one heretofore received for that purpose, shall be reserved for the use of a seminary of learning, and vested in the legislature of the said state, to be appropriated solely to the use of such seminary by the said legislature. *Provided always*, That the four foregoing propositions, herein

offered, are on the conditions that the convention of the said state shall provide, by an ordinance irrevocable without the consent of the United States, that every and each tract of land sold by the United States, from and after the first day of January, one thousand eight hundred and nineteen, shall remain exempt from any tax laid by order, or under any authority of, the state, whether for state, county, or township, or any other purpose whatever, for the term of five years from and after the day of sale: *And further*, That the bounty lands granted, or hereafter to be granted, for military services during the late war, shall, while they continue to be held by the patentees, or their heirs, remain exempt, as aforesaid, from all taxes, for the term of three years, from and after the date of the patents respectively; and that all the lands belonging to the citizens of the United States, residing without the said state, shall never be taxed higher than lands belonging to persons residing therein.

§ 7. *And be it further enacted*, That all that part of the territory of the United States lying north of the state of Indiana, and which was included in the former Indiana territory, together with that part of the Illinois territory which is situated north of and not included within the boundaries prescribed by this act, to the state thereby authorized to be formed, shall be, and hereby is, attached to, and made a part of the Michigan territory, from and after the formation of the said state, subject, nevertheless, to be hereafter disposed of by Congress, according to the right reserved in the fifth article of the ordinance aforesaid, and the inhabitants therein shall be entitled to the same privileges and immunities, and subject to the same rules and regulations, in all respects, with the other citizens of the Michigan territory.

CHAP. XIV.

An act concerning the erection of the district of Kentuckey into an independent state.

(Passed the 18th of December, 1789.)

SECT. 1. WHEREAS it is represented to this present General Assembly, that the act of last session intituled "An act concerning the erection of the district of Kentuckey into an independent state," which contains terms materially different from those of the act of October session, one thousand seven hundred and eighty-five, are found incompatible with the real views of this Commonwealth, as well as injurious to the good people of the said district:

Be it enacted by the General Assembly, That in the month of May next, on the respective court days of the counties within the said district, and at the respective places of holding courts therein, representatives to continue in appointment for one year, and to compose a convention with the powers, and for the purposes herein after mentioned, shall be elected by the free male inhabitants of each county above the age of twenty-one years, in like manner as delegates to the General Assembly have been elected within said district in the proportions following: In the county of Jefferson shall be elected five representatives; in the county of Nelson five representatives; in the county of Mercer five representatives; in the county of Lincoln five representatives; in the county of Madison five representatives; in the county of Fayette five representatives; in the county of Woodford five representatives; in the county of Bourbon five representatives, and in the County of Mason five representatives: *Provided*, that no free male inhabitant above the age of twenty-one years, shall vote in any other county except that in which he resides, and that no person shall be capable of being elected unless he has been a resident within the said district at least one year.

SECT. 2. That full opportunity may be given to the good people of exercising their right of suffrage on an occasion so interesting to them, each of the officers holding such elections, shall continue the same from day to day, passing over Sunday, for five days, including the first day, and shall cause this act to be read on each day immediately preceding the opening of the election, at the door of the court-house or other convenient place; each of the said officers shall deliver to each person duly elected a representative, a certificate of his election, and shall transmit a general return to the clerk of the supreme court, to be by him laid before the convention.

SECT. 3. For every neglect of any of the duties hereby enjoined on such officer, he shall forfeit one hundred pounds, to be recovered by action of debt by any person suing for the same.

SECT. 4. The said convention shall be held at Danville on the twenty-sixth day of July next, and shall and may proceed, after choosing a president and other proper officers, and settling the proper rules of proceeding, to consider and determine whether it be expedient for, and the will of the good people of the said district that the same be erected into an independent state, on the terms and conditions following:

SECT. 5. First, that the boundary between the proposed state and Virginia, shall remain the same as at present separates the district from the residue of this Commonwealth.

SECT. 6. Second, that the proposed state shall take upon itself a just proportion of the debt of the United States, and the payment of all the certificates granted on account of the several expeditions carried on from the Kentuckey district against the Indians, since the first day of January one thousand seven hundred and eighty-five.

SECT. 7. Third, that all private rights and interests of lands within the said district, derived from the laws of Virginia prior

to such separation, shall remain valid and secure under the laws of the proposed state, and shall be determined by the laws now existing in this state.

