

one of which you will be glad to recall has already been delivered.

Senator Frith: The other shoe is about to drop.

Senator Smith: This is, as I have said, the second of two inquiries of which I have given notice relating to offshore mineral rights, and in particular to my belief that the decision of the Supreme Court of Canada in the case which is prominently referred to as the *British Columbia Reference* case is not applicable to the question of who owns the minerals off the shores of Nova Scotia.

Some honourable senators may recall that I spoke to the first of these two inquiries on Thursday, July 10, 1980. What I said then is reported in *Hansard* of that date beginning at page 613. What I propose to say today is a continuation of those remarks. Anyone who wishes to follow my whole argument on the matter—and I do not suppose there will be any great rush in that respect—might find it useful to read what I said on July 10.

The exact question put to the Supreme Court of Canada is set out on page 614 of *Hansard* for July 10, so I shall not repeat it now. It will be recalled, however, that the Supreme Court of Canada decided the *British Columbia Reference* case specifically on the historical facts as the court found those facts to be as they related to British Columbia, but in cases where historical facts are different, then different conclusions might well be reached by the same court.

I submit that there are certainly very, very different historical facts applicable to the Atlantic provinces, and particularly to Nova Scotia and Newfoundland. The importance of the historical outline as the foundation on which the British Columbia decision rests is indicated by the following quotation from that decision, which may be found on page 615 of the said *Hansard*, and which, in part, reads as follows:

We have already said that, in our opinion, in 1871 the Province of British Columbia did not have ownership of property in the territorial sea and that the Province has not, since entering into Confederation, acquired such ownership of property.

I emphasize the following sentence used by the court:

We are not disputing the proposition that while British Columbia was a Crown Colony the British Crown might have conferred upon the Governor or Legislature of the Colony rights to which the British Crown was entitled under international law but the historical record of the Colony does not disclose any such action.

Honourable senators, the burden of my submission today is that it is perfectly clear that the British Crown not only was entitled under international law to confer upon the governor or legislature of the colony of Nova Scotia rights to which that Crown was entitled, but, in fact, did so, and thus Nova Scotia meets that test laid down by the court itself for consideration.

● (1530)

As I previously submitted, and as I repeat now, the historical outline in respect of the Atlantic provinces, and in particular the provinces of Nova Scotia and Newfoundland, shows

that the British Crown did confer upon the legislature of the colony rights to which that Crown was entitled. Those historical facts relate not merely to the territorial sea but also to the ownership of Sable Island and jurisdiction far beyond the limits of the territorial sea.

Let us take a look at some of those historical facts. Nova Scotia's history, as is well known, goes far back into the days when it was a possession of France. One of the earliest documents available is the commission issued by Henry, by the grace of God, King of France and Navarre, reading:

To our dear and well beloved the Lord of Monts, one of the ordinary gentlemen of our chamber, greeting—

And honourable senators will know, of course, that what I am reading is a translation and not the original script.

As our greatest care and labour is, and always hath been, since our coming to this Crown, to maintain and conserve it in the ancient dignity, greatness and splendour thereof, to extend and amplify, as much as lawfully may be done, the bounds and limits of the same; we being, of a long time, informed of the situation and condition of the lands and territories of La Cadia . . . We then, for these causes, fully trusting on your great wisdom and in the knowledge and experience that you have of the quality . . . of the said country . . . expressly appointed and established you, and by these presents, signed by our hands, do commit, ordain, make, constitute and establish you, our Lieutenant General, for to represent our person in the countries, territories, coasts and confines of La Cadia . . . and there to command in peace, rest and tranquility, as well by sea as by land . . . with the advice of wise and capable men, to prescribe under our good pleasure, laws, statutes and ordinances, conformable, as much as may be possible, unto ours, especially in things and matters that are not provided by them . . . over and besides that which is above-mentioned, (and that which is all over prescribed, commanded and ordained unto you by the conditions and powers which our most dear cousin . . . the Admiral of France, have given unto you for that which concerns the affairs and charge of the admiralty, in the exploit, expedition and executing of the things above said), to do generally whatsoever may make for the conquest, peopling, inhabiting and preservation of the said land of La Cadia; and of the coasts, territories adjoining, and of their appurtenances, and dependencies under our name and authority, whatsoever ourselves would and might do if we were there present in person—

There could be no clearer words, I submit, honourable senators, to be used by His Majesty the King of France to give his Lord Lieutenant or Governor of La Cadia every bit of power that he had himself over any part of his realms and the sea that adjoined those realms, and any place to which his authority extended. Again:

—whatsoever ourselves would be and might do if we were there present in person—