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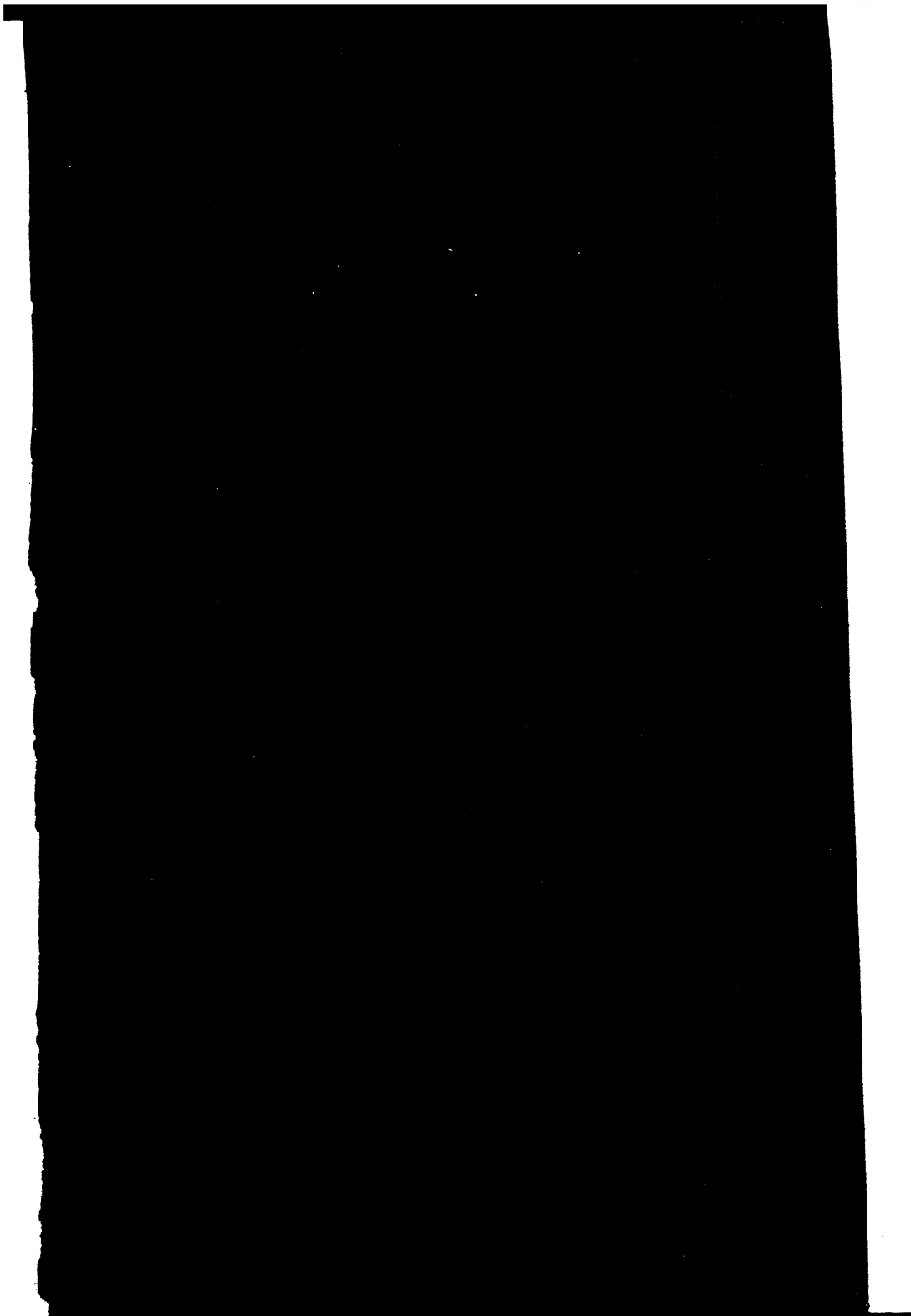
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*To the Right Honorable* EDWARD GEOFFREY

LORD STANLEY, *Her Majesty's Principal*

*Secretary of State for the Colonies.*

THE MEMORIAL of Adelaide Plante de St. Gabriel, Superior, Marie Louise McLaughlin de St. Henry, Assistant, Marie Louise O'Neill de Ste. Gertrude, Zelatrice, Isabella McDonald de St. André, Depositaire, Angelique J. Ferrière de Ste. Marie, and Marguerite Boissonault de Ste. Monique, forming the Council of the Communauté of the Religious Ladies of the Ursulines of Quebec—

MOST HUMBLY SHEWETH—

THAT Your Lordship's Memorialists are aggrieved by a decision of the Executive Council of this Province contained in a Report of that Body approved by His Excellency the late Administrator of the Government, of the 13th December, 1841, (copy annexed)\* in which it is recommended that certain property held by Your Memorialists at l'Ance des Mères for a period of a *century and a half* and disposed of by them in 1832 to Messrs. John &

\* Appendix (No. 1.)

John Malcolm Fraser, for *Commercial purposes*, should be taken from them and granted to a party, Jean Baptiste Laporte or his assignee, the said Jean Baptiste Laporte being up to the 30th April 1838, a sub-lessee of Your Memorialists, deriving all title to the said property from them, and bound under the terms of the said lease, to deliver up the property at the expiration thereof, *with all improvements made upon the same.*

That it is necessary for a perfect understanding of Your Memorialists' case that they should represent to Your Lordship that from the period of the cession of this Province in the year 1763 to the year 1827, the title\* to the property of which Your Memorialists were in possession was never called in question, and that in 1808, Your Memorialists leased the property in question to the Honorable W. B. Coltman, for a period of thirty years, which lease† was subsequently assigned by Mr. Coltman to Jean Baptiste Laporte.

That in the said year 1827, proceedings were had by the Crown against Jean Baptiste Laporte at his own instigation, as it would appear by the Report of Council of the 11th June 1841,‡ (annexed) (a report which like that of the 13th December 1841, Your Memorialists will have frequent occasion in the course of this Memorial to advert to,) to eject him from the property in question.

That by a Judgment of the Court of King's Bench rendered in 1828,§ the whole property was declared to be vested in the Crown, but subsequently, on the 30th July 1840 *in Appeal*, a Judgment|| reversing that of the King's Bench was given, whereby it was determined, that Your Memorialists were the legal proprietors of the property lying above high water mark as defined on a plan annexed to the said Judgment,¶

\* Appendix (No. 2.)  
§ Appendix (No. 5.)

† Appendix (No. 3.)  
|| Appendix (No. 6.)

‡ Appendix (No. 4.)  
¶ Appendix (No. 7.)

copy of which is subjoined, and the Beach below high water mark was adjudged to be Crown property.

That after this solemn decision, Your Memorialists being acknowledged as the Riparian proprietors of the land in rear of the high water mark, they did not deem it of moment to contest the decision in Appeal as they anticipated that no possible objection would be raised to making them *the declared Riparian proprietors*, a grant of the Beach property in front of their own—a property which they had so long enjoyed without hindrance or molestation from the Crown.

