

treaty of 1763. In the year 1856 the Hudson's Bay Company, having applied to Her Majesty's Government for a renewal of their license to trade in the Indian territories, as they were termed, the Secretary of State addressed a despatch to Sir Edmund Head, stating the intention of the Government to bring the whole subject under the consideration of a committee of the House of Commons, and inviting him to take the advice of his council as to the desirability of sending witnesses to appear before the Committee, so that the interests of the Canadian community should be represented.

The matter was referred to the council, the only member of which now in public life, is Sir John A. Macdonald. The council expressed great satisfaction at the communication, stating that "the general feeling here is strongly that the western boundary of Canada extends to the Pacific Ocean," an opinion which, in transmitting the minute, Sir Edmund Head guarded himself from being supposed to entertain. It was determined to secure the services of Chief Justice Draper, in order that Canadian interests should be properly represented, and one avowed reason for the selection was "his estrangement from all the ordinary ties of local or party politics." There can be no dispute as to the eminent qualifications of Chief Justice Draper for the task imposed on him. His instructions were to afford all the information in his power relating to the interests and claims of Canada, and to endeavor that the interests and feelings of Canada should be consulted, "so far as is consistent with right and justice." Canada was then united, so that there were no local jealousies. The Commissioner of Crown Lands was Mr. Cauchon, a French Canadian, to whom the subject was referred for report. The preparation of that report was entrusted to Mr. W. McD. Dawson, and at present it is only necessary to remark that it maintained that "the country about Red River and Lake Winnipeg absolutely belonged to Canada," while on the north the extreme limit of the Hudson's Bay Company's territory was said to be "a few isolated posts on the shore of Hudson's Bay," or else that it was "a myth." It must be borne in mind that this report was adopted by Mr. Cauchon.

Chief Justice Draper, then representing the Government of United Canada, laid two papers before the select committee of the House of Commons, 1857, in which he showed conclusively that the Hudson's Bay Company themselves had only ad-

vanced their claims to extensive territories in modern times, and that when, in the negotiations for determining the boundaries after the treaty of Utrecht, special instructions were given to the commissaries of Great Britain "to take especial care that the said boundaries be understood to regard the trade of the Hudson's Bay Company only." It was Mr. Draper's opinion that it would be desirable to obtain the advice of the Judicial Committee of the Privy Council on the boundaries of Canada, and Rupert's Land, but on such a reference he said that he presumed the Committee would not pronounce a judgment but "simply make a report, on which Her Majesty in Council, in virtue of Her Royal prerogative, might declare the boundaries, or else a declaratory Act of Parliament might be passed." It is important to bear this in mind, as the *Gazette*, like other defenders of the Dominion Government, has maintained that the Judicial Committee was the only tribunal competent to settle the question. We shall soon have the opinion of the Judicial Committee itself as to the mode of giving legal effect to the award, but the Judicial Committee can do no more than the arbitrators, which was to make a report. It is however to be borne in mind that the precise mode of giving legal effect to whatever decision may be arrived at in regard to the boundaries is a matter important only so far as it ensures an authoritative decision.

The determination of the boundaries must be effected by some kind of arbitration, and for the obvious reason that there are no true legal boundaries, which is what the opponents of the Canadian award have been constantly insisting should have been found by the arbitrators. If there had been any precise boundaries defined by Act of Parliament, there would have been no occasion for any reference. As early as the year 1871 the Governments of the Dominion and of Ontario asked the respective Parliaments for appropriations to cover the cost of defining the boundary line separating Ontario from the North-West territory, and on 17th July, 1871, the Lieutenant-Governor called the attention of the Dominion Secretary of State to the necessity of taking prompt action in the matter. It is not unimportant to notice that the same expression was used in the respective minutes of the two Governments in 1871, that was subsequently adopted in 1878, viz., to determine the boundary line."

The commissioners named were the Hon. Wm. McDougall, C.B., and Eugene E.

Tache. No third arbitrator was proposed, as Mr. McDougall suggested should be named in a letter dated 9th March, 1872, in which he added, "so far as I could judge both Sir John A. Macdonald and Sir George Cartier, to whom I made the suggestion, viewed it favorably." Meantime Sir John Macdonald, "to prevent unnecessary delay," proposed to transmit to the Ontario Government a draft of the proposed instructions to the commissioner for the Dominion which had been prepared "after consultation with Surveyor General Dennis," who had been called on for a report, which was adopted by the Dominion Government. It will therefore be perceived that originally the very plan of determining the boundary, which was afterwards adopted, was agreed to by both Governments when Sir John A. Macdonald was Premier, and that it failed simply because one of the parties undertook to decide the points in controversy before the meeting of the commissioners. This of course put an end to the proposed arbitration, as the Ontario Government obtained a report from Hon. Wm. McDougall, in which he gave satisfactory reasons for his opinion, that the true boundary was the North-Western angle of the Lake of the Woods. Further correspondence ensued, which led to no result, as, although both parties professed a willingness to leave the disputed question to arbitration, the Dominion Government proposed the Judicial Committee of the Privy Council, while the Ontario Government held that a Colonial tribunal would be more satisfactory.

When the Mackenzie Government was formed, in 1873, an amicable arrangement was made for a conventional boundary, pending a reference to arbitration, which was mutually agreed to, and soon after arbitrators were named. When the final Orders in Council were passed both the contending parties agreed that "the determination of such three referees should be final and conclusive. This order was approved by the Earl of Dufferin, then Representative of the Queen and we are unaware of any precedent for the violation of such an agreement made by the advice of one administration by its successor. We need not dwell on subsequent controversies. It was never contended that the award of itself established any boundaries, but that the parties to it should have felt bound to obtain that legal sanction which would have to be obtained for the decision of the Judicial Committee. It is hardly fair in the *Gazette* to affirm that Mr. Mackenzie held the same opinion as Sir John A. Macdonald, because he permitted the