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COPY OF A CASE

ON BEHALF OF

THE LADIES OF THE URSULINE CONVENT OF QUEBEC,

IN

SUPPORT OF A MEMORIAL BY THEM PRESENTED

TO

HIS EXCELLENCY THE GOVERNOR IN CHIEF,

IN THE MONTH OF JANUARY LAST;

AND UPON

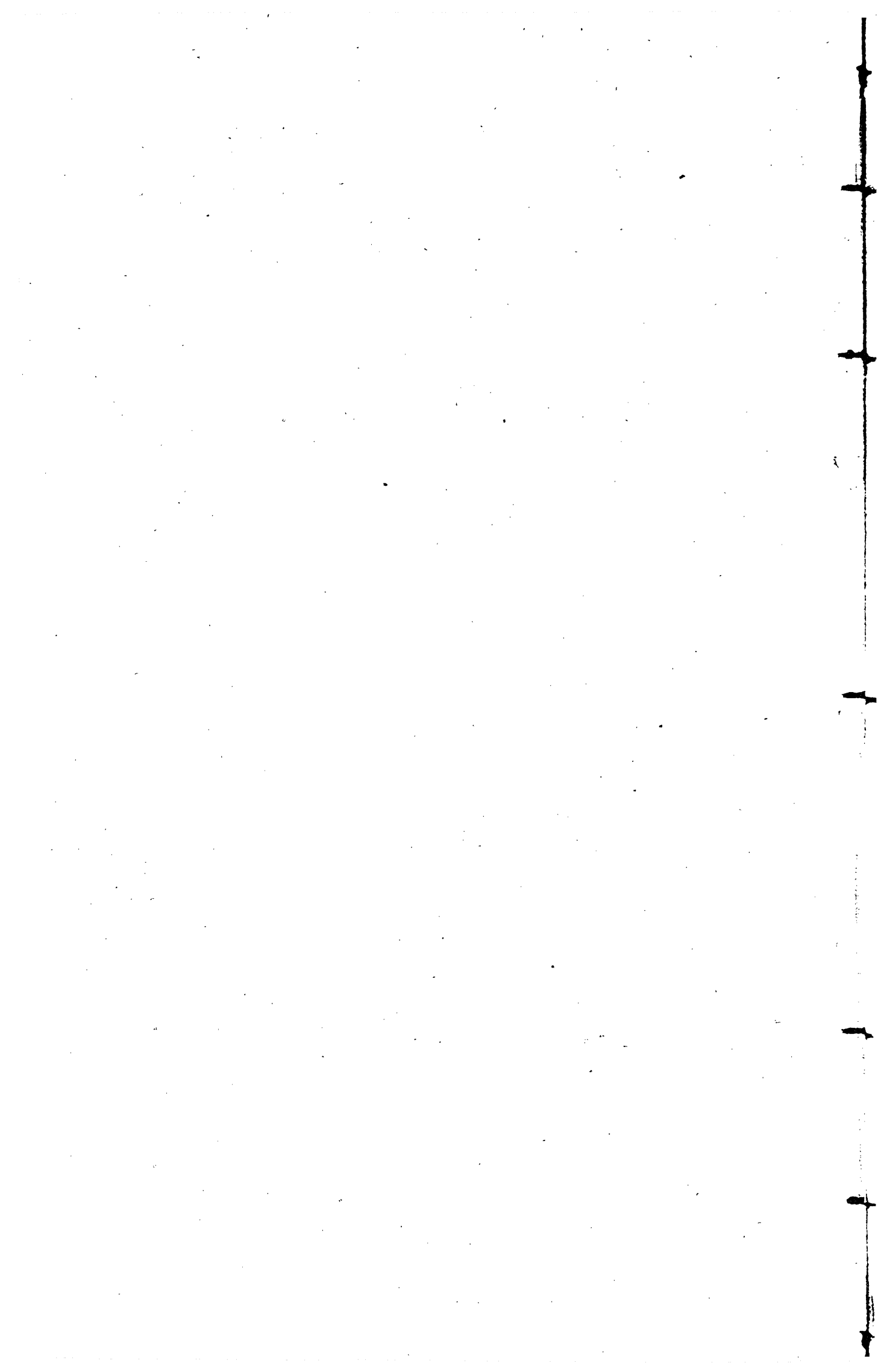
TWO SEVERAL PETITIONS

OF

MR. JAMES REYNAR,

PRAYING FOR A GRANT OF THE LOT OF LAND AND BEACH TO WHICH THE SAID MEMORIAL RELATES.

&c. &c.



COPY OF A CASE

ON BEHALF OF

THE LADIES OF THE URSULINE CONVENT OF QUEBEC,

IN

SUPPORT OF A MEMORIAL BY THEM PRESENTED

TO

HIS EXCELLENCY THE GOVERNOR IN CHIEF.

THESE proceedings originated in an application made by John Fraser, Esquire, grantee from the Ladies of the Ursuline Convent of Quebec, of a lot of land and beach at *l'ance des mères* near the City of Quebec, lying within the *censive* of the Crown, for a commutation of the tenure and for a fresh grant thereof to the said John Fraser, to be by him holden in free and common soccage, under the provisions of the Act of the Imperial Parliament of the 3d Geo. IV, c. 119, commonly called the Canada Trade Act.

The title of Mr. Fraser to the land in question, under the sale to him made thereof by the Ladies of the Ursuline Convent, was in the ordinary course, referred to the Attorney General and to the Inspector General of the King's Domain. The latter officer, by his report of the 3d November, 1832, while he seems to admit the good faith of the possession of the Nuns of the whole of the premises sold by them to Mr. Fraser, refers to titles antecedent to those of the Ladies of the Ursuline Convent, whereby the lot in question was bounded towards the River St. Lawrence, by a line at the distance of from fifteen to twenty toises from a road reserved along the River St. Lawrence; inferring from this, that the strict legal title to so much of the lot as lay below that line was in the Crown, he concludes with submitting to His Excellency, "how far the prayer of the petitioner, Mr. Fraser, could be granted in the shape in which it then presented itself, in respect of so much of the said lot of land, as he" (in the opinion of the Inspector General of the King's Domain,) "had failed to show a sufficient title, or whether or not His Excellency would be pleased to make the petitioner an original grant of that part as being in the possession of the whole as a *bona fide* purchaser." He recommended also for the purpose of ascertaining the true bearing of the case, that a plan should be drawn shewing the line of high water mark of the River St. Lawrence along the whole length of this lot, and the distance from this line to within three feet of the ridge of the cape, (Mr. Fraser's boundary to the land.)

The Attorney General adopting the result of the researches of the Inspector General of the King's Domain, by his report of the 19th of November, 1832, submits therein in conclusion that His Majesty's Government may exercise its discretion in granting to Mr. Fraser, in free and common soccage, that part of the land which lies beyond the line referred to in the report of the Inspector General, with the reservation of a road for the convenience of the public and for such consideration as might seem just and equitable.

In consequence of these several reports, Mr. Fraser presented on the 6th of December, 1832, a petition to His Excellency the Governor in Chief, stating that he having acquired from the Ursuline Nuns a lot of land and beach at *l'ance des mères*, of nine arpents and a half in front, and extending from low water mark to within three feet of the summit of the Cape, situate within His Majesty's Seigniorship, he had applied for a commutation of the tenure of the said lot of land and beach, but that no formal grant being to be found to that portion of the beach which lies between a line drawn at a distance of fifteen to twenty toises from a road supposed to have been reserved along the margin of the River and low water mark, the proper officers had not felt themselves authorized without the sanction of His Excellency to include the same in the surrender and regrant. The prayer of this petition was, that His Excellency would be graciously pleased to grant his authority to the Law Officers and other Public Officers in that behalf, to include in such surrender and regrant the remainder of the soil comprised in the conveyance of the Nuns to the petitioner, Mr. Fraser, or that His Excellency would grant the same to him for such consideration as to His Excellency should seem just and equitable.

His Majesty's Executive Council for the Province, having by their report of the 22d of April, 1833, recommended a commutation and regrant of such portion only as it was conceived that Mr. Fraser had produced a strict legal title to, but that Mr. Fraser should not be disturbed in his possession of the beach and premises in question, for the remaining term of lease made thereof by the Ursuline Nuns, to the late Honorable John Mure, viz:—until the year 1838, and communication of the objections thus made to the title of these Ladies, having been given to them by Mr. Fraser, with a view of their affording such explanations of their title as might be satisfactory to the Law Officers of the Crown; they had the honor of submitting in the month of January last, a Memorial to His Excellency the Governor in Chief, containing a deduction, of their title from their several vendors, at the remote periods of 1668, 1671, 1675, 1678 and 1682, wherein these lands are bounded by the River St. Lawrence generally. In this memorial the Ladies of the Ursuline Convent showed also a general possession by them of the premises, and a particular possession of the beach thereof, extending to low water mark, through their lessee, the late Honorable John Mure, and his assigns, from the year 1802, uninterruptedly, as more fully stated in their aforesaid memorial.

These titles, with the memorial, having been referred to His Majesty's Attorney General of the Province, he, by his report of the 21st of June, 1834, controverts the title of the memorialists only in so far as respects the interval between high and low water mark, the title to the remaining portion admitting no longer, as is conceived, of any doubt.

