

IN SENATE OF THE UNITED STATES.

MARCH 3, 1847.

Submitted, and ordered to be printed.

Mr. JARNAGIN made the following

REPORT :

[To accompany bill S. No. 193.]

The Committee on Private Land Claims, to whom was referred the memorial of the legal representatives of Julien Dubuque, deceased, praying the confirmation of their title to certain lands in Iowa, have had the same under consideration, and beg leave to report :

That after a careful examination of all the reports heretofore made for and against this claim, this committee concur in the report submitted to the Senate on the 30th of March, 1846, and adopt the same as their new report.

The committee report a bill for the relief of the heirs, assignees, or legal representatives of Julien Dubuque, deceased.

MARCH 30, 1846.

Mr. JARNAGIN made the following report :

The Committee on Private Land Claims, to whom was referred the memorial of Pierre Chouteau, jr., and others, praying for the confirmation of their title to a certain tract of land situated in the Territory of Iowa, and known as the "Dubuque claim," ask leave to report :

This claim was presented to Congress by the Secretary of the Treasury on the 23d day of June, 1812, but has not hitherto been acted upon. The report of the commissioners upon the claim, and the letter from the General Land Office transmitting the same to Congress, are as follows :

"TREASURY DEPARTMENT,
"General Land Office, June 23, 1812.

"SIR: I enclose a copy of a report of the land commissioners at St. Louis, directed to be made by the sixth section of the act of Congress, page 310 of the volume of Land Laws.

"And have the honor to be, very respectfully, sir, your obedient servant,

"EDWARD TIFFIN.

"Hon. JEREMIAH MORROW,

"Chairman of the Land Committee, H. R."

At a sitting of the board of commissioners for ascertaining and adjusting land claims in the Territory of Louisiana, held at St. Louis on the 20th September, 1806, were present a full board, to wit: John B. C. Lucas, Clement B. Penrose, and James Lowry Donaldson, commissioners.

Julien Dubuque and Auguste Chouteau claim a tract of one hundred and forty-eight thousand one hundred and seventy six arpens of land, situate on the river Mississippi, at a place called the Spanish Mines, about four hundred and forty miles from St. Louis, forming in superficies an extent of about twenty-one leagues. They produce, first, a petition by 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 west side of the Mississippi, beginning at the heights of Maquauquitois, to the heights of Mesquabynanques, being in front on said river about seven leagues, by a depth of three leagues—the whole forming the said tract called the Spanish Mines; together with a reference by the Baron de Carondelet to one Andrew Todd, an Indian trader, of the above demand, under the date of the 22d of October, 1796, with the assent of said Andrew Todd to the granting of the same, provided the said petitioner should not interfere with his trade; the same dated 29th October, same year.

The decree of the Baron de Carondelet is in the form following :

“Concedido como se solicita, baxo las restricciones que el comerciante Don Andrés Todd expresa en sa informe, 10 Noviembre, 1796.

“EL BARON DE CARONDELET.”

The translation of which is as follows :

“Granted as it is demanded, under the restrictions mentioned by the merchant, Don Andrew Todd, in his information.”

In an additional article to a treaty, made by William Henry Harrison, with the united tribes of the Sac and Fox Indians, dated November 3, 1804, it is agreed that nothing in said treaty shall affect the claim of any individual or individuals who may have obtained grants of lands from the Spanish government, and which are not included within the general boundary line laid down in said treaty, provided that such grants have at any time been made known to the said tribes, and recognised by them.

CERTIFICATE.

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.

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

A majority of the board (the honorable John B. C. Lucas dissenting) ascertain the above claim to be a complete Spanish title.

The foregoing is truly copied from the minutes of the board.

Given under my hand, as clerk of said board, at St. Louis, June 1, 1811.

THOMAS F. REDDICK.

Memorial to the honorable the Senate and House of Representatives of the United States of America in Congress assembled.

The petition of Pierre Chouteau, jr., Ferdinand Kennett, and others, respectfully represents :

That some time in the year 1774 Julien Dubuque, a mineralogist, emigrated to the province of Louisiana, and settled among the Sac and Fox nation of Indians, on the Mississippi river, near the site of the present town of Dubuque.

On the 22d of September, 1788, the said Indians, in full council assembled, sold to Dubuque a portion of their land, with the mines which it contained; and on the 22d of October, 1796, he presented his petition to the Baron de Carondelet, governor general of Louisiana, praying for the grant of a tract of land situated on the west bank of the Mississippi river, containing seven leagues in front on said river by three leagues in depth, commencing at the upper hills of the little river Maquanquitois, and extending below to the Mesquabynanques hills. He stated in said petition that, having formed a habitation on the frontiers of the government among the savage tribes who inhabit the country, he had purchased from them a tract of land and the mines which it contained, and by his perseverance in surmounting all obstacles (as dangerous as they were expensive) had at length become the "peaceable possessor of said land."

This petition was referred by the governor general to Don Andrew Todd, (a merchant who seems to have had a monopoly of the Indian trade,) with a request that he would give information as to the nature of Dubuque's demand.

Todd replied, in writing, that he saw no reason *why the LAND asked for by Dubuque should not be granted, if the governor found it convenient to do so*; but required as a condition of the grant that the Indian trade should be prohibited to Dubuque unless he obtained his (Todd's) consent in writing therefor.

Upon an examination of said report of Todd, the Baron de Carondelet, on the 10th of November, 1796, made a grant of the land asked for by Dubuque in the following words: "Concedido, como se solicita, baxo las restricciones que el comerciante Don Andres Todd expresa en sa informe;" the translation of which is—"Granted, as asked for, under the restrictions mentioned by the merchant Don Andrew Todd in his report."

As to a true and just exposition of the sale of the Indians and the grant

of the land to dubuque by the Baron de Carondelet, your petitioners beg leave to refer to an extract from the report of a committee of the Senate made in the Dubuque claim on the 6th of January, 1845. Commencing on page 4, the committee use the following language :

“The principal question made on this claim is one which, perhaps, in the whole history of Louisiana titles, is peculiar to itself. There is no fraud imputed ; no want of authority to make the supposed grant ; no uncertainty of its location. It is not challenged for want of being possessed in good faith ; and no exception is taken to the capacity of the grantee. But conceding all these facts, it is objected, that, on the face of the papers, in their purpose and meaning, no title of any sort, *in the land, was intended or has been created.* That the whole transaction was but to obtain a personal privilege, or usufruct, at will ; and whatever of concession or stipulation there is, was but for a temporary personal protection, and which has not been otherwise validated as a title.

“Such, in substance, is the objection made by Mr. Gallatin, while Secretary of the Treasury. (See vol. 1 Laws U. S., p. 562.)

“The report adverse to the claim made by Mr. Smith, chairman of the Committee on Public Lands in the Senate, in 1841-'2, (see Senate Docs, vol: 5, No. 341.) assumes essentially the same ground as Mr. Gallatin, and regards the Indian contract as a personal privilege to Dubuque to work the mines ; the governor's concession but an affirmance of this power ; that the right was acquired without consideration, and died with the person. That the Indians had no right to sell the lands, and that it was the policy of the Spanish government not to sell its mines, &c.