That Your Memorialists after the Judgment in Appeal applied to the Crown through the Messrs. Frasers, who had acquired the property from your Memorialists, by Petition, expressing their desire to obtain a concession of the beach in front of their property, at such a valuation as might be affixed, but the question being referred to the Executive Council by His Excellency Lord Sydenham, that body on the 11th June 1841, made a Report, which was approved by His Excellency the Governor in Council whereby the prayer of their petition was rejected for the following reasons :—

1st.—That the property should be permitted to be purchased by Jean Baptiste Laporte, the Government being pledged to give him the said Laporte a preference in case of the disposal of the Beach lot, for that on the 1st March 1839, it was determined that the whole of the lot should be leased for a term of twenty-one years, at the rate of £100 per annum to Laporte, on his paying arrears at the rate of £10 per year for eight years, in consideration of large outlays made by him on the property.

2d.—Because the Messrs. Frasers, by assuming to acquire a title to property in opposition to the rights of the Crown, that property being at the time in liti-

gation, had thereby acquired no claim to the favourable consideration of the Government.

3d.—Because it would be prudent to avoid the necessity in all future interventions of the Crown in the matter in litigation, by disposing of the property *without* “*garantie.*”

That Your Memorialists would beg to remark upon these reasons in their order :—

1st.—The Crown at the time in 1839, when promise was made to Jean Baptiste Laporte of a lease of the property in question, was under the apprehension, *that the whole property as well above as below high water mark was in the Government*, and although Your Memorialists conceive that it was unfair to wrest the property from your Memorialists, who had been in quiet possession thereof for a century and a half, to give the same to Jean Baptiste Laporte, their refractory tenant, who stood pledged by a solemn engagement to give them possession at the end of the lease, yet they could not contend against might, but when by the Judgment in Appeal, an appeal, which the Crown consented might be gone into, the property in rear was declared not to be the Crown's but theirs, they had entertained a reasonable and well founded hope, that as, in all like cases, which have ever taken place in the late Province of Lower Canada, no impediment whatever would, or could, be thrown in the way of their acquiring the beach in front of their property from the Crown, that property having been put in *Commercio* in the sale made by them to the Messrs. John and John Malcolm Fraser.

2d.—The promise given to Jean Baptiste Laporte of a lease, as that promise implies, was made under the supposition *that he had made large outlays or improvements upon the property.* It will be found on enquiry, that the allegations of Laporte in this respect are utterly untrue, and that such outlay was

trifling in the extreme—the road was improved at the public expense, and it was the occupants of the houses, who constructed the same at their own cost. Had the Inspector General, (Mr. Primrose,) of the Domaine, and the Surveyor General, been deputed as they were, *in a similar case of John Reynar*, a Lessee of Your Memorialists, in the year 1834, who set up a claim precisely such as Laporte's, to have ascertained what outlay had been made by Mr. Laporte, a report more unfavourable to that person's allegations would have been made, than was, in Mr. Reynar's, whose claim was entirely set aside by the then Governor in Chief and Executive Council of Lower Canada, *and Your Memorialists maintained in their rights.*

That the Crown having been by surprise led to promise a lease to Laporte on certain conditions, ~~cannot~~ in justice be considered as binding when the vested rights of a party, such as those of Your Memorialists were affected thereby. It has been matter of continued occurrence that Reports of Council similarly obtained have been set aside by the Government.

3rd.—The Messrs. Fraser, when they purchased from Your Memorialists, had, as they still have the strongest ground to believe, that their title was good, and the decision in Appeal has shown, that, *that belief to a very great extent was not unfounded, a large portion of the property being declared to belong to Your Memorialists*, and it would be hard indeed to visit Your Memorialists with an act of undue severity, for doing that which was not illegal, and to the competency of the doing of which, no objection in fairness can be raised.

4th.—The recommendation that Jean Baptiste Laporte should be permitted to purchase all the ground belonging to the Crown *without reference to the boundary*, but that to avoid all further intervention of the Crown in the matter of litigation, the pro-

perty should be disposed of without "*garantie*," seems to Your Memorialists to be at variance with the recommendation *contained in the same report* in relation to another question of a similar nature, wherein it is said "that the Committee see no good reason why " it (a beach lot) should not be sold, *giving those who " hold the land in rear a preference in the purchase,*" —and again in relation to the case of Your Memorialists, that, " unless upon mature consideration, " the right of the Crown to the ground above high " water mark should be thought by the Law Officers " clear and incontrovertible, the question had better " be considered as settled by the Judgment of the " Court of Appeals," in which case the ground between high and low water mark (and that only) can be considered as at the disposal of Government.

That Your Memorialists, on being made acquainted with the Report of the Council of the 11th June 1841, above alluded to, lost no time in representing the injury inflicted on them thereby to His Excellency Lord Sydenham, the late Governor General, and His Excellency having made himself entirely master of the subject in all its circumstances and bearings, was pleased to order the Report in question to be reconsidered by the Executive Council.

That it having been intimated to Your Memorialists that the great difficulty in the way of making a grant to Your Memorialists was the promise which had been given in 1839 to Jean Baptiste Laporte of a lease from the Crown, and it having been also suggested that an offer on the part of Your Memorialists to compensate Mr. Laporte for his improvements would lead to the settlement of all difficulties, Your Memorialists, through the Messrs. Fraser, accordingly made such offer.

That the reference for reconsideration by His Excellency Lord Sydenham, was suffered to lay over, and no report was had thereon, previous to the death of



that Nobleman ; but recently, viz., on the 13<sup>th</sup> December, 1841, a report was made by the Executive Council, in which that body after stating,—*and Your Memorialists here beg to call Your Lordship's attention to the marked language of the Executive Council when speaking of Riparian proprietors,*—“ In the disposal of the other beach lots at l'Ance des Mères, the Council were enabled to put an end to all litigation and dispute about boundary by ordering sales of the beach lots to the persons claiming to be Riparian proprietors or holders of the ground immediately in rear of the lands of the Crown forming part of the river or on its shore where the disputed boundary was situated,”—go on to say, but in the present case, (that of Your Memorialists,) a lease has been ordered to Laporte, and the land in rear has been, as before stated, conveyed to the Messrs. Frasers by the Ursulines, so that it is not in the power of the Government to sell the beach lot to the owners of the land in rear without invalidating the order in Council in favour of Laporte”—and finally it was recommended, “ that a sale to Laporte or his assignee of the beach lot bounded on the land side by the Ursuline Nuns or their tenants wheresoever the boundary may happen to be, be made in conformity with the last order in Council,”—(that of 11<sup>th</sup> June 1841.)

That there are certain rules relating to the right of Riparian proprietors which stand admitted on all hands and which have too important a bearing to permit of their being passed over in silence :—Where a river constitutes, as in this case 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, can 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 that the

interval of ground is in the Crown, as a front of the river, such ground can only, in justice as well as in equity, be made to the Riparian proprietor—and although a difference of opinion may be pretended to exist as to whether the Riparian proprietor of land lying upon a navigable river, bounded by that river, is not in Law entitled to the interval between high and low water mark, yet the weight of authority is decidedly in favour of the Riparian proprietor, and this has confessedly the sanction of the Roman Law, and has been adopted in the modern code of France, and it has also received the sanction of the Court of Appeals in a Judgment rendered in that Court as late as November 1830, in the case of Fournier, appellant, and Oliva, respondent, a report whereof is annexed,\* and it is a fact, that can be tested by enquiry, that in no instance whatever, that has taken place in Canada East (formerly Lower Canada,) *has ever the beach in front of a Riparian proprietor been conceded to another without a preference of taking the same being first offered to such proprietor.*

That Your Memorialists pray Your Lordship to cause an enquiry to be made into all the circumstances of their case with a view to a full understanding of its merits being arrived at, and a just decision being had, as well in regard to the law which prevails in this Province as respects Riparian proprietors, as with deference to the custom and usage which prevail within it—of the Crown making grants of the Beaches to such proprietors in preference to any other, and that Your Lordship will direct that Your Memorialists be maintained in their rights, and that they do receive a grant of the Beach in question, the same being in front of their property at l'Ance des Mères.