The ground upon which the opinion of the Attorney General proceeds, is that the riparian proprietor of land lying upon a navigable river, bounded by that river is not entitled to the interval between high and low water mark. Now, although a diversity of opinion did exist on this point in France, and writers desirous of extending the prerogative of the crown beyond its due limits, have ascribed to the crown the right to this interval of land, yet it is respectfully contended, that the weight of authority is decidedly in favor of the riparian proprietor, and this decision has confessedly the sanction of the Roman law, and has been adopted in the modern code of France. It has also received the sanction of the Provincial Court of Appeals, in a judgment rendered in that Court, so late as the term of November, 1830, between Fournier, Appellant, and Oliva, Respondent; a report whereof is subjoined to this case. But so far as the commutation of tenure in this particular case is concerned, the question is rather a question of speculative curiosity, than of practical utility, as the difficulty is surmounted, as in the case of Wolfe's Cove adjoining these premises, by a grant of such interval in free and common socage for a nominal consideration with the adjoining riparian lot, surrendered for the purpose of effecting a commutation of the tenure.

There are, however, some rules relating to this subject, which stand admitted on all hands, and which have too important a bearing upon it, to admit of their being passed over in silence. Where a river constitutes the boundary of a lot of land, it is not competent to any one to interpose between the riparian proprietor and the waters of the river, any work whereby this, his natural boundary, would be taken from him. The consequence is, that if a grant be made to any one, of the interval between high and low water mark,—supposing hypothetically that this interval of ground is in the Crown as a part of the river,—such grant can only be made to the riparian proprietor. If made to another, the grant is a mere nullity, and would be taken by the King's Courts to have been obtained by surprise. If a contrary rule obtained, the riparian proprietor would be prevented from building wharves; the new grantee could not interpose a wharf between the riparian proprietor and the stream; and the public would thus be deprived of the benefit conferred upon trade and navigation, by the erection of wharves in ports and harbours.

Independently of the above just ground of claim, which the riparian proprietor of these premises, the memorialists, had to this interval of ground over all others, it is to be observed further, that they had an exclusive right of fishing in front of this lot, under a grant so far back as the year 1651, which right seems admitted by the Inspector General of the King's Domain, in his report of 3d of November, 1832, and would of itself entitle the memorialists to prohibit the making of wharves, or other erections to the prejudice of their said right of fishing.

Had the application been for a grant to the Ladies of the Ursuline Convent themselves, they being a body in mortmain, considerations of public policy might have been thought to stand in the way of such grant being made: but here these Ladies have divested themselves of their property and are not interested therein, save under their covenant of warranty to the petitioner for commutation. By the assignment of this beach to the petitioner, the interval in question is, with the space immediately above it, put *in commercio*, and upon the grant of his prayer for a commutation of the tenure, the objects contemplated by the Canada Trade Act are, so far as this lot is concerned, fully accomplished.

The doubts which had been stated of the title of Mr. Fraser, under his grant from the Ladies of the Ursuline Convent, having in some form or other reached the ear of Mr. James Reynar, the sub-lessee of these premises as hereinafter mentioned, pending the last mentioned proceedings, he presented to His Excellency the Governor in Chief two several petitions, to the examination of which we now proceed.

The first of these petitions bears date the 25th of April, 1834. In it he sets forth that the Crown was the proprietor of the lot and beach in question, to within forty feet of the *cime du cap*;—that he has been in possession of the said lot of land and beach since the 1st of May, 1827, and has held several and distinct leases thereof, the latter having been granted to him by Wm. Finlay, of the City of Quebec, Esquire, as curator of the estate of the late John Mure, which said lease will expire in the year 1838;—that the improvements in buildings and in making roads on these premises, which at the time when the petitioner took them were of small value, had cost the petitioner £2700, the petitioner complains that the Nuns will not grant him a renewal of his lease; and in conclusion prays that a grant or a renewal of the lease of the said lot of land and beach may be granted to him by His Excellency the Governor, and in default thereof, that the grantee or lessee of the same should be held to indemnify the petitioner for his said betterments and improvements, or that such other relief might be afforded as His Excellency might deem him entitled to.

The second petition of Mr. Reynar bears date the 4th of July, 1834, and states in support of the claim he had so before preferred, that should he be deprived of the support of the Crown, he and his family would be completely ruined; that the Ladies of the Ursuline Convent disregarding the fair and equitable claim of the petitioner, who had (as he alleges) improved and brought the property to its present value, had oppressively and unjustly made over all their rights therein to John Fraser, Esquire, of Quebec, the relative (as it is said) of the superior of that body, and had hitherto refused to entertain any proposition made to them by the petitioner; that the Ladies of the Ursuline Convent in having adopted a course so harsh and so ungenerous towards the petitioner, had shown how little they regarded the rules of common justice, which should have governed their proceedings in this matter; that as the petitioner was credibly informed that the right of property to the beach in question was not vested in the Ladies of the Ursuline Convent but in the Crown, the petitioner prayed that His Excellency would be pleased to take his exceedingly hard case into consideration, and as in that of John Saxton Campbell, Esquire, by whom a similar claim for the property contiguous to *that of the petitioner* was preferred and decided upon by His Excellency in Council, make him a grant in perpetuity on such terms or conditions, based upon the indulgence extended to Mr. Campbell, as might seem fit to His Excellency.

The foregoing petitions contain most grave misrepresentations, as well in what is therein stated as in what is therein suppressed. The petitioner, Mr. James Reynar, suppresses the fact that he entered into the occupation of these premises as sub-lessee of the Ladies of the Ursuline Convent of Quebec, and that the principal lessor under whom he held was an emphyteotic lessee. The lease from the Ladies of the Ursuline Convent to the late Honorable John Mure, of whose curator the said James Reynar is sub-lessee, of these premises, bears date the 2d of September, 1807, and is executed before Planté, and Colleague, Notaries Public. It appears from the recital of this instrument that Mr. Mure had occupied these premises under a lease from those Ladies, for five years previous to the last mentioned date. The lease is for thirty years, and the emphyteotic rent reserved is of twenty pounds annually, payable half yearly; *jusqu'à l'expiration des dites trente années, auquel tems le dit terrain rentrera en la possession des dites Dames avec toutes les augmentations et améliorations qui s'y trouveront de quelques nature et valeur qu'elles soient, sans qu'elles soient tenues de payer aucune indemnité ni dédommagement pour raison d'iceux.*

The petitioner, James Reynar, suppresses also the fact, that it was one of the conditions of the sub-lease that he should surrender up his improvements without indemnity. The sub-lease from William Finlay, Esquire, as curator to the vacant estate and succession of the late Honorable John Mure, to Mr. Reynar, was executed before McPherson, and Colleague, Notaries Public, and bears date the 22d April, 1830, covering exactly the lot leased to the late Mr. Mure, and subsequently sold to Mr. Fraser, and for the commutation of the tenure whereof an application is now pending before His Excellency in Council. In this deed of sub-lease Mr. Reynar expressly covenants with the lessee of the Ladies of the Ursuline Convent, "*to cause all buildings which may be made on the said premises to be erected and built in regular order and symmetry as to size, architecture, &c. which shall remain for the benefit of the proprietors of the soil or others having right to the same on the end and expiration of the present lease; to observe the Voyerie, and all rules and regulations of Police which may in any manner concern the said premises, not to sub-lease or underlet the said premises without permission from the said lessor, and on the end and expiration of the present lease peaceably and quietly to surrender and deliver up the said*

“ premises with all buildings, improvements, augmentations and ameliorations which may have been made or done thereto, and without any indemnity or remuneration in the premises, accidents by fire and other fortuitous causes and events excepted.”

The next important fact suppressed by Mr. Reynar is, that before preferring either of the aforesaid petitions, he had divested himself of all interest in the premises in question, save and except in a house thereon built, of the value of from two to four hundred pounds, by two several deeds of assignment, the first bearing date the 8th of April, 1833, and the second bearing date the 23d of August, of the same year, both executed before McPherson and Colleague, Notaries Public. By the first of these deeds of assignment, Mr. Reynar assigns to Messrs. Rodger, Dean & Co.; the unexpired term of a portion of these premises, with a like clause as that just given respecting improvements, &c., subject to which condition as to improvements, the said James Reynar, grants to the said Rodger, Dean & Co.—“ the right of building, erecting or making on the said premises, for the behoof, benefit, and advantage of them the said Rodger, Dean & Co., all such other works, buildings, piers and wharves, as they may see fit.” On the 14th of May, 1833, Messrs. Rodger, Dean & Co., assigned over all their interest in the leased premises to Mr. William Petry of Quebec, by deed executed before the same Notaries on that day. And lastly by the before mentioned assignment of the 23d of August, 1833, the said James Reynar assigned to the said William Petry, all the remainder of the leased premises not previously assigned to Messrs. Rodger, Dean & Co., subject to the reserve in favor of the said James Reynar, “ as well of a certain extent of ground, on which is erected and being the dwelling house now occupied by him, with the stable and cart house thereof, as of the said house, stable and cart house, with ingress and egress to the same, and the necessary space round about the said house and out-house to the end of using the same as a dwelling, stable and out-house respectively.”

The next fact which the petitioner Mr. Reynar has suppressed is, that the road across the property in question, whereby its value is alleged to have been enhanced, was improved at the expence of the Province, under an appropriation for improving the road generally from *l'ance des mères* in the Lower Town of Quebec, to Sillery, which was applied under the direction and superintendance of public commissioners, named by His Excellency the Governor in Chief.

This brings us to the consideration of the affirmative allegations of the petitioner, Mr. Reynar.—He alleges that the improvements were made by him, and prays to be maintained in the possession of them, as if he were still the proprietor thereof; whereas in fact, with the exception of the house and its appurtenances, he is not in possession of any part of these premises, and since his assignment is an utter stranger to them. The improvements themselves, it has been seen, were to go to the original lessors. The effect of the application of Mr. Reynar, if entertained, would be to oust the Ladies of the Ursuline Convent of their possession, and to convey with the soil the full property of all improvements made by the late Honorable Mr. Mure, if any, his assignor, and of all the improvements made by the assignees of Mr. Reynar, Messrs. Rodger, Dean & Co., and Mr. Petry, to him Mr. Reynar.

