

Chouteau *v.* Molony

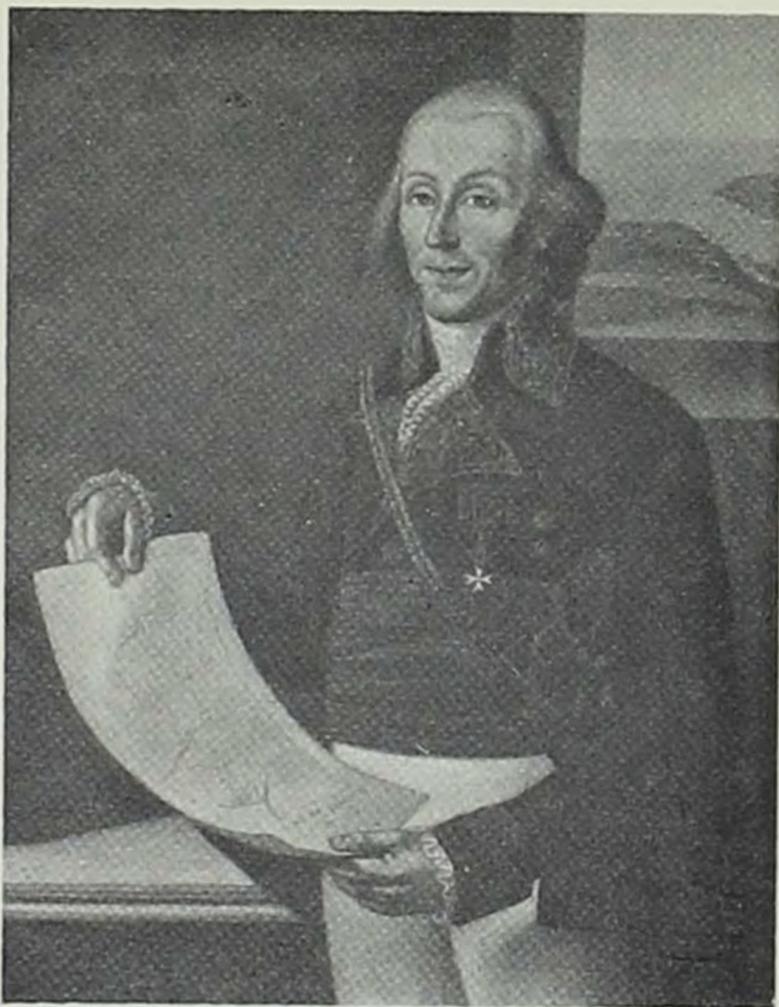
The Fox village on Catfish Creek was in a tumult. Sixty white men had just arrived in a keelboat to take possession of the lead mines. Already these invaders had begun their digging and smelting. Rude buildings began to rise despite the red men's protest. Little Night had scarcely been laid in his grave when these noisy strangers appeared to disturb him.

The Foxes were assembling their warriors, intent on ousting the miners and demonstrating that white men, no matter how many, would not be allowed to work the mines of Julien Dubuque. Colonel John T. Smith contended that he had bought an interest in Little Night's mines from the Chouteaus. The Indians scouted the statement. Their chiefs wisely pointed out that their brother, Little Night, had merely received permission to work the mines and had not been granted an absolute title to the land. Finally, turning a deaf ear to all further arguments, the warriors set fire to the buildings and drove the intruders pellmell across the Mississippi.

For a score of years the Foxes defiantly and successfully warded off all attempts on the part of white men to work the mines. Observant travelers



