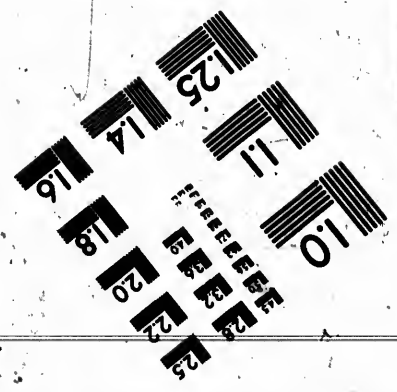
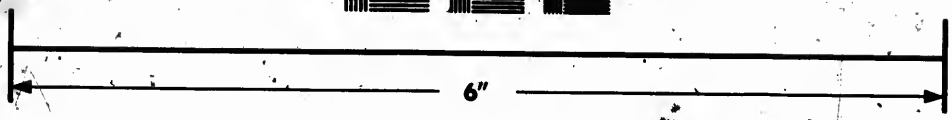
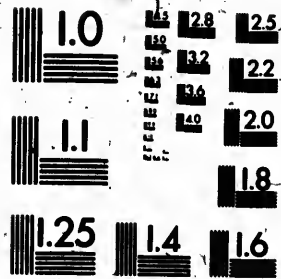


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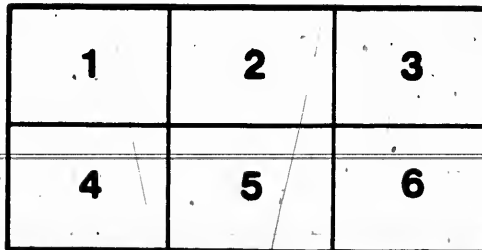
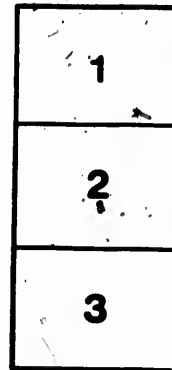
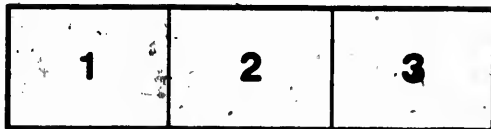
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IN THE QUEEN'S BENCH,
(APPEAL SIDE.)

R. _____

THE ATTORNEY GENERAL,

Pro Respondent,

APPELLANT;

ENGINEER SAIBU,

RESPONDENT.

Statement of the Appellant.

Filed
Sept, 1880.

For the Atty. General,
DUNBAR BOSS,
Q. C.

*1. Order held by the Atty. General
during 10 or 12 days last.*
2. Order of the Bench.
3. Order of the Bench.
4. Order of the Bench.
5. Order of the Bench.
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30. Order of the Bench.

PROVINCE OF CANADA, }
LOWER CANADA. }

COURT OF QUEEN'S BENCH.
APPEAL SIDE.

OUR SOVEREIGN LADY THE QUEEN,

APPELLANT,

and

EBENEZER BAIRD.

(Defendant in the Court below,)

RESPONDENT.

RESPONDENT'S CASE.

THE proceeding in the Court below, in which this Appeal originated, was in the nature of a *scire facias*, nominally for the benefit of the Reverend Ladies the Ursuline Nuns of Quebec, but really for that of Mr. William Lampson, a Cove owner, for the purpose of setting aside letters patent granting certain beach lots at the City of Quebec, to Mr. Baird, the Respondent in the above cause. In order that the real nature of the claim set up in the Court below may be distinctly before this Court, the Respondent here transcribes at full length the information which was issued in the name of the Attorney General on the 12th of April 1848,—“ Be it remembered that the Honorable “ Louis Hypolite Lafontaine, Esquire, Attorney General of Our present “ Sovereign Lady the Queen, who prosecutes for Our said Lady the Queen, in “ this behalf, comes in his own proper person before the Honorable the Justices “ of Her Majesty’s Court of Queen’s Bench, for the District of Quebec, and for “ and on behalf of Our said Lady the Queen, complains of Ebenezer Baird, of “ the City of Quebec, in the said district, Esquire, and giveth the Court here “ to understand and be informed that on the twenty third day of February last “ past, by letters patent under the great seal of the said Province, given at the “ Government House, in the City of Montreal, Our said Lady the Queen, upon “ the Petition of the said Defendant, did give, grant and confirm unto him his “ heirs and assigns certain lots or pieces of ground, beach and premises within “ the said District in the said letters patent described as follows: All that “ certain lot or parcel of beach situate at a place called L’Ance des Mères, near “ the City of Quebec, in the County and District of Quebec, bounded, &c, (Here follows a description of first:—a lot commencing at high water mark as established by the plan of one Sar and running to low water, and secondly:—a lot in front of the one above mentioned running into deep water) “ To have and to hold the said lots, tracts or parcels of land, beach and premises of Our said Lady the Queen, her heirs and successors unto the said Ebenezer Baird, his heirs and assigns, to his and their own proper use and behoof for ever in free and common soccage by fealty only, in lieu of all other rents, services, dues and duties whatsoever, in like manner as lands are now holden of Our said Lady the Queen in free and common soccage in

“ that part of the united Kingdom of Great Britain and Ireland called England.
“ And Our said Lady the Queen, by the said Letters Patent did grant to the
“ said Ebenezer Baird, his heirs and assigns for ever full power and liberty to
“ use, occupy and enjoy the said lots, tracts, or parcels of land, beach and pre-
“ mises in any manner that he or they shall think fit by erecting a wharf or
“ wharves, store or stores, or other buildings thereon, and to apply the produce
“ or profits thence arising to his and their own use and benefit upon and
“ subject to certain provisos and conditions in the said letters patent mentioned
“ of which letters patent the said Attorney General bringeth here into Court a
“ true copy together with these presents.”

