

HARDY AND LONG.

[To accompany bill H. R. No. 444.]

MARCH 26, 1858.

Mr. MILES TAYLOR, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the petition of Hardy and Long, for the return of rent collected by the agents of the United States for the working of mines not the property of the United States, have had the same under consideration, and now report:

Joseph Hardy, one of the petitioners, previous to the year 1823, made an arrangement with the Winnebago, Ottawa, Pottawatomie, and Chippewa Indians, and obtained from them permission to work certain lead mines on the lands occupied by them, on the upper Mississippi, within the territories of the United States, and to which their title had not then been extinguished. There is no direct proof of that arrangement, or of the time when it was entered into, but the fact of its having been made is sufficiently established by other evidence.

Some time after this arrangement was made, it seems that the agents of the United States saw fit to contest the right of Mr. Hardy to carry on the smelting of lead under this contract with the Indians, and insisted upon his paying rent to the United States for the use of the mines, and taking from them a lease of license to that effect. When this interference with the operations of Mr. Hardy first took place does not appear from anything in the papers submitted, but it was certainly prior to the year 1826, as rent was paid to the United States by Mr. Hardy in 1826; and there is a copy of a contract between him and Lieutenant M. Thomas, superintendent of the United States lead mines, dated June 7, 1827, giving to Mr. Hardy permission to purchase and smelt ore on those lands for the period of one year from that date, on his stipulating to pay a certain rent therefor.

The Indian title to the lands on which the mines in question were situated was not extinguished until in 1829 and 1832, when the treaties of Prairie du Chien and of Rock Island were respectively made (7 Statutes at Large, 320 and 370) with the different tribes occupying them. From the time the agents of the United States first claimed rent for the working of these mines, it appears from a statement furnished by the Commissioner of the General Land Office with his letter of the 21st of February, 1850, that Mr. Hardy had delivered to the agents of the United States, up to the 2d of January, 1830—the

day on which the treaty of Prairie du Chien went into effect—107,492 pounds of lead. And the question now presented is this: Ought this rent to be returned, because improperly exacted?

The Commissioner of the General Land Office, in his letter of the 21st February, 1850, says that Mr. Hardy acted in violation of law when he made the arrangement spoken of with the Indians, and that he acquired no rights from them in consequence of this, and refers to a provision in the 12th section of the act approved May 19, 1796, which declares "that no purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian, or nation, or tribe of Indians, within the bounds of the United States, shall be of any validity in law or equity, unless the same be made by treaty," &c. Your committee are of opinion that this provision does not sustain the position taken by the Commissioner. The object of the provision was to prevent any contracts being entered into with the Indians which would have vested a real right of any kind whatever in third persons which could in any way impair the proprietary rights of the United States to these lands, or interfere with or affect their disposition of them whenever the Indian title was extinguished. The Indian title was to the occupancy of the land, and that right of occupancy entitled them to derive any advantage from it which was not inconsistent with the tenure by which they held it. The working of the mines, whilst they occupied the land, was not inconsistent with that tenure, as the right to work them would have terminated with their abandonment of the land. And what they could have properly done themselves, which was in itself of a temporary character, and purely precarious in its nature, as being entirely dependent on the continuation of their occupancy, they were clearly competent to permit others to do, whilst their right of occupancy had been divested neither by abandonment nor treaty. And this right, your committee think, was not in the slightest degree restrained, or intended to be restrained, by the provision of the act in question.

If this view be correct, it is clear the rent paid by Mr. Hardy was exacted without any right; that it was improperly received by the United States, and that it ought to be returned to the petitioner. And as the correctness of this view has been already recognised by Congress in other cases, and especially in that of John P. B. and the legal representatives of Henry Gratiot, by act approved August 14th, 1848, your committee do not hesitate to recommend the passage of the bill herewith reported, providing for the liquidation and payment to the petitioners of the value of the lead so received by the United States.

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

The undersigned, your petitioners, respectfully represent to your honorable bodies, that one of them, to wit, Joseph Hardy, (late of the Galena lead mines, now of Missouri,) commenced the mining and smelting business at said mines; that the said business was commenced and conducted by said Joseph Hardy upon lands then owned

