IN SENATE OF THE UNITED STATES.

JUNE 3, 1844.

Submitted, and ordered to be printed.

Mr. HENDERSON made the following

REPORT:

[To accompany bill S. 183.]

The petition of Henry Chouteau and others, claiming as heirs at law of Auguste Chouteau, deceased; Bryan Mullanphy and others, claiming as the heirs at law of John Mullanphy, deceased; and William Russell, Pierre Chouteau, jr., and others, claiming as purchasers at administrator's sale of the estate of Julien Dubuque, deceased, represents:

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

On the 22d of October, 1796, Dubuque presented his petition to the Baron de Carondelet, Governor General of Louisiana, praying for the grant of a tract of land on the west bank of the Mississippi river, commencing at the upper hills of the little river *Maquauquitois*, and extending to the *Mesquabynanques* hills, which he stated he had bought from the Indians, and of which he was in the peaceable possession. The petition of Dubuque was referred by the Governor General to Andrew Todd, an authorized monopolist of the Indian trade, with direction to Todd to inform him, the Governor, as to the nature and propriety of Dubuque's demand. Todd reported favorably on Dubuque's petition, provided the concession to be made should be so qualified that Dubuque should not trade with the Indians without the written consent of him, the said Todd. The matter being thus presented and considered of by the Governor, on the 10th of November, 1796, he granted to Dubuque the land asked for, with the restriction of trading with the Indians as proposed by the merchant, Todd. This grant, the petitioners allege, vested Dubuque with a complete title to the lands specified, according to the laws of Spain. That the additional article affixed to the treaty made with the Sac and Fox Indians by General William H. Harrison, at St. Louis, on the 3d of November, 1804, was superadded to protect from the lands retained by the Indians (by way of reservation) all Spanish grants which had been previously made within their territory by their consent and approbation. They allege and refer to the certificate of General Harrison, dated the 1st of January, 1806, in support of their averment, that the additional article was suggested by the exhibition of Dubuque's grant, and specially added by the consent of the

Indians, to secure that claim, the validity of which they acknowledged. That on the 20th of October, 1804, Dubuque sold to Auguste Chouteau the south half of the grant, for the price of $10,848 60; and on the 20th of September, 1806, their title papers were presented to the proper board of land commissioners, a majority of whom reported and adjudged the claim to be a complete Spanish title. They exhibit a copy of a letter from General Harrison, (enclosing his certificate to Mr. Chouteau,) in which he states that he never had any doubt of the validity of the Dubuque claim. They state that Dubuque remained in the uninterrupted possession of the land from the time of his purchase from the Indians, in 1788, till his death, in 1808 or 1809, during all which period he worked the mines and cultivated a part of the land. That he died in possession, and was buried upon the land on a high bluff near the town of Dubuque; and so great was the reverence entertained for him by the Indians, that for many years after his death they kept a fire burning over his grave, and watched it by day and night. That Auguste Chouteau sold one-half of his interest in the claim to John Mullanphy, and hence the claim of the Mullanphy heirs; and that, after the death of Dubuque, Auguste Chouteau, his administrator, by an order of the probate court of St. Charles county, in the Missouri Territory, sold the northern half of the Dubuque claim, of which Dubuque died seized, in eleven parcels or lots, which were purchased by different individuals; hence the claim of William Russell and others. They further state that, after the death of Dubuque, the Indians continued to hold the possession of the country in which this claim was situate, and so excluded the claimants from their possession and enjoyment of it; but that, immediately after the Indians evacuated the country under treaty of the 21st of September, 1832, the petitioners took possession of the land included within the Dubuque grant, and proceeded to erect houses and occupy the same, as is usual on private land claims similarly situated, and supposed themselves entitled to the protection of the law in doing so; yet, by the order of the Secretary of War, they were forcibly ejected by military power. For this wrong they state they had no legal redress, or any means of testing their title against the United States; nor could they reach the armed men who ejected them by legal process—no court having civil jurisdiction of the *locus in quo*. The petitioners also state that they have several times memorialized Congress for redress, and remonstrated against any forcible possession or disposal of this claim, as a part of the public domain, by the United States authorities; but that their remonstrances have been in vain. They aver their title to be good and valid by the laws of Spain; secured to them by the treaty ceding Louisiana to the United States; validated by the Indian treaty of 1804; consecrated in good faith by their long and uninterrupted possession; and approved by the board of land commissioners—and hence pray Congress for its confirmation.

Nearly all the material facts set forth in the memorial rest upon documentary testimony. These consist of—

1st. The contract of Dubuque with the Fox tribe of Indians, dated 22d of September, 1788.

2d. Dubuque's petition to the Baron de Carondelet, of the 22d of October, 1796.

3d. The Baron's order to Andrew Todd, to give information on the nature of Dubuque's demand or petition.

4th. Todd's report, favorable to the grant solicited, dated the 10th of November, 1796.

5th. The Governor's concession, qualified as advised by Todd.

6th. Additional article to General Harrison's treaty with the Sac and Fox Indians, recognising the validity of Spanish grants within their territory, made with consent of the Indians, dated 3d of November, 1804.

7th. The certificate of General Harrison, that this article was suggested to protect *particularly* the claim of Dubuque, and like similar claims, dated the 1st of January, 1806.

8th. His letter to Auguste Chouteau, to same effect.

9th. Deed of Dubuque to Auguste Chouteau, for one-half of the Dubuque claim, dated the 20th of October, 1804.

10th. Notice of claim filed, and proceedings had thereon, before board of land commissioners, a majority of the board reporting favorably to the claim, dated 20th of September, 1806.

11th. Treaty with the Sac and Fox Indians, ceding to the United States the lands in which this claim is situate, dated 21st September, 1832.

12th. Order of Major General Macomb, under instructions of War Department, to remove, as intruders, those in possession of the mineral lands in the country acquired by the last-mentioned treaty, dated the 5th January, 1833.

13th. The several petitions and protests of these claimants to Congress, &c., complaining of being ejected by military force, and asking redress of greivances.

All the preceding documents stand so verified in the records of the country, as that the facts contained in them have been recognised by two several departments of the Government, and are such as the committee regard beyond controversy. The history of the claim recited in the memorial contains little more than a compendium of these documents.

