29th Congress, 1st Session. Rep. No. 432. Ho. of Reps.

PIERRE CHOUTEAU, Jr.

March 14, 1846.
Read, and laid upon the table.

Mr. Isaac E. Morse, from the Committee on Private Land Claims, made the following

REPORT:

The Committee on Private Land Claims, to whom was referred the memorial of Peter Chouteau jr., and others, praying for confirmation of their title to certain lands known as the "Dubuque claim," in the Territory of Iowa, having had the same under consideration, beg leave to make the following report:

The petitioners claim seventy two thousand three hundred and twenty-four arpens of land, (72,324) by virtue of certain mesne conveyances from Julien Dubuque, being the southern half of said Dubuque's claim, and the same amount constituting the northern half, by virtue of an administrator's sale of the interest of Dubuque after his death. Of the proceedings in the succession of Dubuque, they have furnished your committee no evidence; but as the whole claim, or any part thereof, depends on the validity of Dubuque's claim, it is immaterial whether the subsequent conveyances or the administrator's sale be legal or regular, if the conclusion to which your committee have arrived (afier a careful and laborious examination) be correct in relation to the original grant to Julien Dubuque.

The annexed documentary evidence, with the opinions of certain officers of the United States government, constitute a clear statement of facts, and may be considered necessary to a complete understanding of this case.

No. 1.

Copy of the Council of the Foxes.

Copy of the council held by the Reynards, (Foxes,) that is to say, of the branch of five villages, with the approbation of the rest of their people, explained by Mr. Quinantolaye, deputed by them, in their presence, and in ours:

We, the undersigned, make known that the Reynards permit Mr. Julien Dubuque, called by them the Little Night, (La Petite Nuit,) to work at the mine as long as he shall please, and to withdraw from it, without specifying any term to him; moreover, that they sell and abandon to him all

Ritchie & Heiss, print.

the coast and the contents of the mine discovered by the wife of Peosta, so that no white man or Indian shall make any pretension to it, without the consent of the Sieur Julien Dubuque; and, in case he shall find nothing within, he shall be free to search wherever it shall seem good to him, and to work peaceably, without any one hurting him, or doing him any prejudice in his labors. Thus we, chiefs, and by the voice of all our villages, have agreed with Julien Dubuque, selling and delivering to him this day, as above mentioned, in presence of the Frenchmen who attend us, who are witnesses to this writing.

At the Prairie du Chien, in full council, the 22d September, 1788.

BLONDEAU.
BAZILE PIER, his × mark.
ALA AUSTIN, his × mark.
BLONDEAU.
QUIRNEAU TOBAGUE, his × mark.
ANTAQUE.

Witness: JOSEPH SONTIGNEY.

No. 2.

Petition of Julien Dubuque.

To his excellency the Baron de Carondelet:

The most humble petitioner to your excellency, named Julien Dubuque, having made a settlement upon the frontiers of your government, in the midst of the Indian nations who are the inhabitants of the country, has bought a tract of land from these Indians, and the mines it contains, and by his perseverance has surmounted all obstacles, as expensive as they were dangerous, and after many voyages has come to be the peaceable possessor of a tract of land on the western bank, to which he has given the name of "Mines of Spain," in commemoration of the government to which he belongs. As the place of the settlement is but a point, and the different mines which he works are scattered at a distance of more than three leagues from each other, your most humble petitioner prays your excellency to be pleased to grant him the peaceable possession of the mines and lands, that is to say: from the coasts above the little river Maquauquitois to the coast of the Mesquabynanques, which forms about seven leagues on the west bank of the Mississippi, by a depth of three leagues; which demand your most humble petitioner ventures to hope your goodness will be pleased to grant him. I beseech this same goodness, which forms the happiness of so many, to endeavor to pardon my style, and to be pleased to accept the pure simplicity of my heart in default of my eloquence. I pray Heaven, with the whole of my power, that it may preserve you, and may load you with its benefits; and I am, and shall be all my life, your excellency's most humble, most obedient, and most submissive servant,

J. DUBUQUE.

No. 3.

Governor's order.

NEW ORLEANS, *October* 22, 1796.

Let information be given by the merchant, Don Andrew Todd, on the nature of this demand.

THE BARON DE CARONDELET.

No. 4.

Information of the merchant, Don Andrew Todd.

SENOR GOVERNOR: In compliance with your superior order, in which you command me to give information on the solicitation of the individual interested in the foregoing memorial, I have to say that, *as to the land for which he asks*, nothing occurs to me why it should not be granted, if you find it convenient; with the condition, nevertheless, that the grantee shall observe the provisions of his majesty relating to the trade with the Indians; and that this be absolutely prohibited to him, unless he shall have consent, in writing.

ANDREW TODD.

NEW ORLEANS, *October* 29, 1796.

No. 5.

Concession of the Baron de Carondelet.

NEW ORLEANS, *November* 10, 1796.

Granted, as asked, under the restrictions expressed in the information given by the merchant, Don Andrew Todd.

THE BARON DE CARONDELET.

No. 6.

Additional article to the treaty of 3d November, 1804.

Treaty with the Sacs and Foxes, concluded at St. Louis, November 3, 1804, by William Henry Harrison, governor of the Indiana Territory.

"*Additional article.*

"It is agreed that nothing in this treaty contained shall affect the claims of any individual or individuals who may have obtained grants of land from the Spanish Government, and which are not included within the

general boundary line laid down in this treaty; provided that such grants have at any time been made known to the said tribes, and recognised by them."

No. 7.

Certificate of General William Henry Harrison, Governor of the Indiana Territory.

I, the undersigned, William Henry Harrison, governor of the Territory of Indiana, and commissioner plenipotentiary of the United States for treating with the Indian tribes northwest of the Ohio, do hereby certify and declare, that, after the treaty which was made with the Sacs and Foxes, at St. Louis, on the 3d day of November, 1804, was drawn up and prepared for signing, I was shown a grant from the Governor General of Louisiana, to a certain Dubuque, for a considerable quantity of land, at some distance up the Mississippi, and where the said Dubuque has for many years resided. Finding that this tract could be considered as receded by the treaty as it then stood, the additional article was written and submitted to the Indians. They readily consented to it; and the undersigned informed them that the intention of it was to embrace particularly the claim of Dubuque, the validity of which they acknowledged.

Given under my hand and seal, at Vincennes, the 1st day of January, 1806.

WILLIAM HENRY HARRISON.

No. 8.

Letter of General W. H. Harrison.

VINCENNES, *January* 4, 1806.

DEAR SIR: Enclosed you have the certificate on the subject of Dubuque's claim; I hope *it* will be sufficient for your purpose, and that you have suffered no inconvenience from its not being sent on sooner. I have no doubt of the validity of your claim, and never had any.

The certificate I intended to have sent on last week, but there was no mail.

