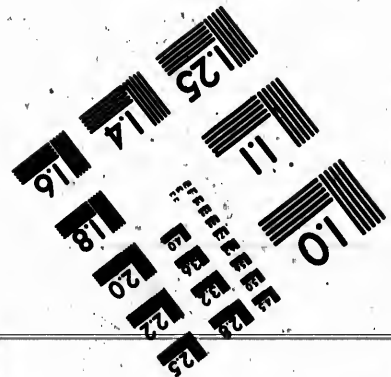
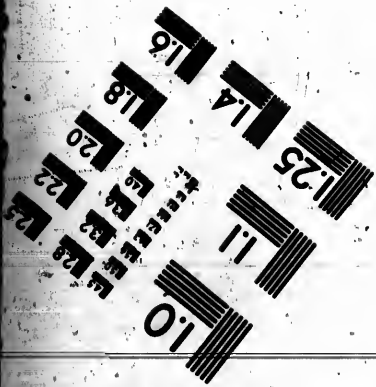
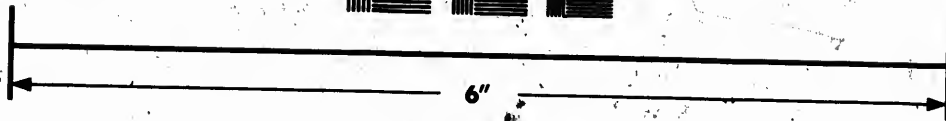
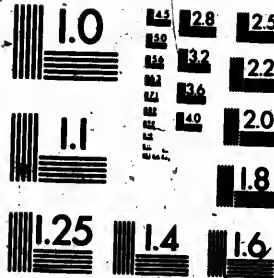


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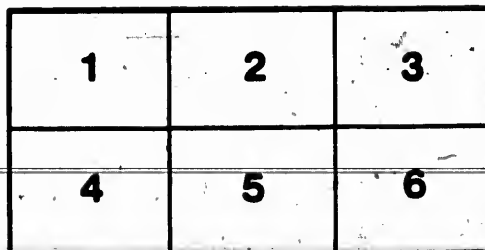
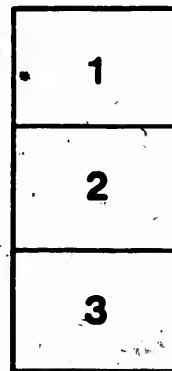
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IN THE QUEEN'S BENCH.

APPEAL SIDE.

OF HER SOVEREIGN LADY THE QUEEN.

AND

APPELLANT.

EBENEZER BAIRD,

RESPONDENT.

RESPONDENT'S CASE.

**G. OKILL STEWART,
For Respondent.**

Printed by Broussseau, Quebec.

follows: "that such wharf or wharves shall be of a breadth of sixty feet at the least, and shall extend from the line of high water mark to the said line of limit before mentioned and established by the Commissioners to limit the grants of water lots in deep water of the river St. Lawrence."

There is also a particular reserve of a road over the beach. When I say that these clauses are not to be found in other Patents, I mean of similar property, that is, grants of older dates of property in the immediate neighbourhood and elsewhere; they are conditions lately imposed on persons in respect of property particularly situated. I have stated that the condition of the Patent in this cause tyed, when fulfilled, will be beneficial to the property on the north side of the blue line above mentioned, it is true that this blue line cuts through several houses which is a detriment to and inconvenient to the proprietors of each portion, but I conceive that the fulfillment of the conditions would add value to both. I am one of a commission appointed by the Provincial Government to point out to the Government what we conceive to be the proper limits, for grants into deep water and the conditions include the dimensions of wharves and the mode in which they should be constructed. Although this was recommended, I have known instances in which these conditions have not been exacted by the Government in making grants to their full extent.

RE-EXAMINED.—The difference which exists between the Letters Patent in this cause tyed and other Letters Patent containing grants of beach lots near Cap Blanc, that is, in the conditions imposed upon the grantee, and which difference I have above stated, is that it makes the condition more onerous on Mr. Baird, the Defendant, than upon other grantees in the neighborhood, that is in the particulars mentioned in my cross-examination.

No. 3.