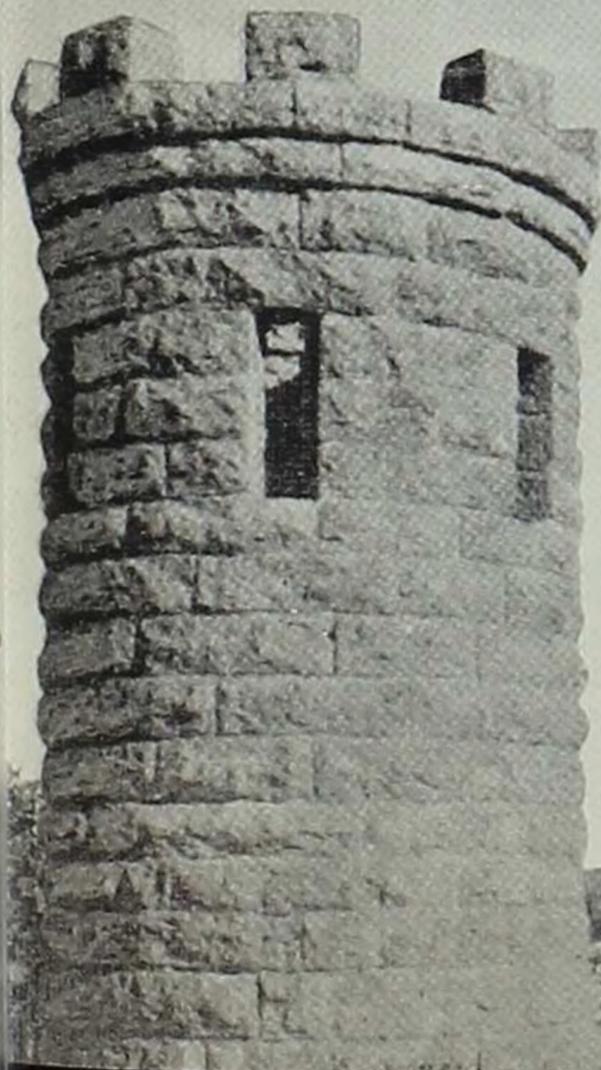
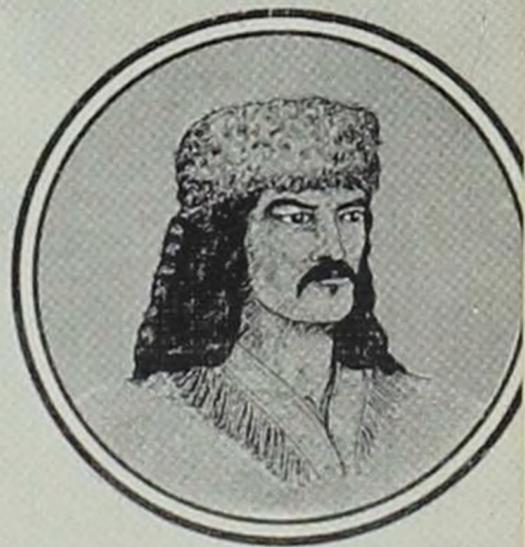
Auguste Chouteau, who with Pierre Laclede Liguist, founded the City of St. Louis. Chouteau was given title to 72,324 arpents, or seven undivided sixteenths of the Mines of Spain in payment for a Julien Dubuque debt of \$10,848.60.

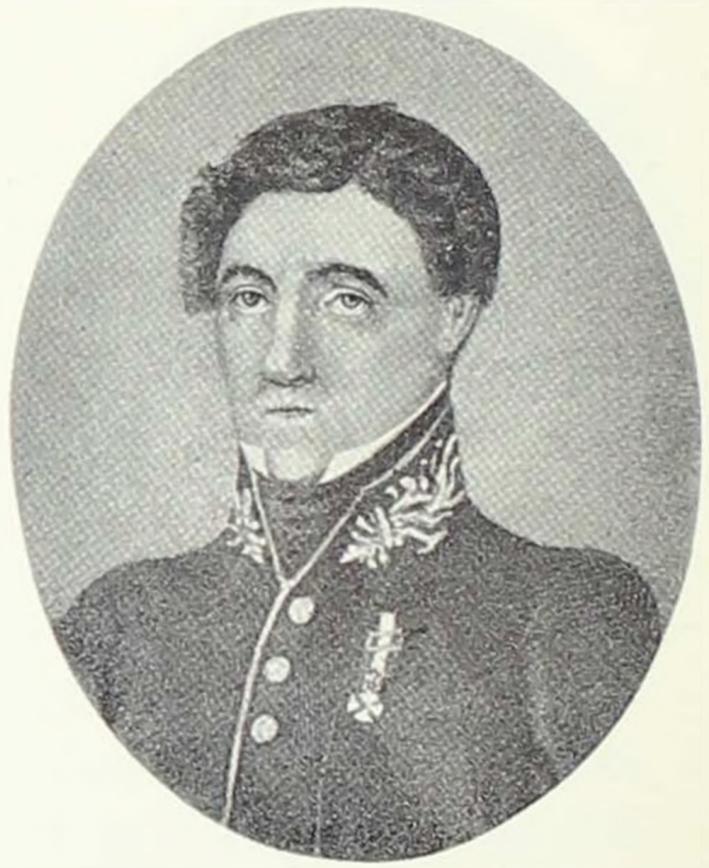


Don Francisco Louis Hector, Baron de Carondelet, was the sixth Spanish Governor of Louisiana and afterwards Viceroy of Peru. It was Carondelet who made the first and largest Spanish Land Grant to Dubuque.

Grave of Julien Dubuque, founder of the City of Dubuque, Iowa.

