

prerogative, and left to the King the power of arranging the boundaries at his pleasure. On this subject the Attorney-General for Ontario expressed himself very clearly and with great force; it is only to be regretted that he had not followed his own reasoning to its logical conclusion. In the statement of the case for Ontario, page 5 he says:

"The Crown had an undoubted right to add to the boundaries of the Province, and that if the boundaries given to it by the Commissioners are not the identical boundaries which the Statute provided for, and which were thereby to continue during His Majesty's pleasure, and if the Commissioners assigned to the Province a larger area than the Statute had described, the Crown had a right to make, and did make, the addition."

And in his argument before the arbitrators he remarks as follows:—

"Because the Crown had a right to add to the territory of the Province. If the Statute did not give the territory to the banks of the Mississippi, the Crown had, by virtue of the Royal prerogative, a right to add to the limits of the Province; and the Commission in which territory up to and along the eastern bank of the Mississippi was given to the Province, had the effect of giving to it that boundary, supposing that the Statute had not given it."

Further, he says:

"Because the Crown had the right to place the territory in the Province, though it could be made to appear that the territory in some sense belonged to the Hudson's Bay Company, they were only private persons. If the Crown had chosen to put the whole of the Hudson's Bay territory into the Province, the Crown had a right to do so."

A little further on, he says:

"The Crown would not be interfering with their property by placing it under a certain government."

And he goes on as follows:—

"I have said the Crown had a right to include additional territory beyond that given by Statute if the Crown thought proper. An illustration of this prerogative is afforded by the Act of 1774, which provides for additions to the Province of Quebec as theretofore given by the proclamation. The Act provides that these additions, which Parliament itself was making, were to continue during His Majesty's pleasure only; although Parliament was making an addition, the prerogative in regard to even that territory was not interfered with; and a *fortiori* the prerogative right of giving still further territory to the Province was not intended to have been interfered with by the Act. As the Statute provided that the additions thereby specified were to be during His Majesty's pleasure, if His Majesty's pleasure should interfere with that provision being carried out it would so far be in effect a repeal of the Act, and would be a stronger exercise of the Royal prerogative than a further addition to the territory provided by the Statute would be."

Again he says (page 10):

"The Constitutional Act of 1791, implies the same right of the Crown to exercise the Royal prerogative in the arrangement of territorial limits. That Act was passed in contemplation of the division of the Province of Canada into the two Provinces of Upper and Lower Canada, and it made provision for the Government of each of those Provinces. But the Act did not itself make the division; it provided that when the division was made, the Government should be as the Act describes. This is the enactment. 'His Majesty has been pleased to signify, by his Message to both Houses of Parliament, his Royal intention to divide his Province of Quebec into two separate Provinces,' etc. It was to be done, if done at all, by the Royal prerogative. His Majesty might divide the Province into two in any way he chose; and all that Parliament did by the Act of 1791 was to provide that, in case of such a division by the Crown, each of the two sections should be subject to the Government which the Statute provided for it. Another illustration of such an exercise of the prerogative is in the proclamation of 1763, whereby the Crown created four new Provinces: Prince Edward Island, or St. John's Island, as it was sometimes called in those days with the lesser islands, were added to Nova Scotia by the same prerogative."

Again (on page 10):

"Mr. Burke's letter to his constituents [printed in the book of documents] contains a reference to this matter—the paragraph is towards the foot of page 385. He says: 'My next object of enquiry, therefore, was upon what principles the Board of Trade would, in the future discussions which must inevitably and speedily arise, determine what belonged to you and what to Canada. I was told that the settled uniform practice of the Board of Trade was this: That in questions of boundary where the jurisdiction and soil in both the litigating Provinces belonged to the Crown, there was no rule but the King's will, and that he might allot as he pleased, to the one or the other. They said also that under these circumstances, even where the King had actually adjudged a territory to one Province, he might afterwards change the boundary; or, if he thought fit, erect the parts into separate and new governments at his discretion.'"