“The committee believe it a formidable answer to this objection, *that no precedent or example can be found of such grant of personal privilege in the use of lands* being made up between the Indians and the Spanish government, in the whole history of the provincial administration in Florida and Louisiana.

“It is well known that the Spanish authorities scrupulously respected the Indian possession and right of occupancy ; and though, like the government of the United States, they claimed a reversionary interest in all the Indian lands within their provinces, yet *practically* in a diminished sense from that claimed by the United States, inasmuch as they indulged the Indians with a power of sale to individual white men, *subject to a ratification of title by the government authorities of the province.*

“Such sales in the Attakapas, upon the Mississippi river, the Red river, and in the Floridas, were common, and such have been confirmed by the boards of land commissioners, by Congress, and by the courts of the United States, in numerous instances.

“Now in this sale of Dubuque it is shown, by his contract with the Indians, ‘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 pretention to it, without the consent of the Sieur Julien Dubuque.’

“Whatever of uncertainty there may be in the description of boundary, and however inartificial the language, as compared with our legal forms of conveyancing, yet the terms are amply comprehensive to convey a fee simple. They sell and abandon to him, or sell and deliver *possession* to him, *of all the coast* and contents of the mine discovered, &c. It is familiar to all that the creoles of Louisiana call the shores of the river the

coast. This sale to Dubuque of all the coast and contents of the mine, &c., is equivalent, in description, to all the lands and hereditaments upon the bank of the river, situated at the mine discovered by the wife of Peta.

"This locality, let it be remembered, was then within the territory of the Fox tribe of Indians, remote from surveys and settlements, whereby more definite calls are made; and so continued till the treaty of the 21st of September, 1832.

"If a right of occupancy and *temporary personal* security was all Dubuque sought, it cannot be questioned but he had fully obtained both of the Indians, who *alone*, at the time, had the *right* and *power* to grant them.

"In such view of the case, and to such end, it is obvious his petition to the Spanish governor was a useless thing, and the governor's concession a nullity.

"To avoid this conclusion, and to show some object and purpose of the governor's concession, Mr. Gallatin asserts that the *Indian grant* was only 'a personal permission (to Dubuque) to work the lead mines as long as he should remain;' and that the governor's grant was only 'the peaceable possession' of a tract of land on which the mines were. But can there be any doubt that the *part* of the Indian contract we have quoted is the language of *sale and conveyance*? That it is so, and was so intended, is the more obvious—for that besides *the coast and mine* so sold by them, they *further stipulate* that 'in case he shall find nothing within (the mine sold to him) he shall be *free to search wherever* it shall seem good to him; and to *work peaceably*, without any hurting him, or doing him any prejudice in his labors.'

"The committee readily acknowledge *this part* is but a *personal permission*. But it is a permit *beyond* the sale and conveyance, not purporting, as in the preceding, a *sale and surrender of possession*, with a covenant of warranty against all pretensions of the white man or Indian; but simply, if the land and mine sold to Dubuque should be unproductive of ore, he might search for and work mines in any other portion of their lands without molestation.

"This examination of the Indian grant is not made to show it was a valid sale in fee, but that it was intended to be so so far as the Indians could make it.

"But that it was a solemn conveyance, made in full council, and a good and sufficient transfer of their *possessory right and title* to the land it referred to, it seems incredible that any one should doubt who critically reads it. Dubuque, then, held a peaceable possessory right to lands within their territory, evidenced by an Indian grant in council. And that he could have no motive to petition the Spanish governor to grant him that which *he already had right to and enjoyment of* is the more certain, as he did not present his petition to the Spanish governor *till more than eight years after his possession under the Indian grant*.

"In his petition, Dubuque represents that he had 'made a settlement upon the frontiers, in the midst of the Indian nations, and had bought a tract of land of them, and the mines it contained.' (This land was 2,000 miles up the river from the governor's residence in New Orleans, where he petition was presented.) He expressly states to the governor he had 'come to be the peaceable possessor of the land' to which his petition had

reference. That he had accomplished this 'by his perseverance, and surmounted all obstacles, as dangerous as they were expensive.'

"His peaceable actual possession established, the expenses incurred, the dangers passed, the obstacles surmounted, it seems to the committee that no more unmeaning purpose could be ascribed to Dubuque than that he now sought to obtain of the governor a possessory right only. True, Dubuque's memorial, as translated, represents him as soliciting the governor 'to grant him the peaceable possession of the mines and land, * * * * from the upper hills of the little river Maquauquitois to the Mesquabyanques hills, which forms about seven leagues on the west bank of the Mississippi river, by a depth of three leagues.' But the petitioner states, at the same time, that he 'had made a settlement * * * in the midst of the Indian nations; * * * * and had bought these lands and mines from the Indians, * * * * and had come to be the peaceable possessor of them, * * * * to which he had given the name of the 'Mines of Spain.' Fixed in the idiom of our own language, and technically tenacious of its phraseology, shall we so render the sentence which purports to ask the 'grant of peaceable possession' as to make the petition absurd and contradictory, and without sensible object or design?

"In the literal sense of the petition, he was asking of the governor what, upon the statement of the case, it was apparent the governor had no right to grant, viz: *the possessory right to lands in the Indian territory.* But the obvious meaning of the petition is, that he sought of the governor *a confirmation in form of grant* of his possessory title, as purchased and held under the Indians. That the language of the petition is inapt, involved, and perhaps somewhat incongruous, is nothing peculiar or remarkable in requêtes to the governor of that province. But the phraseology, it is believed, is not so imperfect as totally to obscure the *intention*, which is the matter to be looked to. The grant solicited is of 'lands and mines, which the petitioner *then possessed* by purchase from the Indians. He desired assurance of title by specific boundaries, and an indicated quantity; and this '*demand*' he hoped the governor would be 'pleased to grant him.'

"It is well understood that a simple concession, responsive to a requête, grants according to the terms and intent of the requête. When the concession, therefore, does not set forth and recite the terms and intent of its grant, the terms and intent must be sought for in the requête; qualified, of course, in such manner and degree as the concession may indicate.

"On the presentation of Dubuque's requête, the Baron de Carondelet, desiring advice on the subject, ordered as follows: '*Let information be given by the merchant, Don Andrew Todd, on the nature of this demand.*'

"The language of this order is broad enough to justify the inference that the governor referred to Todd to inform him what was the object and extent ('the nature') of Dubuque's requête, as that he sought Todd's advice on the propriety of granting the *understood* object of Dubuque's solicitation. But it matters little whether he desired advice on *both* or the latter point only, inasmuch as Todd recites his *understanding* of what it was *Dubuque did solicit*, and gives his counsel with reference to that understanding. He replies: 'In compliance with your superior order, in which you command me to *give information on the solicitation* (the requête—its object) of the individual interested in the foregoing memorial,

I have to say, *that, as to the land which he asks for, nothing occurs to me why it should not be granted, if you find it convenient, &c.*, with condition that he shall not trade with the Indians without Todd's consent in writing.

