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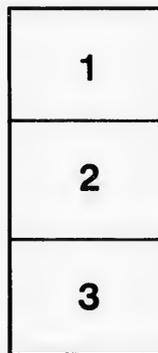
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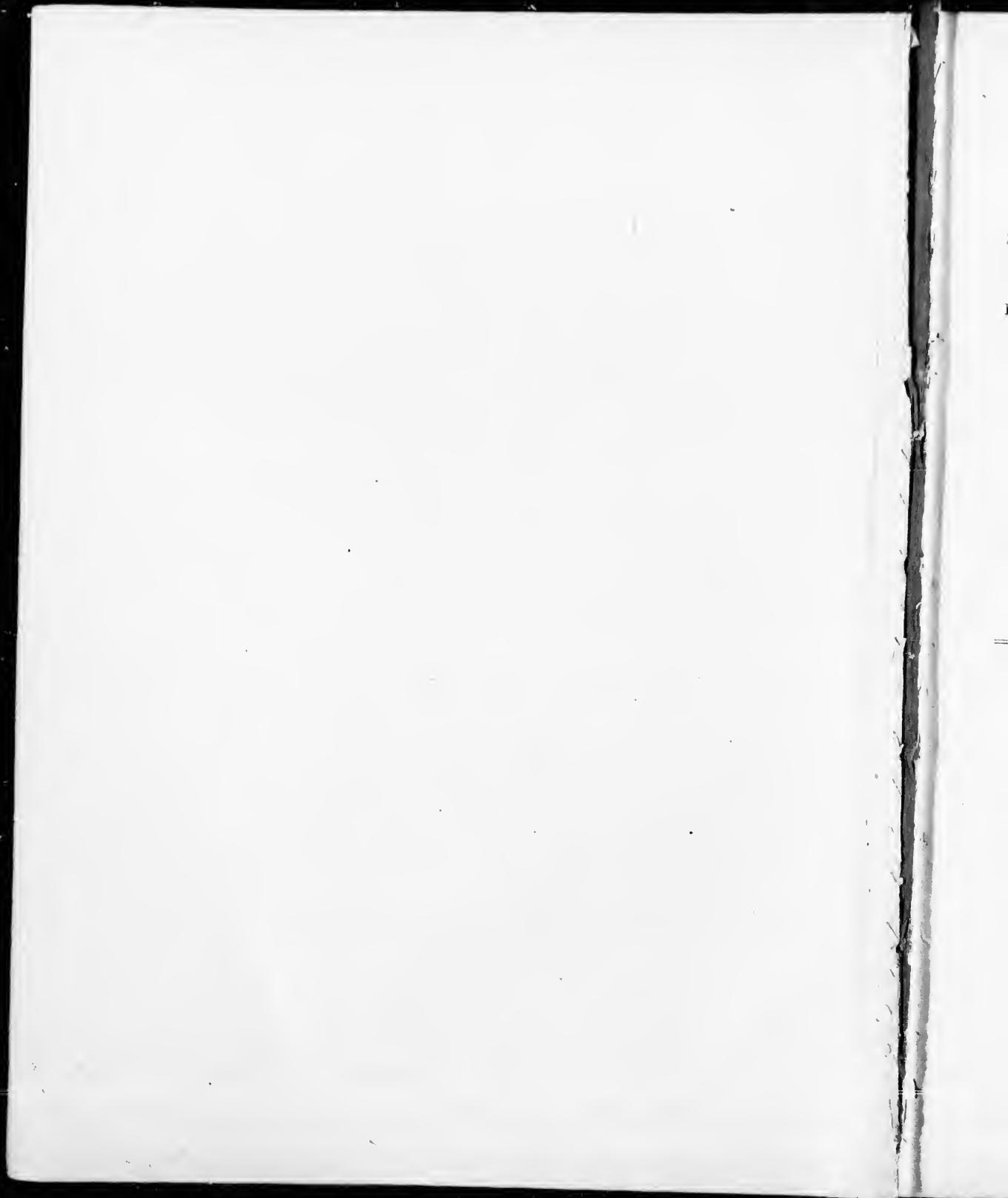
PRIVY COUNCIL,

1884.

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In the Privy Council.

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MANITOBA, IN THE DOMINION OF CANADA.

BETWEEN THE PROVINCE OF ONTARIO, OF THE ONE PART,

AND

THE PROVINCE OF MANITOBA, OF THE OTHER PART.

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I.
Reference to the Privy Council.

MEMORANDUM OF AGREEMENT

BETWEEN THE GOVERNMENTS OF THE PROVINCES OF ONTARIO AND MANITOBA IN REGARD TO THE
TERRITORY IN DISPUTE BETWEEN THEM, 18th DECEMBER, 1883.

JOINT
APPENDIX.
—
Sec. I.
Reference to the
Privy Council.

In order to have the question of the title to the disputed territory set at rest at the earliest possible day, as between the two Provinces, so far as the same is possible by the action of the said Provinces, Agreement between Ontario and Manitoba, 18th December, 1883.

And in order to avoid unnecessary conflicts or collisions in the meantime between the courts or officers of the two Governments, and to make the best practicable arrangement on which the two Governments can now unite as to matters within Provincial jurisdiction, for the administration of justice and the preservation of peace and order, the said Governments of Ontario and Manitoba agree as follows:

1. Neither Government is to be understood by this Agreement as abandoning any claim such Government has heretofore made, or had, to, or in, the disputed territory, or any part thereof.

[Clauses 2 to 29 contain provisions for the government of the territory pending the dispute.]

30. The Joint Case hereto annexed is hereby mutually agreed to by the said Governments provisionally, and subject to the following understanding, viz:

If Mr. Christopher Robinson, counsel for Manitoba, or Mr. Mowat, on behalf of Ontario, should hereafter be of opinion that there ought to be some variation of the said Case, as to the forms of the 20 questions submitted, or otherwise, and notifies in writing such opinion to the other on behalf of Ontario or Manitoba, as the case may be, on or before the fifteenth of February next, the said Case is to be varied in any way that they may agree, or, if they differ, the said variation may be decided in manner hereinafter provided with respect to documentary evidence as to which the parties may differ; but no variation is to be made after the 15th April next.*

31. Either Government may apply, *ex parte*, to Her Majesty, or to the Judicial Committee, to have the said Case set down for argument in the month of June or July, 1884. If the said Joint Case is not set down to be argued in June or July next, or is not argued then, either party may apply at any time, *ex parte*, to have the said Case set down or argued at such other time as the Judicial Committee aforesaid may appoint.

30 32. For the purpose of considering the question of the true boundary the following evidence is to be submitted to the Privy Council, *quantum valeat*:

(1) The Book of Arbitration Documents; the Cases submitted to the Arbitrators on behalf of the Dominion of Canada and the Province of Ontario respectively; and all maps referred to in the said Book or said Cases.

(2) The Acts of the Legislature of Ontario on the subject of the boundaries.

(3) All other documents which were produced before the Select Committee of the House of Commons, or which have come into the possession of either Government.

(4) The notes of Chief Justice Sewell on the trial of the De Reinhard case, on their authenticity 40 being established to the satisfaction of the Judges, or Judge, hereinafter referred to, or of the Attorney-General of Ontario.

* Variations were afterwards agreed to by Mr. Robinson and Mr. Mowat, and the "Special Case" printed post is the "Joint Case" as so varied.

JOINT
APPENDIX.

Sec. I.
Reference to the
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Agreement
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18th Decem-
ber, 1883.

(5) In case of any question arising with respect to any documentary evidence, as to whether it should be included in the Joint Case, the question is to be referred, at the instance of either party, to the Chief Judges of the Appeal Courts of Toronto, viz., the Honourable Messieurs Sprugge, Hagarty, Wilson, and Boyd, or a majority of them; or the Attorneys-General of the two Provinces, or their Agents in this behalf, are to have power to jointly refer any such questions to one or two of the said Chief Judges, or to the Chief Justice of the Supreme Court of Canada. The decision in any of such cases, if certified by the Judges, or Judge, before the 15th April next, shall be final as regards the submission of such evidence to the Privy Council, *quantum valeat*, and the evidence, with the certificate of the Judges, or Judge, shall be forthwith printed. No evidence not certified before the 15th April next shall be submitted.

(6) The papers set forth in Ontario Sessional Paper, 1882, numbered 63, and the subsequent correspondence between the Province of Ontario and the Dominion, in Ontario Sessional Papers, 1883, and numbered 23, and any other correspondence between the said two Governments which either party may desire may also be submitted, *quantum valeat*.

(7) The Province of Ontario undertakes the printing, for the Privy Council, of the Book of Arbitration Documents, the Cases submitted to the Arbitrators, the Orders of Reference, the Award, the said Acts of the Legislature of the Province, the papers referred to in the preceding paragraph, and any other documents which may be put in on the part of that Province under this Agreement.

(8) The Province of Manitoba undertakes the printing, for the Privy Council, of the documents reported by the Select Committee, Chief Justice Sewell's notes on the De Reinhard case, and any other documents which may be put in on the part of that Province.

(9) Either Government may, at its own discretion, print any of the papers and documents to be submitted, in addition to those which the said Government undertakes to print.

(10) Any such documents or papers printed, or purporting to be printed, by the Queen's Printer (at Toronto, Winnipeg, or Ottawa) shall be deemed sufficiently authenticated, *prima facie*, for the purposes of the said Case.

(11) All papers for the Privy Council shall be printed as aforesaid, in due form, and shall be delivered, on or before the 15th of May next, to the proper officer for the use of the Privy Council, and to the Solicitors in London for the opposite party.

(12) Any maps that either Government deems useful for the argument before the Privy Council shall be prepared and lithographed on the part of such Government; and, having been duly authenticated, either by mutual agreement or by reference to the Judges, or Judge, aforesaid, copies shall be delivered with the printed papers and documents aforesaid.

(13) Each and every of the said papers and documents is to be submitted to the Privy Council *quantum valeat*, and not otherwise.

(14) Nothing herein contained is to be construed as an admission that a Court, in order to ascertain its own jurisdiction in the disputed territory, or some part thereof, might not take judicial notice of the said particulars, or some of them, and it is hereby agreed that in the discussion of the Case, before the Privy Council, reference may be made to any evidence of which such judicial notice may be taken, whether the same is or is not contained in the printed papers.

33. The printing or not printing of any of the documents or other evidence is not to postpone the setting down of the Joint Case, or the application therefor, or the argument, or the decision of the case, unless the Judicial Committee of the Privy Council shall, on special application and after notice (so that counsel for both Governments may be heard thereon), see fit to direct such postponement.

34. Any Order to set down, and any other paper necessary to be served on either of the said Governments, may be served on the London Solicitors of such Governments, such Solicitors of the said Province of Manitoba being Messrs. Bishoff, Bompas & Dodgson, 4 Westminster Buildings, London, E.C.; and of the said Province of Ontario being Messrs. Freshfields & Williams, 5 Bank Buildings, London, E.C.

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35. The decision of the Privy Council shall be carried into full effect by such (if any) future legislation as may be necessary, or as may be recommended by the said Judicial Committee.

36. If, in any suit or proceeding within Provincial jurisdiction, the boundary between Ontario and Manitoba do in the meantime come in question, the court or other judicial authority before which the question arises is, in dealing therewith, to take judicial notice of all the documents and facts which it is above agreed to submit to the Privy Council on the same question, and without the said documents and facts being put in evidence before such Court or other judicial authority, and is to have power to draw such inferences from the said documents and facts as may be necessary.

37. To give legal effect to the present Agreement, the Government of each Province will introduce at the next session of the Legislature thereof, and procure to be passed, a Bill in the terms of the Bill in that behalf hereto annexed.

38. The costs of the Reference shall be in the discretion of the Judicial Committee of the Privy Council, which is to have power to award or withhold costs.

39. The said Agreement is understood to be entered into on the part of the Ontario Government, without prejudice to any question which there has been, or may be, between the Dominion and Ontario Governments in relation to the territory in dispute between them, or in relation to any matters which have been the subject of negotiation or correspondence between the Dominion and Ontario Governments; and the rights or claims of the Province of Ontario as to the same, are hereby expressly reserved.

TORONTO, 18 December, 1883.

O. MOWAT,

Attorney-General of the Province of Ontario.

JAMES A. MILLER,

Attorney-General of the Province of Manitoba.

IN THE PRIVY COUNCIL.

IN THE MATTER OF THE BOUNDARY BETWEEN THE PROVINCES OF ONTARIO AND
MANITOBA, IN THE DOMINION OF CANADA.

BETWEEN THE PROVINCE OF ONTARIO, OF THE ONE PART,

AND

THE PROVINCE OF MANITOBA, OF THE OTHER PART.

SPECIAL CASE.

The Province of Ontario claims that the westerly boundary of that Province is either (1) the meridian of the most north-westerly angle of the Lake of the Woods, as described in a certain Award made on the 3rd August, 1878, by the Honourable Chief Justice Harrison, Sir Edward Thornton and Sir Francis Hincks, or (2) is a line west of that point.

The Province of Manitoba claims that the boundary between that Province and the Province of Ontario is (1) the meridian of the confluence of the Ohio and Mississippi Rivers, or (2) is that portion of the height of land, dividing the waters which flow into Hudson's Bay from those which empty into the valley of the great lakes, and lying to the west of the said meridian line.

It has been agreed to refer the matter to the Judicial Committee of Her Majesty's Privy Council, and an Appendix has been prepared containing the materials agreed to be submitted with this case for the adjudication of the dispute. Each and every of the particulars in the said Appendix is submitted *quantum valet* and not otherwise.

In addition to the particulars set forth in the Appendix, any historical or other matter may be adduced which in the opinion of either party may be of importance to the contention of such party;

JOINT
APPENDIX.

Sec. I.
*Reference to the
Privy Council.*
Agreement
between
Ontario and
Manitoba,
18th Decem-
ber, 1883.

Special Case—
Ontario and
Manitoba.

JOINT APPENDIX.
—
Sec. I.
Reference to the Privy Council.
—
Special Case—
Ontario and
Manitoba.

and (subject to any rule or direction of the Judicial Committee in that behalf) such additional matter is to be printed as a separate Appendix by the party adducing the same; and copies are to be furnished at least ten days before the argument.

The book known as the Book of Arbitration Documents may be referred to in the argument for the purpose of showing, in part, what materials were before the arbitrators.

It is agreed that in the discussion before the Judicial Committee of the Privy Council reference may be made to any evidence of which Judicial notice may be taken, or which (having regard to the nature of the case and the parties to it) the Privy Council may think material and proper to be considered, whether the same is contained in the printed papers.

The questions submitted to the Privy Council are the following:

- (1) Whether the Award is or is not, in all the circumstances, binding.
- (2) In case the Award is held not to settle the boundary in question, then what, on the evidence, is the true boundary between the said Provinces.
- (3) Whether in case legislation is needed to make the decision on this case binding or effectual, Acts passed by the Parliament of Canada and the Provincial Legislatures of Ontario and Manitoba, in connection with the Imperial Act 34-5 Viet., cap. 28, or otherwise, will be sufficient, or whether a new Imperial Act for the purpose will be necessary.

10

O. MOWAT,
Attorney-General of Ontario.

JAMES A. MILLER,
Attorney-General of Manitoba.

20

ONTARIO ACT, 47 VIC., CAP. II. (1884), RESPECTING THE REFERENCE.
AN ACT RESPECTING THE TERRITORY IN DISPUTE BETWEEN THIS PROVINCE AND THE PROVINCE OF MANITOBA.

Ontario Act,
47 Vic., cap. II,
1884.

WHEREAS, the boundary between this Province and the Province of Manitoba is in dispute; and whereas the Governments of the Provinces aforesaid have come to an agreement to refer the said dispute to Her Majesty in Her Privy Council, and to promote concurrent legislation for the Administration of Justice, and to secure peace and good order in the said territory until the Judicial Committee of the Privy Council shall determine the dispute;

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

28. The agreement between the Governments of the two Provinces, bearing date the eighteenth December, 1883, is hereby in all respects confirmed.

29. The Lieutenant-Governor in Council may agree with His Excellency, the Governor-General, that the Dominion of Canada may become a party to the said reference, or that the question of the northerly and westerly boundaries of the Province, so far as the said Dominion of Canada is concerned, be referred, separately or in any other way, to Her Majesty in Her Privy Council as aforesaid, and on any terms and conditions which may be agreed upon.

30. This Act shall not go into effect until the Lieutenant-Governor has issued his Proclamation in that behalf.

[The Proclamation referred to, issued 16th April, 1884.]

40

MANITOBA ACT, 47 VIC. CAP. III. (1884), RESPECTING THE REFERENCE.
AN ACT RESPECTING THE TERRITORY IN DISPUTE BETWEEN THIS PROVINCE AND THE PROVINCE OF ONTARIO

Manitoba Act,
47 Vic., cap.
3, 1884.

WHEREAS, the boundary between this Province and the Province of Ontario is in dispute; and whereas the Governments of the Provinces aforesaid have come to an agreement to refer the said dispute to her Majesty, in Her Privy Council, and to promote concurrent legislation for the administration of justice, and to secure peace and good order in the said territory until the Judicial Committee of the Privy Council shall determine the dispute;

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Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows :

28. The agreement between the Governments of the two Provinces, bearing date the eighteenth December, one thousand eight hundred and eighty-three, is hereby in all respects confirmed.

29. This Act shall not go into effect until the Lieutenant-Governor has issued his Proclamation in that behalf.

[The Proclamation referred to, issued 12th April 1884.]

JOINT
APPENDIX.

S. C. I.

Reference to the
Privy Council.

REPORT OF A COMMITTEE OF THE EXECUTIVE COUNCIL OF THE PROVINCE OF MANITOBA, APPROVED BY HIS HONOUR THE LIEUTENANT GOVERNOR IN COUNCIL, ON THE 31ST DECEMBER, 1883.

10 The Committee of the Executive Council have had before them a report dated 31st December, 1883, from the Honourable the Attorney-General with respect to the Boundary Question.

The Committee on the recommendation of the Attorney-General advise that such action should be taken by the Government of Manitoba as may be necessary to secure the consent of the Federal Government as speedily as possible to pass such an Order in Council as would be necessary to move Her Majesty the Queen to submit the case as agreed to between the Attorneys-General for the Provinces of Ontario and Manitoba on behalf of their respective Governments, for the opinion of the Judicial Committee of Her Majesty's Privy Council and a recommendation that Her Majesty should ask for that opinion: Also, that the Federal Government shall be bound by the opinion so to be given, so far as the Western Boundary of Ontario is concerned, and would request that the Colonial Minister, if necessary, should procure an Act of the Imperial Parliament to be passed to legalize that opinion, so that the Act when passed should be binding not only on Ontario and Manitoba but also on the Federal Government.

Certified, JNO. MACBETH,

Clerk of the Executive Council, Manitoba.

To the Honourable, the Provincial Secretary.

THE LIEUTENANT-GOVERNOR OF MANITOBA TO THE SECRETARY OF STATE (CANADA).

GOVERNMENT HOUSE, WINNIPEG,
January 4th, 1884.

SIR,—I have the honour to transmit herewith a Report of a Committee of my Executive Council, together with a Memo of Agreement and the Joint case, respecting the Boundary Question between this Province and the Province of Ontario; and to request that the same may be brought before His Excellency the Governor General in Council.

I have the honour to be, sir,

Your obedient servant,

(Signed) J. C. AIRKS.

Honourable J. A. Chapleau,
Secretary of State, Ottawa.

Lieutenant-Governor,
Manitoba, to
Secretary
State (Can.),
4 Jan., 1884.

ORDER IN COUNCIL (ONTARIO), APPROVED BY HIS HONOUR THE LIEUTENANT-GOVERNOR, THE 11TH DAY OF JANUARY, 1884.

40 Upon the recommendation of the Honourable the Attorney-General the Committee of Council advise that the Dominion Government be requested to advise His Excellency the Governor-General to transmit to Her Majesty the case which has been agreed to between the two Governments, of Ontario and Manitoba, with respect to the western boundary of this Province, and to crave Her Majesty that she be pleased to refer the said case to the Judicial Committee of the Most Honourable Privy Council for hearing and consideration, in order that the opinion of the Committee upon the questions stated in the said case should be obtained in accordance with the agreement between the said Governments of Ontario and Manitoba.

Order in
Council
Ont., 11 Jan.,
1884.

Certified, J. G. SCOTT,
Clerk, Executive Council, Ontario.

JOINT
APPENDIX.

Sec. I.

Refer. See to the
Privy Council.Lieutenant-
Governor,
Ontario,
to Secretary
State (Can.),
12 Jan., 1882.

THE LIEUTENANT-GOVERNOR OF ONTARIO TO THE SECRETARY OF STATE (CANADA).

GOVERNMENT HOUSE, ONTARIO,

TORONTO, 12th January, 1884.

SIR,—I have the honour to request that agreeably to the information given to the Honourable James Miller, and communicated through him to my Government, your Government will be pleased, on the earliest possible day, to advise His Excellency the Governor-General to recommend Her Majesty to request the Judicial Committee of the Privy Council to decide the case which has been agreed to between the two Governments of Ontario and Manitoba with respect to the Western Boundary of this Province. A copy of a Minute in Council of my Government on the subject is herewith transmitted.

I presume that by the time this despatch reaches you, you will have received a despatch from His Honour the Lieutenant-Governor of Manitoba to the same effect.

To avoid any possible occasion for delay of action in regard to the reference to which the two Provincial Governments have agreed, I reserve for a separate despatch all other matters connected with the Boundary Dispute, or its settlement.

I have the honour to be, sir,

Your obedient servant,

JOHN BEVERLEY ROBINSON,
Lieutenant-Governor of Ontario.

Honourable J. A. Chapleau,
Secretary of State, Ottawa.

20

REPORT OF A COMMITTEE OF THE HONOURABLE THE PRIVY COUNCIL (CANADA), APPROVED BY HIS
EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL, ON THE 6TH MAY, 1884.Order in
Council, Can-
ada, 6th May,
1884.

The Committee of the Privy Council have had before them two despatches from the Lieutenant-Governors of Manitoba and Ontario, dated 4th and 12th January, 1884, respectively, enclosing Minutes of Council of their respective Governments on the subject of the case agreed to by the Attorneys-General of the two Provinces with respect to the western boundary of Ontario, and a copy of the case and of the joint agreement relating thereto.

The Minister of Justice, to whom the despatches in question were referred, reports that the Government of Ontario request that Your Excellency may be advised to transmit the case agreed upon to Her Majesty, with a prayer that Her Majesty may be pleased to refer the same to the Judicial Committee of the Most Honourable the Privy Council, in order that their opinion may be had thereon. A despatch to the same effect is sent by the Government of Manitoba, with the additional request that Your Excellency's Government be bound by the opinion so to be given, and that, if necessary, an Act of the Imperial Parliament should be asked for to make the decision obligatory upon the Dominion as well as on the Provinces concerned.

The Minister recommends that copies of the despatches referred to, with the enclosures, be transmitted to the Secretary of State for the Colonies, with the request that he will lay the same before Her Majesty with the humble prayer that Her Majesty may be pleased, under 3 and 4 William IV. chapter 41, section 4 (Imperial Act), to refer the case agreed upon on behalf of the Governments of Ontario and Manitoba respectively, for the hearing and consideration of the Judicial Committee of 40 Her Most Honourable Privy Council.

That as regards the boundary line, so far as it affects the limits of the two Provinces, the Minister advises that Your Excellency's Government should express their readiness to be bound by the decision of the Judicial Committee.

The Committee concur in the recommendations of the Minister of Justice, and they respectfully advise that Your Excellency be moved to transmit the despatches referred to, to Her Majesty's Principal Secretary of State for the Colonies, in accordance with the recommendation of the Minister of Justice.

JOHN J. MCGEE,

Clerk Privy Council.

To The Honourable the Secretary of State.

50

II.

The Arbitration.

REPORT OF THE HON. ADAM CROOKS, TREASURER AND MEMBER OF THE EXECUTIVE COUNCIL,
(ONTARIO), TO THE LIEUTENANT-GOVERNOR, 10TH NOVEMBER, 1874.*

May it please Your Excellency:

The undersigned has the honour to report the following on the subject of the western and northern boundaries of the Province of Ontario:

By Chapter 28 of the Acts of the Parliament of the United Kingdom of Great Britain and Ireland, passed in the Session held in the thirty-fourth and thirty-fifth years of Her Majesty's reign, and intituled
10 'An Act respecting the establishment of Provinces in the Dominion of Canada,' it was enacted that the Parliament of Canada might from time to time, with the consent of the Legislature of any Province of the said Dominion, increase, diminish or otherwise alter the limits of such Province, upon such terms and conditions as might be agreed to by the said Legislature, and might, with the like consent, make provision respecting the effect and operation of any such increase or diminution or alteration of territory in relation to any Province affected thereby. By a Resolution of the Legislative Assembly, passed on the 3rd day of March last, the House approved of the reference of the question of the western boundary of this Province to arbitration, or to the Privy Council, according as the Lieutenant-Governor in Council should see fit. It is considered by Your Excellency's Council to be expedient that the question of the northern boundary of this Province should be determined at the same time as the
20 western boundary, though the determination of the northern boundary is not of so pressing importance as the other. In view of these objects, the undersigned, before his late visit to Ottawa on other public business, was authorized by the other members of Your Excellency's Council to propose (subject to Your Excellency's approval) to the Government of the Dominion that the question concerning the northern and western boundaries of the Province of Ontario should be determined by a reference to arbitrators to be mutually agreed upon, and whose standing and ability might readily be expected to secure for their decision the confidence alike of the people of Ontario and the people of the Dominion.

Your Excellency's Council were of opinion that a decision by such arbitrators is likely to be more prompt and perhaps more satisfactory than any other mode of decision which is attainable.

The undersigned was also authorized to suggest the name of the Hon. William Buell Richards,
30 Chief Justice of Ontario, as one of the arbitrators, subject to Your Excellency's approval.

Accordingly, the undersigned, while at Ottawa, conferred with the Premier and other members of the Dominion Government on the subject of the said matters, and made the above suggestions to them.

The Government of the Dominion concurred in the views expressed on the part of the Government of Ontario, and proposed on behalf of the Dominion the name of the Hon. Lemuel Allan Wilmot, late Lieutenant-Governor of New Brunswick, to act in conjunction with the said Chief Justice, and that authority be given to the said the Hon. William Buell Richards and the Hon. Lemuel Allan Wilmot, to agree upon a third person to be associated with them, such third person not being a resident of Canada, and that the determination of a majority of such referees should be final and conclusive upon the limits to be taken as and for such boundaries as aforesaid respectively.

40 The undersigned recommends that the Province agree to concurrent action with the Dominion in obtaining such legislation as may be necessary for giving binding effect to the conclusion which may be arrived at, and for establishing the northern and western boundaries of the Province of Ontario in accordance therewith.

10th November, 1874.

ADAM CROOKS.

JOINT
APPENDIX.
Sec. II.
The
Arbitration.

Ontario Order
of Reference,
1874.

* *Seas. Papers, Ontario, 1875-6, No. 14, p. 14.*

JOINT
APPENDIX.

Sec. II.

*The
Arbitration.*Ontario Order
of Reference,
1874.ORDER IN COUNCIL (ONTARIO), APPROVED BY THE LIEUTENANT-GOVERNOR THE 25TH DAY OF
NOVEMBER, 1874.*

The Committee of Council have had under consideration the annexed Report of the Hon. the Treasurer, dated 10th November, 1874, with reference to the western and northern boundaries of Ontario, and advise that the action of the Treasurer be approved of by Your Excellency, and that the recommendations contained in the said Report be acted upon.

Certified.

J. G. SCOTT,

*Clerk Executive Council, Ontario.*REPORT OF A COMMITTEE OF THE PRIVY COUNCIL (CANADA), APPROVED BY THE GOVERNOR-GENERAL
ON THE 12TH NOVEMBER, 1874.*Dominion
Order of
Reference,
1874.

On a memorandum dated 12th November, 1874, from the Hon. Mr. Mackenzie, stating that he recommends concurrence in the proposition of the Government of Ontario to determine by means of a reference the northern and western boundaries of that Province relatively to the rest of the Dominion. That the Ontario Government having named the Hon. William Buell Richards, Chief Justice of Ontario, as one of the referees, he submits the name of the Hon. Lemuel Allan Wilmot, formerly Lieutenant-Governor of the Province of New Brunswick, to act in conjunction with him, and advises that authority be given them to agree upon a third person, not being a resident of Canada, and that the determination of a majority of such three referees be final and conclusive upon the limits to be taken as and for such boundaries respectively.

He further recommends that the Dominion agree to concurrent action with the Province of Ontario in obtaining such legislation as may be necessary for giving binding effect to the conclusions arrived at, and for establishing the northern and western limits of the Province of Ontario in accordance therewith.

The Committee submit the above recommendations for Your Excellency's approval.

Certified.

W. A. HIMSWORTH,

*G. P. C.*THE UNDER-SECRETARY OF STATE (CANADA) TO THE LIEUTENANT-GOVERNOR OF ONTARIO.†
DEPARTMENT OF THE SECRETARY OF STATE,
OTTAWA, 21st Nov., 1874.

SIR,—I am directed to transmit to you, for the information of Your Government, a copy of an Order of His Excellency the Governor-General in Council, on the subject of the appointment of referees to determine the northern and western boundaries of the Province of Ontario, relatively to the rest of the Dominion.

I have the honour to be, Sir,

Your obedient servant,

EDOUARD L. LANGEVIN,

Under-Secretary of State.

His Honour the Lieutenant-Governor of Ontario, Toronto.

THE UNDER-SECRETARY OF STATE (CANADA) TO HON. LEMUEL ALLAN WILMOT.‡
DEPARTMENT OF THE SECRETARY OF STATE,
OTTAWA, 21st November, 1874.

SIR,—I have the honour to inform you that His Excellency the Governor-General in Council has been pleased, at the instance of the Government of the Province of Ontario, to direct that the question

* Sess. Papers, Ontario, 1875-6, No. 14, p. 14.

† *Ibid.*, p. 13.

‡ House of Coms. (Canada), Return, 19th March, 1881, No. 37, p. 22.

of the northern and western boundaries of that Province relatively to the rest of the Dominion, be determined by means of three referees, of whom one is to be named by the Government of the Dominion, and one by the Government of Ontario—these two to have authority to agree upon a third not being a resident of Canada; the determination of a majority of such three referees to be final and conclusive upon the limits to be taken as and for such boundaries respectively.

JOINT APPENDIX. Sec. 11. 2nd e Arbitration.

Appointment of Dominion Arbitrator, 1874.

I am further directed to state that His Excellency desires to avail himself of your services as a referee on behalf of the Dominion for the above purpose, to act in conjunction with the Honourable William Buell Richards, Chief Justice of Ontario, the referee named by the Government of that Province.

10 I am to add that the Dominion Government agree to concurrent action with the Province of Ontario in obtaining such legislation as may be necessary for giving effect to the conclusions arrived at, and for establishing the northern and western limits of the Province of Ontario in accordance therewith.

May I request that you will have the goodness to acquaint me, for His Excellency the Governor-General's information, whether you are prepared to accept the office of referee for the Dominion, and that, if so, you will place yourself in communication with the Honourable Mr. Chief Justice Richards.

I have the honour to be, Sir,
Your obedient servant,
EDOUARD J. LANGEVIN,
Under-Secretary of State.

20 Hon. L. A. Wilmot, Fredericton, N.B.

THE ASSISTANT PROVINCIAL SECRETARY (ONTARIO), TO CHIEF JUSTICE RICHARDS.*
PROVINCIAL SECRETARY'S OFFICE, ONTARIO,
TORONTO, 3rd December, 1874.

SIR,—I am commanded by His Honour the Lieutenant-Governor to inform you that he has been pleased to appoint you one of the arbitrators in the matter of the settlement of the northern and western boundaries of the Province of Ontario. I am, at the same time, to transmit, herewith, copy of the Order in Council, and the recommendation of the Hon. the Treasurer relating to such proposed arbitration.

Appointment of Ontario Arbitrator, 1874.

30 I have the honour to be, Sir,
Your obedient servant,
I. R. ECKART,
Assistant Secretary.
The Honourable Wm. Buell Richards,
Chief Justice of Ontario.

ONTARIO ACT, 38 VICT., CAP. VI. (1874).

AN ACT RESPECTING THE NORTHERLY AND WESTERLY BOUNDARIES OF THE PROVINCE OF ONTARIO.

40 Whereas by chapter twenty-eight of the Acts of the Parliament of the United Kingdom of Great Britain and Ireland, passed in the session held in the thirty-fourth and thirty-fifth year of Her Majesty's 40 Reign, and intituled "An Act respecting the establishment of Provinces in the Dominion of Canada," it is enacted "that the Parliament of Canada may, from time to time, with the consent of the Legislature of any Province of the said Dominion, increase, diminish, or otherwise alter the limits of such Province, upon such terms and conditions as may be agreed to by the said Legislature, and may, with the like consent, make provision respecting the effect and operation of any such increase or diminution

Ontario Act, 38 Vic., cap. 6, 1874.

* Sess. Papers, Ontario, 1875-6, No. 14, p. 15.

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Arbitration.
Ontario Act,
38 Vic., c. 6,
1874.

or alteration of territory in relation to any Province affected thereby;" And whereas the northerly and westerly boundaries of the Province of Ontario have never been determined; And whereas, subject to the approval of the Parliament of Canada and the Legislature of Ontario, it has been agreed by the Governments of the Dominion of Canada and the Province of Ontario that the questions which have arisen concerning the said boundaries should be determined by reference to arbitration; And whereas the Governor-General of Canada in Council has, subject as aforesaid, named the Honourable Lemuel Allan Wilmot, formerly Lieutenant-Governor of the Province of New Brunswick, and the Lieutenant-Governor in Council of the Province of Ontario has, subject as aforesaid, named the Honourable William Buell Richards, Chief Justice of Ontario, as arbitrators in respect to the said matters, and the two Governments have also agreed, that the said Honourable Lemuel Allan Wilmot and the Honourable 10 William Buell Richards shall choose a third person, not being a resident of Canada, to act in conjunction with them upon the said arbitration, and that the determination of a majority of the said arbitrators shall be final and conclusive as to the limits to be taken as and for such boundaries as aforesaid respectively:

Therefore Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. The Legislature of the Province of Ontario consents that the Parliament of Canada may declare that the boundaries which by the award of the arbitrators aforesaid, or of any two of the arbitrators aforesaid, may be decided to be the northerly and westerly boundaries respectively of this Province, shall be declared to be the northerly and westerly boundaries thereof; or in case the award shall be as 20 to the westerly boundary alone, the same may be in like manner declared by the Parliament of Canada as aforesaid, and that the Parliament of Canada may thereby increase, diminish, or otherwise alter the northerly or westerly limits of the Province of Ontario, so that the same may be in accordance with the award.
2. In case the arbitrator appointed by the Lieutenant-Governor should die or resign, or become incapable of exercising his said office, the Lieutenant-Governor in Council may appoint another in his place, and in case either of the said other arbitrators should die or resign, or become incapable as aforesaid, the Lieutenant-Governor in Council may concur in any appointment which may be made in his place.
3. This Act shall not go into effect until the Lieutenant-Governor in Council shall issue his Procla- 30 mation in that behalf.

[No Proclamation was issued bringing this Act into force.]

ORDER IN COUNCIL (ONTARIO), APPROVED BY THE LIEUTENANT-GOVERNOR THE 31ST DAY OF JULY, 1878.*

Ontario Order
of Reference,
1878.

Upon consideration of the Report of the Honourable the Attorney-General, dated 30th day of July, 1878, recommending that the Honourable Robert A. Harrison, Chief Justice of Ontario, be appointed arbitrator in the matter of the northerly and westerly boundaries of the Province of Ontario in relation to the rest of the Dominion, in the room and stead of the Honourable William Buell Richards, who, since his appointment as such arbitrator, was appointed Chief Justice of the Supreme Court, and subsequently resigned his appointment as arbitrator, the Government of the Dominion 40 having named Sir Francis Hincks one of the arbitrators in the room and stead of the Honourable Lemuel Allan Wilmot, deceased, and the Right Honourable Sir Edward Thornton having been named on behalf of the Governments of the Dominion and Ontario; and also recommending that the determination of the award of such three arbitrators, or a majority of them, in the matter of the said boundaries respectively, be taken as final and conclusive; and also that the Province of Ontario agree to concurrent action with the Government of the Dominion in obtaining such legislation as might be necessary for giving effect to the conclusion arrived at by the said arbitrators, and for establishing the northern and western limits of the Province of Ontario in connection therewith:

* Sess. Papers, Ontario, 1879, Vol. 11, No. 42.

The Committee of Council advise that the foregoing recommendations be adopted and approved of by Your Honour.

Certified.

LONSDALE CAPREOL,
Assistant Clerk Executive Council, Ontario.

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REPORT OF A COMMITTEE OF THE PRIVY COUNCIL (CANADA), APPROVED BY THE GOVERNOR GENERAL ON THE 31ST JULY, 1878.*

The Committee of Council have had under consideration the subject of the northern and western boundaries of the Province of Ontario, which under previous Orders in Council had been referred to the Honourable W. B. Richards, then Chief Justice of Ontario, named as referee on behalf of that Province, but who was subsequently replaced by the present Chief Justice, the Honourable R. A. Harrison, and the Honourable Sir Francis Hincks, who has been named on behalf of the Dominion; and whereas subsequently to the action taken under Order of Council of 12th November, 1874, it was mutually agreed between the Governments of the Dominion and Ontario, that the Right Honourable Sir Edward Thornton should be selected as third referee, the Committee recommend that such selection be confirmed by Minute of Council, and that the determination of such three referees be final and conclusive upon the limits to be taken as and for each boundary respectively.

Dominion
Order of
Reference,
1878.

Certified.

W. A. HIMSWORTH,
Clerk Privy Council, Canada.

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A STATEMENT OF THE CASE OF THE PROVINCE OF ONTARIO
RESPECTING THE WESTERLY AND NORTHERLY BOUNDARIES OF THE PROVINCE.

PREPARED FOR THE ARBITRATION BETWEEN THE DOMINION AND THE PROVINCE, 1878,

BY THE HONOURABLE OLIVER MOWAT, ATTORNEY-GENERAL OF ONTARIO.†

Ontario has the same limits as Upper Canada had; and the same limits as, west of the division line between Upper and Lower Canada, the Province of Canada had, and the Dominion of Canada had before its purchase of the rights of the Hudson's Bay Company.

Case of
Ontario, as
submitted to
the Arbitra-
tors, 1878.

In the present dispute the claim of Ontario is to the boundaries which were officially insisted upon by the Province of Canada before Confederation, and by the Dominion afterwards. It is submitted that the demand so made was just and well-founded.

Thus, the Hon. Mr. Cauchon, Commissioner of Crown Lands, in an Official Paper, in the year 1857, claimed that the westerly boundary of the Province extended "as far as British territory, not otherwise organized, would carry it, which would be to the Pacific; or, if limited at all, it would be by the first waters of the Mississippi which [a due west line from the Lake of the Woods] intersected, which would be the White Earth River; and this [he showed] would in fact correspond with the extent of Canada previously known to the French. . . . The southerly boundary of the British dominions, west of Lake Superior, being therefore demonstrated as identical with the southerly boundary of Canada, to some point due west of the Lake of the Woods, the only question is as to where that point is to be found. Is it the White Earth River, the first waters of the Mississippi which the due west line inter-sects? or is it the summit of the Rocky Mountains, on the same principle that the co-terminous boundary of Louisiana was ultimately so construed?"

With respect to the northerly boundary, the Commissioner pointed out that "the only possible conclusion is that Canada is either bounded in that direction by a few isolated posts on the shore of Hudson's Bay, or else that the Company's territory is . . . a myth, and consequently that Canada has no particular limit in that direction."

* Sess. Papers, Ontario, 1879, Vol. 11, No. 42.

† Sess. Papers, Ontario, 1879, No. 13; Report Committee Ho. Coms. (Canada), 1880, p. 291.

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Ontario, as
submitted to
the Arbitra-
tors, 1878.

So also, after Confederation, in an official letter of the Canadian Ministers, Sir George E. Cartier and the Honourable William McDougall, to Sir Frederic Rogers, Bart., Under-Secretary of State for the Colonies, dated 16th January, 1869, they pointed out that "the boundaries of Canada on the north and west were declared, under the authority of the Constitutional Act of 1791, to include 'all the territory to the westward and southward' of the 'boundary line of Hudson's Bay . . . to the utmost extent of the country commonly called or known by the name of Canada.' Whatever doubt may exist as to the 'utmost extent' of Old or French Canada, no impartial investigator of the evidence in the case can doubt that it extended to, and included, the country between Lake of the Woods and Red River. The Government of Canada therefore does not admit, but on the contrary denies, and has always denied, the pretensions of the Hudson's Bay Company to any right of soil beyond that of 10 squatters in the territory"—between the Lake of the Woods and Red River (that being the territory to which the matter which called forth the letter referred).

In another letter, dated 8th February, 1869, also addressed to Sir Frederic Rogers, the same Ministers mentioned among other facts and inferences "which cannot, [they] believe, be disputed," the following:—

"1. The Charter of Charles II. (and for the present we raise no question as to its validity) could not and did not, grant to the Hudson's Bay Company any territory in America which was not then (1670) subject to the Crown of England.

"2. The Charter expressly excluded all lands, etc., then 'possessed by the subjects of any other Christian Prince or State.'

"3. By the Treaty of St. Germain-en-Laye (1632), the King of England resigned to the King of France the sovereignty of Acadia, New France, and Canada generally, and without limits.

"4. 'La Nouvelle France' was then understood to include the whole region of Hudson's Bay, as the maps and histories of the time, English and French, abundantly prove.

"5. At the Treaty of Ryswick (1697), twenty-seven years after the date of the Charter, the right of the French to 'places situated in the Hudson's Bay' was distinctly admitted; and although commissioners were appointed (but never came to an agreement) to 'examine and determine the pretensions which either of the said Kings hath to the places situate in the Hudson's Bay,' and with 'authority for settling the limits and confines of the lands to be restored on either side;' the places taken from the English, *i.e.*, from the Hudson's Bay Company, by the French previous to the war, and 'retaken by 30 the English during this war, shall be left to the French by virtue of the foregoing [the 7th] Article.' In other words, the forts and factories of the Hudson's Bay Company, established in Hudson's Bay under pretence of their Charter, and taken possession of by the French in time of peace, on the ground that they were an invasion of French territory, were restored, by the Treaty of Ryswick, to the French, and not to the Company.

"6. By the Treaty of Utrecht, 1713, 'the Bay and Straits of Hudson, together with all lands, seas, sea coasts, rivers, and places situate in the *Bay and Straits*, and which belong thereto,' were finally ceded to Great Britain.

"7. As no definite boundary was ever established between the possessions of the French in the interior and the English at Hudson's Bay, down to the Treaty of Paris, 1763, when the whole of Canada 40 was ceded to Great Britain, the extent of the actual possession by the two nations for some period, say from the Treaty of Utrecht to the Treaty of Paris, affords the only rational and true basis for ascertaining that boundary.

"8. The evidence is abundant and conclusive to prove that the French traded over and possessed the whole of the country known as the Winnipeg Basin and 'Fertile Belt,' from its discovery by Europeans down to the Treaty of Paris, and that the Hudson's Bay Company neither traded nor established posts to the south or west of Lake Winnipeg, until many years after the cession of Canada to England.

"9. No other or subsequent grant to the Company was ever made which could possibly extend their territorial rights under their Charter. The license to trade in the Indian territories, which they 50 obtained in 1821, was revoked in 1858, and has not been renewed.

"10. The country which, in view of these facts, must be excluded from the operation of the Charter, includes all the lands fit for cultivation and settlement in that part of British America."

Ontario claims that the official views of the Government of the Dominion, as thus expressed, should, *prima facie*, be carried out as between the Dominion and the Province, unless the Dominion proves that the assertions so made by its Ministers were false or mistaken, and that the claim to which they led was unfounded. The onus of proof is on the Dominion.

The opinion of Chief Justice Draper, as communicated to the Government of the Province of Canada, 12th June, 1857, was that the decision of the Privy Council would give "to Canada a clear right west to the line of the Mississippi and some considerable distance north of what the Hudson's Bay Company claim;" though not any territory "west of the westernmost head of the Mississippi River."

But the claim of the Dominion as made in 1872, after having acquired the Company's right, and as made now, proposes to limit the Province on the west to the meridian of the confluence of the Ohio and Mississippi, variously stated as 88° 50', 88° 58', and 89° 9' 27"; and to limit the Province on the north (as the Company claimed in 1857) by the height of land which divides the waters that fall into Hudson's Bay from those that fall into the St. Lawrence and its lakes.

In support of the claim which Ontario represents, the Province relies on the arguments of the Ministers of the Province of Canada before Confederation, the arguments of the Ministers of the Dominion, the legal opinion of the learned Chief Justice, and the arguments set forth in Mr. Mills' Report, and in the other papers, on the same side, which have been collected and printed for the purpose of the present arbitration. The evidence obtained during the present year affords some fresh arguments in favour of the same views.

The present statement is a summary of some only of the facts and reasons which support Ontario's claim.

In 1763, France ceded to England, Canada with all "its dependencies," reserving so much of what had theretofore been known as Canada as lay west of the Mississippi River; and the Treaty provided that the confines between "France and England in that part of the world shall be fixed irrevocably by a line drawn along the middle of the River Mississippi from its source . . . to the sea."

Shortly after the Treaty, His Majesty, by Royal Proclamation dated the 7th October, 1763, erected the Province of Quebec, with certain boundaries therein set forth. Afterwards, in 1774, the Quebec Act was passed, which recited that "by the arrangements made by the said Royal Proclamation, a very large extent of territory, within which were several colonies and settlements of the subjects of France, who claimed to remain therein under the faith of the said Treaty, was left without any provision being made for the administration of civil government therein." The Act therefore provided, "that all the territories, islands, and countries in North America, belonging to the Crown of Great Britain, bounded on the south by" a line, therein described, from the Bay of Chaleurs to "the River Ohio, and along the bank of the said river westward to the banks of the Mississippi, and northward to the southern boundary of the territory granted to the Merchants Adventurers of England trading into Hudson's Bay, . . . be and they are hereby, during His Majesty's pleasure, annexed to and made part and parcel of the Province of Quebec, as created and established by the said Royal Proclamation of the 7th October, 1763."

Ontario contends that a true construction of this language requires that the line northerly from the confluence of the Ohio and Mississippi should follow the Mississippi River to its source.

That this is not only the just construction of the language employed, but was also the real intention of Parliament, is shown further by the history and the known objects of the Bill, by the proceedings thereon in the House of Commons, and by the letter of the Right Honourable Edmund Burke, dated 2nd August, 1774, to his constituents of the Province of New York, whose agent he was at the time.

So, the Royal Commission which was issued immediately afterwards (viz., 27th December, 1774) to Sir Guy Carleton, as Captain-General and Governor-in-Chief of the Province, expressly describes the

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line from the confluence of the Ohio and Mississippi as "northward along the eastern bank of the said river [Mississippi] to the southern boundary of the territory granted to the Hudson's Bay Company.

Sir Frederick Haldimand succeeded Sir Guy Carleton. His Commission is dated 18th September, 1777, and assigned to the Province the same boundary lines as the previous Commission had done.

These two Commissioners remove all reasonable doubt as to the line northward being along the banks of the Mississippi to its source, on two grounds:—

(1.) On the ground that these Commissions show the contemporaneous exposition of the intention of the Act, by the Ministers of the day and by their distinguished law advisers. Lord Camden was Lord Chancellor; Mr. Thurlow was Attorney-General, and Mr. Wedderburn was Solicitor-General—each of whom afterwards became Lord Chancellor.

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

By the Treaty of Paris between Great Britain and the United States, in 1783, it was agreed that the boundary between the two countries should be a line, therein particularly described, from the north-western angle of Nova Scotia, through Lakes Ontario, Erie, Huron, Superior, Long Lake, etc., to the Lake of the Woods, "thence through the said Lake [of the Woods] to the most north-western point thereof, and from thence on a due west course to the River Mississippi," etc.

The Commission to Sir Guy Carleton after this Treaty (dated 22nd April, 1786), followed this description in giving the boundaries of the Province, and assigned as its southerly boundary a line "to the said Lake of the Woods, thence through the said Lake to the most north-western point thereof, and from thence on a due west course to the River Mississippi; and northward to the southern boundary of the territory granted to the Hudson's Bay Company.

A due west line from the point indicated would not intersect what is now known as the Mississippi, and therefore what was then known as the Mississippi, or the first tributary so intersected, the waters of which flow into the Mississippi, may be taken as intended. This question is very fully discussed in Mr. Dawson's paper. If that view should not be sustained, the alternative is the course taken under the Treaties with the United States of 1794, 1814, 1818, and 1842.

The Constitutional Act, 1791, the Act providing for the division of the Province of Quebec, recited that "His Majesty had 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, to be called the Province of Upper Canada and the Province of Lower Canada;" and the Act made provision for the government of each Province after the division should take place. A Paper had been presented to Parliament previous to the passing of this Act, describing the line proposed to be drawn for dividing the Province of Quebec into two Provinces. This paper traced the line of division into Lake Temiscaming, "and from the head of the said Lake by a line drawn due north until it strikes the boundary line of Hudson's Bay; including all the territory to the westward and southward of the said line, to the utmost extent of the country commonly called or known by the name of Canada."

On the 24th August, 1791, an Order in Council was passed, reciting among other things that this Paper had been presented to Parliament previous to the passing of the Act; and dividing the Province into two, according to the line of division mentioned in the paper.

On 18th November, 1791, General Alured Clarke, Lieutenant-Governor and Commander-in-Chief of the Province of Quebec, issued a Proclamation, in His Majesty's name, in pursuance of his instruction and of a provision for this purpose in the Statute, declaring when the division should take effect (26th December, 1791). This Proclamation recited as follows:

"Whereas we have thought fit, by and with the advice of our Privy Council, by our Order in Council dated in the month of August last, to order that our Province of Quebec should be divided

into two distinct Provinces, to be called the Province of Upper Canada and the Province of Lower Canada, by separating the said two Provinces according to the following line of division, viz.:—To commence at a stone boundary, [etc.] running north twenty-five degrees east until it strikes the Ottawas River, to ascend the said river into the Lake Temiscaming, and from the head of the said lake by a line drawn due north until it strikes the boundary line of Hudson's Bay, including all the territory to the westward and southward of the said line to the utmost extent of the country commonly called or known by the name of Canada."

That the country then commonly called or known by the name of Canada comprised the whole of the territory formerly claimed against the Hudson's Bay Company, and now claimed by Ontario, is established by abundant testimony.

On the 12th September, 1791, a Commission issued to Lord Dorchester, this being the second Commission issued after the Treaty of 1783. It recited the Commission of 22nd April, 1786, to the Governor-General (as Sir Guy Carleton), the Order in Council of 19th August, 1791, dividing "said Province of Quebec" into separate Provinces, by a line therein specified: "the Province of Upper Canada to comprehend all such lands, territories and islands lying to the westward of the said line of division as were part of our said Province of Quebec." This form of expression shows that Quebec was supposed and intended to include all the territory belonging to England, and formerly known as Canada; for it is not to be supposed that there was an intention so soon to give to the Province narrower bounds than were indicated by the Paper presented to Parliament, adopted afterwards by the King in Council, and declared by the Proclamation of Governor Clarke. The change of expression was probably suggested by taking note of the language of the Treaty of 1763, by which, while France ceded to England "Canada and all its dependencies," the cession was subject to a limitation. The watershed of the Mississippi and Missouri had been the boundary line between Canada and Louisiana, and that part of Canada which was west of the Mississippi was reserved to France. So, by the Treaty of 1783, a further part of Canada was ceded by England to the United States. A description, therefore, in 1791, of the Province of Quebec, or of Upper Canada, which would purport to give to the Province all "the country commonly called or known by the name of Canada" would not have been correct. A form of expression was therefore substituted which was free from this difficulty.

The subsequent Commissions to the Governors-General of Canada, up to and including that of Lord Gosford in 1835, and the Imperial Commission to Mr. Caldwell as Receiver-General of Lower Canada, assigned the same line of division between Upper and Lower Canada.

In the seven subsequent Commissions, from the Commission to the Earl of Durham, 30th March, 1838, to the Commission to Lord Elgin, 1st October, 1846, inclusive, and also in the two Commissions to Sir John Colborne and the Right Honourable Charles Poulett Thomson, as Captains-General and Governors-in-Chief of Upper Canada, dated the 13th December, 1838, and 6th September, 1839, respectively, 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." The expression "shore of Hudson's Bay" obviously has the same signification as "boundary line of Hudson's Bay," but if the latter expression could be supposed to refer to some line south of the shore, the subsequent Commissions must be taken as having extended the boundary to the shore. These two Commissions trace the western boundary into Lake Superior, and no further, saying nothing of the line thence westerly or northerly; but of course nobody has ever supposed that the southerly boundary of the Province terminated as soon as Lake Superior was reached.

[The Commissions subsequent to Lord Elgin's contain no boundary line descriptions. The other Commissions to the Lieutenant-Governors of Upper Canada which have been examined either do not give the boundaries of Upper Canada, or give them partially only, and in such a manner as throws no light on the present question. So also the Commissions after the union do not give the western boundary of the Province of Canada. The Act of Union, 1840, does not specify the boundaries of the Province of Canada thereby created, but describes the new Province of Canada as constituted of the former Provinces of Upper and Lower Canada.]

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Now the Province of Upper Canada, from a period long antecedent to its union with Lower Canada, and the Province of Canada afterwards, acted, whenever there was occasion, on the assumption that the boundaries of the Province were those assigned by the Royal Commissions. Thus:

(1.) The Province of Upper Canada is known to have been in the habit, since, at all events, 1818, of issuing writs into the territory west of the line of $89^{\circ} 9\frac{1}{2}'$.

(2.) In 1850, the Province of Canada, with the sanction of the Imperial authorities, entered into a treaty with the Indians, and procured from them the surrender of the rights of the Indians in the territory as far west as Pigeon River. This territory, it may be observed, is south of the height of land, and was never claimed by the Hudson's Bay Company, though it is now claimed on behalf of the Dominion.

(3.) From the year 1853, the Province of Canada, continuously, and without objection from any quarter, made grants of lands, in the Queen's name, in this territory, and west of the proposed line of the Dominion. Between 1853 and Confederation no less a quantity than 35,039 acres had thus been granted west of that line. Numerous mining licenses in the same territory were granted in like manner, commencing with the year 1854, the territory embraced in them extending to Pigeon River.

(4.) In 1868 the Government of the Dominion appropriated \$20,000 towards the construction of a road from the Lake of the Woods to Fort Garry, on Red River; and the money was spent accordingly.

So far as relates to Ontario's western boundary, it is unnecessary to consider for the present purpose the argument as to the Hudson's Bay Company owning this territory; because the extension of the southerly boundary to the west is not, either by the Statute, or by the subsequent acts of the Crown 20 made to depend on the Company's having or not having the territory to which the western extension of the southerly boundary would bring us; and the Crown of course had the power to include part of the territory of the Company, if such was the Royal will. But the fact that this western territory had been discovered, explored, traded with, occupied and taken possession of by the French before the Treaty of Cession, adds strength to Ontario's claim, even in respect of the western boundary.

The decisions of a Lower Canadian Court, in 1818, in the cases of De Reinhard and McLellan, have been cited in favour of the line drawn due north from the confluence of the Ohio and Mississippi, and stated in the evidence in that case to be $88^{\circ} 50'$ or $88^{\circ} 58'$. The principal evidence, however, on which a different conclusion is based, was not before the Court, or referred to, in those cases; and it is said also that the prisoner De Reinhard was pardoned (though clearly guilty of murder), and that the 30 reason of his pardon was, that (notwithstanding the supposed decision of the Court to the contrary) the place of committing the murder was within Upper Canada, and, therefore, not within the jurisdiction of the Court under the Statute 43 Geo. III., c. 138, on the authority of which the Court was acting.

In view of all these considerations, it is apparent that if there is any difficulty, on the westerly side of the Province, it is as respects the territory west of Lake of the Woods. Is the western line further west than this Lake? Is the point of commencement the point on the first tributary of the Mississippi which a line due west from the most north-western point of the Lake of the Woods strikes? Or does the western limit extend to the Rocky Mountains?

Then as to the Northern boundary:

It has been already stated that the Quebec Act, and such of the Royal Commissions to the Governors, previous to 1838, as mention the Northern boundary, specify for that purpose the southerly boundary of the territory granted to the Hudson's Bay Company; and the principal difficulty here is, that the southerly boundary of this territory has always been an unascertained line.

The claim of the Dominion is that the boundary is the Height of Land already described. It is submitted, for the following among other reasons, that the Height of Land is not our northern boundary:

(1.) Because the easterly and westerly lines assigned to the Province by the Royal Commissions cut through and go north of the Height of Land; and the Commission issued in 1791, and such of the

subsequent Commissions as mention the northerly boundary, thereby declared in the Charter that the southerly boundary of the Company's territory was not south of these points, viz.: the south shore of Hudson's Bay (there called James' Bay), and the most north-western point of the Lake of the Woods; and was north of the Height of Land.

(2.) Because the Height of Land was not claimed or suggested by the Company as being the intention of the Charter, or as being the measure of the Company's just rights, until nearly a century and a half after the date of the Charter. This fact is a practical contemporaneous exposition of the statute by the Company themselves against their recent claim, and, having been continued for 150 years, is, without other evidence, conclusive.

(3.) Because the alleged rule, that the discovery and possession of the shore of a new country give a right to the rivers and the land adjoining the same, if a recognized rule now, was not such at the time of this Charter being granted, and ought not to govern its interpretation. The rule is said to be founded on reason and necessity; but there is no just reason or necessity for applying such a rule in the case of a river nearly 3,000 miles long.

(4.) Because the French, from the beginning of the seventeenth century, were in possession of the territory to the south of the lands watered by the rivers flowing into Hudson's Bay, and were extending their explorations and settlements to the head waters of the rivers flowing into Hudson's Bay, and to the interior of the country. There is no sound reason to sustain a rule for giving to the discoverers of the Bay, into which these rivers flow, a right to stop such explorations and settlements, in favour of discoverers (if the English were such) who did not choose to occupy the interior of the country. The rule as to rights to unoccupied contiguous territory is in such case more than sufficient to outweigh the supposed rule as to the Height of Land.

(5.) Because the ground of the recent claim is that the English were the first discoverers, and that their discoveries were followed by such possession of the territory in question as the laws of nations recognize as giving a title to the territory up to the Height of Land; while the fact is, that it is impossible to say with certainty who were the first discoverers, nor was the alleged discovery by the English followed by possession. The voyage of Cabot, when he entered the Bay, is said to have been in 1517; and no sort of possession of any part of the Bay by the English before 1667 is pretended being an interval of 150 years. Gilliam is said to have built, in 1667, Fort Charles (Rupert), which was on the east side of the Bay. In the meantime the Bay had become known to the world; persons acting under the authority of the French Government had repeatedly visited it: had taken possession in the French King's name, and set up the Royal Arms there; the French had established posts at convenient points for trade with the Indians, and had secured and were enjoying the whole trade with the Indians around the Bay. In 1627, the King gave to the Company of New France the right of trade to an extensive territory—including Hudson's Bay—both along the coasts and into the interior. Under such circumstances, the rule invoked by the Dominion has no application.

What then is to be regarded as the southerly boundary of the territory of the Company?

The language of the Charter, by reason of its ambiguity, affords no assistance in this enquiry. The validity of the Charter has always been questioned on the ground of its ambiguity, as well as for other reasons. Some legal opinions have indeed been given in favour of the validity of the charter as respects the whole territory to the Height of Land claimed in recent times by the Company; but these opinions were based upon the Company's statement that they had "always claimed and exercised dominion, as absolute proprietors of the soil, in the territory understood to be embraced by the terms of the grant."

(1.) Assuming, however, that the northern boundary is, on one side, the shore of Hudson's Bay, say between 51° and 52° of latitude, and on the other at least as far north as the most north-western point of the Lake of the Woods, say latitude 49° 23' 55"; if these points were in the Hudson's Bay territory, the northern boundary would be a line drawn from one of these points to the other. We claim that our boundary is farther north than this, but it cannot be south of it.

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Are these points in what was the territory of the Company? And is the Provincial boundary therefore no further north?

(2.) If by reason of the Charter being so old, and having been acted upon in some sort, and of its validity to some extent being implied in certain statutory references to the Company, the instrument cannot be treated as absolutely void, it must, as regards its construction and operation, on well-known and well-settled principles, be interpreted most strongly against the Company, and in favour of the Crown. The object of giving the Charter was to encourage discoveries by the Company; and the validity or operation of the instrument is to the extent only of giving to the Company whatever of the unknown territory the Company, within a moderate and reasonable time, should occupy; and all that the Company could be entitled to was what the Company had, in this manner acquired for them- 10
selves and for the Crown, previous to the cession of Canada in 1763 by France to England; or what- ever, previous to that time, the Company had been in possession or enjoyment of as their own with the concurrence of the Crown,

(3.) The Company were certainly not entitled to any of the territory which France owned at the time of the cession, and ceded to England; for it is preposterous to suppose that the Charter intended to grant, and did effectually grant, to the Company, as against the world, all the territory southerly and westerly of the Bay to the then unknown Height of Land (unknown to the Crown and to the Company), though such territory should be, as it was, to the extent of unknown hundreds of thousands of square miles—a third of the continent; that the Charter was intended to give, and did give, to the Company, the right to shut up this enormous territory from the Crown and from all British subjects 20
—and from other nations also—for all time; that if the Company should do nothing to discover, settle or acquire it for a hundred years or more, nobody else could; and that any portion of it which England should, a hundred years afterwards, acquire by war with another nation, and by employment of the resources of the whole Empire, in Europe as well as in America,—accrued, when so acquired, and was intended to accrue, to the Company, for their own private benefit.

(4.) It is clear, and indeed has been repeatedly admitted by the Company themselves, that until long after the date of the cession the Company had no possession of any part of the interior of the country, and that their possession was confined to certain forts on the Bay and two factories not very distant.

(5.) On the other hand, the Dominion Ministers truly affirmed in 1869, that “the evidence is 30
abundant and conclusive to prove that the French traded over and possessed the whole of the country known as the Winnipeg basin and ‘Fertile Belt’ from its discovery by Europeans down to the Treaty of Paris, and that the Hudson’s Bay Company neither traded nor established posts to the south or west of Lake Winnipeg until many years after the cession of Canada to England.” In fact, the Company’s first post—viz., Cumberland House, on Sturgeon Lake—in the vicinity of the region in question was not built until 1774, and they did not establish any post within this tract of country before 1790.

(6.) The following facts (amongst others) were judicially found by Judge Monk, in *Connelly vs. Woolrich*, with respect to the proceedings of the French, before the Hudson’s Bay Company’s charter was granted. He showed that as early as 1605 Quebec had been established, and had become an important settlement; that before 1630 the Beaver and several other companies had been organized at 40
Quebec for carrying on the fur trade in the west, near and around the Great Lakes and in the North-West Territory; that the enterprise and trading operations of these French companies, and of the French colonists generally, extended over vast regions of the northern and north-western portions of the continent; that they entered into treaties with the Indian tribes and nations, and carried on a lucrative and extensive fur trade with the natives; that in the prosecution of their trade and other enterprises these adventurers evinced great energy, courage and perseverance; that they had extended their hunting and trading operations to the Athabasca country (say 58° north latitude and 111° west longitude); that some portions of the Athabasca country had before 1640 been visited and traded in, and to some extent occupied by the French traders in Canada and their Beaver Company (which had been founded in 1629); that from 1640 to 1670 these discoveries and trading settlements 50
had considerably increased in number and importance; that Athabasca and other regions bordering

mean it belonged to the Crown of France at that time, to the same extent and by the same means as the countries around Hudson's Bay belonged to England; viz., by discovery and by trading and hunting.

(7.) It may be added, that if the Athabasca country thus belonged to France at so early a period, so would the whole intermediate country between Athabasca and Hudson's Bay on the west, and between the Athabasca country and the St. Lawrence on the south.

(8.) Between 1670 (the last date named by Judge Monk) and 1763 the French established posts or forts in that North-West Territory which they had previously explored, and hunted over and traded with; namely, on Rainy Lake, the Lake of the Woods, Lake Winnipeg, Lake Manitoba, on the Winnipeg River, the Red River, the Assiniboine River, the River aux Biches, and the Saskatchewan, and so west to the Rocky Mountains, where Fort La Jonquière was established by St. Pierre in 1752. All the Lakes and Rivers mentioned are connected by the Nelson River with Hudson's Bay, and are in the territory which, in the following century, the Hudson's Bay Company claimed under their Charter, but confessedly they had constructed in it no post or settlement of any kind until long after 1763—their first post away from the Bay (other than the two factories already mentioned) having been established in 1774. It was not until 1790 that they had any post in the Winnipeg Basin; and they did not enter the valley of the Red River until long afterwards.

(9.) France had also, on the northerly side of the dividing line, Fort Abbitibi, which was north of the Height of Land, and was built in 1686. It was situated at a considerable distance north of the Height of Land, and upon the lake of the same name, from which the River Mississippi flows into Hudson's Bay. The French had also Fort St. Germain, on the Albany, which was built in 1684; and still higher up on the same river Fort La Maune, established about the same period; and, to the east, Fort Nemiscan, on the lake of that name, situated on the River Rupert, midway between Lake Mistassin and the Bay; this fort was built before 1695. Of none of these did the English Government or the Company ever complain. The French had also another fort on the Albany, being that mentioned in one of the memorials of the Company as having been built in 1715.

(10.) The Company furnished certain maps for the purpose of the present arbitration, two of which only seem of importance on either side. One of these two bears the Royal Arms and those of the Company, is of the date of 1748, and seems to have been prepared by the Company in view of the Parliamentary enquiry of that year, and for the purpose of showing the limits which the Company then claimed. The line which this map gives as the Company's southern boundary is considerably north of the Height of Land, even as shown on this map; for the line is therein made to cut Frenchman's River—a river not named on this map, but corresponding with the Abbitibi River—and several other rivers shown on the map as flowing into the Hudson's Bay. The line runs to Lake Winnipeg (which is misplaced, being represented as due north of Nepigon, its southern point in the latitude of Fort Nelson), thence northerly along the easterly shore of Winnipeg, and thence northerly to Sir Thomas Smith's Sound in Baffin's Bay. The map thus demonstrates that the Company, at the time of its preparation, did not claim to the Height of Land, even as the same was then supposed to be situated, and did not claim Lake Winnipeg.

The other of the two maps is Mitchell's engraved map, described as published by the authors, 40 February, 1755. This copy appears to have been much used and worn. There is on it an irregular line marked "Bounds of Hudson's Bay by the Treaty of Utrecht;" and this line may therefore be taken as showing the extent of the Company's claim in 1755, and long after. The line is about one-third of a degree north of the Lake of the Woods, and extends to the limit of the map in that direction, being about 98° of longitude. The territory south of this line is differently coloured from the territory north of it.

It is evident that the Company have in their possession no maps which purport to give to them a larger territory than these maps do. Their claim to the height of land as the true intention of the Charter, and the true measure of their rights, so far from having been always made, was not thought of by the Company until more than half a century later, and was in effect negatived by the Crown in 50 numerous Commissions to the Governors of the country.

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The maps produced show the extent of territory which the Company claimed prior to the cession of 1763.

It may be observed that on the occasions of the Treaties of Ryswick and Utrecht, the Company's claims were expressed either in the terms of the Charter, or were simply to "the whole Bay and Straits of Hudson, and to the sole trade thereof." It sufficiently appears, from the early documents which emanated from the Company, that this general claim to the whole Bay and Straits was a claim to the waters and shores only, and to the exclusion of the French therefrom—the French having been in possession of forts on the Bay until after the Treaty of Utrecht, and the Treaty of Ryswick having in effect given them possession of all places on the Bay, except, it may be, Fort Bourbon; and that the Company's object was the trade of the Bay, and not the occupation or settlement of the country, 10 away from the shores of the Bay.

Indeed, in 1700, the Company, notwithstanding this claim, were willing to accept the Albany River as their southern boundary on the west side, and Rupert River as their southern boundary on the east side of the Bay. In 1701-2 they were content even with East Main River, and proposed it as a boundary. But both proposals were rejected by the French as being far more than the Company had any right to demand.

In 1711-12 the Company proposed a line to run from the Island of Grimington, or Cape Perdrix, on the Labrador coast, south-westerly to and through Lake Mistassin. This line did not extend beyond the south-west shore of the lake; and though the Company made a demand for the surrender of the forts on the shores of the Bay, yet they do not appear to have made at that time any proposal as to a 20 line on the west or south side of the Bay.

Thus the only claims and contests of the Company at this period were about the margin of the Bay.

After the Treaty of Utrecht (1713), which gave to the British all lands, etc., "on the Bay and Straits, and which belong thereto," the Company, on the 4th August, 1714, proposed for the first time, that the Mistassin line should go south-westerly to 49° north latitude . . . and that that latitude be the limit;" but as to how far to the west this line of 49° was to be followed nothing is said.

In 1719 and 1750 the Company proposed the line of 49°, but both times the proposition was rejected by the French. This line would have given to the Company a boundary greatly more limited 30 than the boundary of the Height of Land, which began to be claimed three-quarters of a century later.

It has already been said that the Company could not take advantage of their Charter for the purpose of making any addition to their territory by exploration or settlement after the cession of 1763; but the practical result would be nearly the same if this right should be deemed to have ceased at a somewhat later date, viz., the date of the passing of the Quebec Act, 1774, or even the date of the Treaty of 1783. The Company made no further settlement between 1763 and 1783, except Cumberland House; and it is doubtful whether its locality belongs to the Winnipeg or the Churchill system. Both the Act and the Treaty obviously require that the southern boundary should be deemed a fixed line, not liable to variation by the mere act of the Company.

These considerations are submitted as showing that the strict legal rights of the Company did not 40 extend beyond their forts on the shores or in the neighbourhood of the Bay, and such adjacent territory as these forts may have commanded; and that Ontario is entitled to have its northerly boundary line drawn accordingly.

Or, if the Company's territory is to be considered as extending beyond the forts on the Bay and the immediately adjacent territory, their territory is not to be deemed south of the northern extremity of the dividing line between Upper and Lower Canada; or to exceed otherwise what England herself was entitled to under the Treaty of Utrecht, viz., the middle line between the forts and settlements of the English and French; and further, is not to include a greater area than is shown on the maps 1800, p furnished by the Company, in case the middle line would give them a larger territory than these maps those a

claimed for the Company; for the reference in the Statute of 1774 to the territory granted to the Hudson's Bay Company, cannot in any view be construed as referring to a more southerly line than the Company had theretofore claimed for themselves.

Or, if there is too much doubt as to the southern boundary of the Company's Territory to determine with precision where such boundary was, a northern boundary should be assigned to the Province which would give to the Province the full territory which the Commissions to the Governors definitely provided for, and, in addition, such further territory to the north as may be just and reasonable.

O. MOWAT,

Attorney-General of Ontario.

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10 STATEMENT OF THE CASE OF THE GOVERNMENT OF THE DOMINION OF CANADA
REGARDING THE BOUNDARIES OF THE PROVINCE OF ONTARIO.
PREPARED FOR THE ARBITRATORS, 1878, BY HUGH MACMAHON, Q.C., COUNSEL FOR THE DOMINION.*

ABBREVIATIONS.

"ONT. DOCTS."—Statutes, Documents and Papers respecting the Northern and Western Boundaries of Ontario, compiled by direction of the Government of Ontario [otherwise known as the Book of Arbitration Documents].

"MILLS"—Revised Report for the purpose of the Arbitration between the Dominion of Canada and Province of Ontario, by David Mills, Esq., M. P.

"PAPERS RELATING TO H. B. CO. PRESENTED TO HOUSE OF COMMONS."—Papers presented by command of Her Majesty to the House of Commons, in pursuance of an address respecting the territory, trade, taxation and government claimed or exercised by the Hudson's Bay Company. (Ordered by House of Commons to be printed, 12th July, 1850.)

The limits assigned to the Province of Ontario by the British North America Act, 1857, sec. 6, are such part of the Province of Canada, as, at the passage of the Act, formerly constituted the Province of Upper Canada.

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tors, 1878.

The claim of the Dominion of Canada is, that the meridional line drawn due north from the junction of the Ohio and Mississippi Rivers (ascertained to be 89° 9' 27" west) forms the western boundary of Ontario, and that the land's height of the northern water-shed of the St. Lawrence is the northern boundary.

The Government of Ontario contend that the western limit of that Province is the Rocky Mountains; that the north-western linitary line lies north of the Saskatchewan; and that the north-eastern line lies in the vicinity of Hudson's Bay. (Mills, p. 1.)

The claim of Ontario to extend the western limit of the Province to the Rocky Mountains rests, it is assumed, upon the supposed title of France to that country, as having been the first discoverers thereof. It was stated by M. de Callières, when writing to M. de Seignelay in 1685 (N. Y. His. Doc., Vol. IX., p. 265), that the French were the first to discover Hudson's Bay, and that nation was therefore entitled to the whole country to the base of the Rocky Mountains; and the rule of international law on which this is claimed is thus stated by M. de Callières: "It is a custom established and a right recognized by all Christian nations, that the first who discovers an unknown country, not inhabited by Europeans, and who plant in it the arms of their prince, secure the property thereof to that prince in whose name they have taken possession of it."

40 L'Escarbot, in 1617, stated that "New France has for its limits, on the western side, the lands as far as the sea called the Pacific; on this side, the Tropic of Cancer; on the south, the islands of the Atlantic Sea, in the direction of Cuba and the Island of Hispaniola; on the east, by the Northern Sea, which bathes New France; and on the north, that land called 'Unknown,' towards the Icy Sea as far as the Arctic Pole." (Ont. Docts., p. 53, †) So that the whole of the north-western portion of the continent was claimed as belonging to France.

* London, Ontario, 1878; Sess. Papers, Ontario, 1882, No. 69, p. 277; Report Committee Ho. Cons. (Canada), 1880, p. 237.

† The pages of the Book of Arbitration Documents here and elsewhere throughout this Appendix mentioned, are those at foot as printed for the case referred to the Judicial Committee of the Privy Council.

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It will be necessary briefly to show upon what these claims are founded, and then to consider if they have any value as bearing on the question to be decided by the arbitrators.

In 1626, Louis XIII. granted to the Company of New France a charter which, it is asserted, included the whole of the country about Hudson's Bay, and west of it.

The Indians from the vicinity of Hudson's Bay came to Montreal to trade; hence it is said there was no necessity for erecting forts and trading posts. (Mills, p. 127.)

It is stated that Jean Bourdon, the Attorney-General, in 1656, explored the entire coast of Labrador, and entered Hudson's Bay.

It appears that in the year 1656 there was an order of the Sovereign Council of Quebec authorizing Sieur Bourdon, its Attorney-General, to make a *discovery* thereof. 10

There is no record whatever of his having attempted to make the discovery in the same year in which the order was passed by the Council. There is a record, however, of his having made the attempt in the year following (1657), and he may then have designed carrying out the order. He sailed on the 2nd day of May, and returned on 11th August, 1657; and it is not pretended that he could have made a voyage to Hudson's Bay and return between these dates. (Journal des Jésuites, pp. 209-218.) As to the extent of this voyage there can be no doubt, as in the Rel. des Jésuites, Vol. III., Rel. 1658 p. 9, it is thus reported:

"Le 11 (Août) parut la barque de Monsieur Bourdon lequel estant descendu sur le grand fleuve du Costé du Nord voyagea jusques au 55 degré ou il recontra un grand banc de glace qui le fit remonter, aiant perdu deux Hurons quil avait pris pour guides. Les Esquimaux sauvages du Nord les massa- 20 crèrent et blessèrent un François de trois coups de flèches et d'un coup de couteau."

The Jesuits would have known if Jean Bourdon had entered the Straits of Hudson, and would have mentioned it in their Relations. On the contrary, they never mention it, and it is to be taken from that that the assertion that he ever entered Hudson's Bay is a myth, because he was of the Province of Quebec, and was a man well known and trusted by the Jesuits, and went with Father Juges on an embassy to Governor Dongan, of New York.

It is asserted that Father Dablon and Sieur de Vallière were, in 1661, ordered by Sieur d'Argenson, Governor of Canada, to proceed to the country about Hudson's Bay, and they went thither accordingly, and the Indians who then came back with them to Quebec declared that they had never seen any 30 Europeans there before.

In Shea's Charlevoix, Vol. III., pp. 39 and 40, it is stated that he (Father Dablon) attempted to penetrate to the Northern Ocean by ascending the Saguenay. Early in July, two months after they set out, they found themselves at the head of the Nekauba River, 300 miles from Lake St. John. They could not proceed any further, being warned by the approach of the Iroquois.

Rev. Claude Dablon arrived in Canada in 1655, and was immediately sent missionary to Onondaga, where he continued, with a brief interval, until 1658. In 1661 he set out overland for Hudson's Bay, but succeeded in reaching only the head waters of the Nekauba, 300 miles from Lake St. John. (N.Y. His. Doc. Vol. IX., p. 97, note 2.—*Ed.*)

In the Rel. des Jésuites, Vol. III. (1661), p. 13, there is an account of this voyage, which is called "*Journal du premier voyage fait vers la mer du Nord.* (12 Août, 1661.)" The account is dated from 40 the highest point they reached, Nekauba, 100 lieues de Tadousac, 2 Juillet, 1661:

"1661, Juillet le 27, retournèrent ceux qui estoient allés, ou pretendoient aller à la mer du Nord au Kiristinons, P. Dablon, etc." (Journal des Jésuites, p. 300.)

An assertion is made that some Indians came from about Hudson's Bay to Quebec, in 1663, and that Sieur la Couture with five men proceeded overland to the Bay, possession whereof they took in the King's name.

There is no record of this voyage. No mention is made in Charlevoix or in the Relations of the Jesuits respecting Couture or his expedition.

Sieur Duquet, King's Attorney for Quebec, and Jean L'Anglois, a Canadian colonist, are said to have gone to Hudson's Bay in 1663 by order of Sieur D'Argenson, and renewed the act of taking possession, by setting up the King's arms there a second time.

Viscount D'Argenson, who is stated by Mr. Mills, at p. 129 of his Revised Report, to have given the order to Duquet to proceed to Hudson's Bay, left Canada on 16th Sept., 1661, two years prior to the giving of the order, which it is stated Sieur Duquet received. (Shea's Charlevoix, Vol. III., p. 65 note 5, and p. 17; N. Y. His. Docts., Vol. IX., p. 17.)

In 1666 or 1667, Radisson and des Grosellières were roaming among the Assiniboines in the region of Lake Winnipeg, and were conducted by members of that tribe to the shores of Hudson's Bay, (Mills, p. 8.)

Father Albanel and Sieur St. Simon were, in November, 1671, sent by M. Talon to Hudson's Bay, which they reached in 1672.

In the Relations of the Jesuits, Albanel gives an account of his trip, and shows that the English Company were already in possession of Hudson's Bay, having entered there under their Charter.

It is quite apparent from the Relation that no one had, on behalf of France, visited Hudson's Bay prior to his visit in 1672. Father Albanel says:

"Jusques icy on avoit estimé ce voyage impossible aux François, qui après l'avoir enterpris déjà par trois fois, et n'en ayant pu vainere les obstacles, s'estoient veu obligez de l'abandonner dans le desespoir du sucez. Ce qui paroist impossible, se trouve ais-é quand il plaist à Dieu. La conduite 20 m'en estoit deuë, apres dix-huit ans de poursuites que j'en avois faite, et j'avois des preuves assez sensibles que Dieu m'en reservoit l'execution, après la faveur insigne d'une guerison soudaine et merveilleuse, pour ne point dire miraculeuse, que je receus dès que je me fus devoté à cette mission, à la sollicitation de mon superieur." (Rel. des Jésuites, 1672, p. 56.)

Up to this time (1672) the Jesuits do not appear to have heard of any prior expedition having reached Hudson's Bay.

What is relied upon by the Province of Ontario, as furnishing evidence of Father Dablon and Sieur Couture having visited Hudson's Bay, is a memoir of M. de Callières sent to the Marquis de Seignelay in 1684 (N. Y. His. Doc., Vol. IX., p. 268); and M. de Denonville, on 8th November, 1686, by a memoir sent to M. de Seignelay, appears to have copied the statement made by M. de Callières. 30 (See Ibid., p. 304.) But in his letter which accompanied the memoir, M. de Denonville says: "I annex to this letter a memoir of our rights to the entire of that country, of which our registers ought to be full, but no memorials of them are to be found." (N. Y. His. Doc., Vol. IX., p. 297.) M. de Denonville thereby admits that documentary evidence could not even at that time be adduced in support of these visits having been made to Hudson's Bay.

At the time that M. de Callières and M. de Denonville wrote (in 1684 and 1686), it was most important to show, if possible, that Dablon and Couture had been at Hudson's Bay. The French, before that time, had driven the English from a number of their forts; and in March, 1686, Canadian troops were sent by Denonville, who surprised and captured Forts Albany, Hayes and Rupert, belonging to the Hudson's Bay Company; and it therefore became necessary to show a colour of right for these 40 proceedings, and these memoirs were prepared with that view.

ENGLISH DISCOVERY.

1517.

Sebastian Cabot, who sailed to Hudson's Bay and Straits under a commission from Henry VII. of England, entered the Bay, which, in 1610, took the name of Hudson. This is admitted by Mr. Mills pp. 122 and 123. (See Bacon's History of Henry VII., Hakluyt, Vol. III., pp. 25, 26 and 27.)

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1576, 1577 and 1578.

Sir Martin Frobisher, it is said, made three voyages to Hudson's Bay. He entered Hudson's Bay in 1576, and gave the name to Frobisher's Straits. (Mills, p. 123; Hakluyt, Vol. III., pp. 55 to 95; Pinkerton's Collection, Vol. XII., pp. 490-521.)

1608-1610.

According to the narrative of Prickett (who was with Hudson during the voyage), to be found in Harris's Voyages, Vol. II., pp. 243-4, Hudson sailed on 17th of April, 1610, reached the Bay now known as "Hudson's" in July of that year and wintered in the Bay, and remained there until late in the summer of 1611.

1611.

It was desired to prosecute the discoveries made by Hudson, and, in 1611, His Royal Highness Henry Prince of Wales was applied to by persons concerned in the project, and he resolved to send Captain Button, who penetrated to the Hudson's Bay and sailed 200 leagues to the north-west. He wintered there at Nelson River. (Harris, Vol. II., pp. 245-404.)

1631.

It appears that the English nation had been trading with Greenland, and those trading finding that "other nations were interfering with this trade" found themselves under a necessity of having recourse to the Crown for protection and assistance, as well for defending their fisheries as for prosecuting their discoveries, and they accordingly addressed themselves to King Charles I., who furnished them a frigate called "The Charles," under command of Captain Luke Fox, who sailed in the spring of 20 1631, in order to make discoveries towards the north-west. Captain Fox and Captain James met at Port Nelson in August, 1631.

Captain Thomas James undertook his voyage in 1631 for the satisfaction of Charles I., at the expense of the merchants of Bristol. The account of the voyage was written by himself, and published in 1633. Captain James left England in May, and met Captain Luke Fox on 29th August, near Port Nelson. He wintered in Hudson's Bay. (Harris's Travels, Vol. II., pp. 407, 409 and 413.)

1667 and 1668.

Des Grosellières and Radisson (who it is supposed were *Coureurs des bois*) were roaming among the Assiniboines and were conducted by them to Hudson's Bay.

Des Grosellières and Radisson went to Quebec for the purpose of inducing the merchants there to 30 conduct trading vessels to Hudson's Bay. The proposal was rejected, as the project was looked upon as chimerical by the Quebec merchants. (Ont. Docts. p. 280.) (This does not accord with the pretensions of the French that Jean Bourdon had made a voyage there in 1656 or 1657.)

Des Grosellières was in London in 1667, and before going there had been in Boston and Paris in search of persons willing to fit out an expedition to explore Hudson's Bay. He met with a favourable reception, and the London merchants employed Z. Gillam, a person long used to the New England trade, to perfect this discovery. Gillam sailed in the "Nonsuch" in 1667, and on his arrival built Fort Charles, said to have been the first fort erected in the Bay, and upon his return those engaged in the enterprise applied to Charles II. for a patent, which was issued on 2nd May, 1670, to Prince Rupert and others. (Harris's Voyages, Vol. II., p. 286.) 40

1669.

Captain Newland was sent out, in 1669, by the same parties who in 1667 sent out Z. Gillam.

As far as the Hudson's Bay territory is concerned, the English were first, both as to discovery and occupation. So long as the English were not there, the Indians came to Montreal and Quebec, and the French derived the benefit of the trade, which was all that was required, and they could then afford to treat as chimerical the statements of Radisson and Des Grosellières that Hudson's Bay could be reached 50 Eng

with ships. But once the English occupied the territory, erected forts and created settlements, where-
by the French fur trade was cut off from the west and north, then it became necessary for them to
claim title by discovery. Hence the memoir of M. de Callières to M. Seignelay, which is shown cannot
be relied upon, and which De Denonville says there are no memorials to support.

If possession is to form a claim to the country, the evidence that the English first made a settle-
ment and thus took possession is of the clearest character, for it is not seriously pretended that any
actual possession was taken nor any settlement made until Gillam went to Hudson's Bay and built
Fort Charles, in 1667.

What, then, did England obtain, by taking possession and making a settlement for the purpose of
occupancy, by building the numerous forts on Hudson's Bay, in the year 1667, and during subsequent
years? According to Vattel, Book I, Chap. 18, Sect. 207, "Navigators going on voyages of discovery,
furnished with a commission from their Sovereign, and meeting with islands or other lands in a desert
state, have taken possession of them in the name of their nation; and this title has been usually
respected, provided it was soon after followed by real possession."

"When a nation takes possession of a country, with a view to settle there, it takes possession of
everything included in it, as lands, lakes, rivers, etc." (*Ibid.*, Chap. 22, Sect. 226.)

"In the negotiations between Spain and the United States respecting the western boundary of
Louisiana, the latter country laid down, with accuracy and clearness, certain propositions of law upon
this subject, and which fortify the opinion advanced in the foregoing paragraphs. 'The principles
(America said on this occasion) which are applicable to the case are such as are dictated by reason, and
have been adopted in practice by European Powers in the discoveries and acquisitions which they have
respectively made in the New World. They are few, simple, intelligible, and, at the same time, founded
in strict justice. The first of these is that when any European nation takes possession of any extent of
sea coast, that possession is understood as extending into the interior country to the sources of the rivers,
emptying within that coast, to all their branches, and the country they cover, and to give it a right, in
exclusion of all other nations, to the same. (See *Memoire de l'Amérique*, p. 116.) It is evident that
some rule or principle must govern the rights of European Powers in regard to each other in all such
cases; and it is certain that none can be adopted, in those to which it applies, more reasonable or just
than the present one. Many weighty considerations show the propriety of it. Nature seems to have
destined a range of territory, so described, for the same society; to have connected its several parts
together by the ties of a common interest; and to have detached them from others. If this principle
is departed from, it must be by attaching to such discovery and possession a more enlarged or contracted
scope of acquisition; but a slight attention to the subject will demonstrate the absurdity of either.
The latter would be to restrict the rights of an European Power who discovered and took possession of
a new country to the spot on which its troops or settlement rested—a doctrine which has been totally
disclaimed by all the Powers who made discoveries and acquired possessions in America.'" (*Phillimore's*
Internat. Law, 2nd ed., Vol. I, pp. 277-8-9.)

Sir Travers Twiss, in his discussion on the Oregon question, at page 300, states that "Great Britain
never considered her right of occupancy up to the Rocky Mountains to rest upon the fact of her having
established factories on the shores of the Bay of Hudson, *i. e.* upon her title by mere settlement, but
upon her title by discovery, confirmed by settlements, in which the French nation, her only civilized
neighbour, acquiesced, and which they subsequently recognized by treaty."

The British nation, therefore, acquired, by discovery and by settlements made on Hudson's Bay,
the possession of the country extending into the interior to the sources of the rivers emptying within
that coast, which would include the Saskatchewan and English Rivers to the west, having their sources
at the foot of the Rocky Mountains, and extending south and east to the sources of all the rivers flowing
into James' Bay.

The law entitling England to this has been stated not only by Vattel, but has been adopted and
corrected by the United States, and is recognized by the highest authorities on International Law in
England—Dr. Twiss and Dr. Phillimore—as being the correct principle to apply in such cases.

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tors, 1878.

If England acquired the territory claimed within the limits stated, it may for some purposes be necessary to consider what the Hudson's Bay Company took under their Charter. The Charter will be found in Ont. Docts., pp. 29-37, and at p. 33 will be found what the King grants to the Hudson's Bay Co. under the name of "Rupert's Land." First is granted the sole trade and commerce of all those seas, bays, lakes, rivers, creeks, etc. Then the Company are created the absolute lords and proprietors of *the same territory, limits and places, etc., etc., in free and common socage, with power to erect colonies and plantations, etc.*

The Charter is very wide; and although it appears to have been concealed by the leading counsel in England (Ont. Docts., pp. 193 to 202) whose opinions were obtained, that the charter granting a monopoly to the Company to trade may have been void because not sanctioned by Parliament, yet that the *territorial grant is valid*, and the only difference in the opinions appears to be to the extent of territory covered by the grant.

In 1849, on an address of the House of Commons praying that Her Majesty would be graciously pleased to direct that means be taken to ascertain the legality of the powers in respect to TERRITORY, TRADE, TAXATION and GOVERNMENT, which are, or have been, claimed by the Hudson's Bay Company, the Directors of the Company were requested to render their assistance in complying with the address of the House of Commons, which they did on the 13th of September, 1849, by enclosing to Earl Grey a statement as to their RIGHTS as to TERRITORY, TRADE, ETC., which will be found in full in Ont. Docts., pp. 288-9 and 290.

Annexed to this statement was a map showing the territory claimed by the Company as included within their Charter; and a copy of this map was likewise produced, in 1857, to the Select Committee of the House of Commons, and is attached to the Report of that Committee. This map shows that on the south the Company claimed to the land's height, and on the west to the foot of the Rocky Mountains

On 30th Oct., 1849, Earl Grey enclosed to the then law officers of the Crown, the statement and map furnished by the Company, requesting an opinion as to the rights of the Company.

The opinion furnished is as follows:—

(Copy of a Letter from Sir John Jervis and Sir John Romilly to Earl Grey.)

TEMPLE, January, 1850.

MY LORD,—We were honoured with your Lordship's commands, contained in Mr. Hawes's letter of the 30th October last, in which he stated that he was directed by your Lordship to transmit to us the copy of a Resolution of the House of Commons, that an Address be presented to Her Majesty, praying that measures may be taken for ascertaining the legality of the powers which are claimed or exercised by the Hudson's Bay Company on the continent of North America.

Mr. Hawes then stated that he was to enclose the copy of a letter from the Chairman of the Hudson's Bay Company, together with a statement and map prepared under his direction, of the territories claimed by the Company in virtue of the Charter granted to them by King Charles the Second,

Mr. Hawes also sent the copy of a letter, dated the 30th September last, from Mr. A. K. Isbister inquiring in what mode Her Majesty's Government intend to give effect to the Resolution of the House of Commons, and whether, in the event of any reference to a judicial tribunal, it will be necessary for the parties interested to appear by counsel or otherwise, or to furnish evidence, and, if so, of what nature.

Mr. Hawes concluded by stating that your Lordship requested that we would take these papers into our early consideration, and inform you whether we are of opinion that the rights claimed by the Company do properly belong to them. In the event of our entertaining a doubt on any point raised in these papers, Mr. Hawes was to request that we would advise your Lordship in what manner the opinion of a competent tribunal can be obtained on the subject.

In obedience to your Lordship's command, we have taken these papers into our consideration, and have the honour to report that, having regard to the powers in respect to territory, trade, taxation, and

government, claimed by the Hudson's Bay Company in the statements furnished to your Lordship by the Chairman of that Company, we are of opinion that the rights so claimed by the Company do properly belong to them.

Upon this subject we entertain no doubt; but as it will be more satisfactory to the complainants against the Company, to the promoters of the discussion in the House of Commons, and possibly to the Company themselves, if the questions are publicly argued and solemnly decided, we humbly advise your Lordship to refer these questions to a competent tribunal for consideration and decision, and to inform Mr. Isbister that he may appear as complainant, and the Company that they may be heard as respondents upon the argument. The proper mode of raising the question for discussion will, we presume, be for Mr. Isbister, or some other person, to embody in a Petition to Her Majesty the complaints urged against the Hudson's Bay Company; and such a Petition may be referred by Her Majesty, either to the Judiciary Committee, under the 4th section of the Statute 3 and 4 William IV., c. 41, or to the Committee of Trade, as involving questions within their jurisdiction. The Judicial Committee, from its constitution, is the best fitted for the discussion of a case of this description, and we recommend that to that tribunal the proposed Petition should be referred."

(Papers relating to H. B. Co., presented to House of Commons, pp. 7-8.)

On 6th June, 1850, Earl Grey caused to be sent to Sir John Pelly a letter, from which the following extracts are taken:—

(*Extract of a Letter from B. Hawes, Esq., to Sir John Pelly, Bart., dated Downing Street, 6th June, 1850.*)

"With reference to your observation, that 'it would be of the utmost importance if the decision of the Privy Council on the rights and privileges of the Company were sent to Hudson's Bay by one of the ships appointed to sail on the 8th instant, I am to remind you that the proceedings for the purpose of giving effect to the Resolution of the House of Commons of 5th July, 1849, have not led to any reference to the Privy Council, and that the question raised in that Resolution stands in the following position:—

"Steps having been taken, as you are aware, to obtain from the Hudson's Bay Company a statement of its claims, that statement was duly submitted to Her Majesty's law advisers, and Her Majesty's Government received from them a report that the claims of the Company were well founded. It was observed in that report that, with a view to the fuller satisfaction of the House of Commons, and the parties interested, it would be advisable to refer the inquiry to a competent tribunal, and that the proper method of raising a discussion upon it would be for some person to address a Petition to Her Majesty, which petition might then be referred either to the Judicial Committee or the Committee of Privy Council for Trade and Plantations.

"Such a Petition was, therefore, essential to the complete prosecution of the inquiry. Lord Grey accordingly gave to certain parties in this country, who had taken an interest in the condition of the inhabitants of the Hudson's Bay Company's territories, and had questioned the validity of the Company's Charter, an opportunity to prefer the necessary Petition if they were so disposed; but, for reasons which it is unnecessary to repeat, they respectively declined to do so. Lord Grey having, therefore, on behalf of Her Majesty's Government, adopted the most effectual means open to him for answering the requirements of the address, has been obliged, in the absence of any parties prepared to contest the rights claimed by the Company, to assume the opinion of the law officers of the Crown in their favour to be well founded."

(Papers relating to H. B. Co., presented to House of Commons, p. 15.)

The law officers of the Crown—Sir Richard Bethell, Attorney-General, and Sir Henry S. Keating, Solicitor-General—gave an opinion in 1857 (Ont. Docts., pp. 200-1), "that the validity and construction of the Hudson's Bay Company's Charter cannot be considered apart from the enjoyment which has been had under it during nearly two centuries, and the recognition made of the rights of the Company in various Acts both of the Government and the Legislature.

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"We beg leave to state, in answer to the questions submitted to us, that in our opinion the Crown could not now with justice raise the question of the general validity of the Charter; but, that on every legal principle, the Company's territorial ownership of the lands, and the rights necessarily incidental thereto, (as, for example, the right of excluding from their territory persons acting in violation of their regulations) ought to be deemed to be valid.

"The remaining subject for consideration is the question of the geographical extent of the territory granted by the Charter, and whether its boundaries can in any, and what manner, be ascertained. In the case of grants of considerable age, such as this Charter, when the words, as is often the case, are indefinite and ambiguous, the rule is that they are construed by usage and enjoyment, including in these latter terms *the assertion of ownership by the Company on important public occasions, such as the 10 Treaties of Ryswick and Utrecht, and again in 1750.*"

Now, what were the Hudson's Bay Company claiming as their territorial rights at the time of the Treaty of Ryswick (1697) and after the Treaty of Utrecht (1713), and also in 1750?

By the 7th and 8th Articles of the Treaty of Ryswick, certain things were to be done—(1) the Treaty was to be ratified, and (2) after the ratification, Commissioners were to be appointed, who were "to examine and determine the rights and pretensions which either of the said Kings had to the places situate in Hudson's Bay." (Ont. Docts., pp. 15 and 16.) And although Commissioners were appointed, and although claims were at different times advanced by the Hudson's Bay Company (as will presently be stated), nothing was done by the Commissioners to determine such rights and pretensions.

"After the Commissioners have determined those differences and disputes, the Articles the said 20 Commissioners shall agree to shall be ratified by both Kings, and shall have the same force and vigour as if they were inserted word for word in the present Treaty." (Treaty of Ryswick, Art. 8, Chalmers's Treaties, Vol. I., p. 335.)

The English and French Governments went on negotiating, under the Treaty, until 1702, when the War of Succession broke out and all negotiations were at an end.

It has been stated, and urged as a ground against the later pretensions of the Hudson's Bay Company, that in July, 1700, they were willing to contract their limits. While willing to do this for the purpose of effecting a settlement, and only on condition of their not being able to obtain "the whole Straits and Bay which of right belongs to them." (Ont. Docts., p. 123.)

Nothing was done under this, and the Hudson's Bay Company were again addressed by the Lords 30 of Trade and Plantations, in January, 1701, when they again insist on their rights to the whole Bay and Straits, but are willing to forego their rights to a certain extent if by that means they can secure a settlement. "But should the French refuse the limits now proposed by the Company, the Company think themselves not bound by this, or any former concessions of the like nature, but must, as they have always done, insist upon their prior and undoubted right to the whole Bay and Straits of Hudson which the French never yet would strictly dispute, or suffer to be examined into (as knowing the weakness of their claim), though the first step in the said Article of Ryswick directs the doing of it." (Ont. Docts., pp. 124-5.)

In May, 1709, the Company were requested by the Lords of Trade and Plantations to send an account of the encroachments of the French on Her Majesty's dominion in America, within the limits 40 of the Company's Charter; to which the Company replied, setting forth their right and title, and praying restitution. (Mills, pp. 152-3.)

A further petition was sent by the Hudson's Bay Company to the Queen, in 1711. (Ont. Docts., pp. 126-7.)

Nothing was done by the Commissioners towards the determination of the differences and disputes up to the time when Count de Torey, on behalf of France, made a proposition, in April, 1711, with a view of bringing about a general peace between England and France; and while these negotiations were in progress, and on 7th February, 1712, the Hudson's Bay Company set forth what they desired should be stipulated for them at the ensuing treaty of peace. (Ont. Docts., pp. 128-9.)

For reasons thought very cogent, it is not supposed the question of *post liminy* will require much if any consideration; but as no point should be overlooked which ought, or even might, be considered in the case, the subject is therefore shortly considered.

Vattel, Book III., cap. 14, sec. 20, defines the right of *post liminy* to be "that in virtue of which persons and things taken by the enemy are restored to their former estate on coming again into the power of the nation to which they belonged."

"The Sovereign is bound to protect the persons and property of his subjects, and to defend them against the enemy. When, therefore, a subject, or any part of his property, has fallen into the enemy's possession, should any unfortunate event bring them back again into the Sovereign's power, it is undoubtedly his duty to restore them to their former condition—to re-establish the persons in all their rights and obligations—to give back the effects to the owners—in a word, to replace everything on the same footing on which it stood previous to the enemy's capture. (*Ibid.*, sec. 205.)

"Provinces, towns and lands, which the enemy restores by the treaty of peace, are certainly entitled to the right of *post liminium*; for the Sovereign, in whatever manner he recovers them, is bound to restore them to their former condition as soon as he gains possession of them. (*Ibid.*, sec. 205.) The enemy, in giving back a town at the peace, renounces the right he had acquired by arms. It is just the same as if he had never taken it; and the transaction furnishes no reason which can justify the Sovereign in refusing to reinstate such town in the possession of all her rights, and restore her to her former condition." (*Ibid.*, sec. 214.)

20 It is submitted, however, that as between the Dominion and Province of Ontario, the question whether the Hudson's Bay Company were entitled to demand the right of *post liminium* is of no consequence whatever.

The late Chief Justice Draper, when acting as agent for the Province of Canada, delivered to the House of Commons' Committee, on the 28th of May, 1857, a paper relative to the boundaries, wherein it is stated:

"The 8th Article of the Treaty of Ryswick shows that the French at that time set up a claim of right to Hudson's Bay, though that claim was abandoned at the peace of Utrecht, and was never set up afterwards." (*Ont. Docts.*, p. 240.)

30 Lord Dartmouth's letter of the 27th May, 1713 (*Ont. Docts.*, p. 129), enclosing the petition of the Hudson's Bay Company, shows what was the design in not accepting an "Act of Cession" from the French King; and Her Majesty the Queen "insisted only upon an order from the French Court for delivering possession; by this means the title of the Company is acknowledged, and they will come into the immediate enjoyment of their property without further trouble."

The sections of the Treaty of Utrecht having any bearing upon the question are the 10th and 15th to be found in *Ont. Docts.*, pp. 16 and 17.

40 Under sec. 10 the King of France was "to restore to the Queen of Great Britain, to be possessed in full right forever, the Bay and Straits of Hudson, together with all lands, seas, coasts, rivers, and places situate in the said Bay and Straits, and which belong thereunto; no tracts of land or of sea being excepted which are at present possessed by the subjects of France." * * * "The same Commissaries shall also have orders to describe and settle in like manner the boundaries between the other British and French colonies in those parts."

In the wording of the 10th article a great deal of discussion arose as to whether the word "restore" or the word "cede" should be used. Count de Torcy, in January, 1713, says: "The plenipotentiaries now make no difference between places 'ceded' and places 'restored.'" (*Bolingbroke's Correspondence*, Vol. III., p. 601.) But in March, 1713, he says that the truth is so evident that the plenipotentiaries of Great Britain at Utrecht always make a distinction between places that should be "ceded" and those that should be "restored." (*Bolingbroke's Correspondence*, Vol. III., p. 605.)

Great Britain was contending that as France had dispossessed her of Hudson's Bay territories, the French should "restore" them, while the French desired to use the word "cede," as if the territories

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had belonged to the French, and they were for the first time ceding them to Great Britain. The word "restore" was used, and it is important to examine the original text of the treaty, which is in Latin. The words used in that article, "*spectantibus ad eadem*," show clearly that France was to restore to England all the lands looking towards the Hudson's Bay; in other words, the whole watershed of the waters running into the Hudson's Bay.

The first part of the 10th section does away with any exception, and left nothing for the French to hold possession of in Hudson's Bay.

Mr. Mills, at p. 159 of his report, after quoting the portion of the 10th section above referred to says: "The words of the Treaty just quoted, and the attendant circumstances show that what was claimed by England, and yielded by France, was the Bay and the country upon its margin. Nevertheless, the language of the Treaty did not make it impossible for England, if she were so disposed, to insist upon the possession of the whole country to the land's height. France, too, consented with reluctance to the use of the word 'restoration' instead of 'cession.'"

The Treaty not only made it possible for England to insist upon the possession of the whole country to the land's height, but from the very moment Commissaries were appointed as provided by the Treaty, she always insisted that she was entitled to the whole country, and it will be apparent that France assented to this contention as being the correct interpretation of the Treaty.

Although Commissaries were appointed as provided by the Treaty, and notwithstanding the Commissaries failed to define the boundaries between the territories of each of the Governments, it was in some manner assumed that the boundary had been settled by the 49th parallel; and this was looked upon by the Americans and by the English themselves as being the southern boundary of the Hudson's Bay Company's Territory. And we find that in the discussions, which took place in regard to the boundary line from the north-west angle of the Lake of the Woods to the Rocky Mountains, the United States asserting on the one hand, and Great Britain not denying on the other, that the 49th parallel was the boundary between their respective countries, because it was the southern boundary of the Hudson's Bay.

"From the coast of Labrador to a certain point north of Lake Superior, those limits were fixed according to certain metes and bounds, and from that point the line of demarcation was agreed to extend indefinitely due west along the 49th parallel of north latitude. It was in conformity with that arrangement that the United States did claim that parallel as the northern boundary of Louisiana." 30 (Greenhow's Oregon, 2nd ed., p. 460.)

Whether a boundary was ever agreed upon, or whether it was merely assumed that the boundary above stated had been assented to, cannot now be of much importance, as in 1760 the Marquis de Vaudreuil did not pretend that the Canada of the French extended in a north-westerly direction beyond the Red Lake.

On the 4th August, 1714, the Hudson's Bay Company sent a memorandum to the Lords Commissioners of Trade and Plantations, accompanied by a map, in which they claimed that the eastern boundary should be a line running from Grimington's Island through Lake Miscosinque or Mistassinic, and from the said lake by a line run south-westward into 49 degrees north latitude, as by the red line may more particularly appear, and that that latitude be the limit; that the French do not come to the north of it, nor the English to the south of it. (Ont. Docts., pp. 131-2.) 40

When, in 1719, Commissaries were appointed, the instructions given to Mr. Pulteney and Col. Bladen, the British Commissaries, were explicit to claim to the 49th of north latitude, where another line was to begin and extend westward upon the 49th of north latitude, over which said lines the French were to be prohibited from passing. (Ont. Docts., p. 362.)

In order that there might be no mistaking the full extent of the demand of the British Government, and to show that, under the Treaty, England was claiming the whole territory southward to the height of land and westward to the Rocky Mountains, the English Commissaries in 1719 sent to the French Commissaries a memoir on the subject of the boundary, in which they set forth that "the French

since the Treaty of Utrecht had made a settlement at the source of the River Albany, the Commissaries of His Britannic Majesty insist that the French shall quit the said settlement, and that the Fort, if there be any such building, shall be given up to the Company of English merchants trading in Hudson's Bay aforesaid.

"The said Commissaries further demand that the subjects of His Most Christian Majesty shall not build forts or found settlements upon any of the rivers which empty into Hudson's Bay under any pretext whatsoever, and that the stream and the entire navigation of the said rivers shall be left free to the Company of English Merchants trading into Hudson's Bay, and to such Indians as wish to traffic with them." (Ont. Docts, p. 365.)

10 Sir Travers Twiss says:—

"The object of the 10th Article of the Treaty of Utrecht was to secure to the Hudson's Bay Company the restoration of the forts and other possessions of which they had been deprived at various times by French expeditions from Canada, and of which some had been yielded to France by the 7th Article of the Treaty of Ryswick. By this latter Treaty, Louis XIV. had at last recognized William III. as King of Great Britain and Ireland; and William, in return, had consented that the principle of *uti possidetis* should be the basis of the negotiations between the two Crowns. By the 10th Article however, of the Treaty of Utrecht, the French King agreed to restore to the Queen (Anne) of Great Britain, 'to be possessed in full right forever, the Bay and Straits of Hudson, together with all lands seas, sea coasts, rivers and places situate in the said Bay and Straits, and which belong thereto; no 20 tracts of land or sea being excepted which are at present possessed by the subjects of France.' The only question, therefore, for Commissaries to settle were the limits of the Bay and Straits of Hudson, *construed*, on the side of the French Province of Canada, as all the country drained by streams entering into the Bay and Straits of Hudson were, by the terms of the Treaty, recognized to be part of the possessions of Great Britain.

"If the coast boundary, therefore, was once understood by the parties, the head waters of the streams that empty themselves into the Bay and Straits of Hudson indicate the line which at once satisfied the other conditions of the treaty. Such a line, if commenced at the eastern extremity of the Straits of Hudson, would have swept along through the sources of the streams flowing into the Lakes Mistassinnie and Abbitibis, the Rainy Lake, in 48° 30', which empties itself by the Rainy River into 30 the Lake of the Woods, the Red Lake, and Lake Traverse.

"This last lake would have been the extreme southern limit in about 45° 40', whence the line would have wound upward to the north-west, pursuing a serpentine course, and resting with its extremity upon the Rocky Mountains, in about the 48th parallel of latitude. Such would have been the boundary line between the French possessions and the Hudson's Bay district; and so we find that in the limits of Canada, assigned by the Marquis de Vaudrenil himself, when he surrendered the Province to Sir J. Amherst, the Red Lake is the apex of the Province of Canada, or the point of departure from which, on the one side, the line is drawn to Lake Superior; on the other, 'follows a serpentine course southward to the River Oubac'e, or Wabash, and along it to the junction with the Ohio.' This fact was insisted upon by the British Government in their answer to the ultimatum of France, sent in on the 1st 40 of September, 1761, and the map which was presented on that occasion by Mr. Stanley, the British Minister, embodying those limits, was assented to in the French memorial of the 9th of September." (Historical Memorial of the Negotiations of France and England from March 26th to Sept. 20th, 1761. Published at Paris by authority.) (Twiss' Oregon Boundary, pp. 209-211.)

"By the Treaty of Utrecht, the British possessions to the north-west of Canada were acknowledged to extend to the head waters of the rivers emptying themselves into the Bay of Hudson; by the Treaty of Paris they were united to the British possessions on the Atlantic, by the cession of Canada and all her dependencies; and France contracted her dominions within the right bank of the Mississippi. That France did not retain any territory after the Treaty to the north-west of the sources of the Mississippi, will be obvious when it is kept in mind that the sources of the Mississippi are in 47° 35', 40 whilst the sources of the Red River, which flows through Lake Winnipeg, and ultimately finds its way by the Nelson River into the Bay of Hudson, are in Lake Traverse, in about 45° 40'." (Twiss' Oregon p. 226.)

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It has not been thought necessary to refer to the numerous maps described in the Ontario Documents, as, unless a map has been made use of in connection with a Treaty, or a boundary has been defined thereon, but little reliance can be placed upon it. Sir Travers Twiss says:—"The claim however, to the westwardly extension of New France to the Pacific Ocean requires some better evidence than the maps of French geographers. A map can furnish no proof of territorial title: it may illustrate a claim, but it cannot prove it. The proof must be derived from facts which the law of nations recognizes as founding a title to territory. Maps, as such, that is, when they have not had a special character attached to them by treaties, merely represent the *opinions of the geographers* who have constructed them, which opinions are frequently founded on fictitious or erroneous statements: e.g., the map of the discoveries of North America by Ph. Bunche and J. N. DeLisle in 1750, in which portions 10 of the west coast of America were delineated in accordance with De Fonte's story, and the maps of North-west America, at the end of the seventeenth and beginning of the eighteenth centuries, which represent California as lately ascertained to be an island." (Twiss' Oregon, pp. 305-6.)

When new Commissaries were appointed in 1750, the Lords of Trade and Plantations requested the Hudson's Bay Company to furnish a memorandum showing the limits claimed, which was done on the 3rd of October in that year, and is substantially as claimed by them in 1719. (Mills, pp. 176-7.)

It were well to consider what territory was comprised within the limits of Louisiana, as this will prove a help to arriving at a proper conclusion as to what England claimed as being comprised in "Canada," or "New France."

According to extracts (Ont. Docts., pp. 41-2) copied from the Charter of Louis XIV. to M. Crozat 20 Sept., 1712, it will be seen that Louisiana "was the country watered by the Mississippi and its tributary streams from the sea-shore to the Illinois," i. e., the Illinois River was the northern boundary of Louisiana according to this "authoritative document of the French Crown." By the same public document all the rest of the French possessions were united under the Government of New France (Twiss' Oregon, pp. 219-220.)

In the course of the negotiations respecting the limits of the Provinces of Canada and Louisiana the Marquis de Vaudreuil, who signed the surrender, published his own account of what passed between Sir J. Amherst and himself, of which he considered the English account to be incorrect. "On the officer showing me a map which he had in his hand, I told him the limits were not just, and verbally mentioned others extending Louisiana on one side to the carrying-place of the Miamis, *which is the 30 height of the lands whose rivers run into the Etouabache; and on the other to the head of the river of the Illinois.*" (Annual Register, 1761, p. 268.) Even thus, then, all to the north of the Illinois was admitted to be Canada. (Twiss' Oregon, pp. 220-221.)

What took place at the various conferences respecting the limits of Canada has been procured from the records of the Foreign Office.

On the 18th August, 1761, M. de Bussy, the French Minister at London, furnished to Mr. Pitt a memorandum upon the limits of Louisiana, which bore upon the limits of Canada, and ran thus:

"Sur les limites de la Louisiane.

"Pour fixer les limites de la Louisiane du côté des colonies Angloises et du Canada, on tirera une ligne qui s'étendra depuis Rio Perdido entre la Baye de la Mobile et celle de Pensacola, en passant par 40 le Fort Toulouse chez les Alibamons, et qui, se prolongeant par la pointe occidentale du Lac Erié enfermera la Rivière des Miamis, et par l'extrémité orientale du lac Huron, ira aboutir à la hauteur des terres du côté de la Baye d'Hudson vers le Lac de l'Abittibis, d'où la ligne sera continuée de l'Est à l'Ouest jusques et compris le Lac Supérieur." (Pub. Rec., Off. Vol. 483.)

Instructions, however, accompanied by an ultimatum, were transmitted under date of the 27th August, 1761, to Mr. Stanley, in which it was laid down that these limits could not be acceded to; and Mr. Pitt, in alluding to the conduct of France, stated that among the reasons whereby British confidence had been shaken was the "claiming, as Louisiana, with an e frontier unparalleled, vast regions, which the Marquis de Vaudreuil had surrendered to General Amherst as Canada, and defined himself, with his own hand, as comprehended in the government of that Province, where he commanded;" and 50 Mr. Pitt gave the following definition of the boundaries of Canada, as set forth by M. de Vaudreuil:

"Le Canada, selon la ligne de ses limites tracée par le Marquis de Vaudreuil lui-même, quand ce Gouverneur-Général a rendu, par capitulation, la dite Province au Général Britannique le Chevalier Amherst, comprend d'un côté, les Lacs Huron, Michigan et Supérieur, et la dite ligne, tirée depuis Lac Rouge embrassé, par un cours tortueux, la Rivière Ouabache (Wabash) jusqu'à sa jonction avec l'Ohio, et de là se prolonge le long de cette dernière rivière inclusivement, jusques à son confluent dans le Mississippi;" and on this definition of the limits of Canada its cession was claimed—a copy of M. de Vaudreuil's map being sent to Mr. Stanley for reference, together with an extract of a letter from General Amherst dated 4th October, 1760, bearing upon that subject. (Pub. Rec., Off. Vol. 483.)

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Annexed will be found a copy of that map of M. de Vaudreuil to which Mr. Pitt referred, which has been made from the original enclosed by General Amherst in his despatch of 4th October, 1760 from which document also the following extracts have been taken:

"The Government of Canada includes Lakes Huron, Michigan and Superior, as you will see by the enclosed sketch, the red line being marked by the Marquis de Vaudreuil."

"The Government of Quebec begins with Trondines on the north-west, and de Chmillon on the south-east, and takes in all the parishes from them down the River St. Lawrence." (Pub. Rec., Off. Vol. 94, Ama. and W. Indies.)

It is further recorded on the 2nd September, 1761, the Marquis de Vaudreuil's map was shown to the Duc de Choiseul by Mr. Stanley, and that the bounds of Canada were agreed upon as therein stated. This fact is further substantiated by a passage in Mr Stanley's despatch of the 4th of that month, which runs as follows:

"The Duc de Choiseul complained that the bounds of Canada were laid down very unfavourably to France in the description which your memorial contains, alleging (*sic*) that there had been disputes between the Marquis de Vaudreuil and the Governor of Louisiana with regard to the limits of their two Provinces, wherein the former, being the more able and the more active, had greatly enlarged his jurisdiction; he added, however, that though many such objections might be made, it had been the intention of the King his master to make the most full and complete cession of Canada, and that he consented in his name to those limits. I then produced the map you sent me, and it was agreed that this Province should remain to Great Britain as it is there delineated." (Minutes of a Conference at Paris, Sept. 2nd, 1761. Pub. Rec., Off. Vol. 483, France.)

The last Mémoire of France to England in these negotiations is dated Sept. 9th, 1761, and was delivered by M. de Bussy to Mr. Pitt on the 14th.

The first Article fully confirms the acceptance by France of the de Vaudreuil map, and states as follows:

"Le Roi, a dit dans son premier mémoire les propositions et dans son ultimatum, qu'il céderoit et garantiroit à l'Angleterre la possession du Canada dans la forme la plus étendue: Sa Majesté persiste dans cette offre: et sans dissenter sur la ligne des limites, tracée dans une carte présentée par M. Stanley, comme cette ligne demandée par l'Angleterre, est sans doute la forme la plus étendue que l'on puisse donner à la cession, le Roi veut bien l'accorder." (Mémoire Historique sur la Négotiation de la France et de l'Angleterre, 1761, p. 52. F. O. Lib. 4to, No. 434.)

Then came the Treaty of Paris, concluded on 10th February, 1763, by which the Canada of the French was ceded to Great Britain.

By the 7th section of this Treaty, "It is agreed that for the future the confines between the dominions of his Britannic Majesty and those of His Most Christian Majesty in that part of the world, shall be fixed irrevocably by a line drawn along the middle of the River Mississippi, from its source to the River Iberville, and from thence by a line drawn along the middle of this river and the lake Maurepas and Pontchartrain to the sea." (Ont. Docts., pp. 18-19.)

As the source of the River Mississippi was Red Lake, and as it was from that point that the Marquis de Vaudreuil directed the red line to be drawn, there can be no difficulty in coming to a conclusion as to what was included within the bounds of the "Canada" of the French.

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Now, the proclamation of the King on the 7th October, 1763, created four separate Governments, viz.: Quebec, East Florida, West Florida and Grenada.

All the lands not within the limits of the said Governments, and not within the limits of the territory granted to the Hudson's Bay Company, were for the present reserved for the protection and dominion of the Indians. (Ont. Docts., p. 26.)

QUEBEC ACT, 1774.

When the Quebec Act of 1774 was introduced, it was designed to extend the bounds of the Province of Quebec far beyond those created by the Proclamation of the King, issued in October, 1763. By the Act, as originally introduced, it was evidently intended to include in the Province of Quebec "all the territories, islands and countries heretofore a part of the territory of *Canada*, in *North America* extending southward to the banks of the *Mississippi*, and northward to the southern boundary of the territory 10 granted to the Merchant Adventurers of England trading to Hudson's Bay, and which said territories islands and countries are not within the limits of the other British colonies as allowed and confirmed by the Crown, or which have since the 10th February, 1763, been made a part and parcel of the Province of Newfoundland." (Mills, pp. 77-8.)

Now, in the Act as passed, the words "*heretofore a part of the territory of Canada*," are left out and the Act included "all the territories, islands and countries in North America belonging to the Crown of Great Britain," between certain defined limits along the western boundary of the then Province of Pennsylvania until it strike the River Ohio; and along the bank of the said river, westward, to the banks of the Mississippi, and northward to the southern boundary of the territory granted to the Merchants Adventurers of England trading in Hudson's Bay; and all the territories, islands and countries 20 which have since the 10th February, 1763, been made part of the Government of Newfoundland, be and they are hereby, during His Majesty's pleasure, annexed to and made part and parcel of the Province of Quebec, as created and established by the said Royal Proclamation of 7th day of October, 1763." (Ont. Docts., p. 3.)

On reading this description it will be seen that the east bank of the Mississippi could not have been intended as the western limit.

Whenever the bank of a river or lake is created a boundary, the Act expressly states such to be the case, as "the eastern bank of the River Connecticut," "the eastern bank of the River St. Lawrence," "thence along the eastern and south-eastern bank of Lake Erie," and "along the bank of the said river (Ohio) until it strikes the Mississippi." Now, when the River Mississippi is reached, the description 30 does not proceed "along the bank of the said river," as in the other descriptions, but describes the remaining limit as "northward to the southern boundary of the territory granted to the Merchants Adventurers of England."

It is said that the word "northward" in the Act cannot mean "north," and that, therefore, a line drawn north from the junction of the Ohio and Mississippi rivers to the southern boundary of the Hudson's Bay Company's lands would not conform to the description in the Act.

The meaning of the expression "northward," as used in this Act, received judicial interpretation in the year 1818, on the occasion of the trial of Charles de Reinhard for murder committed at the Dalles; and also during the trial of Archibald McLellan, in the same year, for a like offence.

The Judges of the Court of Queen's Bench in Lower Canada, in giving judgment in these cases 40 (Ont. Docts., pp. 226-7-8), were clearly of opinion that the western limit of Upper Canada was a line drawn due north from the junction of the Ohio and Mississippi rivers.

In the Treaty between Great Britain and the United States, in 1846, the term "westward" was used, and it was interpreted to mean "due west." (U. S. Treaties and Conventions, p. 375.)

Because the Commission which issued to Sir Guy Carleton in 1774 extended the boundary of the Province "along the eastern bank of the Mississippi river to the southern boundary of the territory granted to the Hudson's Bay Company," it is asserted that the Commission should govern.

The fact of a Commission having been issued with this extension, not authorized, cannot be made to extend the boundaries created by the Act. These Commissions, being mere instructions to the Governor-General, can have no effect in altering territorial boundaries.

The Commission to Governor Andros, of Connecticut, gave him authority to the South Sea.

Lord Elgin's Commission as Governor-General, issued in 1846, apparently gave him jurisdiction to the shore of Hudson's Bay; but it never was claimed or pretended that the Commission extended the boundaries of Canada to the shore of that Bay. (For Commission, *vide* Ont. Docts., pp. 51-52.)

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What is known as the Constitutional Act of 1791 (31 Geo. III, cap. 31) was passed to repeal certain 10 parts of an Act passed in the fourteenth year of His Majesty's reign, entitled "An Act for making more effectual provision for the government of the Province of Quebec, in North America," and to make further provision for the government of the said Province.

"Whereas an Act was passed in the fourteenth year of the reign of his present Majesty, entitled 'An Act for making more effectual provision for the government of the Province of Quebec, in North America;' and whereas the said Act is in many respects inapplicable to the present condition and circumstances of the said Province: and whereas it is expedient and necessary that further provision should now be made for the good government and prosperity thereof; may it therefore please your most excellent Majesty that it may be enacted, and be it enacted by the King's most excellent Majesty, 20 by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that so much of the said Act as in any manner relates to the appointment of a Council for the affairs of the said Province of Quebec, or to the power given by the said Act to the said Council, or to the major part of them, to make ordinances for the peace, welfare, and good government of the said Province, with the consent of His Majesty's Governor, Lieutenant-Governor, or Commander-in-Chief, for the time being, shall be and the same is hereby repealed.

"And whereas 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, to be called the Province of Upper Canada and the Province of Lower Canada, etc." (Ont. Docts., p. 4.)

The Proclamation of November, 1791 (Ont. Docts., p. 27), declares that by an Order in Council of 30 August it was ordered that the Province of Quebec should be divided into two distinct Provinces. But it is argued that this Proclamation annexed to Upper Canada territories not included in the Province of Quebec. This argument is based upon the use of the word "Canada" at the end of the first paragraph of the Proclamation.

It is stated the 14th Geo. III. "is in many respects inapplicable to the present condition and circumstances of the said Province." To what Province is it applicable? Why, to the Province of Quebec. The Act says the intention of the King was "to divide his Province of Quebec into two separate Provinces."

His Majesty, on the 24th day of August, 1791, "was pleased, by and with the advice and consent of his Privy Council, to order that the Province of Quebec be divided into two distinct Provinces, to be 40 called the Province of Upper Canada and the Province of Lower Canada, by separating the said two Provinces according to the line of division inserted in the said order." (Ont. Docts., p. 389.)

The Act of Parliament was that alone upon which the Order in Council could be based or the Proclamation issued; and it is quite evident that neither the Order in Council nor the Proclamation intended to do more than the Act made provision for, *i. e.*, to divide the Province of Quebec.

The construction put upon this Act by the Court of Queen's Bench in Lower Canada, in De Reinhard's case and in McLellan's case (Ont. Docts., pp. 226-7-8), was that "Upper Canada could include only that part of the Province so divided as was not contained in Lower Canada, but it could not extend beyond those limits which constituted the Province of Quebec."

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In the Commission issued to Lord Dorchester, Sept. 12, 1791, as Captain-General and Governor-in-Chief of the Provinces of Upper Canada and Lower Canada (wherein the Order in Council of 19th August, 1791, is recited), it states the intention to divide the Province of Quebec into two separate Provinces, "the Province of Upper Canada to comprehend all said lands, territories and islands lying westward of the said line of division as were part of our said Province of Quebec." (Ont. Docts. p. 48.)

The Commission issued in 1794 to Henry Caldwell, Esquire, Receiver-General of the Province of Lower Canada, contains a boundary description of Upper Canada similar to that in the Commission of Lord Dorchester. (Ont. Documents, pp. 389-390.)

The ten Commissions issued to the Governors-General of the Provinces of Upper and Lower Canada between December, 1796, and 1st July, 1835, contain boundary-line descriptions similar to that of Lord Dorchester, in September, 1791.

On the 13th December, 1838, a Commission was issued to Sir John Colborne as Governor-in-Chief of the Province of Upper Canada, in which, after describing the other boundaries of the Province, it proceeds: "On the west by the Channel of Detroit, Lake St. Clair, up the River St. Clair, Lake Huron, the west shore of Drummond Island, that of St. Joseph and Sugar Island, thence into Lake Superior." (Ont. Docts., p. 390.)

The Commission to the Right Hon. Charles Poulett Thomson, dated 6th September, 1839, contains boundary descriptions similar to above. (*Ibid.*, p. 390.)

29TH AUGUST, 1840.

The Act of Union (Impl. Act 3, 4 Vic., cap. 35) was passed to make "provision for the good government of the Provinces of Upper Canada and Lower Canada..... which, after the passing of this Act, shall form and be one Province under the name of the Province of Canada." (Ont. Docts., p. 10.)

After the passing of the Union Act, and on the 29th August, 1840, a Commission was issued to Lord Sydenham as Governor-in-Chief of the Province of Canada. The Commission gives the western boundary of the United Provinces, as in the Commission to Sir John Colborne. (Ont. Docts., p. 51.)

The Commission to Lord Metcalf, in February, 1843, and that to Earl Cathcart, in March, 1846, and the one issued to Lord Elgin, on 1st October, 1846, contain boundary-line descriptions of Upper Canada similar to that issued to Lord Sydenham in 1840.

It will be seen that, between December, 1838, when Sir John Colborne was appointed Governor-General, until 1852 or 1853, when Lord Elgin's term as representative of Her Majesty expired, the British Government understood and treated the western boundary of Upper Canada as being on the shore of Lake Superior; and it is fair to infer that the Imperial authorities were not ignorant that a line drawn north from the junction of the Ohio and Mississippi would strike the shore of Lake Superior, and they no doubt intended that where the line so struck should be the limit of the jurisdiction of the Governors-General, and consequently the westerly limit of the Province of Upper Canada.

Then, in order to reach offenders for crimes committed in the Indian Territory (reserved for the Indians by the proclamation of October, 1763), the Act of 43 Geo. III., cap. 138 (11th August, 1803) was passed. (Ont. Docts., pp. 4-5.)

As doubts existed as to whether the provisions of 43 Geo. III., cap. 138, extended to the Hudson's Bay Territory, the Act 1 and 2 Geo. IV., cap. 66 (2nd July, 1821), was passed, including the Hudson's Bay Company's lands and territories heretofore granted to the Hudson's Bay Company; and under the 14th section of that Act the rights and privileges of the Hudson's Bay Company are to remain in full force, virtue and effect. (Ont. Docts., pp. 6-7-10.)

So that in all these Acts they were making provision for the government, or at least for the judicial control of large territories claimed as belonging to the Crown of Great Britain, and which were not included in the Province of Upper Canada.

The sixth clause of the British North America Act, 1867 (Imperial Act, 30th Vic., cap. 3), is as follows:

"The parts of the Province of Canada (as it exists at the passing of this Act) which formerly constituted respectively the Provinces of Upper Canada and Lower Canada shall be deemed to be severed, and shall form two separate Provinces. The part which formerly constituted the Province of Upper Canada shall constitute the Province of Ontario; and the part which formerly constituted the Province of Lower Canada shall constitute the Province of Quebec." (Ont. Docts., p. 11.)

And the 146th section of the same Act, under which Rupert's Land and the North-Western Territory could be admitted into the Union, is as follows:

10 "It shall be lawful for the Queen, by and with the advice of Her Majesty's Most Honourable Privy Council, on addresses from the Houses of Parliament of Canada and from the Houses of the respective Legislatures of the Colonies or Provinces of Newfoundland, Prince Edward Island and British Columbia, to admit those Colonies or Provinces, or any of them, into the Union, and on addresses from the Houses of the Parliament of Canada, to admit Rupert's Land and the North-Western Territory or either of them, into the Union, on such terms and conditions, in each case, as are in the addresses expressed, and as the Queen thinks fit to approve, subject to the provisions of this Act; and the provisions of any Order in Council in that behalf shall have effect as if they had been enacted by the Parliament of the United Kingdom of Great Britain and Ireland." (Ont. Docts., p. 404.)

20 On the 17th December, 1867, the Senate and Commons of the Dominion of Canada adopted an address to the Queen, praying Her Majesty to unite Rupert's Land and the North-Western Territory with this Dominion, and to grant to the Parliament of Canada authority to legislate for their future welfare and good government. (Orders in Council, Dom. Stats., 1872, p. lxvi.)

In compliance with the terms of the above address, the Rupert's Land Act, 1868 (Imperial Act, 31 and 32 Vic., cap. 105), was passed, and under the second section of that Act the term "Rupert's Land" should include the whole of the lands and territories, held, or claimed to be held, by the said Governor and Company.

30 On the 19th November, 1869, the Hudson's Bay Company executed a deed of surrender to Her Majesty, of Rupert's Land, which included the whole of the lands and territories, held, or claimed to be held, by the Company, excepting the lands mentioned in the second and fifth paragraphs. Under the second paragraph, the Company might, within twelve months, select a block of land adjoining each of their stations. The schedule of the lands selected is attached to the surrender, and includes about 46,000 acres of land.

Under paragraph No. 5, "the Company may within fifty years after the surrender claim in any township or district within the Fertile Belt, in which land is set out for settlement, grants of land not exceeding one-twentieth part of the land so set out."

(6) "For the purpose of the present agreement, the Fertile Belt is to be bounded as follows,—On the south, by the United States boundary; on the west, by the Rocky Mountains; on the north, by the northern branch of the Saskatchewan; on the east, by Lake Winnipeg, the Lake of the Woods, and the waters connecting them." (Order in Council, Stats. of Can., 1872, p. lxxix.)

40 Such surrender was accepted by Her Majesty, by an instrument under her sign manual, and signed on the 22nd day of June, 1870.

On the 23rd June, 1870, Her Majesty, by an Order in Council, ordered that, after the 15th July, the said North-Western Territory and Rupert's Land should be admitted and become part of the Dominion of Canada, on the Dominion paying to the Company £300,000, when Rupert's Land should be transferred to the Dominion of Canada; which transfer has been made and the consideration money paid. (Ont. Docts., pp. 405-6-7-8.)

On the very threshold of Confederation, Ontario knew the terms upon which Rupert Land and the North-Western Territory might be admitted into the Union; and during the negotiations that were pending between the Imperial authorities and the Dominion respecting the surrender by the Hudson's

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Bay Company of their lands and territories, rights and privileges, the Ontario Government never interfered or claimed that what was about being surrendered to Her Majesty for the purpose of admission into the Dominion had at any time formed a part of the Province of Upper Canada—although Ontario must be assumed to have known that the Hudson's Bay Company was, in 1857, claiming under its Charter that the southern boundary of the Company's territory was the height of land dividing the waters which flow into the Hudson's Bay from those emptying into the St. Lawrence and the Great Lakes, and that the western boundary was the base of the Rocky Mountains.

In thus lying by while the Dominion was purchasing this territory, and without forbidding the purchase or claiming any interest whatever in the rights and privileges about being acquired, that Province is now estopped from setting up that its western boundary extends beyond the meridian 10 passing through the point of junction of the Ohio and Mississippi Rivers, north of the United States and south of the Hudson's Bay territories. All the remaining territory was "held, or claimed to be held, by the Governor and Company," and was, as such, paid for by the Dominion. (*Gregg v. Wells*, 10 A. and E. 90.)

The acceptance by the Imperial Government of a surrender of what the Hudson's Bay Company claimed as territory belonging to them, was an admission that no portions of these territories were ever included in the Province of Upper Canada. The British Government being bound by this admission, surely Ontario must be.

In 1871 a Commissioner was appointed by each of the Governments of the Dominion and Province of Ontario, for the settlement of the northerly and westerly boundaries of the Province. 20

The instructions given to the Commissioners on behalf of the Dominion were that—

"The boundary in question is clearly identical with the limits of the Province of Quebec, according to the 14th Geo. III, ch. 83, known as the "Quebec Act" and is described in the said Act as follows, that is to say: Having set forth the westerly position of the southern boundary of the Province as extending along the River Ohio 'westward to the banks of the Mississippi' the description continues from thence (*i.e.*, the junction of the two rivers) 'and northwards to the southern boundary of the territory granted to the Merchants Adventurers of England trading to Hudson's Bay.

"Having determined the precise longitude, west of Greenwich, of the extreme point of land making the junction of the north and east banks respectively of the said river, you will proceed to ascertain and define the corresponding point of longitude or intersection of the meridian passing through the said junction with the international boundary between Canada and the United States. 30

"Looking, however, to the tracing enclosed, marked A, intending to illustrate these instructions, it is evident that such meridian would intersect the international boundary in Lake Superior.

"Presuming this to be the case, you will determine and locate the said meridian, the same being the westerly portion of the boundary in question, at such a point on the northerly shore of the said lake as may be nearest to the said international boundary, and from thence survey a line due south to deep water, marking the same upon and across any and all points or islands which may intervene, and from the point on the main shore found as aforesaid, draw and mark a line due north to the southern boundary of the Hudson's Bay Territory before mentioned. This will complete the survey of the westerly boundary line sought to be established.

"You will then proceed to trace out, survey and mark, eastwardly, the aforementioned southern 40 boundary of the territory granted to the Merchants Adventurers of England trading to Hudson's Bay.

"This is well understood to be the height of land dividing the waters which flow into Hudson's Bay from those emptying into the valleys of the Great Lakes, and forming the northern boundary of Ontario; and the same is to be traced and surveyed, following its various windings, till you arrive at the angle therein between the Provinces of Ontario and Quebec, as the latter is at present bounded, having accomplished which, the same will have been completed."

The Privy Council of Ontario on receiving a copy of above instructions advise the Dominion, "That the Province of Ontario claims that the boundary line is very different from the one defined by the said instructions, and cannot consent to the prosecution of the Commission for the purpose of

marking on the ground the line so defined, and that the Commissioner appointed by the Government of Ontario should be instructed to abstain from taking any further action under his commission." (Ont. Docts., pp. 340-1.)

The boundaries that Ontario was willing to accept are set forth in an Order in Council. (Ont. Docts., p. 243.)

Until the boundaries could be definitely adjusted, provisional boundaries were agreed upon on the 3rd of June, 1874, as follows:—On the west, the meridian line passing through the most easterly point of Hunter's Island, run south until it meets the boundary line between the United States and Canada and north until it intersects the fifty-first parallel of latitude, and the said fifty-first parallel of latitude shall be the conventional boundary of the Province of Ontario on the north. (Ont. Docts., p. 347)

SUPPLEMENT TO DOMINION CASE, SUBMITTED TO THE ARBITRATORS, 1878.*

(COPIED FROM DOCUMENTS FURNISHED BY THE FOREIGN OFFICE.)

M. de Vaudrenil was Governor of La Nouvelle France in 1755.

General Wm. Shirley (as Mr. Shirley) was Captain-General and Commander-in-Chief of the Province of Massachusetts Bay in 1749, and in July of that year it was agreed that Commissaries should be appointed to define, in an amicable spirit, the boundaries between the colonial possessions of Great Britain and France in North America.

There is proof that Mr. Shirley was originally one of these Commissaries, and that Mr. Mildmay was the other; for on the 21st September, 1750, a mémoire, signed "W. Shirley" and "W. Mildmay," was presented to the French Commissaries, respecting the boundaries of Nova Scotia or Acadia, under Art. 12 of the Treaty of Utrecht; and on the 11th of January, 1751, a second mémoire on the same subject was signed by "W. Shirley" and "Wm. Mildmay," as British Commissaries at Paris; but it is evident that Mr. Shirley had ceased to be a Commissary in April, 1755; for on the 23rd January, 1753, a further mémoire was presented by the British Commissaries to the French Commissaries respecting this same boundary; but instead of its bearing the signatures of Mr. Shirley and Mr. Mildmay, it was signed "Mildmay" and "Ravigny de Cosne."

Mr. Shirley had therefore no doubt returned to America, and Mr. Ravigny de Cosne, who was British Chargé d'Affaires at Paris, in the absence of the Earl of Albemarle, had succeeded him as one of the British Commissioners.

In May, 1755, the commission was still sitting at Paris.

On the 14th of May of that year, a mémoire was delivered by the French Ambassador in London (the Duke de Mirepoix) to the British Minister for Foreign Affairs, in which was laid down the following four points of discussion:

1. Limits of Acadia.
2. Limits of Canada.
3. The course and territory of the Ohio.
4. The islands of St. Lucia, St. Vincent, Dominica and Tobago.

With regard to the limits of Canada the mémoire ran as follows:—

"The Court of France have decisively rejected, and will always reject, the proposition which has been made by England, that the southern bank of the River St. Lawrence and Lakes Ontario and Erie shall serve as boundaries between the two nations."

"It is necessary to establish as a base of negotiation relative to this Article, that the River St. Lawrence is in the centre of Canada. This truth is justified by all titles, by all authors, and by possession. All that France will be able to admit, after having established this principle, which cannot

* Report of Committee Ho. Cons., Canada, 1880, p. 250.

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be reasonably contradicted, is to examine, in regard to this object, whether the reciprocal convenience of the two nations can exact some particular arrangement thereto, in order to fix invariably the respective boundaries.

"The only pretext the English make use of to colour their pretensions is drawn from Article 15 of the Treaty of Utrecht; but in examining attentively all the expressions of that Article, it is evident that nothing is less founded than the inductions which the Court of London actually wish to draw from it.

"1. It is only a question in this Article of the person of the savages, and not at all of their country, or pretended territory, since they have no determined territory, and the only knowledge they have of property is the actual use they make of the land they occupy to-day, and which they will 10 cease perhaps to occupy to-morrow.