SECT. 8. Fourth, that the lands within the proposed state of non resident proprietors, shall not in any case be taxed higher than the lands of residents, at any time prior to the admission of the proposed state to a vote by its delegates in Congress, where such non residents reside out of the United States; nor at any time either before or after such admission, where such non residents reside within this Commonwealth, within which this stipulation shall be reciprocal; or where such non residents reside within any other of the United States, which shall declare the same to be reciprocal within its limits; nor shall a neglect of cultivation or improvement of any land within either the proposed state or this Commonwealth, belonging to non residents, citizens of the other, subject such non residents to forfeiture or other penalty within the term of six years, after the admission of the said state into the Federal Union.

SECT. 9. Fifth, that no grant of land or land warrant to be issued by the proposed state, shall interfere with any warrant heretofore issued from the land office of Virginia, which shall be located on land within said district now liable thereto, on or before the first day of September one thousand seven hundred and ninety-one.

SECT. 10. Sixth, that the unlocated lands within the said district, which stand appropriated to individuals or description of individuals, by the laws of this Commonwealth, for military or other services, shall be exempt from the disposition of the proposed state, and shall remain subject to the disposed of by the Commonwealth of Virginia, according to such appropriation, until the first day of May one thousand seven hundred and ninety-two, and no longer: thereafter the residue of all lands remaining within the limits of said district, shall be subject to the disposition of the proposed state.

SECT. 11. Seventh, that the use and navigation of the river Ohio, so far as the territory of the proposed state, or the territory which shall remain within the limits of this Commonwealth lies thereon, shall be free and common to the citizens of the United States, and the respective jurisdictions of this Commonwealth and of the proposed state on the river as aforesaid, shall be concurrent only with the states which may possess the opposite shores of the said river.

SECT. 12. Eighth, that in case any complaint or dispute shall at any time arise between the Commonwealth of Virginia and the said district, after it shall be an independent state, concerning the meaning or execution of the foregoing articles, the same shall be determined by six commissioners, of whom two shall be chosen by each of the parties, and the remainder by the commissioners so first appointed.

SECT. 13. *Provided however*, That five members assembled, shall be a sufficient number to adjourn from day to day, and to issue writs for supplying vacancies which may happen from deaths, resignations or refusals to act; a majority of the whole shall be a sufficient number to chuse a president, settle the proper rules of proceeding, authorise any number to summon a convention during a recess, and to act in all other instances where a greater number is not expressly required. Two thirds of the whole shall be a sufficient number to determine on the expediency of forming the said district into an independent state on the aforesaid terms and conditions, *Provided* that a majority of the whole number to be elected concur therein.

SECT. 14. *And be it further enacted*, That if the said convention shall approve of the erection of the said district into an independent state on the foregoing terms and conditions, they shall and may proceed to fix a day posterior to the first day of November, one thousand seven hundred and ninety-one, on which the authority of this Commonwealth, and of its laws under the exceptions aforesaid, shall cease and determine

forever over the proposed state, and the said articles become a solemn compact mutually binding on the parties, and unalterable by either without the consent of the other.

SECT. 15. *Provided however*, That prior to the first day of November, one thousand seven hundred and ninety-one, the general government of the United States shall assent to the erection of the said district into an independent state, shall release this Commonwealth from all its federal obligations arising from the said district as being part thereof, and shall agree that the proposed state shall immediately after the day to be fixed as aforesaid posterior to the first day of November one thousand seven hundred and ninety-one, or at some convenient time future thereto, be admitted into the Federal Union.

SECT. 16. And to the end that no period of anarchy may happen to the good people of the proposed state, it is to be understood that the said convention shall have authority to take the necessary provisional measures for the election and meeting of a convention, at some time prior to the day fixed for the determination of the authority of this Commonwealth, and of its laws over said district, and posterior to the first day of November one thousand seven hundred and ninety-one aforesaid, with full power and authority to frame and establish a fundamental constitution of government for the proposed state, and to declare what laws shall be in force therein, until the same shall be abrogated or altered by the legislative authority acting under the constitution so to be framed and established.

SECT. 17. *And be it further enacted*, That the electors in going to, continuing at, and returning from an election of members to the said convention, shall be entitled to the same privileges from arrest, as are by law allowed at an election of members to the General Assembly, and each person returned to serve as a member in said convention, shall be entitled to the same privileges from arrest in going to, during his attendance on, and returning from said convention, as are by law allowed to the members of the General Assembly.

SECT. 18. This act shall be transmitted by the executive to the representatives of this Commonwealth in Congress, who are hereby instructed to use their endeavours to obtain from Congress a speedy act to the effect above specified.