But if Mr. Reynar had not parted with his interest in these premises, still his application would have been inadmissible. Holding his title from the Ladies of the Ursuline Convent, he was estopped from controverting their title. He could not convert a possession which he held from them, into an adverse possession against them.—Those Ladies being in possession of the land as proprietors, under a title of a nature to transfer property, could not be ousted of them, otherwise than by a judgment of a Court of competent jurisdiction. The law, it is apprehended, respects not only naked property, but also its ordinary symbol, possession. If the strict legal title were in the crown,—which is most respectfully denied,—it would seem hardly consonant to equity to oust a *bona fide* possessor, for a valuable consideration under titles extending as far back as a century and a half, to convey these premises to a particular tenant of such *bona fide* purchaser; and this in direct contravention of the formal covenant, under which, such particular tenant was allowed to enter upon the premises.

The petitioner, Mr. Reynar, with a view doubtless of casting unmerited odium upon this proceeding does not scruple to lay before His Excellency an absolute untruth, in the assertion, that the premises in question had been oppressively and unjustly made over to a relative of the Superior of the Convent.—No relationship whatever subsists between that lady and the grantee, and if such relationship did exist, it would be altogether immaterial as a grant like the present one must be made, after a deliberation of the whole Convent formally convoked, and with the consent and approbation of the Catholic Bishop of Quebec.

The weight that is due to the other charges against these Ladies on this transaction, which the petitioner, Mr. Reynar, has permitted himself to make, do not after the foregoing statement seem to require any answer or notice.

It could only have been in consequence of mis-statements like these, on the part of Mr. Reynar, that the Attorney General could have been led to recommend, in his report of the 21st June last, upon Mr. Reynar's petition, that should His Excellency resolve upon making to Mr. Fraser, the grant either of a fee simple or of a lease in the beach lot in question, it would be just towards Mr. Reynar, that the grantee should be required to indemnify him for any improvements which he may have erected upon the property; and by a report made by a Committee of His Majesty's Executive Council, dated the 14th of July, 1834, they recommend before coming to any decision whatever, on Mr. Reynar's application, that he should be called upon, to furnish a plan and survey of the ground mentioned in his petition, shewing all the improvements of every description now existing on the property, with the names of the several occupants at the present moment, and a valuation of such improvements respectively, the whole to be done at his expence, under the direction of the Surveyor General, and of the Inspector General of the King's Domain.

This order evidently proceeds upon the opinion which the papers of Mr. Reynar were calculated to produce, that all the improvements upon these lots were made by him. If the Council had been aware of the facts as they really stood, the reference could not have been in the above general form, but would have been limited to the improvements made by Mr. Reynar, whereof he was in possession. Nor so far as Mr. Reynar's claim is concerned could there have been any reference at all as to improvements, if the Council had been apprised by him that the lease which he held was an emphyteotic lease, by which from its nature all improvements made upon the leased premises remain to the lessor upon the termination of the lease; such improvements being a part of the consideration of the lease, and made with reference to its duration; and it could be shewn in point of fact, if it were deemed necessary, that from the low rate of the money rent reserved by the original lease to Mr. Mure, these improvements form a very moderate consideration for the lease in question, and that Mr. Reynar will be fully indemnified for the monies expended by himself with a large profit besides to him on the transaction.

Having thus, as it is hoped, shewn that no claim equitable or legal has been set up by Mr. Reynar to interfere with the petition of Mr. Fraser, the question comes to be whether a commutation shall be had and a fresh grant be made unto him, comprising the whole of the aforesaid lot down to low water mark, subject to the road reserved for and now used by the public over the premises. The interval of land in controversy cannot be made available either for private profit or public convenience in the hands of any other person than the riparian proprietor, Mr. Fraser, whose prayer seems entitled to peculiar favor from the long *bona fide* possession had of the premises by the persons from whom he derives title, joined with his own actual possession, all serving to place his claim at an immeasurable distance from any claim of a mere stranger; and whilst His Majesty's Attorney General and the Inspector General of the King's Domain entertain opinions adverse to the strict right of the petitioner to the whole of the premises claimed by him, they studiously guard against the expression of an opinion adverse to those equitable rights to a grant of the whole lot, which even with their views of strict legal right it is obvious that they are themselves sensible of.

In conclusion, the Ladies of the Ursuline Convent of Quebec solicit for their grantee the application of the rule, which under analogous circumstances has been applied to the recent commutation of the tenure and regrant of Wolfe's Cove, immediately adjoining the premises here in question on the one side, and which rule had been previously applied to the grant made to John Saxton Campbell, deriving title from the Hotel Dieu of Quebec, to the lot and beach adjoining to the aforesaid premises on the other side. The justice and liberality of His Majesty's Government will relieve them, if this rule be extened to their grantee, from the vexatious litigation which must otherwise arise, of a nature so little in accordance with their duties, habits and feelings.

Dated the 18th of August, 1834.

STUART & BLACK,
For the Memorialists.

Copy of a report made by the Inspector General of the King's Domain to His Excellency the Governor in Chief, in a letter to Lieutenant Colonel Craig, Secretary to His Excellency, respecting the title of Mr. Fraser.

Quebec, 3d November, 1832.

SIR,

In obedience to the order of reference of His Excellency the Governor in Chief, bearing date the 8th day of October last, and made upon the Petition of John Fraser, Esquire, praying for a commutation of tenure of a certain lot of land and beach in the neighbourhood of the City of Quebec, at the place called *l'ance des mères*, within the censive of His Majesty's Domain, and in the said Petition particularly described, and for a fresh grant of the same from His Majesty in free and common soccage. I have the honor to report to you for the information of His Excellency, that I have examined the titles produced by the Petitioner in support of his Petition, and also searched for and examined as far as has been in my power, the titles therein referred to, and the terriers and other ancient documents connected with the property in question, from all which it appears that the Ursuline Nuns, from whom the Petitioner derives title under a deed of sale executed before E. B. Lindsay, and Colleague, Notaries, on the 18th April, 1832, never themselves had any legal title to that part of the said lot of land which lies between high and low water mark of the River St. Lawrence, nor for the distance of from 15 to 20 toises above a road which was originally reserved in most of the titles of concession granted by the French Government, along that part of the River, in as much as the several persons from whom the Ursuline Nuns acquired the property, of which the lot in question forms the front, by their original titles were bounded towards the River St. Lawrence by a line at the aforesaid distance of from 15 to 20 toises from the road reserved along the River. This being the case, the Petitioner has necessarily failed in establishing a title to so much of the said lot of land as lies between high and low water mark of the River St. Lawrence, and for the breadth of a road and 15 or 20 toises more towards the ridge of the Cape, which embraces by far the greatest and most valuable portion of the lot.

It appears, however, by a deed produced by Mr. Fraser, that the Ursuline Nuns by an act passed before Planté, and his Colleague, Notaries, on the 20th September, 1807, leased this lot as described in Mr. Fraser's acquisition and as belonging to them, to the late Honorable John Mure, who had then been in possession of it as tenant under them for the previous five years, for thirty years more, which is the only act of possession I am aware of, and this right of possession seems to me to have been originally founded upon a right of fishing in front of their lots, which the greater part of the proprietors along that portion of the St. Lawrence obtained from M. DeLauzon, the then Governor, about the year 1651, and to which right the Ursuline Nuns by their subsequent acquisitions may be considered to have succeeded. It also appears that in the description of the lots in the deeds by which the Nuns acquired this property they are bounded in general terms by the River St. Lawrence.

Under these circumstances it will be for His Excellency to determine how far the prayer of the Petitioner can be granted in the shape in which it presents itself now, in respect to so much of the said lot of land as he has failed to shew a sufficient title to as above mentioned, or whether or not His Excellency will be pleased to make the Petitioner an original grant of that part as being in the possession of the whole as a *bona fide* purchaser. To ascertain however the true bearing of this case, it would be necessary to have a plan shewing the line of high water mark of the River St. Lawrence along the whole length of this lot, and the distance from such line to within three feet from the ridge of the Cape, (Mr. Fraser's boundary towards the north.)

I have further to report that the sum of ninety one pounds thirteen shillings and four pence currency, is due to the Crown, upon the purchase made by Mr. Fraser, subject however to a reduction according to the estimated value of such portion of the property as may be found not to have belonged to the Nuns.

Upon the payment of such sum as when estimated shall be found due, no other impediment will exist to the granting the prayer of this Petition, in as far as respects the portion of the said lot, which really belonged to the Nuns, at the time of the purchase made by the Petitioner, subject to such limitations, conditions and restrictions, as to His Majesty, may seem meet; and as to the remainder it wholly depends upon the pleasure of His Excellency, as above stated.

The whole nevertheless humbly submitted by

Your obedient and faithful servant,

F. W. PRIMROSE,

I. G. D. R.

Copy of a report made by Charles Richard Ogden, Esquire, Attorney General of Lower Canada, in a letter to Lieutenant Colonel Craig, Secretary to His Excellency.

Quebec, 19th November, 1832.

SIR,

In obedience to the commands of His Excellency the Governor in Chief, I have examined the title given by the Ursuline Nuns, to Mr. John Fraser, of a lot at *l'ance des mères*, of 9½ arpents in front, and extending from low water mark to within three feet of the summit of the Cape, situate within His Majesty's Seignior, as to which land Mr. Fraser has prayed a commutation of tenure, and I have now the honor of reporting my opinion on the same for His Excellency's information.