"2. It would be absurd to pretend that everywhere where a savage, a friend or subject of one of the two Crowns, should make a passing residence, that country that he had dwelt in should belong to the Crown of which he might be the subject or the friend.

"3. The savages in question are free and independent, and there are none that could be called subjects of one or the other Crown; the enunciation of the Treaty of Utrecht in this respect is incorrect, and cannot change the nature of things. It is certain that no Englishman would dare, without running the risk of being massacred, tell the Iroquois that they are subjects of England; these savage nations govern themselves, and are as much, and more, friends and allies of France than of England; several French families are even affiliated among the Iroquois, and have dwelt with them 20 during the course of the last war, during which the five nations preserved the most exact neutrality.

"4. Article 15 of the Treaty of Utrecht contains the same stipulations, as much in favour of the French as in favour of the English, and these stipulations are mutual; the French could then sustain with a better title than the English pretend about the Iroquois, that the nations, Abénaquises and Souriquoises, otherwise Miamaes, Malécites, Cannibas, etc., are subjects of France, and as there are some Souriquois who inhabit the extremity of the Peninsula of Cote, Cape Fourcher, and Cape Sable, it would follow that the French could pretend to form settlements there, with as much right as the English have formed them at Oswego, or Chouagen on the shores of Lake Ontario, in 1726 or 1727, and consequently long after the peace of Utrecht; France has not ceased since that time to complain of that enterprise and she relies upon the Fort of Chouagen being destroyed. 30

"5. The Treaty of Utrecht has been ill interpreted in pretending that it would authorize the French and English to go and trade indiscriminately amongst all the savage nations, under pretext of subjection, alliance or friendship. This Article, well understood and well expounded, assures only the liberty of commerce which the savages can make among themselves, or with European nations, and does not at all authorize them to leave the confines of their colonies to go and trade with the savages.

"6. Finally, this Article 15 conveys that it shall be settled that the American nations shall be reputed subjects or friends of the two Crowns. This stipulation has not been executed, because, in fact, it is scarcely susceptible of execution, since such a savage nation, which to-day is friendly, to-morrow may become an enemy, and, consequently, the fixation which might have been appointed for it would be continually contradicted by fact.

"All that has just been exposed proves clearly that in discussing concerning the rules of the justice and right of Article 15 of the Treaty of Utrecht, it will be easy to destroy the false interpretations that have been given it; it will not be less easy to demonstrate that the English should not be determined by any motive of interest to put forward the pretensions they have formed; it is not a question in these vast regions of America, to dispute about a little more or a little less land. The essential interest is confined to two objects, that of security and that of commerce; and the Court of France will be always disposed to concert, in these two respects, with that of London, equitable and solid arrangements as well for the present as for the future." 40

On the 7th of June following, the British Government returned a reply to this mémoire, repeating Article by Article, and with reference to the limits of Canada, said:— 50

"It will be difficult to form a precise idea of what is called in the Memorial the centre of Canada, and still less can it be admitted as a base of negotiation that the River St. Lawrence is the centre of that Province; this is advanced without proof, and it is impossible that the course of a river of that length can form the centre of any country. Besides, Great Britain cannot grant that the country between the northern coast of the Bay of Fundy and the southern bank of the River St. Lawrence, which Great Britain has already offered to leave neutral, and not possessed by either of the two nations, in reserve for the borders that are proposed to be drawn for it, ought to be regarded or has ever been considered as a part of Canada, since the contrary has been demonstrated by authentic proofs. Neither can Great Britain admit that France has right to Lakes Ontario and Erie, and the Niagara River, and 10 to the navigation of these waters exclusively, since it is evident, by incontestable facts, that the subjects of Great Britain and France, as well as the Five Nations Iroquois, have indiscriminately made use of the navigation of these lakes and this river, according as occasions and convenience have required; but as regards a piece situated on the south bank of the River St. Lawrence, exclusive of that already proposed to be left neutral, the boundaries of which are in dispute between the two nations or their respective colonies, the Court of Great Britain is ready to enter into a discussion in regard to this, and to fix the limits of it by an amicable negotiation, but without prejudice, nevertheless, to the rights and possessions of any of these five nations.

"With regard to the exposition that is made in the French Memorial, of the 15th Article of the Treaty of Utrecht, the Court of Great Britain does not conceive that it is authorized either by the 20 words or the intention of that Article.

"1. The Court of Great Britain cannot admit that this Article only has regard to the person of the savages, and not their country; the words of that Treaty are clear and precise, viz.: The Five Nations or Cantons Indians are subject to the rule of Great Britain, which, by the accepted exposition of all treaties, must have reference to the country as well as to the person of the inhabitants; France has recognized this most solemnly; she has well weighed the importance of that avowal at the time of the signature of this Treaty, and Great Britain can never depart from it; the countries possessed by these Indians are very well known, and are not at all as indeterminate as is pretended in the Memorial; they possess and transfer them, as other proprietors do everywhere else.

"2. Great Britain has never pretended that the country in which a savage should make a passing residence would belong to the Crown whose subject or friend he might be.

"3. However free and independent the savages in question may be (which is a point which the Court of Great Britain does not at all wish to discuss), they can only be regarded as subjects of Great Britain, and treated as such by France in particular, since she has solemnly engaged herself by the Treaty of Utrecht, renewed and confirmed in the best form by that of Aix-la-Chapelle, to regard them as such; the nature of things is not changed by the Treaty of Utrecht. The same people, the same country, exist still; but the acknowledgment made by France of the subjection of the Iroquois to Great Britain is a perpetual proof of her right in this respect, which can never be disputed with her by France.

"4. It is true that the 20th Article of the Treaty of Utrecht contains the same stipulations in 40 favour of the French as in favour of the English, with regard to such Indian nations as shall be deemed, after the conclusion of this Treaty, by Commissioners, to be subjects of Great Britain or of France; but as to what is mentioned of the five nations or Cantons Iroquois, France has distinctly and specifically declared by the said 15th Article that they are subjects of Great Britain, '*Magne Britannicæ imperio subiectæ*,' and consequently this is a point to be no more disputed about.

"5. In whatever manner one interprets the Treaty of Utrecht with respect to the trade which will be permitted the English and French to carry on indiscriminately with the savage nations, it is nevertheless very certain that such a general trade is by no means forbidden by this Treaty. It is an ordinary and natural right to transact business with one's own subjects, allies or friends; but to come in force into the territories belonging to the subjects or allies of another Crown, to build forts there, to 50 deprive them of their territories and to appropriate them, is not and will not be authorized by any

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pretension, not even by the most uncertain of all, viz., convenience. However, such are the forts of Frederick, Niagara, Presqu'isle, Rivière-aux-Bœufs, and all those that have been built on the Oyo and in the adjacent countries. Whatever pretext France can allege for regarding these countries as dependencies of Canada, it is certainly true that they have belonged to, and (inasmuch as they have not been ceded or transferred to the English) belonging still to the same Indian nations that France has agreed, by the 20th Article of the Treaty of Utrecht, not to molest, '*Millo in posterum impedimento aut molestia officiant.*'

"6. It has already been proved that France has, by the express words of the said Treaty, fully and absolutely recognized the Iroquois as subjects of Great Britain. It would not have been as difficult as is pretended in the Memorial to come to an agreement on the subjects of the other Indians, if, among 10 the many Commissions which have emanated to settle this point, there had been a mutual disposition to come to a conclusion. The acts of these Commissions have sufficiently shown the true reasons which have prevented the execution of the 15th Article of the Treaty of Utrecht, without recourse to an imaginary supposition, as if the Treaty was not capable of being executed; a supposition which is evidently destroyed by the Treaty itself with regard to the Iroquois nations.'

On the 22nd of July, 1755, Monsieur de Mirepoix, the French Ambassador, left England by order of his Court, without taking leave; consequently, on the same day, Mr. de Cosne was instructed by His Britannic Majesty's Government to quit France immediately without taking leave, and to repair to England, which he did on the 25th, and arrived in England, with all his public papers, on the 31st of the same month. 20

Negotiations were accordingly suspended, and on the 17th of May, 1756, war was declared by Great Britain against France; followed, on the 9th of June, by a French ordonnance declaring war against England. 20

No further reports than those above described would appear to have been made to the Government by the English Commissaries between the 1st of April, 1755, and March, 1756.

The following is an account of what passed between the 26th March and 20th September, 1761 :

On the 26th of March, 1761, the Duc de Choiseul, in the name of the King of France, addressed the King of Great Britain, through Mr. Pitt, a letter, communicating proposals as to the basis of negotiations for a separate peace between England and France, in addition to those pending to secure a general European peace. 30

On the 8th of April, the British reply was forwarded to the Duke, containing the views of the Court of St. James as to the proper basis to be established, in which willingness was expressed to receive an Envoy duly authorized to enter into negotiations. The result of this was, that M. de Bussy was appointed French Minister to London, and Mr. Hans Stanley was sent in a similar capacity from Great Britain to Paris; these diplomatists arriving at their respective posts early in June of the same year.

Negotiations were immediately set on foot for the conclusion of peace between France and England; but the chief difficulty in arriving at an amicable understanding consisted in the desire of the French to retain the fisheries at and near Cape Breton.

On the question of Canada, under date of the 17th June, the Duke de Choiseul had demanded 40 that the boundary of Canada in that part of the Ohio which is regulated by the water-line, and so clearly defined by the treaty under discussion, be so established, that there may not be any contestation between the two nations as to the said boundary. 40

On the 26th June, the above proposal of the Duc de Choiseul, as to the fixation of new limits to Canada towards the Ohio, was rejected by Great Britain on the grounds that it was "captious and insidious; thrown out in hopes, if agreed to, to shorten thereby the extent of Canada, and to lengthen the boundaries of Louisiana, and in the view to establish what must not be admitted, namely, that all that was not Canada was Louisiana, whereby all the intermediate nations and countries, the true barrier to each Province, would be given up to France."

The intentions of the Court of St. James were further fully set forth, as to Canada, in the following passage of the same letter:—

"First, then, the King will never depart from the total and entire cession, on the part of France, without new limits or any exception whatever, of all Canada and its dependencies."

On the 29th June Mr. Stanley reported that "the southern bounds of Canada were to be so settled as to give that Province entire and unimpaired to Great Britain such as France, in short, held it in all respects;" and on the 1st July he stated that "it was agreed that Canada, as that Province was determined by their (French) geographers and historians, as well as by the respective civil and military Departments, should be ceded undismembered and entire to Great Britain."

10 In his despatch of the 14th July, 1761, Mr. Stanley forwarded a Mémoire containing proposals from the Duc de Choiseul, Art. 1 of which ran as follows:—

"1. The King cedes and guarantees Canada to the King of England, such as it has been, and in right ought to be possessed by France, without restriction, and without the liberty of returning upon any pretence whatever against this cession or guaranty, and without interrupting the Crown of England in the entire possession of Canada."

It must, however, be remembered that other questions of great importance bearing on European interests were involved in these negotiations for peace; and as difficulties were offered by France to the British proposals, on the 25th July, Mr. Stanley was instructed to present an ultimatum from Great Britain, the first point of which related to Canada, and declared that "His Britannic Majesty would never depart from the total and entire cession on the part of France, without new limits, or any exception whatever, of all Canada and its dependencies."

The reply of France to this ultimatum was transmitted home in Mr. Stanley's despatch of the 4th August which contained the following clause with regard to Canada:

"The King consents to cede Canada to England in the most extensive form, as specified in the memorials of propositions."

Nevertheless, the replies of the French Government to the other demands were not deemed satisfactory, and Mr. Stanley, assuming that the Treaty had failed, stated in his despatch of the 6th August, that he was "convinced that the sole cause of the failure was the determined resistance of the French as to the entire concession of the fishery."

30 M. de Bussy was, as has been stated, at this time French Minister in London, and on the 18th August he furnished to Mr. Pitt a memo. upon the limits of Louisiana, which bore upon the limits of Canada, and ran thus:

"On the limits of Louisiana.

"To fix the limits of Louisiana towards the English Colonies and Canada, a line should be drawn, which will extend from Rio Perdido, between the Bay of Mobile and that of Pensacola, passing by Fort Toulouse in the Alabama, and which, being prolonged by the western point of Lake Erie, will enclose the river of the Miamis, and by the eastern extremity of Lake Huron will go and meet the high lands on the side of Hudson's Bay towards the Lake of Abitibis, from whence the line will be continued from east to west up to and comprising Lake Superior."

40 Instructions, however, accompanied by an ultimatum, were transmitted under date the 27th August, 1761, to Mr. Stanley, in which it was laid down that these limits could not be acceded to, and Mr. Pitt, in alluding to the conduct of France, stated that among the reasons whereby British confidence had been shaken, was "the claiming, as Louisiana, with an effrontery unparalleled, vast regions which the Marquis of Vaudreuil had surrendered to General Amherst, as Canada, and defined himself with his own hand, as comprehended in the government of that Province where he commanded;" and Mr. Pitt gave the following definition of the boundaries of Canada, as set forth by M. de Vaudreuil:

"Canada, according to the line of its limits, traced by the Marquis de Vaudreuil himself, when this Governor-General surrendered, by capitulation, the said Province to the British General, Chevalier

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Amherst, comprises, on one side, Lakes Huron, Michigan and Superior, and the said line, drawn from Lake Rouge, embraces by a tortuous course the River Onabache (Walash) up to its junction with the Ohio, and from there extends the length of this river inclusively, until its confluence into the Mississippi; and on this definition of the limits of Canada, its cession was claimed; a copy of M. de Vaudrenil's map being sent to Mr. Stanley for reference, together with an extract of a letter from General Amherst, dated 4th October, 1760, bearing upon that subject.

Annexed hereto will be found a further copy of that map of M. de Vaudrenil, to which Mr. Pitt referred, which has been made from the original enclosed by General Amherst in his despatch of 4th October, 1760, from which document also the following extracts have been taken:—

"The Government of Canada includes Lakes Huron, Michigan and Superior, as you will see by 10 the enclosed sketch, the red line being marked by the Marquis de Vaudrenil.

"The above State is taken only from the part beginning above the Island of Montreal, with the Cedars and Vaudrenil on the north-west of the River St. Lawrence, and Chateaugay on the south-east, and ends with Berthier on the north-west of the river, the Island of Dupas and Sorel on the south-east."

"The Government of Trois Rivières joins that of Montreal with Maskenongy on the north-west, and Yamaska on the south-east, and ends with Ste. Anne on the north-west, and Ste. Pierre de Bequit on the south-east of the River St. Lawrence."

"The Government of Quebec begins with Grondines on the north-west and de Chaillon on the south-east, and takes in all the parishes from there down the River St. Lawrence." 20

It is further recorded on the 2nd September, the Marquis de Vaudrenil's map was shown to the Duc de Choiseul by Mr. Stanley, and that the bounds of Canada were agreed upon as therein stated. This fact is further substantiated by a passage in Mr. Stanley's despatch of the 4th of that month which runs as follows:

"The Duc de Choiseul complained that the bounds of Canada were laid down very unfavourably to France in the description which your memorial contains, alleging (*sic*) that there had been disputes between the Marquis de Vaudrenil and the Governor of Louisiana with regard to the limits of their two Provinces, wherein the former, being the more able and more active, had greatly enlarged his jurisdiction. He added, however, that though many such objections might be made, it had been the intention of the King his master to make the most full and complete cession of Canada, and that he 30 consented in his name to those limits. I then produced the map you sent me, and it was agreed that this Province should remain to Britain, as it is there delineated."

The last Mémoire of France to England, in these negotiations, is dated 9th September, and was delivered by M. de Bussy to Mr. Pitt on the 14th.

The 1st Article fully confirms the acceptance by France of the de Vaudrenil map, and states as follows:—

"The King has declared in his first Memorial of propositions, and in his ultimatum, that he will cede and guarantee to England the possession of Canada, in the most ample manner. His Majesty still persists in that offer, and without discussing the line of its limits marked on the map presented by Mr. Stanley,—as that line, on which England rests its demands, is without doubt the most exten- 40 sive bound which can be given to the cession,—the King is willing to grant it."

On September 15th, in consequence of the non-acceptance by France of the terms offered by Great Britain, instructions were sent to the British Minister at Paris to demand his passports, and on the 21st a passport was sent to M. de Bussy, the French Envoy in London.

On the 20th, Mr. Stanley received his passport, together with an assurance that the King of France would be found at any time willing to re-open these negotiations, which were in effect resumed the following year; for on the 29th August, 1762, the French King despatched the Duc de Nivernois to London to carry over the peace propositions; and as a result, Preliminary Articles of Peace were signed at Fontainebleau on the 3rd November, 1762.

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From these is given the following extract:—

"His Majesty renounces all the pretensions that he had formerly formed, or could form, for New Scotland or Acadia, in all its parts, and guarantees it quite entire and with all its dependencies to the King of Great Britain. Besides, his very Christian Majesty cedes and guarantees to his said Britannic Majesty, in all its entirety, Canada, with all its dependencies, as well as the Island of Cape Breton and all the other Islands in the Gulf and River St. Lawrence, without restriction, without his being free to come back upon this cession and guarantee, under any pretext, nor to trouble Great Britain in the aforementioned possessions.

Foreign Office, April 27th, 1878.

EDWARD HERTSLET.

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- 10 [Book of Arbitration Documents, reprinted in separate volume.
Mr. Ramsay's Report to the Dominion Government not reprinted in this Appendix.
Mr. Mills' Report to the Ontario Government not reprinted in this Appendix.]

REPORT OF THE PROCEEDINGS BEFORE THE ARBITRATORS
IN THE MATTER OF THE BOUNDARIES OF THE PROVINCE OF ONTARIO,
AT OTTAWA, 1ST, 2ND, 3RD AUGUST, 1878.*

Arbitrators:

The Right Honourable Sir Edward Thornton,
The Honourable Sir Francis Hincks, and
The Honourable the Chief Justice of Ontario.

Counsel for Ontario:

The Hon. Oliver Mowat, A. G., Ont., and Mr. Thomas Hodgins, Q.C.

Counsel for the Dominion:

Mr. Hugh MacMahon, Q.C., and Mr. E. C. Monk.

ARGUMENT OF THE ATTORNEY-GENERAL OF ONTARIO.

The Hon. Oliver Mowat, Attorney-General of Ontario, opened the case for Ontario. He said:—
I have embodied in the printed "Statement of the Case of the Province of Ontario" the substance of the principal grounds on which I think the Province is entitled to the bounds northerly and westerly which we claim. I have also for facility of reference, had printed in a book, of which the arbitrators have copies, the statutes, documents, and other matter which seemed to bear on the subject, whether
30 favourably or unfavourably to our claim. I do not mean to attempt now an exhaustive statement of all that is material, but purpose confining myself to stating some grounds which seem to me to be quite sufficient, and more than sufficient, to sustain our claim, although there are others of perhaps not less importance that might be dwelt upon. I do not mean even to answer at present all the points which have been set forth in the case for the Dominion; some of them I shall refer to, and if any of those not referred to seem to make any impression upon the arbitrators, I shall have an opportunity in my reply to remark upon them.

The sixth section of the British North America Act provides that that part of the Province of Canada "which formerly constituted the Province of Upper Canada, shall constitute the Province of Ontario;" the Province of Canada was by the Union Act of 1840 constituted of the Provinces of Upper and
40 Lower Canada. The line of division between these Provinces had been settled in 1791 by an Order in Council, and extended in manner therein described to the "boundary line" of Hudson's Bay. By the same Order in Council, Upper Canada was to include "all the territory to the westward and southward

* Printed by G. Blissett Robinson, Toronto, 1833. Report of Committee of the House of Commons, Canada, 1830, pp. 262-291, 301-337.

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of the said line to the utmost extent of the country commonly called or known by the name of Canada." All of the Province of Canada which lies west of the line of division belongs to Upper Canada, as all which lies east of the same division line belongs to the Province of Quebec. Ontario has the same limits as Upper Canada had, and the same limits as west of the division line the Province of Canada had, and as the Dominion of Canada had before its purchase of the rights of the Hudson's Bay Company. In 1870 the Dominion acquired these rights, as also the "North-Western Territory," in addition to the territory which the Province of Upper Canada and the Province of Canada had had. The question for the arbitrators is as to the westerly and northerly boundaries of the Province of Ontario, or of the Province of Upper Canada.

It will be convenient before entering upon the argument, to point out upon the produced map by Mr. Devine, the principal points which come in question in the discussion. This map has been prepared to assist the arbitrators in following the arguments addressed to them. It is in the main correct, although I have discovered two or three unimportant inaccuracies. On this map is marked the line of division between Upper and Lower Canada, which line runs northerly into Lake Temiscaming and thence due north to the boundary line or shore of Hudson's Bay. In regard to that line, I suppose there will be no dispute.

The westerly boundary of the Province, according to the present claim of the Dominion, has also been marked upon the map; it is a line drawn due north from the confluence of the Ohio and the Mississippi and in longitude about $89^{\circ} 9\frac{1}{2}'$. The provisional line of 1874 is the next on the map westward, but is not of any importance for our present purpose; it was found necessary, until the right boundary should be decided, that a line should be agreed upon provisionally, to the east of which the Province should make its grants of land, and to the west of which grants by the Dominion might be made. (Book of Documents, p. 347.) The next line westwardly is that running to the most north-western angle of the Lake of the Woods, near the Province of Manitoba; that point is very nearly in the meridian of Turtle Lake, and of Lake Itasca, both of which lakes have been regarded as sources of the Mississippi, and are very nearly in the same longitude.

Ontario claims that it is clear that its western boundary line is no farther east than the meridian of the most north-western angle of the Lake of the Woods, and that the only question on the western side of the Province is as to how much (if any) territory we are entitled to west of that meridian.

With regard to the northern boundary, we claim it to be certain that it is not south of the shore of James' Bay, or of the most north-westerly point of the Lake of the Woods; as to the exact extent of the Province to the north of those points there may be more difficulty. The statute of 1774, usually called the "Quebec Act," added a considerable territory to the Province of Quebec, and purported to give as the northern boundary of that Province, the territory granted to the Hudson's Bay Company; how far that territory extended has never been definitely ascertained. We have examined whatever documentary evidence there is which might throw light on this question, and we have also had a pretty exhaustive examination made of the various maps published before the present century. An analysis of the maps has been printed at p. 135 and on subsequent pages of the Book of Documents; and the produced map by Mr. Devine shows the principal lines. The most northerly is one which, in 1701, the Hudson's Bay Company unsuccessfully claimed for its southern boundary; and the next is the line they had asked for without success in the previous year, 1700. All of the other northerly lines marked on this map are at the westerly side placed to the north of the Lake of the Woods; most of them are several hundred miles to the north of that lake; while on the east they are south of James' Bay and of the point to which the Royal Commissions bring us there. None of these northerly lines has the authority of a treaty or a statute or an agreement. One line is marked on certain maps as "bounds of Hudson's Bay by the Treaty of Utrecht;" but that was a mistake of the geographers; it must be admitted that the bounds were not settled by the Treaty of Utrecht.

The claim of Ontario is precisely the same as had always been made for the Province before the Dominion of Canada purchased the rights of the Hudson's Bay Company. Controversies on the subject took place between the Hudson's Bay Company and the Province of Canada, and afterwards between 50

that Company and the Dominion of Canada. During these Controversies able papers were written wherein the claims of Canada were set forth; and I rely upon the arguments contained in these papers though not now repeating them all.

Opinions of some learned lawyers having been given in favour of the claim of the Hudson's Bay Company, these were controverted in the official papers on behalf of Canada; these opinions were given on inaccurate and partial representations of the facts; new evidence in favour of our claim has been obtained since; but upon the evidence collected before 1856, we have on our side the opinions of other eminent lawyers, and the opinion of the late Chief Justice Draper. The opinion of the Chief Justice was formed and communicated when he was in his prime; he was one of the ablest Judges in 10 Canada, and had given great attention to this subject. He was sent to England by the Canadian Government to watch over the interests of the Province; he had access to private sources of information, some of which we have been able to reproduce now; and the opinion that he formed was arrived at upon a fuller knowledge of the facts than had existed on the part of any court or counsel who had theretofore given attention to the matter, and whose opinions we are in possession of. The opinion was communicated to the Government here, not expressed in controversy with an adversary: and it is very cautiously expressed; it does not go as far as the Province was claiming; he did not think the evidence sufficient to give a line to the Rocky Mountains (as the Province claimed), but expressed the opinion—his "confident hope"—that a decision by the Privy Council would give "to Canada a clear 20 right west to the line of the Mississippi, and some considerable distance north of what the Hudson's Bay Company claim, though not any territory west of the westernmost head of the Mississippi," which is very near the Rocky Mountains. The opinion will be found at page 391 of our Book of Documents.

Sir Edward Thornton.—The law officers of the Crown in England strongly recommended an appeal to the Privy Council, but that was not done. The writer of this extract seems to have expected that there would be a decision of the Privy Council; and I would like to know why the case was not referred.

Chief Justice Harrison.—It was probably delayed by negotiations.

The Attorney-General.—There were constant negotiations going on from that time, and the matter was one which, however clear the right might be thought to be, it was considered desirable to settle by compromise.

30 *Sir Edward Thornton.*—But it was not compromised.

The Attorney-General.—It was compromised twelve years afterwards. My learned friend, Mr Hodgins, reminds me that one thing which prevented the reference was that the Government here thought the question ought to be referred by the British Government—that the Province ought not to have the responsibility of it; at all events the delay was only twelve years from this time—not a great while to be negotiating about a continent of territory.

Mr. MacMahon.—I can answer further in regard to that. The Province of Canada refused to submit anything but the validity of the Charter of the Hudson's Bay Company to the Council; they refused to submit the question of the boundaries.

The Attorney-General.—The adverse opinions were founded upon the Company's *ex parte* statements of the facts, and one of the allegations was that the Hudson's Bay Company had been always in 40 possession of the territory. Now it is a familiar principle with regard to old statutes or charters, that the interpretation of them is governed by the contemporaneous exposition they received, and by the acts of the parties under them. If the fact was, that, from 1670 to the time when these opinions were called for, there had been an actual possession by the Hudson's Bay Company of the whole territory which they claimed, there could be little question of their right to such territory. It would be absurd to suppose that, as a matter of law and legal construction, the Company could be deprived of property which they had for nearly two centuries "claimed and exercised dominion over" under their grants, as absolute and undisputed proprietors of the soil. But we deny that there was any such claim, dominion or possession, by the Company of the territory now in question, for more than a century after 1670; the principal ground upon which the opinions referred to must have proceeded was not in

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accordance with the facts. We have in our book the Company's statement. I refer to page 288:—"Under this grant the Company have always claimed and exercised dominion as absolute proprietors of the soil in the territories understood to be embraced by the terms of the grant, and which are more particularly defined in the accompanying map; and they have also claimed and enjoyed the exclusive right of trading in those territories." The map referred to claims up to the height of land. No lawyer, upon that statement, could come to any other conclusion than did the law officers. In some of the earlier as well as the more recent of the legal opinions, express reference was made to the importance of knowing how much of this territory had been in possession of the Hudson's Bay Company, and it was stated in them that an old charter of this kind, especially an ambiguous one, should not be interpreted without reference to that fact.

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No adverse legal opinion has been given on the facts that are now before the arbitrators. On the other hand, we have the opinion of a very distinguished judge, who was aware of all the material facts in favour of the Company's contention—although not of all the facts in favour of the Province,—and who gave that opinion after having been exclusively occupied several months with the subject. However, the arbitrators are not bound by that opinion. They will give whatever weight they may consider due to it; but they will consider for themselves whether the opinion was right or wrong.

On entering now upon some discussion of the evidence, I submit that, inasmuch as the Province of Ontario is now claiming what had always been claimed before by the Province of Canada, and by the Dominion of Canada likewise, I am entitled to ask the arbitrators to take that claim to be *prima facie* correct and well founded. The Dominion is one of the two parties to this controversy, and we 20 put in evidence the official statements of the representatives of the Dominion repeatedly made; we show what position they took in regard to this question, what assertions they made, and what they claimed, up to the very last moment before becoming purchasers of the Hudson's Bay Company's rights. I do not say this is conclusive, that it estops the Dominion from saying that their contention had been wrong, false or mistaken, but I do say that their demands before buying out the Company throw the burden on the Dominion of showing that in all those antecedent discussions and statements they had been wrong. I start with the strongest presumption in my favour when I show that before they made that purchase, the Dominion of Canada had taken the position which I now take, had made the assertions which I now make, had used many of the arguments which I now use, and had considered that those arguments were incapable of being answered. To take a single example, what did the 30 Dominion Ministers say in their letter to the Colonial Minister on the 16th January, 1869? (Book of Documents, p. 324.) They expressly claimed "that the boundaries of Upper Canada on the north and west" included "all the territory to the westward and southward of the boundary line of Hudson's Bay to the utmost extent of the country commonly called or known by the name of Canada;" and that "Whatever doubt may exist as to the utmost extent of old or French Canada, no impartial investigator of the evidence in the case can doubt that it extended to and included the country between the Lake of the Woods and Red River."

But I shall show that, if I had no presumption in my favour, the conclusions which I desire the arbitrators to arrive at are the conclusions which they cannot but arrive at in view of all the facts

In 1763 France ceded to England "Canada with all its dependencies," reserving only such part of 40 what had been known as Canada as lay west of the Mississippi. The treaty will be found at page 18 of our Book of Documents. The watershed between the Missouri and the Mississippi rivers had been the boundary between Canada and Louisiana when both were owned by France, and by the treaty of 1763 the River Mississippi was agreed to as the future boundary between the English and French possessions in that quarter; the language of the treaty being, "that the confines between [France and England] in that part of the world shall be fixed irrevocably by a line drawn along the middle of the River Mississippi from its source [etc.], to the sea." Very soon after this treaty, viz., on 7th October, 1763, the Province of Quebec was erected by Royal Proclamation, but the Province as then constituted took in very little of what was afterwards Upper Canada and what is now Ontario; the most north- 50 westerly point was Lake Nipissing; the whole of the territory adjacent to the great lakes was excluded. In 1774 the boundaries of Quebec were enlarged by the Quebec Act. That Act recited that "by the

arrangements made by the said Royal Proclamation a very large extent of territory, within which were several colonies and settlements of subjects of France, who claimed to remain therein under the faith of the said treaty, was left without any provision being made for the administration of civil government therein." The Act therefore provided that "all the territories, islands and countries in North America belonging to the Crown of Great Britain, bounded on the south by a line" therein described, from the Bay of Chaleurs to "the River Ohio, and along the bank of the said river, westward, to the banks of the Mississippi, and northward to the southern boundary of the territory granted to the Merchants Adventurers of England trading into Hudson's Bay," etc., "be, and they are hereby, during His Majesty's pleasure, annexed to and made part and parcel of the Province of Quebec as created and established by the said Royal Proclamation of the 7th October, 1763." What territory was embraced in this description? The Dominion contends now that the expression "northward to the southern boundary" of the Hudson's Bay Territory, meant a line drawn from the confluence of the two rivers due north, which would be in longitude about 89° 9½' west; that the old Province of Quebec contained no territory west of that line; and that the Province of Upper Canada or the Province of Canada contained none. The only pretence for this argument is the word "northward" in this statute. Reasons as strong and indisputable as possible in favour of a more westerly boundary are afforded by the other language of the statute; by the surrounding circumstances; and by subsequent transactions.

Look first at the statute itself. It will be found at page 3 of the Book of Documents. The enactment is as follows:—"That all the territories, islands and countries in North America, belonging to the Crown of Great Britain, bounded on the south by a line from the Bay of Chaleurs," etc., "until it strike the River Ohio, and along the bank of the said river, westward, to the banks of the Mississippi, and northward to the southern boundary of the territory granted to the Merchants Adventurers of England trading to Hudson's Bay; and also all such territories, islands and countries, which have, since the 10th day of February, 1763, been made part of the Government of Newfoundland—be, and they are hereby, during His Majesty's pleasure, annexed to, and made part and parcel of the Province of Quebec as created and established by the said Royal Proclamation of the 7th day of October, 1763."

Now, in the first place, the word "northward" does not necessarily mean due north. In descriptions in the ordinary deeds and documents with which we are familiar, the word "northward" is constantly used as meaning any northerly direction—either due north, or towards the north-west or the north-east. Then in another part of the description a corresponding word is used in the sense in which I say this word "northward" should be used, for after the description brings the line to the River Ohio, it goes on thus: "along the river *westward* to the banks of the Mississippi." Here the word "westward" is used, not in the sense of due west, but of a line following the sinuosities of the River Ohio. Further, we have in the same description the expression "directly west." We have thus a word corresponding to "northward"—namely, "westward"—meaning not due west, but in a westerly direction; and we have the words "due west" and "right line" when Parliament meant due west and in a straight line. These considerations remove any presumption that Parliament when saying northward, must necessarily be taken to have meant due north. All the territories, islands and countries in North America belonging to the Crown of Great Britain, which were assigned in 1774 to the Province of Quebec, are bounded on the south by the line described, to the banks of the Mississippi; and what we say is that "northwards" meant the whole territory northward from the south line so described. The south line is given, and the statute describes what territory that south line is intended to include—all the territories belonging to Great Britain northward to the Hudson's Bay Company's territory.

The surrounding facts bearing on the question place the intention beyond doubt. First, observe that the recital declares the object of the Act to be, to give to the Province more extensive boundaries than it had by the Proclamation: "Whereas, by the arrangements made by the said Royal Proclamation, a very large extent of territory, within which were several colonies and settlements of the subjects of France, who claimed to remain therein under the faith of the said treaty, was left without any provision being made for the administration of civil government therein." Where were these colonies and settlements? There is no room for question that if you take the due north line as the westerly boundary, you do not include in the Province many of these French colonies and settlements. A large number of them, containing a large population, are given in Mr. Mills' book; and by looking

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at the produced map by Mr. Devine, the arbitrators will see the number of forts which, with the populations in their neighbourhood, would be excluded. It is thus an historical fact, utterly beyond controversy, that a line due north from the confluence of the Ohio and Mississippi would leave between that line and the Mississippi a large number of colonies and settlements for which it was intended by the statute to provide civil government. Assume that the word "northward" is ambiguous, as certainly it does not necessarily mean due north, we remove all doubt by showing from the statute what the intention was, and by showing that that intention would not be carried out by a due north line.

Further, if I had not the recital in the statute; if I did not know from history that there were colonies and settlements there, which the recital shows that it was intended to include; if all I knew was that we had this ambiguous word, and that the British possessions at the time of the passing of, 10 the Act extended along the banks of the Mississippi to its source, that fact would afford sufficient ground for presuming that the word "northward" was intended to include whatever British possessions there were there.

"In the interpretation of statutes, the interpreter must, in order to understand the subject matter and the scope and object of the enactment, call to his aid all those external and historical facts which are necessary for the purpose." (Maxwell on Statutes, pp. 20, 21.) It is presumed that the circumstances which led to the Act, the Bill introduced, and the proceedings of Parliament thereon, can be looked at for the purpose of the present controversy, as the discussions on the negotiations for a treaty are looked at to remove any doubt to which the language of the treaty might give rise. The proceedings in Parliament are printed at page 299 of the Book of Documents; and the debate on the Bill 20 shows that, as a matter of fact, the intention of the measure was understood on both sides of the House to be that the Mississippi, and no due north line, should be the western boundary. The Bill originated in the Lords, and the Bill, as it came down from that House, was clear as to the Mississippi being the western boundary. The Bill described the Province as "all the territories, etc., heretofore forming a part of the territory of Canada in North America, extending southward to the bank of the River Ohio, westward to the banks of the Mississippi, and northward to the southern boundary of the territory granted to the Hudson's Bay Company. (Page 302.) Under that description the present question would not be arguable. There is no reference there to a due north line from the confluence of the Ohio and the Mississippi; and it will not be argued that any territory there belonging to Great Britain was to be left without any government or without any provision made by the statute for its 30 government.

The description was altered in the Commons. Why was it altered? Was it in order that the banks of the Mississippi should not be the western boundary? By no means; no member objected to that boundary. It appears beyond question from the debate that all parties, those in favour of and those opposed to the Bill, concurred in regarding the western boundary as being properly the Mississippi River to its source (that being, as I have said, the boundary also between the possessions of France and England), and that the only reason for the change was the desire of Mr. Burke—who was at that time agent for the Province of New York—to settle the boundary between the Province of Quebec and the Province of New York. He thought the Province of New York might suffer if the Crown was left to settle its boundaries, and he therefore wanted the statute to settle them; but no proposal was made 40 by him, or by anybody else, that the territory of the Province of Quebec should be less extensive towards the west. We have Mr. Burke's letter, written after the Act had passed, and in which he gives an account to his constituents of the Province of New York of what he had done for them. He points out what was wrong in the Bill as first introduced—namely, the difficulty as between the French Province of Quebec and the English Province of New York—in a region of country far away from the Mississippi; and he tells what he did for the purpose of removing that difficulty. His letter is dated 2nd August, 1774, and is printed at page 384 of the Book of Documents. He told his constituents that he thought they "might be very much affected by" the clause as it stood in the Bill as it passed the Lords; and explained "the conduct which (he) held in consequence of that view of (their) interests." He informed his clients that "the predominant and declared opinion" was, that "any growth of the [English] colonies which might make 50 them grow out of the authority of this kingdom, ought to be accounted rather a morbid fulness than a

sound and proper habit;” that the prevailing habit was to restrain “the colonies from spreading into the back country;” and “that the lines of the plan of the policy just mentioned were very distinguishable in the Bill as it came down to” the House of Commons, and that he had in consequence procured the alterations which had been made in the House of Commons. That “this was not (as it might be between two ancient British colonies) a mere question of geographical distinction, or of economical distribution, where the inhabitants on the one side of the line and the other lived under the same law and enjoyed the same privileges of Englishmen. But this was a boundary discriminating different principles of jurisdiction and legislation; where, in one part, the subject lived under law, and in the other under prerogative.”

10 In the debate the great extent of this territory was objected to by Mr. Townsend, who said that the limits thereby assigned to Canada, and stated in the Bill to have been part of it, were greater than England and France had ever given to Canada. He was answered by Lord North as follows:—

“The first thing objected to by the honourable gentleman is the very great extent of territory given to the Province. Why, he asks, is it so extensive? There are added undoubtedly to it two countries which were not in the original limits of Canada as settled in the Proclamation of 1763—one the Labrador coast, the other the country westward of (to?) the Ohio and Mississippi, and a few scattered posts to the west. Sir, the addition of the Labrador coast has been made in consequence of information received from those best acquainted with Canada and the fishery upon that coast, who deem it absolutely necessary for the preservation of that fishery that the Labrador coast should no longer be 20 considered as part of the Government of Newfoundland, but be annexed to that country. With respect to the other additions, these questions very fairly occur. It is well known that settlers are in the habit of going to the interior parts from time to time. Now, however undesirable, it is open to Parliament to consider whether it is fit there should be no government in the country, or, on the contrary, separate and distinct governments, or whether the scattered posts should be annexed to Canada. The House of Lords have thought proper to annex them to Canada; but when we consider that there must be some government, and that it is the desire of all those who trade from Canada to these countries that there should be some government, my opinion is that, if the gentlemen will weigh the inconvenience of separate governments, they will think the least inconvenient method is to annex those posts, though few in population, great in extent of territory, rather than to leave them without 30 government at all, or make them separate ones. Sir, the annexation likewise is the result of the desire of the Canadians, and of those who trade to those settlements, who think they cannot trade with safety as long as they remain separate.”

Attorney-General Thurlow said—“The honourable gentlemen are mistaken if they suppose that the bounds described embraced in point of fact any English settlement. I know of no English settlement embraced by it. I have heard a great deal of the commencement of English settlements; but as far as I have read they all lie upon the other side of the Ohio. I know at the same time that there have been, for nearly a century past, settlements in different parts of all this tract, especially in the southern parts of it and in the eastern (? western) bounded by the Ohio and Mississippi, but with regard to that part there have been different tracts of French settlements established. As far as they 40 are inhabited by any but Indians, I take those settlements to have been altogether French; so that the objection certainly wants foundation.”

Solicitor-General Wedderburn said—“It is one object of this measure that these persons (the English) should not settle in Canada.”

Mr. Burke said—“In the first place, when I heard that this Bill was to be brought in on the principle that Parliament was to draw a line of circumscription about our colonies and to establish a siege of arbitrary power, by bringing round about Canada the control of other people different in manners, language and laws from those of the inhabitants of this colony, I thought it of the highest importance that we should endeavour to make this boundary as clear as possible. The noble lord showed me the amendment, which by no means relieved 50 my apprehensions. The reason why I feel so anxious is that the line proposed is not a geographical distinction merely; it is not a line between New York and some other English settlement; it is not a

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question whether you shall receive English law and English government upon the side of New York or whether you shall receive a more advantageous government upon the side of Connecticut, or whether you are restrained upon the side of New Jersey. In all these you will find English laws, English customs, English juries, and English assemblies wherever you go. But this is a line which is to separate a man from the rights of an Englishman. First, the clause provides nothing at all for the territorial jurisdiction of the Province. The Crown has the power of carrying the greatest portion of the actually settled portion of the Province of New York into Canada. . . . The Bill turns freedom itself into slavery. These are the reasons that compel me not to acquiesce by any means either in the proposition originally in the Bill, or in the amendment."

Lord Cavendish testifies in so many words that "the difference was whether the tract of country 10 not inhabited should belong to New York or Quebec." The change made was by substituting a long clause drawn by Mr. Burke for the short description of the southern boundary which the Bill had contained. The following words of the Bill from the Lords, "extending southward to the banks of the River Ohio, and westward to the banks of the Mississippi," were cancelled, and for this description the one substituted gave to the Province "all the territories, etc., in North America belonging to the Crown of Great Britain bounded on the south by the line [therein described] to the banks of the Mississippi,"—leaving untouched the remainder of the original description, which was and is as follows:—"and northward to the southern boundary of the territory granted to" the Hudson's Bay Company, which word "northward" clearly had not in the Bill meant a due north liminary line on the west (to its point of contact with the territory of the Hudson's Bay Company), but had meant northward from 20 the whole described boundary line to the whole southerly boundary of the Hudson's Bay Company; and such southern boundary the Bill had constituted the northern boundary of the newly-created Province. It is thus perfectly clear that the western boundary was, as a matter of fact, intended to be the line of the Mississippi to its source; that as to this there was no difference of opinion.

Then let us look at the subsequent transactions. I have referred to the commissions issued by the Crown immediately after the passing of the Act, and which constitute an authoritative contemporaneous exposition of what the statute meant. In the first commission issued to the Governor-General of Canada after the passing of the Act, the boundaries of the new Province were described. The commission was to Sir Guy Carleton, and it described the line word for word as the Act had described it, to the confluence of the Ohio and Mississippi, and northward as in the Act, except that 30 after the word northward the commission had these words, which are not in the Act, "along the eastern bank of the said river" (Mississippi) to (as in the Act) the southern boundary of the territory granted to the Hudson's Bay Company. Thus we have a royal commission issued shortly after the Act, defining the Province as it was the royal will that it should be bounded, and expressly declaring that the line should be along the eastern bank of the Mississippi; such commission having been prepared and issued on the advice of the very Ministers who were responsible for the statute and personally knew what it meant. The fact would possess great force, no matter who the Ministers were or who were their law advisers, and at this date must be held by any tribunal to free the question from the possibility of a doubt, on two grounds. First, because the commission is, as I have said, a conclusive contemporaneous exposition of what the statute meant; and, secondly, because the Crown had a right to add to the 40 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.

Chief Justice Harrison—And providing the Crown had not given the territory to the Hudson's Bay Company already.

The Attorney-General—No; 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. The present is not a question of property, but of government.

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Chief Justice Harrison—That of course brings up the old question as to what right the Hudson's Bay Company did acquire.

The Attorney-General—I mean that the Hudson's Bay Company might have the fee, just as a private individual might have the fee in any portion of the territory of the Province; the Crown would not be interfering with their property by placing it under a certain government. That is all I am concerned about now. What I want to know is, how far our Province extends, and what territories are included under the government of the Province; the ownership of the soil may be a distinct question.

It is of some importance to know that the Law Officers of 1774 were men of great eminence. Lord Camden was the Lord Chancellor; Mr. Thurlow was the Attorney-General, and he afterwards became Lord Chancellor; the Solicitor-General was Mr. Wedderburn, and he also afterwards became Lord Chancellor. The Ministry had the highest legal assistance, and their acts upon which I rely are of the highest value. They more certainly shew the intention than a mere exposition by a court, however able, whose members know nothing personally as to why an Act had been passed or what was meant by it; and a contemporaneous exposition by such a court would not be meddled with fifty years afterwards, not to speak of a hundred years afterwards.

The second commission to a Governor-General, after the passing of the Act, was to Sir Frederick Haldimand, and it defined the Province in the same way as the commission to Sir Guy Carleton had done.

I have said that 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 this 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.

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 the 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.

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 inquiry, 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

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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. They allege the example of Carolina: first one Province; then divided into two separate governments, and which afterwards had a third, that of Georgia, taken from the southern division of it. They urged, besides, the example of the neutral and conquered islands. These, after the Peace of Paris, were placed under one government. Since then they were totally separated, and had distinct governments and assemblies. Although I had the greatest reason to question the soundness of some of these principles, at least in the extent in which they were laid down, and whether the precedents alleged did fully justify them in that latitude, I certainly had no cause to doubt but that matter would always be determined upon these maxims at the Board by which they were adopted." 10

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 to 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.

By the Treaty of 1783 (printed at page 19 of the Book of Documents) it was agreed between His Majesty and the United States of America that the boundary of the United States should be a line therein particularly described, from the north-west angle of Nova Scotia, through Lakes Ontario, Erie 20 Huron, Superior, Long Lake, etc., to the Lake of the Woods, "thence through the said Lake (of the Woods) to the most north-western point thereof, and from thence on a due west course to the River Mississippi," etc. The effect of this was to transfer a further portion of what was formerly Canada from Great Britain to the United States. It is in this Treaty that we have the first description referring to the Lake of the Woods. It is material to observe the language of the Commissions to the Governors-General after this Treaty. The commission to Sir Guy Carleton three years afterwards, in giving the boundaries of the Province, followed the description of the Treaty, and assigned as the southerly boundary of the Province a line "to the said Lake of the Woods, thence through the said lake to the most north-western point thereof, and from thence on a due west course to the River Mississippi, and northward to the southern boundary of the territory granted to the" Hudson's Bay 30 Company. This was the first commission issued after the Treaty, and will be found at page 49 of the Book of Documents. It is to be observed that a due west line produced from the most north-western point of the Lake of the Woods would not strike what is now known as the Mississippi; and as we find that to be so, what is to be done? Various views have been suggested. One is that the line should go on until it reaches the first tributary of the Mississippi.

Chief-Justice Harrison.—What was the Mississippi as then understood? That is the first inquiry.

The Attorney-General.—I have had that marked on the map. Mr. Dawson, the member for Algoma, has furnished me with an elaborate paper shewing what the Mississippi was as then understood. (Ont. Documents, 273-8.) On this part of the case, I rely on the arguments of Mr. Dawson, and of Mr. Mills in his book at page 67, without repeating them. 40

Chief-Justice Harrison.—They both treat it with great ability.

The Attorney-General.—The matter is also discussed very ably in a paper by the Hon. Mr. Cauchon, Commissioner of Crown Lands, which has been printed at page 243 of the Book of Documents. If the Arbitrators fail to be satisfied with the reasoning of all these gentlemen, where is the line to go from that point? What alternative is there? When the difficulty on this point occurred between England and the United States, they agreed that the line should be drawn due north or south, as the case might be, to the line 49°. This was by the Treaty of 1818, which will be found on page 21 of the Book of Documents. I shall advert to this point again.

I have referred to the Constitutional Act of 1791, and have read the recital in that Act, to the effect that His Majesty had been pleased to signify his intention to divide the Province of Quebec. A 50

paper was presented to Parliament before the passing of the Act, which described the line proposed to be drawn to divide the Province. (Docts. p. 411.) It traced the line of division into Lake Temiscaaming, and thence "by a line drawn due north until it strikes the boundary line of Hudson's Bay, including all the territory to the westward and southward of the said line, to the utmost extent of the country commonly called or known by the name of Canada." That was the description of Upper Canada as given in this paper, laid before Parliament when providing for the government of each of the two sections, and afterwards adopted by an Order in Council passed for the purpose of giving effect to the Act. In August, 1791, the Order in Council was passed, and it recited among other things that this paper had been presented to Parliament previous to the passing of the Act. It was therefore with the knowledge and concurrence of Parliament that the Crown adopted the line of division which I have spoken of, and gave to Upper Canada all of old Canada which was to the westward and southward of the line or lines mentioned in the Order. On 18th November of the same year, General Alured Clarke, Lieutenant-Governor and Commander-in-Chief of the Province of Quebec, issued a Proclamation in His Majesty's name; in pursuance of his instructions, declaring when the division should take effect, the Act having provided that the division should take effect, upon a Royal Proclamation being issued, setting forth a day for that purpose. December 26th, 1791, was the date named in the Proclamation. The description of the Province is given in the recital:

"Whereas we have thought fit, by and with the advice of our Privy Council, by our Order in Council dated in the month of August last, to order that our Province of Quebec should be divided into two distinct Provinces, to be called the Province of Upper Canada and the Province of Lower Canada, by separating the said two Provinces according to the following line of division, viz.:—To commence at a stone boundary on the north bank of the Lake St. Francis, at the Cove west of Pointe au Bodet, in the limit between the Township of Lancaster and the Seigneurie of New Longueuil, running along the said limit in the direction of north thirty-four degrees west to the westernmost angle of the said Seigneurie of New Longueuil; thence along the north-western boundary of the Seigneurie of Vandreuil, running north twenty-five degrees east till it strikes the Ottawas River, to ascend the said river into the Lake Temiscaaming, and from the head of the said lake by a line drawn due north until it strikes the boundary line of Hudson's Bay, including all the territory to the westward and southward of the said line to the utmost extent of the country commonly called or known by the name of Canada."

What "territory westward and southward" of the described lines was "commonly called or known by the name of Canada?" I have collected in the Book of Documents a vast amount of evidence on that point, which I will not trouble the Arbitrators with at present. There is no doubt that Canada included the whole of the territory now claimed by Ontario. If I find that my friends dispute that the name had this extensive signification, I shall give references to all sorts of documents which shew that Canada was as extensive as I state it to have been.

Sir Edward Thoroton—Are you able to shew any acts of jurisdiction exercised by Canada in the disputed territory?

The Attorney-General—Yes, I shall come to that point directly, and shall shew continued and repeated acts of jurisdiction by the Province in the territory west of the line that the Dominion now contends for.

Before the Proclamation of General Clarke, the commission to Lord Dorchester, who was to be Governor-General, had been issued. It bears date 12th September, 1791, and recited the commission of April 22nd, 1786, to the same Governor-General (as Sir Guy Carleton), and the Order in Council of August, 1791, dividing "the said Province of Quebec" into two separate Provinces, by a line therein specified: "the Province of Upper Canada to comprehend all such lands, territories and islands lying to the westward of the said line of division as were part of our said Province of Quebec." This form of expression shews that Quebec was supposed and intended to include all the territory belonging to England, and formerly known as Canada, for it is impossible to suppose that there was an intention so soon to give to the Province narrower bounds than were indicated by the paper presented to Parliament, adopted afterwards by the King in Council, and then were defined by the Proclamation of Governor Clarke. Some change was required by strict accuracy of expression. By the Treaty of 1763, France

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had ceded to England "Canada and all its dependencies," but with a limitation: the watershed of the Mississippi and Missonri had been the boundary line between Canada and Louisiana, and by the treaty the part of Canada which was west of the Mississippi had been reserved to France; by the Treaty of 1783, a further part of Canada had been ceded by England to the United States. A description, therefore in 1791 of the Province of Quebec, or of Upper Canada, which would purport to give to the Province all "the country commonly called or known by the name of Canada" would not have been correct; and a form of expression was substituted which was free from this objection. There is not the slightest reason for thinking that there was any intention by the subsequent commissions—in referring to the old Province of Quebec—to limit the territory which was provided for by the paper to which I have referred, by the Order in Council and by the commission first issued. Quebec was evidently under-¹⁰ stood on all hands as embracing so much of Canada as still belonged to Great Britain.

The subsequent commissions to the Governors-General of Canada, up to and including that of Lord Gosford in 1835, and the Imperial commission to Mr. Caldwell as Receiver-General of Lower Canada, assigned the same line of division between Upper and Lower Canada. I point this out in order to shew that it was not an accident or a mistake which led to the line between Upper and Lower Canada being described as it was; it was evidently the deliberate purpose of the Crown to give that description. The commissions commence with the one issued in 1791 to give that line—the very first commission issued after the Act—and every commission from that time to 1838 assigned the same boundaries. In seven commissions, from that issued to the Earl of Durham, March 30th, 1838, to that to Lord Elgin, October 1st, 1846, and also in the two commissions to Sir John Colborne and the Right Hon. Charles Poulett Thomson, as Captains-General and Governors-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 the said lake (Temisaming) until it strike 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." The two expressions "boundary line of Hudson's Bay" and "shore of Hudson's Bay" evidently meant the same thing.

After Lord Elgin's, the commissions to the Governors-General did not contain any boundary-line descriptions. The other commissions to the Lieutenant-Governors of Upper Canada which have been examined, either do not give the boundaries of Upper Canada or give them partially only, and in such ³⁰ a manner as throws no light on the present question. So also the commissions after the union do not give the western boundary of the Province of Canada. The commissions to Sir John Colborne and Governor Thomson trace the western boundary into Lake Superior, and no farther, saying nothing of the line thence either westerly or northerly.

I was asked just now by Sir Edward Thornton whether acts of jurisdiction were ever exercised within the limits now claimed by the Dominion; and I propose now to answer this question. The first fact I may mention is, that Upper Canada has been in the habit of issuing writs into the territory west of the line $89^{\circ} 9\frac{1}{2}'$, since, at all events, 1818. We have been able to trace the practice back to that date. In 1850 the Province of Canada, with the sanction of the Imperial authorities, entered into a treaty with the Indians, and procured the surrender of the rights of the Indians in the territory as far ⁴⁰ west as Pigeon River or the international boundary. This territory, it may be observed, is south of the height of land, and includes the territory between the line $89^{\circ} 9\frac{1}{2}'$ and the international boundary; this being territory which the Hudson's Bay Company never claimed, although the Dominion claims it now. The treaty is set forth in pages 22 to 24, Book of Documents. Mr. Robinson, who negotiated the treaty, seems, from the terms of it, to have been of the opinion that the height of land was our northern boundary, but of course his opinion does not bind us. Another way in which jurisdiction has been exercised in this:—From the year 1853 the Province of Canada, continuously and without objection from any quarter, made grants of land in the Queen's name in this territory, west of the proposed line of the Dominion, and up to Pigeon River. Between 1853 and Confederation, no less a quantity than ⁵⁰ 35,059 acres had thus been granted west of that line. Numerous mining licenses in the same territory were granted in like manner, commencing with the year 1854, the territory embraced in them extend-

ing to Pigeon River. The dates and other particulars... all these grants are given in the Book of Documents, pp. 322, 409. In 1868 the Government of the Dominion appropriated \$20,000 towards the construction of a road from the Lake of the Woods to Fort Garry, on Red River; the money was expended accordingly.

Sir Edward Thornton—I think that was the money expended in time of great distress, and which led the Hudson's Bay company to complain of intrusion on their territories.

The Attorney-General—And, on behalf of the Dominion, its Ministers, Sir George E. Cartier and the Hon. William McDougall, ably replied to the complaint, and showed that there was no ground for it. The correspondence will be found at page 323 of the Book of Documents.

10 So far as relates to Ontario's western boundary, it is unnecessary to consider the argument as to the Hudson's Bay Company owning this territory; because the extension of the southerly boundary to the west is not made to depend on the Company's having or not having the territory to which the western extension of the southerly boundary would bring us, and 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. But the fact that this western territory had been discovered, explored, traded with, occupied and taken possession of by the French before the treaty of cession—which seems now to be admitted on all hands—shows that the Company had no right to this territory, and adds strength to Ontario's claim, even in respect to the western boundary.

The only things that I know of against all this mass of evidence are the decisions of a Lower Canadian Court in 1818, in the cases of De Reinhard and McLellan, which have been cited in favour of the line drawn due north from the confluence of the Ohio and the Mississippi, and stated in the evidence in those cases to be $88^{\circ} 50'$ or $88^{\circ} 58'$. In each of those cases the question was whether the locality in which the murder was committed was in Upper Canada or not. The Court was acting under a special statute and commission, which confined its authority to offences committed outside of Upper Canada; the prisoners wished to make out that the scene of the alleged murder was in Upper Canada, and that the court had therefore no jurisdiction. The court naturally leaned against what seemed a technical objection. The investigations and discussions of the last twenty-five years have thrown an immense amount of fresh light on the question; a good deal of the evidence on which I ask the Arbitrators to come to a different conclusion was not before the court; the court seemed also impressed with the erroneous idea that the word "northward," in the Act of 1774, necessarily meant due north, and the argument for another construction from other words in the statute was not presented by counsel, whose contention rather conceded that the Act of 1774 was against them, and they endeavoured to show that the Act of 1791 extended the boundaries; the court had before it the Proclamation of General Alured Clarke, but not the paper which had been submitted to Parliament in 1791, nor the series of commissions which had been issued, and which showed conclusively the intention of the Act and of the Crown; nor had the court its attention called, either to the historical facts referred to in the recital of the Quebec Act, or, to the evidence of intention afforded by the debate on the Act and by Mr. Burke's letter. The court had nothing like the same materials for coming to a correct conclusion as the Arbitrators have; and, having reference to the materials before the Arbitrators, I submit it is quite clear that the conclusion of 40 the court on the point now in question was wrong.

Chief Justice Harrison—Still, it was an important decision.

Sir Edward Thornton—It was a unanimous decision.

Mr. MacMahon.—The then Chief Justice said that he had consulted his brother judges, and they were unanimously of opinion that that was the conclusion which ought to be reached.

Chief Justice Harrison.—De Reinhard, although convicted, was never executed.

The Attorney-General.—No, he was not executed. I have endeavoured to get the despatch which directed that he should be released, but it cannot be found. There is no doubt that the man was not hanged, and no reason has been suggested for this except that the British Government, acting under the advice of the Crown lawyers in England, thought that the ruling of the court on the point in question here was not correct. (Docts., p. 126.) McLellan was acquitted.

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In view of the whole evidence now before the Arbitrators it is apparent that if there is any difficulty on the westerly side of the Province, it is only as respects the territory west of Lake of the Woods. Is our western line further west than this lake? Does it extend to the first tributary of the Mississippi which a line due west from the most north-western point of the Lake of the Woods strikes? Or does our western limit extend to the Rocky Mountains?

I submit that the proper legal way of viewing the matter is, that inasmuch as the Royal Commissions declare that the line is to go due west to the Mississippi, some meaning must be given to that direction, and these words should be construed as referring to either the then supposed locality of the Mississippi, or the first stream the waters of which flow into the Mississippi, no matter by what name the stream may be called. There are various streams which fall into the Mississippi that a due west line would meet; these first fall into the Missouri and then into the Mississippi. We must find some meaning for the words employed; and as what is now called the Mississippi would not be touched by this due west line, we must find another meaning as near to the language used as possible.

I come now to consider the northern boundary, which I have only referred to incidentally. I have stated that the Quebec Act, and such of the Royal Commissions to the Governors previous to 1791 as mention the northern boundary, specify for that purpose the southerly boundary of the territory granted to the Hudson's Bay Company; and the principal difficulty here is, that the southerly boundary of this territory was never definitely ascertained.

The claim of the Dominion is that the northern boundary of the Province is the height of land already described. I submit that it is clear that the height of land is not our northern boundary, and on the contrary, is considerably south of our northern boundary. The first fact showing this is, that the easterly and westerly lines assigned to the Province by the Royal Commissions, cut through, and go north of, the height of land. This alone is conclusive on the point. The shore of Hudson's Bay to which our boundary goes on the east is far north of the height of land, and the Lake of the Woods, through which our boundary passes on to the west, is also north of the height of land to which the claim of the Dominion would limit us. It may be said also that the commission which was issued in 1791, and such of the subsequent commissions as mentioned the northerly boundary, declared in effect that the southerly boundary of the Company's territory was not south of those two points, namely the south shore of James' Bay (called there Hudson's Bay) and the most north-western point of the Lake of the Woods.

The next point to which I ask the attention of the Arbitrators is, that so southerly a boundary as this height of land was not claimed or suggested by the Company as being within the intention of the charter, or as being the measure of the Company's just rights, until nearly a century and a half after the date of charter. The Company's papers and books have been thoroughly examined, and I do not think my learned friends will be able to show that for a century and a half after the date of the charter the Company claimed the height of land as their boundary. The English Commissioners, in their negotiations with France, made in one instance a proposal something like that, but made it of their own motion, without any authority from the English Government, and without any suggestion from the Company. That proposal will be found printed in the Book of Documents, at page 365, the last paragraph on that page. The language used is this: "The said Commissaries further demand that the subjects of His most Christian Majesty shall not build forts or found settlements upon any of the rivers which empty into Hudson's Bay, under any pretext whatsoever; and that the stream and the entire navigation of the said rivers shall be left free to the Company of English merchants trading into Hudson's Bay, and to such Indians as shall wish to traffic with them." But even that proposal did not claim as the boundary the height of land; it claimed only that the rivers should be free, and that no forts should be built or settlements made upon them, because such would interfere with the freedom of the streams. The proposition had reference only to the rivers, not to the lands. There is no evidence that the land was in the minds of the Commissioners.

The point, however, which I am making is, that the Company themselves did not for one hundred and fifty years make that claim. They made their claim in different forms at different times. Upon the occasion of the Treaty of Ryswick, in 1697, and Utrecht, in 1713, the Company's claim was ex-

pressed either in the terms of the charter, or was simply to "the whole Bay and Straits of Hudson," and "to the sole trade thereof." It sufficiently appears from the early documents which emanated from the Company, that this general claim to the whole bay and straits was a claim to the waters and shores only, and to the exclusion of the French therefrom,—the French having been in possession of forts on the bay until after the Treaty of Utrecht, and the Treaty of Ryswick having in effect given them possession of all places on the bay except it may be, Fort Bourbon. The Company's object was the trade of the bay, and not the occupation or settlement of the country away from the shores of the bay. The line which the Company itself proposed in 1700 was from the River Albany, on the one side, to Rupert River, on the other side of the bay; but the French rejected the proposal. In 1701 the Company proposed a still more northerly line, namely, from the River Albany on the one side to East Main River on the other; but the French rejected that one also. In 1711-12, the Company proposed a line to run from the Island of Grinnington, or Cape Perdrix, on the Labrador coast, south-westerly to and through Lake Mistassin. This line did not extend beyond the south-west shore of the lake; and though the Company made a demand for the surrender of the forts on the shores of the bay, yet they do not appear to have made at that time any proposal as to a line on the west or south side of the bay, and their only claims and contests of this period were about the margin of the bay. In one instance or more they absurdly claimed the whole eastern coast to the Atlantic and the whole western coast to the Pacific; but the specific claim that they were entitled to the height of land, and to the territory along the various rivers which directly or indirectly flow into Hudson's Bay, was not made for one hundred and fifty years after the charter had been obtained.

The ground on which the Company's (and now the Dominion's) claim to the height of land is maintained is, an alleged rule that the discovery and possession of the shore of a new country give a right to the rivers and to the land adjoining. I do not admit that so-called rule. It is stated more strongly than the authorities warrant. My learned friends have in their case referred to Dr. Twiss's book on the Oregon Territory. That book was written by Dr. Twiss as a controversialist. It was published during the discussions on the question of the Oregon Territory, and published to help the English cause. But the view which was taken by Great Britain as to the alleged rule, appears from an extract which my learned friends have printed at page 6* of the Dominion case: "Sir Travers Twiss, in his discussion on the Oregon question, at page 300, states that Great Britain never considered her right of occupancy up to the Rocky Mountains to rest upon the fact of her having established factories on the shores of the Bay of Hudson—that is to say, upon her title by mere settlement, but upon her title by discovery, confirmed by settlements, in which the French nation, her only civilized neighbour, acquiesced, and which they subsequently recognized by treaty." So that it is only to the extent of the actual recognition of the English settlement by the French, subsequently made, that Dr. Twiss was of opinion that the rule had proceeded. At page 148 of the same book the author quotes Mr. Rush as asserting on behalf of the United States, "that a nation discovering a country, by entering the mouth of its principal river at the sea coast, must necessarily be allowed to claim and hold as great an extent of the interior country as was described by the course of such principal river, and its tributary streams." But Dr. Twiss remarks that "Great Britain formally entered her dissent to such a claim, deaving that such a principle of usage had been ever recognized amongst the nations of Europe;" and that "in the subsequent discussions of 1826-7 Great Britain considered it equally due to herself and to other powers to renew her protest against the doctrine of the United States."

Suppose, however, the modern rule to be as the Dominion contends; we are now interpreting an old charter, and we cannot interpret it by a new rule. The object is to find out what the intention at the time was; and we are not for that purpose to make use of modern rules not known and acted on at the time the charter was granted. I do not find any ground whatever in holding that the rule which my learned friends contend for was a recognized rule at that time, if there is any reason for maintaining its subsequent adoption and recognition.

Again, all international rules are founded on reason and necessity; it is because they are supposed to be just that the rules are recognized. If in some cases it may be just and reasonable that the possession of the coast should give a title to all the land watered by the rivers, back to the height of land,

* The Case of the Dominion will be found at p. 4 of this Appendix.

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this cannot apply to a river 3,000 miles long. So far from being a matter of necessity or reason, it is absurd that the possession of a few miles of coast on Hudson's Bay should give the right to a river 3,000 miles long, and to half a continent of territory which that river happens to water. General rules respecting the rights of nations must be applied in a moderate and reasonable way, and not to cases to which the application cannot be defended on grounds of reason and justice. If such a rule exists as my learned friends contend for, there is no reasonable justice or good sense in applying it to a case of this kind.

Further, possession as well as discovery is needed in order to give to a nation the rights for which my learned friends contend. The facts are, that the French, from the beginning of the seventeenth century, were in possession of the territory to the south of the lands watered by the rivers flowing into Hudson's Bay, and were from time to time extending their explorations and settlements, as they had a right to do, to the head waters of the rivers flowing into Hudson's Bay, and to the interior of the country. They had various forts and settlements in the interior, and these settlements were not objected to by the English, nor could they have been. Supposing the rule to have been what the Dominion contends that it was, the fact of the French being in possession of the territory to the south of the rivers, and extending their territory from time to time, would bar the discoverers of the bay—if the Company were the discoverers—from saying that, by reason of the discovery, they could stop all further exploration in that direction. The rule, so far as it exists, is of effect only where the interior of the country can be reached only through the coast discovered and settled.

The case of the Dominion is based on the assertion that the English were the first discoverers of the bay, but it is impossible to say with certainty who were the first discoverers; nor was the alleged discovery by the English followed by possession. The voyage of Cabot, "grand pilot to Henry VII." (of England), into the bay, is said to have taken place in 1517; but no sort of possession of any part of the bay by the English before 1667 is pretended; being an interval of 150 years. It would be extraordinary to find a rule by which, after discovery being made and 150 years or more allowed to go by, the advantage of that discovery can then be claimed as giving title to half a continent. Gilham, a British subject, is said to have built, in 1667, Fort Charles (Rupert), which was on the east side of the bay; but in the meantime the bay had become known to the world. In the list of maps at p. 135 of the Book of Documents will be found a number of maps of dates antecedent to the charter, and showing the bay; the country was well known to everybody when Gilham built his fort.

It is not material under the circumstances, but it is reasonably clear as a fact, that the bay was repeatedly visited by Frenchmen from the French settlements on the St. Lawrence between 1656 and 1663. I refer the Arbitrators to page 108 of the Book of Documents, the memoir of Sieur de Callières to the Marquis de Seignelay, the Foreign Minister of France. My learned friends dispute the truth of the statement in the memoir of Sieur de Callières, that Father Dablon and Sieur Couture visited Hudson's Bay in 1661 and 1663. M. de Callières is spoken of as a man of high character, and this memoir was not written for the purpose of controversy, but was a confidential communication to the Minister in France, who was the official superior of the writer. M. de Callières was Governor of Montreal and afterwards of Canada. I apprehend it will be assumed at this late day that his statements were correct. He says:—

"As regards Hudson's Bay, the French settled there in 1656, by virtue of an *arrêt* of the Sovereign Council of Quebec, authorizing Sieur Bourdon, its Attorney-General, to make the discovery thereof, who went to the north of said Bay, and took possession thereof in His Majesty's name. In 1661, Father Dablon, a Jesuit, was ordered by Sieur d'Argenson, at the time Governor of Canada, to proceed to said country. He went thither accordingly, and the Indians, who then came from thence to Quebec, declared they had never seen any European there. In 1663, Sieur d'Avangour, Governor of Canada, sent Sieur Couture, Seneschal of the Côte de Beauport, to the north of the said Hudson's Bay, in company with a number of Indians of that country, with whom he went to take possession thereof, and he set up the King's Arms there. In the same year, 1663, Sieur Duquet, King's Attorney to the *Prevôte* of Quebec, and Jean l'Anglois, a Canadian colonist, went thither again by order of the said 50

Sieur d'Argenson, and renewed the act of taking possession by setting up His Majesty's Arms there a second time. This is proved by the *arrêt* of the said Sovereign Council of Quebec, and by the orders in writing of said Sieurs d'Argenson and d'Avaujour." There is a detailed account, of which the Governor of the Province is sending a confidential communication.

I refer also to the statements of M. de Denonville, Governor-General of Canada, to the Foreign Minister. They will be found at page 111 of the Book of Documents. M. de Denonville says:—"On the 29th of April, 1627, a new (company) was organized, to which the King (Louis XIII.) conceded the entire country of New France, called Canada, in latitude from Florida, which His Majesty's royal predecessors had had settled, keeping along the sea coasts as far as the Arctic Circle, and in longitude from the 10 Island of Newfoundland westward to the great lake called the Fresh Sea, and beyond, both along the coasts and into the interior. Since that time, the French have continued their commerce within the countries of the said grant. In 1656, Jean Bourdon ran along the entire coast of Labrador with a vessel of thirty tons, entered and took possession of the North Bay. This is proved by an extract of the ancient register of the Council of New France on the 26th of August of the said year. In 1661, the Indians of said North Bay came expressly to Quebec to confirm the good understanding that existed with the French, and to ask for a missionary. Father Dablon went overland thither with Sieur de la Vallière and others. Father Dablon has given his certificate of the fact. In 1663 those Indians returned to Quebec to demand other Frenchmen. Sieur d'Avaujour, then Governor, sent Sieur Couture thither with five others. Said Sieur Couture took possession anew of the head (fonds) of said Bay, 20 whether he went overland, and there set up the King's Arms engraved on copper. This is proved by Sieur d'Avaujour's order of May 20th, 1663, and the certificates of those who were sent there." These also are statements made confidentially by a man of high character, who ought to know, to his official superior in France.

I find the following on this subject at page 3 of the Dominion Case:—"It appears that in the year 1656 there was an order of the Sovereign Council of Quebec authorizing Sieur Bourdon, its Attorney-General, to make a discovery thereof. There is no record whatever of his having attempted to make the discovery in the same year in which the order was passed by the Council. There is a record, however, of his having made the attempt in the year following (1657), and he may then have designed carrying out the order. He sailed on the 2nd day of May and returned on the 11th August, 1657; and 30 it is not pretended that he could have made a voyage to Hudson's Bay and return between these dates. Journal des Jésuites, pp. 209-218." Of course he could not; but then a man may make voyages in different years. It is not to be assumed that he did not make a voyage the year before, because he made a partial voyage in this year, since we have positive testimony that he had also made that previous voyage. If these Governors were making false statements to their superiors in France, they would have referred to 1657; but they referred to 1656, showing that the reference was to a different transaction altogether. It is true there is no entry in the Jesuits' book of this voyage of 1656, but that book is silent in regard to many things which no doubt did occur; and the mere fact of its not mentioning a voyage is no sort of evidence that the voyage did not take place. The printed case for the Dominion comments also on what is said in reference to Father Dablon. It does not appear whether 40 there were two priests of that name or only one. At all events, the mere fact that the journeys which we prove to have been made by a priest of that name were not recorded by the Jesuits is no evidence against the direct authority that we have for the fact. On the whole, there seems to be no reason which would justify us in now doubting that persons acting under the authority of the French Government had repeatedly visited Hudson's Bay in and before 1663; had taken possession in the French King's name, and set up the Royal Arms there.

And, however that may be, the French had certainly before that date established posts at convenient points for trade with the Indians, and had secured the whole trade with the Indians around the Bay. In 1627, long before the date of the Hudson Bay Charter, the King of France gave to the Company of New France the right of trade to an extensive territory—including Hudson's Bay—both along 50 the coasts and into the interior; those words being inserted in the Charter. The French were enjoying the whole trade with the Indians around the Bay at the time the Charter to the Hudson's Bay Company was given. It is said in the books that for the purpose of giving property in a country, the

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possession needed is a possession having relation to the nature of the country. This was not an agricultural country; settlement for the purpose of agriculture was not expected; all that either party wanted was the trade with the Indians; the French had secured that, and had been in the enjoyment of it long before the Hudson's Bay Company obtained their Charter, and this was sufficient to prevent their rights from being interfered with by the subsequent possession of the coast by the English, after they had allowed one hundred and fifty years to pass without acting on the discovery which they are said to have made.

In the Dominion case, stress is laid on the fact that, by the Treaty of Utrecht (1713), the whole Bay and Straits were ceded or restored to England by France. But it was never intended by either party that so extensive a claim as is now made should be made under any language employed in that Treaty. In the memorial concerted with the Marquis de Torey, January 19th, 1713, and forwarded to Lord Bolingbroke by the Duke of Shrewsbury (Book of Documents, page 153), it is stated:—"The inhabitants of Hudson's Bay, subjects of the Queen of Great Britain, who have been dispossessed of their lands by France in time of peace, shall be entirely and immediately after the ratification of the Treaty, restored to the possession of their said lands; and such proprietors shall also have a just and reasonable satisfaction for the losses they have suffered, with respect to their goods, movables and effects; which losses shall be settled by the judgment of commissaries, to be named for this purpose, and sworn to do justice to the parties interested." And Mr. Prior writes to Lord Bolingbroke on January 8th of the same year (Book of Documents, p. 153):—"As to the limits of Hudson's Bay, and what the ministry here seems to apprehend, at least in virtue of the general expression, *tout ce que l'Angleterre a jamais possédé de ce côté là* (which they assert to be wholly new, and which I think is really so, since our plenipotentiaries make no mention of it), may give us occasion to encroach at any time upon their dominions in Canada, I have answered, that since, according to the *carte* which came from our plenipotentiaries, marked with the extent of what was thought our dominion, and returned by the French with what they judged the extent of theirs, there was no very great difference, and that the parties who determine that difference must be guided by the same *carte*, I thought the article would admit no dispute. In case it be either determined immediately by the plenipotentiaries or referred to commissioners, I take leave to add to your Lordship that these limitations are not otherwise advantageous or prejudicial to Great Britain than as we are better or worse with the native Indians, and that the whole is a matter rather of industry than dominion. If there be any real difference between *restitution* and *cession, queritur!*"

It is plain, therefore, that the Treaty was not intended to authorize so large a claim by England against France as the Dominion case contends. We know pretty well what, for the sake of peace, the French were willing to give up—namely, the territory to one or the other of the lines marked on DeLisle's maps, and marked as such on our map—and what I have just read shows that there was not a great difference between what England demanded and what France was willing to give; and it is manifest that would not have been the case if there was anything like what is now demanded.

The testimony, therefore, appears to be abundant that the height of land boundary was what the English had no right to claim. Assuming that to be so, the question is,—What line north of the height of land is to be regarded as the Company's southern boundary?

The language of the Charter, by reason of its ambiguity, affords no assistance in this inquiry. The validity of the Charter has always been questioned on the ground of its ambiguity, as well as for other reasons. Assuming that the northern boundary is on one side the shore of Hudson's Bay, say between 51° and 52° of latitude and on the other at least as far north as the most north-western point of Lake of the Woods, say latitude 49° 23' 55"; if these points were clearly in the Hudson's Bay Territory, the northern boundary would perhaps be a line drawn from one of these points to the other. We claim that our boundary is farther north than this, but cannot be south of it. Are these points in what was the territory of the Company? And is the Provincial boundary on farther north? If by reason of the Charter being so old, and having been acted upon in some sort, and of its validity to some extent being implied in certain statutory references to the Company, the instrument cannot be treated as absolutely void, it must, as regards its construction and operation, on well-

known, and well-settled principles, be interpreted most strongly against the Company, and in favour of the Crown. The object of giving the Charter, as the Charter itself declares, was to encourage discoveries by the Company; and the validity or operation of the instrument is to the extent only of giving (so far as the Crown could give) to the Company whatever of unknown territory the Company, within a moderate and reasonable time should occupy; and all that the Company could be entitled to was what the Company had, in this manner, acquired for themselves and for the Crown previous to the cession of Canada in 1763 by France to England; or what, previous to that time, the Company had been in possession or enjoyment of as their own with the concurrence of the Crown.

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It is a familiar rule that Crown Grants are construed most favourably to the Crown, the grantor.

10 The rule is thus stated in Chitty on Prero. page 391: "In ordinary cases between subject and subject, the principle is that the grant shall be construed, if the meaning be doubtful, most strongly against the grantor, who is presumed to use the most cautious words for his own advantage and security. But in the case of the king, whose grants chiefly flow from his royal bounty and grace, the rule is otherwise; and Crown grants have at all times been construed most favourably for the king where a fair doubt exists as to the real meaning of the instrument, as well in the instance of grants from His Majesty as in the case of transfers to him." The rule is not new, but was in existence at the time of this Charter and before, and was, perhaps, more stringently acted upon then than it is in the case of modern deeds. Independently of this consideration, legal opinions are uniform that, in the case of an old and ambiguous charter like this, the instrument operates as far as possession and enjoyment have been had under it, and no further. I may cite some decided cases bearing on this point. Blankley *vs.* Winstanley, 3 Term Reports, 288, is one of them. In that case it was observed by one of the learned judges as follows:—"With regard to the usage: usage consistent with the meaning of the Charter has prevailed for one hundred and ninety years past, and if the words of the Charter were more disputable than they are, I think that ought to govern this case. There are cases in which this Court has held that a settled usage would go a great way to control the words of a charter. Such was the case of Gape *vs.* Handley, in which the Court went much further than is necessary in the present case; and it is for the sake of quieting corporations that this Court has always upheld long usage where it was possible, though recent usage would not perhaps have much weight." So in Wadley *vs.* Bayliss, 5 Taunt. 753, the case of an award under the Inclosure Acts, it was laid down that "the language of the award being ambiguous, 30 it was competent to go into evidence of the enjoyment had, in order to see what was the meaning of those who worded it."

The rule is thus applied by Sir Arthur Pigott, Mr. Spankie, and Mr. Brougham, in the opinion printed at page 198 of the Book of Documents:—"In such a long tract of time as nearly one hundred and fifty years now elapsed since the grant of the Charter, it must now be, and must indeed long since have been, fully ascertained by the actual occupation of the Hudson's Bay Company, what portion or portions of lands and territories in the vicinity, and on the coast and confines of the waters mentioned and described as within the Straits, they have found necessary for their purposes, and for forts, factories, towns, villages, settlements, or such other establishments in such vicinity, and on such coast and confines, as pertain and belong to a Company instituted for the purposes mentioned in their Charter; and 40 necessary, useful or convenient to them within the prescribed limits for the prosecution of those purposes."

In 1857 the Crown Lawyers pointed out (page 202) that the question of the validity and construction of the Company's Charter cannot be considered apart from the enjoyment that had been had under it. "Nothing could be more unjust than to treat this Charter as a thing of yesterday, and upon principles which might be deemed applicable to it if it had been granted within the last ten or twenty years." They likewise say:—"The remaining subject for consideration is the question of the geographical extent of the territory granted by the Charter, and whether its boundaries can in any and what manner be ascertained. In the case of grants of considerable age, such as this Charter, where the words, as is often the case, are indefinite or ambiguous, the rule is that they are construed by 50 usage and enjoyment." There is no authority or opinion against that.

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Again, the Company were certainly not entitled to any of the territory which France owned at the time of the cession, and ceded to England; it is preposterous to suppose that the Charter intended to grant, and did effectually grant to the Company, as against the world, all the territory southerly and westerly of the Bay, to the then unknown height of land (unknown to the Crown and to the Company), though such territory should be, as it was, to the extent of unknown hundreds of thousands of square miles—a third of the continent; that the Charter was intended to give, and did give to the Company, the right to shut up this enormous territory from the Crown and from all British subjects—and from other nations also—for all time; that if the Company should do nothing to discover settle or acquire it for one hundred years or more, nobody else could; and that any portion of it which England should, a hundred years afterwards, acquire by war with another nation, and by the employment of the resources of the whole empire, in Europe as well as America—accrued, when so acquired, and was intended to accrue, to the Company for their own private benefit. Such a claim, cannot be in accordance with a sound interpretation of any authorities which can be found.

It is clear, and indeed has been repeatedly admitted by the Company themselves, that until long after the date of the cession, the Company had no possession of any part of the interior of the country, and that their possession was confined to certain forts on the Bay and two factories not very distant. Henley House was one of these factories, on the Albany, erected in 1744; and France had at the same time forts on the same river. At all events, with these exceptions, no possession of any part of the territory away from the shore was had by the Company until long after the cession.

I have said that the Company have admitted that to be so. A committee of the British House of Commons was appointed in 1749 to enquire into the state and condition of the countries adjoining Hudson's Bay, and of the trade carried on there; and evidence was given before this committee that at that time, the only forts and settlements of the Company were on the Bay. (Book of Documents, 395). Those opposed to the Company at that time were complaining of this, and urging that the Company had not attempted to settle the country.

Again, in a statement of the Hudson's Bay Company, the material part of which is printed in the Book of Documents, page 402, there is this admission: "As long as Canada was held by the French the opposition of wandering traders (*Coueurs des Bois*) was insufficient to induce the Company to give up their usual method of trading. Their servants waited at the forts built on the coast of the Bay, and there bought by barter the furs which the Indians brought from the interior. But after the cession of Canada to Great Britain in 1763, British traders, following in the track of the French, penetrated into the countries lying to the north-west of the Company's territories, and by there building factories, brought the market for furs nearer to the Indian seller." That means British traders unconnected with the Company. "The Company, finding their trade seriously affected, extended the field of their operations, and sent parties to establish themselves in the interior." I need for my purpose nothing more than this statement by the Company themselves. It is an express admission that the French did settle in the territories referred to; that the Hudson's Bay Company confined themselves to the forts on the Bay; and that after the Treaty of 1763, British traders unconnected with the Company commenced to move, that they were first to move; and that it was not until the Company found their trade seriously affected by the acts of these other traders that the Company extended their operations.

Then at page 412, Book of Documents, there is a letter from Mr. Goschen, then chairman of the Company, telling the result of his researches into the books and papers of the Company. Amongst other things he says: "At the time of the passing of the Quebec Act, 1774, the Company had not extended their posts and operations far from the shores of Hudson's Bay. Journals of the following trading stations have been preserved bearing that date, namely, Albany, Henley, Moose, East Main, York, Severn, and Churchill." The solicitors employed by the Dominion to search the records of the Hudson's Bay Company, wrote as follows (see page 414 Book of Documents):—"From a perusal of the Company's Journals, we find that it was not the practice of the Company's servants to go up country to purchase peltry from the Indians; but the Indians came down to York and other forts on the Bay and there exchanged their furs, etc., for the Company's merchandise." So that the Company not only

did not establish stations, but did not go up the country. "It appears that the peddlers (French traders—*coureurs des Bois*, as they were called), from Quebec, had, for some time prior to the year 1773, gone up into the Red River district, and by so doing had cut off the Indians and bought their furs." Sir John Rose says (his statement is at page 414 of the same book): "I may mention that I do not think that any further research would have thrown more light on the matter than the Ontario Government is already in possession of. I employed a gentleman for several weeks to search at the Colonial Office and Foreign Office, as well as the Rolls' Office and Hudson's Bay Archives, and every scrap of information bearing on it was, I think, sent out either to Mr. Campbell or to Mr. Scott [Dominion Ministers] some months ago. I believe that any further search would be attended with no result." Thus, during the whole period from 1670 to the passing of the Quebec Act, the Hudson's Bay Company had been in no sort of possession of more than their forts and factories on and in the immediate neighbourhood of the Bay.

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The Dominion Ministers truly affirmed in 1869, that "the evidence is abundant and conclusive to prove that the French traded over and possessed the whole of the country known as the Winnipeg Basin and 'Fertile Belt,' from its discovery by Europeans down to the Treaty of Paris, and that the Hudson's Bay Company neither traded nor established posts to the south or west of Lake Winnipeg until many years after the cession of Canada to England." The Company's first post—viz., Cumberland House, on Sturgeon Lake—in the vicinity of the region in question—was not built until 1774, and they did not establish any post within this tract of country before 1790.

There has been printed in the Book of Documents, 230, the judgment of the Hon. Mr. Justice Monk, of Lower Canada, in a case of *Connolly vs. Woolrich*, and the substance of it is this:—He shows, in regard to the French, that as early as 1605, Quebec had been established and had become an important settlement: that before 1630 the Beaver and several other companies had been organized at Quebec for carrying on the fur trade in the west, near and around the great lakes and in the North West Territory; that the enterprise and trading operations of these French companies, and of the French colonists generally, extended over vast regions of the northern and north-western portions of the continent; that they entered into treaties with the Indian tribes and nations, and carried on a lucrative and extensive fur trade with the natives; that in the prosecution of their trade and other enterprises these adventurers evinced great energy, courage and perseverance; that they had extended their hunting and trading operations to the Athabasca country (say 58° north latitude and 111° west longitude); that some portions of the Athabasca country had, before 1640, been visited and traded in, and to some extent occupied by the French traders in Canada and their Beaver Company (which had been founded in 1629); that from 1640 to 1670 these discoveries and trading settlements had considerably increased in number and importance; that Athabasca and other regions bordering upon it belonged to the Crown of France, at that time, to the same extent, and by the same means, as the country around Hudson's Bay belonged to England, viz., by discovery, and by trading and hunting. Judge Monk mentions 1670, because it was the date of the Charter of the Hudson's Bay Company. These were the conclusions to which Judge Monk came judicially.

It may be added, that if the Athabasca country belonged to France at so early a period, so would the whole intermediate country between Athabasca and Hudson's Bay on the east, and between the Athabasca country and the St. Lawrence on the south, because with these parts the French were more familiar, and traded to a much larger extent than further north. Between 1670 (the last date named by Judge Monk) and 1763, the French established posts or forts in that North-West Territory which they had previously explored, and hunted over, and traded with, namely, on Rainy Lake, the Lake of the Woods, Lake Winnipeg, Lake Manitoba, on the Winnipeg River, the Red River, the Assiniboine River, the River aux Biches, and the Saskatchewan, and so west to the Rocky Mountains, where Fort la Jonquière was established by St. Pierre in 1752. All these lakes and rivers are connected by the Nelson River with Hudson's Bay, and are in the territory which, in the following century, the Hudson's Bay Company claimed under their Charter; but confessedly they had constructed in it no post or settlement of any kind until long after 1763.

The subjects of France had also, on the northerly side of the dividing line, Fort Abitibi, which was north of the height of land, and was built in 1686. It was situate at a considerable distance north.

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of the height of land, and upon the lake of the same name, from which the River Mississippi flows into Hudson's Bay. The French had also Fort St. Germain, on the Albany, which was built in 1684; and still higher up on the same river Fort La Maune, established about the same period; and, to the east, Fort Nemiscan, on the lake of that name, situate on the River Rupert, midway between Lake Mistassin and the Bay; this fort was built before 1695. Of none of these did the English Government or the Company ever complain. The French had also another fort on the Albany, being that mentioned in one of the memorials of the Company as having been built in 1715. The facts enumerated form another conclusive ground against such a claim as is now set up by the Dominion as purchasers from the Company.

The matter is made clear in another way: that is, by the maps which the Company has furnished for the purposes of the present arbitration. We applied to them for what maps they had, and they furnished seven, only two of which seem to be of importance. One of the two, dated 1748, bears the Royal Arms and the Arms of the Company, and seems to have been prepared by the Company in view of the Parliamentary inquiry of that period, and for the purpose of showing the limits which the Company then claimed. The line which this map gives as the Company's southern boundary is considerably north of the height of land, even as shown on this map; for the line is therein made to cut Frenchman's River, and several other rivers shown on the map as flowing into Hudson's Bay. The Company does not by the map claim to the height of land even so far as these comparatively small rivers are concerned. Their southerly line on the map runs to the eastern shore of a lake called Ninigon, thence to and northerly along the eastern shore of Winnipeg, and thence northerly to Sir Thomas Smith's Sound in Baffin's Bay. I am entitled to say that this map demonstrates that the Company, in 1748, did not claim to the height of land, even as the height of land was then supposed to be situated, and did not claim Lake Winnipeg.

The other of the two maps is Mitchell's engraved map, described as published by the author, February, 1755. This copy appears to have been much used and worn; I suppose, therefore, that it is the map to which the Company chiefly referred when they had occasion to examine any map of their territory. There is on it an irregular line marked "Bounds of Hudson's Bay by the Treaty of Utrecht," and the colouring on the two sides of that line is different. This line may therefore be taken as showing the extent of the Company's claim in 1755 and long after. Can there be any doubt that this is a fair conclusion to draw? On what principle can it be said that this map, which has been in the possession of the Company for over a century, should not be taken as showing, not what the bounds were, but what the Company regarded as their bounds? The line is about one-third of a degree north of the Lake of the Woods, and extends to the limit of the map in that direction, being in about the 98th degree of longitude.

Chief Justice Harrison—The height of land does not appear to have been known at the time the first of these two maps was prepared.

The Attorney-General—But these rivers are marked on the map, and the territory marked as the Company's does not extend to the sources of them.

Chief Justice Harrison—Those rivers are undoubtedly to the north of the height of land.

The Attorney-General—In regard to the territory which the Company knew when these maps were prepared, they did not claim to the height of land. On this map of Mitchell's the Company claimed a more southerly boundary than in the other map, but even in this map the line they claimed cut some rivers which flow into Hudson's Bay, instead of extending to their sources. The claim to go to the sources of the rivers is inconsistent with both maps, although the Company claimed larger bounds by the one than by the other. The Lake of the Woods is marked, and the line they claim by the map is north of the Lake of the Woods.

Chief Justice Harrison—There does not appear to be an interval of more than seven years between these two maps. The height of land is marked in some places upon Mitchell's map.

The Attorney-General—Yes; but the map throughout negatives the idea that the Company then claimed to the height of land. After the Treaty of Utrecht (1713), which gave to the British all lands,

etc., "on the Bay and Straits, and which belong thereto," the Company, on 4th August, 1744, proposed, for the first time, that the Mistassin line should go as far south-westerly as 49° north latitude . . . and that that latitude be the limit;" as to how far to the west this line of 49° was to be followed nothing was then said. In 1749 and 1750 the Company proposed the line of 49° generally, but both times the proposition was rejected by the French. This line would have given to the Company a boundary greatly more limited than the boundary of the height of land, which began to be claimed nearly three-quarters of a century later.

It has already been said that the Company could not take advantage of their Charter for the purpose of making any addition to their territory by exploration or settlement after the cession of 1763. The practical result would be nearly the same if this right should be deemed to have ceased at a somewhat later date, viz., the date of the passing of the Quebec Act, 1774, or even the date of the Treaty of 1783, for the Company made no further settlement between 1763 and 1783, except Cumberland House; and it is doubtful whether its locality belongs to the Winnipeg or the Churchill system. Both the Act of 1774 and the Treaty of 1783 obviously require that the Company's southern boundary should be deemed a fixed line, not liable to extension by the mere act of the Company.

These considerations are submitted as showing that the legal rights of the Company did not extend beyond their forts on the shore or in the neighbourhood of Hudson's Bay, and such adjacent territory as these forts may, under the circumstances, have given them a right to; and that Ontario is entitled to have its northerly boundary line drawn accordingly.

If the evidence fails to satisfy the Arbitrators of the right of Ontario to this extent of territory; I refer them to the possible alternative lines mentioned at page 423 and following pages of the Book of Documents; and I will not detain the Arbitrators now by the statement and discussion of these other lines.

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 definitely provided for, and such further territory to the north as may be just and reasonable in view of the whole case.

ARGUMENT OF MR. HODGINS, Q.C.

Mr. Thomas Hodgins, Q.C., for the Province of Ontario, next addressed the Arbitrators. He said: In the printed documents submitted by the Government of Ontario, three territories are mentioned, the localities and limits of which must in some measure be ascertained, in order to arrive at a proper solution of the question where the boundaries of Ontario should be traced. These territories are: (1) The Indian Territories; (2) the Territories claimed by the Hudson's Bay Company, and (3) the Territories known as Canada or New France.

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Q.C., of Coun-
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The Indian Territories may be shortly described as those extensive tracts of land lying to the westward and northward of Canada and the Hudson's Bay Company's Territory, not actually taken possession of by any civilized government prior to 1763. These Indian Territories are, as we contend, the lands described by Sir Alexander Mackenzie in his *Travels in North America*, published during the early part of the present century, and appear on the map as the Athabascan and Chippawayan Territories. These territories were specially reserved under the sovereignty of the Crown for the use of the Indians by the King's Proclamation of the 7th October, 1763, which established the Provinces of Quebec, East and West Florida, and Grenada, "within the countries and islands ceded to the Crown" by the Treaty of Paris of the 19th February, 1763. That Proclamation describes them as "the lands lying to the westward of the sources of the rivers which fall into the sea from the west and north-west;" and as "such parts of our dominions and territories as, not having been ceded to us, are reserved to the Indians, or any of them, as their hunting grounds;" and again, as "lands which not having been ceded to or purchased by us, are still reserved to the said Indians as aforesaid." They are also described in the first section of the Act of 1803, which extended the jurisdiction of the Courts of Lower and Upper Canada over crimes and offences committed within certain parts of North America, in the following words: "Indian Territories or other parts of America, not within the limits

* Book of Documents, p. 26.

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of the Provinces of Lower or Upper Canada, or either of them, or of the jurisdiction of the Courts established in those Provinces, or within the limits of any civil government of the United States of America.* No more clearly defined locality is given to these territories in any of the State Papers relating to North America; but Lord Selkirk in his *Sketch of the British Fur Trade in North America*, published in 1816, refers to them thus:—"This vague term, 'Indian Territories,' has been used without any definition to point out the particular territories to which the Act is meant to apply." "There are, however, extensive tracts of country to which the provisions of the Act unquestionably do apply, viz., those which lie to the north and west of the Hudson's Bay Territories, and which are known in Canada by the general name of 'Athabases.' It was here that the violences, which gave occasion to the Act, were committed; and these are the only districts in which a total defect of jurisdiction 10 described in the preamble of the Act was to be found."†

The other territories are those which, prior to the cession of Canada in 1763, formed the possessions of the King of England, and are claimed as the "Hudson's Bay Company's Territory," and the possessions of the King of France, and known as "Canada or New France." That portion of this latter territory lying west of the Ottawa and Lake Temissequing, and of "a line drawn due north to the boundary line" or "shore" "of Hudson's Bay"—excepting the portion south of the great lakes, and west to the Mississippi, ceded to the United States in 1783—now forms the territory of the Province of Ontario. The diplomatic correspondence and State papers, printed in the Book of Documents, show that for a series of years, prior to 1763, the territory about the shores of Hudson's Bay was a chronic 20 subject of dispute, of diplomatic negotiation, and of treaties, between the English and French Govern-ments. From 1668 to 1755, the chief subject of discussion between the French Ministers and their territorial limits or boundaries of the two Sovereigns about Hudson's Bay.

Taking first the question to which Sovereign the southern limits of Hudson's Bay belonged, it will be found that after the Treaty of Utrecht in 1713, the English Ministers asserted that the whole of Hudson's Bay, including of course the southern shore inland to line 49, belonged to Great Britain. On the other hand, the representatives of the Crown of France contended that their earlier discoveries, their prior possession, and their settlements, had made that southern shore part of the territory of Canada. Certainly up to 1700, the Hudson's Bay Company conceded to the French the sovereignty 30 of the southern portion of James' Bay south of the Albany River on the west,—or line 53° north latitude.‡ But subsequently a gradual advance was made in the territorial claims of the Hudson's Bay Company, as follows:—To the Canute or Hudson River in 52° N. latitude §; to Lake Miskosinke or Mistoveny in 51½° N. latitude ¶; although no new possessory rights were acquired by Great Britain or the Company in the disputed territory between 1700 and 1713.

After the Treaty of Utrecht of 1713, the claim presented by the Company to the English Govern-ment advanced the boundary to line 49° N. latitude.¶ That Treaty restored—not surrendered—to England "the Bay and Streights of Hudson, together with all lands, seas, sea coasts, rivers and places situate in the said Bay and Streights which belong thereto," all of which with the fortresses there erected, "either before or since the French seized the same," were to be given up within six months from the ratification of the Treaty. It further provided that the conterminous limits of the territories 40 of the two nations, at Hudson's Bay, should be determined within a year by Commissioners to be named by each Government; so as to fix "the limits between the said Bay of Hudson and the places appertaining to the French—which limits both the British and French subjects shall be wholly forbidden to pass over or thereby to go to each other by sea or land." This Treaty, notwithstanding the exclusion, gave to the French a right to use the shores of the Bay, whatever meaning may be attached to the following words: "It is, however, provided that it may be entirely free for the Company of Quebec, and all other the subjects of the Most Christian King whatsoever, to go by land, or by sea, whithersoever they please, out of the lands of the said Bay, together with all their goods, merchandises,

* Book of Documents, p. 5.

† Earl Selkirk, *Sketch of the Fur Trade*, pp. 25-6.

‡ Book of Documents, p. 123.

§ *Ibid.*, p. 124.

¶ *Ibid.*, p. 120.

|| *Ibid.*, p. 132.

arms, and effects of what nature or condition soever," except munitions of war.* The Commissioners were appointed, but never determined the question of boundary. The British Commissioners, inspired by the Hudson's Bay Company, claimed for the first time as the boundary, the line 49° north latitude. † This the Commissioners of the French King resisted, contending that the territory claimed was part of Canada.

Now at that time the Hudson's Bay Company had not any territorial occupation beyond a few small posts or a widely scattered fringe of settlements, about three or four, on the shores of the Bay, and from which their trade with the Indians was carried on. This fact appears in the evidence taken by a Committee of the House of Commons in 1749. Historically the same fact is stated by writers and officers of the Company who dealt with the question from personal knowledge. In Robson's *Account of Hudson's Bay*, published in 1753, it is stated:—"The Company have, for sixty years, slept at the edge of a frozen sea. They have shown no curiosity to penetrate further themselves, and have exerted all their art and power to crush the spirit in others." (p. 6.) Further on, in speaking of the Indians, he shows how the French had gone inland, and had—unmolested by the Company—established forts and trading settlements with the Indians, and which, according to the acknowledged rules of international law, had given the French King proprietary and sovereign rights over the territory thus occupied by his subjects. "The French," he says, "live and trade with the Indians within the country at the heads of the rivers that run down to the English factories." "In consequence of this narrow spirit of self-interest in the Company, the French have been encouraged to travel many hundred miles overland from Canada, and up many rivers that have great waterfalls, in order to make trading settlements; and there they carry on a friendly intercourse with the natives at the head of most of the rivers westward of the Bay, even as far as the Churchill River, and intercept the Company's trade." "There are fine improvable lands up the rivers of the Bay, and no British settlements or colonies are made or attempted to be made there." (p. 7.)

Bowen's *Geography*, published in 1747, says: "The bottom of the Bay is by the French pretended to be part of New France; and, indeed, to cross the country from St. Margaret's River (meaning the St. Maurice or the Saguenay) which runs into the river of Canada or St. Lawrence, to Rupert's River, at the bottom of Hudson's Bay, is not above 150 miles. The French have a house or settlement for trade near the southern branch of Moose River, about 100 miles above the factory, where they sell their goods cheaper than the company do: although it be very difficult and expensive to carry them so far from Canada. . . . The French get all the choice skins, and leave only the refuse for the Company. The French have also got another house (Fort Nemiskau) pretty high up, upon Rupert's River, by which they have gained all the trade upon the East Main, except a little the Company get at Slade River, the mouth of which is about thirty leagues to the north of Rupert's River. And further on, referring to the absence of English trade with the interior, the writer says that "The English who trade here have no plantations or settlements within land, but live near the coast within their forts, in little houses or huts." † Governor Pownall, in his Report on the French posts in North America, states that by their influence with the Indians, the French had been admitted to a landed possession and had become possessed of a real interest in and a real command over the country. §

The French Government prior to the Treaty of Utrecht claimed the whole of that territory; and after the Treaty they continued to claim it as part of "Canada." They contended:—"The term 'restitution,' which has been used in the Treaty, conveys the idea clearly that the English can claim only what they have possessed; and as they never had but a few establishments on the sea coast, it is evident that the interior of the country is considered as belonging to France." ¶ The French King, Louis XIV., in a letter to M. de la Barre, dated the 5th August, 1683, claimed that the actual possession of the territory about the Bay had been taken in his name prior to the possession of the English. His letter states: "I recommend you to prevent the English, as much as possible, from establishing themselves in Hudson's Bay, possession whereof was taken in my name several years ago; and as Col. d'Unguent (Dongan) appointed Governor of New York by the King of England, has had precise orders on the part of the said King to maintain good correspondence with us, and carefully avoid whatever may interrupt it, I doubt not the difficulties you have experienced on the side of the English will cease for the future." ||

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* Book of Documents, p. 16. † *Ibid.*, p. 132. ‡ *Ibid.*, p. 371. § *Ibid.*, p. 380. ¶ *Ibid.*, p. 372. || *Ibid.*, p. 106.

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The facts connected with the right of possession then claimed by the French King, will be found in a letter from M. Talon to the King, dated Quebec, Nov. 2, 1671, in which he states that he had despatched Father Albanel and Sieur de St. Simon to Hudson's Bay.* Then, further on, the result of their journey is thus described: "Father Charles Albanel, Jesuit Missionary, employed in the instruction of the Indian nations and Montagnais, and Paul Denis de St. Simon, commissary, and deputed by M. Talon, Intendant of Canada, to take possession in the King's name of the countries, lands, lakes and rivers, which lie between the banks of the River St. Lawrence as far as the shores of the straits of the Fretum Davis, including Hudson's Bay, and adjacent lands and seas, being at Miskaouto, Nagasit, places where the Indians meet to trade, and at the River Nemiskau (Rupert River) which rises in Lake Nemiskau, the residence of Capt. Kiaskon, Chief of all the Indians inhabiting the North Sea and Hud- 10 son's Bay, and on the 9th of July, 1672, planted the Cross, with the Captain's consent, and in His Majesty's name set up the arms of France, on the said Lake Nemiskau, at the mouth of the river of the same name. On the 19th of the same month, being at the River Minabigonskae, Sossilahourat, captain of the Mistasirenois, having consented, they did set up in like manner the said arms, after having turned up a sod of earth, pulled up some grass, planted some shrubs and performed other necessary ceremonies. They made known to the Indian nations, in their language, that they subjected them to the French nation, and that they should acknowledge in future King Louis XIV., for their Monarch and Sovereign Lord. In witness whereof, the said minute was signed by Father Albanel, Sieur de St. Simon, and by 20 Sebastian Provero; and the chiefs of each Indian nation, to the number of eleven, made their hieroglyphical marks." A similar surrender by the Indians on the west side of Hudson's Bay took place at Sault St. Marie.† In these statements we have not only the actual taking possession, but we have that act of Indian surrender which has been recognized by the Crown of England for years; the actual surrender of the Indian territory by a document signed by the chiefs of those Indians who were the occupants of the territory about Hudson's Bay, acknowledging that they surrendered the territory to the King of France, in the same manner as the Indian territories have been and still are surrendered to the Crown in Canada.

The Treaty of Utrecht did not surrender any portion of the territory of Canada or New France, it only restored the Bay and Straits of Hudson; therefore whatever should be included in that description was ceded to the Crown of England. The English could not claim more territory than that named in 30 the Treaty, and as "Canada" was not named or ceded, no part of it, as such, became the property of the Crown of England. The word used by the French was *restituta*. The rule of interpretation in regard to such Treaties is that where the Treaty is alleged to be capable of two interpretations, that which is most favourable to the ceding power shall govern. Such was the decision of the United States Supreme Court in the case of the *United States vs. Arredondo*.‡ In that case there was a difference between the American and Spanish copies of the Treaty; but the Court held that the version which was most favourable to Spain, the ceding power, should govern. In giving judgment the Court said: "A Treaty of cession is a deed of the ceded territory; the Sovereign is the grantor; the act is his, so far as it relates to the cession; the Treaty is his act and deed." "The King of Spain was the grantor; the Treaty was 40 his deed; the exception was made by him; and its nature and effect depended upon his intention expressed by his words in reference to the thing granted, and the thing reserved, and excepted in and by the grant." "We must be governed by the clearly expressed and manifest intention of the grantor, and not the grantee, in private—a fortiori in public—grants"

Examining this Treaty by the light of this decision, we find that the French King "restored" only that which had been originally English territory—on the Bay and Straits of Hudson; not by name any territory of Canada or New France. The French King, being the ceding power, could not be held bound by a larger cession than the words of the Treaty covered. This view was strongly and effectively maintained by the French Commissioners. In M. de Lamoignon's memoirs to the Duke of Orleans, he reported: "The English have never possessed the lands that the French have at Hudson's Bay, therefore it is impossible for the King of France to restore them to them; for one cannot restore more than that which 50 has been taken by usurpation. The fact is that at the time of the said Treaty of Utrecht, the French possessed one part of the Strait and Bay of Hudson, and the English possessed the other. It is very

* Book of Documents, p. 104

† *Ibid.* pp. 345, 51-2.

‡ 6 Peters U.S., 691.

true that, some time before, the King of France had conquered the English part; and it is of this that it is understood that restitution is to be made.* To the same effect is the memoir of M. D'Auteuil, Attorney-General of Canada: "The Treaty of Utrecht speaks only of restitution; let the English show that which the French have taken from them, and they will restore it to them; but all that they demand beyond this they demand without any appearance of right." "It is well to remark that the English in all the places of the said Bay and Straits which they have occupied, have always stopped at the border of the sea, while the French, from the foundation of the colony of Canada, have not ceased to traverse all the lands and rivers bordering on the said Bay, taking possession of all the places and founding posts and missions. They cannot say that any land, or river, or lake, belongs to Hudson's Bay, because if all the rivers which empty into this Bay, or which communicate with it, belongs to it, it might be said that all New France belonged to them—the Saguenay and the St. Lawrence communicating with the Bay by the lakes. That this being incontestable, it is for France to regulate the limits in this particular quarter, and that of the little which she may cede, she will always cede that which is her own, as the English cannot pretend to anything except a very small extent of the country adjoining the forts which they have possessed at the foot of the Bay."† And consistent with these views, it appears that after the Treaty the French erected a fort at the head of the Albany River.‡ The Hudson's Bay Company claimed that the boundary should be at the 49th parallel, while the French insisted it should be at the 55th parallel. The object of the Company being, as stated by Chief Justice Draper, "to establish an arbitrary boundary and to secure the fur trade from the French."§

20 The negotiations between the Commissioners appear to have ended about 1720, probably because during that year several of the chief Ministers of State whose names appear in these papers—notably Mr. Secretary Craggs, the Earl of Sunderland, the Chancellor of the Exchequer, and others—became implicated in corrupt transactions with the South Sea Company, which caused their expulsion from Parliament the following year. Their successors in the Government appear to have allowed the negotiations to lapse. "Nothing was done," wrote the Duke de Choiseuil in 1761.

The next chapters in this history are the capture of Quebec and the Treaty of Paris of 1763, by which Canada was ceded to England. By the Articles of the Capitulation of Montreal between General Amherst and the Marquis de Vaudreuil in 1760, and the Treaty of 1763, France ceded to England "in full right, Canada and all its dependencies, and the sovereignty and property acquired, by 30 treaty or otherwise," and declared that "a line drawn along the middle of the River Mississippi" should be the limits of the British and French Territories.

Neither in the capitulation between General Amherst and the Marquis de Vaudreuil, nor in the Treaty of 1763, is there any reference to the territories about Hudson's Bay. But I take this ground now: By this capitulation, by this treaty, the English King succeeded to the sovereignty, to the prerogative rights, and to the assertion of title, over the territories which the French King claimed about Hudson's Bay. In addition to his own prerogatives as King of England, he became clothed with the prerogatives which had pertained to the King of France as the Sovereign over this territory; and this double prerogative was to be exercised in such a way as would best maintain the public right of the people to whose allegiance he had succeeded. The claim to the territories about Hudson's Bay had 40 been in contest between the King of France and the Hudson's Bay Company. It now became a question of territorial right between the King of England, as representing the possessory rights and sovereignty of the King of France, on the one side, and the Hudson's Bay Company on the other. Succeeding, therefore, to the French sovereignty over this territory and people, the Crown of England had the right to claim as against the Hudson's Bay Company, and all others, the French sovereignty, as if the French authority had not been suppressed, and as if the French authority was itself seeking to enforce its territorial claims. Viewed in the light of this claim of the double sovereignty which it thus had, the subsequent proceedings of the Crown of England in regard to the boundaries of Upper Canada, should weigh with the Arbitrators in determining what effect and what interpretation should be given to these subsequent proceedings as political acts of State. The interpretation, I take it, of 50 this double sovereignty, must be that which was the largest and most advantageous for the public

* Book of Documents, p. 370.

† *Ibid.*, p. 368.

‡ *Ibid.*, p. 363.

§ *Ibid.*, p. 242.

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rights of the Sovereign and people. This doctrine of succession to sovereign rights has received judicial interpretation in regard to the property and territory, and sovereign rights, of a displaced power. And the judicial interpretation which I shall quote is cited with approval in the last edition of *Wheaton on International Law*, as being a fair and proper exposition of public law on that question. In the case of the *United States vs. McClure**, Vice-Chancellor (now Lord Justice) James, says: "I apprehend it to be the clear, public, universal law, that any Government which *de facto* succeeds to any other Govern-ment, whether by revolution or restoration, conquest or re-conquests, succeeds to all the public property to everything in the nature of public property, and to all rights in respect of the public property of the displaced power—whatever may be the nature or origin of the title of such displaced power." "But this right is the right of succession, is the right of representation, it is a right not paramount but 10 derived, I will not say under, but through the suppressed and displaced authority, and can only be enforced in the same way, and to the same extent, and subject to the same co-relative obligations and rights, as if that authority had not been suppressed and displaced, and was itself seeking to enforce it." The same doctrine had been previously recognized in England, in the case of the *King of the two Sicilies vs. Wilson*,† *United States vs. Prioleau*‡; and in Canada in the case of *United States vs. Boyd*.§ The Supreme Court of the United States has in various cases affirmed the same doctrine: that the new government takes the place of that which has passed away, and succeeds to all the rights and property of the original sovereign.

Now, with reference to the alleged claims of the Hudson's Bay Company to the lands south of Hudson's Bay, to line 49°, it may reasonably be argued that there could be no estoppel between the 20 Crown of England, clothed with the double sovereignty of the French and English Crowns, over this disputed territory, and the Hudson's Bay Company. Whatever representations and claims the Hudson's Bay Company may have induced the English Government to make prior to the cession of the territory, would not estop the Crown of England, having acquired the sovereignty which France had held, in any contention between it and the Hudson's Bay Company.

Chief Justice Harrison—I fancy that Great Britain could not have conferred on the Hudson's Bay Company any greater rights than Great Britain at the time of the grant possessed.

Mr. Hodgins—The cession of the disputed territory would not accrue to the Hudson's Bay Company.

Chief Justice Harrison—Not in the absence of an express grant. 30

Mr. Hodgins—We say that this territory about the south shore of Hudson's Bay had been surrendered by Indian treaty to the Crown of France prior to the Hudson's Bay Company's claim of title, and had been occupied and thenceforward claimed as French territory up to a period after the Treaty of Utrecht, and therefore could not have been granted to the Hudson's Bay Company. And that there would be no estoppel operating in favour of the Hudson's Bay Company by reason of the subsequent requirement of that territory, by the Crown of England in 1763.

We come next to the King's Proclamation of the 7th October, 1763, under which the Provinces of Quebec, East and West Florida, and Grenada, were established. In that Proclamation there seems to be an express reservation. The Proclamation is not printed in full in Book of Documents, but it will 40 be found in a work which I obtained from the Education Department of Ontario, in which the terms of Capitulation, the Treaty of Peace, and the Proclamations in regard to the earlier establishment of Quebec and the other Provinces, are collected. That Proclamation reserves out of the extensive and valuable acquisitions in America secured to the Crown by the Treaty of Paris, other territories than those placed under the four Governments then constituted, viz., a territory not yet ceded to the Crown, which, I assume, included the Indian territories before referred to, and a territory beyond the sources of the rivers which fall into the Atlantic. It was assumed at that time, and some of the maps confirmed the assumption, that Lake Winnipeg was connected with Pigeon River, and so through the great lakes with the St. Lawrence. The Crown therefore reserved for future disposition the territories referred to, and expressly limited the jurisdiction of the Governors of the new Provinces in a way 50

† 1 Simons, N.S., 301.

* Law Reports, 8 Equity, 75.

‡ 2 Hemming & Miller, 563.

§ 15 Grant's Chancery, 138.

markedly different from the commissions which issued subsequently under the Quebec Act: "That no Governor or Commander-in-Chief do presume upon any pretence whatever, to grant warrants of survey, or patents for lands beyond the bounds of their respective governments, or for lands beyond the banks or sources of any of the rivers which fall into the Atlantic Ocean from the west or north-west, or any lands whatsoever, which, not having been ceded to or purchased by us, are reserved to the Indians."

The next document in point of time is the Quebec Act of 1774. The Attorney-General has left me little to add in construing that Act, and he has shown that the words "during His Majesty's pleasure," preserved the future exercise of the Royal prerogative. The Dominion contends for the most limited construction which can be placed upon the term "northward" in that Act—that it means "due north." The rule is otherwise stated by the Supreme Court of the United States: "In great questions which concern the boundaries of States—when great natural boundaries are established in general terms with a view to public convenience and the avoidance of controversy—the great object, where it can be distinctly perceived, ought not to be defeated by those technical perplexities which may sometimes influence contracts between individuals."* But apart from the construction placed by the Crown upon that word "northward," immediately after the passing of the Act, we find in the preamble of the Act, and on the ground within the disputed territory—that is, between the line drawn "due north" from the junction of the Ohio and Mississippi, and the line of the "banks of the Mississippi River"—irresistible arguments against the contention of the Dominion. Now, within that disputed territory between the lines referred to, there were, at the time, several well-known settlements and trading forts of the French, as shown on the map—Forts Kaministiquia, St. Pierre, St. Charles, La Pointe or Chaconnamicon, St. Croix, Boussecour, St. Louis, Crevecoeur, St. Louis, De Chartres, and the settlements on Lake Superior, west of this "due north" line.

The preamble of the Act shows that the intention of Parliament was to extend civil government over French settlements left out of governmental control; for after reciting the Proclamation of 1763, it says: "Whereas, by the arrangements made by the said Royal Proclamation, a very large extent of country, within which there were several colonies and settlements of the subjects of France who claimed to remain therein under the faith of the said Treaty, was left without any provision being made for the administration of civil government therein." Now, if the object of the Act, as stated in the preamble, was to extend civil government over the colonies and settlements not theretofore within the limits of any of the Provinces, can any reasonable argument be advanced for excluding from the benefits of that Act a long and narrow strip of territory containing the settlements and forts named, lying between this "due north" line and the eastern banks of the Mississippi? England, at the surrender of Canada, claimed to the line of the Mississippi, and the map produced by the Dominion as the one containing the line traced between General Amherst and the Marquis de Vaudreuil, shows that the line started from Red Lake, one of the sources of the Mississippi. And as if to place the boundary beyond question, the Treaty declares that the limits between the British and French territories shall "be fixed irrevocably by a line drawn along the middle of the River Mississippi from its source to the River Iberville," etc.

But—still keeping in view the object of the Quebec Act as set forth in the preamble, and remembering that the Crown in its negotiations with France had perseveringly insisted upon the line of the Mississippi as the western boundary of Canada, and had obtained that boundary—there is a further point which I would press upon the Arbitrators. The first document promulgated by the Crown immediately after the passing of the Act, was a commission to Sir Guy Carleton, in December, 1774, as Governor-General of the new Province of Quebec, and it gives an authoritative interpretation by the Crown of the indefinite word "northward," used in the Act of Parliament, which was peculiarly within the power and prerogative of the Crown to interpret. That commission gives the boundaries mentioned in the Quebec Act until it comes to the words "westward to the banks of the Mississippi and northward," not "due north," but "northward along the eastern bank or the said river (Mississippi)." This description must be taken to be the Crown's interpretation of the boundaries which the Act of Parliament had established for the Province of Quebec, and was a political act of state within

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* *Handley's Lessee v. Anthony, 5, Wheaton, 574.*



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the prerogative right of the Crown—to fix the boundaries where they were uncertain, and even to extend them if necessary; and such act of the Crown is binding upon the Arbitrators and cannot now be questioned. That Governor-General, as well as his successor had thus from the crown complete jurisdiction over the territory to the line of the banks of the Mississippi. But when the southern portion of the Province of Quebec was ceded to the United States, by the Treaty of 1783, the Crown had again to interpret the Quebec Act as to the remaining territory; and in the commission issued by the Crown in 1786, appointing Sir Guy Carleton, Governor-General over what remained of the Province of Quebec, the Crown defined that Province as extending on the west to the Lake of the Woods and the Mississippi River.*

These commissions to the Governors were political acts of state or of sovereign power over the territory in question, and brought the territory within the jurisdiction of the Civil Government of Quebec delegated to the Governors. The Courts of the United States have been called upon to determine questions of boundaries similar to that now before the Arbitrators; and by a consensus of decisions from 1818 to the present, their courts say that in all these questions affecting boundaries the act is a political act. We call it a prerogative act. They hold that where the political act has been recognized either by the Executive or by Congress, either officially or in legislative documents, or in diplomatic controversies with foreign nations, that the interpretation put upon the boundaries of territories, and the limitation of such boundaries, and the claim in regard to such boundaries, shall govern the civil courts. Chief Justice Marshall, in delivering the judgment of the Supreme Court on the question of the boundaries of Louisiana and West Florida, in the case of *Foster v. Neilson*,† says: 20
“After these acts of sovereign power over the territory in dispute, to maintain the opposite construction would certainly be an anomaly in the history and practice of nations. If the Government have unequivocally asserted its right of dominion over a country of which it is in possession, and which it claims under a treaty, if the Legislature has acted on the construction thus asserted, it is not in its own courts that this construction is to be denied. A question like this, respecting the boundaries of nations, is more a political than a legal question, and in its discussion the courts of every country must respect the pronounced will of the Government. To do otherwise would be to subvert those principles which govern the relations between the legislative and judicial departments, and mark the limits of each.” This judgment has been cited with approval, and has been followed in all subsequent cases of disputed boundaries of states or territories. 30

But we are not limited to these unquestioned and unquestionable prerogative acts of the Crown in interpreting the statute. We come next to the division of the Province of Quebec into Upper and Lower Canada; and if words mean what they express, then the words used in the Order in Council,‡ in the paper presented to the Houses of Parliament, previous to the passing of the Act of 1791,§ in the proclamation of General Clark,|| and in the Commissions which were subsequently issued to the Governors under that Act¶ show conclusively the intention of the Crown as to the boundaries of the new Province of Upper Canada, whether as dividing the old Province of Quebec, or as settling the uncertain course of the “northward” line of the Quebec Act. The Order of the King in Council and the Proclamation issued immediately after the passing of the Act, were also “acts of sovereign power over the territory” in question, and are, we contend, as binding on the arbitrators as they would be on a 40
court of justice. If these acts of the Crown were more than a division of the Province of Quebec; if they were also an extension of the boundaries of the old Province of Quebec, they are equally acts of the prerogative, done with the concurrence of the other estates of the realm, and are binding upon this Arbitration as a court of justice. Therefore, in whatever light the Order in Council of 1791, and the Proclamation under it, are viewed, that Proclamation—giving the boundaries described in the paper presented to the Parliament, and sanctioned by the Order in Council—is the document which determines what are the boundaries of the Province of Ontario. It determined what were the boundaries of the Province of Upper Canada. The Statute of 1841 united the Province of Upper Canada with the Province of Lower Canada, but did not alter the boundaries of either. The Confederation Act of 1867

* Book of Documents, pp. 47-8. † 2 Peters, U. S., 254. ‡ Book of Documents, p. 188.
§ *Ibid.*, p. 411. || *Ibid.*, p. 27. ¶ *Ibid.*, pp. 48-53.

declares that the boundaries of the former Province of Upper Canada shall be the boundaries of the Province of Ontario. Thus we are brought back to the Order in Council and Proclamation of 1791, as to what are the true boundaries of Ontario. The paper submitted to Parliament, and the Proclamation, give two limits:

First.—That the boundary shall commence at the St. Lawrence at Longueuil, thence to the Ottawa River, thence up the Ottawa to the head of Lake Temiscaming, and thence in a line “due north until it strikes the boundary line of Hudson’s Bay”—not, of the Hudson’s Bay Company’s territory. And we have in the commissions to the Governors-General, as the Attorney-General has stated, a further interpretation of the word “Boundary”—the use of the word “shore.” From 1791 to 1846 every 10 commission issued by the Crown contains the expressions—“strikes the boundary line,” or “strikes,” or “reaches” the “shore of Hudson’s Bay.” No less than eighteen commissions issued by the Crown of England to the Governors between those dates, use the terms “strikes” or “reaches” the boundary line or the shore of Hudson’s Bay. Therefore we contend that the Crown of England, having what may be called the double sovereignty of the French and English Crowns in regard to that disputed southern shore of Hudson’s Bay—whether the former sovereignty had been admitted or denied—intended that this new Province of Upper Canada should extend to the southern shore of Hudson’s Bay.

Second.—The Parliamentary paper and the Proclamation say, “westward to the utmost extent of the country commonly called or known by the name of Canada.” Now the Crown here uses a word 20 which the Crown had knowledge of. In the negotiations with the French King, the Crown had been contending for the cession of the country called or known by the name of “Canada.” It had obtained, first by conquest, and then by treaty, the territory or country called or known by the name of “Canada.” Now, the limits of Canada were known either from descriptions in State documents, or from a known extent of territory—known to the Crown and to the officers of the Crown—or known by localities which had certain names admitted to be within the territory or country called or known by the name of “Canada.” To aid us in finding the extent of Canada we may refer to maps published in England and France prior to and at the time of this Proclamation. We may also refer to the prior admissions or reports by the officers of the English and French Governments; to the works of historians and geographers, and the knowledge acquired by the actual experience of travellers; and from all 30 these we can obtain with tolerable certainty a knowledge of the extent of the territory called or known by the name of “Canada.” Now, it is not necessary, so far as this arbitration is concerned, to consider that portion south of the present boundary between the United States and ourselves, or to determine whether it was part of Canada or not. I have argued that it was; and the United States Courts in dealing with questions of titles there have held that the territory lying to the east of the Mississippi was formerly Canada, and, that the United States had succeeded to the title of the King of France in that part of Canada which he had prior to the conquest by Great Britain in 1759, and which was ceded to England by the treaty of 1763.* So far, therefore, as that territory is concerned, had it remained the property of England it would have become part of the new Province under the term “Canada,” used in the Proclamation of 1791. North of the line of the Mississippi, and north of what is now the 40 international boundary, there were French forts or trading posts. These French forts—Fort Bourbon, Fort Dauphin, Fort La Reine, Fort Rouge, Fort St. Charles, Fort Maurepas, Fort St. Pierre and Fort Kaminstiquia—appear on both French and English maps published prior and subsequent to the surrender of Canada. Now, to what Sovereign did these forts belong? Did they belong to the Sovereign of England or of France? Were they occupied by English or by French subjects? Every record we have, whether taken from English or French sources, admits that these forts were French; that all through that interior western country the French had established their posts, had carried on trade with the Indians, and were more adventurous than the English. The English had simply occupied a scattered fringe of posts on the shores of Hudson’s Bay, while the French had gone into the interior of the country, had established these trading posts, and by virtue of their establishment had occupied 50 the territory with the knowledge and tacit acquiescence of the English—if the English had been entitled by the possession of the coasts to that interior country—had occupied the interior portions of the

* United States vs. Repentigny, 5 Wallace, U. S., 211.

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country and made settlements, and had therefore acquired for the King of France the dominion and sovereignty of that territory. That interior territory, therefore, as part of the territory of Canada, was surrendered under the Treaty of 1763. I think that this is put beyond question by the Articles of Capitulation between the Marquis de Vaudreuil and General Amherst. Article 3 mentions the posts situated on the frontiers—Detroit, Michillimackinac, and other posts. Article 25 provides for the affairs of the trading company known as the Indian or Quebec Company, referred to in the Treaty of Utrecht. Article 37 provides that the Canadians and French "settled or trading in the whole extent of the Colony of Canada," shall preserve peaceable possession of their goods both movable and immovable; they shall also retain the furs in the "posts above" which belong to them, and those which may be on their way to Montreal; and they shall have leave to send canoes to fetch furs which shall 10 have remained in the posts. These particular references to the settlements and posts in the countries above, clearly point to the French trading posts on Lake Superior and in the country west of that lake. Then we have the map which is printed in the Dominion case, which shows that whatever may have been the dispute between the Marquis de Vaudreuil and General Amherst as to the Mississippi, the Marquis admitted that the western boundary of Canada extended to Red Lake—a lake immediately south of the Lake of the Woods. They did not dispute as to the territories north of that lake; and the terms of the capitulation covered the posts and forts in the countries above, which posts and forts were those I have mentioned, some of which were in what has since been known as the Red River Territory.

After these admissions by the Marquis de Vaudreuil on behalf of the King of France, respecting 20 "the posts and countries above," could the French be heard contending that the country within which these posts and settlements were to be found was not a portion of Canada? French officers had established posts there for the benefit of the Government of Canada. A trade was carried on between those posts and Montreal, and by distinct references, in the terms of the capitulation, provision was made respecting the French subjects and their property and furs therein, which would have been improper unless as referring to the territory of Canada then surrendered to the British Crown. The only dispute between the British and French was whether the south-westerly boundary should be along the River Ohio or along the River Mississippi. Then if those western posts and settlements formed part of the country commonly called or known by the name of "Canada," clearly they were included in the boundaries of Upper Canada by the Proclamation of 1791. Fort Népigon, Fort Kaministiquia 30 —tracing them westward—Forts St. Pierre, St. Charles, La Reine, Maurepas, Dauphin, Bourbon—some of them on Lake Superior, others on Pigeon River and the Lake of the Woods, Lake Winnipeg and Lake Manitoba. The evidence that these forts did exist is found not only in the documents furnished to the Arbitrators, but some of them are referred to in Sir Alex. Mackenzie's travels. The preface to his work contains the following statement at page lxx.: "Fort Dauphin, which was established by the French before the Conquest;" and again at page lxxiii.: "It may be proper to observe that the French had two settlements upon the Saskatchewan long before and at the Conquest of Canada, the first at the Pasquia, near Carrot River, and the other at Nepawi, where they had agricultural instruments and wheel carriages, marks of both being found about those establishments, where the soil is excellent." The Nepawi settlement mentioned by Mackenzie is Fort St. Louis or Nipeween, on the Saskatchewan. 40 He also refers to Fort Kaministiquia as having been under the French Government of Canada.

Now the Dominion case asserts a general principle of international law, which, if there was no countervailing doctrine or fact against it, would be held to be clearly applicable to cases where there was only the simple fact of possession. "When a nation takes possession of a country with a view to settle there, it takes possession of everything included in it, as lands, lakes, rivers, etc." That is true to a limited extent; but this other doctrine is also true: that where the subjects of another Crown take possession of the same territory—either close to the settlements originally made by the first discoverers, or get, by some means, into the interior of that territory, to the head waters of the rivers which flow down through the territory first settled—the subjects of the other Crown become entitled to that possession and territory if they are allowed to remain undisturbed, and their sovereign becomes 50 entitled to the dominion over that territory. I quote first from Twiss on the *Law of Nations in Times of Peace*, page 166: "When discovery has not been immediately followed by settlement, but the fact

of discovery has been notified, other nations, by courtesy, pay respect to the notification; and the usage of nations has been to presume that settlement will take place within a reasonable time; but unless discovery has been followed, within a reasonable time, by some sort of settlement, the presumption arising out of notification is rebutted by non-user, and lapse of time gives rise to the opposite presumption of abandonment." He then quotes the argument of the English plenipotentiaries at the conference between great Britain and the United States in 1826, that it is only in proportion at first discovery is followed by exploration; by formally taking possession in the name of the discoverer's sovereign; by occupation and settlement, more or less permanent; by purchase of the territory on receiving the sovereignty from the nation; or some of these acts that the title is strengthened and confirmed.

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10 The rule is further stated in *Vattel's Law of Nations*, page 170: "If, at the same time, two or more nations discover and take possession of an island or other desert land without an owner, they ought to agree between themselves and make an equitable partition; but if they cannot agree, each will have the right of empire and the domain in the parts in which they have first settled." Apply this to the case of the English and French struggling for the right of possession and sovereignty over this northern continent. Admit that the English did make discoveries and settlements on the shores of Hudson's Bay. The French, prior to that, had made settlements along the St. Lawrence and up towards Hudson's Bay, and subsequently within the interior of the country where the rivers flowing into Hudson's Bay took their rise. The two nations should agree as to their limits; but if they do not, or cannot, agree, each nation has the right of empire in the part respectively first settled by its subjects. The English will thus be entitled to so much of the shores of the Bay and of the interior country as will not interfere with the possessory rights of the French at the Bay and in the west. The French will have the right to the territory they had settled upon, and up to such a line as the Chief-Justice referred to when he suggested the illustration of a line along the middle of a river; so that it must be between the English settlements on the Bay and the French settlements on the Bay and in the interior, that the line should be drawn. The English, after making a few small settlements on the shores of the Bay, rested there for years, and neglected to take possession of the interior. The French then took possession; and the effect of these acts of the two nations is governed by the rule thus stated by Vattel at page 171: "It may happen that a nation is contented with possessing only certain places, or appropriating to itself certain rights in a country which has not an owner, without being solicitous to take possession of the whole country. In this case another nation may take possession of what the first has neglected; but this cannot be done without allowing all the rights acquired by the first to subsist in their full and absolute independence;" that is, to the extent of the territory they have acquired, or to the middle line between the two territories. And it is interesting to find the opinion of an English Sovereign, Queen Elizabeth, affirming a principle which has since been recognized as the correct one by writers on international law.—In *Twiss on the Law of Nations*, at page 173, we find the following: "When Mendoza, the Spanish Ambassador, remonstrated against the expedition of Drake, Queen Elizabeth replied that she knew no right that the Spaniards had to any places, other than those they were in actual possession of. For that they having touched only here and there upon a coast, and given names to a few rivers and capes, were such insignificant things as could in no wise entitle to a propriety, further than in parts where they actually settled and continued to inhabit." Again Twiss says, at page 175: "Settlement, when it has supervened on discovery, constitutes a perfect title; but a title by settlement, when not combined with a title by discovery, is in itself imperfect, and its immediate validity will depend upon one or other condition: that the right of discovery has been waived, *de jure*, by non-user, or that the right of occupancy has been renounced *de facto*, by the abandonment of the territory." "Again, the presumption of law will always be in favour of a title by settlement." "Where a title by settlement is opposed to a title by discovery, although no convention can be appealed to in proof of the discovery having been waived, still a tacit acquiescence on the part of the nation that asserts the discovery, during a reasonable lapse of time since the settlement has taken place, will bar its claim to disturb the settlement." Wheaton, referring to this rule, says on page 220: "This rule is founded upon the supposition, confirmed by constant experience, that every person will naturally seek to enjoy that which belongs to him; and the inference—fairly to be drawn from his silence and neglect—of an original defect in his title or his intention to relinquish it."

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Thus the Arbitrators will see that the international law has incorporated the same doctrine of prescription as that which prevails in the municipal courts of every civilized community. Assuming that the Hudson's Bay Company had the right under their charter to go up those rivers which flowed into Hudson's Bay, and settle the country, did they exercise that right, or did they acquiesce in another person taking that right from them? Clearly, they did so acquiesce. They knew that the French had gone inland to the heads of the rivers flowing into Hudson's Bay, and were trading with the Indians there; they knew that the French had established their forts and posts there; and they knew that these forts and posts indicated an occupation and settlement of the territory; and they knew all the legal results flowing from the occupation and settlement, which gave the French King proprietary and sovereign rights there; and they acquiesced in that occupation from the time the French settlements were made, and had acquiesced in it up to the time of the cession of Canada in 1763; and the Hudson's Bay Company, and those who now claim under them, cannot be heard asserting to-day that there was no acquiescence, and that there was no *non-user* of the right which the charter gave them, of going into the interior and occupying this territory as their own. The Hudson's Bay Company, and the Dominion as claiming under them, assert title to the height of land or watershed line, on the ground that having taken possession of the mouths of certain rivers at Hudson's Bay, they were entitled to all the lands watered by the rivers flowing into the Bay. A similar ground was taken by the United States in 1827, but Twiss (p. 174) combats it, and shows it to be irreconcilable with other rules of international law to which all nations agree. And referring to the argument founded upon the grants in such charters as that to the Hudson's Bay Company, he says (173): "Those charters had no valid force or effect against the subjects of other sovereigns, but could only bind and restrain, *vis-à-vis* those who were within the jurisdiction of the grantor of the charters; and that although they might confer upon the grantees an exclusive title against the subjects of the same sovereign power, they could only affect the subjects of other sovereign powers so far as the latter might be bound, by the common law of nations, to respect acts of discovery and occupation effected by members of other independent political communities."

Apply these doctrines to the case of the Province, and the result is clear. We have established the fact of the early surrender of the Indian title to the territory around the southern shores of Hudson's or James' Bay to the French King; the fact of the actual settlement and occupation of these interior posts by the French, and which, according to the rules of international law, had made that territory part of Canada or New France. We stand on the territorial rights which the French King had thus acquired; which the French King, in 1763, ceded to the English Crown as Canada, with all its dependencies, and its settlements and posts in the whole extent of the Colony of Canada; which, by the Quebec Act and Commissions to Governors, became the north-western part of the Province of Quebec; which, by the Order in Council and Proclamation of 1791, and the commissions to Governors, became the former Province of Upper Canada; and which, by the British North America Act, has now become the territorial extent of the Province of Ontario.

ARGUMENT OF MR. MACMAHON, Q.C.

Mr. Hugh MacMahon, Q.C., opened the case for the Dominion. He said: A great deal which had been argued upon the other side we have never questioned at all; and a greater part of what has been addressed to the Commissioners by my learned friend Mr. Hodgins, we agree with entirely. 40

What I propose doing, in the first place, is to glance cursorily at the evidence in regard to the early settlements; although I do not conceive it to have very much bearing on the case, still, as it has been pressed on the Arbitrators by the Attorney-General so very forcibly, I consider it necessary to view the facts as they appear from the historical documents.

France claimed in 1685, and in 1671—1671 to 1685—that she was entitled to the whole North-West, including what is claimed as the Hudson's Bay territory. That claim was set up first by De Callières, when writing to the authorities in France in 1685, and afterwards. His memoir was followed by the Marquis de Denonville's, when communicating with the same Government. It was stated in that memoir just as has been asserted by the Attorney-General, and that memoir is set forth in the New York Historical Documents, Vol. 9, 287, and also at page 304 of the same volume. But in that 50

statement of M. de Denonville, he admits that documentary evidence could not even at that time be adduced in support of those visits having been made to Hudson's Bay. His words are:—"I annex to his letter a memoir of our rights to the title of that country, of which our registers ought to be full, but no memorials of them are to be found." When we come to examine into the facts of these asserted voyages, it will be found that not one of them was made until the voyage of Albanel, in 1672. It is asserted that Jean Bourdon, the Attorney-General in 1656, explored the entire coast of Labrador and entered Hudson's Bay. Now, there is no record whatever of that—nothing whatever to support it; but there is a record in 1655, that Sieur Bourdon, then Attorney-General, was authorized to make a discovery of the Hudson's Bay, and it will be seen hereafter what he did in order to comply with that *arrêt* of the Sovereign Council. He made an attempt: he started on his voyage on May 2, 1657. This statement is contained on page 3 of the Dominion Case. He started on May 2, and returned on August 11 of the same year. My learned friend had to admit that there was no possible chance of his making a voyage to Hudson's Bay between those dates. The account of it, as given in the Relations of the Jesuits of 1658, page 9, is this:—"The 11th (August) there appeared the barque of M. Bourdon, which having descended the Grand River on the north side, sailed as far as the 55th degree, where it encountered a great bank of ice, which caused it to return, having lost two Hurons that it had taken as guides. The Esquimaux savages of the north massacred them, and wounded a Frenchman with thr. arrows and one cut with a knife." Jean Bourdon was of the Province of Quebec; he was well known to the Jesuits and trusted by them, and it is stated in the memoir that he went with Father Jogues on an embassy to Governor Dongan, then Governor of the Province of New York.

The other statement is that Father Dablon and Sieur de Vallière were ordered, in 1661, to proceed to the country about Hudson's Bay, and that they went thither accordingly. Now, all the accounts agree in the statement that Dablon never reached Hudson's Bay. In Shea's *Charlevoix*, Vol. 3, pp. 39, 40, it is stated that Father Dablon attempted to penetrate to the Northern Ocean by ascending the Saguenay. Early in July, two months after they set out, they found themselves at the head of the Nekauba River, 300 miles from Lake St. John. They could not proceed any farther, being warned of the approach of the Iroquois. In the New York Historical Documents there is a note by the editor of these papers on page 97, which gives an account of the Rev. Father Dablon from the time of his arrival in Canada in 1665. He was immediately sent missionary to Onondaga, where he continued, with a brief interval, until 1658. In 1661 he set out overland for Hudson's Bay, but succeeded only in reaching the head waters of the Nekauba, 300 miles from Lake St. John.