JULIEN DUBUQUE'S GRAVE
—FOUNDER OF THE CITY
OF DUBUQUE, IOWA





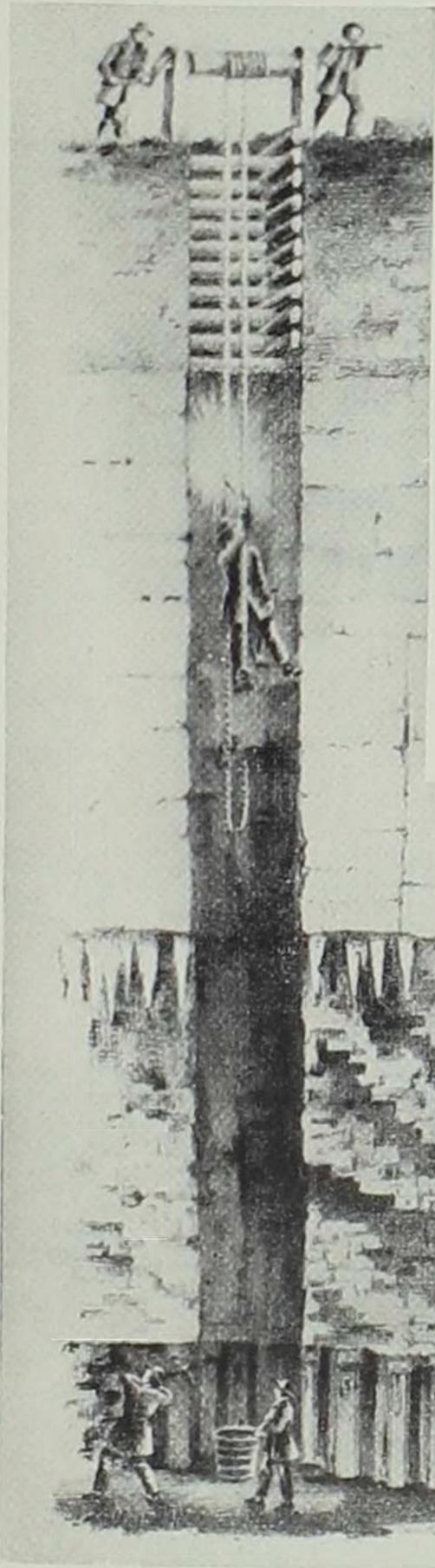
(Left) Don Carlos Dehault de Lassus, as the last Lieutenant-Governor of Upper Louisiana, represented Spain in the transfer of the Territory to France on March 9, 1804, and to the United States on March 10, 1804. (Right) Lieutenant-Colonel Francisco de Cruzat was the second Lieutenant-Governor of Upper Louisiana.



INDIAN ATTACK ON THE VILLAGE OF SAINT LOUIS 1780

State Historical Society of Missouri

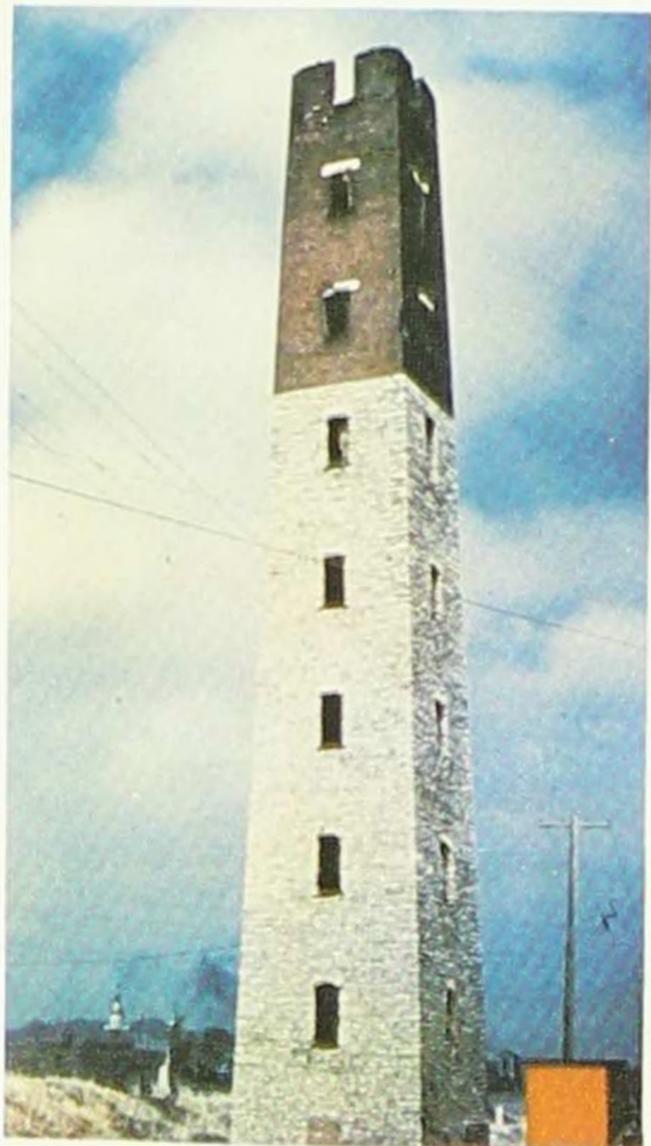
The embattled citizens of St. Louis beat off a combined British and Indian attack on May 26, 1780. Jean Marie Cardinal, who had mined lead in the Dubuque area, had fled to warn St. Louis residents of the impending attack. Cardinal died from wounds received that day. He was probably the only person living in what is now Iowa who lost his life in the American Revolution.