By the researches of the Inspector General of the King's Domain, into ancient records and titles, it has been discovered that the Nuns had no title to the interval between high and low water mark in front of the said land, and that by the original titles of concession of the beach in that part of the Saint Lawrence, there was a reservation of a road and of a space of 15 to 20 toises beyond it, or rather the lots in that quarter were bounded by a line drawn at a distance of 15 to 20 toises from the road, reserved along the margin of the river. I conceive therefore, that Mr. Fraser under his title, can only claim a commutation of tenure for that part of the land which lies beyond the said line, drawn at a distance of 15 to 20 toises from the said road, and as to the remainder of the soil comprised in the conveyance of the Nuns to Mr. Fraser; His Majesty's Government may exercise its discretion, in granting it to him in free and common soccage, with a reservation of a road for the convenience of the public, and for such considerations as may seem just and equitable.

I have the honor, to be, &c.

C. R. OGDEN,
Sol. Genl.

Lt. Colonel Craig,
Secretary,
&c. &c. &c.

Report of a case decided in the Provincial Court of Appeals, in the Term of November 1830.

PRESENT. :—

The Honorable

CHIEF JUSTICE REID.

WILLIAM SMITH,

CHARLES DELERY,

JOHN STEWART,

ANDREW WILLIAM COCHRAN. } Esquires.

Fournier, Appellant, and Oliva, Respondent.

This was an action by the Appellant, Plaintiff in the Court of King's Bench, against the Respondent *en complainte*, for having trespassed on the Plaintiff's land, and erected on the front thereof adjoining the River *Vase*, a certain fence, to the damage of the Plaintiff ten pounds, with the usual conclusion. The Respondent pleaded the general issue. It appeared, that to a certain extent the river, bounding the front of the Appellant's land, was a navigable river, and that in the place where the fence was erected, the ordinary tides came nearly to the bottom of the pickets, but that the highest tides rose nearly to the top of the pickets—that the Appellant and his predecessors had, for 30 years and upwards, been in the possession of the land where this fence was erected, and had usually cut hay upon it. The Court of King's Bench dismissed the action, considering the place where the fence was erected to be public property, in which the Appellant could have no right of possession to entitle him to maintain his action. The Chief Justice in pronouncing judgment, stated that the action was well brought in the Court below, and that the Plaintiff was entitled to judgment. That the banks of navigable rivers belong to the person whose lands adjoin those rivers, subject, however, to the servitude in favor of all His Majesty's subjects, of free communication with the River for all purposes of public utility. That by the Roman Law the banks of navigable Rivers belonged to the proprietors of lands adjoining such Rivers; and previous to the Ordinance of 1669 no Statutory Law, in France, to the contrary could be found. It had been maintained by some writers,—treating of the construction to be given to this Ordinance,—that as a road of twenty-four feet was thereby reserved along the banks of navigable Rivers for public purpose, the bank of the River was, to this extent, to be considered as vested in the Crown and as public property. But this opinion had been controverted by so many other writers of greater weight, and upon such strong grounds, that the Court could not hesitate in rejecting it, and therefore the Court reversed the judgment of the Court below and entered judgment for the Appellant.

MEMORIAL

OF

THE LADIES OF THE URSULINE CONVENT OF QUEBEC

TO

HIS EXCELLENCY THE GOVERNOR IN CHIEF.

To His Excellency the Right Honorable MATTHEW LORD AYLMER, Knight, Commander of the Most Honorable Military Order of the Bath, Captain, General and Commander in Chief, in and over the Province of Lower Canada, &c. &c. &c.

The Memorial of the Ursuline Nuns at Quebec, for and on behalf of their Religious House.

HUMBLY SHEWETH,

That your Memorialists charged with the administration of the property belonging to the Religious House of the Ursuline Nuns at Quebec, are impelled by a sense of duty to lay before your Excellency this their humble Memorial, in full and entire reliance upon your Excellency's justice.

That for many years past your Memorialists have been in possession of a lot of land and beach at *l'ance des mères*, near the City of Quebec, as forming part and parcel of a larger tract extending from the main road beyond St. Lewis Gate to the River St. Lawrence, described as follows, that is to say, all that lot of land and beach from low water mark to within nine feet from the ridge of the Cape below that part of the ridge in which cattle may pasture, consisting of nine arpents and a half or thereabouts in front, between the land of the Honorable Henry Caldwell (now represented by Frederick Grant and John Greenshields) on one side, and that of the Hotel Dieu (now represented by John Saxton Campbell, Esquire,) on the other.

That so far back as the year 1802, the beach lots in the neighbourhood of Quebec becoming available for the then commencing trade in timber, your Memorialists leased the said lot of land and beach to the late Honorable John Mure, in his lifetime of the City of Quebec, Merchant, and in the year 1807, executed a formal lease of the same to the said John Mure for a period of thirty years, an authentic copy of which lease accompanies this memorial.

That the said late John Mure and his representatives have remained in the undisturbed use of the said lot of land and beach down to this time.

That your Memorialists being so in the quiet and undisturbed possession of the said lot of land and beach, did for a valuable consideration sell and assign the same to John Fraser, Esquire, by deed executed before E. B. Lindsay, and Colleague, Notaries Public, on the 18th of April, 1832; of which deed an authentic copy in like manner accompanies this Memorial.

That the aforesaid grantee of your Memorialists, the said John Fraser, being desirous of making improvements upon the said lot of land and beach, and laying out monies thereupon, in a manner conducive to the improvement of this port, by his humble Petition bearing date the 28th day of September, 1832, prayed a commutation of the tenure of the said lot of land and beach into the Free and Common Soccage Tenure, to the end that the improvements so to be made by him upon the said premises, at considerable expense, might not, upon subsequent transfers thereof, be subject to heavy mutation fines and other seigniorial dues.

That upon the said Petition being referred to the Attorney General and the Inspector General of his Majesty's Domain, the latter officer having examined the original archives, found that your Memorialists had been in the *bona fide* possession of the said premises as hereinbefore stated, and that the right of possession, so far as the afore-said beach was concerned, seemed to him to have been originally founded upon a right of fishing in front of these lots, which the greater part of the proprietors along that portion of the St. Lawrence, obtained from Monsr. de Lauzon, the then Governor, about the year 1651, and that in the description of the lots in the deeds by which this property was acquired by the House of your Memorialists they are bounded in general terms by the River St. Lawrence.

That adopting the aforesaid view of the Inspector General of his Majesty's Domain, his Majesty's Attorney General did not feel himself authorized to accept a surrender of the aforesaid beach lot, leaving it to his Majesty's Government to exercise its discretion in granting the same to the said John Fraser, in Free and Common Soccage, with the reservation of a road for the convenience of the public, and for such consideration as might seem just and equitable.

That the said John Fraser having thereupon applied for a grant of the said beach lot in Free and Common Soccage, the prayer of the said John Fraser was granted only in so far as respects so much of the property acquired by him as aforesaid, as it was conceived that the House of your Memorialists was entitled to dispose of to him; but as to the remainder thereof, viz., a tract of ground and beach between low-water mark and a line drawn at the distance of from fifteen to twenty toises above the road upon a breadth of nine acres, the Committee of his Majesty's Executive Council reported that they could not recommend that a grant thereof should be made to the said John Fraser.

That upon receiving communication of the last mentioned proceedings, from the aforesaid John Fraser, and being required by him, to carry into effect the aforesaid grant, so made unto him by your Memorialist as aforesaid, your Memorialists felt it their duty, to examine the archives and records of their house, with a view of ascertaining how far their aforesaid long public possession had been sanctioned by anterior titles; and your Memorialists have been led to the conclusion, that if His Majesty's Government had been put into possession, not only of the fact of the aforesaid long possession of the house of your memorialists, but also of the ancient titles and documents, upon which the possession of your Memorialists was founded, His Majesty's Government would have become satisfied of the justice of the title of your Memorialists, as well to the aforesaid lands and beach lot, lying below the aforesaid road, as to those above the same.

Your Memorialists pray leave in consequence to supply the omission in this behalf made by their aforesaid grantee, the said John Fraser, and respectfully to lay before your Excellency, their titles to the land and beach lot in question.

Your Memorialists would premise that the original grantees of the premises in question, derived title not directly from His Most Christian Majesty, but from the Company of the one hundred associates, to whom His Most Christian Majesty, by certain articles granted to them, by the Cardinal de Richelieu, on the 29th of April, 1627, had granted the territories and Country of New France or Canada, in whose hands the said country remained down to the surrender thereof unto His Most Christian Majesty, made by the said company on the 24th of February, 1663; and it is believed that the registers of grants within the Colony, either do not extend beyond the period of the aforesaid surrender, and the consequent establishment of the Royal Government of His Most Christian Majesty; or, if they embrace any of the acts or proceedings of the said company, the same are in an imperfect state and condition.

That previous to the cession of this country, to the Crown of Great Britain, in the year 1763, to wit: in the year 1686, the Ursuline Nunnery at Quebec took fire, and many of the papers and documents of the house were, as your Memorialists have reason to believe, then lost and destroyed, and in confirmation of this fact, your Memorialists pray leave to lay before your Excellency, an authentic copy of the entry made in the journals of their said house, at the period of the said conflagration.

That notwithstanding this untoward circumstance, your Memorialists have it in their power to refer to titles to the land and beach in question, as far back as the years 1668, 1671, 1675, 1678, and 1682, which coupled, as in this instance, with long actual possession, —extending to these remote periods,—your Memorialists humbly conceive, confer a higher and better title than is held for many other lands in this Province, and the disturbance of which would tend materially to unsettle property, and the fortunes of very many families within this Province.

That for the better understanding of the title deeds, the general bearing and purport whereof your Memorialists are now proceeding to state, they beg leave to subjoin a sketch or figurative plan of the premises to which the said titles respectively apply.