An assertion is also made that some Indians came from about Hudson's Bay to Quebec in 1663 and that Sieur la Couture, with five men, proceeded overland to the Bay, possession whereof they took in the King's name. There is no account of this voyage in *Charlevoix* or in the *Relations of the Jesuits*; and the authority relied upon, is the same as my learned friend relies on, as being furnished for the Marquis de Denonville, to which I have already referred as being untrustworthy. M. de Callières in his memoir, written in 1685, was twenty-one years after the time of which he writes. It is asserted in the memoir that Couture made that journey to the Hudson's Bay for the purpose of discovery; and taking that in connection with the fact that the Governor of the Province is compelled to admit that they have no record in any shape to which they could refer, although they ought to have many, and when we come to what really took place in 1671, during Talon's administration, we find that it was then, that the desire existed that some one connected with the French should go to the Hudson's Bay, and, if possible, make a discovery of it; and the design of putting all this forward in 1685, was to make the King of France and his Ministers believe that this country was then in the possession of the French. For what purpose? Because in 1682 they had gone to that territory, had taken possession of the forts built and set up by Gillam and others on behalf of the Hudson's Bay Company, and had destroyed property there; therefore it was necessary that they should account in some way for having gone into that territory and taken possession of it. The next voyage claimed after that of Couture is the voyage of Sieur Duquet.

50 *Chief Justice Harrison*.—Before these periods there can be no doubt that some Frenchmen had penetrated to Hudson's Bay.

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Mr. MacMahon.—No, not one. Fort Rupert was established in 1688; that was Gillam's Fort. It is admitted on all hands that Gillam built the first fort on the Bay. That was the first fort of any account upon the Hudson's Bay, or anywhere in connection with it; this is not questioned by my learned friend. That fort was put up in the interest of Prince Rupert. I am merely going over the arguments of my learned friend in order to show on what a slight basis the historical statements have been built, and how willing the Province of Ontario has been to seize upon such papers, as authentic documents, in order to prove that this territory was French.

In 1663 Sieur Duquet, the King's attorney for Quebec, and Jean L'Anglois, a Canadian colonist, are said to have gone to Hudson's Bay by order of Sieur D'Argenson, and to have renewed possession by setting up the King's Arms there a second time. By reference to page 129 of Mills' revised Report, it will be seen that that order could not have been given by D'Argenson, because he had left Canada on September 16, 1661, two years before this pretended order was given to Sieur Duquet; and there is ample authority for that in Shea's *Charlevoix*, vol. 3, page 65, note 5, and p. 17. I have given the historical references here in order that, if possible, my learned friends might meet the statement that is made.

The Attorney-General.—Would it not be convenient for my learned friend to answer now the way in which Mr. Mills treats these things?

Mr. MacMahon.—I do not think it is necessary, because Mr. Mills puts the matter on a ground that could hardly be maintained. If he were to look at it now, he would admit that there is not so much in his view as he thought there was at the time he wrote his report. In a note on page 129, Mr. Mills says: "An attempt has been made, on the strength of certain passages in the *Relations des Jésuites*, to throw doubt on the authenticity of certain of the occurrences mentioned in the memoirs of M. de Callières and the Marquis de Denonville. It is not at all likely that either of these—the one being Governor of Montreal and the other Governor-General of New France, having access to the official documents, and writing within a short time of the date of the events narrated—could by possibility be mistaken." Now, De Callières was writing twenty-one years after the events; Denonville was writing twenty-two years after them, and relying upon the very identical memoir that De Callières had written, and which he said there was not a document to support. If there was not a document on which they could rely, how it is possible that any reliance could be placed upon their statements just at that particular juncture, when it was necessary for them to find some argument upon which they could defend their having sent the French into Hudson's Bay and destroyed these forts? For, in 1686 the Marquis de Denonville had sent two or three companies of Frenchmen to Hudson's Bay and taken three forts in one year; and it was necessary that they should account for these transactions to the Government of France. I will show that the Hudson's Bay Company were at that very time making representations to their Government in regard to the conduct of the French, and to the governors of the French. I think that this is all I need say in regard to Sieur Duquet's voyage. The fact of D'Argenson having left Canada two years before his order is said to have been given to Duquet, shows that the whole thing was, if not a fabrication, a mistake. I am not going to say that it was a fabrication; I am not called upon to account for it in any way; I am only called upon to point out that there is no authority for it; and the whole circumstances go to show that the transaction could not have transpired as it is set forth by the governors at that day. There has been an egregious error committed in some way. That order could never have been given, because we have the most unmistakable evidence that D'Argenson was not in this country then.

When we come to the voyage of Albanel and St. Simon in 1671, which we admit was made, we find in a letter of M. Talon to the King, dated Quebec, November 2, 1671, these words: "Three months ago I despatched with Father Albanel, a Jesuit, Sieur de St. Simon, a young Canadian gentleman recently honoured by His Majesty with that title. They are to penetrate as far as Hudson's Bay, draw up a memoir of all they will discover, drive a trade in furs with the Indians, and especially reconnoitre whether there be any means of wintering ships in that quarter." That is what they were to do; so that if the French Government of the day had, prior to that, caused visits to be made to Hudson's Bay, in the way in which they pretend some years after that to state, all that knowledge and information

would have been acquired, and there would have been no necessity for sending a priest there in order to make that discovery. If those statements of the earlier alleged voyages had not been made by the duly constituted authorities of the Government of the country, I think this is almost all the answer it would be needful to make. But Father Albanel says, at page 56 of the *Relations* for 1672: "Hitherto this voyage had been considered impossible for Frenchmen, who, after having undertaken it already three times, and not having been able to surmount the obstacles, had seen themselves obliged to abandon it in despair of success. What appears as impossible, is found not to be so, when it pleases God. The conduct of it was reserved for me, after eighteen years' prosecution that I had made, and I have very sensible proofs that God reserved the execution of it for me, after the signal favour of a sudden and marvellous, not to say miraculous, recovery that I received as soon as I devoted myself to this mission, at the solicitation of my superior, and in fact I have not been deceived in my expectation; I have opened the road in company with two Frenchmen and six savages." This shows that so far as the Jesuits were concerned, the pioneers of the country, they had never heard of any one having penetrated to Hudson's Bay before them. The very letter that M. Talon was writing to the King shows that he had never heard anything of the kind. There is no doubt, therefore, that Albanel's voyage was the first effort successfully made to reach Hudson's Bay.

The Attorney-General—M. Talon says also, in that letter to the King, that those countries were originally discovered by the French.

Mr. MacMahon—That is the way in which these accounts were made up; but it is evident that the French had not been in Hudson's Bay, and did not know whether it would winter ships or not.

The Attorney-General—M. Talon says that he directed St. Simon to take renewed possession of it.

Mr. MacMahon—It was not necessary to take renewed possession, if they were in possession already, as it is now claimed that they were. There is not a record in existence which will substantiate the claim then made as to former possession. In December, 1711, the Hudson's Bay Company presented a petition to Queen Anne, in which they set forth that the French, in time of perfect peace between the two kingdoms, in 1682, arbitrarily invaded the Company's territories at Fort Nelson burned their houses, and seized their effects; that in the years 1684 and 1685 they continued their depredations; that in the year 1686 they forcibly took from the Company, Albany Fort, Rupert Fort, and Moose River Fort, and continued their violent proceedings in 1687 and 1688, and the Company by the damages at £108,514 19s. 8d. (Mills, 153.)

It is not my intention to take up the time of the Arbitrators in referring to the English discoveries. A series of them will be found at pages 4 and 5 of the Dominion Case. The voyages are those of Sebastian Cabot, in 1517; Sir Martin Frobisher, in 1576, 1577 and 1578; Hudson, 1608-10; Button, 1611; Luke Fox and Thomas James, 1631. Then we come to 1667 and 1668, when we find that Des Grossellières and Radisson (who it is supposed were *Coueurs des Bois*) were roaming among the Assiniboines, and were conducted by them to Hudson's Bay. These two men went to Quebec after their return for the purpose of inducing the merchants there to conduct trading vessels to Hudson's Bay. At page 280 of the Ontario Documents we have the whole transactions during that period fully set forth by the Hudson's Bay Company just as they transpired. The proposal of Des Grossellières and Radisson was rejected, as the project was looked upon as chimerical by the Quebec merchants. Now, if Attorney-General Bourdon, the Attorney-General of the Province, had been there twelve or fourteen years before, and made known what his discovery was, and how he got there and returned from there, it would not have been stated by the merchants of Quebec that the project was chimerical.

The Attorney-General—Nor did they state so. The document merely says that their project was rejected.

Mr. MacMahon—I will furnish the authority for stating that the project was looked upon as chimerical. I think you will find it in Mr. Mills' book.

Des Grosellières was in London in 1667, but before going there he had been in Boston and in Paris, endeavouring to get merchants to assist in reaching the Hudson's Bay by ships. He wished

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them to fit out an expedition for that purpose, but they refused to join in the undertaking, and he then referred to the British Ambassador at the Court of Paris, who advised him to go to London. He went there, and those who afterwards obtained the patent from Charles II. to the Hudson's Bay Company, employed Des Groseillères and Radisson, with Gillam, who went there and built Fort Rupert in 1667 or 1668. Then Captain Newland was sent out in 1669 by the same parties who sent out Gillam. So far as the Hudson's Bay territory is concerned, the English were first, both as to discovery and occupation.

It is stated in Mr. Mills' book (and not denied) that as long as the English were not there, the Indians came to Montreal and Quebec, and Three Rivers. The whole of the trade was done between Fort Frontenac (Kingston) and Quebec, by the Indians themselves; and with the exception of the *Coureurs des Bois*, who went into the country some hundred miles, there was no pretence of the French having penetrated into the interior. But as soon as the English commenced occupying the Hudson's Bay territory, as soon as they were intercepting and taking possession of the trade that had formerly belonged to the French merchants, then those who were interested took steps to secure, at Hudson's Bay, the trade which the English were intercepting. The memoirs are full of statements as to the venality of those connected with the French Government in Canada. It is stated that the Governors-General themselves were in league with certain merchants and traders for the purpose of getting possession of as much of the trade as they possibly could, and that none except certain favoured individuals could get licenses from the Governors. The people stated themselves that they were persecuted by the emissaries of the Government, who sought to prevent them going into the interior; and thus the *Coureurs des Bois* were prevented from going into the interior of the country, and cutting off the trade which would otherwise have gone to Montreal, and which the officials were bound to participate in if they could. That is the reason why the French Governors here thought it necessary to send these memoirs to the Court of France.

Now, having found the English making discoveries, entering into possession, and building forts upon Hudson's Bay, the question suggests itself—a question which ought to be determined—what extent of territory the King of England, as represented by the Hudson's Bay Company, or the discoveries of that Company—what extent of territory the King of England was entitled to by this discovery, possession and occupation. I do not think there can be a doubt about it. Most of the authorities on the point are referred to on page 6 of the Dominion Case. It is laid down in Vattel that “navigators going on voyages of discovery furnished with a commission from their Sovereign, and meeting with islands or other lands in a desert state, have taken possession of them in the name of their nation; and this title has been usually respected, provided it was soon after followed by real possession.” Here we have these people sent out under the sanction of the King and of Prince Rupert to make a discovery of Hudson's Bay. They did make that discovery, and entered into possession; and I am going to show to the Commissioners, no matter what the occupation was, that under the law of nations, as interpreted then and since by the highest authorities, they were entitled to the whole of the lands watered by the streams flowing into Hudson's Bay and James' Bay; and more than that, it will be apparent that the Hudson's Bay Company and the English Government were claiming that the whole of these lands belonged to England. Vattel says also: “When a nation takes possession of a country, with a view to settle there, it takes possession of everything included in it, as lands, lakes rivers, etc.”

The next authority I shall quote is Phillimore. He says: “In the negotiations between Spain and the United States respecting the western boundary of Louisiana, the latter country laid down with accuracy and clearness, certain propositions of law upon this subject, and which fortify the opinion advanced in the foregoing paragraphs. The principles (America said on this occasion) which are applicable to the case, are such as are dictated by reason, and have been adopted in practice by European Powers in the discoveries and acquisitions which they have respectively made in the New World. They are few, simple, intelligible, and at the same time founded in strict justice. The first of these is, that when any European nation takes possession of any extent of sea coast, that possession is understood as extending into the interior country to the sources of the rivers emptying within that coast, to all their branches, and the country they cover, and to give it a right, in exclusion of all other

nations to the same. (*See* Mémoire de l'Amérique, p. 116.) It is evident that some rule or principle must govern the rights of European Powers in regard to each other in all such cases; and it is certain that none can be adopted, in those to which it applies, more reasonable or just than the present one. Many weighty considerations show the propriety of it. Nature seems to have destined a range of territory so described for the same society, to have connected its several parts together by the ties of a common interest, and to have detached them from others. If this principle is departed from it must be by attaching to such discovery and possession, a more enlarged or contracted scope of acquisition; but a slight attention to the subject will demonstrate the absurdity of either. The latter would be to restrict the rights of an European Power who discovered and took possession of a new country to the spot on which its troops or settlement rested—a doctrine which has been totally disclaimed by all the Powers who made discoveries and acquired possessions in America" (Phillimore's International Law, 2nd ed., vol. 1, pp. 277-8-9.)

I wish to draw the Arbitrators' particular attention to this expression in regard to restricting the rights of European Powers, etc., to the spot on which troops or settlement rested, because in dealing with the Treaty of Ryswick, the argument has been advanced that all which was left to the English after that treaty were the settlements in the immediate neighborhood of the fort or two then in their possession; that is, the territory immediately round about, and nothing more; although, as I will afterwards show, I do not think that the Treaty of Ryswick has anything to do with the discussion of this case. At page 223 in the discussion of the Oregon question, Dr. Twiss says: "In the negotiations antecedent to the Treaty of Utrecht, it was expressly urged, in support of the British title to the territories of Hudson's Bay, that M. Frontenac, then Governor of Canada, did not complain of any pretended injury done to France by the said Company's settling, trading, and building forts at the bottom of Hudson's Bay, nor made pretensions of any right of France to that Bay till long after that time." (Anderson's History of Commerce, A. D. 1670, vol. 2, page 516) He goes on to say: "In other words, the title which this charter created was good against other subjects of the British Crown by virtue of the charter itself." That is what Dr. Twiss lays down as a proposition which he says cannot be controverted—that as regards the title created by the charter, it was good against other subjects of the British Crown by virtue of the charter itself; so that in virtue of what has taken place within the last few years it must be good as against the Province of Ontario. He continues: "But its validity against other nations rested on the principle that the country was discovered by British subjects, and at the time of their settlement was not occupied by the subjects of any other Christian Prince or State; and in respect to any special claim on the part of France, the non-interference of the French Governor was successfully urged against that power as conclusive of her acquiescence." That is laid down by Dr. Twiss, and it is a proposition which has been assented to by Phillimore in the quotation just read. The quotation which was made use of by my learned friend the Attorney-General from Twiss' *Oregon* was not attempted to be controverted by the English authorities at the time of the Oregon difficulty. Mr. Mills, at page 182 of his Report, says: "It can hardly be contended that because the Hudson's Bay Company had established certain posts and forts at the mouths of some of the rivers that empty into the Bay, they could rightfully claim all the country drained by those rivers and their tributaries. A pretension of this kind was put forward by the United States to the whole of Oregon, because of the discovery of the Columbia River by Captain Gray, but it was expressly repudiated at the time by Great Britain. No such rule is recognized by writers on international law." Now, the rule of law, as recognized by international writers and Great Britain, was different from that put forward by Mr. Mills. What was stated by Twiss and what is asserted here is, that it depended upon other considerations. Sir Travers Twiss in his discussion on the Oregon question, at page 300, states that "Great Britain never considered her right of occupancy up to the Rocky Mountains to rest upon the fact of her having established factories on the shores of the Bay of Hudson, i. e., upon her title by mere settlement, but upon her title by discovery, confirmed by settlements in which the French nation, her only civilized neighbour, acquiesced, and which they subsequently recognized by treaty." That is the ground upon which Dr. Twiss puts it, and it is the groundwork of the whole international law as stated by Phillimore in the quotation that I have already read. The principle is stated in Vattel in the reference I have made; is fully recognized by Great Britain and the United States; and is fully assented to by Twiss and Phillimore.

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In reference to the middle distance, my learned friend quoted from Twiss, 148. At 173 and 177, Twiss treats of this middle distance in regard to this very territory. He says: "Again, in the case of a river, the banks of which are possessed by contiguous States, the presumption of law is, that the Thalweg, or mid-channel, is the natural boundary; since rivers are, in the case of the contiguous States, *communis juris*, unless acknowledged by them to be otherwise, or prescribed for by one of the parties. The general presumption," observes Lord Stowell in the *Two Gebroeders*, 3 Rob., p. 339, "certainly, bears strongly against such exclusive rights, and the title is matter to be established on the part of those claiming under it, in the same manner as all other demands are to be substantiated, by clear and competent evidence."

"A title by contiguity, as between contiguous States, would thus appear to be a reciprocal title; 10 it cannot be advanced by one party, excepting as a principle which sanctions a corresponding right in the other. The practice is in accordance with this. Thus, the United States of America, in its discussion with Spain respecting the western boundary of Louisiana, contended that 'whenever one European nation makes a discovery, and takes possession of any portion of that continent (*i. e.*, of America), and another afterwards does the same at some distance from it, where the boundary between them is not determined by the principle above mentioned (*i. e.*, actual possession of the sea coast), the middle distance becomes such a course.' (British and Foreign State Papers, 1817-18, p. 328.)

Now, here we have taken possession of the sea coast, so that the question of middle distance, or reaching the territory by another route, cannot come in question at all; because, as contended by the United States and Great Britain in the discussion of this question, they have always claimed, and the 20 Hudson's Bay Company have always claimed, that the territorial rights extended to the height of land on all sides; and I will point out to the Commissioners that as early as 1709, before the Treaty of Utrecht, the Hudson's Bay Company were claiming on the east and south, the very line that ran from Grimmeton's Island down through Lake Mistassinnie. Now, it is necessary to look at the Company's grant in different aspects. The Charter will be found in Ontario Documents, 29-30. What does the King grant to the Hudson's Bay Company under the name of Rupert's Land? First is granted the sole trade and commerce of all those seas, bays, lakes, rivers, creeks, etc. Then the Company are created the "absolute lords and proprietors of the same territory, limits, and places, etc., etc., in free and common soeage, with power to erect colonies and plantations, etc. So that here was a proprietary government created by the charter. You will see by the charter that the Company had the power to 30 adjudge, to create colonies—the power to do everything, apparently, which any government ought to be called upon to do. And I refer to the fact of its being a proprietary government because it will be necessary to consider that in relation to the bounds which my learned friend the Attorney-General says could be created by the King, notwithstanding that the boundaries might have been limited by the Act of Parliament. The charter is very wide. Although Sir Vicary Gibbs, who gave an opinion in 1804, thought the charter void because it purports to confer upon the Company exclusive privileges of trade, he does not say anything about the proprietary rights; he does not say anything about the right of the King to grant a charter the same as was granted in Pennsylvania; he does not say anything about the right to make a territorial grant; he merely gives the opinion that the charter is invalid because it grants exclusive privileges of trade and thereby creates a monopoly, which they say the King could not 40 grant without the sanction of Parliament.

The next opinion in point of time is that of Sir Arthur Pigott, Sergeant Spankie, and Lord Brougham, 1816; and the next one is that of Mr. Edward Beacroft, in 1818. In these two opinions they did not for a moment say that the charter is invalid, but they say that the Crown had no right, and could not of itself create a monopoly, and therefore as to that part of the charter it might be invalid; but as to the rest of the charter, they say the only part of it to which a question could be raised was in regard to the extent of the territory covered by the charter. I think I will be able to show the Commissioners that the charter was always considered by the British Government as extending to the full length asserted now by the Dominion, and as was asserted by England shortly after the Treaty of Utrecht.

The Attorney-General urged, with a great deal of force, that the opinions given by the law officers 50 of the Crown in 1850 and 1857, were given upon statements furnished by the Hudson's Bay Company

which were *ex parte*, and that, therefore, the Commissioners are not bound by these opinions. I do not pretend that Ontario is bound by any of these opinions; that is not asserted by the Dominion; but the Province of Ontario is put into a position, which I think the Province is not able to escape from, by the very fact of the proceedings referred to having been instituted, and that the law officers of the Crown stated at that time that the Hudson's Bay Company were entitled to everything that they claimed; and I am going to point out to the Commissioners what the claims were, and upon what these claims were based.

The claim, as furnished by the Hudson's Bay Company, will be found in full in Ontario Documents, 288-90. [Appendix A, *ant.*, pp 340-2]. That claim was founded—upon what? Upon a document prepared by the Crown itself, and furnished to these very counsel as the title on which they were to rely; and the law officers of the Crown, looking at that document, at the charter itself, could see for themselves, and were giving an opinion in regard to a legal document. The Company import into their statement a part of the charter, and set out by saying in the words of the charter what the King had granted them; and then they say that they "have always claimed and exercised dominion as absolute proprietors of the soil in the territories understood to be embraced by the terms of the grant, and which are more particularly defined in the accompanying map." The map is an exact counterpart of what was used in 1857, and in that map is set forth all that they claim.

Chief Justice Harrison—Each time that they were called upon to give their claim, they appear to have extended their boundaries.

20 *Mr. MacMahon*—They were determined to claim enough, like my learned friend the Attorney-General, who started out with claiming the line of the Rocky Mountains. They furnished that claim to their grantors; they were furnishing that claim to the Crown, and it was submitted to the Crown officers, who gave an opinion in regard to it, and that opinion I have had copied in the Dominion Case at p. 7, [*ante*, p. 500.] It was given by Sir John Jervis and Sir John Rolfe—of whom one became Chief Justice of the Common Pleas, and the other Master of the Rolls. In that opinion, which is addressed to Earl Grey, they say:—"In obedience to your Lordship's command, we have taken these papers into consideration, and have the honour to report that, having regard to the powers in respect to territory, trade, taxation and government claimed by the Hudson's Bay Company in the statements furnished to your Lordship by the chairman of that Company, we are of opinion that the rights so claimed by the 30 Company do properly belong to them. Upon this subject we entertain no doubt." The Commissioners will see that that map is attached to the correspondence and papers; and all these papers were brought down, in 1850, to the House of Commons on a return then ordered, and which shows the correspondence which took place between Mr. Isbister, who was representing those who felt themselves aggrieved—I do not know whether representing a Government or private parties.

Chief Justice Harrison—He was not acting for any Government—he was acting as an individual.

Mr. MacMahon—He was acting for some people who claim to have rights in the Hudson's Bay; and the correspondence took place in respect to the charter, the extent of territory and the trade, taxation and government, as claimed by the Hudson's Bay Company.

Sir Edward Thornton—I should suppose that Mr. Isbister represented the people in Assiniboia—40 the dissatisfied people in the Red River Settlement.

Chief Justice Harrison—Yes; certainly he did not represent any Government. He was one of the first to rouse public opinion about the monopoly, both here and in England.

Mr. MacMahon—I showed the letters and papers attached to the map to the Attorney-General, but we concluded that it was not necessary to have them printed, as part of them appear in the Ontario Documents. The letter I will now read is addressed to Mr. Isbister, dated April 30, 1859, and will be found at pages 12 and 13 of the Hudson's Bay Company's Documents:

"DOWNING STREET, April 30, 1850.

"SIR,—In answer to your letter of the 16th of this month, I am directed by Earl Grey to state to you, with as much distinctness as possible, since there appears to have been some misunderstanding on

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the subject, the course which Her Majesty's Government have adopted and propose to pursue relative to the charges against the Hudson's Bay Company. (2) In pursuance of the address of the House of Commons, praying Her Majesty to take such means as might seem most fitting and effectual to ascertain the legality of certain powers claimed by that Company, Lord Grey called on the Company for a statement of those claims, and laid it before the Attorney and Solicitor-General for their opinion. You are acquainted with their opinion, which was to the effect that the rights so claimed by the Company properly belonged to them. (3) They added a suggestion that yourself, or any other party dissatisfied with their opinion, might be recommended to prosecute complaints against the Company by means of a petition to the Queen, which might be referred to the Judicial or some other committee of the Privy Council. (4) This offer was accordingly made to yourself. You now appear to suppose that Her Majesty's Government, in making the offer, intended to defray out of the public funds the expense which must attend such an investigation. (5) This, however, Her Majesty's Government cannot consent to do. Having been advised by their own law officers that the claims of the Company are well founded, they cannot impose on the public the expense of proceedings which, in the opinion of their own regular advisers, will prove ineffectual. All that is in their power is to recommend that those who are dissatisfied with that opinion should pursue the course pointed out by the law advisers for questioning it, and to assist as far as they may lawfully do in having the question so raised brought to a legal determination. (6) But the expense of the steps necessary for this purpose must be borne by the parties who undertake them; and if none of those who have brought under the notice of Lord Grey, and of Parliament, their exceptions to the jurisdiction and power claimed by the Company, are willing to incur such expense, Her Majesty's Government must consider that there are no further steps which it is in their power to adopt for the purpose of ascertaining the legal validity of the claims of the Company."

Now, here was the British Government being advised by their own legal advisers that any steps they might take in order to test the territorial rights (which I suppose it was designed to test by anything that might go before the Privy Council) would be ineffectual; and at that early date Mr. Isbister, who was moving either on behalf of himself or somebody interested, was told that the Government would not assume the responsibility. And we are told in 1850 that the only way of testing the validity of that charter, or the extent to which the rights of the Company might be narrowed down, was by the legal interpretation to be put upon the charter by the Privy Council. Neither then nor in 1857 did Canada think it proper to test in any way—particularly as suggested by the law officers of the Crown on both of these occasions—the validity of that charter. Following that, there was further correspondence. In 1850, Sir John Pelly, who was then Governor of the Hudson's Bay Company, had written to Lord Grey. The following is an extract from his letter, dated at the Hudson's Bay House, May 31, 1850: "Permit me at the same time to state that the Company's ships for Hudson's Bay are appointed to sail on the 8th June, and that it would be of the utmost importance if the decision of the Privy Council, on the rights and privileges of the Company, were sent out by that opportunity, and the Government directed to issue a Proclamation agreeable to the tenor of the decision, which would in my opinion greatly tend to allay the excitement in which a portion of the half-breed inhabitants have been kept." Now, there the Governor of the Hudson's Bay Company invites Her Majesty's Government to have it decided, and to have the excitement allayed. The reply of Lord Grey will be found at page 8 of the Dominion Case. After pointing out what had been done, Mr. Hawes says that a petition to Her Majesty was suggested, and he goes on to say: "Such a petition was, therefore, essential to the complete prosecution of the inquiry. Lord Grey accordingly gave to certain parties in this country, who had taken an interest in the condition of the inhabitants of the Hudson's Bay Company's Territories, and had questioned the validity of the Company's charter, an opportunity to prefer the necessary petition if they were so disposed; but, for reasons which it is unnecessary to repeat, they respectively declined to do so. Lord Grey having, therefore, on behalf of Her Majesty's Government, adopted the most effectual means open to him for answering the requirements of the Address, has been obliged, in the absence of any parties prepared to contest the rights claimed by the Company, to assume the opinion of the law officers of the Crown in their favour to be well founded." Lord Grey at that time was Colonial Minister, and he, on behalf of Her Majesty's Government, was obliged to assume that the

opinion of the law officers of the Crown in favour of the Hudson's Bay Company was well founded, and Her Majesty's Government refused to interfere any further with it, as they were perfectly right in doing.

Chief Justice Harrison—These questions, however, were all questions as to certain rights, more than questions as to boundary.

Mr. MacMahon—The trade, taxation and territory were all included.

Chief Justice Harrison—But the question as to the boundary really never came up, because the persons who were then attacking the Hudson's Bay Company said that the Company had no right to any part of the territory. If the question of boundary had come up, they must have looked at the 10 Quebec Act and to these other Acts. But the question then was not a question of boundary at all; it was a question of whether the Company had any rights.

Mr. MacMahon—They were claiming certain rights, and a certain territory as being incident to or connected with those rights. The whole went together.

Chief Justice Harrison—There was no opinion from the law officers of the Crown as to the boundary.

Mr. MacMahon—The Company claimed those boundaries; their own position supplied boundaries. In 1837 the very same question came before Sir Richard Bethell, and, as reference has been made to the distinguished lawyers who gave opinions on the other side, I may say that I presume Sir Richard Bethell's opinion as Attorney-General would be authority as high as could be got from any source in 20 regard to what was covered by the charter.

Sir Edward Thornton—I do not see that there can be the least doubt that the complaints made in 1850 were from Winnipeg, from the same people who were dissatisfied for a great number of years with the Hudson's Bay Company.

Mr. MacMahon—The question as to territory, as to that portion of territory at least, must have got before the law officers of the Crown in some way.

Chief Justice Harrison—These people at Red River said the Hudson's Bay Company had no rights in any part of this territory, and the law officers were against them.

Mr. MacMahon—We have not the petition presented to the House of Commons, but if Mr. Isbister was acting on behalf of those who were known as the Red River settlers, and if he was their 30 representative, then as far as regards the territory that they were disputing, as being controlled by the Hudson's Bay Company, when they had no right to control it at that time, that must have been a question the law officers considered, and in regard to which they gave an opinion.

Chief Justice Harrison—The Attorney-General, for the sake of this argument, admits that the Hudson's Bay Company had some rights, but that as a matter of boundary they did not extend to certain points.

Mr. MacMahon—The question of boundary must have been considered in regard to that territory, as to whether the Hudson's Bay Company were exercising rights outside of the boundaries that they were entitled to under the charter.

Chief Justice Harrison—The case was not put on that ground; the higher ground was taken that 40 the Company had no right there at all.

Sir Edward Thornton—If I am not mistaken, the territory of Assiniboia was granted to the Earl of Selkirk. It is marked upon this map as the territory of Assiniboia.

Mr. MacMahon—Yes. In 1837—the Arbitrators will remember that that was after a lengthened investigation had been gone into by the House of Commons—when Chief Justice Draper was acting as agent for Canada.

Sir Edward Thornton—That is the first time that Canada as a country appeared in the matter at all; I mean the late Province of Canada.

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Mr. MacMahon—Yes. When Chief Justice Draper went to England as the agent of Canada, the whole matter as to the rights of the Company was supposed to have received very close attention by the home authorities, and the strongest possible arguments were adduced by the agent of the Province in order to curtail the rights of the Hudson's Bay Company, territorially; and at that time the law officers of the Crown, Sir Richard Bethell and Solicitor-General Keating, were asked for an opinion; the whole of which is in Ontario Documents, 200, 201. In that opinion they say,—“That the validity and construction of the Hudson's Bay Company's charter cannot be considered apart from the enjoyment which has been had under it during nearly two centuries, and the recognition made of the rights of the Company in various Acts, both of the Government and the Legislature.” In their statement of rights the Hudson's Bay Company say, in 1850—“It may be right here to mention that although the 10 original title to the territory and trade in question was derived under the charter above referred to the rights of the Company have, in various instances, received the recognition of the Legislature.”

Chief Justice Harrison—Just confirming what I said; the whole dispute was as to the rights of the Company, not the boundary.

Mr. MacMahon—They also say,—“It may be right here to refer to several Acts of the Legislature which have recognized the general rights and privileges claimed and exercised by the Company:—

“An Act passed in the sixth year of the reign of Queen Anne, c. 37, intitled ‘An Act for the Encouragement of the Trade in America,’ and this Act contains an express proviso that ‘nothing therein contained shall extend or be construed to take away or prejudice any of the estates, rights or privileges of or belonging to the Governor and Company of Adventurers trading into Hudson's Bay.’ 20

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“In like manner, in 1745, when an Act was passed (18 Geo. II. c. 17) for granting a reward for the discovery of a north-west passage through Hudson's Straits, it was expressly provided that nothing therein contained should extend or be construed to take away or prejudice any of the estates, rights or privileges of or belonging to the Hudson's Bay Company.”

One of the contentions in regard to the rights and privileges of the Hudson's Bay Company was that they had not fulfilled the intent of their charter—that they had not been making any endeavours to discover a passage to the North-Pole; that if the charter was ever valid, they had forfeited it by not fulfilling certain conditions. I refer to that to show that during all that time their rights and privileges were being expressly accepted and held valid by these Acts of Parliament during the reigns of Anne and the Georges—so that they were not to be infringed upon in any way—and that they had 30 been recognized up to the very day when Rupert's Land was surrendered by the Hudson's Bay Company to Her Majesty.

At this point the Arbitrators adjourned until ten o'clock the next morning.

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Arbitrators and Counsel all present.

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Chief Justice Harrison—Before the argument is proceeded with, I would state, without having any desire whatever to unduly hurry the argument, that if there is any probability of its being concluded by one o'clock or so, there is a prospect of the Arbitrators being able to agree this afternoon.

Mr. MacMahon—I will shorten my argument very much. Before commencing the regular course of the argument, I wish to refer to that matter of Radisson and Des Grosellières. In the printed Case 40 the word “chimerical” is used to express the way in which the merchants of Quebec looked upon the statement of these men. My learned friend the Attorney-General said that that was a statement of Mr. MacMahon's. I thought that that statement would be found in Mr. Mills' book, but I see that I was mistaken in that; the statement is to be found in Harris' *Travels*, page 286, vol. 2 (reads the passage), so that it was not a statement of my own.

The Attorney-General—The authority is then less than that of my learned friend himself would be

Mr. MacMahon—Not at all.

Chief Justice Harrison—The difference is that Harris is not an advocate.

Mr. MacMahon—Harris is about the best authority that we could get for the statement; his work 50 was published in 1760.

I was referring the Arbitrators last evening to the opinion delivered by Sir Richard Bethell, afterwards Lord Westbury, and Sir Henry S. Keating, delivered in 1857 (Ontario Docts., 200-1). It will be remembered that at the time the whole evidence, and all the correspondence that could be got together in regard to this question, had been submitted to the Committee of the House of Commons, and therefore the law officers of the Crown were fully advised of everything that could be brought to bear upon the subject; and I may say here, as the matter was referred to by the Hon. Chief Justice yesterday, that although, perhaps, the question of boundary did not come up as a square issue at that time, nor in 1850, still the question of boundary must have arisen incidentally when each of these opinions was given, so that the law officers of the Crown at that time were dealing incidentally with the question of boundary, and they could not avoid dealing with it in some way. They say:—"We beg leave to state, in answer to the questions submitted to us, that in our opinion the Crown could not now with justice raise the question of the general validity of the charter; but that, on every legal principle, the Company's territorial ownership of the lands and the rights necessarily incidental thereto (as, for example, the right of excluding from their territory persons acting in violation of their regulations) ought to be deemed to be valid."

They likewise say,—"Nothing could be more unjust, or more opposed to the spirit of our law, than to try this charter as a thing of yesterday, upon principles which might be deemed applicable to it if it had been granted within the last ten or twenty years." In another part of the opinion they say:—"The remaining subject for consideration is the question of the geographical extent of the territory granted by the charter, and whether its boundaries can in any and what manner be ascertained." That is the question they were discussing. "In the case of grants of considerable age, such as the charter, when the words, as is often the case, are indefinite or ambiguous, the rule is that they are construed by usage and enjoyment, including in these latter terms the assertion of ownership by the Company on important public occasions, such as the Treaties of Ryswick and Utrecht, and again in 1750." They refer to these three different periods as points of time, in order to ascertain what ought to be the boundaries allowed to the Hudson's Bay Company in 1857, and show that the enjoyment under that charter, the assertion of rights under that charter, and the claims made by virtue of the charter, must and ought to be taken into consideration when dealing with the question; and the law officers, in giving their opinion, dealt with the subject in that view.

The Treaty of Ryswick I will only refer to very shortly. The Attorney-General, in his argument referred to the forts that had been taken by the French, and to the effect of the Treaty of Ryswick in regard to the possession of these forts. But although the question is somewhat discussed at page 9 of our printed Case, I do not think it necessary that I should elaborate it at all, because in 1857, Chief Justice Draper, acting as agent on behalf of Canada, stated what was in effect, in a very few words, his view of the Treaty of Ryswick, and it was this: "The eighth Article of the Treaty of Ryswick shows that the French at that time set up a claim of right to Hudson's Bay, though that claim was abandoned at the peace of Utrecht, and was never set up afterwards." (Ontario Documents at p. 240.) So that at the peace of Utrecht—and this is nearly the last stage in the argument—any rights that the French might or could have had were abandoned in 1713, and at one bound we get to what was the position of the Government of Great Britain and the Hudson's Bay Company at that time.

It is stated that at a certain time, in 1700, the Company were willing to contract their limits, and the statement is made that because of that, they were precluded at a later date from setting up that they were entitled under the charter to all that the charter could give them. What do they say in 1700—about the earliest date at which they made a claim after the Treaty of Ryswick? They say, "We are willing to contract our limits; but although we are willing to do that, we are entitled of right to the whole Bay and Straits of Hudson." This is like a man who has a suit of cement, who, in order to avoid the expense and trouble of a law suit, says, "I will be willing to allow you certain bounds, but if you do not accept that, I will insist on getting all my rights, and all that I am entitled to."

There was another statement made at that time to the Lords of Trade and Plantations, in January 1701, when the Hudson's Bay Company again "insist on their undoubted right to the whole Bay and

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Straits," but are willing to forego their rights to a certain extent, if by that means they can secure a settlement. "But should the French refuse the limits now proposed by the Company, the Company think themselves not bound by this, or any former concessions of the like nature, but must, as they have always done, insist upon their prior and undoubted right to the whole Bay and Straits of Hudson, which the French never yet would strictly dispute, or suffer to be examined into (as knowing the weakness of their claim), though the first step in the said Article of Ryswick directs the doing of it." (Ontario Documents, pp. 124-5.)

In May, 1709, the Company were requested by the Lords of Trade and Plantations to send an account of the encroachments of the French on Her Majesty's dominion in America within the limits of the Company's charter; to which the Company replied, setting forth their right and title, and praying 10 restitution. (Mills, pp. 152-3.)

A further petition was sent by the Hudson's Bay Company to the Queen, 1711. (Ontario Documents, pp. 126-7.)

On February 7, 1712, the Hudson's Bay Company set forth what they desired should be stipulated for them at the ensuing Treaty of Peace. (Ontario Documents, p. 128.)

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In this memorandum the Hudson's Bay Company ask "that a line be supposed to pass to the south-westward of Grimington Island, or Cape Perdrix, to the great Lake Miskosinke, *alias* Mistoveny dividing the same into two parts, (as in the map now delivered), and that the French nor any other employed by them shall come to the north or north-westward of the said lake, or supposed line, by land or water." I believe that the plan now produced is marked as having been prepared in 1709. I refer 20 the Arbitrators to it. There is the Island of Grimington, and they ask that a line be drawn through that lake until it passes south of the 49th parallel; showing that at that time, in 1712, when they were presenting their petition to Queen Anne, that is what they were claiming as their rights at that time. I do not intend to refer to the question of post liminy at all, because the assent of Chief Justice Draper prevents the necessity of our having to discuss that question. Now, Lord Dartmouth's letter after the Treaty of Utrecht, addressed to the Lords of Trade and Plantations, on May 27th, 1713, will be found in Ontario Documents, p. 129. He says:

"MY LORDS AND GENTLEMEN,—The Queen has commanded me to transmit to you the enclosed petition of the Hudson's Bay Company, that you may consider of it and report your opinion what orders may properly be given upon the several particulars mentioned. In the meantime I am to 30 acquaint you that the places and countries therein named, belonging of right to British subjects, Her Majesty did not think fit to receive any Act of Cession from the French King, and has therefore insisted only upon an order from that Court for delivering possession to such persons as should be authorized by Her Majesty to take it; by this means the title of the Company is acknowledged, and they will come into the immediate enjoyment of their property, without further trouble."

Now, the object of that will be seen when we consider that the whole course of these negotiations had been impeded by the French ambassadors claiming that the word "cede" should be used, while the English ambassadors refused to accept it with the word "cede" used at all; they insisted on the word "restore." They said that the territory was being restored to them, claiming that the French never were there, never had a right to be there, and therefore could not cede it, for it was not theirs to 40 cede; but that having taken possession of a part of it in the time of peace, as claimed by the Hudson's Bay Company, the word "restore" was the proper word to use; and a great deal of correspondence took place between the ambassadors in regard to it. Under section 10 of the Treaty of Utrecht, the King of France was "to restore to the Queen of Great Britain, to be possessed in full right forever, the Bay and Straits of Hudson, together with all lands, seas, coasts, rivers, and places situate in the said Bay and Straits, and which belong therunto; no tracts of land or sea being excepted which are at present possessed by the subjects of France." In reference to the discussion just spoken of, Bolingbroke says, in March, 1713, that the truth is so evident, that the Plenipotentiaries of Great Britain at Utrecht always make a distinction between places that should be ceded and those that should be restored. (Bolingbroke's Correspondence, vol. 3, 601.)

Then we come to the question of the extent of country. Mr. Mills, who prepared this case for the Province of Ontario,* was compelled to admit that all was claimed for England under the Treaty which possibly could be claimed; and that is an admission which my learned friends cannot get over.

Mr. Mills, at p. 159 of his Report, after quoting the portion of the 10th section above referred to, says: "The words of the Treaty just quoted and the attendant circumstances, show that what was claimed by England and yielded by France was the Bay and the country upon its margin. Nevertheless, the language of the Treaty did not make it impossible for England, if she were so disposed, to insist upon the possession of the whole country to the land's height. France, too, consented with reluctance to the use of the word 'restoration' instead of 'cession.'"

10 Now, what was England doing from the very time of the passing of the Treaty, from the very time when the Commissioners were appointed? I will show that she commenced to claim, and that she did claim in 1713, the restitution of these lands to the Company itself; because Lord Dartmouth says that the order was required, so that the Company might be placed in possession; and England went on claiming to the very height of land, and she insisted that France should send her subjects out of that country, or prevent them from building forts or places whereby they could trade in the Hudson's Bay territories. Although it is stated that Commissioners were appointed as provided by the Treaty, it was in some way assumed that the boundary had been settled at the 49th parallel. Everybody seemed to be impressed with the idea that the 49th parallel had been settled by the Treaty of Utrecht. In the United States this was urged. When the States were settling the parallel as to the northern 20 boundary of Louisiana, it was claimed that the 49th parallel was settled at the Treaty of Utrecht, and that the United States, as the proprietors of Louisiana, were entitled to come up to that parallel as the territory of Louisiana. And in this country it was assumed: in a letter that will be found from the late Bishop Strachan to Lord Selkirk, it is stated that the 49th parallel had been settled upon. In some way or other that seemed to be understood, and we find that many of the maps of very early date show that, as will be fully borne out by a reference to the list of the maps in the Ontario Documents. Many of these maps have the 49th parallel upon them as being the bounds between the English and French possessions under the Treaty of Utrecht. There is no doubt it was assumed at that time that that was the parallel; it was insisted upon by the United States, and not denied by Great Britain. The Law Officers of the Crown in Great Britain at that time seemed to have the idea, 30 whether derived from maps or from what source I do not know, but they appeared to have fully believed that the 49th parallel had been settled upon. The reason is, I suppose, because the Hudson's Bay Company always assumed that the height of land was their southern boundary; and Mitchell's map will show that the height of land was about the 49th parallel; and therefore it was taken as if the 49th parallel was about the proper line to be drawn. Now, whether that was the case or not, whether it was ever agreed upon or not, is of very little importance.

The Attorney-General—You admit that it was not, I suppose.

Mr. MacMahon—I admit that it was not. It was never decided upon, and in fact France never intended it. It is stated in Anderson's *History* that France never desired to settle the boundaries at all under the Treaty of Utrecht; and it was only when she was compelled, after the war of 1759, that 40 any settlement could be got. But it matters very little just now. If the Commissioners will look at the map attached to the Dominion Case, which was furnished at the time of the surrender of Quebec—and that is taken from the map that was sent over by General Amherst to the British Government, furnished to General Haldimand by the Marquis de Vaudreuil—they will find there what France was claiming. She never claimed anything beyond the Red Lake. There never was any pretence, as far as France was concerned, of claiming, as Canada, anything north or west of the Red Lake. That is what the Marquis de Vaudreuil at that time considered was the boundary of Canada upon the north and the west.

(Some conversation took place over the maps, in the course of which Chief Justice Harrison pointed out that there were two Red Lakes.)

*By this is meant Mr. Mills' revised Report, published some time previously. The "Case" of Ontario was prepared by the Attorney-General of the Province.

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The Attorney-General—The Red Lake referred to by Mr. MacMahon is a little south of Turtle Lake
Mr. MacMahon—It is hardly south; it is more west than south. But for the purposes of my argument it does not matter, because I am addressing myself to that part of the argument of the Attorney-General which lays claim to all that north and west country as belonging to the French, and being part of New France. The map shows that there never was any such claim; and the correspondence which took place with regard to the boundaries shows that after that map was delivered, in 1761, France was claiming, as being part of Louisiana, a large part of the territory that was ceded as a part of Canada—claiming it as being part of the Illinois country. The correspondence shows how anxious the French Government and the French Administration of that day were in regard to acquiring the territory south, or at least retaining the territory south, as part of Louisiana. 10

On the 18th August, 1761, M. de Bussy, the French Minister at London, furnished to Mr. Pitt a memorandum upon the limits of Louisiana, which bore upon the limits of Canada, and ran thus:

“Sur les limites de la Louisiane.

“Pour fixer les limites de la Louisiane du côté des colonies Angloises et du Canada, on tirera une ligne qui s'étendra depuis Rio Perdido entre la Baye de la Mobile et celle de Pensacola, en passant par le Fort Toulouse chez les Alibamons, et qui, se prolongeant par la pointe occidentale du Lac Erié enfermera la Rivière des Miamis, et par l'extrémité orientale du Lac Huron, ira aboutir à la hauteur des terres du côté de la Baye d'Hudson vers le Lac de l'Abitibis, d'où la ligne sera continuée de l'Est à l'Ouest jusques et compris le Lac Supérieur.” (Pub. Rec., Off. Vol. 483.)

Mr. Pitt, the Prime Minister of that time, states in an ultimatum which he forwarded to Mr. Stanley at Paris, the following definition of the boundaries of Canada, as set forth by M. de Vaudreuil: “Canada, according to the line of its limits traced by the Marquis de Vaudreuil himself, when this Governor-General surrendered, by capitulation, the said Province to the British general, Chevalier Amherst, comprises, on one side, Lakes Huron, Michigan and Superior; and the said line drawn from Lac Rouge, embraces by a tortuous course, the River Ouabache (Wabash) up to its junction with the Ohio, and from there extends the length of this river inclusively until its confluence into the Mississippi.” Then on page 8 of the Supplement will be found what was stated by the Duc de Choiseul, when the map was shown to him by Mr. Stanley. Mr. Stanley's despatch says: “The Duc de Choiseul complained that the bounds of Canada were laid down very unfavourably to France, in the description which your memorial contains, alleging (*sic*) that there had been disputes between the Marquis de Vaudreuil and the Governor of Louisiana with regard to the limits of their two Provinces, wherein the former, being the more able and the more active, had greatly enlarged his jurisdiction; he added, however, that though many such objections might be made, it had been the intention of the King his master to make the most full and complete cession of Canada, and that he consented in his name to those limits. I then produced the map you sent me, and it was agreed that this Province should remain to Great Britain as it is there delineated.” (Minutes of a Conference at Paris, September 2nd, 1761. Pub. Rec. Off., Vol. 483, France.) 30

So that was the Province as understood both by the French and English at that time; and according to the claim made at that time, it had not any greater limits or any wider extent. In 1714, the Hudson's Bay Company sent a memorandum to the Lords Commissioners of Trade and Plantations, accompanied by a map in which they claimed that the eastern boundary should be a line running from Grimington's Island through Lake Miscosinke or Mistassinie; and from the said lake by a line run south-westward into 49 degrees north latitude, as by the red line may more particularly appear, and that that latitude be the limit; that the French do not come to the north of it, nor the English to the south of it. [Ontario Documents, pp. 131-2.] In 1719 Commissioners were appointed, and they set forth that “the French since the Treaty of Utrecht had made a settlement at the source of the River Albany; the Commissaries of His Britannic Majesty insist that the French shall quit the said settlement, and that the fort, if there be any such building, shall be given up to the Company of English Merchants trading in Hudson's Bay aforesaid.

“The said Commissaries further demand that the subjects of His Most Christian Majesty shall not build forts or found settlements upon any of the rivers which empty into Hudson's Bay under any 50

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pretext whatsoever, and that the stream and the entire navigation of the said rivers shall be left free to the Company of English Merchants trading into Hudson's Bay, and to such Indians as wish to traffic with them." (Ontario Documents, p. 365.)

The Attorney-General stated that it was merely the freedom of the rivers which was required by the English Commissioners at that time. But Lord Dartmouth, in his letter to the Lords of Trade and Plantations, appeared to be anxious in regard to the property that the Hudson's Bay Company had acquired under their charter, and which he wished to be given back to them, in order that they might continue to occupy it.

The Attorney-General—That is not mentioned in the instructions that Lord Dartmouth gave; it was the notion of the Commissioners themselves.

Mr. MacMahon—The Commissioners, I suppose, were instructed.

The Attorney-General—We have their instructions.

Mr. MacMahon—This is the demand they were making. They were insisting that the French should not continue there, and that they should give up all their settlements, and not trade or build forts, and that they should cease to occupy this country altogether. The demand will be found in Ontario Documents, p. 365. Sir Travers Twiss says in regard to that: "By the 10th Article, however, of the Treaty of Utrecht, the French King agreed to restore to the Queen (Anne) of Great Britain, 'to be possessed in full right forever, the Bay and Straits of Hudson, together with all lands, seas, sea coasts, rivers and places situate in the said Bay and Straits, and which belong thereto; no tracts of land or sea being excepted which are at present possessed by the subjects of France.' The only question, therefore, for Commissaries to settle was the limits of the Bay and Straits of Hudson, eastwards, on the side of the French Province of Canada, as all the country drained by streams entering into the Bay and Straits of Hudson were, by the terms of the Treaty, recognized to be part of the possessions of Great Britain.

"If the coast boundary, therefore, was once understood by the parties, the head waters of the streams that empty themselves into the Bay and Straits of Hudson indicate the line which at once satisfied the other conditions of the Treaty. Such a line, if commenced at the eastern extremity of the Straits of Hudson, would have swept along through the sources of the streams flowing into the Lakes Mistassinic and Abbitibis, the Rainy Lake, in 48° 30', which empties itself by the Rainy River into the Lake of the Woods, the Red Lake, and Lake Traverse."

These are the bounds that Sir Travers Twiss places on the rights of the Hudson's Bay Company, saying that all that extent of country to 48° 30', at which the sources of these rivers commence, of right belonged to the Hudson's Bay Company under the Treaty, and that they could claim it, and were claiming it, under the Treaty of Utrecht. Now, speaking of Lake Traverse, he says:—"This last lake would have been the extreme southern limit, in about 45° 40', whence the line would have wound upward to the north-west, pursuing a serpentine course, and resting with its extremity upon the Rocky Mountains, in about the 48th parallel of latitude. Such would have been the boundary line between the French possessions and the Hudson's Bay district; and so we find that in the limits of Canada, assigned by the Marquis de Vaudreuil himself, when he surrendered the Province to Sir J. Amherst, the Red Lake is the apex of the Province of Canada, or the point of departure from which, on the one side, the line is drawn to Lake Superior: on the other, 'follows a serpentine course southward to the River Oubache, or Wabash, and along it to the junction with the Ohio.' This fact was insisted upon by the British Government in their answer to the ultimatum of France, sent in on the 1st of September, 1761, and the map which was presented on that occasion by Mr. Stanley, the British Minister, embodying those limits, was assented to in the French memorial of the 9th of September. (Historical Memorial of the Negotiations of France and England from March 26th to September 20th, 1761, published at Paris by authority; Twiss' Oregon Boundary, pp. 209-211.)

"By the Treaty of Utrecht, the British possessions to the north-west of Canada were acknowledged to extend to the head waters of the rivers emptying themselves into the Bay of Hudson, by the Treaty of Paris they were united to the British possessions on the Atlantic by the cession of

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Canada and all her dependencies; and France contracted her dominions within the right bank of the Mississippi. That France did not retain any territory, after the Treaty, to the north-west of the sources of the Mississippi will be obvious when it is kept in mind that the sources of the Mississippi are in 47° 35', whilst the sources of the Red River, which flows through Lake Winnipeg, and ultimately finds its way by the Nelson River into the Bay of Hudson, are in Lake Traverses, in about 45° 40'. (Twiss' Oregon, p. 226.)

I have not referred to any of the maps, for the reason stated by Sir Travers Twiss, that it was an impossibility at that time to get any correct maps, few or no surveys having been made.

In 1750—and that date is referred to in the opinion of Sir Richard Bethell and Sir Henry Keating—the Hudson's Bay Company were claiming as their bounds just what they were claiming in 1857. 10 The claim of the Company in 1750 will be found in Mills, 176, 177:—"The line to begin from the Atlantic Ocean on the east side of Grimington's Island, otherwise Cape Perdrix, in the latitude of 58½°, on the Labrador coast, and to be drawn from thence south-westward to the Great Lake Miscoinke, otherwise called Mitozeny, and through the same, dividing that lake into two parts, down to the 49° of north latitude as described in the said map or plan delivered herewith, and from thence to be continued by a meridian line of the said latitude 49°, westward." So that they have been claiming that all along; and, as stated by Sir Richard Bethell and his associates, that is what ought to be taken into consideration in viewing the question.

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I think I have gone over the whole of the ground as far as regards the treaties, and I have shown that no part of that territory, to the north and the west, ever belonged to France, nor was it claimed by 20 France at the time of the cession of Canada to Great Britain, in 1760. In fact, the French wanted to contract the limits of Canada, and to claim as part of Louisiana the territory up to the line which, in 1760, the Marquis de Vaudreuil had marked out as the limits of Canada; and there was no pretence, no claim of any kind made by France to the northerly and westerly territory, when she could have made the claim, if it was in her power to do so.

The other point is in reference to the Quebec Act.

Sir Francis Hincks—The learned counsel has been speaking for a long time upon the respective claims of the French and English. But it is an important thing to see what the English Government has done with regard to the boundaries of the Province since the whole territory became English. That is what we want to see particularly. 30

Mr. MacMahon—The Proclamation of 1763 created four separate governments—Quebec, East Florida, West Florida, and Grenada—and provided that all the lands not within the limits of these governments, and not within the limits of the territory granted to the Hudson's Bay Company, should be received for the present under the royal protection and dominion for the use of the Indians. 50

The Attorney-General—The old Province of Quebec is marked on Devine's map in accordance with the Proclamation.

Sir Francis Hincks—Then the boundaries marked on Devine's map are agreed to as representing that Proclamation? 40

Mr. MacMahon—Yes. I consider there is no point which turns on the proclamation of 1763; we are both agreed as to the correctness of that. We come now to the Quebec Act of 1774, and that is where the first difficulty occurs, but I think I will be able to show to the Commissioners that there is no difficulty in deciding that question. If we look at the circumstances under which the Act was brought in, and take into consideration the statement, as made by the Attorney-General, of what the object of the Act was, and what the Bill was as originally brought into the House, and how it was amended, we will easily see that the claim of Ontario in regard to the western boundary cannot be supported at all.

Assuming that the claim made by the Province of Ontario is the correct claim, what territory could they possibly acquire by taking the Red Lake—by running through the Red Lake, which is on the boundary there?

Sir Francis Hincks—I do not think you need trouble yourself about the Red Lake; that is not the point; it is the boundary to the south and west of Hudson's Bay; the question of the boundary running to Hudson's Bay.

Mr. MacMahon—I will confine myself to that altogether. If the Commissioners will look at page 77 of Mr. Mills' book, they will find the clause of the Act as originally introduced; and I would draw special attention to it, in order to show what was the design of the Legislature at that time in settling the western boundary of the Province. It reads in this way, "Be it enacted, that all the said territories and islands and countries heretofore a part of the territory of Canada, in North America, extending southward to the banks of the river Ohio, and westward to the banks of the Mississippi." Well now, the House of Commons, or the Committee of the House of Commons, at that time understood that if the description of the Act read in that way, when once the river Ohio was reached the use of the word "westward" would make it on a due west course to the river Mississippi.

Sir Francis Hincks—I think you do not appreciate our difficulty. You are still at the westerly boundary. It is the northern boundary we want to get at.

Mr. MacMahon—You are not troubled about the westerly boundary?

Sir Francis Hincks—Not so much as the northerly. Whatever the westerly boundary line may be there is no doubt that it runs northerly until it reaches the southerly boundary of the Hudson's Bay Company. We want to know what the southerly boundary of the Hudson's Bay Company is.

Mr. MacMahon—In 1703, 1750, and 1857, the Hudson's Bay Company were claiming that the 20 height of land was the southern boundary of their territory. They always claimed that.

Sir Francis Hincks—What you have got to deal with is whether any Acts of Parliament, proclamations, or commissions to Governors, established other boundaries. You are aware of the points in that branch of the case. Some of the commissions, for instance, expressly say "to the shore of the Hudson's Bay."

Mr. MacMahon—Then dealing with the question of the commissions. First we have to look at the Constitutional Act of 1791, because it is asserted that the Proclamation of 1791 enlarged the boundaries of what was previously the Province of Quebec. The Act of 1791 does not itself give boundaries but the Proclamation follows and gives boundaries. My learned friend says it does not matter whether the boundaries were extended by the commissions into the Hudson's Bay Territory or not; that that is not a question for the consideration of the Arbitrators; but I say that it is. The Hudson's Bay Company had a government of their own under the charter as it existed, and the King could not, of his own mere motion, take from them the proprietary government, that which had been granted to them by the charter, unless they had forfeited the charter in some way.

Chief Justice Harrison—That is assuming that the charter gives them definite boundaries.

Mr. MacMahon—What took place by the acquisition of Rupert's Land, by the Rupert's Land Act, must define the boundaries as far as Great Britain and as far as the Hudson's Bay Company are concerned; and when we come to look at what was being stipulated for by the Hudson's Bay Company under that Act, and the surrender made in consequence of the Act, we shall find exactly what the British Government were doing and assenting to only ten years ago.

Chief Justice Harrison—What are the boundaries in the Proclamation under the Act of 1791?

Mr. MacMahon—The boundaries under that Act have received judicial interpretation.

Chief Justice Harrison—We want to give them an interpretation.

Mr. MacMahon—The Proclamation will be found in Ontario Documents, 27; and I may say here that the whole trouble results from the use of one word, and it is upon that the Province of Ontario are building their right to go to the west and north of what was the Province of Quebec. The last word in the first clause of the proclamation is "Canada," when it should have been "Quebec." It is altogether in relation to that word; and before we know anything about what was comprised in Canada we have to ascertain what was comprised in the limits of Quebec; that is, if the Commissioners think it proper that I should discuss what was proposed in the Act of 1774. That is what I was doing when

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Sir Francis spoke of the boundaries under the Acts of the Government as by proclamations, commissions, etc. I considered it necessary to argue that point under the Act of 1774, in order to show that the use of that word in the Proclamation of 1791 was a mistake.

Sir Francis Hincks—Refer to that, please.

Mr. MacMahon—I say that the Act of 1791, in all its provisions, is merely for the purpose of dividing the Province of Quebec, and that the use of the word Canada in the Proclamation was simply a mistake. The commission to Lord Dorchester, in 1791, will be found on page 48, Ontario Documents; that is the first commission issued after the Act; it issued certainly before the Proclamation. But the commission that was issued in 1796 speaks of the Province of Quebec; it does not speak of Canada at all. The third paragraph of Lord Dorchester's commission is this:—"And whereas, we have thought fit 10 by our Order made in our Privy Council on the nineteenth day of August, one thousand seven hundred and ninety-one, to divide our said Province of Quebec into two separate provinces, to be called the Province of Upper Canada and the Province of Lower Canada, by a line to commence at a stone boundary on the north bank of the Lake St. Francis, at the cove west of the Point au Bandet, in the limit between the Township of Lancaster and the Seigneurie of New Longueuil, running along the said limit in the direction of north thirty-four degrees west to the westernmost angle of the said Seigneurie of New Longueuil; thence along the north-western boundary of the Seigneurie of Vaudreuil, running north twenty-five degrees east, until it strikes the Ottawa River, to ascend the said River into the Lake Tommisseanning, and from the head of the said lake by a line drawn due north until it strikes the boundary line of Hudson's Bay; the Province of Upper Canada to comprehend all such lands, territories 20 and islands lying to the westward of the said line of division, as were part of our said Province of Quebec, and the Province of Lower Canada to comprehend all such lands, territories and islands lying to the eastward of the said line of division, as were part of our said Province of Quebec.

Now, if we are to consider the Quebec Act and the Commissions under it, it is necessary to understand what was comprised in the Province of Quebec under that Act; and it was for that purpose I was referring the Commissioners to what took place on the introduction of the Act in 1774.

Sir Francis Hincks—That is very important.

Mr. MacMahon—The Quebec Bill, as introduced into the House of Lords, contained these words—"Be it enacted, that all the said territories, islands and countries heretofore a part of the territory of Canada, in North America, extending southward to the banks of the River Ohio, and westward to the 30 banks of the Mississippi," etc. I stated that that would mean, from the point at which the line struck the Ohio, a due west course until it reached the Mississippi. What do we find was done in regard to that? The Legislature felt that that was the interpretation which would be put on these words, and they made an amendment. The amendment will be found in Cavendish's debates on the Act. They made this amendment, "Until it strike the River Ohio, westward to the banks of the Mississippi." But they inserted after the word Ohio, "And along the banks of the said river," showing that they intended that the bank should be followed. And if the Commissioners read the whole of that Act, they will see that in every instance the phrase "Along the bank of the river" is used.

The Attorney-General—The Act only professes to describe the south line.

Mr. MacMahon—But when it comes to the junction of the Mississippi and Ohio it describes it in 40 another way, showing that the eastern bank of the Mississippi was not intended by the Legislature at that time to be the eastern boundary of the Province of Quebec. If they had intended that, an amendment would have been made, as was made in regard to the Ohio; they would have put "northerly, along the bank of the Mississippi," just as they did "westerly along the bank of the Ohio." But when it came to the junction of the Ohio and Mississippi, they said "northward;" and it is alleged that because they used that word "northward," it must mean northerly along the banks of the Mississippi River, because a commission was issued to one of the Governors containing in it words to that effect. But the commission of 1796 describes what was intended to be contained as the territorial jurisdiction of the Governors and contains no such words.

In looking at the Reinhard case, it will be found that the whole of that question was very elaborately argued.

Sir Francis Hincks—Yes, we understand the whole of that question. You will see that there is a line drawn in this map of Devine's, professing to be the boundary according to the Commission to Lord Elgin.

The Attorney-General—That is the last commission. The other commissions were substantially in the same terms. One set of commissions says "shore," and the other set says "boundary line" of Hudson's Bay.

Sir Francis Hincks—The Proclamation of 1791 says, "until it strikes the boundary line of Hudson's Bay." Now, what is the boundary line of Hudson's Bay?

Chief Justice Harrison—Can you strike the boundary line of Hudson's Bay without going to the shore?

Mr. MacMahon—It is not the Bay which is meant, it is the territory.

Chief Justice Harrison—That is the point we want you to address yourself to. It is a very important point.

Mr. MacMahon—The Commission to Lord Dorchester in 1791 says, "until it strikes the boundary line of Hudson's Bay." [Ontario Docs., 48.]

Sir Edward Thornton—The Proclamation of 1791 follows that very commission. The wording is the same—"the boundary line of Hudson's Bay."

Mr. MacMahon—The boundary line of Hudson's Bay cannot be anything but the boundary line of the territory, because the King had no authority, no right, under a Proclamation, to enter upon a territory granted to the Hudson's Bay Company for the purpose of governing.

Chief Justice Harrison—Of course that is all based upon the assumption that it had been granted. All these proclamations throw light upon the question of whether it had been granted or not.

Mr. MacMahon—They show afterwards how the territory was dealt with, and I will come to that question now.

Sir Francis Hincks—They repeat the expression in 1796, five years later—"the boundary line of Hudson's Bay."

Chief Justice Harrison—All the commissions follow that, down to 1838.

Mr. Hodgins—And then, from that down to Lord Elgin's, the language is "strikes the shore."

Mr. MacMahon—Between those dates they understood that there was a difference between the shore and the boundary line.

Sir Francis Hincks—You will observe that the commissions still use the words "due north." In the old commissions the language is "due north to the boundary line of Hudson's Bay;" but afterwards the commissions say—still following the expression "due north"—"expressly to the shore of Hudson's Bay," but which rather conveys the idea that they interpreted the boundary line of Hudson's Bay and the shore of Hudson's Bay to be the same thing.

Sir Edward Thornton—They improved the English a little in that.

Mr. MacMahon—The Proclamation is void to a certain extent; it has gone too far. I will show the way in which the Government have dealt with the Hudson's Bay Company in regard to this very territory. I say that where there is a proprietary Government, such as the Hudson's Bay Company was admitted to be—and the British Government have always dealt with the Company as such—neither the Proclamation nor the Act of Parliament could take away the rights of the Hudson's Bay Company in any way; the only way to do so, if the Company had forfeited their charter, would be to bring them into court; and that is the course which in 1859 the law officers of the Crown advised should be pursued if the Company had committed any acts by which their charter ought to be forfeited

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or abridged in any way. In the case of *Campbell v. Hall*, in 1 Cowper, 204, cited in Forsyth's Constitutional Law, 401, it is laid down by Lord Mansfield that there cannot exist any power in the King exclusive of Parliament.

Chief Justice Harrison—That depends entirely upon the territory where the power is exercised; if there is no Parliament, there is no power to limit the King's authority. There was no Parliament in the Hudson's Bay territory.

Mr. MacMahon—I cite also the case of *Payne* against *Lord Baltimore*, 1 Vesey, 444. That and the case of *Campbell and Hall*, together with a case in 12 Peter in the State of *Rhode Island* against the State of *Massachusetts*, have decided that where there is a proprietary Government existing there is no authority, unless by proceedings *under a writ*, to take away the territory or to assume any government over it; so that after the grant was made, and confirmed by all these Acts of Parliament, the King had no authority or power to take away the rights of the Hudson's Bay Company that existed.

Chief Justice Harrison—Of course that is assuming one of the things which has been argued before as to the rights, if any, of the Hudson's Bay Company south of Hudson's Bay, and what extent north. That is one of the points in controversy. All these documents throw light upon it.

Mr. MacMahon—My learned friends do not claim that they are entitled to any land north of the height of land.

The Attorney-General—I thought I had occupied a good deal of time in showing that I was claiming that.

Chief Justice Harrison—I understood the Attorney-General to claim to the Arctic Ocean.

Mr. MacMahon—I did not know that he meant that.

Sir Francis Hincks—Do I understand that you have no difficulty about the northern boundary?

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Mr. MacMahon—The northern boundary is of no great consequence: the trouble is with the western boundary. Then came the Act of Union in 1840, and we will see what was the boundary under that. The first commission to Lord Sydenham is dated August 29, 1840. By that commission, after the line reaches Lake Temiscaming, it is "due north from the head of the same lake until it reaches the shore of Hudson's Bay, and being bounded on the south, beginning at the said stone boundary between Lancaster and Longueuil, by the Lake Saint Francis, the River Saint Lawrence, the Lake of the Thousand Islands, Lake Ontario, the River Niagara, which falls into Lake Erie, and along the middle of that lake; on the west by the Channel of Detroit, Lake Saint Clair, up the River Saint Clair, Lake Huron, the west shore of Drummond Island, that of Saint Joseph and Sugar Island; thence into Lake Superior."

I think you stop there; it just takes you where the due north line of 1774 would strike, and shows that Upper Canada is bounded by that northern line running from the junction of the Ohio River to that point in Lake Superior which would be intersected.

The Attorney-General—The commission does not say that.

Mr. MacMahon—No, but that is declared to be the whole extent of Canada in 1840, and all that was claimed for it by the British Government.

Chief Justice Harrison—Yet that same commission draws a dividing line between the two parts of Canada, Upper and Lower—a line running due north from Lake Temiscaming to the shore of Hudson's Bay.

Mr. MacMahon—Yes, that is a description in that commission—that wrong reading appears to have got into it in some way or other—but no matter what the commission was, the King had no right to draw that line as against the Hudson's Bay Company, if we satisfy you that the Hudson's Bay Company's territory extended south of Hudson Bay to the height of land. The commission that was issued to Lord Elgin in 1846 is somewhat similar: "Thence into Lake Superior." Lord Elgin left in 1852 or 1853; showing that up to that time the jurisdiction of the Governors-General of Canada ended on the shores of Lake Superior, and must have ended just about at the point where the due north line strikes. The Province of Canada afterwards bought from the Indians the territory south of the height of land. I have argued the question about as fully as I can, in regard to the commissions, and in regard

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to the extent of territory under the jurisdiction of the Governors in 1840, and down to the last commission issued to Lord Elgin, in that year, and up to the time he left in 1852 or 1853. The British Government must have been aware at that time where a line drawn from the junction of the Ohio and Mississippi Rivers would strike in Lake Superior, and no doubt they intended Upper Canada to be included within that line.

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We come now to Confederation. The 146th section of the British North America Act is as follows:

"It shall be lawful for the Queen, by and with the advice of Her Majesty's Most Honourable Privy Council, on Addresses from the House of Parliament of Canada and from the Houses of the respective Legislatures of the Colonies or Provinces of Newfoundland, Prince Edward Island and British Columbia, to admit those Colonies or Provinces, or any of them, into the Union; and on Addresses from the Houses of the Parliament of Canada, to admit Rupert's Land and the North-Western Territory, or either of them, into the Union on such terms and conditions, in each case, as are in the Addresses expressed, and as the Queen thinks fit to approve, subject to the provisions of this Act; and the provisions of any Order in Council in that behalf shall have effect as if they had been enacted by the Parliament of the United Kingdom of Great Britain and Ireland." (Ontario Docts., p. 40.)

After or about that time the Agents of the Government of Canada went to England and made representations in regard to the expenditure of some \$20,000 which the Government of Canada thought proper to expend on roads in the territory of Hudson's Bay. In the letter that was addressed to the British Government—by Sir Stafford Northcote, I think, who was then the Governor of the Company—he complained, on behalf of the Company, of trespasses having been committed by the Canadian authorities: and although the Canadian authorities denied that they were committing any trespass whatever in going to the Red River country, still they stated that the people there were in a starving condition, and that as an act of humanity alone the Government was prompted to make this expenditure, so as to give the people employment. That correspondence shows conclusively what was being asserted on the one hand by the Canadian authorities, and being denied by the Hudson's Bay Company on the other—denied with all the force which could be given to a denial. The result was that the British Government, by whom this charter to the Hudson's Bay Company was granted, or at least confirmed—because they did confirm it, in effect, if not in express words, by stating in the numerous Acts of Parliament from 6 Anne to 48 George the Third, c. 138, that all the rights and privileges of the Hudson's Bay Company should be respected—the result was that the British Government took legislative action. What do we find them doing? We find that an Act, known as the Rupert's Land Act, was passed in 1868, after the presentation of an address from the Senate and House of Commons of Canada on Dec. 17, 1866 (Ontario Docts., p. 40+7). What was the agreement between the parties to this transaction? It is necessary to understand what was being surrendered, because the fact of the surrender, and the acceptance of that surrender by Her Majesty, was a confirmation of everything that the Hudson's Bay Company had been claiming under their charter: and that is a point which I am sure the Arbitrators will not lose sight of in dealing with this question. The surrender itself, the Act of Parliament itself, the agreement which was come to, not only between the British Government and the Hudson's Bay Company, but between the Canadian authorities,—these all prove the same thing. Under paragraph No. 5 of the Hudson's Bay Company's Deed of Surrender, "the Company may, within fifty years after the surrender, claim in any township or district within the fertile belt, in which land is set out for settlement, grants of land not exceeding one-twentieth part of the land so set out," etc. (6) "For the purpose of the last Article the fertile belt is to be bounded as follows: on the south by the United States boundary; on the west by the Rocky mountains; on the north by the northern branch of the Saskatchewan; on the east by Lake Winnipeg, the Lake of the Woods and the waters connecting them." Now, here are the boundaries of the fertile belt, and there can be no mistaking them. Under the second section of the Rupert's Land Act, it is declared that, for the purpose of this Act, the term "Rupert's Land" should include the whole of the lands and territories held, or claimed to be held by the said Governor and Company. So that all that land which in 1719 and 1850 the Company were claiming, the British Government admitted that they had a right to; and the Dominion accepted the surrender of all that.

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Chief Justice Harrison—Of course the British Government, when accepting the surrender, were willing to accept a surrender, not only of all that the Company had, but of all that they claimed to have.

Mr. MacMahon—The Company claimed the fertile belt, and were allowed to participate afterwards in its lands as their own; they were allowed to hold lands there.

Mr. Hodgins—The same as squatters on Crown lands.

Mr. MacMahon—They claimed it as lords of the soil, as entitled to the domain. The Commissioners will see from the map of 1850 what they were claiming. They were claiming down to the 49th parallel, and when they came to the height of land again they went north, showing that they were claiming all that extent of territory to the height of land at the very last moment. Ontario, as a part 10 of the Dominion, knew of all that was going on; knew that the Dominion was entering into these negotiations; but she sat by, and never said a word—never said, "No matter what you do, we are going to claim this land." They said nothing, but agreed that all this should be surrendered. It was surrendered, and paid for by a million and a-half of the Dominion's money, and the surrender was accepted by the Dominion and British authorities as being a part of what was granted to the Hudson's Bay Company. It does not matter whether the Company had a right to it or not—they were claiming it, and claiming to be paid for it; and there is where I say that the Province of Ontario can have no right now to claim any portion of that land that was surrendered—to claim it as being part of the Province. If she had a right to claim it, then was the time to intervene, and say, "This is part of our Province, and if you accept the title to that land you do so at your peril." I need not quote the numerous 20 authorities in support of the proposition as to the Province now being excluded.

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The Attorney-General—I should like very much to see them, if there are any.

Mr. MacMahon—I cite Story's Equity, sec. 1,546. "In a late case before the House of Lords, on appeal from the Court of Session in Scotland, the Lord Chancellor discusses this question of estoppel in fact, or acquiescence in adversary's claim of right, somewhat in detail. He is reported thus: 'It is a universal law that if a man, either by words or by conduct, has intimated that he consents to an act which has been done, and that he will offer no opposition to it, although it could not have been lawfully done without his consent, and he thereby induces others to do that from which they otherwise might have abstained, he cannot question the legality of the act he had so sanctioned, to the prejudice of those who have so given faith to his words, or to the fair inference to be drawn from his conduct;' and again: 30 'If a party has an interest to prevent an act being done, and acquiesces in it, so as to induce a reasonable belief that he consents to it, and the position of others is altered by their giving credit to his sincerity, he has no more right to challenge the act, to their prejudice, than he would have, had it been done by his previous license.'"

Chief Justice Harrison—That is quite clear as between individuals; can you show us that that is part of the law of nations?

Mr. MacMahon—I do not think that the Province can possibly stand in a better position than an individual.

Chief Justice Harrison—One nation is not bound by what two other nations do, unless the third nation is a party to what is going on.

Mr. MacMahon—Ontario is a part of the Dominion. 40

Chief Justice Harrison—It was no party to these negotiations. 40

Mr. MacMahon—No.

Chief Justice Harrison—Then the arrangement was something that took place between other parties that were strangers to the Province.

Mr. MacMahon—The Province is part of the Dominion; and, knowing that the Dominion was acquiring rights from the Hudson's Bay Company, if the Province had any claim to that territory they should have made the claim then, when the matter was about being settled. The instructions subse- 50

quently (1871) given to the Commissioner on behalf of the Dominion, when it was proposed that the boundaries should be settled, will be found on page 20 of the Dominion Case, from which I will read an extract:

"1. The boundary in question is clearly identical with the limits of the Province of Quebec according to the 14th Geo. III., ch. 83, known as the 'Quebec Act,' and is described in the said Act as follows, that is to say: Having set forth the westerly position of the southern boundary of the Province as extending along the River Ohio 'westward to the banks of the Mississippi,' the description continues from thence (*i.e.*, the junction of the two rivers) 'and northward to the southern boundary of the territory granted to the Merchants Adventurers of England trading into Hudson's Bay.'" Now, what 10 the territory of the Merchants Adventurers of England trading to the Hudson's Bay was has been fully set forth by them; and, although on the side of the Province of Quebec the line of the Province of Quebec may have struck the shore of Hudson's Bay, still that has nothing to do with this western limit, It can have nothing to do with that, because on the western limit there is no line at all named; and Ontario may get as much from the Province of Quebec, on the easterly side, as they can.

My learned friend Mr. Monk will follow me; and if there is anything that strikes me after my learned friend the Attorney-General has replied, perhaps the Arbitrators will allow me a few words.

ARGUMENT OF MR. MONK.

Mr. E. C. Monk, of the Quebec Bar, followed, on behalf of the Dominion.—I have great difficulty in adding anything to the able and exhaustive argument of my friend and colleague, Mr. MacMahon. 20 I shall limit myself as briefly as possible to a reference to some of the portions of my learned adversary's case upon certain points which, to say the least, are well open to controversy. I find on the third page of his case—and I know that he laid great stress upon it in addressing the Commissioners—a letter written by Sir George E. Cartier and Mr. McDougall to Sir F. Rogers. I find on the fifth page of the Case the following reference to this letter:—"Ontario claims that the official views of the Government of the Dominion, as thus expressed, should, *prima facie*, be carried out as between the Dominion and the Province, unless the Dominion proves that the assertions so made by its Ministers were false or mistaken, and that the claim to which they led was unfounded." The second assertion in this letter is that the charter of the Hudson's Bay Company "expressly excluded all lands, etc., then possessed by the subjects of any other Christian prince or state;" and the next paragraph states that "by the treaty 30 of St. Germain-en-Laye (1632) the King of England resigned to the King of France the sovereignty of Acadia, New France and Canada, generally, and without limits." That, I submit, is unfounded. The Treaty of Ryswick is quite different in its terms. The word "resign," or "give up," is not a correct translation for the French version of it as I find it in the Treaty of St. Germain at page 11 of the Ontario Documents. The French words inserted between brackets there are "rendre" and "restituer"—to give back or restore—implying unquestionably a previous possession on the part of France of these territories. New France, Acadia and Canada could not have included Hudson's Bay. The Hudson's Bay territories were never in the possession of France at that time, and, as Mr. MacMahon has established, were not even known or discovered in 1632 by the French.

The Attorney-General also laid particular stress on the memoir of M. De Callières, and I may therefore be allowed to refer the Commissioners to a few notes that I have made on the subject. The first 40 French voyage alluded to by Mr. Mills is that of Attorney-General Bourdon, and Mr. Mills makes the statement upon the authority of a memoir from Sieur De Callières to the Marquis De Seignelay and another memoir from the Marquis De Denonville. This memoir says that in 1656 Jean Bourdon, the Attorney-General of Quebec, explored the entire coast of Labrador and entered Hudson's Bay; and this, M. De Callières says, is proved by an extract from the ancient register of the Council of New France of 1656. Jean Bourdon was a man thoroughly well known in the Province—better known, no doubt, in that part of the country than would be the Attorney-General of the Province to-day—and was a man with whom the Jesuits were on intimate terms, and who is mentioned on almost every page of the *Relations* written at that time. Yet, notwithstanding these facts, no mention whatever is made in the 50 *Relations des Jésuites*—and I have read them over with care—no mention whatever is made of Jean

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Bourdon's voyage to Hudson's Bay. At page 9 of the *Relations* for 1658, mention is made of an attempted journey which Bourdon made with the intention of reaching Hudson's Bay. Under date of August 11th, we find an entry in which the Father Jesuit, who is reported as keeping the journal at that time, says that the barque of M. Bourdon returned. We have in the *Relations* no particular date of Bourdon's starting on this voyage; but in the *Journal des Jésuites*, pages 209-218, the Commissioners will find that he left in the middle of May in the same year. He returned on August 11th; and, as is not controverted, it would have been perfectly impossible for him to have made the voyage to Hudson's Bay in so short a time. But the learned counsel stated that there was no reason why this particular voyage should have been the one mentioned by De Callières. The voyage to which I refer was made in 1657; the extract from the register to which De Callières refers is dated 1656; clearly indicating 10 that what De Callières took as evidence of a voyage having been made was simply an order, an instruction given by the Council to Sieur Bourdon to attempt this voyage. There can be no doubt whatever that the *Relations des Jésuites*, whatever may have been said of them since, were the only correct record which was kept of the early doings of the colony, and there can be no doubt whatever that had Sieur Bourdon in 1656, as is claimed, made a voyage of this kind, a record of it would have been kept, as I propose to show in a moment. The next voyage to which De Callières refers in his memoir is that of Father Dablon, a Jesuit, who in 1661, as Mr. Mills states in his Report, was ordered by Sieur D'Argenson, Governor of Canada, to proceed to the country about Hudson's Bay. It is stated that Dablon went there with Sieur De Vallière, and that the Indians who came back with them to Quebec declared that they had never seen any Europeans there before. Mr. Mills, in a note on the 20 next page, 127, explains the *Relations des Jésuites* not mentioning Bourdon's voyage by the assertion that they were naturally anxious that members of their own society should be the pioneers in discovery, and that therefore many important discoveries were never brought to light in their *Relations* because they were not made by the Jesuits. Of course an argument of this kind cannot apply to the voyage of Dablon, as he was a Jesuit, a man in whom the interests of the society were centred; and if a voyage had been made by him, no doubt a great deal of prominence would have been given to it. On the contrary, in the third volume of the *Jesuit Relations*, 1662, we find this Jesuit, Father Dablon, describing an unsuccessful voyage that he made. There can be no doubt that he attempted a voyage. A portion of this relation is written by himself, and he calls it "Journal du Premier Voyage Fait Vers la Mer du Nord." This first portion of it is most important and conclusive, as showing that De Callières 30 in his memoir of M. De Seignelay, twenty-one years afterwards, must have been speaking from hearsay and without any authentic documents on which to base his assertions. Dablon says that the highest point which he did reach was Nekauba, a hundred leagues from Tadoussac, and that subsequently he returned; and this is from a report of this journey written by himself. I noticed that the Attorney-General attempted to raise a doubt as to the identity of the Dablon in De Callières' memoir with the Dablon of the *Relations des Jésuites*. I have examined with care, and I find that the end of one of the volumes a complete list of all the Jesuits, pioneers both of the faith and in the way of discovery, and I find that there is only one Dablon mentioned. Another inaccuracy of this memoir is as to the trip of Duquet, under an order said to have been given by Sieur D'Argenson. There can be no doubt that at the time this pretended order was given D'Argenson had left Canada. The Attorney-General must 40 admit now, although he attaches so much importance to this memoir, that it is inaccurate in most important particulars; first as to the voyage of Bourdon, which is shown never to have taken place at all; next as to the voyage of Dablon, which is shown also not to have taken place; then as to the trip of Duquet, under the special instructions of a superior who could not have given them since he had left the country two years before.

My learned friend has attached a great deal of importance, apparently, to the fact that in 1627 a Charter had been granted by Louis XIII. to a number of adventurers sent to discover new lands to the north of the River St. Lawrence. But my learned friends have omitted to verify the fact that in this Charter to the French Company, which the Commissioners will find in the first volume of *Edits and Ordonnances*, at page 6, the only portions of land granted to the French Company are the 50 lands or portions of lands which had already been occupied by the Kings of France, and the object of the Charter was simply to give them an exclusive right of trade therein. The clause of the M

Charter reads as follows:—"Le fort et habitacion de Quebec, avec tout les pays de la Nouvelle France dite Canada, tante le long des Côtes depuis la Floride que les predecesseurs Rois da Sa Majesté out fait habiter en rangeant les Côtes de la Mer jusqu'au Cerele Artique pour latitude, et de longitude depuis l'Île de Terre-neuve tirant à l'ouest au Grand Lac dit la Mer douce et au delà que de dans les terres, et le long des Rivières qui y passent et se dechargent dans le fleuve dit St. Laurent, ou autrement la grande Rivière du Canada, et dans tous les autres fleuves qui se portent à la mer;" thereby clearly indicating that the Charter did not go further than the land occupied by the predecessors of Louis XIV. In the case for the Province it is stated at page 3, "La Nouvelle France was then understood to include the whole region of Hudson's Bay, as the maps and histories of the time, English and French, abundantly prove." This is a broad assertion, which is not supported by the early discoverers nor by the historians of that time. Charlevoix described New France as being an exceedingly limited territory. (Reads extract from Charlevoix, in French.) I find also in l'Escaobot, a description which shows that at that time the whole territory known as New France extended but a few miles on each side of the St. Lawrence; and Charlevoix regrets it, and says at that time the giving up of this territory did not amount to much, as New France was circumscribed by very narrow limits on either side of the St. Lawrence. My learned friends say that the right of the French to places in Hudson's Bay was acknowledged by the Treaty of Ryswick. The Commissioners will see, on reference to this Treaty of Ryswick, that a special provision was made, quite distinct from the provision in the Seventh Article of the Treaty. By Article Eight it was specially provided that Commissioners should be appointed, with full powers to settle the limits of the territories of the conflicting nations around Hudson's Bay. The fact of these Commissioners never having met to settle the limits, renders, I respectfully submit, the provisions of the Treaty, so far as the territories around Hudson's Bay are concerned, a dead letter.

Having shown that Sir George E. Cartier and Mr. McDougall were mistaken in most important points, I think that the pretension of my learned friends, that the Dominion should be bound by this letter of its Ministers, is unfounded.

On referring to a map attached to the report made by Mr. Ramsay to the [Government] of Canada some time ago, I find a line which corresponds with the one the Chief Justice referred to at the time, where the Red Lake is shown immediately to the north-west of Lake Superior, at the height of land. I understand that the Commissioners have much less difficulty about the western boundary than the other.

Chief Justice Harrison—It is the northern boundary that we want now to ascertain.

Mr. Monk—My learned friend seemed to attach considerable importance to the Constitutional Act of 1791. The Commissioners were alluding, a few minutes ago, to the fact that in the Proclamation which followed the Constitutional Act (Ontario Documents, 27) the words "until it strikes the boundary line of Hudson's Bay" are to be found. Now, this Proclamation was simply declaring when the Constitutional Act would come in force; so that if the Commissioners would take notice of the Constitutional Act itself, which is in Ontario Documents, page 4, they will perceive a frequent recurrence of the words, "Government of the *Province of Quebec*." It is to be found in the second line of the second paragraph, and is continually mentioned, thereby indicating that by that Constitutional Act there was no intention whatever to enlarge, or vary in any manner, the old limits of the Province of Quebec, as stated in the Quebec Act of 1774. I may be allowed to refer to the remarks of Chief Justice Sewell in *De Reinhard's Case*, which do not apply to the western boundary, but show that no increase of the limits of the Province of Quebec could have taken place. I am citing from the minutes taken in shorthand under the sanction of the court, printed in a book which I obtained from the parliamentary library, in which the point specially set forth by Mr. Stuart, then representing the prisoner is fully reported.

The case came up specially on two or three occasions. It came up on a motion for arrest of judgment after the verdict had been rendered. On this question as to whether the Constitutional Act of 1791, owing to the use of this word "Canada," might directly or indirectly be accepted as showing what was the Province of Quebec, Chief Justice Sewell was concurred with by Mr. Justice Bowen and Mr. Justice Perrault. I will read from his decision: Chief Justice Sewell—"The Court are most dis-

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tinctly 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 shall 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 those limits which constituted the Province of Quebec, otherwise it would certainly have been an Act to enlarge rather than an Act to divide.

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Sir Francis Hincks—Unfortunately that does not help us one bit, because of the indefinite character of the boundary of Hudson's Bay. We want to know the southern boundary of Hudson's Bay. The Act of 1791 does define it to a certain extent, because it refers to a line drawn due north to a certain point, to the boundary of Hudson's Bay; and then afterwards the commissions come in to assist us, and they say distinctly, "to the shore of Hudson's Bay." If the Act had said, "the boundary line of the territory of Hudson's Bay," it would have been clear; but it says, "the boundary line of Hudson's Bay." This is the difficulty with which we have to deal.

Chief Justice Harrison—From that it may be fairly argued that it was understood at that time that the south shore of Hudson's Bay was the southern limit of the Hudson's Bay Company.

Sir Francis Hincks—The Attorney-General has brought forward his argument very strongly on that point, and I do not think you have answered him by the Act of 1774, because that simply gave an indefinite boundary.

Mr. Monk—If our contention be correct, that it was not intended by the Constitutional Act to extend, in any manner, the limits of the Province of Quebec, we have to examine the Quebec Act of 1774, however indefinite it may be, to see what were considered the southern boundaries of Hudson's Bay at that time. The Quebec Act of 1774, in defining the northern boundary of the extended Province of Quebec, says "northward"—not to Hudson's Bay, as the Proclamation does, but—"to the southern boundary of the territory granted to the Merchant Adventurers of England trading into Hudson's Bay."

Chief Justice Harrison—That, of course, was uncertain at that time. There was no natural boundary referred to there. That has been the dispute all along, and it continued shifting from time to time.

Mr. MacMahon—And that is what is to be decided by the Commissioners now.

Mr. Monk—This would bring us back to the Proclamation of 1763, constituting the four Provinces in the British dominions, and specifying thus—“And we do further declare it to be our royal will and pleasure for the present, as aforesaid, to receive under our sovereignty, dominion and protection, for the use of the said Indians, all the lands and territories not included within the limits of our said three new governments, or within the limits of the territory granted to the Hudson's Bay Company,” not specifying them again, but clearly indicating, by inference, that the territory to the north of the old Province of Quebec up to the limit, to that northern boundary, had been granted to the Hudson's Bay Company, as it was occupied, or supposed to be occupied, by them. I would refer the Commissioners to the tenth article of the Treaty of Utrecht, page 16, Ontario Documents, as follows:—“The said Most Christian King shall restore to the kingdome and Queen of Great Britain, to be possessed in full right forever, the Bay and Streights of Hudson, together with all lands, seas, sea-coasts, rivers and places situate in the said bay and streights, and which belong thereto, no tract of land or of sea being excepted which are at present possessed by the subjects of France.” At that time there were some forts occupied by the French just at the other side of the northern boundary, the height of land. The Eleventh Article of the Treaty provides that “the Most Christian King shall take care that satisfaction be given, according to the rule of justice and equity, to the English Company trading to the Bay of Hudson, for all damages and spoil done to their colonies, ships, persons, and goods by the hostile incursions and depredations of the French.” On reference to this map of Devine's, the Commissioners will see that at that time there were French posts just at the other side of the height of land. For instance, there was one on the south-west corner of Lake Mistassinnie, another just at the other side of the height of land, just above Lake Temiscaming, another at the source of Moose River, and another south-east of Lake Joseph, a little above Lake Superior. The stipulation regarding the damages which were to be paid to the Hudson's Bay Company, and the restitution of the forts, constitute as far as we can judge, an acknowledgment of their rights to that portion of the country. The real question, as I understand it, is to ascertain what was understood by the Hudson's Bay Company as their southern boundary, by the authority that fixed that of Upper Canada. Subsequent to this Treaty of Utrecht, in 1711, commissioners were appointed; and, although the first commissioners appointed did not come to any conclusion, owing to the fact of their powers, it would seem, not being sufficiently extensive, other commissioners were appointed, and the Hudson's Bay Company were ordered by the Lords Commissioners of Trade and Plantations to send in their claim as they understood it. The Hudson's Bay Company did send in their claim, and in 1719 instructions were given to Commissioner Bladen regarding the limits of the territory in question, based on the claim of the Hudson's Bay Company; and Commissioner Bladen received certain instructions as to the limits which he was to insist upon. His instructions are at page 362, Ontario Documents. This is important as being a recognition, on the part of England of the claim of the Hudson's Bay Company, such as had been sent in at the time, since they insist upon Commissary Bladen maintaining his position as far as these limits are concerned. The limits, as contained in these instructions, are a line “drawn from the south-western point of the Island of Grimington, or Cape Perdrix (so as to include the same within the limits of the Bay), to the Great Lake Miscosinke *alias* Mistoveny, dividing the said lake into parts (as in the map to be delivered to you); and that where the said line shall cut the 49th degree of northern latitude, another line shall begin and be extended westward from the said lake, upon the 49th degree of northern latitude, over which said line, so to be described as above mentioned, the French, and all persons by them employed, shall be prohibited to pass to the northward of the said 49th degree of latitude.” There can be no doubt whatever that at that time the 49th parallel seemed settled upon as corresponding about with the height of land. Further on in the instructions of the commissary are these words: “But you are to take especial care in wording such articles as shall be agreed on with the commissary of His Most Christian Majesty upon this head, that the said boundaries be understood to regard the trade of the Hudson's Bay Company only,” clearly recognizing in these instructions to their commissary that the charter of the Hudson's Bay Company, such as it had been granted to them, according to their interpretation and recognition of the charter, extended down to the 49th degree of latitude.

Chief-Justice Harrison—For the purposes of trade only.

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Mr. Monk—I would respectfully submit that their charter for the purposes of trade did not extend farther than their territorial right went. In 1719 a memoir on the subject of the limits of the Hudson's Bay was sent to the English commissioners through Lord Stair to the Marquis D'Estriées, one of the French commissaries. It states:—"The commissaries named by His Britannic Majesty demand that the said limits may be defined in the following manner, viz.: That the limits shall commence from the north cape of Davis Bay, in latitude 56 degrees 30 minutes, which shall serve as limits between the English and the French on the coast of Labrador." It then describes the coast of Labrador and the 49th parallel as being the limits on which the English commissaries would insist; and proceeds to state that these limits were to be insisted on solely as regards the trade, and that His Britannic Majesty did not thereby accede to the right of the French to any lands in America in the said boundaries. I 10 submit that this was an act on the part of His Majesty's Government clearly showing that in 1719 the interpretation of the Hudson's Bay Charter, and the limits as understood then, were the 49th parallel, or what was corresponding to it, the height of land, as understood at that time. I will not detain the Commissioners any longer on this portion of the case.

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If there is any difficulty as to whether this northward line should be drawn due north from the confluence of the Ohio and Mississippi, or should follow the course of the Mississippi, I would refer the Commissioners most particularly to the judgment, a very exhaustive one, which was rendered by Chief Justice Sewell and his colleagues upon the motion on arrest of judgment in the De Reinhardt case which I have above referred to. It is not reported in full in the Ontario Documents, and is very im- 20 perfect as an extract. The point was a most important one, the life of a fellow-being depended on it, and the gentlemen on the bench to whom was entrusted the decision were men of the highest reputation and standing in the legal world.

Chief-Justice Harrison—Notwithstanding the adjudication, the point supposed to be adjudicated upon seems to have been considered so doubtful that the sentence was never acted upon.

Mr. Monk—But the reason I lay some stress upon this is that my learned friend seemed to think that this question at the trial had simply come up incidentally. The fact is that it was argued at great length on the motion for arrest of judgment, and a decision came to after mature consideration of all the documents and treaties, and after as much historical research as was possible. Chief Justice Sewell says: "We have been compelled to give a decision upon the question, not from any wish on our 30 part, but because it has been brought before us and we had no way of evading it." "It is impossible for us to do otherwise; it is a fixed and certain boundary (speaking of the due north line from the confluence of the Ohio and Mississippi), and according to the statute we have to the best of our knowledge decided it. In the decision we have made we are supported by the authority of Lord Hardwicke in the disputes between Penn and Baltimore"—where a similar difficulty arose. I have the case at length but there is no use in detaining the Commissioners any longer upon it, if I may be allowed to leave this book with them. The discussion about this northward line is very amply shown in these notes which I hold; much more so than in the Ontario Documents. I do not know from what report that extract was taken. The book I have, contains every point brought up and adjudicated upon, and every argument used in favour of the pretension which my friends are urging, that the Mississippi should be the bound- 40 ary line.

THE ATTORNEY-GENERAL OF ONTARIO IN REPLY.

The Attorney-General in reply said:—"Most of the arguments of my learned friends which are not covered by the observations that I addressed to the Arbitrators in my opening, have been already considered and answered in Mr. Mills' report, and the documents of which the Arbitrators have been put in possession; and, to avoid prolonging the present discussion, I shall confine my reply to the estoppel which my learned friend, Mr. MacMahon, finds in the settlement made by the Dominion with the Hudson's Bay Company, and in the Imperial Act under which the settlement was effected. My learned friend has pointed out that an individual who, with full knowledge, acquiesces by his silence in what is done by others to his prejudice, cannot afterwards hold the thing so done to have been as 50 against him illegal or void. I do not desire to hold the transaction between the Company and the

Dominion to have been illegal or void. It was the pressure from the people of Upper Canada that brought it about; but when all the Company's claims became vested in the Dominion, both those claims that there is a question about and those that there is no question about were expected to enure, and I submit did clearly enure, for the benefit of whatever portions of the Dominion were really entitled thereto as against the Company. The Dominion was acting in the settlement as trustee for all the Provinces which constituted the Dominion. The new territory not within any of the Provinces is, in the common interest, to be divided into provinces as it becomes settled. Ontario did not suppose that any statute obtained from the Imperial Parliament, or anything done by the representatives of the Dominion, was to estop her from claiming what belonged to her as a Province. But there is no proof that Ontario as a Province even knew anything about the matters which are said to estop her, before these matters were finally concluded. In fact, they all took place without any reference to the Local Government. The Dominion Government was understood to be acting for all in good faith, and without prejudice to the rights of the Provinces among themselves; and the Province of Ontario had a right to assume that the Dominion, after settling with the Company, would take the same view of the boundary question which the Dominion had always previously taken, namely, that Canada, and therefore Ontario, extends to the Rocky Mountains on the west and far north of the height of land, no intimation to the contrary having been given to the Provincial Government until long after the acquisition of the Company's claims. The Company had some territory in regard to which there was no dispute; it really did belong to the Hudson's Bay Company; it was thought important that Canada should acquire this territory; and it was desired also to get a clear and undisputed title to both that which the Hudson's Bay Company certainly had, and the further territory in regard to which there was the dispute. The settlement with the Company was not on the assumption that the whole belonged to the Company; the £300,000 paid to the Company would have been a mere bagatelle as purchase money for all that the Company pretended to claim; it would have required several millions to buy all if their title had been clear; but there was a controversy about the title, and it was thought worth while to give that amount of money and certain other advantages to the Company, for the purpose of getting all doubt removed without further delay. The arrangement was a compromise, and understood to be so.

Chief-Justice Harrison—You were acquiring, in fact, a quit claim.

The Attorney-General—That was all. There is another point with reference to my learned friend's estoppel. He says that we stood by and concealed our rights from the Dominion Ministers. But, on the contrary, they knew our rights better, perhaps, than the new Provincial Ministers did. It was Dominion Ministers who had been stating our case against the Company; everything they had stated against the Company was in favour of Upper Canada; whatever they claimed to the north and west as belonging to Canada was in fact a claim for Ontario. Some of these Ministers had indeed been the very agents through whom the facts in our favour had been brought to light and pressed, officially and otherwise, upon public attention. In consequence and by means of this contention they got the surrender from the Company for a comparatively small sum, and they prevented the Province from negotiating on its own account with the Company. If there is any estoppel in the case, it is the Dominion that is estopped from resisting our claim, instead of the Province being estopped from making the claim.

AWARD OF THE ARBITRATORS, 3RD AUGUST, 1878.

TO ALL TO WHOM THESE PRESENTS SHALL COME:

The undersigned having been appointed by the Governments of Canada and Ontario as arbitrators to determine the northerly and westerly boundaries of the Province of Ontario, do hereby determine and decide that the following are and shall be such boundaries; that is to say:—

Commencing at a point on the southern shore of Hudson's Bay, commonly called James' Bay, where a line produced due north from the head of Lake Temiscaming would strike the said south

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shore; thence along the said south shore westerly to the mouth of the Albany River; thence up the middle of the said Albany River, and of the lakes thereon, to the source of the said river at the head of Lake St. Joseph; thence by the nearest line to the easterly end of Lac Seul, being the head waters of English River; thence westerly through the middle of Lac Seul and the said English River to a point where the same will be intersected by a true meridional line drawn northerly from the international monument placed to mark the most north-westerly angle of the Lake of the Woods by the recent Boundary Commission; and thence due south, following the said meridional line to the said international monument; thence southerly and easterly, following upon the international boundary line between the British possessions and the United States of America into Lake Superior.

But if a true meridional line drawn northerly from the said international boundary at the said most north-westerly angle of the Lake of the Woods, shall be found to pass to the west of where the English River empties into the Winnipeg River, then, and in such case, the northerly boundary of Ontario shall continue down the middle of the said English River to where the same empties into the Winnipeg River, and shall continue thence on a line drawn due west from the confluence of the said English River with the said Winnipeg River, until the same will intersect the meridian above described; and thence due south, following the said meridional line to the said international monument; thence southerly and easterly, following upon the international boundary line, between the British possessions and the United States of America, into Lake Superior.

Given under our hands, at Ottawa, in the Province of Ontario, this third day of August, 1878.

ROBT. A. HARRISON,
EDWD. THORNTON,
F. HINCKS.

Signed and published in the presence of

E. C. MONK,
THOMAS HODGINS.

ONTARIO ACT, 42 VIC., CAP. 2 (1879).

AN ACT RESPECTING THE NORTHERLY AND WESTERLY BOUNDARIES OF ONTARIO.

Ontario Act,
42 Vic., Cap.
2, 1879.

Whereas the northerly and westerly boundaries of the Province of Ontario were not determined until lately;

And whereas pending the determination thereof certain provisional lines, which for certain purposes were to be regarded as such boundary lines, were agreed to by the Governments of the Dominion and the Province;

And whereas it was agreed by the Governments of the Dominion of Canada and the Province of Ontario that the true boundaries should be determined by reference to arbitration;

And whereas one of the arbitrators named in the Revised Statutes of Ontario, chapter four, died, and the other resigned without having made any award;

And whereas the Governor-General of Canada in Council afterwards named as arbitrator the Honourable Sir Francis Hincks, of the City of Montreal, Knight, and the Lieutenant-Governor in Council of this Province named as arbitrator the Honourable Robert Alexander Harrison, Chief Justice of Ontario;

And whereas the two Governments further agreed that the Right Honourable Sir Edward Thornton, Knight, should be the third arbitrator, and that the determination of the award of the said arbitrators or a majority of them in the matter of the said boundaries should be taken as final and conclusive;

And whereas on the third day of August, in the year of our Lord one thousand eight hundred and seventy-eight, the said arbitrators made their award in writing, in the words following:—[Here is given the text of the Award]:

And whereas the effect of the said award is to give to this Province less territory than had been claimed on behalf of the Province, and more territory than the Government of Canada had contended to be within the limits of the Province, or than was contained within the provisional boundary lines aforesaid;

And whereas by chapter twenty-eight of the Acts of the Parliament of the United Kingdom of Great Britain and Ireland, passed in the session held in the thirty-fourth and thirty-fifth years of Her Majesty's reign, and intituled "An Act respecting the establishment of Provinces in the Dominion of Canada," it is enacted that the Parliament of Canada may, from time to time, with the consent of the Legislature of any Province in the Dominion, increase, diminish, or otherwise alter the limits of such Province upon such terms and conditions as may be agreed to by the said Legislature, and may with the like consent, make provision respecting the effect and operation of any such increase, or diminution or alteration of territory in relation to any Province affected thereby;

And whereas it is proper that the boundaries determined by the said award be adopted and confirmed;

Therefore Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. The Legislature of the Province of Ontario consents that the Parliament of Canada may declare that the boundaries which by the award of the arbitrators aforesaid were decided to be the northerly and westerly boundaries, respectively, of this Province, shall be and are the northerly and westerly boundaries thereof, whether the same increase, diminish, or otherwise alter the true northerly and westerly limits of the Province.

LECTURE OF SIR FRANCIS FINCKS (ONE OF THE ARBITRATORS) ON THE NORTHERLY AND WESTERLY BOUNDARIES OF ONTARIO, AND THE AWARD RELATING THERETO, MAY 6, 1881.*

Sir Francis Hincks having been introduced to the meeting by the Chairman, the Hon. Sir W. P. Howland, K.C.M.G., C.B., delivered the following lecture:—

SIR WM. HOWLAND, LADIES AND GENTLEMEN,—

Before entering on the subject to which I propose to invite your attention this evening, I must express to you the deep gratification which I felt on being invited, during a recent visit, to address a Toronto audience, after the lapse of so many years. Should my life be spared for another twelve months, a period of fifty years will have elapsed since, as a young man, I settled in the old capital of Upper Canada, then popularly known as Little York, but within two years afterwards incorporated as the city of Toronto. Ten years after my first settlement at York, I became a member of the Government of United Canada, and was under the necessity of taking up my residence at the capital, since which time, with the exception of about two years, when the sessions of Parliament were held at Toronto, under the alternate system, I have been a comparative stranger among you, although I have had frequent opportunities of seeing several of my old fellow-pioneers, and have had the gratification of being invariably met with a friendly greeting, not only by my old friends, but by those with whom I had had differences of opinion on what may now be properly termed dead issues.

Having several years ago entirely withdrawn from party connection, a political address would be wholly repugnant to my feelings; but circumstances seem to me to render it desirable that the public should be better informed on a subject which is generally supposed to be imperfectly understood, while it is due as well to my own character, as to the memory of the late lamented Chief Justice Harrison, that a full explanation should be given of the grounds on which the Arbitrators appointed to determine the true boundaries of the Province of Ontario arrived at their decision. Such an explanation, I think, likewise due to the Right Honourable Sir Edward Thornton, Her Majesty's Minister at Washington, who was good enough, at the joint request of the Governments of the Dominion and of Ontario, to act

* The Northerly and Westerly Boundaries of the Province of Ontario, and the Award relating thereto, as discussed and explained by the Hon. Sir Francis Hincks, K.C.M.G., in his Public Lecture at the Educational Department, Toronto, May 6th, 1881. Toronto: Printed by C. Blackett Robinson, 1881.

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as third Arbitrator on the occasion referred to. While it is no part of my duty to defend the action of the Dominion and Provincial Governments in agreeing to leave the disputed boundary of the Province of Ontario to be determined by Arbitrators, I may remark that there are many precedents for such a mode of settling conflicting claims. It is fortunate that there is no danger of this question, complicated though it is at present, leading to the fearful consequences which history, as well as our daily observation, teaches us to be the result of territorial disputes. A very large proportion of the wars which have occurred during past centuries, and which have entailed such immense losses of blood and treasure, must be attributed to quarrels regarding boundaries; and in modern times the expediency of resorting to arbitration as the best mode of settling such disputes, has been very generally admitted.

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In the case of the Ontario boundary arbitration in 1878, the unanimous award, made after a most careful and conscientious examination of the voluminous papers submitted to the Arbitrators, together with the cases of the learned counsel on both sides, has been severely criticized, not only by the Select Committee of the House of Commons in 1880, but by the leaders of the Dominion Government in the Senate and House of Commons, during the last session. It has been stated as an objection to the competency of the Arbitrators, that two of the three were not members of the legal profession, but I have been unable to find any precedent in analogous cases for confining the choice of arbitrators to lawyers. In one of the most recent cases, when arbitrators were appointed to determine the boundaries between Zululand and the Transvaal in South Africa, there was one lawyer, the Attorney-General of the Cape, joined with a civilian, and an officer holding the rank of Lieutenant-Colonel. I own that I fail to discover the value of special legal attainments in such a case; and, moreover, there were before the Arbitrators conflicting opinions given by eminent judges and lawyers. The greatest judges are far from being infallible, and are themselves always desirous of the assistance of counsel, whose duty is to submit every point of law, and every fact, in support of their respective clients. Let me, for argument's sake, suppose that in a trial before a judge, a clause in an Act of Parliament had a special bearing on the case in controversy, and that the counsel, whose client would be benefited by that clause, were to fail to bring it to the notice of the Court, and that the judgment afforded proof that this important clause had not engaged the judge's attention, surely it would not be contended that, however eminent the judge might be, his judgment ought to carry as much weight as that of a non-professional arbitrator whose opinion had been formed after a full consideration of circumstances, which had never been brought under the notice of the judge. I shall have to make a practical application of this supposition case to the disputed boundary of Ontario on the south-west, and as bearing on the judgment of Chief Justice Sewell in the De Reinhard case, which was concurred in by his colleagues. I must, before doing so, notice as briefly as possible some statements, which appear to me to be a sufficient justification of my placing on record the reasons which induced the Arbitrators to make the award which is now the subject of controversy. During the session of Parliament held in 1880, a Select Committee was appointed by the House of Commons to inquire into and report upon all matters connected with the boundaries between the Province of Ontario and the unorganized territories of the Dominion. The report, concurred in by nine out of thirteen members of that Committee, declares that "the award does not declare the true boundaries of Ontario," adding, "it seems to your Committee to be inconsistent with any boundary line ever suggested or proposed subsequent to the Treaty of Utrecht." One of the principal witnesses, Mr. William McD. Dawson, a portion of whose evidence is embodied in the report, stated that the Arbitrators had adopted a boundary "which was not a possible one." Sir John Macdonald is reported in *Hunsard* to have said:—We have only to read the written statement of one of those Arbitrators, Sir Francis Hincks, in which he admitted they did not settle the true boundary, to be convinced." Sir Alexander Campbell was reported to have made substantially the same statement in the Senate. It has seemed to me that such allegations as I have cited, render it desirable that the public should be put in possession of the grounds, on which the Arbitrators concurred in an award, which, although adverse to the claims of the Ontario Government, was promptly accepted by it, and subsequently by the Provincial Legislature.

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SOUTH-WESTERN BOUNDARY.

I shall first consider the South-Western Boundary. It is evident from the report of the Select Committee, that its framers attached much greater weight to Commissions to Governors as settling boundaries, than the Arbitrators did. Commissions may be of assistance in interpreting obscure language in an Act of Parliament, but where the meaning of an Act is free from doubt, it must be set aside by a Commission. The south-western boundary of Ontario depends on the construction of the Imperial Act of 1774, on the effect of the subsequent treaty with the United States, of 1783, and on the proclamation issued under the Act of 1791. It is important to consider the circumstances under which the Act of 1774 was passed. In the year 1763 a treaty was concluded at Paris, between England and France, which contained the following provision: "In order to establish peace on solid and durable foundations, and to remove forever all subject of dispute with regard to the limits of the British and French territories on the continent of America, it is agreed that for the future the confines between the dominions of His Britannic Majesty, and those of His Most Christian Majesty, in that part of the world, shall be fixed irrevocably by a line drawn along the middle of the River Mississippi from its source to the River Iberville, and from thence by a line drawn along the middle of that river and the lakes Maurepas and Pontchartrain to the sea . . . provided that the navigation of the Mississippi shall be equally free as well to the subjects of Great Britain as to those of France in its whole breadth and length from its source to the sea." The treaty from which I have just quoted was concluded on the 10th February, 1763, and on 7th October, 1763, a proclamation was issued erecting four new Governments, one of which was Quebec, the western boundary of which was fixed at the south end of Lake Nipissing. In the year 1774, in consequence of urgent representations, as to the necessity of establishing a settled government in territories where no government of any kind existed, a bill was introduced by the Government of the day, the object of which was clearly stated by Lord North in language which I shall quote. "It is well known that settlers are in the habit of going to the interior parts from time to time. Now, however undesirable, it is open to Parliament to consider whether it is fit there should be no government in the country, or, on the contrary, separate and distinct governments, or whether the scattered posts should be annexed to Canada. The House of Lords have thought proper to annex them to Canada but when we consider that there must be some government, and that it is the desire of all those who trade from Canada to those countries, that there should be some government, my opinion is that, if gentlemen will weigh the inconveniences of separate governments, they will think the least inconvenient method is to annex those posts, though few in population, great in extent of territory, rather than to leave them without government at all, or make them separate ones. Sir, the annexation likewise is the result of the desire of the Canadians, and of those who trade to those settlements, who think they cannot trade with safety as long as they remain separate." Now, it must be borne in mind, that the principal posts in the unorganized territories, when the Act of 1774 was passed, were situated on the River Mississippi, and of course in British territory by the Treaty of 1763. The pretension of the advocates of the due north line, which is the boundary claimed by the Dominion, is that Parliament deliberately abandoned the natural boundary of the Mississippi, thereby excluding from the benefit of the Act, the very persons for whom it was specially intended, and that it adopted, without a single conceivable motive, a conventional line running due north from the junction of the Ohio with the Mississippi. It is well known that the Bill was introduced in the House of Lords, in 1774, and that as sent down by that House to the Commons the description was "all the said territories, islands and countries, heretofore a part of the territory of Canada in North America, extending southward to the banks of the River Ohio, westward to the banks of the Mississippi, and northward to the southern boundary of the territory granted to the Merchants Adventurers of England trading to Hudson's Bay, and which said territories, islands and countries are not within the limits of some other British Colony as allowed, and confirmed by the Crown." Now it has never been pretended that there was any ambiguity in that description as to the western boundary, but a discussion was raised in the Commons by Mr. Edmund Burke, then agent for the State of New York, who had doubts whether under the description, Canada might not encroach on territory on the north-east of that State, which had actually been in dispute, and which by amicable agreement had been made over to New York, reserving the rights of Canadian settlers in the disputed territory. The territory on the Mississippi had never been

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in dispute during the protracted wars between the British and French regarding boundaries in the Ohio valley.

INTENTION OF ACT OF 1774.

There is not the slightest reason to suppose that a single member of the House of Commons desired to alter the natural boundary of the Mississippi, on the banks of which were the principal settlements for the inhabitants of which the Act was specially intended to provide a government. Mr. Burke, as appears from a report of his remarks in a book entitled "The Cavendish Debates," insisted very strenuously on defining the boundaries more precisely. I am not unaware that the framer of the report of the Commons Committee has, on the authority of Mr. Justice Johnson of Montreal, pronounced the Cavendish Debates as of no authority, but the Hon. Wm. McDougall has given most satisfactory reasons for considering them a valuable contribution to the history of the period. There is however a letter in existence, addressed by Mr. Burke to the Legislature of New York, in which he explains with great precision the object of his amendments, and from which it is clear that it never was contemplated to interfere with the Mississippi boundary. The change in the description of the boundary was made while the House was in Committee on the Bill, four members, one of whom was Mr. Burke, having left the House in Committee to arrange the new description. It is said "the difference was whether the tract of country not inhabited should belong to New York or Canada," and most assuredly this difference could not possibly apply to territory on the Mississippi River. I shall now cite the boundaries as finally agreed to by the House, and I request your most particular attention to the first words, which seem to me to deserve much more consideration than has been given to them by the advocates of the due north line, from the confluence of the Ohio and Mississippi Rivers. "That all the territories, 20 islands and countries in North America, belonging to the Crown of Great Britain, 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 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 the 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, 30 and from thence along the said northern and western boundaries of the said Province until the said Western boundary strike the Ohio; but in case the said bank of the said lake shall not be found to be 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 strike the River Ohio, and along the bank of the said river westward to the banks of the Mississippi, and northward to the southern boundary of the territory granted to the Merchants Adventurers of England trading to Hudson's Bay." You will not fail to observe that the intention of the framers of the amendment, as of the original Bill, was to include all the territories 40 belonging to the Crown of Great Britain in the newly constituted Province, which were not already included in the old Provinces. You will notice how precise the definition is until the Ohio is reached, after which there was no territory regarding which there could be a dispute. You will likewise bear in mind that the last clause of the description is precisely the same as in the original Bill, viz., "Westward to the banks of the Mississippi and northward to the southern boundary of the territory granted to the Merchants Adventurers of England trading to Hudson's Bay," and that in that Bill "northward" could not have had the meaning which has been claimed for it, and which is that it must necessarily mean "due north," although the meaning of the word is really "towards the north."

THE DE REINHARD CASE.

Great stress has been laid on a decision given in the year 1818 by the Court of Queen's Bench at Quebec, presided over by Chief Justice Sewell, on the trial of a person named De Reinhard, for a

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murder committed at a place called Dalles, in the vicinity of the Lake of the Woods. Some judges who gave evidence before the Select Committee on the boundaries in 1880, referred to this judgment as conclusive in favour of the due north line. Judge Johnson said that "Chief Justice Sewell, who tried the case, is looked upon as the greatest luminary of the law we ever had in Lower Canada. It may almost be said that he made our laws." Again, Mr. Justice Armour said:—"There is a judicial decision as to the meaning of the word 'northward' in the Quebec Act. The decision was that 'northward' evidently meant 'due north.' That is the De Reinhard case. No doubt about it, it is a clear decision, and were I deciding judicially I would be bound to follow that decision." As Mr. Justice Armour proceeded to state, that if asked his individual opinion as a person looking into the matter, he would determine that "'northward' had reference to the territory and not to a linitary line," I do not think that his evidence is much in favour of the due north line. I shall state the reasons which led me, and I believe my co-Arbitrators, to attach no importance whatever to the judgment in the De Reinhard case. The question of boundary was never fairly brought before the Court in 1818. It is well known that very high authorities, including the eminent counsel by whom De Reinhard was defended the Honourable Messrs. Cartier and McDougall, the Honourable David Mills, who has made a most valuable report on the subject the Messrs. Dawson, up to a recent period, and the learned counsel who represented Ontario before the Arbitrators, have all held that the language employed in the Order of Council and the Proclamation of 1791, "including all the territory to the westward and southward of the said line to the utmost extent of the country called or known by the name of Canada," must be interpreted as giving to Ontario, then Upper Canada, a much more extensive territory to the west, than what it would be entitled to according to the interpretation placed on the Act of 1774, by those who hold that the Mississippi River was the boundary of the old Province of Quebec, and that the Act of 1791 was intended to divide that Province, but not to extend it. I refer to this difference of opinion here to show that the view taken by the Arbitrators was never presented to the Court in 1818. Had it been pointed out to the eminent judges who presided on that occasion, that the language of the Act of 1774 made special provision for including in the new Province "all the territories, islands and countries in North America belonging to the Crown of Great Britain," before defining the boundaries, it might have been presumed that the intention of the Act would have been so manifest that even if the language had been deemed ambiguous, its meaning could scarcely have been misunderstood. To my own mind there is no ambiguity in the language. The object of the Act was to provide for the government of all the territories not included in the old Provinces, and not south of the Ohio River. When the Mississippi was reached, the word "northward" was quite sufficient, as the western boundary was that established by the Treaty of 1763. How any one could have imagined that Parliament would have been guilty of the absurdity of excluding the settlements on the river from the benefit of an Act chiefly intended for them, and of abandoning a natural boundary like the Mississippi in order to run a line due north, without any conceivable object, is incomprehensible to me. The point which strikes me as important is that De Reinhard's counsel rested their case on the Act of 1791 and not on that of 1774, and it will be found on reference both to the arguments of counsel, and to the judgment of the Court, that the most important branch of the decision was that the Act of 1791 only authorized the division of the old Province of Quebec into two separate Provinces, and consequently that the Proclamation could not be interpreted to give Upper Canada any territory that had not been included in the old Province of Quebec. Now, the Arbitrators were of opinion that on this point the judgment of the Court delivered at Quebec in 1818 was correct, and consequently that the boundaries of Ontario must be limited to those of the Province of Quebec as defined by the Act of 1774. There have been so many opinions, which I admit to be entitled to great weight, in favour of the boundary which was contended for by the eminent counsel for the prisoner in the De Reinhard case, that it is highly probable that, as lawyers, they held their construction of the Proclamation of 1791 to be correct; I must, however, point out that it is the duty of a lawyer, when defending a criminal, to spare no effort to procure his acquittal, and, in thinking the De Reinhard case over in my own mind, it occurred to me that if counsel had contended for the Mississippi boundary as that established by the Act of 1774, and had concurred with the Arbitrators, that after the treaty of peace with the United States in 1783, the most north-western angle of the Lake of the Woods became the

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south-west boundary, they might not have saved the prisoner whom they were defending. The evidence on the trial as to the precise locality of Dalles was conflicting, but to a very slight extent. Mr. Sax, a witness for the Crown, held that Portage des Rats was the north-west angle, and that its longitude was $94^{\circ} 6'$ west. Mr. Joseph Bonchette placed Portage des Rats in longitude $94^{\circ} 10'$ west, and the north-western angle in $94^{\circ} 25'$. Now, Dalles is placed in $94^{\circ} 40'$ west longitude, and would consequently have been outside the boundaries of Upper Canada under the award of the Arbitrators. Again, Mr. Coltman, one of the witnesses, stated that Dalles was on the River Winnipeg, about fifteen or eighteen miles from the most north-western point of the Lake of the Woods, and that it was on a line "running to the north with a little westing." If, then, it be assumed that the north-western angle of the Lake of the Woods is the true south-western boundary of Ontario, then Upper Canada, it would have been fatal to the prisoner's case for his counsel to have contended for the boundary established by the Act of 1774, and they accordingly argued most strenuously that the Proclamation issued in accordance with the Act of 1791, had considerably extended the boundaries of Upper Canada. I confess I have been a good deal surprised at some of the recent opinions given by gentlemen who claim to be experts, as to the meaning of the term "northward." Mr. Lindsay Russell declares in his evidence that this word "admits of no choice in its interpretation." Such was not the opinion of Mr. Sax, the surveyor examined for the Crown on the trial of De Reinhardt in 1818, which, although instructive, is not a little amusing, and deserves to be noticed in detail.

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MEANING OF NORTHWARD.

Mr. Sax—"A line, supposing it ran due north from the junction of the Ohio and Mississippi Rivers, 20 would leave the River Winnipeg five degrees out of the Province of Upper Canada—not a northward line but a due north line.

Attorney-General—"Do you mean to say that a northward line is not a north line?"

Mr. Sax—"It is not always; it may be north by east, or north by west, or north north-west, or many other points of the compass. A due north line is one that goes direct to the north pole without any deviation whatever.

Attorney-General—"And does not a northward line go to the north pole? If you had a northward line to run would you not run it to the north pole?"

Mr. Sax—"Perhaps I might and perhaps not; I would certainly run it northerly, though I might not run it due north.

Attorney-General—"What is to prevent you taking it due north? If you had a line to run from a given point until it struck a river, and thence to continue along the course of that river northward, would you call that drawing a northern line?"

Mr. Sax—"Undoubtedly it would be a northern line, but not a due north line.

Attorney-General—"Would it not? Could it be east or west?"

Mr. Sax—"It might, according to circumstances, be a north-eastward or north-westerly line, and yet a northern line—that is a line having a northward course or drawing nearer to the north pole as it progressed, though not an astronomical north line.

Attorney-General—"Is not a north line a line northward?"

Mr. Sax—"Certainly, a line running due north is undoubtedly a northward line.

Attorney-General—"And a line true north-westward you would call a north-westward line?"

Mr. Sax—"Certainly, a line due north-west is a north-westward line, but a line, for instance, that runs toward the north, notwithstanding it may gain in its course more northing than westing or easting, is not therefore necessarily a due north line, but is a northern or northward line.

Chief Justice Sewell—"I really do not comprehend the distinction; to say that a northward line is not a north line, I confess, appears to me to approach the *reductio ad absurdum*. Suppose that we had a compass here, and from a given point I draw a line north-westward, that is to say terminating at a point north-westward, would not that be a due north-west line?"

Mr. Sax—"It would if drawn due north-west, but if in drawing it you gained northerly it would from the course of its deviation be a line northward though not a north line.

Chief Justice Sewell—"Then its course northward must unquestionably be due north if a line north-westwardly is a north-west line. I want to know whether in point of fact, a fact that any man can tell as well as a surveyor, whether a line from the eastern or western point of the compass, drawn northward, is or is not a north line. Just answer that question, yes or no, and then you may explain that answer in any way you think proper.

Mr. Sax—"It certainly must be to a certain extent a north line, but not a due north line.

Chief Justice Sewell—"Why not.

- 10 *Mr. Sax*—"A line drawn from any point between two cardinal points of the compass, direct to any cardinal point, is a due north or due west line as the case may be; but a line may be so drawn between two points as to be called by surveyors a northward or a southward line as it may chance to gain in the course of running it upon that point of the compass to which it is approaching; as I might draw a line from a point north-westwardly but gaining a northerly direction in its course, so that at its termination it would be a line northward from having more northing there than at the point from which I started.

I confess that I think that *Mr. Sax's* opinion is entitled to infinitely more weight than that of *Mr. Russell*.

IMPORTANCE OF A NATURAL BOUNDARY.

- 20 I have already stated the reasons which induced the Arbitrators to arrive at the conclusion that the intention of the Act of 1774, and its language, interpreted according to common sense, was to extend the old Province of Quebec, so as to include all the territories belonging to the Crown of Great Britain in America, not included in the old British Colonies, now the United States, nor in the territories belonging to the Hudson's Bay Company, nor in the Indian territories north-west of the Mississippi. The view taken by the Arbitrators was never presented to the Court in 1818, and the territory between the imaginary due north line and the Mississippi having become part of the United States, the absurdity of placing such a construction on the Act of 1774, as would have left an important strip of territory without any government whatever did not strike the learned judges. It must be borne in mind, that although the Commission of a Governor cannot supersede an Act of Parliament, as the framer of the
- 30 report of the Commons Committee of 1880 seems to imagine, it may fairly be cited as corroborative evidence of the intention of an Act where any ambiguity of language is found to exist. The first Commission issued under the Act of 1774 to Sir Guy Carleton proves conclusively what was understood at the time to be in its meaning. Immediately after the word "northward" the words "along the eastern bank of the said river" were added in the Commission. It really looks as if it had occurred to the framer of the Commission that the hastily prepared amendment to the original Act might create doubt at some future time, and yet *Mr. Burke*, the framer of the description, thus explained his intention: "My idea was to get the limits of Quebec, which appeared to many as well as to myself intended to straighten the British Colonies, removed from construction to certainty, and that certainty, grounded on natural, indisputable, and immovable barriers—rivers and lakes where I could have them,
- 40 lines where lines could be drawn, and where reference and description became necessary to have them towards an old British Colony, and not towards this new and, as was thought, favourite establishment." Is it conceivable that the author of this passage I have quoted could have intended to abandon such a natural boundary as the Mississippi for one without sense or meaning, and the adoption of which would have left without any government the very settlements which it was specially intended to include? I need only observe further that I believe that those who maintain that the boundaries were enlarged by the Proclamation issued under the act of 1791, concur with the Arbitrators in the opinion that by the Act of 1774, the Mississippi was the western boundary of the old Province of Quebec.

EFFECT OF THE TREATY WITH UNITED STATES ON THE BOUNDARY.

- 50 I have now to draw your attention to the effect of the Revolutionary War on the boundary of the old Province of Quebec. When the treaty of peace was concluded at Paris, on 3rd September,

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1783, boundaries were established to which I shall briefly refer. It is sufficiently evident that there was a desire to find natural boundaries, if practicable, and accordingly the line of division was carried through Lake Superior to the Long Lake, thence by water communication to the most north-western point of the Lake of the Woods, and from thence on a due west course to the River Mississippi. In a paper dated in 1876, written by Mr. S. J. Dawson, the Chairman of the Commons Committee, of 1880, he argued that the diplomatists who framed the Treaty of 1783 had in view, not the Mississippi proper, but "the main artery of the vast river system to which the comprehensive name of the Mississippi was applied in those days." He maintained that "the diplomatists, who framed the treaty, knew perfectly well that the northerly waters of the Mississippi were far to the south, and that they must have meant a branch or tributary of the Missouri, called the White Earth River, which would intersect the due west line at a point over 450 miles west of the Lake of the Woods." Mr. Dawson held that "it is impossible to avoid the conclusion that the true intent, meaning, and spirit of the Treaty of 1783, was that the western boundary of Canada and the United States, and the eastern limit of Louisiana on the due west line, should be at a point upwards of 450 miles west of the Lake of the Woods." I have referred to Mr. S. J. Dawson's opinion so late as 1876, to establish that he recognized the north-western angle of the Lake of the Woods, as within the Canadian territory, and further, that he recognized the Mississippi as the western boundary. Mr. Dawson, when he stated with such confidence, that the diplomatists, in 1783, "knew perfectly well" that the northerly waters of the Mississippi proper were far to the south of such a line, must have been unaware that, eleven years after the treaty from which I have quoted, viz., in 1794, another treaty was concluded, which commences as follows:—"Whereas it is uncertain whether the River Mississippi extends so far to the northward as to be intersected by a line to be drawn due west from the Lake of the Woods in the manner mentioned in the treaty of peace between Her Majesty and the United States, it is agreed," etc. The agreement was that the two nations would make a joint survey of the said river from one degree of latitude below the Falls of St. Anthony to the principal source or sources of the said river, and if the result should be that the river would not be intersected by such a due west line, then the two parties would proceed to establish a boundary by amicable negotiation. This was subsequently accomplished by the Treaty of 1818, establishing the 49th parallel of north latitude. At that time, thirty-five years after the period when Mr. S. J. Dawson thought that diplomatists "knew perfectly well" all about localities, it was not known whether the Lake of the Woods was north or south of the 49th parallel, and it was accordingly provided that a line should be drawn due north or due south from the north-western angle to the 49th parallel. The Mississippi of the treaty between England and France, of the Act of 1774, and of the treaty with the United States, has its source almost due south of the Lake of the Woods, where the international boundary is fixed. It seemed to the Arbitrators that under all circumstances of the case, the true south-westerly boundary of Ontario should be held to be at the international boundary, rather than at a point due north of the source of the Mississippi. The latter would have been in nearly the same meridian, I may observe, and would have entailed much useless expense in surveys, besides disputes as which was really the true source of the Mississippi, which according to Mr. S. J. Dawson, is to be found "in numerous brooks and countless lakelets."

NORTH-EASTERN BOUNDARY.

I shall now proceed to state the grounds on which the Arbitrators arrived at their decision as to the true boundary on the north-east. Up to the time when it became my duty to study the question as an arbitrator, I had been under the prevailing impression that the height of land was the southern boundary of the Hudson's Bay Territory. It would be impossible, on such an occasion as this, to state all the arguments which have led me to think that the pretensions of the Hudson's Bay Company were without foundation. I may, however, refer to the able papers, which the late Chief Justice Draper prepared, regarding the claims of the Company, and likewise to a memorandum from the Hon. Joseph Canehon, who was Commissioner of Crown Lands in 1857, and which is printed in the appendix to the report of the Commons Committee as the memorandum of Mr. W. McD. Dawson. I presume that the cause of the action taken at that particular time was the approaching termination of the lease of the Indian territories. The claim of the Hudson's Bay Company, under their original

charter, was described in the memorandum prepared by Mr. Dawson under the Commissioner's instructions, to be "to government, jurisdiction, and right of soil over the whole country watered by rivers falling into Hudson's Bay." I have been unable to discover any authority for so extensive a claim. There can be no doubt that the Hudson's Bay Company themselves proposed, after the Treaty of Ryswick, that the French should not trade or build any house, factory or fort to the north of the Albany River on the West Main Coast, or north of Rupert's River on the east Main Coast. It is true that under the Treaty of Utrecht the French were to restore to Great Britain a number of forts, but it does not appear to me that this restoration was ever completed. It was provided by the treaty that "within a year" Commissaries to be named by both parties were to determine the limits between the British and French, and it is notorious that such Commissaries never did determine the boundaries, while the French King, many years after the Treaty of Utrecht, declared, with reference to the pretensions of the Hudson's Bay Company, that he was "firmly resolved to maintain his rights and his possessions against pretensions so excessive and so unjust." The Proclamation under the Act of 1791 establishes the north-east boundary at the termination of a line drawn due north from the head of Lake Temiscamingue, until it strikes the boundary line of Hudson's Bay, and it is contended by the very same parties who insist, contrary, as I think, to common sense, that in the Act of 1774, northward must mean due north, that the meaning of words which seem to me sufficiently clear, must have been to the boundary of Hudson's Bay Territory, and not to the bay. Now, in the Act of 1774, when the territories were really meant, and not the bay, the language is not susceptible of misconstruction. The words are, "the southern boundary of the territory granted to the Merchants Adventurers trading to Hudson's Bay." But, as in the case of the western boundary, the Commissions to various Governors afford a clue to the meaning attached to the language of the Proclamation by the Imperial Government. For a considerable time the Commissions were in the precise words of the Proclamation, "to the boundary of Hudson's Bay," but in 1838 Lord Durham's Commission contained the words, "until it strikes the shore of Hudson's Bay." Now, I wish it to be clearly understood, as Mr. W. McD. Dawson seems to imagine, that the decision of the Arbitrators was founded on the Commission, that such was not the case. In accordance with the Statute of 1791, an Order in Council was passed authorizing the proclamation, which fixed the north-eastern boundary at the boundary line of Hudson's Bay, and that I hold to be a sufficient description of the shore, although it was satisfactory to the Arbitrators to have the additional evidence afforded by the Commissions. I have already adverted to the Albany River having been proposed by the Hudson's Bay Company as their southern boundary, and it seemed to the Arbitrators that a natural boundary, following the course of that river, left to the representatives of the Hudson's Bay Company quite as much territory as they could justly claim. It would be wholly impossible for me, within the limits to which I am necessarily confined, to refer at any length to the numerous documents which led the Arbitrators to reject the pretension of the Dominion Government, that the height of land was the southern boundary of the Hudson's Bay Company's territory. The original charter limited the territorial grant to territories not in the possession of any other Christian prince, and although the subsequent Treaties of Ryswick and Utrecht affected the boundaries between France and England, yet there is no evidence of any new grant having been made to the Hudson's Bay Company. In his very able report on the boundaries, the Hon. David Mills has maintained that the effect of the Treaty of Utrecht was not to restore to the Hudson's Bay Company what it had lost by the Treaty of Ryswick. There was a warm controversy between the two Governments as to whether the term "cede" or "restore" should be used, and it is far from improbable that the British Minister may have been inspired by the Hudson's Bay Company to contend for the word "restore" while the French Minister was very urgent for the word "cede." It appears, from a letter of Mr. Prior, that according to the *cartes* sent by both plenipotentiaries, "there was no very great difference" between the claim of Great Britain and what France was willing to concede, and it is quite certain that the French never contemplated surrendering the territory claimed by the Hudson's Bay Company to the height of land. As a matter of fact, the boundaries under the treaty of Utrecht were to have been settled by Commissaries, who never acted in the matter, and, fifty years later, Great Britain required the French title. Chief Justice Draper furnished a number of extracts from documents bearing on the question of title, on which he observed: "They certainly show that

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neither after the Treaty of Ryswick, nor that of Utrecht, when they stated the boundaries they were either willing to submit to or were desirous of obtaining, nor yet in 1750, when they set forth what they thought themselves entitled to claim under their charter, did they ever think of asserting a right to all the countries the waters of which flow into Hudson's Bay. Their claim to lands lying both northward and westward of the Bay is entirely at variance with any such idea."

OBJECTIONS TO AWARD ANSWERED.

I could not treat the important subject under your consideration with entire satisfaction if I failed to notice the numerous criticisms to which the award of the Arbitrators has been subjected. I shall dismiss very briefly that class that I believe to be numerically the most formidable, whose opposition to the award is based, not on its merits, but on the extent of territory to which Ontario is entitled under it. The decision of the Arbitrators had scarcely been announced in 1878, when an anonymous writer, over the signature "Britannicus," published several letters on the subject, in which he contended that the award was "open to grave objections," the first being that "the region is worth millions." He was told in an article, that I contributed to the press, that "the Arbitrators were appointed to decide on boundary lines, on principles of law and justice, and ought not to have been influenced by the extent or the value of the territory in dispute."

CHIEF JUSTICE HARRISON ON AWARD.

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I shall offer no apology for citing a few extracts from letters of the late Chief Justice Harrison addressed to me in August, 1878, on the subject of the criticisms made on the award: "I feel satisfied that you can give an answer to all and sundry who attack the award. I believe there never was an award made in a matter of such importance that is so little open to honest criticism Singular to say, since the award was made, I have received from Judge McDonald, of Guelph, an old lithographed map, without name or date, but evidently made long before the Constitutional Act of 1791, which indicates the northern boundary of Upper Canada to be on the precise line where we have placed it.....I also received the *Gazette* (Montreal) of the 15th August, containing the second letter of 'Britannicus.' These attacks, with the exception of the last, are puerile, and the last is a perfect absurdity. Assume that all which 'Britannicus' says about the territory awarded to Ontario, is true, how does that affect the validity of the award? Our duty was judicial: we had little or nothing to do with questions of policy. By the light of the evidence adduced, and the arguments propounded, we unanimously decided upon certain boundaries, for the north and west of the Province. Whether the land thus given to the Province was full of diamonds, or only of worthless rocks, was no business of ours. The surveyor who finds the boundaries of two lots of land is never influenced by the consideration that one piece is intrinsically more valuable than the other. None of the able counsel who addressed us ventured so far to take leave of his senses as to attempt to take such untenable ground."

JEALOUSY OF ONTARIO.

"Britannicus" is a representative of the class of whose opinions Mr. Royal, M. P., is one of the latest exponents. He was a member of the Select Committee of 1880, and while Mr. S. J. Dawson is the avowed advocate of the formation into a new Province of a large portion of the Province of Ontario, Mr. Royal contends that Manitoba should obtain ports on Lake Superior and Hudson's Bay. The masses outside of Ontario take no other interest in the subject than to oppose the extension of her territory, without the least reference to her legal rights. I may notice in this connection an extraordinary assertion in Mr. W. McD. Dawson's evidence, to the effect that Quebec would not have consented to enter Confederation had the legal boundaries of Ontario been believed to be where they were placed by the award of the Arbitrators, or, perhaps I should rather say, where the witness himself stated them to be in his report in 1837. There is a very simple answer to Mr. McD. Dawson, and all who share his opinions. The boundaries of Ontario depend on the construction placed on the Statute of 1774, the Treaty of Peace of 1783, and the Proclamation in conformity with the Statute of 1791. The claim of the Dominion, as well as that of Ontario, is based on the construction of the law. Mr. McD. Dawson's recent pretension, which I need scarcely remind you, is at complete variance with the former assertions both of himself and of his brother, is based on the omission to define the western

boundaries in the Commissions of the Earl of Durham in 1838, and in subsequent Commissions, which, so far as I have any knowledge, is not deemed to have any legal effect by any of the disputants on the boundary question with the exception of the Messrs. Dawson.

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CLAIMS TO MORE EXTENDED BOUNDARIES.