and occupied by the Winnebago, Ottawa, Pottawatomie, and Chipewewa tribes of Indians; that prior to said Hardy's entering upon said business he made an arrangement by which he purchased from the said Indians their permission to prosecute said business; that he carried on said business, not only by virtue of said agreement and purchase from the owners of the lands, but also with the knowledge and acquiescence of the United States agents in that quarter, no one of whom ever disputed, or offered or attempted to disturb his possessory rights; that after the commencing of his business, at great expense, and several years before the United States purchased the lands and mines which were thus in his possession by purchase, certain agents of the United States lead mines claimed that they belonged to the United States, and demanded from said Hardy, for the United States, ten per cent. of all the lead manufactured by him from the ore dug upon the lands, then in his undisputed possession, by virtue of his said agreement with the said Indian owners thereof; that the said Joseph Hardy complied with the demands and requisitions of the regularly appointed superintendent and agents of the United States lead mines, notwithstanding he questioned the legal or equitable right and authority of said agents to exact rent from the tribes of said Indians; that said Hardy (during the existence of his agreement with said Indians) was never disturbed in his occupation of the lands, but, on the contrary, his occupancy, from first to last, though known to, was acquiesced in by the lawful agents of the United States; that subsequent to the year 1823, and prior to the treaty of 1830, by which the United States first acquired the lands occupied by said Hardy, said Hardy paid a large amount of rent to agents of the United States, who paid the same into the treasury, as is shown by the accounts and receipts of the government, which accounts are to be found in the proper departments at Washington city, and receipt herewith submitted; that the investment of large sums of money by said Joseph Hardy in the business of mining and smelting, by virtue of an agreement with the Indian owners of the lands used, being known to and acquiesced in by the United States for several consecutive years, equitably entitled his property to production; that the exacting of rents by the United States from the Indians, their employees, or their tenants, *for the use of their own lands*, was a procedure unknown to law, and at war with the rights of the Indians.

Your petitioners would further state, that during the Indian disturbances the said Joseph Hardy built a fort and furnished teams and wagons for the use of the United States; that he sustained great loss thereby; and, inasmuch as your petitioners are advised that the rents which were paid by the said Joseph Hardy previous to the ratifying of the treaty aforesad were illegally exacted from him by said agents, your petitioners therefore pray that the moneys exacted from the said Joseph Hardy as rents for ore dug from the lands not owned by the United States may be returned to them, as has been done in several similar cases.

Most respectfully, &c.,

JOSEPH HARDY.
ALTON LONG.

DECEMBER 4, 1854.

GENERAL LAND OFFICE,
February 21, 1850

SIR: Your letter of the 14th instant, addressed to the Secretary of War, desiring certain papers and information having reference to the mining and smelting operations of Joseph Hardy, late of the Galena lead mines, and now a claimant before Congress, has been referred for the consideration of this office and for reply, the mineral business of the United States being under its management.

After a careful examination of all the documents, books, and papers on file in this office, having any connexion or relation to mineral affairs, there is no contract, lease, license, or permit to be found among them in the name of said claimant; but I have the honor to furnish you with an exhibit of the amount of rent lead paid by Joseph Hardy to agents of the the United States, prepared from their abstracts and returns made to the Ordnance Bureau, then having charge of the United States lead mines, and all matters pertaining thereto, being full amount exacted as rent from the year 1826 up to the ratification of the treaty of Prairie du Chien, with the Indians, for the purchase of that section of country, the mines being within the boundary of that cession. I have included, also, in the sum total of rents paid, the amount taken from entries in the account books of said agents or superintendents, which should properly be added—that is, taking it for granted they are equally conclusive testimony with the returns, &c., in favor of Mr. Hardy.

The fact of such an amount of rent lead having been paid, and returns of the same made by the officers of the government to the proper department, the implication, I think, is clear that a lease, permit, or other agreement between the United States and Mr. Hardy once existed.

The total amount of rent lead paid by Joseph Hardy, and within the period above stated, is 107,492 pounds.

It will be perceived by the acknowledgment of Mr. Hardy, that, in contracting with the Indians for permission to dig for led ore and smelt the same upon their lands, he acted in violation of law inhibiting all intercourse and trade with them, without permission from the general government; if not so expressly enacted, certainly contrary to the spirit of the laws upon the subject. Section twelve of the act approved May 19, 1796, it would seem, reaches the case in question, an extract of which is as follows, to wit:

“And be it further enacted, That no purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian, or nation or tribe of Indians, within the bounds of the United States, shall be of any validity, in law or equity, unless the same be made by treaty or convention, entered into pursuant to the constitution,” &c., with a penalty for treating without authority.

On the other hand, a precedent in favor of Mr. Hardy should, I beg leave to suggest, be considered, being an act approved the 14th of August, 1848, for the relief of John P. B. and the legal representatives of Henry Gratiot, their claim being precisely of a similar character to that presented by Mr. Hardy.

I herewith return, enclosed, the petition which accompanied your letter.

With much respect, your most obedient servant,
J. BUTTERFIELD, *Commissioner.*

Hon. J. R. J. DANIEL,
Chairman of Committee of Claims, House of Representatives.

Exhibit of rent lead paid by Joseph Hardy to agents of the United States prior to the ratification of the treaty of Prairie du Chien, of January 2, 1830.