The possession of Dubuque at the time of his death, the period of his death, and circumstances of his burial, the fact of the claimants possessing and improving the lands claimed immediately after a peaceable possession became practicable, by removal of the Indians pursuant to the treaty of the 21st of September, 1832, and the destruction of their improvements, and their actual expulsion by military force, under the order from the War Department of the 5th of January, 1833, are all the important facts connected with the proposed inquiry that are not in full proof before the committee. But the certificate of General Harrison of the 1st of January, 1806, referring to the tract of land "where the said Dubuque has for many years resided," and the military order issued in 1833, together with the subsequent action of the Government in respect to the claim, sufficiently sustain all that is important to be suggested in the memorial respecting Dubuque's possession, and the expulsion of the claimants by military force in 1833; and hence these facts, too, are regarded by the committee as established.

The memorial gratuitously represents that an administrator's sale of Dubuque's interest in this claim was made after Dubuque's death, by which several of the petitioners became entitled to the interests now claimed by them. Of this there is no proof; but the matter is of no consequence in the present investigation of the title. The substantial facts of the case are therefore undisputed, and all the subjects for decision are questions of construction of title papers and documentary stipulation; in

other words, questions of law upon documentary evidence of title—a sort of demurrer to evidence.

The principal question thus 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 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 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 claim 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 pretension to it, without the consent of the Sieur Julien Dubuque."

Whatever of uncertainty there may be in this 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 Peosta.

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, as 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 the 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 lands, * * * * from the coast above the little river Maquauquitois to the coast of the Mesquabynanques, which forms about seven leagues on the west bank of the Mississippi, by a depth of three leagues." 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 this 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 request, 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 value,") 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 for which he asks, 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.

Thus rested this claim, and Dubuque's possession under it, till after the cession of Louisiana, when, on the 20th of October, 1804, Dubuque sold to Auguste Chouteau one-half of it, or 72,324 arpens, for the sum of $10,848 60. Supposing this transaction to be veritable, (and it stands unimpeached,) it is not without effect to show that, before speculation had begun in Louisiana lands—before Congress had organized any tribunal for their investigation—this was regarded as a good grant, and of much value.

By the second article of the treaty of St. Louis of the 3d of November, 1804, with the Sac and Fox Indians, by General Harrison, a cession of a part of their lands was acquired to the United States by a boundary line therein set forth. By the fourth article, the United States recognise the rightful claim and possession of these tribes to the *land retained by them*, and stipulate to protect them in the quiet enjoyment of them against the citizens of the United States and all other white persons who may intrude upon them. General Harrison, on the first of January, 1806, certified that, after the treaty was prepared for signing, he was shown a grant to Dubuque, at some distance up the Mississippi river, and "where the said Dubuque has for many years resided;" and finding this *tract* would be considered as *receded* by the treaty as it then stood, the *additional article* was written and submitted to the Indians. "*They readily consented to it*, and the undersigned informed them that the intention of it was to embrace particularly the claim of Dubuque, the validity of which they acknowledged."

It is maintained by Mr. Gallatin, and in Mr. Smith's report in the Senate of 1842, that this additional article adds nothing to the validity of the

Dubuque claim; that it neither recognises nor confirms the title. But how far is this correct? It surely had reference to this and similar claims, and intended something in respect to them.

The land which the Sac and Fox Indians retained under the treaty of 1804 embraced this claim—the possession and home of Dubuque. By the 4th article, the United States bound these Indians that they should "never sell their lands, or any part thereof," but to the United States only. The lands so restricted in sale the same article acknowledges the Indians "rightfully claim;" and these lands the United States stipulate to "protect them in the quiet enjoyment of."

Such was the draught and import of the treaty, as *prepared for signature*, when (as General Harrison, our negotiator, certifies) the Dubuque claim was interposed, for the purpose of having it exempted from those lands which the said 4th article conceded the Indians "*rightfully claim*," and which the United States were about to pledge themselves in guaranty to the Indians, "to protect them in the quiet enjoyment of."

What, now, was the conference which ensued? Was it not to ascertain whether the Dubuque claim was fact or fiction? And what the result? The Indians were inquired of, whether they recognised this claim as a valid Spanish grant made by their consent. They responded affirmatively. What, then, was the difficulty our negotiator saw in the matter, and how did he propose its remedy? The reply is in his own words: "Finding that *this tract* would 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."

The article thereupon added is 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."

The committee are preadmonished that General Harrison's certificate and letter are no part of the treaty. But they cannot doubt they may be properly resorted to for explanation of the object of this additional article, and to aid in its construction if it be obscure.

The additional article, then, is inserted as an exception or proviso to the 4th article. In such relation, its import and effect is to qualify that article in this wise, viz: The Indians "*rightfully claim*" the lands retained by them, *except the grant to Dubuque, and other like grants.* And the United States agree to protect them "in the quiet enjoyment of" all these lands retained by them, *except the Dubuque claim* and *similar claims.* That the Indians engage they will never sell the lands retained by them to strangers; but if they shall ever sell them, they will sell them to the United States, *except the lands comprised in the Dubuque claim and similar Spanish grants.*

It is a necessary and universal rule of construction of *treaties* and *agree-*

ments, that what one party binds himself to do or perform is assented to and approved of by the other party in whose favor it is to be done and performed. And the rule is equally reasonable and proper, that whatever of the *res gesta* is recited in such instrument by both parties as against themselves, is assented to as true by the other party, if no reservation or disclaimer to the contrary appears; because it is the deed or act of *both*, and the matters thereof are of *mutual agreement*.

How can it be said, therefore, that this concession of the Indians by the treaty of 1804, in favor of the validity of the Dubuque claim, was not acceded to and approved by the United States, parties to the same treaty, and at *whose instance* the concession was inserted? For what inserted but to save and secure the claim?

This Dubuque claim remained within the boundaries over which the Sac and Fox Indians retained dominion until the treaty of 21st September, 1832, when and whereby the United States acquired the country from these same Indians, in which this grant is situated.

With the treaty of 1804 supervening, how shall it be maintained that the United States purchased a possessory right to the Dubuque lands of the Sac and Fox tribes in 1832? Had not the United States, by the treaty of 1804, interdicted the Indians from selling or claiming the Dubuque lands for any purpose? And did they not, by the same treaty, equally disqualify themselves from purchasing a right from those whom, by treaty, they had obliged to disclaim having any right? It is not easy to imagine how the principles of estoppel could be made more manifest. But the design of the transaction is equally without disguise. As reported by General Harrison, it is a plain story, incapable of being misunderstood. But, connected with the facts of the grant as then subsisting, the peaceable and notorious possession of the grantee amongst the Indians, and therefore their undoubted recognition and assent to it, these facts and considerations, aside from General Harrison's explanation of them, render the additional article of the treaty in obvious conformity to the same purposes expressed by him.