With best respects to Mrs. Chouteau, I am your friend and humble servant,

WILLIAM H. HARRISON.

AUGUSTE CHOUTEAU, Esq.,
St. Louis, Missouri.

No. 9.

Deed from Julien Dubuque to Auguste Chouteau.

To all who these present letters shall see, greeting: Be it known that we, Julien Dubuque, mineralogist, a resident of the Mine d'Espagne, and

presently in the town of Saint Louis, of Illinois, of the one part, and Auguste Chouteau, a merchant, residing in this said town of Saint Louis, of the other part, have, of our own motion and will, in the presence of the witnesses here below named, covenanted and agreed upon what follows, to wit: That I, Julien Dubuque, by these same presents, acknowledges and confesses to have on this day sold, ceded, left, and conveyed, now and forever, and promises to defend from all troubles, debts, dowers, mortgages, evictions, substitutions, and other impediments whatever, unto the above-said Auguste Chouteau, merchant, here present, and accepting, who acquires, for him, his heirs or assigns, to wit, a tract of land containing seventy-two thousand three hundred and twenty-four arpens, in superficie, to be taken at the south part of a concession obtained by me (said Dubuque) from the Baron de Carondelet, as is detailed in his decree, dated at New Orleans, on the tenth day of November, of seventeen hundred and ninety-six, and written at the bottom of the petition which I presented to the said Baron de Carondelet; said petition and decree above mentioned having been registered in the book kept by Mr. Soulard, surveyor of the Territory of Louisiana.

The said concession, containing about seven leagues front on the Mississippi river, by three leagues deep, to begin at the upper hills of the little river Maquauquitois, at the place where it empties into the river Mississippi, and to end at the Mez qua-bi-nan-que hills, at the place where they touch the said river Mississippi. The seventy two thousand three hundred and twenty-four arpens of land thus sold by me, the aforesaid Dubuque, to the said Auguste Chouteau, shall be taken and limited as follows: To begin at the south part of my said concession, at the Mez-qua-bi-nan-que hill, by three leagues in depth, and to ascend the river Mississippi northward until the completion of the said seventy two thousand three hundred and twenty-four arpens; and, as an establishment made by me, and which I am now occupying, would be included within the said seventy-two thousand three hundred and twenty four arpens of land here above mentioned and sold, I reserve for myself, by these presents, the exact quantity of forty-two arpens front on the Mississippi, by eighty four in depth, at the said place of my aforesaid establishment; and inasmuch as the same quantity of forty two arpens front, by eighty four deep, would not complete the said amount sold, I, the aforesaid Dubuque, in order to complete the said seventy two thousand three hundred and twenty-four arpens by me sold to the said Auguste Chouteau, do bind myself by these presents to deliver the said forty-two arpens, by eighty-four deep, in another place of my said concession; which forty-two arpens shall be in front, and the eighty-four in depth. We, the aforesaid Dubuque and Chouteau, covenant and agree, of our own motion and will, to have each one in particular the full and entire enjoyment of the said seventy-two thousand three hundred and twenty four arpens of land above mentioned, as well for the working of the mines as the cultivation of the lands above sold by me, the said Dubuque, and acquired by me, the said Chouteau, excepting, however, that I, the said Dubuque, shall have the said enjoyment during my lifetime only, binding myself not to sell, convey, or alienate the said concession to any one whomsoever, under the penalty of the nullity of the right to work the mines and cultivate the land by me sold as aforesaid; and, in consideration of the said enjoyment to work the mines and cultivate the lands thus granted to me by the said Chouteau during my

lifetime, all the works, furnaces, buildings, clearings, &c., by me made on the said land, shall belong to the said Chouteau after the above mentioned term of my lifetime, in order that the said Chouteau, his heirs or assigns, have the full and peaceful possession thereof, and enjoy the same, after my demise, as a thing to him or them belonging. This present sale made by me (said Dubuque) for the price and sum of ten thousand eight hundred and forty-eight dollars and sixty cents, which, by these presents, I do acknowledge to have received in cash from the hands of the said Auguste Chouteau, and for which, by these same presents, I do give him full and entire acquittance and discharge; it being my will, that, on account of the said payment, the said Chouteau shall have the full and peaceable possession of the said tract of land from this day, and him, and his heirs or assigns, enjoy the same, as a thing to him or them belonging, divesting myself of the abovesaid quantity of seventy-two thousand three hundred and twenty-four arpens of land above mentioned, in consideration of the abovesaid payment of the sum of ten thousand eight hundred and forty-eight dollars and sixty cents, received by me from the hands of the said Chouteau; forbidding my heirs, executors, or administrators, to appeal, in any manner whatever, from all that which is here before mentioned and stipulated: for thus it has been covenanted and agreed upon, promising, &c., binding ourselves, &c., renouncing, &c.

Done and executed in the town of Saint Louis, of Illinois, the twentieth of October, of the year eighteen hundred and four, and the twenty-ninth of the American independence.

In faith whereof, we, the said Dubuque and Chouteau, have signed the presents, in the presence of Messrs. Marie Philippe Leduc, recorder, Bernard Pratte, and Manuel Gonzales Moro, nd also affixed our seals, the day and year as above.

The words *reciproquement et*, of the twenty-third and twenty-fourth lines, are run over, as being null.

J. DUBUQUE. [SEAL.]
AUGUSTE CHOUTEAU [SEAL.]

M. P. LEDUC.
MANUEL GONZALES MORO.
BERNARD PRATTE.

DISTRICT OF SAINT LOUIS, *sct:*

Before Charles Gratiot, chief judge of the court of common pleas of the district aforsaid, came Julien Dubuque and Auguste Chouteau, and acknowledged the above to be their act and deed.

In witness whereof, I have hereunto set my hand and seal, the fifteenth of November, one thousand eight hundred and four.

CHRLES GRATIOT. [SEAL.]

Recorded in book A, pages eleven, twelve, thirteen, and fourteen, the third of December, one thousand eight hundred and four.

M. P. LEDUC, *Recorder.*

DISTRICT OF SAINT CHARLES:

Recorded in book A, pages twelve, thirteen, fourteen, fifteen, and six-

teen, the twenty-seventh day of December, one thousand eight hundred and four.

P. PROVENCHERE, *Recorder.*

No. 10.

Notice of claim to commissioners.

To James L. Donaldson, recorder of land titles for the Territory of Louisiana.