JOSEPH HAMEL, Road Surveyor.—I have been Road Surveyor since 1810, previous to which time I performed the duties of a sworn Provincial Land Surveyor. In the discharge of the duty of these offices, I became well acquainted with property in and near the City of Quebec. I performed the duties of Land Surveyor since the year 1822. Being shown the exhibit No. 1, endorsed "Exhibit of the Attorney General" and also the plan endorsed "Exhibit of the Attorney General, No. 2." I can state that I have known the locality or property therein mentioned and described, since my infancy, and before ever Laporte ever had any possession of any portion of this property which is commonly known as Cap Blanc. I have had work to perform in connection with this property both as Land Surveyor and as City Board Surveyor in the years 1810 and 1811. I made the plan of the whole of Champlain street, under the orders of the City Corporation with reference to the widening of that street which runs through the place called Cap Blanc; Cap Blanc itself being within the limits of the City itself. Champlain street is the only road leading up to the Cove, where the principal commercial business of the City is done and is the only great public Queen's highway in that part of the City known as Champlain Ward.

I know the blue line having once traced it in the field at the request of the Defendant. When I first knew this property, it was all beach, there being then only a few scattered huts or shanties placed upon wharves built above high water, and in fact as respects these, some of them were built in the Cliff, having only a small gallery in front of their shanties, on which galleries, people at high water could pass, without which people could not pass unless behind the shanties. Foot passengers had to wait in fact until the tide receded a little before they could pass with any convenience. There was no road then, and the appearance of any track

or road would be always washed away by the tide, except in bays where the water did not reach and the whole place looked very miserable indeed. The persons living in these shanties were labourers of the poorest class who worked in the Coves in the neighbourhood. It was some time before 1829 that there was a road made to pass with vehicles on the site where Champlain street is now.

It was after Laporte settled there that the road was first made. This road was called Laporte's road. After which in the year 1829, Mr. Larue, Land Surveyor, and myself, being in partnership, were employed by Commissioners appointed by the Government to lay out several roads, for the improvement of which, money had been voted. We were so employed to survey among other roads, the road in question, through Cap Blanc. This part of the road now forming Champlain street was laid out by Mr. Larue and he extended his survey to the Coves. It was I who gave the name of Champlain street to the locality as in the discharge of my duty as Road Surveyor. I put up that name upon boards in the street, and I did so because it is a continuation of an old settled part of this City known as Champlain street. Since this time Champlain street has become a great thoroughfare of the City and the traffic increases there every day. I know the property on the north of the blue line at Cap Blanc, and I know that some parts of this property has access to Champlain street, and I know that the persons in the houses through which the blue line passes have access to the street as a public highway, and this is a matter of fact; and the fact is that all the houses in that locality on the North side of Champlain street have access to it; in fact they face upon it, with the exception of one or two at the West end. The building of wharves upon that locality would certainly improve the property on the North side of Champlain street and on the South also, by increasing the traffic, and would thus improve it on the North side of the street as well as upon the South.

Being shown the Letters Patent in this cause I filed can state that the first lot thereby granted is from the Blue Line to low water mark and the second lot thereby granted is between low water and a line in deep water called the Commissioners line, that is, a line fixed by Government Commissioners to settle a line for the port of Quebec. I have read over the conditions set forth in the said Letters Patent and which are thereby made obligatory upon the Defendant, such as, the building of wharves &c. I have also read the reservations therein contained and also, in particular the reservation following. "Provided always and we do hereby reserve to Us our Heirs and successors and to all our liege subjects in their respective benefit and advantage from time to time and at all times hereafter, their respective will and pleasure by night and by day to go, return, pass and pass through along and over the aforesaid described lots or pieces of ground and over any wharf or wharves erected or to be hereafter erected for the purpose of towing-boats, barges, rafts, scows and other vessels up and down the river St. Lawrence when and so often as they shall have occasion so to do," and also the reservation as follows: "We do hereby reserve to us our heirs and successors a free public road or highway of a breadth not exceeding thirty six feet through such parts of the said premises hereby granted as are lying and being on the border of the river St. Lawrence; to wit, between high and low water mark, where the said road may be most advantageously laid out for the public use and convenience," and also the reservation to Her Majesty, her heirs and successors of "full power right and authority upon giving twelve months previous notice to the said Defendant, his heirs and assigns in possession of the said lot or piece of ground, beach and premises to resume for public improvements the possession of the said lots or pieces of ground, beach and premises or any part or portion thereof on the payment to him the said Defendant, his heirs and assigns, of the consideration money in the said Patent mentioned, or part thereof, as the case may be, and on payment to him or them of a reasonable indemnity in that behalf for the ameliorations or improvements

" which shall have been made on the said lots or pieces of ground, beach and premises ;" and am of opinion that the building of the wharves and widening of the street would benefit the locality on both sides of the street. The blue line to which I have referred is the line drawn by Mr. Sme, and referred to in the judgment of the Court of Appeals being Defendant's Exhibit No. 4.

