

THE CLAIM OF MANITOBA TO HER PUBLIC LANDS.

A WRITER over the signature of "Thorpe Mable," in a recent issue of THE WEEK, incidentally discusses the right of Manitoba to the public domain within her borders, and in a few sentences dismisses the subject with a degree of dogmatic assertion that would apparently exclude further debate. The argument of the writer, in brief, is that, in the first place, the Dominion Government purchased the North-West Territory from the Hudson's Bay Company, "whose proprietary (*sic*) rights are unassailable"; that the Half-breed settlers received compensation for their claims; and that the Indian title was extinguished by the Dominion.

When the writer states that the title of the Hudson's Bay Company to the ownership of the soil was unassailable, he displays an extraordinary ignorance of the history of the Company and of the Territory they assumed to own, as well as of the strongly adverse opinions expressed by leading Canadian statesmen on the validity of the Company's pretensions. A slight examination of this very interesting subject points to a far different conclusion. And while it is difficult, on so wide a question, to be brief and clear at the same time, I shall endeavour to succinctly outline the argument of those who oppose the pretensions of the Hudson's Bay Company.

The charter of the Company, granted in 1670, purported to convey to them "all the lands and territories upon the countries, coasts and confines of the seas, bays, lakes, rivers, creeks and sounds" "that lie within the entrance of the Straits commonly called Hudson's Straits" "that are not already actually possessed by the subjects of any other Christian prince or state." It is upon this precarious foundation that the Company assumed to lay claim to half a continent. But it cannot be contended that the grant conveyed any more territory than the British Crown at that time possessed. What then was the extent of the territory within the Hudson's Straits at that time possessed by England? The evidence is that there had been, on the part of England, up to that date no such acts of occupation as, according to the recognized laws of nations, would entitle her to the sovereignty of the littoral of Hudson's Bay, much less to that of any portion of the inland territories. On the contrary, the French had displayed far greater activity in that direction and had erected trading posts on the very shores of the Bay. Their occupation dates from 1656; that of the English began a decade later. But granting that the French occupation was not such as to give them a title to the shore, there can be no question that they were the first to acquire valid territorial rights over the interior. The few forts erected by the English on the fringe of the Bay were taken and retaken by the French and English alternately during the last quarter of the seventeenth century, and by the Treaty of Ryswick in 1697 Fort Albany alone was left in the possession of England, the rest of the territory being abandoned to the French. Up to the Treaty of Utrecht in 1713 (under which the Bay and Straits alone were surrendered to England) no new posts had been established by the Company. By the Treaty of St. Germain-en-Laye, in 1727, England resigned to France the territories known as Acadie, New France and Canada—the latter term having at that time a meaning even more extended than at present. In fact it was not until the Treaty of Paris in 1763 that England acquired the North-West Territory. Until then the sovereignty of France over the whole of that Territory, with the exception of the shores of the Bay, was unquestioned, and, until then, no efforts were put forth by the Hudson's Bay Company to extend their settlements and trading posts into the interior. As Robson, in his "Account of Hudson's Bay" (published in 1763), graphically and truthfully stated, "The Company have for sixty years slept at the edge of a frozen sea." The most extreme claim urged by the Company itself, prior to the Treaty of Paris, recognized the right of France to the southern watershed of the Bay.

In face of these facts it would be absurd to contend that a grant of lands, made by the Crown in 1670, would convey to the Company those not acquired till a century later. This view of the case is altogether apart from those considerations that impeach the validity of the charter itself. That it was in itself invalid was the well-advised opinion of some of the highest legal authorities of England, who deny its validity because of the ambiguity and uncertainty of its terms, and on the high constitutional grounds that it conferred an unjust and impolitic monopoly, and was granted without the assent of Parliament. Lord Brougham's opinion was that the Company could lay claim to such lands only as had been actually and continuously occupied by it since the date of its charter. It was only when its trade was threatened by its active rival, the North-West Company, that the Hudson's Bay Company was forced to establish itself in the interior, and, on the amalgamation of the two corporations in 1821, it first set up its arrogant claim to the entire watershed of Hudson's Bay. It

is preposterous to suppose (to adopt the line of argument used by the Attorney-General of Ontario before the Arbitrators on the Boundary Question) that the charter was intended to give and did give to the Company the right to exclude the subjects of England and all other countries from one-third of the North American Continent for all time to come: that the Company could for a century refrain from settling it and prevent anybody else from settling there; and that if England acquired it by great wars, waged in America and Europe a century later, its conquest was to be for the sole benefit of this vast parasite, which so long blighted the growth of the North-West.