Take notice, that Julien Dubuque claims 75,852 arpens of land, purchased by said Dubuque from the Indians, the 22d September, 1788, for which the Baron of Carondelet granted a concession, bearing date the 10th November, 1796, which concession was for the quantity of 21 leagues in superficie, or 148,176 arpens; of this, Mr. Auguste Chouteau claims, by virtue of an assignment made to him, the quantity of 72,324, and this claimant the residue thereof. The papers relative to this claim are already recorded in this book, pages 78, 79, 80, and 81. Julien Dubuque further claims 7,056 arpens of land, situated on the Mississippi, opposite the Prairie des Chiens, at about 220 leagues distance from St. Louis, granted to a certain François Cailhol by Don Carlos Dehault Delassus, by concession bearing date the 13th August, 1799, by said Cailhol assigned to this claimant by deed bearing date the 17th May, 1805.

RECORDER'S OFFICE,
St. Louis, Missouri, October 30, 1833.

I certify that the above is truly copied from book B, page 109, of record in this office.

F. R. CONWAY,
Recorder of Land Titles in the State of Missouri.

No. 11.

Proceedings of the board of commissioners.

At a sitting of the board of commissioners, held on the 20th day of September, 1806—

Present: The honorable John B. C. Lucas, Clement B. Penrose, James L. Donaldson, esqs.

Julien Dubuque and Auguste Chouteau, claiming a tract of one hundred and forty-eight thousand one hundred and seventy-six arpens of land, situate at a place called the Spanish Mines, on the river Mississippi, at a distance of about four hundred and forty miles from St Louis, forming in superficies about twenty-one leagues, produce a petition of the said Julien Dubuque to the Baron de Carondelet, praying for the peaceable possession of an extent of land of about seven leagues on the western bank of the Mississippi, beginning at the heights of the little river Maquauquitois to the heights of Mesquabynanques, being in front on said river seven leagues,

by a depth of three leagues; the whole forming the said tract called the Spanish Mines. A reference by the Baron de Carondelet to one Andrew Todd, an Indian trader, of the above demand, under date of the 22d October, 1796, with the assent of the said Andrew Todd to the granting of the same, provided the said petitioner should not interfere with his trade, the same dated 29th of same month and year.

The decree of the Baron de Carondelet in the following words: "Concedido," &c., * * * An additional article to a treaty made by William Henry Harrison, &c., &c., * * * A certificate in the words following: "The undersigned, Wiliam Henry Harrison," &c. * * * * * *

And last, by a bill of sale of one-half of said tract to said Auguste Chouteau, by said Julien Dubuque, dated October 20, 1804.

A majority of the board, John B. C. Lucas dissenting, ascertain this claim to be a complete Spanish grant, made and completed prior to the 1st day of October, 1800.

Extract from the minutes.

J. V. GARNIER,
Assistant Clerk to the Board.

No. 12.

Report of Mr. Gallatin, Secretary of the Treasury, to the President of the United States.

FACTS.

In 1788, Dubuque purchases, from the Indians, an extent of seven leagues front on the Mississippi, by three leagues in depth, containing upwards of one hundred and forty thousand acres, and the most valuable lead mines of Louisiana, situated about five hundred miles above St. Louis. The sale is very vague. They permit Dubuque to work the mine as long as he pleases, and till he thinks proper to abandon it, without confining him to any time; and they also sell him the hill and contents of the land (or mine) found by Peosta's wife; and if he finds nothing in it, he may seek where he pleases, and work quietly. In 1796, he presents his requete to Governor Carondelet at New Orleans, stating that he has made a settlement (habitation) or settled a plantation amongst the Indians; that he has purchased from them a portion of land, with all the mines therein contained; that the *habitation* is but a point, and, inasmuch as the mines he works are three leagues from each other, he requests the governor to grant him the *peaceable possession* of the mines and lands contained within certain natural boundaries, and which he states as being above six leagues in front and three in depth.

The governor refers the application, for information, to A. Todd, who had the monopoly of the Indian trade on the Mississippi.

A. Todd reports that no objection occurs to him, if the governor thinks it convenient to grant the application, provided that Dubuque shall not trade with the Indians without his permission.

Governor Carondelet writes at the foot of the request, "Granted as is

asked, (concedido como se solicita,) under the restrictions mentioned by Todd in his information, November 10, 1796."

Governor Harrison, in his treaty with the Sacs and Foxes of the 3d November, 1804, introduced an additional article, by which it is agreed that nothing in the treaty shall affect the claim of individuals who might have obtained grants of land from the Spanish government, known to and recognised by the Indians, though such grants be not included within the boundary line fixed by the treaty with said Indians.

And the same governor certifies that the article was inserted with the intention of particularly embracing Dubuque's claim.

The claim having been laid before the commissioners, they made, on 20th September, 1806, the following decision:

"A majority of the board, John B. C. Lucas dissenting, ascertain this claim to be a complete Spanish grant, made and completed prior to the 1st day of October, 1800."

A copy of that decision, attested by the assistant clerk of the board, has been delivered to Auguste Chouteau, who had purchased from Dubuque one undivided half of the claim.

REMARKS.

1. Governor Harrison's treaty adds no sanction to the claim. It is only a saving clause in favor of a claim, without deciding on its merits—a question which, indeed, he had no authority to decide.

2. The form of the concession, if it shall be so called, is not that of a patent or final grant; and that it was not considered as such the commissioners knew, as they had previously received a list, procured from the records at New Orleans, and transmitted by the Secretary of the Treasury, of all the patents issued under the French and Spanish governments, in which this was not included, and which also showed the distinction between concession and patent, or complete title.

3. The form of the concession is not even that used when it was intended ultimately to grant the land, for it is then uniformly accompanied with an order to the proper officer to survey the land; on which survey being returned, the patent issues.

4. The governor only grants as is asked, and nothing is asked but the peaceable possession of a tract of land on which the Indians had given a *personal* permission to work the lead mines as long as *he* should remain.

Upon the whole, this appears to have been a mere permission to work certain distant mines, without any alienation of, or intention to alienate, the domain. Such permission might be revoked at will; and how it came to be considered as transferring the fee simple, or even as an incipient and incomplete title to the fee simple, cannot be understood.

It seems, also, that the commissioners ought not to have given to any person certificates of their proceedings, tending to give a color of title to claimants. They were by law directed to transmit to the Treasury a transcript of their decisions, in order that the same might be laid before Congress, for approbation or rejection.

No. 13.

Order of Major General Macomb, of the United States Army.

HEADQUARTERS OF THE ARMY,
Washington, January 5, 1833.

SIR: Your letter of the 28th November has been received. You will direct the commanding officer at Fort Armstrong or at Fort Crawford, as may be most convenient, to order off the intruders upon the mineral grounds lately ceded by the Sacs and Foxes, at the treaty entered into by those tribes with General Scott and Governor Reynolds.

The intruders will be required to leave the ceded country within such time as you may deem proper to fix upon; and should they not comply with the order to leave the country, you will direct a force from either of the posts above mentioned to remove them, and destroy their establishments.

These are the instructions of the Secretary of War.