Quebec, 9th February, 1842.

\* Appendix (No. 3)

## APPENDIX.

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No. 1.

COPY of a Report of a Committee of Council of the 13th December 1841, and approved by His Excellency The Administrator of the Government, in Council on same day, on the Memorial of the Society of Ursuline Nuns at Quebec, &c. &c. &c.

The Committee of Council have had under consideration the Memorial of the Society of Ursuline Nuns at Quebec, praying the reconsideration of an order in Council approved by His Excellency the late Governor General, on the 11th June 1841, relating to the disposition of a Beach Lot of land at l'Ance des Merès in Quebec.

The Committee have also had under consideration a proposal made by the Hon. Edward Caron on behalf of the Ladies of the Ursuline Convent, representing that they are the guarantee of a title to the premises in question, which title it appears was made by them in perpetuity, reserving a rent, the Tenants being Messrs. J. and J. M. Fraser of Quebec, and offering to indemnify Mr. Laporte, to whom a Lease of the premises was ordered by the Executive Government of Lower Canada, in consideration of certain improvements, for these improvements, on condition that the Crown would sell its right to the Messrs. Fraser.

In the disposal of the other beach lots at l'Ance des Merès the Council were enabled to put an end to all litigation and dispute about boundary, by ordering sales of the beach lots to the persons claiming to

be riverian proprietors or holders of the ground immediately in rear of the lands of the Crown forming part of the bed of the River or on its shore where the disputed boundary was situate, but in the present case, a Lease has been ordered to Laporte, and the land in rear has been, as before stated, conveyed to the Messrs. Fraser by the Ursulines, so that it is not in the power of the Government to sell the beach Lot to the owners of the land in rear, without invalidating the order in Council in favour of Laporte. The judgment of the Court of Appeals has designated a certain boundary purporting to be the high water mark, leaving the Assignees or Tenants of the Ursuline Nuns holders of the land in rear. This judgment of the Court of Appeals appears to be still liable to be called in question by an appeal to the Judicial Committee of the Privy Council, either on the part of the Government or on the part of the Ursuline Nuns.

At the time the lease was ordered in favour of Laporte, not only the beach lot bounded on the land side by the high water mark, but also a portion of the land up to the Cape was considered to belong to the Government, and consequently no severance of the property adjoining the bed of the river from that within it was contemplated.

The Committee in the order now under reconsideration, finding the Government under a pledge to give a Lease to Laporte, and finding also that by the judgment of the Court of Appeals, and the act of the Ladies of the Ursuline Convent the property unfortunately severed, and the question of boundary still open, and tenants under the Nuns still insisting upon their right to the land down to low water mark, and Laporte or his assignee still insisting on the right to the shore up to the Cape by way of carrying into effect the order in Council in favour of Laporte so far as it could be done, and for the purpose of leaving the

parties interested to contest their own rights without further litigation on the part of the Government, advised a sale to Laporte, of all the Beach Lot being the property of the Crown, wherever its boundary might be found to be, and the Committee understand the proposal of Mr. Caron on the part of the Ursuline Nuns to be made, with the object of forcing a compromise which would avoid further litigation, and prevent the severance of the Beach Lot bounded by high water mark from the land in rear, which severance would be obviously to the great detriment of both properties.

Were the Government free of the order made in Lower Canada in favour of Laporte, the proposal made by Mr. Caron would appear to be fair and reasonable,—the beach Lot might then, as in the case of other lots, be sold to the proprietors of the land in rear, or if on the other hand the Ladies of the Ursuline Convent had forborne to dispose of the land in rear until the boundary had been ascertained, or if they had then agreed as to the boundary, the whole property might, by their acting in concert with the Crown, have gone into the hands of one proprietor, and by the junction of the estates all further disputes might have been avoided.

But under present circumstances, the Committee do not feel at liberty to cancel the order in favour of Laporte or to force him or his assignee to part with any right which they may acquire under it. They think it right that the Government at least should be free of all further legal contests, and they see no other means of producing this result than by carrying into effect the last order, which may be substantially done by a sale to Laporte or his assignee of the Beach Lot bounded on the land side by the property of the Ursuline Nuns or their tenants, wheresoever the boundary may happen to be,—the sale to be made in conformity with the last order in Council.

## No. 2.

FURENT présentes les Révérendes Dames Marie Anne Louise Taschereau de St. François Xavier, Supérieure des Dames Religieuses Ursulines de Québec, Marie Josephte Lafontaine de Thérèse de Jésus, Assistante, Marie Anne Brassard de Ste. Magdelaine, Zélatrice, Marie Marguerite Marchand de Ste. Ursule, Dépositaire, Marie Louise Ignace Desroches de Ste. Angèle, Marie Anne Archange Panet de St. Bernard, et Geneviève Julie Berthelot de St. Joseph, discrettes, toutes Religieuses du Couvent et Monastère des dites Dames Ursulines, composant la plus saine partie d'icelui, assemblées au son de la cloche au principal parloir extérieur de leur communauté, en la manière accoutumée, pour délibérer de leurs affaires.

Lesquelles, de l'agrément et consentement de Sa Grandeur Monseigneur l'Illustrissime et Révérendissime Joseph Octave Plessis, Evêque de Québec, ont, par ces présentes cédé, quitté et délaissé à titre de bail emphytéotique pour trente années entières et consécutives, qui ont commencé le premier Octobre présent mois, et finiront le dernier jour d'Avril de l'année que l'on comptera mil huit cent trente-huit, promettant faire jouir paisiblement à Monsieur William Bachelor Coltman, négociant, demeurant à Québec, à ce présent et acceptant tant pour lui que pour Monsieur John Coltman, son frère et associé, demeurant à Québec, preneurs, pendant le dit tems, sans néanmoins pouvoir céder le tout ou partie du présent bail, à qui que ce soit, sans le consentement exprès et par écrit des dites Dames Bailleresses ou de leurs successerices, c'est à savoir, un terrain de grève situé à l'Ance des Mères, de cinq arpents huit pieds de front, prenant à basse marée allant en profondeur jusqu'à trois pieds vers la cime du cap plus bas que l'endroit de la cime où les animaux peuvent aller paitre, tenant

du côté nord-est à un terrain cédé à pareil titre à Louis Dumière, Ecuyer, maintenant représenté par Alexandre Munn, et du côté sud-ouest aux terrains des Dames de l'Hôtel-Dieu, le tout sans obligation de parfournement de mesure exacte, tel et ainsi que le dit terrain est actuellement et se poursuit et comporte, sans en rien réserver pour par le dit Sieur preneur ès dits noms, ses hoirs ayans cause, en jouir au dit titre durant le dit tems, et pour en prendre possession, faire déguerpir toutes personnes qui pourraient s'en être emparé, et faire tout ce qui sera nécessaire en son nom, à son compte et à ses frais, sans pouvoir rien répéter contre les dames baillereses, ni faire diminuer la rente ci-après fixée, pour raison des frais de poursuite ou autres qu'il pourrait être obligé de faire à cet effet.

