



*Yours Sincerely*  
*Oliver P. Shiras*

OLIVER P. SHIRAS,

United States Judge of the Northern District of Iowa.

# ANNALS OF IOWA.

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## THE MINES OF SPAIN.

BY JUDGE OLIVER P. SHIRAS.\*

It is doubtless true that the great majority of the residents of Iowa, if their attention should be called to the title of this article, would assume without question, that it had no reference whatever to any region situated within the boundaries of The Hawkeye State, yet the fact is that this name was once descriptive of one of the earliest settled portions of the State, and it is the purpose of this article to briefly sketch the circumstances leading to the adoption and to the disappearance of the name in its connection with the early history of the territory now included within the boundaries of Iowa.

For some time previous to the year 1788, one of the largest and most important villages of the Outagamie or Fox Indians, occupied by Kettle Chief's band, was situated at the mouth of a small stream, now called Catfish Creek, which flows into the Mississippi River, a short distance south of the present corporation limits of the City of Dubuque, thus giving the village a frontage on the Mississippi, while the valley of the creek afforded easy access to the interior through the lofty river bluffs, making the location

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\*Oliver P. Shiras was born in Pittsburg, Pa., October 22, 1833. He was educated at the Ohio University where he graduated in 1853. In 1856, the year after he entered the Yale Law School, his Alma Mater conferred upon him the degree of A. M. Yale also honored him in 1886 with the degree of LL. D. Mr. Shiras settled in Dubuque, Iowa, in 1856, in which year he was admitted to the bar. Entering the Union army in 1862, he served as aide-de-camp on the staff of General Francis J. Herron, in Missouri, Arkansas and Louisiana, until 1864, when he returned to Dubuque, resuming the practice of law. In 1882 he was appointed U. S. Judge of the Northern District of Iowa. He is the author of "Equity Practice in the Circuit Courts of the United States."

an ideal one for the Indian Town, and the advantages of which quickly caught the attention of one Julien Dubuque, as he passed up and down the Mississippi while engaged in his trading operations with the Indian Tribes upon its borders.

Julien Dubuque was born January 10, 1762, at the village of St. Pierre, on the south bank of the river St. Lawrence, about fifty miles above the City of Quebec, his great grandfather, Jean Dubuque, having emigrated from the province of Rouen, France, to Canada early in the 17th century. His great grandson was evidently of an adventurous disposition, for after receiving a fair education in his early youth, he pushed westward into the valley of the Upper Mississippi and we find him engaged in trading with the Indians at Prairie Du Chien and other points in that neighborhood, at a time when he had barely passed his majority. Shortly thereafter we find him established at Kettle Chief's village, where he quickly discovered that the River Bluffs of that region were rich in galena or lead ore, which the Indians, with their rude methods, were then extracting therefrom. Having taken up his abode in the village, he soon obtained a strong influence over its inhabitants, not only by a judicious expenditure of presents, but by the native strength of his character and by that ready adaptation to his surroundings which was such a marked characteristic of the early French settlers on this continent. Having thoroughly identified himself with the interests of the village, thereby winning the regard of its people, Dubuque, at a council held with the representatives of the tribe at Prairie Du Chien, on the 22d day of September, 1788, procured the execution of a written instrument in the French language, of which the following is a translation:

Copy of the council held by the Foxes, that is to say, of the branch of five villages, with the approbation of the rest of their people, explained by Mr. Quinantotaye, deputed by them in their presence, and in the presence of us, the undersigned, that is to say, the Foxes, permit Mr. Julien

Dubuque, called by them the Little Cloud, 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 Mr. Julien Dubuque; and in case he shall find nothing within, he shall be free to search wherever he may think proper to do so, and to work peaceably without anyone hurting him, or doing him any prejudice in his labors. Thus we, chief and braves, 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 Due Chien, in full council, the 22d day of September, 1788.