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

ALEX. MACOMB, *Major General.*

Brig. Gen. HENRY ATKINSON,
Commanding at Jefferson Barracks.

No. 14.

Letter of Thomas H. Blake, esq., Commissioner of the General Land Office.

GENERAL LAND OFFICE, *May* 1, 1844.

SIR: In answer to your letter of the 30th ultimo, to-day received, I have the honor to inform you that the "Reddick" claim, for 640 acres, (in township 66 north, of range 5 west,) situated within the limits of the half-breed Sac and Fox reservation, has been recognised as a confirmed claim, and that a patent was issued for it under date 7th February, 1839.

With great respect, your obedient servant,

THOMAS H. BLAKE, *Commissioner.*

Hon. JOHN HENDERSON, *Senate U. S.*

No. 15.

Opinion of the Hon. Felix Grundy, Attorney General of the United States, on the claim of Reddick's heirs.

ATTORNEY GENERAL'S OFFICE,
January 2, 1839.

SIR: I have had the honor to receive your communication of the 24th ultimo, with the accompanying papers, relative to the conflicting claims of Thomas F. Reddick's heirs and Marsh and others to a tract of 640 acres

of land, situate on the bank of the Mississippi river, about 18 miles above the mouth of the Des Moines river, in fractional township number sixty-six north of the base line, of range number five west of the fifth principal meridian.

I deem it unnecessary to give a separate answer to each of the interrogatories or questions propounded in your letter, believing that the present case may be properly decided without an explanation of my views in relation to some of the matters involved in your inquiries. Congress, by the act of the 1st of July, 1836, "relinquished all the right, title, claim, and interest that the United States have in and unto the said six hundred and forty (640) acres of land, to the said Thomas F. Reddick's heirs, with the following proviso: That if said lands shall be taken by any older or better claim, not emanating from the United States, the government will not be in anywise responsible for any remuneration to said heirs; and provided, also, that should said tract of land be included in any reservation heretofore made under treaty with any Indian tribe, the said heirs be, and they are hereby, authorized to locate the same quantity, in legal divisions or subdivisions, on any unappropriated land of the United States in said territory subject to entry at private sale."

If this act of Congress be available to the heirs of Reddick for no other purpose, it at least proves that the claim set up by them is fair and honest, and such a one as the United States are bound to satisfy in some way under the treaty ceding Louisiana to them. Taking it then for granted that the original claim of Tesson, which is dated the 30th of March, 1799, and under which Reddick's heirs derive their title, gave him an inchoate right to the land in controversy, (as is proved and admitted by the act of Congress above referred to,) I will proceed to examine whether it can be affected by the last proviso in said act, (of July 1, 1836.) The first question which arises is, whether this land was reserved by any Indian treaty, so as to affect the title of Reddick's heirs?

In the treaty of the 4th of August, 1824, between the United States and the Sacs and Foxes, there is this provision: "It being understood that the small tract of land lying between the rivers Des Moines and Mississippi, and the section of the above line between the Mississippi and the Des Moines, is intended for the use of the half-breeds belonging to the Sac and Fox nations; they holding, however, by the same title and in the same manner as other Indian titles are held." From this it is evident that no other or greater title is vested in the half-breeds to this particular tract of land than was originally held by these tribes to that portion of the land described in the said treaty, to which the Indian title was thereby extinguished. It gave the half-breeds the Indian right of occupancy, not the title in fee. This the United States was competent to do. They might, if the consent of the Indian tribes could be obtained, extinguish the Indian title or not, at their pleasure, and no individual claimant to lands occupied by the Indians would have just cause of complaint. But to transfer the land to which an individual has a just and legal claim presents a very different case. While this land was the property of Spain, that government granted it to Tesson, who immediately settled upon it, and he and those claiming under him have occupied the same ever since.

The 2d article of the treaty with France, by which the United States acquired the territory in which this land is situated, and which is dated the 30th of April, 1803, provides, "that in the cession made by the preceding

article are included the adjacent islands belonging to Louisiana, all public lots and squares, vacant lands, and all public buildings, fortifications, barracks, and other edifices which are not private property," &c.

No difficulty, it seems to me, can arise as to the true meaning of this article. It is a cession of the public, not of the private property of individuals; and this is in conformity to the public law, as understood and practised by all civilized nations; which is, where a cession of territory is made by one nation to another, it is understood to pass the sovereignty only, including the public property, but does not affect the rights of private property; and if any doubt could exist on this subject, it would be removed by the expression used in the treaty.

The *vacant* lands are ceded, which shows that the intention of the parties was not to intefere with lands owned by individuals.

It has already been stated that the grant of Tesson was made in 1799, and that possession was taken immediately thereafter; and such possession was continued until after an execution sale of the land on the 15th of May, 1803, and for two years thereafter, about which time Thomas F. Reddick, the ancestor of the claimants, on the one part, in this case, became the purchaser, and took possession. During the occupation of Tesson, several improvements were made on said land: cabins were erected, and enclosures made; and an orchard, consisting of one hundred trees, planted, and several arpens of land cultivated in different years. *This possession, improvement, and cultivation, must have been known and sanctioned by the Indians. No complaint whatever appears to have been made by them. I therefore think it not unreasonable to infer from these circumstances that they (the Indians) knew of the grant to Tesson, made by the Spanish government, and recognised the same;* and *therefore*, the following article, which was added to the treaty of November 3, 1804, *applies to the case* under consideration: "Additional article.—It is agreed that nothing in the treaty contained shall affect the claim of any individual or individuals who may have obtained grants of land from the Spanish government, and which are not included in the general line laid down in this treaty, provided that such grants have at any time been made known to the said tribes, and recognised them." *From this it seems that the Sacs and Foxes, as well as the United States, did not intend, by any agreement or treaty of theirs, to impair the rights of grantees under the Spanish government. It was understood by both parties that such claims existed;* AND, UNDER CERTAIN CIRCUMSTANCES, THEIR VALIDITY IS ACKNOWLEDGED BY THE FOREGOING ARTICLE.

It is a sound rule of law, that all statutes made on the same subject shall be taken into view, and construed together, when the object is to ascertain the true meaning of the legislature relative to the subject-matter of such statutes. The same rule should be applied in relation to treaties or compacts made between the same parties. Therefore, the foregoing "*additional article*" *ought to be considered as in full force, and applicable to all the* subsequent treaties and proceedings *between the same parties*, it never having been changed or annulled by them, but, on the contrary, expressly reaffirmed by another portion of these tribes and the United States in the year 1815.

It is insisted that the act of June 30, 1834, vests the title to the land in controversy in the half-breeds of the Sac and Fox tribes of Indians. This cannot be maintained, if the views which I have stated be correct. That

act only provides that the right, title, and interest, which might accrue or revert to the United States, to the reservation of land lying between the rivers Des Moines and Mississippi, which was reserved for the use of the half-breeds belonging to the Sac and Fox nations, now used by them, or some of them, under the treaty of 1824, is relinquished and vested in the said half-breeds, with full power to sell or devise, &c.