“ And the said Attorney General of our said Lady the Queen further giveth
“ the Court here to understand and be informed that by a certain Judgment
“ of the Court of appeals of the Province of Lower Canada, rendered on the
“ thirtieth day of July one thousand eight hundred and forty in the said
“ cause in the said Letters Patent mentioned, the Reverend Ladies the Ursu-
“ lines of Quebec aforesaid were adjudged and declared to be and in fact and
“ in law are, the proprietors and in possession of all the land adjoining the
“ said lot in the said Letters Patent firstly described, and that the line of high
“ water mark of the said river Saint Lawrence was by the said Judgment
“ declared to be and is the boundary and line of division between the property
“ of the said Reverend Ladies the Ursulines of Quebec, and the said lots of
“ land so granted to the said Defendant by the said Letters Patent as aforesaid,
“ as by the said Judgment whereof the said Attorney General brings here into
“ Court a true copy, reference thereto had, will more fully appear, which
“ Judgment hath never been reversed, set aside or vacated, but was at the date
“ of the said Letters Patent, and yet is in full force and effect and was and is
“ binding upon our said Lady the Queen as having been rendered adversely
“ to and against our late Lord the King Her Majesty's Royal predecessor in the
“ throne, in favor of the said Reverend Ladies, the Ursulines of Quebec.

“ And the said Attorney General of Our said Lady the Queen further giveth
“ the Court here to understand and be informed that the said river Saint
“ Lawrence is a navigable river where the tide ebbs and flows and that the
“ said lot of land in the said Letters Patent firstly mentioned, comprises all the
“ beach of the said river at the place there described between high water
“ mark and low water mark immediately adjoining and in front of the said
“ property of the said Reverend Ladies the Ursulines of Quebec, there situate,
“ and that the said Reverend Ladies are by law entitled to the free use and
“ enjoyment of the said beach, when uncovered by water, and to free access
“ to the waters of the river St. Lawrence there at high tide for all the purposes
“ of navigation, and otherwise, for all other purposes as Riparian proprietors
“ are used to enjoy the beaches of navigable rivers adjoining the property
“ whereof they are lawfully seized and possessed.

“ And the said Attorney General of Our said Lady the Queen further giveth
“ the Court here to understand and be informed that the said grant of the said
“ two lots obtained in the said Letters Patent made to the said Defendant
“ *unlawfully prejudices and injuriously affects the said rights of the said Reverend*
“ *Ladies, the Ursulines of Quebec, as such Riparian proprietors.*”

“ Wherefore and in as much as the said Reverend Ladies the Ursulines of
“ Quebec by their humble petition have represented the premises to Our said
“ Lady the Queen and Our said Lady the Queen hath been graciously pleased,
“ for their relief, to order the said Attorney General to do what to law and
“ justice doth appertain, in this behalf, the said Attorney General of Our said

* For conditions of Letters Patent, see Appendix No. 1.

"Lady the Queen hereby demands the process of this Honorable Court to compel the said Ebenezer Baird to be and appear in this Honorable Court on Monday the twenty fourth day of April instant to answer and make his defence to this Information and to shew if he has or knows any thing why the said Letters Patent and the enrolment thereof for the reasons aforesaid ought not to be cancelled, vacated and annulled and restored to our said Lady the Queen in Her said Court now here to be cancelled, and further to do and receive concerning the premises whatsoever the said Court shall consider in this behalf; and the said Attorney General for Our said Lady the Queen prays that by the Judgment of the Court here the said Defendant be ordered to bring and produce before the Court here the said Letters Patent and that the same be and be declared to be repealed, cancelled, vacated, annulled and set aside to all intents and purposes whatsoever."

With this information the Letters Patent therein mentioned were filed.

The first plea filed to this information was an exception as to form. This was overruled.—The next plea was a demurrer with an assignment of causes which are as follow :

First. There is no legal right of action in Her Majesty for the causes in the said information set forth, and, by the law of the land, neither Her Majesty nor any of Her subjects can sue in Her name for rights which may belong to third parties; and it is not competent to the Reverend Ladies Ursulines of Quebec, in the said information named, to sue in the name of the Crown, but any right of action that they may have, must be exercised by themselves personally and in their own name.

Secondly. There is no complaint in the said information for any cause or causes of action accrued to Her Majesty.