In the contest that subsequently arose over the meaning and validity of this agreement, it was shown on behalf of those who asserted title under Dubuque, that after the signing of the paper, he, with the consent of the Indians caused to be erected monuments to designate the Northern and Southern boundaries of the tract intended to be included therein, the northern monument being placed at the mouth of a small stream called by him "The Little River Maquanquitois", which is now known as the "Little Maquoketa", and which joins the Mississippi some five miles north of the present City of Dubuque, the southern monument being erected at the mouth of the stream called by Dubuque "The Mesquabysnonques," but now known as "The Tete Des Morts," and which flows into the Mississippi at the southern boundary of the county of Dubuque.

At this time this region was included within the boundaries of the Province of Louisiana, a part of the Spanish dominions of this continent, France having parted with her claim thereto by the terms of the Treaty of 1762.

In 1796 Dubuque applied to Baron De Carondelet, the Governor of the Province of Louisiana and representative of The King of Spain, for a grant or concession, basing the same on the agreement entered into with the Indians at Prairie Du Chien.

The petition for the grant, being translated, reads as follows:

*To His Excellency, The Baron De Carondelet:*

Your excellency's very humble petitioner, named Julien Dubuque, having made a settlement on 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, with the mines it contains, and by his perseverance has surmounted all the 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 of the Mississippi, to which (tract) he has given the name of the "Mines of Spain" in memory of the government to which he belonged. As the place of the settlement is but a point, and the different mines which he works are apart, and at a distance of more than three leagues from each other, the very humble petitioner prays your Excellency to have the goodness to assure him the quiet enjoyment of the mines and lands, that is to say, from the margin of the waters of the little river Maquanquitois to the margin of the Mesquabysnonques, which forms about seven leagues on the west bank of the Mississippi, by three leagues in depth, and to grant him the full proprietorship thereof, which the very humble petitioner ventures to hope, that your goodness will be pleased to grant him his request. I beseech that same goodness which makes the happiness of so many subjects, to pardon me my style, and be pleased to accept the pure simplicity of my heart in default of my eloquence. I pray Heaven, with all my power, that it preserve you, and that it load you with all its benefits; and I am, and shall be all my life, your Excellency's very humble, and very obedient, and very submissive servant.

J. DUBUQUE.

The application was referred by the Governor to "Don Andrew Todd" who held a license to trade with the Fox Indians for his views thereon, and he replied that as to the land asked for he saw no reason why the petition might not be granted, adding "With the condition nevertheless, that the grantee shall observe the provisions of his majesty relating to the trade with the Indians; and this be absolutely prohibited to him, unless he shall have my consent in writing."

Thereupon the following order was entered by the Governor, in reply to the petition submitted:

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.

With this recognition of his rights from the Spanish Governor, Dubuque continued to live among the Indians at "The Mines of Spain," carrying on his mining and trading operations and sending the products thereof to St. Louis until the Province of Louisiana, by the terms of the treaty concluded at St. Ildefonso on the 1st of October, 1800, between Napoleon, as First Consul of the French Republic, and the King of Spain, was ceded to France and subsequently by the terms of the treaty of Paris, concluded on the 30th day of April, 1803, between France and the United States became the property and part of the Territory of the American Republic.

By the provisions of the 3d Article of the treaty the latter Government agreed that the inhabitants of the ceded territory should be incorporated in the union of the United States and be protected in the free enjoyment of their liberty, property and religion, and by the 6th Article it further agreed "to execute such treaties and articles as may have been agreed between Spain and the Tribes and Nations of Indians, until by mutual consent of the United States and the said tribes or nations, other suitable articles shall have been agreed upon."

On the 3d day of November, 1804, a treaty with the Sac and Fox Indians was concluded at St. Louis by General William Henry Harrison, Governor of the Territory of Indiana, which then included the present states of Missouri and Iowa, to which treaty was appended what is called an "Additional Article" wherein it is recited that "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 recognized by them." When it is remembered that this treaty was entered into at St. Louis, the residence of Auguste Chouteau, who had on the 29th

day of October, 1804, purchased from Dubuque 72,324 arpens to be taken from the south part of the concession granted him, and of Antoine Soulard who was the agent or factor representing Dubuque at St. Louis, it is certainly a fair inference that this additional article, through their influence, was added to the treaty, to guard, as far as possible, the interests of Dubuque and to prevent the holding that the cession by the Indians to the United States of the region wherein the Mines of Spain were located, would terminate the rights of Dubuque and his grantees therein.