It was the *intention* of the treaty to recognise the Dubuque claim as a valid Spanish grant, contradistinguished *from Indian lands*. But they certainly were *Indian lands*, if not divested by grant. Yet the Indians disclaimed them, as being *a good Spanish grant*, and the United States sought and obtained this exemption for them for the *same reason*. Can human ingenuity plausibly ascribe any other *motive* or *reason* with our negotiator, than to affirm and secure the title as a *Spanish grant* to the claimants?

To repel this conclusion, or to prove it unavailable, it is said that whatever intention our negotiator had to ratify this claim by the additional article to the treaty of 1804, he had no authority to decide upon such question. The answer to this objection is simple and conclusive. If in the terms and intent of the treaty it has been decided, the question of power in the negotiator has been settled by the *ratification of the treaty*, which thereby became the supreme law of the land.

Besides the Dubuque claim, it is found that a Spanish concession for a tract of land situated lower on the river, *but within the Sac and Fox territory*, was made on the 30th of March, 1799, to one Tesson, and sold on execution against him in 1803, when one Reddick became the purchaser. This grant subsequently fell within the tract relinquished *in fee* to the half-

breed Sac and Fox Indians *by the United States*, by act of Congress of the 30th of June, 1834. With this additional encumbrance upon the original title, the heirs of Reddick obtained an act of Congress of the 1st of July, 1836, releasing to them all interest of the United States in said grant. But, as the United States had released two years before to the half breeds *all* their reversionary interest in these lands, it is apparent the heirs of Reddick took nothing by the act of 1836.

Upon this state of the case, the Attorney General of the United States decided that Reddick's claim, as an inceptive title from Spain, *the possession of which must have been known to the Indians*, was good, and that it was protected by the treaty of 1803, by which Louisiana was ceded to the United States. And upon the *presumption* that the grant was known to the Indians, the Attorney General assumes that the additional article to the treaty of 1804 "applies to the case;" and after quoting the article, proceeds to say: "It was understood by both parties that such claims existed, and, under certain circumstances, their *validity is acknowledged by the foregoing article.*"

His conclusion was, therefore, notwithstanding the relinquishment of the United States to the half breeds by the act of 1834, that the title in Reddick's heirs was valid.

By information from the General Land Office, as per date of 1st of May, 1844, this Reddick claim was patented on the 7th of February, 1839.

Here, then, is a practical construction of the added article to the treaty of 1804, which has determined that it did *acknowledge the validity* of such titles as were within its purview. Thus, by the Land Office department, has this question been settled. What shall excuse the Government in withholding the benefit of this construction from the Dubuque claim, which is older in grant, more continuously possessed, more certainly approved of by the Indians, and not equally encumbered by a preceding grant of this Government to a third party?

By the 5th section of the act of Congress of the 2d of March, 1805, a board of land commissioners was organized, for theinvestigation of land titles in all that part of Louisiana, then called the district of Louisiana, north of the 33d degree of north latitude. The 6th section of the same act authorized the appointment, by the Secretary of the Treasury, of a land agent, to represent the interests of the United States before the board. And by the same section it was made his duty to "examine into and investigate the titles and claims, if any there be, to the lead mines within the said district, to collect all the evidence within his power with respect to the claims to and the value of the said mines, and to lay the same before the commissioners, who shall make a special report thereof, with their opinions thereon, to the Secretary of the Treasury, to be by him laid before Congress at their next ensuing session."

The Dubuque title was presented to the board of land commissioners appointed under the act aforesaid, and exercising their ordinary powers under the 5th section.

On the 20th of September, 1806, the majority of the board (two of them) decided this claim of Dubuque "to be a complete Spanish title." On the 28th of September, 1811, the agent appointed under the 6th section of the act aforesaid made his report to the board on the claims to the lead mines, with the evidence of title collected by him.

Besides the title papers of the Dubuque claim, hereinbefore referred to,

he returned therewith the act of the board in 1806, in favor of the claim. In the mean time, the *place* of Donaldson (a member of the board in 1806, and who had decided with Penrose in favor of the claim) had been supplied by the appointment of Judge Frederick Bates.

This claim, and the decision thereon, of 1806, on the 19th of December, 1811, came up for review as a *lead mine claim*, under the 6th section of the act. Bates and Penrose declined giving any opinion; while Lucas, who had given an adverse opinion in 1806, adhered to it in 1811.

The journals of the board furnish no reasons of either commissioner for his opinion on the claim at the session of 1806 or 1811. But in the letter of Mr. Lucas to Mr. Gallatin of the 22d of December, 1811, he states, in reference to this claim, that "having *discovered* that, by the notice of the claim as entered on record of the recorder of land titles, the claim is not introduced as supported on a *complete title*, but on an *incipient* or *imperfect* title; *therefore*, the opinion which I delivered was, that the *claim ought not to be confirmed.*"

And by his second letter, of date 31st January, 1812, he says: "My own (opinion) in this case stands alone on the minutes; it differs from that which I had given on the same claim in 1806. At the *present time*, my opinion is that it *ought not to be confirmed, because*, reading the notice as entered on record, it appears that they don't claim under a *complete title*, but merely under an *incipient title.*" (See both letters in 3d vol. American State Papers, Land Laws, pages 586 and 587.)

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 language of the treaty excludes every idea of interfering with private property; of transferring lands which had been severed from the royal domain." (Lessee of Pollard's heirs *vs.* Kibbe, 14th Pet. Reps., 391.)

"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 their Government is not changed. The new Government takes the place of that which has passed away." (Soulard and others *vs.* the United States, 4th Pet. Reps., 512.)

"The right of property, then, 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." (Delassus *vs.* the United States, 9th Pet. Reps., 133.)

"This court has defined property to be any right, *legal or equitable*,

inceptive, *inchoate*, or perfect, which before the treaty with France in 1800 or with Spain in 1819, had so attached to any piece or tract 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 aw 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.* Lucas, 12th Pet. Reps., 436.)

Nor has the *reason* given by Mr. Lucas for his opinion adverse to the claim met with any more concurrence in the Executive department than in the courts. Without other illustrations, it is sufficiently and strongly in point; that the Reddick claim, *an inceptive title*, *a mere permit to settle*, which never received the approval of any board of commissioners, though once conditionally recommended as a settlement right, and prejudiced by the relinquishment of the rights of the United States therein to the half-breed Sac and Fox Indians by act of the 30th day of June, A. D. 1834; yet, under all these less favorably authenticated conditions of the title, the Reddick claim *has been validated* and *patented*, while that of Dubuque, doubly as well established, from considerations unknown to this committee, has been repelled with a degree of rudeness incompatible alike with law or justice.