Thirdly. The Reverend Ladies the Ursulines of Quebec by the law of the land must and ought to sue in their own name for the preservation of any rights they may have and must, in common with all Her Majesty's subjects, resort to the Courts of justice for redress where injury is sustained.

Fourthly. There is no injury alledged in the said information to have been suffered by reason of the granting of the Letters Patent therein referred to, and it is not shewn how the granting thereof has, in any particular whatever, injured Her Majesty or the said Reverend Ladies Ursulines of Quebec.

Fifthly. The granting of the said Letters Patent has no further or greater effect than that of substituting the Defendant in the place of Her Majesty, who, and whose officers, could have been restrained from interfering with the rights of any of Her Majesty's subjects. In like manner the Defendant can be restrained from interfering with any legal rights of the said Ladies Ursulines of Quebec, as Riparian proprietors, supposing them to have any.

Sixthly. There is no one act complained of in the said information that can prejudice the said Ursulines Nuns or Her Majesty.

Seventhly. It is not shewn how Her Majesty was precluded from making the grant by Letters Patent in the said information mentioned to the Defendant in the said cause, and how it is that the Ladies Ursulines Nuns enjoy higher privileges, immunities and rights than other Corporations and other Her Majesty's subjects in general, or how it is that the Defendant is not entitled to the same rights as other Her Majesty's subjects to receive grants of land on the river St. Lawrence.

Eighthly. The said information does not contain a legal cause of action, and the premises therein contained do not warrant the conclusions thereof, and the pretensions therein set forth are not warranted by the law of the land."

By an interlocutory judgment, the Court ordered the parties, before adjudicating upon this demurrer, to proceed to evidence on the merits, thus leaving the question open as to the legality of the course adopted by the Crown.

In addition to the pleadings above mentioned there were filed also the general issue, and temporary and perpetual peremptory exceptions.

By the perpetual peremptory exception the Respondent pleaded.

First. That on the 27th of May, 1828, the Attorney General of Our then Sovereign Lord King George the Fourth prosecuting, by information on behalf of His Majesty, gave the Court of Kings Bench at Quebec to understand, that on the 22d day of April 1816, and long before His late Majesty George the Third was seized in his demesne as of fee, as owner and proprietor, of and in a tract of land at l'Anc 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, on the other to the south-west, by land in possession of John Saxton Campbell and in the rear by Cape Diamond.

That from the day aforesaid till the demise of George the Third, the said tract remained in possession of the Crown, and, afterwards, became vested in George the Fourth, in right of his Crown, yet that one Jean Baptiste Laporte, on the 25th day of April, 1856, with force and arms, entered into possession of the said tract and premises, and received the rents, issues and profits thereof. That by the same information the Attorney General prayed for the restoring of the land to the Crown with the rents, issues and profits. That the forcible intrusion complained of by the Crown was not the wilful act of Laporte, but of the Reverend Ladies the Ursulines Nuns by whom he was instigated to take possession upon untrue representations made by them that they were proprietors of the tract. That Laporte made no defense to the information, that the Nuns intervened and claimed under a title to the whole tract from De Montigny, Governor of Canada, to one Duquet, on the 15th September, 1645. That on the 20th of April, 1831, by the judgment upon the said information, it was adjudged that no part of the said tract ever formed part of the concession to Duquet, and Laporte was ordered to give up possession within fifteen days. That the Nuns having appealed from this judgment, it was by the Court of Appeals reversed, in part, by its judgment of the 30th July, 1840, which awarded to the Nuns the portion above high water mark, as shewn upon the plan of one Sar, a surveyor, by a line designated on the plan by the letters g, h, i, k, l and d, as that at which the tide did rise and would rise if there were no obstructions.* That Laporte was again condemned to restore possession of the rest of the property sued for to the Crown.

That Our Lady the Queen afterwards became possessed of the portion of the tract between high and low water marks, under the judgments of the Courts in the right of Her Sovereignty, as the soil of the tide-water, and that by reason of the said judgment of the Court of Appeals a RES JUDICATA, was established as between the Nuns and the Crown. That the said judgments had established that both Laporte and the Nuns were trespassers. That afterwards on the 20th of April 1831, Laporte having restored to the Crown possession of the property, between high and low water marks, he became its tenant for a period

* For Sar's plan see No. 20 of the Record. For the plan drawn by Larue, surveyor, by order of the Executive Government, before the grant to Baird, and annexed to Letters Patent, - See No. 46 of the Record.

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Nuns in
(1816) -
to the Nuns

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owners could not have access to the road. Knows Berthiaume's lot. It was the first house built, it is above the Blue Line on a small rising ground (*butte*). He had his choice. There are two or three houses built in front of this lot between it and the road. These houses block up the front of Berthiaume's lot, and cut off access from it to the road. Property has increased in value there lately. I sold my lot for £100. It was originally not worth five shillings. Rise caused by the timber shanties.

ELIZABETH WISEMAN, aged 64 years :

Has lived at Cap-Blanc since she was 6 years of age.—There were then only two houses built, her father's and Duval's.—Cap-Blanc then belonged to the Nuns.—The wharf and buildings now there were erected by the occupants of the houses.—The greater part of the persons named in the plan built the houses there.—Is certain all the houses built there were so built by the occupants of lots. Laporte built the wharf whereon he has built his house, and another wharf higher up, upon a lot which he exchanged with some other person.