"What Todd understood to be the object of Dubuque's requête is too manifest to be disputed by any. He enters into no subtle analysis of the requête to determine whether Dubuque sought a confirmation of an Indian permit to work mines, or sought a personal possessory right to a portion of Indian territory which the Spanish government had no right to grant a possession of, or sought a life estate, or an estate at will in mining privileges; he found himself entangled in no such meshes of verbal criticism, nor confounded himself by imputing to the memorial a profitless and unmeaning object. But, apprehending the motives of the petitioner as apparent and palpable, he, in plain and simple brevity, replied to the governor, 'that, as to the land for which he (Dubuque) asks, nothing occurs to me why it should not be granted.'

"This information seems to have satisfied the governor; and hence the conclusion is irresistible—the governor understood Dubuque's requête as Todd did, viz: a simple petition for a grant of the lands specified; and which had been purchased of the Indians. But the lead mines were an incident to the lands of so little importance at that time, that Todd never alludes to them. Todd is reported to have been an authorized monopolist Indian trader. And, as the petition sought a grant of land in the Indian territory, a confirmation of title acquired by an Indian sale, the reference to Todd was manifestly to be informed if there was any wrong or fraud done to the Indians that might be complained of by them, if the Spanish government should ratify the alleged purchase, and so concede to Dubuque its reversionary interest in the lands described; the governor being so satisfied, granted, as solicited, with the qualification (*the only qualification*) interposed by Todd as to trading with the Indians."

In the case of Mitchell and others vs. the United States, 9th Peters's Reports, page 759, the Supreme Court say that "the report of the commissioners on Opelousas claims was submitted to the Secretary of the Treasury in 1815; acted on and approved by Congress in 1816; in which report the commissioners state, 'that the right of the Indians to sell their land was always recognised by the Spanish government.' The sales by the Indians transferred the kind of right which they possessed; the ratification of the sale by the governor must be regarded as a relinquishment of the title of the crown to the purchaser, and no instance is known where permission to sell has been refused, or the rejection of an Indian sale."

The power of the governor general of Louisiana (representing the King of Spain) to grant lands in that province, your petitioners believe, has never been questioned. And, as to the Baron de Carondelet, it is well known that he was governor general of Louisiana from the 1st of January, 1792, until the latter part of the year 1797; and that the power to grant lands was then vested in him, not having been transferred to the intendant until October, 1798. (See 8th Peters's Reports, 452; White's Compilation, 218.)

In the case of Mackey and others vs. the United States, 10th vol. Peters's Reports, page 240, the court use the following language: "In repeated decisions, we have acknowledged the authority of the local governors to make grants of land, and have also affirmed the validity of descriptive

grants, though not surveyed before the 10th of March, 1804, in Missouri, and the 24th of January, 1818, in Florida." The tract of land asked for by DuBuque being described in his petition as "seven leagues in front on the western bank of the Mississippi river, by three leagues in depth, commencing at," &c., and the governor general to whom it was presented having granted the particular tract of land asked for, that act of the governor severed the same from the royal domain, and vested in DuBuque a good and valid title, according to the laws and usages of Spain and the decisions of the Supreme Court of the United States.

Your petitioners further represent, that by the treaty between the Sac and Fox nation of Indians and the United States, concluded at St. Louis on the 3d day of November, 1804, the former ceded to the United States a portion of their lands, as designated by a certain boundary line therein set forth; and the United States, on their part, stipulated that the said Indians should be protected in the quiet enjoyment of the lands retained by them, as will appear by the following articles of said treaty:

"ARTICLE 2d. The general boundary line between the lands of the United States and of the said Indian tribes shall be as follows, to wit: Beginning at a point on the Missouri river opposite to the mouth of the Gasconade river; thence in a direct course so as to strike the river Jeffreon at the distance of thirty miles from its mouth, and down the said Jeffreon to the Mississippi; thence up the Mississippi to the mouth of the Wisconsin, and up the same to a point which shall be thirty-six miles in a direct line from the mouth of said river; thence by a direct line to the point where the Fox river (a branch of the Illinois) leaves the small lake called Sakeagan; thence down the Fox river to the Illinois river, and down the same to the Mississippi. And the said tribes, for and in consideration of the friendship and protection of the United States which is now extended to them, of the goods (to the value of two thousand two hundred and thirty-four dollars and fifty cents) which are now delivered, and of the annuity hereinafter stipulated to be paid, do hereby cede and relinquish forever to the United States all the lands included within the above described boundary.

"ARTICLE 3d. In consideration of the cession and relinquishment of land made in the preceding article, the United States will deliver to the said tribes, at the town of St. Louis, or some other convenient place on the Mississippi, yearly, and every year, goods suited to the circumstances of the Indians, of the value of one thousand dollars, (six hundred of which are intended for the Sacs and four hundred for the Foxes,) reckoning that value at the first cost of the goods in the city or place in the United States where they shall be procured," &c.

"ARTICLE 4th. The United States will never interrupt the said tribes in the possession of the lands which they rightfully claim, but will, on the contrary, protect them in the quiet enjoyment of the same against their own citizens and against all other white persons who may intrude upon them: and the said tribes do hereby engage that they will never sell their lands, or any part thereof, to any sovereign power but the United States, nor to the citizens or subjects of any other sovereign power, nor to the citizens of the United States."

An additional article was added to said treaty as follows:

"ADDITIONAL ARTICLE. It is agreed that nothing in this treaty 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 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."

That article exempted and excluded from the operation of said treaty all grants of land made by the Spanish government within the territory retained by the Indians, provided such grants were at any time made known to the Indians and recognised by them.

General William Henry Harrison, who acted as commissioner on the part of the United States in making said treaty, and who was at the time governor of the Territory of Indiana, states in his certificate as follows, to wit:

"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 first day of January, 1806.

"WILLIAM HENRY HARRISON, [L. s]"

Accompanying the certificate of General Harrison was the following letter:

"VINCENNES, January 4, 1816.

"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.*"

On the 20th day of October, 1804, Dubuque sold to Auguste Chouteau 72,324 arpens of said land for \$10,848 60, the undivided half or moiety of which was afterwards sold by the said Chouteau to John Mullanphy; and on the 20th of September, 1806, they presented their title papers in said claim to the board of commissioners then in session, consisting of Messrs. John B. C. Lucas, Clement B. Penrose, and James L. Donaldson, appointed to adjust private land claims, under the act of Congress of the 2d of March, 1805, and the act amendatory thereto of the 21st of April, 1806—a majority of whom (John B. C. Lucas dissenting) ascertained and

reported the said claim "to be a complete Spanish grant, made and completed prior to the first day of October, 1800."

