Connolly vs. Woolrich and Johnson et al

formed in 1629. From that date, during the thirty years which immediately preceded the grant of King Charles II. in 1670, these discoveries and trading settlements had considerably increased in number and importance. If this be true, it will be seen hereafter that, apart from the question of the Company's limits, the Athabaska region was, by a general clause, excepted, from the grant of King Charles; for although neither the laws of France, nor those of her contiguous colonies, may have obtained at those distant posts in 1670, the date of the Hudson Bay Charter, yet I think it is beyond all doubt that the Athabaska, and other regions bordering on it, belonged to the Crown of France at that time, to the same extent and by the same means, as the countries around Hudson Bay belonged to the Crown of England—that is to say, by discovery, by hunting, and trading explorations—with this difference, that in the case of the French traders there was a kind of occupation, whereas the English never occupied or settled any part of the Hudson Bay coast till 1669. I will assume, however, for the purposes of argument, that, in both these cases, the principle of public law applied, viz., that in the case of a colony (though they were not plantations or colonies in the proper or legal sense of the terms) acquired by discovery and occupancy, which is a plantation in the strict and original meaning of the word, the law of the parent states then in being was immediately and *ipso facto* in force in these new settlements—that is to say, at Athabaska and on the Hudson Bay; and that the discoverers and first inhabitants of these places carried with them their own inalienable birthright. the laws of their country. Yet they took with them only so much of these laws as was applicable to the condition of an infant colony. For the artificial refinements and distinctions incident to the property of a great and commercial people, the mode of maintenance for the established clergy, the jurisdiction of spiritual courts, and a multitude of other provisions, were neither necessary nor convenient for them, and therefore not in force. The whole of their institutions were also liable to be new modelled and reformed by the general superintending power of the legislature in the mother country, and even this doctrine would apply only to newly discovered and uninhabited regions.

But in both cases under consideration, the discoverers and first settlers found these wild regions occupied and held by numerous and powerful tribes of Indians;—by aboriginal nations, who had been in possession of these countries for ages; and in regard to the Cree Indians, it is stated by a writer who professes to have a familiar knowledge of the natives, (Martin's Hudson Bay, pp. 84-85):

"The Crees are the largest tribe or nation of Indians, and are divided into "two branches—the Crees on the Saskatchewan, and the Swampies along the "borders of Hudson Bay, from Fort Churchill to East Main. Forty years ago, "in consequence of their early obtainment of firearms, they carried their victories to the Arctic circle and across the Rocky Mountains, and treated as "slaves the Chipewyans, Yellow Knives, Hares, Dogribs, Loucheux, Nikanies, "Dahotanies, and other tribes in the adjoining regions."

Now, as I have before stated, I am admitting for the sake of argument, the existence, prior to the Charter of Charles, of the common law of France, and