Cross examined.

My name is widow St. Hilaire on the plan. One lot is occupied by myself,—the other two by my two sons, tenants of Mr. Lampron—a great many others on this road are tenants of Lampron.

JOSEPH GAGNÉ :

Knows Cap-Blanc for more than fifty years back ; there was only one house there when he knew it first. If the properties are to be bounded by the Blue Line, the remaining space between it and the cape would be of no value ; if on the contrary they had the river, the property would be of very considerable value.

PAUL BROTEAU, aged 51 years :

Knows Cap-Blanc for thirty years. (The same as last on value of property.)

WILLIAM WARR, Surveyor, aged 84 years :

Knows Cap-Blanc since 25 years. It is of considerable value—its principal value consists in its frontage on the river ; buildings are of no great value. If river front taken from it the land portion would be of no great value. The beaches constitute the value on account of the depots of timber in the coves made there. Cape is 300 feet high and inaccessible on that side. The line of high water as laid down on the plan intersects most of the houses on the North side of the road, and a few on the South. If the proprietors of the land portion were bounded by the line of high water mark, their property would become comparatively valueless. In most cases the houses could not be removed further back, and in most instances there is no room for houses between the Blue Line and the Cape, and one half of the houses would have to be removed, and the remaining half of the houses intersected by the Blue Line would be shut out from access to the road.

Cross examined.

The land between the Blue Line and the cliff would vary from ten to twenty five feet. One sixth of the property between the Blue Line and cliff would be about ten feet broad, remaining five sixths would vary from ten to twenty five feet.

JAMES BARR, aged 40 years :

If the proprietor of Cap-Blanc had the river front, it would be worth £30,000. The property above the road about £4,000, and if bounded by Blue Line, it would be valueless.

FERRIS BRUNELLE, aged 48 years :

River front principal value of property.—Knows Cap-Blanc for 30 years—resided there 20 years. To clear the space between the Blue Line and the street, the houses intersected by the Blue Line would have to be taken down.

JOHN TURNER LILLIOT, aged 33 years :

About 1847, a large brick house was erected on Chevalier's lot by Lampron, with a wharf in front with a house upon it. A valuable and expensive property.

REV. MR. MAGUIRE, Chaplain :

Nuns in possession of the front on the river from 1637 to Judgment of 1831. Laporte became lessee, (1816)—paid his rent regularly up to 1836—from that period to 1839 when his lease expired, he paid no rent to the Nuns. The property is valuable with river front,—without it of no value.

DEFENDANT'S EVIDENCE.

RICHARD HENRY JORDAN, aged 19 years :

Is son of Widow Jordan, tenant of Lampron. House on Champlain St. Has access from that street. Street is the great thoroughfare to cove.

CHARLES ALLEN, button-maker, 30 years :

Knows Cap-Blanc for 24 years,—tenant of Lampron on Champlain St.

CHARLES LAFONTAINE :

Knows Cap-Blanc for 28 years. Laporte was the first who lived on the lot where I am,—was the lessee of Lampron for 4 years on Champlain St.—peaceable possession and access from Street.

MICHAEL McINERNEY, aged 26 years :

Knows Cap-Blanc. Lived there last 7 years. Lessee of Lampron on North side of Champlain St. Peaceable possession in connexion with said street.

JOHN ELLIOT, aged 28 years :

Lived at Cap-Blanc three years ago and for the fifteen preceding years, knows it well. Is on North side of Champlain St. Has a property there, is now tenant of Lampron.

CATHERINE MOUTRAU, aged 23 years :

Has resided at Cap-Blanc for the last 40 years. Is tenant of Lampron, on Champlain St., north side,—eaves on Champlain St.—Blue Line cuts her house, and if bounded by high water mark, house would not be bounded by Champlain St.

MARIE DUVAL, aged 63 years :

Knows Cap-Blanc. Has lived there since her birth, occupies a lot on north side of Champlain St., and bounded by the street. Blue Line passes a little not much through the property. Has a lease from Lampron. Lot is part of property formerly occupied by Laporte. Always access to Champlain St. upon which it fronts.

Cross Examined.

If bounded by Blue Line and blocked up, property would be little worth.

Re-Examined.

We have never been blocked up.

JULES COUTURE, aged 37 years :

I have a lot at Cap-Blanc upon the property formerly occupied by Laporte of twenty feet on Champlain St.; had always access to the street. Blue Line cuts the lot. There are houses built all along on the north-side. Tenant of Lampron. If my property were bounded by Blue Line instead of Champlain St., it would be of no value.

Re-Examined.

I mean that if I had no egress on the street, my lot would be of no value.

JOHN TURNER LILLIOT, aged 32 years :

Lessee of Lampron. Lot faces on the street, touching it on its whole front. Blue Line cuts the lot. Merrick was previous tenant. I leased it from him first, now from Lampron. Merrick had it two years.

Cross Examined.