John B. C. Lucas dissented upon the ground that it was not a perfect, but merely an inchoate and incomplete title, as appears by his letters to the Secretary of the Treasury. (See 3d vol. American State Papers, Public Lands, pages 586-'87.) The committee of the Senate, in their late report upon the Dubuque claim, pages 11 and 12, use the following language: "In reviewing the decision of the board of 1806, in favor of the claim, the committee are satisfied their decision was right and just in its general result, but that the board erred in pronouncing it 'a complete Spanish title.'" It is obviously but a concession of land, without a natural or ascertained boundary. And for this reason a survey, the customary prerequisite, was wanting, preparatory to executing the grant in complete form. But the dissenting opinion of Mr. Lucas, for *this reason*, is manifestly against all legal and equitable principle applicable to the case. And regarding the claim as reported by him to be "an incipient or imperfect title," it is, as such, equally with perfect titles, protected by the treaty ceding Louisiana, and therefore was entitled to his decision in its favor, as the following adjudged cases in the Supreme Court of the United States fully attest:

"The term 'property,' as applied to lands, comprehends every species of title, *inchoate* or *complete*. It is supposed to embrace those rights which lie in contract—those which are executory as well as those which are executed. In this respect the relation of the inhabitants to this government is not changed. The new government takes the place of that which has passed away."—Soulard and others vs. United States, 4th Peters's Reps., 512.

"The court has defined property to be any right, *legal* or *equitable*, *incipient*, *inchoate*, or *perfect*, which, before the treaty with France in 1803, or with Spain in 1819, had so attached to any piece of land, great or small; as to affect the conscience of the former sovereign with a 'trust,' and make him a trustee for an individual, according to the law of nations, of the sovereign himself, the local usage or custom of the colony or district, according to the principles of justice and rules of equity."—Strother vs. John B. C. Lucas, 12th Peters's Reps., 436.

The claim was again presented to the board of land commissioners on the 19th of December, 1811, as a lead mine claim, by the land agent of the United States, at which time the place of Donaldson (one of the board in 1806) had been supplied by the appointment of Judge Frederick Bates. Upon a review of the claim which then took place, Mr. Lucas adhered to his opinion of 1806; but the two other commissioners, Bates and Penrose, declined giving an opinion, upon the ground, as your petitioners believe, that they considered the action of the board in 1806 as having disposed of the claim so far as they were concerned.

The principal facts of the case depend upon documentary evidence, as to which see document A, containing true copies of all the original papers in the claim, obtained from the office of F. R. Conway, late United States recorder of land titles at St. Louis, Missouri.

To show the time of discovery, by what nation made, and the different transfers of the sovereignty of the province of Louisiana, your petitioners submit the following historical facts relative to the same: De Soto was probably the first white man who saw the Mississippi river. On the 17th

of June, 1673, Marquette, a French missionary, with Joliette, a citizen of Quebec, crossed from lake Michigan to the Mississippi river, and descended the same to the mouth of the Arkansas. In 1679, six years later, La Salle, a Frenchman, (then commanding a fort on lake Ontario,) set out to explore the country, accompanied by father Hennepin, and proceeded as far as the Illinois river, where they passed the winter. La Salle returned to Canada, in the spring of 1680 for supplies, and directed father Hennepin to descend the Mississippi to its mouth, which he accomplished, and then ascended the same as far as the falls of St. Anthony. On his return to France, he published an account of his travels, in which he called the vast regions traversed by the Mississippi, Louisiana, in honor of Louis the XIV.

The first effort to colonize this region was made in 1699, when an expedition sailed from Rochefort, under the command of Lemoine d'Ibberde, a Canadian naval officer of reputation, who was the first to enter the Mississippi river by sea, and who laid the foundation of the colony on Mexi bay.

France, as early as the year 1712, granted the colony of Louisiana to the Sieur Anthony Crozat. This grant, by letters patent, embraced all the lands discovered by La Salle and father Hennepin lying between New France (now Canada) and Mexico, and was organized into a province. In the year 1717, Crozat, finding himself unable to carry into effect the object of the royal concession, surrendered it to the crown. In the month of August, of the same year, the province was granted to the "Compagnie d'Occident" upon the same conditions upon which it had been given to Crozat. The "Compagnie d'Occident," which had been united to the Company of the Indies, after making several large grants of land to individuals, in 1731 surrendered their grant to the crown, with a reservation, however, of the grants of land made by them.

In the year 1762 a secret treaty was concluded between France and Spain, by which the former ceded to the latter the province of Louisiana, which was confirmed by the definitive treaty of 1763; but the Spanish Government did not get possession of the same until 1769, and then only by an appeal to arms, the people having been opposed to a change of sovereigns. (See 3d vol. of Charlevoix's History of New France, and 8th vol. of the Encyclopædia Americana)

Spain retained Louisiana until the 1st of October, 1800, when the treaty of San Ildefonso was concluded, which placed that province again under the jurisdiction of France; but it did not contain any provision as to private property. The King of Spain, however, mindful of the interest of his late subjects, stipulated for the confirmation of the titles which emanated from himself and his lawful authorities, almost in the same language used by the King of France, in 1764, in his letter to Monsieur Dabadie, then governor of Louisiana.

In the royal despatches from Barcelona, (5th of October, 1802,) for the delivery of the province, it is declared that "the inhabitants shall continue in the peaceful possession of their property. All grants made by my governors, by whatever denomination, shall be confirmed," &c. &c. (See White's Spanish Laws, page 162.)

Louisiana was ceded by France to the United States by the treaty concluded on the 30th of April, 1803. The 2d article of that treaty 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. And the 3d article declares that the inhabitants "shall be maintained and protected in the free enjoyment of their liberty, *property*, and the religion which they profess." "The right of property is protected and secured 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. The sovereign who acquires an inhabited country 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. Their right to property remains unaffected by this change." *Delassus vs. the United States*, 9th Peters's Reports, 133.

Dubuque remained in the uninterrupted possession of the said land from the time of its purchase from the Indians, in 1788, until his death, which occurred in the month of February or March, 1810, during the whole of which time he worked the mines and cultivated a portion of the land. He died in possession, and was buried upon the land, on a high bluff near the present town of Dubuque; and so great was the veneration entertained for him by the Indians, that, for many years after his death, they kept a fire burning upon his grave, and watched it by day and night.

Pierre Chouteau, jr., one of your petitioners, having been repeatedly urged by Dubuque to join him in business on the land aforesaid, left St. Louis in the spring of the year 1810 for the residence of Dubuque, where he intended to remain for some years at least. Upon his arrival he found that Dubuque had departed this life some few weeks before. Dubuque often spoke to the Indians of the expected arrival of his friend, the said Chouteau, and a short time before his death enjoined it upon them, as your petitioners are informed and believe, to receive and treat him as a friend. The chiefs of the said nation received the said Chouteau with every demonstration of respect and kindness, and informed him that it was the request of Dubuque that he should take possession of his property and occupy his house.