By this act the half-breeds are to have all the right, title, and interest to the reservation which might accrue or revert to the United States, &c.

Now, suppose the Indian title had been extinguished to the whole tract of country given by this act to the half-breeds in the ordinary way, by purchase and removal of the Indians, would it have been said that the 640 acres of land, now claimed by Reddick's heirs, could have belonged to the United States, and been subject to their disposal? or, on the contrary, would not all men have concurred in saying that the land was the property of Reddick's heirs, and that the United States were bound by their treaty stipulations with France, and by the universal usage among civilized nations, to go on and perfect the title? If this be so, I can see no principle upon which the claim of the half-breeds, or their assigns, can be sustained. It ought never to be presumed that the government intended to make two grants for the same lands, or that it intended to grant land again which had been granted by the government under which it derives title; and if a construction can be put upon the acts of government which will avoid such an effect, it ought to be done in this case. Although the exterior boundaries of the reservation in the treaty of 1824 embraced the land in controversy, still it by no means follows that Congress intended to convey it to the half breeds; because, in the first place there is a body of valuable land (this being excepted) on which the act of June 30, 1834, did operate and transfer to the half-breeds. In the next place the language of the act itself, upon a sound interpretation, excludes the lands in controversy. I am, therefore, of opinion that a patent should issue to Reddick's heirs.

I am, sir, &c.,

FELIX GRUNDY.

To the SECRETARY OF THE TREASURY.

No. 16.

Report of Mr. Smith, of Indiana, to the Senate.

[27th Congress, 2d session.]

IN SENATE OF THE UNITED STATES.

JULY 1, 1842.

Ordered to be printed—to accompany Senate bill 172.

Mr. SMITH, of Indiana, submitted the following report:

The Committee on Public Lands, to whom was referred "A bill extending the right of pre-emption to certain settlers in the Territory of Iowa," report:

The object of the bill is to grant the right of pre-emption to lands lying

in the county of Dubuque, in the Territory of Iowa, to settlers upon what is called the Dubuque claim. This claim covers over 140,000 acres of land, and is the obstacle sought to be removed by the passage of the bill referred to the committee, as by the acts of Congress the right of pre-emption or of disposition is excluded from the lands thus situated. The committee are aware that this claim has been from time to time before Congress, at the instance of the claimants; that it does not properly belong, merely as such, to the Committee on Public Lands; and, disclaiming any desire to take cognizance of matters that do not legitimately connect themselves with the subject before them, they conceive it to be indispensable to a decision upon the question submitted, to examine the claim set up in opposition to the right of the United States to dispose of these lands as other public lands are disposed of, as upon the validity of the Dubuque claim must depend such right of disposition. The committee are not unapprized that their decision will not be decisive of the claim; but they deem it proper to express such views as they entertain in relation to it, for the purpose of sustaining the conclusion to which they have finally come. They proceed, without further introductory remarks, to present to the Senate the material facts necessary to a correct understanding of the claim; and as the agreement between the Fox Indians and Dubuque, made in council at Prairie du Chien on the 22d of September, 1788, is the foundation of his claim, it is incorporated at length in this report.

"Copy of the council held by the Reynards, (Foxes,) that is to say, of the branch of five villages, with the approbation of the rest of their people, explained by M. Quinantotaye, deputed by them, in their presence and in ours. We, the undersigned, make known that the Reynards permit Mr. Dubuque (called by them the Little Night—la Petite Nuit) to work at the mines as long as he shall please, and to withdraw from it without specifying any term to him; moreover, that they sell and abandon to him all the coast and the contents of the mine discovered by the wife of Peosta, so that no white man or Indian shall make any pretensions to it without the consent of the Sieur Julien Dubuque; and, in case he shall find nothing within, he shall be free to search wherever it shall seem good to him, and to work peaceably, without any one hurting him, or doing him any prejudice in his labors. Thus we, chiefs, and by the voice of all our villages, have agreed with Julien Dubuque, selling and delivering to him this day as above mentioned." Signed by the Indians.

On the 22d of October, 1796, (more than eight years after the execution of this permit,) Dubuque petitioned Governor Carondelet on the subject of this grant or permit; and as this petition is one of the main links in his chain of title, and as the committee desire to place the matter in its true light before the Senate, they give the petition entire:

"The most humble petitioner to your excellency, named Julien Dubuque, having made a settlement upon the frontiers of your government, in the midst of the Indian nations, who are the inhabitants of the country, has bought a tract of land from these Indians, and the mines it contains, and by his perseverance has surmounted all obstacles, as expensive as they were dangerous, and, after many voyages, has come to be the peaceable possessor of a tract of land on the western bank, to which he has given the name of 'Mines of Spain,' in commemoration of the government to which he belongs. As the place of the settlement is but a point, and the

different mines which he works are scattered at a distance of more than three leagues from each other, your most humble petitioner prays your excellency to be pleased to grant him the peaceable possession of the mines and lands—that is to say, from the coast above the little river Maquauquitois to the coast of the Mesquabynanques, which forms about seven leagues on the west bank of the Mississippi, by a depth of three leagues; which demand your most humble petitioner ventures to hope your goodness will be pleased to grant him. I beseech this same goodness, which forms the happiness of so many, to endeavor to pardon my style, and to be pleased to accept the pure simplicity of my heart in default of my eloquence. I pray Heaven, with the whole of my power, that it may preserve you, and may load you with its benefits; and I am, and shall be all my life, your excellency's most humble, most obedient, and most submissive servant,

"J. DUBUQUE."

This petition was referred by Governor Carondelet to one Andrew Todd, a merchant, for his opinion, on the 29th of October, 1796. Todd returned his answer, as follows:

"In compliance with your superior order, in which you command me to give information on the solicitation of the individual interested in the foregoing memorial, I have to say that, as to the land for which he asks, nothing occurs to me why it should not be granted, if you find it convenient; with the condition, nevertheless, that the grantee shall observe the provisions of his majesty relating to the trade with the Indians, and that this be absolutely prohibited to him, unless he shall have my consent, in writing."

On the 10th of November, 1796, Governor Carondelet sanctioned the application of Dubuque in the following language:

"Granted as asked, under the restrictions expressed in the information given by the merchant, Don Andrew Todd.

"THE BARON DE CARONDELET."

Under this evidence of right, Dubuque held the possession of these mines at his will, until the treaty of the 3d of November, 1804, made by General Harrison with the Indians, for the district of country including the Dubuque claim, when a saving clause was inserted in the treaty, acknowledging the validity of this claim, and saving it from the operation of the treaty; previous to which, however, on the 1st of January, 1806, Dubuque had sold one-half of his claim to one Auguste Chouteau. Such being the facts of the case, so far as this claim is involved, the questions arise, what were the nature and legal character of the grant under which Dubuque claimed these lands, at the time of the treaty? and, secondly, what effect had the treaty upon his claim?