On the 17th day of May, 1805, Julien Dubuque and Auguste Chouteau jointly filed a claim to the premises before The Board of Commissioners appointed under the Act of Congress with power to hear and report upon claims to lands in the Territory of Louisiana, and the majority of the Board, on the 20th day of September, 1806, filed a report wherein it was held that the claim of Dubuque, as set forth in his petition to Baron De Carondelet and granted by him was a complete Spanish grant, made and confirmed before the 1st day of October, 1800, and therefore entitled to recognition and protection under the terms of the treaty between France and the United States.

While the claim filed by Dubuque and Chouteau was pending before the Board of Land Commissioners, Lieutenant Zebulon M. Pike was directed by General Wilkinson, then in command of the Army of the West, to undertake the exploration of the upper valley and sources of the Mississippi River, with a view to ascertaining the boundaries and extent of the so-called Louisiana Purchase, and was specifically instructed to enquire into the nature and extent of the claims advanced by Dubuque.

This expedition of twenty soldiers, under command of Lieutenant Pike, left St. Louis in a keelboat, propelled by sails and oars, on the 9th day of August, 1805.

When the expedition reached the Indian Village at the mouth of Catfish Creek about September 1st, it was wel-

comed with a salute from a small cannon owned by Dubuque; the Spanish flag, which till then he had kept flying, was lowered and the stars and stripes were run up in place thereof, and Lieutenant Pike was duly honored as the representative of the young Republic that had succeeded to the rights of the ancient Kingdom of Spain. When, however, in pursuance of his instruction, Lieutenant Pike endeavored to obtain information respecting the productiveness of the mines, their extent and value and the nature of the claim thereto asserted by Dubuque, he found him disinclined to be communicative, so he finally submitted to him ten questions, to which he required answers in writing, which were given, but which were subsequently declared by the United States Supreme Court, "To be curious and reserved upon the part of Dubuque." Being compelled to content himself with the replies as given, Lieutenant Pike bade farewell to "the polite and evasive Monsieur Dubuque," as he termed him in his diary and continued his voyage of exploration up the Mississippi, returning to St. Louis on April 30, 1806.

As might naturally be expected, after the possession of the province of Louisiana had passed to the United States and its authority had been recognized by Dubuque, the name of "The Mines of Spain" fell into disuse and in the subsequent papers and proceedings the premises are described as "The claims of Monsieur Dubuque", "Dubuque's Lead Mines," and the like.

The report of the Board of Land Commissioners which, as already stated, sustained the claim of Dubuque to the ownership of the soil, having been submitted to Albert Gallatin, Secretary of the Treasury, he gave the subject a full and careful investigation and in 1810 submitted to the President a report wherein he held that the right obtained by Dubuque from the Indians, by the instrument executed at Prairie Du Chien, was merely a permission to work certain mines, without any intention to alienate the domain wherein the mines were located, and that the grant or con-



cession given by Governor Carondelet did not conform to the rules and regulations adopted by the Spanish Government controlling such grants, and therefore it did not take effect as an independent and completed grant from that government.

On the 24th day of March, 1810, Julien Dubuque died, having failed to obtain from the authorities at Washington or from Congress a recognition of his claim to be the owner of the land whereon he had spent the last twenty-two years of his life. He was buried with all due honors by his Indian friends, upon the summit of the bold river bluff which lay to the north of the village site, and which is but a short distance from the southern boundary of the city which now bears his name. Undisturbed and undisputed possession of at least so much of his claim as was needed to form his last resting-place was accorded him, until after the lapse of eighty-seven years the citizens of Dubuque, in 1897, determined to erect a monument to his memory, and to that end several acres of the bluff whereon he was buried were purchased and a monument, in the form of a circular tower of stone, thirty-eight feet in height, was erected on the site of his grave, the base of which contains a sarcophagus quarried from the stone of the neighboring hills, in which was placed a walnut casket containing the skeleton, which was found well preserved, of Julien Dubuque.