Ce présent bail ainsi fait à la charge par le preneur, ses hoirs, et ayans cause durant le dit tems, d'avoir soin du dit terrain sans faire ni souffrir faire aucun dommage ni détérioration sur icelui. En outre ce bail fait pour et moyennant le prix et somme de dix livres du cours actuel de cette province de rente emphytéotique pour chacune des dites trente années ; laquelle somme le preneur tant pour lui que pour ses hoirs et ayans cause promet et s'oblige bailler et payer aux dites dames baillereses et à leurs successeurs, en leur couvent, ou à leur ordre porteur des présentes, en espèces d'or ou d'argent ayant actuellement cours, nonobstant mutation d'autre monnaie quelconque, moitié chaque six mois, excepté le premier paiement qui se fera pour portion de tems le premier Mai prochain, ensuite le premier Novembre, et ainsi continuer de six mois en six mois durant le cours du présent bail, à la fin du quel le dit terrain rentrera en la possession des dites dames, avec toutes les augmentations et améliorations qui s'y trouveront de quelque nature et valeur qu'elles soient, sans

qu'elles soient tenues de payer aucune indemnité ni dédommagement pour raison d'iceux.

Et pour l'exécution des présentes, le dit Sieur preneur a élu son domicile en sa demeure, à Québec, auquel lieu, etc., nonobstant, etc., promettant, etc., obligant, etc., renonçant, etc., fait et passé à Québec, au parloir extérieur du couvent des dites dames bailleres, l'an mil huit cent huit, le vingt-un Octobre avant midi, et ont les susdites dames bailleres, ainsi que le dit Sieur preneur, signé, lecture faite.

Sr. St. F. Xavier, Supérieure ; Ste. Thérèse de Jésus, Assistante ; Sr. Ste. Madeleine, Ztre. ; Sr. Ste. Ursule, Dépte. ; Sr. Ste. Angèle, D. ; Sr. St. Joseph, D. ; Sr. St. Bernard, D.

WILLIAM BACHELOR COLTMAN,  
JH. PLANTÉ,  
R. LELIEVRE.

Pour copie conforme à la minute trouvée dans l'étude de feu Mtre. Jh. Planté, Notaire, déposée dans les archives de ce district, vidimée et collationnée par nous soussignés gardiens d'icelles et Protonotaires de la Cour du Banc du Roi, à Québec, le 5 Mars, 1842.

PERRAULT & BURROUGHS,  
B. B. R.

No. 3.

Fut présent l'Honorable William Bachelor Coltman, l'un des membres du Conseil Exécutif de cette Province, et négociant, demeurant en cette ville, tant en son nom que comme procureur de Joseph Coltman, Thomas Coltman, Frances Coltman et Charlotte Coltman, ses frères et sœurs, demeurant en Angleterre, suivant leur procuration du neuf Novembre mil huit cent quatorze, par eux signée et scellée présence de témoins, munie des affidavits et autres formalités requises pour son authenticité, certifiée sin-



cère et véritable par le dit Honorable William Bachelor Coltman, paraphée de lui et des notaires soussignés pour demeurer ci-annexée. Lequel, aux dits noms, a par ces présentes volontairement vendu, cédé, transporté, délaissé et abandonné dès maintenant pour et jusqu'au dernier jour du mois d'Avril, de l'année que l'on comptera mil huit cent trente-huit, avec garantie des faits et promesses tant de sa part et de celle de feu Monsieur John Coltman, son frère, que de la part de leurs frères et sœurs constituans sus-nommés, au Sieur Jean Baptiste Laporte, Boulanger, demeurant en la Haute-Ville de Québec, rue Ste. Anne, à ce présent et acceptant cessionnaire et acquéreur, pour lui ses hoirs et ayans cause à l'avenir, pendant le dit tems, c'est à savoir : tous les droits de possession, jouissance, profits, fruits et revenus et autres généralement quelconques qu'il a, ainsi que ses constituans susnommés, et que lui et eux peuvent avoir et prétendre sur un terrain de grève, situé à l'Ance des Mères, de cinq arpents huit pieds de front prenant à basse marée, allant en profondeur jusqu'à trois pieds vers la cime du cap plus bas que l'endroit de la cime où les animaux peuvent aller paître ; tenant du côté nord-est au terrain des Dames Religieuses Ursulines de cette ville, maintenant possédé par la veuve du Sieur Alexandre Munn, et du côté sud-ouest au terrain des Dames de l'Hôtel-Dieu, le tout plus ou moins, et tel que le dit terrain se poursuit et comporte sans en rien réserver, disant l'acquéreur le bien savoir et connaître pour l'avoir vu et visité, et en est content et satisfait ; pour par lui ses dits hoirs et ayans cause en jouir de ce jourd'hui jusqu'au dit jour, dernier Avril mil huit cent trente-huit, de la même manière que le dit Honorable William Bachelor Coltman, aux dits noms, peut en jouir en vertu du bail emphytéotique que les Dames Religieuses Ursulines en ont consenti en faveur du dit vendeur, et cédant tant pour lui que pour feu Monsieur John Coltman son frère, par

acte passé devant les notaires soussignés, le vingt-un Octobre mil huit cent huit, mettant le dit acquéreur et cessionnaire en son lieu et place, droits, noms, raisons et actions. Les droits susvendus appartenans, savoir, moitié au dit Honorable William Bachelor Coltman, en vertu du bail emphytéotique susdaté, et l'autre moitié à lui et à ses constituans susnommés, comme héritiers du dit feu Sieur John Coltman, leur frère. Cette vente et cession ainsi faite à la charge par le dit acquéreur et cessionnaire ses hoirs et ayans cause, durant le dit tems, d'avoir soin du dit terrain, sans faire ni souffrir faire aucun dommage ni détérioration sur icelui, de payer chaque année aux dites Dames Religieuses Ursulines et à leurs successerices, en leur couvent, ou à leur ordre porteur des présentes, en espèces d'or ou d'argent ayant cours lors de la passation du dit bail susdaté, nonobstant mutation d'autre monnaie quelconque, dix livres du cours actuel de cette Province, pour leur rente emphytéotique stipulée au dit bail, payable moitié chaque six mois, les premiers de Mai et de Novembre de chacune année, à commencer à courir pour l'acquéreur du premier Mai prochain, jusqu'à la fin du dit bail ; auquel tems le dit terrain rentrera en la possession des dites Dames Ursulines, avec toutes les augmentations et améliorations qui s'y trouveront de quelque nature et valeur qu'elles soient, sans qu'elles soient tenues de payer aucune indemnité ni dédommagement pour raison d'iceux. Cette vente faite en outre pour et moyennant le prix et somme de cent cinquante livres du cours actuel de cette Province, en déduction de laquelle somme le dit Honorable William Bachelor Coltman, Ecuyer, reconnaît avoir reçu ès dits noms, du dit acquéreur celle de vingt-cinq livres courant, dès avant la passation des présentes, et dont quittance à compte ; s'obligeant le dit Jean Baptiste Laporte acquéreur, payer le résidu du dit prix de vente au dit vendeur ès dits noms en sa demeure à Québec ou à

son ordre porteur des présentes en bonne monnaie courante, savoir cinquante livres dans le cours du mois d'Avril prochain, et soixante quinze livres pour parfait payement dans le cours du dit mois d'Avril de l'année que l'on comptera mil huit cent dix-huit, le tout sans intérêt, les payemens étant faits à leur échéance, mais avec intérêts à raison de six par cent sur chaque payement, à courir de leur échéance respective.