* "Mr. Burke did not approve of the extensive claims of the Crown in the matter of prerogative, as maintained by the Board of Trade; he thought the doctrine was carried too far; still, he admitted that it was

the uniform settled practice of the distinguished persons who constituted the Board of Trade to act on that principle. I find nothing against that view; there seems to be no doubt that the Crown had the legal power stated, and that, if the Quebec Act did not give the Province of Quebec as large a territory as the commissions of the Governors afterwards provided for, these commissions were sufficient to give the additional territory to the Province."

On page 12 he remarks as follows:—

"In seven commissions, from that issued to the Earl of Durham, March 30th, 1838, to that of Lord Elgin, October 1st, 1846, and also in the two commissions to Sir John Colborne, and the Right Hon. Charles P. Thompson, as Captain-General and Governor in Chief of Upper Canada, dated respectively December 13th, 1838, and September 6th, 1839, the line of division between Upper and Lower Canada is stated to reach the shore of Hudson's Bay by a line drawn due north from the head of said lake [Temiscaming] until it strikes the shore of Hudson's Bay."

"These seven commissions use the word 'shore.' It is not to be supposed that there was a mistake in substituting the word 'shore' for the words 'boundary line.'"

On page 13 he goes on:

"The Crown had power to include within the limits of the Province part of the territory of the company, as well as that of any private owner of land, if such was the Royal will."

And on page 24, says:

"If there should seem to the arbitrators to be too much doubt on the subject to enable them to determine with absolute precision the northern boundary of the Province, a boundary should be assigned, which would give to the Province the full territory which the commissions to the Governors definitively provided for."

These views are remarkably clear, and on reference to the Act of 1774 it will be seen that it did not carry the northern boundary of the then Province of Quebec north of the southern boundary of the Hudson's Bay Company's territories, and it is equally clear that the first commissions issued under it described the territories of the Merchant Adventurers of England as coming as far south as the Mississippi, at least. These territories, in fact, were to be found on the Mississippi according to these commissions, and the Attorney General, in so far as he claims that any extension further north must be based on commissions issued under the Royal prerogative, is perfectly logical; it remains for us to see what these commissions say on the subject. The first commission issued subsequent to the passing of the Act was on the 27th September, 1774, to Sir Guy Carleton, which runs as follows:—

"And further know you, that we, reposing especial trust and confidence in the prudence, courage and loyalty of you, the said Guy Carleton, of our especial grace, certain knowledge, and mere motion, have thought fit to constitute and appoint you, the said Guy Carleton, to be our Captain General and Governor in Chief in and over our Province of Quebec, in America, comprehending all our territories, islands and countries in North America, bounded on the south by a line from the Bay of Chaleurs, along the high lands which divide the rivers that empty themselves into the River St. Lawrence from those which fall into the sea, to a point in forty-five degrees of northern latitude, on the eastern bank of the River Connecticut, keeping the same latitude directly west, through the Lake Champlain, until in the same latitude, it meets with the River St. Lawrence; from thence up the eastern bank of the said river to the Lake Ontario, thence through the Lake Ontario, and the river commonly called Niagara, and thence along by the eastern and south-eastern bank of Lake Erie, following the said bank until the same shall be intersected by the northern boundary granted by the charter of the Province of Pennsylvania, in case the same shall be so intersected, and from thence along the said northern and western boundaries to the said Province, until the said western boundary strikes the Ohio; but in case the bank of the said lake shall not be found so intersected, then following the said bank until it shall arrive at that point of the said bank which shall be nearest to the north-western angle of the said Province of Pennsylvania, and thence by a right line to the said north-western angle of the said Province, and thence along the western boundary of the said Province until it strikes the River Ohio, and along the bank of the said river westward to the banks of the Mississippi, and northward along the eastern bank of the said river to the southern boundary of the territory granted to the Merchant Adventurers of England trading to Hudson's Bay; and also all such territories, islands and countries which have, since the tenth day of February, one thousand seven hundred and sixty-three, been made part of the Government of Newfoundland as aforesaid, together with all the rights, members and appurtenances whatsoever thereunto belonging."

The next was the commission of 18th Sept., 1777, to Sir Frederick Haldimand, and it is precisely the same as the last. It is quite evident that, taking these commissions by themselves, and supposing them to be an expression of the