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Bed of Beaver Lake.

SPEECH

OF

HON. DANIEL D. PRATT,

OF INDIANA,

IN THE SENATE OF THE UNITED STATES, MARCH 2, 1872.

The VICE PRESIDENT. If there be no further Senate resolutions. the Senate, as in Committee of the Whole, resumes the consideration of the bill (S. No. 616) to release to the State of Indiana the lands known as the bed of Beaver lake, in Newton county, in said State, on which the Senator from Indiana had unanimous consent to address the Senate. Does the Senator desire the bill to be reported?

Mr. PRATT. Yes, sir; I ask that it may be reported.

The Chief Clerk read the bill, as follows:

Be it enacted, &c., That the lands in Newton county, in the State of Indiana, known as the bed of Beaver lake, be, and the same are hereby, released and quitclaimed to the State of Indiana.

Mr. PRATT. Mr. President, the bill under consideration is one of local importance. It proposes, in the briefest possible words, to release to the State of Indiana whatever title the United States have in the lands known as the bed of Beaver lake. But principles are involved which make the bill one of general importance. It raises the question where the proprietary interest and municipal jurisdiction reside in the case of the beds of our lakes and rivers in the five northwestern States, where their shores have been meandered in the public surveys and the lands on their banks and margins have been sold. What rights have the riparian proprietors acquired? Are those rights limited by the lines run and the stakes set by the Government surveyors on the banks, or have they acquired the right to the soil under water to the middle of the lake or river? And if they have not, and the United States have sold all their surveyed and platted lands in a given State, does the General Government still continue to own the beds of the rivers and lakes, or has the proprietary interest as well as the municipal jurisdiction over them vested in the State? The very statement of the question shows its importance. While it has often occupied the attention of the courts, Congress has so far, I believe, given no expression of opinion.

Nor, sir, will its action in this particular case in the passage of this bill set an inconvenient precedent. There are peculiar equities in this case which make it imperative, whatever the abstract rights of the United States may be, that the cession of the bed of the lake should be made to the State. Beaver lake was never navigable in any commercial sense. It was a shallow pond of water, remote from public thoroughfares, surrounded by marshy lands, a resort [illegible] in early times for horse-thieves [illegible]nterfeiters, valuable only for its fish. The large body of land surrounding it was taken up by the State under the swamp-land grant, and the drainage of the lake has been accomplished by the State and individuals without cost to the Government, and without objection from any officer authorized to speak for the United States.

For years past the Commissioner of the General Land Office in his annual reports to Congress has informed the country that less than two thousand acres of the public lands remain undisposed of in the State of Indiana. If it be true that having disposed of the public lands in the State, the United States still own the beds of our lakes and rivers, it may well be asked why should this barren proprietorship continue, since no laws exist for the protection of these rights or the punishment of trespassers, and since no possible benefit can flow from retaining the mere naked claim, the very assertion of which would be so offensive to the State's sovereignty? Why not by general law release them to the several States, which may protect them for the general good, or if thought best, parcel them out to the riparian proprietors, and thus put an end to a long-standing controversy?

I but suggest the question. It is not necessary that I should argue it. There is sufficient in the evidence before Congress to prove that whatever may be the abstract rights of the United States in the bed of this lake, it should without delay quiet the State title by the passage of this bill.

I spoke of the evidence before us. Early in the session the Senate adopted a resolution offered by me calling upon the Secretary of the Interior for all information in his power to give touching the drainage of the lake, by

whom, at what cost, and under what authority it had been accomplished; how much land not included in the public surveys had been reclaimed; their value, and by whom occupied, and by what title or claim of title; and whether since the drainage of the lake the public surveys had been extended over it, and if not, why not? On the 1st day of February the letter of the Secretary of the Interior, transmitting the report of the Commissioner of the General Land Office in response to the resolution, was laid before the Senate. It is a pamphlet of sixty-six pages, and contains all the information necessary for our intelligent action. In what I say I shall have frequent occasion to draw on this report for facts.

An unhappy controversy has sprung up over the reclaimed lands, to which there are three parties. One claims that as public lands they are subject to the preëmption laws, and an attempt has been made to enter upon them and erect houses with a view to creating preemption claims. This has been met by resistance and violence by those in possession or claiming title. Another party claim title from the State; while a third claim as riparian proprietors originally or by derivation.