By the 1st section of the act of the 3d of March, 1807, chapter 101, the President of the United States is authorized, under certain circumstances, to use the military power in removing persons who, "*after the passing of this act*," shall take possession of any lands "*ceded to the United States by any treaty*," &c., excepting lands purchased from or the title whereof has been approved by the United States, with a proviso that it shall not affect titles to lands in Louisiana before the boards of commissioners shall report, and Congress shall decide thereon.

The 2d section extends to possession taken of lands "*ceded to the United States*," *before passing of this act*, recognising such as tenants at will of 320 acres each, provided they make written disclaimer of title Omitting to do this, the 4th section provides for their removal by the marshal, with a proviso that this power is not to be exerted in Louisiana against those claiming title who may have filed their claim with the commissioners before the 1st of January, 1808.

The 1st section of this act did not apply to the Dubuque claim, because *the possession of the claim* was *previous* and continuous till *after* passage of the act.

The 2d and 4th sections did not apply, because, though *possession* was taken in 1788, and so of course *previous* to the passing of the act, yet it was excepted by the proviso, it having been presented as a claim to the *land commissioners* before January, 1808, viz: it was before the board in 1806, and by them *favorably reported on*. Further, it was in no sense within the provision of the act at all, because the act applied only to possession taken of lands which *had been ceded to the United States*. But this was *private property* under Spain and France before the treaty of cession of 1803, and therefore never ceded to the United States, being excepted therefrom by the 2d article of the treaty. (See the United States *vs.* Arredondo, 6th Pet. Reps., pp. 735–'6; also, 9th Pet. Reps., p. 734.)

Yet regardless of the protection afforded to this claim by the treaty of 1803, and of its further recognition and assurance by the treaty of General Harrison in 1804, and the approval of the claim by the board of commis-

sioners in 1806, and in manifest violation of the letter and spirit of the law above quoted, and equally in conflict with the opinion of the Attorney General of the United States on said law, per date of the 14th February, 1825, (No. 106,) as if only feeling power and forgetting right, the order of the War Department of the 5th of January, 1833, was given "*to order off the intruders upon the mineral grounds lately ceded by the Sacs and Foxes;*" and, if they should not remove accordingly, a military force was directed "*to remove them and destroy their establishments.*"

This act of lawless violence, the petitioners allege, was executed to the letter against them. The war power of the nation usurped the place of judicial judgment, and the implacable argument of the soldier's bayonet was interposed on a claim of private right, where treaty stipulation and the Constitution of the country had entitled the claimants to the chancellor's decree or the decision of a jury. This trial of title in the War Department, in which treaty stipulations were discarded, the opinion of the board of land commissioners set aside or overruled—this military ejectment of the citizen from his possession under an authenticated claim of title, and the destruction of his improvements, was an outrage which no terms of reprobation could characterize with undue severity; an indecent contempt of all the civil rights and privileges by which the persons and property of the *citizen* are intended to be secured by a Government of laws.

In pursuance of the violent and tortious possession of the lands and mines included in this claim, so acquired by the United States as last above represented, they have proceeded, by act of the 2d of July, 1836, chapter 652, and by act of 3d of March, 1837, chapter 803, and by act of the 16th of August, 1842, to dispose in part of said claim, and to subject portions thereof to right of pre-emption; all of which the committee regard as wrong done to private rights. But, conforming to a questionable precedent in our legislation upon like cases, they report that all private interests which have attached upon the claim, under the laws aforesaid, be held valid in favor of the parties interested—and with this qualification, that those acts, so far as they apply to this claim, be repealed; that, for the lands sold by the Government, the claimants have a like quantity in lieu thereof from other public lands; and that the remainder of the claim be confirmed to the lawful heirs and assignees of the said Julien Dubuque, deceased.

The committee have arrived at these results from a conviction that the concession made to Dubuque, in 1796, of these *lands and mines*, previously purchased of the Indians and possessed by him, was a *good and valid grant* under the laws of Spain, and as such protected by the treaty of Louisiana of 1803.

That its *validity* was recognised by General Harrison's treaty of 1804, and its recognition approved of by the ratification of the said treaty by the President and Senate of the United States. That its validity was further attested by the opinion of the board of commissioners, in its favor in 1806.

That the Executive department, through the Land Office, and under advice of the Attorney General of the United States, in establishing by patent the Reddick claim, have sustained a weaker title in the same Territory, and so adjudged valid all the principles of this claim.

That this claim, though a valid grant, is not *a complete Spanish title*, and has not been perfected to *a legal title in form*, and hence the committee advise a patent to be issued therefor; and, in conformity with these views, report a bill and recommend its passage.

In support of the views taken by the committee in the foregoing report, they refer to the documents marked with the letters of the alphabet from A to R, both inclusive.

A.

Petition of Pierre Chouteau, jr., Louis Menard, and others, praying the confirmation of their titles to certain lands in the Territory of Iowa.

To the honorable the Senate and House of Representatives of the United States of America in Congress assembled:

The petition of Pierre Chouteau, jr., Louis Menard, Julie G. Cabanné, administratrix of John P. Cabanné, deceased; Ferdinand Kennett and Julia his wife, James M. White and Ann W. his wife, heirs at law of John Smith T.; William Hempstead, Charles S. Hempstead, T. H. Beebe, E. H. Beebe and Mary Lisa, heirs at law of Edward Hempstead; Henry Chouteau, Gabriel S. Chouteau, Edward Chouteau, Rene Paul, Gabriel R. Paul, Julius S. Paul, Edmund W. Paul, Frederick W. Beckwith and Tullia C. his wife, late Tullia C. Paul; Peter N. Ham and Amelia his wife, late Amelia Paul; Louisa C. Du Breuil, late Louisa C. Paul; Frederick W. Beckwith, administrator of Thomas F. Smith, deceased; Louis C. Smith, Thomas F. Smith, Philomena Smith, Augustus R. Chouteau, Edward A. Chouteau, Gabriel Paul, Adolphe Paul, Thereze Paul, Richard H. Ulrici and Estelle his wife, late Estelle Paul; J. C. Barlow and Virginia C. his wife, late Virginia C. Chouteau, heirs at law of Auguste Chouteau, deceased; Richard Graham and Catharine his wife, late Catharine Mullanphy; Charles Chambers and Jane his wife, late Jane Mullanphy; James Clemens, jr., and Eliza his wife, late Eliza Mullanphy; Denis Delany and Octavia his wife, late Octavia Mullanphy; Colonel W. S. Harney and Mary his wife, late Mary Mullanphy; Anne Biddle, late Anne Mullanphy, and Bryan Mullanphy, heirs at law of John Mullanphy, deceased, and William Russell—who claim to be the owners, in fee, of a tract of land situated on the west bank of the Mississippi river, in the county of Dubuque, and Territory of Iowa, containing seven leagues in front by three leagues in depth, and hereinafter more particularly described, respectfully represent:

