

CANADA.

treated as subsidiary to, or dependent upon, the limits assigned to seigniories or jurisdictions granted by the Crown of France.

The Council apprehend that the "spirit" of an English Act of Parliament, or an English Proclamation, is in the first place to be sought in the fair and obvious inference from the words of those documents.

2. All the classes of arguments connected with the settlement of the American boundary line and the Treaty of 1783 are disposed of, as it appears to the Council, by the Commissioners, who state,—

"As the Treaty was not designed to alter, and had not force to alter, the colonial boundaries (which remained to be ascertained after the Treaty by the same distinctive features as before), if in fact the line of highlands claimed by Great Britain as the boundary with the United States was not the ancient provincial boundary, a mistaken assumption on that point could not affect the latter boundary."

It is perfectly clear, that from 1763 to 1783, the provincial boundary, whatever it was, existed by virtue of the Royal Proclamation as confirmed by the Quebec Act: what it was could not be affected by a treaty concluded 20 years afterwards, with a power not in existence when the boundary was established. Moreover, as the Commissioners observe, the very fact that this last Commission was appointed by Her Most Gracious Majesty, to explore the territory, and ascertain, if possible, the strict legal claims of the two provinces, is sufficient to prove that Her Majesty's Government did not consider the question concluded by the Treaty of 1783, or by anything which had taken place under it.

3. The appointment of the Commissioners was made, as the Council presume, in order to obtain, after inspection of the ground, a fair and impartial finding on the facts of the case by persons at once competent and unbiassed by any local interest. These persons distinctly lay down an essential requisite for fulfilling to the letter and the spirit of the Quebec Act and the Proclamation of 1783, viz., that the line of highlands to be taken as the basis of the northern boundary of New Brunswick is to be a line from which the streams flow into the River St. Lawrence.

It may be observed that this condition expressly negatives the assumption as the boundary of any line of highlands south of the river of Restigouche.

At the same time, this condition is most distinctly laid down in the documents which form the groundwork of the legal rights of both provinces, so distinctly, indeed, that the Council believe it will not admit of being shaken by mere presumptions or inferences from French grants anterior to the exercise of the authority of the British Crown.

The question at issue really is, "In what manner that authority was exercised when it came into existence?"

Her Majesty's Commissioners have thus returned their finding on the facts, and the Council feel perfect confidence in the equity of the decision at which Her Majesty will be advised to arrive.

4. Assuming, therefore, that the essential conditions attaching to the line of highlands have been determined by Her Majesty's Commissioners, it remains only to advert to the conventional lines proposed respectively by Her Majesty's Commissioners and by the Canadian Crown Land Office. With regard to the former, the Executive Council of New Brunswick have already expressed their belief that it would readily be acceded to by the Legislature of this province, although, according to the views of the Commissioners, it involves the cession by New Brunswick of a considerable portion of territory.

With regard to the line now proposed in Mr. Price's Report, the Executive Council can only say that it would cut off the whole right bank of the Madawaska River; and by a line run north-east to the Petam Kedgewick, would moreover cede a large tract on the left bank of the former river, to which New Brunswick, according to the Commissioners' Report, and the fair construction of the Quebec Act and Royal Proclamation, has an undoubted legal claim. Over both of these tracts, too, New Brunswick has exercised jurisdiction since the year 1783.

It is difficult to see what sort of compensation this latter proposition offers for the cession of the rights implied by the necessity of adopting as the basis of the boundary a watershed of which the northern slope descends to the St. Lawrence.

There is of course no tribunal before which the legal rights of these provinces can be litigated except that of Her Most Gracious Majesty, by whose express commands the evidence has been now collected, and in whose hands the Executive Council of New Brunswick are contented to leave the care of their own province, with perfect confidence in the justice of Her Majesty's decision.

That a copy of this minute be transmitted by the Lieut.-Governor to Her Majesty's Secretary of State for the Colonies, and to His Excellency the Governor-General.

(No. 483.)

No. 20.

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COPY of a DESPATCH from Earl GREY to Governor-General the Earl of ELGIN AND KINCARDINE.

MY LORD,

Downing-street, April 11, 1850.

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I HAVE the honour to acknowledge the receipt of your Despatch, No. 159, of the 9th March, transmitting the copy of an approved Minute of your Executive Council on the report made to your Lordship by the Commissioner of Crown Lands in Canada, commenting on that made by the Commissioners