

“restricted by statute from going further. Its westerly extension has already been fully dealt with.

“In 1838, however, the description was entirely remodelled, all reference to what it had been as a division of the former Province of Quebec expunged, a new description formulated and a new, distinct and, in some respect, entirely different boundary given to Upper Canada by competent authority, as embodied in the commission to Lord Durham, and continued in every succeeding description thereafter.

“By this new boundary the Province of Upper Canada was extended on the north to the ‘shore’ of Hudson’s Bay, and curtailed on the west to the entrance ‘into Lake Superior.’

“I observe that it has been contended that “the boundary line of Hudson’s Bay” and ‘the shore of Hudson’s Bay’ were convertible terms and meant one and the same thing. I cannot admit this; the law does not admit it, for it has declared that a territory granted to the Hudson’s Bay Company existed, and if it existed it had to be found somewhere between its southern boundary and the shore of Hudson’s Bay, and its southern boundary being, by statute law, the northern boundary of the Province of Upper Canada, it could not be identical with the shore of Hudson’s Bay.

“The question then arises, had the Crown the prerogative right to extend the boundary of Upper Canada to the north beyond that provided by statute, and if so did that right include the power to extend it over any part of the Hudson’s Bay Company’s territories? On this point, it may be observed that the Hudson’s Bay Company’s territories had already been put by law (Act of 1821) very effectually under the Government of Upper as well as Lower Canada—reserving whatever peculiar rights may have appertained to them under their charter. The Hudson’s Bay Company were a trading concern, having certain rights, but they were not a government—notwithstanding that they made some efforts in that direction, and, I see nothing in the law, as it then stood, to render it incompatible for the Royal prerogative to have extended the limits of Upper or of Lower Canada over these territories, reserving the rights of the Company as the law already did.

“This seems to have been the view taken by the Arbitrators, for they commence their description *at the shore* of Hudson’s Bay, where an extension of the due north line from the head of Lake Temiscaming would reach it.

“It would not, however, appear to be the view taken by the Department of the Interior, if I may judge by the Dominion maps issued since the sitting of the Arbitrators, for these maps carry the boundary of Ontario to the *shore* of Hudson’s Bay, as if the Arbitrators had made a boundary there, but do not carry the contiguous boundary of Quebec to the same point, but indicate it as extending only to what may have been considered ‘the boundary line of Hudson’s Bay.’ The Department must necessarily be in error in this, for the Arbitrators have not made or declared a boundary for Ontario between these points. They have assumed it as existing by commencing at the *shore* of Hudson’s Bay, but if the Department is right there is a hiatus and no legal boundary whatever provided for Ontario in the large gap between the point where the boundary of Quebec is made to terminate and the point where the Arbitrators commence their description, for if they were right in commencing there, Quebec also extends contiguously to the same point, as the same extension of Lower Canada to the north was made in 1838 as of Upper Canada, in a separate and distinct description.

“I think, therefore, that in commencing their description at the shore of Hudson’s Bay, the Arbitrators were correct, and that the Crown had the prerogative right to extend the boundary to that point, just as the first Province of Quebec was created in 1713; and as the extended Province of Quebec *might have been* further added to by Proclamation in 1791, had it been so done by proper authorization, and conveyed in intelligible language, which it was not.

“I now come to the other point, *the curtailment of the Province on the West* by the same instrument the Arbitrators have recognized as *extending it on the North*.

“By that instrument it will be seen that all reference to the former Province of Quebec, to be found in every descriptive act of authority for the preceding 47 years,