

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 travellers 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 the center of the trade and contained 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 Dubuque'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 claims 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 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.

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