That, some time in the year 1774, Julien Dubuque, a mineralogist, emigrated to the province of Louisiana, and settled among the Sac and Fox Indians, on the Mississippi river, near the seat of the present town of Dubuque. 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 western 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 Maquauquatois, and extending below to the Mesquabynanques hills. In said petition, he stated that, having formed an 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 peaceful owner of the 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, the Baron de Carondelet, on the 10th November, 1796, made a grant of the land asked for, in the following words: "Concedido, como se solicito, baxo las restriciones que el comerciente 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 information." This act of the Governor, as your petitioners are advised, vested in Dubuque a "titulo en forma," or a complete Spanish title to the lands and mines, according to the laws and usages of Spain. Your petitioners further represent, that at a treaty made by the United States with the Sac and Fox tribe of Indians, at St. Louis, on the 3d of November, 1804, an additional article was added to the same, reserving from the operation of said treaty all grants of land made by the Spanish Government, provided the same were at any time made known to the Indians, and recognised by them; which article, General William Henry Harrison, then Governor of the Indiana territory, and *ex officio* Governor of the district of Louisiana, and who acted as commissioner, on the part of the United States, in making said treaty, states in his certificate, dated the 1st of January, 1806, was added for the purpose of embracing particularly the claim of Dubuque, the validity of which was acknowledged by the said Indians, and to prevent the land from being receded by the said treaty. On the 20th of October, 1804, Dubuque sold to Auguste Chouteau, 72,324 arpens of said land, in consideration of $10,848 60, and on the 20th of September, 1806, they presented their title papers in said claim before the commissioners appointed to adjust private land claims under the act of Congress approved the 2d of March, 1805, and the act amendatory thereto, approved the 21st of April, 1806—a majority of whom, after mature consideration, ascertained the said claim of Dubuque to be a complete Spanish grant, made and completed prior to the 1st day of October, 1800. General William Henry Harrison writes to Auguste Chouteau the following letter, to wit:

"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*."

(See document marked A, being a transcript of the record in the claim, from the office of F. R. Conway, Esq., U. S. Recorder of Land Titles at St. Louis, Mo.)

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 some time in the year 1808 or 1809, during the whole of which time he worked the different mines, and cultivated a portion of the land. He died in possession of and was buried upon the land, on a high bluff, near the town of Dubuque; and such was the veneration entertained for his character by the Indians, that, for many years after his death, they kept a light burning upon his grave, and watched it by day and night.

Dubuque having died without issue, 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 land, for the payment of his debts. The land was divided by the said administrator into eleven lots or parcels, and sold, the ten first of which contained 6,000 arpens each, and the eleventh 14,088 arpens. The first lot (commencing at the north) was purchased by John P. Cabanné, the next five by John Smith T; the 7th, 8th, and 10th, by Pierre Chouteau, jr., and Louis Menard; the 9th by Edward Hempstead; and the 11th by William Russell, Edward Hempstead, and Rufus Easton, the last of whom sold his interest in the same to the said William Russell.

Auguste Chouteau sold the undivided half or moiety of his interest in the said land to John Mullanphy.

After the death of Dubuque, several ineffectual efforts were made to induce the Executive of the United States to remove the Indians from the said land, and to give to your petitioners the possession of the same. Having failed in this, shortly after the treaty concluded between the United States and the Sac and Fox tribe of Indians on the 21st day of September, A. D. 1832, (by which the latter ceded to the United States a large tract of country, within the limits of which the 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 the same manner as lands claimed under similar titles have always been occupied and held in the country ceded to the United States by France, and supposed that they were under the protection of the law in so doing, and that the Government would not disturb them till 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 *ejectment by military force*, under an order of the Secretary of War. (See document marked B.)

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

These Spanish grants on the frontiers were made in favor of the pioneers of population, and to encourage the settlement and improvement of the country, by bestowing donations of the public domain; and under the Government making such grants; they were treated and respected as property, and the transfers, devises, and descents of them recognised; and the grants themselves, if not in the first instance complete, were finally confirmed upon application, without a single known refusal on the part of the confirming authority. No reason is known why this claim has been treat-

ed differently from others of the same origin and merits, unless that it is of greater size and of more considerable value than most of the Spanish concessions. But though this consideration may have swayed certain officers or agents of the Government, who in their too great zeal to protect the public property have failed to discriminate between the public and the private, and have resorted to measures which were never applicable or intended to be applicable to the settlement of a question of title, yet your petitioners are well persuaded that the matter will be considered in a far different light by your honorable bodies; that you will be unable to discover the propriety of one measure of right for the small and another for the larger claims. Your petitioners have presented several petitions to your honorable bodies, protesting against the sale of the said land in any manner whatsoever by the United States, and urged at the same time that their title to the same should be adjudicated upon by a reference to the judicial tribunals of the United States; and they also took the precaution to file a caveat with the Commissioner of the General Land Office of the United States for the same purpose.

Your petitioners know historically that the Baron de Carondelet was Governor 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, and was not transferred to the intendant until October, 1798. (See 8th Peters's Reports, 452; and White's Compilation, 218.) The second article of the treaty of the 30th of April, 1803, between France and the United States, especially precludes from the cession "private property;" and the third article of the same declares that the inhabitants "shall be maintained and protected in the free enjoyment of their liberty, *property*, and the religion which they profess."

If the title of your petitioners to the said land should be considered as inchoate and incomplete, still they are advised that, according to the repeated decisions of the Supreme Court of the United States, the laws, customs, and usages of Spain, and the uniform legislation of Congress upon the subject, such inchoate and incomplete title would be converted into a fee simple. The Supreme Court say that "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 territory acquires full dominion over it; but this dominion is never supposed to divest the vested rights of individuals to property. The language of the treaty ceding Louisiana excludes every idea of interfering with private property; *of transferring lands which had been severed from the royal domain.* The people change their sovereign. *Their right to property remains unaffected by this change.*" (Delassus *vs.* United States, 9th Peters's Reports, 133.)

