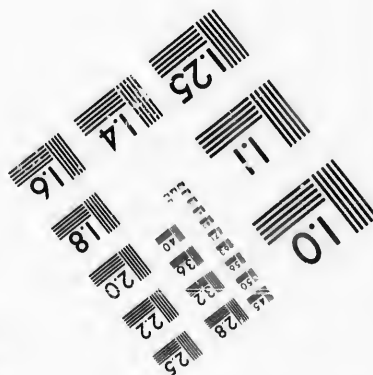
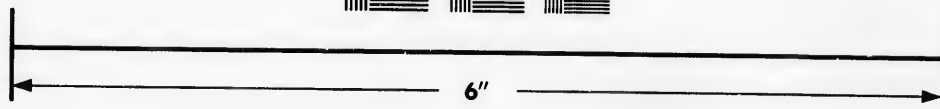
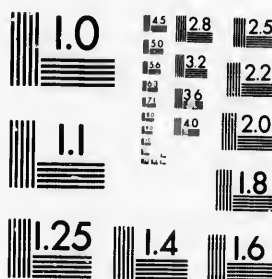


# IMAGE EVALUATION TEST TARGET (MT-3)



Photographic  
Sciences  
Corporation

23 WEST MAIN STREET  
WEBSTER, N.Y. 14580  
(716) 872-4503

**CIHM/ICMH  
Microfiche  
Series.**

**CIHM/ICMH  
Collection de  
microfiches.**



Canadian Institute for Historical Microreproductions / Institut canadien de microreproductions historiques

**© 1986**

# Technical and Bibliographic Notes/Notes techniques et bibliographiques

The Institute has attempted to obtain the best original copy available for filming. Features of this copy which may be bibliographically unique, which may alter any of the images in the reproduction, or which may significantly change the usual method of filming, are checked below.

L'Institut a microfilmé le meilleur exemplaire qu'il lui a été possible de se procurer. Les détails de cet exemplaire qui sont peut-être uniques du point de vue bibliographique, qui peuvent modifier une image reproduite, ou qui peuvent exiger une modification dans la méthode normale de filmage sont indiqués ci-dessous.

☒ Coloured covers/  
Couverture de couleur

☒ Covers damaged/  
Couverture endommagée

☐ Covers restored and/or laminated/  
Couverture restaurée et/ou pelliculée

☐ Cover title missing/  
Le titre de couverture manque

☐ Coloured maps/  
Cartes géographiques en couleur

☐ Coloured ink (i.e. other than blue or black)/  
Encre de couleur (i.e. autre que bleue ou noire)

☐ Coloured plates and/or illustrations/  
Planches et/ou illustrations en couleur

☐ Bound with other material/  
Relié avec d'autres documents

☐ Tight binding may cause shadows or distortion  
along interior margin/  
La reliure serrée peut causer de l'ombre ou de la  
distorsion le long de la marge intérieure

☐ Blank leaves added during restoration may  
appear within the text. Whenever possible, these  
have been omitted from filming/  
Il se peut que certaines pages blanches ajoutées  
lors d'une restauration apparaissent dans le texte,  
mais, lorsque cela était possible, ces pages n'ont  
pas été filmées.

☐ Additional comments:/  
Commentaires supplémentaires:

☐ Coloured pages/  
Pages de couleur

☐ Pages damaged/  
Pages endommagées

☐ Pages restored and/or laminated/  
Pages restaurées et/ou pelliculées

☒ Pages discoloured, stained or foxed/  
Pages décolorées, tachetées ou piquées

☒ Pages detached/  
Pages détachées

☒ Show-through/  
Transparence

☐ Quality of print varies/  
Qualité inégale de l'impression

☐ Includes supplementary material/  
Comprend du matériel supplémentaire

☐ Only edition available/  
Seule édition disponible

☐ Pages wholly or partially obscured by errata  
slips, tissues, etc., have been refilmed to  
ensure the best possible image/  
Les pages totalement ou partiellement  
obscurcies par un feuillet d'errata, une pelure,  
etc., ont été filmées à nouveau de façon à  
obtenir la meilleure image possible.

This item is filmed at the reduction ratio checked below/  
Ce document est filmé au taux de réduction indiqué ci-dessous.

10X	14X	18X	22X	26X	30X
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12X	16X	20X	24X	28X	32X

The copy filmed here has been reproduced thanks to the generosity of:

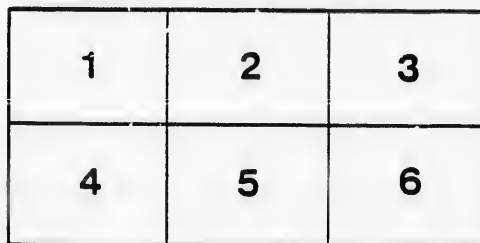
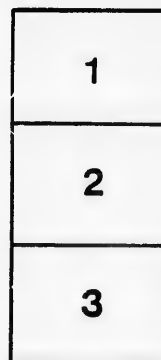
Législature du Québec  
Québec

The images appearing here are the best quality possible considering the condition and legibility of the original copy and in keeping with the filming contract specifications.