In compliance with that request, the said chiefs gave to the said Chouteau the immediate possession of the house formerly occupied by Dubuque. He had frequent conversations with the chiefs of the said nation relative to the claim of Dubuque to the said tract of land, and was informed by them that he (Dubuque) was entitled to the same; that they had sold it to him in 1788, and that the sale had been assented to by the Baron de Carondelet in 1796, with which they were much pleased; and moreover, that they had, on the 3d November, 1804, requested General Harrison to secure it to Dubuque by the treaty which he was then about to make with them, and that they were told it was done. The said Chouteau did not remain all the time upon the said land after his arrival in 1810, but continued to do business there until the commencement of the war in 1812, when he returned to St. Louis.

After the death of Dubuque, Auguste Chouteau, qualified as his administrator, and as such, obtained an order from the probate court of St. Charles county, in the Territory of Missouri, to sell the interest of Dubuque in said lands for the payment of debts. The land was divided by the administrator into lots or parcels, and sold under the order aforesaid,

when John P. Cabanné, Pierre Chouteau, jr., William Russell, and others, became the purchasers.

Shortly after the treaty between the Sacs and Foxes and the United States, concluded on the 21st of September, 1832, (by which the former ceded to the United States a large tract of country within the limits of which the Dubuque tract of land now claimed is situated,) your petitioners took possession of the said land, and proceeded to erect houses upon and occupy the same, in like manner as lands claimed under similar titles have always been occupied and held in the country ceded by France to the United States, and believed that they were under the protection of the law in so doing, and that the government of the United States would not disturb them until it was ascertained that their title was invalid, or, at any rate, until some provision should be made for testing its validity. But, so far from doing this, the extraordinary spectacle was exhibited of an *ejection by military force* under an order of the Secretary of War. (See document B)

Your petitioners, who had been thus oppressively thrust from the said land, were unable to resort to any tribunal to test their title, or to restore them to the possession, for they could not institute any proceedings against the United States for quieting the title; nor could they sue the armed men who ejected them, to recover the possession, as no court had jurisdiction at that spot for those purposes.

By the treaty of the 21st of September, 1832, the Indians sold to the United States only such land as was "*rightfully claimed by them*;" for as they did, at the treaty of the 3d November, 1804, not only disclaim the ownership, but expressly recognise the Dubuque claim as a valid Spanish grant, (the possession of which was then in Dubuque,) the United States acquired no title to that tract of land by the treaty aforesaid:

Your petitioners, having taken possession of said land under and by virtue of a grant from the Spanish government, *were not intruders upon the public lands, and ought not to have been so regarded and treated by the Secretary of War.* In confirmation of this statement, and to show the illegality and injustice of the order for their removal, they beg leave to refer to the opinion of the Hon. William Wirt, then Attorney General of the United States:

"OFFICE ATTORNEY GENERAL UNITED STATES,
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, &c.* * * * * Under these circumstances, I am of the opinion that *Mr. Henderson is not an intruder* within the meaning of the act of the 3d of 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 to the Executive to remove him by force under that law.*

"WILLIAM WIRT.

"Hon. WM. H. CRAWFORD,
"Treasury Department."

[See opinion in volume of Opinions, &c., No 106.]

Your petitioners beg leave, also, to refer to the proceedings of the executive department of the government of the United States in the Reddick claim, situated within the same Indian territory as the Dubuque claim.

On the 30th of March, 1799, Louis Honoré Tesson obtained permission from the lieutenant governor of Upper Louisiana to make a settlement within the territory of the Sac and Fox Indians. The settlement was made, cabins built, an orchard planted, and a portion of land cultivated; but there is no evidence that it was ever "made known to the said Indians and recognised by them," in conformity to the additional article of the treaty of the 3d of November, 1804. In 1803 the said claim was sold under an execution against Tesson, and Thomas F. Reddick became the purchaser.

By the treaty between the United States and the Sacs and Foxes, concluded on the 4th of August, 1824, a portion of land lying between the Mississippi and Des Moines rivers (embracing within its boundary the Reddick claim) was set apart and reserved for the half breed Sac and Fox Indians, to be held as other Indian lands; but by the act of Congress of the 30th of June, 1834, the United States relinquished all their right, title; and reversionary interest in the same to the said half-breeds. The said Tesson or Reddick claim having been duly presented to the board of land commissioners for their action, and reported upon for confirmation, ("whenever the Indian title should be extinguished,") it was accordingly confirmed to the said Reddick, or his legal representatives, by the act of Congress of the 1st of July, 1836. Upon this state of facts, the Hon. Felix Grundy, then Attorney General of the United States, was called upon for his opinion, who decided that, under and by virtue of the additional article to the treaty of General Harrison of the 3d of November, 1804, the title was in Reddick's heirs, and that they were entitled to a patent for 640 acres; which was accordingly issued.

Mr. Grundy used the following language in commenting upon the effect of the additional article to the treaty aforesaid :

"From this it seems that the Sacs and Foxes, as well as the United States, did not intend, by any agreement 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." * * * * *

"Therefore, the '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."

He says, farther: "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 the treaty stipulations with France, and by the universal usage among civilized nations, *to go on and perfect the title?*"

The Reddick claim, the Bazil Giard claim for 6,808½ arpens, nearly opposite Prairie du Chien, and the Dubuque claim, so far as your petitioners

know or believe, are the only Spanish grants made in the said Indian territory; the two former of which have been patented—the first on the 7th of February, 1839; the second on the 2d day of July, 1844. These Spanish concessions on the frontiers (frequently embracing lead mines, salines, and mill seats, *eo nomine*,) were made in favor of the pioneers of population, and to encourage the settlement of the public domain; and under the Spanish government they were treated and respected as private property—the transfers, devises, and descents of which were recognised; and the grants themselves, if not in the first instance complete, were finally confirmed and perfected upon application, without a single known refusal on the part of the confirming authority.

Your petitioners have presented several memorials to the Executive of the United States, and to your honorable bodies, protesting against the right of the United States to sell said land in any manner whatsoever, and against the illegal proceedings which have been adopted by the officers of the government in relation to the same, and urged at the same time that their title to the said land ought to be confirmed or adjudicated upon by the judicial tribunals of the United States.

In brief.—The sale of the said land to Dubuque by the Indians in 1788—the grant or confirmation of the same by the Baron de Carondelet in 1796—the express recognition of the claim by the Indians in 1804 and 1810—the validation of the same by the additional article to the treaty of Gen. Harrison of 1804, which was ratified by the President and the Senate—the report in favor of the claim made by the United States board of land commissioners in 1806—the uninterrupted possession and cultivation of the land by Dubuque, for upwards of thirty consecutive years, to the time of his death and burial upon the land—the confirmation and issuing of a patent in the Reddick claim, situated in the same Indian territory as the Dubuque claim, but which does not appear to have “been made known to the Indians and recognised by them”—the stipulations of the treaty between France and the United States, by which Louisiana was ceded—the decisions of the Supreme Court of the United States—the legislation of Congress—and the fact that the genuineness of the claim has never been questioned—is conclusive evidence in the minds of your petitioners that they have a good and valid title to the said tract of land, and such as would have been maintained and protected as inviolable by the Spanish government, if the territory had been retained by it; but the sovereignty over the territory having been transferred to the government of the United States, the same obligations to go on and perfect the title are imposed upon it as rested upon Spain.