Being shewn the paper writing, Defendant's Exhibit No. 5, purporting to be a sale by the Reverendes Dames Religieuses Ursulines de Quebec, to John Fraser and John Malcolm Fraser, and also the record or *contra-lettre* being Defendant's Exhibit No. 6, the portion of the property at Cap Blanc, which the first of these deeds, that is the Deed of Sale, purports to dispose of, is that between low water mark and within three feet of the *Cape de Cap*. The *contra-lettre* or Exhibit No. 6 of the Defendant refers to the same property. Being shewn the Defendant's Exhibit No. 7, purporting to be a sale by the said John Fraser and John Malcolm Fraser to William Lamont, I can state that the property therein described is the same as that described in the said Exhibit No. 5, with the exception that the sale to Lamont is bounded by high water mark, when that to Fraser is bounded by low water mark. This high water mark is now known as the blue line. The said William Lamont has property immediately adjoining Cap Blanc, property which he has held for a number of years.

> **CROSS-EXAMINED.**—Most of the premises whose leases are at Cap Blanc, on the south side of the street after Laporte's brewery, and which with this property, were erected on piles or pillars or stults; and any questions about the houses were made by the persons who built the houses. These erections, I do not know, whether they can be called wharves, but they look like wharves on the surface; but they are generally clap boarded on the outside. When first Laporte became connected with Cap Blanc there was not a single house erected; but there were a few huts occupied by people who had squatted there; there may have been six or eight of these huts including the huts on Mr. Miron's property adjoining, which is of the same size as the property at Cap Blanc. This was in 1813 or 1814. There were no settlements within the limits of the City beyond that. There are now valuable establishments situated beyond the property in question. I have been in communication with the Defendant in this cause in relation to the property in question and have made plans for him.

QUESTION.—Do you not know that Mr. Laporte adopted as his mode of settling this property that of granting leases to individuals upon condition of their erecting houses and making improvements upon the lots leased to them?

ANSWER.—I do not know any thing about Mr. Laporte's condition.

It was in the year 1814, that in my capacity of Road Surveyor, I laid out Champlain Street, passing through the property in question by orders of the Corporation of the City of Quebec. The blue line intersects the majority of the houses on the north side of Champlain Street.

QUESTION.—In whose possession are the houses intersected by the blue line?

ANSWER.—The houses in question are occupied by the several persons whose names appear upon the plan filed, being Defendant's Exhibit No. 9 in this cause, or their representatives.

QUESTION.—Is the Defendant in this cause in possession of any other houses intersected by the blue line, by himself or by tenants under him, and state which of the said houses if any are so?

ANSWER.—I made a plan for the Defendant for the premises in question, including the portion of the houses south of the blue line but on the north of the road, for the purpose of enabling the Defendant to execute leases for some of them, but which I cannot say. My descriptions extended from the easterly line marked on Exhibit No. 9, and extended as far as Mr. Simpson's big brick house, represented on the said plan by Chevalier, adjoining Claude Gignère on the said plan. The lots I so laid out for the Defendant were bounded on the north by the blue line, were of various breadths and of the depth of sixty feet south of Champlain street, which was reserved of the breadth of thirty-two feet besides the sixty feet; the reservation was of a street of thirty-two feet, and not of Champlain street as it now exists, but the street as it now exists forms part of the thirty-two feet, and the widening of my plan was to be on the south side of Champlain street. This plan was made upon instructions from the Defendant, I telling him at the time that the upper part of the street had been laid out in such a manner that it could not be touched and that the widening of the street must be on the south side of the street to which he acceded.

QUESTION.—Is it not true that the Defendant in the cause under his Patent is now proprietor for the most part of the property in question on both sides of Champlain street?

ANSWER.—Yes, as far as Mr. Simpson's brick house.

QUESTION.—Can the Defendant in this cause take corporeal possession of the interval between Champlain street and the blue line in the state in which the north side of Champlain street is now built up, and by what means could he do so?