Pour sûreté de quoi le dit acquéreur a affecté, obligé et hypothéqué généralement tous ses biens présents et futurs, et spécialement sans qu'une obligation déroge à l'autre le susdit terrain, sur lequel le dit vendeur ès dits noms aura un privilège spécial comme bailleur de fonds.

A ce faire étaient présentes et sont intervenues les Révérendes Dames Marie Anne Louise Taschereau de St. François Xavier, Supérieure du Couvent et Monastère des Dames Religieuses Ursulines de Québec ; Marie Josephte Lafontaine de Ste. Thérèse de Jésus, Assistante ; Geneviève Julie Berthelot de St. Joseph, Zélatrice ; Marie Louise McLaughlin de St. Henry, Dépositaire ; Marie Marguerite Blais de St. Pierre ; Marie Françoise Panet de St. Jacques ; Angélique Judith de Ferrière de Ste. Marie, toutes religieuses professes et discrettes de la communauté des dites Dames Ursulines, composant la plus saine partie de leur couvent, assemblées au son de la cloche en la manière accoutumée, au principal parloir d'icelui, pour délibérer de leurs affaires ; lesquelles de l'agrément de Monseigneur l'Evêque de Québec, ont, par ces présentes, donné leur consentement, pour et au nom de leur dite communauté, au contrat de vente des autres parts, sous la condition expresse et sans laquelle elles n'auraient point donné leur dit consentement, que le dit Honorable William Bachelor Coltman s'obligera, comme il s'oblige par ces présentes, de demeurer garant et responsable solidairement avec

le dit Jean Baptiste Laporte, un d'eux seul pour le tout, sans division ni discussion, du paiement annuel de la rente emphytéotique portée au dit bail du vingt-un Octobre mil huit cent huit, sans aucune novation ni dérogation aux droits d'hypothèque que les dites dames ont en vertu du dit bail, excepté seulement qu'elles ne pourront en aucun tems, exiger à la fois du dit Honorable William Bachelor Coltman plus d'une année de la dite rente, encore qu'elles en eussent laissé écouler d'avantage, sans en avoir fait la demande au dit Honorable William Bachelor Coltman, Ecuyer.

Et pour l'exécution des présentes, les vendeur et acquéreur ont élu leur domicile chacun en sa demeure actuelle ; auquel lieu, etc., nonobstant, etc., promettant, etc., obligeant, etc., renonçant, etc., fait et passé à Québec au principal parloir du couvent des dites Dames Ursulines, l'an mil huit cent seize, le vingt-cinq Avril après midi.

Et ont les parties signé, lecture faite, excepté le Sieur Laporte qui a déclaré ne le savoir, de ce requis.

(Signé,) W. B. COLTMAN.

Sr. Marie A. L. Taschereau de St. François Xavier, Supérieure ; Sr. Marie Josephte Lafontaine de Thérèse de Jésus, Assistante ; Sr. Julie Geneviève Berthelot de St. Joseph, Zélatrice ; Sr. Marie L. McLaughlin de St. Henry, Depte. ; Sr. Marguerite Blais de St. Pierre, Discrete ; Sr. M. Françoise Panet de St. Jacques, Discrete ; Sr. Angélique Judith Ferrière de Ste. Marie, Discrete.

JH. PLANTÉ,  
R. LELIEVRE.

Et le vingt-six Avril après midi mil huit cent seize, pardevant les notaires publics à Québec susdit et soussignés, est comparue Dame Ursule Phiset, épouse du dit Sieur Jean Baptiste Laporte, ci-dessus dé-

nommé, de lui pour ce présent duement autorisée à l'effet qui suit, laquelle après avoir eu lecture et communication de l'acte ci-dessus et des autres parts, a déclaré l'avoir pour agréable, et le ratifie par ces présentes ; s'obligeant solidairement avec son dit mari, elle seule pour le tout, à l'entretènement et exécution d'icelui, et notamment aux payemens de la rente emphytéotique et au prix du dit bail, tant envers les Dames Ursulines qu'envers le dit Honorable William Bachelor Coltman, et au nom qu'il agit, sous la sûreté de tous les biens présents et futurs de la dite Dame Ursule Phiset, qu'elle y a par ces présentes affectés, obligés et hypothéqués. Car ainsi, etc., obligeant, etc., fait et passé à Québec, en l'étude, les jour et ans susdits, et a signé avec nous, lecture faite.

(Signé,)

URSULE LAPORTE,  
JH. PLANTÉ,  
R. LELIEVRE.

Pour copie conforme à la minute trouvée en l'étude de feu Mtre. Jh. Planté, Notaire, déposée dans les archives de ce district, vidimée et collationnée par nous soussignés gardiens d'icelles et Protonotaires de la Cour du Banc du Roi, à Québec, le 5e Mars 1842.

PERRAULT & BURROUGHS,  
P. B. R.

## No. 4.

Copy of a Report of the Executive Council approved by His Excellency the Governor General, on the application of Messrs. Bonner and Petry, and others, relating to a certain property at l'Ance des Mères.

The Committee of Council have had under consideration the several cases referred to, regarding claims to Beach Lots at Quebec, called l'Ance des Mères, and have agreed upon the following Report :

The property called l'Ance des Mères is situated on the River St. Lawrence, above the Mariners' Chapel at Quebec, and extends to Wolfe's Cove, above that city.

According to a Report of the Inspector General of the Queen's domain, it may, in reference to the present proprietors or claimants, be divided into five sections—1st. The permanent property, formerly belonging to Alexander Munn, consisting of 832 feet French measure, and joining on the east to the Mariners' Chapel. This Lot is said to consist of two extra parcels or concessions—one of 300 feet front, acquired from the LaCroix family, representing Mr. Rouer de Villeray, being that portion next the Mariners' Chapel, and the remaining 532 feet from the Ursuline Nuns, in 1782.

The titles or concessions to Simon Fraser, are reported to describe the land conceded, as extending from the top of the cape to low water mark, and the premises in question are reported to have passed through many hands, under the above description.

The Inspector General of the Queen's domain states, that from an examination of the ancient titles, he has no doubt, but that the description, including

the space between low and high water mark, was an encroachment upon the property of the Crown; yet, as it appears that on these mutations of property, the Crown has taken the seigniorial dues without complaining of the description, or taking any proceeding to vindicate its rights.—The Inspector General appears to be of opinion, that the Crown is in a manner estopped to assert an Estate inconsistent with the descriptions thus admitted.

It appears from examination of the papers before the Council, that the right of the proprietors to claim even down to high water mark, is extremely doubtful, as from ancient muniments, an intention to reserve in the hands of the Crown a strip of land above high water mark is plainly expressed. In the case of one of the sections of the l'Ance des Mères property, this point was contested at law, and upon appeal from the judgment of the Court of Queen's Bench at Quebec, the Court of Appeal held the right of the Crown not to extend above high water mark, but that to high water mark it did extend.

The Ursuline Nuns being the party claiming against the Crown, commenced an appeal to the Queen in Council, but did not proceed in it, so that so far as the legal judgments of the Provincial Courts is concerned, the space of ground between low and high water mark, must be considered the property of the Crown, and the ground above it to the private proprietors.

The Committee are of opinion, that unless, upon mature consideration, the right of the Crown to the ground above high water mark, should be thought by the Law Officers clear and incontrovertible, the question had better be considered as settled by the judgment of the Court of Appeals, in which case the ground between high and low water mark (and that only) can be considered at the disposal of the Government.