"Thorpe Mable" will be astonished to learn that these were the views of those eminent Canadian statesmen, including Sir John A. Macdonald, Sir A. T. Galt, the Hon. George Brown, the Hon. Wm. McDougall, and Sir George E. Cartier, who negotiated the purchase from the Hudson's Bay Company in 1868. Such, also, was the opinion of Lord Lytton and, apparently, of Lord Cardwell as well. Both the Imperial and Dominion Governments at one time favoured the aggressive policy of taking forcible possession of the North-West Territory, and leaving the Company to assert its title afterwards as best it could. The £300,000, paid by the Dominion Government to avoid tedious legal proceedings, was not intended to purchase—nor did it purchase—the fee-simple of the Territory, but merely extinguished the vexatious pretensions of the Hudson's Bay Company. Such being the case, did the Dominion acquire a better right than the Company possessed? What circumstances or considerations have there been that afford any valid reason for excluding the North-West from the general rule in British Colonies, that the public lands should be the property of the people settled upon them, and who, by cultivation and the establishment of government have given them a value? Prior to the transfer in 1870 the country was as well settled as Upper Canada was in 1791, and had in the Council of Assiniboia an organized government. That the people regarded the lands as their own, and not the property of another colony or of the Company, is proved by the fact that that Council enacted a homestead law. What wonder, then, that when the Canadian Commissioner met the French and English representatives at Fort Garry in 1870, the clever though misguided Riel strove to make it a condition of the transfer that "all bargains with the Hudson's Bay Company for the transfer of this Territory be considered null and void, and that any arrangements with reference to the transfer of this country shall be carried on only with the people of this country."

The same idea was presented in even stronger terms by the Legislature of Manitoba in June, 1884, when it declared that

They (the Hudson's Bay Company) never established any claim to a title to the lands, except those to which Lord Selkirk had extinguished the Indian title, and which were subsequently repurchased from his successors by the Hudson's Bay Company. On the contrary, the settlers at Point du Chien settled there under the homestead law adopted by the Council of Assiniboia, irrespective of the Hudson's Bay Company. The extinction of the Hudson's Bay title cannot be viewed by this House in any other light than that of the purchase from the Hudson's Bay Company of certain rights, which were held by that Company to the detriment of the people of Canada, and which were extinguished by the Government thereof in the same way that in the other Provinces they have extinguished other rights created in former ages, and which obstruct the progress and development of the people.

It is, in truth, to be hoped that the time is not far distant when Manitobans will have heard the last of this invidious statement. The paltry £300,000 paid to the Company has long since been recouped to the Dominion from their public lands and from the taxes exacted from an unwilling people.

The argument that the individual settlers received allotments of land in exchange for their claim as a people to the whole of the territory is hardly worthy of consideration. It has an importance with the writer, owing to a confusion in his mind between the rights of the people regarded as individuals and as an organized and civilized community. The recognition of the claims of the settlers obviously differs from denying to their Government rights to which it had been, and still is entitled, as representing the community as a whole. The allotment of lands among the settlers only embraced a portion of the people, and was in itself a tardy apology for the unjustifiable Canadian occupation.

"Thorpe Mable's" third argument, that the Dominion Government has extinguished the Indian title is one that can hardly be seriously discussed. I am not aware that any of the Indian Treaties affected Manitoba. At any rate, the Indians have never been regarded, in the United States or Canada, as having a proprietary interest in the soil. The Dominion has extinguished the Indian title to certain tracts of Ontario. Is it likely that the title of Ontario to these lands will ever be questioned? But the people of Manitoba contend for this right, not merely on these controversial grounds but on a higher ground. They wish, reasonably enough, to be on an equality with the other Provinces. The acquisition of the public lands