Original copies in printed paper covers are filmed beginning with the front cover and ending on the last page with a printed or illustrated impression, or the back cover when appropriate. All other original copies are filmed beginning on the first page with a printed or illustrated impression, and ending on the last page with a printed or illustrated impression.

The last recorded frame on each microfiche shell contain the symbol  $\longrightarrow$  (meaning "CONTINUED"), or the symbol  $\nabla$  (meaning "END"), whichever applies.

Maps, plates, charts, etc., may be filmed at different reduction ratios. Those too large to be entirely included in one exposure are filmed beginning in the upper left hand corner, left to right and top to bottom, as many frames as required. The following diagrams illustrate the method:



L'exemplaire filmé fut reproduit grâce à la générosité de:

Législature du Québec  
Québec

Les images suivantes ont été reproduites avec le plus grand soin, compte tenu de la condition et de la netteté de l'exemplaire filmé, et en conformité avec les conditions du contrat de filmage.

Les exemplaires originaux dont la couverture en papier est imprimée sont filmés en commençant par le premier plat et en terminant soit par la dernière page qui comporte une empreinte d'impression ou d'illustration, soit par le second plat, selon le cas. Tous les autres exemplaires originaux sont filmés en commençant par la première page qui comporte une empreinte d'impression ou d'illustration et en terminant par la dernière page qui comporte une telle empreinte.

Un des symboles suivants apparaîtra sur la dernière image de chaque microfiche, selon le cas: le symbole  $\longrightarrow$  signifie "A SUIVRE", le symbole  $\nabla$  signifie "FIN".

Les cartes, planches, tableaux, etc., peuvent être filmés à des taux de réduction différents. Lorsque le document est trop grand pour être reproduit en un seul cliché, il est filmé à partir de l'angle supérieur gauche, de gauche à droite, et de haut en bas, en prenant le nombre d'images nécessaire. Les diagrammes suivants illustrent la méthode.

STATEMENT  
OF THE  
SEIGNIORS  
OF  
RIMOUSKI & METIS  
IN REFERENCE TO  
THEIR RIGHT OF FISHING  
IN THE RIVERS  
RIMOUSKI AND METIS.

---

QUEBEC :  
PRINTED BY C. DARVEAU  
No. 8, Mountain Hill,  
1877



STATEMENT  
OF THE  
SEIGNIORS  
OF  
RIMOUSKI & METIS  
IN REFERENCE TO  
THEIR RIGHT OF FISHING  
IN THE RIVERS  
RIMOUSKI AND METIS.

---

QUEBEC :  
PRINTED BY C. DARVEAU  
No. 8, Mountain Hill,  
1877

*In*

no  
hu  
fo  
th

be  
fo  
Th  
off  
ha  
fo



STATEMENT  
OF THE  
SEIGNIORS  
OF  
RIMOUSKI AND METIS

*In reference to their right of fishing in the rivers Rimouski and Métis.*

I.

GENERAL OBSERVATIONS.

In a new and extensive country as Canada it is not surprising that the laws regulating fishing and hunting have not been in certain localities always enforced in favor of those who had exclusive rights to this privilege.

At first the settlers were spread in small numbers in distant and separate places, the rivers and forests were for them as opened and free domains. There was then no municipal regulations and no officers specially appointed to define where parties had or had not a right to fish or hunt for pleasure or for profit.

In the Province of Quebec the Seigniors were living amongst their tenants in a spirit of good will, and they knew well how to enjoy whatever right or privilege belonged to them. Several grants were made of lands and rivers with the exclusive right of fishing in such rivers by the Crown of France to the Seigniors ; other grants were made without such exclusive right.

By the Treaty of *Peace* of 10th February 1763 and by the Imperial Act of 1774, 14 George III., c. 83, the rights of property of the Seigniors were clearly confirmed. Even without these guarantees, under the public law of England these rights of the Seigniors to enjoy whatever had been granted to them by title from the French Crown could not have been interfered with except by some positive enactment of the Imperial Parliament. I am not aware that the public law or the civil law of England was then and is now adverse to the exclusive right of fishing being granted by the Crown even in navigable rivers.

There is a wide difference between the right of navigation and the right of fishing. The right of navigating the rivers belonged to the public and cannot be interfered with by the Seigniors or by any one else, but this right of navigation does not include the right of fishing or of bathing or of doing any thing which is not an accessory to the right of navigation.