Then the question will remain, suggested by the Inspector General of the Queen's domain,—whether the Government as regards section No. 1, are to be considered estopped to assert the right of the Crown to the ground between high and low water mark, because of the receipt of seigniorial dues upon the mutation of estate, and because of long possession in the claimants. The Committee are of opinion, that the matter should be allowed to remain as at present, the occupant not now claiming a confirmation of his Estate, but should be advised to ask for a confirmation, the Committee think it should be conceded as an admitted right of the Crown, and at a valuation.

The second section of the property at l'Ance des Mères, consists of 360 feet French measure in front ; it is reported to have been leased by the Ursuline Nuns to Mr. Dunière for 40 years, the unexpired term of which came into the possession of Alexander Munn, about the year 1806 ; this term expired in 1836, when the lot being in possession of Mrs. Munn, an order in Council was passed, directing that it should be let at a rent of £100 per annum, and that the occupier should have a preference for the first term of 21 years. This order was made on petitions from Mr. Munn, and from J. Bte. Laporte, who possessed the adjoining lot.

It appears that Mrs. Munn did not take any lease of the premises from the Government for the beach lot, or pay any rent, but on the contrary, possession has been held since the expiration of the lease, and William Lampson, through Mr. J. B. Forsyth, by way of creating a colourable title against the Crown, procured from the Ursuline Nuns a conveyance to himself in perpetuity, of the lot, describing the property conceded as extending to low water mark. William Lampson, who has purchased Mrs. Munn's claim, and who also, as above mentioned, purchased from the Ursuline Nuns in perpetuity, the property held by Munn, with a



boundary extending to low water mark, now petitions for a grant of the beach and deep water in front.

The Committee consider the claim for a grant to be inadmissible. They also are of opinion, that the plan of leasing the beach for short terms of years, is not productive of benefit, while it tends to complicate public business,—the Beach is not wanted for public purposes, and the Committee see no good reason why it should not be sold, giving those who hold the land in rear a preference in the purchase ; by so doing, all dispute concerning the boundary must cease after a purchase in fee simple,—there is no longer any object to be gained in ascertaining the exact position of the boundary, either on the part of the Crown or the purchaser.

The Committee therefore respectfully recommend, that the petitioner William Lampson, be offered the beach lot, and a water lot to the ordinary depth of 22 feet, at a valuation by the Commissioner of Crown Lands, at its real market value, and a commutation of the seigniorial rights of the Crown in the lands held by him in rear thereof.

The third lot or section of the Crown property at l'Ance des Mères, consists of 908 french feet in front,—it was originally leased by the Ursuline Nuns to Messrs. Coltman on the 21st October 1808, for 30 years ; the unexpired term of which lease, came into the possession of J. B. Laporte by assignment from Messrs. Coltman in 1816. During the continuance of this term, Mr. Laporte being desirous of obtaining a renewal of the lease, and finding some difficulty with the Ursuline Nuns, inquired into the title, and gave information to Government which induced H. M. Attorney General to commence a suit against him as the tenant in possession.

The Crown claimed in this suit not only the beach up to high water mark, but also from thence to Cape Diamond, and Laporte, being thus sued, called upon

the Nuns as guarantees of his title, they intervened in the suit, claiming low water mark as the boundary of their estate.

Judgment in favour of the Crown to the full extent of its claim, was given in the Court of King's Bench ; against this Judgment the Ursuline Nuns appealed, and in July 1840, Judgment was given against the Crown, as regarded the ground in rear of high water mark, and establishing in favour of the Crown its title to the ground between high and low water mark.

It is remarkable, that in the Judgment, the Court of Appeals adopted as high-water mark, a line drawn on a plan made by Mr. Sax, a deputy surveyor, who was employed to make a figurative plan of the locality for the assistance of the Court, which line is in fact below the true high water-mark made, and was not intended to establish its exact locality, or supported in the proceedings by any evidence, shewing that it was a true line ascertained by actual survey. This line runs in an irregular manner and cuts through houses and cabins erected on the cape side of the road to the coves.

The Ursuline Nuns, and the Crown have both declared their intention to appeal from this Judgment, but the former having failed to put in the necessary security, forfeited their right to appeal, and the Crown have, therefore, the right to insist upon the Judgment as binding, or, on the other hand to appeal from it, and insists upon the full extent of its first claim.

On the 7th March, 1839, it was determined, that this lot should be leased for a term of years, and in consideration of large outlays made by Laporte, that he should have the first lease of 21 years, on paying arrears of rent at £10 per annum for eight previous years, and the new rent being £100 per annum orders were issued to the Attorney General to prepare this lease, but its completion has been prevented by the following circumstance.

Messrs. J. & J. M. Fraser, while the suit was in litigation, and after the first Judgment in favor of the Crown, procured a grant in perpetuity, from the Ursuline Nuns, of the whole ground to the summit of the Cape, and extending from thence to low-water mark ; thus assuming to acquire a title to the ground in litigation, under colour of authority from the Messrs. Fraser, Mr. Wm. Lampson has taken violent possession of the beach lot within a few days past. The Committee are respectfully of opinion that it would be inexpedient for the Government to continue the litigation. They also respectfully reiterate their opinion, that the plan of leasing for terms of years is inexpedient. The Committee are further of opinion, that the Government is pledged to Laporte to give him a preference in case of the disposal of the beach lot.

The Committee are also of opinion, that Messrs. Fraser by assuming to acquire a title to property in opposition to the rights of the Crown, that property being in litigation, has thereby acquired no claim to the favorable consideration of the Government.

They are also of opinion, that it would be prudent to avoid the necessity for all further intervention of the Crown in the matter in litigation, to dispose of the property, without guarantee of title. The Committee, therefore, respectfully recommend, that Mr. Laporte be permitted to purchase the beach lot extending to the ordinary depth of 22 feet water, and including all the ground belonging to the Crown in the lot, without reference to the boundary, but without compromising the seigneurial rights of the Crown, on the property held by or under the Ursuline Nuns, and that this sale be made on a valuation of the Commissioner of Crown Lands, to be reported and approved by your Excellency. The 4th section is under patent and no question is open relating to it. The 5th section consists of from 9 to 10 arpents in

front, and was acquired so far as it could be from the Ursuline Nuns, by Mr. John Fraser in 1832—he shortly afterwards applied for a commutation of tenure, which was granted, but inasmuch as this would confer no title to the ground between high and low-water mark, it was agreed that this should be sold to him absolutely. For the purpose of ascertaining the value of the property, the title to which was to be commuted, as well as of that which was to be sold to him, Messrs. William Philips and Robert Wood, were appointed as experts, one on behalf of the Crown, and one on behalf of the purchasers. These gentlemen valued the commutable property above high-water mark at £2,224 7s. 6d. upon which a commutation fine of 10 per cent. was to be paid, and the property below high-water mark at £285 for the ground and £479 3s. 4d. for the improvements. The commutation fine was paid amounting to £222.

The claimants also paid the fees to Government Officers, on the patent for the property below high-water mark, amounting to £251. 7s. 6d.

Before the issue of a patent, however, the matter was again brought under the consideration of the Executive Council, and an order was made by the Governor in Council, from which the following is an extract :—

“ But inasmuch as the Committee are of opinion, that the beach has evidently been undervalued by the experts according to their report of the 22nd October, 1835, they recommend that the premises be valued at 2d. per superficial foot, being the rate at which similar properties have hitherto been estimated in that neighbourhood, and that Mr. Fraser do pay an annual rent, to be calculated on the amount of such valuation, at the rate of 6 per cent. The property having been assigned in portions to Messrs. Bonner and Petry—these gentlemen severally petitioned to have patents issued to them, for their respective portions of the

beach, upon the terms stated in the last mentioned order in Council.