The first class ignore all rights founded upon the riparian claim unless they are coupled with possession in fact and cultivation sufficient to entitle those in possession to the benefit of the preëmption laws. They ignore also the rights derived from the State, since, as they claim, the State's right is founded upon the riparian theory, she having received title from a riparian proprietor. They deny that the State, in her sovereign capacity, has any other than a mere political jurisdiction over the beds of the lakes and rivers. In other words, the class which seeks to preëmpt claims that the soil of the lake once covered by water is the property of the United States, and demands its survey that they may assert their right to preëmpt it.

I beg the indulgence of the Senate while I attempt to discuss the merits of these various claims. To do this I must go back to the origin of the controversy.

What is known as the swamp-land act was passed by Congress on the 28th of September, 1850. It gave the States the overflowed lands within their limits which were unfit for cultivation and remained unsold at the passage of the law. These lands were placed at the disposal of the Legislatures of the several States in which they were situate; but there was the condition stamped on the grant that the proceeds, whether from sale or by direct appropriation in kind, should be applied exclusively, so far as necessary, to the purpose of reclaiming the lands by means of levees and drains. Of the sixty million acres which have been selected and patented to the several States under this law, the State of Indiana has received 1,354,732 acres.

On the 29th of May, 1852, the State passed a law to regulate the sales of these lands and carry into effect the condition of the grant. The auditor and treasurer of each county were made agents to sell them and receive the purchase-money. They could not be sold at less than $1 25 per acre, and the purchase-money was to be paid into the State treasury in trust, to be expended in reclaiming the wet lands in the counties from which the money proceeded. Upon presenting the receipt of the county treasurer, the purchaser was entitled to a patent from the State. In every county having swamp lands, the Governor appointed a swamp-land commissioner. It was his duty to employ an engineer, whose business was to make surveys and ascertain the best and cheapest methods of reclaiming the lands. When this was done, the commissioner and engineer were required to make a report, how far the lands were capable of reclamation, the best mode of doing it, and the estimated expense. After this they were to let all the work by contract when and as fast as the sale of the lands warranted it.

As I have said, the moneys paid into the State treasury were to constitute a special fund to defray the expenses of reclaiming the lands, whether by ditching, diking, or other means, and what was left was to be added to the principal of the common-school fund. So confident was the expectation that a large surplus would remain after satisfying the condition of the grant, that Governor Wright, in his annual message to the Legislature, predicted that $1,000,000 would be added to that fund.

This pleasant hope was destined to be blasted, for such was the reckless and corrupt mismanagement of this trust at a period when the Democratic party was in the control of the State, that not only was the fund lost, but the lands were but partially reclaimed. Honestly sold, and the proceeds honestly applied, every acre of the swamp lands would have been made dry and productive, and a large surplus left for the education of the children of the State; but instead of this, not one half of the lands have been reclaimed and the fund has gone into the hands of dishonest contractors and officials.

Twenty years ago Beaver lake, the subject of this controversy, covered from fifteen to sixteen thousand acres of land. Irregular in shape, its greatest length was about seven miles, while its greatest width was from four to five, and it varied in depth from two to ten feet. It was a clear, smooth sheet of water, filled with fish, and resorted to by sportsmen. It had several islands, the most considerable of which was Bogus Island, containing about eighty acres. Its name was significant, for here, according to tradition, bogus money was made. Nature admirably adapted the spot for the resort of desperadoes. The country for miles around was marshy, and here the lawless were safe from the pursuit of the officers of the law. To the north about four miles flowed the sluggish waters of the Kankakee. All the lands surrounding the lake were selected by the State under the swamp-land grant, and were subsequently patented to it. In the survey of the public lands in northern Indiana, at an early day, this lake had been meandered. The surveys extended to its margin, forming

fractional sections around it. Neither the bed of the lake nor the islands in it were surveyed. It was treated like all other similar bodies of water which so abound in the northern part of the State, and like the beds of our larger rivers, which were never included in the public surveys. Of course the thing was impracticable

Well, sir, these lands remained in market for many years, and yet there was no purchaser. It was not until they had been donated to the State, and she had undertaken to drain them, that they attracted attention. Then two men, Condit and Dunn, proceeded to enter every fractional section bordering upon the lake. The aggregate of their purchases was about two thousand acres. Condit soon sold his interest to Bright; and Dunn and Bright, then owning the entire rim of the basin in which the lake lay, proceeded to develop their scheme.