This doctrine as recognized in England has been discussed in all its bearings and very well explained in that celebrated and leading case of *Blundell & Catterall* : 7 English Common Law Reports p. 91 and

copied in the American work of Angell on Tide Waters, Appendix page 25 & 26. " This *jus publicum* " appears from Lord Hale to be the public right in " all the king's subjects, of navigation for the purposes of commerce, trade and intercourse ; and also " the liberty of fishing in the sea, or the creeks or " arms thereof which Lord Hale, *De jure Maris*, p. 11, " says the common people of England have regularly " as a public common of piscary, and which he says " they may not, without injury to their right, be restrained of, *unless* in such places, creeks or *navigable* " *rivers* where either the king or some particular subject has granted a propriety, exclusive of that common liberty."

The authorities of the French law as it existed in 1763 are numerous, and all agree to give to the Seigniors an absolute right of property in the non-navigable rivers within the limits of their Seigniorship and a right in the use of water in navigable rivers including right of fishing, reserved by their titles from the Crown of France only to the right of navigation belonging to the public.

Among other books may be cited " *Traité des fiefs* by Pocquet de Livonière," page 621.

Pour les rivières navigables " les Seigneurs particuliers peuvent y avoir droit de pêche, etc., par " titres, c'est-à-dire, par concession de nos Rois, par " aveux anciens ou par possession immémoriale.

" Pour les rivières non navigables, elles sont " censées appartenir aux Seigneurs..... lesquels y " ont droit de pêche, etc.

As to navigable rivers. "The Seigniors can have  
" therein the right of fishing by titles, that is to say,  
" by Grants of our Kings. by old acknowledgments,  
" or by immemorial possession."

As to non navigable rivers "they are presumed  
" to belong to the Seigniors who have therein the  
" right of fishing, etc.

Bacquet, des Droits de Justice chap. 30.

Henrys, vol. 2, liv. 3, questions 5 et 6.

Salvaing, de l'usage des Fiefs, chap. 37, and under  
the present law of France, the same doctrine as to the  
limitation of navigation is upheld.

Demolombe, des Servitudes, vol. 11. 332. "Les  
" bateliers ne peuvent employer le chemin de halage  
" qu'aux besoins de la navigation ; c'est ainsi qu'ils  
" n'ont pas le droit de s'en servir pour les commodités  
" de la pêche."

Proudhon, Domaine de la Propriété No. 784.

Garnier, Régime des Eaux, vol. 2, p. 82.

"La servitude imposée aux riverains est exclu-  
sivement réservée au service de la navigation."

Idem vol. I, p. 93.

Daviel, vol. I, p. 78. "On ne peut se servir du  
" marche-pied du fleuve pour s'y baigner."

II.

ABOLITION OF THE FEUDAL SYSTEM IN  
THE PROVINCE OF QUEBEC.

When in 1854 the feudal system was abolished in the Province of Quebec, all the rights and privileges of the Seigniors had to be determined. In order to come to a proper conclusion a Special Court composed of all the judges of the Superior Courts of the Province was created by an act of the Parliament, 18th Victoria, chap. 3. and to that Court was confided the duty of determining the legal rights of the Seigniors. There had been a long agitation on behalf of the Censitaires, (tenants,) forming the seven eight parts of the people against the Seigniors whose privileges were looked upon with some jealousy, and this feeling had penetrated to a certain extent the mind of many public men. However the Seigniors, being a small minority, had to submit, and whatever wrongs they may have suffered, they have to abide, as others are bound to do, by the judgment of this Special Court. The deliberations and proceedings of this Court are contained in four printed volumes. I refer for the present question to volume A. page 68, 69, 70, 71, 74. A correct translation of the judgment on each question, in the form of answers, is published in English in Robertson Digest of cases in Lower Canada, page 438 No. 26 to No. 32, and 37 to 33.

By the same act re-printed in the Consolidated Statutes of Lower Canada, chapter 41, section 34, it is enacted that the decisions of the Seigniorial Court shall be held as a final judgment in appeals *en dernier ressort*, having force as *res judicata*.

### NAVIGABLE RIVERS.

“ No. 26. Seigniors had no other rights over navigable rivers than those specially conveyed to them by their grants, provided those rights were not inconsistent with the public use of the water of those rivers which is inalienable and imprescriptible.

“ 27. 1. In seigniories bounded by a navigable river Seigniors could lawfully reserve to themselves the right of fishing therein, or impose dues on their tenants (censitaires) for the exercise of that right, when the right of fishing in the same had been granted to them; but they could not make the reservation, or impose the dues, without grant and as Seigniors only.

“ 2. Where the right of fishing in navigable rivers was granted to Seigniors, the tenants (censitaires) could not have that right without special concession.

“ 3. The right of Seigniors in tidal navigable rivers over the space of ground covered and uncovered by the tide, are derived from special grants, and without that extend to high water mark only; in navigable rivers not subject to the tidal flow, the rights of Seigniors extended to the water line, saving all legal servitudes, and without prejudice to the special grants in navigable rivers above mentioned.