If space between Blue Line and street were occupied by others, interval would be of no great value. On looking at plan I can say two houses have been built in front of the house—between Blue Line and street.

Re Examined.

Have always used the street upon which the house I occupy is built.—There is a passage from houses above mentioned to street.

Re-cross Examined.

Passage is two feet wide.

FERDINAND MILLER, aged 37 years :

Has lived at Cap-Blanc for the last fifteen years. Has an emphyteutic leased from Lampron—three years ago on North side. Whole front touches street. Lot on Champlain street is ten feet. Blue Line cuts it. Always had possession to Champlain St. If bounded by Blue Line property would not be of much good.

Re Examined.

Has never been disturbed in his possession as far as Champlain street. Has always occupied it quietly.

PERRIN ST. HILAIRE, aged 82 years.

Has lived at Cap-Blanc since his birth. Has a lot which was given to him by his mother, widow St. Hilaire, who had it from Lampron three years ago. It is on the north side of Champlain Street facing the street,—front 18 feet on street. Has always had access on street without any interruption.

Cross Examined.

If bounded by Blue Line, very little value would remain to me.

Re Examined.

My mother was on the said lot before she leased it from Lampron.

ELIZABETH WISSMAN—64 years:

Has resided at Cap-Blanc since she was six years of age. Has a lot on the north of Champlain street upon which the lot front. Leases of Lampron 24 years ago. Lot on its whole length touches Champlain street—is forty feet long. Has never experienced any impediment in entering upon the said street. In spring tides high water mark passes on said lot. If bounded by Blue Line, it would be of no value, especially if a wall were built to shut me in.

Re Examined.

There never has been any question of a wall at that place.

HONABLE F. W. FRASER:

Information in Rex vs. Laporte was to recover a portion of the property in Letters Patent,—that therein first described. That secondly described is no portion of the land and beach described in Information,—but is bed of the river below low water mark. Fulfillment of conditions of grant would be beneficial to property above Blue Line and all property in the neighborhood. Sale 4th. Nov. '40, Fraser to Lampron comprehends all the property first described in Patent and an additional portion north of Blue Line. Property in sale 11th. April '52 (Name to Fraser) is the same,—also in *contre-lettre*.

Cross Examined.

Property in question is one of the places where tide rises highest and nearest to cliff. Conditions in Letters Patent not the same as in other Patents of beach lots in same locality and differ:

One is the power of resumption for public purposes on paying value of improvements:—another, Wharf to be built of a specific breadth—to extend from high water mark to Commissioners line. Also, reserve of a road over beach. Blue Line cuts through several houses, which is a detriment to properties. Is one of the Commissioners to establish water line. Conditions include dimensions of wharf and mode of construction. Knows instances in which these conditions have not been erected to full extent.

Re Examined.

These differences make the conditions more onerous to Baird than other grantees.

JOSEPH HAMIL, Road Surveyor, aged 56 years:

Road Surveyor since 1840, previously Land Surveyor (since 1832). Has known Cap-Blanc since infancy, and before Laporte had possession of it. In 1841 made the plans of Champlain St. Knows the Blue Line,—when first he knew property, it was all beach. There being only a few scattered huts or shanties placed upon wharf built above high water, and some on the cliff with a small gallery in front on which people passed at high water. Houses occupied by labourers of poorest class. Sometime before 1829 a road for vehicles was made where Champlain St. now stands, it was after Laporte had settled there. Laris and witness were employed in 1829 by Government Commissioners to lay out several roads for which money had been voted, among them the road in question. Laris laid out Champlain St. I named the street because it was a continuation of the old street. All the houses on the north side have access to it, they face upon it, save one or two at the West end. The building of wharf improves both sides of the street. The first lot in Patent is between Blue Line and low water mark, and the second is between low water mark and Commissioners line. Conditions and reservations in grant would benefit the locality on both sides of the street. Sale by Name to Fraser embraces property between low water mark and within three feet of the *Côte du Cap*. Sale by Fraser to Lampron is of the same property as the last, except that the latter is bounded by high water mark (Blue Line), and the former by low water mark. Most of the houses on South side in Laporte's time were erected on piles or pillars or studs, and any evidence about the houses were made by the persons who built the houses. Does not know whether these erections can be called wharf, but took his wharf on the surface, but are generally hollow and clap-boarded on the outside. When first Laporte became connected with this property, there was not a single house upon it, but there were a few huts erected by persons who had squatted there; there may have been six or seven of them here including those on Mrs. Munn's property adjoining. This was in 1818 or 1819. Has made plans for the Dubouche. Laid out Champlain St. in 1841. Blue Line intersects majority of houses on North side. Houses intersected by Blue Line are occupied by persons whose names are on the plan, or their representatives. Defendant told witness he had erected some for some of the lots on the North side, but cannot say which. A street of 25 feet reserved. Defendant under the grant is proprietor of the most part of the property on both sides of Champlain St. as far as Mr. Lampron's brick house. The Defendant could take corporal possession of the interval between Champlain St. and the Blue Line from the lot marked Lapointe on the

plan down to Jacques Blais, by occupying the houses built on the interval, all of which, except a small portion, are on this interval. Property above the Blue Line is valueless, because costly to excavate cliff. Property on the North side of Champlain St. from the way in which it is settled is of little or no value from the miserable settlements, and there being no yard room.

