

always brings forward the Cavendish debates, and tells us what certain members are reported to have said in these debates; but we must remember that in those days the parliamentary debates were not reported, and that the work of Sir Henry Cavendish, who took notes simply for his own amusement or information, first saw light sixty-five years after the date of the debate which it purports to give; we have no means of knowing it may not have been a highly *ex parte* report, but we can easily see that the Parliament of those days had good reason for refusing to allow its debates to be published, if the work of Sir Henry Cavendish may be taken as a specimen of the reports of the time. Why, Sir, the debate as there reported would not do much credit to any legislative body in the Dominion—I had almost said, to a county council. I will read to the House Judge Johnson's opinion on the matter. On being interrogated as to the value of these debates as an authority, he said:

"The Cavendish papers were published in 1839, sixty-five years after the debates of 1774, and were never considered to be of any importance, but rather hazy. They would have the authority of any report, if published at the time, subject to contradiction or correction by people who could contradict or correct them. But when published sixty-five years afterwards, when the people who could contradict or correct them were dead, they could not possess any value. They were looked upon as the gossiping production of an old gentleman who was not very eminent, Mr. Henry Cavendish, afterwards Sir Henry Cavendish."

Others, however, may have a different opinion of these debates, but whatever value may attach to them as a historical record, it does not appear to me that they should be made use of to explain away or over-ride an Act of Parliament. As an instance of the way in which even intelligent men may be led to coincide in assumptions which have nothing to sustain them in history or in fact, I may allude to the Attorney General of Ontario making use of the word "cede" when speaking of the Treaty of Utrecht and the territories restored by France. Whether the word "cede" or "restore" should be used was a matter which came near breaking off the negotiations and plunging two great nations into all the horrors of war. The word "restore" was finally used, and yet the Attorney General said:

"By the Treaty of Utrecht, 1713, the bay and straits of Hudson, together with all lands, seas, sea-coasts, rivers and places situate in the bay and straits and which belong thereto, were finally ceded to Great Britain."

I would be sorry for a moment to suppose that the Attorney General of Ontario would willingly have given a construction to the most important part of the treaty calculated to lead the arbitrators astray; but, to say the least, he committed a mistake in stating the case, which may have had a most important bearing on the award. France claimed vast territories on Hudson's Bay as belonging to her by virtue of first discovery and subsequent occupation, England denied that claim and insisted that France should acknowledge her right by restoring, not ceding, the territory in dispute. France did so, and that should for ever have settled all questions arising from priority of discovery or first occupation. Yet, in face of this, the volumes laid before the arbitrators base the claims of Ontario, in great part, on the occupation of the French at Hudson's Bay, although the French themselves had given up all claim on that ground. And the Attorney General of Ontario supported what is so set out in these volumes by supposing, himself, and leading the arbitrators to suppose, that the territory was ceded and not restored to England. And what is it that was restored? Simply all the lands looking towards Hudson's Bay; the words in the treaty as explained by the learned Judge Armour are *spectantibus ad eadem*, which have been construed by Sir Travers Twiss and other high authorities on constitutional law to mean all the lands looking towards the waters within the water-shed of Hudson's Bay. No wonder that the three gentlemen who made the award, notwithstanding their high position and great ability, were led to a conclusion so extraordinary,

Mr. Dawson,

seeing that they only had a few days to study the matter and had nothing better than such statements and assumptions as those to which I have just referred to go upon. As to the merits of the award itself, if the arbitrators had the power to make a boundary between the territories of the Dominion and the Province of Ontario, nothing can be said further than that with the best intentions they have made a most extraordinary award, and it would still be a question whether it was within the constitution to confer on them such powers as could have enabled them to override and ignore Acts of the Imperial Parliament, Acts of prerogative and commissions to Governors, and that too without so much as saying to the Parliament of this Dominion, by your leave. But I apprehend that the reference to them left it only in their power to indicate an existing boundary. And in this view, which is no doubt the correct one, they failed most lamentably, for the boundary they have indicated has nothing whatever to sustain it in history, in law, or in fact. If they intended to go by the descriptions in commissions to Governors, they were in error in not carrying the whole province of Ontario to the shores of Hudson's Bay, and in not describing the western boundary as entering into or touching Lake Superior merely. If, on the other hand, they took the description in the Act of 1774 as their guide, they ignored that description in carrying the northern boundary of Ontario north of the southern boundary of the territories of the Merchant Adventurers of England trading into Hudson's Bay. In either case, they were manifestly in error in carrying the northern and western boundaries of Ontario into the Indian territories, which are described in the Imperial Acts of 1803 and 1821 as being beyond the limits of Upper Canada, and they should at least have kept wide of the boundaries of the old colony of Assinabois, which, as shown by the evidence of Judge Johnson, one of its former Governors, and that of the Hon. Donald A. Smith, who was for a long period Governor of the Hudson's Bay Company's territories, had been recognized by the Imperial Government, and was *de facto* a colony having an autonomy quite distinct from that of Upper Canada. But it has been claimed that, as the arbitrators were three most distinguished gentlemen, we should not on account of their high position assail their award. But the case is quite too important for considerations of this kind. No one can be more ready than I am to admit individually and collectively the high position and great respectability of the gentlemen who formed the Board of Arbitrators, but they have themselves set an example that even Acts emanating from an authority still higher than theirs may sometimes be cavalierly treated. They have, in their award, over-ridden commissions issued under the Royal prerogative, have ignored Acts of the Imperial Parliament, turned aside from a judicial decision emanating from the highest Court in the land, and have favored us with a boundary which is not in accordance with any line ever existing, or even suggested. The fact is, they had not considered the matter; their session lasted only three days. On the first they adjourned; on the second they heard the arguments of counsel, and on the third gave their decision. They had not had time even to read the wonderful book of documents, and, in fact, one of them has since admitted as much. Under these circumstances we cannot reasonably be censured for criticising an award which, should it be adopted by this House, must exercise, for many a day to come, a serious influence on the affairs of this great Dominion. In attempting to show where the Royal prerogative, through the commissions to Governors, had fixed the boundaries, I have confined myself to one branch of the subject, and may take another occasion to refer to matters equally deserving of consideration, and among these to the fact that Ontario was a consenting party to the formation of the Province of Manitoba, and to the Rupert's Land Act, which latter, in fact, admitted the full claims of the Hudson's Bay