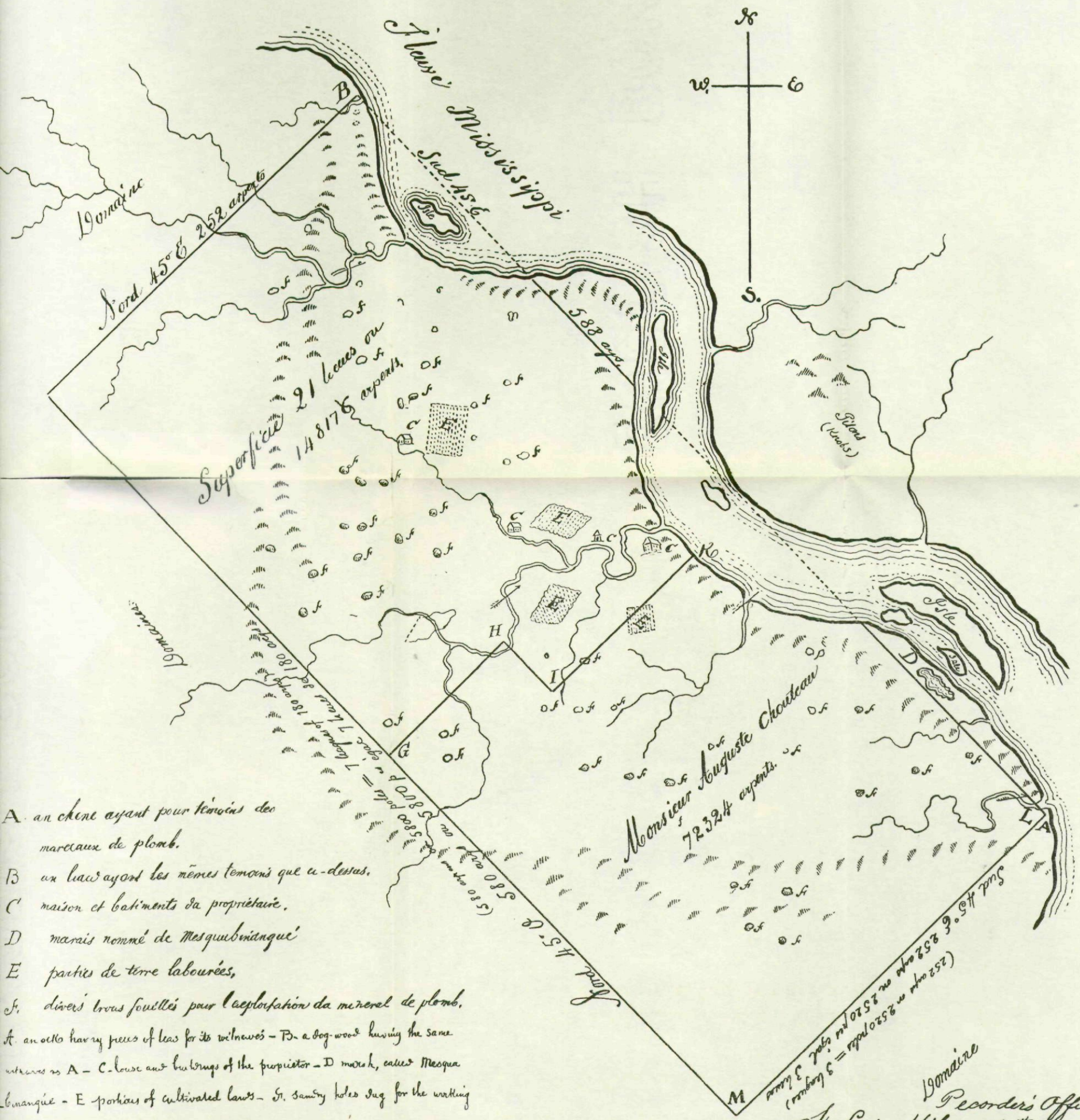
Under the auspices of the Dubuque County Early Settlers Association, dedicatory services were held on Sunday, October 31, 1897, attended by a large concourse of people, at which, among other appropriate exercises, a commemorative address on the life of Dubuque was delivered by the Hon. James H. Shields, to whom the writer of this article is indebted for much of the data herein found.