That the Lot No. 1, in the said plan immediately adjoining the lot of land and beach commonly known by the name of Wolfe's Cove, under a title deduced from the late Honorable Henry Caldwell, now held by the aforesaid Frederick Grant and John Greenshields, is held by your Memorialists under a deed of sale to them made on the 25th day of June, 1682, before Duquet, Royal Notary and witnesses, by Jean Lemire, and the lot of land therein

sold and assigned over to them is described as being of "un arpent et demi de terre de front sur le grand Chemin qui va de Québec au Cap Rouge, sur la profondeur qui se rencontre depuis le Chemin jusqu'au *Fleuve St. Laurent* avec la Pêche qui est au devant, et généralement tout ce que en depend, et en joignant la dite terre d'un côté à Monsieur Charles Le Gardeur Ecuier, Sieur de Lilly, Conseiller au Conseil Souverain de ce Pays, et de l'autre côté les dites Dames, d'un bout le *Fleuve St. Laurent* et de l'autre le dit Chemin," which said lot of land as appears by the said deed of sale appertained to the said Jean Lemire, under and in virtue of a sale to him thereof made by Nicolas Juchereau Sieur de St. Denis, as appeared by a certain deed of purchase bearing date the 5th of July 1654, acknowledged before Mtre. Louis Roux, Esquire, Sieur de Villeray, Councillor in the Sovereign Council, then Notary, on the 22d August, 1655, to which said Sieur de St. Denis the said lot of land had been given by his father, Jean Juchereau Sieur de Mauvo, by deed passed before Audouart Lorie, Notary, the last day of November, in the year 1650, being within the *censive* of his Majesty's Domain of Quebec. To this deed of sale is affixed a receipt by the Receiver of his Majesty's Domain in favor of your Memorialists, for the sum of one hundred and twenty-four livres, eight sols and eight deniers, as being the amount due to the King's Domain by reason of the aforesaid purchase, which said receipt bears date the 31st March, 1685.

That the lot No. 2 immediately adjoining to the preceding lot is held by your Memorialists, under a deed of sale to them made on the 12th day of March, 1671, before Becquet, Royal Notary, and witnesses, by Denis Duquet and Catherine Gauthier, his wife, and the lot of land therein sold and assigned over to them, by the advice and consent of the Right Reverend François de Laval, Bishop of Petrea, Apostolical Vicar of this Country and named by the King first Bishop of New France, is described as being "un habitation contenant trente arpens de terre sise en la Grande Allée, paroisse de Notre Dame de Quebec, le tout ainsi qu'il se contient et comporte et circonstances et dependances, sans aucune chose en reserver n'y retenir, borné d'un côté à la Demoiselle Veuve de feu Guillaume Gauthier, ou ses représentans, d'autre côté de Sieur Jean Lemire, (to wit, the lot hereinbefore described) d'un bout le *Fleuve St. Laurent*, et d'autre la dite Grande Allée," which said lot of land as appears by the said deed of sale appertained to the said vendors under and in virtue of a grant thereof unto them made by Monsieur de Montmagny, then Governor of this Country, on this 15th day of September, 1645, ratified by the Gentleman of the West-India Company, to wit, the aforesaid Company of the one hundred associates, Seigniors of this Country, under date of the 29th day of March, 1649, signed and sealed by Monsieur Daillebout, then Governor of this Country, under date of the 13th day of June, 1661. The aforesaid original grants of this last mentioned lot of ground, appear by the last mentioned deed to have been delivered over to the purchasers at the time of the sale but are not now in their possession. Their absence, however, is abundantly supplied by a formal ratification and approval of this sale by the said Denis Duquet, on the part of Monsieur Jean Talon, Councillor of the King in his Privy Council and Council of State, Intendant of Justice Police and Finance of New France, of the Island of Newfoundland, Acadia, and other Countries of Northern France, bearing date the 25th day of October, 1672.

That the lot No. 3, immediately adjoining to the preceding lot has been held by your Memorialists as part and parcel of the extent of ground and beach consisting as well of the aforesaid Nos. 1 and 2 as of the following Nos. 4, 5, and 6, and in relation to it your Memorialists have not been able to discover the title thereof to them, and rest their claim thereto, upon their long possession as hereinafter more particularly shewn, and upon the presumption arising from the local position of this lot in the centre of lots to which the title of your Memorialists is indisputable, and without any adverse title or possession having been at any time set up by any other individuals as deriving title from the original grantees.

That the lot No. 4, immediately adjoining the last mentioned lot, is held by your Memorialists under a deed of sale to them made on the 28th of April, 1675, before Becquet, Royal Notary, and witnesses, by Guillaume Brassard, and Catherine Louvet, his wife, Michel Louis Fontaine and Magdelaine Brassard, his wife, Jacques Hedouin and Jeane Brassard, his wife Jean Lemelin and Marguerite Brassard, his wife, Pierre Richer, as husband of Dorothee Brassard, his wife, as well in their own names as taking burthen for Antoine, Jean Baptiste, and Louis Brassard, brothers of the said Guillaume, Magdelaine, Jeane, Marguerite and Dorothee Brassard, all children and heirs of the then deceased Antoine Brassard and Françoise Emery, his wife: and the lot of land therein sold and assigned over to your Memorialists is described as being "vingt-cinq arpens de terre ou environ, en nature de labour et fredoches, sise au lieu de la Grande Allée, faisant partie de quarante arpens de terre donnés et concédés au dit défunt Antoine Brassard par feu Monsieur Chevalier de Montmagny lors Gouverneur et Lieutenant pour le Roy en ce pays par titre datté du quatorze Février, mil six cent quarante-sept, bornée d'un côté le Sieur Noel Pinguet," (to wit, the lot hereinafter mentioned,) "d'aure côté les héritiers de défunt Le Sieur Gauthier La Chesnaye." (to wit, the lot hereinbefore last mentioned,) "d'un bout par devant

“ sur la Grande Allée, et d'autre bout sur le Fleuve St. Laurent.” This act is followed by a deed of ratification on the part of the above named Antoine Brassard, son and one of the co-heirs of the deceased Antoine Brassard and Françoise Emery, his wife, executed before the same Notary and witnesses, on the 19th of September, 1675, to which is subjoined a certificate on the part of the Notary that the whole purchase-money had been paid. Also by another deed of acquittance and ratification bearing date on the last day of February 1677, by the aforesaid Louis Brassard another of the children and co-heirs of the said deceased Antoine Brassard and Françoise Emery, his wife. Also by a deed of donation bearing date the 19th of October, 1668, from the aforesaid Antoine Brassard and Françoise Emery, in their lifetime, unto Louis Fontaine and Magdelaine Brassard, his wife two of the above named vendors of six arpents of land therein stated to form part of the forty arpents granted by Monsieur de Montmagny to Antoine Brassard as above mentioned.

That the lot No. 5, immediately adjoining the last mentioned lot, is held by your Memorialists under a deed of sale to them made on the 20th day of November, 1678, before Becquet, Royal Notary, and witnesses, by Noel Pinguet and Magdelaine Dupont, his wife, and the lot of land therein sold and assigned over to your Memorialists is described as “ une pièce de terre située au lieu dit la Grande Allée, contenant un arpent et demi de front sur la dite Grande Allée; et de douze arpens plus ou moins de profondeur, joignant d'un côté les dites Dames Religieuses a cause de leur acquet d'Antoine Brassard, (to wit the lot hereinbefore last mentioned,) d'autre côté Monsieur Dupont, Conseiller, et comme representant Germain Normand, d'un bout la dite Grande Allée, et d'autre le Fleuve St. Laurent.”

That the remainder of the said lot of ground appears to have been held by your Memorialists under a deed of sale to them made on the 11th day of October, 1668, before Becquet, Royal Notary, and witnesses, by Pierre Mâsse and Marie Pinet, his wife, wherein it is described as a lot of land “ sise au lieu dit la Grande Allée contenant environ dix arpens de terre, en labour sur un arpent de front, sur la quelle il y a une vieille maison bornée d'un côté Pierre Soumandre, d'autre côté les representans Claude Figéret, d'un bout sur la dite Grande Allée, et d'autre côté sur le Grand Fleuve St. Laurent :” which said lot of land as appears by the said deed of sale appertained to the said vendor, under and in virtue of a grant thereof unto him made by Messire Pierre de Voyer Chevallier Vicompte d'Argenson then Governor and Lieutenant General for the King in this country, on the 15th of October, 1658. To this deed of sale is subjoined a formal ratification and approval thereof by Monsieur Jean Talon, Intendant, &c. bearing date the 25th of October, 1672.

There is also a grant in counter exchange by the Ladies of the Hotel Dieu at Quebec, of a lot of land of one arpent in front, bounded at one extremity by the Grande Allée, and at the other by the River St. Lawrence, bearing date the 21st day of May, 1790, and executed before Decheneau and colleague, notaries.

Your Memorialists trust that they have succeeded in establishing the precise locality of the several beach lots held by them under the aforesaid several deeds of sale, but if any doubt or diversity of opinion could arise upon this head, owing to the lapse of considerably more than a century and a half since these purchases were made, and the death of several generations of possessors since that time, there can be no doubt as to the whole beach lot of nine arpents and a half in front now in question, being covered by these ancient titles, and held by your Memorialists under them. So too, under any hypothesis it must be admitted that the Fee Simple of this beach lot had gone out of His Most Christian Majesty, and could not now be claimed by our Sovereign Lord the King, as seised of all the lands whereof the Crown of France was seised previous to and at the time of the cession of this country. Under the benign rule of his Majesty's just and paternal Government, the foregoing long possession might be entitled to peculiar consideration, in as much as by the constitutional law of the United Kingdom of Great Britain and Ireland, no subjects of his Majesty can be disturbed by the Crown in a possession of land exceeding sixty years, even without any title whatsoever or color of title.

That if it had not been in the power of your Memorialists to produce the aforesaid original titles, the aforesaid long possession of your Memorialists, joined to various public acts recognizing that possession, would of themselves have created legal presumption of title, and would have entitled your Memorialists to be maintained in the possession of such beach land and premises.