Having noticed those opponents of the award, who do not pretend to appeal to the law in support of their pretensions, I shall advert very briefly to the views of those who contend that the Proclamation issued under the Statute of 1791, extended the territories of Ontario beyond the boundaries of the Province of Quebec, as established by the Statute of 1774. The Act of 1791 declares that a message had been sent to both Houses of Parliament, signifying the royal intention to divide the Province of Quebec, and it then makes provision for the future government of the two Provinces to be created out of the old Province of Quebec. It is true that the Proclamation uses the term Canada instead of Quebec. I have already stated that although a Governor's Commission cannot be invoked in opposition to an Act of Parliament, it may fairly be referred to, when the language is at all ambiguous. It seems to me that the Proclamation of 1791 could not be construed to give an extension of territory not contemplated by the Act, but the first Commission issued under it to Lord Dorchester, describes the territory comprised in Upper Canada to be all lying to the westward of the line from Lake Temiscamingue to the boundary of Hudson's Bay, "as were part of our said Province of Quebec." The Arbitrators concurred so far with the judgment of the Lower Canada Court in 1818, as to confine the western boundary to that established by the Act of 1774. I have now to refer to a mild criticism, which I notice merely to draw attention to what I consider a very reasonable view of the south-western boundary. Shortly after the publication of the award, a writer in the *Monetary Times*, of Toronto, criticised the decision to adopt the north-western angle of the Lake of the Woods as the south-western boundary, on the ground that the true boundary was a point on the meridian of the source of the Mississippi, due west [from] the international boundary. The writer took precisely the same view as the Arbitrators—that under the Statute of 1774, the western boundary was the Mississippi River, and it must be obvious that such was the view of the diplomatists who negotiated the Treaty of Peace between Great Britain and the United States. Moreover, he admitted that the award "cannot be impeached as inequitable," although he gave it as his own opinion that the Arbitrators had "stumbled" on a decision which, "if the work had to be done over again, we fail to see in what respects it could be materially improved." I admit that there is much to be said in favour of the view taken by the writer in the *Monetary Times*, which I believe was likewise the view of the Hon. Wm. McDougall, who has studied the question very carefully, and who has pronounced himself strongly in favour of the Mississippi having been the western boundary of the Province of Quebec, under the Act of 1774. Practically it is a matter of no importance whether the south-westerly boundary is at the international boundary, or at a point a few miles farther west, that would be intersected by a line on the meridian of the source of the Mississippi.

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HON. WM. MCDUGALL'S OPINION.

I have noticed Mr. McDougall's opinion on the south-westerly boundary, and it may be convenient to advert here to his criticism on the award as to the north-easterly boundary. In his speech on the subject in the House of Commons in 1880, Mr. McDougall stated that he had become satisfied that the words "boundary line of Hudson's Bay" had been a clerical error of the Attorney-General, but as he did not state the grounds for that opinion, I am unable to judge whether they are entitled to any weight. It appears, however, from his evidence before the Committee, that when in England, in the year 1869, he took a great deal of trouble to ascertain whether the description was a clerical error. He searched the records of the Colonial Office without success, and then went to the Privy Council Office where he procured the Attorney-General's fiat, which, he said, he opened "with a good deal of anxiety," only to find the same language as in the original Proclamation, "to the boundary line of Hudson's Bay." He still, however, clings to his opinion that "it was an error of the Attorney-General, who, being human in those days, as in these, was liable to err." May it not be possible that Mr. McDougall himself has erred in his conclusion that an error was committed by others? The Arbitrators,

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I need scarcely add, did not feel themselves justified in assuming that the Proclamation issued in conformity with an Act of Parliament contained an important error. Mr. McDougall likewise stated that the Arbitrators "had found in some communication between the Imperial Government and their officers in this country, the words 'to the boundary line of Hudson's Bay.'" This seems to me an extraordinary mode of describing a Proclamation issued on the authority of the King in Council, for the division of the Province of Quebec, in accordance with an Act of Parliament. Mr. McDougall took no notice of the Commissions in which the shore of Hudson's Bay was declared the boundary, nor does he seem to have recollected that on every occasion when the territorial boundary was meant the description was invariably "the territory belonging to the Merchants Adventurers trading to Hudson's Bay." Mr. McDougall has acknowledged that the Hudson's Bay Company had at one time agreed to accept the Albany River as the southern boundary of their territory; and although it was never agreed to by the high contracting parties, still the fact that the Hudson's Bay Company at that period made no claim to any country south of the Albany River is confirmatory of the correctness of the award.

MR. W. McD. DAWSON'S OPINION.

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I shall now proceed to the consideration of another view of the boundary question. In the report of the Select Committee of 1880, the evidence of Mr. W. McD. Dawson is prominently brought forward as that of the person "who was the first to investigate the case on the part of Canada, in 1857, than whom no one should have a more thorough knowledge of the subject." Mr. McD. Dawson himself states in his evidence that he wrote a report in 1857, for the Commissioner of Crown Lands, which, he adds "has been the cause of all the controversy that has since taken place in relation thereto." He gave an interesting account of the circumstances under which he wrote this well-known report, having assured Mr. Cauchon, who was then his chief, "that there was no authority whatever for such a boundary" as the northern watershed of the St. Lawrence.

I may state, before noticing Mr. Dawson's evidence further, that it ought to be carefully read together with his own report of 1857, and I shall be much surprised if any different opinion from my own is arrived at, and that, I must acknowledge, is that it is a mass of inconsistency. Mr. Dawson informed the Committee that "the case presented by the Dominion was no case at all," that the learned Counsel, "after a great deal of desultory reading, failed to seize the true facts of history bearing on it," and he then referred to the prevailing ignorance of the subject, which he illustrated by a quotation from the evidence of his esteemed friend, Col. Dennis, Deputy Minister of the Interior, which I shall have to notice later.

CHARGE AGAINST DOMINION COUNSEL.

Mr. Dawson has not only made the very serious charge against the learned counsel for the Dominion, which I have just cited, but in his answer to a question whether he had himself been consulted, he declared that "it very often seems to be the habit of Governments not to consult those who know most about the case that has to be dealt with." I should feel that an apology was due from me to the learned counsel for the Dominion, Mr. McMahon, Q.C., of Ontario, and Mr. Monk, of Montreal, for noticing such a charge, were it not that it enables me to define clearly Mr. W. McD. Dawson's peculiar position as to this question. It will not, I presume, be denied by a single member of the legal profession, or indeed by anyone else, that the duty of the learned counsel for the Dominion, was to advocate the claim of the Government which they represented, to the utmost extent of their ability. The Dominion claim which was formally made in March, 1872, was to a boundary, on the west, on the meridian due north from the confluence of the Ohio and Mississippi Rivers, and on the north, to the height of land dividing the waters which flow into Hudson's Bay, from those emptying into the Great Lakes. Such was the Dominion claim made in 1872, in the form of a draft of instructions for a Commission to be appointed to survey and locate the boundaries. If the Dominion counsel had neglected to support the pretension, which they were retained to defend, they would of course be liable to censure, but it has never been pretended by any one, until very recently by Sir John A. Macdonald, that they failed for want of zeal. I am sure that the Arbitrators would have unanimously borne testimony to their exertions in support of the boundaries, which they were instructed to contend for. But then they did not

consult Mr. W. McD. Dawson. Now it is quite true, that [there] is a very wide divergence between Mr. Dawson's opinions in 1857 and in 1880. Most assuredly, no lawyer who had read Mr. Dawson's report of 1857, would have called on him to support the Dominion claim, and if the learned counsel could have made a forecast of Mr. McD. Dawson's evidence in 1880, he was the last person to whom they would have applied for aid in support of their case. An extract or two from Mr. McD. Dawson's evidence will suffice. He said, "I think, therefore, that in commencing their description at the shore of Hudson's Bay, the Arbitrators were correct." Then having referred to Lord Durham's Commission, in 1838, which only defined the boundary into Lake Superior, Mr. Dawson states in his evidence: "From that date the Province of Upper Canada no longer subsisted as a divisional part of the old Province of Quebec." The Messrs. Dawson avow that they hold the opinion that the language in the Commission of a Governor can supersede an Act of Parliament, although in the report it is said, "it may be remarked that the judges who appeared before your Committee seemed to be strongly of the opinion that the boundaries of provinces, with constituted governments, could not be altered by Commissions to Governors, or Proclamations." I refer to Mr. Dawson's opinion at present, merely to demonstrate the impossibility of counsel employed to advocate the Dominion claim, being guided by his advice, valuable as he himself pronounced to be. Let me suggest a case. Had the Government of Mr. Mackenzie, in 1878, instructed the learned counsel which it employed, to abandon altogether the pretension of Sir John Macdonald in 1872, and to adopt the Dawson theory, if I may so term it, that the true western boundary was to be determined by a Commission to Lord Durham in 1838, as terminating at the east end of Lake Superior, and had the decision been precisely what it was, as it most assuredly would have been, what, I ask, would have been the consequence? Why, from one end of the Dominion to the other it would have been proclaimed that the Government of Mr. Mackenzie had deliberately sacrificed the rights of the Dominion to the Province of Ontario. Between those who contend for the due north line, and for the Mississippi boundary, there is at least one principle held in common. Both profess to be governed by the Statute of 1774, and to claim the boundary prescribed by that Act. They differ as to the interpretation of the Act, but they acknowledge it as their guide. The Messrs. Dawson repudiate it altogether, and claim that the Province of Canada has been deprived, by virtue of the language of a Commission, of territory over which it had exercised jurisdiction during many years. I feel assured that on one point there can be no difference of opinion, and that is, that Mr. Mackenzie's Government acted wisely in instructing their counsel, to maintain the Dominion Claim precisely as it had been put forward by the Government of Sir John Macdonald. Even if Mr. Dawson's view of the question were as sound, as I believe it to be the reverse, it would have been most improper for counsel to have entertained it. Their duty was to defend the Dominion claim, not that of the Messrs. Dawson; and they performed it faithfully.

MR. WM. MCD. DAWSON'S INCONSISTENCY.

In his report in 1857, Mr. Dawson had taken the most extreme view of the claim of Ontario, then part of United Canada, and he felt it necessary to endeavour to reconcile that opinion with the one which he subsequently adopted in 1880. He declares in his last evidence: "I claimed these countries as the birthright of the people of United Canada," but he soon after admitted that "the claim put forward by me would have inured, if properly and efficiently maintained, to the benefit of Upper Canada, but that was not a point of special importance at the time. We were one Province, under one Government and one Legislature, and every acre of those vast regions was as much the property of the one as the other portion of the United Provinces." This is a specimen of Mr. McD. Dawson's mode of reasoning. The claim was either in accord with the Act of 1774, or it was without foundation. In 1791 Mr. Dawson must admit, that all the territory in the old Province of Quebec, which was not comprised in Lower Canada, became part of Upper Canada. The disputed territory, as I will call it, for the sake of convenience, was, of course, part of the United Province, and when the Provinces were again separated, Ontario retained the precise boundaries of Upper Canada. To do the Dominion Government justice, they have never pretended that Ontario was not entitled to her true boundaries, but have merely disputed what those boundaries really were. Mr. Dawson asserts that the decision of the Arbitrators 'has no basis whatever of history or fact to sustain it,' and he then gives it as his opinion that they had "one of three things open to them to declare," viz.: 1st, "That Ontario embraced the whole North-

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West Territory under the Proclamation of 1791, which I have just dismissed as untenable." The Arbitrators dismissed it likewise, although Mr. McD. Dawson's report of 1857 was calculated to induce them to adopt that boundary. 2nd, "That it was bounded by the line prescribed by the Quebec Act of 1774." That was precisely what the Arbitrators did decide, although the precise boundary was necessarily governed by the terms of the treaties between Great Britain and the United States, negotiated during the interval. 3rd, "That a more recent definition, which they seemed to have intended to adopt in part, should prevail." Mr. Dawson is completely mistaken if he imagines that the north-eastern boundary was adopted on the ground of the language in the Commissions of Lord Durham and of other Governors. The Proclamation issued under the authority of the Statute of 1791, and of an Order in Council, was the ground of the decision, although the Commissions were held to be corroborative of 10 language, not quite so clear as might have been wished. It appears, then, that, although Mr. W. McD. Dawson stated in his evidence that the decision of the Arbitrators "had no basis whatever of history or fact to sustain it," the south-western boundary was determined on one of the three grounds which he himself stated in his evidence it was "open to them to declare," viz.: "That it was bounded by the line prescribed by the Quebec Act in 1774," while, as regards the north-eastern boundary, his own language in his evidence is: "I think, therefore, that in commencing their description at the shores of Hudson's Bay, the Arbitrators were correct." I think that it will be generally admitted that the evidence of Mr. W. McD. Dawson has no weight whatever, and I shall therefore proceed to consider the course which the Dominion Government has adopted with reference to this boundary dispute.

POLICY OF DOMINION GOVERNMENT.

20

It will, I presume, be at once admitted that the Province of Ontario is entitled to precisely the same territory west of the Quebec boundary line to which United Canada was entitled prior to Confederation. I have already referred to Mr. Cauchon's report of 1857, which Mr. McD. Dawson claims as his own, and which is published as his in the Appendix to the Report of the Select Committee of 1880. That report, which was adopted by the Government of the day, concludes a long historical statement in the following words:—"This brief chronological sketch of the history of the Company, and of the circumstances connected therewith, must sufficiently show that they have acquired no territorial grant whatever under either of the two conditions to which their Charter was subject: first, as regards the countries then known upon 'the coasts and confines' of Hudson's Bay, because they were already in possession of another Christian prince, and were, therefore, excluded from the grant in terms of the 30 Charter itself; and second, as regards discoveries, because when they first penetrated into the interior, one hundred and four years after the date of their Charter, they found the country, and a long-established trade, in the hands of others, unless indeed as regards some discoveries to the north, which are of no special importance to Canada." In his evidence before a committee in 1857, Mr. McD. Dawson stated that for "the boundary designated for us by the Hudson's Bay Company, viz., the water-shed of the St. Lawrence, there is no earthly authority except themselves." Mr. Dawson's view, which gave Canada, now represented by Ontario, much more territory than was given to it by the Arbitrators, was deliberately adopted by the Government of the day. On the 16th January, 1869, a letter was addressed to the Colonial Department by the late Sir George E. Cartier and the Hon. William McDougall, from which I shall make a brief quotation:—"Whatever doubt may exist as to the 'utmost extent' of old 40 or French Canada, no impartial investigator of the evidence in the case can doubt that it extended to and included the country between the Lake of the Woods and the Red River." The chief opposition to the award of the Arbitrators has been raised by the professed admirers of Sir George Cartier, who declared that "no impartial investigator" would hesitate as to giving Ontario a greater extent of territory than that awarded by the Arbitrators. It is evident from another part of the letter, that Sir George E. Cartier and Mr. McDougall held the same views as the counsel for the prisoner in the De Reinhard case, as the counsel for the Ontario Government, as the Hon. Mr. Mills, and as both the Messrs. Dawson, so late as 1876. I shall now advert to the negotiations in 1872 between the Governments of the Dominion and of Ontario. On the 14th March of that year, the Hon. Joseph Howe, the Secretary of State, transmitted to Lieutenant-Governor Howland a draft of instructions to be given to 50 the Commissioner who was to be appointed to locate the boundary line. The instructions prescribed

the westerly boundary the meridian of the confluence of the Ohio and Mississippi Rivers, known as the due north line, and as the northerly boundary the height of land. This was objected to by Ontario, and the boundary has remained ever since in dispute, although, in a report made by Sir John Macdonald on the 1st May, 1872, the importance of establishing it without delay was forcibly urged. It is to be inferred from the evidence of Col. Dennis, Deputy Minister of the Interior, that the Dominion claim made early in 1872, and which was at complete variance with the previous pretensions of that Government, was based on a report from himself to the Minister of Justice, Sir John A. Macdonald, dated 1st October, 1871. In that report it is expressly stated in section 18, that the Charter of the Hudson's Bay Company described their grant "as extending over and including all lands and territories drained 10 by the waters emptying into Hudson's Bay," and reference is made to a copy of the Charter, marked "E." On this Mr. W. McD. Dawson remarks:—"Whereas there are no such words in it, nor anything that, as I would translate that very absurd document, could possibly bear such a construction." Mr. McD. Dawson did not, when pointing out the mistake into which Col. Dennis had fallen, advert to the fact that this misquotation from a document which, it may be presumed, Sir John Macdonald accepted without ascertaining its correctness, was made the ground of a territorial claim which, although nearly ten years have elapsed, is still in dispute.

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AWARD SHOULD BE ADOPTED OR SET ASIDE ON APPEAL.

The question at issue between Ontario and the other Provinces comprised in the Dominion is so important that I feel that it would be unbecoming in me to make any complaint of the treatment of the 20 Arbitrators, who faithfully discharged a public duty which they were called upon to perform. Their unanimous award, arrived at after a careful study by each Arbitrator of the evidence in the case, and without previous consultation or communication of any kind with one another, has been attacked in a manner wholly without precedent, to the best of my belief. I am persuaded that no Government in Great Britain would repudiate an agreement entered into by its predecessors to leave a disputed question to arbitration. This, however, is a point which I have no intention of discussing. I merely wish to state that my own anxious desire would be that there should be an appeal to set aside the award to the highest judicial tribunal. In the meantime I desire to record my entire dissent from the statement of Mr. S. J. Dawson, as reported in *Hansard*, that "the award was made in the absence of anything like full information on the subject, and even without a due consideration of the information 30 that was available;" and having by your indulgence been permitted to explain the grounds on which the award was made, I rely with implicit confidence on the judgment of an enlightened public as to its merits.

SUMMARY OF CHARGES—DEFENCE OF COUNSEL.

I shall be as brief as possible in summing up. I think the charges may be stated as—1st, "The whole case was thrown away—it looks almost as if it was deliberately thrown away." "It was most wretchedly managed on the part of the Dominion." 2nd, "They, the Arbitrators, did not affect to set up the true boundaries according to law; they laid down a mere conventional or convenient boundary." I have given the utterances of Sir John Macdonald in the House of Commons on the 18th March last as I find them in *Hansard*. In support of the first charge, Sir John Macdonald referred to the Imperial 40 Act authorizing the surrender of Rupert's Land and the North-West to Canada, and stated that "the contention was not raised that the Act says that Rupert's Land shall be held to be whatever was in possession or deemed to be in possession of the Hudson's Bay Company;" and again, "to show how ineffectually the Dominion case was presented, I may say that that view of the subject was never presented before the Arbitrators. I fear very much that, owing doubtless to his more pressing duties, Sir John has been unable to read the papers in the boundary case, and that he has relied on others, as in the case already noticed of Col. Dennis's misquotation in 1871, to supply him with facts. Had he read the parliamentary blue book, he would have found, at page 254 in the Dominion case submitted by Mr. MacMahon, Q.C., the statement that the 2nd section of the Act, 31 and 32 Vic., cap. 105, provides that Rupert's Land "should include the whole of the lands and territories held or claimed to be held by 50 the said Governor and Company." The words underlined were placed in italics, but possibly by the framer of the report or some other official. Mr. MacMahon, however, in his address to the Arbitrators, as will be seen at the foot of pages 283 and 284, specially brought the clause under consideration as

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being "a confirmation of everything that the Hudson's Bay Company had been claiming under their charter," adding "that is a point which I am sure the Arbitrators will not lose sight of in dealing with the question." And yet Sir John Macdonald stated in the broadest and most explicit terms that Mr. MacMahon never presented this view to the Arbitrators, and consequently deliberately threw away the case. A word now as to the Arbitrators. I can only answer for myself. My interpretation of the Rupert's Land Act is that it was intended to convey to the Dominion the whole property of the Hudson's Bay Company, with certain specified reservations that have no bearing on the point under consideration. I did not imagine that the Act could be so interpreted as to transfer territory belonging to a third party, and I am perfectly certain that if Sir John Macdonald's construction of the statute could be maintained, it would be in direct contradiction to the spirit and intention of the Act, and a gross act of injustice. I proceed to the second charge. The duty of the Arbitrators was to find the true boundaries of Ontario, and they are charged with declaring "a mere conventional or convenient boundary." Now, for my present purpose, I shall refer merely to those pretensions which specially engaged the consideration of the Arbitrators as affecting the south-western boundary. On the claim under the Proclamation of 1791, which the Arbitrators held to be valid, notwithstanding the able arguments of counsel, of the Hon. Mr. Mills and others, including the Messrs. Dawson, one of whom, the Chairman of the Committee of 1880, fixed the boundary at the White Earth River, 450 miles west of the Lake of the Woods, they concurred in the judgment of the Quebec Court in 1818 that no territory could be awarded to Ontario that was not comprised in the old Province of Quebec as created by the Act of 1774, modified by the Treaty of 1783 with the United States and by subsequent treaties. They entirely rejected the Dominion claim to a boundary on what is known as the due north line, and having no doubt whatever that the Mississippi River was the western boundary of the old Province of Quebec by the Act of 1774, and that by the Treaty of 1783 the south-western boundary must be either at the international boundary at the north-western angle of the Lake of the Woods, or still further west, they decided in favour of that boundary which they were clearly of opinion Ontario was entitled to. On the north-east they were clearly of opinion that the height of land boundary could not be sustained, and that the true point of departure was the point on James' Bay due north from the head of Lake Temiscamingue.

CHARGE OF ADOPTING A CONVENIENT LINE REFUTED.

The sole ground for the charge that they adopted a conventional or convenient boundary is, that the line connecting the north-eastern and south-western boundaries was adopted for the sake of convenience. The Arbitrators were guided in their decisions solely by Acts of Parliament, Proclamations authorized by Orders in Council on the authority of Acts of Parliament, and international treaties. They found in the Proclamation of 1791, that after reaching James' Bay, the description proceeded thus: "including all the territory westward and southward of the said line to the utmost extent of the country commonly called or known by the name of Canada." If the critics of the award believe such language susceptible of the construction that it lays down a precise spot on the north-west as a boundary, then their charge might have some foundation, but the fact is that the language would have justified the Arbitrators in extending the boundaries of Ontario very considerably. They were strongly urged by Col. Dennis, one of the permanent staff of the Department of the Interior, after their decision as to the south-westerly and north-easterly boundaries became known, to connect the two points by a natural boundary; and being aware of the fact that the Albany River had been formerly suggested by the Hudson's Bay Company as a satisfactory southern boundary, they adopted it. It is not a little singular that the award was promptly accepted by Ontario, although the only questions of doubt were decided in favour of the Dominion. Both on the west and north the doubts were whether Ontario should not have had more territory.

THE MANITOBA BOUNDARY ACT.

I must say a few words on the Boundary Act of last session, which appears to me to be a most extraordinary attempt to solve the question in controversy. The objection made to the award of the Arbitrators is that they did not find the true boundaries, but adopted a convenient boundary. I need not repeat my refutation of this allegation, but even on the assumption that it had any force, it would

not apply to the western boundary, regarding which the Arbitrators were clearly of opinion that the international boundary at the north-western angle of the Lake of the Woods, was the true point of departure. The northern boundary which, owing to the vagueness of the language employed in the Proclamation issued under the Act of 1791, is more open to doubt, remains still in dispute between the Dominion and Ontario, so that the Act has simply engaged the Province of Manitoba in the controversy as to one branch of the award, and has thus made confusion worse confounded. Moreover, the Dominion is now contending for a territory on the north of Ontario and eastward of Manitoba's new boundary, which could scarcely be erected into a Province. I do not think, however, that the Act of last session will prove disadvantageous to Ontario. It has put an end to the Dawson scheme of a new Province of Algoma, and it has rendered it almost necessary to settle the western boundary, in which Manitoba is interested, without reference to the northern boundary, with which that Province has no special concern. The western boundary is not only the most important, but the least open to doubt, as I think I have already clearly demonstrated. I will only add in conclusion that the Arbitrators were of opinion that having reference to all the facts of the case, the boundaries set forth in the award were supported to a larger extent than any other line by these facts, and by the considerations and reasons which should and would guide and govern the determination of the question by any competent legal or other tribunal.

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THE PROVINCIAL SECRETARY (ONTARIO) TO THE SECRETARY OF STATE (CANADA).*

TORONTO, 31st December, 1878.

20 SIR,—I am directed by His Honour the Lieutenant-Governor to intimate that a measure will be introduced during the approaching session of the Legislature to give effect by way of declaratory enactment and otherwise, to the award made by the arbitrators appointed by the Governments of Canada and Ontario to determine the northerly and westerly boundaries of the Province of Ontario. The Act, I presume, may be in substance the same as R. S. O., chapter 4, with the variations necessary in consequence of the award having now been made. No proclamation was issued, as had been contemplated when the Act was passed. See section 3.

Correspondence and Documents subsequent to the Award, 1878-9.

I am further directed respectfully to remind the Government of Canada that the territory which is in dispute before the award was made, extends on the easterly side of Ontario from, say, the Rocky Mountains to a line drawn due north from the confluence of the Ohio and Mississippi, and extends on 30 the northerly side from, say, the height of land to the most northerly limit of Canada; that the award assigns part of this territory to the Dominion, and part to Ontario, and that the administration of justice will continue to be surrounded with difficulties and uncertainties, especially in the matter of jurisdiction, until the award is confirmed by express legislation at Ottawa and here; and that the subject assumes unusual importance in view of the construction of public works within the territory and the consequent influx of an unsettled and migratory population.

Prov. Sec. (Ont.) to Secretary of State (Can.), 31 December, 1878.

His Honour the Lieutenant-Governor will be glad to learn that such legislation as may be necessary to give effect to the award will be had at Ottawa at the next session of the Parliament of Canada; as the legislation should, it is respectfully submitted, be as nearly as possible simultaneous and identical.

His Honour will be glad to receive and consider any suggestions in connection with this object, 40 and also to receive as soon as possible the maps, field notes, etc., etc., relative to so much of the territory assigned to Ontario as had been surveyed under the authority of the Dominion.

I have the honour to be, Sir,

Your obedient servant,

ARTHUR S. HARDY,

Secretary.

Hon. J. C. Aikins, Secretary of State, etc., etc.,
Ottawa.

* Sess. Papers, Ontario, 1879, No. 80.

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Correspondence and documents subsequent to the Award, 1879:

Under-Sec. of State to Prov. Sec., 8th Jan., 1879.

THE UNDER-SECRETARY OF STATE TO THE PROVINCIAL SECRETARY.*

DEPARTMENT OF THE SECRETARY OF STATE,

OTTAWA, 8th January, 1879.

SIR,—I have the honour to acknowledge the receipt of your letter of the 31st December last, addressed to the Honourable the Secretary of State, respecting legislative enactments to give effect to Award made by the Arbitrators to determine the northerly and westerly boundaries of the Province of Ontario, and am directed to state that the same will not fail to receive all due consideration.

I have the honour to be, Sir,

Your most obedient servant,

EDOUARD J. LANGOEVIN,

Under-Secretary of State.

The Honourable A. S. Hardy,
Provincial Secretary, Toronto.

EXTRACT FROM THE SPEECH OF HIS HONOUR THE LIEUTENANT-GOVERNOR OF ONTARIO, ON THE OPENING OF THE LEGISLATURE, 9TH JANUARY, 1879.†

It is also my pleasing duty to call your attention to the settlement by arbitration of the northern and western boundaries of Ontario, since you last assembled. The decision of the Arbitrators declares the boundaries of the Province to extend to the waters of Hudson's Bay on the north, and to the north-west angle of the Lake of the Woods on the west, these limits embracing an area of many thousand square miles beyond the limits to which the claim of the Dominion since 1871 would have confined us. You will be invited to approve of a measure having for its object the preservation of order, the administration of justice, and the encouragement of settlement and enterprise in this territory. I have reason to believe that the outlay necessary to secure these objects will be more than compensated by the revenue to be derived from the country.

THE ASSISTANT PROVINCIAL SECRETARY TO THE SECRETARY OF STATE,‡

TORONTO, 2nd May, 1879.

SIR,—As in the report of the proceedings in the House of Commons of 1st instant, appearing in the newspapers, it is stated that the papers relating to the North-West boundary question have been mislaid, I am instructed, in order that no time may be lost in introducing the legislation necessary to set at rest any doubts as to the boundaries of Ontario, to forward to you the following documents:—

- 1st. A copy of the printed collection of Statutes, Documents and Papers bearing on the question.
- 2nd. Printed statement of the Case of the Government of Canada.
- 3rd. Printed statement of the Case of the Province of Ontario.
- 4th. A manuscript copy of the Order in Council of the Lieutenant-Governor of Ontario with reference to the appointment of arbitrators.
- 5th. A manuscript copy of the Award.
- 6th. Printed copy of correspondence between the Secretary of State of Canada and the Secretary of this Province respecting legislation with reference to the Award.

I am further desired to say, that in order to facilitate the consideration of this matter, copies of the printed documents above mentioned have been forwarded to each member of the Dominion Government.

I have the honour to be, Sir,

Your obedient servant,

I. R. ECKART,

Assistant Secretary.

The Honourable the Secretary of State (Canada),
Ottawa.

* Sess. Papers, Ontario, 1879, No. 80.

‡ Sess. Papers, Ontario, 1880, No. 46, p. 2.

† Journals Leg. Ass., Ontario, 1879, Vol. 12, p. 2.

THE ASSISTANT PROVINCIAL SECRETARY TO THE SECRETARY OF STATE.*

TORONTO, 23rd September, 1879.

SIR,—I am directed by His Honour the Lieutenant-Governor to call the attention of the Government of Canada to my despatch, dated 31st December last, in a memorandum needed to put beyond dispute, in civil and criminal cases, any question as to the western and northern limits of Ontario.

The measure therein referred to as intended to be submitted to the Legislature of Ontario was, as you are aware, passed at its last session; but no like Act was passed by the Parliament of Canada at its recent session.

I am to remind you that a report on the subject, by a Committee of the Honourable the Privy Council, was approved by His Excellency the Governor-General in Council on the 12th November, 1874, and that in this report it was set forth that, in a memorandum dated on that day, the Premier of the Dominion recommended concurrence in a proposition made by the Government of Ontario, to determine, by means of a reference, the northern and western boundaries of that Province relatively to the rest of the Dominion; that the Ontario Government having named the Honourable William Buell Richards, Chief Justice of Ontario, as one of the referees, the Premier submitted the name of the Honourable Lemuel Allan Wilmot, formerly Lieutenant-Governor of the Province of New Brunswick, to act in conjunction with him, and advised that authority should be given them to agree upon a third person, not being a resident of Canada, and that the determination of a majority of such three referees should be final and conclusive upon the limits to be taken as and for such boundaries respectively, and by the report of the Committee of the Privy Council it was recommended that the Dominion should agree to concurrent action with the Province of Ontario, in obtaining such legislation as might be necessary for giving binding effect to the conclusion which should be arrived at, and for establishing the northern and western boundaries of the Province of Ontario in accordance with the award.

A further report of a Committee of the Honourable the Privy Council was approved by His Excellency the Governor-General in Council on the 31st July, 1878, whereby it was stated that the Committee of the Council had under consideration the subject of the northern and western boundaries of the Province of Ontario, which under previous Orders in Council had been referred to the Honourable W. B. Richards, then Chief Justice of Ontario, named as referee on behalf of that Province, but who was subsequently replaced by the then Chief Justice, the Honourable R. A. Harrison, and to the Honourable Sir Francis Hincks, who had been named on behalf of the Dominion, and that subsequently to the action taken under the Order in Council of 12th November, 1874, it had been mutually agreed between the Governments of the Dominion and Ontario that the Right Honourable Sir Edward Thornton should be selected as third referee, and the Committee recommended that such selection should be confirmed by Minute of Council, and that the determination of such three referees should be final and conclusive upon the limits to be taken as and for such boundaries respectively.

Corresponding Orders in Council were made by this Province.

I am directed to respectfully suggest that an award having, on 3rd August, 1878, been duly made in pursuance of the reference, it is just that there should be no further delay in formally recognizing the award as having definitely settled the matters submitted to the arbitrators.

The Government of Ontario, on its part, acquiesced in the award, not because it was believed to have accorded to this Province all that was claimed on its behalf, or all that the Province might within its strict legal rights have had awarded to it, but because the tribunal appointed jointly by the two Governments was one to whose competency and character no one could take exception, and because according to the judgment of the people of Ontario neither party to the arbitration could consistently with good faith refuse to abide by the decision.

The Government of Ontario does not doubt that the Government and Parliament of Canada will ultimately take the same view, and I have respectfully to represent that the delay in announcing the acquiescence of the Dominion authorities, and in giving full effect otherwise to the award, has been embarrassing and injurious.

* Sess. Papers, Ontario, 1880, No. 46, p. 3.

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The present Government of Canada has already been made aware that before the arbitrators met an exhaustive collection had been made by the Governments of Canada and Ontario, severally, of all the facts, documents and evidence bearing upon the controversy; that everything material had been printed, and in a form which facilitated, to the greatest practical degree, the full and prompt examination of the question at issue; that cases had been prepared on both sides, containing a summary of the respective claims and the reasons therefor; that these cases also had been printed and that the whole matter had been argued before the arbitrators by counsel.

With respect to the arbitrators it is manifest that no three persons could have been selected whose judgment would be entitled, in such a case, to more unqualified respect than that of the three arbitrators appointed. Sir Francis Hincks, as a Canadian publicist and statesman, is acknowledged to have few equals in shrewdness, industry or ripe experience; the late Chief Justice Harrison was a lawyer of the first rank, and a judge whose method of reasoning was always distinguished for its practical and common sense character; and Sir Edward Thornton, Her Majesty's Minister at Washington, brought to the consideration of the case, not only the aid of the very high abilities, but the absolutely independent judgment of one who could have no partialities or inclinations in favour of either side.

If the merits of the award have been considered by the Government of Canada they will have observed certain preliminary things in connection with the question which were and are beyond controversy. Amongst these are the facts that Ontario is entitled to the same limits as Upper Canada had whatever these were; that these limits embrace so much of the British territory west of the division line between Ontario and Quebec as belonged to France before the cession of 1763, and (what is the same thing) so much as belonged to the Province of Canada before Confederation, or (in other words) so much as belonged to the Dominion before its purchase of the rights of the Hudson's Bay Company, and that the single question which the arbitrators had to consider was, what territory Canada had on the Ontario side of the division line before the recent purchase from the Hudson's Bay Company had been made.

It must further have been noticed that the territory awarded to Ontario is considerably less than had been officially claimed and insisted upon by the Province of Canada before Confederation, and by the Dominion afterwards, and considerably less, on the west, than, according to the legal opinion of Chief Justice Draper, in 1857, Canada was clearly entitled to.

Further, the territory so awarded to Ontario is less than was comprised in Upper Canada, according to the true intent and meaning of the Quebec Act (1774), as shown by its recitals, and by its known objects, and its history, including the proceedings thereon in the House of Commons, as reported in "Cavendish's Debates," and as set forth in the letter of the Right Honourable Edmund Burke, dated 2nd August, 1774, to his constituents, the Province of New York, whose agent he was at that time. All these documents are to be found amongst the printed documents already mentioned.

The terms of the Royal Commissions assigning or defining the boundaries of Canada and Upper Canada respectively, appear in the same book; and a reference to them will have shown to the Government of Canada that the territory awarded to Ontario is less than was given to the Province by the express terms of the Royal Commission (27th December, 1774) which, immediately after the passing of the Quebec Act, was issued to Sir Guy Carleton, as Captain-General and Governor-in-Chief of the Province; and also by the express terms of the Commission to his successor, Sir Frederick Haldimand; that the Commission to Sir Guy Carleton, after the treaty of Paris, 1763, expressly gives as one of the boundaries of the Province a line to the Lake of the Woods, thence through said lake to the most north-western point thereof (as the Arbitrators have done), and from thence in a due west course to the River Mississippi. The Arbitrators have not given to the Province any territory west of the Lake of the Woods.

The Government of Canada must also have observed that a paper was presented to Parliament previous to the passing of the Constitutional Act of 1791, describing the line which it was proposed to draw in order to divide the then Province of Quebec into two Provinces; that this line is described as drawn from the head of Lake Temiscaming due north until it should strike the boundary line of Hudson's Bay, including, as the paper stated, all the territory to westward and southward of the said line to the extent of the country commonly known by the name of Canada; that on the 24th August,

1791, an Order in Council referred to this paper, and divided the Province accordingly; that the subsequent Proclamation of General Clarke, in the same year, contained a description in the same words; that the Royal Commissions to Lord Dorchester and subsequent Governors-General, to and including the Commission to Lord Gosford in 1835, described the division line between Upper and Lower Canada in the same way, as extending to the boundary line of Hudson's Bay; and that the Commissions from that to the Earl of Durham, in 1838, to the Commission to Lord Elgin, in 1846, as well as the various other Royal Commissions, described the line of division as striking the shore of Hudson's Bay.

It is also undenied and undeniable that the Province of Upper Canada, for a period long antecedent to its union with Lower Canada, acted whenever there was occasion on the assumption that the boundaries of the Province were those so assigned by the Royal Commissions, and issued writs into the territory west of the line $89^{\circ} 9\frac{1}{2}'$ (which was the line insisted on by the Dominion after the purchase from the Hudson's Bay Company).

It is another significant fact of the same kind that the Province of Canada, as far back as 1850, procured from the Indians the surrender of their rights in the same territory west of that line, and from time to time thereafter made grants in the Queen's name, of the land west of the same line.

In truth, so far as the western boundary is concerned, it was proved to demonstration that the north-west angle of the Lake of the Woods was the most easterly limit that could be assigned to the Province under any interpretation of the evidence.

There is an old decision of a Court in Lower Canada in what is called the De Reinhard case, in favour of a more easterly line, viz., $89^{\circ} 9\frac{1}{2}'$ (the meridian of the confluence of the Ohio and Mississippi Rivers), but on an examination of the case, of which a full report is in print and accessible, it will be found that the decision was come to without the Court being aware of the terms of the Royal Commissions to the Governors hereinbefore mentioned, and without attention having been called to the historical facts which are referred to in the recitals of the Quebec Act, and which give significance to those recitals as bearing on the question of boundary; nor was the Court in possession of the evidence of intention which is afforded by the debate on the Bill and by other means now known and relied upon as demonstrating the other construction. De Reinhard, though clearly guilty, was not executed, and the only known or supposed reason for pardoning him is that the British Government were advised that the conclusion of the Court on the point in question was not maintainable. This is stated in an official paper on the part of the late Province of Canada.

Only one of the Royal Commissions hereinbefore mentioned, so far as is known, was in print before the recent investigations; and when copies of these Commissions were procured and examined for the purposes of the arbitration, it became apparent that these Commissions alone set at rest all possible question that the westerly boundary of the Province included the Lake of the Woods; and that the northerly boundary extended to the shores of Hudson's Bay on the east, and to or beyond the most north-west angle of the Lake of the Woods on the west. How far north of these points our northerly boundary was to be found was a fair subject of controversy, but the territory north of these two points is of comparatively little value. It is to be observed that the line of the English and Albany Rivers, which was fixed upon by the Arbitrators as the northerly boundary, is not far north of a straight line connecting the two points mentioned, and has the advantage of presenting an almost unbroken waterline; that it is thus a natural and convenient boundary; and that it gives to Ontario a less aggregate quantity of territory in the north than is assigned to Canada in some of the maps of the Hudson's Bay Company itself; and gives to the Province a less northerly boundary than the Company in 1701, thirty years after the Charter, was content with and unsuccessfully endeavoured to restrict Canada to.

But if it were far less clear than it is that the award does not give Ontario more territory than the Province was entitled to, and if the reasons which justify the conclusions of the Arbitrators were far less clear and strong than they are, it is respectfully submitted that the award demands the active acquiescence and recognition of the parties to the reference. The question of boundaries was in controversy, it was referred by mutual consent to the distinguished gentlemen named, they have made their award and the fact is conclusive in regard to all questions on the subject.

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I am further to remind the Government of Canada that the settlement of the controversy, as well as the explorations for railway and other purposes, have drawn public attention to the territory north and west of Lake Superior, that settlement therein is proceeding, that various enterprises are establishing themselves, that speculation is likely to be directed to this region, and that various causes are at work favourable to an influx of population, both of a settled and floating character.

In view of these considerations the Government of Ontario trusts that the Government of Canada will recognize the propriety of announcing without further delay their intention to submit to Parliament, next session, a Bill declaring the boundary established by the Arbitrators to be the true northerly and westerly boundaries of Ontario, and to use the influence of the Government to have the measure accepted by both Houses, and assented to by His Excellency the Governor-General. 10

I am to renew the request contained in a former despatch that the Government of Canada would be pleased at once to forward to this Government the maps, field notes, etc., etc., relative to so much of the territory assigned to Ontario as has been surveyed under the authority of the Dominion.

I have the honour to be, Sir,

Your obedient servant,

I. R. ECKART,

Assistant Secretary.

The Honourable the Secretary of State (Canada),
Ottawa.

THE UNDER-SECRETARY OF STATE (CANADA), TO THE PROVINCIAL SECRETARY (ONTARIO).* 20
DEPARTMENT OF THE SECRETARY OF STATE,
OTTAWA, 25th September, 1879.

Under Sec.
State to
Prov. Sec.,
25 Sept.,
1879.

SIR,—I have the honour to acknowledge the receipt of your communication of the 23rd inst., with reference to the question as to the northern and western limits of the Province of Ontario; and to inform you that the subject will be submitted to His Excellency the Governor-General.

I have the honour to be, Sir,

Your most obedient servant,

EDOUARD J. LANGEVIN,

Under-Secretary of State.

The Honourable the Provincial Secretary of Ontario,
Toronto. 30

THE PROVINCIAL SECRETARY TO THE SECRETARY OF STATE.†
PROVINCIAL SECRETARY'S OFFICE, ONTARIO,
TORONTO, 19th December, 1879.

Prov. Sec. to
Sec. State, 19
Dec., 1879.

SIR,—I have the honour to call your attention to my despatch bearing date the 31st day of December, 1878, and to intimate that the Government of Ontario have not yet been favoured with the reply of your Government to the suggestions made and information sought by my communication. I beg further to intimate that the Arbitrators having made their award, the Government of the Province understand that the provisional arrangement theretofore in force between the Province and the Dominion, having reference to the boundary and the north-west portion of the Province is at an end, the 40 award having "definitely settled" the boundaries between the Province and the Dominion.

I have the honour to be, Sir,

Your obedient servant,

ARTHUR S. HARDY,

Provincial Secretary.

HON. J. C. AIKINS,
Secretary of State, Ottawa.

* Sess. Papers, Ontario, No. 46, p. 6. † *Ibid.*, p. 2.

REPORT OF THE MINISTER OF JUSTICE (CANADA).*

OTTAWA, 12th January, 1880.

With respect to the Statutes passed by the Legislature of the Province of Ontario, in the Month of March, 1879, I have the honour to report as follows:—

Cap. 1.—“An Act for granting to Her Majesty certain sums of money to defray the expenses of Civil Government, for the year one thousand eight hundred and seventy-nine, and for other purposes therein mentioned.”

Cap. 2.—“An Act respecting the Northerly and Westerly boundaries of Ontario.”

These Acts do not seem to call for the exercise of the power of disallowance. I recommend that they be left to their operation.

I concur.

JAS. McDONALD, M.J.

L. A. LASH, D.M.J.

[The above report was approved of by Order-in-Council (Canada), of 12 March, 1880.]

RESOLUTIONS OF THE LEGISLATIVE ASSEMBLY OF ONTARIO, PASSED ON THE 3RD MARCH, 1880.†

That by an agreement made between the Government of Canada and the Government of Ontario, it was decided that, subject to the approval of the Parliament of Canada and the Legislature of Ontario, the questions which had risen concerning the northerly and westerly boundaries of the Province of Ontario should be determined by arbitration; and that by Orders in Council, passed by the respective Governments, it was declared, that the determination of the Arbitrators appointed to make such award should be “final and conclusive.”

That in accordance with the agreement entered into by the respective Governments, the Right Honourable Sir Edward Thornton, Her Majesty's Minister at Washington, the late Hon. R. A. Harrison, Chief Justice of Ontario, and the Honourable Sir Francis Hincks, were agreed upon by Orders in Council of the respective Governments, as Arbitrators to determine the northerly and westerly boundaries of the Province of Ontario.

That on the 3rd day of August, 1878, the said Arbitrators delivered their award, wherein they declared and determined what are the northerly and westerly boundaries of the Province of Ontario.

That in a despatch dated 31st December, 1878, from His Honour the Lieutenant-Governor of Ontario, to the Secretary of State for Canada, His Honour intimated to the Government of Canada, that during the approaching session of the Legislature a measure would be introduced “to give effect by way of declaratory enactment or otherwise, to the award made by the Arbitrators to determine the northerly and westerly boundaries of the Province of Ontario;” and that His Honour, in the same despatch, also stated he would be glad to learn that such legislation as might be necessary to give effect to the award would be had at Ottawa in the next session of the Parliament of Canada.

That in a despatch dated 8th January, 1879, the Government of Canada acknowledged the receipt of the despatch last mentioned, and stated that the same would not fail to receive all due consideration, and that no intimation was given, in reply to His Honour's communication, that the Government of Canada would refuse to be bound by the award of the Arbitrators, or to submit to the Parliament of Canada a measure giving effect thereto.

That by an Act of the last session, the Legislature of Ontario did consent that the boundaries of the Province, as determined by the said award, should be declared to be northerly and westerly boundaries of the Province of Ontario, and by a further Act made provision for the Administration of Justice in the northerly and westerly parts of Ontario.

That on the 16th January, 1869, the Government of the Dominion of Canada, through its members and representatives, contended before Her Majesty's Imperial Government that the western boundary

* Sess. Papers, Canada, 1882, No. 141, p.p. 86, 87, 90.

† Journals Leg. Ass., Ontario, 1880, Vol. 13, p. 160.

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"extended to and included the country between the Lake of the Woods and Red River," and that the northern boundary included the whole region of Hudson's Bay."

That the boundaries then claimed by the Government of the Dominion, on behalf of Canada, as against the pretensions of the Hudson's Bay Company, would, on the same grounds, be the boundaries of the Province of Ontario, and would give to Ontario a territory vastly in excess of that embraced in the award of the Arbitrators.

That by an Order in Council, approved on the 28th November, 1871, the constitutional advisers of His Excellency the Governor-General of Canada, obtained the sanction of the Crown to the statement that "it was of much consequence that the ascertaining and fixing on the ground of the boundary line in question, should be, as far as possible, expedited;" that by another Order in Council, approved on the 9th April, 1872, His Excellency's advisers obtained the assent of the Crown to the opinion that both Governments would "feel it their duty to settle, without delay, upon some proper mode of determining, in an authoritative manner, the true position of such boundary;" that by another Order in Council, approved on the 7th November, 1872, His Excellency's advisers obtained the further sanction of the Crown to the statement that "the importance of obtaining an authoritative decision as to the limits, to the north and to the west, of the Province of Ontario had already been affirmed by a Minute in Council," and "that the establishment of criminal and civil jurisdiction and the necessity of meeting the demands of settlers and miners for the acquisition of titles to lands, combined to render such a decision indispensable."

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That although so long since as the 12th November, 1874, and as the result of protracted negotiations, the Government of Canada, by Order in Council, consented to concur in the proposition of the Government of Ontario to determine the northern and western boundaries of Ontario by means of a reference; and although information was from time to time given to Parliament by the Government of Canada of the progress of the arrangements for such reference, no action was taken, nor was any effort made by or in the Parliament of Canada, previous to the award being given, to arrest or prevent the reference agreed upon by the respective Governments of Canada and Ontario; that in May, 1878, the Parliament of Canada granted \$15,000 to defray the expenses of the Ontario Boundary Commission,

That this House regrets that, notwithstanding the joint and concurrent action of the respective Governments in the premises, and the unanimous award of the Arbitrators, the Government of Canada has hitherto failed to recognize the validity of the said award, and that no legislation has been submitted to Parliament by the Government of Canada for the purpose of confirming the said award.

That nevertheless it is, in the opinion of this House, the duty of the Government of Ontario to take such steps as may be necessary to provide for the due Administration of Justice in the northerly and westerly parts of Ontario, and that this House believes it to be of the highest importance to the interests of this Province, and to the securing of the peace, order and good government of the said northerly and westerly parts of Ontario, that the rights of this Province, as determined and declared by the award of the arbitrators appointed by the concurrent agreement and action of the Governments of Canada and Ontario, should be firmly maintained.

That this House will at all times give its cordial support to the assertion, by the Government of Ontario, of the just claims and rights of this Province, and to all necessary or proper measures to vindicate such just claims and rights, and to sustain the award of the Arbitrators by which the northerly and westerly boundaries of this Province have been determined.

The Resolutions were carried on the following division.

Yeas.—Messieurs Appleby, Awrey, Badgerow, Ballantyne, Baxter, Bell, Bishop, Blezard, Boulter, Broder, Calvin, Cascaden, Chisholm, Creighton, Crooks, Dryden, Field, Fraser, Freeman, French, Gibson (Huron), Gibson (Hamilton), Graham, Hardy, Hawley, Hay, Jelly, Kerr, Laidlaw, Lauder, Livingston, Long, Lyon, McCraney, McKim, McLaughlin, McMahon, Mack, Meredith, Metcalfe, Monk, Morgan, Morris, Mowat, Nairn, Near, Neelon, Pardee, Parkhill, Paxton, Richardson, Robertson (Cardwell), Ross, Sinclair, Springer, Striker, Tooley, Waters, Watterworth, White, Widdifield, Wigle, Wood, Young—64.

Nays.—Mr. Miller—1.

DOMINION ACT, 43 VIC., CAP. 36 (1880).

AN ACT RESPECTING THE ADMINISTRATION OF CRIMINAL JUSTICE IN THE TERRITORY IN DISPUTE BETWEEN THE GOVERNMENTS OF THE PROVINCE OF ONTARIO AND OF THE DOMINION OF CANADA.

Whereas certain territory on the western and northern boundary of Ontario is claimed by the Government of Ontario as being within the said Province, and whereas such claim is disputed; and whereas the Parliament of Canada is desirous of making suitable provision for the Administration of Criminal Justice within the said territory until the dispute is determined;

Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. Every crime or offence committed in any part of the said territory may be inquired of, tried and punished within any county or district in the Province of Ontario or the Province of Manitoba, or in the District of Keewatin, and such crime or offence shall be within the jurisdiction of any court, judge, magistrate or magistrates, or justice or justices of the peace, or other functionary having jurisdiction over crimes or offences of the like nature committed within the limits of the county or district in which such crime or offence is prosecuted; and such court, judge, magistrate or magistrates, justice or justices, or other functionary, shall proceed thereon by way of preliminary investigation, and to trial, judgment and execution, or other punishment, for such crime or offence, in the same manner as if such crime or offence had been committed within the county or district where such trial is had.
2. Such crime or offence shall be sufficiently laid and charged, whether it is laid and charged to have been committed in Ontario, or in the District of Keewatin, and any sentence which might have been imposed upon the offender had the offence been committed either in an undisputed part of Ontario or in an undisputed part of Keewatin, may be imposed upon an offender convicted under this Act.
3. The next preceding two sections shall apply to any crime or offence heretofore committed, as well as to every crime or offence hereafter committed, in the said territory.
4. Where any person charged with the commission of any crime or offence within the territory above described is in custody in any gaol within the Province of Ontario, or within the Province of Manitoba, charged with the said crime or offence, and it is intended that such person shall be tried in a province other than the province in a gaol of which he is confined, or in a different part of the same province, then any judge of any Superior Court of the province in a gaol of which such prisoner is confined, having criminal jurisdiction, or any such court, on application by or on behalf of the Minister of Justice of Canada, or of the Attorney-General of Ontario, or in case the prisoner is in custody at Prince Arthur's Landing and it is intended to try him at Sault Ste. Marie, then the judge of the District of Algoma, on application as aforesaid, may make an order upon the keeper of such gaol to deliver the said prisoner to the person named in such order to receive him; and such person shall, at the time prescribed in such order, convey such prisoner to the place at which he is to be tried, there to remain in custody, subject to the order of the court by which it is intended he shall be tried, or of any other court which may have jurisdiction to try him. In case the prisoner is confined in any gaol or lock-up in the said disputed territory, any judge of a Superior Court of Ontario or Manitoba having criminal jurisdiction may make the like order.
5. The judge or court, on granting the said order may, if the judge or court thinks fit, direct that unless the prisoner is tried within a time limited in the said order, he shall be either discharged from custody on his own recognizance or on bail, or returned forthwith to the gaol from which he was taken, as the said judge or court may consider proper, and the terms of the said order shall be duly obeyed; provided that the judge, or any other judge of the same court, or the court, may, at any time, upon application made in that behalf, vary the terms of the said order.
6. The provisions of this Act are merely cumulative to the law as it now stands.
7. Whenever, under any law of Canada, any judge, stipendiary magistrate, justice of the peace or other functionary, is authorized to commit to a common gaol, house of correction or lock-up house, or to

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the custody of the North-West Mounted Police, any person convicted before him of an offence committed in any part of the North-West Territories, or of the District of Keewatin, or in any part of the said disputed territory, then if there be no proper place of confinement for or within the locality in which the conviction is had or the offence was committed, or if for any reason it would, in his opinion, be more convenient or less expensive so to do, the said judge, stipendiary magistrate, justice of the peace or other functionary may commit such person to the gaol at Winnipeg, or to the gaol at Prince Arthur's Landing, whichever may, in his opinion, be nearest to or most conveniently accessible from the place of conviction.

Dom. Act, 43
Vic., c. 36,
1880.

8. Whenever any person is committed to gaol under the preceding section, any constable or other person, in whose charge such person is to be conveyed to the place of imprisonment, shall have the same power to hold and convey such person and to re-take him in case of an escape, and otherwise deal with such person as if he had been committed to such gaol by some court or authority competent (independently of the said section) to so commit him.

9. It shall not be necessary in any warrant of commitment under this Act, or in any conviction or sentence upon which such warrant is issued, that any reason should be stated which renders it more convenient or less expensive, or that it should be stated that, in the opinion of the convicting judge, stipendiary magistrate, justice of the peace or other functionary, it is more convenient or less expensive that the offender should be committed to the gaol mentioned in the warrant, or that such gaol is in his opinion nearer to or more conveniently accessible from the place of conviction.

10. The Governor in Council may, from time to time, make arrangements with the Governments of Ontario and Manitoba, respectively, for the payment of such sums as may be agreed upon for the confinement in the said gaols at Prince Arthur's Landing and Winnipeg, respectively, of such persons as may have been committed to either of such gaols for offences not committed within the Province in which such gaol is situate.

11. This Act shall remain in force until the end of the next Session of Parliament and no longer.

EXTRACT FROM THE SPEECH OF HIS HONOUR THE LIEUTENANT-GOVERNOR OF ONTARIO, ON THE
OPENING OF THE LEGISLATURE, 13TH JANUARY, 1881.*

Lieut.-Gov.
Speech, 13th
Jan., 1881.

It is much to be regretted that the Dominion Government have taken no step to obtain, and have hitherto shown no intention of seeking to obtain, from the Parliament of Canada, legislative confirmation of the award determining the northerly and westerly boundaries of Ontario, made two years ago by three most distinguished arbitrators chosen by the two Governments, and who had before them all the evidence obtainable from the most diligent researches both in America and Europe, or brought to light during the many discussions bearing on the subject that have taken place during the past century. The result of the inaction of the Dominion Government in this respect is to defer the settlement and organization of a large extent of country; to deprive the inhabitants of that district of those safeguards of peace and order which they, in common with all others, are entitled to enjoy; and to withhold from the people of Ontario the benefits which the possession of that territory would afford.

THE ATTORNEY-GENERAL OF ONTARIO TO THE MINISTER OF JUSTICE (CANADA), WITH RESPECT TO
INTERIM LEGISLATION.†

TORONTO,
1st February, 1881.

Attorney-
Gen. to Min.
of Justice,
1st Feb.,
1881.

Dear Sir,—I hope that the present session of the Dominion Parliament will not be allowed to come to an end without the necessary Act being passed adopting and confirming the Boundary Award. If, however, we are again to be disappointed, some additional legislation is absolutely required to

* Journals, Leg. Ass., Ontario, 1881, Vol. 14, p. 2.

† Sess. Papers, Ontario, 1882, No. 23.

mitigate the serious evils consequent upon the unhappy position in which the territory in question is placed. No magistrate or justice of the peace acting in the disputed territory can feel any assurance that his jurisdiction will not be disputed, and his officers set at defiance or sued in trespass; and the doubts which the inhabitants must have as to their position, in view of the delay of the Dominion Parliament to confirm the award, necessarily paralyzes the administration of justice in this territory.

Your Act of last session (43 Viet. cap. 36) does not declare what law will govern in the case of civil rights, and makes no provision for the trial of civil matters; nor does it set at rest the very important question as to whether the license law of Ontario or the prohibitory law of Keewatin governs in this territory. In my letter of 23rd April last, I suggested that Parliament should be requested to make some provision in respect of these matters; and I also suggested that authority should be given alike to the justices of the peace of Keewatin and Thunder Bay and Algoma to act in any part of the disputed territory; and that the jurisdiction of the District Court of the District of Algoma, and of the Division Courts established for Thunder Bay, and the judges and officers of such courts, including the Sheriff of Thunder Bay, should have authority and jurisdiction within this territory. The draft Bill which I submitted last session, under the hope that you would introduce it into Parliament, dealt with these matters; the sections relating to them were not in the Bill which you introduced; they seem to me far more important for the due administration of justice than those which the Bill did include; and indeed the latter, to be operative to any great extent, required the aid of some of the omitted provisions. I do not see what valid objection can be urged against the introduction of these provisions. The fact of reciprocal rights being given to the officers of Keewatin and of Ontario would clearly show that you were not by this legislation admitting the right of Ontario.

On account of the omission of the provision giving to the Sheriff of Thunder Bay authority in this territory, it was found necessary, at very heavy expense, to bring the prisoner Horn, who was accused of murder, down to Sault Ste. Marie for trial.

I send you a copy of the clauses in the draft Bill to which I refer above. You are doubtless bearing in mind that the Act of last session expires by limitation upon the rising of Parliament.

I also send herewith for your consideration a new draft Bill embodying the omitted provisions, and containing some further words which, to prevent possible misapprehension on the part of anybody, you may perhaps think it useful to employ.

I trust also that authority will be given to the Ontario Government to deal with the land and timber in the disputed territory, subject to our accounting therefor in case our right to the territory should not be maintained. Though the Parliament of Canada has not yet recognized the award, the award certainly gives to us meantime such a *prima facie* interest as makes it most reasonable that we should have the necessary means of giving titles to the settlers within the territory, so long as what you deem the possible rights of the Dominion are duly protected in the manner proposed.

I remain, etc.,

O. MOWAT.

The Honourable James McDonald,
Minister of Justice, Ottawa.

ACT OF THE PROVINCE OF MANITOBA, 44 VIC., CAP. 1 (1881).

AN ACT TO PROVIDE FOR THE EXTENSION OF THE BOUNDARIES OF THE PROVINCE.

Whereas by chapter twenty-eight of the Acts of the Parliament of the United Kingdom of Great Britain and Ireland, passed in the session held in the thirty-fourth and thirty-fifth years of Her Majesty's reign, intituled "An Act respecting the establishment of Provinces in the Dominion of Canada," it is enacted that "the Parliament of Canada may, from time to time, with the consent of the Legislature of any Province of the said Dominion, increase, diminish, or otherwise alter the limits of such Province, upon such terms and conditions as may be agreed to by the said Legislature, and

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may, with the like consent, make provision respecting the effect and operation of any such increase or diminution or alteration of territory in relation to the Province affected thereby;"

And whereas it is expedient and desirable that the boundaries of the Province of Manitoba should be increased on terms and conditions of a just character;

Therefore the Legislative Assembly of Manitoba enacts as follows:

1. The Legislative Assembly of Manitoba consents that the Parliament of Canada may increase, or otherwise alter the limits of the Province of Manitoba upon the terms and conditions set out in this Act, and may make provisions respecting the effect and operation of any such increase or alteration of territory; the increase or alteration of the limits of the Province to be so that the boundaries thereof shall be as follows: Commencing at the intersection of the international boundary dividing Canada 10 from the United States of America, by the centre line of the road allowance between the twenty-ninth and thirtieth ranges of townships lying west of the first principal meridian in the system of Dominion land surveys; thence northerly, following upon the said centre line of the said road allowance, as the same is or may hereafter be located, defining the said range line on the ground across townships one to forty-six, both inclusive, to the intersection of the said centre line of the said road allowance by the centre line of the road allowance on the twelfth base line in the said system of Dominion land surveys; thence easterly along the said centre line of the road allowance on the twelfth base line, following the same to its intersection by the easterly limit of the District of Keewatin, as defined by the Act 39 Victoria, chapter 21, that is to say, to a point where the said centre line of the road allowance on the twelfth base line would be intersected by a line drawn due north from where the westerly boundary 20 of the Province of Ontario intersects the aforesaid international boundary line dividing Canada from the United States of America; thence due south, following upon the said line to the international boundary aforesaid, and thence westerly, following upon the said international boundary line dividing Canada from the United States of America, to the place of beginning."

Act of Manitoba, 44 Vic., Cap. 1, 1881.

[The remaining portions of the Act have reference to the terms and conditions upon which such increase or alteration may be made.]

DOMINION ACT, 44 VIC., CAP. 14 (1881).

AN ACT TO PROVIDE FOR THE EXTENSION OF THE BOUNDARIES OF THE PROVINCE OF MANITOBA.

Dominion Act, 44 Vic., Cap. 14, 1881.

Whereas, by an Act of the Legislature of the Province of Manitoba, passed during the session thereof held in the present year of Her Majesty's reign, and intituled "An Act to Provide for the 30 Extension of the Boundaries of the Province of Manitoba," the Legislature of that Province hath consented to the increase of the same by the alteration of its limits, as hereinafter enacted, upon the terms and conditions hereinafter expressed: Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. The Province of Manitoba shall be increased as hereinafter defined, that is to say, so that the boundaries thereof shall be as follows:—"Commencing at the intersection of the international boundary dividing Canada from the United States of America by the centre of the road allowance between the twenty-ninth and thirtieth ranges of townships lying west of the first principal meridian in the system of Dominion land surveys; thence northerly, following upon the said centre of the said road allowance as the same is or may hereafter be located, defining the said range on the ground across townships one 40 to forty-four, both inclusive, to the intersection of the said centre of the said road allowance by the centre of the road allowance on the twelfth base line in the said system of Dominion land surveys; thence easterly along the said centre of the road allowance on the twelfth base line, following the same to its intersection by the easterly limit of the District of Keewatin, as defined by the Act thirty-ninth Victoria, chapter twenty-one, that is to say, to a point where the said centre of the road allowance on the twelfth base line would be intersected by a line drawn due north from where the westerly boundary of the Province of Ontario intersects the aforesaid international boundary line dividing Canada from the United States of America; thence due south, following upon the said line to the

international boundary aforesaid; and thence westerly, following upon the said international boundary line dividing Canada from the United States of America, to the place of beginning," and all the land embraced by the said description not now within the Province of Manitoba shall, from and after the passing of this Act, be added thereto, and the whole shall, from and after the said date, form and be the Province of Manitoba.

2. The terms and conditions upon which such increase is made are as follows:—

(a) All the enactments and provisions of all the Acts of the Parliament of Canada which have, since the creation of the Province of Manitoba, been extended into and made to apply to the said Province, shall extend and apply to the territory by this Act added thereto, as fully and effectually as if the same had originally formed part of the Province, and the boundaries thereof had, in the first instance, been fixed and defined as is done by this Act—subject, however, to the provisions of section three of this Act.

(b) The said increased limit and the territory thereby added to the Province of Manitoba shall be subject to all such provisions as may have been or shall hereafter be enacted, respecting the Canadian Pacific Railway and the lands to be granted in aid thereof.

3. All laws and ordinances in force in the territory hereby added to the Province of Manitoba at the time of the coming into force of this Act, and all courts of civil and criminal jurisdiction, and all legal commissions, powers and authorities, and all officers, judicial, administrative, and ministerial, existing therein at the time of the coming into force of this Act, shall continue therein as if such territory had not been added to the said Province; subject, nevertheless, with respect to matters within the legislative authority of the Legislature of the Province of Manitoba, to be repealed, abolished or altered by the said Legislature.

4. This Act shall come into force only upon, from and after a day to be appointed in that behalf by Proclamation of the Governor published in the *Canada Gazette*.

[Proclamation issued, dated 13 June, 1881, appointing the 1st of July following as the day for the Act to come into force.]

DOMINION ACT, 44 VIC., CAP. 15, 1881.

AN ACT TO CONTINUE IN FORCE FOR A LIMITED TIME THE ACT FORTY-THIRD VICTORIA, CHAPTER THIRTY-SIX.

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. The Act passed in the forty-third year of Her Majesty's reign, chapter thirty-six, and intituled "An Act respecting the Administration of Criminal Justice in the Territory in dispute between the Governments of the Province of Ontario and of the Dominion of Canada," shall continue in force until the end of the now next ensuing session of Parliament.

THE LIEUTENANT-GOVERNOR OF ONTARIO TO THE SECRETARY OF STATE (CANADA).*

GOVERNMENT HOUSE,

TORONTO, 31st December, 1881.

SIR,—I beg to call your attention to the unfortunate condition of that large portion of this Province to which the Federal authorities dispute our right. I desire specially to refer to that part of the disputed territory, comprising about 39,000 square miles, which lies on the westerly side of this Province, and to which, by the Act of last session for the extension of the boundaries of the Province of Manitoba (44 Vic., cap. 14), the Federal Parliament transferred to that Province the claim of the Dominion, so far as relates to the provincial jurisdiction therein.

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I beg to remind you that the importance of having settled without further delay all questions in regard to the boundaries of the Province was repeatedly stated, and even insisted upon, by your Government as long ago as the year 1872. Thus in an Order in Council, approved by His Excellency the Governor-General on the 9th April, 1872, it was affirmed to be "of the greatest consequence to the peace and well-being of the country in the vicinity of the dividing line, that no question as to jurisdiction, or the means of prevention or punishment of crime, should arise or be allowed to continue;" and it was not doubted "that both Governments would feel it their duty to settle, without further delay, upon some proper mode of determining, in an authoritative manner, the true position of such boundary."

On the 1st of May in the same year, Sir John A. Macdonald, the Premier, and then Minister of Justice, made a report, which was approved by Order in Council, in which report it was stated, in 10 reference to the disputed territory, that "it was very material that crime should not be unpunished or unprevented;" and in this view it was suggested that "the Government of Ontario be invited to concur in a statement of the case for immediate reference to the Judicial Committee of the Privy Council of England." It was further stated that "the mineral wealth of the North-West country is likely to attract a large immigration to those parts; and with a view to its development, as well as to prevent the confusion and strife that is certain to arise among the miners and other settlers so long as the uncertainty as to boundary exists," it was recommended that a course of joint action should meanwhile be adopted by the Dominion and the Province "in regard to the grants of lands and of issuing licenses, reservation of royalties, etc."

Ontario Despatch, 31 Dec. 1881.

By another Order in Council, approved on the 7th of November, 1872, His Excellency the Governor- 20 General's Federal advisers obtained the sanction of the Crown to the statement that "the importance of obtaining an authoritative decision as to the limits to the north and to the west of the Province of Ontario had already been affirmed by a Minute in Council," and that "the establishment of criminal and civil jurisdiction, and the necessity of meeting the demands of settlers and miners for the acquisition of titles to land, combined to render such a decision indispensable."

On the 26th of June, 1874, a provisional arrangement was made for the sale of lands in the disputed territory, which arrangement was in force from its date until 3rd August, 1878, when the award was made. By the award so much of the territory theretofore in dispute as was situate east of the meridian of the most north-western angle of the Lake of the Woods (say longitude 95° 14' 38" W.), was 30 awarded to Ontario, and the claim theretofore made on behalf of this section of Canada to the territory beyond that meridian, to either the White Earth River or the Rocky Mountains, was negatived by the Arbitrators.

I beg to remind you that from that day to this the Federal Government has made no official communication to the Government of this Province of their intention to reject the award, but my Government has been left to gather this intention from the omission of the Federal Government for the first two sessions of Parliament to bring in any measure for the recognition or confirmation of the award; and from the speeches made in Parliament by Ministers during the last two sessions; and more distinctly from the transfer made last session to Manitoba by the Act already mentioned, and which Act, 40 passed notwithstanding the remonstrances of this Government, had the effect of putting it out of the power of the Dominion to confirm the award without the concurrence of that Province.

My Government cannot doubt that the Federal authorities are aware, and will admit, that the progress of the country in the last nine years, and the realization during this period of the condition of things, which in 1872 was only anticipated, have immensely increased the duty then perceived and expressed by your Government, that "no question as to jurisdiction or the means of prevention or punishment of crime should be allowed to continue;" and that there is a "necessity of meeting the demands of settlers and miners for the acquisition of titles to lands." Immigrants and others have, as anticipated, been attracted to the territory in dispute, in common with the rest of the North-West Territories; numerous settlers, miners and lumberers have now gone into the territory; a large floating population is there; also a considerable number of persons who desire to be settlers; and the lands, 50 mines and timber of the territory are in active demand.

With respect to the timber, enormous quantities of it are being cut and removed by trespassers and others. Some of those engaged in the work assert that they have licenses, permits, or the like, from the Federal Government; and this Government has, in consequence, applied to your Government for information as to how far their proceedings have had the sanction of the Dominion Government; but the information has not been given, nor has any notice been taken of the application for it.

A communication from our stipendiary magistrate in the territory (a copy of which, or of its material part, was transmitted to you on the 8th March, 1881.) shows—what also appears from other quarters—that the explorers and miners on the Lake of the Woods had suffered great disappointments and losses from the continuance of the territorial dispute; that some of them had expended all their money in exploring and surveys, expecting an early return for their investments and toil, but that nothing could be done with mining capitalists because a sure title to lands could not be procured; that the delay of another year would ruin many; that many would be driven from the locality never to return, causing loss to merchants and others who had made advances to them; that the people of the locality were suffering in many ways from the unsettled condition of affairs, there being no civil court of acknowledged jurisdiction to collect debts, no land agent to locate settlers, no registry office to record deeds, and no disinterested timber agent to protect the forests; that all was uncertainty and confusion; that the claims to mineral lands had become so mixed that those who claimed locations would soon be unable to recognize their own property; that some places had been surveyed several times, the surveys covering each other; that the magistrate had no doubt there would be fighting, and perhaps murder, over these claims; that some persons were then armed to defend their supposed or assumed rights against wealthier claimants; and that whiskey sellers were plying their illicit calling with great success, and much to the injury of the district. Since the date of this communication, the Manitoba Act referred to has introduced new elements of confusion and disorder. Two sets of Provincial laws, and two sets of Provincial officers, distract the inhabitants of both the unorganized and the organized parts of the territory.

As regards the organized portions, which lie south and east of the Height of Land—and where, up to the time of Confederation, and for many years before, the authority of the laws, courts and officers of Upper Canada had always been assumed, by the Government and the population, without dispute or question, and where, since Confederation, the authority of Ontario had continued to be assumed in the same manner—the unfortunate position of the inhabitants now, was, (in the debate on the Manitoba Bill), pointed out by the leader of the Government to be this: “The people of Prince Arthur’s Landing may resist the processes of law; they may say to the Sheriff that he is committing an illegality. A man may say to another who brings a suit against him, ‘This is the process of an Ontario Court, and Ontario laws do not extend here, because we are not part of that Province.’” The same things may be said in respect of the officers and courts of Manitoba in the same territory.

I have further to remind you that since the award was made, the Government of Ontario have repeatedly called the attention of your Government to the serious practical evils which were attending the dispute, and to the importance and duty of not delaying a settlement of the question, or of making adequate provisional arrangements if the award was not to be recognized by the Federal authorities; but no measure has ever been recommended to Parliament to remove or alleviate, with reference to civil rights or the trial of civil matters, the evils thus arising from varying laws and disputed jurisdiction.

In criminal matters only has something of a provisional kind been done, namely, by the Dominion Statute 43 Vic., cap. 46, continued until the end of next session by 44 Vic., cap. 15; and this legislation is so defective that no magistrate or justice of the peace acting in this disputed territory can feel any assurance that his jurisdiction will not be disputed, or his officers set at defiance or sued in trespass.

An authoritative determination of the right might be accomplished at once, by the Parliament of Canada and the Legislature of Manitoba passing Acts for this purpose, under the authority of the Imperial Act 34 and 35, Vic., cap. 28; and otherwise. But my Government are aware that the policy

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of the present Federal Government and Parliament forbids any expectation of that course being adopted.

In 1872 your Government proposed an immediate reference to the Judicial Committee of the Privy Council; and it was suggested in a communication to the Government of Ontario that "no other tribunal than that of the Queen in Council would be satisfactory to the other Provinces of the Dominion, in a decision of questions in which they have a large interest, the importance of which is by current events being constantly and repeatedly augmented." My Government have observed also that in the debate in the Senate on the Manitoba Bill last session, Sir Alexander Campbell, speaking for the Government, said: "The boundary line will have to be settled. It will be settled, I suppose, by some reference to the Judicial Committee of the Privy Council of England, or some other tribunal. No particular burden will be thrown on Manitoba to procure a settlement." Speaking of the boundary line, the same Minister further observed: "Its location is a matter of dispute; and all we can do is to endeavour to get Ontario to agree to some tribunal by which it can be settled."

In the House of Commons' debate on the same Bill, at a subsequent time, the Premier said, speaking of his predecessors: "The Government were peculiarly bound to see that the question was left to a tribunal that could speak authoritatively; and I do not see, unless they were afraid of their case, why they (the Ontario Government) should have objected to the Imperial tribunal, to which it must go finally. That is the only way of settling the case. All must submit to that, the highest tribunal in the Empire."

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Having reference to these observations, and remembering that the award of the distinguished 20 gentlemen who were chosen by the two Governments as Arbitrators, and whose ability and impartiality have always been acknowledged, has not been satisfactory to the Federal authorities, I do not suppose that any tribunal constituted by agreement of the parties would, under all the circumstances, be proper or satisfactory.

A reference to the Judicial Committee of the Privy Council, or to any other tribunal, would involve much loss of time; and meanwhile the advices received from the territory indicate that the timber therein is being destroyed; that enormous quantities of it are being practically lost to the Province; and that the development of the territory is arrested, to the permanent injury of this Province, by the continued absence of undisputed authority to enforce order, administer justice, and grant titles. The evils arising from this state of things are so great, and are increasing so rapidly, and it is so important 30 that the Province should, without further delay, secure peaceable possession of whatever limits it is entitled to, that my Government would be willing, with the concurrence of the Legislature, to submit the matter to the Privy Council, on condition of consent being given by the Dominion Government and that of Manitoba, and by the Parliament of Canada and the Legislature of Manitoba, to just arrangements for the government of the territory in the meantime.

Without such provisional arrangements, this Province may as well wait for the confirmation of the award, which (so far as concerns the rights and powers still remaining to the Dominion) my Government confidently expect from another Parliament, as go to the expense, and have the unavoidable delay of a second litigation.

From the time that it became manifest that the Dominion Government did not contemplate an 40 early recognition of the award, provisional arrangements have from time to time been suggested by this Government, and by the Attorney-General on its behalf. I beg to refer you to the communications containing these suggestions; and I may add that your Government has not hitherto made any of them the subject of communication to this Government; nor have any counter propositions hitherto been suggested.

It may be convenient here to state the substance of these suggestions:

(1) By reason of the award, and of its accordance with the contentions of the Province and Dominion of Canada up to 1870, the *prima facie* title to the territory must be admitted to be in the Province of Ontario; and it was therefore proposed that, pending the dispute, this Province should

have the authority of the Dominion to deal with the lands and timber (as in the other parts of the Province), subject to an account if the title is ultimately decided to be in the Dominion, and not in the Province.

(2) As (without a state of practical anarchy) there cannot continue to be two systems of law in this great territory of 39,000 square miles, the law of Ontario should, by proper legislation, be declared to govern in regard to matters which, by the British North America Act, are within Provincial jurisdiction. This, or any other arrangement with regard to these matters, will now require legislation by Manitoba.

(3) It was further proposed that, pending the dispute, the jurisdiction of our Courts and officers should be recognized and confirmed; and that the jurisdiction of our stipendiary magistrates in the disputed territory should be increased to the extent contemplated by the disallowed Act, 42 Vic., cap. 19, Ont. This extended jurisdiction, it may be observed, would not be so great as the jurisdiction which has been conferred by Dominion Statutes upon similar magistrates in the territories of the Dominion. To prevent doubts, there should be legislation by the Federal Parliament, and by the Legislatures of both Manitoba and Ontario.

The Manitoba Act of the last session of Parliament has rendered necessary the concurrence of the Government and Legislature of Manitoba in the provisional arrangements referred to. But it is presumed that such concurrence would, if now desired or approved by the Federal Government, be given gladly; for it is not to be supposed that that Province—with its small revenue, and with the enormous additional demands upon it for the government and development of its undisputed territory, increased by the same Act from 13,464 to upwards of 100,000 square miles—can desire to have the further expense and responsibility of the temporary government of 39,000 square miles of disputed territory, which may never be theirs, and to which such of the people of Manitoba as may take the trouble to learn the facts, must feel it not improbable that Ontario has the right; since such was in effect the view taken and acted upon in every way by the successive Governments of Canada up to 1870; and since such highly competent referees as the Right Honourable Sir Edward Thornton, then Her Majesty's Ambassador at Washington, and now her Ambassador to the Court of St. Petersburg, the late Honourable Chief Justice Harrison, and the Honourable Sir Francis Hincks, K.C.M.G. declared and awarded the disputed territory to be within the boundaries of this Province.

I have called the Ontario Legislature to meet for the dispatch of business on the 12th of January. I perceive that the Parliament of Canada is to meet in the following month, and I would respectfully urge the great importance of my being officially informed, before the meeting of our Legislature, whether the Dominion Government is now willing, with the concurrence of the Legislature of Manitoba, so far as such concurrence is necessary, to agree to the arrangements which have been suggested, and to obtain from Parliament at its approaching session the Dominion legislation necessary to give effect to such arrangements. Or, if the Dominion Government is not willing to agree to the arrangements suggested, my Government would be glad to be informed what the best terms are to which your Government is prepared to agree, for the final settlement of the question of right, and for the provisional government of the territory in the meantime. I beg to remind you once more that since the award, no terms have ever been proposed to this Government with reference to either matter, unless it may be in the informal, and so far nugatory, negotiations which have recently taken place with the Attorney-General.

I beg also to renew the request made in a former despatch, but not hitherto noticed by your Government, for information as to the transactions of your Government with respect to the disputed territory since the date of the award. What my Government desire to have is, information of all transactions with respect to the timber and lands respectively, including copies of all grants, licenses, permits, regulations, instructions, letters, documents and papers of every kind relating to the same. This information my Government submit that they are entitled to receive, whether there is to be a provisional arrangement or not.

It has recently been stated in the public journals that the Federal Government had assumed

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authority to grant to the Pacific Railway Company land for their line of road through the disputed territory, and for timber purposes, a breadth of twenty miles on each side of this road throughout its whole length. No communication on the subject has been received from the Federal Government. If the newspaper statement is correct, my Government respectfully submit that, as the right to the territory is in dispute, no such grant should have been made without the concurrence of the Provincial authorities; and that if their concurrence was not cared for, they should at all events have had previous notice to what was contemplated, that they might have had an opportunity by negotiation or expostulation, of seeing that, if possible, the interests of the Province were not set at naught. I have respectfully to request copies of the Orders in Council and other documents (if any) relating to the transaction.

I have the honour to be, Sir,

Your obedient servant,

J. B. ROBINSON.

To the Honourable the Secretary of State,
Ottawa.

THE SECRETARY OF STATE (CANADA), TO THE LIEUTENANT-GOVERNOR OF ONTARIO.*

OTTAWA, 27th January, 1882.

Federal Despatch, 27th January, 1882.

SIR,—I have the honour to inform you that His Excellency the Governor-General has had under his consideration in Council your despatch bearing date the 31st December, 1881, relating to the disputed territory west and north of the Province of Ontario.

I have now to state for the information of your Government as follows:

1. The position of His Excellency's advisers has been uniform from the beginning. They have on all occasions been anxious to obtain from the highest tribunal approachable, an authoritative decision of the question in dispute, but have been unwilling, and have considered it inconsistent with their duty to treat the matter as one which might be dealt with by arbitration.
2. There is a legal boundary between Ontario and the recently acquired North-West Territories; and as representing the various Provinces of the Dominion who have acquired that territory, it is the duty, it is conceived, of the Government of the Dominion not to give away any part of it, nor to agree to arbitration upon its boundary, but to ascertain what its legal extent is.
3. This disposition on the part of His Excellency's advisers was also the conviction of the Government in office at the time the territory was acquired, and for some years afterwards, and the anxiety which is felt now was expressed then by the several Orders in Council which are referred to in your Honour's despatch.
4. The North-West Territories were acquired in 1870, and on the 9th of April, the 1st of May, and the 17th of November, 1872, the importance of settling the boundary, and of settling it as a question of law, which could be determined by a Judicial Tribunal, was pressed upon the consideration of His Excellency's predecessor, and communicated to the Government of Ontario by the several Orders in Council referred to in your despatch.
5. Had the proposal then made for the submission of the dispute to the Judicial Committee of the Privy Council been accepted by Ontario, the delays and inconveniences alleged in the communication under consideration to have occurred would have been avoided. The matter would long since have been settled by the highest authority in the Empire, and the boundary between Ontario and the then recently acquired North-West Territories authoritatively and finally settled.
6. His Excellency's advisers believe that it is much to be regretted, in the interest of Ontario, as well as of the Dominion at large, that a proposal so reasonable in itself, and which would have brought to the consideration of the legal question involved the most learned and accomplished minds in the

* Sess. Papers, Ontario, 1882, No. 23; Return, Ho. Coms., Canada, dated 14th February, 1882.

empire, and given every assurance of a speedy and satisfactory decision, and one which would have commanded universal assent, was not accepted by the Government of Ontario.

7. It does not appear that any response was made by the Government of Ontario to the proposal to submit the question to the Judicial Committee of the Privy Council.

8. The proposal of 1874, referred to in your despatch, that the question in dispute should be referred to arbitration, does not seem to have been treated by either Government as a mode of seeking an authoritative decision upon the question involved as a matter of law, but rather as a means of establishing a conventional line without first ascertaining the true boundary. In corroboration of this view it is to be noted, that of the three gentlemen who made the award referred to in your despatch under the reference of 1872, two were laymen, and only one of the profession of the law.

9. His Excellency's advisers are of opinion that in advance of Parliamentary sanction it was not only highly inexpedient, but transcended the power of the Government of the day to refer to arbitration the question of the extent of the North-west Territories acquired by the Dominion by purchase from the Hudson's Bay Company.

10. That territory had been acquired on behalf of, and was in fact held for, all the Provinces comprised in the Dominion, and the extent of it was a question in regard to which, if a dispute arose, Parliament only could have absolved the Government of the day from the duty of seeking an authoritative determination by the legal tribunals of the country. Such a decision having been once obtained, if it had been found that it promised to be to the convenience of Ontario and the adjoining Province that a conventional boundary should be established in lieu of the legal boundary, authority might have been sought from the Legislatures of those Provinces and from the Parliament of the Dominion for the adoption of such a conventional line.

11. That the course pursued was not intended as a means of seeking a legal boundary is further shown by the course pursued by the Legislature of Ontario, who, under the provision contained in the Imperial Act 31 and 35 Vic., Cap. 38, enabling the Parliament of Canada to increase, diminish, or otherwise alter the limits of a Province, with the assent of its Legislature, passed an Act giving their assent to the limits of their Province being changed by Parliament to meet the award, whatever it might be. The passage of such an Act shows that it was not sought that the true boundary line should be ascertained, but that a conventional one should be laid down.

12. It must further be observed that a Committee of the House of Commons has reported as follows, viz.:-

"In reference to the award made by the arbitrators on the 3rd day of August, 1878, a copy of which is appended (p.), your Committee are of opinion that it does not describe the true boundaries of Ontario. It seems to your committee to be inconsistent with any boundary line ever suggested or proposed subsequent to the Treaty of Utrecht (1713). It makes the Provincial boundaries run into territory granted by Royal Charter in 1670 to the Merchants Adventurers of England trading into Hudson Bay, and it cuts through Indian territories which, according to the Act 43 George III., Cap. 138, and 1 and 2 George IV., Cap. 66, formed 'no part of the Provinces of Lower Canada or Upper Canada, or either of them,' and it carries the boundaries of Ontario within the limits of the former colony of Assiniboia, which was not a part of Upper Canada," showing how unwarrantable it would have been for the Government of the Dominion to have undertaken to ask Parliament to adopt the award as one defining the true boundaries.

13. On assuming office, His Excellency's present advisers found that no authority had been obtained from Parliament for the reference made in 1874 of the dispute to arbitration. They themselves were opposed to that mode of disposing of the question, conceiving it to be inexpedient and lacking in legal authority, and that the duty of the Government was to seek for the disposal of the matter as a question of law.

14. It is to be borne in mind that when the proposal of the reference to the Judicial Committee of the Privy Council was suggested, and its expediency enforced by the Dominion Government in 1872,

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the Supreme Court of Canada had not been brought into existence, and there was therefore no high tribunal other than the Judicial Committee of the Privy Council in England by which the question in dispute could have been authoritatively settled.

15. In 1875 the Act creating the Supreme Court was passed by the Parliament of Canada, the British North America Act, 1867, authorizing that Court to be created, *inter alia*, for the purpose of dealing with inter-Provincial and constitutional questions, and upon the creation of that Court it would seem to have become the tribunal to which both Federal and Provincial Governments should have resorted for the decision of the question now under discussion.

16. As in 1872 the Government of the day was anxious to submit the question to the then highest tribunal, so now His Excellency's present advisers would readily consent to use the influence of the 10 Dominion Government with that of Manitoba to obtain a submission of the whole question as to the boundary to the Supreme Court of Canada, under the 52nd section of the Act of 1875, establishing the Court. They trust with confidence that their exertions with the Government of Manitoba would be attended with success, and that such submission would be agreed to by that Government.

17. Another method of obtaining an authoritative decision was pointed out to the Attorney-General of Ontario at an interview sought for that purpose with him by Sir John Macdonald and the Minister of Justice, who, on the 21st of November last, proposed to Mr. Mowat, at his office in Toronto, that the Government of the Dominion and that of Ontario should unite in soliciting the good offices of some eminent English legal functionary for the purpose of determining the true boundary line. The names of Lord Selborne, who was then, it was reported, likely to seek relief from the fatigues of his office, 20 and of Lord Cairns, were suggested by Sir John Macdonald, who proposed that one or other of these noblemen, or some other distinguished legal functionary, should be invited to come to Canada, to sit in Toronto or elsewhere, for the purpose of hearing the evidence and deciding upon the boundary question, as one of law, susceptible of being determined by evidence as other important questions are.

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18. The great advantage in such a submission would be that whilst legal ability and learning of the highest character would be secured for the decision of the question, it would have given both parties the opportunity of submitting such evidence as they might think proper, and the difficulty of agreeing on facts, and settling a case to be submitted to the Privy Council, would have been avoided. Evidence would be heard upon the spot, and the fact of the hearing and the arguments of counsel taking place in the country would have tended to command general assent. 30

19. This proposition was taken into consideration by Mr. Mowat, and it is only recently that he conveyed to the Minister of Justice his indisposition to accede to that proposal; but it is one which His Excellency's Government is still ready to adopt, if their previous suggestion of a submission to the Supreme Court of Canada should not command the assent of the Government of Ontario.

20. As regards the assertion in Your Honour's despatch, that the enlargement of the boundaries of Manitoba has complicated the present question, this Government are unable to adopt the view put forth in the despatch. The original confines of Manitoba were very small, and the rapidly augmenting population of that Province had made the fact a ground of continued complaint, and the Local Government had urged upon the Government of the Dominion that the limited extent of their Province paralyzed their efforts in the development of the Province, in the establishment of municipalities, and the 40 creation of means of communication, and otherwise. It was uncertain how long the disputed boundary question might remain open, and His Excellency's Government felt themselves constrained, finally, to recommend the enlargement of the boundaries of Manitoba, but Parliament did so in such a manner, and in such language, as carefully guarded against the step constituting any interference with the disputed question of the western limits of Ontario.

21. It is believed that the Government of Manitoba would readily acquiesce in the question of the boundary line being brought for decision either before the Supreme Court of Canada or the high legal functionary, as suggested by Sir John Macdonald and the Minister of Justice, to Mr. Mowat, on the occasion referred to.

22. His Excellency's advisers look upon this question as one which should be considered rigidly as one of Law, on account of the fiduciary character which they hold in regard to the various Provinces of the Dominion, whose money was expended in the acquisition of the territory, and who are now largely exerting and taxing themselves for the purpose of constructing a line of railway through it, to which the Government of Ontario (although the railway passes for upwards of 600 miles through its territory) have refused to contribute any aid in land, as has so largely been done out of the North-West Territories by the Dominion.

23. The Government of the Dominion believe that the interests of Ontario are considered by the action which they advise as much and as strongly as the interests of any other Province. Their only anxiety is that a legal question in which Ontario is interested by itself, and in which it is interested also as a member of the Confederation, should be disposed of by a Legal Tribunal.

24. They heartily wish that the proposal urged by the Dominion Government in 1872 for a submission to the Judicial Committee of the Privy Council had been accepted by Ontario, and they cannot but attribute much of the inconvenience and delay alleged in your despatch to have occurred to the refusal of Ontario to unite in such a submission.

25. To the arbitration of 1874 His Excellency's Government was unable, for the reasons assigned, to give their adhesion; but, with Ontario, they believe it to be of the greatest importance that the dispute should be settled, and they will be anxious to further in every way in their power the submission of the question either to the Supreme Court of Canada or to an eminent legal functionary, to be mutually agreed upon; or, if it be preferred, by the two Provinces of Ontario and Manitoba, to the Judicial Committee of the Privy Council, although His Excellency's advisers would prefer that it should be decided in Canada, either by the high legal functionary, as suggested, or by the Supreme Court, with the right of applying to the Judicial Committee of the Privy Council for an appeal to the Queen from any decision which may be arrived at, should either Province desire it.

26. The question of the title to the land in the disputed territory should not be confused nor mixed up in any way with that relating to the boundaries.

27. The Indians, and the Crown, and those claiming under them, have rights which can be decided by the ordinary tribunals of the Province within which the land in dispute may finally be found.

28. With respect to the timber, of which it is said in Your Honour's despatch that enormous quantities are being cut and removed by trespassers and others, this Government have ascertained that no licenses have been issued to cut timber east of that boundary since the establishment of the Conventional line in 1870. Information regarding all permits, licenses, and other transactions would be readily furnished to the Government of Ontario at any time.

29. The assumption in your despatch that the Conventional boundary terminated on the 3rd of August, 1878, the date of the award referred to, seems to be without foundation; but if the Conventional line is to be considered as having been then abrogated, it must be considered as at an end for all purposes, leaving both parties to assert their own rights in reference to all the questions involved.

30. As regards the Government of the country, and the enforcement of law and order in the meantime, it was intimated to Mr. Mowat, at the interview above referred to, that the Government of the Dominion would be ready to agree to such measures as were necessary to prevent confusion in these important respects. The suggestion was then made that all Justices of the Peace residing in the disputed territory should receive commissions from both Ontario and Manitoba, and that all the judges of Ontario and all the judges of Manitoba should be put in a joint commission as regards the disputed territory. The laws of Ontario and Manitoba being alike in most respects, no confusion would probably arise. That in criminal matters the Act 43 Vic., Chap. 36, had made, it was thought, satisfactory provision; or if there was anything deficient, the Government of the Dominion would be ready to ask Parliament to supply it. That where there was found to be a practical difference between the laws of Ontario and those of Manitoba, the Government of the Dominion would use its good offices with the Government of Manitoba to induce them to consent that the law to be administered should be that of

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Ontario, as regards all matters of Provincial jurisdiction, until the legal limits of both Provinces should be finally ascertained.

I have the honour to be, Sir,

Your obedient servant,

J. A. MOUSSEAU,

Secretary of State.

His Honour the Lieutenant-Governor of Ontario,
Toronto.

THE LIEUTENANT-GOVERNOR OF ONTARIO TO THE SECRETARY OF STATE (CANADA).*

TORONTO, 18th February, 1882. 10

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SIR,—I have the honour to acknowledge the receipt of your despatch dated 27th January last, and for the information of the Government of the Dominion, I beg to submit the following reply.

My Government are glad that, though the Federal Government have for more than three years refrained from noticing requests and suggestions repeatedly made by the Government of Ontario with respect to the disputed territory, and from making any official communication of the views of your Government as to the question of title, or as to provisional arrangements necessary for the government and settlement of the country while your Government were pleased to dispute our title, your despatch has at last placed this Government in official possession of the views of the Federal Government on these subjects. My Advisers deeply regret to find those views so unsatisfactory, and (as they respectfully submit) so unjust to the people of Ontario. But a frank discussion of them may be of service 20 to the interests concerned.

Your despatch intimates distinctly, what had been already perceived, though not before officially stated to this Government, that the policy of your Government is to reject and disregard the Award; and your despatch states the reasons for this course. I notice that among these reasons it is not suggested (as of course it could not be), that the Arbitrators were not able and impartial men, well known, and held in high estimation in this country; or that they had not before them all the known evidence bearing on the subject with the decision of which they had been entrusted; or that they did not do their best to come to a correct conclusion. The reasons which you give are of an entirely different kind, namely, that the reference "transcended the power of the Government of the day;" that the matter should be "considered rigidly as one of law;" that the duty of Government was to seek "an 30 authoritative determination by the legal tribunals of the country;" that the reference "was not intended as a means of seeking a legal boundary," but that the object of it was that "a conventional line should be laid down;" and that His Excellency's present advisers were "opposed to disposing of the question" by arbitration, conceiving that mode to be "inexpedient and lacking in legal authority." These seem to my Advisers to be, under the circumstances, unprecedented grounds of objection. A difference of opinion between one set of Ministers and their successors as to the expediency of having settled a controversy by arbitration, seems to my advisers to be no sort of justification for the repudiation of an Award after it has been made in good faith.

Awards and Treaties between Governments often require subsequent Parliamentary sanction; but in such cases my advisers claim that, according to the ethics of nations, it is the recognized and bounden 40 duty of the Governments to obtain such sanction, or to do their best to obtain it; nor are changes in the *personnel* of either Government allowed to affect the obligation.

There are very recent examples of this old-established doctrine. The British Government thought it their duty to obtain the prompt sanction of Parliament to the Alabama Award, though it was not like the present, a unanimous Award and though both the Government and the people regarded the amount awarded as excessive and exorbitant. So, on the other hand, in the United States of America, Congress gave prompt effect to the Fishery Award, though it was not a unanimous Award, and though the people and their representatives regarded it as grossly unjust. In the present case a unanimous

* *Session Papers, Ontario, 1882, No. 23.*

Award has for more than three years been disregarded by the Federal authorities of Canada; and, while they contended that it assigned to Ontario more extensive boundaries than, as a matter of rigid law, this Province possessed, there is (on the contrary) reason for believing that if the Award errs in that respect, the error is in assigning to Ontario too little territory instead of too much.

It appears to my advisers that many circumstances give exceptional force to the considerations which demanded the acceptance of the Award by the Federal authorities.

The reference was made with the practical concurrence of Parliament; and Ontario had every reason for assuming and relying upon the general acquiescence of the Dominion. The reference had been agreed to in November, 1874. It was embodied in Orders of Council, approved by His Excellency the Governor-General and by His Honour the Lieutenant-Governor respectively. The three Arbitrators were immediately notified of their appointments, and their consent to act obtained. The reference was publicly known, and seemed to receive general approval. The Legislature of Ontario, in 1875, passed the Provincial Act to which your despatch refers, and, in common with the Dominion Government, proceeded, at considerable expense, to obtain, for the purposes of one arbitration, from Europe and America, all documentary and other evidence bearing on the question in dispute. The Imperial Government was apprized of the arbitration, and its assistance was given in an exhaustive search of the Colonial Office for State Papers. The fact of the reference was communicated by Ministers to Parliament at its first session after the reference had been agreed to, and it was repeatedly alluded to during the Parliamentary sessions held before the making of the Award. At no one of the four sessions intervening was any motion passed, or even proposed, in either House of Parliament, disapproving of the reference; nor, so far as my advisers are aware, did any member at any one of these sessions contend or suggest that the reference "transcended the power of the Government of the day," as is now alleged. Two or three members expressed an opinion in favour of a different mode of settlement; and even this expression of opinion seems to have occurred in the session of 1875 only. In the session of 1878 an appropriation of \$15,000 to pay the expenses incident to the reference was voted by Parliament; and without objection or question by anyone.* The documents and other evidence obtained from time to time were printed; statements of the case of the respective Governments were prepared and furnished to the Arbitrators; the question was argued by Counsel on both sides; and the Award assigned to this Province part only of the territory which the Dominion Ministers, before compromising with the Hudson's Bay Company, had claimed as clearly belonging to this section of Canada.

The Award was made on the 3rd August, 1878. A change of Government took place on the 17th October following. The new Government on coming into office gave no notice to this Province that the Award was to be repudiated. On the 1st November, 1878, a map of that date was "published by order of the Honourable the Minister of the Interior," marking the boundaries of Ontario in precisely the manner assigned by the Award. On the 31st December, 1878, a despatch to your Government stated that a measure would be introduced during the then approaching session of the Ontario Legislature, to give effect to the Award by way of declaratory enactment and otherwise: and the despatch suggested that a like Act should be passed by the Parliament of the Dominion.† In answer to this despatch no notice was given that the Federal Government meant to repudiate the Award; no warning to refrain from passing, or to postpone passing, the proposed Act; and accordingly the Ontario Legislature, at its next session, passed an Act consenting that the boundaries, as determined by the Award, should be the northerly and westerly boundaries of the Province.‡ A like Act not having been passed at the next session of the Federal Parliament, and no reason for the delay or omission having been communicated to this Government, two despatches were addressed to your Government dated respectively 23rd September, and 19th December, 1879. In the despatch of the 23rd September, it was, amongst others things, urged that, an Award having been made in pursuance of a reference by the two Governments, it was just that there should be no further delay in formally recognizing the Award as a conclusive settlement of the matters submitted to the

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* House of Commons (Canada) Debates, 1878, p. 2528, item 292.

† Sess. Papers, Ontario, 1879, Vol. 2, No. 80.

‡ 42 V., chap. 2, Ont.

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arbitrators; that the Government of Ontario did not doubt that the Government and Parliament of Canada would ultimately take the same view; but it was respectfully represented that the delay in announcing the acquiescence of the Dominion authorities, and in otherwise giving full effect to the Award, had been embarrassing and injurious.* By the despatch of 19th December, 1879, the attention of your Government was called to a former despatch, and it was intimated "that the arbitrators having made their Award, the Government of the Province understand that the provisional arrangement theretofore in force between the Province and the Dominion" was "at an end, the Award having 'definitely settled' the boundaries of the Province and the Dominion," within the meaning of the provisional arrangement.† The receipt of these despatches was formally acknowledged, but neither of them was answered otherwise. No exception was taken to the alleged termination of the provisional arrangement; and the Province was still left without any intimation of an intention to repudiate the Award. The first intimation of this intention was given during the session of Parliament held in the year 1880. Until then there was no known Act of the Federal Government or speech of Federal Ministers which did not consist with an ultimate recognition of the Award by the Government of Canada.

The recognition of the Award by the Parliament of Canada is desirable, to prevent doubts and disputes; but my Government do not admit that the Award has no legal force without such Parliamentary action. It is to be remembered that the British North America Act contains no provision giving authority to Parliament to deal with the boundaries of the Dominion or Provinces; and my Government contend that the reference was within the powers incident to Executive authority. It is admitted in your despatch that a reference to the ordinary legal tribunals would have been within such authority, and it is not easy to see why a reference, made in good faith, and with the acquiescence of Parliament for several years, to a Tribunal created by mutual consent for the purpose, should stand in a different position. Even if the Award is supposed to have no legal effect until sanctioned by Parliament, still it appears to my Government to be inconsistent alike with reason and justice, with British precedent and practice, that the Federal Government should, at this late date, and after all these proceedings, refuse to ask such Parliamentary sanction, or that His Excellency's present Advisers should seek to excuse a repudiation of the Award, by alleging inability in their predecessors to sanction an arbitration, or by the preference of His Excellency's present Advisers for some other scheme of adjustment. References to arbitration, without previous Parliamentary sanction, of matters involving large sums of money have been frequent; and, for this purpose, between questions of money and questions of territory there is not in reason any solid distinction. If, as your despatch suggests, the Dominion Government occupy a fiduciary position with reference to the territory in question, it is equally true that they occupy a fiduciary position in regard to every power which, as a Government, they possess or exercise.

It seems to my Government that, under all the circumstances, the Award should have been promptly accepted, even if it had appeared that the arbitrators had not found or awarded what they considered to be the legal boundaries, and disregarding these, had merely laid down the boundaries which they deemed most convenient and reasonable. But it so happens that the surmise in your despatch, that the Governments did not contemplate that the arbitrators should find the legal boundaries, is unsupported by evidence, and is entirely without foundation. The Order of the Privy Council of 12th November, 1874,‡ expressly stated the object to be "to determine by means of a reference the northern and western boundaries" of the Province; and the Order provided, that the "determination of a majority of such three referees be final and conclusive upon the limits to be taken as and for such boundaries respectively." The Minister further recommended, and His Excellency approved the recommendation, "that the Dominion agree to concurrent action with the Province of Ontario in obtaining such Legislation as may be necessary for giving binding effect to the conclusions arrived at and for establishing the northern and western limits of the Province of Ontario in accordance therewith." The Order of the Lieutenant-Governor in Council was to the same effect as regards this Province.

* Sess. Papers, Ontario, 1880, No. 46.

† Sess. Papers, Ontario, 1880, No. 46, p. 2; *Ib.* 1875, No. 14.

‡ Sess. Papers, Ontario, 1875, No. 14, p. 14.

One of the arbitrators who were first named having died, and another having resigned, new arbitrators were appointed in their places—viz., Chief Justice Harrison and Sir Francis Hincks; and, these gentlemen having signified their acceptance, they were promptly put in possession of the documentary and other evidence. The formal Orders in Council appointing them were made some time afterwards, and when the arbitrators met to hear counsel—viz., on the 31st July, 1878. By the Order in Council of that date, approved of by His Excellency, it was again provided "that the determination of the Award of such three arbitrators, or a majority of them, in the matter of the said boundaries respectively, be taken as *final and conclusive*," with the same agreement as before with respect to legislation.* A like Order in Council was passed by the Ontario Government. It is not pretended that the arbitrators received any instructions beyond the Orders in Council. The statements of the case which were prepared by counsel for the respective Governments, and printed and laid before the arbitrators, discussed the question of boundaries as a matter of law.† The *in voce* arguments also of counsel, on both sides, before the arbitrators dealt with the question as a matter of law;‡ and the Award affirms that it determines and decides "what *are* and shall be the northerly and westerly boundaries of the Province."§

To assume in the face of all this, and without evidence, that the arbitrators did not propose to find, or did not find, what in their opinion were and are THE boundaries, the true boundaries, the legal boundaries, is what, in the view of my advisers, neither Government can possibly do on any principle known in law, or recognized in public or private transactions.

The case does not even rest here. Sir Francis Hincks, the Arbitrator for the Dominion, has taken occasion to communicate the facts to the public. In a lecture delivered by him on the 6th May, 1881, he states that "the arbitrators were guided in their decision solely by Acts of Parliament, proclamations authorized by Orders in Council on the authority of Acts of Parliament, and international treaties. . . . The arbitrators were of opinion that, having reference to all the facts of the case, the boundaries set forth in the Award were supported to a larger extent than any other lines by these facts, and by the considerations and reasons which should and would guide and govern the determination of the questions by any competent legal or other tribunal." In the lecture he gives a *résumé* of the grounds on which the arbitrators proceeded, and all of these go to show the legal boundaries. As to the western boundary, he says that "the arbitrators were clearly of opinion that the international boundary at the north-western angle of the Lake of the Woods was the true point of departure." This point settled the western boundary as awarded, and it is in this district of the Province that the Federal authorities have actively interfered with the rights of the Province, and that the territory is most valuable, and a vigorous administration of justice most needed. The northern boundary (in the opinion of the arbitrators), owing to the vagueness of the language employed in the proclamation issued under the Act of 1791, is more "open to doubt;" but the doubt of the arbitrators was, as Sir Francis Hincks states, "whether Ontario should not have had more territory; not whether it should have had less. Indeed, the groundlessness of the notion that the Award gives to Ontario more territory than it is entitled to is further demonstrated by the statement of Sir Francis in the same lecture, that "the only questions of doubt were decided in favour of the Dominion; that both on the west and north the doubts were whether Ontario should not have had more territory." Your despatch objects to considerations of "convenience" being taken into account, as if such considerations could have nothing to do with the question of legal boundaries; yet convenience, or the argument *ab inconvenienti*, is a recognized element of legal interpretation where other considerations leave a question of construction in doubt.

Against all this evidence that the question which the arbitrators considered (whether they were bound to do so or not) was the question of the true legal boundaries, and that what they awarded was what they believed to be the true legal boundaries, your despatch suggests merely two circumstances: (1) that two of the arbitrators were laymen; (2) that the Act of the Ontario Legislature 38 Vic., chap. 6, affords an inference in favour of the Federal assumption. An elaborate argument with regard to

* Sess. Papers, Ontario, 1879, No. 42.

† Sess. Papers, Ontario, 1879, No. 13; Report of Boundary Committee, House of Commons, Can., 1880, pp. 237, 291.

‡ Report of Boundary Committee, House of Commons (Canada), 1880, pp. 262, 301, 325.

§ *Ibid.*, p. 480.

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either point is unnecessary. As to the first point, four things may be shortly observed: (1) The question to be arbitrated upon involved facts as well as law. (2) If two of the referees were laymen, the remaining arbitrator the late Chief Justice Harrison, was an able lawyer and Judge—a gentleman, it may be added, who was a Conservative in politics, and an old personal friend of the present First Minister of Canada. (3) The two arbitrators chosen by the Governments in 1874 were Judges—Chief Justice Richards and Judge Wilnot; Sir Edward Thornton was soon afterward selected by the two Governments as the third arbitrator. (4) The case was one in which eminent publicists, like Sir Edward Thornton and Sir Francis Hincks, were, by their training and mental habits, quite as well fitted as any lawyer to ascertain and determine the legal boundaries. Sir Edward Thornton, it may be observed, had four successive times been accredited to great Courts in Europe and America as an Ambassador of the highest rank and with full powers. He possessed, moreover, a most unusual topographical knowledge of this continent. Sir Francis Hincks had spent nearly half a century in colonial life, and had filled positions of the largest responsibility in the public service of Canada.

Then, as to the inference suggested from the Ontario Statute* passed under the provision contained in the Imperial Act, 34 and 35 Vic., chap. 38, which enabled the Parliament of Canada to increase, diminish, or otherwise alter the limits of a Province with the assent of its Legislature, it is only necessary to observe that the British North America Act contained no provision for settling questions of boundaries between Provinces, or between a Province and the Dominion; that, as between Canada and New Brunswick in 1851, a special Imperial Act for a like purpose was deemed expedient; and that by the legal effect of the Imperial Act, 34 and 35 Vic., chap. 38, concurrent Statutes by the Parliament of the Dominion and the Legislature of Ontario, fixing the true legal boundaries, would be as effectual as if a variation of the legal boundaries had been intended.

But would it be correct or proper to repudiate the Award if there had been some reason—which there is not—for assuming or supposing that it gave to Ontario boundaries somewhat more extensive than its strict legal boundaries? Whether the Award has or has not given accurately the true legal boundaries, it certainly does not assign to Ontario as much territory as Canadian Governments of which His Excellency's present Chief Adviser was either the head or a distinguished member, had repeatedly and confidently claimed for this section of Canada from the year 1857 up to the year 1870. Nor so much as was claimed for Upper Canada on the 15th January, 1857, when a Minute of Council, approved by His Excellency the Governor-General, was transmitted to the Colonial Secretary, in which it was stated that "the general feeling here is strongly that the western boundary of Canada extends to the Pacific Ocean."† Nor so much as in an official paper of the same period, the Commissioner of Crown Lands of Canada claimed for us, when he asserted that the westerly boundary of the Province extended "as far as British territory not otherwise organized would carry it, which would be to the Pacific; or, if limited at all, it would be by the first waters of the Mississippi, which a due west line from the Lake of the Woods intersected, which would be the *White Earth River*;" and when, with respect to the northerly boundary, the Commissioner pointed out that "the only possible conclusion is, that Canada is either bounded in that direction by a few isolated posts on the shore of Hudson's Bay, or else that the Company's territory is . . . a myth, and consequently that Canada has no particular limit in that direction." Nor has so much been awarded to us as Chief Justice Draper was in the same year sent to England by the Canadian Government for the very purpose of claiming or demanding for this section of the Province, as against the Hudson's Bay Company.‡ Nor so much as that distinguished Judge claimed accordingly before a Committee of the British House of Commons in May and June of that year.§ Nor so much as in a letter from him dated 12th June, 1857, after he had elaborately examined the question, he communicated the opinion that we had "a clear right to."¶ Nor so much as the Dominion Ministers, Sir George E. Cartier and the Honourable William McDougall, in an official letter to Sir Frederick Rogers, Bart., Under-Secretary of State for the Colonies, dated 16th January, 1869, insisted that Upper Canada so clearly included that "no impartial investigator of

* Revised Statutes of Ontario, chap. 4; 42 Vic., chap. 2.

† Sess. Papers, Canada, 1857, Vol. 15, No. 17.

‡ *Ibid.* Vol. 15, No. 17.

§ Hudson's Bay Rept. Com., England, 1857, pp. 212, 374, etc.

¶ Book Arb. Docs., p. 391.

"the evidence in the case could doubt it."* But for the circumstance that, as between Great Britain and the United States, by the joint effect of the Treaties of 1794, 1814, 1818 and 1842,† the source of the Mississippi was taken to be, as between the United States and the British possessions, in Turtle Lake, at a point in nearly the same longitude as the most north-western point of the Lake of the Woods, the arbitrators could hardly have failed to hold that our westerly boundary was to be found at White Earth River, west of the Province of Manitoba as constituted previously to its extension by the Federal Parliament at its last session.

My Advisers feel surprised that, under all these circumstances, the Federal authorities should appear to have applied themselves for two years and more to the task of finding some plausible ground 10 for repudiating the Award, even though they may hope (what my Advisers deny) that a rigid technical interpretation of the documents, in connection with the other evidence relating to the subject, might possibly limit the boundaries of the Province still further.

Your despatch says that the North-West Territory (of which the now disputed territory is assured to be part) "was acquired on behalf of, and was in fact held for, all the Provinces comprised in the Dominion." In saying this, the Federal Government overlook the circumstances under which, and the means by which, the so-called acquisition was accomplished. In all the negotiations with the Hudson's Bay Company the Federal Government insisted that almost the whole territory so said to have been acquired belonged already to Upper Canada (now Ontario); that the Hudson's Bay Company, so far as they were in possession of any part of this territory, were but squatters on it ‡; that this was perfectly 20 clear; that "no impartial investigator of the evidence could doubt it." So strong were the grounds on which this contention rested, that the Company, acting under the advice and with the aid of the ablest counsel, and of some of the shrewdest men of business in England, gave up their claim to some 1,300,000 square miles of territory—half a continent—in consideration of being allowed to retain about 12,000 square miles of it, and of receiving for the rest the comparatively paltry sum of £300,000 sterling. § The United States of America gave to the Russian Government in 1867 nearly five times as much (\$7,200,000) for the comparatively barren and valueless territory of Alaska, with an area not nearly half that to which the Hudson's Bay Company released its claim. The comparatively small sum mentioned was accepted by the Hudson's Bay Company because of the reason there was to apprehend 30 all the territory which the Canadian Ministers claimed for it, instead of merely the 100,000 square miles, the right of Ontario to which the Federal authorities now persistently resist, in spite of a solemn Award, and in spite also of the previous contentions and demands of Ministers of the Dominion itself.

It is further to be observed that the Hudson's Bay Company never pretended, as against the territorial jurisdiction of Upper Canada, that they had any claim under their Charter to any territory south of the Height of Land.

In the claim against the Hudson's Bay Company, the Dominion Government were trustees for Ontario; and, on principles well recognized in equity jurisprudence, their compromise of the claim should enure to the sole benefit of Ontario, on condition only of this Province making good the paltry sums by which the compromise was effected. On the equitable principles referred to, as these are 40 constantly applied between individuals, the Dominion Government had and have no right, without the consent of the Legislature and Government of Ontario, to hold the territory for the other Provinces of the Dominion. This consideration does not affect the question of what the legal boundaries of Ontario are, but does greatly strengthen the political and moral obligation of the Award being accepted by the Dominion frankly and promptly, and may be important hereafter in determining the questions which may arise between the Dominion and Ontario consequent on the delay which has occurred, and on the use made by the Dominion of the territory acquired by means of the supposed and asserted rights of this Province and otherwise.

It seems to my Advisers incredible that the Federal Government can have had all these considera-

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* Book Arb. Docs., p. 324.

† *Ib.*, pp. 20 and 21.

‡ Letter to Sir I. Rogers, 16th January, 1869. Book Arb. Docs., p. 324.

§ See Book Arb. Docs., p. 407 *et seq.*

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tions in mind when placing so much stress on the supreme "duty" of "rigidly" confining Ontario to its strictly "legal bounds," even at the expense of repudiating a solemn Award, made in good faith by arbitrators as distinguished, and as well qualified for their office, as could be found on this continent, or indeed anywhere.

The objection of the Federal Government to a settlement of the question by arbitration is further remarkable (in the view of my Advisers), because arbitration has always been a customary mode of settling questions of this very kind between two Governments.

It is scarcely necessary to illustrate so frequent an event in history, or so elementary a principle in international or municipal Law, as the settlement of disputed boundaries by reference. As early as 1697, a portion of the very territory now in dispute was by the Treaty of Ryswick made the subject of an arbitration, the parties submitting to the arbitration being no less personages than William III. of England, and Louis XIV. of France. The commissioners were "to examine and determine the rights and pretensions which either of the said kings hath to the places called Hudson Bay;" and the articles agreed to by the commissioners "shall be ratified by both Kings, and shall have the same force and vigour as if they were inserted word for word in the present Treaty." Even within the Canadian annals of this century there is a precedent, which is not without significance, for the arbitrated settlement of disputed boundaries between Provinces. In 1846, in order to adjust a boundary dispute which had prevailed since the Ashburton Treaty, between Canada and New Brunswick, Mr. Gladstone, then Secretary for the Colonies, constituted a Boundary Commission of the Attorney-General for Nova Scotia, and two officers of the Royal Engineers. A report was made defining a conventional boundary 20 as the best attainable. The documents chiefly involved in that question were, as in the question now under discussion, the Proclamation of 1763, the Treaty of Utrecht, the Quebec Act of 1774, a Governor's Commission, and contemporary Maps and State Papers. The finding of the Commission was unfavourable to the Province of Canada, and its Executive Council disputed the "justice or equity of the recommendations of the Imperial Commissioner."* In view of the controlling importance attached by the Federal authorities in the present case to the strictly legal boundaries as being those only to which attention should be directed, the reply of Earl Grey (2nd June, 1850) reads curiously. His Lordship said that "The decision of a court of justice appears unsuited to the case. The question in a legal point of view seems to turn on the words of the Quebec Act of 1774. But a tribunal could scarcely pronounce a decision which should define the whole line of separation between the Provinces. And, 30 even if it could do so, it could only interpret and follow the letter of the Act, and not adopt any line of compromise which might be most advantageous to both parties." The matter was afterwards submitted to arbitration, the Governor-General selecting one arbitrator, the Lieutenant-Governor of New Brunswick another, and the two arbitrators choosing a third. After some delay a majority Award was rendered, reaffirming in the main the report of Mr. Gladstone's Commissioners, and the Award was enacted into the Imperial Statute 14 and 15 Vic., chap. 63.

Now that you have communicated to the Government of Ontario, for the first time, the grounds on which the opposition of your Government to the Award proceeds, or is supposed to be defensible, and have thus given to this Government the opportunity of discussing the matter with your Government, my advisers are unwilling to think that the overwhelming reasons which this simple statement 40 of the facts affords for a recognition of the Award, may not even now prevail with your Government to acquiesce in the Award, and to obtain from Parliament at its present session the proper legislation, as well as to get the Legislature of Manitoba to abandon the claim which the Federal Parliament transferred to that Province, in regard to the 39,000 square miles on the westerly side of Ontario.

The transfer to Manitoba included the 7,000 square miles of territory lying south of the Height of Land, and west of the line to which the Federal authorities desire to limit this Province. I have said this territory was not claimed by the Hudson's Bay Company under their charter, nor was there any ground or pretence for so claiming it. Before 1870 it had been treated at all times, and for all purposes, as belonging to this section of Canada. As such it had, before Confederation, been the subject of grants, licenses, and other transactions on the part of the Provincial Government. So much of the territory as 50

* Sess. Papers, Canada, 1852-3, App. ZZ., p. 1.

was from time to time occupied by a white population was governed, without any question on the part of anybody, by the laws, courts and officers of Upper Canada; and since Confederation the same territory has uninterruptedly been governed by the laws, courts and officers of Ontario; it has had municipal organization as part of this Province; the Ontario District of Algona has for all purposes of the Dominion and Province been considered to include it; and Provincial money has from time to time been expended in making surveys, and in making roads, bridges, and other improvements, and in administering justice, and maintaining peace and order in the territory. The land is part of certain territory which was the subject of an Order in Council of the Government of Canada, and of a treaty by that Government with the Indians, as long ago as 1850. To this territory Mr. Ramsay, counsel for the Dominion, reported (18th March, 1873) that Ontario was equitably entitled. He justly said that "in creating the Province of Ontario, it is not possible to conceive that the Imperial Legislature intended to convey to that Province, and to the Province of Quebec, less territory than the late Province of Canada actually enjoyed. Now, it is incontestable that up to 1867 the Government of Canada *de facto* extended to the Height of Land which forms the water-shed of the water system of the St. Lawrence and the Great Lakes. . . . It would therefore seem that, in fairness to the Province of Ontario the old line of the Height of Land should be adopted as the western as well as the northern boundary of the Province of Ontario."* Thus in refusing to leave this territory with Ontario, and in transferring to Manitoba their claim to it, the Federal authorities have endeavoured to take from Ontario territory which the chosen counsel of the Dominion Government, a Queen's Counsel of the Quebec Bar, had told that Government "it is not possible to conceive that the Imperial Parliament intended" to withdraw from this Province; and to which he declared it to be "incontestable that up to 1867 the Government of Canada, *de facto* (and therefore Upper Canada, *de facto*) extended, and which, in "fairness to the Province of Ontario," it should be allowed to retain. But all these considerations have been disregarded.

The only shadow of claim which the Federal Government can have to this portion of the disputed territory appears to be under an Order of Her Majesty in Council, dated 31st July, 1880, annexing to Canada all British territory in North America not already belonging to it (except Newfoundland).^{*} And if the legal interest in the territory in question became thereby vested technically in the Dominion, it is manifest that, both under the Award and independently of it, the authorities of the Dominion should have treated their acquisition as a trust for Ontario, and should at once have transferred the territory to this Province, instead of making it over, or endeavouring to make it over, to another Province.

Your despatch proposes that Ontario should abandon the Award, and submit the question anew to the Supreme Court of Canada for adjudication. This is the mode which your despatch intimates that your Government now prefer to any other for a new litigation of the question of title. It seems to my Advisers to be remarkable that if this mode of settlement is so peculiarly appropriate and desirable as your despatch contends, the question is now made for the first time. A great and obvious difference between a submission to the Supreme Court now and a direct immediate reference to the Judicial Committee of the Privy Council, is that the former course would create years of further delay and involve great additional labour and expense; and without any advantage, as the final decision would be by the Privy Council. The proposal implies, too, that your Government contemplate that the evidence shall be taken anew, and according to the usual practice of taking evidence in ordinary cases. A suit, involving facts covering a period of nearly two centuries, and requiring documentary and other evidence from the Imperial archives in London, the archives of the Hudson's Bay Company, the Public and other Records in Paris, Washington, Albany, Quebec, Ottawa, and elsewhere, would afford unusual occasion for repeated and long-continued delays and innumerable harassing questions of procedure. If the object were delay, no better means of delaying a conclusive decision could be devised. My Government decline consenting to the submission.

The proposal for inviting one of the two Law Lords named in your despatch, or "some other

* Report of Boundary Com., Ho. Coms., Canada 1880, p. 218.

* Prefix to Dom. Statutes, 1880-81, p. ix.

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eminent English legal functionary," to come to Canada "for the purpose of hearing the evidence and deciding upon the boundary question as one of law," seems to my Advisers to stand next in order as a means of indefinite delay. In view of the objection taken by your Government to any form of arbitration, my Advisers were surprised at the proposal to submit the question to another referee, sitting alone, and without appeal, and who, though an English judge, would in this matter be acting as an arbitrator. Then it is extremely doubtful if either of the noblemen named would accept the invitation, especially in view of the time which taking the evidence might occupy; and if either were willing to accept the reference, my Advisers are of opinion that the decision of the question by any one English Judge, however exalted, would not "command general assent" to the same extent, or anything like the same extent, as the decision of three Arbitrators of such eminent ability, and so well known to our people, and standing so high in public estimation here, as Sir Edward Thornton, Sir Francis Hincks, and the late Chief Justice Harrison. It may further be observed that no English judge has jurisdiction in his own country to adjudicate on the title to an acre of land, except subject to appeal; and that this Province should voluntarily abandon the adjudication of the three Arbitrators named, in order to have another trial and decision by one English judge, without appeal, as to the title to 100,000 miles of territory, is a proposal which does not commend itself to my Advisers as one possible to entertain.

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I may refer here to the charge which you make against the Government of Ontario, of refusing to contribute any land of the Province to the construction of the Pacific Railway, while you contrast with this alleged refusal the fiduciary character which your Government hold "in regard to the various Provinces of the Dominion whose money was expended in the acquisition of the territory, and who are now largely exerting and taxing themselves for the purpose of constructing a line of railway through it;" and you also contrast with the assumed refusal of the Ontario Government the course of the Dominion in largely contributing to the work "out of the North-West Territories of the Dominion." My Government are not aware of any application to them by your Government for any contribution, in land or otherwise, to the work mentioned. My Advisers are of opinion also that in making the charge you have forgotten that the greater part of the territory referred to, and by far the more valuable part, was acquired by the Dominion through setting up the title thereto of Ontario in opposition to the Hudson's Bay Company; that so far as regards that portion of the territory which does not in law or equity belong to Ontario alone, Ontario is one of those Provinces of the Dominion to whom the North-West Territories belong, whose money has been expended in their acquisition, and whose people are taxed to construct the railway; and that, in fact, by far the larger part of the money so expended and of the taxes so imposed is contributed by the people of Ontario. It is with their money and their lands, far more than with the money or lands of any of the other Provinces, that the railway is being constructed; and why Ontario should be called on to offer a further contribution out of lands within its own bounds, towards implementing the contract entered into for this Dominion work, my Advisers fail to perceive.

The expressed object of my despatch of the 31st of December last was to ascertain officially whether your Government could not be induced, without making further unnecessary delay, to consent to some just and adequate arrangements for the Government of the country, the preservation of the timber, the granting of titles to settlers, and the recognition of an undisputed authority to enforce order and administer justice. The evils of the existing state of things in the disputed territory are already so great, and are increasing so rapidly, and it had become "so important that this Province should without further delay have peaceable and undisputed possession of whatever limits it is entitled to," that my Government were "willing, with the concurrence of the Legislature, to submit the matter to the Privy Council on condition of consent being given by the Dominion Government, and that of Manitoba, to just arrangements for the Government of the country in the meantime. Without such "provisional arrangements" my despatch stated that the Province might as well wait for the confirmation of the Award by another Parliament, as go to the expense and have the unavoidable delay of a second litigation. I therefore desired to know whether the Dominion Government were willing to agree to the provisional arrangements which had theretofore from time to time been suggested in written communications by this Government, and by the Attorney-General on their behalf, and which my

despatch repeated; and if your Government were not willing to agree to the arrangements specified, I desired to be informed what the best terms were to which your Government were prepared to agree.

With respect to provisional arrangements, my Advisers regret to find, from your despatch, that the Federal Government decline to agree to the suggestion that, "pending the dispute, the Province should have the authority of the Dominion to deal with the lands and timber as in other parts of the Province (subject to an account if the title should ultimately be decided to be in the Dominion and not in the Province):" and my advisers further learn with regret that the Federal Government decline to make any arrangement whatever as to either the timber or the lands, and even intimate that if the provisional arrangement of 26th June, 1874, which gave to the Dominion the temporary right of selling lands west of the provisional line is at an end, the effect will be held by the Federal Government to be, "to leave both parties to assert their own rights, in reference to all the questions involved"—an observation which seems to mean that the Federal Government will in that case proceed to deal at their discretion with the lands on both sides of this line, notwithstanding the dispute as to the title.

My Advisers are of opinion that no provisional arrangements can be adequate which do not (amongst other things) include just arrangements regarding the sale of lands, and the preservation of timber. Even to leave to Ontario the sole government of the country pending the dispute, while the Federal Government continue to deny to this Province the right of dealing, provisionally or otherwise, with a single mile of the territory, or a single tree growing thereon, and insist on remaining unshackled in their own dealings with both land and timber to which they have no right, would be a concession of little practical value, and entirely insufficient to justify the abandonment by this Province of the awarded rights which it possesses.

But your despatch does not even propose to leave Ontario the sole government of the territory pending dispute. My Advisers understand from the manner in which your despatch refers to the laws of Ontario, that the meaning of your proposal is, that the two Provincial Governments should have concurrent authority in the territory—an arrangement which my Advisers respectfully think would in practice be absurd and impossible. To remedy, in any adequate way, the present unhappy state of the territory, my Advisers consider it absolutely necessary that (pending the dispute) the Ontario Lieutenant-Governor in Council should, in the territory in question, have the authority which, in the public interests, is exercised in the other parts of this Province, and is no less needed in this unsettled territory. So, the Legislature of Ontario should be at liberty (pending the dispute) to legislate for the territory from time to time, as its needs and interests require. My Advisers are of opinion that for the peace and order of the territory, the due administration of justice, the development of the country, and the interests of settlers and others, nothing short of an unqualified application to the territory of all the laws of Ontario, including the authority of its Government and Legislature, would accomplish the objects in view; and my Advisers entirely fail to see that any legitimate purpose would stand in the way of such a provisional arrangement. As observed in my former despatch, it is not to be supposed that the Province of Manitoba, with its small revenue, and with the enormous demands upon it for the government and development of its undisputed territory, can desire the further expense and responsibility of the temporary government of 39,000 miles of disputed territory, which may never be theirs, and to which such of the people of Manitoba as may take the trouble to learn the facts must feel it not improbable that Ontario has the right.

If a provisional arrangement were made, and confirmed by proper legislation, for the government of the country by Ontario, without dispute, until the settlement, somehow, of the question of title, there might not be excessive embarrassment or inconvenience in giving effect to the suggestion "that all Justices of the Peace residing in the disputed territory should receive commissions from both Ontario and Manitoba;" or, perhaps, in giving effect to the further suggestion, "that all the judges of the two Provinces should be put in a joint commission as regards the disputed territory," if these concessions should be required by the authorities of the Dominion and of Manitoba; but the details necessary for carrying out these suggestions would require careful consideration by all parties concerned.

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With reference to your observations on the enlargement of the boundaries of Manitoba by the Act of last session, this Government have made no complaint of the extension of that Province by the addition to it of undisputed territory. On the contrary, in my despatch of the 15th March last, it was observed that "so far as the territory to be comprised within the limits of the Province of Manitoba is clearly and indisputably within the jurisdiction of the Parliament of Canada, my Government rejoice at the extension of that Province, as affording a wider scope for the energies of its people and Government, and as giving to a large number of settlers in Keewatin and North-West territories the direct benefit of Provincial and Municipal Government. But while the extension of the boundaries in directions as to which there is no dispute is matter of congratulation," the transfer of the disputed territory to that Province was strongly objected to, for reasons there set forth. A hope was expressed, which 10 the result proved to be vain, that, in view of the representations made in the despatch, your Government might "even yet see fit to modify the measure before Parliament as to deprive it of its objectionable features, while still conceding all necessary advantages to the Province of Manitoba, in whose rapid progress and development this Province, as a portion of the Dominion, feels profound satisfaction."

The wrong which your Act of last session did, consisted, not in adding to the Province of Manitoba nearly 100,000 miles of undisputed territory, but in making the further unnecessary and objectionable addition of 39,000 miles of territory not only disputed, but in fact belonging to this Province. This feature of your Act greatly complicated matters, inasmuch as the Government of that Province has since assumed to exercise jurisdiction in the disputed territory, with the concurrence and 20 approval of your Government; and inasmuch also as the consent of the Government and Legislature of Manitoba became thenceforward necessary to any arrangements which the Federal authorities and those of Ontario might see fit to make, whether for determining the question of right, or for providing for the government of the country pending the dispute. It is satisfactory to learn from your despatch that your Government are confident that the Government and Legislature of Manitoba would concur in any arrangement of which your Government may approve. But if the Federal Government will make no just provisional arrangement in regard to the lands and timber; and continue, notwithstanding the dispute, to deal with these as subject to their own discretion; and yet demand that this Province abandon the Award, and submit to a new litigation of the question of title, as the condition of making or procuring the other just and necessary provisional arrangements proposed, my Advisers are of 30 opinion, and feel bound frankly to state it, that Ontario should not and will not submit to a demand which they cannot but consider most unreasonable.

I am advised to remind you that Ontario with its awarded boundaries has not so large an area as either Quebec or Keewatin; or an area much exceeding the undisputed territory given to Manitoba; or much more than half the area of British Columbia.

Your despatch seems to intimate that no licenses have been issued to cut timber east of the provisional boundary line agreed to in 1874 (you mention the year 1870, it is presumed, by mistake); and you add, that information regarding all permits, licenses, and other transactions would be readily furnished to the Government of Ontario at any time. This Government did not suppose that any licenses had been issued by the Federal Government to cut timber east of the provisional line, and will 40 be glad to be furnished with the information promised in respect to their transactions of any kind in this part of the disputed territory.

My Advisers regret that your Government give no information, and do not apparently offer any, with respect to transactions affecting that important part of the disputed territory which lies west of the provisional line, though such information has been repeatedly requested on behalf of the Ontario Government. My Advisers once more respectfully insist that, whether the title of Ontario to the territory is disputed or admitted, and whether the provisional agreement of 1874 is in force or at an end, the Government and people of Ontario are entitled to full information respecting these transactions, including (as my despatch of the 31st December mentioned) copies of all grants, licenses, permits, regulations, instructions, letters, documents, and papers of every kind relating to the same. 50

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My Advisers regret also that your Government have not thought fit to give any answer to that part of my despatch which referred to the reported grant to the Pacific Railway Company of land for their line of road through the disputed territory, and (for timber purposes) a breadth of twenty miles on each side of this road throughout its whole length, or to my request for copies of Orders in Council and other documents, if any, relating to the transaction.

Your despatch refers to an interview of Sir John Macdonald and the Minister of Justice with the Attorney-General on the 21st November last. The Attorney-General considers that there are several (no doubt unintentional) inaccuracies in what is said or implied in your despatch as to this interview, and as to what took place then and afterwards. I do not deem it necessary to refer to any of these inaccuracies further than to observe that the interview was not "sought" by the Ministers named, but by the Attorney-General, in letters to Sir John Macdonald and Sir Alexander Campbell respectively; and that the Attorney-General's communication to the Minister of Justice with respect to the proposed reference to Lord Cairns or Lord Selborne was made on the 30th of the same month, and not at a more recent date. But whatever may or may not have been said at that interview or otherwise, your despatch states what your Government desire now with a view to the settlement of the dispute, and what provisional arrangements your Government are willing now to make; and, while my Government do not approve of either of the two modes of settlement which you prefer in case there should be a new litigation, and though they regard the provisional arrangements which you mention as entirely insufficient to justify (for the sake of such arrangements) a recommendation to the Legislature of Ontario to abandon any of the awarded rights of the Province, and at this late date to voluntarily enter upon a new litigation on the question of Title; still, my Government trust that the Federal authorities will recognize the duty of making the provisional arrangements required, without attempting to exact from the Province as a condition, the abandonment of its awarded rights, and a new litigation of the question of Title.

The evils which the territory is enduring in consequence of the dispute should surely be reduced to a minimum by every means in the power of the Federal authorities. The dispute is by them; the evils are of their creating; and no one can justify leaving this immense territory without settled laws and settled government. Ontario has a special interest in this object, apart from the value of the territory, its lands and mines and timber, as many of the people of the Province have gone there to settle or to trade, and most desire to go. Some local improvements, too, which Ontario might at once undertake, would serve to open and develop important sections of the country. Municipal organization is already necessary in some localities, and our people in the territory desire the extension to it of our school system, and desire that assistance from our School Funds which our people in the rest of the Province receive. It is with the laws of this Province that the settlers are familiar; the Province has organized courts in the territory, and has appointed officers to administer our laws. My Advisers hope that, without attempting to exact from the Province conditions to which its representatives cannot agree, the Dominion authorities will at last take the "measures necessary to prevent confusion in these important respects;" will, as regards criminal matters, supply by the proper legislation the deficiencies pointed out by this Government in past communications with respect to the Dominion Statute 43 Vic., chap. 36; and will, as regards matters of Provincial jurisdiction, obtain the consent of Manitoba to the legislation immediately required for placing beyond question the subjection of the territory to all the laws of Ontario, until the termination of the dispute which the Dominion authorities have raised. My Advisers respectfully suggest that the simplest and best way of accomplishing the last of these necessary objects would be, by obtaining from the Legislature of Manitoba an Act consenting to the repeal of so much of the Act of last Session as had the effect of assigning to that Province the claim of the Dominion to 39,000 square miles of the disputed territory, and by procuring from the Federal Parliament an Act giving effect to such consent, and containing the other necessary provisions for securing the important objects mentioned.

But I am advised that no provisional arrangement would be so satisfactory, or so beneficial to the development and settlement of the territory, the maintenance of order, and the due administration of

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justice therein, as the just course of obtaining, without further delay, by proper legislation from the Federal Parliament and the Legislature of Manitoba, the recognition of the Award as a final adjustment of the boundaries of this Province. The evils already endured are beyond recall, but the continuance or aggravation of them from this time forward is in the hands of your Government.

I earnestly commend all these considerations to the best attention of the Federal Government.

I have the honour to be, Sir,

Your obedient servant,

J. B. ROBINSON.

To the Honourable J. A. Mousseau,
Secretary of State, Ottawa.

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III.

Canadian Documents

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CANADIAN TREATY WITH THE INDIANS OF LAKE SUPERIOR, 1850.

REPORT OF A COMMITTEE OF THE EXECUTIVE COUNCIL (CANADA), APPROVED BY THE GOVERNOR-GENERAL ON THE 11TH JANUARY, 1850, AUTHORIZING NEGOTIATIONS WITH THE INDIANS.

The Committee of the Executive Council have had under consideration, on your Excellency's reference, a memorandum presented to the Honourable Colonel Bruce, Superintendent Indian Department, from the Hon. W. B. Robinson, on behalf of certain Indian Chiefs lately arrested at Sault Ste. Marie, on a charge of having been implicated in the attack on the property of the Quebec Mining Company, and who are represented to be now in Toronto, anxious to obtain assistance to return to their homes, as well as an assurance that the Government will speedily take measures to adjust the claims of the Indians for compensation, on their renouncing all claims to the occupation of the lands in the vicinity of Lakes Huron and Superior, and portions of which have been occupied for mining purposes.

The Committee of Council having reference to the proceedings already taken with a view of adjusting the claims of the Indians, and also to a late report on the subject from the Commissioner of Crown Lands, which will form the subject of a separate minute, are respectfully of opinion, that a sum not exceeding £100 be advanced to the Indians to enable them to return; and the Committee are further of opinion that Mr. Robinson be authorized on the part of the Government to negotiate with the several tribes for the adjustment of their claims to the lands in the vicinity of Lakes Superior and Huron, or of such portions of them as may be required for mining purposes.

The Committee of Council are further of opinion that Mr. Robinson should be instructed to communicate to the Indians the fact of his appointment, and that it is his intention to proceed to Lake Superior at such time as may be found most convenient for meeting with the Chiefs; and that he be likewise instructed to impress on the minds of the Indians, that they ought not to expect excessive remuneration for the partial occupation of the territory heretofore used as hunting grounds, by persons who have been engaged in developing sources of wealth which they had themselves entirely neglected.

The Committee of Council are further of opinion, that Mr. Robinson should warn the Indians against listening to the counsels of any one who may advise them to resort to criminal proceedings, which will not only render the parties participating in them amenable to the laws of the Province, but likewise entail expenses which will necessarily diminish the fund from which alone the means of affording compensation can be obtained. The Commissioner of Crown Lands will advance to Mr. Robinson the sum required, which must form a charge against any moneys received on account of the mining locations.

THE TREATY.

This agreement made and entered into on the seventh day of September, in the year of our Lord 1850, at Sault Sainte Marie, in the Province of Canada, between the Honourable William Benjamin Robinson, of the one part, on behalf of Her Majesty the Queen, and Joseph Peaudechat, John Ininway, Mishemuckqua, Totomenai, Chiefs, and Jacob Wasseba, Ah Mutchwagabon, Michel Shebageshiek, Manitoshainse and Chigenaus, principal men of the Ojibbeway Indians inhabiting the northern shore

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of Lake Superior, in the said Province of Canada, from Batchewanaung Bay to Pigeon River, at the western extremity of said lake, and inland throughout that extent to the height of land which separates the territory covered by the Charter of the Honourable the Hudson's Bay Company from the said tract, and also the islands in the said lake within the boundaries of the British possessions therein, of the other part;

Witnesseth, that for and in consideration of the sum of £2,000 of good and lawful money of Upper Canada, to them in hand paid, and for the further perpetual annuity of £500, the same to be paid and delivered to the said Chiefs and their tribes at a convenient season of each summer, not later than the first day of August, at the Honourable the Hudson's Bay Company's posts of Michipicoten and Fort William, they, the said Chiefs and principal men, do freely, fully and voluntarily surrender, cede, grant¹⁰ and convey unto Her Majesty, her heirs and successors, for ever, all their right, title and interest in the whole of the territory above described, save and except the reservations set forth in the schedule hereunto annexed, which reservation shall be held and occupied by the said Chiefs and their tribes, in common, for the purposes of residence and cultivation. And should the said Chiefs and their respective tribes at any time desire to dispose of any mineral or other valuable productions upon the said reservations, the same will be, at their request, sold by order of the Superintendent-General of the Indian Department for the time being, for their sole use and benefit and to the best advantage.

