

renewed and confirmed in the best form". This would certainly include the matters relating to Nova Scotia which were included in the Treaty of Utrecht.

Article IV of the Treaty of Paris specifically deals with Nova Scotia, Canada and the Island of Cape Breton. The King of France guaranteed Nova Scotia in all its parts and with all its dependencies to the King of Great Britain. He also guaranteed to the King of Great Britain the Island of Cape Breton.

—and in general every thing that depends on the said countries, lands, islands and coasts, with the sovereignty, property, possession, and all rights acquired by treaty, or otherwise [which the King of France] and till now over the said countries, lands, islands, places, coasts . . . so that . . . the . . . King cedes and makes over the whole . . . and that in the most ample manner and form, without restriction, and without any liberty to depart from the said cession and guaranty under any pretence, or to disturb Great Britain in the possessions above mentioned—

Article V deals with fishing and among other things

—consents to leave to the subjects [of the King of France] liberty of fishing in the gulph of St. Lawrence, on condition that the subjects of France do not exercise the said fishery but at the distance of three leagues from all the coasts belonging to Great Britain—

Honourable senators, these treaties conveyed to Britain, among other things, the Island of Newfoundland and the Province of Nova Scotia including Cape Breton together with whatever rights in connection therewith as had been held by France. It is worth noting again that the Treaty of Utrecht provided that the subjects of France should be excluded from fishing off the eastern coast of Nova Scotia for a distance of 30 leagues "beginning from the island commonly called Sable"—85 miles offshore—and then stretching along towards the southwest. The Treaty of Paris allows the French to fish in the Gulf of St. Lawrence but not within "the distance of three leagues from all the coasts belonging to Great Britain"—that is nine miles approximately—and not within "the distance of fifteen leagues from the coasts of the Island of Cape Breton". Thus Britain was asserting and exercising jurisdiction over certain areas to a distance of 30 leagues, which is 90 miles, from Nova Scotia, 15 leagues, which is 45 miles, from all coasts belonging to Cape Breton, and three leagues, nine miles, from all coasts belonging to Great Britain. This jurisdiction was accepted by the other three countries who were parties to the treaty.

Even long before the Treaty of Utrecht, the King of England was claiming jurisdiction over extensive areas of Nova Scotia, and in that connection I have already referred to the Royal Charter of 1621 to Sir William Alexander. This, incidentally, may be found in the Public Archives of Nova Scotia as Bulletin No. 22 under the heading "The Boundaries of Nova Scotia and its Counties".

Then we come to the Commission of Governor Wilmot, one of the governors sent out by the King of England to be

Governor of Nova Scotia, and, as I say, that was a somewhat larger territory then than it is now. This commission was given to Governor Wilmot under date of November 21, 1763, just about nine months after the Treaty of Paris, which was signed on February 10, 1763, and a total of 142 years after the Royal Charter of 1621, which was the first—at least the first I have been able to find—document in which England laid claim to Nova Scotia. Wilmot's commission gave a description of Nova Scotia which in part reads:

—and all Islands within Six Leagues of the Coast to the Southward by the Atlantick Ocean from the said Cape to Cape Sable including the Island of that name and all other Islands within Forty Leagues of the coast with all the Rights, Members and Appertenances whatever thereunto belonging—

As to offshore rights, honourable senators, it is clear that the English Crown was claiming consistently from at least 1621 substantial jurisdiction over large areas at least far enough from the mainland to include Sable Island and far beyond. The claim clearly was much further seaward than the territorial sea of three miles. In this respect, therefore, I submit there can be no doubt that the historical facts differ so greatly from those relating to British Columbia as to distinguish undoubtedly the British Columbia situation and the Nova Scotia situation and the general Atlantic provinces situation.

It will be recalled that the joint opinion in the *British Columbia Reference* case specifically stated that it did not dispute the right of the Crown to delegate to colonies the right to legislate in respect of such matters. It said that in the case of British Columbia there was no evidence of such delegation. There is, however, substantial evidence of such delegation in respect of the Atlantic provinces, both specifically and by necessary implication. An examination of the situation with regard to Nova Scotia reveals that very clearly. Thus again the relevant historical facts differ very greatly from those relating to British Columbia.

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In this connection, honourable senators, the commissions issued to British governors of Nova Scotia were made in wide enough terms to give jurisdiction to exercise any rights which the British Crown had in, over or arising from the colony. They also instructed the governors to make laws with the advice and consent of the council and assembly.

For a long time before Confederation, the Governor of Nova Scotia was assisted in legislating in respect of that province by a representative assembly. Indeed, the first representative assembly in Nova Scotia was elected in 1758 and was, I believe, the first representative assembly in what is now this country.

The commission to Lord Cornwallis dated May 6, 1749, appointed him:

Governor in Chief in and over our province of Nova Scotia or Acadie in America, with all the rights, members and appertenances whatsoever thereto belonging.