They also say: "That order" (that is, the order of survey) "is the foundation of title, and is, according to the acts of Congress and the general understanding and usage of Louisiana and Missouri, capable of being perfected into a complete title. *It is property capable of being alienated, of being subjected to debts, and is as such to be held as sacred and inviolate* as other property." (See Chouteau's heirs *vs.* United States, 9th Peters's Reports, 145.) In the case of Delassus *vs.* United States, 9th Peters's Reports, page 135, the court say "that those regulations" (those of O'Reilly) "were intended for the general government of subordinate

officers; not to control and limit the power of the person from whose will they emanated. The Baron de Carondelet, we must suppose, possessed all the powers which had been vested in Don O'Reilly; and a concession ordered by him is as valid as a similar concession directed by Governor O'Reilly would have been."

In Mitchel et al. *vs.* United States, 9th Peters, 740, the court say: "The fact of the supervision of Indian sales of their land by the governors of provinces and commandants of posts, in acts of confirmation and *putting the purchasers in possession*, is very clearly established by the report of the land commissioners of the United States in Louisiana. It was exercised by Don Galvez, Governor General of Louisiana, as early as 1777, in confirming an Indian sale of the Great Houma tract, on the Mississippi; and there is no evidence that this power was ever intrusted to or conferred on any other officer, nor that it was ever exercised by any other." (Same case, 757.) "From the confirmation of the Houma grant, in 1777, by the Governor General of Louisiana, to that of the Captain General of Cuba of this, in 1811, during forty years, no instance appears of a direct confirmation by the King, or of his ever having required any other act than the *approbation of the local Governor to give perfect* VALIDITY *to the purchase.*" Also, page 756: "The proclamation also authorized the union of these rights by a purchase from the Indians, and *taking possession with the leave and license of the Crown in favor of an individual*, or by the Governor at an Indian council, for and in the name of the King." Also, page 758: "The Indian right to the lands, as property, was not merely of possession; that of alienation was concomitant. Both were equally secured, protected, and guarantied, by Great Britain and Spain, *subject only to ratification and confirmation by the license, charter, or deed, from the Governor*, representing the King." Also, page 759: "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.*"

Also, page 746: "Individuals could not purchase Indian lands without permission or license from the Crown, colonial Governors, or according to the rules prescribed by colonial laws; but such purchases were valid with such license or in conformity with the local laws; and by this union of the perpetual right of occupancy with the ultimate fee, which passed from the Crown by the license, the title of the purchaser became complete."

Your petitioners further represent, that they are advised that the forcible entry of the United States and ejection of your petitioners from the said tract of land, as above stated, is contrary to law and the decision of the Supreme Court of the United States in the case of Mitchell et al. *vs.* United States, 9th Peters's Reports, 743. "By the common law, the King has no right of entry on lands which is not common to his subjects; *the King is put to his inquest of office or information of intrusion, in all cases where a subject is put to his action; their right is the same, though the King has more convenient remedies in enforcing his.* If the King has

no original right of possession to lands, he *cannot acquire it without office found, so as to annex it to his domain.*"

The stipulations of the treaty between France and the United States, the legislation of Congress, the decisions of the Supreme Court of the United States, the uninterrupted possession of the land by Dubuque for upwards of thirty consecutive years, his purchase from the Indians, the confirmation or grant from the Baron de Carondelet, the acknowledgment of the validity of the claim by the Sac and Fox tribe of Indians in 1804, the additional article of the treaty of the 3d of November, 1804, which was ratified by the Senate of the United States, the favorable report of the United States board of commissioners upon the claim in 1806, and the fact that the genuineness of the grant has never been questioned, is conclusive evidence, in the opinion of your petitioners, that they have a "*titulo en forma*" to the said tract of land, and such as would have been maintained and protected as inviolable by the Spanish Government, and that the transfer of the sovereignty over the territory has imposed upon the Government of the United States the same obligation which rested upon Spain. Your petitioners therefore pray that their title may be confirmed to the tract of land granted to Julien Dubuque by the Baron de Carondelet, 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 to the Mesquabynanques 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 G. CABANNE,
Administratrix of John P. Cabanne, deceased.
FERDINAND KENNETT, and JULIA, his wife,
JAMES M. WHITE, and ANN W., his wife,
Heirs at law of John Smith, T.
CHARLES S. HEMPSTEAD,
WILLIAM HEMPSTEAD,
MARY LISA,
T. H. BEEBE,
E. H. BEEBE,
Heirs at law of Ed. Hempstead.
HENRY CHOUTEAU,
GABRIEL S. CHOUTEAU,
EDWARD CHOUTEAU,
RENE 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,
FREDERICK W. BECKWITH,
Administrator of Thomas F. Smith, deceased,

LOUIS C. SMITH,
THOMAS F. SMITH,
PHILOMENA SMITH,
AUGUSTUS R. CHOUTEAU,
EDWARD A. CHOUTEAU,
GABRIEL PAUL,
ADOLPHE PAUL,
THEREZE PAUL,
RICHARD H. ULRICI,
ESTELLE ULRICI,
J. C. BARLOW,
VIRGINIA C. BARLOW,
Heirs at law of Auguste Chouteau, deceased.

RICHARD GRAHAM, and CATHARINE, his wife,
CHARLES CHAMBERS, and JANE, his wife,
JAMES CLEMENS, Jr., and ELIZA, his wife,
DENIS DELANY, and OCTAVIA, his wife,
Col. W. S. HARNEY, and MARY, his wife,
ANNE BIDDLE, and BRYAN MULLANPHY,
Heirs at law of John Mullanphy, deceased.

WILLIAM RUSSELL, by
F. W. RISQUE, *their Attorney in Fact.*

B.

Copy of the Council of the Foxes.

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

We, the undersigned, make known that the Reynards permit Mr. Julien Dubuque, called by them the Little Night, (La Petite Nuit,) to work at the mine as long as he shall please, and to withdraw from it, without specifying any term to him; moreover, that they sell and abandon to him all the coast and the contents of the mine discovered by the wife of Peosta, so that no white man or Indian shall make any pretension to it, without the consent of the Sieur Julien Dubuque; and, in case he shall find nothing within, he shall be free to search wherever it shall seem good to him, and to work peaceably, without any one hurting him, or doing him any prejudice in his labors. Thus we, chiefs, and by the voice of all our villages, have agreed with Julien Dubuque, selling and delivering to him this day, as above mentioned, in presence of the Frenchmen who attend us, who are witnesses to this writing.