As I have shown, the law required that the money arising from the sale of swamp lands in a given county should be devoted to their drainage. Under the influence of these men, the swamp-land commissioner who was charged by the law with the wise expenditure of the fund, located a ditch from the lake to the Kankakee river, about four or five miles distant. The fall from the surface of the lake to the river was twenty-five feet, some say more. It is not clear that Dunn and Bright contributed anything to the expense. It is said the ditch was dug but half the distance, and a plow opened the remainder of the way; but so great was the rush of water from the lake that a channel was soon formed, in places a hundred feet wide.

It is claimed, and is probably true, that those owning lands in the vicinity of the lake have contributed money from time to time to dig the ditch and extend it into the bed of the lake. Other ditches were opened to drain water into it. The result of this system of improvements, covering a period of several years, has been to lay bare and reclaim from thirteen to fourteen thousand acres of land once covered by the lake, some of which is a mere bed of sand, but a great part of it, probably ten thousand acres, fit for cultivation, and worth from five to ten dollars per acre. From one to two thousand acres remain undrained.

These are the facts, as I gather them mainly from the evidence before the Senate.

Now, the purpose of Dunn and Bright in thus concentrating in their hands all the lands bordering on the lake becomes plain. Their theory was that as riparian proprietors their patents carried their title to the center of the lake, so as to include its bed and islands. Accordingly as the waters receded, they proceeded to survey all the bed laid bare, and made a plat of the entire body, including the fractional lots bought of the State, representing on their map the lines of the Government surveys as extending through the lake north and south, east and west. They divided the whole into forty-acre lots, numbering them from one to four hundred and twenty-seven, inclusive, and divided them between themselves, Dunn taking the odd and Bright the even numbers. The portion which fell to Dunn amounted to seventy-eight hundred and eighty-eight acres.

In 1856 a judgment was rendered in favor of the Ohio Life Insurance and Trust Company against Dunn, Bright, Allen, May, and Governor Willard. On this judgment the lands of Dunn were levied upon and sold, and were conveyed by some arrangement to Aquila Jones, the State treasurer, with a view of satisfying in whole or in part the indebtedness of Dunn to the State. Jones transferred his title to the State, and the Legislature ratified the transaction; for in 1865 it passed an act for the sale of the lands and to give protection to actual settlers thereon. By this process the State became substituted as to the title which Dunn possessed in the margin and bed of the lake. As to that part which bordered upon the lake, and which the State sold him, of course no question could arise, but as to his constructive right to the land formerly under water, of course the State inherited his infirmity of title, if infirmity there were.

Under the law I have spoken of, the officers of the State have sold all the lands which fell to Dunn in his division with Bright, and realized from them $8,500. I count up in the pamphlet before me one hundred and thirty-five patents which the State has made of these lands to purchasers, and this does not exhaust the number of the sales made. The men who have bought these lands have paid for them, and in many cases taken possession and made valuable improvements. What the extent and value of these improvements are I do not know.

I send to the Clerk's desk the affidavit of Adam W. Shidler, and ask that it may be read. It is part of the evidence transmitted by the Secretary of the Interior.

The Chief Clerk read as follows:

STATE OF INDIANA, *Newton county, ss:*

Adam W. Shidler, being duly sworn, deposes and says that he is a practical surveyor and civil engineer; that he has acted in the capacity of county surveyor and deputy surveyor of this county from its organization to the present time; that he first saw Beaver lake, which lies in the northwestern part of Newton county, in the year 1851; that at that time it was a clear smooth sheet of water, about seven and a half miles long and five miles wide, and the water was from two to nine feet in depth, and was only resorted to by sportsmen for the purpose of hunting and fishing; at this time there was only one residence on or near the margin of said lake, from the fact that the land for many miles in all directions was too wet for cultivation; that in the years 1854 and 1855 the State of Indiana, by her commissioner, John Darrah, excavated a number of ditches for the purpose of draining said lake, one of which commenced at the margin of said lake, near the corner of sections thirty-three, thirty-four, twenty-seven, and twenty-eight, township thirty-one north, range nine west; and extended to the Kankakee river, in section five, of said town, a distance of about five and one half miles in length, and was excavated to the depth of from three to seventeen feet; soon after this the water in the lake began to subside until the year 1859, when it had subsided about two and one half feet; at this time one Isaac Hitchcock took a contract of deepening, widening, and extending said ditch into the bed of the lake, and in the years 1859 and 1860 extended said ditch about one mile into the bed of the lake, by which the depth and width of said ditch were very much increased, but it was not as yet of sufficient capacity to carry all the waters from said