“ 4. The mutation of beaches, between high and low water mark, on the river St. Lawrence, or in other navigable rivers, held by Seigniors by virtue of grants, as aforesaid, and conceded by them, entitles Seigniors to the mutation fine (lods et ventes) in the same cases in which it would have accrued in other sales.

“ NON-NAVIGABLE RIVERS.

“ 28. 1. By the grant of the fief to the Seigneur, he  
“ became proprietor of the non-navigable rivers, rivu-  
“ lets and other running waters, which passed through  
“ or were wholly or in part within the fief ; the same  
“ principle applied to the property in such rivers and  
“ rivulets to the middle of the stream. It is also in  
“ virtue of the same grant, that he became proprietor  
“ of non-navigable lakes as well as of ponds.

“ 2. He was thus proprietor of these waters in the  
“ manner aforesaid, as belonging to and forming a por-  
“ tion of the fief ; unless they were excluded by the  
“ grant ; subject nevertheless to legal servitudes.

“ 29. 1. At the cession of the country, the Seigniors  
“ of Canada were lawful proprietors of those non-navi-  
“ gable and non-floatable waters, in whole or to the  
“ middle of the stream as the case might be, on the  
“ whole of their unconceded lands, and might make  
“ use of them for industrial or other purposes, to the  
“ exclusion of all other persons.

“ 30. The right of property in rivers was not a  
“ right *justitiæ* (droit de justice) it resulted from the  
“ conveyance of and followed the estate granted ;  
“ when the estate was conveyed in Seigniorship the right  
“ resulted from the general laws of property in force  
“ in the country, and not from the text of the Custom  
“ of Paris, nor from any law specially promulgated for  
“ Canada.

“ 31. It was not a right *justitiæ* (droit de jus-  
“ tice).

“ 32. 2. The property of Seigniors in non-navi-  
“ gable and non floatable waters was susceptible of

“ division into the immediate demesne and the useful  
“ demesne like the property in the soil.”

“ 2. The concession operating this division, conveyed to the tenant (*censitaire*) the possession and enjoyment of these waters which were within the limits of the concession.”

“ 37 et 38. There has been no established jurisprudence in Lower Canada since the cession of the country, in relation to the rights in the waters which fall through or border upon their lands.”

The judgment upon all these questions has been considered since as a *res judicata* and has conferred to the seigniors incontrovertible and vested rights which are held sacred by those and for those who live under the protection of the British Constitution.

Our own Parliament of Canada has not acted in a different spirit, and it has formally and clearly acknowledged these vested rights in all the Statutes relating to fisheries as may be seen by the acts 29 Victoria, Chapter II. S. 3 and 31 Victoria, Chapter 60. S. 2 still in force. The reservation is nearly the same in these two acts.

In the Statute of 1865, 29 Vict. chap. 11. S. 3 it is enacted: “ The commissioner of Crown Lands may, *when the exclusive right of fishing* does not already exist by law in favor of private persons, issue fishing lease and licences for fisheries and fishing.”

In the Statute of 1868, since Confederation, 31 Vict. chap. 60 section 2 it is enacted “ The Minister of Marine and Fisheries may *when the exclusive right of fishing* does not already exist by law, issue or autho-



"rize to be issued fishery leases and licences for  
" fisheries and fishing."

Under these statutes it seems that seigniors having rights of fishing in the rivers within their seignories are not bound to take any license; but this question, if restricted to a nominal license for salmon fishing, is not a matter in dispute now and need not be discussed. When the bill upon which this statute of 1865 is founded was introduced, the Honble. Mr. Alexander Campbell, then Commissioner of Crown Lands, a gentleman of high legal attainments, is reported in the Debates to have cited the opinion on this matter of a former Attorney General and Minister of Justice of Canada, now Chief Justice of the Province of Quebec, a most distinguished lawyer, with a perfect knowledge of the jurisprudence of Lower Canada in particular and of Canada generally.

These debates have been deemed so important that they were published then in pamphlet form in french and english, and at page 4, 5 & 6 the Honble. Campbell is reported to have said :

" In order to enable the House to judge fairly in  
" the case, it seems necessary that it should be made  
" aware of the rights of parties whose fisheries are  
" likely to be affected by the bill. Some misconceptions  
" exist in relation to these rights, but it was in no  
" wise the intention of the Government to interfere  
" with them. This is stated at the outset because my  
" hon. friend opposite (Hon. Mr. DeBeaujeu) had manifested some apprehension that the bill might in  
" some way invade the rights of the Seigniors and  
" Censitaires, and in order to effectually quiet such

“fears it is proposed to make a further slight alteration which will entirely remove any such danger. This alteration is noted in the 3rd clause, and provides that only where no exclusive rights of fishing exist by law in favor of private persons, shall the Commissioner of Crown Lands issue leases.

“Hon. Mr. LETELLIER DE ST. JUST.—This does not now appear in the bill.