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

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

Witness: Joseph Sontigny.

C.

Petition of Julien Dubuque.

To his excellency the Baron de Carondelet:

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

J. DUBUQUE.

D.

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 CARONDLET.

E.

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 my consent, in writing.

ANDREW TODD.

NEW ORLEANS, *October* 29, 1796.

F.

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.

G.

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."

H.

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

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

them that the intention of it was to embrace particularly the claim of Dubuque, the validity of which they acknowledged.

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

WILLIAM HENRY HARRISON.

I.

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.

J.

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 Mez-qua-bi-nan-que hills, at the place where they touch the said river Mississippi. The seventy-two thousand three hundred and twenty-four arpens of land thus sold by me, the aforesaid Dubuque, to the said Auguste Chouteau, shall be taken and limited as follows: To begin at the south part of my said concession, at the Mez-qua-bi-nan-que hill, by three leagues in depth, and to ascend the river Mississippi, northward, until the completion of the said seventy-two thousand three hundred and twenty-four arpens; and, as an establishment made by me, and which I am now occupying, would be included within the said seventy-two thousand three hundred and twenty-four arpens of land here above mentioned and sold, I reserve for myself, by these presents, the exact quantity of forty-two arpens front on the Mississippi, by eighty-four in depth, at the said place of my aforesaid establishment; and inasmuch as the same quantity of forty-two arpens front, by eighty-four deep, would not complete the said amount sold, I, the aforesaid Dubuque, in order to complete the said seventy-two thousand three hundred and twenty-four arpens by me sold to the said Auguste Chouteau, do bind myself, by these presents, to deliver the said forty-two arpens, by eighty-four deep, in another place of my said concession; which forty-two arpens shall be in front, and the eighty-four in depth. We, the aforesaid Dubuque and Chouteau, covenant and agree, of our own motion and will, to have each one in particular the full and entire enjoyment of the said seventy-two thousand three hundred and twenty-four arpens of land above mentioned, as well for the working of the mines as the cultivation of the lands above sold by me, the said Dubuque, and acquired by me, the said Chouteau, excepting, however, that I, the said Dubuque, shall have the said enjoyment, during my lifetime only, binding myself not to sell, convey, or alienate the said concession to any one whomsoever, under the penalty of the nullity of the right to work the mines and cultivate the land by me sold as aforesaid; and, in consideration of the said enjoyment to work the mines and cultivate the lands thus granted to me by the said Chouteau during my lifetime, all the works, furnaces, buildings, clearings, &c., by me made on the said land, shall belong to the said Chouteau after the above-mentioned term of my lifetime, in order that the said Chouteau, his heirs or assigns, have the full and peaceful possession thereof, and enjoy the same, after my demise, as a thing to him or them belonging. This present sale made by me (said Dubuque) for the price and sum of ten thousand eight hundred and forty-eight dollars and sixty cents, which, by these presents, I do acknowledge to have received in cash from the hands of the said Auguste Chouteau, and for which, by these same presents, I do give him full and entire acquittance and discharge; it being my will, that, on account of the said payment, the said Chouteau shall have the full and peaceable possession of the said tract of land from this day, and him, and his heirs or assigns, enjoy the same, as a thing to him or them belonging, divesting myself of the above-said quantity of seventy-two thousand three hundred and twenty-four arpens of land above mentioned, in consideration of the abovesaid payment of the sum of ten thousand eight hundred and forty-eight dollars and sixty cents, received by me from the hands of the said Chouteau; forbid-

ding my heirs, executors, or administrators, to appeal, in any manner whatever, from all that which is here before mentioned and stipulated: for thus it has been covenanted and agreed upon, promising, &c., binding, ourselves, &c., renouncing, &c.

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

In faith whereof, we, the said Dubuque and Chouteau, have signed the presents, in the presence of Messrs. Marie Philippe Leduc, recorder, Bernard, Pratte, and Manuel Gonzales Moro, 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. [SEAL.]
AUGUSTE CHOUTEAU. [SEAL.]

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

DISTRICT OF SAINT LOUIS, *sct:*

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

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

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.*

K.

Notice of claim to commissioners.

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

Take notice, that Julien Dubuque claims 75,852 arpens of land, purchased by said Dubuque from the Indians, the 22d September, 1788, for which the Baron of Carondelet granted a concession, bearing date the 10th November, 1796, which concession was for the quantity of 21 leagues in superficie, or 148,176 arpens; of this, Mr. Auguste Chouteau claims, by virtue of an assignment made to him, the quantity of 72,324, and this claimant the residue thereof. The papers relative to this claim are already re-

corded in this book, pages 78, 79, 80, and 81. Julien Dubuque further claims 7,056 arpens of land, situated on the Mississippi, opposite the Prairie des Chiens, at about 220 leagues distance from St. Louis, granted to a certain François Cailhol by Don Carlos Dehault Delassus, by concession bearing date the 13th August, 1799, by said Cailhol assigned to this claimant by deed bearing date the 17th of May, 1805.

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

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

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

L.

Proceedings of the board of commissioners.

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

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

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

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

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

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

Extract from the minutes.

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

M.

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

FACTS.

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

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

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

Governor Carondelet writes at the foot of the request, "Granted as is asked, (concedido como se solicita,) under the restrictions mentioned by Todd in his information, November 10, 1796."

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

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

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

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

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

REMARKS.

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

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

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

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

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

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

N.

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

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

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

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

These are the instructions of the Secretary of War.

I have the honor to be, sir, your obedient servant,
ALEX. MACOMB, *Major General.*

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

O.

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

GENERAL LAND OFFICE, *May* 1, 1844.

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

With great respect, your obedient servant,

THOMAS H. BLAKE,
Commissioner.

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

P.

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

ATTORNEY GENERAL'S OFFICE,
January 2, 1839.

SIR: I have had the honor to receive your communication of the 24th ultimo, with the accompanying papers, relative to the conflicting claims of Thomas F. Reddick's heirs and Marsh and others to a tract of 640 acres of land, situate on the bank of the Mississippi river, about 18 miles above the mouth of the Des Moines river, in fractional township number sixty-six north of the base line, of range number five west of the fifth principal meridian.