After the death of Dubuque, it does not appear that efforts to secure a recognition of his title were resumed until, as a result of the constantly increasing westward movement of the white frontiersmen and the efforts of the government

# Appercu du Plan Siguratif de la terre de Monsiear Julien Dubuque

elabie en 1774, Située à 600 milles à peu-près de cette ville de Saint Louis, et de laquelle Monsiear Auguste Chouteau a acquis la quantité de 72324 arpents, designés par les lettres suivantes H. I. R. L. M. G.

Sketch of the figurative plat of M<sup>rs</sup> Julien Dubuque's land, which was settled in 1774, and is situated 600 miles or thereabouts from this town of Saint Louis - and of which land M<sup>rs</sup> Chouteau has acquired the quantity of 72324 arpents, designated by the letters H I R L M G.



- A. un chêne ayant pour témoins des morceaux de plomb.
  - B. un laud ayant les mêmes témoins que ci-dessus.
  - C. maison et bâtiments du propriétaire.
  - D. marais nommé de Mesquembriangue
  - E. parties de terre labourées,
  - S. divers trous fouillés pour l'exploitation du minéral de plomb.
- A. an oak having pieces of lead for its witnesses - B. a dog-wood having the same witnesses as A - C. house and buildings of the proprietor - D. marsh, called Mesquembriangue - E. portions of cultivated lands - S. sandy holes dug for the working of lead ore.

Copied from original recorded in Book B, p. 81  $\frac{1}{2}$  I certify  
 original plat recorded in book B, page 81. both on file in this office  
 J. McCouray U. S. Recorder of Land Titles  
 the State of Missouri

St Louis Missouri 30<sup>th</sup> Nov 1845  
 Recorder's Office  
 above is a true copy of the

to obtain a cession of the rights of the Sac and Fox Indians to portions of the land occupied by them, and the dispute with the chief Muk-ka-ta-mish-a-ka-kaik or Blackhawk over the true meaning of the treaties of August 19, 1825, and July 15, 1830, and the validity thereof as applied to him and his followers, there arose what is commonly known as "The Blackhawk War," which was ended by the battle of Bad Axe, fought on August 2, 1832. On the 21st day of the following September at Fort Armstrong, Rock Island, Illinois, a treaty was entered into between the United States, represented by Major General Winfield Scott of the United States Army, and John Reynolds, Governor of the State of Illinois, and the confederated tribes of the Sac and Fox Indians, represented on behalf of the Sacs by Kee-ookuck (He who has been everywhere) and eight other chiefs and on behalf of the Foxes by Wau-pe-la (He who is painted white) and twenty-three other chiefs or Headmen, whereby the Indians ceded to the United States in requital for the wrongs done by the war just ended, viewed from the white-man's standpoint, the eastern portion of the lands held by them along the western bank of the Mississippi River and thus including the territory within the boundaries of the claim of Dubuque. By the terms of this treaty the Indians were to remain in full possession of the ceded territory until June, 1833, but the opportunity to acquire choice locations proved too great a temptation for the hardy and energetic white men who were located on the eastern shore of the Mississippi, who began to pour into the newly acquired territory without regard to the rights of the Indians.