“Hon. Mr. CAMPBELL—No, I have just said that I propose making the alteration in Committee as already noted in the bill. I believe that there is some misapprehension abroad as to the position of the Seigniors in regard of fishing rights, which it would be well to dissipate. Upon referring to the patents or grants issued to the Seigniors, or to the parties from whom the Seignoiries have been purchased, it is found that there has been a conveyance of fishing rights which ought not to be disregarded; and to enable the House to judge of the unquestionable character of these rights, I will quote from a few of the patents or grants. Among numerous other deeds, more or less similar, may be instanced those of the seigniories of Islet du Portage, Verbois, River du Loup, Isle Verte, Grand Pabos, Soulange, St. Sulpice, Boucherville, Isles Bouchard, Kamouraska, Sillery, Gaudarville, &c., &c. In some of these grants there is conveyed, besides the express and exclusive right of fishing, the liberty to fish with all sorts of tackle on the beach as far as low water mark, or in any manner the grantee may deem convenient, or as he may think fit. Others grant a sedentary (or fixed) fishery. Many convey the right of soil in beaches, islands, battures, and

“ shoals, some with and some without fishing. Not a  
“ few grants stipulate the right of exclusive fishery as  
“ far as the middle of the St. Lawrence, opposite the  
“ lands described.

“ Quite a number of other references to the same  
“ effect from like documents might be adduced, but  
“ these will probably suffice to show the intentions of  
“ the French Crown to have been a full and perfect  
“ conveyance of a proprietary right in these fisheries  
“ to be used as the owners thought fit, or in accor-  
“ dance with the practice of the times.

“ Judicial decisions have been had confirming  
“ certain fishing rights. The action also of the Com-  
“ mission appointed under the Seigniorial Act has fur-  
“ ther established many such claims. This shows  
“ sufficiently clear that not only was the right to  
“ fisheries conveyed, but also the privilege of fishing  
“ on any way that seemed best to the grantees. The  
“ precise practice would be a question of fact. ”

“ Hon. M. Campbell.—The question of positive  
“ ownership in these fisheries had been raised when  
“ the former Administration was in power, and the  
“ then Attorney General for Canada East, the Hon.  
“ Mr. Dorion, had delivered an opinion on the subject.  
“ This question arose in consequence of an advertise-  
“ ment of the Sheriff that he would proceed on a cer-  
“ tain day to sell a certain fishing right at Rivière  
“ Ouelle, taken under execution. The official conduct-  
“ ing the affairs finding that no express grant of fisheries  
“ was made by the main grant, was anxious to estab-  
“ lish that the supplementary deed could not supply  
“ such omission. It was then suggested that the right

“ to the fishery resided in the Crown and that it could  
“ not be sold, but the opinion of the Attorney General  
“ was adverse to such a view. It was as follows :—

*On the Commissioner of Crown Lands' letter respecting  
the right of fishery in the Seigniorie of La Bouteillerie.*

Quebec, 13th Feb. 1864.

“ On the 29th October, 1672, the Sieur de la  
“ Bouteillerie was granted *a titre de fief*, two leagues  
“ of land in front by one and a half in depth, to be  
“ taken on the River St. Lawrence, to wit : one league  
“ above and one league below the River Ouelle, in-  
“ cluding the same.

“ On the 20th October, 1750, another grant was  
“ made to Mde. DeRamezay, widow of Sieur Boishe-  
“ bert, of two leagues in front by two leagues in  
“ depth ; to be taken at the depth of the league and  
“ a half, of land formerly contained in the Seigniorie  
“ of La Bouteillerie, to form together with the former  
“ concession of 1672, one and the same seigniorie.

“ This last grant appears to have been ratified on  
“ the 24th June, 1751, and in the deed of ratification  
“ it is said that “ His Majesty has ratified and con-  
“ firmed the said grant, wishes, in consequence, that  
“ the said Widow DeBoishebert, her heirs or assigns,  
“ enjoy in perpetuity the said land, to be one and the  
“ same seigniorie, *a titre de fief* with the old grant, with  
“ high, middle and low justice, *right of fishing*, hunting  
“ and trading with the Indians, in the whole extent  
“ of the said grant ; without being bound, for all that  
“ to pay to His Majesty or successors, any money or  
“ indemnity,” of which remittance, “ with the stipu-

“ lation to leave the beach free for all fishermen, with  
“ the exception of those necessary to the said Dame  
“ De Boishebert for her fishery.”

“ This deed of ratification has given to the Seig-  
“ niors of la Bouteillerie the right of fishing, not only  
“ in the augmentation of the seigniory, but also on the  
“ whole extent of the first grant, comprising thereinto  
“ this part of the River St. Lawrence where it is  
“ bounded.