Amount from entries in account books of agents or superintendents, corroborated by returns and abstracts:	
Consolidated return for quarter ending December 31, 1826, is.....	11,221 lbs.
Consolidated returns for March 31, 1827.....	2,788 "
Consolidated returns for month of May.....	6,176 "
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	20,185 "
From abstracts and returns alone.....	87,307 "
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Making a total of.....	107,492 "
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GENERAL LAND OFFICE, *February 21, 1850.*

This indenture, made and entered into this 7th day of June, 1827, between Lieut. M. Thomas, superintending the United States lead mines, of the first part, and Joseph Hardy, jr., of the second part, witnesseth:

That the said party of the second part is hereby permitted to purchase and smelt lead ore at the United States mines, on the Upper Mississippi, for the period of one year from the date hereof, upon the following conditions, to wit:

First. All purchases, or other requisitions, of ore, ashes, zane, or lead, to be from persons authorized to work the mines, either as assessors, smelters, or diggers, and from no others; and no ore to be purchased from the leased premises of any person without his permission.

Second. To commence smelting as soon as one hundred thousand pounds of ore are obtained, and to continue it so long as any is on hand; to weigh a charge of ore for the log furnace, and the lead produced from it, when required to do it by the said first party, or his assistant.

Third. To keep a book containing an accurate account of all ore, ashes, or zane purchased, or otherwise acquired, which book shall, at all times, be open to the inspection of the said first party, or his assistant, and to furnish a transcript or return at the end of every month, (agreeably to a form to be furnished by said first party,) which book and returns to be verified on oath if required.

Fourth. The said second party hereby agree to pay to the said first party, for the use of the United States, the one-tenth part of all the lead smelted by him under this indenture, to be paid monthly in clean pure lead, at the warehouse on Fever river, or at such other place near the mines as the said first party shall direct, and free of expense to the United States. And the said second party is not to sell, or remove from the place of smelting, in any manner whatever, any lead, until the rent has been paid as aforesaid.

Fifth. The said second party is to have as much fuel as will suffice for the purpose of his indenture, and to cultivate as much land as will suffice to furnish his teams, &c., with provender.

Sixth. It is understood and agreed between the aforesaid parties, that the second party shall not employ, in any manner, any smelter, lessee, or miner, who has forfeited his license, lease, or permit to mine, nor any other person who is at the mines without the authority of the said first party; and, as good faith and fair dealing should prevail, the said second party agrees not to entice or harbor the laborers or workmen of another smelter.

Sixty days are allowed, after the expiration of this license, to close all business under it; but it is understood that no purchase or hauling of ore is to take place after the license has expired. The bond given for the faithful performance of the contract is to be in full force and virtue until a written settlement is made.

It is distinctly understood by the said parties, that upon proof being afforded to the first party that either of the foregoing stipulations have been violated, or not complied with, he may declare this indenture null and void, and re-enter and take possession of all the premises, as if no such agreement existed.

M. THOMAS, [L. s.]

Lieut. U. S. Army, Supt. U. S. Lead Mines.

JOSEPH HARDY, Jr. [L. s.]

Witness present: TH. McKNIGHT.

Approved November 12, 1827.

J. Q. ADAMS.

Registered and original returned to Lieut. Thomas, December 8, 1827.

Know all men by these presents, that we, Joseph Hardy, jr., as principal, and John H. Gay and Thomas Estes as sureties, are holden and stand firmly bound unto the United States of America, or their certain attorney, in the penal sum of ten thousand dollars, current money of the said United States, well and truly to be paid into their treasury; for which payment, well and truly to be made, we, the said Joseph Hardy, jr., John H. Gay, and Thomas Estes, do hereby jointly and severally bind ourselves, our heirs, executors, and administrators, and each and every of them, jointly, severally, and firmly, by these presents. Signed with our hands, and sealed with our seals, this seventh day of June, in the year of our Lord one thousand eight hundred and twenty-seven.

The condition of the above obligation is such, that whereas the said Joseph Hardy, jr., has obtained from the agent of the United States a license, bearing date the 7th day of June, 1827, containing stipulations therein more particularly described, to smelt lead ore: Now, if the said Joseph Hardy, jr., shall faithfully and fully execute and comply with the terms and conditions set forth in said license, then, and in that case, this obligation to be void and of no effect; otherwise, to remain in full force and virtue.

JOSEPH HARDY, JR. [L. S.]
 JOHN H. GAY. [L. S.]
 TH. ESTES. [L. S.]

Witnesses present:

TH. McKNIGHT, as to Joseph Hardy.
 GEO. COLLINS, as to Messrs. Gay and Estes.

Registered and original filed in the office of the Second Comptroller, December 8, 1827.

ORDNANCE OFFICE,
 Washington, January 2, 1855.

The foregoing are true copies from one of the record books of this office; the renting of the United States lead mines, and granting smelting licenses at the times therein mentioned, being performed by officers of this department.

H. K. CRAIG,
 Col. Ordnance.