The committee think it very obvious that the grant, permit, or concession, by whatever name it may be called, of the Indians in council, to Dubuque, was never intended by either of the parties to give any greater interest in the land or mines to Dubuque than a mere *personal permit* or *privilege* of working the mines as long as he pleased, and of leaving them whenever he should think proper, "without any one hurting him or doing him any prejudice in his labors."

This view is not only sustained by a fair construction of the paper itself, but by the fact that there was no specified limits to the assumed grant, no consideration paid. The Indians continued in the possession of the lands,

as before, up to the date of the treaty; but another position, perhaps more conclusive, may be assumed, in the want of power in the Indian tribes to sell or convey lands in their possession to individuals.

The grant of the Spanish governor, admitting his power to make a valid concession or title to Dubuque, does not profess to do so. It merely recognises and affirms the contract made by Dubuque with the Indians, made a little more specific as to boundaries, and grants to him the "peaceable possession" of the lands and mines, as prayed for in his petition. The right to the lands was neither asked for by Dubuque in his petition nor granted by the governor. It may, therefore, be safely assumed, that the whole object of the request, as well as of the grant, was, on the one side, to ask, and on the other side to give, a personal permission to possess the lands and work the mines "peaceably, without any one hurting him (Dubuque) or doing him any prejudice." This construction of the contract between the parties is sustained by the consideration, that the Indians had no power to make a grant of greater force with an individual; that such is the legal import of the papers and facts of the case; that it is and was the settled policy of the Spanish government not to sell their mines, and they cannot be presumed to have done so in this case; that the form of the concession was not accompanied by any order of survey, or any declaration that a patent would subsequently issue—provisions usually contained in a Spanish grant or concession.

The next question is, did the clause of the treaty of 1804, saving from its provisions this claim, aid its defects as a claim for any greater interest than a mere personal privilege? It will hardly be contended that a saving clause in a treaty can enlarge or diminish the extent of the claim saved from its operation. The claim stands upon its own merits. If valid, the treaty could not affect it; if defective, the treaty could not give it validity, unless by an express provision to that effect. The view, however, which the committee have taken of the nature of the claim, and of its legal import, renders it unnecessary to go at large into the construction of general treaty stipulations, as the interest of Dubuque, being a mere personal privilege, accompanied by a naked right of possession at most, when saved from the operation of a general treaty, would retain its original character, and receive no additional sanction from such saving clause.

If these facts be correctly stated, and the committee have succeeded in the application of the correct principles to them, it follows that the claim of Dubuque did not survive him, nor was it such an interest as he could legally convey in his lifetime, and therefore it does not present any obstacle to the relief contemplated by the bill.

The remaining question is, whether it is proper to subject these lands to the operation of the laws in force, including the pre-emption laws for the disposal of the public lands, as in ordinary cases. After much reflection, the committee have come to the conclusion that as the Dubuque claim is, in their opinion, invalid; as the government, under the same opinion, took possession of the lands covered by this claim, laid off towns, sold lots, leased lead mines, and received the rents; as settlers took possession of the farming lands with these facts before them, and the additional fact that the pre-emptions were secured to other settlers upon the public lands, and as these settlers have made valuable and lasting improvements upon the lands, it is believed to be the only just course to the parties concerned to subject these lands to the laws in force, including the pre-emption laws, reserving to the

persons claiming under Dubuque the right to enter a like quantity of the public lands subject to private entry, should their claims ultimately prove valid. This course would do justice to the settler, quiet his title, and secure to him the reward of his labor. The government would receive the value of the land, and the claimants under Dubuque would have ample redress in the grant named.

The committee are pleased to know that they are not now making a decision to be cited as a precedent, as the principle they have adopted has been sanctioned in numerous cases similarly circumstanced. They therefore report the bill to the Senate, amended conformably to these views.

No. 17.

Opinion of Mr. Wirt, Attorney General of the United States.

OFFICE OF THE ATTORNEY GENERAL U. S.,
February 14, 1825.

SIR: I understand, from the letter of the Commissioner of the General Land Office, that Mr. Henderson, whom Mr. Poindexter calls upon the Executive to remove by force *as an intruder*, is in possession of the land in question, under a Spanish title; that the register of the proper land office has made due report of this title to the Secretary of the Treasury, under the 4th section of the act of 31st March, "concerning the sale of the lands of the United States, and for other purposes;" and I understand that Mr. Henderson and Mr. Poindexter are now contesting their titles by a suit at law.

Under these circumstances, I am of the opinion that Mr. Henderson is not an intruder, within the meaning of the act of 3d March, 1807, "to prevent settlements being made on lands ceded to the United States until authorized by law," and consequently that it is not competent for the Executive to remove him *by force* under that law.

I have, &c.

WILLIAM WIRT.

Hon. W. H. CRAWFORD,
Treasury Department.

Were it not for the zeal and confidence manifested for the integrity of this case by the claimants, and the fact that a favorable report was made during the last session of Congress by a distinguished member of the Senate, coupled with the important fact that these claims cover several already large and flourishing towns in the Territory of Iowa, besides an amount of land exhaustless in agricultural and mineral wealth, your committee would have been content to abide by the able report of Mr. Gallatin, a former Secretary of the Treasury, and the confirmation of similar views by Mr. Smith, of Indiana, in his report to the Senate in 1842.

But representing in part the government of the United States, against which the first just claim, even by foreign nations, has never been refused, your committee deem it their duty to establish beyond a doubt that neither Dubuque, his heirs or assigns, have, or ever had, a legal or equitable title

to the lands claimed in their memorial; as they expect to show by a careful examination of the law and the evidence in this case.

Your committee admit in its fullest extent the power of the governors, commandants, and other officers representing the majesty of Spain and France, to cede away the royal domain of which the kings, during their several periods, claimed absolute sovereignty of all lands even in the possession of the Indian tribes.

And your committee further admit, that rights of individuals, whether perfect or inchoate, were intended to be protected in all our treaties with those sovereigns for territory, and that claimants *bona fide* under French or Spanish grants were entitled to have all such rights respected, when perfect in themselves, and that those claimants with inchoate or inceptive titles were equitably entitled to have the same perfected by our government, where the inception commenced in good faith, and where the intention was manifest.

It will be admitted from the broad and liberal construction given of those rights as against this government, by your committee, that it is not their intention to stand on technicalities or special pleadings; and while they feel bound to respect in its most extensive interpretation any claim which in justice or equity could "affect the conscience of the king by his own or the acts of the lawful authorities of his province," still it is not their intention to sanction the doctrine that every claim, however vague, would be respected by this government, which could not be fairly and justly construed against the former government.