“ This right is not restricted by the charge or  
“ reserve “ to leave the beach free to every fisherman ”  
“ this reserve not applying to the fisheries, but only  
“ to those parts of the beach not being occupied by  
“ the fisheries of the proprietors of the Seigniory ; up  
“ to the time of the abolition of the Seigniorial Tenure,  
“ this right of fishery could be conceded, and the  
“ grantees have a right to enjoy it conformably to the  
“ grants made, and in the parts of the Seigniory where  
“ it shall not have been granted, it belongs, since the  
“ abolition of the Seigniorial Tenure, to the riparian  
“ owners.

“ I am, therefore, of opinion that the Crown has  
“ no right of fishery in this Seigniory, and that no op-  
“ position can be made to the sale of the propriety  
“ known under the name of Great porpoise Fishery  
“ of River Ouelle Point, and of the fishery rights  
“ attached to it, seized on Messrs. Casgrain and Tetu,  
“ at the suit of the Trinity House of Quebec.

“ (Signed)

A. A. DORION,

“ Attorney-General, L. C.

“ That opinion has further confirmed me in the  
“ view taken of the matter, and I was glad to find  
“ myself so supported, not professing to be intimately  
“ conversant with Lower Canada law. The subject  
“ also came in a special manner before the Seigniorial  
“ Tenure Commissioners, and there my hon friend  
“ (Hon. Mr. De Beaujeu) presented a claim for indem-  
“ nification for the loss of his fishing rights, when the  
“ Commissioners decided he had not lost them, but  
“ that they continued to vest in him as fully and per-  
“ fectly as ever, and that consequently he had no  
“ claim to compensation. Such being the case with  
“ that hon. member's rights, it of course followed that  
“ it was likewise the case with all other persons si-  
“ milarly situated—at least with all seigniors who had  
“ not been compensated for the surrender of rights of  
“ this kind.”

The present claimants affirm that they have not received any indemnity whatever for their right of fishing in the Seigniories of Rimouski and Métis.

The Hon. Mr. Campbell added p. 6. “ In Upper  
“ Canada the right of fishing was altogether in the  
“ hands of the Crown or held by the Crown for the  
“ public or for the Indians, and Parliament was  
“ therefore at liberty to make such laws on the sub-  
“ ject as might be considered desirable.”

It is perhaps the same rule in New Brunswick and Nova Scotia, but the undersigned has not any opinion to offer in this matter ; the object of this memorial is to show that at least the rule is different in the Province of Quebec, and that the rights of fishing vested in the Seigniors by their titles have been fully recognized and exist still at the present day.

In the course of these debates in which members of the Legislative Council very well conversant with the laws of the Province of Quebec took part, not one of them has expressed an opinion adverse to the rights of the Seigniors.

The Hon. M. Letellier de Sr. Just, now Lieutenant-Governor of the Province of Quebec, said among other things "page 14 of the same pamphlet :

" There were certain rights in regard to fishing, " which had existed from time immemorial, and he " held it would neither be just nor right to deprive the " present claimants of those rights without compensating them for their loss. Changes in this respect " could not be effected without proper indemnity to " the parties."

### III.

*Titles from the King of France to the claimants, granting to them the right of Fishing in the rivers of Rimouski and Metis.*

It is proper now to consider the nature and extent of the rights of the claimants. Their right of property as Seigniors or owners of the Seigniories of Rimouski and Métis is not disputed ; they have succeeded to the original grantees, and have been in possession from time immemorial. They have been acknowledged by the Government when the cadastres of these Seigniories have been publicly deposited and approved. They have therefore clearly the right to claim the same privileges which have been granted by the kings of France to the original Seigniors. The original grants are in their possession, bearing the ratification of the

Great King, Louis XIV, under his own signature and royal seal. When in 1854 the question of the feudal tenure was agitated, these titles were all printed in french and form now 2 volumes. In the vol. I. page 20 and 21 is found the title of the Seigniory of Rimouski, dated the 24th april 1638 ; here follows an abstract of that part relating to the present case."

" Jacques R. de Brisay, Marquis de Denonville  
Gouverneur du Canada, etc., et Jean Bochart, Intendant, etc.

" Nous avons en vertu du pouvoir à nous donné  
" par Sa Majesté, donné, accordé et concédé au Sieur  
" de la Cardonnière l'étendue de deux lieues de terre,  
" prés et bois de front sur le dit fleuve St. Laurant à  
" prendre de la concession du Bic en descendant le  
" fleuve et de deux lieues de profondeur dans les terres,  
" ensemble la Rivière dite Rimouski et autres rivières et  
" ruisseaux si aucun se trouve dans la dite étendue avec  
" l'Ile de St. Barnabé et les battures isles et islets qui pour-  
" ront se rencontrer entre les dites terres et la dite Ile, pour  
" en jouir par le dit Sieur de la Cardonnière en toute  
" propriété, seigneurie, fief et justice haute, moyenne et  
" basse, et droit de chasse et de pêche, au-devant et au  
" dedans des dits lieux..... "

This extract translated in english reads as follows :  
" Jacques R. de Brisay, marquis de Denonville, Gov-  
ernor of Canada etc. and Jean Bochart, Intendant.....