ANSWER.—The Defendant could take corporeal possession from and including the lot marked Laporte on the plan marked Defendant's Exhibit No. 9, down to Jac. Blais, on the said plan, and this he could do by taking and occupying the houses built on this interval, which all but a very inconsiderable part are upon the interval between the streets and the blue line.

QUESTION.—Supposing the houses upon the interval mentioned in your last answer to belong to the Defendant, would there be any other way of his taking possession of the land upon which they are built, than by causing them to be pulled down or removed.

ANSWER.—Of course, if the houses on this interval do not belong to the Defendant then they ought to be removed by the owner and the Defendant might then build a house of his own in lieu of those taken down.

QUESTION.—Supposing the Defendant to be put into exclusive possession of all below the blue line, would not the property above the blue line suffer great diminution in value?

ANSWER.—I consider that the property above the blue line is valueless, because it would cost as much to excavate the cliff and make it habitable as it can sell for after that excavation is made, and this I can state from calculations, having made them myself and which can be easily ascertained from the angle of the cliff being *forty five degrees* at least, which is of a height of one hundred and eighty feet.

QUESTION.—What value do you attach to the property on the north side of Champlain street, that property having for its boundary the street itself?

ANSWER—From the way in which it is settled, it is of little or no value from the miserable settlements and there being no yard room.

QUESTION—What value would you attach to the property in question, including as well the property on the north side of the street as the river front on the south side of it?

This question was withdrawn.

RE-EXAMINED—Being asked if I can state the average depth between the blue line marked in the plan Defendant's Exhibit No. 9 and the foot of the cliff, I can state, that the line is immediately at the foot of the cliff except perhaps at one or two places where there are little coves, which I cannot point out on the plan as for instance at Laportes, but then as respects these latter the distance between the blue line and the cliff was very trifling also: as respects Laportes lot there must have been an excavation made there to build the house as there are no windows in the first story in the rear.

No. 3.

EDWARD BOXER—I am one of the Harbour Commissioners appointed by the Executive Government to settle the line for future deep water grants from the Crown opposite to the city of Quebec and in the Harbour of Quebec. I acted as such with Colonel Oldfield, commanding the Royal Engineers at Quebec, and the Honorable Francis Ward Primrose Inspector General of the Queen's Dockyard. Since Colonel Oldfield left, his successor Colonel Halloway was substituted in his place. The object of this commission was to protect the interests of the Crown and public and more particularly for the benefit of the trade at Quebec, where grants had been previously made injurious to the public, it was to prevent this for the future that we were appointed commissioners and for the purpose of resuming any property ungranted that might be required for the public service. I am well acquainted with that portion of the Harbour at Quebec known by the name of Cap Blanc. I have known this property very particularly since the date of the commission which I think was in 1812 and I more particularly noticed this property as it was considered the best and only safe place for a naval Government depot and in consequence we recommended that there should be a reservation of the rights of the Crown in that particular which I believe was made in the Patent and which is latterly made a condition in all grants of the Crown opposite to the city of Quebec.

I am acquainted with the property on the street commonly called Champlain street known as Cap Blanc front frequently having passed through it including the north side of Champlain street. I recollect that we recommended as Commissioners a broad commercial high road in front of the houses on the north of the road, considering that it would be the best commercial place in Quebec for the running out of wharves for the improvement of the harbour of Quebec. We recommended also, if I recollect right, that the road should be widened forty feet which would have the effect of taking down those houses on the south side that intererred with the road on that width.

There has been read to me at this the time of my examination the conditions of the Patent in this cause filed being the grant to the Defendant in question in this cause and I can state that the fulfillment of these conditions will be eminently beneficial to the trade of the harbour of Quebec and I consider that the fulfillment of these conditions will be equally beneficial to the proprietors all along the road at Cap Blanc in a commercial point of view, by that I mean to say that it will improve the value of them.

No. 5.

CATHERINE MERTEAU.—Je réside au Cap Blanc et j'y ai résidé depuis quarante ans, mon voisin d'un côté au nord est madame Duval et de l'autre côté au sud ouest est François Wiseman. C'est M. Lampon qui m'a donné le bail de cette propriété. J'ai pris mon bail chez M. Lemoine, notaire de M. Lampon. Il y a deux ans depuis que j'ai possédé la dite propriété comme locataire de M. Lampon. C'est sur le côté du cap de la rue Champlain elle touche la rue Champlain par devant et le Cap par derrière. On sort de la dite propriété sur la rue Champlain. * * * * *

No. 6.