It will not be necessary to notice the power and instructions given to O'Reilly, Carondelet, Gayoso, and other officers of the crown, in relation to the cession of lands, although it would have been, perhaps, extremely difficult for Carondelet to refuse to obey them in giving a patent, or ordering any survey, under the instructions received by him subsequently to the issuing the pretended grant to Julien Dubuque; but refer to a few decisions of the Supreme Court of the United States as to their understanding of the laws as applicable to all claimants under Spanish grants; and with these facts, and the law as laid down by the highest tribunal of the country, your committee have not found much difficulty in coming to a conclusion. In the case of Smith *vs.* the United States, page 331, volume 10, Reports of Peters, they say:

"In all our adjudications on either class of cases, we have considered the term *lawful authorities* to refer to the local governors, intendants, or their deputies; *the laws and ordinances* of Spain as composed of royal orders, of those of the local authorities, and the usages and customs of the provinces, respectively, under Spain; that any inchoate or perfect title, so made, granted, or issued, is legally made by the proper authorities; we have as uniformly held, that in ascertaining what titles would have been perfected if no cession had been made to the United States, we must refer to the general course of the law of Spain, to local usage and custom, and not to what might have been or would have been done by the special favor or arbitrary power of the king or his officers. It has been also distinctly decided in the Florida cases, that the land claimed must have been severed from the general domain of the king, by some grant which gives it locality by its terms, by a reference to some description, or by a vague general grant, with an authority to locate afterwards by survey, making it definite;

which grant or authority to locate must have been made before the 24th January, 1818."

In same case, page 334, they say: "We are, therefore, clearly of opinion that no claim to land in Missouri can be confirmed under the acts of 1824 or 1828, unless by a grant, concession, warrant, or order of survey for some tract of land described therein, to make it capable of some definite location consistently with its terms made, granted, or issued before the 10th of March, 1804, or by an order to survey any given quantity without any description or limitation as to place, which shall have been located by a survey made by a proper officer before that time, as was Soulard's case." "Spain never permitted individuals to locate their grants by mere private survey." "*The grants were an authority to the public surveyor or his deputy to make the survey as a public trust, to protect the royal domain from being cut up at the pleasure of the grantees.*"

A grant might be directed to a private person, or a separate official order given to make the survey, *but without either it would not be a legal execution of the power.* "No such survey was made on this grant, so that it had not attached to the land claimed at the time named in the law."

Again, the court say, at p. 335, "But neither in this, or the record of any of the cases which have been before us, have we seen any evidence of any law of Spain, local regulation, law, or usage, which makes a private survey operate to sever any land from the royal domain; on the contrary, all the surveys which have been exhibited in the cases decided, were made by the surveyor general of the province, his deputies, the special order of the governor, or intendant, or those who represented them." No government gives any validity to private surveys of its warrants or orders of survey; and we have no reason to think that Spain was a solitary exception, even as to the general domain, by grants, in the ordinary mode, for a specific quantity, to be located in one place.

"*A fortiori* where a grant *sui generis* might, by its terms, be so split up as to cover every saline, mineral, and water-power site in the whole territory. Of all others, the survey of such a grant ought to be made by an authorized officer. If the grant was a lawful authority for such selections, its execution, by survey, ought to be so supervised that the selections should be made in a reasonable time, quantity of land, and number of spots selected."

These principles are embodied in the jurisprudence of the United States, and are reiterated in numerous decisions of the courts of Louisiana, where the civil law still prevails.

In the application of these principles of law to the case of Dubuque, it will be seen that the pretended sale of Foxes (les Renards) to him was a permit "to work at the mine as long as he pleases, and to withdraw from it without specifying any term to him;" and, "moreover, they sell and abandon to him all the coast, and the contents of the mine discovered by the wife of Peosta;" confining the words sell and abandon simply to the mine discovered by Peosta's wife, and not to an extent of country of seven leagues on the west bank of the Mississippi, by three leagues in depth, which he terms mines of Spain.

That such was the intention of the Indians, is evident from the subsequent part of the same instrument: "And in case he shall find nothing within, he shall be free to search wherever it shall seem good to him, and to work peaceably, without any one hurting him, or doing him any preju-

dice in his labors. Thus we, chiefs, and by the voice of all our villages, have agreed with Julien Dubuque, selling and delivering to him, this day, as above mentioned, in presence of the Frenchmen who attend us, who are witnesses to this writing."

It cannot for a moment be pretended that this was a sale of the whole "mines of Spain," as claimed under the subsequent grant. The committee from the Senate who reported favorably on this claim last year do not contend for this; on the contrary, they say, "the committee readily acknowledge this part is but a personal permission, but it is a permit beyond the sale and conveyance," &c. Now it is a well established principle in the interpretation of written instruments, that effect must be given to the whole, if possible. What did they sell? If any thing, the contents of Peosta's wife's mine. What did they permit? Why the usufruct of all the mines that he might discover, "and be free to search wherever it shall seem good to him."

In his requête to the Baron de Carondelet, he says: "Comme le lieu de l'habitation n'est qu'un point;" which is translated "as the place of the settlement is but a point." Habitation means plantation or place where he inhabits. The only inference is, that he had purchased a home or habitation; "and the different mines which he works are scattered at a distance of more than three leagues from each other, your most humble petitioner prays your excellency to be pleased to grant him" (what) "the *peaceable possession* of the mines and lands, that is to say, from the hills* above the little river" (how far above?) "Maquauquitois, to the hills of the Mesquabynanques, which forms *about* seven leagues on the west bank of the Mississippi, by a depth of three leagues." Now, had the requête been for exactly seven leagues front, by three leagues, or had it been a grant, *per aversionem*, viz; by metes and bounds, it would still have required some order directed to the surveyor general, or some other competent officer, or some private surveyor (constituted a government officer *pro hac vice*) to set apart and sever from the royal domain this land, to define it so as to affect the conscience of the king, and constitute him a trustee for the claimant, before he could have any right, under any treaty which binds our government.

That the Baron de Carondelet did not consider it an absolute grant of the land, is evinced by the fact, that although the petitioner mentions an immensely large and valuable tract of country abounding with mineral wealth, he does not even refer it to the surveyor general or any other surveyor, but simply says: "Let information be given by the merchant (Don Andrew Todd) on the *nature* of this demand." It is not pretended that Todd was a surveyor; but Todd having certain trading privileges with these same Indians, is required to give information as to the nature of the demand. Todd reports, that as to the land for which he asks, (whether to his plantation, which is but a point, or for the whole coast of about 7 by 3 leagues, does not appear,) "nothing occurs to me why it should not be granted if you find it convenient;" and upon that Carondelet says: "Granted, as asked, under the restrictions expressed in the information given by the merchant, Don Andrew Todd. Baron de Carondelet."