And the said William Benjamin Robinson, of the first part, on behalf of Her Majesty and the Government of this Province, hereby promises and agrees to make the payments as before mentioned, and further, to allow the said Chiefs and their tribes the full and free privileges to hunt over the ter-²⁰ritory now ceded by them, and to fish in the waters thereof, as they have heretofore been in the habit of doing, saving and excepting only such portions of the said territory as may from time to time be sold or leased to individuals, or companies of individuals, and occupied by them with the consent of the Provincial Government.

The parties of the second part further promise and agree that they will not sell, lease or otherwise dispose of any portion of their reservations without the consent of the Superintendent-General of Indian affairs being first had and obtained; nor will they at any time hinder or prevent persons from exploring or searching for minerals or other valuable productions in any part of the territory hereby ceded to Her Majesty, as before mentioned. The parties of the second part also agree, that in case the Government of this Province should, before the date of this agreement, have sold or bargained to sell³⁰ any mining locations or other property, on the portions of the territory hereby reserved for their use and benefit, then, and in that case, such sale or promise of sale shall be perfected, if the parties interested desire it, by the Government, and the amount accruing therefrom shall be paid to the tribe to whom the reservation belongs.

The said William Benjamin Robinson on behalf of Her Majesty, who desires to deal liberally and justly with all her subjects, further promises and agrees that in case the territory hereby ceded by the parties of the second part shall at any future period produce an amount which will enable the Govern-³⁰ment of this Province, without incurring loss, to increase the annuity hereby secured to them, then and in that case the same shall be augmented from time to time; provided, that the amount paid to each individual shall not exceed the sum of one pound, provincial currency, in any one year, or such further sum as Her Majesty may be graciously pleased to order; and provided, that the number of Indians entitled to the benefit of this Treaty, shall amount to two-thirds of their present number (which is 1,240) to entitle them to claim the full benefit thereof; and should the numbers at any future period not amount to two-thirds of 1,240, the annuity shall be diminished in proportion to their actual numbers.

Schedules of Reservations made by the above named and subscribing Chiefs and Principal Men.

First.—Joseph Peaucehat and his tribe,—The reserve to commence about two miles from Fort William (inland), on the right bank of the River Kimintiquin; thence westerly six miles parallel to the shores of the lake; thence northerly five miles; thence easterly to the right bank of the said river, so as not to interfere with any acquired rights of the Honourable the Hudson's Bay Company.⁵⁰

Second.—Four miles square at Gros Cap, being a valley near the Honourable Hudson's Bay Company's Post of Michipicoten, for Totomenai and tribe.

Third.—Four miles square on Gull River, near Lake Nipigon, on both sides of said river, for the Chief Mishemuckgun and tribe.

Signed, sealed and delivered at Sault
Sainte Marie, the day and year first
above written, in presence of—

GEO. IRONSIDE, S. I. AFFAIRS,
ARTHUR P. COOPER, Cap. Com. Rifle Brigade,
10 H. N. BALFOUR, 2nd Lieut., Rifle Brigade,
JOHN SWANSTON, C. F. Honble. Hudson's Bay Co.,
GEO. JOHNSTON, Interpreter.
J. W. KEATING.

W. B. ROBINSON,
JOSEPH PEAUDECHAT,
JOHN INISWAY,
MISHEMUCKQUA,
TOTOMENAI,
JACOB WASSEBA,
AH MUTCHWAGADON,
MICHEL SHIBAGESHICK,
MANITON SHAINSE,
CHIGENSAUS.

JOINT
APPENDIX.
Sec. III.
Canadian
Documents,
and Correspondence
between
the Colonial
Secretary and
the Hudson's
Bay Company,
prior to the
surrender of
the Company's
claims.

STATEMENT OF LANDS PATENTED BY THE PROVINCE OF CANADA, BEFORE CONFEDERATION, ON NORTH SHORE OF LAKE SUPERIOR, WEST OF LONGITUDE 88° 55'.

Locality.	Date of Patent.	Area. (Acres.)
20 British North American Co., Spar Island and Tract on Main Shore.....	6th April, 1853	6,400
Montreal Mining Co., opposite Victoria Island.....	8th September, 1856	6,400
Montreal Mining Co., North-East Shore Thunder Bay.....	10th " 1856	6,400
Montreal Mining Co., Pigeon River.....	13th " 1856	6,400
Location North of Neebing.....	4th January, 1864	400
" " "	26th " 1864	200
" " "	28th " 1864	200
Lot No. 15, on Thunder Bay.....	3rd November, 1864	400
Lot No. 1, on Thunder Bay.....	11th " 1864	400
30 Block A, on Current River, Thunder Bay.....	29th March, 1865	400
Lot No. 2, North of Neebing.....	29th November, 1865	400
Location North of Neebing.....	27th February, 1866	200
Locations Nos. 1, 2, 3, 4, 5, 6, 8, Thunder Bay (Herrick's Survey).....	11th March, 1867	1,930
Location No. 7, Thunder Bay (Herrick's Survey).....	25th April, 1867	171
Locations Nos. 1, 2, 3, 4, Thunder Bay (Savigny's Survey)...	19th June, 1867	1,600
Locations Nos. 8, 9, 10, 11, 12, 13, Thunder Bay (Savigny's Survey).....	28th June, 1867	1,680
Lots in Township of Neebing.....	8th July, 1863	400
40 " " "	4th January, 1864	100
" " "	22nd June, 1866	100
" " "	20th August, 1866	100
" " "	30th August, 1866	312
" " "	3rd September, 1866	60
" " Paipoonga.....	14th November, 1864	173

Lands patented by Canada, west of the due north line, 1853-1866.

JOINT APPENDIX. STATEMENT OF LANDS PATENTED BY THE PROVINCE OF CANADA, ETC.—(Continued.)

Sec. III. Canadian Documents and Correspondence between the Colonial Secretary and the Hudson's Bay Company, prior to the surrender of the Company's claims.	Locality.	Date of Patent.	Area.
	Lots in Township of Paipooonge.....	20th December, 1866	126
	" " "	29th April 1867	106
	" Town Plot of Fort William.....	29th December, 1865	1½
	" " "	12th September, 1866	½
	Total No. of Acres.....		35,059

Certified to be correct,

THOS. H. JOHNSON,
Assistant Commissioner.

10

THOMAS DEVINE,
Deputy Surveyor-General.

DEPARTMENT OF CROWN LANDS,
TORONTO, November 15th, 1876.

LICENSES TO MINE ETC., ON PIGEON RIVER, WEST OF LAKE SUPERIOR, GRANTED BY THE PROVINCE OF CANADA.

LICENSES GRANTED BY THE PROVINCE OF CANADA, PRIOR TO CONFEDERATION, TO EXPLORE AND TO MINE, OR QUARRY, FOR METALS, MINERALS, ETC., ON THE NORTHERLY SHORE OF LAKE SUPERIOR —THE WESTERN BOUNDARY OF THE TERRITORY COVERED BY THE LICENSES, RESPECTIVELY, BEING PIGEON RIVER.

20

LICENSE.	DATE.
Wharton Metcalfe.....	22nd March, 1854
James Adam.....	22nd March, 1854
Peter Mitchell.....	13th June, 1854
Asa Fowls.....	13th June, 1854
Thomas Daly.....	2nd August, 1855
R. R. Nelson.....	2nd August, 1855
Charles Kemball.....	2nd August, 1855
Edward H. Hawk.....	2nd August, 1855
J. Van Etten.....	3rd August, 1855
Louis M. Oliver.....	3rd August, 1855
John McMurrich.....	23rd July, 1858
John McIntyre.....	5th July, 1860
Colin Rankin.....	3rd August, 1860

30

DEPARTMENT OF CROWN LANDS,
TORONTO, 23rd Nov., 1877.

Examined,
T. DEVINE,
D.S.G.

THOS. H. JOHNSON
Assist. Commissioner.

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Continued.)

Area.
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106
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1 1/4
35,059

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20

FORM OF LICENSE*

PROVINCE OF CANADA.

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Canadian
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and Correspondence
between
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Secretary and
the Hudson's
Bay Company,
prior to the
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the Company's
claims.
Licenses
granted by
Canada, west
of the due
north line,
1854-1860.

LICENSE TO EXPLORE FOR METALS, MINERALS, ETC., ON THE NORTHERLY SHORE OF LAKE SUPERIOR.

R. R. Nelson, of _____ having paid into this Office the sum of twenty-five pounds, by the hands of *Mr. W. H. Jones*, (being the authorized charge for this License), is hereby permitted to explore and examine, in accordance with the General Order in Council, dated 21st September, 1853, within the section of country situated between *Sault Sainte Marie* and *Pigeon River*, on the Shore of *Lake Superior* and extending *Ten* miles in a northerly direction, during a period of six months, from the date hereof, and to mine or quarry for copper ore, lead, iron, tin, marble, gypsum, 10 earths or minerals, upon any unlocated and unoccupied lands within that section of country, and not falling within any Indian or Public Reserve, and to select and take possession of a Tract not exceeding in extent Four Hundred Acres, and of the form of forty chains in front by one hundred chains in depth. And subject to the said *R. R. Nelson* reporting accurately his discovery, and the selection he has made, to the Commissioner of Crown Lands, within the said period of six months; and furnishing at the same time a Map and Report thereof, together with an affidavit by the License holder and some other credible person proving that no counter occupation or workings exist.

This License to remain in force for the term of two years, and to entitle the party named therein to purchase the Tract he may select; paying the consideration money in one sum, at the rate of seven shillings and six pence per acre, within that period. Or failing to do so, he shall be regarded as having 20 abandoned such right to purchase.

Until a purchase be completed, the License holder shall not convey from the Location which he selects, any copper ore, lead, iron, tin, marble, gypsum, earths or minerals, excepting such specimens as may be necessary for testing the quality and value thereof; nor shall he, until a purchase be completed 20 or remove any timber from the location.

Upon a selection being made, the subjoined Certificate of Location will be filled up.

JOSEPH CAUCHON,
Com. Cr. Lands.

Crown Lands Department,
Quebec, 2nd August, 1855.

30 No. 9.

I CERTIFY that *R. R. Nelson*, mentioned in the preceding License, to explore for metals, minerals etc., having declared his selection under its provisions, and filed the required affidavits, has been entered on the map of this office for a Mining Tract of 400 acres, situated at *Thunder Bay*, and on the north shore thereof, the outlines of which, pending an actual survey, are calculated by the Office Maps, as follows, that is to say: *The southeast angle of the Tract being about seven miles north-easterly from the mouth of the Rivière au Courant, in north latitude 48° 29' 30" and west longitude 49° 16' 40", on Bayfield's Chart of Lake Superior. The Tract being forty chains in perpendicular breadth by one hundred chains in mean depth, the lateral lines running due north and the rear lines at right angles thereto.*

JOSEPH CAUCHON,
Com. Cr. Lands.

40 Crown Lands Department,
Toronto, 30th January, 1856.

* Book "Mining Licences," Crown Lands Department, Toronto, p. 9. The written part of the License is here given in italics: the rest composes the printed form of the Department.

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mer.

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*Canadian
Inventions
and there-
spondence
between
the Colonial
Secretary and
the Hudson's
Bay Company,
prior to the
surrender of
the Company's
claims.*

*Licenses
granted by
Canada, west
of the true
north line,
1834-1860.*

ORDER IN COUNCIL REFERRED TO IN THE FOREGOING LICENSE.

In Council, September 21, 1853.

On the communication from the Crown Land Department, dated 15th September, instant, representing that the existing system, relative to the allotment of mining tracts, not having realized the anticipations formed by the Government of the period of their promulgation, nor, on the other hand, enabled individuals desirous of engaging in mining pursuits to effect their objects, without compelling them to purchase locations of so extensive an area as to occasion a needlessly large expenditure of capital on acquiring a right to explore and mine where the indications were favourable, it is respectfully submitted by the Department whether it may not be desirable, in substitution of the system laid down in the Orders in Council of 18th April, 1846, 9th May, 1846, and 7th October, 1846, to devise regulations, combining with a right to explore, during a limited period, on favourable terms, the privilege of purchasing tracts of very moderate extent, provided the explorations prove satisfactory: 10

The Committee recommend that on payment into the hands of the Commissioner of Crown Lands of the sum of twenty-five pounds, that officer be permitted to issue a license to any individual, authorizing him to explore, upon any unoccupied lands within the limits of any such country, or section of country, as he may desire to be inserted, situate within the boundaries of Upper Canada, for copper, lead, iron, tin, marble, gypsum, earth or minerals. Such license to remain in force for a period of two years, and to authorize the individual in whose favour it issued to take possession of a tract not exceeding four hundred acres, and not already occupied by any other person—such tract to be in the proportion of forty chains front by one hundred chains in depth. The license holder to report his discovery and selection accurately, by letter and map, within six months from the issue of his license, accompanied by an affidavit made by himself and some other credible person, proving that no counter occupation or workings exist. 20

And at the expiration of the said term of two years, during which the license shall have force, he shall complete a purchase, paying the consideration money in one sum, at the rate of seven shillings and six pence per acre, or failing to do so he shall be regarded as having abandoned such right to purchase.

Certified,

WM. H. LEE.

CORRESPONDENCE AND DOCUMENTS.

THE SECRETARY OF STATE FOR THE COLONIES* TO THE GOVERNOR-GENERAL.†

DOWNING STREET, 4th December, 1856.

*Correspond-
ence and
Documents;
Colonial Sec-
retary to Gov-
ernor-Gener-
al, 4th Dec.,
1856.*

SIR,—I am desirous of informing you, at the earliest period, of certain important questions which have recently been raised respecting the affairs of the Hudson's Bay Company in British North America, and of the steps which Her Majesty's Government have in contemplation regarding them.

You are aware that the Hudson's Bay Company claim, under the charter of 1670 and the various Acts of Parliament which they consider to have subsequently recognized it, rights of proprietorship, exclusive trade, taxation and government, over all the regions under British dominion watered by streams flowing into Hudson's Bay. The extent and ground of this claim are defined in the "Statement of Rights" printed in the annexed Parliamentary paper, and in the accompanying map.

The Hudson's Bay Company also claim, and actually exercise rights of exclusive trade although not the ownership of the soil, over all the territory comprised in a certain license to trade, granted in the year 1838 by the Crown under the provisions of the Act, "for regulating the fur trade," 1 and 2 George IV., cap. 66, of which license, copy is also annexed to this despatch. 40

It has been intimated to me on the part of the Hudson's Bay Company, that as their license expires in 1859, and as a very long period is required before any important change of arrangements can be noti-

* Hereinafter referred to as the Colonial Secretary.

† *Sess. Papers, Canada, 1857, Vol. 15, No. 17.*

fied and acted on throughout the vast and distant regions affected by it, it will be very desirable that the views of Her Majesty's Government and of Parliament, as to the renewal of the license, should be ascertained as early as possible.

Her Majesty's Government have therefore determined on bringing the whole subject under the investigation of a Committee of the House of Commons at the earliest convenient time. The enquiry will be mainly directed to the question of the renewal of the license; but it must incidentally embrace the general position and prospects of the Hudson's Bay Company.

As many points may arise in the course of this enquiry which may affect the interests of Canada, I have to instruct you to consider, with the advice of your Council, the question whether it may be desirable to send witnesses to appear before the Committee, or in any other manner to cause the views of the Provincial Government, and the interests of the Canadian community, to be represented before this Committee.

I have, etc,

H. LABOUCHERE.

Governor Sir E. Head, Bart, etc., etc.

JOINT APPENDIX.
Sec. III.
Canadian Documents, and Correspondence between the Colonial Secretary and the Hudson's Bay Company, prior to the surrender of the Company's claims.
Correspondence and papers, 1854-7.

MINUTE OF COUNCIL, CANADA, DATED 17th JANUARY, 1857, APPROVED BY THE GOVERNOR-GENERAL.*
The Committee of Council have read with great satisfaction the despatch of the Secretary of State for the Colonies, of the 4th of December last, on the subject of the Hudson's Bay Company's occupation of the great north-western territory of America.

Order in Council (Can.), 17th January, 1857.

They rejoice that the important position and advantages of that great portion of the continent have received such prominent attention from the Imperial Government, and are to undergo the examination and consideration of a Committee of the House of Commons in England.

The Committee desire to urge the importance of ascertaining the limits of Canada in the direction of the territory over which the Hudson's Bay Company claim jurisdiction. The general feeling here is strongly that the Western boundary of Canada extends to the Pacific Ocean.

In this, or in any view, the tracing and fixing on the ground the line of separation between the United States and these territories of the north-west, is of great importance. The rapid settlement of Minnesota, shortly to be admitted a State of the American Union, renders this the more necessary, for as civilization approaches the boundary, so will be increased the difficulty of maintaining the distinction between the rights of the two nations on the frontier.

Already the Committee have reason to believe that difficulties in this respect have occurred, or at least have been threatened, and the importance cannot be underrated of early guarding against any such.

The Committee are most anxious that Canadian interests should be properly represented before the proposed Committee of the House, and that opportunity should be afforded for carefully and closely watching any evidence that may be adduced before that body; and they will take the earliest occasion of suggesting to your Excellency the manner in which they conceive this can be best accomplished. Situated as Canada is, she necessarily has an immediate interest in every portion of British North America, and the question of the jurisdiction and title claimed by the Hudson's Bay Company is to her paramount of importance.

REPORT OF A COMMITTEE OF THE EXECUTIVE COUNCIL (CANADA), DATED 16th FEBRUARY, 1857, APPROVED BY THE GOVERNOR-GENERAL.*

In furtherance of the Order in Council of the 27th January ultimo, directing the appointment of a Special Agent to proceed to England to represent Canadian rights and interests before the proposed Committee of the House of Commons, on the subject of the Hudson's Bay Territory, the Committee respectfully recommend that the instructions to be given to such Agent for his guidance in the matter referred to, be as follows:

Order in Council (Can.), 16th February, 1857.

*Sess. Papers, Canada, 1857, Vol. 15, No. 17.

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*Canadian
Instruments,
and Corre-
spondence
between
the Colonial
Secretary and
the Hudson's
Bay Company,
prior to the
surrender of
the Company's
claims.*

"The fact that a Parliamentary Committee will probably hear evidence and report to the House of Commons, on the subject of the Hudson's Bay Territory, makes it impossible for His Excellency to convey to you instructions which are not in themselves more or less vague.

"His Excellency cannot anticipate the nature of the evidence to be given, or forestall the conclusion to be arrived at by such a Committee. Even after the Committee shall have reported, the course likely to be taken by Parliament or by Her Majesty's Government can only be conjectured.

"You will not, therefore, expect to receive instructions of a very definite character, but His Excellency has full and complete confidence in your knowledge and discretion, and he confides this mission to you the more readily, because your position in the country is such as to imply an entire estrangement from all the ordinary ties of local or party politics.

"Immediately on your arrival in London, you will place yourself in communication with the Right Honourable the Secretary of State for the Colonies (to whom these instructions have been communicated), and as soon as any Parliamentary Committee on the subject of the Hudson's Bay Company or territory is constituted, you will take steps for offering to afford all information in your power relating to the interests or claims of Canada.

"You will consider it as part of your duty to watch over those interests by correcting any erroneous impressions, and by bringing forward any claims of a legal or equitable kind, which this Province may possess on account of its territorial position or its past history.

Order in Council (Can.),
16th February,
1857.

"You will not consider yourself as authorized to conclude any negotiation or to assent to any definite plan of settlement affecting Canada, without reporting the particulars of the same, and your own views thereon, to His Excellency in Council.

"His Excellency has full and complete confidence in the justice and consideration of Her Majesty's Government, and he is sure that the interests and feelings of Canada will be consulted, so far as is consistent with right and justice.

"The people of Canada desire nothing more.

"His Excellency feels it particularly necessary that the importance of securing the north-west territory against the sudden and unauthorized influx of immigration from the United States side, should be strongly pressed. He fears that the continued vacancy of this great tract, with a boundary not marked on the soil itself, may lead to future loss and injury, both to England and Canada. He wishes you to urge the expediency of marking out the limits, and so protecting the frontier of the Lands above Lake Superior, about the Red River, and thence to the Pacific, as effectually to secure them against violent seizure or irregular settlement, until the advancing tide of emigrants from Canada and the United Kingdom may fairly flow into them, and occupy them as subjects of the Queen on behalf of the British Empire.

"With these objects in view, it is especially important that Her Majesty's Government should guard any renewal of a license of occupation (should such be determined on), or any recognition of rights in the Company, by such stipulations as will cause such license or such rights not to interfere with the fair and legitimate occupation of tracts adapted for settlement.

"It is unnecessary of course, to urge in any way the future importance of Vancouver's Island, as the key to all British North America, on the side of the Pacific, situated as it is between the extensive seaboard of Russian America and the vast territory in the hands of the United States.

"His Excellency cannot foresee the course which a Committee of the House of Commons may see fit to pursue in the proposed enquiry, or determine beforehand on what points evidence may be required.

"At any moment, however, His Excellency will be ready to attend to your suggestions, and supply such information, either by documentary evidence, or by witnesses from Canada, as you think necessary, and he may be able to send over.

"You will, of course, act upon such instructions as you may from time to time receive.

Certified.

WM. H. LEE, C.E.C.

THE ASSISTANT PROVINCIAL SECRETARY (CANADA) TO CHIEF JUSTICE DRAPER.

SECRETARY'S OFFICE,

TORONTO, 20th February, 1857.

Sir,—I have the honour, by command of His Excellency the Governor-General to communicate to you hereby His Excellency's instructions for your guidance in connection with your mission to England, as the Special Agent appointed to represent Canadian rights and interests, before the proposed Committee of the House of Commons, on the subject of the Hudson's Bay Territory.

I am to premise, however, that as it is impossible to anticipate the nature of the evidence that may be taken, or the conclusion that may be arrived at by the Committee, or the course which Parliament or Her Majesty's Government may think proper to adopt on the report of the Committee, it is not in His Excellency's power to convey to you at present any instructions of a precise or definite character. His Excellency has, however, entire confidence in your knowledge and discretion, and he has the more readily entrusted the important mission to you, inasmuch as your high position in the Colony removes you from all the ordinary influences of local or party consideration.

Immediately on arriving in London you will place yourself in communication with the Right Honourable the Secretary of State for the Colonies (to whom these instructions have been communicated); as soon as any Parliamentary Committee on the subject of the Hudson's Bay Company or Territory is constituted, you will take steps for offering to afford all information in your power relating to the interests or claims of Canada.

20 You will consider it as part of your duty to watch over those interests, by correcting any erroneous impressions, and by bringing forward any claims of a legal or equitable kind, which this Province may possess on account of its territorial position or its past history.

You will not consider yourself as authorized to conclude any negotiations, or to assent to any definite plan of settlement affecting Canada, without reporting the particulars of the same, and your own views thereon, to His Excellency in Council.

His Excellency has full and complete confidence in the justice and consideration of Her Majesty's Government, and he is sure that the interests and feelings of Canada will be consulted so far as is consistent with right and justice. The people of Canada desire nothing more.

His Excellency feels it particularly necessary that the importance of securing the north-west territory 30 against the sudden and unauthorized influx of immigration from the United States' side, should be strongly pressed.

He fears that the continued vacancy of this great tract, with a boundary not marked on the soil itself, may lead to future loss and injury, both to England and Canada. He wishes you to urge the expediency of marking out the limits, and so protecting the frontier of the lands above Lake Superior, about the Red River, and thence to the Pacific, as effectually to secure them against violent seizure, or irregular settlement, until the advancing tide of immigrants from Canada and the United Kingdom may fairly flow into them, and occupy them as subjects of the Queen, on behalf of the British Empire.

With these objects in view, it is especially important that Her Majesty's Government should guard any renewal of a license of occupation (should such be determined on), or any recognition of rights in 40 the Company, by such stipulations as will cause such license, or such rights, not to interfere with the fair and legitimate occupation of tracts adapted for settlement.

It is unnecessary, of course, to urge in any way the future importance of Vancouver's Island, as the key to all British North America, on the side of the Pacific, situated as it is, between the extensive seaboard of Russian America, and the vast territory in the hands of the United States. His Excellency cannot foresee the course which a Committee of the House of Commons may see fit to pursue in the proposed enquiry, or determine beforehand on what points evidence may be required. At any moment,

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Canadian Documents,
and Correspondence
between
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Secretary and
the Hudson's
Bay Company,
prior to the
surrender of
the Company's
claims.

Provincial
Secretary
(Canada),
to G. J.
Draper,
20 February,
1857.



MICROCOPY RESOLUTION TEST CHART

(ANSI and ISO TEST CHART No. 2)



APPLIED IMAGE Inc

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JOINT
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*Canadian
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however, His Excellency will be ready to attend to your suggestions, and supply such information, either by documentary evidence, or by witnesses from Canada, as you may think necessary, and he may be able to send over. You will, of course, act upon such further instructions in the premises as His Excellency may from time to time cause to be communicated to you.

I have, etc.,

E. A. MEREDITH,
Assistant Secretary.

The Hon. Mr. Chief Justice Draper, C.B., etc., etc.,
Toronto.

MEMORANDUM OF THE HON. JOSEPH CAUCHON, COMMISSIONER OF CROWN
LANDS, CANADA, 1857.*

10

Memorandum
of the Com-
missioner of
Crown Lands,
Canada, 1857.

The Commissioner of Crown Lands submits the following remarks on the North-West Territories of Canada, Hudson's Bay, the Indian Territories, and the questions of Boundary and Jurisdiction connected therewith.

The question now under special consideration has more particular reference to the subject of the renewal of a Lease held by the Hudson's Bay Company for the "*Indian Territories*," which are not considered to be within the boundaries of Canada, though subject to Canadian jurisdiction.

But the Hudson's Bay Company's "Map and Statement of Rights," under their original Charter as submitted to the Imperial Government in 1850, by Sir J. H. Pelly, the Chairman of the Company has also, however, to be considered in connection with it.

It becomes necessary, therefore, to expose the fallacies of the "Statement of Rights and Map" 20 referred to, in order that the rights of the Province may not be misunderstood or the pretensions of the Company taken for granted.

The rights of the Hudson's Bay Company, and the effect of their operations upon the interests of Canada, will best be considered under the following separate heads, viz.:

First—With respect to their operations under the original Charter on the territories affected thereby.

Second—With respect to their operations within the boundaries of this Province.

Third—With respect to their operations on what has been termed the Indian Territories, now under lease to them.

Fourth—Arising out of the foregoing, the more important question of the boundaries of the above 30 Territorial Divisions; and

Fifth—With respect to jurisdiction, as exercised, and as sanctioned by law.

Operations of the Company on their own Territories.

On the first head, as regards their operations under their Charter on the territories which, if valid, it would cover, it is a matter of very secondary importance to Canada. The territories of the Hudson's Bay Company, taken at the largest extent which any sound construction of their Charter in connection with international rights would warrant, if not in point of distance so very remote, are nevertheless so situated, that it can only be when all the localities to the south and west, more available for purposes of agriculture and settlement, have been filled to overflowing, that settlers may be gradually forced into that vicinity from the superabundant population of more favoured countries.

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The most direct interest that Canada could have in the matter at the present moment, being responsible for the administration of justice there, would be rather of a moral and political than of an interested or commercial character. But as the necessities of the Company, in whose hands a monopoly

* Sess. Papers, Canada, 1857, Vol. 15, No. 17.

of the trade has practically existed since the Treaty of Utrecht, together with the powers which they profess to derive from their Charter, has induced them to establish a jurisdiction which, for the moment, seems to have been successful in maintaining tranquillity and order, Canada has had no special reason to intervene, though if any complaints had been made on this score she would of course have felt called upon to exercise the powers vested in her by Imperial Statutes.

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It is not, indeed, to be denied that the freedom of the trade, consisting of furs and fisheries, would be of advantage to this country; but as this involves a question of the validity of the Charter, and whether or not, if valid in respect of the territory really affected by it, it would also affect the open sea of the Bay, and seeing that the question is not now raised of any further legislation to give effect to the powers it professes to confer, the consideration of this point is immaterial at the present moment, compared with the more important subjects that have to be treated of.

Operations of the Company on Canadian Territories.

The second point to be taken into consideration, and which is of a more important nature, is that which affects the operations of the Company within the boundaries of Canada, and on this head it must be admitted that they have had every facility they could possibly enjoy in their own territories, if such exist; whether on the coasts of Labrador, Lakes Huron, Superior, or Winnipeg; whether on the Saguenay, the St. Maurice, the Ottawa, the Red River, the Assiniboine, or the Saskatchewan—where ever they have operated within the boundaries of Canada they have had precisely the same scope as within their own territories on the shores of Hudson's Bay; not indeed but what if opposition had been sprung up, the same facilities must necessarily have been afforded to any rival traders, had they not been effectually protected from such rivalry by their unlimited means, their extensive ramifications and complete organization, with which no rival traders were able to compete, unless indeed to a very limited extent in the immediate vicinity of the settlements.

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There are indeed parts of the Province so remote from established settlements, and having so little direct intercourse with them, that in former years it might have been to some extent a tax upon the country to have established tribunals sufficient to enforce the laws over regions inhabited only, with one exception, by the servants of the Company and the Indians, though it may now be reasonably questioned whether corresponding benefits would not have accrued from such a course, while it must be admitted that the Company have at all events reaped a profit, taking together the costs they have been put to from the want of legal tribunals and the monopoly of the trade which the non-organization of such tribunals has practically been the means of enabling them to enjoy.

The exception referred to, where a considerable settlement exists, besides the employes of the Company and the Indians, is the Red River Country.

But the time has passed when any considerations of expense, or temporary inconvenience, even if proved to exist, can be allowed to stand in the way of opening up those territories, when indeed the necessity for expansion compels the Provincial Government to create further facilities for it; and as an additional reason why the Government should no longer permit the present state of things to continue, it must be added that rumours have been gaining ground of late years, with a force and clearness which almost compel conviction, that the jurisdiction actually exercised in those remote localities has been as contrary to the wishes of the people as it has been manifestly without the sanction of law, all which has created a necessity for early investigation and action on the part of the Canadian Government.

With this view preparations were made in the Crown Lands Department last summer for a preliminary survey from the head of Lake Superior westward, preparatory to the opening of free grant roads, which have been so successful in other parts of the country, for the purpose of forming the nucleus of a settlement which would gradually penetrate to the valley of the Red River and the prairies beyond; besides which a first-class thoroughfare would be necessary to afford easier means of communication with the navigable waters flowing to the west, etc., to facilitate the administration of justice in the distant settlements, and the necessary intercourse generally between those parts and the more populous

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districts of the country, and which would at the same time throw open to emigration, agriculture and commerce a far larger area, with at least an equal average mildness of climate, and susceptible of more rapid development (a known characteristic of prairie countries) than all other parts of the Province heretofore rendered available for settlement.

The question of the renewal of the license of exclusive trade for the Indian Territories does not, of course, affect the country above referred to, any more than it does the lands, whatever they be—for they have never been defined upon authority—which the original Charter of the Hudson's Bay Company may, upon investigation, be construed to cover.

Operations of the Company on the Indian Territories.

The third point is, for the moment, of less importance than the last, though within the period of 20 another such lease as the Act 1 and 2 Geo. IV, cap. 56, authorizes, it would be impossible to calculate the immense influence it must have upon the future of this country, and the British institutions which have taken root so deeply and thrive so nobly on its soil. The present operations of the Hudson's Bay Company in these "Indian Territories" are conducted on the same principle precisely as within the boundaries of Canada, the jurisdiction they exercise having heretofore had the excuse of necessity, if not the sanction of law; and so far as it can be shown to have been exercised to the benefit of those countries the Company might fairly claim indemnity for the consequences, should that become necessary, and there is no reason to doubt either the generosity or the justice of the Legislature, if called upon to ratify such a measure.

Memorandum of the Commissioner of Crown Lands, Canada, 1857.

It now becomes necessary, under the fourth head, to treat the questions of boundary arising out of the three foregoing; and these questions have, heretofore, been so little understood, that it will be necessary to enter into the subject at some length.

The difficulty of describing definite boundaries in countries which at the time were but very imperfectly or partially known, has always been a matter of serious embarrassment. In the present instance however, the difficulties can only be in matters of detail, and it may be safely assumed that they will be still further lessened by the fact, that wherever uncertainty can be supposed to prevail in any point of real importance, it can only be between the Province of Canada on the one hand, and the "Indian Territories" on the other (not between Canada and the Territories of the Hudson's Bay Company, unless at a point of comparatively little consequence); and it would be difficult to conceive that it could be adverse to the interests of the Crown or the community, if the principal question of boundary were sunk altogether, and the whole of the "Indian Territories" incorporated with this Province.

Boundary of the Company's Territories under Charter of 1670.

In the first place, then, with respect to the Territory affected by the Charter of the Hudson's Bay Company, it may be admitted that it would not only be difficult but absolutely impossible to define it; it is therefore fortunate that its limited extent renders the question of little importance further than that it becomes necessary to consider and rebut the very large pretensions of the Company.

The extent of the territory affected by the Charter is subject to two distinct conditions:

First—It is confined to all such territory as was then the property of the donor.

Second—It is confined to all such unknown territories as by the discoveries of the Company, his subjects, might become his property.

These distinctions, though not directly expressed, are nevertheless conditions resulting from the circumstances, and necessary to a proper understanding of the case.

With respect to the first, viz., the territory which was the property of the donor, it is necessarily limited by usage and by common sense to what was known or discovered, for the unknown and undiscovered could not be his property, and might never become his property, that being dependent upon circumstances then in the future; it is further limited by specific condition, expressed in the Charter itself, to such portions of what was then known as did not belong to any other Christian Prince or State, which condition, it must be admitted, was an acknowledgment on the part of the donor that some part of the territory he was describing was not his, and of doubt as to what did or did not belong to him.

With respect to the extent of territory *that might have been affected by the second condition* above stated (that is as regards exclusive trade, the grant of soil being less extensive and more ambiguous), it has no particular limit, for it embraces all countries which could be reached either by "water or land" through Hudson's Straits, and to limit or extend it merely to the sources of rivers discharging into Hudson's Bay would be a construction which the Charter will in no sense admit of. But while it extends to all unknown countries or infidel nations, which the Company could reach through Hudson's Straits or Bay, it is at the same time inferentially and *necessarily* restricted from extending to any of those unknown parts which might be first discovered and possessed by the subjects of any other Christian Prince or State. This is not, indeed, expressed in the Charter in relation to undiscovered territories, but it is emphatically so as regards the then state of the rights and possessions of Christian Powers, 10 While the King, therefore, is so careful, at least in the wording of the document, not to infringe upon the rights of others *already acquired*, it can scarcely be supposed that he meant to infringe upon the rights of others *to acquire* what then belonged to none. The inference is altogether against the supposition that King Charles meant by his Charter to deny the right of any other civilized nation to make further discoveries and appropriate the countries discovered, and even if he had so intended it, he had not the power to alter the law of nations in this respect. Besides, the Charter is expressly one of discovery as well as trade, etc.; the advantages granted to the "adventurers" are incidental and subordinate to that greater object, but there could be no *discovery* on their part wherever they were preceded by prior discovery and possession on the part of the subjects of any other Christian Prince. The right of 20 discovery is and was so well established, and wherever considered of any importance, has been so jealously watched that volumes of diplomatic controversy have been written on single cases of dispute, and the King of Great Britain could not by his Charter annul the recognized law of nations, or limit in any degree the right of other States to discover and possess countries then unknown. It may even be considered extravagant to affirm that he could convey a right of property to territories *not then*, but which might *afterwards become* his or his successors, by the prior discovery and possession of the Company themselves, his subjects: were it necessary to dwell upon this point, it could easily be shown that most of the territories now claimed under the Charter which were not discovered at that date, the Company were not afterwards the first nor were any other British subjects the first discoverers of; that, in fact, except the Coppermine River, the Company never discovered anything or penetrated beyond the *Coasts* 30 *and Confines* of the Bay (to which perhaps they at that time justly considered their rights restricted) for upwards of a hundred years after the date of their Charter, and that when they did so penetrate, the only *discovery* they made was that the whole country in the interior had been long in the peaceful possession of the subjects of another Christian Prince.

But the position as regards discovery after the date of the Charter, it is unnecessary to dwell upon particularly as an adverse title can be proved prior to the date of the Charter, and that too sanctioned by treaty.

The early discovery and occupation of the country in and about Hudson's Bay are, as in many other cases, shrouded in a good deal of obscurity. The British claim as the first discoverers of the whole coast of this part of North America, in the persons of John and Sebastian Cabot, about the year 40 1497; but it is contended on the other hand that their discoveries did not extend to the north of Newfoundland, which still retains the name they gave it, and which they supposed to form part of the main land. It is *said*, indeed, that the Cabots penetrated to a very high latitude far to the north of the Straits now bearing the name of Hudson; but it must be remarked that there appear to be no authentic records of the two voyages of the Cabots, their journals or observations. There appears to be only *hearsay* evidence of what they did, or where they went, told afterwards at second-hand to third parties. The voyages of the Cabots, therefore, although they are matters of history, not admitting of any reasonable doubt, in a general way, as to their having reached the coast of America, lose much of their force as the bases of specific territorial claims, from the want of any record of their proceedings. Did they ever land? If so, where? What observations did they make? Did they take formal posses- 50 sion? etc.

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The French claim through fishermen of Brittany, who established fisheries on the coast as early as 1501, and through a map published by Jean Deny, of Honfleur, in 1506. The map would be valuable if any authentic copy of it be extant. There does not appear to be any such record of the operations of the Breton fishermen as would fix precisely the spot where their trade was carried on, though a British geographical work, published in 1671, with a map attached, fixes it at Hudson's Straits, naming the country after them, on the south side of the Straits and within the Bay. The next navigator through whom the French claim is maintained is John Verazzani, who visited the country by order of Francis the First of France, in 1523-4. This is the first voyage, in behalf of either France or England, of which any authentic and circumstantial record exists, as written by the navigator himself, who gave the country the name of New France. In 1534 Jacques Cartier's discoveries com-
menced, and these are so well known that it is unnecessary to say more of them.

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Thus, then, it appears that the Cabots' voyages, unstained by any authentic record, affording no means of basing even a probable surmise as to whether so much as a landing was effected, formal possession taken, or any act done to constitute the assumption of sovereignty or of territorial dominion, comprise the only grounds on which England can base a claim to the country north of Newfoundland, prior to the voyage of Jacques Cartier. Apart, therefore, from the question of "*beneficial interests*" (to use the expression of a British diplomatist) which were acquired by France, commencing with the discoveries of Cartier, the preponderance of *admissible* evidence is altogether in favour of French discovery of that part of the continent between Newfoundland and Hudson's Bay. But even if the question rested altogether between the unauthenticated discoveries of the Cabots and the commencement of set-
tlement by Cartier, it would not be inappropriate to assume the British view of a similar question as maintained in the Oregon dispute, in the following words:—

"In the next place, it is a circumstance not to be lost sight of, that it (the discovery by Gray) was not for several years followed up by any act which could give it value in a national point of view; *it was not in truth made known to the world either by the discoverer himself or by his Government.*"

The next English attempts at discovery commenced in 1553, when Willoughby penetrated to the north of Hudson's Bay, which, however, he did not discover or enter. This was nineteen years after Jacques Cartier's first voyage, and was followed by various other attempts at finding a north-west passage, all apparently directed to the north of Hudson's Straits until 1610, the period of Hudson's voyage, in which he perished after wintering in the Bay which bears his name; but by this time it must be
observed that Canada was colonized by the French.

In 1540 De Roberval was made Viceroy of Canada, the description of which, as given in his commission, included Hudson's Bay, though not then of course known by that name.

L'Esкарbot gives a full description of Canada at the period of De La Roche's appointment in 1598 as follows:—

"Ainsi notre Nouvelle France a pour limites du côté d'ouest les terres jusqu'à la mer dite Pacifique au deça du tropique du cancer; au midi les îles de la mer Atlantique du côté de Cuba et l'île Espagnole; au levant la mer du nord, qui baigne la Nouvelle France; et au Septentrion cette terre que est dite inconnue, vers la mer glacée jusqu'au Pole Arctique."*

Notwithstanding failures and difficulties, France continued the effort to colonize Canada, and in 1598 De La Roche was appointed Governor of the whole of Canada as above described; in 1603 or 1604 the first exclusive Charter was granted for the fur trade of Canada up to the 54° of north latitude; in 1608 Champlain founded the City of Quebec; and in 1613 he accompanied his Indian allies, to the number of between two and three thousand, up the Ottawa and by Lake Nipissing and the French River, to war with a hostile nation at the Sault Ste. Marie. It must now be observed that the great incentive to the colonization of Canada was the enormous profits of the fur trade, without which it is scarcely likely that such persevering efforts would have been made for that purpose while so many countries with more genial climates remained in a manner unappropriated.

* Therefore New France has for boundaries on the west the Pacific Ocean within the Tropic of Cancer; on the south the Islands of the Atlantic towards Cuba and Hispaniola; on the east the Northern Sea, which washes its shores, embracing on the north the lands called Unknown, towards the Frozen Sea, up to the Arctic Pole.

Tadoussac, at the mouth of the Saguenay River, was the first important post established by the French on the St. Lawrence; it was the entrepôt of the fur trade before Quebec was founded, and continued to be so afterwards. This will not be deemed extraordinary when it is considered that the Saguenay River afforded the best means of access into the interior, and was the best inland route, in fact is the best canoe route yet, to the Great Bay now bearing the name of Hudson. There is indeed no authentic record of any of the French having made an overland journey to the Bay at so early a period, but when it is considered at what an early date the *Coueurs des Bois* traversed the whole country in search of peltries, how readily they amalgamated with the Indians, who in that locality were in friendly alliance with them, and when it is also considered what extraordinary journeys the Indians undertook, as instanced by the war carried into the enemy's country at the Sault Ste. Marie, already referred to, the presumption is that the fur traders of Tadoussac not only enjoyed the trade of the Great Bay, but must also have penetrated very far in that direction, if not to the Bay itself, a journey at the most of less distance and not greater difficulty than that which Champlain successfully accomplished with an army, while it had the strong incentive of profit to stimulate it. It is not necessary, however, to prove that every corner of the country known to the world as New France or Canada had been first visited by the actual possessors of the region.

However strong the probabilities, therefore, of the *Coueurs des Bois* having been in communication with the great northern Bay before the visit of Hudson in 1610, or of Button, who succeeded him in 1612, it is not necessary to base any argument thereon; nor is it necessary to dwell on the reputed voyage of Jean Alphonse, of Saintonge, in 1545, which, although quoted by French historians, does not appear to be sufficiently authenticated. For, granting that the rights accruing from discovery resulted from the voyages of Hudson and Button, these discoveries were practically abandoned, in fact were never dreamt of being followed up by way of occupation, the finding of a north-west passage having been their sole object; but waiving even this point, it will be found that the rights of France were made good by international treaty long before the Charter of Charles the Second was granted.

It will be seen from L'Escarbot's description, and those contained in the commissions of the Governors already referred to, that France claimed the whole country extending to the north of Hudson's Bay, her title resting in the first instance upon the discoveries already mentioned, of which those of Verazzani, Cartier, and Champlain are of unquestioned authenticity, to which they had added, when L'Escarbot wrote, in 1611, the title resulting from actual possession in the shape of permanent settlement. England, on the other hand, claiming under Cabot's discovery, denied the right of France generally to the whole, and practically to the more southerly parts, where she endeavoured to plant settlements of her own, in which she was successful at a period somewhat later than the French. The fact is, each was trying to grasp more than they could take actual possession of; and if mere discovery of parts of a continent without actual possession or settlement were made the basis of permanent rights, neither of the contending parties would perhaps have had any right at all. Gradually the state of the actual possessions of the two Powers settled down into a sort of intelligible shape, though without any very distinct boundaries, the most northerly of the English possessions being known as New England, and *all* the country to the north thereof being known as New France or Canada, where the French *only* were in possession, there being no possession or settlement of any kind to the north of them. Still, had England colonized Hudson's Bay at that period and been successful in keeping actual possession of it, she would just have had the same right to do so that she had to colonize New England. That England persevered with extraordinary energy in trying to find a north-west passage there can be no doubt, nor does it appear that France, though publicly claiming the country, made any objection; but neither country made the most distant attempt at settlement or actual occupation of those remote and inhospitable regions at that period.

In 1615 another expedition was made into Hudson's Bay, in search of a north-west passage, by Baffin and Bylot. In 1627 the Quebec Fur Company was formed under the auspices of Cardinal Richelieu and an exclusive Charter granted to them for the whole of New France or Canada, described as extending to the Arctic Circle. In 1629 Quebec was taken by the British, as were also most of the other principal towns founded by the French, in Acadia and Nuremberga (now Nova Scotia and New

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Brunswick), which were then Provinces of New France, the two nations being then at war. In 1631 Fox and James, on two different expeditions, prosecuted a further search for a north-west passage in Hudson's Bay, and from the latter of the navigators the southerly portion of the Bay takes its name,

At this period the authenticated voyages of the English into Hudson's Bay were Hudson in 1610 Button in 1612, Bylot and Baffin in 1615, and Fox and James in 1631; the numerous other expeditions having been apparently directed to the north of Hudson's Straits. At the same time, the extent of New France or Canada, as claimed by the French, was publicly known throughout the civilized nations of Europe. It is not necessary to say that that claim was admitted by Great Britain; it is sufficient that it was known. British authorities even of a later period, it must be observed, have contended that the French were intruders in America altogether in violation of the title accrued through the discoveries of the Cabots, and had no right whatever to any part of it *until acquired by treaty*. It therefore becomes immaterial whether the claims of the French were disputed or not, so far as they were afterwards confirmed or a title created by Treaty.

In 1632 peace was concluded, and by the Treaty of St. Germain-en-Laye, Canada or New France was relinquished to the French without any particular designation of its limits, and the British forces were to be withdrawn from the places they had taken, which being the most important, including the seat of Government, might almost be said to have amounted to the conquest of the whole country.

Admitting, then, that but a disputed title of discovery had previously existed on either part—nay, admitting more, that the right vested by prior discovery was in England, this Treaty sets the matter at rest as regards all that was at that time called by the name of New France or Canada. There is indeed no getting behind this Treaty, of which the Charter afterwards granted by Charles the Second was in fact, but for the saving clause it contains, a violation, and Canada might well be content to rest her case here as against a Charter, which, referring to a country previously guaranteed by the Treaty to a foreign power, is expressly conditioned (as a Charter of discovery) not to interfere with what belonged to that other power. If, as is asserted by some English writers, France had no rights in America but such as she acquired by Treaty, what, it may be asked, were the limits of the Territory she acquired by the Treaty of St. Germain-en-Laye, if not all that she claimed under the name of New France? It must be observed, too, that Champlain, the Viceroy of Canada, was made prisoner when Quebec was taken in 1629, and carried to England, where he remained for some time, and that the very year in which the Treaty was entered into, he published a work, containing a map of New France, by which Hudson's Bay was included in the country so called. Can it then for a moment be supposed, with Champlain, the Viceroy of New France, a prisoner in their hands, and their flag floating in triumph from the battlements of its capital, that the British Government and the diplomatists who negotiated the Treaty were ignorant of the meaning attached to the terms "Canada" or "New France," or could attach any other meaning to those terms than that which Champlain's published maps of a previous date indicated, and with which the descriptions of other French writers, whose works were known throughout Europe, coincided? Can it be supposed that in the negotiations preceding the Treaty Champlain's views of the extent or boundaries of his Viceroyalty were wholly unknown, or that the British diplomatists meant something less by the appellation than what was known to be understood by France? If, indeed, something less than the known extent of country called New France had been agreed upon, some explanation would undoubtedly have been contained in the Treaty, or, if there had been any misunderstanding on the subject, the map which issued the same year, in Champlain's work of 1632, would at once have been made a cause of remonstrance, for, coming from the Chief Officer of the Colony, who was re-appointed to or continued in his office after the Peace, and published in Paris under the auspices of the King, it could not be otherwise looked upon than as an official declaration of the sense in which France regarded the Treaty.

Even, then, if the rights of France were wholly dependent upon international Treaties, her right became as good by the Treaty of St. Germain-en-Laye to the shores of Hudson's Bay as to the shores of the St. Lawrence. If she had rights before, the Treaty confirmed them; and if she had no rights before, the Treaty created them; and in either case, the effect was as great in the one locality as the

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other. Every further step, however, in the history of the country will only tend to show that even if there had been no such Treaty as that of St. Germain-en-Laye, the Charter could not be sustained in opposition to the rights of France.

The provisions of the Treaty of 1632 seem to have been respected for a period of thirty-six years, when, in 1668, the next English expedition entered the Bay, which was the first *trading voyage* ever made by British subjects to the Bay, and which resulted in the formation of the Hudson's Bay Company and the grant of the Charter two years after. In saying that this was the first purely commercial enterprise of the British in Hudson's Bay, it is not meant to be implied that no trade was had with the Indians by those engaged on the former expeditions, but that such enterprises were undertaken with the definite object of reaching the Pacific, and without the least idea of any practical occupation of, or trade with the country.

The British having ceased any attempt upon Hudson's Bay from the time of Fox and James' voyages and the Treaty of St. Germain-en-Laye, for a period of thirty-six years, it now remains to be seen what the character of this their next attempt was, and what had been the circumstances of the country in the interim.

That the name of Canada or New France continued to attach to the whole country during that period is indisputable; the French published maps of these times leave no doubt upon the subject; and when we find the French not only designating the country by these names in their maps published by royal authority, but also entering upon the practical occupation of the since disputed parts of the country so designated, the carrying on of the trade with it both by sea and land, and the establishing of missions, all within the period intervening between the Treaty of St. Germain-en-Laye and the granting of the Charter, or the voyage which preceded the Charter, and all without interference on the part of Great Britain, we must conclude that the rights of the French were incontestable, and that if ever an adverse claim had been preferred, it was considered to have been abrogated by the Treaty.

In 1656 the first exclusively commercial sea voyage was made into Hudson's Bay by Jean Bourdon who found the trade in furs so profitable that others immediately followed. The first missionary establishment was made there in 1663 by La Couture, who went overland by direction of D'Avignon, Governor of Canada, who had been twice solicited by deputations of Indians from the Bay to send them missionaries; and now the French being fully established in the trade, and in the occupation of the country, both by sea and land, of the coast and of the interior, the English "Adventurers" first appear upon the scene, in a business way, under the countenance of two Canadians, De Grozelier and Radisson, who, having been already engaged in the trade of the Bay, and having failed in procuring certain privileges they desired from their own Government, went to England and induced some Englishmen to join them in a trading voyage in 1668, which was so successful that, as already stated, it resulted in the formation of a Company, and the grant in 1670 of one of those extraordinary Charters which were so much in vogue in those days that the whole of the Continent of America, north of the Gulf of Mexico, known and unknown, may be said to have been covered by them, and some of it doubly so, if the vague and ambiguous descriptions, of which this was the most vague, could be said to mean anything.

This was the origin of the Hudson's Bay Company, and they immediately commenced to build forts and establish themselves in the trade, but no sooner was this known in France than orders were given to expel them. Accordingly a desultory warfare was kept up for a number of years between the Canadian traders and the Company, in which the latter were nearly expelled, but again recovered themselves and strengthened their position, when it became necessary to take more effective means for their expulsion. Troops were accordingly despatched from Quebec overland for that purpose, under the Chevalier de Troyes, who commenced his work very effectually by taking the principal Forts of the Company. It must be observed that this was in 1686, in time of peace between Great Britain and France, and yet these proceedings were not made a cause of war, which in itself would strongly imply an admitted right on the part of France to extirpate the Company as trespassers upon her territory.

War having afterwards broken out, the Forts on Hudson's Bay were successively taken and retaken till the Peace of Ryswick, in 1697, put a stop to hostilities, at which time the British appear

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to have been possessed of Fort Albany *only*, the Canadians having possession of all the other establishments and the trade of the Bay.

By the Treaty of Ryswick, Great Britain and France were respectively to deliver up to each other generally whatever possessions either held before the outbreak of the war, and it was specially provided that this should be applicable to the places in Hudson's Bay taken by the French during the peace which preceded the war, which, though retaken by the British during the war, were to be given up to the French. There could scarcely be a stronger acknowledgment of the right of France to expel the Company as trespassers upon her soil, for it is impossible to construe the Treaty in this particular otherwise than as a justification of the act.

Moreover, commissioners were to be appointed in pursuance of the Treaty to determine the rights and pretensions which either nation had to the places in Hudson's Bay. Had these commissioners ever met, of which there appears to be no record, there might have been a decision that would have set the question at rest as to which were "*rights*" and which were "*pretensions*." The commissioners must, however, have been bound by the text of the Treaty wherever it was explicit. They *might* have decided that France had a right to the whole, but they could *not* have decided that Great Britain had a right to the whole. They would have been compelled to make over to France all the places she took during the peace which preceded the war, for in that the Treaty left them no discretion. The following are the words of the Treaty:—"But the possession of those places which were taken by the French, during the peace that preceded this present war, and were retaken by the English during the war, shall be left to the French by virtue of the foregoing article." Thus the Treaty of Ryswick recognized and confirmed the right of France to certain places in Hudson's Bay distinctly and definitely, but it recognized no right at all on the part of Great Britain; it merely provided a tribunal to try whether she had any or not.

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So strongly has the Treaty of Ryswick been interpreted in favour of France in this particular, that some historians merely state the fact, that by it she retained all Hudson's Bay, and the places of which she was in possession at the beginning of the war.

The commissioners having apparently never met to try the question of right, things remained *in statu quo*, and the most reliable accounts show that the Hudson's Bay Company retained possession of Fort Albany *only* from that time up to the Treaty of Utrecht, in 1713. Now, whatever the commissioners might have done, had they ever passed judgment on the cause the Treaty provided they should try, they could not have given Fort Albany to the British, for it was one of the places taken by the French during the preceding peace, and retaken by the British during the war, and therefore adjudged in direct terms of the Treaty itself to belong to France.

Thus then it will be seen, that the only possession held by the Hudson's Bay Company during the sixteen years that intervened between the Treaty of Ryswick and the Treaty of Utrecht was one to which they had no right, and which the obligations of the Treaty required should be given up to France.

Here, therefore, for the second time an International Treaty interposes a barrier against the pretensions of the Company.

By the Treaty of Utrecht, in 1713, the whole of Hudson's Bay was ceded to Great Britain without any distinct definition of boundaries, for the determining of which commissioners were to be appointed, No official statement of the action of such commissioners is at present available for reference, but it is stated that no such action threw any additional light upon the subject. Indeed, no such commissions ever had done much to determine boundaries in unexplored countries, as witness, for instance, the dispute so long pending on what was called the North-Eastern boundary question between Great Britain and the United States, which was finally compromised by the Treaty of Washington, concluded by Lord Ashburton; and again, the difficulties arising out of the same ambiguous description, and which so many commissions endeavoured in vain to settle, between the Provinces of Canada and New Brunswick.

There is no denying the fact that the ancient boundaries of Canada or New France were circumscribed by the Treaty of Utrecht, and it is difficult to determine precisely the new boundaries assigned to it. The general interpretation adopted by the British geographers, as the country gradually became better known from that time up to the final cession of Canada, was that the boundary ran along the high lands separating the waters that discharged into the St. Lawrence from those that discharged into Hudson's Bay to the sources of the Nipigon River, and thence along the northerly division of the same range of high lands dividing the waters flowing direct to Hudson's Bay, from those flowing into Lake Winnipeg, and crossing the Nelson, or rather (as it was then known) the Bourbon River, about midway between the said Lake and Bay, thence passing to the west and north by the sources of the Churchill River, etc.; no westerly boundary being anywhere assigned to Canada. It may indeed be held doubtful whether the terms in which Hudson's Bay was ceded could possibly be interpreted to mean more than the Bay and its immediate environs, but whatever the legitimate interpretation of the Treaty, the actual acceptance of it gave to France at least all to the south of the dividing high lands above described, for she remained in undisputed possession thereof until the final cession of Canada in 1763; while on the other hand the acceptance of it on the part of Great Britain, as proved by the same test of occupation, confined her at least to the north of the said high lands, if not to the very shore of the Bay, beyond which her actual possession never extended.

It must here be observed, however, that the Treaty of Utrecht conferred nothing upon the Hudson's Bay Company. It gave them nothing that was not theirs at the Treaty of Ryswick, and the Treaty of Ryswick gave them nothing that was not theirs before. The Charter obtained from King Charles the Second may have granted all that was his (if anything) to grant in 1670, but it would have required a new Charter to have granted what France ceded to Great Britain forty-three years afterwards. No doubt the Treaty of Utrecht had this important bearing upon the Company, that although it conferred no territorial rights upon them, the territory it conferred on Great Britain was then inaccessible to British subjects by any other route than through the Bay and Straits of Hudson, over which (if over anything) the Company's Charter gave exclusive control, and over which, whether rightfully or wrongfully, they have exercised such control.

Matters continued in this state as regards the territorial rights of Great Britain and France for fifty years more, when Canada was ceded to Great Britain by the Treaty of Paris in 1763. During this period the Hudson's Bay Company occupied the posts on the coasts of the Bay, and these only, having made no attempt to penetrate into the interior or occupy even what the British geographers of the time construed the Treaty of Utrecht as conferring, not upon the Company, but upon Great Britain: while on the other hand the French had covered that part of New France which still remained to them (according to the British authorities) with posts or forts from the Lake of the Woods to the lower end of Lake Winnipeg, and remained in peaceable possession thereof, and in the most active prosecution of the trade until the whole country was given up to the British by the Peace of Paris, in 1763; by which, however, nothing was conferred upon the Hudson's Bay Company any more than there had been by the Treaty of Utrecht, the rights acquired by these treaties being simply in common with other British subjects.

For a few years, about the time of the transfer of Canada from French to British dominion, the trade of the western territories languished from a very natural want of confidence on the part of the Canadians by whom it had, up to that time, been carried on, and who now owed a new allegiance and had to seek a new market for the produce of their industry; but a fresh impulse was soon given to it, first by separate individuals, then by small companies, and finally by the great North-West Company of Montreal, who not only spread their operations over all the territories formerly possessed by the French, but explored new countries to the north and west, while the Hudson's Bay Company had not yet made a single establishment beyond the immediate confines of the sea coast.

The temporary depression of the fur trade at the period of the transfer of Canada to British dominion was, of course, advantageous to the Hudson's Bay Company, for the Indians inhabiting those parts of Canada where the French posts were established around Lake Winnipeg and its tributaries, would naturally seek a market in Hudson's Bay during the comparative cessation of demand at the es-

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establishments in their midst. But when confidence was restored, and a new impulse was given to the trade in the north-west of Canada, the supply was again cut off from Hudson's Bay, and now the Company for the first time entered into competition with the Canadian traders in the interior, where their first establishment was made in 1774. And why, it may be asked, did not the Hudson's Bay Company oppose the French Canadians in the interior a few years earlier, as well as they opposed them (principally the same people) now that they had become British subjects? The answer is very simple. During French dominion they could not do it because the country belonged to France, but by the cession of the country to Great Britain, the Company had acquired the same right as any other British subjects to trade in it, and they availed themselves of that right accordingly.

From this period an active competition was carried on between these companies, but the Canadian North-West Company were everywhere in advance of their rivals. They were the first to spread themselves beyond the limits of the French, over the prairies of the Saskatchewan; they were the first to discover the great river of the north, now bearing the name of McKenzie, and pursue its course to its discharge in the Frozen Ocean; they were the first to penetrate the passes of the Northern Cordilleras and plant their posts upon the shores of the Pacific; and with such indomitable energy did they carry on their business, that, at the period of Lord Selkirk's interference, they had upwards of 300 Canadians, "Voyageurs," employed in carrying on their trade to the west of the Rocky Mountains.

It would be a useless task now to enter into a detail of the attempt made by the Earl of Selkirk, as a partner of the Hudson's Bay Company, to ruin their opponents. It is only necessary to refer to it here as the first endeavour made to exercise the privileges contended for under the Charter over those territories which had not been acquired by Great Britain till the conquest or cession of Canada. Lord Selkirk having become principal partner, and acquired a predominant influence in the affairs of the Hudson's Bay Company, it was determined to assert the assumed privileges of the Company to an extent never before attempted; and for this purpose a grant of the country on the Red River was made to his lordship, who commenced in 1811-12 to plant a colony there.* A Governor was appointed, the colonists and the servants of the Company were armed and drilled, and in 1814 the claims of the Company to soil, jurisdiction and exclusive trade were openly asserted, and for the first time attempted to be enforced by the actual expulsion of the North-West Company, several of whose forts were surprised and taken, their people being made prisoners, their goods seized, and the channel of their trade obstructed by the interception of their supplies. Overawed somewhat for the moment by this bold assumption of authority, the Canadian Company appear to have avoided the contest, but when forced into it they proved the stronger; the Governor was killed in leading an attack upon a party of the North-West Company, who turned and gave battle, and the colony was dispersed. This final catastrophe occurred in the spring of 1816, while in the meantime Lord Selkirk was organizing a more formidable force than had hitherto taken the field. Having procured a commission of the peace from the Government of Canada, he engaged a large force of the disbanded DeMeuron soldiers, equipped them in military style, procured arms, ammunition, artillery even, and started for the interior.

It must be allowed that it was a somewhat anomalous course for the Government of Canada to have pursued, to permit such a force to be organized; but when it is considered that great ignorance prevailed as to the state of those remote localities, that it was known that there had been disturbances and bloodshed the previous year; when also Lord Selkirk's position is considered, and that he went as a pacificator professedly to maintain peace, it may not be deemed so extraordinary that so much confidence should have been placed in him, for he was even granted a sergent's guard of regular troops. It is not the object here, however, to enter into a discussion of the unfortunate occurrences of that period, or the particular action of the Provincial Government, and the circumstances are only referred to, to show that Canada actually exercised the jurisdiction, that Lord Selkirk's destination was the Red River

* "Who have been the aggressors in their different quarrels, I am not able to determine; however, previous to 1811, at which time Lord Selkirk became connected with the Company trading to Hudson's Bay, and sent settlers from Europe to that country, no great differences existed between the servants of that Company and the fur traders of Canada. There might be difficulties between different posts, but seldom attended with serious consequences."—Despatch of Lieutenant-Governor Gore to Earl Bathurst, 9th September, 1816.

Colony, and that he deemed it necessary to fortify himself doubly with commissions as a Canadian magistrate, first for Canadian territory, and second (under 43 Geo. 3rd) for the "Indian territories," so that those who resisted his authority on the ground that they were in Canada, he could judge under the one commission, and those who resisted on the ground that they were in the Indian territories, he could judge under the other, while the judicial and governmental attributes claimed for the Company would have served as a third basis of operation; and thus with the actual force at his disposal there was a pretty fair prospect of the Hudson's Bay Company being made the absolute masters of the north-west country.

At the Sault Ste. Marie, however, Lord Selkirk met intelligence of the death of Governor Semple and the dispersion of his colony; nevertheless, he still proceeded with his force as far as Fort William, on Lake Superior, where he arrived about the 11th of August, 1816, and soon after arrested the partners of the North-West Company, who were there at the time, and took possession of the whole establishment, including the merchandise and stores of the Company. The course pursued on this occasion, as appears by documents published at the time, shows the character of the pretensions set up at that period—pretensions which were then and not till then presumed upon.

It will be observed that Fort William was the principal depôt of the Canadian merchants, through which all their supplies for, and peltries from, the North-West had to pass. By seizing on this point, therefore, Lord Selkirk had possession of the key of their whole trade, and was enabled to permit or refuse the transit of their goods as he saw fit. For whatever purpose, therefore, he obtained his two commissions of the peace in Canada, the expedition simply resolved itself into a continuation of the attempt to destroy the North-West Company of Canada, the rivals in trade of the Hudson's Bay Company; for, however desirable it might be to arrest and bring to trial all parties implicated on either side in the death of Governor Semple, there could be no excuse for seizing the persons of those gentlemen who were known not to have been at the time within hundreds of miles of the scene of that catastrophe, merely because they were partners in the North-West Company, nor, even if there were cause for their arrest, did that justify the taking possession of their property without the sanction or the form of law.*

The object of entering upon this brief record is, to point out that all this occurred at *Fort William*, on the shores of Lake Superior, within what the Hudson's Bay Company, by their map and statement of "rights," now admit to be within the boundaries of Canada. And thus it will be seen that, while the pretension of extending the privileges of the Charter beyond the "coasts and confines" of the Bay to the western territories of Canada was a mere invention of that period, to further their own ends and to destroy the rival Company of Canada, they were as ready to employ force at Fort William as in the Valley of the Red River.

In further proof that the transactions at Fort William were openly done in violation of Canadian law and in defiance of Canadian authority, it is only necessary to add that when Lord Selkirk's proceedings became known, warrants were issued for his apprehension and a party of constables sent to arrest him, and that refusing obedience to the laws of this country, and presuming upon the force for the moment at his command in that remote locality (remote then as regards the time it took to reach it, though at our doors to-day), he caused the constables to be taken prisoners themselves, and treated the Deputy Sheriff of the Western Districts, who afterwards made the attempt, in like manner. This war between the companies, though injurious to both, failed to exterminate either, and the final result was a compromise by which they entered into partnership; and thus the trade has been carried on since, under the name indeed of the Hudson's Bay Company, but expressly in conjunction with the North-West Company of Canada, so that Canada can at no time be said to have been out of possession of her western territories within the limits occupied by the French at the time of the conquest, nor out of possession of the "Indian Territories" beyond, which, after the conquest, were first discovered by the Canadian traders, and for which the License of exclusive trade was granted to the Partners of the North-West Company of Canada, as such, in conjunction with the Hudson's Bay Company.

* "From these Documents it appears, that the Earl of Selkirk, acting in his own cause, aided by an armed force, has not only made the partners of the North-West Company prisoners, but has also seized their Papers and Property."—Lieut.-Gov. Gore to Earl Bathurst, 9th Sept, 1816.

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It is true that after the amalgamation of the Companies and the License of exclusive trade granted in 1821, competition became *illegal* in the "*Indian Territories*" beyond the boundaries of Canada, as indeed it had always proved *impracticable* on the part of minor traders either within or beyond the remote parts of the province, small traders being altogether unable to cope with the two great Companies. It is true also that after they, the two great Companies, had been for some time united, and when by the policy pursued by them the trade had ceased to be beneficial to, and had been lost sight of in, Canada, an arrangement was effected between the two sections of the United Company by which the name of the North-West Company was dropped entirely, the lease relinquished, and a new one obtained in which the name of the Hudson's Bay Company alone appeared; but it must be observed that this new arrangement was accepted and entered into by the British Government by consent of the 10 partners representing the original Canadian Company, for although this Lease or License only affects the Indian Territories beyond the actual boundaries of Canada, it can scarcely be supposed that the Government would have agreed to give it, had Canadian traders still remained in the field. The policy of the Companies when joined, has however been so far successful that they have managed heretofore to secure themselves against opposition, many no doubt being imposed upon by the pretentious but erroneous construction put upon their Charter, and the public in general kept in the dark respecting a trade which, though partly carried on in the very centre of Canada and within range of steam navigation, is so managed as to pass by a circuitous route, by means of the primitive canoe and over portages on men's backs, away hundreds of miles into the interior and round by Hudson's Bay.

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But the time has come when Canada must assert her rights, not only from that necessity for expan- 20 sion which her growing population and trade require, but also because if she does not now begin to provide for the future by opening up her remote territories to colonization, and securing the loyalty and attachment of the people by extending to them the rights and privileges of her laws and institutions there is a moral certainty that a power far more formidable than the Hudson's Bay Company must in a very short period acquire the actual possession of those countries.

This brief chronological sketch of the history of the Company and of the circumstances connected therewith, must sufficiently show that they have acquired no territorial grant whatever under either of the two conditions stated, to which their Charter was subject; first as regards the countries then known upon the "coasts and confines" of Hudson's Bay, because they were already in the possession of the 30 subjects of another Christian Prince, and were therefore excluded from the grant in terms of the Charter itself; and second, as regards discoveries, because when they first penetrated into the interior, 104 years after the date of their Charter, they found the country and a long-established trade in the hands of others—unless indeed as regards some discoveries to the north, which are of no special importance to Canada, such as the Copper Mine River, discovered by Hearne under the auspices of the Com- 30 pany.

Under the first head the most sanguine advocate of the Company, upon a full investigation of all the circumstances, could only urge on their behalf a claim to certain points, or stations, on the sea coasts of the bay, and even to these a doubtful and disputed title.

The high legal authorities that may be quoted in favour of the claims of the Company cannot be held as of weight against the conclusions inevitably resulting from a fuller investigation of the subject, 40 inasmuch as they are merely opinions upon *the cases submitted*. The latest opinion given upon the subject is that of Sir John Jervis and Sir John Romilly in their letter to Earl Grey, of January, 1850, in which they gave it as their opinion, "That the rights claimed by the Company do properly belong to them." Before arriving at this conclusion, however, these learned gentlemen are careful to specify precisely what papers they had then under consideration, and to which alone they refer as the basis of their opinion. These papers were simply the "*Statement of Rights and the Map*," submitted by the chairman of the Company, Sir J. H. Pelly.

This opinion, therefore, can only be taken as affirmative of the power of the King to grant such rights and privileges as the Charter specifies, and that the Charter would cover all the territory claimed; 50 but the question of whether that territory belonged to the King to grant was not before them. With respect to the territory which the wording of the Charter would cover, it would be difficult to say what

it would not cover; and with respect to the validity of the grant of such powers, it is to be remarked that very high authorities have given a directly opposite opinion; and it may be asked why, if the Charter was valid, did the Company procure an Act of Parliament to confirm it in 1690, and why, when that Act expired, which was limited to seven years, did they again ask for an Act to continue it? It is worthy of notice, too, that the seven years' Act was passed during war with France, when it appears that Parliament did not scruple to grant or confirm a Charter for countries to which Great Britain had, at best, but a disputed title, based only upon a very partial, and, even during peace, a very precarious possession; nor is it less worthy of remark, that when Parliament refused to re-grant or continue the Charter, the Treaty of Ryswick had intervened, by which the rights of France were recognized, and those of Great Britain left, at most, in doubt, and when, therefore, any such Act would have been a direct violation of an international Treaty.

Another opinion appears to have been obtained by the Hudson's Bay Company at an earlier period, from Romilly, Holroyd, Cruise, Scarlett and Bell, equally upon the case drawn and without reference to the real points at issue, merely affirming that the grant of the soil contained in the Charter is good, and that it will include all the countries the waters of which flow into Hudson's Bay. This opinion is, therefore, like the other, of no weight on questions which were not before the learned gentlemen who gave it.

Opposite opinions were obtained at an earlier period by the North-West Company, viz., in 1804 from Sir V. Gibbs and Mr. Bearcroft. These opinions, however, although they touched the fundamental principles of the Charter, had no reference to the interior countries on the Red River, Lake Winnipeg the Saskatchewan, etc., for the simple reason that no opinion was asked on a case which only arose six or seven years later, when Lord Selkirk came on the field.

The position of the question at this period was that the North-West Company, being in possession not only of all the country formerly possessed by the Canadian-French in that direction, but also of the country first discovered by themselves to the north-west of the Churchill River, came to the conclusion that their trade could be more conveniently carried on with these more remote parts through Hudson's Bay than through Canada. The question they submitted, therefore, was solely in regard to the validity of the Charter in respect of the navigation, trade, and fisheries of the Bay itself. The North-West Company as little dreamt of asking an opinion respecting the legality of their trade in the interior as the Hudson's Bay Company thought, at that period, of attempting its forcible restraint. In the case put it is to be remarked that no reference is made to the early possessions of the French on the coasts of the Bay, and consequent possession of the Bay itself in communicating therewith, and yet, and even without this, these opinions are entirely adverse to the exclusive privileges claimed under the Charter.

After the difficulties occasioned by the more recent assumption of power in virtue of the Charter to expel the North-West Company from the Red River country, under the auspices of Lord Selkirk, had become serious, another opinion was obtained by that Company in 1816, from Sir Arthur Pigott, Sergeant Spankie and Lord Brougham. This opinion must be held to be more valuable than those obtained by the Hudson's Bay Company, inasmuch as it enters more into the merits of the case, and is therefore more explicit as to the real views of the learned counsel on the subject submitted to them, whereas the opposite opinions are such that the gentlemen who gave them would be at liberty to ignore upon a fuller submission of the case, without incurring a charge of inconsistency.

The opinion under consideration is very decided on the point that the Red River and Saskatchewan countries are not within the limits of the Charter, even upon the merits of the description contained in the Charter itself, apart from the question of prior possession by another State. The question of prior occupation of these localities by the French is indeed lightly touched upon, though the opinion, as above, is definitely given without it; but the rights of Canada now for the first time fully discussed, based on prior discovery, at least of the whole of the interior, prior occupation on the shores of the Bay itself, and international treaties, do not appear to have ever been pronounced upon by any of those

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high legal authorities who have heretofore been consulted, because no such case has ever been submitted, and yet, based upon history and facts, it may be taken to supersede all necessity for raising any question as to the extent of the royal prerogative in giving validity to such a Charter.

Had the Hudson's Bay Company indeed deemed their position good in law, as against the North-West Company, in respect of the Red River country, it can scarcely be supposed that they would have resorted to force at such a lavish expense (and it must be added, involving no small amount of bloodshed), when the question could have been so easily determined by the legal tribunals, at an expense altogether inconsiderable as compared with the actual losses and costs incurred. They have indeed attempted to show that they had not an equal chance with their rivals in the courts of this Province; but not to speak of the injustice of such an insinuation in itself, the objection is untenable while 10
they had the right of appeal, and to suppose that they were deterred from taking such a course from any difficulty attending the proceeding would be simply absurd, when we find them organizing an army to defend their claims in those remote localities, and thus voluntarily removing the venue from the courts of law, by a far more difficult and expensive process, to the arbitration of force, where the interference of law could not be so readily invoked to check their proceedings.

And if any justification of this course could be based on the supposed validity of their Charter and on the ground that it could be construed to cover that locality, why, when they failed to maintain their position by force, when the North-West Company, even after the temporary interruption of their trade through the seizure of Fort William by Lord Selkirk, still continued in the ascendant, why did they not then resort to a trial at law, which, if it had resulted in their favour, would at once have 20
secured a power exactly commensurate with the emergency to maintain their rights. For then, if the civil power had proved insufficient, the whole power of the empire would have been available as far as necessary. But instead of trying the issue in a Court of Law, they finally amalgamated with their rivals, affording thereby a clear proof that they had no hope of being able to treat them otherwise than as possessing equal rights, thus consenting to their opponents sharing with them what they had previously contended to be their private property.

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To conclude the question of the Hudson's Bay Company's territories under their Charter, therefore, it is difficult to arrive at the result that they have any territorial rights at all, for in the first place, the country was practically occupied by the French before the date of the Charter, and consequently excluded from it; and in the second place, because the whole country, including Hudson's Bay, was 30
known as New France or Canada, as *per* maps and descriptions publicly known throughout Europe previous to that date, and therefore, if not so before, became the property of France by the Treaty of St. Germain-en-Laye in 1632, and as such *necessarily could not be and expressly was not* granted by their Charter; and in the third place, because by the Treaty of Ryswick the right of France to expel them as trespassers on her soil was manifestly admitted. And finally, even assuming that Great Britain originally had acquired a divided right with France, each to the extent of the establishment which their subjects respectively were the first to form, the Hudson's Bay Company would only have a right, under their Charter, to those particular posts, or forts, which they were the first to take possession of in localities previously unoccupied, for the Treaty of Ryswick conferred nothing upon them (if it even permitted them to retain anything, which is doubtful); the Treaty of Utrecht, although it gave Hud- 40
son's Bay to the British, conferred nothing upon the Company, apart from other British subjects; and the Treaty of Paris (although it gave Canada to Great Britain) conferred nothing upon them, except rights in common with other British subjects; while until eleven years after the last-named treaty, they never occupied anything beyond their original establishments on the coast, and those (also on the east) conquered from or ceded by France at the Treaty of Utrecht, but which could not, by such subsequent conquest, or cession, be made subject to their Charter.

Boundaries of Canada.

Having thus disposed of the boundaries of the Hudson's Bay Company's Territories—if such can be said to exist—the boundaries of Canada next come to be considered, and a division of the subject will naturally suggest itself into two heads. First, the original boundaries of Canada under the French; 50
and second the boundaries of Canada as acquired by Great Britain in 1763. The southerly boundaries, when not affecting the present question, need not of course be particularly referred to.

It will not be necessary to enter at length into the question of the original boundaries under the French, as they have already been sufficiently indicated. They claimed all to the north of the St. Lawrence, and were the first to occupy Hudson's Bay. If the British, besides their visits in search of a north-west passage, had seen fit to occupy the country for any practical purpose and been the first to do so, they might no doubt have claimed it for their own. Had any such actual occupation followed the voyages of Hudson and Button, notwithstanding the French footing on and claim to the whole continent north of the St. Lawrence, it must be admitted that a valid title would have been created. But when such occupation was only first attempted some fifty or sixty years later, in support of a commercial project of two Frenchmen, who had been already engaged in the trade, and when France was in formal and actual possession, it cannot be denied that the French title was the preferable one. Of the original territories of Canada, Great Britain therefore acquired a part by the Treaty of Utrecht, the residue remaining to France for fifty years later. On this head there seems to be no dispute, for British authorities designate a part of what they claim to have been acquired by that treaty as Canada.

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It now remains to be considered what were the boundaries of the country finally acquired by the Treaty of 1763, which, according to French and other authorities, was much larger than according to British authorities; but it will perhaps be most satisfactory for the present to adopt the latter.

One of the most circumstantial British accounts of the westerly possessions of the French is to be found in a geographical and historical work published by Thos. Jefferys in 1760. After giving the French account of Canada, he proceeds to give the English version of its boundaries in the following words:

"Canada, according to the English account, is bounded on the north by the high lands which separate it from the country about Hudson's Bay, Labrador or New Britain, and the country of the Eskimeaux and the Christeneaux; on the east by the River St. Lawrence; and on the south by the Outawais River, the country of the Six Nations and Louisiana, its limits towards the west extending over countries and nations hitherto undiscovered."

Memorandum of the Commissioner of Crown Lands, Canada, 1857.

The high lands referred to in the above are distinctly delineated on the maps published with the work as the northerly section of the range which, dividing to the north-west of Lake Superior, separates the waters flowing direct to Hudson's Bay from those flowing into Lake Winnipeg, crossing the Nelson River at Split Lake or Lac des Forts, etc. Describing the country from Lake Superior westward, the author goes on, at page 19, as follows:—

"At the mouth of Les Trois Rivières, or the Three Rivers, is a little French Fort called Camenistagonia; and twenty-five leagues to the west of the said Fort, the land begins to slope and the river to run towards the west.

"At ninety-five leagues from this greatest height lies the second establishment of the French that way, called Fort St. Pierre, in the Lake des Pluies. The third is Fort St. Charles, eighty leagues further, on the Lake des Bois. The fourth is Fort Maurepas, a hundred leagues distant from the last, near the head of the Lake of Quinipigon. Fort La Reine, which is the fifth, lies a hundred leagues further on the river of the Assinibois. Another Fort had been built on the River Rouge, but was deserted on account of its vicinity to the two last. The sixth, Fort Dauphin, stands on the west side of Lac des Prairies, or of the Meadows; and the seventh, which is called Fort Bourbon, stands on the shore of the Great Lake Bourbon. The chain ends with Fort Poskoyac, at the bottom of a river of that name, which falls into Lake Bourbon. The River Poskoyac is made by De Lisle and Buache to rise within twenty-five leagues of their west sea, which they say communicates with the Pacific ocean. All these Forts are under the Governor of Canada."

The above, it will be observed, is the English account of what was still French Canada in 1760, just after the taking of Quebec and before the final conquest and cession of the country. The River

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Poskoyac is that which now bears the name of the Saskatchewan upon which Sir Alexander McKenzie states that the French had another Fort higher up than Fort Poskoyac.*

The same author, Jefferys, in his description of Louisiana, says: "It is bounded on the N. by Canada; on the E. by the British Colonies of New York, Pennsylvania, Maryland, Virginia, etc., etc." The map accompanying this description claims the British Colonies, Virginia, etc., as coming up to the east bank of the Mississippi, and therefore it is Louisiana west of the Mississippi that he refers to as bounded by Canada on the north, that is to say, from the sources of the Mississippi westward.

The same year in which this work was published, all Canada was surrendered to the British, though not finally ceded till three years after.

In surrendering the country to the British, the Marquis de Vaudreuil submitted articles of 10 capitulation which were marked "granted," or "refused," etc., according as they were finally agreed to by General Amherst. In guarding the interests of the Canadian colonists in every part of the country surrendered, the localities above described by English authority as being under the "Governor of Canada," are designated as "*the Countries above*," and the 46th article of the capitulation is as follows: "The inhabitants and merchants shall enjoy all the privileges of trade under the same favours and conditions granted to the subjects of Her Britannic Majesty as well in the *Countries above* as in the interior of the Colony.—Granted."

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By which these countries were manifestly surrendered along with the rest of Canada, and the future rights of the Canadians guaranteed thereto by the provision that no British subjects should ever enjoy any privileges of trade there in which they did not share; not indeed that this guarantee, although it would decidedly have that effect, could have been foreseen as a safeguard against the Hudson's Bay Company who had never at that period penetrated into the country, it being simply intended to prevent any cause whatever from depriving the French colonists of the benefits of a trade, which had always been one of the most important in the country.

In the negotiations for peace that followed in 1761, which were directed on the one part by Mr. Pitt, and by the Duke de Choiseul on the other, and which ended, for the time, in failure, France contending for the boundaries of Louisiana extending to Canada, which Great Britain opposed. Finally, the Treaty of 1763 allowed Louisiana to extend west of the Mississippi to its source, and made that river from its source downwards the boundary between the British and French possessions,—the boundary from the source of the Mississippi westwards being left undetermined, a question which had ultimately to be settled with the United States instead of with France.

The system adopted and industriously followed up by the two rival Companies after their union had indeed so disseminated an erroneous appellation, that the country north and north-west of the Mississippi had come to be commonly called the Hudson's Bay Company's Territories; but when diplomatists and statesmen came to study the subject, tracing up from history and fact their respective claims, as bearing upon the Oregon question, they did not stultify themselves by the use of such an erroneous term; accordingly we find Mr. Buchanan, now President-elect of the United States, using the following language, in concluding a proposition made by him on 1st July, 1846:—

"The line proposed will carry out the principle of continuity equally for both parties, by extending the limits both of *ancient Louisiana and Canada* to the Pacific along the same parallel of latitude which divides them east of the Rocky Mountains."

The same line of argument sustains the British plenipotentiary when, in arguing the pretensions of his Government to Oregon, he traces the progress of the Canadians westward across the Rocky Mountains to the Pacific.

* "It may be proper to observe, that the French had two settlements upon the Saskatchewan long before, and at the conquest of Canada; the first at the Pasquia, near Carrot River, and the other at Nipawi, where they had agricultural instruments and wheel carriages, marks of both being found about those establishments, where the soil is excellent."—Note to General History of the Fur Trade, p. lxxiii. See McKenzie's Voyages. London, 1801.

The next step in the natural progress of events is the description of Canada under British sway. The first step after the Treaty of Paris was to provide for the government of the settled parts of the country, for which purpose the Government of Quebec was organized, comprising, however, a very limited portion of Canada, as *per* proclamation of 7th October, 1763, the rest of the country being thereby reserved from survey or settlement, for the protection of the Indians. The descriptions of Canada, however, of that period, took in the country to the westward of Pennsylvania, by the Ohio River, to the Mississippi. And the Imperial Statute of 1774, commonly called the "Quebec Act," describes the Province as extending "Northward to the southern boundary of the Territory granted to the Merchant Adventurers of England trading to Hudson's Bay," *but does not specify what their boundaries are*, and it will be seen, by what follows, that the construction put upon this Act by the British Government, nine years later, was adverse to the present pretensions of the Company. The Treaty of Independence of the United States provided a new southerly boundary for Canada, a part of what had formerly gone under that name having been ceded to the United States; and by the commission issued to Lord Dorchester—the first after this treaty—the same words are used in describing the boundaries of Canada, as in the Treaty, viz.:

"Through Lake Superior, northwards of the Isles Royal and Phillippeaux to the Long Lake; thence, through the middle of the said Long Lake, and the water communication between it and the Lake of the Woods, to the said Lake of the Woods; thence, through the said Lake to the most north-western point thereof, and from thence on a due west course to the River Mississippi, and northward to the southern boundary of the territories granted to the Merchant Adventurers of England trading to Hudson's Bay."

This description, it will be seen, leaves the boundaries beyond the sources of the Mississippi indeterminate. On the supposition that a line due west from the Lake of the Woods would intersect the Mississippi, the King was obliged to limit the extent of Canada on such line to the Mississippi proper, because, by the Treaty of Paris, France retained the whole country to the west of the Mississippi from its source downwards. Had the King's commission said from the intersection of the *due west* line with the Mississippi "*due north*," it might have been argued that it provided a westerly boundary, but it simply says "*northerly*," because although it was necessary to limit it to the Mississippi, where Louisiana commenced, there is no need for being specific beyond the sources of that river where the westerly boundary of Canada was yet unknown. Of the extent of Canada to the north by this description, it is enough to say that it was the same as by the Act of 1774, and required the boundaries of the territory granted to the Hudson's Bay Company to be defined *first*, and if that failed, it had no other limit, short of its original extent under the French.

At the "definitive Treaty of Peace" with the United States, their territory did not extend at any point to the west of the Mississippi, until they acquired Louisiana in 1803. It will be remembered that Mr. Pitt objected to the northerly boundary of Louisiana coming so far north as the southerly boundary of Canada in 1761, that nevertheless it was so settled in 1763 that the Mississippi should be the boundary to its source. This result seems to have been a compromise, by which Louisiana was confined almost entirely to the west of the Mississippi, Great Britain thus gaining her point on the east, which came more nearly in contact with her old possessions, and giving to France entire scope on the west to the very sources of the Mississippi, the boundary from thence westward being left undetermined. This point had accordingly to be afterwards settled with the United States, who had in the meantime acquired the rights of France. This settlement ultimately admitted the 49th parallel of latitude as the northerly boundary of Louisiana, and as such necessarily the southerly boundary of Canada, from the Lake of the Woods due west to the Rocky Mountains, passing north of the source of the Mississippi proper, though intersecting some of its tributary streams, the only error in which was that the line should not have been north of the source of the Mississippi, an error resulting from a previous treaty with the United States, at a time when it was supposed that the parallel of latitude agreed upon east of the Mississippi would intersect that river.

Were the King's letters patent to Lord Dorchester indeed taken literally at the present day in regard to the southerly boundary of Canada, the due west line of the description, not intersecting the

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Mississippi, would go on as far as British territory, not otherwise organized, would carry it, which would be to the Pacific; or if limited at all, it would be by the first waters of the Mississippi which it did intersect, which would be the White Earth River, and this would in fact correspond with the extent of Canada previously known to the French, taking in all the old forts already mentioned, and leaving out the "countries and nations hitherto undiscovered," that is at the time of the Conquest, though at the period when that description was made, the North-West Company were carrying on an active trade much further to the west: nor is it clear that this would be adverse to the intention of the description, for some of the maps of that period represent the Mississippi as west of the Red River.

The southerly boundary of the British Dominions west of Lake Superior being therefore demonstrated as identical with the southerly boundary of Canada to *some point due west* of the Lake of the Woods, the only question is as to where that point is to be found; is it the White Earth River, the first waters of the Mississippi with which the due west line intersects? or is it the summit of the Rocky Mountains, on the same principle that the *coterminous* boundary of Louisiana was ultimately so construed?

The next point to be determined is the northerly extension of Canada from its southerly boundary. The official description, corresponding with the Act of 1774, carries it to the boundary of the Hudson's Bay Company's Territories, but the same official description ignores the boundaries they claim (*thus proving so far the construction then put upon the Act of 1774*), for it carries the southerly boundary of Canada down the water-shed of Hudson's Bay from two to three hundred miles to the Lake of the Woods, and *thence due west*; thus making the starting point far within what the Hudson's Bay Company claim, and thus, *from a point within what they claim* as their territory, it is to extend northerly to their territories. If, then, the "rights" of the Hudson's Bay Company were even far less equivocal than they are, their southerly boundary, as pretended by themselves, is entirely demolished, and the question arises, *where is the boundary of their territories so described as the northerly limit of Canada?* The question of territorial rights has already been so fully discussed that it is unnecessary to repeat the arguments. The only possible conclusion is, that Canada is either bounded in that direction by a few isolated posts on the shore of Hudson's Bay, or else that the Company's territory is—like the intersection of the due west line with the Mississippi—a myth, and consequently that Canada has no particular limit in that direction.

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The accompanying map illustrates the northerly boundary of Canada, according to British authorities, as ceded by the French in 1763, there being no westerly boundary then known or since provided. This is perhaps all that could, in the first instance, be absolutely claimed as under the Government of Canada, were it not that, since the final determination of the southerly boundary, the Imperial Government merely described the authority of this Government as extending over *all the countries theretofore known as Canada*, which might fairly be taken to cover the territory acquired by the Treaty of Utrecht, as well as that required by the Treaty of Paris.

Boundaries of the Indian Territories.

The boundaries of the Indian Territories need little consideration or explanation, as they simply include all that belongs to Great Britain in North America to the north and west of Canada, excepting the territory (if any) which the Hudson's Bay Company may of right claim. It must not be lost sight of, however, that the great bulk of this territory has been acquired by the Crown of Great Britain, through discoveries of its Canadian subjects, beyond whatever may be determined to be the westerly boundary of Canada, across the Rocky Mountains to the shores of the Pacific, and by the Mackenzie River to the Frozen Ocean. The importance of these discoveries in the negotiations pending the treaty of Oregon cannot be forgotten, for it is in virtue of *Canadian Discovery* and *Canadian Settlement* that the British negotiator was enabled to maintain his position in the controversy, and secure a footing for his country in the Pacific. And when, it may be asked, did ever the Hudson's Bay Company afford such an important advantage to British interests?

Sir Alexander McKenzie's journey in 1793 across the Rocky Mountains (the first ever performed north of Mexico) is thus referred to by the British Plenipotentiary, in negotiating the Treaty of Oregon:

"While Vancouver was prosecuting discovery and exploration by sea, Sir Alexander McKenzie, a partner in the *North-West Company*, crossed the Rocky Mountains, discovered the head waters of the river since called Frazer's River, and following for some time the course of that river, effected a passage to the sea, being the first civilized man who traversed the continent of America from sea to sea in these latitudes. On the return of McKenzie to Canada, the *North-West Company* established trading-posts in the country to the westward of the Rocky Mountains."

This was the British title to that part of the country, and but for this journey and the establishing of these trading-posts, by which were acquired what the same diplomatist says "may be called beneficial interests in those regions by commercial intercourse," the probability is that Great Britain would now hold no continuous possessions across this continent, if she even held any isolated localities on the Pacific, in virtue of her discoveries by sea.

Lewis and Clark, Americans, descended the southerly branch of the Columbia River, 1805, and in 1811, Mr. Thompson, of the *North-West Company*, came down the main branch from the north, whose discovery is thus referred to by the British Plenipotentiary:—

"In the year 1811, Thompson, the astronomer of the *North-West Company*, discovered the northern head waters of the Columbia, and following its course till joined by the rivers previously discovered by Lewis and Clark, he continued the journey to the Pacific."

And again:—

"Thompson, of the *North-West Company*, was the first civilized person who navigated the northern, 20 in reality the main branch of the Columbia, or traversed any part of the country drained by it."

This is the title by which Great Britain has been enabled to retain the main branch of the Columbia to its intersection with the 49th parallel of north latitude, and the free navigation for her subjects of the whole river from that point to its discharge in the Pacific Ocean, as secured by the Treaty of Oregon, 1846.

With respect to McKenzie's discoveries to the north, no diplomatic reference thereto can be quoted inasmuch as there has been no disputed title on the part of any foreign power to give rise to any controversy on the subject.

It may fairly be urged, therefore, that these "Indian Territories," originally the fruits of Canadian enterprise, perseverance and industry, should no longer be shut out from the Canadian people, but should in fact be united to Canada as a part of the British dominions which Canadian subjects have 30 had the merit of acquiring and retaining for the British Crown.

Jurisdiction.

The question of jurisdiction next comes under consideration, and in this, as regards the Hudson's Bay Company, it is apprehended that the actual exercise of it is widely different from what existing laws would sanction.

The mystery with which this company have managed to shroud their operations in the interior renders it difficult to say what they do or what they do not do, but it is generally understood that they actually exercise unlimited jurisdiction in every respect, civil, criminal, and governmental, and that not only in what has been considered their own territories, but also in the Indian Territories and those parts of Canada not immediately contiguous to settlement; all of which existing law positively forbids 40 them to do, it need not be said, in Canada, but either in their own territories or in the Indian Territories.

By the Imperial Statute 43 Geo. III., cap. 138, the jurisdiction over the Indian Territories and all "parts of America not within the limits of the Provinces of Lower or Upper Canada, or either of them, or within any civil government of the United States of America," is vested in the said Provinces. It is a curious circumstance that the very words of this Act, which seem to have been intended to deny all claim to any jurisdiction on the part of the Hudson's Bay Company, should have been taken hold of as the means of questioning its reference to them. The preamble of the Act, in giving the reason for the enactment, states that offences not committed within the limits of the Canadas or the United States, as

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above, "are therefore not cognizable by any jurisdiction whatever." This, the Company argued, could not mean their territories, *because* jurisdiction *did* exist there. The Act, they said, could not mean *all* British America not within the limits of the Canadas, for the assertion that no jurisdiction existed was not true of Nova Scotia or New Brunswick, and therefore might not be true of Hudson's Bay. Thus, in fact, it appears that the framers of the Act, having their minds directed to the North-West, where the offences referred to had occurred, forgot to exclude the Provinces lying on the opposite side of Canada, on the Atlantic coast, from its operation; and this omission, when the war was carried on between the two Companies in the interior, Lord Selkirk turned to account to throw doubt on the applicability of the Act to the Company's Territories. But the assumption that this Act does not affect their pretensions is doubly futile; for, when more closely considered, it either brings their territories within Canadian jurisdiction or it ignores them altogether, and in either case it contracts the limits they claim. If they make good their assertion that it does not affect their territories, then it destroys their claim to have their limits extended to the boundaries of Canada. The territories referred to in the preamble of the Act are those not within the limits of *either* Lower or Upper Canada, the two Provinces being treated *distinctly* as regards the territories not within their limits. Now, taking Lower Canada in the first instance, it is bounded by the Ottawa, and a line due north from the head of Lake Tamiseamingue and the places outside its limits on which the Act would have effect, if not the Company's territories, must certainly be something between those limits and their territories. But the question is more important as regards the places outside of Upper Canada. If the maps accompanying the "Statement of Rights," submitted by Sir J. H. Pelly, be correct, then the territory affected by the Act is about 1,500 miles distant in its nearest part from the most remote point in Canada. In other words, Canada ends at the source of Pigeon River, and the Indian Territories begin at the top of the Rocky Mountains, and we are required, therefore, to assume that the Imperial Legislature meant to commit the absurdity of giving jurisdiction to the Courts of Canada over a territory beginning at a distance of some fifteen hundred miles from her frontier, while a different British jurisdiction (that of the Company) prevailed in the intervening space. But assuming for fact the Company's view of the case, that it did not affect their territories, we find the very purpose for which the Act was passed, as expressed in the title, to be, to provide a jurisdiction for certain parts of North America *adjoining* to the said Provinces of Lower and Upper Canada. Consequently, if the territory affected by the Act only commences at the summit of the Rocky Mountains, as represented by the map submitted by Sir J. H. Pelly, then as it *adjoins* this Province, Canada must extend to the summit of the Rocky Mountains; so that, on their own showing, the jurisdiction they exercise in the intervening space, at Red River, for instance, is out of their own territories, and, therefore, not only without the sanction of law, but in violation of a positive enactment. They must thus either ignore their own pretensions to the territory between what they call the westerly boundary of Canada and easterly boundary of the "Indian Territories," or they must admit that the Act under consideration (which is still unrepealed) applies to their territories, in which case their jurisdiction in every part would be in violation of the statute.

But if there was any doubt on the subject before, it was fully removed by the Act 1 and 2 Geo IV., cap. 66, which was passed after all the strife and bloodshed in the North-West, and which, after reciting the doubt raised respecting the former Act being applicable to the Hudson's Bay Company's territories, declares at sec. 5, in the strongest and most comprehensive manner, that the said Act and all its clauses shall be construed to apply to their territories, anything in "*any grant or charter to the Company to the contrary notwithstanding.*"

This Act, 1 and 2 Geo. IV., cap. 66, gives jurisdiction, as full and complete as language can make it, over all the Indian and Hudson's Bay Company's Territories, to the Courts of Canada, and it provides for the appointment of Justices of the Peace by the Crown (both for the Indian Territories and Hudson's Bay Company's Territories), to whom the *Canadian Courts are empowered* to issue commissions "to take evidence in any cause or suit, and return the same, or try such issue, and for that purpose to hold courts," etc. These courts are most distinctly made subordinate to the Courts of Canada, etc., and can, in fact, be created by and exist through them only.

By the 11th and 12th clauses, however, the Crown is empowered to create Courts of Record, without the intervention of the Canadian Courts (but without limiting the power to be exercised through

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them), for the trial of small causes and petty offences, the former being limited to civil cases not affecting a larger amount than £200, and the latter to cases in which the offence does not subject the person committing the same to capital punishment or transportation.

By this Act it is repeatedly declared and enacted in the most emphatic manner, that its enactments shall have effect "notwithstanding anything contained in any Charter granted to the Governor and Company of Adventurers of England trading to Hudson's Bay."

It is true the last clause of the Act reserves to the Company, in the most ample manner, all rights and privileges they "are *by law* entitled to claim and exercise under their Charter." This, it will be observed, is what the "Statement of Rights" refers to when claiming a "*concurrent jurisdiction*" with the Canadian Courts. Now, when it is observed that the Legislature has refrained from expressing any opinion as to what the rights and privileges of the Company really are, and cautiously abstained from recognizing any but what they already had "*by law*," it is difficult to suppose that it was the intention of the Act to recognize in them those very powers which it was making the most ample provision for the exercise of by a totally different authority, in strong and repeatedly expressed abnegation of their pretensions.

It is also to be observed that the previous Act, 43 Geo. III., which denies their jurisdiction, is still in force, unrestricted in every particular, and not deriving its force from the subsequent Statute, which is merely *declaratory* in that particular of its proper construction.

The question of whether the Company can exercise any legal jurisdiction within their own territories—limited to their just extent—loses its importance, however, in face of the more serious question of its actual exercise both in Canada and the Indian Territories, and that even to the extent of life and death, while the intention of the Imperial Legislature in creating a jurisdiction for these territories, reserved all important cases, either civil or criminal, for trial by the regularly constituted legal tribunals of an organized community, where the *Charter* of British rights would be held as sacred as the interests of a commercial Company who assume to be themselves the judges, where (without any reflection upon them collectively or individually) cases must, in the very nature of things, arise in which they ought to be the judged.

It, therefore, becomes of very great moment to ascertain the truth of certain statements that have been made to the effect that their principal officers at Red River hold their commissions from the Crown, and if so, under what form, for what extent of territory, and how described. Such commissions might, no doubt, have been issued under the Statute 1 and 2 Geo. IV., for the Hudson Bay Company's Territories and for the Indian Territories, for the trial of small causes and offences of a minor nature, as already described, without in the least infringing upon or limiting the right of Canada to intervene; but if the British Government has expressly included the Red River country in any such commissions, it can only have been through a misapprehension of boundaries, which is not to be wondered at from the policy pursued since the union of the Companies, and the erroneous view of the case they have so constantly disseminated; and no doubt any such powers, if they have been granted, would be withdrawn as soon as the case has been brought fully under the consideration of the Imperial authorities.

In concluding the question of Jurisdiction, it is necessary to observe that the Imperial Statutes 40 herein quoted, which vest the jurisdiction in Canada to the shores of the Pacific, have been repealed in so far as they relate to Vancouver's Island by the Act 12-13 Vic., cap. 48, which re-invests the jurisdiction of Vancouver's Island in the Imperial Government until the establishment of a Local Legislature, which the Act contemplates.

At the same time, a Charter was granted to the Hudson's Bay Company for the colonization of the island, conveying a grant of the soil.

Neither the Act nor the Charter, however, confers any jurisdiction upon the Company.

The Company were required by the terms of the grant to colonize the Island within five years failing which the grant was to become void. It was also stipulated that the grant might be recalled at the time of the expiration of their lease for the Indian Territories, upon payment to the Company of 50 the expenses they might have incurred, the value of their establishments, etc.

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Before concluding this Report, it is desirable to offer a few general remarks upon the subject, which the policy of the Company has kept out of view, and which consequently is not generally well understood.

The Hudson's Bay Company claim under three separate titles, the first of which is the Charter of Charles II., granted in 1670, *forever*. The second is the lease originally granted in 1821 to them, in conjunction with the North-West Company of Canada, for the Indian Territories. The third is their title to Vancouver's Island, as explained. Under the first, they base their claim to government, jurisdiction, and right of soil over the whole country watered by rivers falling into Hudson's Bay; at least, such is the theory, although they have abandoned it south of the present southerly boundary of Canada, 10 at Rainy Lake, the Lake of the Woods, and along the 49th parallel, to the south of which those rivers take their rise. Under the second, they claim exclusive trade from the Rocky Mountains west to the Pacific, and from the sources of the McKenzie River to the Frozen Ocean. There is no dispute about their title on this head, but their lease expires in two years, and it is the renewal of this lease for a further period of twenty-one years which they now seek to obtain.

It will be seen by the question of boundary already treated, that the country about Red River and Lake Winnipeg, etc., which they claim under their Charter, absolutely belongs to Canada; and it will be observed that the abstract right, not the value of the territory, has been dwelt upon, but unfortunately the latter has been as little generally understood as the former, the result of the means the Company have taken to conceal it, for seldom if ever has the wisdom and foresight of man devised a 20 policy better calculated to the end for which it was intended than that adopted since the union of the Companies in 1821.

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Before that union, the Canadian Fur Trade gave employment to some thousands of men as mere carriers, or "*Voyageurs*" as they were termed.

In endeavoring to depreciate the national services rendered by the North-West Company during the war of 1812, at the capture of Michilimacinae, etc., Lord Selkirk alludes to this body of men as forming the "*Voyageurs Corps*," but denies credit to the Company for their important services, which he admits "in a great measure secured Canada," because they were not constantly employed by the Company, and effected this service at a season of the year when the Company did not require them. Assuming this to be the fact, however, had there been then, as now, no such Company and no such 30 trade, there would have been no such body of men ready for action in the hour of danger.

Had the circumstances of the trade continued the same to the present day, settlement must have followed the route of such a line of traffic, and the continual intercourse between this country and the fertile plains of the "far West" would have placed us as far in advance of our American neighbours in the colonization of those countries as we are now behind them.

But the policy of the united Companies has been so admirably carried out in all its details, that an erroneous impression respecting the country and everything connected with it had gradually got possession of the public mind, and it is wonderful with what tact such impressions may sometimes be conveyed without any statement being made contrary to truth. The very appellation of "*Hudson's Bay Territory*" as applied, for instance, to the Red River country, carries a false impression with it, for 40 the waters of the Mississippi and the Red River, the Assiniboine and the Missouri, interlace with each other there, and therefore the designation of "*Gulf of Mexico Territory*" would be just as correct. But what a different impression it would convey as regards climate. Again, almost every mention of the available parts of the Western Territories, which are well known to possess a soil and climate adapted in the highest degree for successful settlement, is interwoven with some reference to *ice* in some shape or other, which no doubt the company truly encounter in carrying the trade some eight hundred miles due north through Hudson's Bay.

An admirable specimen of this kind of policy, by which erroneous impressions may be conveyed, is to be found in Sir J. H. Pelly's letter to Lord Glenelg, of 10th February, 1837:—

"For many years prior to the conquest of Canada, French subjects had penetrated by the St. Lawrence to the frontiers of Rupert's Land; but no competition had occurred between the traders of the two countries within the territories of the Hudson's Bay Company previous to the cession of Canada to Great Britain.

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"Subsequent to that period, the greater capital and activity of British subjects led to a competition, first on the frontier parts, then in the interior, and at last to the formation of a Company, combining all the individuals at that time engaged in the trade to countries bordering on the west of Lake Superior, under the firm of the North-West Company of Montreal."

This, when dissected, is a significant paragraph. *Where are "the frontiers of Rupert's Land,"* if the French, whose forts were all around Lake Winnipeg, had not reached them before the cession of Canada to Great Britain? This is an important corroboration of the views of the boundary question explained in the present report.

That "no competition had occurred within the Territories of the Hudson's Bay Company" up to that time may be very true, because the Company had never come up from the shores of the Bay, and the French had not gone down—from their places on Lake Winnipeg—to the Bay. The second paragraph above quoted may also be substantially true, but yet it is so framed as to convey to the general reader that the competition arose from the inhabitants of Canada advancing beyond where they had been before; whereas it was the Hudson's Bay Company who then came up, for the first time, from the shores of the Bay, which led to the competition "first on the frontier parts" of Rupert's land, "then in the interior," on Lake Winnipeg, the Saskatchewan, etc., where the Canadians had long enjoyed the trade without competition.

Such is the system and policy pursued by the Company to exclude from view and create erroneous impressions respecting the Western portions of this province, than which there is perhaps no finer country in North America. The same course marks their proceedings at the present moment, for no intimation has been given in this country of their intention to apply for a renewal of the lease of the Indian Territories, though, exercising the privileges they do in countries subject to the Canadian Government, it would not have been unreasonable to expect a different course. Neither does it appear that they have taken any means to inform the inhabitants of those countries whose rights and interests are most deeply affected by the action to be taken, that they were to make this early application for renewal of their lease. Had it been effected in the quiet manner they seem to have desired—a consummation which the thanks of the country are due to the Imperial Government for having refused to sanction—they only would have been heard in their own case, and the result would have been, alike to the people here and in the more remote territories, a surprise.

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Canada has no quarrel with the Hudson's Bay Company, and desires no harsh measures towards them. It would be alike ruinous to them, and injurious to the countries over which they hold either legal or illegal sway, to put a sudden stop to their operations; but it is an error to suppose that the governing of those countries is a task of uncommon difficulty. The state of anarchy which prevailed in those countries during the warfare of the Companies was the result of the strife between them, where there was no sort of authority, except what they seemed equally to wield, and not arising from any turbulent or ungovernable spirit on the part of the native population. On the contrary, the moment a recognized authority stepped in to control both Companies, implicit obedience was at once yielded to it throughout those vast territories, and either party would have found itself powerless to command followers for any purpose of further aggression. This was upon the occasion of the withdrawal of all commissions of the peace, previously granted to the leading people of the two Companies, the appointment of two special Commissioners (one of them a member of the Executive Council of Lower Canada), and the issuing of a Proclamation in the name of the Prince Regent, by authority of a despatch from Earl Bathurst, of 6th February, 1817, requiring the mutual restitution of all the places and property captured during the strife, to the party who had originally possessed the same, and the entire freedom of the trade to each party, until further adjudicated upon. Galling as this restitution must have been in numerous instances, where party feeling, embittered by the loss of many lives, had reached the highest pitch of excitement, it was immediately complied with.

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The proper course to pursue, therefore, would be to lay before the Imperial Government the expediency of annexing the Indian Territories to Canada, showing that by this means only can those countries be retained long in the possession of Great Britain. For colonized they *must and will be*; it is only a question of who shall do it. If we do not, the Americans will, and that in spite of anything the Company can do to prevent it. That these Territories are fit fields for settlement it is useless to dispute, for one physical fact upsets all theories to the contrary. Where a country is found to sustain *animal life* to such an extent that hundreds of thousands of wild cattle find subsistence there both in summer and winter, there man also can find a home and plenty. Nor is the country possessing this characteristic confined to a narrow strip along the frontier, but continuing to widen to the westward it is found that the climate, even on the east side of the Rocky Mountains and at a depth of seven degrees 10 North of the American Boundary, is milder than the average of the settled parts of Upper Canada.

On the west side of the Rocky Mountains the climate is mild to a still higher latitude, but Vancouver's Island, together with the contiguous mainland, is perhaps one of the finest countries in the world for colonization. The only drawback is the difficulty of access—a difficulty which the present system will never remove, for it looms larger now than it did forty or fifty years ago, when the North-West Company of Canada poured a continuous stream of traffic across the continent. This Island cannot now, of course, be annexed to Canada on the same terms as the other Indian Territories, as the existing Charter under which the Island is held (a different and distinct thing, be it remembered, from either the old Charter or the expiring Lease) entitles the Hudson's Bay Company to payment of the value of their establishments if the grant be rescinded, which Canada would naturally be expected to 20 pay if the Island were conceded to her, and it might be well to see now upon what terms this could be done, because it seems that if it be not done at the expiration of the Lease of the "Indian Territories," it could not be done afterwards, unless indeed the Company have failed to fulfil the conditions required within the first five years.

Twelve years ago the United States had no communication with their territories on the Pacific, except by sea; and during the Oregon negotiations, when proposing strenuous measures upon the subject, the President, in his message to Congress, 2nd December, 1845, says:—

"An overland mail is believed to be entirely practicable; and the importance of establishing such a mail at least once a month, is submitted to the favourable consideration of Congress."

How different the circumstances now, and how "entirely practicable" it has proved, need not be 30 dwelt upon, but it must be remarked that at no other point north of the Gulf of Mexico are the facilities for communication across the continent anything like equal to what they are through Canada, there being good navigation three-fourths, if not more, of the whole distance; first to the head of Lake Superior, from whence the navigation is broken to Lake Winnipeg (though about 150 miles of this distance is navigable); then through that Lake to the Saskatchewan, on which there are obstructions in the lower part near the Lake, from whence the navigation is unimpeded to the very base of the Rocky Mountains.

It would be very desirable, therefore, and quite practicable, if the British Government will consent to annex the Indian Territories, extending to the Pacific, and Vancouver's Island, to Canada, to establish 40 during summer a monthly communication across the continent. It is of incalculable importance that these measures should be most forcibly pressed upon the Imperial Government at the present juncture for on their solution depends the question of whether this country shall ultimately become a Petty State, or one of the Great Powers of the earth; and not only that, but whether or not there shall be a counterpoise favourable to British interests and modelled upon British institutions to counteract the preponderating influence—if not the absolute dominion—to which our great neighbour the United States must otherwise attain upon this continent.

No reference has been here made to the controversy between the Company and those who accuse them of exercising a pernicious influence over the Indian population, nor is it necessary to enter into the subject further than to point out the erroneous impression the Company strive to inculcate, to the effect that they are necessary to the Indians. It may well be that the state of things is better under 50

them than it was when the two powerful Companies were in hostile array against each other; and it may be that their affairs are as well conducted, with reference to their effect upon the native population, as could well be expected of a Commercial Company having the primary question of profit and loss as the object of their association. But the question really comes to be, whether those countries shall be kept *in statu quo* till the tide of population bursts in upon them, over an imaginary line, from a country where it has been the rule that the Indian must be driven from the lands the white man covets; or be opened up under the influence of the Canadian Government, which has always evinced the greatest sympathy towards the Indian race, and has protected them in the enjoyment of their rights and properties, not only in their remote hunting grounds, but in the midst of thickly-peopled districts of the country.

JOSEPH CAUCHON,

Commissioner of Crown Lands.

CROWN LANDS DEPARTMENT,
Toronto, 1857.

CHIEF JUSTICE DRAPER TO THE COLONIAL SECRETARY.*

33 SPRING GARDENS,

6th May, 1857.

SIR,—In the last interview with which you favoured me, I took occasion to advert to the question of boundary between Canada and the Hudson's Bay Territory as one which required to be settled as a necessary preliminary to many other very important inquiries involved in the matters submitted to the Committee of the last House of Commons, and, as I understood, to be again submitted to the Parliament.

I alluded to the difference between the views of the Hudson's Bay Company, as expressed in former times, and those which are now, and have been within the last forty years, advanced by them on this point; and I stated my readiness to submit a memorandum to you in relation thereto, which you were pleased to signify your readiness to receive and consider. That memorandum I have now the honour to enclose.

As the construction of the language of the Charter, and the extent of the territory purported to be granted, are involved, it may be considered desirable that the matter should be referred to the Judicial Committee of the Privy Council. In this event, I venture to request that counsel on the part of the Province may be permitted to attend to watch the argument, and, if it be deemed necessary, that they may be heard in support of those views which more immediately affect the interests of Canada.

I have suggested a reference to the Judicial Committee because I think its opinion would command the ready acquiescence of the inhabitants of Canada as to their legal rights, and because I believe they entertain a very strong opinion that a considerable portion of the territory occupied or claimed by the Hudson's Bay Company will be found to lie within the proper limits of that Province.

Whether it would be desirable to sever this from the more general question of the legality and validity of the Charter, is a matter I should desire to leave for your consideration, but in any event I think it expedient that counsel should be permitted to attend to watch the interests of the Province.

The Right Hon. H. Labouchere.

I have, etc.,

WM. H. DRAPER.

MEMORANDUM FROM CHIEF JUSTICE DRAPER, AGENT OF THE PROVINCE OF CANADA, ENCLOSED IN THE FOREGOING LETTER.*

It is not proposed at present to discuss the validity of the Charter of the Hudson's Bay Company. A careful perusal of it will suggest many doubts whether it be not altogether void. But assuming that it may be sustainable for every or for any of the purposes for which it was intended, and for the moment conceding that the indefinite description of the territory purporting to be granted does not vitiate the grant, there is a question as to the limits of that territory in which the Province of Canada is deeply interested.

*Report Select Committee, House of Commons (England), on the Hudson's Bay Company, 1857, p. 374.

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The parts of the Charter bearing on this question are as follows:—

1.—“All the lands and territories upon the countries, coasts, and confines of the seas, bays, lakes, rivers creeks, and sounds aforesaid” (stated in the preceding part to be those which lie within the entrance of the straits, commonly called Hudson's Straits, in whatsoever latitude such bays, etc., should be), “that are not already actually possessed by or granted to any of our subjects, or possessed by the subjects of any other Christian prince or state, with the fishing of all sorts of fish, whales, sturgeons, and all other royal fishes in the seas, bays, inlets, and rivers within the premises; and the fish therein taken, together with the royalty of the sea upon the coasts within the limits aforesaid, and all mines royal, as well discovered as not discovered, of gold, silver, gems; and precious stones, to be found or discovered within the territories, limits, and places aforesaid; and that the said land be from henceforth reckoned and reputed as one of our plantations or colonies in America, called Rupert's Land; And, further, we do by these presents, for us, our heirs and successors, make, create, and constitute the said Governor and Company for the time being, and their successors, the true and absolute lords and proprietors of the same territory, limits, and places aforesaid, and of all other the premises hereby granted as aforesaid, with their and every of their rights, members, jurisdictions, prerogatives, royalties and appurtenances whatsoever, to them, the said Governor and Company, and their successors forever, to be holden of us, our heirs and successors, as of our Manor of East Greenwich, in our county of Kent, in free and common soccage.

And, 2.—“And furthermore, we do grant unto the said Governor and Company, and their successors, that they and their successors, and their factors, servants, and agents, for them and on their behalf, and not otherwise, shall forever hereafter have, use and enjoy, not only the whole, entire and only trade and traffic, and the whole, entire and only liberty, use and privilege of trading and trafficking to and from the territory, limits and places aforesaid, but also the whole and entire trade and traffic to and from all havens, bays, creeks, rivers, lakes, and seas into which they shall find entrance or passage, by water or land, out of the territories, limits or places aforesaid, and to and with all the natives and people inhabiting within the territories, limits and places aforesaid, and to and with all other nations inhabiting any of the coasts adjacent to the said territories, limits and places, which are not granted to any of our subjects.”

Prior to this Charter, there was little or nothing done within Hudson's Bay in the way of taking any actual possession of the territory granted. The bay had been discovered, several ships from time to time had entered it, and probably some interchange of commodities with the Indians had taken place while the vessels remained within the Straits; but nothing whatever was known of the interior. Charles the Second claimed—for it was no more than a claim—all the territory which the discovery of the Straits and Bay could confer on the British Crown. The French Crown in like manner had claimed, by reason of their actual settlement of Canada, and of their progressive discoveries and trade, not only all the western territory, including that now in dispute, but even the Bay of the North, and thence to the pole; but neither French nor English had, in 1670, actually penetrated, so far as appears, within many hundred miles of the Red River.

The settlements made by the Hudson's Bay Company were at first confined to those on the shores of James' Bay, and at the Churchill and Hayes Rivers. Henley House, which is about 150 miles up the Albany River, was not erected before the year 1740. The company afterwards erected Fort Nelson which is laid down on the maps at about 200 or 230 miles from the mouth of Churchill River, and the fort at Split Lake, which is represented as about 140 miles from the mouth of the Nelson River. It is believed that these two last named forts are of comparatively modern erection, but that, at all events, for more than a century after the date of the Charter, these, together with the forts on or near the shores of the Bay, were the only settled posts of the Hudson's Bay Company.

This throws some light upon the view which the Company practically adopted, of the extent of their territories.

In many written documents they treat Hudson's Straits and Bay as the governing and principal matter, in reference to or for the purpose of securing which the grant of territory was made to them.

Memorandum
submitted by
Chief Justice
Draper to the
Colonial Sec-
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In a petition addressed by the Hudson's Bay Company to Charles the Second, in 1682, they say that His Majesty was graciously pleased to incorporate them, and to grant to them forever all the said Bay, and the Straits leading thereunto, called Hudson's Straits, with all the lands and territories, rivers and islands in and about the said Bay, and the sole trade and commerce there; and, referring to a letter of Monsieur de la Barre, the Governor of Canada, threatening to drive them out, they observe, they doubt not but that, by the King's Royal authority and protection, they will be enabled to defend his undoubted right and their own within the Bay, "wherein never any nation but the subjects of your Imperial Crown has made discoveries or had any commerce."

In a letter dated January 25, 1696-7, they urge, "whenever there be a treaty of peace between the 10 Crowns of England and France, that the French may not travel or drive any trade beyond the midway betwixt Canada and Albany Fort, which we reckon to be within the bounds of our Charter."

In 1698, in a letter written by their Deputy-Governor to the Lords Commissioners of Trade, they repeat the same desire.

In a memorial, dated in June, 1699, they represent the Charter as constituting them the true and absolute proprietors of Hudson's Bay, and of all the territories, limits and places thereto belonging. They further set forth the attacks made in 1682 and 1686 by the French from Canada, and their applications for redress, and the declaration made by James the Second that he, upon the whole matter, did conceive the said Company well-founded in their demands, and therefore did insist upon his own right and the right of his subjects to the whole Bay and Straits of Hudson, and to the sole trade thereof; and they pray the then King, William the Third, to insist upon the inherent right of the Crown of England and the property of his subjects not to be alienated, that so considerable a trade might not be lost, and the Hudson's Bay Company "be left the only mourners" in the peace of Ryswick.

At this time all their forts but one (Albany Fort) had been taken by the French; some of them, indeed, while the two Crowns were at peace; an act of aggression specially referred to by His Majesty in the declaration of war in 1689.

In January, 1700, being called upon by the Lords of Trade and Plantations, they offered proposals for limits between them and the French in Hudson's Bay, insisting at the same time upon their undoubted right "to the whole Bay and Straights of Hudson." The proposed limits were to confine the French from trading or building any house, factory, or fort to the northward of Albany River, situate 30 in about 53° of north latitude, on the west main or coast, or to the northward of Rupert's River on the east main or coast of the Bay, binding themselves not to trade or build any house, factory, or fort to the southward of these two rivers "on any ground belonging to the Hudson's Bay Company." They urged that these limits should be settled; stating, that if the French refused, they must insist upon their prior and undoubted right to the whole Bay and Straits of Hudson, which, they observed, the French never yet would strictly dispute or suffer to be examined into, though the first step of the eighth article of the Treaty of Ryswick directs the doing of it. These limits would have given the French access to the Bay by the Moose River.

The French Ambassador did, however, in March 1698-9, set forth the claims of his Sovereign in a long answer to the English memorial, among other things observing that the different authors who have 40 written about Canada or New France gave it no limits northwards, and that it appeared by all the grants or letters of corporation made at several times by the Kings of France to the companies settled in New France, and particularly in 1628, that all the Bay of the North is comprehended in the limits mentioned by the said grants.*

He also further suggested, that if the English had had any knowledge of the Bay, or any claim thereto, they would not have failed to have insisted on it, and expressly to mention it in the Treaty of 1632 (that of St. Germain-en-Laye), when they restored to the French New France. Admitting that

* L'Esкарbet describes Canada at the period of the appointment of De la Roche, in 1593, thus: "Ainsi notre Nouvelle France a pour limites du côté d'ouest les terres jusqu'à la Mer Pacifique au delà du Tropique du Cancer, au midi les îles de la Mer Atlantique du côté de Cuba l'île Espagnole, au levant la Mer du Nord qui baigne la Nouvelle France; et au septentrion celle qui est dite inconnue vers la Mer Glacée jusqu'à la Pôle Arctique."

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the French neither then nor for a long time afterwards had any forts on the coasts of the Bay, he explains it by saying, that being masters of the inland country, the savages, with whom they had a continual trade, brought their furs over lakes and rivers.

In April, 1714, the Hudson's Bay Company thank the Queen "for the great care Your Majesty has taken for them by the Treaty of Utrecht, whereby the French are obliged to restore the whole Bay and Straights of Hudson; the undoubted right of the Crown of Great Britain."

In August, 1714, in reference to the same treaty, the Hudson's Bay Company proposed that the limits between the English and French on the coast of Labrador should commence from the island called Grimington's Island, or Cape Perdrix, in the latitude of $58\frac{1}{2}^{\circ}$ N., which they desire may be the boundary between the French and English on the coast of Labrador; and that a line be drawn south-10 westerly, to pass through the centre of Lake Mistassinnie; and from that lake a line to run south-westward into 49° north latitude; and that such latitude be the limit, that the French do not come to the north nor the English to the south of it.

In another paper of about the same period, they give the following account of the motives which induced the formation of the Company: "It was, therefore, after the happy restoration of King Charles II. that trade and commerce began to revive, and in particular that some noblemen and other public-spirited Englishmen, not unmindful of the discovery and right of the Crown to those parts of America designed at their own charge to adventure the establishing of a regular and constant trade to Hudson's Bay, and to settle forts and factories there, whereby to invite the Indian nations (who lived like savages many hundred leagues up in the country) down to their factories." 20

In August, 1719, the Hudson's Bay Company acknowledges the surrender by the French of the Straits and Bay, in such a manner that they had nothing to object or desire further on that head. But they urged the settlement of the limits between the English and French territories without delay, since the French, subsequently to the conclusion of the peace (in 1715), made a settlement at the head of Albany River, upon which the Company's principal factory was settled, whereby they interrupted the Indian trade from coming to the Company's factories. It was therefore proposed and desired, "that a boundary or dividend line may be drawn so as to exclude the French from coming anywhere to the northward of the latitude of 49° , except on the coast of Labrador; unless this be done, the Company's, factories at the bottom of Hudson's Bay cannot be secure, or their trade preserved."

Memorandum of Chief Justice Draper, submitted to the Colonial Secretary, 9th May, 1857.

In all the foregoing documents it will be observed, that whether upon the peace of Ryswick, when 30 English affairs looked gloomy, and those of France were in the ascendant, or after the Treaty of Utrecht, when the power of France was broken, the Hudson's Bay Company sought to have the boundary between the territories they claimed and those forming part of Canada, settled by some defined and positive line which was to be the result of negotiation, not then pretending that there was anything in their Charter which gave them a rule by which they could insist that the extent of their territories to the southward should be ascertained.

Even in October, 1750, they entertained the same views, while at that time they were pushing their pretensions, both to the northward and westward, to the utmost limits. They state that the limits of the lands and countries lying round the Bay, comprised, as they conceived, within their grant, were as follows: All the lands lying on the east side or coast of the said Bay, eastward to the Atlantic Ocean 40 and Davis' Straits, and the line hereafter mentioned as the east and the south-eastward boundaries of the said Company's territories, and towards the north, all the lands that lie "on the north end or on the north side, or coast, of the said Bay, and extending from the Bay northwards to the utmost limits of the lands there towards the North Pole; but where or how these lands terminate is at present unknown. And towards the west, all the lands that lie on the west side or coast of the said Bay, and extending from the Bay westward to the utmost limits of those lands; but where or how those lands terminate to the westward is also unknown, though probably it will be found they terminate on the Great South Sea. And towards the south all the lands that lie on the south end, or south side of the coast of the said Bay, the extent of which lands to the south to be limited and divided from the places appertaining to the French in those parts, by a line," etc., describing the line from Cape Perdrix to the 50

49th parallel, and along that parallel westward, as in their proposals of August, 1719, excepting that they state the starting point to be in latitude 59½° N. They add, with regard to this boundary, that "to avoid as much as possible any just grounds for differing with the French in agreeing on those boundaries which lie nearest their settlements, it is laid down so as to leave the French in possession of as much or more land than they can make any just pretensions to, and at the same time leaves your memorialists but a very small district of land from the south end of the said Bay necessary for a frontier." It is worthy of remark that this line would have given to France the southerly portion of the Lake of the Woods, Rainy River and Rainy Lake, which are now claimed as within the Company's territories.

- 10 The foregoing extracts are deemed sufficient to establish what the Company considered their territorial rights in reference to their connection with and proximity to Hudson's Bay itself, where they had planted their factories, and desired to attract the Indian trade. They certainly show that neither after the Treaty of Ryswick, nor that of Utrecht, when they stated the boundaries, they were either willing to submit to, or were desirous of obtaining, nor yet in 1750, when they set forth what they thought themselves entitled to claim under their Charter, did they ever think of asserting a right to all the countries the waters of which flow into Hudson's Bay. Their claims to lands lying both northward and westward of the Bay are entirely at variance with any such idea. Sir J. Pelly, before a Committee of the House of Commons, in March, 1837, seems to have adhered to the views expressed in 1750, when he said "the power of the Company extends all the way from the boundaries of Upper and Lower Canada away to the North Pole, as far as the land goes, and from the Labrador coast all the way to the Pacific Ocean," though he afterwards explains that the Company claimed in fee-simple all the lands the waters from which ran into the Hudson's Bay.

- It is submitted, that if this latter claim were well founded, the further grant in the Charter of exclusive trade beyond the limits of the territories granted in fee-simple would give colour to the assertion of the "power" of the Company extending to the Pacific; assuming that the word "power" was used to designate the exclusive right of trade, and not the ownership of the territory. For if the Charter gives the fee-simple of the lands to the Rocky Mountains the Pacific is a "Sea," and Fraser's and McKenzie's are "rivers," in which "entry or passage by water or land out of the territories" actually granted may be found; though in such case the application for a license for the exclusive trade would, if the Charter be in this respect valid, have been unnecessary.

The French Government, it appears, would not agree to the proposal which would have limited them to the 49th parallel. Colonel Bladen, one of the British Commissioners under the Treaty of Utrecht, wrote from Paris in 1719 in reference thereto: "I already see some difficulty in the execution of this affair, there being at least the difference of two degrees between the last French maps and that which the Company delivered us." No settlement of the boundary could be arrived at.

- If the later claim of territorial limits had been advanced during this negotiation, there can be no doubt it would have been resisted even more strenuously than the effort to make the 49th parallel the boundary was, not merely by contending that the territory so claimed formed part of Canada, and had been treated as such by the French long before 1670, but also that the French King had exercised an act of disposition of them, of the same nature as that under which the Hudson's Bay Company claim, by making them the subject of a Charter to a Company under the Sieur de Caen's name, and after the dissolution of that Company had, in 1627, organized a new Company, to which he conceded the entire country called Canada. And this was before the Treaty of St. Germain-en-Laye, by which the English restored Canada to the French. In 1663, this Company surrendered their Charter, and the King, by an edict of March in that year, established a Council for administration of affairs in the colony, and nominated a Governor; and about 1665, Monsieur Talon, the Intendant of Canada, despatched parties to penetrate into and explore the country to the west and north-west, and in 1671 he reported from Quebec that the "Sieur de Lusson is returned, after having advanced as far as 500 leagues from here, and planted the cross, and set up the King's arms in presence of seventeen Indian nations assembled on the occasion from all parts, all of whom voluntarily submitted themselves to the dominion of His Majesty, whom alone they regard as their sovereign protector."

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The French kept continually advancing forts and trading posts in the country, which they claimed to be part of Canada; not merely up the Saguenay River towards James' Bay, but towards and into the territory now in question, in parts and places to which the Hudson's Bay Company had not penetrated when Canada was ceded to Great Britain in 1763, nor for many years afterwards.* They had posts at Lake St. Anne, called by the older geographers Alenimipigon; at the Lake of the Woods; Lake Winnipeg; and two, it is believed, on the Saskatchewan, which are referred to by Sir Alexander McKenzie in his account of his discoveries.

Enough, it is hoped, has been stated to show that the limits of the Hudson's Bay Company's territory are as open to question now as they have ever been, and that when called upon to define them in the last century, they did not advance the claim now set up by them; and that even when they were defining the boundary which they desired to obtain under the Treaty of Utrecht, at a period most favourable for them, they designated one inconsistent with their present pretensions, and which, if it had been accepted by France, would have left no trifling portion of the territory as a part of the Province of Canada.

So far as has been ascertained, the claim to all the country the waters of which ran into Hudson's Bay, was not advanced until the time that the Company took the opinions of the late Sir Samuel Romilly, Messrs. Cruise, Holroyd, Scarlett, and Bell. Without presuming in the slightest degree to question the high authority of the eminent men above named, it may be observed that Sir Arthur Piggott, Sergeant Spankie, Sir Vicary Gibbs, Mr. Bearcroft, and Mr. (now Lord) Brougham, took a widely different view of the legal validity of the Charter, as well as regards the indefinite nature of the territorial grant, as in other important particulars.

Of the very serious bearing of this question on the interests of Canada there can be no doubt. By the Act of 1774, the Province of Quebec is to "extend westward to the banks of the Mississippi, and northward to the southern boundary of the territory granted to the Merchants Adventurers of England, trading to Hudson's Bay."

And in the division of the Provinces under the statute of 1791, the line was declared to run due north from Lake Temiseaming "to the boundary line of Hudson's Bay;" and the Upper Province is declared to consist of or include all that part of Canada lying "to the westward and southward of the said line."

The union of the Provinces has given to Canada the boundaries which the two separate Provinces of Upper and Lower Canada had; the northern boundary being the territory granted to the Hudson's Bay Company.

It is now becoming of infinite importance to the Province of Canada to know accurately where that boundary is. Plans for internal communication connected with schemes for agricultural settlements, and for opening new fields for commercial enterprises, are all more or less dependent upon or affected by this question, and it is to Her Majesty's Government alone that the people of Canada can look for a solution of it. The rights of the Hudson's Bay Company, whatever they may be, are derived from the Crown; the Province of Canada has its boundaries assigned by the same authority; and now that it appears to be indispensable that those boundaries should be settled, and the true limits of Canada ascertained, it is to Her Majesty's Government that the Province appeals to take such steps as in its wisdom are deemed fitting or necessary to have this important question set at rest.

CHIEF JUSTICE DRAPER TO THE GOVERNOR-GENERAL.

LONDON, 8th May, 1857.

Chief Justice
Draper to the
Governor-
General,
8 May, 1857.

SIR,—I have the honour to enclose for your Excellency's information, copies of a memorandum on the subject of ascertaining the boundary between Canada and the Hudson's Bay Territory, and of a letter with which that memorandum was enclosed to Mr. Labouchere. It would have been easy to have lengthened it by other references, showing that the pretensions of the Hudson's Bay Company to

* In the evidence given by the Honourable William M'Gillivray, on one of the North-West trials at York (now Toronto), in 1818, he stated that there were no Hudson Bay traders established in the Indian country about Lake Winnipeg or the Red River for eight or nine years after he had been used (as a partner in the North-West Company) to trade in that country.

the lands as far south as the Lake Winnipeg, were not advanced or acted upon until after the North-West Company—proceeding in the steps of the French before 1763—had advanced not only as far as the extreme French posts—but also to the west of the Rocky Mountains, and along Mackenzie's River to the Arctic Sea.

My object in writing this memorandum and letter, has been to press on Her Majesty's Government the propriety of their agreeing to decide, or of taking the initiative in procuring the decision of this question of boundary. I have not nearly exhausted the facts and evidence on which, I apprehend, it will be found that by their own construction, and by *non user and non claim*, the Company should not now be heard to insist on limits to be ascertained by tracing to their extreme sources the waters 10 which flow into Hudson's Bay.

I have endeavoured to avoid placing the question in such a shape as would make the Province of Canada assume the position of seeking to bring the whole validity of the Charter into question. It appears to me quite clear, that whatever the reasons which influence Her Majesty's Government, they are more desirous of seeing an arrangement effected—which, while it will open for settlement such parts of the country as are suitable, and will provide for the administration of the government of such settlement independently of the Hudson's Bay Company, will at the same time leave to that corporation a considerable, and, in reference to the fur trade, the most valuable, of the privileges they enjoy, and, as a consequence, that they would prefer there should be no question raised on the validity of the Charter, and will not be disposed to facilitate proceedings to bring such a question to trial.

I cannot, however, help feeling that Canada would be placed at a disadvantage in becoming party to any arrangement, while the extent of her own boundaries is unascertained. If even the Hudson's Bay Company's claim were sustained, the Province would be in no worse situation than it is at present, and the necessity of a change of system and government as to the Red River settlement, would not be diminished; while, if a large portion of territory between Lake Superior and the Lake of the Woods is Canadian, her claims to an extension westward would be materially strengthened. And instead of such territory being a part of the consideration for her acceding to a compromise, it would put her on stronger ground to dispute concessions in favour of the Hudson's Bay Company.

I am still anxiously waiting the arrival of a reply to my despatches of the 27th March, which I had hoped to receive by last mail.

I have the honour, etc.,

WM. H. DRAPER.

PAPER RELATIVE TO CANADIAN BOUNDARIES, DELIVERED BY CHIEF JUSTICE DRAPER TO THE HOUSE OF COMMONS (ENGLAND) COMMITTEE, MAY 28TH, 1857.*

On the 25th January, 1696—7, not long before the Treaty of Ryswick (which was signed on the 20th September, 1697), the Hudson's Bay Company expressed their "desire that whenever there should be a treaty of peace between the Crowns of England and France, that the French may not travel or drive any trade beyond the midway betwixt Canada and Albany Fort, which we reckon to be within the bounds of our Charter."

The 8th Article of the Treaty of Ryswick shows that the French at that time set up a claim of 40 right to Hudson's Bay, though that claim was abandoned at the peace of Utrecht, and was never set up afterwards.

In 1687, James the Second declared to the French Commissioners, MM. Barillon and Bonrepos, that having maturely considered his own right and the right of his subjects, to the whole Bay and Straits of Hudson, and having been also informed of the reasons alleged on the part of the French to justify their late proceedings in seizing those forts (Fort Nelson and Fort Charles), which for many years past have been possessed by the English, and in committing several other acts of hostility, to the very great damage of the English Company of Hudson's Bay, His Majesty, upon the whole matter, did consider the said Company well founded in their demands, and, therefore, did insist upon his own right and the right of his subjects to the whole Bay and Straits of Hudson, and to the sole trade thereof."

* Report Select Committee House of Commons (Eng.) on the Hudson's Bay Company, 1857, p. 378.

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Chief Justice Draper to the Governor-General, 8 May, 1857.

Chief Justice Draper's paper relative to the Boundaries, 28 May, 1857.

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"The grants of the French King signify nothing to another prince his right, and they may name what they will in their grants, places, known or unknown, but nobody is so weak as to think that anything passeth by those grants but what the King is rightfully and truly possessed of or entitled to, for *nemo dat quod non habet* is a maxim understood of all; but whereas the French would have no bounds to Canada to the northward, nor, indeed, to any parts of their dominions in the world if they could."—Extract from the Reply of the Hudson's Bay Company to the French Answer left with the English Commissioners, 5th June, 1699, under Treaty of Ryswick.

In 1687 there were discussions between the English and French respecting the right to the Bay and Straits, in which it was, among other things, submitted on the part of the Hudson's Bay Company as follows: "It shall not be the fault of the Company of Hudson's Bay if their agents and those 10 of the Company of Canada do not keep within their respective bounds, the one pretending only to the trade of the Bay and Straits above mentioned, whilst the other keeps to that of Canada; that the forts, habitations, factories and establishments of the English Company be restored, and their limits made good, as the first discoverers, possessors and traders thither."

The Company having already waived the establishment of a right to Hudson's Bay and Straits, from the mere grant and concessions of the King, which, indeed, cannot operate to the prejudice of others that have the right of discovery and continued possession on their side, it is again averred that His Majesty's subjects only are possessed of such a right to the coasts, bays, and straits of Hudson.

"The Hudson's Bay Company having made out His Majesty's right and title to all the bay within Hudson's Straits, with the rivers, lakes and creeks therein, and the lands and territories thereto adjoining, in which is comprehended Port Nelson as part of the whole." 20

10th July, 1700,—the Hudson's Bay Company proposed the following limits between themselves and the French, in case of an exchange of places, "and that they cannot obtain the whole of the Straits and Bay which of right belongs to them."

1. That the French be limited not to trade nor build any factory, etc., beyond the bounds of 53° N. or Albany River, to the northward, on the west main or coast, and, beyond Rupert's River, to the northward on the east main or coast.

2. The English shall be obliged not to trade nor build any factory etc., beyond the aforesaid latitude of 53° N. or Albany River, or beyond Rupert's River, south-east towards Canada, on any land which belongs to the Hudson's Bay Company. 30

3. As likewise that neither the French nor English shall at any time hereafter extend their bounds contrary to the aforesaid limitations, . . . which the French may very reasonably comply with, for that they by such limitations will have all the country south-eastward betwixt Albany Fort and Canada to themselves, which is not only the best and most fertile part, but also a much larger tract of land than can be supposed to lie to the northward, and the Company deprived of that which was always their undoubted right.

By this document it appears the French were insisting on having the limits settled between York and Albany Fort, as in the latitude of 55° or thereabouts.

22nd January, 1701-2, the Lords of Trade and Plantations asked the Company to say "whether in case the French cannot be prevailed with to consent to the settlement proposed on the 10th of July 40 preceding by the Company, they will not consent that the limits on the east side of the Bay be the latitude of 52½°." This proposal would have given the East Main River and Rupert's River to Canada.

