

The Legal News.

VOL. VII. JANUARY 17, 1884. No. 3.

THE BOUNDARY QUESTION.

The literature of the Boundary Question has received another contribution. The author complains, very justly, that the question has been obscured by a vast quantity of gossip and other irrelevant matter. His object is, therefore, to restore the simplicity of the original question, and to indicate the single source from which the real answer is to be drawn. For the expression of his views he has adopted the form of a report of a special committee of the Legislative Assembly of the imaginary Province of "Kewadin." In support of the conclusions of this fictitious report is added the evidence on which it purports to be based. But here the fiction ends. The arguments are, of course, serious, the documents and statutes real, and the evidence a careful condensation of all that is important in that actually taken before Mr. Dawson's committee. The work is very thoroughly done, and represents an immense deal of patient investigation, and careful discrimination. He points out the reasons why the Statute of 1774 is the ground-work of the whole argument, and that by it any prerogative rights of the Crown, in the lands ceded by France, derived from conquest or treaty, ceased. Again, he shows that the Act of 1791 does not purport to establish the boundaries of the Province of Quebec, but to divide it into two provinces, and that, incidentally, it has defined no other boundary than the line separating Upper from Lower Canada. Finally, he establishes that Orders-in-Council, Commissions, Instructions, and Proclamations cannot alter the express terms of an Act of Parliament. He contends that the terms of the Act of 1774 are express, and that they fix as the northern boundary of the then Province of Quebec the watershed between Hudson's Bay and the St. Lawrence. In support of this the pamphlet contains the facsimile of a French map of 1656, prepared by M. Sanson, Géographe du Roi, which

admits the watershed to be, by the consent of all the Maritime States, the unquestioned, as it is the unquestionable, limits of the English and French possessions. The Act also fixes the western boundary, which, from its nature, is even more precise than the northern boundary, for the former is a mathematical line from a point fixed till it strikes another line whose general course is transversal. The word used in the Statute is "northwards," and the efforts of the jurists of the Ontario Government have been to get people to believe that northwards means generally westwards, even where no impediment prevented the line going, in the most direct way, due north. It need hardly be said that these propositions of the Ontario lawyers misled no one; not even the so-called Arbitrators, who, disregarding every consideration but their own foregone conclusions, which, curious to say, coincided to a tittle, laid down a line so purely conventional that it contradicts every Statute, and every Executive document, and the pretension of every man, woman and child who has a word to say in the matter.

There is one branch of the subject, as it now presents itself, which, it is to be regretted, has not been treated by so ingenious a disputant, as the anonymous author, who controls the presses of the "Knisteneaux Printing Company" in the far-famed city of "Winnepagoosis." On the merits of the original Boundary question, the Government of Ontario has not the shadow of an argument; but there is what, in popular language, is called an award, and it has to be determined what is the legal effect, however unjust it may be, of the decision of Chief Justice Harrison, Mr. Thornton and Sir Francis Hincks. Such an investigation includes several branches of enquiry, and principally: (a) How far such a submission is obligatory; (b) The terms of the submission and whether the so-called arbitrators have acted within its terms; (c) The submission of the question to the Judicial committee and the effects of such submission.

The judgment of the Privy Council in the important case of *Hodge v. The Queen* occupies our space this week, to the exclusion of other matter. A review of the case by "R" will appear in our next issue.