MARIE DUVAL.—Je connais le Cap Blanc et j'ai résidé là depuis que je suis née. J'occupe une emplacement sur le côté nord de la rue Champlain borné pas devant par la dite rue et par derrière par le cap; la ligne bleue passe un peu plus beaucoup à travers la dite propriété. J'ai pris un bail de M. William Lampon de la dite propriété. Mon voisin d'un côté est François Wiseman et de l'autre côté c'est M. Birch. Cet automne il y a trois ans depuis que j'ai pris mon bail de M. Lampon. Cet emplacement fait partie de la propriété que M. Laporte occupait autrefois et elle est connue sous le nom de Cap Blanc. J'ai toujours eu accès de la dite emplacement sur la rue Champlain et sur laquelle il fait face. La dite emplacement est bornée par derrière par le Cap. * * * * *

No. 7.

JULIE COUTURE.—Je demeure à Cap Blanc sur la propriété qu'occupait autrefois Jean-Baptiste Laporte; mon emplacement est de vingt pieds, sur la rue Champlain. Je suis bornée en arrière par le cap, du côté nord-est est Ferdinand Miller, et de l'autre côté au sud-ouest c'est madame Duval. J'ai toujours eu accès à la rue Champlain. Je crois que la ligne de la haute marée passe à travers la dite emplacement. Il y a des maisons bâties sur tout la longueur du Cap Blanc sur le côté du cap. J'ai pris mon bail de la dite emplacement de M. William Lampon, il y a deux ans et demi. * * * * *

No. 8.

JOHN TURNER LILLIOT.—I live at Cap Blanc and have lived there two years this spring. I live on a lot of land rented to me by Mr. William Lampon, and have leased it from him since last May. This lot of land is on the north side of Champlain Street and faces the said street, touching the street in its whole frontage, and is bounded by the cape in the rear; and is bounded on one side to the south west by Ferdinand Millar and on the other side to the north-east by Claude Giguère. My lot is about thirty five feet in front on Champlain Street. The line of high water passes through the said lot. The said lot makes part of Cap Blanc. A man of the name of Merrick was Mr. Lampon's tenant before me. I sublet it from Merrick at first and now hold it on a verbal lease from the said William Lampon. I think Merrick had been in possession of it two years before I had it. * * * * *

No. 9.

SIMON BUTLER.—I know Cap Blanc and live in the neighbourhood of it, and I have known it for the last fifty five years since 1798. At that time there were three houses on Cap Blanc without chimnies and with stove pipes in the place of chimnies and the same description of house was built upon the property for a period of twenty years afterwards. These three houses were in a

hollow under the Cliff. This place was large enough to lay up three vessels of about fifty tons for the winter. The rest of this property was a rugged beach over which the water flowed to the foot of the cliff. There was no road there. The hollow that I make mention of may have been two hundred feet long more or less. The depth of this recess may have been about forty feet within the line of the rest of the property. The water overflowed this recess or hollow place also, and it was only at spring or high tides that small vessels could be taken into it for the purpose of wintering as I have already stated. I recollect being in a schooner with my father in the year 1798, which was moored in the above recess. A gale of wind came on in the night, broke her moorings and threw her up alongside of the cliff out of her wintering place above mentioned. The extension of Champlain street now goes over the whole of this property and it is all made ground at the foot of the cliff from Diamond Harbour to Gilmour's Cove between which two points the whole of Cap Blanc lies. Beyond doubt the construction of wharves at this place would improve the property as it would anywhere else.

No. 10.

ETIENNE PARANT.—I am the assistant Secretary of that part of this Province called Canada East and have been so since the year 1847. The nature of my duties as assistant Secretary of this Province is to receive all the correspondence relative to Lower Canada, and to prepare under the direction of the Secretary of the Province, the correspondence from the office and also it superintendence of the Provincial Secretary's office and the business therein conducted. The preliminary matters for the issuing of Letters Patent conveying estate from the Crown, pass through the Crown Land Office and also of the Executive Council. I have a general recollection of the Patent filed in this cause as Exhibit of the Attorney General No. 1. These Letters Patent passed in the usual form, references were made to the several public officers who reported upon the same in the usual way to the best of my belief before the said Letters Patent issued, and they were so issued according to the draft of the Attorney General, which was obtained in due form.

