

trators, or of the Dominion Parliament are likely to "increase" the limits of Ontario. We may therefore dismiss that case. Authority is next given to "diminish" limits. Did you authorize the Dominion Parliament to do this? So your Act reads. But who authorized you or your colleagues to cede our territory, or rather to transfer to another, and on this subject a hostile body the power not of ceding, but of setting it? Did you receive a single petition in favour of your Bill? Were you asked at any public meeting, or by any respectable newspaper in Ontario to pass it? I have no doubt many persons wished you to have the limits of Ontario, especially its western limits, surveyed and marked out upon the ground, but very few imagined that you would allow them to be either diminished or altered to the disadvantage of the Province. To ascertain the true legal boundaries and to permanently mark them on the ground is one thing; to "diminish" or "alter" those boundaries is another and very different thing. The Imperial Act of 1871 makes no provision for the first, because only new provinces, whose boundaries would of necessity be mentioned in the Acts creating them, were intended or referred to. It might be expedient in the case of a small province like Manitoba, to increase it at some future time, or to divide or diminish a large province if the progress of settlement and public convenience should at any time require it. Hence, no provision for ascertaining or settling disputed boundaries is found in the Act of 1871, but alterations by consent are provided for.

3. My next objection is that the Act of 1871 authorizes "the Parliament of Canada," and, assuming that it applies to Ontario, "the Legislature of the Province," to diminish or alter limits. You have assigned that duty to an irresponsible body unknown to the Act and unknown to the Constitution, to wit: an arbitration. You have not even reserved to the Legislature the right to confirm or adopt the award of the arbitrators. A Legislative Act of confirmation might possibly be held to cure the irregularity, but you have put this out of your power, or rendered it a mere empty form, for you have assigned the right or power of confirmation to the Parliament of Canada! I affirm as a proposition of law, that no Provincial Legislature appointed and authorized to legislate on a particular question can renounce that duty, or transfer it to any other body. The act of that other body will, in such a case, be *ultra vires* and a nullity.

4. But I object to arbitration even if we

could legally diminish or alter the limits of the Province by its agency. The true question, which you have entirely ignored, is one of law, not of discretion. It is this,—where according to law is the western limit of Ontario? The same question must be asked as to the northern limit. An arbitration is not the tribunal to answer such a question. Let us see how it will work. You have agreed that two out of three arbitrators shall "determine" this momentous question. You have named the Chief Justice of the Queen's Bench on the part of Ontario. The Dominion Government has named the ex-Governor of New Brunswick. These two, if they can agree upon him, are to name the third arbitrator, "not being a resident of Canada." The determination, therefore, of Ontario's limits on the west and north, has been withdrawn from the Courts, and in case of appeal, from the Judicial Committee of the Privy Council; it has been put out of the reach of the constitutional guardian of the people's rights, the Ontario Legislature, and it is now in the hands of a New Brunswicker and a foreigner, or stranger, at present unknown! The question will be decided *ex æquo et bono*, for arbitrators need not follow the law. We may expect the Chief Justice to contend for the boundary established by law, and to resist all attempts to "diminish" our limits or even to "alter" them. But by the very word *arbitration* you have suggested a "height of land" boundary, or an arrangement which will suit the authorities at Ottawa, into whose hands you have resigned the power of confirmation. The result of such a determination would be agreeable to all our Provincial rivals, for it would cut off from 250 to 300 miles of territory on the west that now legally belongs to us, and on the north, a still larger extent.

I cannot believe that you agreed to arbitration, and framed and hurried through the Legislature your extraordinary Act of last session, for the purpose of asserting or defending the territorial rights of this Province. There is not a word or sentence or clause in it that even squints in that direction. There is one saving clause, however—you can suspend its operation till the new Legislature meets. I give you notice that whether it remains suspended or not, I shall, God willing, propose its repeal as soon as the rules of the House will permit me to submit the question.

I am, &c.,

W. MACDOUGALL.

August 16, 1875.