lake as fast as they accumulated from the rain-fall. About the year 1861 one Algy Dean and William Burton conceived the idea of locating permanently on the lake, and extending this ditch still further into the bed of the lake, and to improve the lands so as to bring them into cultivation. About this time a number of other persons came to the lake and became the owners of land. These persons, in conjunction with said Algy Dean, by their joint efforts, have extended said ditch about two miles into the bed of the lake, and have excavated numerous other ditches, and built fences, and dwelling-houses, and barns, and have cultivated said land and sowed large amounts of the bed of said lake in clover and timothy, and otherwise improving the same, and have now increased the capacity of said ditch so as to convey all the rain-fall from the same, and so as to render the northwestern part good for cultivation. I have within twenty days made a survey of said lake, and made measurements and estimates of the cost of the improvements made on said lake by the State of Indiana and her assignees. Said estimates are in the words and figures following, namely:

I find by actual measurement that the main outlet ditch is six miles and sixty-five chains in length, and from forty-five to seventy feet in width, and from two to twenty-four and one fifth in depth, containing five hundred and nine thousand three hundred and twenty-seven cubic yards of excavation, which would cost at twenty cents per cubic yard the sum of $101,865 56, and that the laterals and other outlet ditches, all of which are necessary for the present reclamation of the lands now in cultivation, contain sixty-five thousand one hundred cubic yards of excavation; this, at fifteen cents per cubic yard, will amount to the sum of $9,766; and that there are at present over thirty-seven miles of fencing, which are used to inclose the lands of said lake, which, at fifty cents per rod, would amount to the sum of $5,920; that there are at present twenty dwelling-houses on and around said lake, which are occupied by families who are cultivating some of the lands of said lake, or have some of the lands under fence. These houses are estimated to be worth the sum of $10,500, and there are fruit trees now in bearing where the water was deep enough to draw a seine and catch fish that are worth $500; that the north end of said outlet ditch is at present obstructed by a deposit of sand which has been accumulating for the last five or six years, and that the said accumulation of sand has now obstructed the mouth or outlet of said ditch for the distance of one mile; that I made a survey of said obstruction in September, 1870, and I made another survey of the said deposit within the sixty days last past, and that said obstruction has within the last year filled up sixty rods of said ditch, and that a contract has been let to responsible parties for excavating said deposit, which will cost the further sum of $1,500, and that there has been let to responsible parties a contract for extending the aforesaid outlet ditch to the deepest water in the lake, so as to let all the water flow freely down the said outlet ditch, and thus reclaim the lands which are now covered with water, and to keep the spring floods, which last spring covered a large portion of the southeast part of said lake, from again overflowing said lands.

ADAM W. SHIDLER.

Subscribed and sworn to before me this 16th day of September, 1871.

[L. S.] ANDREW HALL,
Clerk of Newton Circuit Court.

The VICE PRESIDENT. The Chair understands that it is the desire of the Senate that the unfinished business shall not be called up at one o'clock, and not until the Senator from Indiana has concluded his remarks. If there be no objection, the Chair will not interrupt the Senator from Indiana at one o'clock, but will allow him to conclude his remarks.

Mr. PRATT. Mr. Shidler, in this statement, does not discriminate between the lands sold by the State and the Bright lands as to the location of the improvements; but considering the time which has elapsed since the State sold her lands, it is fair to infer that one half of these improvements are on them.

Now, sir, although the State in conveying these lands by patent has inserted no words of covenant, does that alter the case on the question whether she should defend the title of these men, and in case they lose their lands indemnify them for their loss? Her covenant is found in the law which authorized their sale and guarantied protection to the actual settler. It is enough that she claimed to own them, and sold them. That, with a sovereignty dealing with its people, is guarantee enough. Had she doubted her title and set forth its infirmity in the law authorizing the sale, and guarded against recourse by honestly saying she proposed to sell just such interest as she had, this would have been notice to the world, and no one could complain of being cheated in his purchase. But she expressed no such doubt; she gave no such exhibit; she affirmed by the strongest implication that she had the right to sell. Her citizens and all persons had a right to infer on reading the law that she owned the lands and would protect the purchasers, and this she must do or forfeit the respect of honest men.

It is not for States to deal deceitfully with those who put their trust in them. Justice is their crowning attribute. It cannot be doubted that the moral sense of the people of Indiana will require the Legislature to make full indemnification in case the titles of these men fail. This indemnity will not be full without returning the purchase-money and interest and compensating the settler for the improvements he may lose.