On the 29th January, the Hudson's Bay Company alter their proposals, offering the boundary on the east main or coast, to be Hudson's River, vulgarly called Canute, or Canuse River (which I take to be the river now marked on the maps as the East Main River); but they add, should the French refuse the limits now proposed by the Company, the Company think themselves not bound by this or any former concession of the like nature, but must (as they have always done) insist upon their prior and undoubted right to the whole Bay and Straits of Hudson, which the French never yet would strictly

Chief Justice
Draper's paper
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dispute or suffer to be examined into (as knowing the weakness of their claim), though the first step in the 8th Article of the Treaty of Ryswick directs the doing of it. If either proposal had been accepted, the French would have had access to James' Bay. The first proposition left them Moose River; the second appears to have given up Rupert's River.

In February, 1711-12, prior to the Treaty of Utrecht, the Hudson's Bay Company proposed that the limits between them and the French in Canada should begin "at Grimington's Island, or Cape Perdrix, in the latitude of $58\frac{1}{2}^{\circ}$ north, which they desire may be the boundary between the English and French, on the coast of Labrador, towards Rupert's Land, on the East Main, and Nova Britannia on the French River." That a line be drawn from Cape Perdrix to the Great Lake Mistassing, dividing the same into two parts, beyond which line the French were not to pass to the north, nor the English to the south.

In August, 1714, they renewed their application for the settlement of the limits, adding to their former proposition, that from the Lake Mistassing a line should run south-westward into 49° north latitude, and that such latitude be the limit, and that the French do not come to the north, or the English to the south of the boundary.

In August, 1719, in a memorial, they say that "the surrender of the Straits and Bay aforesaid has been made according to the tenure of the Treaty, at least in such manner that the Company acquiesced therein, and have nothing to object or desire further on that head." But they even then complained that since the conclusion of the peace, viz, in 1715, "the French had made a settlement at the head of Albany River, upon which very river our principal factory is settled, whereby they intercept the Indian trade from coming to the factories; and will, in time, utterly ruin the trade, if not prevented. It is therefore proposed and desired, that a boundary or dividend line may be drawn so as to exclude the French from coming anywhere to the northward of the latitude of 49° , except on the coast of Labrador; unless this is done, the Company's factories at the bottom of Hudson's Bay cannot be secure, or their trade preserved." This shows that the Company there sought to establish an arbitrary boundary, and that the object of it was to secure the fur trade from the French.

The English Commissioners made the demand to have limits established according to the prayer of the Hudson's Bay Company, and for giving up the new fort erected by the French; adding a demand that the French should make no establishments on any of the rivers which discharged themselves into Hudson's Bay; and that the entire course of the navigation of these rivers should be left free to the Company, and to such of the Indians as desired to trade with them.

The precise terms of the instructions to the Commissioners hardly seem to have contemplated the latter part of the demand, for they (the instructions of 3rd September, 1719) merely designate the boundaries beyond which the French and English respectively are not to cross. They contain this passage, however: "But you are to take especial care in wording such articles as shall be agreed upon with the Commissioners of His Most Christian Majesty upon this head, that the said boundaries be understood to regard the trade of the Hudson's Bay Company only."

Colonel Bladen, on the 7th November, 1719, wrote to the Lords of Trade that the English Commissioners would that day deliver in the demand, and that he foresaw "some difficulty in the execution of this affair, there being at least the difference of two degrees between the last French maps and that which the Company delivered us, as your Lordship will perceive by the carte I send you herewith."

Colonel Bladen was right. After receiving the English demands, the French Commissioners, the Marquis de Béthune and the Abbé Dubois, never met the English Commissioners again, and all the instances of the English Ambassadors failed to procure a renewal of the conferences.

The Company were again called upon, on the 25th July, 1750, to lay before the Lords of Trade an account of the limits and boundaries of the territory granted to them. They replied among other things that the said Straits and Bay "are now so well known, that it is apprehended they stand in no need of any particular description than by the chart or map herewith delivered; and the limits or boundaries of the lands and countries lying round the same, comprised, as your memorialists conceive, in the same

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grant, are as follows, that is to say: all the lands lying on the east side or coast of the said Bay, and extending from the Bay eastward to the Atlantic Ocean and Davis's Straits, and the line hereafter mentioned as the east and south-eastern boundaries of the said Company's territories; and towards the north, all the lands that lie at the north end, or on the north side or coast of the said Bay, and extending from the Bay northwards to the utmost limits of the lands; then towards the North Pole; but where or how these lands terminate is hitherto unknown. And towards the west, all the lands that lie on the west side or coast of the said Bay, and extending from the said Bay westward to the utmost limits of these lands; but where or how these lands terminate to the westward is also unknown, though probably it will be found they terminate on the Great South Sea, and towards the south," they propose the line already set out by them, before and soon after the Treaty of Utrecht, stating that the Commissioners 10 under that treaty were never able to bring the settlement of the said limits to a final conclusion; but they urged that the limits of the territories granted to them, and of the places appertaining to the French, should be settled upon the footing above mentioned.

REPORT OF THE SELECT COMMITTEE OF THE CANADIAN LEGISLATURE, ON THE SUBJECT OF THE HUDSON'S BAY COMPANY, WITH THE EVIDENCE ANNEXED.*

(Transmitted by the Government of Canada to England.)

Report of the
Select Com-
mittee of the
Canadian
Legislature,
8th June,
1857, with
the evidence
annexed.

The Select Committee appointed to receive and collect evidence and information as to the rights of the Hudson's Bay Company under their Charter, the renewal of the license or occupation, the character of the soil and climate of the territory, and its fitness for settlement, have the honour to present their First Report, as follows: 20

Your Committee beg leave to inform your Honourable House that they have examined three witnesses, Messrs. Gladman, Dawson, and Macdonell, upon the matter referred to them for investigation; and Your Committee submit to the consideration of Your Honourable House the evidence hereunto annexed of these three gentlemen. 20

The whole nevertheless respectfully submitted.

T. LEE TERRILL,
Chairman.

Committee Room,
8th June, 1857.

Minutes of Evidence.

[The two first witnesses were Mr. George Gladman and Mr. Allan Macdonell. Their evidence related principally to a description of the country, of which they had personal knowledge. That portion of the evidence of the remaining witness, Mr. Dawson, which is omitted, related to the same subject.] 30

MONDAY, 8th June, 1857.

Mr. *William McD. Dawson* called in and examined.

I am head of the Woods and Forests Branch of the Crown Land Department, and reside in Toronto.

I have never had any difficulty or quarrel with any one connected with the Hudson's Bay Company. 40

Q.—Have you particularly studied the titles under which the Hudson's Bay Company claim certain rights of soil, jurisdiction, and trade on this continent?

* Sess. Papers Canada, 1857. Vol. xv. App. 17; Report of Committee, Br. Ho. of Coms., 1857, p. 385.

A.—I have made this subject a particular object of study for many years, and have omitted no opportunity of acquiring information upon it, and although with more time than I could devote to it, and a more extended research, much additional information could be obtained, I believe that it would only tend to fill up details, and strengthen and confirm the results of the investigation I have already made.

Q.—Will you state to the Committee the result of your investigation?

A.—The result of my investigation has been to demonstrate that in the Red River and Saskatchewan countries, the Hudson's Bay Company have no right or title whatever, except what they have in common with other British subjects. Wherever they have any possession or occupancy there they are simply squatters, the same as they are at Fort William, La Cloche, Lake Nippissing, or any of their other posts in Canada.

The Governmental attributes they claim in that country are a fiction, and their exercise a palpable infringement of law.

I am no enemy to the Hudson's Bay Company, nor to any individual connected with it, and I think that there are, at the present day, extenuating circumstances to justify a great degree of forbearance towards them, when their position comes to be dealt with either judicially or legislatively.

Illegal as it undoubtedly is, their present position is a sort of moral necessity with them. The first attempt of the Company, under Lord Selkirk's régime, to assume that position, was no doubt a monstrous usurpation, but it was defeated, though not till it had caused much bloodshed.

The Hudson's Bay Company and the Canadian traders (North West Company) afterwards amalgamated, and then, in pursuance of a policy, most dexterously planned and executed, carried the trade away back into the interior, from the very shores of the Lakes and Rivers adjoining the settlements of Canada, and took it round by Hudson's Bay to keep it out of view, to lessen the chances of a new opposition springing up.

They also gave out that it was their country—a fiction which the License of exclusive trade for the Indian territories helped to maintain—and they industriously published and circulated Maps of it, as such, which, being copied into other Maps and Geographical works, strengthened the delusion, till it became very general indeed.

When therefore by this means they had been left alone in these remote territories, without any intercourse with the organized tribunals or legitimate Government of the country—an intercourse which their monetary interests forbade them to seek—it became a sort of necessity for them to establish a jurisdiction of their own.

It is true that they have gone to an extreme in this matter which it would be difficult to excuse; but in such a case it is hard to take the first step and be able to stop afterwards, more particularly when it consists in a total antagonism to existing law, or rather in assuming to themselves the functions of constituted authorities where they legally possess only the rights of subjects and traders, in common with the rest of the community.

But having once assumed and exercised such powers, and thereby made themselves amenable to the laws of the country, it is not to be wondered at that they have sought to justify it on the pretence that they possess those powers of Government which, (doubtful at best, even in those localities where they have some shew of title) are without the least foundation on the Banks of the Saskatchewan or Red Rivers.

In thus palliating the tenacity with which the Hudson's Bay Company cling to their fictitious title, I may be accused of being their apologist, but I am so only to the extent that, at the present day their position has become a necessity, for, in so far as they have affected the rights of others, they have rendered themselves liable to the most serious consequences, should any party aggrieved see fit to appeal to the legal tribunals of the country, and it is but natural to suppose that they will endeavour to maintain the fiction long enough to enable them to effect a compromise.

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Any number of individuals might associate themselves together for mining, hunting or agriculture, say at Lake Nipissing or on Anticosti, and finding no legal tribunals there, or within their reach, they might establish a jurisdiction of their own and execute their judgments. Circumstances may be imagined in which such a course, if resulting from the necessity of their position, might be morally right though legally wrong, but nothing short of an act of indemnity could save them from the consequences if pursued at law, by those whose rights they had affected.

Such is exactly the position of the Hudson's Bay Company at the Red River, and for the judgments they have rendered there they are unobtrusively amenable to be judged by the legally constituted tribunals of this country; and those whom they have condemned or punished, or whose rights or interests they have adjudicated upon can certainly obtain redress. And to this extent I would be their 10 advocate, that in so far as their assumption of jurisdiction has been, in a manner, a necessity resulting from the acts of former years, the Legislature should pass an Act of indemnity to shield them from the consequences—the circumstances to be first investigated, however, by a commission appointed by the Government for that purpose.

It may seem presumptuous in me to put the case so strongly in opposition to the general view of their territorial rights, but it is not a matter of opinion, it is a matter of fact. I could have no hesitation to state as a fact, that the County of York and the District of Montreal are not portions of the Company's Territory, but the fact that the Red River and Saskatchewan are not in their Territory is just as strong and absolute, and the circumstance that the one happens to be better known than the other, does not alter the fact in the one case more than the other. 20

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But the generally received view of the subject is but of recent date and simply the result of the circumstance, that no one in particular has taken any interest in denying it. It is only since the union of the Companies in 1821 that there has been no obstacle to the continuous imposition of the Company's views upon the public till they ultimately became rather unopposed than accepted; and in denying their title now, (on the Saskatchewan and Red River), I am simply in accord with the highest authorities whose province it has been to treat the question judicially.

It must be remembered that the Company did not attempt to even enter upon these countries until 104 years after the date of their charter, viz; in 1774, and that they then did so, not as taking possession under their charter, but only to participate in a traffic then in the hands of British subjects trading from Canada in virtue of the conquest or cession of the country, through which, and not in 30 virtue of their charter, the Company also had, of course, a right to trade as British subjects.

A rivalry having been kept up for many years in the trade, and the absurd construction of the charter now contended for having been *invented*, the attempt to exercise the powers claimed was made by the Company through Lord Selkirk, first theoretically about the years 1811-12 and practically about 1814, by warning off the North-West Company and obstructing the channel of their trade, and the result was a great deal of strife and bloodshed. In the course of this strife various appeals were made to the Provincial and Imperial Governments and to the legal tribunals, and in every instance the decisions were directly or constructively adverse to the pretensions of the Hudson's Bay Company.

In a despatch to the Governor-General from Earl Bathurst, by order of His Royal Highness the Prince Regent, under date 6th February, 1817, I find the following instructions in relation to these 40 events:

"You will also require under similar penalties the restitution of all forts, buildings, or trading stations, with the property which they contain, which may have been seized or taken possession of by either party, to the party who originally established or constructed the same and who were possessed of them previous to the recent disputes between the two Companies.

"You will also require the removal of any blockade or impediment by which any party may have attempted to prevent or interrupt the free passage of traders or others of His Majesty's subjects or the natives of the country with their merchandize, furs, provisions, and other effects, throughout the lakes, rivers, roads and every other usual route or communication heretofore used for the purposes of the fur trade in the interior of North America, and the full and free permission for all persons to 50 pursue their usual and accustomed trade without hindrance or molestation."

And in the conclusion this object is again peremptorily insisted on, v. z.: "the mutual restoration of all property captured during these disputes, and the freedom of trade and intercourse with the Indians, until the trials now pending can be brought to a judicial decision, and the great question at issue with respect to the rights of the two Companies shall be decisively settled."

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The trials then pending to which the above allusion has reference were those instituted by Lord Selkirk against the partners and employes of the North-West Company, who had resisted the pretensions of the Hudson's Bay Company, and in consequence of which a battle was fought on the Frog Plains, at the Red River, in which some 20 of the Hudson's Bay people were killed, including the "governor," as they styled their chief officer. These trials were for murder, (some of the parties as principals and some as accessories) for arson, robbery, (stealing cannon) and other high misdemeanours, and were held in this City, then the Town of York, in October 1818, and resulted in the acquittal of all the parties on all the charges, though it was not denied that some of them had been in the battle, in which, however, they contended that they were in defence of their just rights.

These trials were held under the Canada Jurisdiction Act, (43 Geo. III, cap. 138) by authority of a commission from Lower Canada, but the jurisdiction under that Act being questioned on the ground that Frog Plains were in Upper Canada, and therefore not in the territories affected by the Act, the Court was so doubtful on the question of boundary that the charge to the jury directed that in case of finding the prisoners guilty, they should return a special verdict, setting forth that "they could not see from any evidence before them, what were the limits of Upper Canada." The Attorney-General was unable to define these limits, but appealed to the Court to decide, as they were deducible from treaties, Acts of Parliament, and Proclamations, &c., and the judgment of the Court was as above stated; the following passage occurring in the charge of the Chief Justice,

"Mr. Attorney-General has put in evidence the latitude and longitude of the Frog Plains, but he does not put in evidence whether this latitude and longitude be without or within the boundaries of Upper Canada, and I do not know whether from 90° to 100° or 150° form the western limit of Upper Canada."

Report of Select Committee of the Canadian Legislature, 8th June, 1857, with the evidence annexed.

In other words, the Court could not affirm that Upper Canada had any Western limit on this side of the Pacific; and the Court was right, its westerly limit never had been assigned, and absolute evidence, of the very nature which the Attorney-General (now Chief Justice, Sir J. B. Robinson) admitted would be proof upon the subject, existed, so far as to prove that the Province extended beyond the Lake of the Woods, without determining how far beyond, but it was not his duty to quote it as he was prosecuting for a conviction as directed by a special commission from Lower Canada under a particular Act. An acquittal, however, rendered any special verdict unnecessary, and the question was not therefore further tried on these cases.

I must remark, however, that the question raised, was solely whether the scene of the outrage at Red River was in Canada or the Indian Territory, not whether it was in Canada or the Hudson's Bay Company's Territory; the latter alternative was not even entertained, having been almost entirely ignored on the trials as too manifestly absurd to make any legal tight upon at all. In short the case for the defence was based on a justification of resistance to the assumed authority of the Company, whose preposterous pretensions on the Red River with "Governors, Sheriffs &c.," were treated with ridicule: without, however, detracting from the individuals, "Governor" Semple who was killed, or his predecessor, McDonell, who were worthy of the highest respect, though, like many others, imposed upon in the first instance by the specious pretences of the Company and Lord Selkirk.

Other actions and trials took place in Upper Canada, all of which, so far as I have been able to trace them, were adverse to the Hudson's Bay Company. In February 1819, in this city, William Smith, Under-Sheriff of the then Western District, obtained £500 damages against Lord Selkirk, then at the head of a large armed force, for resisting him in the execution of a writ of restitution founded upon a verdict obtained at Sandwich in 1816, and resistance also to a warrant for his Lordship's arrest.

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At the same time Daniel McKenzie obtained £1,500 damages for forcible detention, &c., by Lord Selkirk.

Criminal proceedings were also instituted and a bill of indictment found against Lord Selkirk himself and the leaders of his party, for their illegal transactions in the Western Territories; but I have not yet been able to trace up the result of this case, and no doubt much valuable information could be obtained by some one having more time than I have had to hunt up the records of these proceedings.

The latter trials, I believe, were in the ordinary course of procedure of Upper Canada, and not under the Special Act for the Indian Territories, &c., and the proceedings taken extended to transactions which occurred far within the territories drained by waters discharging into Lake Winnipeg. 10

Having shewn the views of the Judicial authorities of Upper Canada, I would advert for a moment to those of Lower Canada.

In May, 1818, Charles De Reinhard was tried at Quebec for murder committed in 1816 on the River Winnipeg, under the Canada Jurisdiction Act. Exception was taken to the Jurisdiction of the Court on the ground that the locality was not in the Indian Territory, but within the limits of Upper Canada. The Court overruled the objection and decided that the westerly boundary of Upper Canada was a line on the meridian of 88° 50' west longitude from London. I hardly think that any surveyor, geographer or delineator of boundaries of any experience or scientific attainments would concur in that decision.

The question would be too long, however, to discuss now, and I shall only say that it was based on 20 the assumption that, of the territory previously belonging to, and acquired from France in 1763, only a part was organized as the Province of Quebec, and that the two Provinces of Canada, after the division, were confined to the same limits provided for the former by the Act of 1774. The Court, the Attorney-General and the Counsel for the prisoner, alike concurred in the fact that the River Winnipeg was a part of the country previously belonging to France and ceded by the treaty of Paris in 1763, and at no stage of the proceedings was the question of its being a part of the Hudson's Bay Company's Territories for one moment entertained.

De Reinhard was found guilty and sentenced to death, but although the Court refused to re-consider its decision, yet the reasoning of Messrs. Stewart and Valliere was so clear, that the Judges deemed it expedient that the execution should be delayed till the decision of the Imperial Government 30 could be had upon the question of Jurisdiction.

The actual reasons given by the Imperial Government I have not been able to get at, but I know that when the decision was given, the prisoner was released, and that the question submitted was that of Jurisdiction, as above stated.

I must here remark, however, that notwithstanding the able and convincing arguments of Messrs. Stewart and Valliere, they omitted one point which the Court would have been obliged, by its own admissions, to have accepted as conclusive against the judgment it gave. The decision given was based upon the technical construction put by the Court upon the actual wording of an Act of Parliament, but it was admitted (by the Court) that the country to the West only "came into the possession of the British Crown at the treaty of Paris in 1763," and it was also admitted that the king could, by 40 "*an Act of Sovereign Authority*," have placed that country under the Government of Canada. It was merely denied that he did so, not asserted that he could not. The counsel for the prisoner did not

Lord Dorchester's
Commission, 1783.

chance to come upon the Commissions of the Governors, or they would have found that there had been such an "*Act of Sovereign Authority*," distinctly describing that country to the West of the Lake of the Woods as attached to the Government of Canada, and the Court, by its own admission, must have been bound by it.

I may also remark that the decision of the Court at Quebec would have made the westerly limit of Upper Canada, a long way east of the United States boundary at Lake Superior, leaving out the shores of the Lake (where we are now selling mining lands), and its westerly tributaries, and has therefore nothing in common with the boundary designated for us by the Hudson's Bay Company, viz: the 50 water-shed of the St. Lawrence, and for which *there is no earthly authority except themselves*.

Report of the
Select Com-
mittee of the
Canadian
Legislature,
8th June,
1857, with
the evidence
annexed.

On this head I must advert to one other authority which is of the highest importance at this moment, when troops are about to be sent to the Red River, and who, if they carry with them the erroneous views which, of late years, have been with some success imposed upon the public by the assiduous promulgation of the Company, may unfortunately be placed in a position of antagonism to the civil power. There were indeed some troops there not very many years ago, and no such evils, as might be apprehended now, resulted; but the circumstances are changed; the scenes of an earlier period may come back if the attempt be made, wholly unsupported by law, to repress a legal right. If such should be the case, it would be unfortunate if Her Majesty's soldiers were found on the wrong side, acting against law, for the subject is now being so well discussed that the people will know their rights, and will appeal to the legal tribunals and the civil powers of the State to sustain them. Better that military rule prevailed entirely, for then the officers would know their duties and their responsibilities. If they go under the impression that they are to be subject to the supposed civil officers of a self-constituted Government which has no legal existence, they may find themselves called upon to enforce behests which are not law, which are infractions of law; they may be called upon to subdue resistance to illegal acts to which resistance is a duty and a right; and if, for acting on these behests, they are ultimately brought before the Courts of Justice, they will find that they have acted under those whose powers will be treated as a nullity; whose civil officers will be held a mockery. This has been so before; it may be so again, if due precaution be not observed; and I state it thus strongly now because the more it is known, the less will be the chance of its recurrence.

20 If proper civil officers, magistrates, &c., were appointed by His Excellency the Governor-General, for the Red River country, to whom alone the troops could look in case of emergency, as vested with authority, the difficulty and danger would be obviated; for without this there is no authority in that country, by, through, or in any person connected with the Hudson's Bay Company, as such, to which any officer or soldier in Her Majesty's service would be justified in yielding obedience.

To revert to the authority upon this subject, I was about to quote; it will be remembered that during the troubles which formerly took place upon special representations made by Lord Selkirk that he was not safe in proceeding to the Red River settlement, some troops were sent with him, and the instructions given to them by order of His Excellency, Sir Gordon Drummond, are so clear and decisive that no one can mistake their purport. They were as follows:

ADJUTANT GENERAL'S OFFICE,

Quebec, 17th April, 1816.

SIR:—THE EARL OF SELKIRK having represented to the ADMINISTRATOR IN CHIEF, and Commanding General of the Forces that he has reason to apprehend that attempts may be made upon his life, in the course of the journey through the Indian country which he is about to undertake, His Excellency has in consequence, been pleased to grant his Lordship a Military Guard for his personal protection against assassination. This party, which is to consist of two serjeants and twelve Rank and File of the Regiment De Meuron, is placed under your command, and I am commanded to convey to you the positive prohibition of His Excellency the Lieutenant-General Commanding the Forces, against the employment of this force for any other purpose than the personal protection of the EARL OF SELKIRK. You are particularly ordered not to engage yourself, or the party under your command, in any disputes which may occur betwixt the EARL OF SELKIRK and his engagés and employés, and those of the NORTH-WEST COMPANY, or to take any part or share in any affray which may arise out of such disputes.

By such an interference on your part, you would not only be disobeying your instructions, but acting in *direct opposition* to the wishes and intentions of the Government, to the COUNTENANCE, SUPPORT and PROTECTION of which, EACH PARTY has an equal claim.

The EARL OF SELKIRK has engaged to furnish the party under your command with provisions during the time of your absence; you are on no occasion to separate from your party, but to return with his Lordship, and on no account to suffer yourself or any of your detachment to be left at any settlement or post in the Indian country.

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Report of Select
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These instructions are to be clearly explained to the non-commissioned officers and men in your party.

I have the honour, to be, Sir,

Your most obedient, humble servant,

(Signed)

J. HARVEY,

Lt. Col., D. A. G.

Lieutenant Graffenried, }
De Meuron's Regiment. }

[The italics and capitals are the same as in the original.]

This is another emphatic declaration that the Government held the Hudson Bay Company and the 10 Canadian traders as possessed of equal rights, and that His Majesty's troops at least were not to be used against the one to sustain the ridiculous pretensions of the other.

Notwithstanding the stringency of these instructions, however, Lord Selkirk, having a number of the disbanded DeMeuron soldiers in his pay, it was difficult for the regulars to resist being led along with them, to enter upon the North-West Company's property, &c., and which involved them in legal difficulties, after their return, from which it was not easy to extricate them.

I have confined myself in the foregoing remarks to the Red River and Saskatchewan countries which were the principal scenes of the disputes which have heretofore called for action, and it will be seen that the imperial authorities, the military authorities, and the courts of justice, have all ignored the pretensions of the Hudson's Bay Company as regards those countries. 20

Report of Select Committee of the Canadian Legislature, 8th June, 1857, with the evidence annexed.

The great danger in renewing the Company's lease of the Indian territories, however, would be that they might drop the pretence that the Red River, &c., is covered by their charter, and claim it as part of the Indian territories, a plea which, though erroneous, might be more easily sustained by technicalities, inasmuch as some of the remote parts of Canada, perfectly understood to be such, have nevertheless sometimes been designated as the "Indian countries," in official documents.

I have not referred to the validity of the Company's charter, either to deny or admit it; I merely deny that it has effect on the countries I have spoken of.

In support of this I have quoted more recent authorities, but for a more particular investigation of their title, its extent and origin, I beg to refer to a Report which I wrote for the Commissioner of Crown Lands, some months ago, the substance of which appears in the shape of a Memorandum in the 30 Return to an Address of the Honourable Legislative Assembly, dated 15th March, 1857, for certain papers connected with the Hudson Bay question. It embodies the views I have entertained for many years, and is the result of much careful study.

Q. Have you made the early and present boundaries of Canada a particular subject of study; if so state the result?

A. The early boundaries of Canada or New France included I think the whole of Hudson's Bay, for I find all that part of the country granted to a trading Company by the King of France, in a charter somewhat similar, but forty-three years earlier than the charter of the Hudson's Bay Company. I find the country also confirmed by Treaty to France, at St. Germain-en-Laye, thirty-eight years before the last named charter, but the investigation of this part of the subject is fully stated in the Memorandum 40 referred to.

I find that from the Treaty of Utrecht in 1713 to the Treaty of Paris in 1763, the boundaries between the French possessions in Canada and the British possessions in Hudson's Bay were not defined. The lines claimed by both parties are distinctly laid down on the Map lately prepared by Mr. Devine in the Crown Land Department. Both, it will be seen, give the Red River and Saskatchewan to France, and the line laid down from British authorities is from those least favorable to French pretensions of that period. All the country south of that line is of course what was ceded by France, as Canada, in 1763, and was in her undisputed possession up to that time. There was never any

westerly limit assigned to Canada either before or since the Treaty of Paris. The French claimed to the Pacific though they never explored the whole way across, which, however, the Canadians (British and French) were the first to effect after the Treaty.

Some British authorities of a more recent date claimed under the Treaty of Utrecht from Hudson's Bay to latitude 49° as having been so determined by Commissioners; but no such decision was ever given. I have searched every book I could find upon the subject, and have communicated with those who have searched the best libraries of France and England with the same object, but no authority can be found for such a boundary. * * *

THE GOVERNOR OF THE HUDSON'S BAY COMPANY TO THE COLONIAL SECRETARY.*

HUDSON'S BAY HOUSE,

18th July, 1857.

10 SIR,—I have the honour to acknowledge the receipt of your letter of the 15th instant, communicating a passage from the statement you have received from the Law Officers of the Crown, in reference to the question of the geographical extent of the territory granted by the Charter of the Hudson's Bay Company, and suggesting that such question might with great utility, as between the Company and Canada, be made the subject of a *quasi* judicial enquiry, and desiring to be informed whether I think it probable that the Hudson's Bay Company would consent to appear before the Judicial Committee of the Privy Council, in the manner and for the purpose suggested.

I have submitted this communication to my colleagues, the Directors of the Hudson's Bay Company, and as we are desirous to throw no obstacle in the way of settlement of the doubts that have been 20 raised by the people of Canada, as to the extent of the territory to which the Company are entitled under their Charter, we shall be prepared to recommend to our shareholders to concur in the course suggested. At the same time, you will not fail to see that other interests than those of the Company may be involved in the enquiry, as there are many persons, not now members of the Company, who have acquired by grants from the Company, or otherwise, a title to large portions of the land in question.

Assuming, however, that the object of the proposed enquiry is to obtain for Canada land fit for cultivation, and the establishment of agricultural settlers, I would observe, that the Directors are already prepared to recommend to the shareholders of the Company to cede any lands which may be required for that purpose. The terms of such cessions would be a matter of no difficulty between Her Majesty's 30 Government and the Company.

The Board, having in view the present condition of the enquiry before the Committee of the House of Commons, and the agitation which prevails on the question in Canada, are desirous of availing themselves of the opportunity your letter affords, to state clearly, for your information, the principles which will guide them in their future proceedings.

The board will be ready to bow to any decision which Her Majesty's Government may consider it for the public interests to take with regard to the maintenance or abolition of the exceptional rights and trade of the Hudson's Bay Company, relying confidently on the justice of Her Majesty's Government, and of Parliament, for just compensation to the present stockholders, and a due consideration of the claims of their factors, traders, and servants in the Indian country, if the time shall have arrived in 40 the opinion of Her Majesty's Government for the abolition of the monopoly.

The present holders of the capital of the Company, 274 in number, are of the usual class of persons holding stock in other chartered companies, who have invested their money on the faith of the Company's Charter, and in confidence of the permanent character of their rights and property, and are in general indifferent to any other question in the present discussion than the security of their capital and dividends.

* *Sess. Papers, Canada, 1859, Vol. 17, No. 7.*

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The situation of the factors, traders, and servants of the Company is described in the evidence taken before the Committee. As no change in the condition or settlement of the country could well be carried into effect without their willing co-operation and assistance, their just claims must be considered in any new arrangements to be submitted to Parliament.

As respects the Board of directors, of which I have the honour to be chairman, their situation is peculiar, and their future conduct must be guided by the disposition of Her Majesty's Government to support them in the future administration of their affairs. They have been rewarded so far, since the union of the Hudson's Bay and North-West Companies, by the success of their administration, as proved not alone by the results of their trade, but by the condition in which they will leave, if they now retire, the government of the whole Indian Territories entrusted to their care, as well as by the 10 express approbation of every succeeding Secretary of State for the Colonies for the last thirty-seven years.

Hudson's Bay Company to Colonial Secretary, 18 July, 1857.

Looking to the future, they will only consent to undertake the future charge of the Indian Territories, which would devolve upon them on the renewal of the license, on the faith of being firmly supported by Her Majesty's Government in maintaining their present establishments in full efficiency. It would be inexpedient, in their opinion, to enter upon a new and further term of their administration without the fullest and most explicit assurance of that support. The Directors have always considered that the settlement of 1821 was sanctioned by the Government and the Legislature, and the monopoly of the Hudson's Bay Company then re-established and extended, quite as much, if not more, as the best instrument the Government could employ for the administration, security, and peace of the Indian 20 country, as for the advantage of the parties whose interests were united by that settlement. These parties and these interests have been long since replaced by others, and are now represented by the present holders of the stock of the Company.

We do not consider any further legislative measures necessary at present for the government of the Indian Territories. The powers under the Charter have hitherto proved sufficient for the ordinary purposes of administration, and the Government have full powers, under the Act of 1821, to appoint Justices and establish Courts, independent of the Company, when and where they shall think it expedient. All the new establishments of this description will create expense, which must be paid by this country or by Canada, as neither the Red River Settlement nor the Indian country have taxable means for the purpose. 30

We beg to be allowed to add the expression of our opinion, that in whatever arrangements which may now be made for the future government of the country, any mixed authority or combination of agents appointed to act with those of the Company will only weaken an administration which it is essential to strengthen in the present state of affairs. 30

No competent persons would be found to abandon civilized life to accept such situations, with such salary as will be found reasonable; and if they could be found, the probability is that the want of sufficient occupation will soon engage them in antagonistic discussions with one another, not conducive to the general order or cordiality of the small community whose affairs they will be sent to direct.

The Board is willing to remain in the exercise of its present functions, to concur in any arrangements proposed by Government or Parliament, which will not interfere with or obstruct their power 40 of independent management of the concerns of the Company; and to give assistance and support to any magistrates appointed by the Government in endeavouring to maintain the present undisturbed state of the Indian Territories. But they will decline to undertake a divided administration of carrying on the government of the country, under the exceptional circumstances of the case, unless assured of the same cordial and unhesitating support from Her Majesty's Government which they have hitherto enjoyed.

I have, etc.,

JOHN SHEPHERD,

Governor.

The Right Honourable Henry Labouchere, M.P.

INSTRUCTIONS TO MR. GLADMAN, DIRECTOR OF THE PARTY ENGAGED, UNDER AUTHORITY OF THE GOVERNMENT OF CANADA, IN EXPLORATION OF THE COUNTRY BETWEEN LAKE SUPERIOR AND THE RED RIVER, AUTHORIZED BY ORDER IN COUNCIL OF 18TH JULY, 1857.*

SECRETARY'S OFFICE,

TORONTO, 22nd July, 1857.

SIR,—I have the honour to acquaint you that, confiding in your integrity, judgment and energy, together with your acquaintance with the Red River Territory; your knowledge of the communication with that country, and with the tribes of Indians which traverse it, His Excellency the Administrator of the Government has been pleased to appoint you to the chief direction and control of the party about
10 to be sent there.

The party organized consists of the following:

Mr. Gladman, Chief Director and Controller of the expedition, and his assistant.

Professor Hind, Geologist and Naturalist, and his assistant.

Mr. Napier, Engineer, with his assistant and staff-men; and Mr. Dawson, Surveyor, with his assistants and chain-men.

Also, such voyageurs or canoe-men as in your judgment may be necessary, the probable number of canoes being assumed at four, with four voyageurs in each; such men to be selected with a view to their being capable of assisting the engineering and surveying branches of the expedition, as axe-men, etc., when required.

20 The primary object of the expedition is to make a thorough examination of the tract of country between Lake Superior and Red River, by which may be determined the best route for opening a facile communication, through British territory, from that lake to the Red River Settlements, and ultimately to the great tracts of cultivable land beyond them. With this view the following suggestions are offered for your guidance, so far as you will find them practicable, and supported by the topography.

In the first place, after being landed at Fort William, to proceed by the present Hudson's Bay canoe route—by Kaministiquia River, Dog Lake, Lake of the Thousand Islands, etc.—to Lac la Croix, and thence by Rainy Lake, Lake of the Woods, Winnipeg River to Lake Winnipeg, and up the Red River to Fort Garry.

30 From Rainy Lake to Lake Winnipeg, the route as at present affords a good navigation for boats of considerable size, with the interruption, however, of some short portages: but from Rainy Lake eastward to Lake Superior the route is very much interrupted, and rendered laborious, tedious and expensive by the great number of portages, some of considerable length, which have to be encountered to avoid the falls and rapids in the ravines and crecks which this route follows.

40 For the establishment of a suitable communication for the important objects aimed at, it is believed that the construction of a road throughout, from some point on Lake Superior, probably either at Fort William or at or near the mouth of the Pigeon River to Rainy Lake, must be undertaken. To ascertain, therefore, at present, by general exploration, what the route for this road should be, whether in the vicinity of the Hudson's Bay route, or by the line of country in which lies the chain of waters from Rainy Lake to the mouth of Pigeon River, this question can obviously be only satisfactorily determined by the difficult portions of both being tested instrumentally; but in either case, as the construction of such road would be a matter of time and much expense, it is considered necessary that the portages, etc., of either of the routes above described should be improved, so as to be made more available and facile, and to be auxiliary to the works of the road by facilitating the transport of men, supplies, etc.

To determine, therefore, the portages to be improved, and the best mode of doing so, and whether the present reaches of canoe or boat navigation may not be further extended by the removal of shoals or the erection of dams, will be points to which you will direct the attention of the engineering and surveying branches of your party.

From Rainy Lake, by Lake of the Woods and Lake Winnipeg, to Fort Garry, as before described, is now comparatively a good water communication, but very circuitous; and should the character of

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Instructions respecting explorations by Canada, west of Lake Superior, 22nd July, 1857.

* Sess. Papers, Canada, 1858, Vol. 16, No. 3.

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Rat River, which rises at no great distance from the Lake of the Woods, and falls into the Red River above Fort Garry, be found susceptible of its being made a boat channel, a saving probably of 150 miles in length might be effected; or on an exploration of the country through which that river flows, it may be found more desirable to construct a road along it from Red River; and should this be so, the nature of the communication between Red River and Lake Superior, eventually, would be about 100 miles of road from Red River to Lake of the Woods, thence about 140 miles of water communication to the eastern end of Rainy Lake, and from that point a continuous road to Lake Superior of from 160 to 200 miles in length.

When you shall have reached Rainy Lake by the Hudson's Bay canoe or northern route, it is left to your discretion whether you should or not leave the engineering party with sufficient force to return 10 and explore back to Lake Superior, the Southern or Pigeon River route, while you proceed with the surveying party by Lake Winnipeg to Red River, and return by Rat River.

All the members of the party, with the exception of the Geologist and his assistant, are, it is understood, to winter on the expedition if required. The expediency of adopting that course can only be determined by you some time hence; but should you decide upon so doing you will, of course take due precautions for the safety and comfort of the party, and for their effective and profitable employment.

As director and leader of the party, you will govern all matters whatsoever connected with the conducting and provisioning of it—the hiring, discharging and payment of men. The lines to be explored, and the water examinations to be made will be determined by you, on consultation with the 20 gentlemen conducting the engineering and surveying branches. You will also decide the times and places for separating the party or parties, and for their re-union. The Engineer and Surveyor have been instructed to afford you all the assistance in their power, and have been informed that they are to consider themselves under your guidance and direction. Any occasional additional assistance they may require will be obtained through you, as well as all necessaries whatever; but the conducting of their immediate professional duties will, of course, be regulated by themselves.

At the very outset, it is important that you should regulate the number of fire-arms that you may consider it necessary to take, which it is believed should not exceed six—one with the Director, one with the Geologist, two with the Engineer, and two with the Surveyor. You will adopt, also, full precautions against any spirits, etc., of any description being carried, except what shall be under 30 your own sole charge and control, and such as you may consider necessary to have in case of illness.

With regard to the procuring of canoes, camp equipage, medicine, etc., etc., for the expedition, it is not considered necessary, from your experience in such matters, to offer any suggestion further than to draw your attention to some Crimean rations of pressed vegetables, now in the commissariat store which occupy but little space, and a small portion of which makes in a short time excellent soup.

In order further to give effect to your control and authority, a commission of magistracy will be conferred upon you.

About the time of your reaching Rainy Lake, or at such period as you may deem proper, you will send a messenger with despatches, reporting upon your progress, etc., etc., and whether you find it necessary or desirable to winter in the territory, etc. 40

Finally, you will impress on each member of your party that no communications or information whatsoever, with regard to the progress or results of the expedition, are to be transmitted, by writing or otherwise, except to the Honourable Provincial Secretary.

The *ad interim* reports of the Geologist, Engineer, and Surveyor, you will enclose with your own, and transmit by the messenger above adverted to. 40

You will also peremptorily require that the weight of all personal effects taken by each of the party, including that of the bag or leathern valise containing them, shall not exceed ninety pounds.

E. PARENT,
Assistant Provincial Secretary.

George Gladman, Esquire,
Port Hope, U. C.

Instructions
respecting
explorations
by Canada
west of Lake
Superior,
22nd July,
1857.

[Here follow special instructions to Professor Hind, Mr. Napier, and Mr. Dawson, respectively, together with voluminous reports showing that the objects of the expedition had been successfully attained. The papers also show that the explorations were continued and extended in the following year under Messrs. Hind and Dawson. See Sessional Papers, 1858, Vol. 16, No. 3. See also the letters to and from Sir Geo. Simpson, *post*, under dates 14th and 23rd April, 1858, respectively.]

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FINAL REPORT OF CHIEF JUSTICE DRAPER RESPECTING HIS MISSION TO ENGLAND, 1857.*

To His Excellency the Right Honourable Sir Edmund Walker Head, Baronet, Governor-General, etc.

The following report is respectfully added to the various despatches and communications heretofore written by me on the subject of my mission to England, having been drawn up in the hope of pre-
10 sentsing a connected statement of the proceedings—while for elucidation and fuller details, I beg per-
mission to refer Your Excellency to all that has been previously submitted by me.

Final Report
of Chief Jus-
tice Draper,
1857.

The instructions of the 20th February, 1857, with which I was honoured, referred to the leading subjects which subsequently engaged attention; among them are the following:

The duty of attending on the Parliamentary Committee, of watching over the interests of Canada by correcting erroneous impressions, and by bringing forward any claims of a legal or equitable kind which the Province might possess on account of its territorial position or past history.

This duty was limited by an express restriction to conclude no negotiations and assent to no definite plan of settlement affecting Canada, without reporting the particulars of the same, and the views entertained by me thereon.

20 The expediency of marking out the limits between the British possessions and the United States, was strongly pointed out, from the importance of securing the North-West territory against sudden and unauthorized intrusion, as well as of protecting the frontier of the lands above Lake Superior, and about the Red River, and thence to the Pacific, so as effectually to secure them against violent seizure, and irregular settlement, until the advancing tide of immigration from Canada and the United Kingdom might fairly flow into them, and occupy them as subjects of the Queen, and on behalf of the British Empire.

That any renewal of a license of occupation (if determined on at all) or any recognition of rights in the Hudson's Bay Company should be guarded by such stipulations as would prevent interference on their part with the fair and legitimate occupation of tracts adapted for settlement.

30 The importance of Vancouver's Island, as the key to all British North America on the side of the Pacific, was alluded to as being too self-evident to require any advocacy.

I lost no time after the receipt of those instructions in setting off for Europe. On my arrival in London, on the afternoon of the 9th of March, I found that, owing to the vote on the Chinese war, Parliament was about to be dissolved, and that the Committee on the Hudson's Bay affairs and territory had held its last sitting on that day, and would merely report the evidence they had taken, the enquiry being incomplete and insufficient as the foundation of any report.

I certainly felt great momentary dissatisfaction since I saw that my stay in London would be thereby greatly prolonged. But a little reflection, and some information which I obtained as to the course the enquiry had taken, soon brought me to view the delay as likely to be an advantage, by
40 affording time that might be put to a very profitable use.

My first interview with the Right Honourable the Secretary of State for the Colonies gave no reason to apprehend any indisposition on his part to take a just view of the interests of Canada in the matter. His language, though general, was favourable and I thought I could safely infer that any obstacles that might arise would not originate with him, however he might be affected by pressure and urgency from other quarters.

* Sess. Papers, Canada, 1858, Vol. 16, No. 3.

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Enquiries in other places, together with a perusal of the evidence taken before the Committee (which Mr. Labouchere promptly communicated to me), led me to the conclusion that the only party desirous of maintaining things in their present position was the Hudson's Bay Company, though, as I afterwards ascertained more distinctly, very different opinions were entertained as to the course which it would be most wise to adopt in the future government of that portion of British territory.

My first duty, therefore, appeared to be to take steps with a view to meet the resistance which the Hudson's Bay Company were opposing to any change. This resistance took, as I thought, two forms— one, resting generally on the rights claimed under their charter from Charles II.; the other more particularly directed against the claims of this Province, by setting up an alleged impossibility arising from geographical and physical causes, to the Government of the territory being administered by Canada. 10 The first was obviously to be met by an examination of the foundation on which they relied, the second by endeavouring to obtain more accurate knowledge of the formation and accessibility of the country lying between Lake Superior and Fort Garry, and by postponing any final arrangements until this should be fully investigated.

I was aware of the correspondence which took place, in 1850, bearing upon the first of these points, and that the late Sir John Jervis (afterwards Chief Justice of the Court of Common Pleas) and Sir John Romilly (now Master of the Rolls) had reported their opinion that "having regard to the powers in respect of territory, trade, taxation, and government, claimed by the Hudson's Bay Company," the rights so claimed properly belonged to that Company. They had, however, accompanied this opinion with their advice that the questions should be referred to a competent legal tribunal for consideration 20 and decision, and they suggested the Judicial Committee of the Privy Council as the tribunal best fitted for the discussion of the case. Her Majesty's Government adopted the advice, but, as they refused to have the proceedings carried on at the public expense, the matter was then dropped.

Final Report
of Chief
Justice Dra-
per, 1857.

Impressed with the idea that a similar reference would receive the approval of the Government, and that it was on every account desirable that the validity of these claims should be submitted to the test of judicial investigation, I applied for and obtained leave to make searches among the public documents and State papers, where I hoped I should obtain some information respecting the original granting of the Charter, as well as some reliable account of the construction put upon it in times when no such questions had arisen as now presented themselves. Several points with respect to the Hud- 30 son's Bay Company's rights and claims, on which doubts had been suggested, might probably be elucidated by this enquiry, and materials might be found to narrow the pretensions set up by them.

But while engaging in this research, which proved much more long and laborious than I at first supposed, I felt it my duty, at an early date after my arrival in London, and as soon indeed as I had sufficiently reflected on the information which I could immediately gather, to submit for the consideration of Your Excellency such views as up to that time impressed themselves on my mind on the subject, in order that Your Excellency in Council might be in a situation to exercise your judgment upon them.

The enquiry before the Committee had taken a much wider range than fell within the limit of my instructions, but the information elicited in regard to the Indians, and the trade carried on by them with the Hudson's Bay Company, had a very important though a collateral bearing upon the preserva- 40 tion of British authority within, and the settling and government of, the North-West Territory. In my despatch of the 20th March, I pointed out the course which the evidence had so far taken, as well as some of the views and reflections to which it was calculated to give rise.

There seemed to be an almost settled conclusion that a change had become necessary—that the Hudson's Bay Company could not be permitted to maintain a territorial monopoly for their own benefit, to the exclusion of the rest of the Queen's subjects from the occupation and cultivation of such lands as were fitted for agricultural purposes; and with regard to Vancouver's Island, its value, in a political point of view, seemed so well understood, that there appeared no room for doubt that it was deemed inexpedient to suffer it to continue in the hands and under the control of that corporation. 50

As to the mainland, I gathered that the impression entertained by Her Majesty's Government was in favour of placing such portion of it as was fitted for settlement, to the west of the Rocky Mountains, under the control of the Colonial Government proposed to be established at Vancouver's Island. While, as to such portion of it similarly fitted for settlement as lay to the eastward of that mountainous chain, there was a readiness to meet the views of Canada—by placing it under the control of the Government of this Province, if the practicability of opening communication between Lake Superior and Red River and so to connect this more distant territory with Canada, under one general Administration, were established, also subject to the rights (whatever they were) of the Hudson's Bay Company—and to an adjustment of compensation for that which it might be found necessary to take from them.

10 Although conflicting opinions existed as to the mode in which the settlement and administration of affairs in this territory should be effected, the prevalent, as I have already stated, was in favour of an entire change of system, and I could anticipate an enquiry whether Canada would be disposed at once to assume the charge of settling and governing and (except as to foreign aggression) of maintaining peace in the territory indicated, accepting the burden of adjusting such claims as might appear on enquiry to be well founded, and if not, what other arrangements would be suggested in contemplation of its ultimate cession to her.

I endeavoured to point out to Your Excellency, in my despatch of the 27th March, the question which I deemed of the most prominent importance, and I discussed therein, at some length, some of the leading considerations involved in them, and I submitted such conclusions as (so far as I could then perceive) I thought it would be for the interests of the Province to arrive at. As to the validity of the claims of the Hudson Bay Company under their charter, I assumed the Government at home entertained the same views as to the propriety of a reference to the Judicial Committee of the Privy Council as had been expressed in 1850.

During the residue of the session of Parliament, and from the dissolution until after the elections, I had but little opportunity of communicating with any of the authorities on these points. I took, however, the earliest convenient occasion to ascertain, as well at the Colonial Office as elsewhere, what opinions prevailed with regard to them, and was surprised and disappointed to find that doubts had been suggested and difficulties raised to following out the course previously suggested by the law advisers of the Crown, and sanctioned by Earl Grey. It was intimated to me, that possibly the Judicial Committee might decline pronouncing any opinion upon the validity of the claims of the Company, when no parties were before them, whose right would be bound by their decision, and that it was more fitting the judgment should be given in a case where the rights of parties were in actual dispute upon which their decision would be strictly judicial and binding. I could perceive plainly that the difficulties, which it was supposed might be met with in the Judicial Committee, must have been suggested since the correspondence of 1850, and that they were deemed of some importance at the Colonial Office. A brief interview with Sir R. Bethel, the Attorney-General, led me to believe that he thought, that after so long an enjoyment on the part of the Hudson's Bay Company, it was not by the Crown that the validity of their charter should be brought into discussion. From all this, I drew the conclusion, that, unless I could raise a question of legal right in which the Province of Canada had a direct interest, there was very little prospect of any reference to the Judicial Committee, while I felt a very strong conviction that no other judgment would be satisfactory on the validity of the Company's claims, or if adverse to the claims of the Province (which, however, I did not believe possible) would receive a respectful submission.

With this impression, I considered that vague and indefinite as the southern boundary of the territory mentioned in the Company's charter is, the limits of the Province of Canada in that part are made dependent on it. I observed also, that this same boundary had been a matter of lengthened dispute between Great Britain and France, finishing only by the treaty of 1763. That at various periods subsequently to 1670, and to 1750, the Hudson's Bay Company had been called upon to point out the extent of their territorial claims under the charter, and to define the boundary which they claimed, and that on no one occasion during all that period had they advanced the claim they now insist upon namely, that the charter gave them the ownership of all lands, the water from which flows into the

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Hudson's Bay or Straits, and therefore extending as far as the head waters of the Red River, and east and west of that stream to the sources of its tributaries, though the Ashburton treaty has, of course disposed of so much of that claim as lies south of the 49th parallel of latitude. And I prepared a memorandum on the subject, which I forwarded to the Secretary of State for the Colonies in a letter, a copy of which letter and its enclosure was transmitted to Your Excellency in my despatch of the 8th of May, 1857.

My object was to place the question on a footing by which the Crown would be called upon to determine the boundary between the Colony and Rupert's Land, as it is styled in the charter of 1670, and, for its own information and guidance, would find it desirable, I might almost say indispensable, to obtain the advice and opinion of the Judicial Committee of the Privy Council. Of the right of the 10 Crown to take this course under the Imperial statute 3 and 4 William IV., there can, I apprehend, be no doubt. It is treated as clear by Mr. MacQueen, in his "Practice of the House of Lords and Privy Council," and on such a reference, I presume, the Judicial Committee would simply make a report, and not pronounce a judgment; upon which report Her Majesty might issue an Order in Council, establishing the boundaries, in virtue of her prerogative royal. Such a declaration would, I venture to submit, meet with respect and obedience in all Her Majesty's Courts of Justice. But if there was a shadow of doubt of the full authority of such an order, a declaratory Act of Parliament, founded upon it, or upon the report of the Judicial Committee, would set the question at rest forever. I thought that Counsel for the Province, as well as for the Hudson's Bay Company, would be heard, and I did not see how it would be possible to exclude the former from contesting the validity of the charter, when it was to be 20 used for the purpose of limiting Canada on the north.

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Parliament was opened on the 8th of May, and a Committee of the House of Commons was named to continue the enquiry. Before that Committee met, I received (the 12th May) the minute of Your Excellency in Council, of the 27th April preceding, which expressed a fixed opinion that no immediate charge should be taken of any territory in a form which would throw upon the Province the cost of administration and defence, while in an unsettled state, until the sanction of the Provincial Legislature was obtained, and that in the meantime I should see—"1st. That Canada should be secured the reversion of such territory north and west of Lake Superior as experience may show to be fit for settlement, contingent on the opening of such communication from Canada as may prove sufficient to allow their future union with the Province. 2nd. That immediate steps should be taken by Her Majesty's 30 Government to prevent the absorption of the territory west of Lake Superior by unauthorized emigration from the United States. 3rd. That every facility should be secured for enabling Canada to explore and survey the territory between Lake Superior and the Rocky Mountains—and if the Provincial Legislature should think fit to provide the means of so doing, no obstacle should be thrown in the way of the constructing of roads or the improvement of water communication, or the promotion of settlement beyond the line supposed to separate the territory of the Hudson's Bay Company from that of Canada."

The first meeting of the Committee was on the 15th of May, when no business except the appointment of the Chairman was transacted. I submitted the names of several witnesses whose evidence I thought would be found valuable; and I received an unofficial intimation of the intention 40 of the Committee to call me before them as a witness. I saw at once the embarrassing position in which this would place me, for it must have been well known that I had no personal knowledge of the territory, and I was therefore certain that my opinions and not my knowledge must form the subject of examination, and that questions might very easily be put to me, which it would be difficult, bearing in mind the restrictive character of my instructions, to answer. I almost determined—if the matter were in any way left open to me, as a matter within my own discretion—not to appear as a witness, though I felt such a course might be open to great misconstruction, and might create impressions unfavourable to the interests of the Province. However, at the meeting of the Committee on 21st May, the Chairman expressed his opinion that I should be called before them, in which all present apparently concurred, and it was formally stated to me that the Committee desired my attendance at 50 their next meeting. I took an opportunity, as soon as the Committee broke up, of stating to the Chairman my objections; but (if he felt there was any force in them) he left me no reason to doubt that in his opinion I should comply with the expressed desire of the Committee.

In the meantime, however, I had learned, through the public press, that an expedition had been set on foot to conduct a geographical survey through a part of the territory in question. I addressed a letter on this subject to the Secretary of State for the Colonies (16th May, 1857—separate, No. 5), a copy of which I enclosed to Your Excellency in my despatch of the 21st May. To this I received a reply from Mr. Merivale, one of the Under-Secretaries of State, bearing date the 25th May, and on the 27th May I received a reply from Mr. Fortescue, the Parliamentary Under-Secretary of State for the Colonies, in reply to my letter of the 6th May, copies of which were transmitted by me to Canada, in my despatch of the 29th of the same month. (Separate, No. 6).

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On the 28th of May I was examined before the Committee. I took particular care to have it understood that I had no instructions to appear before them as a witness. Examined repeatedly as to my individual opinions on the subjects of enquiry, I could not avoid stating what I sincerely thought; but while I felt bound to reply without reserve, I was solicitous to impress that I stood alone responsible for such views, that I pretended no authority to advance them in the name of the Province, and that they were in some instances opposed to what I believed many people in the Province thought.

I addressed a reply on the 5th June to the letter which I had received from Mr. Fortescue on the subject of the suggested reference to the Judicial Committee of the Privy Council, and in this letter I took occasion to present, as succinctly as possible, the points which I thought it most material for the interests of Canada should be treated in the Report of the Committee, and disposed of by Parliament. I felt the more imperatively called upon to take this step at once, lest any answer of mine in the course of a lengthened examination should give rise to misapprehensions as regarded the claims of the Province. A copy of this letter was sent by me to the Provincial Secretary in my despatch of the 5th of June. I received on the evening of the 6th of June a note from Mr. Labouchere's private secretary, respecting my official letter of the 5th of June, to which I replied on the following Monday, and I forwarded copies of those two notes in my despatch to the Provincial Secretary of the 12th of June.

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To this despatch I beg to make especial reference. It contains a *resumé* of my reasons for pressing the reference to the Judicial Committee; a statement of the boundaries, which, for the present, and without reference to the legal adjudication, I was of opinion might answer; as also a recapitulation of some of the proposals made by me for dealing with the questions before the Committee and the Government.

On the 3rd of July I received a copy of the evidence taken before the Select Committee of the House of Assembly, which I immediately transmitted to Mr. Labouchere, as chairman of the Committee. It is printed in the Appendix to the Report of that Committee.

In the meantime (as I learned through private channels of information) the Attorney and Solicitor-Generals had been called upon to report their opinion whether the Crown could lawfully or constitutionally raise for legal decision all or either of the following questions: 1. The validity, at the present day, of the charter of the Hudson's Bay Company; 2. The validity of the several claims of territorial right, of government, of exclusive trade and taxation claimed by that Company; 3. The geographical extent of this territorial claim, supposing it to be well founded to any extent; and, if the Crown could do so, then to state the proper steps to be taken, and the proper tribunal to be resorted to, and whether the Crown should act on behalf of the local Government of Canada, as exercising a delegated share of the Royal authority, or in any other way; and if the Crown could not properly so act, whether they saw any objections to the questions being raised by the local Government of Canada, acting independently of the Crown, or by some private party, in the manner suggested by the law officers in 1850—the Crown undertaking to bear the expense of the proceedings.

I was on the 11th of July favoured by Mr. Labouchere with a copy of the report in reply, but the communication to me was marked "Private and Confidential" (8th July, 1857). A few days prior to its receipt, however, I addressed a letter to Mr. Labouchere, again pressing for a reference and decision on the subject of boundaries. A copy of this letter was transmitted by me to the Provincial Secretary on the 10th of July.

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In reference to the opinion of the law advisers of the Crown, I cannot abstain from remarking that it does not appear to me to meet the questions submitted. The general question put was, whether the Crown could lawfully or constitutionally raise for legal decision,—1. The validity of the charter at the present day. 2. The validity of the several claims of territorial right, of government, exclusive trade and taxation, insisted on by the Company. 3. The geographical extent of the territorial claim, supposing it to be well founded to any extent.

1. As to the validity of the charter. The answer in fact is (if I do not misunderstand it), the Crown cannot justly raise this question, because, taking into consideration the enjoyment that has been had under the charter, and the recognition made of the right of the Company under various Acts, the judgment of any tribunal ought to be in favour of upholding it, although, if principles which govern a 10 charter of recent date were applied, it must be deemed invalid. With great submission, this appears to me to savour much more of an opinion on what should be a result of a reference, than an opinion on the power of the Crown to refer. And, if this be the true sense of the answer, then it is difficult to avoid the reflection that such a determination, coming from a high and impartial tribunal, would carry more weight and conviction with it than an opinion, which, if followed, prevents such an adjudication being obtained. And the adoption of that opinion by the Government becomes virtually an assertion by the Government of the validity of the charter—while the argument, resting upon long enjoyment, and parliamentary recognition, seems almost to involve the admission of its invalidity.

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2. The answer to the second branch of the enquiry is open, as appears to me, to similar objection. If it be admitted—and the opinion given involves the admission—that rights of government, taxation, 20 exclusive administration of justice, or exclusive trade, cannot be legally insisted upon by the Hudson's Bay Company, as having been legally granted by the Crown; and if, as is notoriously the fact, the Hudson's Bay Company have assumed and asserted all these rights, the answer to the question put ought, I humbly conceive, to have been that the Crown could legally and constitutionally raise this question for legal decision, instead of anticipating the judgment by an opinion that the charter should not be deemed invalid, because it professes to grant those powers, inasmuch as to a limited extent those powers may be lawfully used.

I cannot say the result of the reference, so far, was any matter of surprise to me. On whatever grounds the opinion might be rested, I had, as I have already stated, satisfied myself that there would be no facility afforded for raising either of these questions, and I was the more fully satisfied that I 30 had taken a right course in submitting a proposition which it was impossible to negative on any such reasoning as the report contains in regard to the first two questions.

Even on that proposition, however, the opinion given hardly appears to me to afford a full answer.

I concede fully that the Crown could not, of its inherent authority, and by any mere command, bring the Province of Canada and the Hudson's Bay Company, as two contending parties, before the Judicial Committee of the Privy Council to submit their respective claims for final decision. For this purpose the consent of both parties would be indispensable. But I fail to perceive, and on this point the opinion throws no light, that the Crown could not obtain the opinion and advice of the Judicial Committee upon all the existing facts as to the boundaries between Canada and the territories of the Hudson's Bay Company, supposing their claim "to be well founded to any extent," and that such 40 opinion and advice might be made the foundation for determining those boundaries, with the aid, if requisite, of a declaratory Act of Parliament. It has not yet been denied on any hand that the Crown can legally and constitutionally take that course, and I continue to think this is a more safe and will be a more satisfactory mode of determination than a quasi-judicial enquiry, in which the Province of Canada is to be made to assume the position of a plaintiff in ejectment, and in that character to prove a title to turn the Hudson's Bay Company out of an imaginary possession.

The committee held their last sitting for the examination of witnesses on the 23rd June. Their next meeting was on the 20th July, with closed doors, and so their meetings continued until their report was finally adopted. Before this I had several interviews with Mr. Labouchere, in which, among other things, the opinion of the law advisers of the Crown was spoken of. These interviews, as I was 50

informed by a letter of Mr. Under-Secretary Merivale, rendered it unnecessary, in Mr. Labouchere's opinion, to address any reply to my letter of the 8th July. The substance of what took place at these interviews is contained in my last despatch to the Provincial Secretary. I felt it right to send a copy of this letter without delay to Mr. Labouchere, in order that he might be fully aware in what light I viewed, and how I had understood what passed between us. It will be observed that Mr. Labouchere made no direct proposition to me founded on the report of the law advisers of the Crown. On the contrary, so far as I could understand, though I may be in error, I thought him much more desirous of seeing the points in doubt or dispute settled by some compromise than of having them left for legal adjudication, while I represented that a determination of the rights conferred by the charter would tend to facilitate the settlement of the other questions which were raised. I had the opportunity of again pressing the necessity that I thought existed, that the authority of the Hudson's Bay Company should at once be put an end to, over such portions of the territory as might be ceded to Canada. And I took occasion, when the question of compensation to the Company was referred to, to state my unqualified opinion that Canada would never consent to pay any portion of it.

The report of the Committee confirms my early impression of the opinions entertained as to the future government of Vancouver's Island and the territory west of the Rocky Mountains. The importance of Vancouver's Island seems to be fully estimated, and the necessity of administering its government and providing for its settlement otherwise than by the agency of the Company. That colony is also viewed as the most convenient headquarters for settlements on the adjacent mainland, especially about Frazer's River and Thompson's River (on or near which it is said there are indications of gold), and generally as far as the Rocky Mountains. The distance, judging from maps, and taking a direct line without reference to the difficulties of communication and necessary divergencies, by rivers and lakes, are from Victoria, on Vancouver's Island, to the junction of the Frazer and Thompson Rivers, 180 miles; thence to Fort Thompson, 80 miles; thence to Mount Brown, 170 miles; thence to Red River, at Fort Garry, near 900 miles; and thence to Fort William, 300 miles, or 500 miles if the canoe route is followed. The Frazer River empties itself opposite the south-easterly part of Vancouver's Island, a little to the north of the 49th parallel. The parts of this country best fitted by climate and soil for agricultural settlement, as well as the points where it was asserted gold had been discovered, were, according to the evidence of Mr. Cooper, situated upon these rivers. They are also not far from the boundary line of Oregon. The greater facilities of obtaining information and of speedy communication and intervention (if intervention were necessary), from Vancouver's Island to these rivers and the country they drain, had very great influence on the minds of those who were of opinion the settlement and protection of these parts of the territory should be managed by the Government of that Colony. On the other hand, there were those (and I understand Mr. Roebuck to be strongly of that opinion) who thought that the territory lying between the Province of Canada and the Pacific far too extensive to be united to Canada and Vancouver's Island, but that it should be divided into several colonies to be settled under the authority of the British Crown, with local Governments which might in time form part of the confederacy of the British possessions on the North American continent, maintaining their connection with the British Empire.

There were not wanting some who would have been disposed to cede to this Province the territorial right of the Crown on condition that Canada should relieve Great Britain of all future charge of its government, defence and administration, and take upon its own resources the burden of any arrangement which the claims of the Hudson's Bay Company might give legitimate rise to. The express instructions I had in no way to pledge the Province to incur any expenditure until the sanction of the Provincial Parliament was obtained, was sufficient without any other reason to prevent my entering upon this topic, to which, I may be permitted to add, I saw what appeared to me to be the gravest objections. I refer to these matters in connection with the amendments which were made in the draft report first submitted to the Committee, to show that there was a wide difference of opinion in that body as to the best mode of dealing with the subject under consideration.

The recommendation of the report was in effect:—

1st. That the Province should be free to annex to her territory such portions of the land in her neighbourhood as may be available to her for the purposes of settlement—with which lands she is wil-

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ling to open and maintain communication, and for which she will provide the means of local administration. The districts on the Red River and the Saskatchewan are those particularly referred to, and the recommendation, therefore, involves the giving to Canada power to assume the whole of the extensive territory bounded on the south by the United States, and on the west by the Rocky Mountains, and as far north as the soil and climate fit for agricultural settlement extends, leaving to Her Majesty's Government to effect any necessary arrangements with the Hudson's Bay Company, whose authority over the country annexed to Canada would entirely cease.

2nd. The reassuming by the Imperial Government of Vancouver's Island, and the making provision for developing the natural resources of that colony, and extending it over any portion of the continent to the west of the Rocky Mountains, on which permanent settlement may be found practicable. 10

3rd. Subject to these recommendations, the continuance of the privilege of exclusive trade to the Hudson's Bay Company.

On this latter recommendation I would remark, that for the reasons set forth in my despatch of the 27th March, 1837, I thought temporary renewal of the license of exclusive trade would be advisable. It also appeared to me, that to throw that trade at once and unreservedly open, would be, in effect, to give an immediate advantage to the fur traders from the United States, while its benefit to the people of Canada was remote and contingent. For the former, with establishments near the frontier (at Pembina, for instance), already obtaining a considerable number of furs from the British territory, would be ready at once to extend their operations—to enter into active arrangements with the half-breeds and Indians, and to lay the foundation for an immediate connection with them, and so to gain a start of our own people that must be extremely disadvantageous to the latter. And there is a further danger, the apprehension of which arises from an answer given by the Right Hon. Edward Ellice, in his examination before the Committee, when he says in reference to the "servants" of the Hudson's Bay Company in the interior, "Even if it was necessary, and if the attempt were made to deprive them" (as, for instance, by taking away the exclusive right of trade) "of what are, in short, their sole means of existence, they would find means, either by communication with America or somewhere else" (possibly Russia, whose possessions join the British territories on the north), "to carry on the trade and exclude every other party." This warning or covert menace (for it is capable of that construction, though unintentionally) from a gentleman who must know the disposition of those of whom he speaks, and the influence their intercourse with the Indians has given them, is not to be overlooked, and it will not have the less point and significance when it is remembered that though settlements within the Oregon Territory had been formed under the protection of the Hudson's Bay Company's "servants;" and though that Company had no chartered rights there, but only such privileges as the exclusive right of trade gave them; yet when the Ashburton Treaty was made, and the north branch of the Columbia River yielded up to the United States, the transfer of these settlements created no difficulty, while an article was inserted into the treaty by which the possessory rights of the Company were to be respected, under which article the Company have now a great claim in discussion "before the Congress, for indemnity for the surrender of their possessory rights." These reflections are calculated to add to the importance of interposing a body of British settlers between the line of 49° north, and the most valuable fur-bearing country, before the privilege of exclusive trade is entirely abrogated, and strengthen the suggestions offered in favour of a temporary renewal of the license for exclusive trade. 20 30 40

The report points also to the necessity of making communications to the Government of Canada—as well, I apprehend, on the subject of boundary, as respecting such other arrangements for the settlement and administration of the territory as may be deemed expedient. Its language and expression evince a disposition to sustain and advance the welfare of the Province, and to strengthen its position as a part of the British Empire.

I cannot better conclude this report than by recapitulating the points which, appearing to me to come within the scope of my instructions, seemed to be of the greatest present importance, and were presented by me in that light in my communications with the Home authorities. 50

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tice Draper,
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1. The determination of the proper limits between Canada and the territories (whatever they may be) belonging to the Hudson's Bay Company.

2. The marking out the boundary between the possessions of Great Britain and the United States to the Pacific.

3. The adoption of measures to protect the possessions of the Crown from intrusive settlement.

4. The granting to Canada, for a fixed period, powers to explore and survey, to open communications by land and water, and to lay out and settle townships to become, as fast as they are laid out and settled, integral portions of the Province, and, over the territory in which Canada is to possess these powers, to abrogate at once every right and privilege of the Hudson's Bay Company, excepting the right to their factories and other buildings erected within the same, with a sufficient portion of land immediately attached to such factories, etc., necessary for their convenient enjoyment and occupation.

5. The making a provisional arrangement for the government of the Red River Settlement entirely independent of the Hudson's Bay Company, until that settlement can be incorporated with the Province of Canada.

6. The reservation to the Crown of a power to lay out a line of railway, and to use all lands necessary for that purpose throughout the whole territory to the Pacific Ocean.

All which is respectfully submitted.

W. H. DRAPER.

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THE UNDER-SECRETARY TO THE GOVERNOR OF THE HUDSON'S BAY COMPANY.*

DOWNING STREET,

January 20, 1858.

SIR,—Her Majesty's Government have had under their consideration your letter of the 22nd December, 1856, containing an application on behalf of the Governor and Committee of the Hudson's Bay Company, for a renewal of their license for exclusive trading with the Indians in the North-Western Territories of America. They have also, since the receipt of that letter, paid full attention to the Report of the Select Committee of the House of Commons appointed during the last Session of Parliament to consider the state of the British Possessions under the administration of the Hudson's Bay Company, and I have now to acquaint you, by direction of Mr. Secretary Labouchere, with the result of their deliberations on the whole subject.

2. They are disposed to advise Her Majesty to execute the powers vested in her by the Act 1 and 2 Geo. IV., c. 66, by renewing the existing license of the Hudson's Bay Company for the further term of twenty-one years from its approaching expiration on the 30th May, 1859, on the following conditions

3. The reservation, as in the present license, of any territories which may be formed by Her Majesty's Government into colonies.

4. Vancouver's Island to be exempted from the license as already constituted into a colony. On the subject of this Island I am to refer you to another letter of even date herewith, in which the views of Her Majesty's Government in relation to it are communicated to you.

I am further to state that Her Majesty's Government consider it very desirable to ascertain, by the decision of some competent authority, the boundary between the Province of Canada and the Territories claimed by the Company under their charter.

5. It has been suggested by Her Majesty's law advisers that this might be effected through the intervention of the Judicial Committee of the Privy Council on their being moved to entertain the question. You stated in your letter addressed to me on the 18th of July last, that the Directors of the Company were prepared to recommend to their shareholders a concurrence in this course. But I have no authority to state that the Province of Canada is also prepared to concur in it unless allowed at the

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same time to discuss the farther validity of the charter itself, a question which, on public grounds, Her Majesty's Government do not consider themselves authorized to raise. If, therefore, any parties in Canada propose to take measures towards contesting the Company's rights to the full extent before a legal tribunal, Her Majesty's Government must leave them to take that course on their own responsibility. If, on the other hand, Canada thinks it expedient to agree to the course now proposed, namely, that of trying the question of boundary alone with the consent of the Hudson's Bay Company, Her Majesty's Government will afford every facility in their power for its determination. It is, therefore, Mr. Labouchere's intention, in the first place, to submit this proposal to the option of the colony.

6. But supposing that no such proceedings were taken, and that the colony declines to contest the naked question of boundary in the manner suggested, Mr. Labouchere is of opinion that the objects recommended by the Committee may be attained by another course. He will then be prepared to propose to Canada, and to the Company, on the part of Her Majesty's Government, as a further condition for the renewal of the license, that the Company should surrender to the Crown such portions of the Territory now claimed by it under the Charter as may be available to and required by Canada for purposes of settlement.

7. It is stated in the report that the districts likely to be required for early occupation are those on the Red River and Saskatchewan. If that should be the case, the portion of territory thus generally indicated should be rendered free for annexation to Canada; such annexation to take place whether in this or any other direction, when Canada has made a road or any other line of communication connecting the territory she requires, and when Canada has given satisfactory evidence of her intention to take steps for laying out townships, and settling and administering the affairs of these districts. Thus the annexation might be gradual in case it should be found to suit the convenience of the several parties interested.

8. For the purpose of ascertaining the satisfactory performance by Canada of the terms thus required, the period when such annexation should consequently commence, and the manner in which it should be carried into execution, Mr. Labouchere would propose the appointment of a Board of three Commissioners, one to be nominated by the Province of Canada, one by the Company, and one by Her Majesty's Government.

9. The same Board should be authorized to consider and report on the following question, namely, —the amount of pecuniary compensation which, under all the circumstances of the case, may become justly payable to the Company in consequence of such contemplated annexation, and in respect of property which they may be required to surrender.

10. The Commissioners should be instructed to dispose of further questions connected with the transfer which, in the course of these proceedings, it may appear desirable to refer to them.

11. Her Majesty's Government have further to propose that, if it should at any time be made known to them that there is a good reason to believe that mining operations or fisheries may be advantageously conducted in any portion of the territory held by the Hudson's Bay Company under their charter, facilities should be afforded to Her Majesty's subjects for engaging in these pursuits within limited districts. For this purpose it would be necessary that Her Majesty's Government should be authorized to grant licenses or leases, or in some other manner which may be arranged by mutual consent, to place the parties engaged to prosecute such undertakings in possession of the land required or the purpose, any territorial rights of the Company notwithstanding. On the other hand, it should be fully understood that Her Majesty's Government will not grant any such facilities unless the parties applying for them give to Her Majesty's Government and the Company substantial proof of their competency, and of the *bona fide* nature of their intentions; nor unless proper security be taken against the interference of such parties with the fur trade of the Company with the Indians. The mode of carrying into execution these arrangements would be matter for subsequent consideration if the Company should agree to the principles now suggested.

12. If the Company should signify through yourself their willingness to consent to these proposals, Her Majesty's Government will proceed forthwith to submit them to the Local Government of Canada for their consideration, and in the event of their concurrence, they will be prepared to take the necessary means for carrying them into effect.

John Shepherd, Esq.

I have, etc.,

H. MERIVALE.

THE GOVERNOR OF THE HUDSON'S BAY COMPANY TO THE COLONIAL SECRETARY.*

HUDSON'S BAY HOUSE,

21st January, 1858.

SIR,—I have the honour to acknowledge the receipt of Mr. Merivale's letter of the 20th instant, communicating the result of the consideration which Her Majesty's Government had given to my letter of the 22nd December, 1856, and adverting to the full attention paid to the report of the Select Committee of the House of Commons, which inquired last session into the state of the British possessions under the administration of the Hudson's Bay Company, detailing the conditions on which Her Majesty's Government are prepared to advise Her Majesty to renew the existing license for a further term of twenty-one years, and informing me that if the Company should signify their willingness to consent to these proposals, Her Majesty's Government will proceed forthwith to submit them to the local Government of Canada for their consideration, and in the event of their concurrence, will be prepared to take the necessary measures for carrying them into effect.

In reply, I beg leave to state, that after full consideration with my colleagues in the direction, we shall be prepared to recommend to our proprietary body :

1st. To agree to the reservation, as in the present license, of any territories which may be formed by Her Majesty's Government into colonies.

2nd. To agree to the proposed exception of Vancouver's Island from the license; and upon this subject we beg to refer you to the answer to the communication which you have forwarded to us, conveying the views of Her Majesty's Government in relation thereto.

3rd. We concur in your suggestion that in the event of the Government of Canada declining to be a party to the proposed reference of the Boundary question to the Judicial Committee of the Privy Council upon the footing which Her Majesty's Government are prepared to recommend, and which this Company has already expressed their willingness to adopt, the objects recommended by the Committee of the House of Commons may be attained by another course, the detailed arrangements of which should be carried out under the supervision of three Commissioners, one to be appointed by the Crown, one by the Canadian Government, and one by the Hudson's Bay Company.

I trust that the ready acquiescence of the Hudson's Bay Company in the plan proposed for meeting the requirements of the Canadian Government, will be accepted as an earnest of their desire to be on terms of harmony and friendship with their countrymen in Canada.

4th. In communicating this assent on the part of the Hudson's Bay Company, it is, however, right to notice that the territories mentioned as those that may probably be first desired by the Government of Canada, namely, the Red River and Saskatchewan districts, are not only valuable to the Hudson's Bay Company as stations for carrying on the fur trade, but that they are also of peculiar value to the Company, as being the only source from which the Company's annual stock of provisions is drawn particularly the staple article of *Pemican*, a regular supply of which is absolutely necessary to enable the officers of the Company to transport their goods to the numerous inland and distant stations, and to feed and maintain the people, both European and Indians, stationed thereat. It is proper, therefore, that I should draw your attention to the fact that the ultimate loss of those districts will most probably involve the Hudson's Bay Company in very serious difficulties, and cause a great increase of expense in conducting their trade. The Company assume that the Canadian Government will be responsible for the

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Hudson's Bay Company to the Colonial Secretary, 21st January, 1858.

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preservation of peace, and the maintenance of law and order in all the territories ceded to them, and that they will prevent lawless and dishonest adventurers from infringing from thence the rights of the Company over the remaining portions of their territories.

5th. With respect to the eleventh paragraph of your letter, in which it is proposed that "Her Majesty's Government should be authorized at any time to grant licenses or leases, or in some other manner which may be arranged by mutual consent, to place parties engaging to prosecute mining operations or fisheries in possession of the land required in any portion of our territory for the purpose, any territorial rights of the Company notwithstanding,"—assuming that the principles stated in the 9th paragraph, as applicable to cessions to Canada, apply equally to any cessions which may take place in virtue of the 11th clause, I beg to state that we shall be prepared to recommend our shareholders to 10 concur in this proposal.

6th. In conclusion, allow me to refer to the sentiments expressed in the fifth and last paragraph of my letter of the 18th of July last, as explanatory of the continued views of myself and colleagues. We are willing to enter upon a new tenure of our engagements under the renewed license, upon being assured of the support of Her Majesty's Government, and of the cordial co-operation of the neighbouring Government of Canada, in maintaining tranquillity and order among the Indian tribes, and protecting the frontiers of the whole adjacent British territories from foreign encroachment.

The interests of the Hudson's Bay Company, we are convinced, are closely united with the real prosperity of Canada, and we trust that the humane and beneficent objects of Her Majesty's Government will prosper under our united exertions. 20

I have, etc.,

JOHN SHEPHERD,

Governor.

Right Hon. H. Labouchere.

THE COLONIAL SECRETARY TO THE GOVERNOR-GENERAL.*

DOWNING STREET,

22nd January, 1858.

Colonial Secretary to Governor-General, 22 January, 1858.

SIR,—In sending for your consideration and that of your Council, a correspondence which has recently passed between the Directors of the Hudson's Bay Company and this Department (Colonial Office to Hudson's Bay Company, 20th January, 1858; do. do. Hudson's Bay Company, 21st January, 30 1858; do. do.) on the subjects embraced by the investigation of a Committee of the House of Commons in the last year's session of Parliament, it is not necessary that I should add much to the information which that correspondence conveys.

The relations in which the Company is placed, both towards Canada and towards Her Majesty's Government in this country, have naturally attracted in no common degree the attention of the Canadian community, and they were also carefully investigated by the Committee to which I have referred.

It is the anxious desire of Her Majesty's Government to take the opportunity afforded by the approaching termination of the Company's license of exclusive trade over what is termed the Indian Territory, for placing these relations upon such a footing as shall be consonant with justice, and at the 40 same time conducive to the satisfaction and to the interests of the great Province under your government.

It is for the purpose of promoting these objects that I have carried on the correspondence which I now transmit to you, and I make no question but that it will be considered in a similar spirit by the Legislature and people of Canada.

I do not propose to discuss the question of the validity of the claims of the Company, in virtue of their charter, over the whole territory known as Rupert's Land. Her Majesty's Government have

* Sees. Papers, Canada, 1858, Vol. 16, No. 3.

come to the conclusion that it would be impossible for them to institute proceedings with a view to raise this question before a legal tribunal, without departing from those principles of equity by which their conduct ought to be guided. If, therefore, it is to be raised at all, it must be by other parties on their own responsibility.

With regard to the question of boundary, as distinguished from that of the validity of the charter, Her Majesty's Government are anxious to afford every facility towards its solution, a mode of accomplishing which is indicated in the correspondence, if such should be the desire of Canada.

But I trust that in any case a machinery may be provided through the course now proposed which will afford to Canada the means of obtaining any districts which she may require for the purpose of settlement, and to which she may be able to afford the benefits of administration and protection. The tracts claimed by the Company under its charter are conterminous on the north and west with the whole of that great Province which is now united under your government. I therefore look to the gradual aggregation of such portions of these tracts as may be found available to that Province which contains within its limits the noble water communication afforded by the Lakes and the St. Lawrence to the Atlantic.

I recommend this important subject to the early consideration of yourself and your advisers. Her Majesty's Government can have no other wish regarding it than, consistently with the principles of good faith, to promote the prosperity and consult the feelings of the people of Canada in this matter, as well as to provide for the security of law and order in these vast regions, in the maintenance of which Canada has herself so deep an interest.

I have, etc.,

H. LABOUCHERE.

Governor the Right Honourable Sir E. W. Head, Bart.,
etc., etc., etc.

ADDRESS OF THE CANADIAN PARLIAMENT TO HER MAJESTY, 13TH AUGUST, 1858.*

To the Queen's Most Excellent Majesty.

Most Gracious Sovereign,—

We, Your Majesty's most dutiful and loyal subjects, the Legislative Council and Assembly of Canada, in Provincial Parliament assembled, humbly approach Your Majesty, for the purpose of 30 representing—

That the approaching termination of the License of Trade granted by Your Majesty's Imperial Government to the Hudson's Bay Company over the Indian Territories, a portion of which, in our humble opinion, Canada has a right to claim as forming part of her territory, renders imperative the adoption of such measures as may be necessary to give effect to the rights of the Province, and presents a favourable opportunity for obtaining a final decision on the validity of the Charter of the Company and the boundary of Canada on the north and west.

That Canada, whose rights stand affected by that Charter, to which she was not a party, and the validity of which has been questioned for more than a century and a half, has, in our humble opinion, a right to request from Your Majesty's Imperial Government a decision of this question, with a view of 40 putting an end to discussions and questions of conflicting rights, prejudicial as well to Your Majesty's Imperial Government as to Canada, and which, while unsettled, must prevent the colonization of the country.

That the settlement of the boundary line is immediately required, and that therefore we humbly pray Your Majesty that the subject thereof may be forthwith submitted for the opinion of the Judicial Committee of Your Majesty's Privy Council, but without restriction as to any question Canada may deem it proper to present on the validity of the said Charter, or for the maintenance of her rights.

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Colonial Secretary to
Hudson's Bay
Company,
22nd Jan.,
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Address of the Canadian Parliament, 13th August, 1858.

That any renewal of the license to trade over the Indian Territories should, in our humble opinion, be granted only upon the conditions that such portions thereof, or of the other territories claimed by the Company (even if their Charter be held valid), as may be required from time to time to be set apart by Canada, or by Your Majesty's Government, into settlements for colonization, should, as so required, be withdrawn from under any such license and the jurisdiction and control of the said Company; and that Your Majesty's Government, or the Governor-General in Council, should be permitted to grant licenses to trade in any portions of the territories while held by or in occupation of the said Company, upon such conditions for the observance of law and the preservation of the peace, for the prohibition or restriction of the sale of ardent spirits, for the protection of Indian tribes from injury or imposition, and with such other provisions as to Your Majesty's Government, or to His 10

Excellency in Council, may seem advisable.

That in our humble opinion Canada should not be called upon to compensate the said Company for any portion of such territory from which they may withdraw, or be compelled to withdraw, but that the said Company should be allowed to retain and dispose of any portion of the lands thereof on which they have built or improved.

All which we humbly pray Your Majesty to take into Your Majesty's gracious and favourable consideration.

THE DEPUTY GOVERNOR OF THE HUDSON'S BAY COMPANY TO THE COLONIAL SECRETARY.*

HUDSON'S BAY HOUSE,

12th October, 1858. 20

Hudson's Bay Company to Colonial Secretary, 12 October, 1858.

SIR,—With reference to a communication addressed to me, under date of the 3rd ultimo, the receipt of which I had the honour to acknowledge on the 7th of that month, I beg now to state that this Company can only re-assert their right to the privileges granted to them by their Charter of Incorporation, the extent and nature of which they have already fully explained in the papers which will be found amongst those printed by order of Parliament. I refer particularly to a letter addressed by Sir J. Henry Pelly to Earl Grey, dated 13th September, 1849, enclosing a paper entitled "Statement of the Rights as to Territory, Trade, Taxation, and Government, claimed and exercised by the Hudson's Bay Company, on the Continent of North America," and marked No. 2, among the papers on the affairs of the Hudson's Bay Company, printed by order of the House of Commons, on the 12th of July, 1850. 30

This Company cannot, therefore, be a consenting party to any proceeding which is to call in question rights so long established and recognized, but they will, of course, be prepared to protect themselves against any attempt that may be made on the part of the Canadian authorities to deprive them, without compensation, of any portion of the territory they have so long been in possession of.

I have, etc.,

H. H. BERENS,

Deputy-Governor.

The Right Honourable

Sir E. Bulwer Lytton, Baronet,
etc., etc., etc. 40

LORD CARNARVON TO THE DEPUTY GOVERNOR OF THE HUDSON'S BAY COMPANY.*

DOWNING STREET, 3rd November, 1858.

Under Secretary to Hudson's Bay Company, 3 November, 1858.

SIR,—I am directed, by Secretary Sir E. B. Lytton, to acknowledge the receipt of your letter of the 12th October.

Sir E. Lytton will not conceal the disappointment and regret with which he has received that communication, containing, if he understands its tenor correctly, a distinct refusal on the part of the Hud-

* Sess. Papers, Canada, 1859, Vol. 17, No. 7.

son's Bay Company, to entertain any proposal with a view to adjusting the conflicting claims of Great Britain, of Canada, and of the Company, or to join with her Majesty's Government in affording reasonable facilities for the settlement of the questions in which Imperial, no less than colonial interests, are involved.

It is Sir E. Lytton's anxious desire to come to some equitable and conciliatory arrangement by which all legitimate claims of the Hudson's Bay Company should be fairly considered with reference to the Territories or the privileges they may be required to surrender; but if the decision as conveyed in your letter, be regarded as final, all power to facilitate such an arrangement is withdrawn from his hands.

By that decision, Sir E. Lytton sees with regret, that a process of temperate and amicable enquiry and adjudication must be exchanged for a legal conflict, where all parties concerned will be brought into antagonistic and even hostile relations, and where it is manifest that the terms of compensation, compromise, and mutual convenience, which Her Majesty's Government would, under other circumstances, have been able to negotiate, must become far more difficult of attainment, if not actually unattainable.

Unsatisfactory as this result would be, Sir E. Lytton will not feel at liberty to decline it. He desires that the Hudson's Bay Company should distinctly understand, that, in his opinion, the time for arriving at some authoritative definition of conflicting claims can no longer be postponed with safety, or in justice to public interests; and both Canada and the British Parliament might justly complain of further and unnecessary delay. But before deciding finally upon the course to be pursued, he desires to place once more the question before the Hudson's Bay Company, with a sincere hope that on a further consideration they may see the expediency of modifying the determination which your letter announced.

Where on all sides interests so great and various are concerned, the wisest and most dignified course will be found, as Sir E. Lytton has on previous occasions pointed out, in an appeal to, and a decision by, a Judicial Committee of the Privy Council, with the concurrence alike of Canada and of the Hudson's Bay Company.

If the adoption of such a procedure be advantageous to the interests of all parties concerned, Sir Edward cannot but think it would be particularly for the interest of the Hudson's Bay Company.

It would afford a tribunal pre-eminently fitted for the dispassionate consideration of the questions at issue; it would secure a decision which would probably be rather of the nature of an arbitration than of a judgment; and it would furnish a basis of negotiation on which reciprocal concession and the claims for compensation could be most successfully discussed.

In such an event, Sir E. Lytton would be prepared to agree that the Company, if they succeed in maintaining the full rights which they claim, should be indemnified against the costs, and that in any other result it should be understood that each party should bear its own expenses incident to the proceeding.

It is not for Sir E. Lytton to dictate to the Company the course which they should pursue, but I am to place distinctly before them his own intentions, and to leave them to decide.

If, on the one hand, the Company will meet Sir E. Lytton in finding the solution for a recognized difficulty, and will undertake to give all reasonable facilities for trying the validity of their disputed Charter, they may be sure that they will meet with fair and liberal treatment, so far as Her Majesty's Government are concerned; but if, on the other hand, the Hudson's Bay Company persist in declining these terms, and can suggest no other practicable mode of agreement, Sir E. Lytton must hold himself acquitted of further responsibility to the interests of the Hudson's Bay Company, and will take the necessary steps for closing a controversy too long open, and for securing a definite decision which is due to the material development of British North America, and the requirements of an advancing civilization.

It is only fair to add, that in such case the renewal of the exclusive license to trade in any part of the Indian Territory, a renewal which could only be justified to Parliament as part of a general arrangement, adjusted on the principles of mutual concession, must become impossible.

Captain Berens.

I have, etc.,

CARNARVON.

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Under Secretary to Hudson's Bay Company—3rd November, 1858.

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THE DEPUTY-GOVERNOR OF THE HUDSON'S BAY COMPANY TO THE COLONIAL SECRETARY.*

HUDSON'S BAY HOUSE,

10th November, 1858.

SIR,—I have the honour to acknowledge the receipt of Lord Carnarvon's letter of the 3rd instant, to which I now beg to reply, as I am anxious that the views and intentions of this Company should not be misunderstood.

In the year 1850 a correspondence passed between the Colonial Office and this Company in reference to the objections raised by certain parties in regard to the validity of the rights claimed by this Company under their Charter, and, under date of the 24th January, 1850, Mr. B. Howes, by desire of Lord Grey, transmitted to Sir H. Pelly, the then Governor of this Company, a copy of a letter proposed to be addressed by his Lordship to Mr. Isbister, the person bringing forward the complaints referred to. In answer to that communication, the Secretary of this Company, under date the 29th January, 1850, stated that there was nothing in the letter so proposed to be addressed to Mr. Isbister, to which the Directors of the Company had the least objection.

At that period the consent of this Company was not asked, and the Law Officers of the Crown stated as their opinion that the proper mode for raising the question for discussion would be to embody in a petition to the Queen any complaints urged against the Company; and they recommended that any such petition should be referred by Her Majesty to the Judicial Committee of the Privy Council. On that occasion it was distinctly stated that the petition must be confined to the subject to which the Resolution of the House of Commons of 5th July, 1849, extended—that subject being an enquiry into the legality of certain powers claimed and exercised by the Hudson's Bay Company, under their Charter, but not questioning the validity of the Charter itself.

No petition, however, was then presented, and there the matter rested until the year 1857, when a select committee of the House of Commons was appointed "to consider the state of the British possessions in America, under the administration of the Hudson's Bay Company, or over which they possessed a license to trade."

In the month of July, 1857, a communication was made to this Company by Mr. Labouchere, the then secretary of State for the Colonies, calling the attention of the Company to a statement received from the Law Officers of the Crown, having reference solely to the question of the geographical extent of the territory claimed by this Company, as included in the grant by their Charter, recommending that the subject should be referred to the Privy Council, and stating that this could not be done, except by the consent of both parties, namely, Canada and this Company. In reply to this communication, the Governor of the Company informed Mr Labouchere, under date 18th July, 1857, that the Directors of this Company would be prepared to recommend to their shareholders to concur in the course suggested

The suggestion now made to the Company, as set forth in the Address to Her Majesty from the Canadian Legislature, and to which my letter of the 12th ultimo had reference, is that they should give their consent to an inquiry before the Judicial Committee of the Privy Council, which inquiry is to involve not merely the question of the geographical boundary of the Territories claimed by them, but to challenge also the validity of the Charter, and, as a consequence, all the rights and privileges which it professes to grant, and which have been exercised by the Company for a period of nearly 200 years.

If such an inquiry should be gone into in the manner suggested by the Law Officers of the Crown, in 1850, the Company will now, as it was then, be prepared to appear on that inquiry, in support of their rights, but in that event no consent on their part will be necessary, nor, as I have already observed, was any consent asked for or suggested when the former inquiry was contemplated. But if the validity of their Charter itself is to be called in question, the Committee feel that in justice to their Shareholders it would be impossible for them to be consenting parties to proceedings instituted with such an object.

* *Sess. Papers, Canada, 1859, Vol. 17, No. 7.*

The Company has at all times been willing to entertain any proposal that might be made to them for the surrender of any of their rights or of any portion of their territory; but it is one thing to consent, for a consideration to be agreed upon, to the surrender of admitted rights, and another to volunteer a consent to an enquiry to call those rights in question.

While, therefore, I and my colleagues in the Direction of the Hudson's Bay Company, are anxious to do all that we can, consistently with our duty to our shareholders, to meet the wishes both of Her Majesty's Government and of the Canadian Legislature, we feel that we cannot return any answer to your letter of the 3rd instant, than that which is conveyed by the letter on the same subject, which I had the honour of addressing to you on the 12th ultimo.

I have, etc.,

H. H. BERENS,
Deputy Governor.

The Right Honourable Sir E. B. Lytton, Baronet,
etc., etc., etc.

THE ATTORNEY-GENERAL AND SOLICITOR-GENERAL (ENG.) TO THE COLONIAL SECRETARY.*

TEMPLE, 16th December, 1858.

SIR,—We were favoured with your commands signified in Mr. Elliot's letter of the 2nd December inst., in which he stated that with reference to the opinion received from us dated the 30th October, ultimo, relative to certain questions pending with the Hudson's Bay Company, he was directed by you to transmit to us the accompanying copies of a correspondence with that Company, and that we should perceive that the Directors of the Hudson's Bay Company decline to be consenting parties to a reference of the proposed questions respecting the validity and extent of their Charter and respecting the geographical extent of their Territory, to the Judicial Committee of the Privy Council. Under these circumstances it was understood from our former opinion that no other course remains open for trying those questions than a proceeding by *scire facias*.

Mr. Elliot was also pleased to state that you inferred from the views which have been expressed on the subject by the Government and Parliament of Canada, that the Canadian Government will be prepared, if necessary, to take steps for organizing that mode of procedure.

Mr. Elliot was also pleased to request that we would take these papers into our consideration, and to favour you with our opinion whether it will be expedient to apply to the Government of Canada to take such steps as may be requisite for the purpose of commencing the proceeding by *scire facias*, and, if so, what those steps should be; or if it should be our opinion that there are any difficulties in the way of the commencement of that proceeding by the Government of Canada, that we would advise what steps should be taken in this country for accomplishing the intended object.

In obedience to your commands, we have taken these papers into consideration and have the honour to report that the Directors of the Hudson's Bay Company having declined to become parties to the proceeding before the Judicial Committee of the Privy Council, to which they were invited, we apprehend that the only course open for the determination of the questions arising on their charter, is by *scire facias* brought to repeal the Charter, as suggested in our report of the 30th October ultimo.

This proceeding may be instituted by the Canadian Government in the name of any individual subject of Her Majesty, and we apprehend it will now be proper to ascertain from the Canadian Government whether they are willing and ready to commence such proceeding.

If the Canadian Government think fit to proceed by *scire facias*, and to authorize some agent in this country to apply for the writ, there will be no difficulty in obtaining the writ; but we think that, in the first instance, all necessary steps should be taken with the aid of their own legal advisers, by the Canadian Government.

We have, etc.,

Sir E. B. Lytton, etc., etc., etc.,

FITZROY KELLY,
H. H. CAIRNS.

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Report of the
Attorney and
Solicitor-
General,
16th Decem-
ber, 1858.

THE COLONIAL SECRETARY TO THE GOVERNOR-GENERAL.*

DOWNING STREET, 22nd December, 1858.

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Colonial Sec-
retary to
Governor-
General, 22nd
December,
1858.

SIR,—I duly received your despatch, No 106, of the 16th August last, and laid before the Queen the Joint Address to Her Majesty, which accompanied it from the Legislative Council and Assembly of Canada, relative to the Territory of the Hudson's Bay Company.

The subject of this Address has occupied my careful consideration, and I transmit to you the copies of a correspondence respecting it, which has taken place between the Company and this Department.

From this correspondence you will perceive that the Hudson's Bay Company decline to be consenting parties to a reference of questions respecting the validity or extent of their Charter to the Judicial Committee of the Privy Council, and under these circumstances the Law Advisers of the Crown, whom I have consulted in the matter, have stated in an opinion, of which I forward a copy, that the only course open for the determination of these questions is by writ of *scire facias* brought to repeal the Charter.

I have, therefore, to request that you will submit the accompanying papers to your Government and invite them to take steps to obtain the writ in accordance with the suggestion of the Law Advisers, and that you will inform me, as soon as practicable, of the course which the Government of Canada may resolve to adopt in this matter.

Parliament will doubtless meet in the first week of February, and I need not say how desirable it would be if Her Majesty's Government could then be prepared to notify the decision of Canada.

I have, etc.,

20

E. B. LYTTON.

The Right Honourable Sir E. Head, Baronet,
etc., etc., etc.

LORD CARNARVON TO THE GOVERNOR OF THE HUDSON'S BAY COMPANY.*

DOWNING STREET, 28th January, 1859.

Under Sec-
retary to
Hudson's
Bay Com-
pany, 28th
January,
1859.

SIR,—With reference to former correspondence on the pending questions between Her Majesty's Government and the Hudson's Bay Company, I am directed by Secretary Sir E. Bulwer Lytton, to request you will inform the Directors of the Hudson's Bay Company, that Her Majesty's Government, after the maturest consideration, are not prepared to grant to the Company a renewal for a term of years of the license of exclusive trade which they now enjoy over the Territories of North-Western America, but which is not claimed under their Charter, and not included in British Columbia.

At the same time, regard being had to the proximity of the period at which the present license will expire, namely, in May next, and the injury to the public interest in the regions comprised in the license which might in the present state of things arise from its termination at that date, Her Majesty's Government are willing to grant the Hudson's Bay Company a fresh license for one year, to commence from the expiration of the present license.

I have, etc.,

CARNARVON.

H. Berens, Esquire.

* Sess. Papers, Canada, 1859, Vol. 17, No 7.

THE GOVERNOR OF THE HUDSON'S BAY COMPANY TO THE COLONIAL SECRETARY.*

HUDSON'S BAY HOUSE,

LONDON, February 2nd, 1859.

SIR,—I have the honour to acknowledge the receipt of the Earl of Carnarvon's letter of the 28th ultimo, informing me that Her Majesty's Government are not prepared to grant to this Company a renewal, for a term of years, of the license of exclusive trade over the Indian Territory, but that they are prepared to grant a fresh license for one year, commencing from the expiry of the present license.

The subject being one of deep importance, and requiring the consideration of the full Board, the Directors now in London feel that in the absence of the Deputy-Governor, who is in Scotland, but who is expected to arrive in London to-morrow, they ought to postpone coming to a decision until they have been able to consult with him. I have, however, called a special meeting of the Committee for Friday next, when the subject will be fully considered, and on Saturday I hope to have the honour of transmitting to you the result of their deliberations.

I have, etc.,

H. H. BERENS,

Governor.

The Right Honourable Sir E. B. Lytton, Baronet,
etc., etc., etc.

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Canadian documents, and Correspondence between the Colonial Secretary and the Hudson's Bay Company, prior to the surrender of the Company's claims.

Hudson's Bay Company to Colonial Secretary, 2nd Feb., 1859.

THE GOVERNOR OF THE HUDSON'S BAY COMPANY TO THE COLONIAL SECRETARY.*

HUDSON'S BAY HOUSE,

LONDON, 8th February, 1859.

SIR,—With reference to my letter of the 2nd instant, I have now the honour to inform you that I have this day laid before the Board of Directors of the Hudson's Bay Company, the letter addressed to me by Lord Carnarvon on the 28th ultimo. His Lordship, by your directions, therein informs me, that Her Majesty's Government are not prepared to grant to the Company a renewal of the license under the Act of 1st and 2nd Geo. IV., cap. 66. But regard being had to the expiration of the present license in May next, and the injury to the public interests in the region comprised in the license which might in the present state of things arise from its termination at that date, Her Majesty's Government are willing to grant to the Hudson's Bay Company a fresh license for one year, to commence from the expiry of the present license.

The Board direct me respectfully to decline that offer. The acceptance on their part of the license for any period of shorter duration than that which has been usually granted since the passing of the Act above mentioned, would, in their opinion, only further increase the inconveniences resulting from the state of suspension in which the question has been kept for the last two years; so far from strengthening, it would paralyze their authority even within their own Territory, from the impression it would create of the approaching termination of that authority. They do not require, and never have applied for, the license for the purposes of their trade. The Act passed at their suggestion in 1821 was intended for the preservation and maintenance of peace and order in the whole of the Indian Territories. These had been grievously compromised by conflicts of the servants of rival traders, whose interests were about that time united; no means are provided in the Act for the enforcement of its provisions, so as to give additional protection to the trade. The intelligence of the renewal of the license for a year would not even reach a large portion of the posts of the Company before that period had expired.

The Board beg respectfully again to bring under your review the whole of the correspondence and proceedings which have had reference to this subject since their first application, dated December 22nd, 1856, for a renewal of the license.

Hudson's Bay Company to Colonial Secretary, 8th Feb., 1859.

* Sess. Papers, Canada, 1859, Vol. 17, No. 7.

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In consequence of that application, and of the approaching period of the expiration of the existing license, the late Secretary of State for the Colonies, Mr. Labouchere, referred the matter to the consideration of a Committee of the House of Commons. Much evidence was taken before that Committee. The Board, through the medium of their late Chairman, Mr. Shepherd, communicated fully their opinions and intentions with respect to the past and future interests of the Hudson's Bay Company, in a letter to Mr. Labouchere, dated the 18th July, 1857, which was laid before that Committee. For fear that that letter may have escaped your recollection, they think it essential at this moment to transmit a copy of it for your information; no change has taken place in the situation of the Company, nor in any circumstances connected with their affairs, to induce the Directors to change in any respect the course which they have announced to Her Majesty's Government it was their intention to pursue. Nor have they at any time, in any subsequent communication, departed, or intended in any respect to depart, from the principles on which they then intended, and still intend to act.

Hudson's Bay
Company to
Colonial
Secretary,
8th February,
1859.

The Board were then as much aware as they are now of the unpopularity attaching to the existence of the monopoly. That consideration made it more essential that they should weigh with the greatest caution every step in their proceedings which might entail further personal responsibility upon them. No monopoly can be upheld on any ground short of a conviction of its necessity as the best if not the only means of accomplishing some exceptional object. The Board have therefore entreated that the Government might, in the first instance, decide the question of the maintenance or abolition of the monopoly, either for the present or for any future purposes for which it may be required. If better means can be devised of maintaining order and peace in the Indian country, and for the protection of the Indian Tribes from the evils which have hitherto been found inseparable from competition in the trade, as well as for the colonization and agricultural improvement of the Territory, the question of the abolition of the Hudson's Bay Company should only be one of just indemnity to the shareholders for their legal rights and interests.

If, on the other hand, it should be found impossible to devise better means for the Government of the country the hands of the Directors should be strengthened to enable them to fulfil the public purposes for which their services have been considered efficient and satisfactory for the last forty years; any diminution of the confidence and support they have hitherto received from the Government, or even any appearance of it, would weaken their power both with Indians and settlers in the country. The above course would not be inconsistent with any extension of colonization or settlement which either Her Majesty's Government or the Government of Canada can have in view in that part of Her Majesty's dominions now possessed or occupied by the Company, or with the accomplishment of all the objects recommended in the Report of the Committee of the House of Commons.

The Board lamented to see, and have hitherto abstained from adverting to some expressions in your letter of the 3rd November last, imputing to them unreasonable conduct in not accepting some terms of compromise which it is alleged had been offered to them.

In that letter it is stated, "that you entertain an anxious desire to come to some equitable and conciliatory arrangement by which all equitable claims of the Hudson's Bay Company should be fairly considered, in reference to the privileges they may be required to surrender."

Only two propositions have been made to the Board. The first is a letter from Mr. Merivale, under date the 20th January, 1858, by which it was proposed to refer the question of the Company's boundaries to the Judicial Committee of the Privy Council, but distinctly stating that Her Majesty's Government, on public grounds, did not consider themselves authorized to raise the question of the validity of the Charter itself, and that if any parties in Canada proposed to take measures for that purpose, Her Majesty's Government must leave them to take that course on their own responsibility. To that proposition the Board gave their unhesitating consent. The other proposition to this Company which was conveyed by your letter of the 3rd September, 1858, and subsequently by that of the 3rd November following, was to the effect, that this Company should voluntarily concur in some inquiry

having for its object to raise the question of the validity of their Charter, and should give facilities for that purpose; thus altogether repudiating the proposition previously received from Her Majesty's Government, and seeking to do the very thing to which on public grounds the Government had previously declined to be a party. This latter proposition therefore the Directors could not, in justice to their constituents, for one moment entertain, and they confidently appeal to all their previous communications with Her Majesty's Government as justifying that refusal.

Both the present Directors and their predecessors in the management of the affairs of the Company, have been advised by lawyers of the first eminence and authority, that the grant of their land and Territories by the Crown was indisputable and unavoidable. As Trustees, they should feel as little justified in consenting to a reference of the proprietary rights of their shareholders as in gratuitously disposing of their property. The conviction of the Directors of the firm position on which they stand, has not been shaken by the opinions of the late Attorney and Solicitor-General, laid before the Committee.

The Board have heard of no "conciliatory arrangement by which the equitable claims of the Hudson's Bay Company may be fairly considered, in reference to the privileges they may be required to surrender." But the Hudson's Bay Company have invariably expressed their readiness to comply with the conditions on which the Committee of the House of Commons recommended the renewal of the license.

They are most willing to concede immediately, or gradually, as the same may be wanted, for the purposes of actual settlement, portions of their Territories on the Red River or Saskatchewan, which may be available for cultivation and settlement, on "equitable principles." They are ready to leave those principles to the decision of Commissioners to be indifferently appointed. They are willing, if it is considered desirable, to remain in temporary possession of those parts of the Territories until adequate arrangements shall be made for their settlement and administration by some other authority, and to concede, in the meantime, lands to settlers on such terms as may be recommended by Her Majesty's Secretary of State, and in any other way to assist Her Majesty's Government in such ulterior views as they may entertain, whether for the purpose of establishing those territories as an independent colony, or of placing them under the Government of Canada.

The Hudson's Bay Company have done what was in their power to promote settlement in such parts of their land as appeared to them most suitable for agricultural improvement. They have been careful at the same time not to involve the capital of the shareholders in hopeless speculations of this description. Their principal object has certainly been the fur trade of the country. They made a grant to Lord Selkirk, who established the agricultural settlement of the Red River, and made arrangements with the Puget Sound Company for same purpose on the territories beyond the Rocky Mountains.

When the disorders and troubles broke out in the Red River country, which led to the union of the North-West and Hudson's Bay Companies, and to the passing of the Act under which the license of trade was granted, it was thought better to put an end to separate interests, so that the administration both of colony and trade might be conducted under one authority. The Hudson's Bay Company then re-purchased the Red River Settlement, and have since endeavoured to encourage and protect settlers in it. But owing to the circumstances of the country, the inclemency of the climate, the remoteness of markets, and the difficulty of communication, they acknowledge that their efforts have been attended with but little success.

After the notice given to them in your letter of the 3rd November, of the intention wholly to withdraw the license, the Board had taken measures to adapt the administration of their affairs to the altered circumstances in which they would then be placed. They had decided to diminish their establishments in Canada, and to bring their expenditure within the strict limits required by their trade. Further arrangements of this description will become necessary, if the colony on the Red River is no longer to be dependent on their ships and means of conveyance for supplies.

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retary, 8
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If, however, the Secretary of State sees fit to reconsider his decision to withdraw the license, the Board will willingly endeavour to concur in any measures by which the hands of the Government may remain unfettered, with respect to any policy which changes in America might hereafter recommend, and the credit and authority of the Company might at the same time be maintained.

For fear of further misunderstanding on that point, they think it right to protect themselves, in a suggestion they would respectfully make to Her Majesty's Government, from any supposition that they still desired the renewal of the license for the purposes of their trade. It is certainly very essential that there should be no interval between the cessation of their authority and the substitution of some other to prevent or regulate, in as far as that may be possible, the interference of strangers with the Indian tribes, and the renewal of the disorders for the prevention of which the Act of 1 and 2 Geo. IV., 10 cap. 66, was passed. The suggestion they would submit to your consideration is, that the license might be renewed to the Hudson's Bay Company for the usual period of 21 years, with a reservation of power to the Crown to withdraw it at any time on a notice of two years. They make this suggestion to shew their disposition to assist the Government in the difficulties which they are fully aware beset this question. But the Board direct me to repeat, that they cannot undertake the responsibility of remaining charged with the care of order and peace in the Indian country, under the temporary grant of a license which would almost carry with it an acknowledgment of the doubts which have been thrown upon their rights, and convey an impression of the weakness and willing submission of the Board to the clamour by which their administration has unjustly been assailed.

I have, etc.,

T. W. BERENS.

20

The Right Honourable Sir E. B. Lytton, Baronet,
etc., etc., etc.,

THE COLONIAL SECRETARY TO THE GOVERNOR-GENERAL.*

DOWNING STREET, 11th February, 1859.

Colonial Sec-
retary to
Governor-
General, 11
Feb., 1859.

SIR,—In the course of the interview which passed between Messieurs Cartier, Ross, and Galt, and myself, during the visit of those gentlemen to this country in October last, I understood from them that it was the intention of the Government of Canada to undertake legal proceedings in this country against the Hudson's Bay Company, if that Company should refuse to allow the validity of their Charter to be tested by agreement before the Judicial Committee of the Privy Council.

30

It was in consequence of this understanding that I addressed to you my despatch of the 22nd December last, informing you of their refusal.

It was my hope that I should receive an answer to that despatch, expressing in definitive terms the resolution arrived at by the Canadian Government, before the meeting of the Imperial Parliament, and it now becomes necessary that I should press on you the importance of my receiving such an answer immediately, in order that Her Majesty's Government may determine on the course to be taken by themselves.

I have, etc.,

E. B. LYTTON.

40

The Right Honourable Sir E. Head, Baronet,
etc., etc., etc.,

* *Sess. Papers, Canada, 1859, Vol. 17, No. 7.*

THE UNDER-SECRETARY TO THE GOVERNOR OF THE HUDSON'S BAY COMPANY.*

DOWNING STREET, 9th March, 1859.

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Sir,—I am directed by Secretary Sir E. B. Lytton to acknowledge your letter of the 8th February last, conveying on the part of the Directors of the Hudson's Bay Company their refusal to entertain the proposal which he had caused to be submitted to them, that Her Majesty should be advised to renew their license of exclusive trade with the Indians for a year.

Your letter, however, goes also at considerable length into a general statement of the present position of the Hudson's Bay Company, and defence of its conduct; and it becomes necessary that Sir E. Lytton should enter upon that wider field of discussion, so far at least as may be required in order to justify the proceedings of Her Majesty's Government, before he replies to the more urgent part of your communication.

I am to state at the outset, that Sir E. B. Lytton has received from the Governor of Canada a despatch, copy of which is enclosed, informing him that the Local Government require to consult the Legislature before deciding whether they will or will not undertake legal proceedings against the Company.

Sir E. B. Lytton, in regretting this delay, trusts that it will not be much prolonged. It is obviously due to Canada, on a matter in which she is so much concerned, to grant a reasonable time for a definite answer from the Province; but as it is also desirable that the whole question regarding the Charter Territories should be settled in the course of the present session, it is Sir Edward's intention to inform the Governor-General of Canada, that if the answer does not arrive by the 1st of May, Her Majesty's Government must feel themselves free to act.

Under-Sec-
retary to
Hudson's
Bay Com-
pany, 9th
March, 1859.

To return to the general subject of your letter.

The late Government, as your letter recites, were willing to test before the Judicial Committee, not the existence but the extent of the rights claimed under the Charter. To this proposal the Company assented. But Canada declined to take part in an enquiry so limited. Whatever the original advantages of such a scheme may have been, the refusal of Canada to take part in the proceedings absolutely nullified it. A decision as to the limits of the Charter waiving the question as to its general validity, could, after that refusal, have bound no one except the mere parties to the proceeding, and would have been practically useless.

That refusal was only conveyed to Sir E. B. Lytton by despatch from Canada of the 16th August last. I am to notice this only to shew that Her Majesty's Government are chargeable with no unnecessary delay, having, notwithstanding the great importance of the subject, allowed as little time as possible to elapse without taking steps in the transaction.

Her Majesty's Government had now to consider what effect they could give to the 13th Resolution of the Committee of the House of Commons, in which, after specifying the principal objects which they thought desirable, added—"How far the chartered rights claimed by the Company may prove an obstacle to their attainment, they are not able with any certainty to say. If this difficulty is to be solved by amicable adjustment, such a course will be best promoted by the Government, after communication with the Company, as well as with the Government of Canada, rather than by detailed suggestions emanating from this Committee."

With the best attention which they could give to this recommendation, Her Majesty's Government could not but see that the fairest and most direct method to accomplish it was to test, not the limit, but the validity of the Charter itself; and they were, and remain, of opinion that this was best done by the consent of the three parties concerned.

Sir E. B. Lytton is well aware of the proposals made by the Company in Captain Shepherd's letter of 18th July, 1857, which are referred to, and a little extended as regards Saskatchewan, in yours, which

* Sess. Papers, Canada, 1859. Vol. 17, No. 7.

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Under-Secretary to Hudson's Bay Company, 9th March, 1859.

he is now answering. He must be permitted to say that those proposals, though conceived with the sincerest desire to avoid litigation, by no means met the exigencies of the case.

Those proposals simply were (for the present purpose) to relinquish to Government "land fit for cultivation and the establishment of agricultural settlers,"—land as yet unascertained, and in all probability, for the present, but trifling in extent.

Such an offer he could hardly have considered from the beginning sufficient, but it has become, from subsequent causes (using the phrase without the slightest imputation on the motives of those who made it), illusory. The occupation of British Columbia has rendered more urgent than ever a policy even before that time recommended by the course of events, namely, to connect the two sides of British North America, without the obstacle interposed by a proprietary jurisdiction between them. The difficulty of maintaining the jurisdiction of the Hudson's Bay Company over that intervening region became daily more evident, and the certainty also that if any attempt were made to maintain it, Her Majesty's Government would be called on to furnish the means. On the other hand, it appears to be the general opinion among lawyers, that the monopoly of trade claimed by the Company (under the Charter) is invalid altogether, and that this monopoly could only be defended indirectly, by pushing to extreme limits the consequence of a most invidious territorial grant, enabling the Company, as landlords, to exclude traders as trespassers. Sir E. B. Lytton cannot at all, therefore, agree with the Directors in referring the precarious position of the Company to the mere general unpopularity of monopolies. The weakness of their case arose, and still arises, from causes far more special and urgent, and it was obviously to be apprehended that Her Majesty's Government might, as protectors of the right of her 20 subjects generally throughout the empire, be called on to defend the claimants of assumed rights, which had never been fairly submitted to investigation. It was quite impossible for them to be contented in the interest of the public with such offers as the Company had made, and to leave the general question unsettled; and to settle it without the consent of the Company was at least to be avoided, until that assent had been formally invoked.

It was with this view that the letters addressed to you from this Department, on the 3rd September and 2nd November last, to which you refer, were written; and it was with the same view that Sir E. Lytton endeavoured, during the stay of the Canadian Ministers in England last autumn, to induce them to bring Canada to a decision as to her part in the proceedings to be taken.

And Sir E. Lytton feels it due to himself and his colleagues to disclaim most distinctly the 30 supposition expressed or implied, that the proposal conveyed to the Company in those letters was conceived in any spirit of hostility. On the contrary, it is his conviction now, as it was when those letters were written, that the Directors would consult the interest of their shareholders most effectively by causing it to be accepted. In this way all outstanding questions could be solved. Sir E. B. Lytton felt that if the decision of the Judicial Committee was in favour of the Company, and to the full extent claimed, then the Company would stand in a more advantageous position before the country, in claiming compensation for ascertained rights, if required to relinquish them for the public benefit, than they possibly could at present. If, on the other hand, the decision of that Committee were unfavorable to the Company, they would at all events still possess that claim to equitable consideration to which long usage and the investment of extensive capital on the faith of supposed rights might fairly entitle them; 40 and although Her Majesty's Government could not of course give any distinct pledge in this latter event, no one acquainted with the general desire of Parliament to do justice to vested interests would be likely to apprehend serious danger.

In short, as the main and perhaps the sole practical difficulty in coming to the most amicable arrangements with the Company appears to lie in ascertaining not so much the amount of compensation as the principle and mode on which it can be assessed with the approval of Parliament, so that difficulty appeared at once to be surmounted by ascertaining without dispute the nature of the right upon which claims for compensation may be fairly based.

The directors, however, judged differently from Sir E. B. Lytton on this question. Sir Edward does not question their right to decide as they thought best for the interests of their shareholders. He 50 can only express his regret at a determination which retains the very difficulty in the way of speedy and amicable settlement, which he had sought to remove.

As the case now stands, should Canada resort to legal proceedings, negotiation is of course at an end, until the result of such proceedings is known; should she refuse to do so, it will then be for Sir E. B. Lytton to consider whether negotiation with the Company can be resumed, or whether, in the last resort, Her Majesty's Government must take the matter into their own hands, and proceed on their own account as they may be advised. But in any case, he can with justice assure the Directors that his determination will be founded on a regard to public interests only, and without the slightest bias of hostility towards the Company.

It remains for me to convey Sir E. B. Lytton's reply to the immediately practical part of your letter, that referring to the renewal of your license over the non-Charter Territories. The Directors reject his offer of a year's license, but they are ready (in the public interest) to accept a renewal for 21 years, terminable at two years' notice.

Sir E. B. Lytton is sorry he cannot meet their views by acceding to this proposal, although he can well conceive, and would indeed desire, arrangements by which the Indian Territory, and all land not likely to be soon colonizable, might be left to the jurisdiction of the Company, provided, on the other hand, the lands adapted for colonization were surrendered to the Crown; yet, while the latter object remains unachieved, he does not believe that Parliament, or the public, would be inclined or ought to assent to a measure which would give Her Majesty's Government, in concert with the Company, the power of continuing the license for 21 years.

But he wishes to show every reasonable respect to the argument which you draw from the distance of many of the posts in the license territory, which, by rendering communication with them extremely slow, would make a year's extension of comparatively trifling importance for the purposes in view. The delay in obtaining the decision of Canada may also be fairly taken into consideration as opposing obstacles to arrangements with the Company by which the objection to an ultimate extension of the license might be removed. He is ready, therefore, to make the extension of two years' duration instead of one.

In making this proposal, he believes he is acting in the interest of the Company, even in a pecuniary sense alone; that, however, is a question for the directors and shareholders, and not for himself. He only refers to it in order to shew how far he is from being actuated by any motives inimical to the Company. But the really important aspect of the question (as the directors will fully agree with him) is that which regards the maintenance of peace and order, and the welfare of the Indian race; and while he believes that the dangers represented as likely to arise if the trade of the Company ceased to be protected by license are much exaggerated, yet he is desirous to guard against the possibility of such dangers during the interval that must elapse, necessarily without any fault of his own, between the abrupt termination of the Company's jurisdiction in parts so remote, and the establishment of any other machinery for the safety of the Indians which it might be in the power of the Government to devise. He is certain that the Directors will take a similar view of this part of the question, and he is satisfied that if they reject the present offer, they will do so on full conviction, from their own superior knowledge, that no evil consequences are to be apprehended from the sudden termination of their license. But should this be an error in judgment on their part, the responsibility for the consequences will not lie with Her Majesty's Government.

Sir Edward Lytton trusts that as early an answer as practicable may be returned to this letter, as little [time] is left for communicating with the Governor of British Columbia before the termination of the license, and as it may be necessary (in the event of your refusal) to apply to Parliament for an amendment of the present Acts.

I have, etc.,

H. MERIVALE.

H. Berens, Esquire,
etc., etc., etc.

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Under Secretary to Hudson's Bay Company, 9 March, 1850.

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Colonial Secretary to
Governor-
General,
10th March,
1859.

THE COLONIAL SECRETARY TO THE GOVERNOR-GENERAL.*

DOWNING STREET,

10th March, 1859.

SIR,—With reference to former correspondence on the subject of the affairs of the Hudson's Bay Company, I now transmit to you a copy of a correspondence which has taken place between this Department and the Governor and Committee of that Company, on the subject of the approaching expiration of their trading license in North-Western America. You will observe that, as that license expires in May next, Her Majesty's Government could not avoid entertaining the question, although they would have preferred waiting for the decision of the Canadian Government as to trying the validity of the Charter, in order that the whole subject might be disposed of together. 10

With respect to this latter question, it is impossible for Her Majesty's Government to allow the present session of Parliament to pass by without endeavouring to use it for the settlement of pending questions. I have, therefore, to add, that unless I receive by the 1st of May next the decision of the Canadian Government and Legislature, whether they will or will not contest the validity of the Charter, Her Majesty's Government must proceed, though with reluctance, to take such steps as to the Charter Territory, whether in the way of negotiation, legislation, or legal proceedings, as they may be advised. Ample care will, however, in any case, [be taken] to reserve and protect whatever claims of right Canada may hereafter establish.

I have, etc.,

E. B. LYTTON. 20

The Right Honourable Sir Edmund Head, Baronet,
etc., etc., etc.

THE GOVERNOR OF THE HUDSON'S BAY COMPANY TO THE COLONIAL SECRETARY.*

HUDSON'S BAY HOUSE,

March 15, 1859.

Hudson's Bay
Company to
Colonial-
Secretary,
15th March,
1859.

SIR,—I have the honour to acknowledge Mr. Under-Secretary Merivale's letter of the 5th instant and lose no time, after consulting with my colleagues, in replying to it. With respect to the chartered rights of this Company, I can only repeat that my colleagues and myself are unanimous in considering that we cannot, in justice to our proprietors, be consenting parties to any inquiry which shall have for its object to challenge the validity of the charter; and we feel convinced that in any discussion that 30 may arise before Parliament, that body will be prepared to act upon the maturely considered opinion which was given by the then Law Officers of the Crown, when the whole matter was submitted to their consideration. I refer to the opinion of Sir Richard Bethell and Sir Henry Keating, in July, 1857, in which they state that "the questions of the validity and construction of the Hudson's Bay Company's charter cannot be considered apart from the enjoyment that has been had under it during nearly two centuries, and the recognition made of the rights of the Company in various Acts both of the Government and the Legislature;" and "that nothing could be more unjust or more opposed to the spirit of our law, than to try this charter as a thing of yesterday, upon principles which might be deemed applicable to it if it had been granted within the last ten or twenty years."

They then go on to state, that in their opinion the Crown could not now with justice raise the 40 question of the general validity of the charter, but that on every legal principle the Company's territorial ownership of the lands granted and the rights necessarily incidental thereto (as, for example, the right of excluding from their territory persons acting in violation of their regulations), ought to be deemed to be valid.

* Sess. Papers, Canada, 1859, Vol. 17, No. 7.

The Board are aware that it is competent to the Canadian Government to disregard these principles, however just and well founded; but they cannot but lament to see, by a despatch, under date December 22, 1858, and published by the Provincial Legislature, that the Canadian Government should have been invited by Her Majesty's Government to adopt such a policy—a course so opposed to that which was enunciated by Mr. Labouche, in his despatch to Sir Edmund Head of the 22nd January, 1858, in which he distinctly states that he did not propose to discuss the question of validity of the claims of this Company over the whole territory known as Rupert's Land, Her Majesty's Government having come to the conclusion that it would be impossible for them to institute proceedings with a view to raise this question before a legal tribunal, without departing from these principles of equity by which their conduct ought to be guided.

It is to be regretted that delay should arise on the part of the Canadian Government in determining the course which they have thus been invited to take. If such proceedings are ultimately determined upon for the purpose of contesting the validity of the charter, we shall be prepared to maintain the rights of our proprietors.

With regard to your suggestion that the license should be extended for a period of two years instead of for one year, as before proposed, I beg to state that all the material objections to such a proposal which were pointed out in my former letter (8th February, 1859), with respect to the proposed extension of one year, apply equally to an extension for two years. I beg, however, distinctly to state, that in declining to accept a renewal of the license for a period of two years, that refusal in no way proceeds, as you propose to assume, upon a conviction in our minds that injury to the public interest may not be the consequence of the absence of proper measures for maintaining peace and order in the territories in question; on the contrary, our reason for declining to undertake the preservation of peace upon an extension of the license for the period of two years, only arises from our conviction that such an extension would not secure to the Company a continuance of the weight and influence they have hitherto enjoyed, and to enable them to prevent the threatened mischief so short an extension would be considered as evidence of the intention of Her Majesty's Government to determine their privileges altogether at the end of that term, and would deprive them of all moral influence over the parties frequenting those territories.

We consider that the proposed extension would only give so much more time for excitement and agitation, and would produce a state of things among the unsettled population on the frontier which might with difficulty be controlled by any subsequent administration to be established on the removal of the authority of the Company.

In the opinion of the Board, there is no alternative between maintaining the present system in its former efficiency, or providing by legislation a totally different Government, which should possess the means of ensuring a proper administration in the Indian territories.

Should the latter alternative be decided upon, our Board will lend their most zealous assistance towards promoting any measures which may be adopted for the purpose.

I have, etc.,

H. H. BERENS,

Governor.

The Right Honourable

40 Sir E. B. Lytton, Baronet,
etc., etc., etc.

THE COLONIAL SECRETARY TO THE GOVERNOR-GENERAL.*

DOWNING STREET, 18th March, 1859.

SIR,—With reference to former correspondence on the subject of the affairs of the Hudson's Bay Company, I have now to inform you that the Governor and Directors have finally declined the proposal made to them by Her Majesty's Government, on public grounds, of an extension of their license for two years (instead of one, as originally offered). The correspondence shall be transmitted to you by the next mail, as there is not time for the present.

JOINT
APPENDIX.

Sec. III.
*Canadian Documents,
and Correspondence
between the Colonial
Secretary and the Hudson's
Bay Company, prior to the
surrender of the Company's
claims.*

Hudson's Bay
Company to Colonial
Secretary,
15 March,
1859.

Colonial Sec-
retary to
Governor-
General,
18 March,
1859.

JOINT
APPENDIX.

Sec. III.
Canadian Documents, and Correspondence between the Colonial Secretary and the Hudson's Bay Company, prior to the surrender of the Company's claims.

In May next, therefore, the license will expire, and Her Majesty's Government have now under consideration the steps which it may be necessary to take in consequence of that expiration.

You cannot fail to observe that this circumstance renders the disposal of the pending questions relative to the charter of even more urgent necessity than it was before. The question as to the future management of the license territories and of the charter territories being so closely connected, it becomes even more essential that I should have the immediate answer of your Government, whether it is their intention or not to try the validity of the charter by *scire facias*, and if such is their intention, whether they will at once either send a delegate, or in any other manner initiate the necessary proceedings.

I have, etc,

E. B. LYTTON. 10

The Right Honourable

Sir E. Head, Baronet,
etc., etc., etc.

THE GOVERNOR-GENERAL TO THE COLONIAL SECRETARY.*

GOVERNMENT HOUSE,

TORONTO, April 4th, 1859.

Governor-General to Colonial Secretary, 4th April, 1859.

SIR,—I regret very much that I have not been able before this to send any definite reply to your despatches (the dates and numbers of which are marked on the margin), relating to the charter of the Hudson's Bay Company. The first of these despatches was laid before my Council on the 11th January, and I have 20 repeatedly pressed the members of that body for their formal opinion on this important matter. They have frequently discussed the subject, and I fully admit that it is one which requires careful consideration.

I am now, for the first time, able to inform you, that the Executive Council will not advise steps to be taken for testing the validity of the charter by *scire facias*, but they are strongly of opinion that it is most desirable on all accounts that the boundaries of Canada should be accurately and speedily defined.

It is probable that Hudson's Bay Territory will again form the subject of discussion by the Provincial Parliament in the course of the present session.

I have, etc.,

EDMUND HEAD. 30

The Right Honourable

Sir E. B. Lytton, Baronet,
etc., etc., etc.

JOINT ADDRESS OF THE LEGISLATIVE COUNCIL AND ASSEMBLY OF CANADA TO HER MAJESTY, 29TH APRIL, 1859†

To the Queen's Most Excellent Majesty.

Address of the Canadian Parliament to Her Majesty, 29th April, 1859.

Most Gracious Sovereign:

We, Your Majesty's most dutiful and loyal subjects, the Legislative Council and Assembly of Canada, in Provincial Parliament assembled, humbly approach Your Majesty for the purpose of representing:— 40

That having had under consideration the subject of the Hudson's Bay Company, and, in connection therewith, the various despatches from the Colonial Secretary, dated respectively the twenty-second day of December last, the eleventh of February last, the tenth of March last, and the eighteenth of

* Sess. Papers, Canada, 1859, Vol. 17, No. 7.

† Journals Legislative Assembly, Canada, 1859, p. 453.

March last, and the Address to Your Majesty by the Legislature of Canada in its last Session, we adhere to the propositions contained in that Address, and desire respectfully to urge them upon the consideration of Your Majesty's Government.

That, in our opinion, Canada ought not to be called upon to litigate the question of the validity of the Charter claimed by the Company, inasmuch as such portion of Territory as the Charter covers is not part of Canada, and is, if the Charter be invalid, subject to Imperial and not Provincial control; and that, in our opinion, the question of the future of that Territory should not be made to depend on the mere legal view which may be taken by a Court of Law on the validity or extent of the Charter, but that there are considerations involved higher than those of strict legal rights, and which can be dealt with by the Imperial Government alone.

That the formation of a British Province on the shores of the Pacific, and the prospect of immediate and extensive settlement therein, render it of imperative necessity that the vast extent of country lying between that Province and Canada, should come under immediate organization, with a view to colonization.

That while the important objects above alluded to can only be accomplished by the interference and action of the Imperial Government, yet Canada feels that, as a portion of the Empire in whose rule she rejoices, and from the almost direct interest she has in the future of the vast territory contiguous to her on the West, she is justified in urging upon Your Majesty's Government the final disposition of these great questions; and in doing so, she desires to acknowledge the great interest therein which Your Majesty's Government have already evinced, and the prompt and energetic action which they have taken in the matter.

All of which we humbly pray Your Majesty to take into Your Majesty's most gracious and favourable consideration.

PROCLAMATION OF THE GOVERNOR-GENERAL, 27TH AUGUST, 1859, CREATING THE PROVISIONAL
JUDICIAL DISTRICT OF ALGOMA.*

[Extract—Description of the Boundaries.]

Commencing on the north shore of the Georgian Bay of Lake Huron, at the most westerly mouth of French River; thence due north to the northerly limit of the Province; thence along the said northerly limit of the Province westerly to the westerly limit thereof; thence along the said westerly limit of the Province southerly to the southerly limit thereof; thence along the said southerly limit of the Province to a point in Lake Huron opposite to the southern extremity of the Great Manitoulin Island; thence easterly and north-easterly, so as to include all the islands in Lake Huron not within the settled limits of any county or district, to the place of beginning.

Proclamation describing the Boundaries of Algoma.

THE GOVERNOR-GENERAL TO THE COLONIAL SECRETARY.†

QUEBEC,

March 8th, 1862.

MY LORD DUKE,—I have the honour to enclose to your Grace a Minute of the Executive Council, approved by myself, in reference to the propriety of taking some steps towards carrying into effect, in the Saskatchewan territory, the provisions of the Act of the Imperial Parliament, 22 and 23 Victoria, Chapter 26.

The Minute states so fully the reasons for present action in this matter in which I fully concur, that I do not think it necessary to trouble your Grace with any observations of my own on the subject.

I have, etc.,

MONCK.

To His Grace the Duke of Newcastle,
etc., etc., etc.

Governor-General to Colonial Secretary, 8th March, 1862.

* *Canada Gazette*, 1859, p. 2154.

† *Sess. Papers, Canada 1863*, Vol. 22, No. 35.

JOINT
APPENDIX.

THE COLONIAL SECRETARY TO THE GOVERNOR-GENERAL.*

Sec. III.

Canadian
Documents,
and Corre-
spondence
between
the Colonial
Secretary and
the Hudson's
Bay Company,
prior to the
surrender of
the Company's
claims.Colonial-
Secretary to
Governor-
General,
16th April,
1862.

DOWNING STREET,

16th April, 1862.

MY LORD,—I have the honour to acknowledge the receipt of your Lordship's despatch, No. 44, of the 8th March, forwarding a Minute of a Committee of the Executive Council of Canada, in reference to the propriety of taking some steps towards carrying into effect, in the Saskatchewan territory, the provisions of the Imperial Act, 22 and 23 Vict., Cap. 26.

This Minute proceeds on an assumption that a certain Act of Parliament was passed in order to organize the Saskatchewan country. But I have to explain that this was not the effect of the Act referred to. It contained an enactment, in the concluding section, that it should not be applicable to territories heretofore granted to the Hudson's Bay Company. Those territories not having fallen under the jurisdiction of Her Majesty's Government, the Act in question does not in any degree facilitate the acquisition or government of the territory claimed by the Company under this grant, nor until the claim of the Company is shown to be groundless will Her Majesty's Government be in a position to take any step in that direction.

I have, etc.,

NEWCASTLE.

Governor the Viscount Monck,
etc., etc., etc.THE PROVINCIAL SECRETARY (CANADA) TO THE HUDSON'S BAY COMPANY'S GOVERNOR OF
RUPERT'S LAND.†

20

PROVINCIAL SECRETARY'S OFFICE,

QUEREC, 15th April, 1862.

Provincial-
Secretary
(Canada), to
Hudson's
Bay Com-
pany's Gov-
ernor of
Rupert's
Land, 15th
April, 1862.

SIR,—The Government of Canada have had their attention very strongly directed to the important subject of an overland communication with British Columbia through the Hudson's Bay Territory, *via* the Red River, and I am now commanded by His Excellency the Governor-General to inform you of the steps proposed towards effecting this object, and to seek the co-operation of the Hudson's Bay Company therein.

The Canadian Government do not wish at present to raise any question as to the rights of the Company, who must be regarded as *de facto* in possession of the country intervening between Canada and British Columbia. They consider that most important public interests demand the establishment of a practicable line of communication across the continent, and they desire to have the practical aid of your Company in carrying it into effect.

Arrangements were made within the last four years for postal service with Red River, but the want of territorial rights at Red River and along the greater part of the route defeated the plans of the Canadian Government, and, after a very considerable outlay, the line had to be abandoned. Another effort is now being made in the same direction, and, as the Hudson's Bay Company claims the right of territory and government over this region, it is hoped they will also assume their correlative duties, and unite with Canada in opening up the country.

The Canadian Government are about to establish steam communication with Fort William, on Lake Superior, immediately. A large tract of land at this point has been surveyed, and a Crown Land Agent has recently been appointed to reside there. Appropriations have been made by the Legislature for roads towards Red River, on which free grants will be made to settlers, and every effort will be made to attract settlement—the ultimate object being the connection with the Red River and Saskatchewan. Canada is, therefore, now prepared to guarantee that, so far as her undisputed boundary extends, every facility will henceforward exist towards a communication with the west.

* Sess. Papers, Can., 1863, V. 1. 22, No. 31.

† *Ibid.*, No. 29.

The Canadian Government cannot doubt that the Hudson's Bay Company are fully alive to the vast importance of such a communication.

The recent gold discoveries on the Saskatchewan cannot fail to attract many adventurers, who must at present be principally drawn from the United States.

The Settlement of Red River itself has now its sole communication with Minnesota, and will naturally imbibe American principles and views, unless brought in connection with the British settlements east and west. Canada must look with some apprehension to the probable result that, in a very few years, the population lying to her west will be wholly foreign, and that (unless facilities for settlement be afforded from Canada equal to those enjoyed from the United States, and unless efficient civil government be speedily established) British rule over this part of the continent will virtually have passed away, and the key of the trade to British Columbia, and ultimately China, have been surrendered to our rivals. The Hudson's Bay Company cannot desire a result that would equally militate against their own interests; and the Canadian Government, therefore, hopes for their hearty co-operation in the opening of the Red River and Saskatchewan Territories by a communication from Canada to British Columbia.

The Government of Canada considers that, in connection with the means of transport across the continent, a telegraphic communication should be established as especially necessary for Imperial interests, inasmuch as both the United States and Russia possess telegraphic lines to the Pacific, while Great Britain has no other mode of doing so but through the Hudson's Bay Territory. Recent events have proved the paramount importance of such a line.

Leaving untouched, therefore, all disputed questions, I am commanded by His Excellency the Governor-General, to state that the Canadian Government have decided at once to establish steam and stage communication to the extreme limit of the territory under their government, and are ready to unite with the Hudson's Bay Company in a mail service and post route to British Columbia.

The Canadian Government is also prepared to guarantee the construction of a telegraph line to the extreme western limits of the Province.

I request that you will inform me how far you will be prepared to act for the Hudson's Bay Company in carrying out objects of such great national importance, and which cannot be long delayed without the most serious injury to the interests of the Empire, and especially to the future progress and security of Canada.

Alexander G. Dallas, Esquire,
Governor in Chief of Rupert's Land, Montreal.

I have, etc.,

C. ALLEYN.

THE GOVERNOR OF RUPERT'S LAND TO THE PROVINCIAL SECRETARY (CANADA).*

MONTREAL,

16th April, 1862.

Sir,—I have the honour to acknowledge receipt of the important communication which you have addressed to me by command of His Excellency the Governor-General, under date of the 15th instant, wherein you intimate the desire of the Government of Canada to establish an overland communication with British Columbia through the Hudson's Bay Territory, as well as the steps proposed towards effecting that object; and further request the co-operation of the Hudson's Bay Company therein.

After stating that the Government of Canada, regarding the Company as *de facto* in possession of the intervening territories, does not wish to raise any question as to its rights, you proceed to point out the great public interests which are involved by the formation of a chain of settlements, connecting Canada with British Columbia, by postal and telegraphic services, the paramount importance of which is proved by recent events. You also point out the danger of the Red River Settlement, from its close connection with Minnesota, consequent on its isolated position with regard to Canada, becoming imbued with American principles and views, and passing away from us to our rivals, thus depriving the country of the key of the trade to British Columbia, and ultimately to China.

* *Sess. Papers, Canada, 1863, Vol. 22, No. 29.*

JOINT
APPENDIX.

Sec. 111.

Canadian Documents, and Correspondence between the Colonial Secretary and the Hudson's Bay Company, prior to the surrender of the Company's claims.

Provincial Secretary (Canada),
16th April, 1862.

Governor Rupert's Land to Provincial Secretary, 16th April, 1862.

JOINT
APPENDIX.
—
Sec. III.
*Canadian
Instruments,
and Correspondence
between
the Colonial
Secretary and
the Hudson's
Bay Company,
prior to the
surrender of
the Company's
claims.*

Hudson's Bay
Company's
Governor
Rupert's
Land to
Provincial
Secretary,
16 April,
1862.