Your Memorialists would accordingly here beg leave respectfully to solicit your Excellency's attention to these public acts of possession which they proceed now to specify.

The first of these public acts in the order of time, is a declaration made to Jacques Duchenu, Knight Seigneur of la Doussinière and Dambrant, Councillor of the King in his

Privy Council, and Council of State, Intendant of Justice, Police and Finance in Canada, Newfoundland and the other countries of Northern France, bearing date the 20th May, 1666, (being only three years after the establishment of the Royal Government) by the Attorney of your Memorialists at the *Papier Terrier* of the King's Domain. In this declaration we find mention made of the above mentioned deed of purchase from Denis Duquet and his wife, and of the confirmation thereof by the Company of the West Indies, and of the *amortissement* given by that company of the land purchased as aforesaid from the heirs of Antoine Brassard and his wife. It has already been mentioned that the foregoing purchases from Denis Duquet and from Pierre Mâsse, had been previously ratified and confirmed by Monsieur Talon, Intendant, on the 25th day of October, 1672, respectively.

The second of these public acts are letters of *amortissement* given at Fontainebleau, the 7th day of June, 1680, whereby His Most Christian Majesty amortized the said purchases from the heirs Brassard and from Noel Pinguet and Magdelaine Dupont, his wife, exempting the said lands from all dues and duties whatsoever.

The third public act of possession of these premises on the part of your Memorialists is found in the before-mentioned receipt of the Receiver of His Most Christian Majesty's Domain, bearing date the 31st March, 1685, for the mutation fine due upon the aforesaid purchase by your Memorialists' House made from Jean Lemire, and in the before-mentioned acts of ratification by Talon, Intendant.

Another public act of possession is a declaration made to Honoré Michel, Esquire, Seigneur of La Rouvillière, Commissioner of Marine and *Ordonnateur*, during the absence of Mr. Giles Hocquart, Intendant of Justice, Police and Finance in Canada, bearing date 28th of May, 1787; by the Attorney of your Memorialists at the *Papier Terrier* of the King's Domain. In which declaration the lands in question are described as follows:—" Une autre pièce de terre de dix arpens de front, sur dix ou environ de profondeur, tenant par devant et d'un bout au nord-ouest au dit chemin du Roi de la Grande Allée, et par derrière au sud-est au bord du *Fleuve St. Laurent*, d'un côté au nord-est aux dites Religieuses de l'Hotel Dieu, et d'autre au sud-ouest au terre de Saint Michel, appartenante au Séminaire de Québec." To-wit, the lot of land acquired by Messrs. Grant and Greenshields from the late Hon. Hy. Caldwell, representing the Seminary of Quebec.

The fourth public act of possession on the part of your Memorialists is found in the declaration by them made to the Honorable Hugh Finlay, Esquire, Chairman of the Committee of the Executive Council of this Province, directed by an order in Council of His Excellency Lord Dorchester, of the 22d of February, 1790, to report an exact list of the Parishes, Seigniories, Fiefs, and *Rotures* held of his Majesty in this Province. The lands in question are in that solemn document, bearing date the 15th day of June, 1790, thus described:—" Autre pièce de terre de dix arpens cinq perches de front, sur environ neuf arpens de profondeur, tenant d'un bout au chemin de la Grande Allée, d'autre bout le *Fleuve St. Laurent*, d'un côté par l'Honorable Henry Caldwell, d'autre côté par le nord-est les terres des Dames Hospitalières de Quebec, laquelle pièce de terre ne devoit avoir que neuf arpens cinq perches de front; et se trouve présentement d'un arpent de plus par un échange d'un arpent de front sur même profondeur, que nous avions ci-devant enclavé dans le milieu du terrain des Dames Hospitalières de Quebec." It is worthy of remark that no objection appears to have been taken thereto on the part of his Majesty's Government. The identity of the lot thus described in this declaration with the lot here in question cannot be doubted, in as much as it appears to be bounded by lands belonging to the late Honorable Henry Caldwell, now represented in the upper part of these premises by our Sovereign Lord the King, as the purchaser of Marchmont, and at the lower extremity thereof on the River St. Lawrence, by Messrs. Grant and Greenshields, deriving title to the premises belonging to them there, and commonly known by the name of Wolfe's Cove, through the aforesaid late Henry Caldwell: and on the other side by the Hotel Dieu of Quebec, and now represented by John Saxton Campbell, Esquire who derives his title from the said Hotel Dieu of Quebec.

The fifth and next public act of possession is an emphyteotic lease made by your Memorialists to His Majesty, bearing date the 23d of February, 1803, for a period of ninety-nine years, for a certain portion of the lands held by them as aforesaid on the Grande Allée, being so much of the said lands as lie between the said Grande Allée and the Cime du Cap, by the whole breadth thereof on the said Grande Allée, to-wit, by the breadth of nine arpents and a half.

The sixth and last public act of possession on the part of your Memorialists is to be found in a verbal lease from your Memorialists to the Honorable John Murc, from the year 1802 to the year 1807, and in the formal written lease in the last mentioned year for thirty years,

executed to him by your Memorialists of such parts of the said lands as were not included in the aforesaid emphyteotic lease to His Majesty, of the 23d day of February, 1803, which said remainder of the said lands is now in the actual possession of your Memorialists, by reason of the occupation thereof by the sub-lessees of the said late Honorable John Mure, under the aforesaid lease and so made thereof for the space of thirty years by your Memorialists to the said late John Mure as aforesaid.

That it being established by the foregoing titles and possession of your Memorialists that they are bounded by the River St. Lawrence, your Memorialists are advised that according to the opinion of the best judicial writers, the riparian proprietor whose natural boundary is a river, wherein the tide ebbs and flows, has the land down to the low water mark of such river.

That as well the lands lying between high water and low water mark, as the deep waters in front of the latter, can only be beneficially used for wharves by the riparian proprietor; and it would seem contrary to equity and justice, as your Memorialists are advised it would be against law, for any stranger or third person to interpose wharves or other erections between the land of the riparian proprietor and the waters of the river which constitute to him a natural boundary.

That the reasonableness of conferring a preference upon the riparian proprietor in relation to the lands and water in front of his property, for the purpose of erecting thereon wharves, has at all times been recognized by His Majesty's Government in this Province, and without multiplying examples unnecessarily, will be found to have been latterly acted upon in the grants made into deep water to the riparian neighbours of your Memorialists, to wit, to Frederick Grant and John Greenshields on the one side, and to John Saxton Campbell, Esquire, on the other side, of the beach lot and premises of your Memorialists here in question.

That your Memorialists have already a vested right in the waters of the St. Lawrence in front of the said boundary, by reason of the grant of a fishery unto them made, so far back as the year 1651, by Monsieur DeLauzon, then Governor, &c. which said right of fishing seems to have been considered an appurtenance to the beach lot and premises in question. It is material to observe that upon the present occasion the lands in question are held by your Memorialists, not in Fief and Seignior, but in the *censive* of His Majesty's Domain, and that any investment of capital thereupon, in the erection of wharves and stores or otherwise, would go not to the enriching of your Memorialists but of His Majesty's Domain, and that if His Majesty saw fit by commutting the tenure of the said lands, to waive the pecuniary emoluments hereafter to accrue upon mutations thereof, such extinction of feudal dues would be so made by His Majesty for the valuable considerations by him appointed, and payable to the Receiver of the Territorial Revenue of His Majesty.

It remains only for your Memorialists to add, that the erection of wharves on the premises in question, would be advantageous to the Trade and Navigation of this Port, as may be seen upon reference to the report of the Trinity House of Quebec, upon the Petition of the aforesaid John Fraser, your Memorialists' grantee.

Wherefore your Memorialists humbly pray that your Excellency will be graciously pleased to take their aforesaid case into your consideration, and to maintain the House to which they belong in the possession of a property acquired by them, for a valuable consideration, at the earliest period of the history of this Country, and which they have since publicly held undisturbed; and thereupon that the validity of the grant of these premises made by them unto the said John Fraser be recognized, and the said John Fraser received by the proper authorities as a Tenant of his Majesty within the *Censive* of his Majesty's Domain, for and in respect of the beach lot aforesaid: and your Memorialists, as in duty bound, will ever pray.

SR. MARIE LSE. McLOUGHLIN, de St. Henry, Supre.
 SR. ANGELOUQUE DE FERERIER, de Ste. Marie, Assiste.
 SR. MARIE THERESE ONEILLE, de Ste. Catherine, Zelatrice.
 SR. ADELAIDE PLANTE, de St. Gabriel, Depre.
 SR. GENVIEVE JULIE BERTHELOT, de St. Joseph, Discte.
 SR. MARIE LOUISE ONEILLE, de Ste. Gertrude, Discte.
 SR. ISABELLA McDONELL, de St. André, Discte.