But, sir, against this bill it may be urged that thus far I have shown that the State's title is only Dunn's title, and that his title as to all the lands lying in the bed of the lake rests simply upon his claim as a riparian proprietor; and it will be asked, is the Senate prepared to concede the doctrine that a sale of a defined quantity of land upon the margin of a lake carries by construction the title of the purchaser to its center? Were this the whole statement of the question, as it is not, we might well pause. But such was the theory of those who purchased the land. Upon this principle and none other did the original claim of Dunn and Bright rest. Mr. Bright asserted this principle in a suit brought in the circuit court of the county where the lands lie as early as 1857. The action was to recover some of the lands formerly covered by water, and this was the only point in the controversy. I have examined the very able argument submitted to the judge who presided, now one of the judges of the Supreme Court, and formerly a member of this body. It convinced him, and the claim of Bright was sustained—the claim that as a riparian proprietor, and to the extent that he owned lands fronting upon the lake, his right to the soil under the war, including the islands, extended to its center. The proposition is a startling one, and I do not admit its soundness. If the State's claim rested on this foundation alone, and there were nothing in the higher

claim I shall directly put up, I could not with my convictions of the law upon this subject insist that it should be recognized.

The arguments *pro* and *con* on this riparian theory are familiar to the lawyers of this body, and I shall not detain the Senate by going over them. It has seemed to me that the argument of the Commissioner of the General Land Office on this question, in his report of 1868, was exhaustive and unanswerable. I have it here at page 121, but shall not trespass on the patience of the Senate to read it. If the position contended for be true, then it follows that he who buys of the United States lands bordering on the Mississippi or Missouri river, or upon any of the great tributaries leading into them, buys the soil under the water to the middle of the stream. His patent may call for only forty acres, while his actual claim will include two hundred or more. If his claim be good, he, and he exclusively, is entitled to the bed of the river to its middle line, to its quarries and mines, to the sand and gravel, to its drift and whatever of value the subsidence of the waters may allow him to appropriate. They are all his, and he may do with them as he pleases, so that he does not interfere with the navigation of the stream. And this must be equally true of all our lakes, great and small. Their beds by this theory are all the subject of private ownership.

Now, sir, without going into the legal argument, the plain answer to this fanciful theory is this: our public lands are surveyed and sold in pursuance of a law. They were divided into townships, sections, and subdivisions of sections, as low as forty acres. They were surveyed, the corners established, and the lines marked on the trees and measured by a chain. The surveyor is charged to note in his field-book all the water-courses—mark the expression, "all the water-courses over which the line he runs shall pass," and also the quality of the lands. These field-books, showing the corners established, the lines run, and their distances, are to be returned to the surveyor general, who therefrom causes a description of the whole body of the lands surveyed to be made out and transmitted to the officers charged with their sale. He is also to cause a fair plat to be made of the townships and fractional parts of townships, describing the subdivisions thereof, and the marks of the corners. This plat is recorded and kept a perpetual record in his office for public information, and copies are sent to the land offices where sales are to be made. By these plats, showing the corners of every section and its subdivisions, the sales are made. It would seem too plain for argument in this statement of the law, that the register could sell only what is marked on the plat for sale, and nothing outside of it. It may well be asked, to what purpose have these lines been run, and these corners established, if land not surveyed or platted, and wholly outside of the plat, and without description or definition of quantity, may still be sold or claimed to be sold?

I am quoting now from the first law passed by Congress in 1796 for the survey and sale of the lands northwest of the Ohio ceded by Virginia. Something was said in that law about navigable streams. Thus, the very first rule laid down is, that the land shall be divided by north and south lines running according to the true meridian, and by others crossing them at right angles so as to form townships of six miles square, unless—and now mark the exception—unless where the line of the late Indian purchase, or of tracts before surveyed or patented, "or the course of navigable rivers," may render it impracticable. Whenever a line encountered a navigable river, the course of the survey in that direction was as much arrested as if it had encountered the late Indian purchase or land already surveyed. It could no more cross the navigable stream than it could enter a body of land already surveyed or sold.

In that same law, and in section nine, it is provided that all navigable rivers within the territory to be disposed of should be deemed to be and remain public highways, and in all cases where the opposite banks of a stream not navigable should belong to different persons, the stream and the bed should be common to both.

It is hardly necessary to say that in this cession of Virginia there was no stream where the tide ebbed and flowed, though there were many rivers which were navigable. The intent of Congress is here plain enough. It was only where streams were not navigable, and, as I infer, where the lines of the public surveys crossed them, that Congress intended the bed and stream should be common to the proprietors of the two banks.