David Dale Owen
Lead Mining at Dubuque



William J. Petersen
Dubuque Shot Tower



*Above: Close-up of Dubuque's Grave.
Left: Historic Dubuque Shot Tower erected in 1856.*



*Photo by William J. Petersen
Julien Dubuque's Grave from the Mississippi.*

KEY CITY

DUBUQUE'S HOME COMING WEEK



JULIEN DUBUQUE (LE PETITE NOUVEAU)
MINER IN THE MINES OF SPAIN



POTOSA, WIFE OF DUBUQUE
AND DAUGHTER OF CHIEF PEOSTA

1833

75 YEARS

BURIAL VAULT OF DUBUQUE
ERECTED BY THE INDIANS-1810



1908

50,000 POP.

JULIEN DUBUQUE'S MONUMENT
ON THE SITE OF INDIAN VAULT



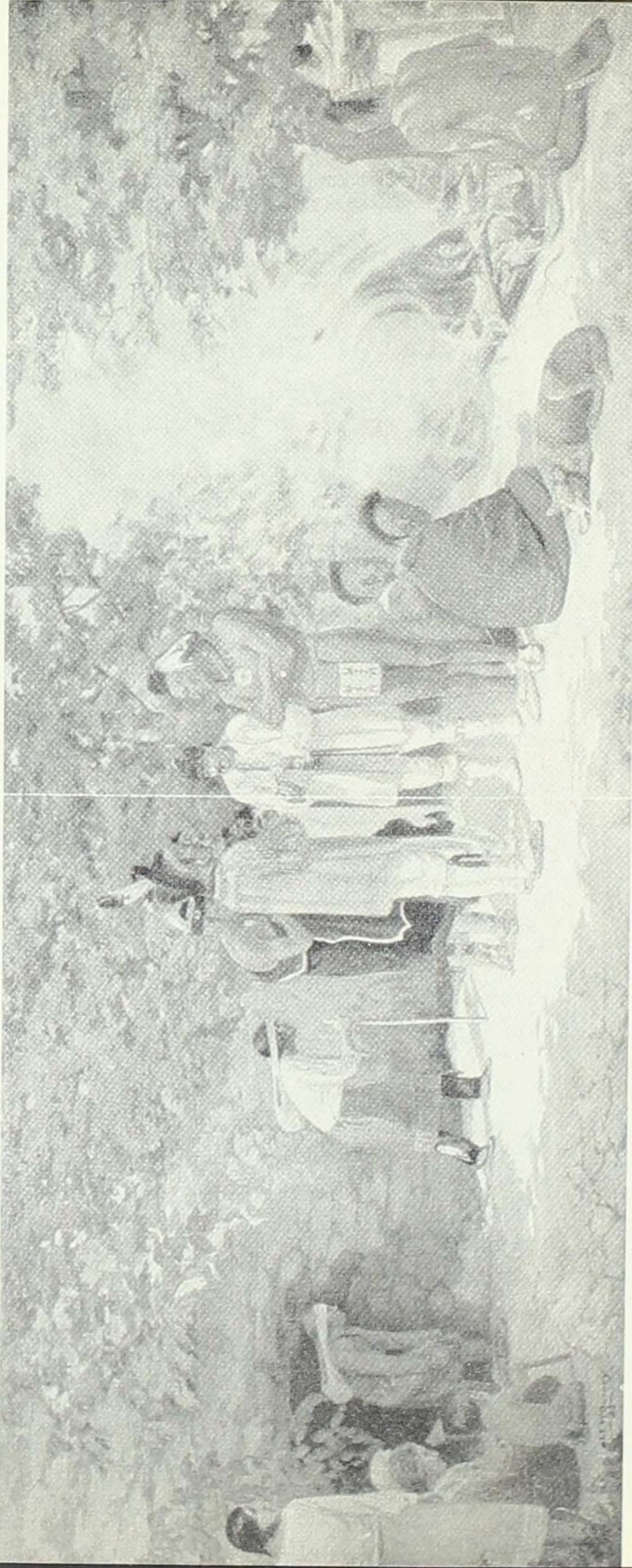
The Home Coming Committee on behalf of the citizens of Dubuque, extend to you, your friends, and neighbors, an invitation to participate in the seventy fifth anniversary of the founding of our city, August twenty fourth to the twenty ninth, nineteen hundred + eight. We expect to make it a gala week, meeting and renewing old acquaintance, visiting familiar places, and having a good time. Come and enjoy the hospitality of our old home. A joyous welcome awaits you.

