Report No. 506.

[To accompany bill H. R. No. 427.]

HOUSE OF REPRESENTATIVES.

HENRY CLAMORGAN, AND OTHERS.

APRIL 26, 1848.

Mr. TOMPKINS, from the Committee on Private Land Claims, made the following

REPORT:

The Committee on Private Land Clvims, to whom was referred the petition of Henry Clamorgan, one of the legal representatives of Jacques Clamorgan, submit the following report:

On the 3d of March, 1797, Don Zenon Trudeau, lieutenant governor of the western part of Illinois, granted to Jacques Clamorgan a tract of land lying upon the waters of the Dardenne and Au Cuiore rivers, and included in what are now St. Charles and Lincoln counties, in the State of Missouri. Trudeau states in the grant that it is made in consideration of valuable services rendered, and large sums of money expended by Clamorgan, in protecting the trade of the Spaniards with the Indian tribes, and in prosecuting discoveries, under authority from his government, upon the waters of the Missouri river. For these services rendered and money expended by Clamorgan, the Spanish government was not in a condition at that time to remunerate him, otherwise than by a grant of land, which he, in default of compensation in money, was willing to receive. The governor general, Baron de Carondalet, commending the patriotic services and sacrifices of Clamorgan, in his official letter of the 5th of April, 1797, approved and ratified the grant made to Clamorgan by lieutenant governor Trudeau.

After the cession of Louisiana to the United States by France, Clamorgan made the legal registry of his muniments of title; and, on the 14th of November, 1811, submitted his concession for confirmation to the board of commissioners appointed by this government to adjust the land claims in the territory of Missouri. The

board, without assigning any reason, recommended to Congress the rejection of this claim with many others.

The rejection by Congress was considered at that time as equivalent to a divestment of a claimant's property in his land; so that after the pre-emption law was extended to Missouri, in 1814, many settlers, in good faith, located and improved farms within the limits of this grant as vacant land. On the 26th of May, 1824, an act was passed by Congress authorizing claimants of land in Missouri, upon payment of all costs, to bring their claims by petition before the district court of that State for adjudication upon principles of law and equity. Had this claim of Clamorgan been adjudicated and established at that time, it would have operated to oust the tenants, by the right of pre-emption, of their possessions and improvements, as their lands not having been offered for sale, they had not then consummated their pre-emption rights into perfect titles by purchase from the government. In section 12 of the act of 1824, it was therefore provided: That none of the provisions of this act shall be applied to a claim of the representatives or assignees of Jacques Clamorgan, deceased, lying between the Missouri and Mississippi rivers, and covering parts of the counties of St. Charles and Lincoln, in the State of Missouri.

This act was revived and re-enacted on the 17th of June, 1844, to continue in force five years, without the restriction upon Clamorgan's claim being stricken out, although the reason for that restriction no longer exists. The settlers upon this grant have long since consummated their pre-emption rights into fee simple estates, by purchase from the government, and the act of 1824 provides that, when the land claimed shall have been disposed of by the government, the claimant shall receive scrip to locate the quantity of land he may be adjudged by the court to be entitled to, upon unappropriated land in the State of Missouri. These settlers, therefore, so far from any longer opposing, are greatly interested in having the claim of Clamorgan adjusted under the provisions of the act of 1824. If the petitioner, and the other representatives of Clamorgan, shall be shut out from this adjustment of their claim, they will be forced to an action for the specific land granted to their ancestor by the Spanish government, relying for its recovery upon the guaranty of private property contained in the treaty of cession of Louisiana by France to the United States. From the principles already settled with reference to that treaty, by the Supreme Court, there arises a well grounded apprehension that the result of this action would be the loss of their lands by the tenants in possession.

The treaty declares, in the 2d article, that the cession shall include all public lots and squares, vacant lands, and all public buildings, fortifications, barracks, and other edifices *which are not private property*. And in the 3d article, that the inhabitants of the ceded territory shall be incorporated into the Union as soon as possible, and *admitted to all the rights of citizens of the United States*, and in the meantime shall be maintained in the free enjoyment of their liberty, *property*, and the religion they profess.

The Supreme Court has decided that, by the treaty, the United States acquired no right to lands to which individuals had previously obtained title, whether that title was perfect or imperfect, complete or inchoate; that grants or concessions from the former government are to be construed in their broadest sense, so as to comprehend all lawful acts which transfer a right of property, whether perfect or imperfect, and, that an inchoate, or imperfect, right to land is property, protected by the treaty, capable of being alienated and subject to debts, and to be held as sacred and inviolable as other property.

In the case of Delassus *vs.* United States, the opinion of the court was unanimous, as far as appears, and was delivered by Chief Justice Marshall. Having cited the foregoing articles of the treaty of 1803, the chief justice says: "They extend to all property until Louisiana shall become a member of the Union, into which the inhabitants are to be incorporated as soon as possible, and to be admitted to all the rights, privileges, and immunities of citizens of the United States; that the perfect security and inviolability of property is among these rights, all will assert and maintain. The right of property, then, is secured and protected by the treaty, and no principle is better settled in this country, than, that an inchoate title to lands is property. Independent of treaty stipulations, this right would be held sacred. A sovereign who acquires inhabited territory, acquires full dominion over it; but this dominion is never supposed to divest the vested rights of individuals to property. The language of the treaty ceding Louisiana, excludes every idea of interfering with private property—of transferring lands which had been severed from the royal domain. The people change their sovereign—the right of property remains unaffected by this change."

Whatever might be the result of a suit instituted under the provisions of the treaty to recover the specific land granted to Clamorgan, his representatives seek to avoid so fierce a conflict with their fellow citizens who have bought their lands in good faith from the government; and they, therefore, desire that the above "proviso" may be stricken out of the law of 1824, and that they may be put upon an equal footing with all other claimants, and allowed their resort to the judicial tribunal established for the purpose of trying the validity of all other claims upon the principles of law and equity.

As the petitioners do not ask for a confirmation of their claim by Congress, but only the privilege of a judicial decision, the committee have not deemed it necessary to discuss at length, in this report, all the merits of this claim, which will come up upon the investigation of the court.

It may not, however, be improper to advert here to the report of the last board of commissioners, as they assign a reason for rejecting this claim. They state that the limits of the grant made to Clamorgan by Trudeau contain 80,000 acres of land. They say that they are satisfied that the grant was made to Clamorgan in good faith, and in consideration of valuable services and large ex-

penditures made from his private purse in the public service, and that his evidences of title are proven to be genuine and valid; but they reject the claim because they infer that Clamorgan abandoned his grant after it was made. They report no proof of abandonment, but infer it from the fact that other grants, made by the Spanish authorities, were located upon a part of this grant, and the residue was surveyed and sold by this government as vacant land. It may be sufficient to say, in answer to this inference, that, if it be true that Clamorgan did abandon his grant, it will be so adjudged by the court upon judicial inquiry, and his representatives will be non-suited and have their costs to pay.

The report itself, however, contains evidence of Clamorgan, and, after his death, his legal representatives pursuing, with all diligence, the establishment of this claim whenever an opportunity was afforded them to do so, from the change of government down to the date of the report. It shows, too, that the land was regarded in the county as the property of Clamorgan, until the rejection of his claim by Congress was supposed to divest him of his title. After that settlements were made upon it under the pre-emption law, and other grants were confirmed within its limits as vacant land.

In view of the foregoing facts, it is the opinion of the committee that the doors of the courts ought not to be closed, by legislative authority, against the petitioners, whilst they are opened to other citizens.

The committee are of opinion that the petitioners are entitled to the relief prayed, and they report a bill for that purpose.