But these gentlemen have since petitioned repeatedly to have the rent reduced, principally because, as they allege, a concession was made to Mr. John S. Campbell, of a beach lot upon more favourable terms.

The petitioners have been answered by a Report of Council, entering into various distinctions between the two cases, and the Report goes to shew, that the instances were not parallel, and that the concession to Mr. Campbell was not more favourable under all the circumstances, than that to Messrs. Bonner and Petry.

But the Committee do not, at this time, think it expedient to enter into these questions of comparison. They cannot say, that they would have assented to so palpable an undervaluation, as that made by the experts, and in the disposal of the property of the Crown—they would have avoided carefully any comparison of sales to be made, with others already perfected. They think the only question must be, whether the petitioners have or have not been charged more for the property, than its real bona fide value—and with a view to this question, the Committee are of opinion, that no injustice has been done.

The Committee are respectfully of opinion, that even if the case attempted to be made out, of a great difference between the terms upon which the land was conceded to Mr. Campbell, and those upon which they purchased, was fully established, it would only have proved, that a great error had been committed in the case of the former sale; and the discovery of an error is, in the opinion of the Committee, the weakest reason in favour of its being perpetuated. For these reasons, the Committee respectfully recommend, that the claim of Messrs. Bonner and Petry be finally dismissed. The Committee have carefully examined the claim of Mr. James Reyner, in relation to this lot and improvements thereupon, in which he claims

an interest, and for the loss of which he demands indemnification, and are of opinion that he has not made out a case in which the Government can afford him any relief, and that his claim is inadmissible.

Mr. Reyner held under a lease, by the terms of which he was bound to give up at its expiration all the improvements during its continuance, and the fact that the Nuns under whom he held were not entitled to the beach lot, and that he was therefore an unauthorized possessor of Crown property, does not enable him to dispute in his own behalf, the title under which he held, or to place himself in a better position, than he would have been in, had that title been legal.

The Inspector General of the Queen's domain, reports upon a beach lot, not properly belonging to the L'Ance des Mères property, in which case, the Government in consideration of the Crown having received seigneurial dues, upon mutations of estate, in which the descriptions included the land between high and low-water mark, granted the beach lot at a nominal yearly rent of five shillings.

The Committee, as the matter respecting this lot is settled, only think it necessary to remark, as in the case of the L'Ance des Mères, 1st section, that in such cases, they would not advise the party in possession to be disturbed, yet they would avoid the instance quoted being made a precedent as in future cases where any action is required to confirm a title in possession acquired through inadvertence on the part of the Government, the full value of such confirmation should be exacted.

COUNCIL CHAMBER,

Montreal, 11th May, 1841.

(A true Copy.)

S. B. SMITH.

Kingston, 26th August, 1841.

Province of L. Canada, }  
 District of Quebec. } IN THE KING'S BENCH.  
 The twentieth day of April, 1831.

Dominus Rex,

*vs.*

JEAN BAPTISTE LAPORTE of  
 the Parish of Quebec, in the County  
 of Quebec, in the District of Que-  
 bec, Yeoman,

Defendant ;

and

The said JEAN BAPTISTE LA-  
 PORTE,

Pltintiff *en garantie*.

*vs.*

The Reverends Dames Marie Margue-  
 rite Boissonnault de Ste. Monique,  
 Supérieure of the Convent and  
 Communauté of the Ursulines of  
 Quebec ; Marie Françoise Panet  
 de St. Jacques, Assistante ; Gene-  
 viève Julie Berthelot de St. Joseph,  
 Zelatrice ; Marie Louise M'Laugh-  
 lin de St. Henry, Depositaire ;  
 Marie Anne Archange Panet de St.  
 Bernard ; Marie Louise O'Neal de  
 St. Catherine ; Jane McKutcheon  
 de Ste. Claire, Discretes of the said  
 Communauté, residing in the City  
 of Quebec, in the County of Que-  
 bec, in the District of Quebec, in  
 their said Convent,

Defendants *en garantie*  
 and intervening party.

The Court having heard the Attorney General on  
 behalf of our Sovereign Lord the King, and Mr.

No. 1574. }

Caron, Attorney for the Ursuline Nuns, as *garants formelles* of the above named Jean Baptiste Laporte, upon the issues raised as well upon the exception *peremptoire en droit perpetuelle* as upon the *défense au fonds en fait*, having also seen and examined the several exhibits and proofs of record and the figurative plan of Mr. William Sax, sworn surveyor, drawn in obedience to the Interlocutory Judgment rendered in this cause on the fourth day of June, one thousand eight hundred and thirty, and filed therein on the second day of October following, and having maturely deliberated upon the whole, it is considered and adjudged, inasmuch as the tract or parcel of Ground and Beach mentioned and set forth in the said information of the said Attorney General and described as follows, that is to say :—“ A certain Tract or parcel “ Land situated in the Lower Town of Quebec, at a “ place called *L’Ance des Mères*, containing five arpents eight feet, French measure, in front, by about “ seventy feet and upwards in depth, extending to “ the foot of Cape Diamond, bounded in front by “ low-water mark, on one side to the north by land “ in the possession of Alexander Munn or his representatives, on the other side to the south-west by “ land in possession of John Saxton Campbell, and in “ the rear by Cape Diamond” forms no part or parcel of the ground sold by one Duquet to the said Ursuline Nuns, by deed, before Becquet, Notary Public, and witnesses, on the twelfth day of March, one thousand six hundred and seventy-one, and subsequently confirmed to them by the Intendant,—that our said Lord the King is the proprietor thereof.

And it is therefore further considered and adjudged that the said Jean Baptiste Laporte do, within fifteen days from the service upon him of the present Judgment, desist from, quit and abandon, and after that delay that he be amoved from the possession and occupation of the tract or parcel of Ground and Beach



hereinbefore described, and that the same be rendered and delivered up to our said Lord the King ; and it is further considered and adjudged that our said Lord the King do recover his costs from the said Jean Baptiste Laporte.

PERRAULT & BURROUGHS,  
B. B. R.

No. 6.

Province of L. Canada, } The 30th July, 1840.  
Court of Appeals. }

THE URSULINE NUNS OF QUEBEC, Appellants ;  
and

THE ATTORNEY GENERAL, *pro Regind*, Respondent.

THE Court having heard the parties by their Counsel, examined the Record and proceedings and deliberated thereon, It is considered that inasmuch as by the report of the Survey of William Saxe, referred to in the Judgment of the Court below of the twentieth day of April, eighteen hundred and thirty-one, it appears that there is a space between the Cape Diamond and high water mark in the River St. Lawrence which the Crown cannot claim as the soil of the Tide-water, and whereof the Appellants have been legally in possession from time immemorial, under titles which it was not the object of the information to try, the Judgment of the Court below has by awarding all the depth of land from low water mark to Cape Diamond, adjudged to the Crown more than ought to have been held and considered as its property, and the Judgment of the Court below is therefore in this respect reversed :—and this Court giving the Judgment which the Court below ought to have rendered, It is adjudged and declared that all the land between Low-water mark of the premises described in the said Judgment and the place designated in the plan of William Saxe therein referred to by a line with

the letters *g, h, i, k, l,* and *a,* as that at which the tide did rise and would again rise but for the obstacles in its way, shall be held to be the property of Our Sovereign Lady the Queen, in right of Her Sovereignty as the soil of Tide water, and therefore it is considered that the said Jean Baptiste Laporte, do within fifteen days from the service of the present Judgment desist from, quit and abandon the same, and that in default thereof he be amoved of the possession and occupation of the said tract and parcel of land and beach as herein awarded to Her Majesty in due course of law. The Court awarding no costs to either party either in this Court or in the Court below. And it is ordered that the Record be remitted to the Court below.