In view of this fact and as a means for asserting their supposed rights, the persons who represented the title and claims of Dubuque and Chouteau sent an agent to the locality, with authority to execute leases to miners who desired to prospect for lead ore, but this intrusion of the whites led to complaints being made to the government of the infraction of the treaty rights of the Indians, which resulted in the is-

suance of an order dated January 5, 1833, by Major General Alexander Macomb, then in command of the Army, for the forcible removal of the settlers, which order was carried into effect by detachments of troops sent from Fort Crawford, at Prairie Du Chien, at which fort were then stationed Col. Zachary Taylor, afterwards President of the United States, and Lieutenant Jefferson Davis, subsequently the head of the Southern Confederacy.

As soon as the Indian right of occupancy ceased in June, 1833, the settlers flocked into the ceded territory and in September, 1834, the Territorial Legislature of Michigan divided the ceded lands into two counties, Dubuque and Des Moines, by a line drawn westward from the foot of Rock Island, the ceded territory having been made part of the Territory of Michigan by an Act of Congress approved June 28, 1834, but by an act approved April 20, 1836, it was included within the limits of the Territory of Wisconsin created by that act, and so remained until by the act approved June 12, 1838, the Territory of Iowa was created.

On the 2d day of July, 1836, Congress adopted an act providing for the appointment of commissioners to lay off the towns of Fort Madison and Burlington in the county of Des Moines and the towns of Belleview, Dubuque and Peru in the county of Dubuque, Territory of Wisconsin, and under the provisions of this and an Amendatory Act approved March 3, 1837, the towns of Dubuque and Peru were laid off on the Mississippi River within the boundaries of the grant petitioned for by Dubuque in 1796, under the description of "The Mines of Spain," the town of Peru being located on a broad plateau of land immediately south of the "Little River Maquanquitois" which Dubuque designated as the northern boundary of his claim. In the town of Dubuque, the portions of the river bluffs included within the town limits were laid off under the designation "Mineral Lots" it being the purpose to include therein the portions of the county wherein the deposits of lead ore were found. At the

public sale of lots at the United States Land Office, the settlers who were already in possession of these lands combined for their own protection, in order to procure a title to their diggings from the United States, and if outsiders attempted to bid upon lots already in possession of a settler, they quickly learned that such a proceeding was not in accord with the law of the mines.

In the meantime the successors to the title asserted by Julien Dubuque and Auguste Chouteau, his grantee, had repeatedly endeavored to obtain a recognition and confirmation of their claim to the ownership of the soil from the Congress of the United States, and although on several occasions reports favorable to the claim asserted had been made by committees of the Senate and House, yet no final action was secured at the hands of Congress, and finally it was determined by the claimants under the Dubuque title to submit their rights to judicial determination, and to that end an action was brought in the United States District Court for the District of Iowa, then presided over by the Honorable John J. Dyer, in the name of Henry Chouteau as plaintiff and against Patrick Molony as defendant, wherein was set forth at length the various matters constituting the claim of Dubuque, it being therein asked that it be adjudged that such claim was in fact a valid title to the land in fee, and therefore superior to the title under which the defendant Molony claimed to be the owner of a particular lot, his title being based upon a purchase of the lot at the public land sale and representing therefore the title derived from the United States.

The District Court held in favor of the defendant and therefore adversely to the validity of the claim advanced by Dubuque and his successors in interest, and thereupon the case, by writ of error, was carried up to the Supreme Court of the United States, and in the hearing before that court, the whole history of the claim of Dubuque was presented for consideration in connection with the legal points in-

volved, as appears from the briefs of Counsel and the Opinion of the Court, as reported in the 16th Howard 203, the judgment of the Court being announced at the December term, 1853.