Your petitioners therefore pray that their title may be confirmed by your honorable bodies to the tract of land granted to Julien Dubuque by the Baron de Carondelet, governor general of the province of Louisiana, on the 10th of November, 1796, containing seven leagues in front on the western bank of the Mississippi river, by three leagues in depth, commencing at the upper hills of the little river Maquauquitois, and extending below to the Mesquabyanques hills, situated in the county of Dubuque and Territory of Iowa.

And your petitioners, as in duty bound, will ever pray, &c.

Pierre Chouteau, jr.

Louis Menard.

Julia Gratiot Cabanné,
 J. Charles Cabanné,
 Virginia Sarpy, by
 Jno. B. Sarpy, her guardian,
 Sarah M. Virginia Kingsbury,
 Adele L. Kingsbury,
 Jule Cabanné Kingsbury, by
 J. W. Kingsbury, their guardian,
 L. Duthil Cabanné,
 Julius L. Cabanné,
 Francis Cabanné,
Heirs-at-law of John P. Cabanné, deceased.

James M. White,
 Ann W. White,
 Ferdinand Kennett,
 Julia Kennett,
Heirs-at-law of John Smith T.

Lucinda Hempstead,
 William Hempstead,
 Charles S. Hempstead,
 Mary Lisa,
 Edward L. Hempstead,
 Stephen Hempstead,
 Thomas J. Hempstead,
 Samuel H. Hempstead,
 Bernard F. Hempstead,
 Cornelia V. Hempstead, by
 Cornelia Hempstead, her guardian,
 Edward H. Beebé,
 Mortimer Kennett,
 Mary H. Kennett,
 Thomas H. Beebe,
 Nicholas Stahl,
 Sarah A. Stahl,
 Mary L. Lorimier,
 Peter A. Lorimier,
 Joseph L. Hempstead,
 Thomas McKnight,
 Cornelia McKnight,
 James M. Campbell,
 Clarissa Campbell,
 Charles H. Gratiot,
 Edward H. Gratiot,
Heirs-at-law of Edward Hempstead, deceased.

Lary Lisa,
Heir-at-law of Emanuel Lisa, deceased.

Pelagie Berthold, widow,
 Pierre A. Berthold,
 Virginia E. Berthold,
 William L. Ewing,
 Clara Ewing,
 Alfred W. Kennedy,
 Emilie Kennedy,
 Tullia Berthold,
 Amédée Berthold,
 Frederick Berthold,
Heirs-at-law of Bartholomew Berthold, deceased.

Henry Chouteau,
 Gabriel S. Chouteau,
 Edward Chouteau,
 René Paul,
 Gabriel R. Paul,
 Julius S. Paul,
 Edmund W. Paul,
 Frederick W. Beckwith,
 Tullia C. Beckwith,
 Peter N. Ham,
 Amelia Ham,
 Louisa C. Du Breuil,
 Louis C. Smith,
 Thomas F. Smith,
 Philomena Smith,

By F. W. Beckwith, their guardian;
 Augustus R. Chouteau,
 Edward A. Chouteau,
 Gabriel Paul,
 Adolphe Paul,
 Therese Paul,
 Richard H. Ulrici,
 Estelle Ulrici.
 J. C. Barlow,
 Virginia Barlow,
Heirs-at-law of Auguste Chouteau, deceased.

Richard Graham,
 Catharine Graham,
 Geo. Graham,
 Thos. B. Graham,
 Jane B. Graham,
 Eliza M. Graham,
 Charles Chambers,
 Jane Chambers,
 Joseph H. Lamotte,
 Ellen Lamotte,
 Margaret F. Chambers,

Benj. F. Thomas,
Jane Thomas,
Tho. B. Hudson,
Eliza Hudson,
Ann B. Chambers,
Mary O. Chambers,
John M. Chambers,
Tho. B. Chambers,
B. M. Chambers,
Wm. S. Harney,
Mary Harney,
Ann B. Harney,
Eliza M. Harney,
John M. Harney,
James Clemens, jr.,
Eliza Clemens,
James B. Clemens,

J. R. G. Clemens,
B. Mullanphy Clemens,
C. Jane Clemens,
Helen M. Clemens,
Octavia Delany,
Jane Delany,
John M. Delany,
Ann Biddle,
Bryan Mullanphy,
*Heirs-at-law of John Mullanphy,
deceased.*

William Russell, and
Justus Post, by
F. W. Risque,
their attorney in fact.

The evidence to which the report refers is as follows :

Petition of Julien Dubuque.

The most humble petitioner to your excellency, who is called Julien Dubuque, having formed a habitation upon the frontiers of your government, in the midst of the savage tribes that are the inhabitants of the country, has purchased a tract of land from these Indians, and the mines which it contains; and, through his perseverance in surmounting all the obstacles arising as well from dangers as heavy expenses, has at length succeeded, after many troubles, in being the peaceful owner of a tract of land situated on the western bank of the Mississippi river, to which he has given the name of the "Mines d'Espagne," in honor of the government to which they belong.

As the locality of the habitation is but a point, and the different mines he works are sparsely spread, and at a distance of three leagues from each other, the most humble petitioner prays your excellency to be pleased to grant him the peaceful possession of the said land and mines: that is, from the upper hills of the small river Maquauquitois to the Mesquabyanques hills, which is about seven leagues upon the western bank of the Mississippi, by three leagues in depth; which demand the petitioner hopes to obtain from your goodness. I pray this same goodness, which makes the happiness of so many subjects, to excuse my style, and to be willing to accept of the pure simplicity of my heart for want of my eloquence. With all my power, I beseech Heaven to preserve you, and to pour all favors upon you; and I am, and shall be all the days of my life, of your excellency the most humble, obedient, and submissive subject.

J. DUBUQUE.

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.

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.*

*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.

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 abovesaid 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 Mesquabyanques 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 Mesquabynanques 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 feet 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 peaceful 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 above said 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 these presents, in the presence of Messrs. Marie Philippe Leduc, recorder, Bernard Pratte, and Manuel Gonzales Moro, and 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.

AUGUSTE CHOUTEAU.

[SEAL.]
[SEAL.]

M. P. LEDUC.

MANUEL GONZALES MORO.

BERNARD PRATTE

DISTRICT OF SAINT LOUIS, *set* :

Before Charles Gratiot, chief judge of the court of common pleas of the district aforesaid, come Julien Dubuque and Auguste Chouteau, and acknowledge 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.

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

P. PROVENCHERE, *Recorder*.

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.”

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.

To which the committee have thought proper to add an extract from the 1st section of the act of Congress entitled "An act to prevent settlements being made on lands ceded to the United States, until authorized by law," approved the 3d of March, 1807, as follows, to wit: "And it shall moreover be lawful for the President of the United States to direct the marshal, or officer acting as marshal, in the manner hereinafter directed, and also to take such other measures and to employ such military force as he may judge necessary and proper, to remove from lands ceded or secured to the United States by treaty or cession, as aforesaid, any person or persons who shall hereafter take possession of the same, or make, or attempt to make, a settlement thereon, until thereunto authorized by law.