Certified,

E. DESBARATS, C. C. A.

No. 8.

Province of Lower Canada, } The 17th November,  
 Court of Appeals, } 1830.

LOUIS FOURNIER, Appellant,  
 and

JACQUES OLIVA, Respondent.

The Court having heard the parties by their Counsel, It is considered and adjudged that the Judgment of the Court of King's Bench for the District of Quebec, rendered in this cause on the twentieth day of June, one thousand eight hundred and twenty-nine, be and the same is hereby reversed. And it is further adjudged that the said Appellant be maintained in the possession and enjoyment of the Lot of Land mentioned and described in the declaration in this cause filed, with injunction to the said Respondent not to trouble the said Appellant in the possession thereof in future—Condemn the said Respondent to remove and

carry away within fifteen days after signification of the present Judgment, the fence by him erected in and upon the said lot of land, and failing herein, doth authorize the said Appellant to prostrate and remove the said fence at the cost and charges of the said Respondent, and further condemn the said Respondent to pay to the said Appellant for his damages by reason of the matters complained of, the sum of five pounds with the Costs, as well in the said Court of King's Bench, as in this Court; and it is ordered that the Record be remitted to the said Court of King's Bench.

Certified,

E. DESBARATS, C. C. A.

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KINGSTON, 21st Feby. 1842.

SIR,

I had the honor, on Tuesday last, to present to His Excellency the Governor General, a Memorial of the Ursuline Nuns of Quebec to the Colonial Minister, praying that a Report of the Executive Council of this Province, dated 13th Decr. 1841, in which it was determined to deprive them of certain property of which they have been the possessors for upwards of 150 years, and to grant the same to one J. B. Laporte, their refractory tenant, or his assignee, might be set aside and quashed.—In the interview I had with His Excellency on the subject I respectfully requested that His Excellency would be pleased to transmit the same to the Colonial Minister, with his report and opinion thereon, as prescribed in like cases by the rules and regulations addressed to the Governors of Colonies from the Colonial Office as respects correspondence of individuals—page 92, section 3—clause 5—until the decision of Lord Stanley was made known to His Excellency, and that no action

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should, as respects either reference for Patent or otherwise, be made in favor of Jean Baptiste Laporte or his assignee, and His Excellency was pleased to assure me, after taking note of what I asked, that the matter should receive his attentive consideration.

I now therefore beg, as agent of the Ursuline Nuns, that this letter may be laid before His Excellency by you, as containing in writing the prayer of the Ursulines, which I had the honor of but verbally making known to His Excellency on Friday.

The plan of Mr. Sax, alluded to in the memorial to Lord Stanley, has been mislaid by me, but in the course of a few days a certified copy will be handed to you, to be attached to the Memorial and Appendix; and I shall at an early day be enabled to transmit a printed copy of the memorial to Lord Stanley, and appendix thereto, to forward with the written one.

I have, &c.

(Signed) J. H. KERR.

The Honble. D. DALY,  
Secretary, East.

SECRETARY'S OFFICE,  
Kingston, 22d Feb. 1842.

SIR,

I am commanded by the Governor General to acknowledge the receipt of your letter of the 21st instant, relating to the Memorial you presented to His Excellency on Friday last, upon the subject of the claim of the Ursuline Nuns to certain property at l'Ance des Merès.

In reply I am to inform you that His Excellency after a careful consideration of your statement of the case is unable to give you any other answer than the one announced to you on the 27th ult. His Excellency will of course readily transmit your Memorial to the Secretary of State; but he sees no sufficient reason

himself for a reversal of the decision of the Executive Council, and after the very long enquiry that has now been had into the merits of the case, he cannot consent to the further delay which the suspension of proceedings solicited by you would cause.

I have the honor to be,

Sir,

Your most obt. servt.,

D. DALY,

Secy.

J. H. KERR, Esq.  
&c. &c. &c.

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KINGSTON, 22d Feby. 1842.

SIR,

I have had the honor to receive your letter of this date, acquainting me in reply to my letter addressed to you yesterday, in relation to the Memorial presented by me on the part of the Ursuline Nuns to His Excellency the Governor General, "that you had been commanded to inform me that His Excellency, after a careful consideration of my statement of the case, is unable to give me any other answer than the one announced to me on the 27th ultimo, but that His Excellency will of course readily transmit the Memorial of the Nuns to the Secretary of State, but that His Excellency himself sees no sufficient reason for a reversal of the decision of the Executive Council, and that after the very long enquiry that has now been had into the merits of the case, His Excellency cannot consent to the further delay which the suspension of proceedings solicited by me would cause."

As representing the Religious Ladies of the Ursuline Convent, I beg respectfully to intimate to you, for the information of His Excellency the Governor General, that the appeal rendered in July 1840, reversing in part the judgment of the King's Bench

in the case of our Sovereign Lord the King versus Jean B. Laporte, the Nuns intervening, will be immediately carried by these ladies to the law tribunal of last resort—the Queen in Council—their right to do which is undoubted and acknowledged to be so in the Report of the Executive Council of the 13th December last. His Excellency is already apprized that the last law decision in 1840, has restored to the Nuns half of the property which the Crown in 1839 were about to grant to Laporte, their refractory tenant—and they are advised by the first law authorities in the Province that by an appeal to the Court of last resort, they will be declared to be the proprietors of the remaining half.

The opinion entertained by His Excellency that he cannot stay the issue of Patent although His Excellency will forward the memorial of the Nuns to the Colonial Minister, necessarily obliges the ladies to take this course as the only one open to them of obtaining redress ; *for in case the Patent to Laporte or his assignee is signed the decision of the Colonial Minister, if favourable to their pretensions, will be of non avail to them*

I therefore most respectfully pray, that Patent be not issued to Jean Bte. Laporte or his assignee till the appeal of the Nuns to the Queen in Council, which will be proceeded with as soon as the rules of Court permit, is finally pronounced, and that in the meantime, His Excellency will be pleased to transmit the memorial of the Nuns presented by me, to the Colonial Minister, Lord Stanley.

I return to Quebec to-morrow, and I request your reply addressed to me there.

I have, &c.

(Signed) J. H. KERR.

The Honble. D. DALY,  
Secretary, East.

SECRETARY'S OFFICE,  
Kingston, 24th February, 1842.

SIR,

I am commanded by His Excellency the Governor General to acknowledge the receipt of your letter of the 22nd instant, praying, in behalf of the Ladies of the Ursulines Community of Quebec, that Patent be not issued in favor of J. B. Laporte, or his Assignee, till such time as the appeal which they now propose making from the decision of the Court of Appeals in July, 1840, to the Judicial Committee of the Privy Council shall have been carried through and a decision obtained upon it.

I have the honor to be,

Sir,

Your most obedient Servant,

D. DALY,  
Secretary.

J. H. KERR, Esq.  
&c. &c. &c.