" We in virtue of the powers given to us by His  
" Majesty, have given, granted and assigned to Sieur de  
" la Cardonnière the extent of two leagues (6 miles) of  
" land meadow and forest, having frontage on the River  
" St. Lawrence to begin from the concession of Bic



“ going down the River and two leagues (6 miles) in  
“ depth, *with the river called Rimouski and other rivers*  
“ *and rivulets, if any others are found within this extent,*  
“ *with the Island of St. Barnabé, and the beaches, islands*  
“ *and islets which may be found between the said lands and*  
“ *the said Island,* to the end that the said Mr. de la Car-  
“ donnière may enjoy the same in full ownership, as a  
“ seigniory, fief and right of high and low justice *with*  
“ *the right of hunting and fishing opposite and within the*  
“ *said places.*

The Island of St. Barnabé is situate in the river St. Lawrence at a distance of 2 or 3 miles, just opposite the said seigniory and river Rimouski and is still the private property of one of the claimants as a part of his Domain.

The title or grant of the seigniory of Métis is not less explicit.

“ Extract from page 150, vol. 1. (translation.) “ Jac-  
“ ques René de Brisay, Marquis de Denonville, Gover-  
“ nor of Canada, and Jean Bochart Intendant &c. To  
“ all whom these may concern : On the petition of  
“ François Pachot praying that we should be pleased  
“ to grant to him *in full ownership the Métis river* in  
“ its frontage to the river St. Lawrence, as far as a lea-  
“ gue (3 miles) in depth, and one league in front on the  
“ river St. Lawrence, one half below and one half  
“ above the said river, in order to establish here *fisheries*  
“ for cod, whale, seal and other fixtures and hold the  
“ whole as a fief and seigniory. We in virtue of the  
“ power given to us by His Majesty have granted and  
“ conceded to the said Mr. Pachot *in perpetuity the*  
“ *said river Métis* with its front (devanture) on the river  
“ St. Lawrence running a league in depth, and one lea-

“ gue in front on the said river St. Lawrence, one half  
“ above and one half below the said river (Métis) for  
“ the purpose of establishing these fisheries of ecd,  
“ whale and seal and other establishments, in perpe-  
“ tuity to the said Pachot”.....  
This Grant bears date at Quebec the 7 january 1689.

It does not appear necessary to add any long commentaries upon the effect of these titles. By this last one the property of the river Metis itself is conveyed to the grantee.

These titles cover the area of the fishing grounds, where the Government has granted leases for the fishing of salmon to other parties and received from them a certain amount of rent.

1°. The fishing ground in the river Rimouski, is in a part of this River, where it is not navigable, extending from the foot of the dam erected in 1828 for a saw mill belonging to the Claimants, running about a distance of 1000 feet along the south shore of the river, and near to small islands belonging also to the claimants ; and where the claimants are not only seigniors, but are also riparian proprietors. Even if they were not riparian proprietors, they have their specific title to the river and have never granted any part of it to their Tenants, Censitaires, or to any one else.

2° In the river Metis the estuary of the fishing ground is also in a place where this river is not navigable extending from the foot of the dam of their grist and saw mill to a distance of some 2000 feet where again the claimants are not only seigniors, but are also riparian proprietors.

It is well to observe that by the change of tenure operated in 1854, (Consolidated Statutes of Lower Canada, Chapter 41) the claimants did not receive any indemnity for their right of fishing, because they are presumed to have retained the enjoyment of this vested right of property.

Applying the rules laid down in the judgment of the Seigniorial Court, the claimants have a double right in the portion of these rivers, that is not navigable 1st simply as seigniors (answer No. 28.) 2nd in virtue of their specific title. In the part of this river within their seigniory, that is navigable, they preserve their right in virtue of their specific title, answers No. 26 and 27 of the Seigniorial Court) subject only to the right of navigation existing under the public law.

#### IV.

*Under what circumstances the Government of Canada granted the present leases. Rights of the claimants acknowledged.*

It was only about the year 1855 that statutes for the protection of salmon and other fishes were enacted. There was a strong opposition then to this kind of protection, which was considered obnoxious to many who were in the habit of fishing at all times and in all places. The superintending of the execution of the fishery laws and regulations was left to the Department of Crown Lands, there being then no Ministry of Marine and Fisheries. It was then as it is now still the desire of the claimants, in view of the public good, to see these laws carried

into effect. In order to attain partly that object in the localities of the South Shore of the St. Lawrence and show a good example, the then Commissioner of Crown Lands and one of the claimants, representing also the other claimants, entered into a temporary arrangement suggested by one of the Officers of that Department. It was to the effect that licences would be issued by the Government for the right of fishing salmon in these seigniories to some parties agreed between the Commissioner of Crown Lands and the claimants, under the condition that one third of the amount of rental for licenses and leases should be retained by the Government and the others two thirds should be remitted to the claimants.