Provided, That nothing herein contained shall be construed to affect the right, title, or claim of any person to lands in the Territory of Orleans, or district of Louisiana, before the board of commissioners established by the act entitled 'An act for ascertaining and adjusting the titles and claims to land within the Territory of Orleans and the district of Louisiana,' shall have made their report, and the decision of Congress shall be had thereon."

It appears, in this case, that the complainants were driven from the possession at the point of the bayonet, although the report of the land commissioners was in their favor.

From a careful examination of the foregoing documents, your committee have come to the conclusion that *property*, such as was intended to be protected by the treaty of eighteen hundred and three, ceding Louisiana, was thereby conveyed to Julien Dubuque. Whether that property consisted of a *complete* or an *inchoate* title to the land, we have not deemed it material to inquire, inasmuch as the Supreme Court—whose interpretation of that instrument is the law of the land—have held that the sacred faith of the nation, pledged in that treaty for the protection of private property, extends its guarantee over every species of title, "legal, equitable, perfect, and inchoate, existing at the time of the treaty."

The committee are much relieved in this case by the fact that there is no question as to the *authenticity* of the papers; no perplexing doubts as to the authority of the grantor; and no preliminary inquiries as to forfeitures incurred by delay, or the neglect of presentation, or the non-performance of conditions.

These papers were presented before the *first board of commissioners* authorized to examine and ascertain titles protected by the treaty of Louisiana, and were held by them to furnish satisfactory evidence of a *complete grant*.

This early investigation, held forty years ago, while the transaction was yet recent, while the facts were yet fresh in the recollection of men, has

stripped the inquiry, *whether the report of that board shall be confirmed*; of all matters of fact, and left for consideration the sole question—what is the legal effect to be given to the documents now before us?

Did the governor of Louisiana, by the words “granted as asked,” &c., confer upon Julien Dubuque a mere personal privilege, which died with him; or did he thereby convey to him an absolute estate? If the *first*, the memorialists have no rights, legal or equitable: if the *last*, they are entitled to all they ask. The committee, fully impressed with the importance of this question, have given it a laborious, and, they trust, a candid examination.

The brief decree of the governor is made with reference to the papers before him. These were the petition of Dubuque and the report of Todd.

Governor Carondelet referred the petition of Dubuque, in the first instance, to Don Andrew Todd—who seems to have been his commissioner of Indian affairs—to ascertain its nature. If he was governed by the report of his officer—which is most probable—that ends the discussion; for he tells him, in substance, that it is a petition for a GRANT OF LAND, and that he knows no reason why the GRANT OF THE LAND containing lead mines should not be made. With this official intpretation of the nature of the solicitation, he says, “granted as solicited,” subject to the conditions suggested in Todd’s report. But if the governor disregarded the report of his officer, which he had called for, and looked at the original petition alone in making the grant, how did he intpret it?

He found it a most primitive paper, inartificial—evidently drawn *in ops consilii*, to use the language of the forum—and entitled to that favorable construction towards the petitioner which is always awarded to such documents. After describing himself as living on the frontiers of the government, among the Indians, distant 2,000 miles, he says he has bought a tract of land from them, with mines, which he works—a pursuit which Spain then encouraged in every possible way—and solicits the *peaceable possession* of the lands and mines.

The word possession, as here used, may mean mere occupancy, or it may mean *seisin*. That it meant the latter, and that governor Carondelet so understood it, is manifest to your committee for the following reasons:

First, from the position of the parties. It is admitted that the Indian title to the country had not then been extinguished, and of course that the Spanish governor had not the right of occupancy. Dubuque represents that he had purchased the Indian title, and was at work upon the ground: of course, he then had the actual occupancy and the right of occupancy. A construction which makes him ask for the *mere occupancy* makes him guilty of the folly of asking for what he already had, and the governor of giving what he had not.

Secondly, from the sense in which the word possession has generally been interpreted in Spanish grants and requêtes. In these cases it has a broader signification than is given to it in our language. Philosophers have generally agreed that *possession* is the first idea of *property*; and, accordingly, in these primitive grants they are commonly used as synonymous.

To verify the use of this word, your committee have examined many petitions and grants under Spanish authority which have been confirmed by the United States, especially those found in the district of Louisiana, and in the district east of Pearl river. The petitions of the early inhab-

itants are of the most irregular and informal character. Sometimes they describe the tract of land, and ask for a *concession*. Sometimes they merely describe the tract and ask that their petition may be granted, without specifying what their petition is. Such papers could only become intelligible from the fact that, taken in connexion with land, they had but one object, and could mean but one thing—a grant of the fee. Sometimes they ask for “a grant of land;” sometimes, “to be made proprietor;” sometimes for “the right of cultivating,” and sometimes for “the peaceable possession:” all meaning the same thing, and producing the same result. Whatever words were used in the petition, the form of the grant was always the same. “The surveyor general will establish the petitioner on the tract,” &c. For example: on page 677 of the 1st volume American State Papers—Public Lands—is the case of Owen Sullivant, who asks for “PEACEABLE POSSESSION” of a tract of land which he describes. An order issues to establish the party on the tract, preparatory to the issuance of titles in form.

On the 17th of June, 1796, Carlos Dehault Delassus petitioned Don Zenon Trudeau, lieutenant governor of Upper Louisiana, to direct the surveyor general to put him *in possession of* 20,000 *arpens* of land, on Cuivre and Salt rivers. The petition was granted.

The board of commissioners, consisting of Messrs. L. F. Linn, F. R. Conway, and A. G. Harrison, were unanimously of opinion that this was a grant of land; and having recommended it for confirmation, it was accordingly confirmed by the act of Congress of July, 1836. (See Reports of Missouri Commissioners, Doc. 59, 24th Congress, 1st session, No. 23.)

Thus *possession* was regarded by two boards of commissioners, acting under laws of Congress in two separate jurisdictions, synonymous with fee simple, and these reports were confirmed by Congress.

This word *possession* is used in the Florida treaty of 1819; and the Supreme Court have defined it to mean, “that legal seisin and possession which follows title, is co-extensive with the right, and continues till it is ousted by an actual adverse possession as distinguished from residence and occupation.” This is the sense in which your committee think the word is used in these French and Spanish petitions when it occurs, especially the one under examination.

Thirdly. A third reason for supposing *peaceable possession* means absolute property in this case is, that the force of terms in this instrument must be governed by the civil law.

The civil law was the common law of France and Spain, and was then in force in the province of Louisiana. All the parties to this instrument, if not familiarly acquainted with its precise rules, were nevertheless governed by the customs it established. In that law, there are no words of conveyance distinct from the ordinary words of contract. By the common law the word “heirs” is necessary to convey a fee simple in real estate; but by the civil law, a house and a horse were transferred by the same solemnities. In the pure Spanish and French *requêtes* and *concessions* on file in the public archives, the word heirs, or any other words of inheritance, can hardly be found.