DUBUQUE IOWA. AUGUST 24-29 1908

E. L. THODELL - DUBUQUE.

Invitation sent out to attend the 75th anniversary of the permanent settlement of Dubuque in 1833.

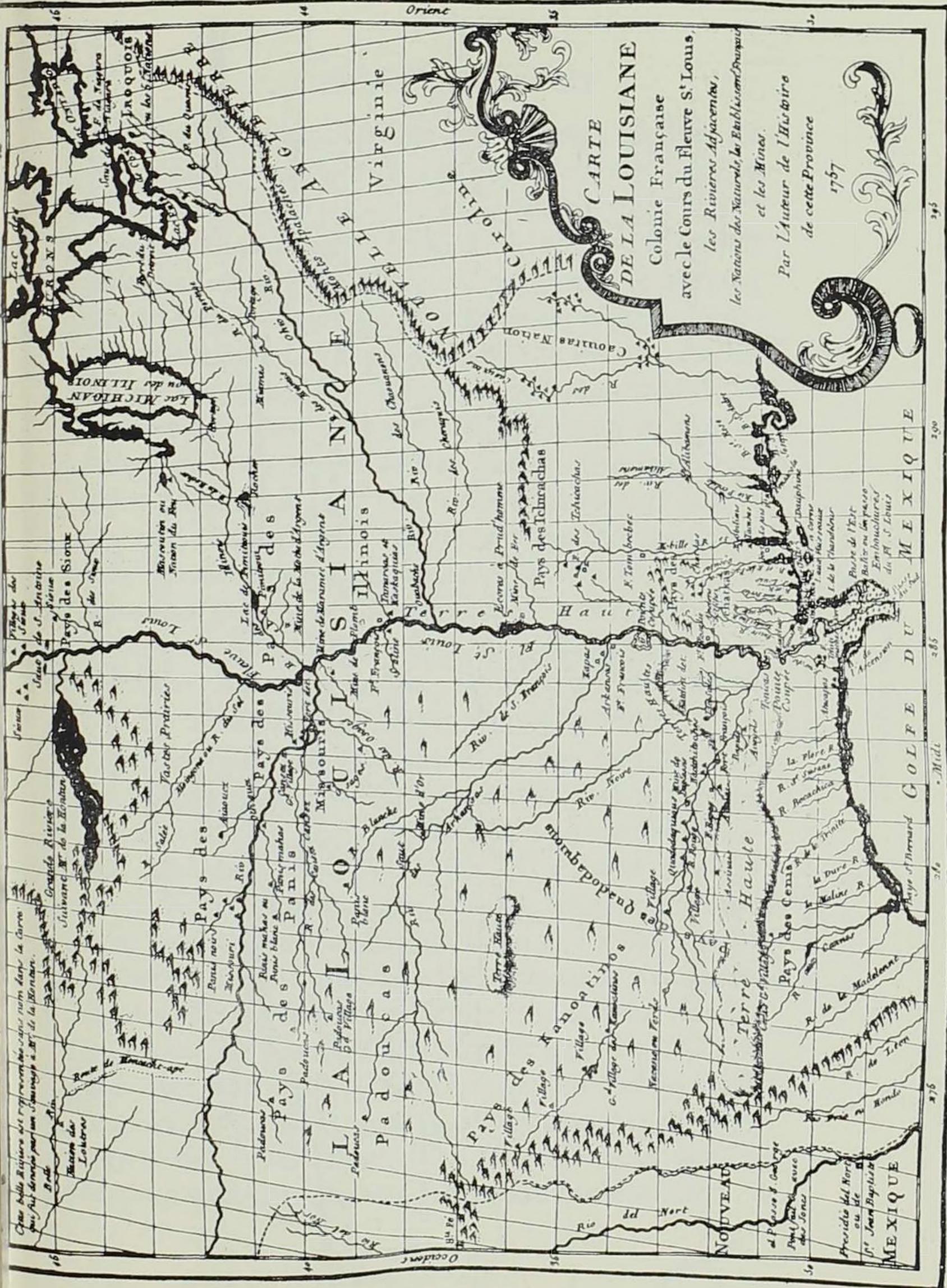
Julien Dubuque - - "Little Night" - - Miner of the Mines of Spain



Painting by James McBurney which originally hung in the Federal Bank and Trust Company of Dubuque.