But there is nothing said here or elsewhere, so far as I can find, in relation to lakes; and the question is, what principle shall govern them?

I hold, Mr. President, that the land officers can sell just what is surveyed and platted, and nothing outside or beyond. They are agents with defined powers, and what they do outside those powers is void. What the surveyor has surveyed and the President by proclamation has offered for sale is subject to sale, and nothing else. What the Government sells is the squares and parallelograms laid down on the township plat. Words and pictures are meaningless if the purchaser, in buying a piece of land whose corners are established and lines measured, and a plat of which is made, gets land outside these lines and in contempt of the corners.

Take this Beaver lake for illustration. It was some seven miles in length. It was never surveyed. The lands around it were, and plats made. These, as well as the field-notes, showed that the lands surveyed extended to the lake, but not into it. If the theory contended for be true, then Dunn in buying a fraction of twenty-five acres abutting on the lake may urge that the parallel lines inclosing his land, instead of stopping at the margin as the plat indicates, shall extend three and a half miles to the center of the lake and embrace a parallelogram of soil under it of per-

haps five hundred acres; and all this notwithstanding the corners laid down on the plat by which he purchased and the area marked of twenty-five acres as the estimated quantity the Government was selling. It is evident that such a claim, if it has any foundation, must rest upon construction and not upon anything expressed in the patent.

And what is this rule of construction? It is that the grantor must be presumed to have intended to convey to the center of the lake, because there are no words of limitation in the patent. But this begs the question. The limitation is found in the survey and plat. The fallacy consists in likening the grant to one made by a natural person. Where a man owns land upon the bank of a river and to the middle of a stream, he may limit his sale to high or low-water mark. He may sell the bed separately, or he may sell all he owns. Whether he has in a given case sold all is a question of construction upon the language used in his deed. I admit the general rule to be that if he sells his land bounding it by the river, it will be presumed that he reserved nothing, unless there are words manifesting that intention. His power to sell the whole is undoubted; and just here his case differs from a register of a land office, whose power is restricted to selling the block of land bounded by four lines on the plat before him.

Therefore it is, Mr. President, I have no faith that Condit and Dunn bought the bed of Beaver lake. When the Government had disposed of all the public lands which it had surveyed and brought into market, the bed of this lake belonged to the United States or to the State of Indiana. If to the State, then this bill simply confirms her title and settles the controversy.

What then, sir, are the reasons in support of the claim of the State? In arguing this question I must go back to the time when the Commonwealth of Virginia, in the midst of our revolutionary struggle and before the Constitution had its birth, owned the whole of the northwestern territory to the Mississippi river. It was in 1780 that the old Congress of the United States recommended 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 for the common benefit of the Union. Virginia promptly and nobly responded to the appeal. On the 20th of December, 1783, her General Assembly authorized her delegates in Congress to convey to the United States in Congress assembled for the benefit of the States, all the right, title, and claim, as well of soil as jurisdiction, which that Commonwealth had within the limits of her charter, situate to the northwest of the river Ohio.

If it be said that that charter had been many years before annulled by solemn judgment of the King's Bench, I reply that Virginia still laid claim to the land, had conquered it by her arms and defended its possession. Moreover, the Congress recognized the claim in the proposition for its cession. When the delegates of Virginia proceeded to make the deed of cession they did not make an absolute, unconditional one. No, sir; it was a conveyance upon certain conditions and trusts. And now I call the attention of the Senate to these conditions.

The territory so ceded was to be laid out and formed into States. They were to be republican States and admitted members of the Federal Union, having the same rights of sovereignty, freedom, and independence as the other States. Certain expenses of Virginia in acquiring and defending the territory were to be reimbursed. Certain French and Canadian settlers were to have their possessions and titles confirmed to them. A certain body of land was to be set apart to the officers and soldiers of the regiment of General George Rogers Clarke. Another body between the Scioto and Miami rivers was set apart to satisfy the bounties promised by Virginia to her troops upon the continental establishment. And then, sir, the whole imperial remainder, so vast in its proportions that since that time five great States in the Northwest have been carved from it, was by the terms of this deed to be considered a common fund for the use and benefit of the States then members of the Confederation and such as thereafter should become members. And these lands were to be faithfully disposed of for that purpose; that is, to create this common fund for the benefit of all the States.