Re-Examined.

Blue Line is at the foot of the cliff, except at one or two places where there are small coves, but the space between Blue Line and cliff even there is very trifling as at Laportie, where there must have been an excavation.

EDWARD BOXER, Harbour Commissioner:

Speaks of Commissioners Line and object,—and Government Naval Depot reserved in grant to Baird. Commission recommended a broad commercial high road, in front of houses on North side, of forty feet, which would take down houses on South side within that breadth. Conditions in grant eminently beneficial to trade of harbor. Would improve value of houses on both sides.

JAMES REYFAR:

Knows Cap-Blanc for 30 years. Houses are built there by placing them on a description of wharf on the river side, to keep the water out of them; and this wharf, in some instances, raises the buildings some ten feet high on the river side; even in other places where they have built no wharf, the earth has been raised to nearly the same level, and houses have been put upon it there; these buildings are now upon the continuation of Champlain St. Conditions in grant will enhance the value of all property at Cap-Blanc.

SEMON BUTLER, Navigator, aged 59 years:

Has lived in the neighborhood of Cap-Blanc for fifty-five years, since 1798. There were then three houses at Cap-Blanc, with stove-pipes for chimneys; same description of houses were built there for 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 80 tons, for the winter. The rest of the property was a rugged beach, on which the water flowed to the foot of the cliff,—so: road there. Hollow may have been two hundred feet long, more or less. The depth of recess about forty feet within the line of the rest of the property. Water overflowed recess, and it was only at spring or high tides, that small vessels could be taken into it for the purpose of wintering. Recollects being in a schooner with his father in '98, which was moored in the recess. A gale in the night broke her moorings and threw her up alongside of the cliff, out of her wintering place. The extension of Champlain St. 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 the whole of Cap-Blanc lies. Wharfs would improve property there as elsewhere.

ETIENNE PARANT:

Is Assistant Secretary for Lower Canada since '47. Superintends Lower Canada matters, under directions of Secretary. Before issuing Patent, parties interested were heard by Counsel before Executive Council (6th. August, '45).

Cross Examined.

The matter was referred to Home Government and a Despatch was received from Colonial Secretary. Patent issued (he is under the impression) immediately before the Lafontaine Ministry came into power. Despatch is in the custody of Governor's Private Secretary.

Re-Examined.

There were several other orders in Council, on the same subject. It could not be otherwise than that there was an order in Council previous to Patent.

ALFRED A. HAMIL, Surveyor, aged 28 years:

Sworn Surveyor for a year past. Knows property South side Blue Line. All residents on the North of Champlain street have access to street; they face upon it with the exception of one or two at the West end. Wharfs improve property on North side and South side also. Conditions and reservations in grant of great benefit to this locality. There are plots on this property, but cannot say how many; cannot say that there is more than one—or even that there is one. Thought there was from seeing vessels moored there, but it may have been two boats.

ANDREW CAMPBELL, N. P.

Knows Cap-Blanc for fifty-three years past. High water originally came up to the spot of the cliff at Mr. Munn's,—cannot say whether in other places at Cap-Blanc it came up so high as to prevent one passing at high water. There were a few huts on North side of road when first he knew the property—think nearly all along Cap-Blanc. None on the South side—part of them were on the declivity. Recollects one particularly in the possession of Turck, about 15 feet upon the declivity. Water did not, to his knowledge, go round the houses, but up to them.—There was no regular road there then.—Conditions of grant beneficial to properties there.

Cross Examined.

If property were enclosed according to Blue Line, it would certainly destroy the value of property in the rear, which is inaccessible from the cliff.

Re-Examined.

Supposing land above Blue Line were not enclosed but left open, and according to Patent inhabitants allowed to pass freely over Cap-Blanc and wharf, with the reserve of a high way not exceeding 36 feet over such part of lands at Cap-Blanc as are on the border of the river between high and low water mark, it would, I should think of course, instead of diminishing, materially benefit and improve property, if the people had the right of using it all in front of their lots.

Re Cross Examined.

If high way did not reach Blue Line, but property above Blue Line were cut off from the high way by a wall, fence or buildings, it would destroy the value of property above the Blue Line entirely.

Re-Examined.

Has no personal knowledge of extent of ground between Blue Line and cliff, but most of it has been dug out of the cliff.

AROLPHS LABUZ, aged 45 years,

Land Surveyor for 31 years. Knows Cap-Blanc since his boyhood. Assisted his father in laying out a road there under the instructions of John Sarton Campbell, in continuation of Champlain St. It was then impassable for vehicles. At Laporte's and elsewhere there were little galleries to pass upon, for water went under these bridges at high tides. Few houses were at the time. Mr. Laporte's the only decent one. I speak of the North side, I do not recollect that there was any on the South side. Had instructions from Government to determine high water mark by boundaries according to Sar's plan. Exhib. No 5 is copy of the plan made by me.

Cross Examined.

