

Bench, and Judge Johnson of the Superior Court of Quebec, hold that the prolongation of a line drawn due north from the point of junction of the Ohio and Mississippi forms the western limitary line, and the Height of Land or the St. Lawrence water-shed, the northern boundary. Judge Armour inclines to the belief that the Height of Land forms both the western and northern boundaries, but says in reference to the decision of the Court of King's Bench in the de Reinhardt case, "no doubt about it, it is a clear decision, and were I deciding it judicially, I would be bound to follow that decision."

The decision to which he refers is in the following words :

FRIDAY, 29TH MAY, 1818.

"Chief Justice Sewell.—The Court are most distinctly of opinion, on referring both to the Act of 1791 and that of 1774, that the argument on the defence must fail. "What was the object of each Act? Amongst others, that of 1774 was to enlarge the Province of Quebec, which had been created in 1763. That of 1791 was to separate or divide the Province of Quebec into two Provinces, to be denominated Upper and Lower Canada, and make each respectively independent of the other by giving a Legislature to each respectively, but still retaining between or within the two Provinces, the same extent of country, the same space as the one Province contained. "What is the Act? What is its object, its avowed object? To repeal certain parts of the Act of 1774; and what is the part repealed? It is that part of it which gives authority to the Council of the Province of Quebec; and what is the reason assigned for so doing? Why, that His Majesty had signified it to be his royal will and pleasure to divide his Province of Quebec. To assert that he intended by this that the limits of the Province should be extended by the separation appears to me repugnant to the plainest principles of common sense, and therefore I cannot assent to it. The short history of the Act of 1791 is briefly this: The King signifies to Parliament his royal intention of dividing his Province of Quebec, and he calls on the Legislature to provide for this alteration by granting an Act adapted to the change. The Legislature pass an Act providing for the due government of the two Provinces, and under the authority of this Act, and the Royal Proclamation, the Province of Quebec was accordingly divided, the Royal Proclamation being an exercise of sovereign authority. His Majesty in that Act, by and with the consent of his Privy Council, declared what should be the line of separation between Upper and Lower Canada, and how much of the former Province of Quebec shall belong to the one, and how much to the other. The object of the Act and the object of the Royal Proclamation are so clearly expressed that we cannot for a moment doubt upon the subject. What says the Act? His Majesty having been pleased to signify his royal will and pleasure to separate and divide the Province of Quebec.' What says the Proclamation? Why, the very same words. To divide the Province of Quebec, not to add to it, any more than to take away from it. Therefore, Upper Canada, in the purview, could include only that part of the Province so divided as was not contained in Lower Canada; but it could not extend beyond these limits which constituted the Province of Quebec, otherwise it would certainly have been an Act to enlarge, rather than an Act to divide. In delivering this opinion I am speaking our unanimous sentiment, for we have consulted our brother Perrault upon the subject and he clearly concurs with us. According to our understanding of the Act and the Royal Proclamation, we are bound to say that we consider the argument of the gentlemen concerned for the prisoner, though presented with great ability and ingenuity, must fail, because the western boundary of the Province of Upper Canada is 'a line drawn due north from the confluence of the Ohio and Mississippi Rivers till it strikes the boundary territory line of Hudson's Bay.'

"The question of *fact* will remain with the Jury. It is they who are to say, whether this place, *the Dalles* IS OR IS NOT to the west of the line which we now declare to be the western boundary of His Majesty's Province of Upper Canada. If they are of opinion that it is within, or to the east of this western line, then it is in the Province of Upper Canada and not within our jurisdiction; but, if they are of opinion