While fully admitting the force of the above arguments, and the immediate necessity of some arrangements being come to, I am reluctantly compelled to admit my inability to meet the Government of Canada in this forward movement, for the following reasons:—

First.—The Red River and Saskatchewan valleys, though not in themselves fur-bearing districts, are the sources from whence the main supplies of winter food are procured for the northern posts, from the produce of the buffalo hunts. A chain of settlements through these valleys would not only deprive the Company of the above vital resource, but would indirectly in many other ways so interfere with their northern trade as to render it no longer worth prosecuting on an extended scale. It would necessarily be divided into various channels, possibly to the public benefit, but the Company could no longer exist on its present footing.

The above reasons against a partial surrender of our territories may not appear sufficiently obvious to parties not conversant with the trade or the country; but my knowledge of both, based on personal experience, and from other sources open to me, point to the conclusion that partial concessions of the districts which must necessarily be alienated, would inevitably lead to the extinction of the Company

Second.—Granting that the Company were willing to sacrifice its trading interests, the very act would deprive it of the means to carry out the proposed measures. There is no source of revenue to meet the most ordinary expenditure, and even under present circumstances the Company has practically no power to raise one. The co-operation proposed, in calling on the Company to perform its co-relative duties, presupposed it to stand on an equal footing with Canada.

It is not to be supposed that the Crown would grant more extensive powers to the Company than those conveyed by the Charter. If any change be made, it is presumed that direct administration by the Crown would be resorted to as the only measure likely to give public satisfaction.

Not having anticipated the present question, I am without instructions from the Board of Directors in London for my guidance. I believe I am, however, safe in stating my convictions that the Company will be willing to meet the wishes of the country at large by consenting to an equitable arrangement for the surrender of all the rights conveyed by the Charter.

I shall by the next mail forward copies of this correspondence to the Board of Directors in London, who will thus be prepared in the event of the subject being referred to Her Majesty's Secretary of State for the Colonies.

I may state that it is my intention to make immediate arrangements at the existing settlement of 30 Red River for the sale of land, on easy terms, free from any restrictions of trade. It would, I believe be impolitic to make any distinction between British subjects and foreigners. The infusion of a British element must be left to the effects of a closer connection and identity of interests with Canada and the mother country.

I have the honour to be, sir,

Your most obedient servant,

A. G. DALLAS.

The Hon. Charles Alley, Provincial Secretary,
etc., etc., etc.

THE GOVERNOR-GENERAL TO THE COLONIAL SECRETARY.*

GOVERNMENT HOUSE,

QUEBEC, April 25th, 1862.

MY LORD DUKE,—I have the honour to forward to your Grace a Minute of the Executive Council, approved by me, on the subject of the establishment of a postal communication through the Hudson's Bay Territory, between Canada and British Columbia, containing a letter from the Provincial Secretary to the Manager of the Hudson's Bay Company, and that gentleman's reply.

Governor-
General to
Colonial
Secretary,
25 April,
1862.

* Sess. Papers, Canada, 1863, Vol. 22.

The subject is one of considerable importance, both in an Imperial point of view and as regards the particular interests of this Province; but the letter of Mr. Alleyn enters so fully into the merits of the question on both grounds, that I do not think it necessary to trouble your Grace with my observations of my own.

The answer of Mr. Dallas would seem to imply that the existence of the present rights of the Hudson's Bay Company will prove a permanent obstacle to the realization of the views which the Canadian Government entertain in reference to the proposed communication.

As the Government of the Province have no means of acting upon the Hudson's Bay Company except through Her Majesty's ministers, I would, on its behalf, ask of your Grace to take such steps as may enable the authorities here to carry into execution their desire for an extension of postal communication between this Province and the shores of the Pacific.

I have, etc.,

MONCK.

His Grace the Duke of Newenstle, K.G.,

etc., etc., etc.

JOINT
APPENDIX.
Sec. III.

Canadian
Documents,
and Corres-
pondence
between
the Colonial
Secretary and
the Hudson's
Bay Company,
prior to the
transfer of
the Company's
claims.

Governor-
General to
Colonial
Secretary,
25 April,
1862.

THE GOVERNOR OF THE HUDSON'S BAY COMPANY TO THE COLONIAL SECRETARY.*

HUDSON'S BAY HOUSE,

LONDON, May 19th, 1862.

MY LORD DUKE,—I have the honour to enclose, for your Grace's information, copy of a correspon-
20 dence that has passed between Mr. Charles Alleyn, Secretary to the Government of Canada, and Mr. Dallas, who has lately succeeded Sir George Simpson in the Government of the Hudson's Bay Territory, in North America, on the subject of a proposed road and line of telegraphic communication between Canada and the gold regions of British Columbia.

I take the liberty of forwarding this correspondence to your Grace, because my colleagues agree with me that any negotiation on the subject should be carried on, not with the Colonial authorities, but with Her Majesty's Government in this country.

The Canadian Government propose, in the first instance, to establish steam communication on Lake Superior, and to open up roads from Fort William in the direction of Red River, and they appear to consider that it is the duty of the Hudson's Bay Company to undertake the further prosecution of the
30 work through their territories. Of course there is no difficulty as far as steamers on Lake Superior are concerned, but between Fort William and the height of land the natural difficulties of the country will make road-making a very expensive business, while the soil, which consists chiefly of rock and swamp, will offer no inducement to settlers, even if they obtain the land for nothing.

Within the last few years a considerable sum of money has been granted and expended by the Canadian Government for the purpose of opening this route, but I am not aware that there has been any practical result.

Beyond Red River to the base of the Rocky Mountains the line will pass through a vast desert, in some places without wood or water, exposed to the incursions of roving bands of Indians, and entirely desti-
40 tute of any means of subsistence for emigrants, save herds of buffalo, which roam at large through the plains, and whose presence on any particular portion of these prairies can never be reckoned on. These again are followed up by Indians in pursuit of food, whose hostility will expose travellers to the greatest danger.

With regard to the establishment of a telegraphic communication, it is scarcely necessary to point at the prairie fires, the depredation of natives and the general chapter of accidents, as presenting almost unsurmountable obstacles to its success.

* Sess. Papers, Canada, 1863, Vol. 22, No. 31.

JOINT
APPENDIX.

Sec. III.
Canadian
Documents,
and Corre-
spondence
between
the Colonial
Secretary and
the Hudson's
Bay Company,
prior to the
surrender of
the Company's
claims.

Hudson's Bay
Company,
to Colonial
Secretary,
19 May, 1862.

I have thought it my duty thus slightly to sketch the difficulties in the way of the enterprise, the subject of the correspondence which I have brought under your Grace's notice; but if it be thought that the interests of Canada and British Columbia, or of this country, require that the experiment should be made, the Hudson's Bay Company will most readily acquiesce in the decision of Her Majesty's Government. At the same time it is my duty to state that, in justice to our proprietors, the Directors of the Hudson's Bay Company cannot risk their capital in doubtful undertakings of this description, spread over such vast distances, through a country where the means of maintaining them, if once made, will lead to an expenditure scarcely to be contemplated. Although, therefore, the Directors, on behalf of the Company, are ready to lend Her Majesty's Government all the moral support and assistance in their power, it must be distinctly understood that the Company have no means at their disposal beyond those employed in carrying on their trade, and cannot consequently undertake any outlay in connection with the schemes suggested by the Canadian Government.

I think it may not be improper to take the opportunity of referring your Grace to former communications between the Hudson's Bay Company and the Colonial Office on the subject of settlement in their territories.

The Company have always expressed their willingness to surrender the whole or any part of their territorial rights upon terms that would secure fair compensation to the proprietors, as well as to the officers and employes in the country.

The Governor at Red River Colony has instructions to make grants of land to settlers, on easy conditions, without any restrictions as to the Company's right of extensive trade, and if Her Majesty's Government, with reference to the interests of the public, consider more extensive plans for the improvement of the country expedient, the Directors of the Company will be quite ready to entertain them, with the desire to meet the wishes of Her Majesty's Government in any manner not inconsistent with the vested rights of their constituents.

I am, etc.,

WM. BERENS,
Governor.

His Grace the Duke of Newcastle, K.G.,
etc., etc., etc.

REPORT OF A COMMITTEE OF COUNCIL (CANADA), APPROVED BY THE GOVERNOR-GENERAL ON THE
18TH FEBRUARY, 1864.*

30

Order-in-
Council,
(Canada) 18th
February,
1864.

The Committee of the Executive Council have had under consideration a despatch, No. 49, from His Grace the Duke of Newcastle, dated 1st May, 1863, with enclosures, on the subject of a proposal of the "Atlantic and Pacific Transit and Telegraph Company," to establish telegraphic and postal communication from Lake Superior to New Westminster, in British Columbia.

The Committee have not been able to persuade themselves that the people of Canada would be likely to receive benefits corresponding to the cost of constructing a line of telegraph from the seat of government to the head of Lake Superior, and guaranteeing half the interest of the cost of constructing a line from that point to the Pacific Coast, unless at the same time the fertile valleys and plains of the Great North-West are made accessible to Canadian settlers and to European emigrants, who are in quest of cheap lands under the protection of the British flag and a free Constitutional Government.

A "telegraph line" will not accomplish these objects, though it may serve an important purpose and lead ultimately to their attainment. But unless "The Atlantic and Pacific Transit and Telegraph Company" are prepared to undertake the construction of a road *pari passu* with the telegraph line, the Committee cannot, in the present condition of the Canadian exchequer, and with the important questions of boundary, territorial jurisdiction and form of government in the vast territory proposed to be opened, still unsettled, recommend acceptance of the heads of proposal as submitted by them and conditionally approved by His Grace.

*Sess. Papers, Canada, 1864, vol. 23, No. 62.

The Committee are of opinion that in view of the recent change in the constitution and objects of the Hudson's Bay Company, which, from the correspondence laid before the House of Lords, appears to have been effected, and the claims which the new organization have reiterated with the apparent sanction of His Grace the Duke of Newcastle, to territorial rights over a vast region not included in their original Charter, it is highly expedient that steps be taken to settle definitely the North-Western boundary of Canada.

The Committee therefore recommend that correspondence be opened with the Imperial Government with a view to the adoption of some speedy, inexpensive and mutually satisfactory plan to determine this important question, and that the claim of Canada be asserted to all that portion of Central British America which can be shown to have been in the possession of the French at the period of the cession, in 1763.

Certified,

WM. H. LEE, C.E.C.

THE COLONIAL SECRETARY TO THE GOVERNOR GENERAL.*

DOWNING STREET,

1st July, 1864.

MY LORD,—I have had under my consideration your Lordship's despatch, No. 18, of the 19th of February, enclosing to the Duke of Newcastle the Minute of your late Executive Council on the subject of the pending negotiation between Her Majesty's Government and the Hudson's Bay Company, for the cession of the rights of that Company in the Hudson's Bay Territory to the Crown.

In that Minute the Executive Council say they "are of opinion that, in view of the recent change in the constitution and objects of the Hudson's Bay Company, which, from the correspondence laid before the House of Lords, appears to have been effected, and the claims which the new organization have reiterated, with the apparent sanction of His Grace the Duke of Newcastle, to territorial rights over a vast region not included in their original Charter, it is highly expedient that steps be taken to settle definitely the North-Western boundary of Canada.

"The Committee therefore recommend that correspondence be opened with the Imperial Government with the view to the adoption of some speedy, inexpensive, and mutually satisfactory plan to determine this important question, and that the claim of Canada be asserted to all that portion of Central British America which can be shown to have been in the possession of the French at the period of the cession in 1763."

If the proposed cession shall take place, it will be necessary to make provision for the future government of the Red River Settlement, and prospectively of such parts of the Territory as may from time to time become the seats of settled occupation and industry.

The Committee of the House of Commons, which in the year 1857 considered the state of the British possessions in North America which are under the administration of the Hudson's Bay Company, expressed themselves in the following terms:—"Your Committee consider that it is essential to meet the just and reasonable wishes of Canada, to be enabled to annex to her territory such portion of the land in her neighbourhood as may be available to her for the purposes of settlement, with which lands she is willing to open and maintain communication, and for which she will provide the means of local administration. Your Committee apprehend that the districts on the Red River and the Saskatchewan are among those likely to be desired for early occupation. It is of great importance that the peace and good order of those districts should be effectually secured.

"Your Committee trust that there will be no difficulty in effecting arrangements, as between Her Majesty's Government and the Hudson's Bay Company, by which these districts may be ceded to Canada on equitable principles; and within the districts thus annexed to her the authority of the Hudson's Bay Company would, of course, entirely cease."

* Journals, Legislative Assembly, Canada, 1865, Vol. 25, p. 45.

JOINT
APPENDIX.
Sec. III.
Canadian Documents, and Correspondence between the Colonial Secretary and the Hudson's Bay Company, prior to the surrender of the Company's claims.
Order in Council, Canada, 18th November, 1864.

Colonial Secretary to Governor-General, 1st July, 1864.

JOINT
APPENDIX.
Sec. 111
*Canadian
Documents,
and Corre-
spondence
between
the Colonial
Secretary and
the Hudson's
Bay Company,
prior to the
surrender of
the Company's
claims.*

Despatch, 1st
July, 1864.

Before taking any further steps in the negotiations with the Company, I am desirous of being informed whether your advisers are prepared to assist in these negotiations, with a view of accepting the government of any portion of the territory, and undertaking the duties contemplated by the Committee, in case sufficiently favourable terms can be obtained. If they are prepared to do so, it will be desirable that they should send over to this country some person duly authorized to communicate with me upon the subject, in order that the negotiations may be proceeded with during the recess, and the necessary measures prepared for obtaining the sanction of the Imperial Parliament and of the Legislature of Canada. If they are not prepared to assist in the negotiations, I shall be glad to hear from you their views upon the subject of the north-western boundary of Canada.

I have, etc.,

EDWARD CARDWELL.

10

REPORT OF A COMMITTEE OF COUNCIL (CANADA), APPROVED BY THE GOVERNOR-GENERAL ON THE
11TH NOVEMBER, 1864.*

Order-in-
Council,
Canada, 11th
Nov., 1864.

The Committee of Council have had under their consideration the despatch of the Right Honourable Edward Cardwell, Her Majesty's Secretary of State for the Colonies, of 1st July, 1864, in reply to your Excellency's despatch of 19th February, 1864, transmitting Minute of Council on the subject of the pending negotiations between Her Majesty's Government and the Hudson's Bay Company, for the cession to the Crown of the rights of that Company in the North-Western Territories,

In the Minute of Council transmitted by your Excellency, the Government of Canada recommended that "correspondence be opened with the Imperial Government, with a view to the adoption of some speedy, inexpensive, and mutually satisfactory plan" to "settle definitely the north-western boundary of Canada," and that "the claim of Canada be asserted to all that portion of Central British America which can be shown to have been in the possession of the French at the period of the cession in 1763."

Mr. Cardwell, in acknowledging this Minute, remarks, that "if the proposed cession shall take place, it will be necessary to make provision for the future government of the Red River Settlement and prospectively of such parts of the territory as may from time to time become the seats of settled occupation and industry." He quotes from the Report of the Select Committee of the House of Commons of 1857, in which it is said:—"Your Committee consider that it is essential to meet the just and reasonable wishes of Canada, to be enabled to annex to her territory such portion of the land in her neighbourhood as may be available to her for the purpose of settlement, with which lands she is willing to open and maintain communications, and for which she will provide the means of local administration."

"Your Committee apprehend that the districts on the Red River and the Saskatchewan are among those likely to be desired for early occupation. It is of great importance that the peace and good order of those districts should be effectually secured. Your Committee trust that there will be no difficulty in effecting arrangements as between Her Majesty's Government and the Hudson's Bay Company, by which those districts may be ceded to Canada on equitable principles, and within the districts thus annexed to her the authority of the Hudson's Bay Company would, of course, entirely cease."

And Mr. Cardwell concludes by asking, whether the Government of Canada are prepared to assist in those negotiations with the view of accepting the government of any portion of the territory, and undertaking the duties contemplated by the Committee, in case sufficiently favourable terms can be obtained; and he suggests that if prepared so to do, it would be desirable that some person duly authorized to communicate the views of the Canadian Government, should be sent to England for that purpose.

The Committee of Council recommend that Mr. Cardwell be informed that the government of Canada is more than ever impressed with the importance of opening up to settlement and cultivation the lands lying between Lake Superior and the Rocky Mountains. The great extent of these lands and

* Journals, Legislative Assembly, Canada, 1865, Vol. 25, p. 46.

their adaptability for settlement are now established beyond a doubt; and it is not to be contemplated that a region so fertile, and capable of sustaining so vast a population, should longer be closed to civilization for the benefit of a trading company, however long established and respectable that company may be. The rapid progress of British Columbia adds to the expediency of opening, without delay, an overland route to the Pacific, and gives feasibility to the hope, long cherished by many, that the Atlantic and Pacific Oceans, ere many years elapse, may be connected by one direct line of railway through British territory, from Halifax to British Columbia. The close relations springing up between the Red River settlers and the Americans of Pembina and St. Paul, and the removal of many Americans into the territory, render it doubly expedient that a settled government, under the British Crown, should be established in the country at an early date. The effort now being made, with every prospect of success, by the Governments of Canada, Nova Scotia, New Brunswick, Newfoundland and Prince Edward Island, for the union of all these Provinces under one Government, presents another strong reason for settling now the future position of the North-West country, more especially as the parties to the proposed British American Federation have unanimously agreed that the people of the North-West Territory, and of British Columbia and Vancouver, may, at any time, join the Federation on equitable terms, and the whole British America thus become united in one system of government under the protecting rule of Great Britain.

The Government of Canada, is ready and anxious to co-operate with the Imperial Government in securing the early settlement of the Territory and the establishment of local government in its settled portions. The Government looks forward with interest to the day when the valley of the Saskatchewan will become the back country of Canada, and the land of hope for the hardy youth of the Province when they seek new homes in the forest; and it anticipates with confidence the day when Canada will become the highway of immigration from Europe into those fertile valleys. To attain these ends the Government is prepared to render all the aid in its power towards opening up the country.

The Committee of Council are, however, clearly of the opinion that the first step towards the settlement of the territory is the extinction of all claim by the Hudson's Bay Company to proprietary rights in the soil or exclusive right of trade. The Committee do not deem it necessary now to raise the question of the validity or invalidity of the Company's charter. Were all the pretensions of the Company as to their title fully admitted for the sake of argument, the necessity of its speedy extinction would still remain. It is not to be entertained for a moment, that half a continent should continue to be shut off from the world on the strength of a parchment title, however good.

The Committee are, however, conscious that it is for the Imperial Government, and not for the Government of Canada, to assume the duty of bringing to an end a monopoly originating in an English charter, and exercised so long under Imperial sanction; and while acknowledging with thanks the courtesy of Mr. Carlwell, in inviting the Government of Canada to assist in negotiations with the Hudson's Bay Company for the cession to the Crown of their claims, the Committee are of the opinion that the negotiations will be advantageously left in the hands of the Imperial Government. When the negotiations have been brought to a close the Government of Canada will be ready to arrange with the Imperial Government for the annexation to Canada of such portion of the land in her neighbourhood as may be available for settlement, as well as for the opening up of communications into the territory and providing means of local administration; or should the Imperial Government prefer to erect the territory into a Crown colony, the Government of Canada will gladly co-operate in the opening up of communication into the territory and the settlement of the country.

The Committee express the hope that until the Government of Canada has been communicated with, no cession of large sections of land will be made by the Imperial Government for any purpose, or any right of way granted through the territory. The history of the American continent is replete with examples of the great evils resulting from the locking up of extensive tracts of land in the hands of wealthy corporations, whose whole object is the realization of large profits. The existence of such an evil in these North-Western regions would seriously embarrass the efforts of any Government for the early and satisfactory settlement of the country.

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In suggesting that the negotiations with the Hudson's Bay Company should remain in the hands of the Imperial Government, the Committee are anxious that Mr. Cardwell should not interpret this as arising from any diminution of interest on the part of Canada in the just and speedy settlement of this great question; on the contrary, the public interest in the question, and the desire for the early occupation of the country, have of late much increased, and the best proof of this is furnished in the desire unanimously expressed by the recent Conference of the Atlantic Provinces, for a political union with the great Western Territories. The Government will observe the progress of the negotiations with profound interest, and will most gladly communicate with Mr. Cardwell on any point which he may deem proper to submit to it. The Honourable the President of the Executive Council of Canada, [Mr. Brown] sails for England on the 16th instant; he has given much attention to the Hudson's Bay question, and will be able to communicate more fully to Mr. Cardwell the views of the Government on the subject, of which he is fully possessed.

Certified.

WM. H. LEE, C.E.C.

REPORT OF THE HONOURABLE GEORGE BROWN, PRESIDENT OF THE EXECUTIVE COUNCIL OF CANADA.*

QUEBEC, 26th January, 1865.

To His Excellency the Governor-General of Canada in Council.

Report of the Canadian Delegate to England, 26th January, 1865.

MY LORD,—I have the honour to report that while recently in England, in compliance with your Excellency's instructions, I placed myself in communication with Her Majesty's Secretary of State for the Colonies, on the subject of opening up to settlement the North-Western Territories.

In Your Excellency's despatch of 19th January, 1864, to the Colonial Secretary, the anxious desire of the Canadian Government was communicated "for some speedy, inexpensive, and mutually satisfactory plan for settling definitely the North-Western boundary of Canada," and the claim of Canada was asserted to "all that portion of Central British America which can be shown to have been in the possession of the French at the period of the cession in 1763."

In reply to this despatch, Mr. Cardwell, on 1st July, 1864, requested to be informed whether the Government of Canada was prepared to assist in negotiations with the Hudson's Bay Company, with the view of accepting any portion of the territory now claimed by that Company, and providing the means of local administration therein; and he suggested that if so prepared it would be desirable that some person duly authorized to communicate the views of the Canadian Government should be sent to England for that purpose.

On the 11th November, 1864, a Minute of Council was approved by Your Excellency, in reply to Mr. Cardwell's despatch. It set forth that the Government of Canada was ready and anxious to co-operate with the Imperial Government in securing the early settlement of the North-West Territories, and the establishment of local government in its settled portions; but that in its opinion the first step towards that end was the extinction of all claim by the Hudson's Bay Company to proprietary rights in the soil or exclusive rights of trade. It suggested that it was for the Imperial Government, and not for the Government of Canada, to assume the duty of bringing to an end a monopoly originating in an English charter, and exercised so long under Imperial sanction; but that when the negotiations were brought to a close, the Government of Canada would be ready to arrange with the Imperial Government for the annexation to Canada of such portions of the territory as might be available for settlement, as well as for the opening up of communications into the territory and providing means of local administration; or should the Imperial Government prefer to erect the territory into a Crown colony, the Canadian Government would gladly co-operate in the opening up of communication into the territory, and the settlement of the country. The Minute finally suggested that the undersigned, while in England, would communicate more fully to Mr. Cardwell the views of the Canadian Government.

While in London I had the honour of several interviews with Mr. Cardwell, at which the whole question was fully discussed; and I gratefully acknowledge the courtesy and attention extended to me by that gentleman.

* Journals, Leg. Assembly, Canada, 1865, Vol. 25, p. 43.

I found that negotiations for the cession to the Crown of the territorial claims of the Hudson's Bay Company had been proceeding for a year past between the Colonial Minister and the Company; and it may not be without advantage that I should state here briefly the point to which these negotiations had been brought:—

I. In July, 1863, the whole interests of the Hudson's Bay Company were transferred to Mr. Edward W. Watkin and certain gentlemen acting with him; and Sir Edmund Head was elected Governor of the Company. The capital stock of the old Company was £500,000 sterling, but at the time of the sale and for some time previous each £100 share was worth £200 on the London Stock Exchange. The market value of the Company's interests was therefore £1,000,000 sterling. The new Company agreed to pay £1,500,000, and did pay that sum, for the transference to them of all the interests of the old Company.

II. On the 28th of August, 1863, Sir Edmund Head, as Governor of the new Hudson's Bay Company, communicated to His Grace the Duke of Newcastle a resolution expressive of the conviction that the time had arrived for introducing into the North-West Territories the direct authority of the Crown.

III. On the 9th of October, 1863, Sir Frederick Rogers, by instruction of the Duke of Newcastle, informed the Company that His Grace was ready to consider any proposals submitted to him by the Hudson's Bay Company with reference to the introduction of the direct authority of Her Majesty's Government in Rupert's Land.

IV. On 11th November, 1863, Sir Edmund Head acknowledged the receipt of Sir Frederick Rogers' communication, and proceeded to explain the views of the Company in the following terms:—

"With regard to the extent of the proposed colony, of which the seat of government would be Red River (or Fort Garry), the Committee presume that His Grace would wish it to include the whole country from the frontier of the United States to the north branch of the Saskatchewan, and to extend eastward towards Lake Superior, as far as the frontier of Canada, wherever the precise line of that frontier may be found. Perhaps the most convenient limit for the northern boundary would be either the Saskatchewan itself, or a line running from the Rocky Mountains eastward through Edmonton House and Fort Cumberland, and, from the latter, following the Saskatchewan down to Lake Winnipeg. Nothing would be gained by going further to the northward, nor by including the eastern side of Lake Winnipeg; but from the mouth of the Winnipeg River, where it enters the lake, the line of demarcation might be run eastward until it cut the Canadian frontier somewhere north of Lake Superior or Lake Huron."

After hinting at the purchase by Government of the whole territorial claims of the Company for a sum of money, payable down or by instalments—but which he admits is probably an impracticable solution—Sir Edmund Head goes on to propose, as the condition of the Company's consent to the erection of a Crown colony, that "the Company should retain the ownership in fee simple of one half of the lands in the colony, and the other half should be conveyed by the Company to the Crown." And this compromise he explains the Company suggests, only subject to the following stipulations:—

"1st. The Hudson's Bay Company should have the sole right to erect, and should bind themselves to complete within five years, an electric telegraph to connect British Columbia and Canada. The line for this telegraph should be approved by the Secretary of State, and it should be maintained by the Company, who would, of course, engage to convey the messages of the Imperial and Colonial Governments at a fixed and moderate rate.

"It would be necessary as a condition precedent to the erection of the telegraph,—

"(a) That the Government of British Columbia and Canada should pledge their faith respectively to the Secretary of State to pay the yearly sum set forth in the enclosures to the despatch of July 31, 1862, with all the advantages as to lands to be granted by Her Majesty's Government, and other terms therein specified.

"(b) That a road should be laid out along the line of telegraph, but the soil on which the telegraph stands, and the space, say one mile in width, on one side of its course, should belong to the Hudson's

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Bay Company, to be reckoned as part of the half of the land which they would retain. The other side of the road might be included in the half belonging to the Crown.

"(c) That the Company in constructing the telegraph should be entitled to use wood or other materials taken from ungranted land.

"2nd. The Crown shall resume the grant of mines, and diggings of gold and silver throughout the colony, on condition of paying to the Hudson's Bay Company one-third of the receipts of all dues, royalties, rents, etc., from such mines or diggings, whether mined by way of export duty or otherwise, but the Company should not be liable for expenses of collection or escort.

"3rd. The buildings required for military or Government purposes at Fort Garry or Red River should be valued and purchased of the Company.

"4th. The Company should retain as a portion of their half of the lands, all lots already laid out and surveyed, as well as five thousand acres round each of their forts as posts."

V. On 11th March, 1864, Mr. Chichester Fortescue, Under Secretary of State for the Colonies, by direction of the Duke of Newcastle, rejected the proposal of the Company. In the course of his communication the following passages occur:—

"In an unsettled colony, there is no effectual mode of taxation for purposes of government and improvement, and the whole progress of the colony depends on the liberal and prudent disposal of its land. These considerations afford decisive reasons against leaving that land in the possession of a corporation. And I am to observe that these objections, conclusive in any case, are greatly enhanced in the case of the Hudson's Bay Company, as I learn from your letter that it has been the 'unvarying opinion' of the Committee on whose behalf you speak that the Company would 'lose fully as much as they would gain by the increase of settlement in the chartered territory.' It is therefore (to say the least) a question whether the Company would not be under a direct inducement to use their proprietary rights to thwart the colonizing efforts of the Government. The conclusive objection to the scheme is that it would reproduce in a gigantic shape the inconveniences which, on a far smaller scale, were found intolerable in Canada. It is evident as a matter of reasoning, and notorious as a matter of fact, that the interposition of large blocks of property between tracts or districts of Crown land must obstruct the opening up of those districts, unless it fortunately happens that the private proprietor is ready to expend money *patri passu* with the Government in the construction of roads and other improvements, and to conform his land policy to that of the authorities. It is also clear that colonists of the Anglo-Saxon race look upon the land revenue as legitimately belonging to the community; and that the diversion of half or more than half of that revenue to the purpose of increasing the dividends of a private corporation would cause a continual and growing discontent which could not be allayed by any abstract argument of right, and the full force of which the Government would be expected by the Company to sustain. His Grace cannot consent to make himself responsible for these consequences, and he is therefore obliged to treat as inadmissible any proposal for the proprietary partition of those territories which may be placed under the Government of the Crown."

Mr. Fortescue then proceeds to state, "the only terms which, after very grave consideration, His Grace feels himself able to propose for the acceptance of the Company," as follows:—

"1. That within certain geographical limits (coinciding more or less with those laid down in your letter) the territorial rights of the Company should be surrendered to the Crown.

"2. That the sum of 1s. *per* acre on every acre sold by Government should be paid to the Company, and payment to cease when their aggregate receipts from this source shall exceed £150,000, or on the expiration of 50 years.

"3. That one-fourth of the sum received by the Government as an export duty for gold, or on leases of gold mines, or licenses for gold mining, shall be payable to the Company for 50 years, or until the aggregate receipts shall amount to £100,000.

"4. That on these conditions a Government be established in the ceded territories—Great Britain undertaking the expense and risk of that Government until the colony is able to support it, as in British Columbia and other colonies.

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"It must be clearly understood that the payments contemplated in the second and third of these articles are entirely dependent on the Government receipts, and that the Government will not be pledged to any particular form of levying a tax upon gold."

Appended to Mr. Fortescue's letter was the following postscript:—

"P.S.—Since the above letter was drafted, His Grace has received from the Governor-General of Canada a despatch, from which it appears that the Canadian Government contemplate the assertion of a claim to all that portion of Central America which can be shown to have been in the possession of the French in 1763. It must, of course, be understood that the above suggestions are made on the supposition that the cession by the Company will place Her Majesty's Government in possession of an indisputable title to the territory ceded by them."

VI. On the 14th March, 1864, Sir Edmund Head replied to Mr. Fortescue's letter of the 11th March, taking strong exception to the postscript of that letter. Among other passages was the following:—

"We believe the title of the Hudson's Bay Company to be good, and we are prepared to defend it in any court in which it may be impugned; but we are not prepared to originate any enquiry of the kind, or to undertake to give any guarantee, or to present to the Secretary of State any title other than that which I have already said is as well known to His Grace as it is to ourselves. Such as it is, it must be taken for better for worse, for we have no other to offer, and we believe that to be sufficient. If, therefore, any such guarantee or undertaking is a condition precedent to the completion of an arrangement on the basis suggested in your letter of the 11th instant, it will, we fear, be wholly useless for us to enter into the consideration of the principle of that offer, or any discussion how far the details involved in it are or are not acceptable to the Company, or how far the amount of compensation would be sufficient. If indeed the question were one only of some few miles, more or less, of boundary, the case would be wholly different. But in the form in which the claim is presented to us in your postscript, it appears to the Committee to make all further action impracticable."

Sir Edmund Head goes on to say:—

"But for this preliminary difficulty arising from the postscript to your letter, it would now be my duty to call your attention to the fact that that letter makes no allusion to a substantive portion of our offer, to which we attach great importance, that, namely, of erecting on certain terms, an electric telegraph across the Hudson's Bay Territory. We have ceded to no one the right to do this, and we are perfectly ready, on fair conditions, and as part of the arrangement, to undertake to do it ourselves. Nor is anything said in the counter proposal made by you as to the portions of land which the Company might be allowed to retain as private property, nor as to the manner in which their buildings and improvements would be dealt with."

VII. On the 5th April, 1864, Sir Frederick Rogers addressed Sir Edmund Head, in rejoinder to his letter of the 14th March. In reference to the Company's objection to the postscript of Mr. Fortescue's letter, he said:—

"It appears to the Duke of Newcastle that the Company has somewhat misapprehended the intention with which that postscript was written. It is assumed, for the present purpose, that the grant to the Hudson's Bay Company is a valid grant. But it appears to be contended on the part of Canada that whether valid or not, an instrument which only granted to the Company land not in possession of a foreign power in the year 1670, could not, from its very terms, comprehend, in 1763, a territory which then belonged to the French, and which it is contended must therefore have then belonged and belongs now to Canada. If this claim on the part of Canada were established, it would be evidently impossible for Her Majesty's Government to secure that land to which it is extended, should, when sold, be subject to a payment of 1s. an acre to the Hudson's Bay Company. It is therefore impossible for His Grace to make any pledge of this kind except as to land which is beyond the scope of the Canadian claim."

Sir Frederick Rogers, however, then went on to modify somewhat this position. He said:—

"As regards the territories west of the Mississippi, to which the present negotiation in the main relates, the Duke of Newcastle, after a careful examination, is prepared, for the purpose of the present negotiation, to assume that the Canadian claim is groundless. And he therefore authorizes me to renew

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the proposals contained in the body of my letter of the 11th, subject to the following stipulation:—That in case it should be found advisable to cede or annex to Canada any territory lying eastward of a line passing through Lake Winnipeg, and from thence to and through the Lake of the Woods, Her Majesty's Government should be at liberty to exempt the annexed territory from all payments to the Hudson's Bay Company, which payments would thenceforth be exclusively leviable (without any deduction from their amount) on the territories acquired by the Crown to the west of the above line of demarcation."

In regard to the second part of Sir Edmund Head's letter of 14th March, Sir Frederick Rogers explained that the Duke of Newcastle was quite willing to recognize the transference to the Hudson's Bay Company of the rights and responsibilities of the Atlantic and Pacific Telegraph and Transit Company—"if it is recognized by the colonies concerned." And he goes on to say, that His Grace "is further willing that on the completion of the road and telegraph from the frontier of Canada to that of British Columbia, lands adjacent to the line shall be granted to the Company at the rate of one square mile for every lineal mile of road and telegraph constructed on Crown lands between the line of demarcation above described and the frontier of British Columbia."

VIII. On the 13th April, the Company accepted the offer of Government in principle, but considered that the amount of the payments within fifty years out of the land and gold revenues should not be limited, or if limited, should be limited to £1,000,000 instead of £250,000. They asked in addition to be allowed—

- (1) To retain as private property their "Posts and Stations" (on which buildings had been erected) "outside the Red River Settlement, with an area of 6,000 acres round each such post."
- (2) To retain "all lots set out and occupied by them."
- (3) To receive for every 50,000 acres of land sold by the Crown, "a grant of 5,000 acres of wild land" of their own choice.

They also require exemption from exceptional taxation and relief from every expense of government.

As the basis of an arrangement for "through communication," they expressed their readiness to adopt Mr. Watkin's plan (modified, as it necessarily would be by the amalgamation of the Hudson's Bay Company, and the Transit and Telegraph Company), but they required five square miles of land *per* lineal mile of telegraph and road, instead of one square mile as offered by Government.

IX. On the 6th of June, Mr. Cardwell declined to accept these proposals without considerable modifications, but deferred any counter-proposal until after consultation with the Treasury and with the Canadian Government.

This was the position of the negotiation when the undersigned reached London, early in December, 1864, and when Mr. Cardwell placed in his hands the papers of which a summary has been given.

Mr. Cardwell, in explaining verbally the state of the negotiations, added, that in case the Hudson's Bay Company's offer of 13th April, 1864, was accepted by the Government of Canada, as containing in principle a basis on which negotiations might be continued with the hope of a satisfactory solution, he was of opinion that considerable modifications of the terms might be obtained.

That there might be no misunderstanding as to the offer of the Company, I requested that a map might be obtained from Sir Edmund Head, so coloured as to show clearly the territory now claimed by the Hudson's Bay Company as their property; and also a second map so coloured as to show what portion of the land claimed to be theirs, they now proposed to surrender to the Crown. Two maps, coloured in this manner, were accordingly obtained from the Company, and are appended to this report.

Accompanying these maps was a letter from Sir Edmund Head, dated 7th December, 1864, which, without abating his proposal of 13th April, offered as an alternative:—

1. That the Company be paid £1,000,000 sterling.
2. That the Government of British North America acknowledge the Company's right to trade, without exclusive privileges of any kind, within the territory.

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3. That the Company should hold in fee simple all their posts now occupied, with a reasonable area round each post. All previous sales and bargains made by them at Red River shall be confirmed.

4. That the Government of British North America shall impose no exceptional taxes on the Company, its property or its servants.

5. That the disputed matter of the Company's lands in Canada be settled by issuing grants on the footing formerly agreed upon between Mr. Vankoughnet and Mr. Hopkins.

6. That the Company shall be bound to hand over to the Government of British North America all the materials for the construction of the telegraph on the payment of the cost price and expenses already incurred.

10 In discussing with Mr. Cardwell these demands of the Hudson's Bay Company, I pointed out what appeared to me the utterly untenable character of their pretensions. I endeavoured to show that they were seeking to sell to Her Majesty's Government, for an enormous sum, territory to which they had no title under their charter; and I contended that if the solution of the question was to be sought in the purchase of a portion of the Company's territorial claims, the first step was clearly to ascertain what validity there was in those claims—what land the Company really had to sell.

I further stated, as my personal view of the matter, that no solution would be satisfactory to the people of Canada short of the entire extinction of the Hudson's Bay Company's territorial claims and exclusive rights of trade. I pointed out, that to recognize and maintain the exclusive pretensions of the Company over a large portion of the continent, and to give it thereby a monopoly of the lucrative 20 fur trade, would be simply erecting a barrier in the way of the rapid settlement of the country, and laying the foundation for serious difficulty when the country became settled, and for a further demand on the part of the Hudson's Bay Company, some years hence, for the final extinction of its claims.

I urged that in view of the present unsettled position of the American continent, it was of the highest importance to attract to British America as large a share as possible of the European emigration—that the opening up of the North-West Territories, with all their agricultural, mineral and fur-trading advantages, would conduce vastly to that end—and that a further delay of this step would (from the immigration of Americans now going on into the territory) render the establishment of British institutions in the settled portions of the country much more difficult than if action were taken now.

Denying the claims set up by the Hudson's Bay Company, I further contended that, even were all 30 their pretensions admitted for the sake of argument, the sum demanded by the Company—namely, one million sterling—was much more than they are entitled to receive for the entire extinction of their claims from the Atlantic to the Rocky Mountains, and from the American line to the extreme north. I pointed out, that it was only eighteen months since the rights of the Hudson's Bay Company had passed by purchase into the hands of the present proprietors; that they paid £1,500,000 for those rights, which was fifty *per cent.* above the then market value of the property; and I referred to the official prospectus on which the new company was formed in July, 1863, for proof that the demand now made on Her Majesty's Government by the Company was utterly unreasonable. I drew Mr. Cardwell's attention to the fact, that the prospectus declared that the assets of the new Hudson's Bay Company, exclusive of the landed territory, had been "recently valued by competent valuers at £1,023, 40 569 sterling," and that these assets were further explained to consist of "goods in the interior, on ship-board, and other stock-in-trade, including shipping, business premises, and other buildings necessary for carrying on the fur trade." I pointed out that in addition to this large amount of convertible property, "a cash balance" derived from the old Hudson's Bay Company was spoken of in the prospectus; and that other large landed possessions, besides those in the east of the Rocky Mountains and north of the American line, were thus set forth in the prospectus as being part of the property purchased by the new Company.

"In addition to its chartered territory, the Company possess the following valuable landed property:—Several plots of land in British Columbia, occupying most favourable sites at the mouths of rivers, the titles to which have been confirmed by Her Majesty's Government; farms; building sites in 50 Vancouver's Island, and in Canada, ten square miles at LaCloche, on Lake Huron, and tracts of land in fourteen other places."

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In addition to all this, I directed Mr. Cardwell's attention to the fact that the Hudson's Bay Company held a claim against the American Government, and which was at that moment under consideration by arbitrators, for the surrender of their rights on the Pacific, south of the boundary line established under the Oregon Treaty. I stated, on information that had reached me, but without personal knowledge of its correctness, that the American Government had expressed its willingness to pay \$1,000,000 for the extinction of that claim, but that the Company rejected it, and were in expectation of receiving a much larger sum.

In view of all these facts, I contended that it was utterly unreasonable on the part of the Company to claim any such sum as £1,000,000 sterling, even for the entire extinction of their territorial and trade claims east of the Rocky Mountains. But I admitted that it was for Her Majesty's Imperial Government to settle with the Hudson's Bay Company the consideration to be paid for the extinction of their claims, as it could not be expected that the people of Canada should bear the burden of extinguishing a monopoly that they did not create and have never recognized, and the advantages from the extinguishing of which they would only share in common with the rest of Her Majesty's subjects. I urged that the Imperial Government should, without delay, secure the extinction of the Company's claims; and that the Government of Canada would be prepared to assume the duty and cost of opening up communications into the country and establishing local government in the settled portions.

I had the honour of interviews with several of Her Majesty's Ministers, who were then in London, in which I was permitted to urge these views to a greater or less extent. But the Christmas holidays having intervened, and being compelled to leave England in time to be present at the opening of the 20 Canadian Parliament on the 19th January, I was unable to press the matter to a close. I therefore suggested to Mr. Cardwell that I would report to Your Excellency the point to which the discussion had been brought, and that when the proposed deputation of members of the Canadian Government visited England in spring, the negotiation might be resumed, and, if possible, brought to a satisfactory termination. Mr. Cardwell kindly consented to this arrangement.

I have the honour to be,

My Lord,

Your most obedient servant,

GEORGE BROWN.

REPORT OF A COMMITTEE OF COUNCIL (CANADA), APPROVED BY THE GOVERNOR-GENERAL ON
THE 24TH MARCH, 1865.* 30

The Committee respectfully recommend that four Members of Your Excellency's Council do proceed to England to confer with Her Majesty's Government:—

1st. Upon the proposed Confederation of the British North American Provinces, and the means whereby it can be most speedily effected.

2nd. Upon the arrangements necessary for the defence of Canada, in the event of war arising with the United States, and the extent to which the same should be shared between Great Britain and Canada.

3rd. Upon the steps to be taken with reference to the Reciprocity Treaty, and the rights conferred by it upon the United States. 40

4th. Upon the arrangements necessary for the settlement of the North-West Territory and Hudson's Bay Company's claims.

5th. And, generally, upon the existing critical state of affairs by which Canada is most seriously affected.

The Committee further recommend that the following members of Council be named to form the delegation, viz:—Messrs. Macdonald, Cartier, Brown and Galt.

Certified.

Wm. H. LEE, C.E.C.

*Order-in-
Council,
(Canada),
24th March,
1865.*

REPORT OF A COMMITTEE OF COUNCIL (CANADA), APPROVED BY THE GOVERNOR-GENERAL ON
THE 27TH MARCH, 1865.*

The Committee have under consideration the Report (hereunto appended) of the Honourable the President of the Executive Council, on the subject of his communications with the Right Honourable the Secretary of State for the Colonies, in London, in reference to the opening up to settlement the North-West Territories.

The Committee respectfully recommend that the negotiations be taken up, by the deputation of Members of Council now about to proceed to London, at the point to which they had been so ably brought by the President of the Council, and carried, if possible, to a successful termination.

Certified.

WM. H. LEE, C.E.C.

THE COLONIAL SECRETARY TO THE GOVERNOR-GENERAL †

DOWNING STREET,

17th June, 1865.

MY LORD,—I have the honour to inform your Lordship that several conferences have been held, between the four Canadian Ministers who were deputed, under the Minute of your Executive Council of March 24th, to proceed to England to confer with Her Majesty's Government on the part of Canada, and the Duke of Somerset, the Earl De Grey, Mr. Gladstone, and myself, on the part of Her Majesty's Government.

On the fourth point, the subject of the North-West Territory, the Canadian Ministers desired that that Territory should be made over to Canada, and undertook to negotiate with the Hudson's Bay Company for the termination of their rights, on condition that the indemnity, if any, should be paid by a loan to be raised by Canada under the Imperial guarantee. With the sanction of the Cabinet, we assented to this proposal, undertaking that if the negotiation should be successful, we, on the part of the Crown, being satisfied that the amount of the indemnity was reasonable, and the security sufficient, would apply to the Imperial Parliament to sanction the agreement and to guarantee the amount.

I have, etc.,

EDWARD CARDWELL.

Governor-General Viscount Monck,
etc., etc., etc.

REPORT OF THE CANADIAN DELEGATES TO ENGLAND. ‡

To His Excellency the Right Honourable Viscount Monck, Governor-General of British North America, etc., etc.

May it please Your Excellency,

The undersigned having, by Order in Council of 24th March, 1865, been appointed a Committee of the Executive Council of Canada to proceed to England and confer with Her Majesty's Government on certain subjects of importance to the Province, sailed for England in April last; and having discharged the duty entrusted to them and returned to Canada we now beg to submit, for Your Excellency's information, a statement of our proceedings while in London. §

The important question of opening up to settlement and cultivation the vast British Territories on the north-west borders of Canada next obtained the attention of the Conference. Your Excellency is aware that the desire of the Government of Canada for a satisfactory and final adjustment of this matter has been often formally expressed. In Your Excellency's despatch of the 19th February, 1864, to the Colonial Secretary, the anxious desire of the Canadian Government was communicated "for some speedy, inexpensive, and mutually satisfactory plan" for settling definitely "the North-western boundary of Canada," and the claim of Canada was asserted to "all that portion of Central British America which can be shown to have been in the possession of the French at the period of that cession in 1763."

* Journals, Legislative Assembly, Canada, 1865, Vol. 25, p. 54.

† *Ibid.*, p. 13.

‡ *Ibid.*, p. 9.

§ The omitted portions of this Report do not relate to the matters in issue.

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Canadian Documents, and Correspondence between the Colonial Secretary and the Hudson's Bay Company, prior to the surrender of the Company's claims.

Order in Council, 27th March, 1865.

Colonial Secretary to Governor-General, 17 June, 1865.

Report of the Canadian Delegates to England, 12 July, 1865.

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claims.

In reply to this despatch, Mr. Cardwell, on 1st July, 1864, requested to be informed whether the Government of Canada was prepared to assist in negotiations with the Hudson's Bay Company, with the view of accepting any portion of the territory now claimed by that Company, and providing the means of local administration therein; and he suggested that if so prepared it would be desirable that some person duly authorized to communicate the views of the Canadian Government should be sent to England for that purpose.

On the 11th November, 1864, a Minute of Council was approved by Your Excellency, in reply to Mr. Cardwell's despatch. It set forth that the Government of Canada was ready and anxious to co-operate with the Imperial Government in securing the early settlement of the North-West Territories, and the establishment of local government in its settled portions; but that in its opinion the first step 10 towards that end was the extinction of all claim by the Hudson's Bay Company to proprietary rights in the soil and exclusive rights of trade. It suggested that it was for the Imperial Government, and not for the Government of Canada, to assume the duty of bringing to an end a monopoly originating in an English charter, and exercised so long under Imperial sanction; but that when the negotiations were brought to a close, the Government of Canada would be ready to arrange with the Imperial Government for the annexation to Canada of such portions of the territory as might be available for settle- ment, as well as for the opening up of communications into the territory and providing means of local administration. Or should the Imperial Government prefer to erect the territory into a Crown colony, the Canadian Government would gladly co-operate in the opening up of communication into the territory, and the settlement of the country. The Minute finally suggested that the Honourable President 20 of the Council while in England would communicate more fully to Mr. Cardwell the views of the Canadian Government.

Report of the
Canadian
Delegates to
England 12th
July, 1865.

The negotiations that followed on this despatch satisfied us of the impossibility of enforcing the end sought by Canada without long-protracted, vexatious and costly litigation. The Hudson's Bay Company were in possession, and if time were their object, could protract the proceedings indefinitely; and Her Majesty's Government appeared unwilling to ignore pretensions that had frequently received *quasi* recognition from the Imperial authorities. Calling to mind, therefore the vital importance to Canada of having that great and fertile country opened up to Canadian enterprise, and the tide of immigration into it directed through Canadian channels—remembering also the danger of large grants of land passing into the hands of mere moneyed corporations and embarrassing the rapid settlement of 30 the country—and the risk that the recent discoveries of gold on the eastern slopes of the Rocky Mountains might throw into the country large masses of settlers unaccustomed to British institutions—we arrived at the conclusion that the quickest solution of the question would be the best for Canada. We accordingly proposed to the Imperial Ministers that the whole British territory, east of the Rocky Mountains and north of the American and Canadian lines, should be made over to Canada, subject to such rights as the Hudson's Bay Company might be able to establish; and that the compensation to that Company (if any were found to be due) should be met by a loan guaranteed by Great Britain. The Imperial Government consented to this, and a careful investigation of the case satisfies us that the compensation to the Hudson's Bay cannot, under any circumstances, be onerous. It is but two years since the present Hudson's Bay Company purchased the entire property of the old Company: they paid 40 £1,500,000 for the entire property and assets—in which were included a large sum of cash on hand, large landed properties in British Columbia and elsewhere not included in our arrangement, a very large claim against the United States Government under the Oregon Treaty; and ships, goods, pelts, and business premises in England and Canada valued at £1,023,569. The value of the territorial rights of the Company, therefore, in the estimation of the Company itself, will be easily arrived at.

The results of our communications with the Committee of Her Majesty's Government were placed, by Mr. Cardwell, in the form of a despatch to Your Excellency; that document bears date the 17th June, 1865, and has already reached Your Excellency's hands. It contains a correct statement of the result of the conference.

JOHN A. MACDONALD.
GEO. ET. CARTIER.
GEO. BROWN.
A. T. GALT.

50

QUEBEC, 12th July, 1865.

THE UNDER SECRETARY TO THE GOVERNOR OF THE HUDSON'S BAY COMPANY.*

DOWNING STREET,

20th February, 1866.

SIR,—I am directed by Mr. Secretary Cardwell to acknowledge the receipt of your letter of the 6th inst., enclosing a copy of one addressed to you by Mr. McEwen, enquiring if the Hudson's Bay Company are willing to dispose of such portion of their Territory as is capable of cultivation to a party of Anglo-American capitalists.

You also enclose a copy of the reply which the Company have returned to this enquiry.

Having regard to the reference you have made in your letter to the probable concurrence of Her Majesty's Government in the establishment of some new government, Mr. Cardwell is desirous of reminding you that at the conferences which took place during last summer, between the Canadian Ministers and certain members of Her Majesty's Government, the Provincial Ministers expressed their desire that the North-Western Territory should be made over to Canada, and they undertook to negotiate with the Hudson's Bay Company for the termination of their rights, on condition that the indemnity, if any, should be paid by a loan to be raised by Canada under the Imperial guarantee. To this proposal, Her Majesty's Ministers assented, engaging that if the negotiation should be successful, they, on the part of the Crown, being satisfied that the amount of the indemnity was reasonable, and the security sufficient, would apply to the Imperial Parliament to sanction the arrangement and guarantee the amount.

Until this engagement shall have been disposed of, it will be necessary for Her Majesty's Government to keep it in view in any steps which they may be called upon to take in the matter.

I am, etc.,

E. E. FORSTER.

Rt Honourable Sir E. Head, Bart., etc., etc.

REPORT OF A COMMITTEE OF COUNCIL, (CANADA,) APPROVED BY THE GOVERNOR-GENERAL ON THE 22ND DAY OF JUNE, 1866.*

The Committee of the Executive Council have given their careful consideration to the despatches of the Secretary of State for the Colonies, bearing date the 24th February and 3rd March last, relative to a proposal made to the Hudson's Bay Company by a party of Anglo-American capitalists, for the purchase "of such portion of the territory claimed by the Company as may be capable of cultivation;" and they have the honour to submit to Your Excellency the following remarks on the subject:—

In the first place, the Committee do not admit that the Company have a legal title to that portion of the North-Western Territory which is fit for cultivation and settlement.

This fertile tract is a belt of land stretching along the northern frontier of the United States to the base of the Rocky Mountains, and Canada has always disputed the title of the Company to it.

Even if it be admitted that the Charter of 1670, recognized as it has been by several Imperial Statutes, gives to the Company a freehold right in the soil in Rupert's Land, Canada contends that the cultivable tract in question forms no part of that land.

It is not now necessary to repeat the grounds on which this opinion is founded, as they have been already more than once submitted to Her Majesty's Government, and it is only alluded to lest silence on the subject might be assumed as an acquiescence on the part of Canada in the right of the Company to sell. Assuming, however, that such right exists, the Committee see grave objections to the proposition of Mr. McEwen being entertained. Canadian experience has shown that sales of large tracts of land to individuals, or commercial corporations, have operated prejudicially to the best interests of the Pro-

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Canadian Documents, and Correspondence between the Colonial Secretary and the Hudson's Bay Company, prior to the surrender of the Company's claims.

Under-Secretary to Hudson's Bay Company, 20th February, 1866.

Order-in-Council, Canada, 22nd June, 1866.

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vince, and retarded rather than promoted its settlement and progress. Companies or individuals purchasing for the purpose of speculation, are governed solely by the one view of obtaining a profitable return of the money invested in the purchase. All other considerations are set aside. No general or comprehensive system of settlement is or can be established. The best tracts are withheld from settlement in order that their value may be increased by the improvement of the surrounding country, and by the labour of the settlers, and the price paid to the Company for the lands, instead of being expended in the opening up of roads and in developing the resources of the country, is divided among a number of non-resident shareholders having no interest in the prosperity of the country further than as such prosperity contributes to the value of their shares.

In the correspondence which took place in 1863 and 1864 between the Hudson's Bay Company and the Colonial Office, with reference to the introduction of the direct authority of Her Majesty's Government in Rupert's Land, it appears that the Company proposed, as a condition of their assenting to the erection of a Crown colony, that they should retain the ownership in fee simple of one-half of the lands of the colony. This proposition was rejected by the Duke of Newcastle, in language which appears to the Committee to be conclusive:

Order-in-
Council,
Canada,
22nd June,
1866.

"In an unsettled colony there is no effectual mode of taxation for purposes of government and improvement, and the whole progress of the colony depends on the liberal and prudent disposal of its land. These considerations afford decisive reasons against leaving that land in the possession of a corporation. And I am to observe that these objections, conclusive in any case, are greatly enhanced in the case of the Hudson's Bay Company, as I learn from your letter that it has been 'the unvarying opinion' of the Committee on whose behalf you speak that the Company would 'lose fully as much as they would gain, by the increase of settlement in the chartered Territory.' It is, therefore, to say the least, a question whether the Company would not be under a direct inducement to use their proprietary rights to thwart the colonizing efforts of the Government. . . . The conclusive objection to the scheme is that it would reproduce in a gigantic shape the inconveniences which, on a far smaller scale, were found intolerable in Canada. It is evident as a matter of reasoning, and notorious as a matter of fact, that the interposition of large blocks of property between tracts or districts of Crown land must obstruct the opening up of those districts, unless it fortunately happens that the private proprietor is ready to expend money *pari passu* with the Government in the construction of roads and other improvements, and to conform his land policy to that of the authorities. It is also clear that colonists of the Anglo-Saxon race look upon the land revenue as legitimately belonging to the community, and that the diversion of half or more than half of that revenue to the purpose of increasing the dividends of a private corporation would cause a continual and growing discontent, which could not be allayed by any abstract argument of right, and the full force of which the Government would be expected by the Company to sustain. His Grace cannot consent to make himself responsible for these consequences and he is therefore obliged to treat as inadmissible any proposal for the proprietary partition of those territories which may be placed under the government of the Crown." *

If such objections exist to the tenure of large tracts of land by so ancient and responsible a corporation as the Hudson's Bay Company, with large powers of government, and a political as well as a commercial status, with how much greater pressure must they weigh against the transfer of such tracts to a private association of speculators.

The Committee are further of opinion that before any steps are taken to introduce a large body of settlers into that country, provision should be made for the efficient administration of the government there.

So long as the Great North-West is only occupied by the Hudson's Bay Company's servants, and by the few scattered settlers at Fort Garry, the system of government now obtaining there may work sufficiently well; but whenever a large population shall settle in the country, it is to be feared that the Company's power will be altogether insufficient to preserve order and good government, and that its authority will be set at naught.

*From letter of Mr. Fortescue, Under-Secretary of State for the Colonies, of 11th March, 1864, quoted in Report of Hon. George Brown, *ante*.

It is evident that the old policy of exclusion of strangers from the Territory must shortly be at an end.

The neighbouring territories belonging to the United States are fast being settled up to the boundary line, and if the statements as to the existence of gold in the Valley of the Saskatchewan be at all verified, there will, ere long, be an influx of population which no power that can be exerted by the Hudson's Bay Company can either resist or control. This population will mainly come from the United States, and although there may be a good many of Her Majesty's subjects among them, by far the greater portion will be aliens, ignorant and regardless of the laws of England, and perhaps hostile to the British Government. They will utterly disregard the authority of the Company, will endeavour to establish a government and tribunals of their own, and, as similar bodies have done elsewhere on this continent, assert their political independence.

Such a community would sever the British North American possessions in twain and be the means of retarding, if not altogether preventing, the formation of a railway connection between the Atlantic and Pacific Oceans.

The future interests of Canada and all British North American possessions are, therefore, vitally concerned in the immediate establishment of a strong Government there, and in its settlement as a part of the British colonial system.

Impressed with this conviction, Canada would ere this have opened negotiations with the Hudson's Bay Company for the extinction of their claims, had it not been for the prospect of her speedy absorption in the proposed Union of the British North American Colonies. It would obviously have been improper for the Canadian Government to commence negotiations which they could not hope to complete, or to enter into engagements, the fulfilment of which must fall on the whole Confederated Provinces. At the same time, the Committee beg leave to observe that if the Company had thought proper to submit for consideration formal proposals for the transfer of their claims, the final settlement of the question would have been greatly advanced.

Recent events serve to shew that in a few months that union will be effected, and the Committee have no doubt that the Confederate Government and Legislature will feel it to be one of their first duties to open negotiations with the Hudson's Bay Company, for the transfer of their claims to the territory. Meanwhile Canada invites the aid of Her Majesty's Government in discountenancing and preventing any such sales of any portion of the territory as is now applied for.

W. H. LEE, C.E.C.

THE GOVERNOR-GENERAL TO THE COLONIAL SECRETARY.*

GOVERNMENT HOUSE,

OTTAWA, 23rd June, 1866.

SIR,—Referring to your despatches (Nos. 18 and 20) of February 24th and March 3rd, I have the honour to transmit, for your information and consideration, an approved Minute of the Executive Council of this Province, on the subject of the Hudson's Bay Territory.

I have, etc.,

MONCK.

The Right Honourable
Edward Cardwell, M.P., etc., etc.,
Secretary of State.

THE GOVERNOR OF THE HUDSON'S BAY COMPANY TO THE UNDER SECRETARY.*

HUDSON'S BAY HOUSE,

LONDON, 17th July, 1866.

SIR,—I have the honour to enclose, for the information of the Right Honourable the Secretary of State, a copy of a pamphlet which I received on the 12th instant.

* *Sess. Papers, Canada, 1867-8, Vol. 1, No. 19.*

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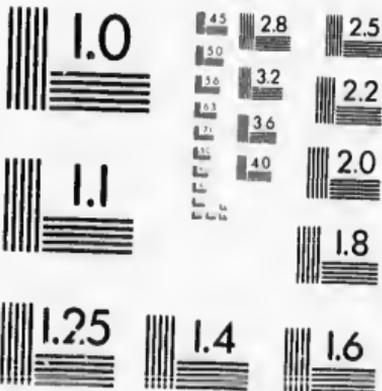
Governor-
General to
Colonial
Secretary,
23 June,
1866.

Hudson's Bay
Company to
Under-Secre-
tary, 17 July,
1866.



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Hudson's Bay
Company to
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17th July,
1866.

This pamphlet purports to be a report addressed to the Secretary of the Treasury of the United States, and it contains certain statements to which the Committee of the Hudson's Bay Company desire to call the special attention of the Earl of Carnarvon.

At page 26 the following passage occurs:—

"Twenty years later, in 1865, the American territory of Montana adjoins the region which excited the enthusiasm of DeSmet. Its population of 25,000, to be increased during 1866 to 50,000, have been drawn to the sources of the Missouri by discoveries of gold and silver mines close to the international border, and rumours of gulches and ledges in the Saskatchewan District, yielding even greater prizes to the prospector, are already rife, and will soon precipitate a strong, active and enterprising people into the spacious void. What is called the 'Americanization' of the Red River Settlements has been slow, although sure, since the era of steam navigation; but the Americanization of the Saskatchewan will rush suddenly and soon from the camps of treasure-seekers in Montana."

You, Sir, are aware of the correspondence which during the last three years has passed between myself as Governor of this Company and the Colonial Office, on the subject of establishing in the Hudson's Bay Territory some government administered in the name of Her Majesty. You know also that Mr. Cardwell decided to offer to Canada an option of acquiring the rights of this Company, and that so far back as the 1st of March last I ventured respectfully to ask the question (which has not yet been answered) how long this option was to remain open.

In a letter addressed to me by Mr. Forster, and dated the 20th of February last, we were told:—
"Having regard to the reference you have made in your letter, to the probable concurrence of Her Majesty's Government in the establishment of some new government, Mr. Cardwell is desirous of reminding you, that at the conferences which took place during last summer between the Canadian Ministers and certain Members of Her Majesty's Government, the Provincial Ministers expressed their desire that the North-Western Territory should be made over to Canada, and they undertook to negotiate with the Hudson's Bay Company for the termination of their rights, on condition that the indemnity, if any, should be paid by a loan to be raised by Canada, under the Imperial guarantee. To this proposal Her Majesty's Ministers assented, engaging that if the negotiation should be successful, they, on the part of the Crown, being satisfied that the amount of the indemnity was reasonable and the security sufficient, would apply to the Imperial Parliament to sanction the arrangement and guarantee the amount."

"Until this arrangement shall have been disposed of, it will be necessary for Her Majesty's Government to keep it in view in any steps which they may be called upon to take in the matter."

Under these circumstances, it is clear that the Company thus cautioned can take no steps of themselves to meet any inroad or immigration within their territory, if it be on their territory that it will first take place—a point to which I shall afterwards revert.

Indeed, the powers of the Charter were probably not given to be used for any such purpose; but if they were sufficient for such an emergency, our hands are at the present moment tied by Mr. Forster's letter.

We think, therefore, that we are the more bound most respectfully to suggest whether, if it is intended to retain the territory north of the 49th parallel as British soil, some steps ought not to be taken for asserting its British character, and maintaining law and order within it.

This may, no doubt, either be effected by the direct action of the English Government, or be attempted by the agency of Canada; but as we understand the latter course to have been deliberately selected, the Committee (provided this Company are fairly dealt with in the matter of compensation) can have no right to offer any remarks on the subject.

In the face, however, of the confident predictions and statements contained in this report to the Secretary of the United States Treasury, we should not be justified if we failed to point out the necessity of speedy action of some kind.

With regard to the particular strip of country where the first overflow of settlers or miners may be expected from the United States Territory of Montana, I think it probable that the Hudson's Bay Company have no immediate interest or responsibility connected with it. So far as I can judge from

the imperfect maps accessible to us, I believe that on the north of Montana there is a narrow belt running along the 49th parallel, watered by streams, which fall not into Hudson's Bay but into Milk River, a tributary of the Upper Missouri. If this be so, this strip of land, though British ground, as being north of the 49th parallel, is not included in the grant made by the charter of Charles II. to the Hudson's Bay Company.

I have, etc.,

EDMUND HEAD,
Governor.

Sir Frederic Rogers, Baronet,
etc., etc., etc.

10

THE COLONIAL SECRETARY TO THE GOVERNOR-GENERAL.*

DOWNING STREET, 1st August, 1866.

MY LORD,—I have the honour to transmit to you, to be laid before your responsible advisers, the accompanying copy of a letter from the Governor of the Hudson's Bay Company, enclosing, in the form of a pamphlet, a letter from the Secretary of the United States Treasury, in answer to a resolution from the House of Representatives, calling for information in regard to commercial relations with British America.

I have, etc.,

CARNARVON.

Governor the Right Honourable Viscount Monck,
etc., etc., etc.

20

THE GOVERNOR-GENERAL TO THE COLONIAL SECRETARY.*

GOVERNMENT HOUSE,

OTTAWA, 18th August, 1866.

MY LORD,—I have the honour to acknowledge the receipt of your despatch (No. 15) of the 1st instant, transmitting copy of a letter from the Governor of the Hudson's Bay Company, respecting the proposed purchase by the Canadian Government of the territorial rights of that Company.

I shall not fail to bring before my advisers your Lordship's despatch and enclosure; but I wish to remark, for your information, that this is one of the subjects upon which it is considered undesirable to decide, pending the discussion of the Union of the Provinces of B.N.A.

As the completion of that Union may now be looked for at an early day, I trust the solution of the difficulties which surround the position of the Hudson's Bay Company may also soon be attempted.

I desire to make this statement in order to explain to your Lordship, by anticipation, any delay which may occur in answering your despatch.

I have, etc.,

MONCK.

The Right Hon. the Earl of Carnarvon,
etc., etc., etc.

MEMORANDUM OF THE COMMISSIONER OF CROWN LANDS OF CANADA, 14TH JUNE, 1867.†

Approved by Order in Council (Canada) of 18th June, 1867.

The Commissioner of Crown Lands has the honour to submit to Your Excellency in Council, that in the year 1859, the section of country between Lake Superior and Dog Lake was thoroughly explored by Provincial Land Surveyors Lindsay Russell and J. F. Gaudet, under the command of Mr. Simon Dawson, Civil Engineer, and a fair line of road marked out (shewn on the accompanying tracing), from Thunder Bay to Dog Lake, a distance of twenty-five miles.

2. It is reported to the Commissioner of Crown Lands that this line was well marked out, and

* Sess. Papers, Canada, 1867-8, Vol. 1, No. 19.

† Sess. Papers, Canada, 1867-8, Vol. 1, No. 19. This was before Confederation.

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Canadian Documents, and Correspondence between the Colonial Secretary and the Hudson's Bay Company, prior to the surrender of the Company's claims.

Colonial Secretary to Governor-General, 1st August, 1866.

Governor-General to Colonial Secretary, 18 August, 1866.

Memorandum of Commissioner of Crown Lands, Canada, 14 June, 1867.

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Canadian Documents, and Correspondence between the Colonial Secretary and the Hudson's Bay Company, prior to the surrender of the Company's claims.

having been for some time used as a mail route will not be difficult to trace, the bridging will be inconsiderable, and a good waggon road may be constructed for about fourteen hundred dollars a mile.

3. The outlet of Dog Lake presents facilities for raising the waters thereof from seventeen to twenty feet, by means of dams across the two channels into which the outlet is divided—which increased elevation the banks of the lake will, it is reported to the Commissioner, admit of. It is estimated that the necessary dams could be constructed for \$6,000. The effect of the work would be to render Dog River navigable for craft drawing six feet of water as far as Jourdain's Rapid, about thirty-seven miles by the windings of the river, or twenty in a direct line from Dog Lake.

4. From Jourdain's Rapid, on Dog River, to the depôt, on Savanne River, is in a direct line eight miles and three-quarters, and forms the height of land dividing the waters which run to Lake Superior from those flowing to Lake Winnipeg. A good waggon road could be constructed for \$900 a mile; but as it would have to pass about two miles beyond the depôt, the distance must be reckoned at eleven miles.

5. The drift flood-wood in the Savanne River would require to be cleared out, at a probable cost of \$1,000.

6. The total cost to reach the waters of the Savanne River would be, therefore, as follows:

Thunder Bay to Dog Lake, twenty-five miles, at \$1,400 a mile.....	\$35,000 00	
Dams at the outlet of Dog Lake.....	6,000 00	
Jourdain's Rapid to depôt on Savanne River, eleven miles of road, at \$900 a mile..	9,900 00	20
Savanne River, clearing out flood-wood in.....	1,000 00	
	<hr/>	
	\$51,900 00	
Superintendence and contingencies	4,000 00	
	<hr/>	
	\$55,900 00	

Memorandum of Commissioner of Crown Lands, Canada, 14th June, 1867.

7. The above is the approximate estimate of Mr. Simon Dawson, C.E., who was in command of the Red River Exploring Expedition in 1858-9, and who now reports to the Commissioner of Crown Lands that he believes the necessary works, of suitable character and strength, can be constructed for the sums named; and that the materials, as well stone as wood, required therefor, can be readily procured in the neighbourhood of the works, with hardy any transportation that cannot be done in scows constructed on the spot.

8. The result of the improvements above estimated for, would be that 120 miles of the route from Lake Superior to Red River would be thrown open, giving easy access to Lac des Mille Lacs, the western extremity of which is within 70 miles of Rainy Lake, from whence the navigation is uninterrupted (save by a short portage at Fort Francis) to the north-west angle of the Lake of the Woods, a point distant about 90 miles from Fort Garry.

9. The Colonization Road Fund of Upper Canada has a sum at its credit, from Parliamentary votes, sufficient to meet the expenditure contemplated by this Memorandum, in case your Excellency in Council should deem it expedient, for the present, to devote it to this object, on the assumption that the amount now expended will form a claim upon the new Dominion of Canada, and that proper accounting shall be had between the present Provinces of Upper and Lower Canada, as to the sum now taken from the Colonization Funds of Upper Canada for general purposes, the equivalent votes for Lower Canada having been heretofore therein expended.

10. The Commissioner of Crown Lands humbly recommends to your Excellency that the course above suggested be adopted, and that the improvements described be immediately undertaken, and carried out during the present season.

Crown Lands Department,
14th June, 1867.

A. CAMPBELL, C. C. L.

REPORT OF A COMMITTEE OF COUNCIL (CANADA), APPROVED BY HIS EXCELLENCY THE ADMINISTRATOR
OF THE GOVERNMENT, ON THE 18TH JUNE, 1867.*

The Committee have had under consideration the annexed Memorandum of the Honourable the Commissioner of Crown Lands [being that of 14th June, 1867], on the subject of constructing a line of road from Thunder Bay to Dog Lake, and thence to Savanne River, for which an approximate estimate has been submitted by Mr. Simon Dawson, C. E., who had charge of the Exploring party despatched to Red River in 1858-9; and they respectfully report their concurrence in the recommendation made by the Commissioner in his said annexed Memorandum, and submit the same for Your Excellency's approval.

Certified,

W. H. LEE, C.E.C.

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Canadian Documents,
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REPORT OF THE SUPERINTENDENT OF COLONIZATION ROADS (ONTARIO) TO THE ONTARIO COMMISSIONER
OF CROWN LANDS.*

DEPARTMENT OF CROWN LANDS,

PROVINCE OF ONTARIO,

TORONTO, 4th October, 1867.

To the Hon. S. Richards, Commissioner of Crown Lands.

SIR,—I have the honour to report to you my return from Thunder Bay, on Lake Superior, whither I had been directed to proceed by the former Commissioner of Crown Lands, the Hon. Alexander Campbell.

My instructions from the above named Minister directed me to organize and supply a party of labourers, with overseers and assistants, for the purpose of commencing and forwarding a scheme of works, intended to open a regular transit line of communication between Thunder Bay, on Lake Superior, and Fort Garry, on the Red River, estimates and appropriations having been made for the above work, as far as the Savanne River, amounting to \$55,900.

My instructions further directed me to operate in concert with Mr. S. J. Dawson, who was charged specially with the construction of the dams necessary to raise the waters of Dog Lake and River, in order to complete the first navigable reach upon the said waters.

[Here follow details of the work, and information respecting the soil, etc.]

All of which is respectfully submitted by

Your obedient servant,

JAS. W. BRIDGLAND,

Supt. of Col. Roads.

RESOLUTIONS, NUMBERED 1 TO 8, OF THE PARLIAMENT OF CANADA, DECEMBER, 1867.†

[The first seven resolutions correspond exactly with the seven paragraphs of the address which was founded upon them, being the next following document.]

8. Resolved, That in case any negotiation between the Canadian Government and the Hudson's Bay Company for the termination of the rights of the latter, entered into in accordance with the despatch of the 17th June, 1865, from the then Secretary of State for the Colonies to His Excellency the Governor-General, should result in an agreement between them, it is hereby declared that such agreement must be submitted to, and sanctioned by the Parliament of Canada before the same shall have any force or effect whatever.

Address of the
Canadian
Parliament
to Her
Majesty,
17-18 Dec-
ember, 1867.

* Sess. Paper, Canada, 1867-8, Vol. 1, No. 19.

† Journals, House of Commons, Canada, 1867-8, pp. 66, 67; Prefix to Dom. Stats., 1872.

JOINT ADDRESS TO HER MAJESTY FROM THE SENATE AND HOUSE OF COMMONS OF CANADA, DECEMBER 1867.*

To the Queen's most Excellent Majesty.

Most Gracious Sovereign,—

We, Your Majesty's most dutiful and loyal subjects, the Senate and Commons of the Dominion of Canada, in Parliament assembled, humbly approach Your Majesty for the purpose of representing:

That it would promote the prosperity of the Canadian people, and conduce to the advantage of the whole Empire, if the Dominion of Canada, constituted under the provisions of the British North America Act of 1867, were extended westward to the shores of the Pacific Ocean.

That the colonization of the fertile lands of the Saskatchewan, the Assiniboine, and the Red River Districts,—the development of the mineral wealth which abounds in the regions of the North-West,—and the extension of commercial intercourse, through the British possessions in America, from the Atlantic to the Pacific,—are alike dependent upon the establishment of a stable government, for the maintenance of law and order in the North-Western Territories.

That the welfare of a sparse and widely-scattered population of British subjects, of European origin, already inhabiting these remote and unorganized territories, would be materially enhanced by the formation therein of political institutions bearing analogy, as far as circumstances will admit, to those which exist in the several Provinces of this Dominion.

That the 146th section of the British North America Act of 1867 provides for the admission of Rupert's Land and the North-Western Territory, or either of them, into Union with Canada, upon terms and conditions to be expressed on Address from the Houses of Parliament of this Dominion to Your Majesty, and which shall be approved of by Your Majesty in Council.

That we do therefore most humbly pray that Your Majesty will be most graciously pleased by and with the advice of Your Most Honourable Privy Council, to unite Rupert's Land and the North-Western Territory with this Dominion, and to grant to the Parliament of Canada authority to legislate for their future welfare and good government; and we most humbly beg to express to Your Majesty that we are willing to assume the duties and obligations of government and legislation as regards these territories.

That in the event of Your Majesty's Government agreeing to transfer to Canada the jurisdiction and control over the said region, the Government and Parliament of Canada will be ready to provide that the legal rights of any corporation, company, or individual within the same, shall be respected and placed under the protection of Courts of competent jurisdiction.

And furthermore, that upon the transference of the territories in question to the Canadian Government, the claims of the Indian Tribes to compensation for lands required for purposes of settlement, will be considered and settled in conformity with the equitable principles which have uniformly governed the British Crown in its dealings with the aborigines.

All which we humbly pray Your Majesty to take into Your Majesty's most gracious and favourable consideration.

The Senate, Tuesday, December 17th, 1867.

House of Commons, Monday, December 16th, 1867.

JOSEPH CAUCHON, *Speaker.* 40

JAMES COCKBURN, *Speaker.*

THE GOVERNOR-GENERAL TO THE COLONIAL SECRETARY.†
GOVERNMENT HOUSE,

OTTAWA, 21st Dec., 1867.

MY LORD DUKE,—I have the honour to transmit a joint Address to Her Majesty the Queen, from the Senate and House of Commons of the Dominion of Canada, praying that Her Majesty will be

* Journals, House of Commons, Canada, 1867-8, pp. 56, 67; Prefix to Dom. Stats., 1872.

† Sess. Papers, Canada, 1867-8, Vol. 1, No. 59.

graciously pleased to direct that an Order in Council may be passed in conformity with the provision of the 146th Section of the British North America Act, 1867, for annexing to the Dominion of Canada the territory of Prince Rupert's Land and the Red River Settlement.

I have the honour to request that your Grace will lay this Address at the foot of the Throne.

I have, etc.,
MONCK.

His Grace the Duke of Buckingham and Chandos,
etc., etc., etc.

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Order-in-Council, Canada, 28th December, 1867.

10 REPORT OF A COMMITTEE OF THE PRIVY COUNCIL (CANADA), APPROVED BY THE GOVERNOR-GENERAL ON THE 28TH DECEMBER, 1867.*

The Committee have had under consideration the annexed Memorandum from the Honourable the Minister of Public Works, submitting, for the approval of Your Excellency in Council, certain recommendations on the subject of the negotiation with the Imperial Government for the transfer of Rupert's Land and the North-West Territory to Canada, and they respectfully advise that a copy of the same, when approved by Your Excellency, be forwarded to his Grace the Secretary of State for the Colonies, as embodying the views of the Canadian Government on that important question.

Certified.

W. H. LEE,

Clerk, P. C.

20 REPORT OF THE DOMINION MINISTER OF PUBLIC WORKS, 28TH DECEMBER, 1867.*

The undersigned has the honour to submit, for the consideration of Your Excellency in Council, the following recommendations on the subject of the negotiation with the Imperial Government for the transfer of Rupert's Land and the North-West Territory to Canada.

Report
Dominion
Minister of
Public
Works,
28th Decem-
ber, 1867.

I. That in addition to the joint Address of both Houses on the subject, Your Excellency will be pleased to transmit to the Secretary of State for the Colonies, the resolutions as they were finally adopted by the House of Commons and the Senate, with the votes and proceedings of both Houses thereon.

II. That the attention of his Grace the Duke of Buckingham be specially called to the Eighth Resolution, which was not embodied in the Address, and was not intended by the Canadian Parliament to express a term or condition of the Order in Council, authorized by the 146th Section of the British North America Act.

III. That Your Excellency will be pleased to express to his Grace, as the opinion of the Canadian Government, that it is highly expedient that the transfer, which the Imperial Parliament has authorized and the Canadian Parliament approved, should not be delayed by negotiations or correspondence with private or third parties, whose position, opinions and claims have heretofore embarrassed both Governments in dealing with this question.

IV. That in the opinion of the Canadian Government, the terms of the Address cannot be materially altered or extended without causing injurious delay, and greatly embarrassing the people and Government of Canada in their efforts to open communications with the Territory, to encourage emigration and settlement, to establish law and order, and to provide for the speedy organization of Municipal and Local Governments therein.

V. That recent proposals of the Congress of the United States in reference to British America, the rapid advance of mining and agricultural settlements westward, and the avowed policy of the Washington Government to acquire territory from other powers by purchase or otherwise, admonish us that not a day is to be lost in determining and publishing to the world our policy in regard to these Territories.

VI. That Your Excellency will be pleased to request his Grace to inform Your Excellency by Atlantic Cable (if the information can be so communicated), whether the Imperial Cabinet will at once

* Sess. Papers, Canada, 1867-8, Vol. 1, No. 19.

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advise Her Majesty to approve of the transfer on the terms of the Address, in order that the Canadian Government may be prepared to submit appropriate measures on the subject on the re-assembling of Parliament in March next.

Respectfully submitted,

WM. MCDUGALL.

December, 28th, 1867.

THE GOVERNOR OF THE HUDSON'S BAY COMPANY TO THE COLONIAL SECRETARY.*

HUDSON'S BAY HOUSE, LONDON,
15th January, 1868.

MY LORD DUKE,—In addressing this letter to your Grace on behalf of the Committee of the Hudson's Bay Company, I think that some apology is necessary for anticipating the official communica- 10
from the Colonial Office, of the Resolutions passed in the Parliament of Canada, as well as the Address to be founded upon them; but as from the tone of the debate in the Canadian Parliament, and from the terms of the Resolutions passed there, it is manifestly the object of that Parliament to have the power to establish in the Dominion of Canada, including the territory of Rupert's Land, Courts which shall have jurisdiction in all matters arising in any part of British North America, and thus to give power to the tribunals so constituted to determine upon the rights claimed by this Company under their Charter a course of proceeding which this Committee consider to be so injurious to the interests of the Hudson's Bay Company, they are desirous to bring the matter before your Grace, and to submit their views upon the subject to Her Majesty's Government, before any assent is given or determination come to in reference to Her Majesty's approval of the proposed admission of Rupert's Land into the Union 20
of British North America.

I beg to remind your Grace that the rights of this Company, under their Charter, have at various times been brought under the consideration of the Government, and that the result of those discussions has been a clear and distinct recognition on the part of the Crown that the general validity of the Charter cannot now be called in question, and, in particular, that the territorial ownership of the lands granted by the Charter and the *rights* necessarily incidental thereto, must now be considered as valid.

It is true that questions have from time to time been raised in Canada as to the extent of the territory claimed by this Company under their Charter, and in some respects as to other rights which the Charter confers; but while Her Majesty's Government have at all times declined to be any party, to proceedings on the subject, the opportunity has always been afforded to the authorities of Canada to 30
bring any questions for adjudication before Her Majesty in Council—a course to which this Company have always been prepared to accede, and which appears to be the only legitimate mode of deciding their rights, if they are to be called in question.

The Canadians have altogether abstained from availing themselves of the opportunity thus afforded them; but it is now obviously the object of the Canadian Legislature to secure to tribunals of their own nomination the decision of those rights.

I may here state that, so far as the mere political powers granted by the Charter are concerned, such as the rights of government, taxation, and exclusive administration of justice, the Company have long since expressed their willingness that these powers should be vested in officers deriving their authority directly from the Crown; but before any such powers can with justice be transferred to the 40
Colonial Government, I submit that the extent of the territorial rights of the Company should either be fully recognized, or that if the Canadian Government are desirous of procuring those rights for the benefit of Canada in general, they should in the first instance arrange with the Hudson's Bay Company the terms upon which they should be so acquired.

But should the Canadian Legislature still desire that any judicial investigation into the territorial rights of the Company should take place, such inquiry should be referred to the Judicial Committee of the Privy Council, in accordance with the opinion of the Law Officers of the Crown, given so long ago as July, 1837, as the only tribunal to which ought to be delegated the construction of a Charter emanating from the Sovereign of Great Britain. This opinion your Grace will find at page 404 of the

* Journals, Coms., Canada, 1867-8, p. 368.

Report from the Select Committee on the Hudson's Bay Company, ordered by the House of Commons to be printed, the 31st July and 11th August, 1857.

I have, etc.,

EDMUND HEAD,
Governor.

His Grace the Duke of Buckingham and Chandos,
etc., etc., etc.

THE GOVERNOR OF THE HUDSON'S BAY COMPANY TO THE COLONIAL SECRETARY.*
HUDSON'S BAY HOUSE, LONDON,

25th January, 1868.

MY LORD DUKE,—I have the honour to acknowledge Mr. Elliot's letter, of the 18th instant, enclosing a copy of Address to the Queen, forwarded by the Governor-General of Canada, and to thank your Grace for communicating these papers to the Hudson's Bay Company.

On this Address I beg to request your Grace's attention to the following observations on behalf of myself as Governor, and the Committee of the Company:—

1. It seems necessary in the first place to distinguish the two classes of rights conferred on the Company by the Charter. Some of these are, no doubt, of a public or political character, such as belong to a proprietary government; but others are practically of a private nature, such as might have been vested in any individual subject, or any private corporation clothed with no public functions of any kind. Of these latter, it is only necessary at present to refer to the right of private property in the soil and in the mines and minerals.

2. It may be that the public or political rights of the Company, are in the Charter ill-defined and of doubtful expediency at any time. It may be, too, as the Law Officers in their letter of 1857 appear to hint, that for any effectual exercise they require the aid of the right of private property, as vested in the Company by the same instrument.

3. The Committee need scarcely remind your Grace that, so far from opposing a resumption by the Crown of the political powers of the Company, almost the first important step taken by them in 1863 Sir E. Head to Sir F. Rogers, 28th August, 1863, was the adoption of the following resolution:—"Resolved that the time has come when, in the opinion of this Committee, it is expedient that the authority, executive and judicial, over the Red River Settlement and the south-western portion of Rupert's Land, should be vested in officers deriving such authority directly from the Crown, and exercising it in the name of Her Majesty.

"That the Governor be empowered to communicate this resolution to his Grace the Duke of Newcastle, and to discuss the subject with him, or with the Under Secretary of State for the Colonies, reporting from time to time to this Committee thereon."

4. In the correspondence which ensued with the Colonial Office, it appears to be implied on the part of his Grace the Duke of Newcastle, that the fact of the right of private property in the soil being no longer possessed by the Crown, was one of the chief obstacles to a compliance with the suggestion made in the above resolution. If this be so, the very fact of making this objection involves an admission in favour of the Company. Most assuredly if the Crown had alienated its right of property in the soil and minerals of the Hudson's Bay Territory, it had granted it to no other party than the Hudson's Bay Company, and by no instrument other than the Charter of Charles II.

5. On Mr. Fortescue's letter of March 11, 1864, an offer of a contingent money payment, as the consideration for the cession of the territorial rights of the Company, was distinctly made by the Secretary of State. The proviso inserted in the postscript to that letter will be adverted to afterwards, and had reference only to the supposed rights of Canada.

* Journals, Cons., Canada, 1867-8, Vol. 1, p. 570.

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6. It is unnecessary for the Committee to refer to the undisputed enjoyment of these rights, at any rate since the time of the Treaty of Utrecht.

Letter of the Law Officers to Mr. Merivale, Appendix to Report, 1857, page 404, last paragraph.

7. In addition to all this, it remains, to quote the express words of the Law Officers in their letter of 1857, already referred to. They say, "In our opinion the Crown could not now, with justice, raise the question of the general validity of the Charter; but that on every legal principle the Company's territorial ownership of the lands granted, and the rights necessarily incidental thereto, ought to be deemed to be valid."

Moreover, in a passage alluded to above, the Law Officers imply indirectly their belief in the validity of this right of private property, when they say that "rights of government, taxation, exclusive administration of justice, or exclusive trade, otherwise than as a consequence of the right of ownership of the land, could not legally be insisted on by the Company." What other opinions of the Law Officers of the Crown may be found in the records of the Colonial Office it is not for us to

Answers to questions 5, 8, 2, 3.

say, but the evidence given by the Right Honourable Edward Ellice before the Committee of 1857, as to the opinions taken by him both for and against the Company, is well worth referring to.

8. One other point is a mere technicality no doubt, but it may be worth observing that the title of the Company to their land is an English title, since it is granted "to be holden as of the Manor of East Greenwich, in our County of Kent, in free and common soccage."

Hudson's Bay Company to Colonial Secretary, 25 January, 1858.

9. The Committee do not intend to impute to the Parliament or the Ministry of Canada, any deliberate intention of violating such rights of the Hudson's Bay Company as they admit to exist, but it must be remembered that a theory has been started, and is referred to in the debate on this Address by which the admissions of the English Government and the opinion of the English Law Officers as to the right of ownership in the soil are directly negated. It has been supposed, we believe, that France

See postscript to letter of Mr. C. Fortescue to Sir E. Head, 11th of March, 1864, and letter April 5, 1864.

was in possession of these territories, or a large portion of them, when the Charter was granted; that they were therefore within the exception which that Charter contains with regard to other territories belonging to "any other Christian Prince;" and that this French title remained good and was transferred to the English Crown with Canada at the final cession of that Province by France.

10. This is not the place for entering on a discussion of the facts and law involved in this argument,—an argument, as we have said, inconsistent with the continued recognition of the Company's rights in various ways by the English Government and their legal advisers for a long series of years; but if this objection to the Company's title shall be presented in a tangible form before a proper tribunal, the Hudson's Bay Company will be quite ready to meet it and demonstrate its futility.

11. The very existence, however, of such a theory in the minds of the Canadian Ministers or the Canadian people, is a sufficient reason why, in justice to the Company, it should be set aside, or its truth or falsehood should be conclusively tested before their rights of property under the Great Seal of England, and in fact their future existence, is placed under the legislation and the absolute control of Canada.

Despatch of Mr. Cardwell to Lord Monck, June 17, 1865.

Letter of Mr. Forster to Sir E. Head, 20th February, 1866.

Minute, June 22, 1866.

Letter from Sir F. Rogers, to Sir E. Head, 31st July, 1866.

Mr. Elliot to Sir E. Head, April 15, 1867.

12. The Committee cannot but feel that the Company has already had great reason to complain of the course pursued during the last few years. In 1865 the Canadian Delegates sent to this country to promote the scheme of Confederation solemnly "undertook," with Mr. Cardwell, to negotiate with the Hudson's Bay Company. The answer given by the Committee was that they would be ready to consider any proposal. The fact of this undertaking was recited again in a subsequent letter, as a reason why no other step should be taken. No negotiation, however, was opened, and, in 1866, the Canadian Council resolved that such negotiation must devolve on the Government of the Confederation when constituted, rather than on the Government of Canada. This was confirmed by the resolutions of the Delegates in England, of April 3rd, 1867. After all, when the Confederation is formed, and the Parliament has met, 50

resolutions are passed, and an Address to the Queen is adopted, praying that the powers of legislation and government over the Hudson's Bay Territory and the North-Western Territory may be conveyed to Canada first, and that the judicial decisions or negotiations as to the Company's rights should take place afterwards.

13. We desire in the first place to remark that this inversion of the order of proceeding is entirely contrary to the expectation raised by the acts of the delegates, and by the communications from the Colonial office to us. We may have erred in thinking so, but certainly we conceived that the negotiations which the delegates, in 1865, undertook to initiate were intended, under the Act of last session, to form the preliminary step for transferring the supreme control to Canada, not to follow after such transposition of the parties. It would appear, too, from a passage in a speech of the Honourable Mr. Holton Extract No. 1 enclosed. in the Canadian Parliament, as reported in the *Canadian News*, as per extract herewith, that the Committee were not the only parties who supposed this to be the intention of the Government.

The Committee, moreover, thought that it was expressly in anticipation of this original undertaking to negotiate being thus carried out, that the Secretary of State for the Colonies intimated his wish in the following terms that the Company should abstain from any other arrangements likely to interfere with the views then entertained :

"It is of course for the Hudson's Bay Company to consider for themselves what course is most proper and conducive to their own interests. But it appears to Lord Carnarvon that any effective negotiation being for the moment impossible, it is for the interest of both parties that the question should remain open for arrangement so soon as an authority exists capable of dealing with it on the part of the Colony or Colonies interested. He would therefore regret to learn that the Company contemplates any immediate action which was calculated to embarrass the negotiations, which would then become possible, and which in the opinion of the Executive Council it would be the duty of the Confederate Government to open."

Mr. Elliot to Sir E. Head, January 23, 1867.

14. The Committee felt no anxiety respecting the wide powers of transfer conferred on the Crown by the Act of last session, because they did not believe that their rights of ownership in the soil and minerals could be affected by it; and because, after the undertaking to negotiate formally communicated to them, and the correspondence relating to it, they relied, as they continue to rely, on the honour and good faith of the English Government.

15. But the case assumes a very different aspect if the plan of giving to the Canadian Parliament and Government legislative and administrative control over these territories, without defining and providing for the rights and interests of the Company as a condition precedent should be carried out. So far as we now see, no security of any kind would exist against such a use of this control in taxation and other matters as might be thought best fitted for compelling the Company to accept any terms, however disadvantageous. No specific guarantee it seems is proposed to be given as to the legislation which might take place before these claims were finally disposed of, or as to the impartiality and competency of the Courts before which the Company, if aggrieved, would have to seek redress. At any rate, the relative position of the two parties to any such suit or discussion respecting these rights would, after the transfer of the legislative and administrative control, be one which must leave the Company as defendant, more or less at the mercy of the plaintiff, and would, to say the least, taint the voluntary character of any agreement to be subsequently arrived at. The only reliance of the Company would be on the honesty and the considerate disinterestedness of the Canadian Parliament and people.

The Committee, moreover, venture to think that their apprehensions on this score are reasonably increased, rather than diminished by all that is reported to have passed in the debates, and especially by the extract of the accompanying report of the speech of Sir John A. Macdonald, K.C.B., the Canadian Premier. The Report is taken from the *Canadian News*. It is probably condensed, and, as a matter of course, it may be more or less inaccurate.

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16. The Act of last Session provides that the incorporation of Rupert's Land and the North-Western Territory with Canada may be made by the Queen "on such terms and conditions in each case as are in the Addresses expressed and as the Queen thinks fit to approve, subject to the provisions of this Act; and the provisions of any Order in Council in that behalf, shall have effect as if they had been enacted by Parliament of the United Kingdom of Great Britain and Ireland."

Now, looking to the previous correspondence between the Hudson's Bay Company and the Colonial Office, it is not unreasonable to suppose, that so far as regards the Territory of the Company, the Act contemplated the insertion of certain terms and conditions in any Address relating to the transfer of such Territory.

But the Address, a copy of which your Grace has had the goodness to transmit to us, contains no "terms and conditions" whatever, except a vague assurance that the "Parliament of Canada will be ready to provide that the legal rights of any corporation, company, or individual within the same shall be respected and placed under the protection of courts of competent jurisdiction."

Such an assurance is of little value, when the party making it disputes the very existence of the rights in question, and at any rate it amounts to no more than a statement that British subjects on British soil shall be entitled to the protection of a Court of Law of some kind, hereafter to be established by the act of one of the parties.

It might be presumed that redress before a competent tribunal would be the right of any one who was wronged, and such an assurance can hardly be deemed a "term or condition" of the kind which the Statute intended to be set out specifically in the Address from the Legislature.

17. The Committee trust it may not for one moment be supposed that they arrogate to themselves any right or entertain the smallest desire to impede or even to comment on the general policy of transferring the government of the North-Western Territory and of the Hudson's Bay Territory to the Confederate Government of Canada. In this, as in everything else, they would bow with submission to the authority of the Crown, and rejoice in any measure which was really calculated to strengthen loyalty and promote union in British North America.

18. What is asked for as a matter of justice to a proprietary consisting of upwards of 1,700 shareholders, who have paid a very large sum on the faith of our Charter, and of the protection of their rights of property in the soil by English law, is the adoption by Her Majesty's Government of one of the following alternatives:—

1st. That some conclusive agreement as to the extent, value and compensation to be made for the claims of the Company, as owners of the soil and minerals of the Hudson's Bay Territory, and some arrangement, by which burthens assumed by them in their political capacity, such as the endowment of the bishoprics, may, when that capacity ceases, be transferred to others, should be completed before not after, the transfer of the government of the North-Western Territory or Hudson's Bay Territory to Canada.

2nd. That before any incorporation of Rupert's Land or the North-Western Territory with Canada, the rights of private property vested in the Company, and the exact limits of such rights, should be ascertained, acknowledged and efficiently protected by law, in a manner binding on any Colonial Government, so that they should not be at any time hereafter impeached or violated without proper compensation.

I have, etc.,

EDMUND HEAD,
Governor.

His Grace the Duke of Buckingham and Chandos,
etc., etc., etc.

THE COLONIAL SECRETARY TO THE GOVERNOR-GENERAL.*

DOWNING STREET,
23rd April, 1868.

MY LORD,—I have already acknowledged, on the 18th of January, Your Lordship's despatch, No 107, of the 21st of December, transmitting a Joint Address from the Senate and House of Commons

* Journals, Coms., Canada, 1867-8, Vol. 1, p. 367.

Colonial
Secretary to
Governor-
General,
23th April,
1868.

Hudson's Bay
Company to
Colonial
Secretary,
25 January,
1868.

Canadian
Documents,
and Corre-
spondence
between
the Colonial
Secretary and
the Hudson's
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of Canada to Her Majesty, praying the annexation to Canada of Rupert's Land and the North-West Territory. Your Lordship will have the goodness to inform the Senate and House of Commons that their Address has been duly laid before the Queen.

Her Majesty's Government will be willing to recommend a compliance with the prayer of the Address so soon as they shall be empowered to do so with a just regard to the rights and interests of Her Majesty's subjects interested in those territories. They are advised, however, that the requisite powers of government and legislation cannot, consistently with the existing Charter of the Hudson's Bay Company, be transferred to Canada without an Act of Parliament. Before such an Act can be obtained it is necessary to consider the position of the Hudson's Bay Company.

The Company have held their Charter, and exercised privileges conferred by it, for 200 years, including rights of government and legislation, together with the property of all the lands and precious metals; and various eminent Law Officers consulted in succession have all declared that the validity of this Charter cannot be justly disputed by the Crown.

I have, on behalf of Her Majesty's Government, called upon the Company to state the terms on which they would be prepared to surrender to the Crown whatever rights they have over the lands and precious metals, including the rights of government, with the intimation that no present payment in money will be made to them, but that in the transference of their rights to Canada they might have a reservation made to them of defined portions of land, and of a share of the future proceeds of the lands and precious metals of the territory up to a certain fixed amount.

I enclose copies of the letters which have passed up to the present time between the Company and this Department upon the subject.

H. B. Co., 15th Jan., 1868.
C. O., 18th Jan., 1868.
C. O., 18th Jan., 1868.
H. B. Co., 25th Jan., 1868.
C. O., 23rd April, 1868.

I purpose to introduce a Bill into the Imperial Parliament with the view of authorizing any arrangement which may be effected on the basis thus indicated; of defining the territory over which it extends; and authorizing the subsequent transfer to the Canadian Government of the rights and powers to be acquired by the Crown in respect to government and property, in accordance with the prayer of the Address.

With respect to the North-West Territory, the same obstacles do not exist to the transfer of the greater part by the Crown to Canada at the present time, subject to proper reservations of the rights and property of Her Majesty's subjects now settled therein, and for the protection of Her Majesty's native subjects; but I apprehend that while it remains separated from Canada by the Hudson's Bay Company's Territory, still under the Company's government, it will not be the desire of Canada to undertake the government of this more remote country. A portion of the North-West Territory immediately adjacent to British Columbia, I am of opinion that it will be necessary for the public advantage to retain in the possession of the Crown, with a view to its incorporation with British Columbia.

I have the honour to be,

My Lord,

Your Lordship's most obedient, humble servant,

BUCKINGHAM & CHANDOS.

THE UNDER-SECRETARY TO THE DEPUTY-GOVERNOR OF THE HUDSON'S BAY COMPANY.*

DOWNING STREET,

23rd April, 1868.

SIR,—I am directed by the Duke of Buckingham and Chandos to acquaint you that he has had under his consideration the Address from the Parliament of Canada to Her Majesty, praying that Rupert's Land and the North-West Territory may be united with the Dominion of Canada, and placed under the authority of the Canadian Parliament, and the letter from the Governor of the Hudson's Bay Company, dated the 25th of January, on that subject.

The Under-Secretary to the Deputy-Governor of the Hudson's Bay Company, 23rd April, 1868.

* Journals, Coms., Canada, 1867-8, Vol. 1, p. 374.

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Her Majesty's Government think that it will be right to comply, under proper conditions, with the wish expressed by the Parliament of Canada, and they propose to introduce a Bill for the purpose into the Imperial Parliament.

They desire, however, to pay due regard to the interests of Her Majesty's subjects already concerned in the Territory; and with that view they will be prepared to make provision for any reasonable terms which may be agreed upon with the Hudson's Bay Company.

I am directed to call your attention to the negotiations which took place in 1864 between the Secretary of State and the Company, as recorded in the correspondence referred to in the margin, and I am to request that you will state what are the terms which the Company would be prepared to accept, proceeding on the principles then adopted—namely, that the compensation should be derived from the future proceeds of the lands, and of any gold which may be discovered in Rupert's Land, coupled with reservations of defined portions of land to the Company.

I am, etc.,

C. B. ADDERLEY.

To Sir Curtis Lampson.

THE COLONIAL SECRETARY TO THE GOVERNOR-GENERAL.*

DOWNING STREET,

8th August, 1868. 20

Colonial Secretary to Governor-General, 8th August, 1868.

MY LORD,—I have the honour to transmit to you, for your Lordship's information, the enclosed copy of an Act of Parliament,† conferring powers for the surrender to Her Majesty by the Hudson's Bay Company of their territories and privileges.

In pursuance of the powers conferred by this Act, I propose to enter into negotiations with the Hudson's Bay Company as to the terms on which they will surrender their rights, and I shall not fail to keep your Lordship informed of the course of such negotiations.

I have, &c.,

BUCKINGHAM & CHANDOS.

Governor the Right Honourable Viscount Monck.

TELEGRAM—THE GOVERNOR-GENERAL TO THE COLONIAL SECRETARY.*

QUEBEC, 9th September, 1868.

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Governor-General to Colonial Secretary, 9th September, 1868.

Privy Council wish to send a delegation to London to take part in treaty with Hudson's Bay Company.

They are anxious that negotiations with the Company should be postponed till arrival of delegates in London.

Please inform me by Cable how soon you will be able to receive them.

They are prepared to go immediately.

MONCK.

REPORT OF A COMMITTEE OF THE PRIVY COUNCIL (CANADA), APPROVED BY THE GOVERNOR-GENERAL ON THE 1ST OCTOBER, 1868.*

40

Order-in-Council (Canada), 1st October, 1868.

In view of the great importance of the immediate settlement of the Hudson's Bay question, and in consequence of the passage by the Imperial Parliament of the Act 31 and 32 Vic., cap. 105, and in accordance with the despatch of his Grace the Secretary of State, No. 173, and dated 8th August, 1868,

* Sess. Papers, Canada, 1869, No. 25.

† The Rupert's Land Act, 1868.

the Committee of Council advise that a delegation proceed to England composed of the Hon. Sir G. E. Cartier and the Hon. W. McDougall, for the purpose of arranging terms for the acquisition by Canada of Rupert's Land, such terms to be subject to the approbation of the Governor in Council.

WM. H. LEE,
Clerk, P. C.

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MEMORANDUM OF SIR GEORGE E. CARTIER AND THE HON. WILLIAM MCDUGALL,
CANADIAN DELEGATES TO ENGLAND.*

We have the honour to acknowledge communication of a Minute of Council of this day's date, appointing us a delegation to England to arrange with the Imperial Government the terms upon which Canada may acquire Rupert's Land, and to state that we have much pleasure in accepting the mission.

We would, however, beg to call the attention of the Committee to the terms of the recent Act of the Imperial Parliament to "enable Her Majesty to accept a surrender upon terms of the lands, privileges and rights" of the Hudson's Bay Company which declares that Rupert's Land for the purposes of that Act "shall include the whole of the lands and territories held or claimed to be held" by the Company.

We would also call the attention of the Committee to the terms of the British North America Act, which provides for the admission of Rupert's Land and the North-West Territory, or either of them, into the Union.

We respectfully recommend that we be authorized to arrange with the Imperial Government for the admission of the North-West Territory into union with Canada, either with or without Rupert's Land as may be found practicable and expedient.

GEO. ET. CARTIER.
W. MCDUGALL.

October 1st, 1868.

REPORT OF A COMMITTEE OF THE PRIVY COUNCIL (CANADA), APPROVED BY THE GOVERNOR-GENERAL
ON THE 1ST OCTOBER, 1868.*

The Committee have had under consideration a memorandum dated this day from the Hon. Sir George E. Cartier, Bart., and the Hon. Wm. McDougall, stating that they have received communication of the Minute in Council appointing them a delegation to England to arrange with the Imperial Government the terms upon which Canada may acquire Rupert's Land, and expressing their readiness to accept that mission.

They however bring under the notice of the Government the terms of the recent Act of the Imperial Parliament, to enable Her Majesty "to accept a surrender upon terms, of the lands, privileges, and rights" of the Hudson's Bay Company, which declares that "Rupert's Land" for the purposes of that Act "shall include the whole of the lands and territories held or claimed to be held" by the Company.

They also call Your Excellency's attention to the terms of the British North America Act, which provides for the admission of Rupert's Land and the North-West Territory, or either of them, into the Union, and they recommend that they be authorized to arrange with the Imperial Government for the admission of the North-West Territory into union with Canada, either with or without Rupert's Land as may be found practicable and expedient.

The Committee advise that the authority requested by the delegates be granted, and that a copy of this Minute, if approved by Your Excellency, be transmitted to his Grace the Secretary of State for the Colonies.

WM. H. LEE,
Clerk, P. C.

* Sess. Papers, Canada, 1869, No 25.

Memorandum
of the Canadian
Delegates, 1st
October,
1868.

Order-in-
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THE GOVERNOR OF THE HUDSON'S BAY COMPANY TO THE UNDER-SECRETARY.*

HUDSON BAY HOUSE, LONDON,

October, 27th, 1868.

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Hudson's Bay Company to Under-Secretary, 27th October, 1868.

SIR,—The Committee of the Hudson's Bay Company have received from Sir C. Lampson and myself reports of the interviews which we have had the honour to have with his Grace the Duke of Buckingham and Chandos, on the subject of the proposed cession to Canada of the Company's territorial rights, and they have anxiously considered how far they would be justified in altering the terms proposed in my letter of May 13th, with a view to meet the objections which have been raised to them.

They understand his Grace to suggest that instead of the Company being entitled to a free grant of 5,000 acres, to be selected by them for every 50,000 acres which shall be alienated by 10 the Government, the whole territory should be at once divided into sections on the map, and that a certain portion of each section should be allotted to the Company by fixed geographical rules, the Company taking the chance as to the value of the land which might fall to its share; and further, that in order to meet the evils which might arise from the existence of so many blocks of wild land free from taxation, the exemption of the Company's wild land from taxes should continue only for a limited period, say for example, twenty years.

The Committee regret that they are unable to agree to this mode of allotment. One of the chief inducements to their shareholders to accept the proposed arrangements would be that, according to the plan of the Committee, if, as it is hoped, the colonization of the country proceeded rapidly under the new government, the Company would receive blocks of land of moderate size in the vicinity of the new 20 settlements, which would possess an actual value in the market. But if the plan suggested by the Duke of Buckingham were adopted, instead of the grants to the Company proceeding equally with the progress of colonization, the whole country would be dotted over with isolated tracts of wild land belonging to the Company, many of which, even if ultimately available for settlement, must necessarily remain entirely valueless until long after the expiration of the twenty years, and if taxed would be a heavy burden instead of a source of profit to the Company.

The Committee are willing, however, to agree that the exemption from taxes on the Company's wild land should only apply to each block of 5,000 acres; which they may be entitled from time to time to select, for a period of twenty years from the date of selection. This would give the Company a reasonable time within which to turn each block to profitable account, and at the same time the ultimate 30 liability to taxation would prevent these lands from becoming an obstruction to the free progress of settlement.

The Committee think it right to add that they do not propose that land purchased by the Company should be reckoned in the 50,000 acres; and that the selection of the land by the Company naturally implies that the Company shall bear the cost of such a survey as may be necessary to define the land selected, it being understood that the Company shall have the option of making the survey by means of their own officers.

The Committee are quite willing that land granted for such purposes as roads, churches or schools shall not be liable to the payment of one shilling *per acre* to the Company, provided that the exemption is restricted to the land actually used in the construction of the work, and that the 40 exceptions are specified in the agreement with the Government for the cession of the Company's rights. They also admit that it is proper that a similar exemption should apply to land set apart as Indian Reserves, on the understanding that these reserves will be made by Her Majesty's Government, as they are informed it is his Grace's intention they shall be, before the Company's territory is transferred to Canada, and that, if at any time before the million sterling is paid to the Company, such land shall be used or granted for other purposes, it shall become liable to the payment of a shilling an acre in common with other land.

With respect to the land which the Committee have asked that the Company may retain as private property round their posts and stations, if 6,000 acres are thought to be too much in that part

*Seas. Papers, Canada, 1869, No. 25.

of Rupert's Land which is suited for settlement, the Committee will consent that the 6,000 acres shall only apply to posts which do not lie within the limits referred to under article 10, in my letter of May 13th, as laid down in Sir E. Head's letter of November 11th, 1863, and that within these limits the extent of land to be retained round each post shall not exceed 3,000 acres, all the lands retained to be free from taxation, except when reclaimed from a wild state.

Lastly, the Committee cannot do that the stipulation that the Committee shall have power to bring before the Judicial Committee of Her Majesty's Privy Council matters in dispute, is open to the objection that the Privy Council acts only as a Court of Appeal, and as they presume that the Company would be entitled to appeal from the local Courts to the Privy Council, they do not think it indispensable to insist on this demand.

The Committee, in declaring their willingness to make these alterations in the terms which they proposed, are actuated by a sincere desire to arrive at an agreement with Her Majesty's Government; but they are conscious that they would be wanting in their duty if they did not add that at the half-yearly meeting of shareholders, held since my letter of May 13th was written, opinions were expressed strongly adverse to any arrangement for the cession of the Company's territorial rights which did not secure the payment as compensation of a sum of hard money.

Sir Edmund Head, in the concluding paragraph of his letter of April 13th, 1864, in which terms were proposed similar to those now under discussion, but involving the cession of a part only of the Company's Territory, avowed to the Duke of Newcastle the apprehensions of the Committee that it might be difficult to convince the shareholders that the offers then made were to their advantage; and although the Committee have felt bound not to recede from the terms contained in my letter of May 13th, which were based on their former offers, they cannot conceal from his Grace that they anticipate a very serious opposition on the part of their shareholders to any such arrangement as that which they have put forward.

His Grace will recollect that at our first interview, before the Canadian delegates had started for England, Sir C. Lamson and I strongly insisted upon this point, and that we suggested that if Canada would agree to pay to the Company one million sterling in bonds, such a settlement might be acceptable to our proprietors.

The Committee entirely share this view. The more they consider the very complicated arrangements which have been devised as a substitute for the payment of a sum of money at once, the more they are convinced that it is as much for the interest of Canada as of the Company, that the claims of the Company should be provided for by a direct compensation, and not by contingent payments extending over a long series of years, and by grants of land under stipulations, which, although indispensable to protect the Company from spoliation, would be invidious in the eyes of the future settlers and embarrassing to the Colonial Government.

At the same time the Committee desire me to assure his Grace, that if their terms as now modified are agreed to by Her Majesty's Government, the Committee will use all their influence to induce the proprietors to confirm them.

I have the honour to be, Sir,

Your most obedient servant,

KIMBERLEY.

The Right Honourable C. B. Adderley, M.P.,
Colonial Office.

THE UNDER-SECRETARY TO THE GOVERNOR OF THE HUDSON'S BAY COMPANY.*

1st December, 1868.

MY LORD,—I am directed by the Duke of Buckingham and Chandos to acknowledge the receipt of your Lordship's letter of the 27th October, and to express his Grace's regret that the serious illness of Mr. McDougall, one of the two delegates sent from Canada, which prevented his Grace from communicating with him, should have caused so long a delay in the answer.

* Sess. Papers, Canada, 1869, No. 25.

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Hudson's Bay
Company to
Under-
Secretary,
27th October,
1868.

Under-
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Hudson's
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His Grace regrets to perceive that the letter under reply does not afford much prospect of an arrangement being come to.

Her Majesty's Government, in the letter of Mr. Adderley of 23rd April to Sir Curtis Lampson, referring to the negotiations which took place in 1864, requested to be informed "what terms the Company would be prepared to accept, proceeding on the principles then adopted, namely, that the compensation should be derived from the future proceeds of the lands, and of any gold which may be discovered in Rupert's Land, coupled with reservations of defined portions of land to the Company."

To this your Lordship replied that the Committee were prepared to recommend—

1. That the Company shall surrender all the territory which they hold under their charter, with the reservation of all their posts and stations, with an area of 6,000 acres round each such post or station; 10 this reservation of 6,000 acres, however, not to apply to the Red River Settlement.
 2. That the Company shall be entitled to receive 1s. for every acre of the land surrendered, which shall be disposed of by the Government whether by sale, lease, or free grant, or parted with in any other manner.
 3. That one quarter of the sum received by the Government as an export duty for gold and silver, or on leases of gold and silver mines, or for licenses for gold and silver mining, shall be paid to the Company, the amount to be received under this and the preceding article being limited to a total sum, conjointly of £1,000,000 sterling.
 4. That the Canadian Government shall confirm all titles to land that has been alienated by the Company at Red River, or elsewhere. 20
 5. That whenever the Government shall have sold, leased, granted, or otherwise parted with 50,000 acres, the Company shall be entitled for every such 50,000 acres to a free grant of 5,000 acres of wild land to be selected by them.
 6. That no tax be imposed upon any land belonging to the Company not under cultivation, and no exceptional tax shall be imposed upon the Company's other lands or property, or upon the Company's servants.
 7. That the disputed matter of the Company's lands in Canada be settled by issuing grants on the footing formerly agreed upon by Mr. Vankoughnet and Mr. Hopkins.
 8. That the Canadian Government shall take over from the Company all the materials for the construction of the telegraph now in Rupert's Land, and the North-West Territory, on payment of the 30 cost price, and the expenses already incurred, with interest.
 9. That full liberty to carry on their trade shall be secured to the Company, free from any special or exceptional taxation.
 10. That until £1,000,000 sterling, stipulated by articles 2 and 3, shall be paid to the Company, no export duties shall be levied by Canada upon furs exported by the Company, and no import duties shall be levied upon articles imported by the Company into the North-Western Territory, and into that part of Rupert's Land which is not included within the geographical limits laid down in Sir E. Head's letter of 13th November, 1863, the Company to be further entitled to import goods in bond free of duty, through any part of the surrendered territory into the North-Western territory and the aforesaid part of Rupert's Land. 40
- Lastly. That in order to afford to the Company a guarantee for the due fulfilment of these provisions by the Canadian Government, power shall be given to the Company to bring before the Judicial Committee of Her Majesty's Privy Council for decision any matters connected with the carrying into effect the foregoing provisions, in respect of which they may consider themselves aggrieved.

His Grace intimated in reply, that there were "certain points in the terms set forth to which he would not feel at liberty to agree in their present shape," and at the meetings which ensued his Grace

Under-Secretary to Hudson's Bay Company, 1st December, 1868.

expressed his strong objections to the principle of the proposals of the Company respecting reserves of land to be selected from time to time at the discretion of the Company, and to the principle of special exemption from taxation in their favour, and expressed his opinion that there were many points in the other proposals requiring material modification.

Your Lordship's present letter intimates that the Company are unable to agree to certain modifications which suggested themselves during the discussions as modes of avoiding the objections entertained by his Grace, and proceeds to state the changes which the Company are willing to agree to, and which his Grace understands to be as follows :

1st. That the exemption from taxes on the Company's wild lands shall only last for a period of 10 twenty years from the date of selection.

2nd. That any lands purchased by the Company shall not reckon in the quantities of 50,000 acres, in respect of which the Company should be entitled to select 5,000 acres.

3rdly. That the Company shall bear the expense of surveying their blocks of 5,000 acres.

4thly. That lands granted for such purposes as roads, churches or schools, shall not be liable to the payment of one shilling *per* acre to the Company.

5thly. That the same exemption shall apply to land set apart by Her Majesty's Government as Indian Reserves before the Company's territory is transferred to Canada.

6thly. That with regard to land around posts beyond what is designated the fertile belt, 6,000 acres shall be granted, and that only 3,000 acres shall be the quantity within that belt.

7thly. That the proposed recourse to the Privy Council as a Court of first instance, shall be abandoned.

His Grace is unable to recommend the adoption by Her Majesty's Government of such terms for the surrender of the territorial rights of the Company. Whatever be the future government of the territory, whether by the Hudson's Bay Company, or by Canada, or by any other authority, very considerable annual outlay will have, as in all other unsettled countries, to be incurred in clearing roads, maintenance and opening of navigation, etc., and surveying.

For these charges, the produce of the early sales of land is the natural resource.

But by the Company's proposals they would deprive the future Government of any prospect for a long time at least of receiving any income.

1st. They first stipulate, not for a share of the receipts from land, but for a definite sum *per* acre, a sum in all probability far in excess of what is likely in practice to be obtained for a greater portion.

2ndly. They stipulate that they shall retain certain reserves around their posts, amounting, therefore, according to the lists of posts handed in by Sir C. Lampson, to upwards of 500,000 acres of the land most likely to be made available for settlement and sale, as being the land surrounding the established posts of the Company, they have, after long experience, retained as the most advantageous positions for trade and occupation, and of which nearly 100,000 acres surround the posts in what is called the fertile belt of the territory.

3rdly. And that they shall also receive a share of mineral rights, and confirmation of all titles.

4thly. They proceed to stipulate for a further reserve of one-tenth of the whole territory, and that the Company shall have this tenth in blocks of 5,000 acres to be selected as each successive 50,000 acres is alienated, and not merely to select in the same locality, but anywhere; so that for instance, if land is alienated on the higher parts of the Rocky Mountains, at Jasper House for example, in consequence of the mining operations in that district, or for fishing stations or for mining purposes on the coast of Hudson's Bay or Labrador, the Company should be entitled to select the proportionate reserve in such part of the most fertile region as they may consider will realize the utmost profit to them, whether by its cultivation or development, or by its power of obstruction to others.

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These lands moreover are to be exempt from taxation for a period of 20 years from selection, and the lands retained round the posts to be entirely free from taxation unless reclaimed.

These conditions His Grace cannot accede to. His Grace would, however, recommend Her Majesty's Government to agree to a surrender on the following conditions:

1st. That the land to be retained by the Company in the neighbourhood of their posts shall vary according to the importance of the post: in no case whatever exceeding 6,000 acres in all for any one post, including the cultivated or reclaimed land now occupied, and in no case exceeding 3,000 acres within the fertile belt for principal posts, and 500 acres for minor posts; the additional land to be set out so as not to include frontage to rivers or tracks, roads, or portages.

2nd. The company to receive one fourth share of all receipts from land. If any free-grants of land 10 be made for other than public purposes, such lands shall be deemed to have been sold at one shilling *per* acre.

3rd. That one quarter of the sum received by the Government as an export duty for gold and silver mines, or for licenses for gold and silver mining, shall be paid to the Company, the amount to be received under this and the preceding article being limited to a total sum co-jointly of £1,000,000 sterling.

4th. That the Imperial Government shall confirm all titles to land that has been alienated by the Company at Red River or elsewhere.

Under-Secretary to Hudson's Bay Company, 1st December, 1868.

5th. That the Company shall have the option of selecting five lots of not less than 200 acres each in each township, whenever it is set out, on payment of rateable cost of survey.

6th. That no exceptional tax shall be imposed on the Company's lands, trade, or servants. 20

7th. That full liberty to carry on their trade shall be secured by the Company.

8th. The Company to have similar reserves granted them in connection with their posts in the North-West Territory.

9th. The boundary lines between Hudson's Bay and Canada to be defined, and between Hudson's Bay and North-West Territory to be defined by a natural or geographical boundary agreed on.

10th. No wild lands to be taxable until surveyed and marked.

11th. That whenever the payment of £1,000,000 sterling under Article 3 shall have been made as therein provided in cash, or otherwise extinguished by any payment or commutation by Canada to the satisfaction of the Company, the claims of the Company to further selections of lots, to royalties, and share of land receipts shall cease. 30

12th. Such lands as Her Majesty's Government shall deem necessary to be set aside for the use of the native Indian population shall be reserved altogether from this arrangement, and the Company shall not be entitled to the payment of any share of receipts or any royalty therefrom, or right of selection in respect thereof under previous articles, unless for such part, if any, of these lands as may be appropriated with the consent of the Crown to any other purpose than that of the benefit of the Indian natives.

If these terms are approved, Her Majesty's Government will be prepared to conclude an arrangement, and to submit it to the Canadian Government for their favourable consideration; but if the Company shall not assent to these conditions, Her Majesty's Government will consider themselves unplighted by any of the offers that have been made.

I am, etc.,

C. B. ADDEFLEY. 40

The Earl of Kimberley.

THE DEPUTY-GOVERNOR OF THE HUDSON'S BAY COMPANY TO THE UNDER-SECRETARY.*

HUDSON'S BAY HOUSE,

LONDON, 22nd December, 1868.

SIR,—I have the honour to enclose for the information of the Right Honourable the Secretary of State for the Colonies, extracts of letters recently received from Governor Mactavish, dated Fort Garry, Red River Settlement, October 10th and November 11th, from which it will be seen that the Canadian Government have intimated through an agent sent to Red River by the direction of the Canadian Commissioner for Public Works, their intention to construct a road from Fort Garry to the Lake of the Woods, through the territory of the Company. A trespass upon the freehold territory of the Company must be committed in order to carry out this intention.

The Committee cannot but look upon this proceeding as a most unusual and improper one, especially as negotiations are at present pending for the transfer of the territory of the Company to Canada. This trespass will be an actual encroachment on the soil of the Company, and that too by a Government which has constantly up to this time and still disputes the right of this Company over that soil.

The Committee therefore ask for the intervention of Her Majesty's Government, but at the same time they beg leave to say that any application by Her Majesty's Government or the Canadian Government for permission to make this road will be favourably entertained.

I have, &c.,

C. M. LAMPSON,

Deputy-Governor.

Sir Frederic Rogers, Bart, etc., etc., etc.,
Colonial Office.

THE UNDER-SECRETARY TO SIR GEORGE E. CARTIER, ONE OF THE CANADIAN DELEGATES.*

DOWNING STREET,

30th December, 1868.

SIR,—I am directed by Earl Granville to transmit to you a copy of a letter which his Lordship has received from the Deputy Chairman of the Hudson's Bay Company, relating to some steps which have been taken under authority of the Canadian Government, and from which they apprehend some invasion of their territorial rights.

His Lordship will be glad to receive from you or from Mr. McDougall any explanation with which you or he may be able to furnish him of the steps taken by the Canadian Government.

I am, Sir,

Your obedient Servant,

FREDERIC ROGERS.

Sir G. E. Cartier, Bart.

THE CANADIAN DELEGATES TO THE UNDER-SECRETARY.*

WESTMINSTER PALACE HOTEL, LONDON,

January 16th, 1869.

SIR,—We have the honour to acknowledge receipt of your letter of the 30th ult. (with its enclosures) stating that you were directed by Earl Granville to transmit to us a copy of a letter which his Lordship had received from the Deputy Chairman of the Hudson's Bay Company, relating to some steps which have been taken under the authority of the Canadian Government, and from which the Company apprehended some invasion of their territorial rights.

* Sess. Papers, Canada, 1869, No. 25.

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Canadian Delegates to Sir J. Rogers, 16 January, 1869.

You inform us that his Lordship will be glad to receive from us any explanation which we may be able to furnish him of the steps taken by the Canadian Government.

We have read the letter of the Deputy Chairman, and extracts from the letters of Governor Mac-tavish, and have much pleasure in being able to furnish his Lordship with what we hope will prove satisfactory information on the subject of the Hudson's Bay Company's complaint.

1. In the month of September last, very precise information reached the Canadian Government that, in consequence of the complete destruction of their crops by locusts, the people of the Red River Settlement, numbering probably from 12,000 to 15,000 souls, were in imminent danger of starvation during the winter about to set in.

2. Numerous and earnest appeals for aid had already been made to the Canadian public by writers 10 in the newspapers, and by clergymen and others acquainted with the country. The Right Reverend Robert Machray, Lord Bishop of Rupert's Land, a member of the Council of Assiniboia, and so far a representative of the Company, visited Ottawa, and urged upon members of the Canadian Government the duty of prompt assistance to avert the threatened calamity.

3. No steps had been taken (so far as the Government could learn) by the Hudson's Bay Company to provide supplies, and aware that a few days' delay at that season might render it impossible to get provisions to Red River in time to afford relief, the Canadian Government appropriated the sum of twenty thousand dollars (\$20,000) towards the construction of a road from Lake of the Woods to Fort Garry. The Minister of Public Works (one of the undersigned) was directed to expend the principal part of this sum in the purchase of provisions, which were to be forwarded with all possible despatch 20 to the Red River settlement, and offered to the settlers, not as alms, but in exchange for their labour on a public work in their own vicinity, and of the highest utility to their settlement.

4. A confidential and experienced agent proceeded at once to St. Paul's, Minnesota, and succeeded in forwarding a considerable supply of provisions before the close of navigation. A further quantity has reached Fort Abererombie, an American post in Dakota Territory, from which point it can be sent to the settlement in the spring.

5. Information has reached the undersigned since their arrival in England, that the Government Agent had, in accordance with his instructions, conferred with the local authorities on his arrival at Fort Garry; that he had received their approval and promise of assistance; that his timely aid was a cause of much joy and thankfulness in the settlement, and that he had proceeded with a large force of 30 labourers to the limit of the prairie country, some thirty miles from Fort Garry, towards Lake of the Woods, and had there commenced the construction of the road.

6. The immediate object of the Canadian Government in taking the steps complained of, was, to supply food to a starving community about to be imprisoned for six months in the heart of a great wilderness, without roads, or means of communication with their fellow-subjects, and to supply it in the way most acceptable to a high-spirited people, viz, in exchange for their labour. It was thought that even the Hudson's Bay Company might look with favour upon a public work which, when completed, will prove a valuable protection to those under their government against similar dangers in the future. On behalf of the Canadian Government, we deny that a "trespass" has been committed, or that our action in this matter was intended to forestal or embarrass negotiations which the Imperial Parliament 40 had directed to be undertaken for the transfer of the North-Western Territories and Rupert's Land to the Dominion of Canada.

The foregoing explanation may perhaps be deemed sufficient to enable Earl Granville to answer the complaint of the Hudson's Bay Company against the Canadian Government, but the undersigned beg leave to add one or two observations which in their opinion this extraordinary demand for the "intervention of Her Majesty's Government," both invites and justifies. If the Hudson's Bay Company, who claim the right to hold and govern the territory in which the alleged "trespass" has taken place, had performed the first duty of a government towards its people, by providing them with easy means of communication with the outer world, or if they had shown themselves either able or willing to meet the threatened calamity by a prompt effort to forward sufficient supplies to the settlement before the 50 close of navigation, the Canadian Government would have rested happy in the belief that neither humanity nor public policy required or justified their interference.

The assertion of the deputy Governor of the Hudson's Bay Company that the country between Lake of the Woods and Red River is "the freehold territory of the Company," and that the so-called "trespass" of the Canadian Government in sending provisions to the starving settlers, and assisting them to make a road for their own convenience and safety hereafter, is "an actual encroachment on the soil of the Company," might, if unnoticed by us, be claimed as another proof or admission of the rights of the Company in that part of the Continent. We, therefore, beg to remind his Lordship that the boundaries of Upper Canada on the north and west were declared under the authority of the Constitutional Act of 1791, to include "all the territory to the westward and southward" of the "boundary line of Hudson's Bay, to the utmost extent of the country commonly called or known by the name of Canada." Whatever doubt may exist as to the "utmost extent" of old or French Canada, no impartial investigator of the evidence in the case can doubt that it extended to and included the country between Lake of the Woods and Red River.

The Government of Canada, therefore, does not admit, but, on the contrary, denies, and has always denied the pretensions of the Hudson's Bay Company to any right of soil beyond that of squatters, in the territory through which the road complained of is being constructed.

We have, etc.,

G. E. CARTIER,

WM. McDOUGALL.

Sir Frederic Rogers, Bart., etc., etc., etc.,
Colonial Office.

THE GOVERNOR OF THE HUDSON'S BAY COMPANY TO THE UNDER-SECRETARY.*
HUDSON'S BAY HOUSE,

LONDON, February 2nd, 1869.

SIR,—I have the honour to acknowledge your letter of the 28th January, addressed to the Deputy-Governor of this Company, enclosing a communication from Sir G. Cartier and Mr. McDougall, on the subject of the recent proceedings of the Canadian Government in the matter of the construction of a road through the Company's territory between Fort Garry and the Lake of the Woods.

After the distinct statement contained in Sir Curtis Lampson's letter of the 22nd December, that the Company, while protesting against a trespass on their land, were prepared favourably to entertain any application for permission to make such a road, either on the part of the Imperial or of the Canadian Government, the Committee think it unnecessary to discuss the greater portion of the letter of the Canadian Ministers. Their objection is not to the road being made, but to its being undertaken by the Canadian Government as a matter of right, as though the territory through which it is to pass were Canadian. Such a step taken at a moment when negotiations are in progress for the transfer of the Company's possessions to Canada, and taken by a Government which openly disputes their title to this portion of them, could not have been allowed to pass unchallenged without derogating from the Company's rights. The Canadian Government themselves seem to have been alive to this. Mr. McTavish states that the agent of that Government (Mr. Snow) on arriving at the Red River, communicated to him his instructions from the Commissioner of Public Works in Canada, containing the expression of a hope on the part of the Commissioner that the Company's agent here would offer no opposition to Mr. Snow's operations, but would leave the matter entirely in the hands of the Imperial Government. Governor McTavish, upon this, very properly allowed Mr. Snow to commence his operations; and so far as this Company is concerned, no impediment has been, or will be, offered to the prosecution of the work.

If it were worth while to discuss that part of the letter of the Canadian Ministers which refers to the circumstances under which the construction of the road was ordered, the Committee would be able to show that the Company had in no way failed in their duty to the colony; but that they had promptly taken measures for the relief of its inhabitants and had supplied large sums, both by direct grants and by subscriptions raised under their auspices for that purpose, at a period anterior to the

* *Sess. Papers, Canada, 1859, No. 25.*

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appropriation of the Canadian road grant. They would also be able to point out how the delay which has occurred in opening up communication and otherwise developing the resources of the Red River Settlement is due to the restraint which has been imposed upon them by Her Majesty's Government at the request of Canada, and not to any negligence or indifference of their own.

But the Committee desire to avoid the raising of a false issue, and they accordingly instruct me to re-state to Earl Granville the precise complaint which they have to make. It is this:—that while negotiations are going on for the acquisition of their territory by Canada, the Canadian Government are endeavouring to exercise rights of ownership over a portion of that territory, to the exclusion of the Company, and to the prejudice of their title. This they are doing by virtue of an old claim which they have repeatedly advanced, which the Company have invariably disputed, and have declared themselves 10 ready to contest before a court of law, and which Her Majesty's Government, acting under the advice of various law officers of the Crown, have declined to endorse.

Hudson's Bay
Company
to Sir F.
Rogers,
2 February,
1869.

The Canadian Government have hitherto shown no inclination to bring their claim to the test of a judicial decision, and in the absence of any such decision, the Committee consider it not unreasonable to ask that due respect should be paid to the Company's uninterrupted possession of the territory for two centuries, and to the numerous and weighty legal opinions which have from time to time been given in their favour.

In appealing to Earl Granville for support in this matter, instead of entering into a controversy with Canada, or taking legal steps to enforce the Company's rights, the committee have been actuated by a desire to proceed as far as possible in accordance with the views and wishes of Her Majesty's 20 Government, as they have endeavoured to do throughout the pending negotiations for the establishment of a settled form of Government at the Red River. They desire now respectfully, but confidently, to claim the support and protection of the Colonial Minister against any invasion of the Company's rights which may have been prompted or facilitated by the policy which they have adopted in order to meet the wishes of the Colonial Office.

I have, etc.,

STAFFORD H. NORTHCOTE.

Sir Frederic Rogers, Bart.

THE GOVERNOR OF THE HUDSON'S BAY COMPANY TO THE UNDER-SECRETARY,*

HUDSON'S BAY HOUSE,

LONDON, January 13th, 1869.

30

Hudson's Bay
Company
to Sir F.
Rogers,
13 January,
1869.

SIR,—I have the honour to acquaint you, for the information of Earl Granville, that I was elected by the shareholders of this Company on Tuesday, the 5th instant, to the office of Governor, vacant by the resignation of the Earl of Kimberley.

It now becomes my duty to address you in reply to Mr. Adderley's letter, dated the 1st December, 1868, which was received by my predecessor on the eve of his resignation, and to which, in consequence of that event, the Committee have not been able to send an earlier answer.

Before making any observations upon the particular topics discussed in Mr. Adderley's letter, I am desired by the Committee to assure Lord Granville that they continue sincerely anxious to promote the object with a view to which this Company was reconstructed five and a half years ago, viz, the gra- 40 dual settlement of such portions of their territory as admit of colonization; that they adhere to the opinion expressed in their resolution of the 28th August, 1863, viz., that the time has come when it is expedient that the authority, executive and judicial, over the Red River Settlement and the southwestern portion of Rupert's Land, should be vested in officers deriving such authority directly from the Crown; and that they cheerfully accept the decision of Her Majesty's Government, communicated to them in Mr. Adderley's letter of the 23rd April, 1868, viz., that the whole of the Company's territory should, under proper conditions, be united with the Dominion of Canada, and placed under the authority of the Canadian Parliament.

* Sess. Papers, Canada, 1869, No. 25.

Acting in accordance with the wish of Her Majesty's Government as conveyed to them in Mr. Elliott's letter of the 23rd January, 1867, the Committee have declined to encourage overtures which have been made to them by private persons for the purchase of portions of the Company's Territories with a view to their colonization, and have kept the whole question in abeyance during the time that the negotiations which have led to the confederation of the British Provinces constituting the Dominion of Canada were proceeding. In the whole of that time they have taken no steps which could give rise to fresh complications, or could place any new difficulty in the way of the admission of their territory into the Confederation when the proper moment should arise; and when they were informed by Mr. Adderley's letter, of the 23rd of April, that the Parliament of Canada had addressed Her Majesty upon this subject, and were requested to state the terms which the Company would be prepared to accept, proceeding upon the principle adopted in the interrupted negotiation of 1864, they unhesitatingly complied with the desire of the Government.

It is therefore with surprise, as well as with regret, that they have learnt from the letter now under reply by the terms proposed by them, even when most strictly in conformity with the principles adopted in 1864, are considered by Her Majesty's Government to be inadmissible, and not to afford much prospect of an arrangement being come to. They find, for instance, that the stipulation that the Company should receive one shilling *per* acre on lands hereafter sold, which was originally suggested to the Committee by his Grace the late Duke of Newcastle, in Mr. Fortescue's letter of March 11th, 1864, and which has never hitherto been called in question, is the first point to which exception is now taken. Objections are also raised against several other proposals which have been long before the Government, while no notice at all is taken of some which have been made for the first time with a view to the protection of the Company's trade, and with regard to which the Committee are left in ignorance, whether they are considered admissible or not.

The Committee, although somewhat embarrassed by this apparent change in the spirit of the correspondence, desire me, however, to make the following observations upon some of the remarks contained in Mr. Adderley's letter, in order that there may be no misapprehension as to the bearing of their proposals:

The Committee are aware that, as is stated in Mr. Adderley's letter, in order to prepare the country for settlement, very considerable annual outlay will have to be incurred, and that for this charge, the produce of the early sale of land is the natural resource; but they are at a loss to understand upon what ground it is alleged that their proposals would deprive the future Government of the ceded territory of "any prospect, for a long time at least, of receiving any income."

The only part of the territory in which it is probable that any early or extensive settlement will take place is the part known as the fertile belt. It has been confidently asserted by independent persons who have travelled through the country, that a great part of this land is not inferior in quality, or in advantages of climate, to the adjoining United States territory now forming the State of Minnesota, and it has been justly pointed out that, being prairie land, it does not require much labour to render it fit for cultivation. But the price of land in Minnesota ranges, as the Committee are informed, from five shillings to one pound *per* acre. The Committee think, therefore, that the fixed payment of one shilling *per* acre, proposed by the Duke of Newcastle, and accepted by them as a basis of compensation, cannot be deemed to be unreasonable, in so far as related to land sold within the limits set forth in Sir Edmund Head's letter of the 11th of November, 1863.

As regards any portions of land lying outside those limits which may possibly be sold, the Committee think it very improbable that such sales will take place except for mining purposes, in which case the payment of a shilling *per* acre could hardly be deemed excessive. In order to save trouble and to obviate disputes, therefore, the Committee proposed the fixed payment of one shilling *per* acre in respect to all sales wherever they may take place, and they believe that the arrangement would have been, on the whole, more favourable to Canada than that suggested by Mr. Adderley.

Mr. Adderley proceeds to remark, with reference to Lord Kimberley's proposal that the Company should retain certain reserves around their posts, that the reservations would amount to upwards of 500,000 acres. It was, however, stated by Lord Kimberley and the Deputy-Governor at an interview

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with the Duke of Buckingham upon this subject, that the Committee were willing to confine their claim for reserves to the limits defined by Sir Edmund Head's letter of the 11th November, 1863; that they were prepared to agree that such reservations should be measured by the importance of the posts to which they were to be attached, and should in no case exceed 3,000 acres. The total quantity of land to be retained by the Company under this arrangement, would not exceed 50,000 acres. The Committee cannot agree to the absolute exclusion of these reserves from all frontage to "rivers or tracks, roads or portages" which would render them entirely valueless, although they would have been ready to consider any reasonable limitation of these special advantages.

As regards the right of selecting lands for the Company in proportion to the quantities sold from time to time by the Government, the Committee desire to call Lord Granville's attention to the reasons given in Sir E. Head's letter of the 13th April, 1864, for adopting this mode of reservation in preference to that of "setting apart beforehand a number of isolated tracts of wild land, dotted over the surface of the colony, and calculated to impede the free flow of settlement in the territory." Their proposal was framed with reference to sales in the fertile belt only, and it never entered into their minds to contemplate such contingencies as those suggested in Mr. Adderley's letter. In order, however, to obviate all cavil upon this point, they would have been quite willing to limit the Company's right of selection to the case of lands sold or alienated within Sir E. Head's limits, provided that it were agreed that no alienations should take place beyond those limits, except either for distinctly public purposes or for the bona fide carrying on of agricultural or mining operations. As regards Mr. Adderley's proposal that the right of selection should be confined to five lots of 200 acres each in each township, as it is set out, the Committee can only remark that the character of this proposal must depend upon the size of the township, of which no indication has been given.

The Committee still adhere to the opinion that under the peculiar circumstances of the proposed transfer of their territory, it would be reasonable that their wild lands should for a limited time be exempt from taxation, in order to allow them a fair opportunity of bringing them into profitable cultivation.

They observe that Mr. Adderley makes no reference to the tenth stipulation contained in Lord Kimberley's letter of the 13th May, viz., that until the stipulated sum of £1,000,000 sterling has been paid to the Company, no export duties shall be levied by Canada upon furs exported by the Company nor any import duties on articles imported by them into the North-Western Territory, and into that part of Rupert's Land which is not included within the geographical limits laid down in Sir Edmund Head's letter of November 11th, 1863. This is a point to which the Committee attached very great importance. If it had been proposed by the Canadian Government to make a direct purchase of the Company's territory, and to pay the price of it at once, the Company would, of course, have accepted their fair share of the burdens which annexation might be expected to involve. But if the purchase money is to be withheld until the Canadian Government have sold off 20,000,000 acres of the land, or have realized a considerable sum by the produce of mining operations, it is reasonable that the pressure of the fiscal burdens, which would fall almost exclusively upon the Company's trade, should be suspended also. Otherwise it might happen that, in consequence of the neglect or the inability of the Canadian Government to proceed with the settlement of the territory, the Company would be subjected to very heavy contributions to the colonial treasury without receiving the smallest benefit in return. As an illustration of the extent to which they might thus be injured, were no limitation placed upon the colonial power of taxation, I may observe that according to the present Canadian tariff, the duty upon the value of the Company's imports alone would amount to about £20,000 a year, while any export duty that might be laid upon their furs would operate still further to their disadvantage. The Committee feel confident that Lord Granville will acknowledge the reasonableness of their taking precautions against such a contingency.