Bridges and galleries had the appearance of having been made for the convenience of the persons occupying the houses. They were on the water side and some over the water. Jas. Sarton Campbell made the first road. The property above the Blue Line, if bounded by the Blue Line, would be of little value, unless the proprietor had a right of *riparian*. The principal value of Cap-Blanc is in its river front, for the purposes of navigation and commerce.

Re-Examined.

Supposing proprietors above Blue Line had a free right of passage over roads and wharfs, it would render property above Blue Line more valuable. Being asked if the lots in the Patent are valuable in the hands of a stranger would they not be more valuable in the hands of the proprietors above Blue Line? Answer, that without the right of *riparian*, the value of the lots above the Blue Line would not be much.

REVEREND THOMAS MAESTER, aged 77 years:

The concession by the *Compagnie de la Nouvelle France* to Jacques Savestre, marked "P.M.'s. Exhibit, n^o 84," does positively relate to Cap-Blanc. Witness made out a diagram from old titles (this among the rest) of the seven arpents of land at Cap-Blanc purchased by the Nuns from D'Artigny in 1737. The title in question covers the identical spot in controversy—generally known as Cap-Blanc.

THE APPELLANT RESPECTFULLY SUBMITS THE FOLLOWING OBSERVATIONS TO THIS HONORABLE COURT:

The principal point involved in the present Appeal is the right of the riparian proprietor to a grant of the beach and deep water lots in front of his property on navigable rivers in preference to any other. The Appellants as proprietors of the land bordering on the River St. Lawrence near Quebec in front of, and adjoining the beach and deep water lots forming the subject of the Letters Patent to the Respondent Baird, claim a right of preference to him and to all others to a grant of the said beach and deep water lots. The object of the action in the Court below was to determine this right.

By the information brought by the Attorney General on behalf of the Queen, Her Majesty submits this important question to the decision of Her Courts of Justice, and the matter in contestation has thus become *res interita* as between the Crown, the Nuns and Baird, precisely as it would have stood had no such grant been made. The Honorable Judge who rendered the Judgment in the Court below has ignored this important Common Law right.

The defence set up by the Respondent is contained in two pleas, a Temporary and a Perpetual Exception alleging the same matters of fact and constituting in reality but one plea. They are somewhat voluminous and much too argumentative, and were liable to be preliminarily disposed of by an issue of Law as containing little or nothing which could be legally deemed an answer to the case of the Appellants. The Respondent cannot complain that he has not had full latitude as well in his allegations as in his facts in evidence.

He has replied the main question in issue and has set up various pretensions and protests in justification of the grant.

The Judgment in Appeal of the 20th. July, 1840, (pleaded and produced by the Respondent,) ordering Laporte to surrender the beach to the Crown, as far as high water mark designated by a Blue Line on the plan filed in this cause, serves no other purpose pertinent to the present cause, than the establishment of the fact essential to the case of the Appellants, that their land is continuous with the beach belonging to the Crown: and that they are therefore the riparian proprietors.

The pretension of the Respondent, that from the 30th. April, 1831, to the 19th. February, 1848, his assignor Laporte retained the property as tenant of the Crown, and made improvements upon an understanding that he should receive a grant of it, is utterly unfounded and untrue, and not attempted to be proved; and even were it true, it could avail him nothing, because the Judgment having determined that the Crown was proprietor of the beach, the improvements made by the occupants under their leases, could not inure to Laporte, because he was bound to surrender them to the Nuns at the expiration of his lease. For this reason, the grant to Baird on the assumption that his assignor had made improvements on the property, and had thereby become entitled to the favorable consideration of the Government for a grant, was a pure fallacy and a surprise and a fraud upon the Crown.

That the grant was made with the sanction of the Metropolitan Government, of which no proof has been attempted, is one of those futile allegations which merely recall the periods of our Colonial History when the claims of individual subjects of the Queen in this Province were entertained and disposed of upon *ad parte* statements without much regard to the rights of others.

That the conditions in Baird's grant are beneficial to the public may possibly be found to be true when fulfilled, but not till then. Should the Nuns, however, have a superior claim to a grant, the same conditions if imposed upon them as grantees, would be equally available to the public. But that these conditions, as found in Baird's Patent, protect the Nuns in their rights as Riparian proprietors, is a contradiction in terms, if not a self evident absurdity and a mockery.

That the road which has been made by the inhabitants from time to time for their own convenience, the creation and the growth of necessity, cuts off the riparian rights and privileges of the Nuns, is a proposition without any Law to sustain it.

That the sale to the Frasers would deprive the Nuns of the right of enforcing their privilege as riparian proprietors is an exception which sets up the *Jus alterius*, and is moreover unfounded in the present case, in as much as it is stipulated in the deed or *contre-lettre* produced by the Respondent himself, that in the event of the Frasers being dispossessed of the beach lot, and of their afterwards obtaining a grant thereof from the Government, the said stipulated rent of £50 should be reduced to a sum equivalent to the rent to be paid by them to Government, but should not be less than £25; in consequence of which the interest of the Nuns to enforce their riparian rights still subsists. The deed from the Nuns gives the Frasers the right of using their name, and hence under this stipulation it would be competent to the Frasers or to Lamson, to litigate the question in the name of the Nuns, even if they had no interest.