Sir, the trusts imposed in this grant are clear and explicit. Before the delegates of Virginia executed this deed of cession, that Commonwealth owned the soil and had sole municipal jurisdiction over it. Virginia was its sovereign. Her laws were supreme. I cannot find in the Articles of Confederation a single power which the old Congress could exercise outside the limits of the States, but the single one of regulating the trade and managing the affairs with the Indians not members of any of the States. There is not a single assertion of jurisdiction besides this. But for this purpose it must be admitted the sovereignty of the United States extended there. When Virginia parted with the soil and municipal jurisdiction she possessed, she provided in explicit terms that this sovereignty should be held in trust for the time being by the United States, but to reappear and be vested in the States formed out of the territory. For, mark you, sir, it was to be laid out and formed into States, and into such States as then constituted the Union, and these States were to have the same rights of sovereignty as Virginia and New York then had, no more and no less. They were not to be lesser lights in the Union, but full-orbed States, with every attribute of sovereignty which the proudest possessed. It is clear, therefore, that when the time arrived, and a new State carved from this territory was admitted into the sisterhood of States, the trust of the United States was limited and restricted to the simple disposal of the lands that remained. There remained over the new State such national sovereignty only as existed over the other States. What

is said by the Supreme Court of the United States in Pollard's Lessee *vs.* Hagan *et al.* (3 Howard,) is equally true of Indiana. The court said:

"The right of Alabama and every other new State to exercise all the powers of government which belong to and may be exercised by the original States of the Union, must be admitted and remain unquestioned except so far as they are temporarily deprived of control of the public lands."

The subject of controversy in that celebrated case was a body of land on the Alabama river which, at the time the State of Alabama was admitted into the Union, was below high-water mark. By the receding of the waters or by alluvion the land became dry, and the United States undertook to convey it by patent. The court held, first, that the shores of navigable waters and the soils under them were not granted by the Constitution to the United States, but were reserved to the States respectively; secondly, the new States have the same rights, sovereignty, and jurisdiction over this subject as the original States; thirdly, the right of the United States to the public lands, and the power of Congress to make all needful rules and regulations for the sale and disposition thereof, conferred no power to grant to the plaintiffs, who held the patent of the United States, the land in controversy in that case. This decision would seem to be conclusive upon the question.

If we turn to the enabling act of Congress of April 19, 1816, we find that the inhabitants of the Territory of Indiana were authorized to form for themselves a constitution and State government, and to assume such name as they deemed proper; and that the State, when formed, should be admitted into the Union upon the same footing with the original States. This was the second grand step taken in the execution of the trust imposed by Virginia's deed of cession. Ohio had already been admitted into the Union, and for fourteen years exercised the same powers of sovereignty with the original States. The people of Indiana met in convention on the 10th of June, 1816, and by an ordinance accepted the propositions of Congress and proceeded to form a constitution of State government.

This, then, Mr. President, is the result: when Indiana was admitted into the Union she was invested with a sovereignty as complete over the territory within her borders as Virginia ever possessed before her deed of cession; nay more, with the same sovereignty and jurisdiction which Virginia possessed within her limits as a State. Nothing of municipal jurisdiction remained to the United States except such as was necessary to sell the public lands, prevent trespasses upon them, and to shield them from taxation.

Besides this power to dispose of and make all needful regulations respecting the public domain, the jurisdiction of the General Government within Indiana was no greater than in any other State. Exclusive legislation and authority may be exercised by the United States only over such places as are ceded by the States for the seat of government, or for the purpose of forts, magazines, arsenals, &c. The Senate will not fail to notice how jealous were the people of the States in admitting within their jurisdiction the combined national and municipal authority of the United States. It is limited carefully to such parcels of ground as were necessary for a seat of government and the needful public buildings the Government must have in the States. Had it been the understanding that the banks and beds of navigable rivers and lakes should be reserved for like exclusive legislation, they certainly would have been mentioned.

Now, sir, nearly forty years have passed since the public lands in northern Indiana, where this lake lies, have been surveyed and brought into market. Every foot has been sold that the Government thought worth surveying. Nothing remains there of what was ceded by Virginia except the beds of the lakes and rivers. These were not surveyed for the double reason, I suppose, that they could not be, and were not thought fit subjects of private ownership. Does it not follow that the municipal jurisdiction of the State must of necessity extend over these, and that the United States, having executed their trust in selling the public domain, have no longer any authority and jurisdiction over the shores and beds of the navigable rivers and lakes?

