

“the description which they themselves prepared and placed in the Act, and which passed the House of Lords, as well as from the surrounding circumstances and their subsequent Acts, meant the Mississippi River to be the boundary of Quebec on that side; unless the evidence is sufficient to satisfy a court of justice (assuming that this case may go before a court of justice) that the Mississippi River was the natural boundary which the Imperial Government and Parliament had in view, then the word “northward,” as the Chairman assumes, might, and probably would, be read “due north.” You would have nothing to direct you on the one side or the other, and having mentioned the Hudson’s Bay territories which are mostly, as he says, east of a due north line, that would be a correct construction; but in the face of positive evidence that it was the intention to make the Mississippi River the western boundary of Quebec, and as the word “northward” is not opposed to that intention I do not see how it is possible to get over it. I am speaking of it now as a lawyer, or rather as a judge if called upon to decide the question.

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By the Chairman :

“Q. You believe the Hudson’s Bay Company had territory, whatever its extent may have been, on the shore of Hudson’s Bay, immediately on the confines of the Bay?—I think so. It never was defined, but it must be held now that they had territory there.

“Q. Do you believe the boundaries, as set up by the award, are the real boundaries of Ontario?—At what point?

“Q. At Hudson’s Bay. Is the boundary line, as laid down by the award, the true northern boundary of Ontario?—That question raises the whole difficulty, I think, with respect to the northern boundary. If you will permit me, I will explain my view of it by reference to this map. In the first place, I think as a matter of law, we must admit to-day, for I think the courts will hold that the Hudson’s Bay territories referred to in all recent negotiations exist, or did exist, as a matter of fact. You will observe in the British North America Act we have distinguished (it was done at my suggestion) between the North-West Territories and Rupert’s Land (the original name of the Company’s plantation), and they are treated as two distinct territories, the boundaries of which had been, or were capable of being, ascertained. I think, therefore, you must look for the southern boundary of Rupert’s Land, somewhere inland in the neighborhood of Hudson’s Bay. I think the evidence is sufficient to justify a court in deciding that question in the affirmative, though I admit it is a very difficult one, when you come to fix the metes and bounds. I dare say you have in the course of your enquiry, ascertained the fact that Commissioners were appointed by England and France, before the conquest by Canada, to settle the question of disputed boundary around Hudson’s Bay. The English proposed a boundary extended two or three hundred miles into the country; the French proposed a narrower boundary near Hudson’s Bay. The Commissioners came together, but never arrived at a binding agreement.

“Q. Still, both were inland from the shore?—I think the French always insisted on access to the Bay; but wars broke out, and in the end we succeeded to the inheritance of both those rights, the French right, wherever that might be, and the English right; but it will probably be held that we, as Englishmen, will be bound to say that our ancestors did not make any improper claim, and we will have to admit that the line extends further inland than the French would allow. With respect to the boundary between Upper and Lower Canada, when it leaves Lake Temiscaming you have got beyond the limit of old Quebec. When you pass the height of land you are in the disputed territories, and in order to get to the shore of Hudson’s or James’ Bay, you have to cross a portion of Rupert’s Land, according to the English claim; and, therefore, I should say that in running a line along James’ Bay to Albany River, and from there to Lake Winnipeg, the Arbitrators lost sight of the order of reference. All this country that will be taken out of the award by a line defining Rupert’s Land,