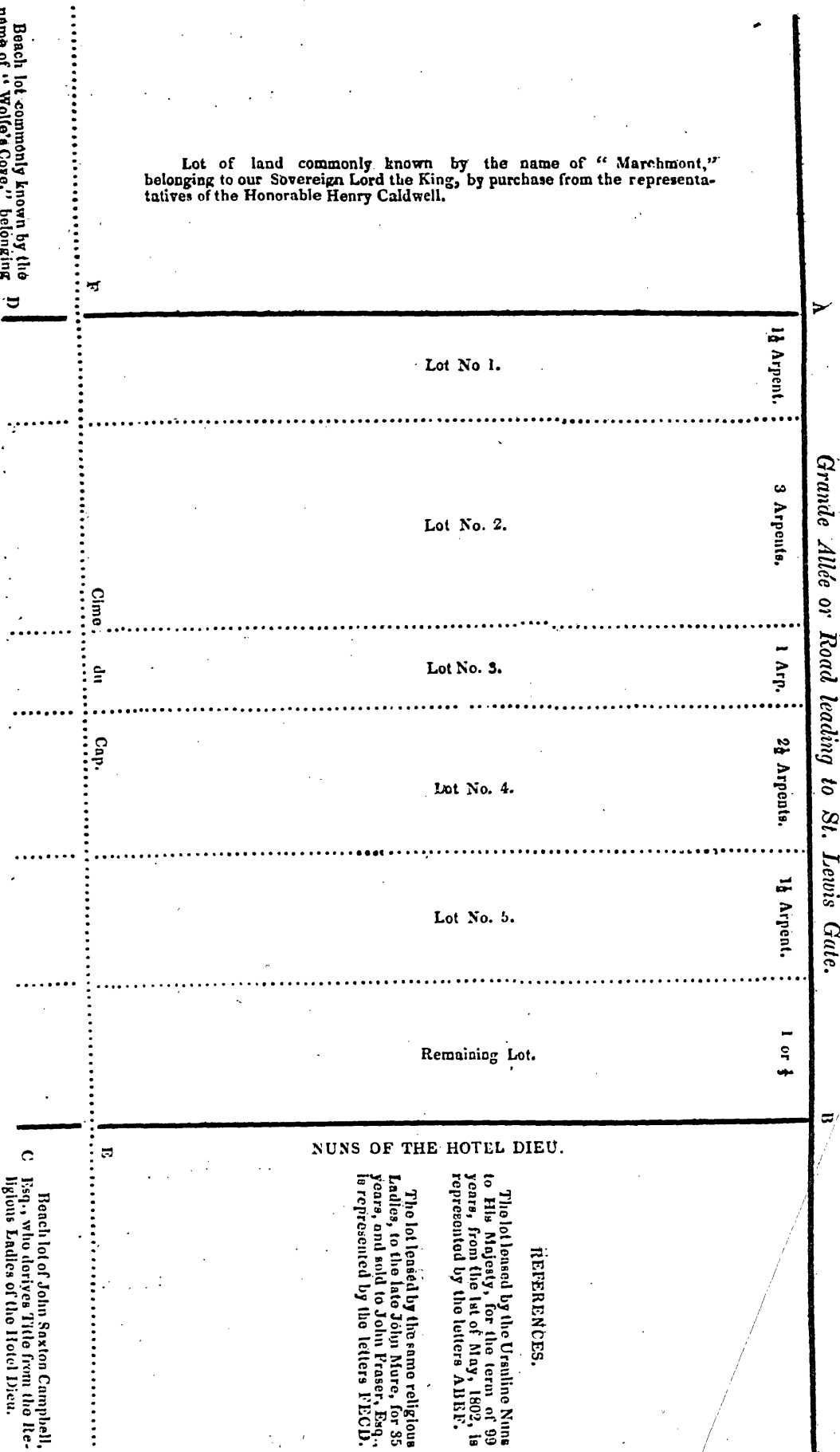
January, 1834.

Copy of PLAN annexed to the Memorial of the Ladies of the Ursuline Convent.

Beach lot commonly known by the name of "Wolfe & Cove," belonging to Grant and Greenfield, who derive Title through the late Hon. Henry Caldwell.

Lot of land commonly known by the name of "Marchmont," belonging to our Sovereign Lord the King, by purchase from the representatives of the Honorable Henry Caldwell.

RIVER ST. LAWRENCE.



Copy of a letter to Lieutenant Colonel Craig, Secretary to His Excellency, requesting communication of Mr. James Reynar's Petition, and of the Attorney General's report.

Quebec, 22d July, 1834.

SIR,

It having only come to our knowledge after the report made by a Committee of the Honorable the Executive Council of the Province, that a claim adverse to that of the Ursuline Nuns, and of Mr. Fraser, their grantee, on the part of one James Reynar, had been preferred to His Excellency the Governor in Chief, and referred with that of the Nuns to the Executive Council; and finding from the report of the Committee of the Council, that this claim is still pending, and may have influenced the Committee of the Council in the determination to which they came; we beg leave to request communication of this adverse petition of Mr. Reynar, and of the documents whereby it is attempted to be supported.

We are the more disposed to regret, that the Committee of the Council should have seen fit to proceed upon a claim adverse to that of the Ursuline Nuns referred to them, without affording any communication of such claim to the parties to be affected thereby, as it would have been easy for us to have shewn, that the occupation of Mr. Reynar of the premises in question is an occupation founded on the title of the Ursuline Nuns as their sub-lessee: and as it is a principle of law and of reason, that the lessee or sub-lessee shall not be received to controvert the title of the person from whom he holds, and shall not be allowed to intervert his possession, and change it into a possession adverse to the possession of the lessor. It may be proper further to remark, as excluding all possible equitable claim on the part of Mr. Reynar, that the lease whereof he became possessed as assignee is an emphyteotic lease, or in the nature of a building lease; one of the principal considerations whereof is, that the improvements made upon the leased premises during the lease, shall enure to the benefit of the lessor—Accordingly upon the determination of the lease granted by the Ursuline Nuns, on the 20th day of September, 1807, which will happen on the 1st day of May, 1838,—the Petitioner, Mr. Reynar, will be by law, bound to deliver up these premises with their improvements to his principal lessors the Ursuline Nuns. One other main consideration is, that the application of Mr. Reynar, if entertained, would have the effect of disturbing the undoubted possession of the Ursuline Nuns, and of converting the occupation of their lessor, which occupation is a continued act of possession on the part of the Nuns, into an adverse possession as proprietor by Reynar, and the Crown thus be rendered accessory to an illegal act on the part of the lessee of the Nuns, reprobated by the common law of the land.

Perceiving also by the report of the Committee of the Council, that His Majesty's Attorney General, has reported adversely to the title of the Ursuline Nuns, and apprehensive that in the statement made of their title, there may have been omissions on our part, which may have led to the foregoing conclusion of the Attorney General; we beg leave respectfully to solicit, that a copy of his report may be communicated to the Nuns, that an opportunity may be afforded to them of supplying any omission, and of furnishing any additional explanations which may be necessary.

In conclusion, we beg that the foregoing request may be brought under the consideration of His Excellency, at as early a day as convenient.

We have the honor, to be, Sir,

Your most obedient servants,

Lt. Colonel Craig,
Civil Secretary, &c. &c. &c.

STUART & BLACK.

Copy of a Letter from Lieutenant Colonel Craig, conveying His Excellency's Answer to the request contained in the foregoing Letter, and enclosing copies of the papers prayed for.

CASTLE ST. LEWIS,
Quebec, 6th August, 1834.

GENTLEMEN,

I have been directed by His Excellency the Governor in Chief, to transmit to you, in compliance with the request contained in your letter of the 22d ultimo, the enclosed copies of Mr. Reynar's Petitions respecting a certain beach lot at *l'ance des mères*, and of the Attorney General's Reports upon the subject, for the information of the Ladies of the Ursuline Convent.

I have the honor to be, Gentlemen,

Your most obedient, humble servant,

H. CRAIG,

Messrs. Stuart & Black.

Civil Secretary.

Copy of Mr. James Reynar's Petition to His Excellency the Governor in Chief: praying for a grant of the lot of land and beach conveyed by the Ladies of the Ursuline Convent to Mr. Fraser.

To His Excellency the Right Honorable MATTHEW LORD AYLMER, K. C. B.
&c. &c. &c.

The Petition of James Reynar, of the City of Quebec, Lumber Merchant,

HUMBLY SHEWETH,

That your Petitioner has been informed that our Sovereign Lord the King is the sole owner and undoubted proprietor of and in a certain lot of land and beach in the neighbourhood of the said City of Quebec, at the place called *l'ance de mères*, "from low tide to within forty feet of the *cime du cap* consisting of nine arpents and a half or thereabouts in front, between the land of the representatives of the Honorable Henry Caldwell on the one side and that of the Nuns of the Hotel Dieu on the other side." That your petitioner has been in possession of the said lot of land and beach since the 1st day of May, in the year of our Lord 1827, and hath held several and distinct leases thereof, the latter having been granted to him by William Finday, of the City of Quebec, Esquire, as Curator of the estate of the late John Mure, which said lease will expire in the year of our Lord 1838.

That at the time your Petitioner became possessed of the said lot of land and beach, the same was comparatively of little value, there being scarcely any improvements of the same, but that since your Petitioner has been in possession thereof, a very great augmentation in the value thereof has been occasioned by the capital, labour and industry of your Petitioner. That many houses, offices and other buildings, necessary for carrying on his trade and business, as a dealer in, and as a shipper of lumber, have been erected and built by him. That large sums of money have been expended by your Petitioner in improving the road passing through the said premises, for and on account of which said improvements and of the materials furnished by your Petitioner for the same, an outlay of upwards of £2,700 has been made by your Petitioner.

That at the same time your Petitioner made the said improvements he found them absolutely necessary for carrying on the said business, and in consideration of the very great augmentation then made by him in the value of the said land and beach, he conceived that he would have an equitable claim upon the Proprietor of the soil for a renewal of his lease, or some indemnity for his betterments and improvements made thereupon, and that the Proprietor of the same would not enrich himself at the expense and loss of your Petitioner, by withholding such renewal or indemnity; that the many losses to which the dealer in lumber is exposed, have in the case of your Petitioner been augmented by the outlay he has made upon the said lot of land and beach.

That your Petitioner considers himself entitled to relief in the premises from his Majesty's Government as Proprietor of the said lot of land and beach, particularly as your petitioner has been informed that applications have been made to your Excellency for a grant or a lease of the said lot of land and beach from his Majesty, and more particularly by John Fraser, of the City of Quebec, merchant.

That applications for a lease or grant of the said lot of land and beach, your Petitioner conceives, are not as much entitled to consideration as that of your Petitioner, and that he has in preference to them an equitable claim upon his Majesty's Government for a grant of the said lot of land and Beach, for a renewal of his lease thereof, or an indemnity for his said betterments and improvements.