FOX INDIANS HELP DUBUQUE MINE LEAD.

Courtesy John Rider Wallis



Five years after this map appeared (1762) France ceded all land west of the Mississippi to Spain.

such as Major Stephen H. Long, Henry R. Schoolcraft, and Major Thomas Forsyth were in accord on the jealousy with which the Foxes guarded their mines. Indeed, in 1823 the Italian exile and judge, Giacomo Constantine Beltrami, had to resort to a bribe of influential whisky in order to obtain permission to visit the mines. Arriving on the steamboat *Virginia*, Beltrami found the Indians carrying on just enough mining to satisfy their needs in trade. They melted the lead into holes dug in the rock and reduced it to pigs in this manner. It was then carried across the river, for they would permit no white man to come to the mines to get lead. Beltrami was amazed to discover that Julien Dubuque's body was enclosed in a leaden chest in a wooden mausoleum situated on the top of a hill overlooking the Mississippi.

Meanwhile, the lead mines on the east bank of the Mississippi were being worked more and more extensively. In 1810 the Indians had melted 400,000 pounds of lead at Fever River, and in 1815 there were twenty rude Indian furnaces in the neighborhood of what was later to be the site of Galena. In 1816, the first flatboat cargo of lead to emanate from the Fever River mines was sent to St. Louis by George Davenport, and by 1821 it was not uncommon to see these unwieldy craft heavily laden with lead slowly making their way down the Mississippi. By 1830 Galena was a trading center with over a thousand inhabitants.

But the white men were not satisfied with being restricted to the east side of the Mississippi in Illinois. They cast longing glances at the west bank, but the big Indian village served as a reminder that they were not wanted. In 1829 James L. Langworthy was said to have crossed the Mississippi and explored the region near the site of Dubuque. Early in 1830 the Indians deserted their village and James and Lucius Langworthy crossed over and commenced mining. Others were not slow to follow and soon the number was sufficiently large to feel it incumbent on themselves to draw up a set of rules to govern the community.

On June 17, 1830, a prophetic event occurred near the mouth of Catfish Creek when a group of rugged miners met around an old cottonwood tree and drew up a set of rules to govern their mining operations. The meeting was organized in due form and the preliminary business disposed of, after which a committee drew up the following regulations:

We, a committee, having been chosen to draft certain rules and regulations, by which we, as miners, will be governed, and, having duly considered the subject, do unanimously agree that we will be governed by the regulations on the east side of the Mississippi River, with the following exceptions, to wit:

ARTICLE 1. — That each and every man shall hold two hundred yards square of ground by working said ground one day in six.

ART. 2. — We further agree, that there shall be chosen

by the majority of the miners present, a person who shall hold this article, and who shall grant letters of arbitration, on application being made, and that said letter [of] arbitration shall be obligatory on the parties concerned so applying.

Written by James L. Langworthy on a half-sheet of coarse unruled paper on the log around which the miners had gathered, this "Miners' Compact" was the first set of laws for the government of white men adopted on the soil of Iowa.

The land west of the Mississippi had not been opened to settlement, however, and troops drove the interlopers away. At the conclusion of the Black Hawk War in 1832, the miners who had been driven out during the summer of 1830 crossed the river and resumed operations on their former claims. But the land was not yet open to settlement, and Zachary Taylor soon arrived with a military force to expel them. Langworthy and most of the miners removed to an island near the west bank of the river where they built rude shacks and, surrounded by heaps of mineral, spent the remainder of the winter and the following spring, suffering many privations.