In the course of the opinion the court considers, at some length, the power possessed by Baron De Carondelet under the laws of Spain and the usages followed by his predecessors in office, in making grants of lands in the actual occupancy of the Indians, reaching the conclusion that such power was subject to the rights of Indian occupancy and that a grant by the Governor would not take effect until that occupancy had ceased, but that as mines were a part of the patrimony of the crown, and as the King of Spain had directed that mines might be searched for and worked in any part of his dominion, the Baron De Carondelet had the right to confer a mining right upon Dubuque in the premises in question, so far as that right was dependent upon a grant from the Spanish Government, and in effect, therefore, it was held that the order of the governor, granting the petition of Dubuque, could not be construed to confer any right or title in or to the soil, other or greater than that granted by the Indians to Dubuque by the agreement executed at Prairie Du Chien in 1788. Construing the latter instrument, the Court points out that even though it be read in connection with the fact of the erection of monuments, fixing the northern and southern boundaries of the claimed grant, it wholly fails to name a western limit thereto, thus rendering it wholly impossible to assign any limit or extent thereto and that to give it the effect claimed for it, would be holding that the Indians intended thereby to sell and convey to Dubuque the land upon which their village stood, as well as the land for seven leagues along the river front, a purpose which the language used in the instrument did not warrant, and it was held that, "Dubuque's contract with the Fox Indians was a sale to him of the Peosta Mine, with its allowed mining appendages, with the privileges to search for

other mines in the event that ore was not found in that mine", but was not a sale or conveyance of the fee title to the land within the boundaries attempted to be assigned to the claim at a subsequent date. In considering the purpose of Dubuque in asking from the Baron De Carondelet a grant, the court states that "Dubuque makes his purchase from the Indians the foundation of his prayer for a grant, and the inducement for the governor to give it. He asks the governor to accord to him the peaceable possession of the mines and lands, which is to say, from the hills above the little river Maquanquitois as far as the hills of Mesquabysnonques, which forms seven leagues on the western bank of the Mississippi, by three leagues in depth. We do not doubt that Dubuque meant to ask for lands as well as mines and that his object was to get a grant for this large body of land. But the true point here is not what he meant to ask for, but what he had a right to ask for under his contract with the Indians and what the Governor meant to grant and could grant under that contract."

In conclusion the Court held that the action taken by Baron De Carondelet upon the petition of Dubuque did not have the effect of conveying the title to the land held by the King of Spain to Dubuque; that consequently this title passed to the United States by virtue of the treaty of April 30, 1803, between France and the United States, which was based upon the treaty of October 1, 1800, between France and Spain and that the title of the United States, thus acquired, by virtue of the Acts of Congress authorizing the laying off of lots in the Town of Dubuque and the subsequent sales thereof, passed to the purchasers at such sale.

This decision, of necessity, finally terminated all efforts to maintain a title to the land within the boundaries of Dubuque's claim based upon his connection therewith, a result that was hailed with delight by the thousands of miners and settlers who, relying on the validity of the title asserted by the United States, had made their homes upon the dis-

puted territory after the extinguishment of the Indian rights therein.

But while it is the fact that the grantees of Dubuque failed to maintain a title under him to the land in question, is it not also the fact that Dubuque personally maintained his claim to ownership and enjoyed all the benefits thereof, both living and dead?

From the time of the execution of his agreement with the Indians in 1788, until his death in 1810, he lived upon the premises, carrying on his mining and trading operations thereon without let or hindrance, and to the exclusion of all other white men.

When he died he was given sepulture on one of the most slightly spots within the domain claimed by him, and after an undisturbed repose of more than three-quarters of a century, his right to the possession of all of Mother Earth that can be held even by the greatest of her sons, after death, has been assured to him through the action of the citizens of Dubuque.

His memory is connected for all time with the premises claimed by him, on which he lived and in which he is buried, in that the township, city and county which now include the region which he once petitioned might be granted him under the title of "The Mines of Spain", are known as Julien—Dubuque.

DUBUQUE, IOWA, MARCH, 1902.

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GEN. FRANCIS GEHON, the present marshal of Iowa, passed by this place yesterday on his way to Dubuque. He left Washington city on the 13th ult., and states on good authority that the Hon. John Chambers of Kentucky, is to be our next Governor.—*Bloomington (Muscatine) Standard, April 2, 1841.*



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