I do not question of course the power of Congress in regulating commerce among the States to legislate in any way to promote the navigability of these streams. I am not speaking of that, but of where the eminent domain resides as to the shores and the soils under water. I say, sir, that the sovereignty of Indiana, and doubtless of every other northwestern State, has been repeatedly asserted over these. Bridges across the rivers have been built by State authority. Dams have been thrown across them to create feeders for canals. In numerous cases the State has authorized individuals to build dams across them for milling or other manufacturing purposes. Laws have been passed for the protection of fish in our lakes and rivers. These were so many assertions of her authority and jurisdiction over the subject-matter. Has any objection even been made by the General Government? Has Congress ever questioned this sort of legislation? No, sir. It has never legislated in any other way than to authorize the improvement of navigation or to authorize bridges which should be post roads, carefully providing against any interruption of the navigability of the stream bridged.

But I repeat, the assertion of ownership and municipal control as against the States over the shores and beds of the rivers and lakes has never been made by Congress. If the sovereignty and complete authority did not exist as I claim, then every interference in the way of building dams by the State and authorizing them by individuals were so many acts of usurpation, and they and the bridges are there without right, and those who built them are trespassers; every law regulating the taking of fish is a usurpation. How could it be other-

wise? And yet, sir, the Government has stood by without objection for nearly half a century while the State has been asserting these rights.

Do not forget, Mr. President, that the new States were to be admitted upon a footing of complete equality with the old thirteen States. In which of them, I ask, has it ever been pretended that the jurisdiction and the authority of the United States extended over the shores and beds of her lakes and rivers? New York has her inland lakes, her Cayuga, Oneida, and Cazenovia lakes. Have the United States ever set up any jurisdiction over them? And suppose they were drained to-day, would anybody pretend that their beds were public domain over which we could legislate? Well, sir, in this respect, as in all others, Indiana stands upon a footing of complete equality with New York.

There is one view more I desire to press, and then I will be done. Beaver lake has been drained by the State, and drained in pursuance of a condition imposed in the swamp-land grant. I do not suppose the reclamation of the wet lands surrounding it would have been practicable without lowering the waters of the lake. But be this as it may, the ditch which turned its waters into the Kankakee was located and dug by State authority. Not a dollar has been spent by the General Government in these improvements. Thousands of acres have been reclaimed and added to the productive resources of the State. For years those claiming to own the bed of the lake have paid State, county, and township taxes upon their lands.

And now I come to the practical question: Will Congress seek to realize a profit out of the bed of this lake? Will it require the public surveys to be extended over it and the lands to be sold, since the only value they have has been created by the State and her citizens. Say there are fourteen thousand acres reclaimed; how much money would this net to the Treasury after all expenses were paid? The sum is too pitiful to be talked about. And then, I ask, how shall we dispose of that parallel case I have cited, where the highest court determined that a patent from the United States in a similar case was worthless? How shall we maintain the equality of Indiana with the original States if Congress shall seize upon and dispose of these reclaimed lands?

Leaving out of view the constitutional and legal aspect of this question entirely, and looking only to the harmonious relations the General Government desires to maintain with the States, and looking beyond that to the simple equities of this case, can there be a doubt what the Senate should do with this bill? Grant, for the argument, that the proprietary title to this lake is in the United States. It was a barren, worthless proprietorship until the State and her citizens uncovered the soil and made it valuable. Would it be quite becoming in a great nation, which has twelve hundred million acres of public domain yet to be disposed of, which is inviting actual settlers to go upon it almost without money and without price, to seize upon the bed of this lake, redeemed and reclaimed by State enterprise, to make a pitiful profit from it?

Pass this bill, and the State better than the General Government can deal with the controversies there. Indeed, the controversy will cease when the General Government abandons all claim of title there. It is only because of the belief that the title is in the United States to the bed of the lake that men, ignoring the patents made by the State, have sought to found settlements there under the preëmption laws, and obtain the lands at $1 25 per acre. They will be disappointed; but I am happy to believe they have incurred no great expenses, and they will be reconciled, I hope, when they know that the cession by Congress is to the State.

Now, Mr. President, as the Senate has indulged me in hearing what I had to say in the advocacy of this bill, I hope I may trespass upon its indulgence a moment more by asking that the bill may be put on its passage.

Mr. POMEROY. I hope we shall have a vote on the bill. I asked for its consideration once before.

Mr. LOGAN. I merely rise to second the suggestion made by the Senator from Indiana. The bill has been reported by the committee unanimously, and his remarks have satisfied me that the bill ought to pass.

By unanimous consent, the bill was considered as in Committee of the Whole.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

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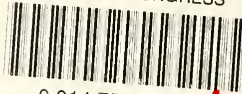
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