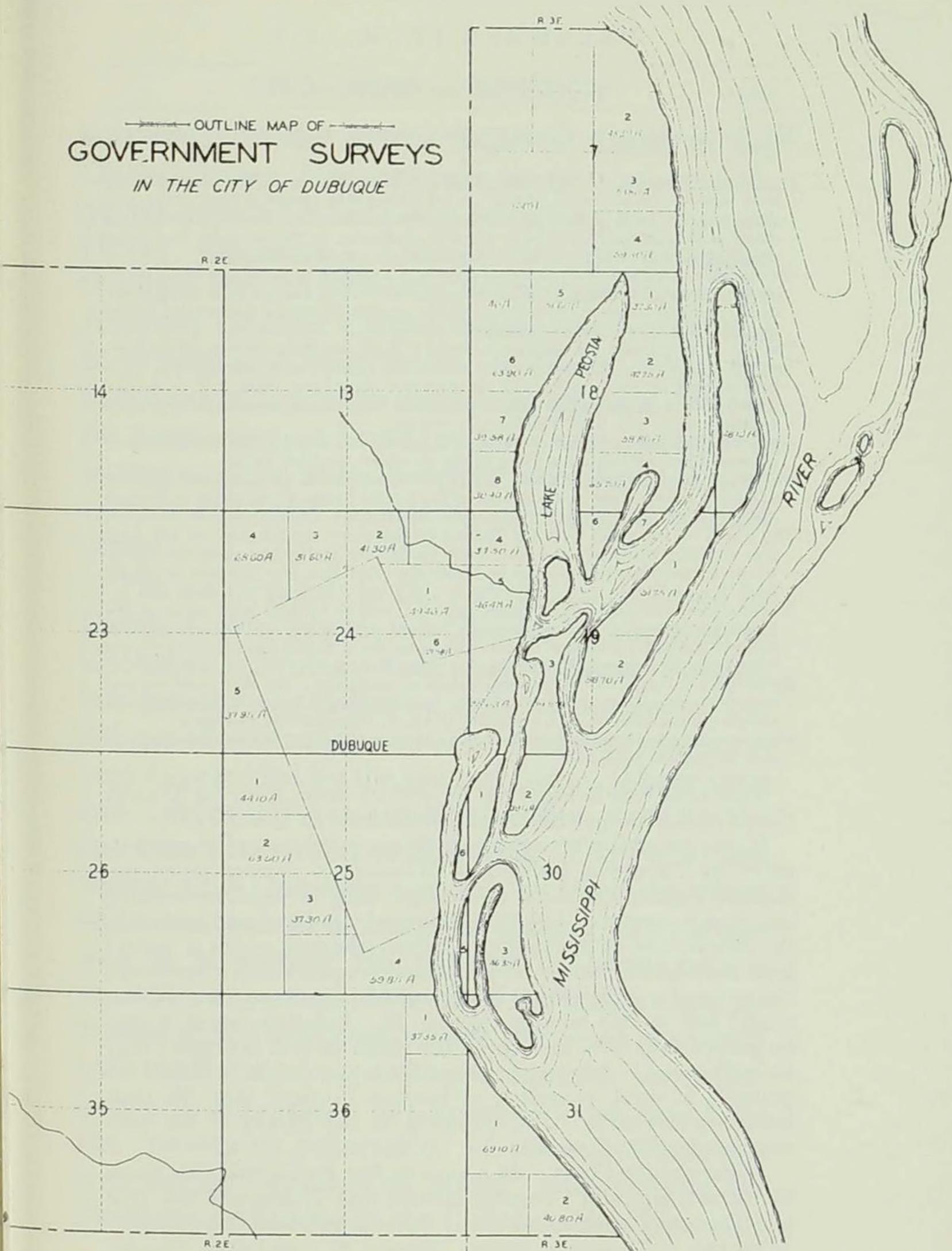
The treaty which closed the Black Hawk War and effected the purchase of a strip of land about fifty miles wide stretching westward from the Mississippi set the date of June 1, 1833, for the extinction of the Indian title to this part of the Iowa country. All of the land embraced within Du-

buque's Mines of Spain was included in the cession. Scores of settlers must have swarmed into Iowa on that day. The movement to the lead mines around Catfish Creek and northward to the Little Maquoketa was especially great and apparently no attention was paid to the possibility of their claims being illegal. Had not the Foxes clearly demonstrated their feelings in regard to the claims of Chouteau?

The settlement at Dubuque's Mines increased rapidly in population. Strategically located on the Mississippi, Dubuque had a distinct advantage over Galena which lay some miles up the Fever or Galena River. But the persistent manner in which the heirs of Chouteau presented their claims before Congress and carried the contest for possession of the old land grant from a lower to a higher court caused the settlers to become nervous and wonder if their titles to the land they occupied were really valid. For two decades the claim of the Chouteaus hung like a sword of Damocles over the lead mines. It can hardly be doubted that the natural growth of the region was retarded as long as this situation existed.

Finally, by mutual agreement the case was put into the form of a suit of ejectment against a farmer named Patrick Molony, who held his land under a patent from the government. Judge John J. Dyer of the United States District Court for Iowa rendered judgment in favor of Molony. The case

— — — — — OUTLINE MAP OF — — — — —
GOVERNMENT SURVEYS
 IN THE CITY OF DUBUQUE



From State Historical Society Collections

Outline map of Julien Township showing original city limits of Dubuque and reproduced in W. H. Hixson & Co. *Atlas of Dubuque, Iowa*. Printed in Rockford, Illinois, this volume contains detailed map of every section and subdivision as the city grew.

HENRY CHOUTEAU, PLAINTIFF IN ERROR, v. PATRICK MOLONY.

On the 22d of September, 1788, the tribe of Indians called the Foxes, situated on the west bank of the Mississippi, sold to Julien Dubuque a permit to work at the mine as long as he should please; and also sold and abandoned to him all the coast and the contents of the mine discovered by the wife of Peosta, so that no white man or Indian should make any pretension to it without the consent of Dubuque.