This arrangement appears to have existed and worked harmoniously during a good number of years, as it must appear by correspondence which took place. Among other letters, the claimants refer to one dated the 19th december 1863, addressed to the Hon. the Commissioner of Crown Lands.

SIR,

With the mutual concurrence of the Hon. P. Vankoughnet (then Commissioner of C. L.) and the Hon. Mr. Tessier, agent for the Seigniories of Rimouski and Métis, (*wherein is vested the droit de pêche*) (meaning the right of fishing) I leased certain fisheries, with the joint understanding that the Seigniors were to receive  $\frac{2}{3}$  of the amount of rental, the Government to retain the other  $\frac{1}{3}$  to defray any little expense that might be incurred. The inclosed is a letter that I have received in relation thereto.

Will you please to give instructions that the amount be paid.

I have the honor to be,

Your obdt. servant,

RICH. NETTLE,

Superintendent of Fisheries.

According to this arrangement the share of the claimants was paid and remitted to them by the Government.

Subsequently M. Whitcher acting for the Commissioner expressed his willingness to continue this arrangement, but wished to reduce the proportion to be remitted. His letter is as follows :

Quebec 1st. June 1864,

SIR,

With reference to the issue for the current season of fishery licence for salmon fishing stations at those parts of the Seigniories of *Rimouski and Métis* where the right of fishery is still vested in the Seigniorial proprietors, this Department is willing to allow the customary percentage of 25 per cent off the rents derived. If you assent to this arrangement and will be so good as to signify the same, licence can at once issue and

at the close of the season the sums payable from the collections will be paid through this office to Mesdames Drapeau and Casault.

I have the honor to be

Sir,

Your obedient servant,

W. WHITCHER,

for C. C. L.

TO HON. U. J. TESSIER,

Quebec.

The answer to this letter may be found in the Department. As it may well be supposed, the claimants wished to adhere to the proportion of rental fixed by Mr. Nettle and approved by the then Commissioner.

At all events under this arrangement divers sums of money supposed to represent their share, were remitted to them each year, until the year 1872, when Mr. Whitcher addressed to one of the claimants the following letter :

Ottawa 10th. May 1872,

SIR.

The suras collected as licence fees on salmon fishing stations at those parts of the Seigniories of *Rimouski and Métis*, where the right of fishing is still vested in the Seigniorial proprietors during the years

1870 and 1871 amount to \$124 as per Statement over leaf. Agreeably to your letter of 6th June 1864, in which you accept on behalf of Madame Drapeau and Casault the *arrangement suggested* by this office, to allow the customary percentage of 25% of the rents collected, I have the honor to enclose here with a cheque in your name for the sum of \$31, being the proportion named to be paid over to the Seigniors. The accompanying receipt please sign in duplicate and return to this office

I have the honor to be,

Your obdt. Servant,

W. WHITCHER

for the Hon. Minister of Marine and Fisheries.

TO HON. U. J. TESSIER,

Senator, Ottawa

These letters prove very clearly the acknowledgment by the Government of Canada, before and since Confederation, of the vested rights of the claimants. However since 1872 no proportional share of the rental of the fishing leases in the river Rimouski and Métis has been remitted to the claimants, although a lease has been granted for the river Rimouski to L. Sylvain Esq., for 1872 and 1873, and to George Stephen Esquire, from 1st January 1874 to 31 December 1878, and a licence to A. M. Delisle Esq for the river Métis during the previous years from 1872 to the present time at a rental for each river of twenty dollars per year, and that these gentlemen have no doubt paid the amount to the Government.

It must be well understood that the claimants do not in any manner make or intend to make any complaint against Mr. Stephen and Mr. Delisle, who are only enjoying the privileges conferred to them by these licences, and for whom the claimants entertain the most friendly feeling.

Our complaint is against the apparent determination of the Government to ignore the rights of the claimants in these rivers Rimouski and Métis, at least since 1872, to repudiate previous arrangements, and to dispose of vested rights belonging to the claimants without their assent.

Although these rights are not of a great pecuniary value, they are a part of their real estate, accessories of their private domains, and they are bound to defend them by all legitimate means.

They are under the impression that their claims have not been sufficiently explained or understood ; otherwise the principles of equal justice to all subjects and the protection due to private rights under our Constitution would have already convinced the ministers of the Crown of the equity and legality of this claim.

The claimants have not lost the hope that relief will be afforded to them and that their just claim in this matter will be acknowledged by the Government. If the Government is advised to adopt a different conclusion, the claimants humbly ask that their claims should be referred upon a settled statement of facts to be decided by a judiciary tribunal in the



Province of Quebec or by the Supreme Court of  
Canada.

JULES TESSIER,

Solicitor for Claimants.

Quebec, 1st June 1877.

N. B. This statement has been written in English as suggested by Mr. Whitcher ; this may serve as an apology of the writer for any inaccuracy of language.

