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### Report : Memorial of E. Tracey et al.

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S. Rep. No. 212, 31st Cong., 1st Sess. (1850)

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IN SENATE OF THE UNITED STATES.

SEPTEMBER 23, 1850.

Submitted, and ordered to be printed.

Mr. UNDERWOOD made the following

REPORT:

*The Committee of Claims, to whom the memorial of Edward Tracey and others was referred, praying that the "Act for the relief John P. B. Gratiot and the legal representatives of Henry Gratiot," approved August 14, 1848, may be extended to all persons who paid rent lead to the agents of the government, smelted from ores dug upon the lands of the Ottawa, Pottawatomie, Chippewa, and other tribes of Indians, report:*

That the claim to have these rents refunded rests upon the opinion that the agents of the government, without authority, leased lands to which the Indian title had not been extinguished to the smelters, from which lands the ore was taken. There is no suggestion made that the lessees were molested by the Indians in consequence of any intrusion upon their territory, or that the lessees were in any manner prevented from the full enjoyment of all the privileges conferred by the leases. After the enjoyment and use of the leased premises, and the payment of the rents, it seems to the committee too late for the tenant to raise a question upon the landlord's title. Were it a case between individuals, the rule of law is so plain that there could not be a doubt as to the propriety of rejecting the claim. The committee are of opinion that the same rule should apply to the government and its lessees. But even if it were proper to abandon the rule, and go into the consideration of the title, the committee are inclined to the opinion that the memorialists are not entitled to relief. The domain is, according to our system, in the United States. The Indians have the usufruct; they do not engage in mining and smelting; they do not apply or use lands for such purposes. Such is the general rule with them, even should there be exceptions. Metals abstracted from the earth, therefore, do not interfere with the uses which the Indian tribes ordinarily make of lands. It may be said, and probably with truth, that taking possession of Indian lands, and using them for mining purposes, would drive out the game, upon which the Indians mostly rely for subsistence, and to that extent operate as an injury to them. Conceding this, it would only prove that the Indians are the proper persons to present a claim for the rents which the lessees ask to have refunded.

It would certainly be discriminating greatly in favor of those who should engage in mining upon Indian lands to permit them to do so without paying rents, whilst those doing the same kind of business upon gov-

ernment lands are required to pay rents. The committee deem it unjust to make any such discrimination.

The committee have not thought it necessary to go into an elaborate examination of the various treaties with the Indian tribes already named, with a view to ascertain whether, when certain lands were conceded to them, the reservations retained by the government were not sufficiently numerous and extensive to cover all the premises leased to the memorialists and others. The committee have, however, examined this subject so far as to ascertain that, in adjusting the boundaries of the Indian tribes to the mineral country east of the Mississippi river, in the treaty made at Prairie du Chien, on the 19th of August, 1825, the tenth article of the treaty retained to the United States certain reservations. It may be that the agents of the government leased the lands in question under the belief that they were embraced by these reservations. The committee have deemed it unimportant to decide whether such reservations did or did not cover the premises leased. Indeed, the facts do not sufficiently appear to enable the committee to form an opinion on this point.

The act of Congress referred to, upon its face, is connected with a demand which the government had against the Gratiots. How far that consideration may have influenced the passage of that act, the committee will not undertake to decide. But whatever motives may have led to the passage of that act, the committee cannot regard it as a controlling precedent, to be followed, notwithstanding their convictions of its impolicy, based on the reasons assigned. The adoption of the following resolution is recommended:

*Resolved,* That the prayer of the memorialists ought not to be granted,