On the 22d of October, 1796, Dubuque presented a petition to the Baron de Carondelet for a grant of the land, which he alleged that he had bought from the Fox Indians, who had subsequently assented to the erection of certain monuments for the purpose of designating the boundaries of the land.

The governor referred the petition to Andrew Todd, an Indian trader, who had received a license for the monopoly of the Indian trade, who reported that as to the land nothing occurred to him why the governor should not grant it, if he deemed it advisable to do so, provided Dubuque should be prohibited from trading with the Indians, unless with Todd's consent, in writing.

Upon this report the governor made an order, granted as asked, under the restrictions expressed in the information given by the merchant, Andrew Todd.

This grant was not a complete title, making the land private property, and therefore excepting it from what was conveyed to the United States by the treaty of Paris of April 30, 1803.

The words of the grant from the Indians do not show any intention to sell more than a mining privilege; and even if the words were ambiguous, there are no extrinsic circumstances in the case to justify the belief that they intended to sell the land.

The governor, in his subsequent grant, intended only to confirm such rights as Dubuque had previously received from the Indians. The usual mode of granting land was not pursued. Dubuque obtained no order for a survey from Carondelet, nor could he have obtained one from his successor, Gayoso.

By the laws of Spain, the Indians had a right of occupancy; but they could not part with this right except in the mode pointed out by Spanish laws, and these laws and usages did not sanction such a grant as this from Carondelet to Dubuque.

Moreover, the grant included a large Indian village, which it is unreasonable to suppose that the Indians intended to sell.

This case was brought up by writ of error, from the District Court of the United States for the District of Iowa.

It was an action brought by petition, in the nature of an ejectment, by Chouteau, a citizen of Missouri, to recover seven undivided eighteenth parts of a large body of land, containing nearly one hundred and fifty thousand arpents; and including the whole city of Dubuque. Molony claimed under a patent from the United States. The documents upon which Chouteau's claim was founded are set forth *in extenso* in the opinion of the court; and as that opinion refers to Mr. Gallatin's report, it may be proper to give a history of the claim so that his report may be introduced. A large portion of the argument, in behalf of the plaintiff in error, consisted of reasons to show that Mr. Gallatin was mistaken. The following is the history of the case, as given by Mr. Cormick.

History of the Claim. In a case so free from doubt, the question arises, why did Congress assume that Dubuque's title was worthless, and sell the land? *From State Historical Society Collections*

In the case of Chouteau v. Molony (*Howard 16, United States Reports*), the heirs of Chouteau carried an adverse decision of the District Court of the United States for the District of Iowa to the United States Supreme Court, which upheld the Iowa Court. The Chouteaus claimed Julien Dubuque had deeded half his land to them and the settlers were trespassing on their property. The District Court of Iowa held that Julien Dubuque did not own the land and could not deed it to the Chouteaus, therefore the Dubuque settlers were the rightful owners.

was then carried to the Supreme Court of the United States. Reverdy Johnson of Maryland together with able St. Louis attorneys represented Henry Chouteau. The settlers at Dubuque, through Patrick Molony, were represented by Attorney General Caleb Cushing and by Thomas S. Wilson and Platt Smith. In March, 1853, the judgment of the lower court was affirmed. When the news reached Dubuque there was general rejoicing — bells rang, bonfires were kindled, and citizens extended mutual congratulations to each other.

The major points in the decision as rendered by Justice J. M. Wayne of Georgia in the case of *Chouteau v. Molony* were clearly stated. Spanish law granted the Indians a right of occupancy but did not allow them to sell or part with any land except as provided by the laws of Spain. These laws and usages did not sanction such a grant as the one from Carondelet to Dubuque. The Foxes had merely sold Dubuque a permit to work the mines and restricted all others from making any pretension to it without the consent of Dubuque. It would be unreasonable to think the Indians had intended to sell their own village site — an act which was itself illegal according to Spanish law. Dubuque, in his petition to Carondelet, had asked for the "peaceable possession" of the mines and this was simply "granted as asked" with definite restrictions pertaining to the Indian trade. Thus, the

Spanish grant did not convey full title but only confirmed such rights as Dubuque had previously received from the Indians. No survey had been made nor had Dubuque obtained an order for one from Carondelet or his successor. Since this grant was not a complete title to land, making it private property, the Dubuque tract was automatically conveyed to the United States by the Louisiana Purchase on April 30, 1803. Chouteau was perfectly familiar with the documents and had simply engaged in speculation when he bought seven-sixteenths of the Mines of Spain. All he had acquired was Dubuque's right to "peaceful possession" which, so far as the Indians were concerned, Dubuque had no right to sell.

WILLIAM J. PETERSEN