Wherefore your Petitioner humbly prays the consideration of your Excellency, and that the known liberality of his Majesty Government will be extended to him in the premises, that a grant or a renewal of the lease of the said lot of land and beach may be granted to him by your Excellency in preference to all other applicants, and in default thereof that the Grantee or Lessee of the same be held to indemnify your Petitioner for his said betterments and improvements, or that such other relief in the premises may be afforded to your Petitioner as your excellency may deem him entitled to.

And your Petitioner, as in duty bound, will ever pray.

JAMES REYNAR.

Quebec, 25th April, 1834.

Copy of a report made by Charles Richard Ogden, Esquire, Attorney General of Lower Canada, in a letter to Lieutenant Colonel Craig, Secretary to His Excellency, upon the Memorial of the Ladies of the Ursuline Convent of Quebec.

Quebec, 21st June, 1834.

SIR,

In obedience to the commands of His Excellency the Governor in Chief, I have given attentive consideration as well to the Memorial of the Ursuline Nuns of Quebec, praying that the validity of a sale by them made to John Fraser, Esquire, of a beach lot at *l'ance des mères*, may be recognised, and the said John Fraser be received by the proper authorities as a tenant of His Majesty within the censive of His Majesty's Domain, for and in respect of the said beach lot, as to the titles and documents adduced in support of the said Memorial, and I have now the honor of reporting for His Excellency's information, my opinion on the subject.

From the titles submitted by the Nuns, it appears that at various times in the seventeenth century, their House purchased from different individuals, a number of contiguous lots of land along the road leading from St. Lewis Gate, then called *La Grande Allée*, which are described as bounded at one end by the said *Grande Allée*, and at the other end by the River St. Lawrence, but neither in the titles by which the Nuns acquired, nor by the original concessions, nor any express grant made of the land or beach lying below the margin of the river.—There being no express grant of the beach below that part where private property generally terminates, I cannot admit the position assumed by the Memorialists, that the riparian proprietor is by the common-law entitled to the property of the beach; for independently of the principle, that a grant extending to a certain boundary, such as a point of land, does not embrace the boundary, I conceive that by the laws of this Province, the River St. Lawrence, its bed, and beach are vested in His Majesty for the use of the public, and that it would require an express grant of such property to divest the Crown.—As the property in question is held by the Crown for the public advantage; I am of opinion that the length of possession alledged by the Memorialists does not confer on them any prescriptive right, which can defeat the title of His Majesty; with this view of the subject, I cannot advise His Excellency to grant the prayer of the Memorial.

I have the honor to be, Sir,
Your most obedient servant,
(Signed) C. R. OGDEN,
Attorney General.

Lieutenant Colonel Craig,
Secretary,
&c. &c. &c.

Copy of a report made by Charles Richard Ogden, Esquire, Attorney General of Lower Canada, in a letter of Lieut. Col. Craig, Secretary to His Excellency, upon the Petition of Mr. James Reynar.

QUEBEC, June 21, 1834.

SIR,

His Excellency the Governor in Chief having been pleased to refer to me a Petition of Mr. James Reynar, praying for a grant of the property or of lease in a certain beach lot in preference to Mr. John Fraser, I have the honor of reporting for the information of His Excellency my opinion thereupon. Regarding the expediency of making any such grant to the Petitioner, it is not, I humbly conceive, within my province to determine; such a subject, being properly within the consideration of his Excellency and his Majesty's Executive Council; should his Excellency resolve upon making the grant, either of a Fee Simple or of a lease in the beach lot in question, it would be just towards the Petitioner that such Grantee be required to indemnify him for any improvements which he may have erected on the property.

I have the honor to be, Sir,
Your most obedient Servant,
(Signed) C. R. OGDEN,
Attorney Genl.

Lt. Colonel Craig,
Secretary,
&c. &c. &c.

Copy of a second Petition presented by Mr. James Reynar to His Excellency, respecting the lot of land and beach mentioned in his previous Petition.

To His Excellency the Right Honorable MATTHEW LORD AYLMER, K. C. B.
&c. &c. &c.

The Memorial of James Reynar of the City of Quebec,

MOST HUMBLY SHEWETH,

That your Lordship's Memorialist having been informed that his Memorial, dated in April last, praying that your Excellency would be pleased to give him a grant or lease of the beach property at *l'ance des mères*, held by him under sub-lease from the Ladies of the Ursuline Convent, who, it is stated, have no right of property therein, the same being vested in the Crown, has been referred for the decision of the Executive Council, humbly prays to be permitted to state in support of the claim he has preferred, that should he be deprived of the support of the Crown that himself and his family would be completely ruined.

That the Ladies of the Ursuline Convent disregarding the fair and equitable claims of your Memorialist, who has improved and brought the property to its present value, have oppressively and unjustly made over all their rights therein to John Fraser, Esquire, of Quebec, the relative of the Superieur of that body, and have hitherto refused to entertain any proposition made to them by your Memorialist.

That the Ladies of the Ursuline Convent in having adopted a course so harsh and so ungenerous towards your Memorialist, have shewn how little they regard the rules of common justice, which should have governed their proceedings in this matter.

That as your Memorialist is credibly informed, that the right of property to the beach in question is not vested in the Ladies of the Ursuline Convent, as is pretended by them, but in the Crown; your Memorialist most humbly prays that your Excellency will take his exceedingly hard case into consideration, and, as in that of John Saxton Campbell, Esq. by whom a similar claim for the property contiguous to that of your Memorialist was preferred and decided upon by your Excellency in Council, make him a grant in perpetuity on such terms or conditions, based upon the indulgence extended to Mr. Campbell, as may seem fit to your Excellency.

JAMES REYNAR.

Quebec, July 4, 1834.

Copy of Report of the Trinity House of Quebec, upon the application of Mr. Fraser for a grant into deep water in front of the lot of land and beach acquired by him from the Ladies of the Ursuline Convent.

Friday, 12th October, 1832.

PRESENT.

The Honorable J. STEWART *Master.*
W. WALKER Esqr. *Deputy Master.*
G. PEMBERTON Esqr. *Warden*
J. LAMBLY Esqr. *Deputy Warden.*

The Board resumed the consideration of Lieut. Col. Craig's letter of 29th October last, with Mr. John Fraser's application for the Grant of a water lot at *l'ance des mères*, and Captain Lambly having reported that he had visited the place, and that the granting of the lot in question would be conducive to the improvement of the Navigation; the Board are of opinion that the granting of the water lot prayed for by Mr. Fraser for the purposes stated in his petition, would not obstruct or impede the Navigation of the River St. Lawrence, and it was

Ordered, that the Registrar do write to Lieut. Col. Craig, Civil Secretary, accordingly transmitting him Mr. Fraser's Petition.

List of the papers accompanying the Petition of the Ursuline Nuns to His Excellency the Governor in Chief.

- No. 1.—Bail Emphyteotique by the Nuns of the Ursuline Convent to John Mure, executed before Planté, and Colleague, Notaries, on the 20th September, 1807.
- No. 2.—Deed of Sale by the same Religious Ladies to John Fraser, executed before Lindsay, and Colleague, Notaries Public, on the 18th of April, 1832.
- No. 3.—Certificate from an entry in the Journals of the Ursuline Nunnery, respecting the conflagration in the year 1686.
- No. 4.—Deed of Sale by Jean LeMire to the Ursuline Nuns, executed on the 25th of June, 1682, before Duquet, Royal Notary.
- No. 5.—Deed of Sale by Denis Duquet to the Ursuline Nuns, executed before Becquet, Royal Notary, on the 12th of March, 1671.
- No. 6.—Deed of Sale by the heirs of Antoine Brassard to the Ursuline Nuns, executed before Becquet, Royal Notary, on the 28th of April, 1675.
- No. 7.—Deed of Sale by Noel Pinguet to the Ursuline Nuns, executed before Becquet, Royal Notary, on the 20th November, 1678.
- No. 8.—Deed of Sale by Pierre Masse to the Ursuline Nuns, executed before Becquet, Royal Notary, on 11th of October, 1668.
- No. 9.—Deed of Exchange between the Ladies of the Ursuline Nunnery and those of the Hotel Dieu, executed before Duchesneau and another Notary, on the 21st of May, 1790.
- No. 10.—Declaration made to Jacques Duchesneau, Knight, &c., bearing date the 20th of May, 1666, at the *papier Terrier* of the King's Domain.
- No. 11.—Copy of *Lettres d'Amortissement*, dated at Fontainebleau, 7th June, 1680.
- No. 12.—Receipt for mutation fine upon the purchase from Jean Le Mire, (this is annexed to No. 4.)
- No. 13.—Declaration to the Hon. Hugh Finlay, bearing date the 15th of June, 1790.
- 14.—Emphyteotique Lease by the Ursuline Nuns to his Majesty, executed before Tetu, on the 23d of February, 1803.
- No. 15.—Plan made by Mr. Ecuyer, Land surveyor, on the 19th of March, 1827.

List of Documents which accompanied the Case of the Ladies of the Ursuline Convent, dated the 18th August, 1834.

- Lease by William Finlay to James Reynar, executed before McPherson and Colleague, Notaries, the 2d April, 1827.
- Another by the same, to the same, dated 22d April, 1830.
- Lease by James Reynar to Messrs. Roger, Dean & Co., executed before same Notaries, on the 8th April, 1833, containing an assignment of part of the leased premises.
- Assignment by Roger, Dean & Co. to William Petry, before the same Notaries, on the 14th May, 1833, of last mentioned lease.
- Lease by James Reynar to William Petry, executed before the same Notaries, on the 23d August, 1833, containing an assignment of the remainder of the leased premises.