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* The word *côte* signifies the brow or declivity of a hill, and also the coast of the sea or river. The government translators call it hill, but it is immaterial to the argument whether it means hill or coast. It is equally vague and indefinite.

Still no order of survey is given to any public officer of the crown, and the books abound in decisions, rejecting all private surveys. Had that land remained in the possession of the King of Spain to this day, it could never have been severed from the royal domain without some order of that kind—a claim so vague and indefinite, comprising such an extent of territory. The reason is obvious, Carondelet never did intend to sever the land from the domain; and at that time Dubuque no doubt considered the unlimited permission of the Indians to search for mineral wealth, authorized and sanctioned as he was by the government, to be of infinitely more value than the lands in fee simple.

But we have been told that we ought not to go behind the grant of Carondelet, or be governed in any manner by the proceedings of the council of Indians, inasmuch as the governor had full power to grant this land without their consent. If Dubuque, in his requête, had not averred the fact that he had purchased the land of the Indians, as an inducement, perhaps, to Carondelet to grant his request, it might not have been fair to have used this to explain the intentions of the governor in his grant; but, connected as it is with his petition, and with an admission subsequently made by the same Indians, by which his claim is attempted to be confirmed by them, justice requires a reference to that instrument, to show the nature of his inchoate right, that his possession under the Indian authority shall not enable him to claim in fee simple. I presume it will not be denied, that, where any inducement was offered as the condition of these very large grants, the failure of the consideration would annul the grants. In the Bastrop and Maison Rouge grants, the grantees stipulated to bring in a large number of families, (in one case 300,) to establish mills, &c.; hence the refusal of this government to confirm them, though clothed with all the formalities required to make the grants good. In nearly all the large grants in Louisiana, some such inducements were held out, either to bring a population into the country, or establish mills, &c.; and sometimes these enormous grants were for military services rendered. In the case of Dubuque, it is not pretended that he had rendered any military services; he was not required to bring in a single family; he did not promise to build any mills, bridges, or to do one single act which could be advantageous to his country. He was a private mineralogist, having no contract with the government, but the entire benefit of his labors was to inure solely to himself. If the governor had seen the proceedings of the council of Indians, he no doubt considered that he was only confirming the personal permission granted to Dubuque; and, if he did not, he may have been induced and deceived, as no doubt he was, by the representations of Dubuque, that he had extinguished so large an extent of Indian title, which seems to be the only conceivable motive for granting such an extensive and valuable territory. We do not say that there are not cases of very large grants of lands to private individuals made "by the special favor or arbitrary power of the king or his officers;" but from the jealousy of the government to cede away mineral lands, it must be admitted that Dubuque, if he cannot make out a clear legal right, as against his own government, cannot hope for much as a matter of equity. He certainly enjoyed very liberal privileges, in being allowed, during his whole life, to work all the mines that could be found in a section of seven leagues by three deep, west of the Mississippi, anywhere between the coasts of those two rivers, and appropriate the en-

tire profits to his own use. What is the extent of country embraced by these rivers, your committee have no means of ascertaining.

If the grant was to all the land between these rivers, the description of seven leagues front by three deep would necessarily yield to the grant by metes and bounds, and they are entitled to the whole.

The claimants rely, also, on an additional article, inserted in the treaty with the Sacs and Foxes, dated November 3, 1804, made by General Harrison, governor of the Indiana territory, in these words:

"Additional article.—It is agreed that nothing in this treaty contained shall affect the claims of any individual or individuals who may have obtained grants of land from the Spanish government, and which are not included within the general boundary line laid down in this treaty; provided that such grants have at any time been made known to the said tribes, and recognised by them."

Your committee hold that such claims were amply provided for in the treaty with France, as well as by the comity of nations, and that this article is entirely surplusage, and that if Dubuque had any just claims, either a perfect or inchoate grant from the Spanish government, it would have been good against this government as well without as with this additional article.

But it seems that, in January, 1806, (more than one year afterwards,) General Harrison certified that he was shown a grant of land to a certain Dubuque, and finding that this tract could be considered as receded by the treaty as it then stood, the additional article was written and submitted to the Indians; they readily consented to it, and the undersigned informed them that the intention of it was to embrace particularly the claim of Dubuque; the validity of which they acknowledged.

It certainly cannot be pretended, that, if the original grant was defective, this vague and indefinite acknowledgment of the Indians could make it good—at most it could only help to confirm the claim of Dubuque as against themselves; and no ingenuity can torture the proceedings of their council into any thing more than a permission to hunt, unmolested, for ore; which Dubuque seems to have done until his death, which terminated this personal usufruct.

Your committee forbear any comment on the opinion of two of the commissioners, who, in 1806, "ascertain this claim to be a complete Spanish grant, made and completed prior to the 1st day of October, 1800." The United States seemed to have attached little weight to this opinion, and, in 1833, ordered the removal, by military force, of the intruders upon the mineral grounds lately ceded by the Sacs and Foxes, at the treaty entered into by those tribes with Gen. Scott and Gov. Reynolds, from which it would seem that the "additional article" of the treaty referred to lands not at that time ceded to the United States.

In conclusion, your committee have carefully and impartially examined this case, with a strong desire to do justice to their fellow-citizens, the petitioners; but the conviction of the correctness of Mr. Gallatin's decision has forced itself so strongly on their minds, that they cannot better close this report than by quoting his views:

1st. Governor Harrison's treaty adds no sanction to this claim. It is only a saving clause in favor of a claim, without deciding on its merits—a question which, indeed, he had no authority to decide.

2d. The form of the concession, if it shall be so called, is not that of a

patent or final grant; and that it was not considered as such, the commissioners knew, as they had previously received a list, procured from the records at New Orleans, and transmitted by the Secretary of the Treasury, of all patents issued under the French and Spanish governments, in which this was not included, and which also showed the distinction between concession and patent, or complete title.

3d. The form of the concession is not even that used when it was intended ultimately to grant the land; for it is then uniformly accompanied with an order to the proper officer to survey the land; on which survey being returned, the patent issues.

4th. The governor only grants as is asked; and nothing is asked but the peaceable possession of a tract of land, on which the Indians had given a *personal* permission to work the lead mines as long as *he* should remain.

Upon the whole, this appears to have been a mere permission to work certain distant mines, without any alienation of, or intention to alienate, the domain. Such permission might be revoked at will; and how it came to be considered as transferring the fee simple, or even as an incipient and incomplete title to the fee simple, cannot be understood.

It seems, also, that the commissioners ought not to have given to any person certificates of their proceedings, tending to give a color of title to the claimants. They were directed by law to transmit to the treasury a transcript of their decisions, in order that the same might be laid before Congress for approbation or rejection.