

if it is to govern in the one case it is but reasonable that it should do so in the other. In this connection, however, it may be remarked that the judges who appeared before your Committee seemed to be strongly of the opinion that the boundaries of Provinces, with constitutional governments, could not be altered by commissions to Governors, or proclamations. On the other hand, the Attorney-General of Ontario, whose reputation as a constitutional lawyer stands high, as well as the other counsel for Ontario, based their arguments, in great part, on what they conceived to be the undoubted prerogative of the Crown to enlarge or curtail the limits of Provinces (see proceedings before the Arbitrators in Appendix); and indeed the Quebec Act gives the Crown, as already mentioned, the power to curtail, at least, for it enacts that the "territories, islands and countries," which are to be added to the Province of Quebec, as constituted by the Royal Proclamation of 7th October, 1763, "be and they are hereby *during His Majesty's pleasure* annexed to and made part and parcel of the Province of Quebec." This seems to leave no doubt as to the power of the Crown to curtail the limits, and in this view the question to be solved would simply be whether the Crown had done so or not. By the Commission of 22nd April, 1786, to the Governor-General, Sir Guy Carleton, the western limit of the Province of Quebec was extended to the Lake of the Woods, and from thence westward to the Mississippi. This, no doubt, was an extension of the Province to the westward, that is, measuring its former limits by the descriptions in the preceding Commissions, in none of which, however they might be construed, were the boundaries carried so far to the north and west.\* It has been claimed that this being a Commission to a Governor General, it was meant to cover the whole territory to the westward, whether within the limits of the Province or not. However this may be, the Commission was, as already stated, revoked, and that, too, in the most decided terms, soon after the passing of the Constitutional Act, by the Commission of 12th September, 1791, to Lord Dorchester, and in the latter Commission and succeeding ones, for a period of nearly forty-seven years, the Province of Upper Canada is described as simply embracing so much of the former Province of Quebec as lay to the westward of the dividing line between the two Provinces. Here was an evident exercise of the Royal prerogative,—in the first place a Commission (that of 1786) running the boundaries northward, through a new water shed, and westward to the Mississippi, and in the next a Commission, that of 12th September, 1791, revoking the former one and limiting the boundaries of Upper Canada to so much of the former Province of Quebec as lay to the westward of the dividing line. Had it been intended that the Province of Upper Canada should extend westward to the Lake of the Woods, and from thence to the Mississippi, it is reasonable to believe that the description would have been repeated, but instead of its being in any way renewed or continued, the very first Commission subsequently issued revoked it absolutely.

There is no reason to suppose that there was any accidental omission in the description contained in the series of Commissions commencing with that of 30th March, 1838, to Lord Durham. The wording is very clear and precise, and the curtailment of Upper Canada, on the west, to the entrance of Lake Superior, must have been a matter which met with the serious consideration of the Imperial authorities. The cause of the change should be sought for in the condition of matters which had arisen, as already stated, at the head of Lake Superior and in the Indian Territories, which latter had been declared, by the Act of 1803, to be beyond the limits of the Provinces and for which a particular jurisdiction had been provided and exercised, added to which, a colony was growing up within these Indian Territories which the Imperial authorities had never treated as a part of Upper Canada, and the south-eastern boundaries of that colony came up to the Height of Land.

The Commission of 1786, to Lord Dorchester, carried the line "through Lake Superior, northward of the Isles Royal and Phillipeau." The wording of the Commission of 1838 to Lord Durham is simply *into* Lake Superior, and there is nothing said in the latter of the Isles Royal and Phillipeau. That the change was intentional and fully considered before being made is obvious, and the only point left indefinite is how far "into" Lake Superior the line should go. To run it "through" would