The allegation that the Queen admitted Laporte's right to compensation is a mere gratuitous assertion not sustained by any evidence; and were it true or practicable, would be a mere *judam pectum*, being entirely without consideration or legal cause.

The right of fishery on the beach in question derived by the Nuns under the original grant from the Company of New France made nearly two centuries ago, and emanating from the French Crown, by deed dated 19th. January, 1663, filed in this cause, is a right which was at least sufficient to exclude all others from the same privilege; and although under the French as under English public law, it could not bar the right of the public to make improvements on the beach for the purposes of navigation and commerce, was nevertheless a private right recognized by the law of France which could not be defeated or extinguished by a change of sovereignty; and was moreover one the value of which was appreciable in money, and of which they could not be deprived without an indemnity. Its bearing on the present case is to enhance the equity of the claim of the Nuns to a full recognition of their rights as riparian proprietors.

The grant to Baird, which, as he alleges, secures the rights of the public and of the Nuns, effectually bars the latter from any egress from their property, in as much as the cliff is inaccessible on the Nord West side, and Baird excludes them from the river and the high way on their front.

The grant is attempted to be justified on the assumption that it is a compensation to Baird as assignee of Laporte, who himself had no claim or right whatever, save that which might accrue to him as a refractory non-paying tenant, and who availed himself of his position as lessee of the Nuns to impair their title and drag them into a law suit.

The assignment said to have been made by Laporte to Baird of the 19th. February, 1848, for the consideration of £2,000 and upwards has not been produced and does not exist.

There is an absolute failure on the part of the Respondent to establish the fact of any improvements having been made by Laporte or himself entitling them to any indemnity, and their pretensions to that effect constitute a surprise and a fraud upon the Government, as none such were ever made.

The Appellant respectfully contends that the Judgment of the Court below ought to be reversed on the following grounds.

1^o Because the fact of the Ursuline Nuns being proprietors of the land bordering on the River St. Lawrence and fronting upon and adjoining the beach and water lots granted to the Respondent by the Letters Patent sought to be rescinded, is fully established by the evidence in the cause, and more particularly by the Judgment of the Court of Appeals of the 30th. July, 1840, produced by the Respondent.

2^o Because the St. Lawrence being a navigable River, the Ursuline Nuns, as riparian proprietors, are entitled by the Law of the land to a grant of the said beach and water lots in preference to the Respondent or any other person, and that the grant to Baird does therefore prejudice and injuriously affect them as such riparian proprietors.

3^o Because the defence set up by the Respondent in the Court below consists of various pretensions and allegations of fact, which, even if they were true, would constitute no sufficient answer to the action in this cause, and that moreover the Respondent has utterly failed to prove any one of them.

4^o Because there being no proof whatever of any assignment from Laporte to Baird, or of the payment of any portion of the supposed consideration therefor, the latter is a mere usurper of the rights and claim of Laporte, if any he had, and has made use of them for the purpose of effecting a surprise and a fraud upon the Crown.

5^o Because the bringing of the information on the part of the Queen, immediately after the issuing of the Letters Patent, is a solemn protest on the part of the Government to the effect that it was so surprised and imposed upon.

6^o Because by the bringing of the Information in the name of the Queen the matter in contestation becomes *res integra* between all the parties, had that the Respondent's pretended claim derives no force from his possession of a Patent for a few days.

7^o Because the absence of such proof of assignment deprives the Respondent of all the equities which he pretends to have derived from Laporte, if Laporte had any; and that the absolute failure of Baird himself to fulfil any of the conditions of the grant which he alleges to be so beneficial to the public and the proprietors in and around Cap-Blanc, leaves him without any to urge on his own behalf.

8^o Because in addition to the indefeasible Common Law right of the Nuns as riparian proprietors to a grant in preference to all others, the equity of their claim is greatly enhanced by the fact of the undisturbed possession by them for nearly two centuries, under title emanating from the Crown of France, of the right of fishery over the beach in question, of which they have been despoiled without any equivalent.

9^o Because by the evidence in the cause it abundantly appears, that the forced intrusion of the Respondent, by means of his Patent, between the Nuns and the beach and waters of the St. Lawrence, has greatly deteriorated, if it has not rendered altogether valueless the property held by the latter on the shore of the said River.

Because from the entire absence of any facts in evidence to sustain any one of the Respondent's allegations, and upon a review of the whole case, it is most manifest that the said Letters Patent were granted to him without any precise knowledge of the facts of the case, or of the claim or the merits of the applicant, and without any notification to the Nuns of such application, or any opportunity afforded them of urging their rights in opposition thereto, and that the whole was the result of a conspiracy to defraud the Nuns of their just rights by procuring, surreptitiously, Letters Patent in favor of an intruder, who had no claim himself or any shadow of a right derived from another.

Respectfully submitted.

For the Atty. General,
DUNBAR ROSS,

Q. C.

Quebec, 10th. September, 1859.