Previous to the issuing of the said Letters Patent the parties interested were heard before the Honorable the Executive Council of this Province, namely, on the 5th day of August 1845. They were heard by legal counsel at that time. I was present, being then Clerk of the Executive Council. The Honorable Mr. Caron and Mr. Cherrier, both Queen's Counsel, were heard on behalf of the Reverend Ladies the Ursuline Nuns, and Mr. Buchanan, also a Queen's Counsel, was heard, together with Mr J. E. Baird, on the part of Mr. Baird, the Defendant in this cause.

CROSS-EXAMINED.—I think that after this hearing the matter was referred to the Home Government, and a despatch was subsequently received from the then Colonial Secretary, who I believe was then Lord Stanley, on that subject. There were several changes in the Ministry between the hearing in question and the issuing of the Letters Patent. I know that the said Letters Patent issued in February 1848, and I am under the impression that that is immediately before the LaFontaine-Baldwin Ministry came into power. I have not got the custody of the despatch of Lord Stanley. It is in the custody of the Private Secretary of the Governor, Colonel Bruce. The subject of this bench was, before the Executive Council before my appointment and I know that in 1843 there was a Report of a Committee of the Executive Council on the subject in question, a copy of which in print is now shewn to me marked "Plaintiff's Exhibit filed at *Enquête* No. 20," and which I have collated and examined with the original Report in Council and which I am thus enabled to say is a true and correct copy of the original.



report in council of the twenty-first September 1843. The Report of the Executive Council on the same subject of the 11th of November and 18th of December of the same year appended to the same are likewise true and correct copies of Reports of the Executive Council, having compared the same with the original. I do not recollect of any other hearing before the Executive Council except the one I have referred to.

RE-EXAMINED.—I think there are several other Reports of council in the same subject after that last above mentioned. I have no doubt about it. It could not be otherwise than that there was an order in council previous to the issuing of the Patent in this cause and this proceeding in Court I dare say was authorized by an order in council.

It was at the request of Mr. William Lampson that I compared the copy above mentioned. I do not know whether there was or not more than one despatch from the colonial Secretary. The original of the Report on which the Patent in this cause filed must have issued would be in the possession of Mr. Lee the acting clerk of the Executive Council.

No. 11.

ADOLPHE LARUE.—I have been a Land Surveyor residing at Quebec for the last twenty one years. I know the place called Cap Blanc very well and have known it since my boyhood, and I recollect assisting my father who was engaged in laying out a road there. It was under the direction of Mr. John Saxton Campbell and my father that I assisted in laying out this road. Mr. Campbell and my father, and I think some others, were commissioners appointed by Government under an Act of the Legislature, by which monies were voted for the making of the said road. This road was made in continuation of what was known as Champlain street, and I believe it to be now known as Champlain street.

When we commenced working at that road it was impassible for vehicles. At the place known as Cap Blanc and especially where Mr. Laporte resided there were little bridges or galleries to pass on foot. At some places, as far as I can recollect, the water used to go under these bridges at high tide. These bridges were the foot-path for foot passengers. There was no actual road and there was no other place to pass but this. At low water persons might go round lower down, but they were not in the habit of doing so. There were but few houses there at the time, and Mr. Laporte's was the only decent one among them. I speak of the north side along the Cape, and I dont recollect seeing any houses on the south side of the foot path at that time.

The continuation of Champlain street was made about the same place as the foot path. I think Champlain street or rather the continuation of it was made in the same manner as wharves by pieces of timber crossed. With the exception of Laportes house the other buildings in this locality were cabannes or buildings of the poorest exception.

I know that I had instructions from Government in my professional capacity of a Land Surveyor to make a survey of the property at Cap Blanc to determine by boundaires high water mark according to M. Sax's plan which instructions I complied with. The paper writing being Plaintiffs exhibit No. 5 is a copy of the plan which was made by me under the direction of the Government. The blue line marked on the said plan running partially through Champlain street is the line that was marked down as high water mark by Mr. Sax. I do not think there is much land between this line and the foot of the cliff. It is a fact that in some places the houses touch the foot of the cliff. This plan contains a survey of two lots separate and distinct from each other, one lot from high to low water mark and the other, from low water mark into deep water. *****

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