A grant of *peaceable possession*, unqualified and unconditional, by the Spanish law, is tantamount to a grant “of peaceable possession to a man and his heirs” by the common law. But such a grant by the common law is a fee simple. A perpetual lease, not reserving rent, is admitted to

convey the whole estate. Coke says: "If a man, siezed of lands in fee, by his deed granteth to another the profits of those lands, * * * * * the whole land itself doth pass; for what is the land, but the profits thereof?" Coke Lit., 4, (b.)

Fourthly. A different construction would make this an anomaly among Spanish grants.

A restricted interest, such as a *usufructuary* or a *life estate*, is only incident to a more advanced state of society, when property becomes more valuable. It usually arises out of contracts between individuals. Such a thing as a usufructuary life estate, with reversion to the sovereign, has not been created by virtue of a royal grant of land in England, France, or Spain, since the days of "*benefices*"—the very earliest stage in the progress of the feudal system. Accordingly, your committee, after a very elaborate search, have not been able to find a single instance in which the Spanish or French government have granted a less interest in vacant land than the whole estate. But, in searching for such precedents, they have fallen upon cases in which the language was much more indicative of "*mere personal privilege*," or of "*a mere usufructuary right*," which have, notwithstanding, been construed by our highest court into grants of absolute property. In the case of the United States vs. Richard, 8th Peters's Reports, 470, after stating his intention to build a water saw mill, the petitioner proceeds to state: "That as for that purpose a fit situation is necessary, such as is offered on Pottsburg creek, bounded by the lands of Strawberry hill, and the mentioned tract not being sufficient for the indicated objects, he requests that the quantity equivalent to the object of his petition be granted to him about one mile distant, east of McQueen's mill, *in order to get cypress for timber*; therefore he supplicates your excellency, submissively, to grant him your superior license, and the expressed tract of five miles of land, *for the purposes he proposes to himself, in order that what he solicits being granted*, he may, with all possible brevity, commence this advantageous work, and in order that he may have in the said tract the necessary timber." The concession made upon this petition is scarcely more definite than the petition itself. Upon these papers Chief Justice Marshall says: "The material question is, whether the land itself, or the privilege of cutting timber, was conceded. * * * * * The concession is loosely worded, but is understood to refer to land." The claim was rejected by the register and receiver; but the Supreme Court, on appeal, determined it to be a grant of land.

In addition to this case, your committee find among the rules for distributing certain lands this royal order inserted: "In whatever manner these lands be distributed, *it shall be in full property.*" 8th Peters's Reports, 455.

It is true this order was of a subsequent date to the grant to Dubuque; but, as far as can be discovered, it was a particular application of a rule which had always prevailed in the public grants of land in Louisiana and Florida.

The committee are strengthened in their conclusions by contemporary construction. In the article added to the treaty with the Sacs and Foxes, in 1804, expressly intended for the protection of the Dubuque claim, it is called a *grant of land*. It was so recognised by the Indians. In 1806, General Harrison, whose position as governor of the Northwest and In-

diana Territories, and of the district of Louisiana, made him familiar with those frontiers, and with the laws, usages, and customs in force in the province of Louisiana, from an early day, writes to one of the parties interested in this claim, "I have no doubt of the validity of your claim, and never had any." In the same year the commissioners of private land claims in the district of Louisiana say, "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."

Add to this the official construction put upon it at the time by Don Andrew Todd, and there seems to be no doubt that it was understood to be a *grant of land* at the time it was made.

Your committee have not deemed it necessary to occupy time in refuting all the objections which may be or have been made. All that have come under their notice are susceptible of an easy explanation.

For example, *it is objected* that "it is and was the settled policy of Spain not to sell their mines."

The board of commissioners, in their report on Missouri land claims, say: "That no claim by the act of 1807 could be confirmed which contained a lead mine or salt spring, and consequently a class of claims, whose merits in every other particular were admitted, were rejected for that reason. This objection, although at the date of the act considered sound, has long since been abandoned. By the act of 1824, and those subsequent to it, no such exception is made." 5th vol. American State Papers, Public Lands, page 702. In acting upon the claims recommended for confirmation by those commissioners, no distinction was made by Congress *between claims embracing lead mines and others.*

It is also objected "*that no patent issued;*" that it "*was not registered among complete titles;*" that "*no order of survey was made.*"

All these objections are satisfactorily met by observing that the land was in the Indian territory, upon which the governor had no right to order a surveyor to enter; and moreover, that, inasmuch as it was a descriptive grant, or special location, designated by specific metes and bounds, a survey was unnecessary. (See Mackey and others vs. the United States, 10th Peters's Reports, page 240.)

As to a patent, &c.—It is as if land were given by Indian treaty in our own country: if sanctioned by the government, it becomes valid and complete, without any recording or the issuance of a patent.

Again, *it is objected* that the foundation of this title was an Indian grant, without definite boundaries. By turning to the report of the commissioners on land claims in the State of Louisiana, it will be seen how large a number of these Indian grants have been confirmed. (State Papers, Public Lands, 3d vol., page 93.)

But all discussion may be cut short as to the rights acquired by Du-buque under the Indian deed, by observing that the Spanish governor does not assume to *confirm* an Indian grant, but to *grant de novo*, as he had a perfect right to do. The Indian grant is introduced as inducement, but by no means as the foundation of title.

These are all the prominent objections which have come to the knowledge of the committee: the whole of which, since the nature of these titles has been fully understood, seem unfounded, and the real one appears to be an unwillingness to fulfil the obligations of the treaty with respect to the more valuable claims. It has been said, with more truth than com-

ports with the honor of the country, that "there is too great a disposition to lean against the larger concessions, some of which are certainly very great; but when we consider the trifling value of land under the Spanish government, there will appear less reason for this prepossession against them."

The interest which the government has to preserve a few leagues of land to its almost boundless domain, is incomparably less than that of presenting to its citizens an example of strict integrity which cannot be driven or seduced from the line of rectitude.

Your committee being well satisfied that the petition of Dubuque, according to a true interpretation thereof, sought a grant of land in absolute property designated by specific metes and bounds, and an indicated quantity; that the same was granted to him by the Baron de Carondelet, governor general of the province of Louisiana, who had full power to make the grant; that it was private property, and fully protected by the treaty ceding Louisiana; and that the first board of commissioners, acting under the acts of Congress of 1805 and 1806, in adjusting private land claims in the district of Louisiana, as early as the 20th of September, 1806, recognised and reported it to be "a complete Spanish grant, made and completed prior to the 1st day of October, 1800," which report was submitted to Congress on the 23d day of June, 1812, by the Secretary of the Treasury, but has not been acted on up to the present time—are therefore fully satisfied that justice demands that the report of the board of commissioners aforesaid should be approved, and that the title to the said tract of land should be confirmed by the United States to the said Julien Dubuque, his heirs, assignees, or legal representatives; and in conformity to these views they have reported a bill, and recommend its passage.