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

If this act of Congress be available to the heirs of Reddick for no other purpose, it at least proves that the claim set up by them is fair and honest, and such a one as the United States are bound to satisfy in some way under the treaty ceding Louisiana to them. Taking it, then, for granted that the

original claim of Tesson, which is dated the 30th of March, 1799, and under which Reddick's heirs derive their title, gave him an inchoate right to the land in controversy, (as is proved and admitted by the act of Congress above referred to,) I will proceed to examine whether it can be affected by the last proviso in said act, (of July 1, 1836.) The first question which arises is, whether this land was reserved by any Indian treaty, so as to affect the title of Reddick's heirs?

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

The 2d article of the treaty with France, by which the United States acquired the territory in which this land is situated, and which is dated the 30th of April, 1803, provides, "that in the cession made by the preceding article are included the adjacent islands belonging to Louisiana, all public lots and squares, vacant lands, and all public buildings, fortifications, barracks, and other edifices which are not private property," &c.

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

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

It has already been stated that the grant of Tesson was made in 1799, and that possession was taken immediately thereafter; and such possession was continued until after an execution sale of the land on the 15th of May, 1803, and for two years thereafter, about which time Thomas F. Reddick, the ancestor of the claimants, on the one part, in this case, became the purchaser, and took possession. During the occupation of Tesson, several improvements were made on said land: cabins were erected, and enclosures made; and an orchard, consisting of one hundred trees, planted, and several arpens of land cultivated in different years. *This possession, improvement, and cultivation, must have been known and sanc-*

tioned by the Indians. No complaint whatever appears to have been made by them. I therefore think it not unreasonable to infer from these circumstances that they (the Indians) knew of the grant to Tesson, made by the Spanish Government, and recognised the same; and *therefore*, the following article, which was added to the treaty of November 3, 1804, *applies to the case* under consideration: "Additional article.—It is agreed that nothing in the treaty contained shall affect the claim of any individual or individuals who may have obtained grants of land from the Spanish Government, and which are not included in the general line laid down in this treaty, provided that such grants have at any time been made known to the said tribes, and recognised by them." *From this it seems that the Sacs and Foxes, as well as the United States, did not intend, by any agreement or treaty of theirs, to impair the rights of grantees under the Spanish Government. It was understood by both parties that such claims existed;* AND, UNDER CERTAIN CIRCUMSTANCES, THEIR VALIDITY IS ACKNOWLEDGED BY THE FOREGOING ARTICLE.

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

It is insisted that the act of June 30, 1834, vests the title to the land in controversy in the half breeds of the Sac and Fox tribes of Indians. This cannot be maintained, if the views which I have stated be correct. That act only provides that the right, title, and interest, which might accrue or revert to the United States, to the reservation of land lying between the rivers Des Moines and Mississippi, which was reserved for the use of the half breeds belonging to the Sac and Fox nations, now used by them, or some of them, under the treaty of 1824, is relinquished, and vested in the said half breeds, with full power to sell or devise, &c.

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

Now, suppose the Indian title had been extinguished to the whole tract of country given by this act to the half breeds in the ordinary way by purchase and removal of the Indians; would it have been said that the 640 acres of land now claimed by Reddick's heirs could have belonged to the United States, and been subject to their disposal? or, on the contrary, would not all men have concurred in saying that the land was the property of Reddick's heirs, and that the United States were bound by their treaty stipulations with France, and by the universal usage among civilized nations, to go on and perfect the title? If this be so, I can see no principle upon which the claim of the half breeds, or their assigns, can be sustained. It ought never to be presumed that the Government intended to make two grants for the same lands, or that it intended to grant land again which had been granted by the Government under which it derives title; and if a construction can be put upon the acts of Government which will avoid such an effect, it ought to be done in this case.

Although the exterior boundaries of the reservation in the treaty of 1824 embraced the land in controversy, still it by no means follows that Congress intended to convey it to the half breeds; because, in the first place, there is a body of valuable land (this being excepted) on which the act of June 30, 1834, did operate and transfer to the half breeds. In the next place, the language of the act itself, upon a sound interpretation, excludes the lands in controversy. I am therefore of opinion, that a patent should issue to Reddick's heirs.

I am, sir, &c.

FELIX GRUNDY.

To the SECRETARY OF THE TREASURY.

Q.

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

[27th Congress—2d session.]

IN SENATE OF THE UNITED STATES.

JULY 1, 1842.

Ordered to be printed—to accompany Senate bill 172.

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

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

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

1788, is the foundation of his claim, it is incorporated at length in this report.

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

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

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

"J. DUBUQUE."

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

"In compliance with your superior order, in which you command me to give information on the solicitation of the individual interested in the

foregoing memorial, I have to say that, as to the land for which he asks, nothing occurs to me why it should not be granted, if you find it convenient, with the condition, nevertheless, that the grantee shall observe the provisions of His Majesty relating to the trade with the Indians, and that this be absolutely prohibited to him, unless he shall have my consent, in writing."

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

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

"THE BARON DE CARONDELET."

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

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

This view is not only sustained by a fair construction of the paper itself, but by the fact that there was no specified limits to the assumed grant, no consideration paid. The Indians continued in the possession of the lands, as before, up to the date of the treaty; but another position, perhaps, more conclusive, may be assumed, in the want of power in the Indian tribes to sell or convey lands in their possession to individuals.

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

the form of the concession was not accompanied by any order of survey, or any declaration that a patent would subsequently issue—provisions usually contained in a Spanish grant or concession.

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

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

The remaining question is, whether it is proper to subject these lands to the operation of the laws in force, including the pre-emption laws, for the disposal of the public lands, as in ordinary cases. After much reflection, the committee have come to the conclusion, that as the Dubuque claim is, in their opinion, invalid—as the Government, under the same opinion, took possession of the lands covered by this claim, laid off towns, sold lots, leased lead mines, and received the rents—as settlers took possession of the farming lands, with these facts before them, and the additional fact that the pre-emptions were secured to other settlers upon the public lands, and as these settlers have made valuable and lasting improvements upon the lands, it is believed to be the only just course to the parties concerned to subject these lands to the laws in force, including the pre-emption laws, reserving to the persons claiming under Dubuque the right to enter a like quantity of the public lands subject to private entry, should their claims ultimately prove valid. This course would do justice to the settler, quiet his title, and secure to him the reward of his labor. The Government would receive the value of the land, and the claimants under Dubuque would have ample redress in the grant named.

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

R.

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

OFFICE OF THE ATTORNEY GENERAL U. S.,

February 14, 1825.

SIR: I understand, from the letter of the Commissioner of the General Land Office, that Mr. Henderson, whom Mr. Poindexter calls upon the

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

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

I have, &c.

WILLIAM WIRT.

Hon. W. H. CRAWFORD,
Treasury Department.