The Committee have desired me to offer to Lord Granville these explanations of their proposals, in order to show that they have done their best to comply with the desire of Her Majesty's Government

that they should submit a scheme founded on the principles of the negotiations of 1864. They have not, however, failed to perceive from an early period of the lengthened correspondence which has taken place between them and the Government, that those principles necessarily gave rise to many difficulties; and they have felt this the more strongly since the negotiations, originally commenced between the Company and Her Majesty's Government, have virtually become negotiations between the Company and the Government of Canada. They cannot disguise from themselves the danger which exists that arrangements so complicated, and involving so many topics for future discussion, are likely to lead to the Company's being placed in a position of antagonism to the Government of Canada; and to the creation of a state of things injurious not only to their own interests, but to the welfare of the country itself.

10 They are sincerely anxious to co-operate with the Canadian Government in the settlement, development, and improvement of the territories with which they have been so long connected, and they believe that if the arrangement between them can be placed on a satisfactory footing, it will be in their power to render material assistance to the colonial authorities in this respect. They believe that if a simpler arrangement than that which has recently been under discussion, could be adopted, and if the Canadian Government were prepared to complete the purchase of the territory at once by the payment of a sum of money or by the delivery of bonds, it would conduce to a more satisfactory result than the prolongation of a controversy as to the minute points of such a scheme as has been under consideration.

Should Lord Granville be of this opinion, and should his Lordship think it desirable to recommend any proposal of the kind to the Canadian delegates, this Committee will gladly place themselves in 20 fuller communication with him on the subject.

I have, etc.,

STAFFORD H. NORTHCOTE,

Governor.

Sir Frederic Rogers, Bart.

THE UNDER-SECRETARY TO THE CANADIAN DELEGATES.*

DOWNING STREET,

18th January, 1869.

GENTLEMEN,—I am directed by Earl Granville to transmit to you, for any observations which you may wish to offer upon it, the enclosed copy of a letter from the Hudson's Bay Company in answer to 30 the proposals made to them by the Duke of Buckingham and Chandos in the letter from this Department of the 1st of December last, with respect to the proposed cession to the Crown of the Company's territorial rights in British North America.

Sir F. Rogers
to Canadian
Delegates,
18 January,
1869.

I am, Gentlemen,

Your obedient servant,

FREDERIC ROGERS.

Sir G. E. Cartier, Bart.

W. McDougall, Esq., C. B.

THE CANADIAN DELEGATES TO THE UNDER-SECRETARY.*

WESTMINSTER PALACE HOTEL,

LONDON, February 8th, 1869.

40 SIR,—We have the honour to acknowledge the receipt of your letter of the 18th ultimo, enclosing a copy of Sir Stafford Northcote's letter of the 13th ultimo, in reply to proposals made to the Hudson's Bay Company for the cession to the Crown of their territorial rights in British America, by his Grace the Duke of Buckingham and Chandos, in the letter of Mr. Adderley of the 1st December last.

The Canadian
Delegates to
Sir Frederic
Rogers,
8th February,
1869.

You state that Earl Granville directed you to transmit this document to us for any observations which we may wish to offer upon it. His Lordship's courtesy and consideration in sending us a copy of Sir Stafford Northcote's letter and inviting us to express our views upon it are gratefully acknowledged, but upon reflection we thought it would be expedient to refrain from any formal expression of our opinion on new and indefinite propositions, until we had received some intimation of the view

* Sess. Papers, Canada, 1869, No. 25.

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which his Lordship was likely himself to take of them, or of the policy in respect to the general question which Her Majesty's present advisers intend to adopt.

At an interview with which we were favoured by Earl Granville on the 26th ultimo, he expressed his preference for a less complicated mode of dealing with the Hudson's Bay question than that proposed by the Duke of Buckingham and Chandos, and requested us to communicate to him our observations on the reply of Sir Stafford Northcote, and especially on the proposition with which his letter concludes, viz., that the Canadian Government should "complete the purchase of the territory at once, by the payment of a sum of money or by the delivery of bonds."

As we have had but few opportunities to confer with his Lordship since his accession to office, it may be proper, before considering Sir Stafford Northcote's letter, to state the position of the Canadian Government, as we apprehend it, in this negotiation.

The British North America Act of 1867 affirmed the policy of uniting under one Government all the colonies, provinces, and territories of British North America. Three provinces were united at once and provision was made by the 146th section, for the admission into the union of the remaining colonies, on address to Her Majesty by their respective Legislatures and the Parliament of Canada.

The North-west Territories and Rupert's Land, or either of them, are to be admitted on the address of the Parliament of Canada alone, and on such terms and conditions as the Canadian Parliament may in its address express, and Her Majesty approve.

In pursuance of the policy of the Imperial Parliament thus distinctly affirmed, the Canadian Parliament at its first session under the new constitution, adopted an address to Her Majesty for the incorporation of the North-west Territory and Rupert's Land with the Dominion of Canada. The terms and conditions expressed in the address were,—

1st. That Canada should undertake the duties and obligations of Government and legislation in respect of those territories.

2nd. That the legal rights of any corporation, company, or individual within the territories should be respected, and that provision should be made for that purpose by placing those rights under the protection of courts of competent jurisdiction.

3rd. That the claims of the Indian tribes to compensation for lands required for purposes of settlement should be considered and settled, in conformity with the equitable principles which have uniformly governed the British Crown in its dealings with the aborigines. 30

The above were the only terms and conditions which, in the opinion of the Canadian Parliament, it was expedient to insert in the Order in Council, authorized by the 146th section.

His Grace the Duke of Buckingham and Chandos, on receiving the address of the Canadian Parliament, consulted the law officers of the Crown, who advised, among other things, that "there would be much difficulty created by the existence of the charter" of the Hudson's Bay Company, "to putting into execution the powers of the 146th section of the British America Act, 1867, assuming that the Hudson's Bay Company were adverse to the union." 40

A Bill was thereupon carried through the Imperial Parliament, apparently to remove the "difficulties" which the law officers had discovered. It reverses the order of procedure contemplated by the Act of 1867, and observed by the Canadian Parliament in its address, and makes the assent of the Company a condition precedent to the transfer. 40

The Canadian Government were not consulted as to the terms of this Act; they could not understand why it was necessary, and greatly doubted the expediency of passing it.

The Duke of Buckingham and Chandos, having opened negotiations with the Hudson's Bay Company under the authority of the Act last mentioned, invited a delegation from the Canadian Government to confer with him in this country. The undersigned, duly commissioned for that purpose, repaired to London in October last, and had frequent interviews with his Grace before his retirement from office. 50

The Canadian Delegates to Sir Frederic Rogers, 8 February, 1869.

The proposals submitted to the Company by the late Government in the letter of Mr. Adderley of the 1st of December last, were not made at our suggestion, although we were disposed to think (and so informed His Grace) that if the Company accepted them, the Canadian Parliament might be persuaded to undertake the duties of legislation and government in the territories on the conditions specified.

The Company, through Sir Stafford Northcote, have declined to accept either the principle or the mode of settlement proposed by the late Government, but suggest a new and summary method of closing the negotiations, by demanding that the Canadian Government should, by a payment in cash or bonds, "complete the purchase of the territory at once." No sum is mentioned, and no data given from which it can be inferred. Under these circumstances, we are asked, as representatives of the Canadian Government, to communicate to Earl Granville any observations we may wish to offer on this reply and proposition of the Company.

His Lordship will readily perceive from the foregoing recital, that, as representatives of the Canadian Government, we are in the position of spectators of a negotiation begun and carried on upon principles and under conditions to which we are strangers, rather than that of assenting principals, responsible for its initiation, and bound by its result.

Without undertaking, therefore, that our views on every point will be approved by the Canadian Government, we proceed most respectfully to offer a few observations on Sir Stafford Northcote's reply to the recent proposals of the Imperial Government.

It will be observed that two things are assumed in these proposals to the Company, which the Canadian Government have always disputed.

1st. That the charter of Charles II. is still valid, and grants the right of soil, or freehold, of Rupert's Land to the Company.

2nd. That Rupert's Land includes the so-called "Fertile Belt," extending from the Lake of the Woods to the Rocky Mountains.

The law officers of the Crown in England have, on two or three occasions, given their opinion in favour of the first assumption, but never, so far as we are aware, in favour of the second. The report of the law officers in 1857 admits that the geographical extent of the territory granted must be determined by excluding the country that "could have been rightfully claimed by the French as falling within the boundaries of Canada" (which the charter itself excludes by express words), and states that "the assertion of ownership on important public occasions, as at the treaties of Ryswick and Utrecht," should be considered; and also "the effect of the Acts of 1774 and 1791." The most recent opinion of the law officers of the Crown which we have seen (January 6th, 1868), as to the rights of the Hudson's Bay Company, does not even by implication support their present claim to the fee simple of nearly one-third of the American continent. On the contrary, Sir John Karslake and his colleagues conclude their report with the emphatic statement that it is "very necessary, before any union of Rupert's Land with Canada is effected, that the true limits of the territory and possessions held under the charter should be accurately defined." An assumption, therefore, which covers so much ground, and is unsupported by any competent legal authority; which ignores the repeated protests and claims of Canada; and seeks to supply a basis upon which a surrender for valuable consideration may be made,—is, to say the least, a most favourable assumption for the Company. We notice these points in Mr. Adderley's letter before remarking on Sir Stafford Northcote's reply, to prevent the possible inference that we have acquiesced in them.

Sir Stafford Northcote assures Lord Granville that the Company "continues sincerely anxious to promote the object with a view to which the Company was reconstructed five and a-half years ago, viz: the gradual settlement of such portions of their territory as admit of colonization." It would be tedious to quote the numerous and positive averments by members and governors of the Hudson's Bay Company, in the course of official inquiries during the last fifty years, that their territories (in which they included the Red River and the Saskatchewan districts) are totally unfit for colonization. The evidence of Sir George Simpson before the House of Commons Committee of 1857, is a fair sample of the views heretofore entertained and avowed by the representatives of the Company. (*Vide* Commons Report, 1857; Questions 716, 717, 718, 719, etc.) Mr. Ellice, for many years the ruling spirit of the Company, declared before the same Committee that the Red River Settlement was an "unwise speculation," and "had failed;" that "the climate is not favourable;" that the Saskatchewan is a

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country capable of settlement only when "the population of America becomes so dense that they are forced into situations less fit for settlement than those they occupy now;" that the winters are "rigorous," and the country badly off for "fuel," etc. (Questions 5840 and 5847.)

With such views of the unfitness of the country for settlement, and avowing their belief that colonization and the fur trade could not exist together, it is not surprising that the Company have always cherished the latter, which was profitable, and discouraged, and, as far as possible, prevented the former, which had proved an "unwise speculation." It is true that the company was "re-constructed" in 1863, with loud promises of a new policy. A great road across the continent was to be made, a telegraph line was to be put up, and emigration and colonization developed on a large scale. The Duke of Newcastle, then Secretary of State for the Colonies, was so much impressed by the zeal and public spirit of the gentlemen who effected the reconstruction, that he wrote despatches to the Canadian Government on their behalf, and evidently believed that a new era was about to open in the North-West, and the wild animals and fur traders retreat before the march of "European" settlers. The stock of the old Company, worth in the market about £1,000,000, was bought up, and by some process which we are unable to describe, became £2,000,000. A show of anxiety to open postal and telegraphic communication was made, and "heads of proposals" were submitted to the Governments of Canada and British Columbia, which on examination were found to embrace a line of telegraph only, with the modest suggestion that the two Governments should guarantee the Company a profit of not less than 4 per cent. on their expenditure! A proposal so absurd could only have been made to be rejected, and it was rejected accordingly. The surplus capital of the reconstructed Company, which was called up for 20 the avowed purpose of opening their territories to "European colonization, under a liberal and systematic scheme of land settlement," has never been applied to that purpose. Five and a half years have passed since the grand scheme was announced to the world, but no European emigrants have been sent out, no attempts to colonize have been made. Sir Stafford Northcote was not probably aware, when he vouched for the *bona fides* of the Hudson's Bay Company as promoters of colonization, that a solemn vote of the shareholders was taken in the month of November, 1866, which condemned and rejected the policy of colonization, absolutely and definitively.

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While unable, for the reasons stated, to concur in Sir Stafford Northcote's assurance that the Hudson's Bay Company are anxious to promote colonization, we are gratified to learn that they "adhere" to the resolution of 28th August, 1863, that the time has come when it is expedient that "the authority, executive and judicial, over the Red River Settlement and the south-western portion of Rupert's Land, should be vested in officers deriving such authority directly from the Crown."

The first remark we have to make upon this reference to the resolution of 1863 is, that it admits the continued incapacity of the Company as a *governing* power; the second, that if this was true in 1863,—if at that time it had become expedient to substitute the authority of the Crown for that of the Company,—it is much more expedient, if not absolutely necessary, now; and third, that if the Company are to be relieved of the duty and cost of government which their charter imposes, and which they admit they do not and cannot properly discharge, compensation should be made, not to the Company, as is claimed, but by the Company to those who take the burden off their shoulders.

We confess we have failed to discover any evidence, and therefore cannot believe, that the Company 40 have "eagerly" accepted the decision of Her Majesty's Government, "that the whole of the Company's territory should, under proper conditions, be united with Canada." A brief notice of the *acts*, in contrast with the *professions* of the Company, will, we think, account for the ill success of our researches and justify our incredulity.

The representatives of the Company, while declaring before the House of Commons Committee in 1857 (as we have already shown) that their territories were "unfit for settlement," professed their readiness to surrender any portion of them that might be desired by the Imperial or Canadian Government for that purpose.

Mr. Ellice declared in the most unqualified terms, not only that the Company was willing to surrender, but that it was the duty of the Government to see that no mere trading corporation obstructed 50 "for one moment," nor to the extent of "one acre of land fit for settlement," the "dominion of the actual settlers." (Commons Report, 1857; questions 5859, 5860, and 5933.)

The Governor of the Company informed the Colonial Secretary (18th July, 1857) that an inquiry into the "geographical extent of the territory granted by their charter," which the law officers had recommended, was of little importance, because, if the object of the inquiry was "to obtain for Canada land fit for cultivation and the establishment of agricultural settlers, the Directors are already prepared to recommend to the shareholders of the Company to cede any lands which may be required for that purpose. The terms of such cession," he assured Mr. Labouchere, "would be a matter of no difficulty between Her Majesty's Government and the Company."

Mr. Ellice had previously told the House of Commons Committee, that the question of boundary was "of no importance at all," because "if the Province of Canada requires any part of the territory, or the whole of it for purposes of settlement, it ought not to be permitted for one moment to remain in the hands of the Hudson's Bay Company." He added that "less money than would be spent in litigation upon the subject would be sufficient to indemnify the Hudson's Bay Company for any claim which they could have on giving up any disputed part of their territory."

These assurances induced the Committee to negative propositions for ascertaining by a judicial inquiry the validity of the charter, or the position of boundaries, and to report in favour of annexing to Canada "such portion of the land in her neighborhood as may be available to her for the purposes of settlement, with which she is willing to open and maintain communication, and for which she will provide the means of local administration." The Committee "trusted" that there would be "no difficulty in effecting arrangements as between Her Majesty's Government and the Hudson's Bay Company," for ceding the territory on "equitable principles."

It may be proper to remind Earl Granville, that leading members of the Committee of 1857, taking the offers of the Company on the subject of colonization to mean what the language of their representatives imported, strongly opposed the recommendation to leave the question open for "amicable adjustment" upon "equitable principles," with the certainty of protracted negotiation and a chance of ultimate disagreement. Mr. Gladstone accordingly submitted resolutions for a prompt and definitive settlement of the whole question. He proposed—

1st. "That the country capable of colonization should be withdrawn from the jurisdiction of the Hudson's Bay Company."

2nd. "That the country incapable of colonization should remain within their jurisdiction."

30 He proposed that in the country remaining within their jurisdiction power should be reserved to Her Majesty's Government to make grants "for the purposes of mines and fisheries, but with due regard to the immunities and trade of the Company." No "immunities" were even suggested with respect to the country which was to be withdrawn for colonization. He proposed to ignore the charter, by declaring that the jurisdiction of the Company "should rest henceforth upon the basis of Statute." He quoted the Governor's letter above referred to, "as an expression of the willingness of the Company to accept in principle the arrangement" he proposed, and ended with the suggestion that, "as the Company had tendered concessions which may prove sufficient to meet the case," no decision seemed necessary as to the question of raising "a judicial issue with the view of ascertaining the legal rights of the Company." The propositions of Mr. Gladstone were only lost in the Committee by the casting vote of the chairman.

40 Twelve years have passed since these offers were made by the Company and accepted by a committee of Parliament. Every Colonial Secretary, from 1858 to the present moment, has attempted to carry out the recommendation of the committee, with the assent of the Company, but without success. Two Acts of the Imperial Parliament have been passed, with provisions to facilitate the arrangement, but are yet without fruit. Sir Edward Bulwer Lytton characterized the offers of the Company during his administration as "illusory," and declared that they "by no means met the exigencies of the case." He expressed his regret at a determination on their part which "retains the very difficulty in the way of speedy and amicable settlement which he had sought to remove," and stated that if Canada declined to resort to "legal proceedings" (which he had recommended) "it would be his duty to consider whether negotiations with the Company can be resumed or whether in the last resort Her Majesty's Government must take the matter into their own hands and proceed on their own account." (Mr. Merivale's letter to H. H. Berens, 9th March, 1859.) Sir Edward remained in office long enough to put an end to the Company's license of exclusive trade in British Columbia and the Indian territories, but not long enough to carry out his policy of "connecting the two sides of British North America without the obstacle interposed by a proprietary jurisdiction between them."

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The Duke of Newcastle opened negotiations with the Company, in 1863-4 with much vigour. But after various proposals and counter-proposals including the "reconstruction" of the Company, he was obliged to treat their propositions as "inadmissible."

Mr. Cardwell, during his administration, could not accept their proposals "without considerable modifications."

The Duke of Buckingham, after many discussions with the representatives of the Company regretted to perceive that their proposals "did not afford much prospect of an arrangement being come to"; and in the communication to which the letter of Sir Stafford Northcote is a reply, declared himself "unable to recommend the adoption" of the terms demanded by the Company.

Our notice of what, in Sir Stafford Northcote's opinion, constitutes a "cheerful acceptance of the 10 decision of Her Majesty's Government, would be incomplete, if we did not remind Earl Granville that the Company's "proper conditions" for the surrender of that portion of the North-Western Territories, for which they can show no title but such as may be derived from the possession of a few trading posts, established there within the last fifty years, rose from a question of "no importance at all" in 1857, or at most, of "less money than would be spent in a litigation on this subject," (House of Commons Report, Question 5834,) to the retention, in 1863, in fee simple, of *half* the land proposed to be surrendered, with various other conditions, including a guarantee by the Governments of Canada and British Columbia of an annual profit on the Company's expenditures for improvements on their own property. In 1864 these conditions took the form of a demand, first, to be paid £1,000,000 sterling from sales of 20 lands and mines, with large reservations "to be selected by them," etc.; and, secondly, to be paid £1,000,000 sterling in cash, with other terms and reservations favourable to the Company.

In 1868 these conditions for the surrender of territorial and governing rights over the *whole* territory remained at £1,000,000, as in the first proposition of 1864, with large reservations of land at "selected" points, specially exempted from taxation, and with full liberty to carry on their trade free from the export and import duties to which all other subjects of Her Majesty in that country would be exposed.

In 1869 these various proposals, which no Secretary of State could possibly entertain, have all been apparently merged in one grand proposition to sell out "the territory at once for a sum of money," in 30 cash or bonds, the amount of which is not stated.

We content ourselves under this head with the observation, that whatever others may be able to see in all these transactions, we are utterly unable to discover either a cheerful acceptance of the decision of any Government, or an honest disposition to fulfil the solemn pledges made to Parliament in 1857, on the faith of which the Company was unquestionably saved from judicial or legislative extinction.

Sir Stafford Northcote claims credit for the Company because they have "declined to encourage overtures which have been made to them by private persons for the purchase of portions of the Company's territory with a view to their colonization." Our information is (and we can give Earl Granville names and dates, if the point is deemed of any importance) that the only "overtures" of the kind mentioned which the Company have received, were not merely "encouraged," but suggested and concocted by prominent members of the Company, for the purpose of producing an impression on the Government, 40 and with a view, not to colonization, but to *negotiation* and the stock market.

We are not sure that we understand the statement of Sir Stafford Northcote that the Company "have taken no step which would give rise to fresh complications or place any new difficulty in the way of the admission of their territory into the Confederation." The sale of land to private parties for colonization (assuming that *bona fide* offers have been received from such parties) could not give rise to much complication, except in the affairs of the Company. If Sir Stafford hints at the negotiations which were lately reported to be going on with certain American speculators in London for denationalizing and Americanizing the Company with a view to the "admission of their territory" into the United States, instead of the Confederation, we respectfully submit that while such a difficulty might indeed be "new," the proper person to solve it would be Her Majesty's Attorney-General with the aid of 50 a court and jury of competent jurisdiction.

We do not understand that Earl Granville expects us to defend in detail the Duke of Buckingham's proposals, or to answer all the objections made to them by Sir Stafford Northcote. The Government of Canada, as we have already reminded his Lordship, neither suggested the Act of Parliament nor the terms of the negotiation, which the late Secretary of State for the Colonies attempted to carry out under its authority. The Canadian plan of dealing with the question of the North-Western Territory and Rupert's Land is set forth in the address of the Canadian Parliament to Her Most Gracious Majesty, and we do not feel at liberty, as representatives, to suggest any other mode, until we are informed by Her Majesty's Government that the one proposed is deemed impracticable.

Sir Stafford Northcote's suggestion that "the payment of a sum of money" for the purchase of the territory would conduce to a more satisfactory result, is, we believe, the point upon which Earl Granville specially desires to have our views. Assuming that by "territory" he means the *whole* territory to which the Company lay claim, and that they are to continue as a trading corporation, retaining their posts, and allotments of land in their neighborhood, as he states was agreed upon by the Duke of Buckingham and Lord Kimberly, we have to observe:—

1. This proposition involves an abandonment of the *principle* which two Secretaries of State (and it must be presumed, two successive administrations), declared after much consideration, and in view of the transactions of 1857, was properly and justly applicable to this case, viz.: That the compensation should be derived from the future revenue of the territory itself, and payable only as it came into the hands of the Government. This *principle* was also accepted by the Company in their communication of 13th April, 1864.

2. On the other hand, the principle of ascertaining and fixing a money value upon the territorial rights of the Company "in the British territory east of the Rocky Mountains and north of the American and Canadian lines," and of extinguishing those rights by a payment "at once," was suggested, in 1865, by a delegation from the Canadian Government of that day, and assented to by Mr. Cardwell, then Secretary of State for the Colonies, and his colleagues

If the latter principle and mode of settlement is now to be adopted, it is obvious that the first question is, What is the nature of these "rights" and what territories do they affect? And the second, What are the rights, separated from the duties and burdens attached to them by the Charter, fairly, worth?

3. We shall not attempt to answer these questions fully in the present communication, but we venture to submit for Earl Granville's consideration a few facts and inferences, which cannot, we believe be disputed, and which are essential elements in any calculation which may be attempted on the basis of a money purchase.

1. The Charter of Charles II. (and for the present we raise no question as to its validity) could not and did not grant to the Hudson's Bay Company any territory in America which was not then (1670) subject to the Crown of England.

2. The Charter expressly excluded all lands, etc., then "possessed by the subjects of any other Christian prince or state."

3. By the Treaty of St. Germain-en-Laye (1632), the King of England resigned to the King of France the sovereignty of Acadia, New France and Canada, generally, and without limits.

4. "La Nouvelle France" was then understood to include the whole region of Hudson's Bay, as the maps and histories of the time, English and French, abundantly prove.

5. At the Treaty of Ryswick (1697), twenty-seven years after the date of the Charter, the right of the French to "places situated in Hudson's Bay" was distinctly admitted; and although commissioners were appointed (but never came to any agreement) to "examine and determine the pretensions which either of the said kings hath to the places situate in Hudson's Bay," and with "authority for settling the limits and confines of the lands to be restored on either side," the places taken from the English (*i. e.* from the Hudson's Bay Company) by the French previous to the war, and "retaken by the English during this war, shall be left to the French by virtue of the foregoing (the 7th) article." In other words, the forts and factories of the Hudson's Bay Company established in Hudson's Bay under pretence of their

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Charter and taken possession of by the French in time of peace, on the ground that they were an invasion of French territory, were restored, by the Treaty of Ryswick, to the French and not to the Company.

6. By the Treaty of Utrecht, 1714, "the Bay and Straits of Hudson, together with all lands, seas, sea coasts, rivers, and places situate in the *Bay and Straits*, and which belong thereto," were finally ceded to Great Britain.

7. As no definite boundary was ever established between the possessions of the French in the interior and the English at Hudson's Bay, down to the Treaty of Paris, 1763, when the whole of Canada was ceded to Great Britain, the extent of the actual possession by the two nations for some period, say from the Treaty of Utrecht to the Treaty of Paris, affords the only rational and true basis for ascertaining that boundary.

8. The evidence is abundant and conclusive to prove that the French traded over and possessed the whole of the country known as the Winnipeg Basin and "Fertile Belt," from its discovery by the Europeans down to the Treaty of Paris, and that the Hudson's Bay Company neither traded nor established posts to the south or west of Lake Winnipeg, until many years after the cession of Canada to England.

9. No other or subsequent grant to the Company was ever made which could possibly extend their territorial rights under their Charter. The license to trade in the Indian territories, which they obtained in 1821, was revoked in 1858, and has not been renewed.

10. The country which, in view of these facts, must be excluded from the operation of the Charter. 20 includes all the lands fit for cultivation and settlement in that part of British America.

It will be for Earl Granville to consider whether this Company is entitled to demand any payment whatever for surrendering to the Crown that which already belongs to it. We confess our utter inability, upon any principle of law, or justice, or public policy, with which we are acquainted, to estimate the amount which ought to be paid under such circumstances. The only basis of computation we can discover, applicable to such a case, is the *cost* of the legal proceedings necessary, if any be necessary, to recover possession. A person has taken possession of a part of your domain under the pretence that it is included in a deed which you gave him for some adjoining property before you purchased the domain. You want to get rid of him, but will be compelled to bring an action. He is artful, stubborn, wealthy and influential. He will be able to worry you with a tedious litigation. How many acres will you allow him to "reserve," and how much will you pay to save yourself the cost and trouble of a law suit? Compromises of this kind are not unknown in private life, and the motives and calculations which govern them may be applicable to the present case. We recommend this mode of computing the amount of the payment to be made for the surrender of the North-West Territory, as distinguished from Rupert's Land, with all the more confidence, because it has already been suggested by one of the ablest and most trusted of the representatives of the Company. (*Vide* evidence of Right Honourable E. Ellice, House of Commons Report, 1857, question 5834.)

With respect to Rupert's Land, or the "lands and territories," "upon the coasts and confines of the seas, bays," etc., "that lie within the entrance of the straits commonly called Hudson's Straits," "not possessed by the subjects of any other Christian prince or state," a different rule, we admit, may be held to apply. Giving to the words of the grant the widest construction, territorially, that could possibly be admitted by any judicial body with the facts of the case in evidence before it, or, giving to these words the construction which the Company themselves applied for a hundred years from the date of their Charter, the "rights" they propose to sell are of little commercial value. No revenue, we feel assured, will ever be derived from them. The fur trade is the only industry the country offers as a source of profit, and this, if we rightly understand Sir Stafford Northcote's suggestion, the Company wish to retain.

It has never been alleged, even by the most sanguine advocates of the new theory of the Company respecting land sales, that any revenue can be derived from that source within the limits which we have assigned to Rupert's Land. The cost of government there, inconsiderable though it may be, will always exceed any possible revenue. We are thus led to the same conclusion as in the case of the territory 50

claimed, but not owned, by the Company, viz., that what they propose to sell has no pecuniary or commercial value. They are there, however, by at least a show of right. Being there, they obstruct the progress of Imperial and Colonial policy, and put in jeopardy the sovereign rights of the Crown over one-third (and as some think, even a larger portion) of the North American Continent. "What is it worth to have this obstruction *quietly* removed?" This is, perhaps, the true question; but the answer, we submit, belongs rather to Her Majesty's Government—which has the power, in the event of resistance, to remove the evil by a summary process—than to those who are a little more than spectators of the negotiation.

Earl Granville is aware that several attempts have been made since 1857 to arrive at a definite agreement on the subject of compensation. The suggestions and proposals on each side, together with the actual market value of the Company's stock at different periods, supply data which his Lordship may deem of importance; and we therefore respectfully submit our views as to the conclusions which may be deduced from them.

The first attempt of the Imperial Government to estimate, and express in pounds sterling, the compensation which it would be reasonable to offer to the Company, was made by the Duke of Newcastle in 1864. The greatest sum which, after "very grave consideration," his Grace felt himself able to propose for the surrender of the country west of Lake Winnipeg was £250,000. But the payment was subject to the following conditions:—

1. £150,000 was to be derived from the sale of lands by the Government within the territory. The payment was to be made at the rate of 1s. *per* acre sold, but to be entirely dependent on the Government receipts.

2. Payments were to cease whenever they reached £150,000; and absolutely at the end of fifty years.

3. The company was to be paid one-fourth of the sum received by the Government for export duty on gold or for mining licenses or leases for gold-mining in the territory, for fifty years, or until the aggregate amounted to £100,000.

4. The payment of any part of the £250,000 was contingent on the ability of the Company to place Her Majesty's Government in possession of an "indisputable title" to the territory ceded by them as against the claims of Canada.

The last condition was objected to by the Company on the ground that they could only give such title as they had, which they contended "must be taken for better for worse." The Duke of Newcastle renewed his offer, modifying the last condition into a stipulation that, in case it should be found advisable, the territory eastward of a line passing through Lake Winnipeg and Lake of the Woods, might be ceded or annexed to Canada, in which case nothing would be payable to the Company in respect of *that* territory.

The present value in cash of such an offer, subject to the conditions and contingencies specified, would be very difficult to ascertain. The revenue from export duty on gold and for licenses would probably be *nil*. The revenue from land sales, if the cost of surveys, management, and necessary roads were deducted, would be *nil* also. It is very doubtful whether, if these deductions be made, the revenue from land sales in the Provinces of Canada, from the cession in 1763 to the present time, would show a surplus.

Sir St. Leonard Northcote quotes the price of land in Minnesota, and thence infers the value of lands in the Red River and Saskatchewan districts, which lie from five to ten degrees further north and are still in the possession of the wild Indians of the plains. But we think it will be found that the lands in Minnesota, which sell for "one pound *per* acre," are either private lands in the neighbourhood of towns, or the property of railway companies, on or near which millions of dollars have been expended to make them saleable. They are certainly not *public* lands unimproved by public expenditure. Sir Stafford ought to have mentioned at the same time a fact, which we believe is known to every emigrant who leaves the British Isles for America, that, in the Western States of the Union, and in the Provinces

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of Canada, wild lands are now given to settlers as "free grants," and we may add, this policy is more likely to be extended than reversed. To talk of the *value* of public lands as a source of revenue, distant from one to two thousand miles from available markets, and without roads or navigable waters by which to approach them, is to contradict all experience, or to assume that the cost of surveys and management, and of canals, roads, and other improvements for their development and settlement, will be supplied by those who do not own them for the benefit of those who do.

But in order to arrive at some result that can be expressed in figures, we will assume that the sum ascertained by the Duke of Newcastle to be a sufficient "compensation" would under his proposition have been paid within fifty years, and at an average rate *per annum*. We thus give the Company the benefit of all the doubts in the case, and reduce the question to a simple problem in arithmetic: What is the present value of an annuity of £5,000 per annum for fifty years?

That value, we submit, is the highest amount in cash that can be claimed as an equivalent for the offer made to the Company in 1864, by his Grace the Duke of Newcastle.

The next offer of the Imperial Government which mentions a specific sum, is that made by his Grace the Duke of Buckingham and Chandos, on the 1st December last. It differs from the previous offer in several important particulars.

1. It embraces the *whole* of the territory claimed by the Company.
2. It proposes to allow the Company to retain their "posts" and certain allotments of land in their vicinity, with a small reservation in each township as it is surveyed.
3. It proposes to allow the Company one quarter of the receipts from land (free grants being treated as sales at 1s. *per acre*), and one quarter of the sum received by Government as an export duty for gold and silver.
4. It limits the amount to be received under these heads conjointly at £1,000,000 sterling.

The other stipulations are unimportant for the purpose of ascertaining the cash equivalent of the proposition.

It is evident that the "unknown quantities" in this equation are as difficult to find as in the first. We know the *total* sum to be paid, and the *proportion* of the receipts from lands and mines applicable for its payment; but we do not know the average annual sum likely to be realized from their sale. The minimum price is fixed at 1s. *per acre*, and it is doubtful, if under the proposed arrangement, the price would ever be found to exceed that sum. There is one term still to be ascertained—the average number of acres *per annum* likely to be sold and granted. A crude guess is all that the case admits of. If we take Upper Canada, possessing many advantages for early and rapid settlement of which unfortunately, the remote territories of the North-West are deprived, we find that from its erection into a separate province, down to 1868, about twenty-two millions of acres had been disposed of by sale and grant, or an average of about 286,000 acres *per annum*.

Assuming that the same rate of sale, etc., is maintained in the North-West Territories (which all the old Hudson's Bay authorities who know the country, would pronounce a bold assumption), we have reduced the question to a simple reference to the annuity tables as before, viz., What is the present value of an annuity of £3,575 *per annum* for 280 years?

We have omitted from the last term the one-fourth of the Government receipts from gold and silver, for two reasons. 1st, It has not been shown that there are any gold or silver mines in the territory that will pay for working. 2nd, All the attempts heretofore made to obtain a revenue from such sources, in Canada, have failed, and public opinion has forced the local Governments to adopt the policy of what may be called "free mining," or cheap lands for the miners, and abolition of royalties and imposts, except to meet the cost of preserving the peace, and of surveys and necessary supervision.

There is another proposition on the Government side which bears on the question of "compensation." It results from the agreement between the representatives of the Government of Canada and Her Majesty's Government in 1865, and, containing fewer elements of uncertainty than propositions which involve questions of Government policy, emigration, land sales, etc., it can be reduced to a cash value with greater exactitude.

Mr. Cardwell describes the agreement as follows :—" On the fourth point, the subject of the North-Western Territory, the Canadian Ministers desired that that territory should be made over to Canada, and undertook to negotiate with the Hudson's Bay Company for the termination of their rights, on condition that the indemnity, if any, should be paid by a loan to be raised in Canada under the Imperial guarantee. With the sanction of the Cabinet, we assented to this proposal—undertaking, that if the negotiation should be successful, we, on the part of the Crown, being satisfied that the amount of the indemnity was reasonable, and the security sufficient, would apply to the Imperial Parliament to sanction the agreement, and to guarantee the amount."

The Canadian delegates reported on the subject with a little more detail. " We accordingly proposed to the Imperial Ministers that the whole British territory east of the Rocky Mountains and north of the American or Canadian lines should be made over to Canada, subject to such rights as the Hudson's Bay Company might be able to establish, and that the compensation to that Company (if any were found to be due) should be met by a loan guaranteed by Great Britain. The Imperial Government consented to this, and a careful investigation of the case satisfies us that the compensation to the Hudson's Bay Company cannot, under any circumstances, be onerous. It is but two years since the present Hudson's Bay Company purchased the entire property of the old Company; they paid £1,500,000 for the entire property and assets in which were included a large sum of cash on hand, large landed properties in British Columbia and elsewhere, not included in our arrangement, a very large claim against the United States Government under the Oregon Treaty; and ships, goods, pelts, and business premises in England and Canada, valued at £1,023,569. The value of the territorial rights of the Company, therefore, in the estimation of the Company itself, will be easily arrived at."

The principle which this agreement between the two Governments recognizes as applicable to the case, appears to be compensation in money for the ascertained rights of the Company, after deducting the value of the property retained by them. The words "if any," and "if any were found to be due" import that, in the opinion of both parties, it was possible if not probable that, after making the deductions, no compensation would be "due."

The basis of the calculation which seems to have been made, or agreed upon, is very simple. The old Hudson's Bay Company had recently sold all the rights and property of the Company of every description for the sum of £1,500,000. An inventory, agreed to by both sellers and purchasers, set down the assets, exclusive of "Territorial Rights," as follows :—

1. The assets (exclusive of Nos. 2 and 3) of the Hudson's Bay Company, recently and specially valued by competent valuers, at	£1,023,569
2. The landed territory (not valued)
3. A cash balance of	370,000
	<u>£1,393,569</u>

On the face of their own statement, £1,500,000, less the above sum, or £106,431, was the amount which the new purchasers actually paid for the "landed territory." Under the agreement of 1865 this seems to be the highest sum which Mr. Cardwell and the representatives of the Canadian Government thought could in any event be demanded by the Company, as indemnity or compensation for the surrender of the rights they "would be able to establish."

We have thus attempted to convert into their equivalents in cash the two offers made to the Company since 1857 by the Imperial Government, and to ascertain the amount of the indemnity contemplated by Mr. Cardwell and the Canadian delegates in the arrangements of 1865. To arrive at any result, we have had to assume figures which, according to our experience, the facts of a new country will be more likely to reduce than to increase. We have also omitted conditions, either implied or expressed, in the proposals of 1864 and 1868, which we believe would have imposed considerable expense upon the Company.

There is another mode of estimating the amount to be paid, on the principle of compensating for actual loss only, which remains to be considered.

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The stock of the Company has for some time been quoted at an average of 13½. The capital is, nominally, £2,000,000, and the shares £20,—the value of the stock, therefore, in cash, assuming that the whole of it could be sold at the market rate, is £1,350,000, or £43,569 less than the value, according to their own estimate, in 1863, of the Company's assets, *exclusive* of the "handed territory." The money obtained from the public for shares, beyond the £1,500,000 paid to the old shareholders, will no doubt be amply sufficient to make good any deficiency in the valuation of 1863.

From a consideration of these data we submit, that, if the validity of the Charter is not now to be questioned; if the territorial extent of the country affected by it is not to be defined; if the claim of Canada to include, within her boundaries, a large portion, if not the whole, of the country occupied by the French at the time of the cession in 1763, is not to be investigated, and finally determined; if 10 the admitted incapacity and the notorious neglect of the Company to perform the duties of government (which were part of the consideration for the *rights* conceded by the Charter), are not to be taken as sufficient, on public grounds, to justify cancellation and re entry by the Crown,—then the very highest indemnity which ought to be paid, in cash, for a surrender of the territorial claims of the Company, with the reservations and other privileges offered by his Grace the Duke of Buckingham and Chandos, is the sum indicated by the foregoing computations.

We must, in conclusion, express to Earl Granville our strong conviction that no *money* offer, which either the Imperial or the Canadian Government would deem reasonable, will be accepted by the Company, and that, to delay the organization of constitutional Government in the North-West Territory until the Hudson's Bay Company consent to reasonable terms of surrender, is to hinder the success of 20 Confederation in British America, and to imperil the interests and authority of the British Crown in the territories now occupied by the Company.

We therefore respectfully submit for Earl Granville's consideration, whether it is not expedient that the Address of the Canadian Parliament be at once acted upon, under the authority of the Imperial Act of 1867.

But, if his Lordship should see any sufficient legal or other objection to that course, then we ask, on behalf of the Dominion Government, for the immediate transfer to that Government of the "North-West Territory," or all that part of British North America, from Canada on the east, to British Columbia, Alaska, and the Arctic Ocean, on the west and north, not heretofore validly granted to and now held by "The Governor and Company of Adventurers of England trading into Hudson's Bay," by virtue of 30 a Charter of King Charles II., issued about the year 1670.

We have the honour to be, Sir,

Your obedient servants,

GEO. ET. CARTIER.
WM. McDougall.

Sir Frederic Rogers, Bart..

etc., etc., etc.,

Colonial Office.

THE UNDER-SECRETARY TO THE GOVERNOR OF THE HUDSON'S BAY COMPANY.*

DOWNING STREET,

22nd February, 1869. 40

Sir Frederic
Rogers to
Hudson's
Bay Com-
pany, 22nd
February,
1869.

SIR,—I am directed by Earl Granville to enclose, for the information of the Directors of the Hudson's Bay Company, the copy of a letter which his Lordship has received from Sir G. Cartier and Mr. McDougall. As the greater part of that letter relates to matters on which the Company and the colony cannot be expected to agree, and on which Her Majesty's Government has no authority to decide their differences, Lord Granville has felt some doubt whether the settlement of the question would be advanced by forwarding this letter. He considers it, however, necessary to do so; and in doing so, to explain clearly the position which he considers himself to occupy.

*Sess. Papers, Canada, 1869, No. 25.

It appears that his Lordship's predecessor entertained the hope that he would be able to arrange the terms of a compromise, under which, with consent of both parties, the sovereignty of the Hudson's Bay Company's Territory would be transferred to the Dominion of Canada.

With this view his Grace made to the Company a proposal, respecting which Sir G. Cartier and Mr. McDougall write as follows:—

"The proposals submitted to the Company by the late Government in the letter of Mr. Adderley of the 1st December last, were not made at our suggestion, although we were disposed to think (and so informed his Grace) that if the Company accepted them the Canadian Parliament might be persuaded to undertake the duties of legislation and government in the territories on the conditions specified."

10 Your letter of the 13th inst., may be considered as a rejection of those proposals, and as thus terminating the negotiations instituted by the Duke of Buckingham and Chandos. But in your letter you propose that the matter should be settled by the immediate payment of a fixed sum of money, or by the delivery of bonds, and you express yourself prepared to enter into further communication with Lord Granville on this subject.

It is of course obvious that this negotiation for the purchase of the Hudson's Bay Company's territory is really between the seller and the buyer, the Company and the colony, and Lord Granville is of opinion that if the negotiation is revived on this or any other basis, Her Majesty's Government, can, at present, do no good by assuming to frame or suggest terms of accommodation; but can merely offer to act as a channel of communication between these two real parties to the transaction, using its best 20 endeavours to remove any difficulties not inherent in the nature of the case.

Acting on this view, Lord Granville communicated to Sir G. Cartier and Mr. McDougall a copy of your letter of the 13th. The enclosure of this letter is the answer which he has received.

The material sentences, for the present purpose, are those with which the letter concludes.

You will observe that the representatives of the colony state the principles on which they consider the cost of the territory should be calculated, indicating the opinion that the sum of £106,431 is the highest which could on any hypothesis properly be demanded by the Company; and express their strong conviction that no money offer, which either the Imperial or Canadian Government would deem reasonable, would be accepted by the Company. Assuming this to be the case, they ask on the part of the Dominion Government either the immediate transfer of the whole territory, subject to the rights of 30 the Company, or a transfer of the sovereignty and property of all the territory not heretofore validly granted to, and now held by, the Company under its Charter.

Under these circumstances, Earl Granville directs me to communicate to you the enclosed letter which, taken in connection with previous correspondence, appears to him to leave little present hope of bringing matters to a settlement by way of compensation. If the Directors of the Company should still think any such arrangement possible, his Lordship will of course be prepared to transmit to the Canadian representatives any modified proposal on the part of the Company. Failing this, he thinks it proper to invite from the Directors, not any argument respecting the true nature and extent of the Company's claims from which, as not being before a court of law, he could anticipate no result, but a statement of any objections they may have, whether of principle or detail, to the two counter proposals now made by 40 Sir G. Cartier and Mr. McDougall on behalf of the Canadian Dominion.

And it might not be immaterial to add what course the Company would propose to take, for securing that life and property are adequately protected, and international obligations duly performed in their territory, so long as they remain responsible for its government.

I am, Sir, your most obedient Servant,

FREDERIC ROGERS.

The Right Honourable Sir Stafford Northcote, M.P.

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between

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Sir F. Rogers
to Hudson's
Bay Com-
pany,
22nd Febru-
ary, 1869.

THE GOVERNOR OF THE HUDSON'S BAY COMPANY TO THE UNDER-SECRETARY.*

HUDSON'S BAY HOUSE,

LONDON, February 26th, 1869.

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Canadian Documents, and Correspondence between the Colonial Secretary and the Hudson's Bay Company, prior to the surrender of the Company's claims.

Governor Hudson's Bay Company to Sir Frederic Rogers, 26th February, 1869.

SIR,—I have the honour to acknowledge your letter of the 22nd inst., transmitting, by Earl Granville's direction, a copy of a letter addressed to His Lordship by Sir George Cartier and Mr. McDougall, on the subject of my letter to yourself, dated the 13th ultimo.

The Committee of the Hudson's Bay Company understand from your letter, that it is not Earl Granville's wish that they should enter into a discussion of the communication from the Canadian delegates, and they therefore refrain from making any comments upon its tone or criticising and correcting its assertions. If there are any of those assertions to which Earl Granville himself attaches weight, the Committee will gladly, on their being pointed out to them, offer such observations upon them as may appear to be necessary.

As regards the manner in which the Canadian delegates treat the suggestions contained in my letter of the 13th ultimo,—that the Canadian Government should complete the purchase of the Company's territory at once, by the payment of a sum of money or by the delivery of bonds,—the Committee desire me to observe that they might have had some difficulty in gathering, from the terms in which the delegates express themselves, whether they were or were not prepared to entertain that suggestion, and to open a negotiation with this Company. But as Earl Granville, who has had personal communication with the delegates, is of opinion that their letter, taken in connection with previous correspondence leaves little present hope of bringing matters to a settlement by way of compensation, the Committee are forced to adopt the conclusion that it is intended as a virtual refusal on the part of the delegates to entertain the question in a serious spirit.

Should Earl Granville at any time come to the conclusion that it is desirable that the Committee should renew the offer of fully communicating with him on the subject of a money sale which they made in my letter of January 13th, they will hold themselves prepared to do so. For the present, and in accordance with what they gather to be his Lordship's views, they consider this matter at an end.

It becomes my duty, then, to answer Earl Granville's questions, (1) Whether the Committee have any objections, either of principle or of detail, to make to the "counter proposals" of Sir G. Cartier and Mr. McDougall, and (2) What course the Company would propose to take for securing that life and property are adequately protected, and international obligations duly performed in their territory, so long as they remain responsible for its government.

With regard to the first of the two counter proposals, viz., that the sovereignty of the whole of the territory in question should be immediately transferred to the Dominion Government "subject to the rights of the Company," the Committee desire to ask whether it is intended that the rights of the Company should be ascertained and defined before the transfer takes place, or after it. If the former be Earl Granville's intention, the Committee have no kind of objection to offer to the proposal; but if it be meant that the transfer should take place first, and that the rights of the Company should then be made the subject of litigation in Canada, with a right of appeal to the courts of this country, I must remark that such a course is likely to lead to much inconvenience, expense and annoyance to all parties concerned, as well as to prove detrimental to the interests of the settlement itself by the prolongation of an irritating and disturbing controversy. As regards the injustice to this Company involved in such a proposal, I beg leave to refer Earl Granville to Sir E. Head's letter of the 25th January, 1868, to the Duke of Buckingham and Chandos, in which a similar proposal is very ably discussed, and to which, and to the extracts from speeches delivered in the Canadian Parliament which it encloses, the Committee desire to invite Earl Granville's particular attention.

The second counter-proposal is for a transfer to the Dominion Government of both the sovereignty and the property of "all the territory not heretofore validly granted to, and now properly held by the Company under its Charter." Upon this proposal also the Committee desire respectfully to ask whether the limits of the territory so to be transferred are to be distinctly set out in the instrument of

*Sess. Papers, Canada, 1869, No. 25.

transfer, so that there may be no room for disputes as to the limits of the respective jurisdictions. Even with the utmost care in this respect, the Committee cannot but feel apprehensive that difficulties will arise in dealings with the Indians and with the various classes of hunters and traders frequenting those distant regions, if two different systems of administration are introduced into those portions of the extreme North-Western Territory which would be affected by the proposed transfer, especially as the great distance of that territory from Canada, and the difficulty of the communications, will render its administration by the Dominion Government very troublesome. Should, however, Her Majesty's Government decide on this measure, the Committee will do all in their power to arrive at a good understanding with the Dominion Government as to the details of the arrangements which should be made in the two portions of the now united territory, and to facilitate the establishment of a strong administrative system in both.

As regards any transfer of the sovereignty without a distinct definition of the limits to be assigned to it, and by virtue merely of vague general words, the Committee feel that they need not point to Earl Granville that such a step would not only be open to the objections which I have already mentioned in the case of the former counter-proposal, but to the further, and very serious one that it must lead to constant conflicts of authority and to frequent political embarrassments. The Company can hardly be expected to provide for the security of life and property, and the due performance of international obligations if their boundary is left unsettled, and their title to important parts of their territory unrecognized. It is probably unnecessary for me to pursue this argument at any length.

I have now to advert to the last question put by Earl Granville,—that relating to the course which the Company would propose to take for the government of their territory, so long as they remain responsible for it.

The Committee desire me, in the first place, to remind his Lordship that they have no authority to give a pledge on the part of the shareholders of the Company, and that they can only undertake to submit certain proposals to them, and to use their own influence to secure their adoption. Subject to this reservation, the Committee are prepared to enter at once into communication with Earl Granville, as to the measures which should be adopted for the purpose to which he adverts. As his Lordship is aware, a resolution was agreed to by this Committee, as long ago as in August, 1863, to the effect that in the opinion of the Directors it was expedient that the authority, executive and judicial, over Red River settlement and the south-western portion of Rupert's Land, should be vested in officers deriving such authority directly from the Crown, and exercising it in the name of Her Majesty. In adopting this resolution, the Committee intended to indicate their desire for the establishment of a Crown colony in this portion of their territory. They still believe that this would be the most satisfactory plan that could be pursued, and they are prepared to discuss it with Her Majesty's Government, if they are encouraged to do so.

I am to state that the Committee would be willing either to advise the surrender of such proportion of the Company's proprietary rights as might be found to be a fair equivalent for the charge which the establishment of a Crown colony would throw upon the Imperial Exchequer, or to recommend the Company, retaining its proprietary rights, to take upon itself the whole of the pecuniary burden. The Committee are satisfied that a territory, which in the present undeveloped state of its communications supports a trade of the annual value of more than £400,000, and which possesses a large amount of highly fertile soil requiring no great expenditure for its clearance and cultivation, is perfectly capable of supporting the expense of any government that it may be required to maintain; and they have little doubt that if the state of the case were fairly laid before the shareholders, and if the moral support of the Imperial Government were distinctly assured to them, the necessary funds would readily be forthcoming.

Of course, if Her Majesty's Government should be of opinion that the great objects in view could be equally well attained by the exercise of the powers actually possessed by, or which might be granted to the Company, and should consider that it would be preferable to adopt this method of government rather than to erect the territory into a Crown colony, the Committee would at once fall in with such a suggestion, and would request Earl Granville to state to them what establishment would, in the opinion of Her Majesty's Government, be sufficient to meet the necessities of the case.

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The Canadian delegates to Sir Frederic Rogers, 25th February, 1863.

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Canadian Documents, and Correspondence between the Colonial Secretary and the Hudson's Bay Company, prior to the surrender of the Company's claims.

It can hardly be necessary for me to add that, in the event of such an arrangement being made, the Company would rely upon the cordial co-operation of the Government in submitting any needful measure to Parliament, and in protecting the settlement from any trespass or interference on the part of Canada.

In conclusion I am to observe that it is on many accounts important that the Directors of this Company should soon communicate to the shareholders the progress of this negotiation, and should lay the correspondence before them. They trust that Earl Granville will have no objection to their doing so.

I have, etc.,

STAFFORD H. NORTHCOTE,
Governor.

10

Sir Frederic Rogers, Bart.,
Colonial Office.

THE UNDER-SECRETARY TO THE GOVERNOR OF THE HUDSON'S BAY COMPANY.*

DOWNING STREET,
9th March, 1869.

Under-Sec.
to H. B. Co.,
9th March,
1869.

SIR,—Earl Granville has had under review the correspondence which has passed respecting the proposed transfer to Canada of the jurisdiction and territorial rights of the Hudson's Bay Company in North America.

It is, in Lord Granville's opinion, of very great importance that this question should be settled on a permanent footing, and with little delay. He does not disguise the interest which Her Majesty's Government have in this settlement. It is not creditable to this country that any inhabited part of Her Majesty's dominions should be without a recognized Government capable of enforcing the law, and responsible to neighbouring countries for the performance of international obligations. The toleration of such a state of things in parts of the Hudson's Bay Territory is unjust to the inhabitants of that territory, and is not without danger to the peaceful relations between this country and the United States; and this danger and injustice are likely to increase in proportion as the mining and agricultural capabilities of what is called the "Fertile Belt" begin to attract settlers from the east and south.

To Canada the settlement of the question is not less important, as removing a cause of irritation between it and its neighbours, and even with the mother country itself; as destroying an obstacle to that which has been looked upon as the natural growth of the Dominion; as likely to open an indefinite prospect of employment to Canadian labour and enterprise; and lastly, as enlarging the inducements which Canada is able to offer to the British immigrant. It is no small matter that it would enable Her Majesty's Government at once to annex to the Dominion the whole of British North America proper except the colony of British Columbia.

To the Hudson's Bay Company it may almost be said to be necessary.

At present the very foundations of the Company's title are not undisputed. The boundaries to its territory are open to questions of which it is impossible to ignore the importance. Its legal rights, whatever these may be, are liable to be invaded without law by a mass of Canadian and American settlers, whose occupation of the country on any terms they will be little able to resist; while it can hardly be alleged that either the terms of the charter, or their internal constitution, are such as to qualify them under all these disadvantages for maintaining order and performing the internal and external duties of government.

The prejudicial effect that all these uncertainties must have on the value of the Company's property is but too evident.

The interests of all parties thus evidently pointing towards an immediate and definite adjustment, Lord Granville has been most unwilling to abandon the hope of bringing it about by way of amicable

*Sess. Papers, Canada, 1869, No. 25.

compromise. He is fully alive to the difficulties of such a compromise. He does not conceal from himself that the estimate which the Company form of the nature and value of their rights is widely different from that which is formed by the gentlemen who represent Canada; nor can he undertake to express any opinion whatever as to the relative correctness of those estimates. Indeed, it would be impossible to do so without knowing to what extent the claims of the Company would be supported by the judgment of a court of law.

But after repeated communications with both parties, his Lordship is convinced that he will be serving the interests of the Dominion, of the Company, and of this country, by laying before the Canadian representatives and the directors of the Company a distinct proposal, which, as it appears to be, it is for the interest of both parties to accept, and in support of which Her Majesty's Government would be prepared to use all the influence which they could legitimately exercise.

If the proposal is really an impartial one, Lord Granville cannot expect that it will be otherwise than acceptable to both the parties concerned. But he is not without hope that both may find, on consideration, that if it does not give them all that they conceive to be their due, it secures to them what is politically or commercially necessary, and places them at once in a position of greater advantage with reference to their peculiar objects than that which they at present occupy.

The terms which his Lordship now proposes are as follows:—

1. The Hudson's Bay Company to surrender to Her Majesty all the rights of government, property, etc., in Rupert's Land, which are specified in the 31 and 32 Vic., c. 103, sec. 4; and also all similar rights in any other part of British North America, not comprised in Rupert's Land, Canada, or British Columbia.
2. Canada is to pay the Company £300,000 when Rupert's Land is transferred to the Dominion of Canada.
3. The Company may, within twelve months of the surrender, select a block of land adjoining each of its stations, within the limits specified in Article 1.
4. The size of the blocks is not to exceed ——— acres in the Red River Territory, nor 3,000 acres beyond that territory, and the aggregate extent of the blocks is not to exceed 50,000 acres.
5. So far as the configuration of the country admits, the blocks are to be in the shape of parallelograms, of which the length is not more than double the breadth.
6. The Hudson's Bay Company may, for fifty years after the surrender, claim in any township or district within the Fertile Belt, in which land is set out for settlement, grants of land not exceeding one-twentieth part of the land so set out: the blocks so granted to be determined by lot, and the Hudson's Bay Company to pay a ratable share of the survey expenses, not exceeding ——— an acre.
7. For the purpose of the present agreement, the Fertile Belt is to be bounded as follows:—On the south by the United States boundary; on the west by the Rocky Mountains; on the north by the northern branch of the Saskatchewan; on the east by Lake Winnipeg, the Lake of the Woods, and the waters connecting them.
8. All titles to land up to the 8th of March, 1869, conferred by the Company, are to be confirmed.
9. The Company is to be at liberty to carry on its trade without hindrance, in its corporate capacity, and no exceptional tax is to be placed on the Company's land, trade, or servants, nor any import duty on goods introduced by them previous to the surrender.
10. Canada is to take over the materials of the electric telegraph at cost price, such price including transport, but not including interest for money, and subject to a deduction for ascertained deteriorations.
11. The Company's claim to land under agreement of Messrs. Vankoughnet and Hopkins to be withdrawn.
12. The details of this arrangement, including the filling up the blanks in articles 4 and 6, to be settled at once by mutual agreement.

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Canadian Documents, and Correspondence between the Colonial Secretary and the Hudson's Bay Company, prior to the surrender of the Company's claims.

Under-Sec. to H. B. Co.,
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It is due, both to the representatives of Canada and to the Company, to add—that these terms are not intended by Lord Granville as the basis of further negotiation; but a final effort to effect that amicable accommodation of which he has almost despaired, but which he believes will be for the ultimate interest of all parties.

If this be rejected either on the part of the Dominion or Company, his Lordship considers that his next step must be to procure an authoritative decision as to the rights of the Crown and the Company, and with this object he will recommend Her Majesty to refer their rights for examination to the Judicial Committee of the Privy Council, whose decision will form a basis for any future legislation or executive action which Her Majesty's Government may find necessary.

Whatever may be the result of this proposal, his Lordship desires to express his sense of the openness and courtesy which he has experienced throughout these negotiations, both from the representatives of Canada and from the Governor and Deputy-Governor of the Company; and the patience with which they have entertained proposals which, from their point of view, must no doubt have appeared inadequate.

Lord Granville is aware that a proposal of this kind will require consideration; but he hopes that you will lose no time beyond what is necessary in acquainting him with your decision.

I am, Sir,

Your most obedient servant,

FREDERIC ROGERS,

Sir Stafford Northcote, Bart., etc.

20

THE UNDER-SECRETARY TO THE CANADIAN DELEGATES.*

DOWNING STREET,

9th March, 1869.

Under-Sec. to Canadian Delegates, 9th March, 1869.

GENTLEMEN,—Lord Granville transmitted to the Governor of the Hudson's Bay Company a copy of your letter of 8th February, and I enclose, by his Lordship's direction, a copy of the answer which he has received.

The conclusion to which he has been led, after a careful consideration both of the correspondence which has passed and of the various representations made orally to him by yourselves and by the Governor and Deputy-Governor of the Company, are embodied in the enclosed letter, which he has directed me to address to Sir S. Northcote, and which you will be good enough to consider as conveying to yourselves also the views of Her Majesty's Government. His Lordship is confident that you will give it your earliest attention.

His Lordship desires me to add that, in case the terms suggested in this letter should be accepted by the parties concerned, Her Majesty's Government would be prepared to fulfil the expectations held out in Mr. Cardwell's despatch of 17th June, 1865, and to propose to Parliament that the Imperial guarantee should be given to a loan of £300,000, the sum which is proposed to be paid over by Canada to the Company on the transfer of the Company's rights. As this is a matter in which the Company has no interest, it is not adverted to in my letter to Sir Stafford Northcote.

I am Gentlemen,

Your most obedient servant,

FREDERIC ROGERS.

40

Sir G. E. Cartier, Bart.,
W. McDougall, Esq.

Resolutions of H. B. Co., 12th March, 1869.

RESOLUTIONS OF THE GOVERNOR AND COMMITTEE OF THE HUDSON'S BAY COMPANY, PASSED MARCH 12TH, 1869, TRANSMITTED TO THE CANADIAN DELEGATES.*

Resolved, that the Committee will recommend the shareholders to accept the proposal of Lord Granville, if the Canadian Ministers will agree to the following modifications:—

* *Sess. Papers, Canada, 1869, No. 25.*

1. That Canada will lay no export duty on furs.
2. That the 6th Article be modified so as to allow the Company to defer exercising their right of claiming their proportion of each township for not more than ten years after it is set out.
3. That no charges be made upon the Company for the expenses of survey.
4. That the proportion of land which they are to be allowed to claim be increased from one-twentieth to one-tenth.
5. That York and Moose Factories be retained as ports of entry.
6. That Canada undertakes to pay the £300 a year now paid to the Bishop of Rupert's Land, and other charges of a public character now borne by the Company.
7. That some provision be made for referring to arbitration any question which may arise out of the agreement.

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THE CANADIAN DELEGATES TO THE GOVERNOR OF THE HUDSON'S BAY COMPANY.*

WESTMINSTER PALACE HOTEL,

LONDON, March 13th, 1869.

SIR,—We have the honour to acknowledge the receipt of a copy of certain Resolutions adopted by the Governor and Committee of the Hudson's Bay Company, on the 12th inst., suggesting important modifications of the proposal of Lord Granville for the transfer of Rupert's Land to Canada.

We beg you will inform the Committee that, in our opinion, the proposal of Lord Granville, is much more favourable to the Hudson's Bay Company than any previous proposal of the Imperial Government, and much more onerous to Canada than its Government and people have been led to expect. With great reluctance we have consented to recommend Lord Granville's proposal, if accepted by the Company *pure et simple*, but not otherwise, to the favourable consideration of the Canadian Government. The modifications and additions proposed by the Committee are not, in our judgment, "details" within the purview of the 12th article of Lord Granville's proposal, but substantive and material changes affecting the very basis of the arrangement. We cannot, therefore, assent to them, or undertake to recommend their acceptance by the Canadian Government.

We have further to observe that, in making these demands upon us, the Committee assume that the changes they propose will be accepted, or approved by the Imperial Government. If we are correctly advised, the Committee are not warranted to make that assumption. In the letter of Sir Frederic Rogers, communicating to us a copy of Lord Granville's proposal, we are assured that it conveys "the views of Her Majesty's Government;" and in the letter conveying these views to the Company it is stated that "these terms are not intended by Lord Granville as the basis of further negotiations." It follows, we think, that Lord Granville's proposal is to be regarded as the *ultimatum* of the Imperial Government, and must be accepted or rejected in its entirety. The Act 31 and 32 Victoria, Chapter 105 (which was not introduced at the instance, or passed in the interest of the Canadian Government), placed the negotiation of the terms of surrender by the Company to the Crown in the hands of Her Majesty's Imperial Government, where, until the Act is repealed, or the negotiation fails, we are of opinion it must remain.

We shall be glad to confer with you upon all questions of "detail," which by the terms of Lord Granville's proposal are left to be adjusted between the Canadian Government and the Hudson's Bay Company.

We have the honour to be, Sir,

Your very obedient servants,

GEO. ET. CARTIER.
WM. McDougall.

Sir Stafford Northcote, M.P.,
etc., etc., etc.

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H. B. Co. to
Canadian Delegates,
16th March,
1869.

THE GOVERNOR OF THE HUDSON'S BAY COMPANY TO THE CANADIAN DELEGATES.*
HUDSON'S BAY HOUSE,

LONDON, March 16th, 1869.

GENTLEMEN,—I have the honour to acknowledge the receipt of your letter of yesterday's date, in reply to my letter to Sir George Cartier, in which I enclosed to you a copy of the Resolutions adopted at the meeting of the Committee of the Hudson's Bay Company on the 12th instant.

It is unnecessary for me to enter into the question you raise, as to whether Earl Granville would or would not accept any modifications of the terms set forth in his Lordship's recent communication to this Committee, if they should be agreed to by this Committee on the one hand, and by yourselves on the other. While stating that he regarded these terms as not being intended as the basis 10 of further negotiations, Lord Granville added that he left the details of the arrangement to be settled by mutual consent. The greater part of the resolutions transmitted to you in my letter of the 12th were resolutions intended to lead to a settlement of certain details, on which it will be necessary for the Committee to offer full explanation to the shareholders of the Company, if they decide on submitting Earl Granville's proposals to a general meeting.

If in your opinion any of them go further than this, the Committee will be ready to reconsider them, and to confer with you upon them.

As regards the resolution by which the Committee proposed that the amount of land to be left to the Company should be one-tenth, instead of one-twentieth, I am to state that the Committee have re- 20 scinded that resolution.

They will await a communication from you with regard to the other resolutions before coming to a conclusion as to the course they should adopt.

I am, Gentlemen,
Your obedient servant,
STAFFORD H. NORTHCOTE.

Sir Geo. E. Cartier, Bart., and
The Hon. Wm. McDougall, C.B.

THE CANADIAN DELEGATES TO THE GOVERNOR OF THE HUDSON'S BAY COMPANY.*

WESTMINSTER PALACE HOTEL, 30
March 18th, 1869.

Canadian Delegates to
H. B. Co.,
18th March,
1869.

Sir,—We have the honour to acknowledge your letter of the 16th inst., in which you inform us that the Committee of the Hudson's Bay Company has rescinded the Resolution adopted on the 12th inst. asking for *one-tenth* instead of *one-twentieth*, as proposed by Lord Granville, of the land which may be surveyed for settlement in the North-Western Territory. You further state that if the other resolutions transmitted to us go further than the "details of the arrangement," left by Lord Granville to be "settled by mutual consent," the Committee are ready to reconsider them.

With reference to the first resolution, "That Canada will lay no export duty on furs," we beg you will inform the Committee that it is not the policy or practice of the Canadian Government to resort to "export duties" as a source of revenue. We feel no hesitation in stating our belief that no such duties 40 as the Committee wish to prohibit, will be levied, but it would obviously be improper for us to consent to any arrangement which would fetter the free action of the Canadian Parliament in respect to modifications of the tariff which the future exigencies of the country may render necessary.

2. The proposal to modify the 6th article so as to permit the Company to defer the exercise of the right of claiming their proportion of lands in any township for a period of ten years after survey, might, we think, be agreed to, on condition that they limit their claim to allotment from the lands which may be unsold at the time they declare their intention to take their proportion in that township.

3. The demand to be relieved from the expenses of survey, which Lord Granville proposed the Company should bear, is not, we think, a "detail," within the meaning of the 12th article. But if 50

*S. P. Papers, Canada, 1869, No. 25.

it will remove the apprehension that charges under this stipulation may become excessive, we see no objection to a proviso, that the expense to the Company for the survey of the lands allotted to them shall in no case exceed eight cents *per acre*.

4. We have no doubt that York and Moose Factories will be retained as ports of entry if goods continued to be imported there. But if by the opening of interior communications trade should be diverted to other ports, it would not seem reasonable that the Government should be bound to maintain customs establishments at Hudson's Bay. The practice of the Canadian Government is to establish ports of entry wherever the interests of trade and commerce require them, and we do not, therefore, see that it is necessary or expedient to make any stipulation on the subject.

5. The demand that the salary of the Anglican Bishop of Rupert's Land should hereafter be charged upon the Canadian Treasury cannot, we think, be regarded as a "detail" within the 12th article of Lord Granville's proposal. The surrender of the rights and powers of government by the Company will necessarily involve the assumption of "all charges of a public character" by the new Government. But an agreement to continue the charges *now* borne by the Company, *eo nomine*, would so far perpetuate a system which the transfer of the territory to Canada is intended to supersede.

6. The last proposal of the Committee is open to very serious objection. The surrender of the powers of government, and of territorial jurisdiction by the Company to the Crown, and the transfer of these powers to the Canadian Government, are acts of State, authorized by imperial Statute, and will have all the force and permanence of fundamental law. The proposal to refer all questions which may arise under this law to some extra-constitutional tribunal is not warranted by the British North America Act, and would, we fear, if adopted, create confusion and embarrassment, and postpone indefinitely the establishment of a satisfactory government in Rupert's Land.

We must decline to admit, even by implication, that the judicial tribunals and the general and local authorities of the Dominion will fail to understand, or hesitate to respect and carry out, in good faith, all the terms and conditions of the proposed arrangement.

We have the honour to be, Sir,

Your obedient servants,

GEO. ET. CARTIER.

W. McDougall.

Sir Stafford Northcote, M.P.,
etc., etc., etc.

DETAILS OF AGREEMENT BETWEEN THE DELEGATES OF THE DOMINION AND THE DIRECTORS OF THE HUDSON'S BAY COMPANY.*

1. It is understood that in surrendering to Her Majesty all the rights, etc., of the Company in any part of British North America not comprised in Rupert's Land, Canada, or British Columbia, the Company are to retain the posts they actually occupy in the North-West Territory.

2. It is understood that it will be a sufficient act of selection under Article III. that the Company should, within twelve months, name the number of acres which they will require adjoining each post. The actual survey to be proceeded with with all convenient speed.

3. It is understood that, in the Red River Settlement, the size of the blocks to be retained round upper Fort Garry shall not exceed (ten) acres; and that round Lower Fort Garry shall not exceed (three hundred) acres.

4. It is understood that a list of the stations round which the Company will require blocks of land, with the size of the blocks they will require, shall be made out forthwith and communicated to the Canadian Ministers.

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Canadian Documents, and Correspondence between the Colonial Secretary and the Hudson's Bay Company, prior to the surrender of the Company's claims.

Canadian Delegates to H. B. Co., 18 March, 1869.

Agreement, Canadian Delegates, and H. B. Co., 22 March, 1869.

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Agreement, Canadian Delegates and H. B. Co., 22nd March, 1869.

5. It is understood that Article V. shall be construed to mean that the blocks shall front the river or road by which means of access are provided, and shall be approximately in form of parallelograms, of which the frontage shall not be more than half the depth.

6. It is understood that the Company may defer the exercise of their right of claiming their proportion of each township for not more than ten years after it is set out; but their claim must be limited to an allotment from the lands remaining unsold at the time they declare their intention to make it.

7. It is understood that the Blank in Article VI. shall be filled up with eight cents (Canadian).

8. It is understood that any claims of Indians to compensation for lands required for purposes of settlement shall be disposed of by the Canadian Government in communication with the Imperial Government, and that the Company shall be relieved of all responsibility in respect of them. 10

STAFFORD H. NORTHCOTE,
G. E. CARTIER,
W. McDOUGALL.

March 22, 1869.

THE CANADIAN DELEGATES TO THE UNDER-SECRETARY.*

WESTMINSTER PALACE HOTEL,
LONDON, 27th March, 1869.

Canadian Delegates to Under-Sec., 27th March, 1869.

SIR,—Your letter of the 9th inst., enclosing a copy of proposals made by Lord Granville to the Hudson's Bay Company in your letter to Sir Stafford Northcote of the same date, has not been formally acknowledged by us, in consequence of a doubt, not yet removed, as to the acceptance of these proposals 20 by the Company. We stated verbally to Lord Granville our objections to his proposals, but finally consented to recommend them to the Canadian Government, on condition that the Company first signified their acceptance of them. Sir Stafford Northcote has since opened communication with us directly, and proposed important modifications of Lord Granville's terms, to which we could not assent. In some points of detail we agreed that the terms might be varied or qualified, if such variation or qualification would be likely to make the arrangements, as a whole, more acceptable to the shareholders of the Company. We understand Sir Stafford Northcote has acquainted Lord Granville with the correspondence which has passed between us on the subject. The Company having, at the meeting on the 24th inst., postponed for a fortnight the question of accepting Lord Granville's proposals, we regret that we are unable to await their decision. Our public duties require that we should immediately return to Canada. 30 We have now the honour to repeat the request contained in our letter of the 8th February—viz., that immediate action may be taken by the Imperial Government upon the address of the Canadian Parliament of December, 1867, or that pending the negotiations for the transfer of Rupert's Land, the North-Western Territory, or all that part of British North America from Canada on the east, to British Columbia, Alaska and the Arctic Ocean on the west and north, not heretofore validly granted to, and now held by the Governor and Company of Adventurers of England trading into Hudson's Bay, may be immediately transferred to the Dominion of Canada, under the authority of the British North America Act, 1867.

G. E. CARTIER,
W. McDOUGALL. 40

MEMORANDUM OF A FURTHER AGREEMENT BETWEEN SIR GEORGE E. CARTIER (ONE OF THE CANADIAN DELEGATES) AND THE GOVERNOR OF THE HUDSON'S BAY COMPANY.*

Agreement, Canadian Delegates, and H. B. Co., 29th March, 1869.

Inasmuch as the northern branch of the Saskatchewan River is the northern boundary of the fertile belt, and therefore any land on the northern bank is not within the Territory of which the Company are to have one-twentieth part, it is understood that in forming the townships abutting on the northern bank, the Company shall be at liberty to take their one-twentieth of any such townships, giving up to the Canadian Dominion an equal quantity of the portion of lands coming to them of townships established on the southern bank.

* Sess. Papers, Canada, 1869, No. 25.

It is understood that the townships on the northern bank shall not for the above purpose extend more than five miles inland from the river.

It is understood that in laying out any public roads, canals, etc., through any block of land reserved to the Company, the Canadian Government may take without compensation such land as is necessary for the purpose, not exceeding one twenty-fifth of the total acreage of the block; but if the Canadian Government require any land which is actually under cultivation, or which has been built upon, or which is necessary for giving the Company's servants access to any river or lake, or has a frontage to any river or lake, they shall pay the Company the fair value of the same, and shall make compensation for any injury done to the Company or their servants.

It is understood that the whole of the land to be appropriated within the meaning of the last 10 preceding clause shall be appropriated for public purposes.

GEORGE ET. CARTIER,
STAFFORD H. NORTHCOTE.

LONDON, 29th March, 1869.

THE UNDER-SECRETARY TO THE GOVERNOR OF THE HUDSON'S BAY COMPANY.*

DOWNING STREET,

April 3rd, 1869.

I am directed by Earl Granville to enclose for your information a copy of a letter addressed by him to Sir G. Cartier and Mr. McDougall, and a letter which he has received from them in reply, in which they intimate their acceptance of the terms proposed to you and them for the surrender of the territorial and other rights of the Hudson's Bay Company in Rupert's Land. I am to add that his Lordship has been informed in conversation by the above gentlemen that they believe the Canadian Government will agree to those terms, and have a confident hope that their Parliament will not reject them, and they added that in the event of the transfer taking place, the Hudson's Bay Company might rely upon the justice and good will of the Government and the Parliament of Canada.

F. ROGERS.

THE GOVERNOR OF THE HUDSON'S BAY COMPANY TO THE UNDER-SECRETARY.†

HUDSON'S BAY HOUSE,

LONDON, 10th April, 1869.

SIR,—I have the honour to acquaint you, for the information of Earl Granville, that at a meeting of the Hudson's Bay Company, held on the 9th inst., the following resolution was adopted by a majority of the proprietors specially summoned to consider the proposal contained in your letter of the 9th ulto, for the surrender of the Company's territory, etc., to Her Majesty:—

That it is expedient to accede in the terms proposed in the communication above referred to, and to surrender to Her Majesty all this Company's territorial rights in Rupert's Land, and in any other part of British North America not comprised in Rupert's Land, Canada or British Columbia, and that the Governor and Committee be and they are hereby authorized to make such surrender on being assured that the terms have been agreed to by the Government and Parliament of Canada, provided that the acceptance of the terms by the Government and Parliament of Canada shall have been signified to them by Her Majesty's Secretary of State for the Colonies, within six months after the passing of this resolution, and that for that purpose the Governor and Committee concur in all such measures as may be found necessary for effecting such surrender, and for securing to the Company the rights and reservations to which, by the terms of the letter from Sir Frederic Rogers, the Company will be entitled.

I have, etc.,

STAFFORD H. NORTHCOTE,
Governor.

Sir F. Rogers, Baronet.

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Canadian Documents, and Correspondence between the Colonial Secretary and the Hudson's Bay Company, prior to the surrender of the Company's claims.

Agreement, Canadian Delegates and H. B. Co., 29th March, 1869.

Under-Sec. to H. B. Co., 3 April, 1869.

H. B. Co. to Under-Sec. 10 April, 1869.

THE COLONIAL SECRETARY TO THE GOVERNOR-GENERAL.*

DOWNING STREET,

10th April, 1869.

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the Company's
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to Govern-
General, 10th
April, 1869.

SIR,—The proprietors of the Hudson's Bay Company have considered at a special meeting the terms on which they have been invited to transfer their territorial rights to the Dominion of Canada, and I enclose the copy of a letter addressed to me by Sir Stafford Northcote, from which you will perceive that those terms have been acceded to.

You will observe that the Governor and Committee of the Company are authorized to concur in all such measures as may be found necessary for effecting this transfer, and for securing to the Company all the rights and reservations to which they will be entitled, provided that the acceptance of the terms 10 by the Government and Parliament of Canada is duly signified to them within six months.

I trust that this acceptance may be confidently anticipated, and that by it an opening will be made for extending the benefits of a regular Government to those British subjects who at present occupy the Company's territory; for settling the tracts of fertile land which lie in the centre of the continent; and for the consolidation of British North America, under one Central Government.

On one point which has not been hitherto touched upon, I am anxious to express to you the expectations of Her Majesty's Government. They believe that whatever may have been the policy of the Company, and the effect of their chartered rights upon the progress of settlement, the Indian tribes who form the existing population of this part of America have profited by the Company's rule.

They have been protected from some of the vices of civilization; they have been taught to some 20 appreciable extent to respect the laws and rely on the justice of the white man; and they do not appear to have suffered from any causes of extinction beyond those which are inseparable from their habits and their climate. I am sure that your Government will not forget the care which is due to those who must soon be exposed to new dangers, and in the course of settlement be dispossessed of the lands which they are used to enjoy as their own, or be confined within unwontedly narrow limits.

This question had not escaped my notice while framing the proposals which I laid before the Canadian delegates and the Governor of the Hudson's Bay Company. I did not, however, then allude to it, because I felt the difficulty of insisting on any definite conditions without the possibility of foreseeing the circumstances under which those conditions would be applied, and because it appeared to me 30 wiser and more expedient to rely on the sense of duty and responsibility belonging to the Government and people of such a country as Canada.

That Government, I believe, has never sought to evade its obligations to those whose uncertain 30 rights and rude means of living are contracted by the advance of civilized men. I am sure that they will not do so in the present case, but that the old inhabitants of the country will be treated with such forethought and consideration as may preserve them from the dangers of the approaching change, and satisfy them of the friendly interest which their new governors feel in their welfare.

With the expression of this hope, I will close my despatch, merely repeating my sincere desire that the annexation of the great territory may be speedily accomplished, and may bring to the Dominion all the advantages which the statesmen of Canada not unreasonably anticipate.

I have, etc.,

Governor the Right Honourable Sir John Young, Baronet,
G. C. B., etc., etc., etc.

GRANVILLE 40

REPORT OF THE CANADIAN DELEGATES.*

To His Excellency the Right Hon. Sir John Young, Bart., G.C.B., G.C.M.G., Governor-General of Canada.

May it Please Your Excellency,—

Report, Can-
adian Dele-
gates, 8th
May, 1869.

We have the honour to submit for Your Excellency's consideration the following Report of our negotiations with Her Majesty's Imperial Government for the transfer to the Dominion of Canada of Rupert's Land and the North-Western Territory:—

* Sess. Papers, Canada, 1869, No. 25.

Under the authority of an Order in Council of the 1st October, 1868, we were appointed a delegation to England to arrange the "terms for the acquisition by Canada of Rupert's Land," and by another Order in Council of the same date, we were authorized to arrange "for the admission of the North-West Territory into union with Canada, either with or without Rupert's Land, as may be found practicable and expedient." We proceeded at once to execute the important mission confided to us, and on presenting ourselves at the Colonial Office, were invited by his Grace the Duke of Buckingham and Chandos, then Secretary of State for the Colonies, to visit him at Stowe, for the purpose of discussing freely and fully the numerous and difficult questions which were involved in the transfer of these great territories to Canada. We found that his Grace had already made some progress in the preliminaries of a negotiation 10 (under the Act 31 and 32 Vic, cap. 105) with the Hudson's Bay Company, for the surrender to Her Majesty of the territorial and political rights which they claimed in Rupert's Land. We objected very earnestly to some of the demands of the Company which were communicated to us by his Grace, but after much consideration and important modifications of the Company's demands, we agreed that if they would surrender the territory on the conditions which his Grace proposed, we would recommend the acceptance of these conditions by the Canadian Government.

The Duke of Buckingham's proposals will be found in the letter of Mr. Adderley, of the 1st December, 1868, addressed to the Governor of the Hudson's Bay Company.

Considerable delay in the negotiations was occasioned by the retirement from office of the Duke of Buckingham and his colleagues, and also by the resignation of Lord Kimberley, the then Governor of 20 the Company.

On the 18th January, 1869, Earl Granville, who had acceded to office as Secretary of State for the Colonies, transmitted to us the reply of the Company, declining the proposals of the Duke of Buckingham. His Lordship subsequently requested us to communicate to him any observations which we might desire to offer upon this reply of the Company and upon certain counter-proposals which it contained. We felt reluctant, as representatives of Canada, to engage in a controversy with the Company concerning matters of fact, as well as questions of law and policy, while the negotiation with them was being carried on by the Imperial Government in its own name and of its own authority. But we did not feel at liberty to decline Lord Granville's request, and on the 8th of February stated at length our views upon the various points raised in the letter of Sir Stafford Northcote, the new Governor of the Company, in answer to the proposals of the Duke of Buckingham. We beg to refer Your Excellency to 30 the correspondence for full information as to the positions taken and the opinions expressed by us at this stage of the negotiation.

Lord Granville, being of opinion that the rejection by the Company of the proposals of his predecessor had terminated the negotiations instituted by him, submitted for our consideration proposals of his own, based on a different principle from that which had been laid down by the Duke of Buckingham.

We felt it our duty to state to his Lordship that these proposals would not be acceptable to the Canadian Government. They were subsequently modified, and in the form in which they appear in the letter of Sir Frederick Rogers, of the 9th March, were conditionally accepted by us, subject to the 40 approval of Your Excellency in Council.

Certain details were left by Lord Granville to be settled between the representatives of the Company and ourselves, which led to interviews and discussions with them, and to a correspondence, which is also submitted herewith.

During the progress of the negotiations, a formal complaint was made to the Colonial Secretary by the representatives of the Company against the Canadian Government, for undertaking the construction of a road between Lake of the Woods and the Red River Settlement without having first obtained the consent of the Company. The letter conveying this complaint was referred to us by Earl Granville for such explanations as we were able to offer. The correspondence on this subject is also respectfully submitted.

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Sec. III.

Canadian Documents, and Correspondence between the Colonial Secretary and the Hudson's Bay Company, prior to the surrender of the Company's claims.

Report Canadian Delegates, 8th May, 1869.

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Your Excellency is aware that since our return to Canada the Hudson's Bay Company have signi-
fied to Lord Granville their acceptance of the terms proposed by him for the surrender to Her Majesty
of their territorial rights in Rupert's Land. We have, therefore, the honour to submit the same, with
a memorandum of the "details" agreed to by us on behalf of the Canadian Government, for the
approval of Your Excellency, and for such action thereupon as Your Excellency may be advised to take
All of which is respectfully submitted.

OTTAWA, May 8, 1869.

Geo. E. CARTIER,
Wm. McDougall.

REPORT OF A COMMITTEE OF THE PRIVY COUNCIL (CANADA), APPROVED BY THE GOVERNOR-GENERAL
ON THE 14TH MAY, 1869.*

Order-in-
Council
(Can.), 14th
May, 1869.

The Committee have had under consideration the accompanying report and correspondence of the
delegates appointed, by Order in Council of 1st October last, to proceed to England to negotiate the terms
for the acquisition by Canada of Rupert's Land and the North-West Territory, and they humbly
advise that the said report and the terms agreed upon, as set forth in the said report and correspondence,
be approved by Your Excellency and submitted for the consideration and sanction of Parliament.

To the Honourable the Secretary of State,
etc., etc., etc.

Wm. H. LEE, Clerk, P.C.

MESSAGE OF THE GOVERNOR-GENERAL TO THE HOUSE OF COMMONS.*

JOHN YOUNG.

The Governor-General transmits, for the consideration of the House of Commons, the report of the 20
delegates appointed to negotiate for the acquisition of Rupert's Land and the North-West Territory.
GOVERNMENT HOUSE,

OTTAWA, 17th May, 1869.

RESOLUTIONS OF THE SENATE AND HOUSE OF COMMONS OF CANADA OF 28TH MAY, 1869.†

Resolutions of
Parliament
of Canada,
28th May,
1869.

Resolved,—That the Senate and Commons of the Dominion of Canada, during the first session of
the first Parliament of Canada, adopted an Address to Her Majesty, praying that Her Majesty would
be graciously pleased, by and with the advice of Her Most Honourable Privy Council, under the provi-
sions of the 146th section of "*The British North America Act, 1867*," and on the terms specified in
that Address, to unite Rupert's Land and the North-west Territory with this Dominion, and to grant to
the Parliament of Canada authority to legislate for their future welfare and good government, and 30
assuring Her Majesty of the willingness of the Parliament of Canada to assume the duties and obliga-
tions of government and legislation as regards those territories.

Resolved,—That the Joint Address of the Senate and Commons of Canada was duly laid at the
foot of the Throne, and that Her Majesty, by despatch from the Right Honourable the Secretary of
State for the Colonies to the Governor-General of Canada, under date of 23rd of April, 1868, signified
her willingness to comply with the prayer of the said Address; but she was advised that the requisite
powers of government and legislation could not, consistently with the existing charter of the Hudson's Bay
Company, be transferred to Canada without an Act of Parliament, which Act was subsequently passed
by the Imperial Parliament, and received Her Majesty's assent on the 31st July, 1868.

Resolved,—That by despatch dated 8th August, 1868, from the Honourable Secretary of State for
the Colonies, the Governor-General was informed, that in pursuance of the powers conferred by the Act
for the surrender of the Hudson's Bay Territories to Her Majesty, he proposed to enter into negotiations
with the Company as to the terms of such surrender, whereupon, under authority of an Order of the
Governor-General in Council of the 1st October, 1868, the Honourable Sir George Et. Cartier, Baronet,

* Sess. Papers, Canada, 1869, No. 25.

† Journals, House of Coms., Canada, 1869, p. 150; Prefix to Stats., Can., 1872, p. lxxviii.

and the Honourable William McDougall, C.B., were appointed a delegation to England, to arrange the terms for the acquisition by Canada of Rupert's Land, and by another Order in Council of the same date, were authorized to arrange for the admission of the North-west Territory into union with Canada, either with or without Rupert's Land, as it might be found practicable and expedient.

Resolved.—That the delegates proceeded on their mission to England and entered into negotiations with His Grace the Duke of Buckingham and Chandos, the Secretary of State for the Colonies, and afterwards with the Right Honourable Earl Granville, his successor in office, for the acquisition by Canada of the territorial and other rights claimed by the Hudson's Bay Company in Rupert's Land, and in any other part of British North America, not comprised in Rupert's Land, Canada, or British Columbia. That terms of agreement were conditionally assented to by the delegates on behalf of the Dominion, and on their return to Canada were submitted with a Report dated 8th May, 1869, which was approved by His Excellency the Governor in Council, on the 14th day of the same month.

Resolved.—That the Senate will be prepared to concur in accepting the transfer of the territorial and other rights of the Hudson's Bay Company in Rupert's Land, and in any other part of British North America, not comprised in Rupert's Land, Canada or British Columbia, on the terms conditionally agreed to on behalf of the Government of Canada, by the Hon. Sir George Et. Cartier, Baronet, and the Hon. William McDougall, C.B., and on behalf of the Hudson's Bay Company, by Sir Stafford H. Northcote, Governor of that Company, and approved by His Excellency in Council as aforesaid, which terms are set forth in a letter from Sir Frederick Rogers, Under-Secretary of State for the Colonies, of the 9th March, 1869, communicated to the delegates by direction of Earl Granville, and in two subsequent memorandums dated respectively 22nd and 29th March, 1869, containing a modification of such terms, and are in the words and figures following;—[See this letter of 9th March, 1869, containing the terms, numbered therein 1 to 12 inclusive, and the memorandum of 22nd March, 1869, and the subsequent memorandum of 29th March, 1869, in the order of their respective dates, *ante*.]

Resolved.—That this House learns with satisfaction, by letter from the Under-Secretary of State for the Colonies, of 9th March last, that, in fulfilment of the expectations held out in Mr. Carlwell's despatch of 17th June, 1865, Her Majesty's Government will be prepared to propose to Parliament that the Imperial guarantee be given to a loan of £300,000, the amount which is proposed to be paid over by Canada on the transfer of the Company's rights.

Resolved.—That the Senate will be ready to concur with the House of Commons in an Address to Her Majesty, that she will be graciously pleased, by and with the advice of Her Most Honourable Privy Council, under the 146th clause of "*The British North America Act, 1867*," and the provisions of the Imperial Act, 31 & 32 Vict., cap. 105, to unite Rupert's Land on the terms and conditions expressed in the foregoing Resolutions, and also to unite the North-Western Territory with the Dominion of Canada, as prayed for by, and on the terms and conditions contained in the joint Address of the Senate and the House of Commons of Canada, adopted during the first session of the first Parliament of Canada and hereinbefore referred to.

Resolved.—That upon the transference of the territories in question to the Canadian Government it will be the duty of the Government to make adequate provision for the protection of the Indian tribes whose interests and well-being are involved in the transfer.

Resolved.—That the Governor in Council be authorized and empowered to arrange any details that may be necessary to carry out the terms and conditions of the above agreement.

ADDRESS OF THE SENATE AND HOUSE OF COMMONS OF CANADA TO HER MAJESTY THE QUEEN.*

To the Queen's Most Excellent Majesty.

Most Gracious Sovereign,—

We, Your Majesty's most dutiful and loyal subjects, the Senate and Commons of the Dominion of Canada in Parliament assembled, humbly approach Your Majesty for the purpose of representing:

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prior to the
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claims.
Resolutions of
Parliament
of Canada,
28 May,
1869.

Address
Canadian
Parliament to
Her Majesty
23 and 31
May, 1869.

* Journals, House of Commons, Canada, 1869, p. 153; Prefix to Stats., Canada, 1872, p. lxxiii.

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Secretary and
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Bay Company,
prior to the
surrender of
the Company's
claims.

Address
Canadian
Parliament to
Her Majesty,
29th and 31st
May, 1869.

That, during the first session of the first Parliament of this Dominion, we adopted an Address to Your Majesty, praying that Your Majesty would be graciously pleased, by and with the advice of Your Majesty's Most Honourable Privy Council, under the provisions of the 146th Section of "*The British North America Act, 1867*," and on the terms specified in that Address, to unite Rupert's Land and the North-West Territory with this Dominion, and to grant to the Parliament of Canada authority to legislate for their future welfare and good government, and assuring Your Majesty of the willingness of the Parliament of Canada to assume the duties and obligations of Government and legislation as regards those territories.

That our joint Address was duly laid at the foot of the Throne, and that Your Majesty, by despatch from the Right Honourable the Secretary of State for the Colonies to the Governor-General of Canada, 10 under date of the 23rd April, 1868, signified Your Majesty's willingness to comply with the prayer of the said Address, but that Your Majesty was advised that the requisite powers of government and legislation could not, consistently with the existing charter of the Hudson's Bay Company, be transferred to Canada without an Act of Parliament, which Act was subsequently passed by the Imperial Parliament, and received Your Majesty's assent on the 31st July, 1868.

That by a despatch dated 8th August, 1868, from the Honourable the Secretary of State for the Colonies, the Governor-General was informed that in pursuance of the powers conferred by the Act for the surrender of the Hudson's Bay territories to Your Majesty he proposed to enter into negotiations with the Company as to the terms of such surrender, whereupon, under authority of an Order of the Governor-General in Council of the 1st October, 1868, the Honourable Sir George Et. Cartier, Baronet, 20 and the Honourable William McDougall, C.B., were appointed a delegation to England to arrange the terms for the acquisition by Canada of Rupert's Land, and by another Order in Council of the same date, were authorized to arrange for the admission of the North-West Territory into union with Canada either with or without Rupert's Land, as might be found practicable and expedient.

That the delegates proceeded on their mission to England, and entered into negotiations with his Grace the Duke of Buckingham and Chandos, then Secretary of State for the Colonies, and afterwards with the Right Honourable Earl Granville, his successor in office, for the acquisition by Canada of the territorial and other rights claimed by the Hudson's Bay Company in Rupert's Land, and in any other part of British North America not comprised in Rupert's Land, Canada, or British Columbia, on the terms conditionally agreed to on behalf of the Government of Canada by the Honourable Sir George 30 Et. Cartier, Baronet, and the Honourable William McDougall, C.B., and on behalf of the Hudson's Bay Company by Sir Stafford H. Northcote, Governor of that Company, and approved by His Excellency in Council as aforesaid, which terms are set forth in a letter from Sir Frederick Rogers, Under-Secretary of State for the Colonies, of the 9th March, 1869, communicated to the delegates by direction of Earl Granville, and in two subsequent memorandums dated respectively 22nd and 29th March, 1869, containing a modification of such terms, and are in the words and figures following;—[This letter of 9th March, 1869, containing the terms numbered 1 to 12 inclusive, and the memorandum of 22nd March, 1869, and the subsequent memorandum of 29th March, 1869, are to be found in order of date, *ante*.]

That we learn with satisfaction by letter from the Under-Secretary of State for the Colonies, of the 9th March last, that in fulfilment of the expectations held out in Mr. Cardwell's despatch of the 17th of 40 June, 1865, Your Majesty's Government will be prepared to propose to Parliament that the Imperial guarantee be given to a loan of £300,000, the amount which is proposed to be paid over by Canada on the transfer of the Company's rights.

That upon the transference of the territories in question to the Canadian Government it will be our duty to make adequate provision for the protection of the Indian tribes whose interests and well-being are involved in the transfer; and we authorize and empower the Governor in Council to arrange any details that may be necessary to carry out the terms and conditions of the above agreement.

We therefore most humbly pray that Your Majesty will be graciously pleased, by and with the advice of Your Most Honourable Privy Council, under the 146th clause of "*The British North America Act, 1867*," and the provisions of the Imperial Act, 31 and 32 Vict., cap. 105, to unite Rupert's Land on the 50

terms and conditions expressed in the foregoing resolutions, and also to unite the North-Western Territory with the Dominion of Canada, as prayed for by and on the terms and conditions contained in our joint Address adopted during the first session of the first Parliament of this Dominion, and hereinbefore referred to.

The Senate, Monday, May 31, 1869.

House of Commons, Ottawa, May 29, 1869.

JOSEPH CAUCHON,

Speaker.

JAMES COCKBURN,

Speaker.

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DOMINION ACT, 32-33 VIC., CAP. 3, (1869).

AN ACT FOR THE TEMPORARY GOVERNMENT OF RUPERT'S LAND AND THE NORTH-WESTERN TERRITORY WHEN UNITED WITH CANADA.

Whereas it is probable that Her Majesty the Queen may, pursuant to "*The British North America Act, 1867*," be pleased to admit Rupert's Land and the North-Western Territory into the Union or Dominion of Canada, before the next Session of the Canadian Parliament; And whereas it is expedient to prepare for the transfer of the said territories from the local authorities to the Government of Canada, at the time appointed by the Queen for such admission, and to make some temporary provision for the Civil Government of such territories until more permanent arrangements can be made by the Government and Legislature of Canada; Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

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Act, 32-33
Vic., cap. 3,
1869.

1. The said territories when admitted as aforesaid, shall be styled and known as "The North-West Territories."

5. All the laws in force in Rupert's Land and the North-Western Territory, at the time of their admission into the Union, shall, so far as they are consistent with "*The British North America Act, 1867*,"—with the terms and conditions of such admission approved of by the Queen under the 146th section thereof,—and with this Act, remain in force until altered by the Parliament of Canada, or by the Lieutenant-Governor under the authority of this Act.

6. All public officers and functionaries holding office in Rupert's Land and the North-Western Territory, at the time of their admission into the Union, excepting the public officer or functionary at the head of the administration of affairs, shall continue to be public officers and functionaries of the North-West Territories with the same duties and powers as before, until otherwise ordered by the Lieutenant-Governor, under the authority of this Act.

7. This Act shall continue in force until the end of the next Session of Parliament.

DEED OF SURRENDER OF RUPERT'S LAND, 19TH NOVEMBER, 1869.

THE GOVERNOR AND COMPANY OF ADVENTURERS OF ENGLAND TRADING INTO HUDSON'S BAY TO HER MAJESTY QUEEN VICTORIA.*

To all whom these presents shall come unto, or concern, the Governor and Company of Adventurers of England trading into Hudson's Bay, send greeting.

Whereas the said Governor and Company were established and incorporated by their said name of "The Governor and Company of Adventurers of England trading into Hudson's Bay," by letters patent, granted by His late Majesty King Charles the Second, in the twenty-second year of his reign, whereby His said Majesty granted unto the said Company and their successors the sole trade and commerce of all those seas, straits, bays, rivers, lakes, creeks and sounds in whatsoever latitude they should be, that lay within the entrance of the straits commonly called Hudson's Straits, together with all the lands and territories upon the countries, coasts and confines of the seas, bays, lakes, rivers, creeks, and sounds

Deed of Surrender, H. B. Co., to Her Majesty, 19th November, 1869.

*Prefix to Stats., Canada, 1872, p. lxxvii.

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aforsaid, that were not already actually possessed by, or granted to, any of His Majesty's subjects, or possessed by the subjects of any other Christian Prince or State, and that the said land should be from thenceforth reckoned and reputed as one of His Majesty's plantations or colonies in America, called Rupert's Land; and whereby His said Majesty made and constituted the said Governor and Company and their successors the absolute lords and proprietors of the same territory, limits and places aforesaid, and of all other the premises, saving the faith, allegiance and sovereign dominion due to His said Majesty, his heirs and successors for the same; and granted to the said Governor and Company and their successors such rights of government and other rights, privileges and liberties, franchises, powers and authorities in Rupert's Land as therein expressed. And whereas ever since the date of the said letters patent, the said Governor and Company have exercised and enjoyed the sole right thereby 10 granted of such trade and commerce as therein mentioned, and have exercised and enjoyed other rights, privileges, liberties, franchises, powers and authorities thereby granted; and the said Governor and Company have exercised or assumed rights of government in other parts of British North America, not forming part of Rupert's Land, or of Canada, or of British Columbia. And whereas by the "British North America Act, 1867," it is (amongst other things) enacted that it shall be lawful for Her present Majesty Queen Victoria, by and with the advice and consent of Her Majesty's Most Honourable Privy Council, on address from the Houses of Parliament of Canada, to admit Rupert's Land and the North- Western Territory or either of them, into the Union of the Dominion of Canada, on such terms and con- ditions as are in the Address expressed, and as Her Majesty thinks fit to approve, subject to the pro- visions of the said Act. And whereas, by the "Rupert's Land Act, 1868," it is enacted (amongst other 20 things) that for the purposes of that Act, the term "Rupert's Land," shall include the whole of the lands and territories held or claimed to be held by the said Governor and Company, and that it shall be com- petent for the said Governor and the Company to surrender to Her Majesty, and for Her Majesty, by any instrument under Her Sign Manual and Signet, to accept a surrender of all or any of the lands territories, rights, privileges, liberties, franchises, powers and authorities whatsoever, granted or pur- ported to be granted by the said letters patent to the said Governor and Company within Rupert's Land, upon such terms and conditions as shall be agreed upon by and between Her Majesty and the said Governor and Company; provided however, that such surrender shall not be accepted by Her Majesty until the terms and conditions upon which Rupert's Land shall be admitted into the said Dominion of Canada shall have been approved of by Her Majesty, and embodied in an Address to Her Majesty from 30 the Houses of the Parliament of Canada, in pursuance of the 146th section of the "British North America Act, 1867," and that upon the acceptance by Her Majesty of such surrender, all rights of government and proprietary rights, and all other privileges, liberties, franchises, powers and authorities whatsoever granted or purported to be granted by the said letters patent to the said Governor and Company within Rupert's Land, and which shall have been so surrendered, shall be absolutely extinguished; provided that nothing in the said Act contained shall prevent the said Governor and Company from continuing to carry on in Rupert's Land, or elsewhere, trade and commerce. And whereas Her said Majesty Queen Victoria and the said Governor and Company have agreed to terms and conditions upon which the said Governor and Company shall surrender to Her said Majesty, pursuant to the provisions in that behalf in the "Rupert's Land Act, 1868," contained, all the rights of government and other rights, privileges, 40 liberties, franchises, powers and authorities, and all the lands and territories (except and subject as in the said terms and conditions expressed or mentioned) granted or purported to be granted by the said letters patent, and also all similar rights which have been exercised or assumed by the said Governor and Company in any parts of British North America not forming part of Rupert's Land, or of Canada, or of British Columbia, in order and to the intent that, after such surrender has been effected and accepted under the provisions of the last-mentioned Act, the said Rupert's Land may be admitted into the Union of the Dominion of Canada, pursuant to the hereinbefore mentioned Acts or one of them. And whereas the said terms and conditions on which it has been agreed that the said surrender is to be made by the said Governor and Company (who are in the following articles designated as the Company) to Her said Majesty are as follows, that is 50 to say:—

1. The Canadian Government shall pay to the Company the sum of £300,000 sterling, when Rupert's Land is transferred to the Dominion of Canada.

2. The Company to retain all the posts or stations now actually possessed and occupied by them, or their officers or agents, whether in Rupert's Land or in any other part of British North America, and may within twelve months after the acceptance of the said surrender select a block of land adjoining each of their posts or stations, within any part of British North America not comprised in Canada and British Columbia, in conformity, except as regards the Red River Territory, with a list made out by the Company and communicated to the Canadian Ministers, being the list in the annexed schedule. The actual survey is to be proceeded with, with all convenient speed.
3. The size of each block is not to exceed in the Red River Territory an amount to be agreed upon between the Company and the Governor of Canada in Council.
4. So far as the configuration of the country admits, the blocks shall front the river or road by which means of access are provided, and shall be approximately in the shape of parallelograms, and of which the frontage shall not be more than half the depth.
5. The Company may, at any time within fifty years after such acceptance of the said surrender claim in any township or district within the fertile belt in which land is set out for settlements, grants of land not exceeding one-twentieth part of land so set out, the blocks so granted to be determined by lot, and the Company to pay a rateable share of the survey expenses, not exceeding eight cents Canadian an acre. The Company may defer the exercise of their right of claiming their proportion of each township or district for not more than ten years after it is set out, but their claim must be limited to an allotment from the lands remaining unsold at the time they declare their intention to make it.
6. For the purpose of the last article the fertile belt is to be bounded as follows:—On the south by the United States' boundary; on the west by the Rocky Mountains; on the north by the northern boundary of the Saskatchewan River; on the east by Lake Winnipeg, the Lake of the Woods, and the waters connecting them.
7. If any township shall be formed abutting on the north bank of the northern branch of the Saskatchewan River, the Company may take their one-twentieth of any such township, which, for the purposes of this article, shall not extend more than five miles inland from the river, giving to the Canadian Dominion an equal quantity of the portion of land coming to them of townships established on the southern bank of the said river.
8. In laying out any public roads, canals or other public works, through any block of land reserved to the Company, the Canadian Government may take, without compensation, such land as is necessary for the purpose, not exceeding one-twenty-fifth of the total acreage of the block; but if the Canadian Government require any land which is actually under cultivation, which has been built upon, or which is necessary for giving the Company's servants access to any river or lake, or has a frontage to any river or lake, the said Government shall pay to the Company the fair value of the same, and shall make compensation for any injury done to the Company or their servants.
9. It is understood that the whole of the land to be appropriated within the meaning of the last preceding clause, shall be appropriated for public purposes.
10. All titles to land up to the eighth day of March, one thousand eight hundred and sixty-nine, conferred by the Company, are to be confirmed.
11. The Company is to be at liberty to carry on its trade without hindrance in its corporate capacity; and no exceptional tax is to be placed on the Company's land, trade, or servants, nor any import duty on goods introduced by the said Company previously to such acceptance of the said surrender.
12. Canada is to take over the materials of the electric telegraph at cost price; such price including transport, but not including interest for money, and subject to a deduction for ascertained deterioration.
13. The Company's claim to land under an agreement of Messrs. Vankoughnet and Hopkins is to be withdrawn.
14. Any claims of Indians to compensation for lands required for purposes of settlement shall be disposed of by the Canadian Government in communication with the Imperial Government; and the Company shall be relieved of all responsibility in respect of them.

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And whereas the surrender hereinafter contained is intended to be made in pursuance of the agree-
ment, and upon the terms and conditions hereinbefore stated.

Now know ye, and these presents witness, that in pursuance of the powers and provisions of the
"Rupert's Land Act, 1868," and on the terms and conditions aforesaid, and also on condition of this
surrender being accepted pursuant to the provisions of that Act, the said Governor and Company do
hereby surrender to the Queen's Most Gracious Majesty, all the rights of government, and other rights,
privileges, liberties, franchises, powers and authorities, granted or purported to be granted to the said
Governor and Company by the said recited letters patent of His late Majesty King Charles the Second;
and also all similar rights which may have been exercised or assumed by the said Governor and
Company in any parts of British North America, not forming part of Rupert's Land or of Canada, or 10
of British Columbia, and all the lands and territories within Rupert's Land (except and subject as in
the said terms and conditions mentioned) granted or purported to be granted to the said Governor and
Company by the said letters patent. In witness whereof, the Governor and Company of Adventurers
of England trading into Hudson's Bay, have hereunto caused their Common Seal to be affixed, the
nineteenth day of November, one thousand eight hundred and sixty-nine.

THE SCHEDULE ABOVE REFERRED TO.

Northern Department, RUPERT'S LAND.

District.	Post.	Acres of Land.
English River	Ile a la Crosse	50
	Rapid River	5
	Portage la Loche	20 say 10 acres each end of Portage.
	Green Lake	100
	Cold Lake	10
	Deer's Lake	5
Saskatchewan	Edmonton House	3,000
	Rocky Mountain House	500
	Fort Victoria	3,000
	St. Paul	3,000
	Fort Pitt	3,000
	Battle River	3,000
	Carlton House	3,000
	Fort Albert	3,000
	Whitefish Lake	500
	Lac La Biche	1,000
	Fort Assiniboine	50
	Lesser Slave Lake	500
	Lac Ste. Anne	500
	Lac la Nun	500
	St. Albert	1,000
	Pigeon Lake	100
	Old White Mud Fort	50
		25,700 acres in Saskatchewan District.
Cumberland	Cumberland House	100
	Fort la Coudre	3,000
	Pelican Lake	50
	Moose Woods	1,000
	The Pas	25
	Moose Lake	50
Grand Rapid Portage	100	
		50 acres at each end of Portage. 4,325 acres in Cumberland District.
Swan River	Fort Pelly	3,000
	Fort Ellice	3,000
	Q'Appelle Lakes	2,500
	Touchwood Hills	500
	Shoal River	50
	Manitobah	50
Fairford	100	
		9,200 acres in Swan River District.
Red River	Upper Fort Garry and Town of Win- nipeg	} (Such number of acres as may be agreed upon between the Company and the Governor of Canada in Council.
	Lower Fort Garry (including the farm the Company now have under culti- vation)	
	White Horse Plain	

District.	Post.	Acres of Land.
Manitobah Lake	Oak Point	50
Portage la Prairie	1,000
Lac la Pluis	Fort Alexander	500
	Fort Frances	500
	Eagle's Nest	20
	Big Island	20
	Lac du Bonnet	20
	Rat Portage	50
	Shoal Lake	20
	Lake of the Woods	50
	Whitefish Lake	20
	English River	20
	Hungry Hall	20
	Trout Lake	20
	Clear Water Lake	20
	Sandy Point	20
York	York Factory	100
	Churchill	10
	Severn	10
	Trout Lake	10
	Oxford	100
	Jackson's Bay	10
	God's Lake	10
	Island Lake	10
Norway House	Norway House	100
	Berens River	25
	Grand Rapid	10
	Nelson's River	10
		145
	Total in Northern Department	42,170 acres.
Southern Department, RUPERT'S LAND.		
Albany	Albany Factory	100
	Martin's Falls	10
	Osnaburg	25
	Lac Seul	500
East Main	Little Whale River	50
	Great Whale River	50
	Fort George	25
Moose	Moose Factory	100
	Hannah Bay	10
	Abitibi	10
	New Brunswick	25
Rupert's River	Rupert's House	50
	Miatassing	10
	Temiskamoy	10
	Woswonaby	10
	Mechiskun	10
	Pike Lake	10
	Nitchequon	10
	Kanapiscan	10
Kinogumissce	Matawagamique	50
	Kuckatoosh	10
		60
	Total in Southern Department	1,085 acres.
Montreal Department, RUPERT'S LAND.		
Superior	Long Lake	10
Temiscamingue	Kakababegino	10
Labrador	Fort Nascoptic	75
	Outposts, ditto	25
	Fort Chimo (Ungava)	100
	South River, Outposts	30
	George's River	50
	Whale River	50
	North's River	25
	False River	25
		380
	Total in Montreal Department	400 acres.

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		Fort Chippewyan	10	
		Fort Vermilion	500	
		Fort Dunvegan	50	
		Fort St. John's	20	
		Forks of Athabasca River	10	
		Battle River	5	
		Fond du Lac	5	
		Salt River	5	
		McKenzie's River.....	Fort Simpson	100
			Fort Liard	300
			Fort Nelson	200
			The Rapida	100
			Hay River	20
	Fort Resolution	20		
	Fort Rae	10		
	Fort du Lac	10		
	Fort Norman	10		
	Fort Good Hope	10		
	Peel's River	10		
	Lapierre's House	10		
	Fort Halkett	100		
		605 acres in Athabasca District.		
		900 acres in the McKenzie R. District.		
	Total in North-West Territory	1,505 acres.		

RECAPITULATION.

	Acres.
Northern Department, Rupert's Land	42,170
Southern do. do.	1,085
Montreal do. do.	400
Northern do. North-West Territory	1,505
	45,160

DOMINION ACT, 33 VIC., CAP. 3, (1870).

AN ACT TO AMEND AND CONTINUE THE ACT 32 AND 33 VICTORIA, CHAPTER 3; AND TO ESTABLISH AND PROVIDE FOR THE GOVERNMENT OF THE PROVINCE OF MANITOBA.

Dominion Act, 33 Vic., Cap. 3, 1870.

Whereas it is probable that Her Majesty the Queen may, pursuant to the "British North America Act, 1867," be pleased to admit Rupert's Land and the North-Western Territory into the Union or Dominion of Canada, before the next session of the Parliament of Canada:

And whereas it is expedient to prepare for the transfer of the said territories to the Government of Canada at the time appointed by the Queen for such admission:

And whereas it is expedient also to provide for the organization of part of the said territories as a Province, and for the establishment of a Government therefor, and to make provision for the civil government of the remaining part of the said territories, not included within the limits of the Province:

Therefore, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

1. On, from and after the day upon which the Queen, by and with the advice and consent of Her Majesty's Most Honourable Privy Council, under the authority of the 146th section of the "British North America Act, 1867," shall, by Order in Council in that behalf, admit Rupert's Land and the North-Western Territory into the Union or Dominion of Canada, there shall be formed out of the same a Province, which shall be one of the Provinces of the Dominion of Canada, and which shall be called the Province of Manitoba, and be bounded as follows: that is to say, commencing at the point where the meridian of ninety-six degrees west longitude from Greenwich intersects the parallel of forty-nine degrees north latitude; thence due west along the said parallel of forty-nine degrees north latitude (which forms a portion of the boundary line between the United States of America and the said North-

Western Territory) to the meridian of ninety-nine degrees of west longitude; thence due north along the said meridian of ninety-nine degrees west longitude, to the intersection of the same with the parallel of fifty degrees and thirty minutes north latitude; thence due east along the said parallel of fifty degrees and thirty minutes north latitude to its intersection with the before-mentioned meridian of ninety-six degrees west longitude; thence due south along the said meridian of ninety-six degrees west longitude to the place of beginning.

2. On, from and after the said day on which the Order of the Queen in Council shall take effect as aforesaid, the provisions of the "British North America Act, 1867," shall, except those parts thereof which are in terms made, or by reasonable intendment, may be held to be specially applicable to, or only to affect one or more, but not the whole of the Provinces now composing the Dominion, and except so far as the same may be varied by this Act, be applicable to the Province of Manitoba, in the same way, and to the like extent as they apply to the several Provinces of Canada, and as if the Province of Manitoba had been one of the Provinces originally united by the said Act.

30. All ungranted or waste lands in the Province shall be, from and after the date of the said transfer, vested in the Crown, and administered by the Government of Canada for the purposes of the Dominion, subject to, and except and so far as the same may be affected by, the conditions and stipulations contained in the agreement for the surrender of Rupert's Land by the Hudson's Bay Company to Her Majesty.

31. And whereas it is expedient, towards the extinguishment of the Indian title to the lands in the Province, to appropriate a portion of such ungranted lands, to the extent of one million four hundred thousand acres thereof, for the benefit of the families of the half-breed residents, it is hereby enacted, that, under regulations to be from time to time made by the Governor-General in Council, the Lieutenant-Governor shall select such lots or tracts in such parts of the Province as he may deem expedient, to the extent aforesaid, and divide the same among the children of the half-breed heads of families residing in the Province at the time of the said transfer to Canada, and the same shall be granted to the said children respectively, in such mode and on such conditions as to settlement and otherwise as the Governor-General in Council may from time to time determine.

32. For the quieting of titles, and assuring to the settlers in the Province the peaceable possession of the lands now held by them, it is enacted as follows:—

30 (1) All grants of land in freehold made by the Hudson's Bay Company up to the eighth day of March, in the year 1869, shall, if required by the owner, be confirmed by grant from the Crown.

(2) All grants of estates less than freehold in land made by the Hudson's Bay Company up to the eighth day of March aforesaid, shall, if required by the owner, be converted into an estate in freehold by grant from the Crown.

(3) All titles by occupancy with the sanction and under the license and authority of the Hudson's Bay Company up to the eighth day of March aforesaid, of land in that part of the Province in which the Indian title has been extinguished, shall, if required by the owner, be converted into an estate in freehold by grant from the Crown.

34. Nothing in this Act shall in any way prejudice or affect the rights or properties of the Hudson's Bay Company, as contained in the conditions under which that Company surrendered Rupert's Land to Her Majesty.

35. And with respect to such portion of Rupert's Land and the North-Western Territory, as is not included in the Province of Manitoba, it is hereby enacted, that the Lieutenant-Governor of the said Province shall be appointed, by Commission under the Great Seal of Canada, to be the Lieutenant-Governor of the same, under the name of the North-West Territories, and subject to the provisions of the Act in the next section mentioned.

36. Except as hereinbefore is enacted and provided, the Act of the Parliament of Canada, passed in the now last session thereof, and entitled "An Act for the Temporary Government of Rupert's

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Land, and the North-Western Territory when united with Canada," is hereby re-enacted, extended and continued in force until the first day of January, 1871, and until the end of the session of Parliament then next succeeding.

REPORT OF THE MINISTER OF JUSTICE (CANADA).*

DEPARTMENT OF JUSTICE,

OTTAWA, Dec. 29th, 1870.

The undersigned has the honour to report to Your Excellency that during the last session of the Canadian Parliament, while the Act 33 Vic, cap. 3, providing for the establishment and government of the Province of Manitoba was under consideration, the question was raised as to the power of Parliament to pass the Act, and especially those of its provisions which gave the right to the Province to have 10 representatives in the Senate and House of Commons of the Dominion.

"The British North America Act, 1867," provides that:

"The Queen in Council on address from the Houses of Parliament of Canada, may admit Rupert's Land and the North-Western Territory, or either of them, into the Union on such terms and conditions as are in the address expressed, and as the Queen thinks fit to approve, *subject to the provisions of this Act*; and any Order in Council in that behalf shall have effect as if it had been enacted by the Parliament of the United Kingdom."

The address, which was passed by the Parliament of Canada, contained no provisions with respect to the future government of the country, the only terms and conditions contained in it being those agreed upon between the Hudson's Bay Company and Canada as the conditions of their surrender of 20 their Charter to Her Majesty. Even if the terms of the address had included a new constitution for the North-West, it must, under the above cited section, have been subject to the provisions of the Imperial Act of Union.

The Rupert's Land Act, 1868, passed by the Imperial Parliament, provides (5 Section) for the admission of Rupert's Land (but not of the North-Western Territory) into the Dominion of Canada; and that, "thereupon, it shall be lawful for the Parliament of Canada, from the date aforesaid, to make, ordain and establish, within the land and territory, so admitted as aforesaid, all such laws, institutions and ordinances, and to constitute such a court and officers as may be necessary for the peace, order, and good government of Her Majesty's subjects and others therein."

This provision of the Act may fairly be held to have authorized the Canadian Parliament to pass 30 the Act, giving a constitution to a portion of Rupert's Land; but still the question remains, whether, under the two Imperial Acts referred to, it had the power to give the people of the new Province representation in the Senate and House of Commons of Canada.

The general purview of the "British North America Act, 1867," seems to be confined to the three Provinces of Canada, Nova Scotia and New Brunswick, originally forming the Dominion.

In the constitution of the Senate the Dominion was divided into three divisions, each division having equal representation in that body. It fixes the normal number of the Senate at seventy-two, subject to the provisions of the Act; and the 28th clause provides that the number of Senators shall not at any time exceed seventy-eight; the 147th clause, however, enacting that in case of the admission of Newfoundland and Prince Edward Island, the normal number of Senators shall be seventy-six, and 40 the maximum eighty-two.

In like manner the clauses of the Act relating to the constitution of the House of Commons give a certain proportionate representation to the Provinces originally constituting the Dominion, and make no reference to the increase of numbers from any addition to the territory of the Dominion.

There is in the Act no provision whatever for representation in the Senate or House of Commons, of Rupert's Land and the North-Western Territory, or British Columbia.

* *Sess. Papers, Canada, 1871, No. 20.*

Under these circumstances, as the question as to the constitutionality of the Act of the Canadian Parliament has been raised, and as the doubt may cause grave disquiet in the territories which have been or may hereafter be added to the Dominion, and in order also to prevent the necessity of repeated applications to the Imperial Parliament for legislation respecting the Dominion, the undersigned has the honour to recommend that the Earl of Kimberley be moved to submit to the Imperial Parliament, at its next session, a measure,

1. Confirming the Act of the Canadian Parliament, 33 Vic., cap. 3, above referred to, as if it had been an Imperial Statute, and legalizing whatever may have been done under it according to its true intent.
- 10 2. Empowering the Dominion Parliament from time to time to establish other Provinces in the North-Western Territory, with such Local Government, Legislature and constitution as it may think proper; provided that no such Local Government or Legislature shall have greater powers than those conferred on the Local Governments and Legislatures by the "British North America Act, 1867;" and also empowering it to grant such Provinces representation in the Parliament of the Dominion; the Acts so constituting such Provinces to have the same effect as if passed by the Imperial Parliament at the time of the Union.
3. Empowering the Dominion Parliament to increase or diminish, from time to time, the limits of the Province of Manitoba, or of any other Province of the Dominion, with the consent of the Government and Legislature of such Province.
- 10 4. Providing that the terms of the suggested Act be applicable to the Province of British Columbia, whenever it may form part of the Dominion.

All which is respectfully submitted.

JOHN A. MACDONALD.

[After some correspondence, the Imperial Act, 34 and 35 Vic., cap. 28, was passed to give effect to the above recommendations.]

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Sec. III.

Canadian Documents, and Correspondence between the Colonial Secretary and the Hudson's Bay Company, prior to the surrender of the Company's claims.

Report Minister Justice, (Can.), 29th December, 1870.

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IV.
Negotiations between Canada and Ontario,

AND OTHER PROCEEDINGS,
After the Hudson's Bay Company's Surrender.

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*Negotiations
between Can-
ada and
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ings, after the
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MINUTE OF COUNCIL (ONTARIO), APPROVED BY THE LIEUTENANT-GOVERNOR ON THE 19TH
SEPTEMBER, 1871.*

The Committee of Council have had under consideration a communication of the Secretary of State for the Provinces, dated 31st July last, in reply to Your Excellency's despatch of the 17th of the same month, in relation to the appointment of a Commission, one member of which should be appointed by the Dominion, and the other by the Ontario Government, to determine the boundary line between the Province of Ontario and the North-West Territories, in which the Secretary of State announces that Eugene E. Taché, Esquire, of the city of Quebec, has been named, on the part of that Government, as its Commissioner for that purpose, and the recommendation of the Honourable the Attorney-General, dated 18th September, 1871, in respect thereto.

The Committee advise that a Commissioner, to act for and on behalf of the Ontario Government, be appointed by Your Excellency, to confer with and act in the premises with the Dominion Commissioner, and they further respectfully advise that it be an instruction to the said Commissioner to report concerning the western as well as the northern boundary of this Province, and the territory of the Dominion, and that the Honourable William McDougall, C. B. be the said Commissioner for this Province.

Certified.

J. G. SCOTT,
C. E. C.

TORONTO, 18th September, 1871.

THE LIEUTENANT-GOVERNOR OF ONTARIO TO THE SECRETARY OF STATE (CANADA).†
GOVERNMENT HOUSE,

TORONTO, 21st September, 1871.

SIR,—With reference to correspondence that has passed on the subject of a Commission to settle the boundary line between Ontario and the North-West Territories, I now have the honour of informing you that I have appointed the Hon. William McDougall, C.B., etc., etc., Commissioner on behalf of this Province, to co-operate with Mr. Taché, the nominee of His Excellency the Governor-General in Council.

I have the honour to be, Sir,

Your obedient servant,

W. P. HOWLAND.

The Hon. the Secretary of State, Ottawa.

THE ACTING UNDER-SECRETARY OF STATE (CANADA), TO THE LIEUTENANT-GOVERNOR.‡
DEPARTMENT OF THE SECRETARY OF STATE FOR THE PROVINCES,

OTTAWA, 26th September, 1871.

SIR,—I have the honour to acknowledge the receipt of your despatch of the 21st instant, stating with reference to previous correspondence on the subject, that you had appointed the Hon. William

* Sess. Papers, Ontario, 1873, No. 44, p. 4.

† *Ibid*, p. 5.

‡ Sess. Papers, Ontario, 1873, No. 44, p. 5.

The Lieut.-Governor (Ont.), to the Secretary of State (Can.), 21st September, 1871.

Under-Secretary (Can.), to Lieut.-Governor, 26th September, 1871.

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ings, after the
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McDougall, C.B., a Commissioner on behalf of the Province of Ontario, to co-operate with the Commissioner appointed by the Dominion Government to determine the boundary line between that Province and the North-West Territories.

I have the honour to be, Sir,

Your obedient servant,

G. POWELL,

For the Under-Secretary.

Hon. W. P. Howland, C. B.,
Lieutenant-Governor, Toronto.

REPORT OF COL. DENNIS, DOMINION SURVEYOR-GENERAL, PREPARED AT THE REQUEST OF SIR JOHN 10
A. MACDONALD.*

OTTAWA, 1st October, 1871.

Report of Col.
Dennis, 1st
October,
1871.

Remarks on the question of the boundary between the Province of Ontario and the Dominion
Lands or North-West Territories.

1. The above limit is identical with the westerly boundary of the Province of Quebec as the same was fixed in the Quebec Act in 1774.
2. In describing the boundary of Quebec, in the Act referred to, having commenced at the Bay of Chaleurs and continued westerly to the north-west angle of the Province of Pennsylvania, it goes on in the following language: "And thence along the western boundary of the said Province (Pennsylvania) until it strikes the River Ohio, and along the bank of the said river westward to the banks of the Mississippi, and *northward to the southern boundary of the territory granted to the Merchant Adventurers of England trading to Hudson's Bay.*"
3. The above phraseology (underlined), in describing the westerly boundary of Quebec, has been, and is still, interpreted in different ways according to the private opinions or prejudices of parties.
4. Those interested in locating the boundary of Ontario as far as possible to the west, argue that the term "*to the banks of the Mississippi and northward to the southern boundary of the territory, etc., etc.*" means that in going northward, the banks of the Mississippi are to be followed to its source, and that they were in fact so intended in the Act.
5. On the other hand, it is contended, in the interest of the Dominion, that the language "*to the banks of the Mississippi,*" simply means to the banks of the said river at the point where it is joined by 30 the Ohio, and the words which follow, "*and northward to the southern boundary, etc.,*" was intended to be construed as upon a *due north line.*
6. There is no evidence forthcoming which would show clearly what was intended by the Act, and in considering the question, therefore, we are left to draw conclusions from co-relative circumstances; a consideration of these have led the writer to believe that a due north line from the forks of the Ohio was intended as the westerly boundary of Quebec, in support of which he would submit:—
7. Had such not been the intention, that is to say, had it been intended that the Mississippi River should be the west boundary, inasmuch as the evident intention to make the Ohio River the southern boundary, west of Pennsylvania, was thus definitely expressed: "*and along the banks of the said river westward to the banks of the Mississippi;*" then such intention would have been expressed in corres- 40 ponding terms, that is to say, the boundary would have been described as "*northward along the banks of the Mississippi, etc., etc., etc.*"
8. This argument has the more force from the fact stated as follows:—The Bill, as submitted to the House, described the boundaries as "heretofore part of the territory of Canada in North America, extending southward to the banks of the River Ohio, westward to the banks of the Mississippi, and northward to the southern boundary of the territory granted to the Merchant Adventurers, etc., etc."
9. Mr. Burke, in the interests of the Provinces of New York and Pennsylvania, moved in amend-

* Report, House of Commons (Canada) Committee, 1880, p. 1.

ment (the House being in Committee) to substitute the following for the boundary, viz.: after North America "by a line drawn, etc., etc., etc., to the north-west part of the boundary of Pennsylvania, and down the west boundary of that Province by a line drawn thence till it strike the Ohio."

The above words were inserted.

10. Then followed another amendment, which was adopted, and after "Ohio" should be inserted "and along the banks of the said Ohio."

Now, had the banks of the Mississippi been intended to be adhered to in going "northwards," is it not clear that the necessity of an amendment to that effect would similarly have made itself evident at the time, and does not the absence of any reference to the point, or discussion whatever upon it, go to show that "northwards" was intended to be on a due north line?

11. The map which was used in the House of Commons to illustrate the question of the boundaries of Quebec in the debate on the Act, is said to have been one known as Mitchell's map, dated February 13th, 1755.

12. It is stated that there were two editions of this map, the first one being withdrawn on the publication of the second, which latter contained "numerous important corrections, but the date was not altered."*

13. The only copy of Mitchell's map available is in the library here, and, on inspecting the River Mississippi on it, we find that the course of that river is taken up abruptly at a point in 47° 12' north latitude and 101° 30' west longitude, at which point we further find on the map the following note by the author:

"The head of the Mississippi is not yet known. It is supposed to arise about the 50th degree of latitude and the west bounds of this map," etc., etc., etc.

14. Now it is not at all probable that with the uncertainty asserted to exist on the map itself used by the House of Commons at the time the boundaries were debated and settled, with regard to the source and direction of a great part of the course of the Mississippi, that the House intended its banks as the boundary of Quebec.

15. Such a theory, leaving as it would, one of the principal boundaries of the Province in great uncertainty, would be entirely inconsistent with the minuteness and precision of language insisted on in settling the Ohio as the southern boundary.

16. Taking the strictly legal construction of the description, it is claimed that the direction expressed as "northwards" is upon a due north line, in favour of which see the decision on this specific case in the judgment of Chief Justice Sewell in connection with the trial of Charles de Reinhard in Quebec, 1817, for murder committed on the Winnipeg River.†

17. The northerly boundary of Ontario, between it and the Dominion lands, is undoubtedly the southern boundary of the Hudson's Bay Company's possessions. It is possible that some difference of opinion may arise as to where this boundary should be located on the ground.

18. The Charter of the Hudson's Bay Company, dated 2nd May, 1670 (see paper marked F), described their grant as "extending over and including all lands and territories drained by the waters emptying into Hudson's Bay."

19. The boundary in such case would be the ridge dividing the water-sheds north and west of Lake Superior, which intersects the Dawson route at height of land portage, and crosses the international boundary between South Lake and Gunflint Lake.

20. It may be argued on behalf of Ontario that the dividing ridge which should bound the Hudson's Bay Company's possessions on the south is that which may be described as the northerly section of the‡ "range which, dividing to the north-west of Lake Superior, separates the waters flowing direct to Hudson's Bay from those flowing into Lake Winnipeg, crossing the Nelson River at Split Lake,

* See Wright's Cavendish Debates.

† See Report of Trial in Library, House of Commons, Ottawa.

‡ See Report Comr. Crown Lands, 1857.

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Negotiations
between Can-
ada and
Ontario, and
other proceed-
ings, after the
Hudson's Bay
Company's
surrender.

Report of Col.
Dennis, 1st
October,
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ada and
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ings, after the
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or Lac des Forts, etc.;" and it will probably be urged in favour of this view that the grant to the Company only covered "such lands and territories as were not already actually possessed by the subjects of any other Christian Prince or State," and that inasmuch as the country to the south of the range of high lands last described was considered to belong to France, that therefore King Charles would give no title in what he did not own, and certain old maps (see B and C) are referred to in support of this view.

21. It is not important to discuss this view, if it is conceded that a due north line from the forks of the Ohio bounds Ontario to the west; as in such case the height of land would be intersected just north-west of Lake Nipigon at a point about which there can be very little dispute.

22. If, on the other hand, the contention of Ontario is allowed, that is to say, that the banks of 10 the Mississippi should be followed to their source, and that a line should be drawn thence due north to intersect the height of land alluded to in paragraph 20, then the westerly boundary would extend over 300 miles north of the Lake of the Woods, and the Province would be made to include a territory which, as regards form and extent, could not, in the opinion of the undersigned, have been at all contemplated or intended at the time of passing the Quebec Act.

23. But the undersigned assumes, on the strength of opinions to such effect, given by eminent counsel to whom the question had been submitted, that the "southern boundary of the territory granted to the Merchant Adventurers of England trading to Hudson's Bay" was, and is, the height of land bounding the watershed of the basin of Hudson's Bay; and, even admitting that the banks of the Mississippi, to the source of the said river, were intended by the Act, a due north line from the latter 20 would, in the course of a very few miles, intersect such height of land, as the same is in the immediate vicinity of the source of the Mississippi, and between it and the Lake of the Woods, the waters in which latter drain into Hudson's Bay.

24. The only territory, therefore, affected by the question of the due north boundary from the forks of the Ohio, as against the Mississippi, as the boundary, is that coloured yellow on the tracing marked A herewith, shown as contained between the due north line from the forks of the Ohio and the curved line defining the height of land to the south and west; because even construing the west limit of Ontario in the Quebec Act as the banks of the Mississippi, and a line due north from the source of that river to the height of land forming the southern boundary of Hudson's Bay Company's territory, such description would only take effect where, and to the east and north of where, such height of land 30 crosses the international boundary between Gunflint and South Lakes, as before mentioned, confirming, in fact, the western and northern boundaries of the Province, in accordance with their description by Bouchette, and which usage had established up to the acquisition of the territories in 1869.

25. Looking at the very irregular character of the boundary which would be formed by following the ridge between the watersheds, it is suggested by the writer, whether it would not be better for Ontario and the Dominion to agree on a conventional boundary, for instance, in some way as shown on tracing lettered C.

26. The saving, in such case, in the expense of surveying and defining the boundaries on the ground, would be at least one-half; besides which, making the limits of this regular character, would facilitate the laying out of the lands adjoining them in future times.

40

OTTAWA, October 1st, 1871.

J. S. DENNIS.

Papers and maps accompanying the preceding remarks, submitted to the Hon. the Minister of Justice.

- A.—Tracing of Cotton's map (modern), showing sources and course of the Mississippi.
- B.—Tracing of Jeffrey's map of 1760.
- C.—Tracing of De Lisle's map of 1740.
- D.—Tracing of (reduced scale) Mitchell's map of 1755.
- E.—Extract—Quebec Act, 1774.

- F.—Extract—Charter H. B. Co., 1670.
 G.—Tracing part of Devine's map, north of Lake Superior (to show conventional boundary proposed).
 H.—Extract—Bouchette's History of Canada, describing boundaries (1832).
 I.—Extract—Opinion of Judges on boundary, from De Reinhard's trial.
 K.—Extract—Commission to Guy Carleton, 1786.
 L.—Extract—King's Proclamation, 1763.

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Negotiations between Canada and Ontario, and other proceedings, after the Hudson's Bay Company's surrender.

THE LIEUTENANT-GOVERNOR OF ONTARIO TO THE SECRETARY OF STATE, CANADA.*

GOVERNMENT HOUSE,

TORONTO, 6th January, 1872.

10 SIR,—With reference to your despatch dated 30th November, covering a copy of a report of a Committee of the Privy Council making certain recommendations as to the issue of patents in the neighbourhood of Lake Shebandowan, and urging the early settlement of the boundary question, I now have the honour to inform you that the subject has been referred to the consideration of the Commissioner of Crown Lands in this Province, and that as soon as his report upon it can be obtained the Executive Council will come to a decision in the matter. In the meantime, I concur in the view expressed in the Minute of the Privy Council, that the boundary line in question should be ascertained and fixed with all possible speed, and, to prevent unnecessary delay, would suggest that a draft of the instructions proposed to be given by the Government of the Dominion to the Commissioner appointed 20 to be transmitted for the consideration of the Government of the Province at the earliest moment.

I have the honour to be, Sir,

Your obedient servant,

W. P. HOWLAND.

The Hon. the Secretary of State for the Provinces,
Ottawa.

THE SECRETARY OF STATE TO THE LIEUTENANT-GOVERNOR.†

DEPARTMENT OF THE SECRETARY OF STATE FOR THE PROVINCES,

OTTAWA, 11th January, 1872.

30 SIR,—I have the honour to acknowledge the receipt of your despatch of the 6th instant, in reply to mine of the 30th November last, in reference to the locating of the boundary line between the North-West Territory and the Province of Ontario, near the head of Lake Superior, and suggesting that a draft of the instructions given by the Dominion Government to the Commissioner appointed on its behalf, be forwarded to your Government. 20

I have the honour to be, Sir,

Your obedient servant,

JOSEPH HOWE.

Hon. W. P. Howland, C.B.,
Lieutenant-Governor, Toronto.

REPORT OF THE MINISTER OF JUSTICE, CANADA.‡

OTTAWA, 11th March, 1872.

40 Reference having been made to the undersigned of the Order in Council, of the 28th November last, on the subject of applications for mining locations, and patents for land in the neighbourhood of Lake Shebandowan, and about the head of Lake Superior, and also of the despatch of the Lieutenant-Governor of Ontario on such Order in Council, he begs leave to report:—

* *Sess. Papers, Ontario, 1873, No. 44, p. 5.*

† *Sess. Papers, Ontario, 1873, No. 44, p. 7.*

‡ *House of Commons Return of 19th March, 1881, No. 37, p. 4.*

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ada and
Ontario, and
other proceed-
ings, after the
Hudson's Bay
Company's
surrender.*

Report of Min-
ister of Jus-
tice (Can.),
11th March,
1872.

That the Lieutenant-Governor, in his despatch of the 6th January, states as follows:—"In the meantime I concur in the view expressed in the Minute of the Privy Council, that the boundary line in question should be ascertained and fixed with all possible speed, and to prevent unnecessary delay would suggest that a draft of the instructions proposed to be given by the Government of the Dominion to the Commissioner appointed, be transmitted for the consideration of the Government of this Province at the earliest moment."

The undersigned with the view, therefore, of meeting the desire expressed by the Lieutenant-Governor, and after consultation with Surveyor-General Dennis, begs leave to recommend that a copy of the draft instructions, hereunto annexed, be transmitted to the Government of Ontario.

All of which is respectfully submitted.

JOHN A. MACDONALD.

10

INSTRUCTIONS TO THE BOUNDARY COMMISSIONER FOR THE DOMINION.*

DRAFT of Instructions to be given to the Commissioner appointed to act on behalf of the Dominion of Canada in the survey and location of the boundary line between the North-West Territories and the Province of Ontario, in conjunction with a Commissioner to be appointed by the Government of Ontario.

Instructions to
Dominion
Boundary
Commission-
er, 1872.

The boundary in question is clearly identical with the limits of the Province of Quebec, according to the 14th Geo. III., cap. 83, known as the "Quebec Act," and is described in the said act as follows, that is to say: Having set forth the westerly portion of the southern boundary of the Province as extending along the River Ohio "*westward to the banks of the Mississippi,*" the description continues 20 from thence (*i.e.*, the junction of the two rivers) "*and northward to the southern boundary of the territory granted to the Merchants Adventurers of England trading to Hudson's Bay.*"

Having determined the precise longitude west of Greenwich of the extreme point of land marking the junction of the north and east banks respectively of the said rivers, you will proceed to ascertain and define the corresponding point of longitude of the intersection of the meridian passing through the said junction with the international boundary between Canada and the United States.

Looking, however, at the tracing enclosed, marked A, intended to illustrate these instructions, it is evident such meridian would intersect the international boundary in Lake Superior.

Presuming this to be the case, you will determine and locate the said meridian, the same being the westerly portion of the boundary in question, at such a point on the northerly shore of the said lake as 30 may be nearest to the said international boundary, and from thence survey a line due south to deep water, marking the same upon and across any and all points or islands which may intervene; and from the point on the main shore, found as aforesaid, draw and mark a line due north to the southern boundary of the Hudson's Bay Territory before mentioned.

This will complete the survey of the westerly boundary line sought to be established.

You will then proceed to trace out, survey and mark, eastwardly, the aforementioned "*southern boundary of the territory granted to the Merchants Adventurers of England trading to Hudson's Bay.*"

This is well understood to be the height of land dividing the waters which flow into Hudson's Bay from those emptying into the valley of the great lakes, and forming the northern boundary of Ontario; and the same is to be traced and surveyed, following its various windings till you arrive at the angle 40 therein between the Provinces of Ontario and Quebec, as the latter is at present bounded; having accomplished which, the service will have been completed.

Your requisition for such assistance, scientific and otherwise, as may be necessary to enable you to determine the necessary longitude with precision, and to effect the practical surveying operations in the field, and for such instruments as may be required will receive due consideration.

Further instructions relating to the character of the boundary marks to be erected, and conveying other information which you will probably require, will be duly sent you.

* *Scs. Papers, Ontario, 1873, No. 44, p. 15.*

REPORT OF A COMMITTEE OF THE PRIVY COUNCIL (CANADA), APPROVED BY THE GOVERNOR-GENERAL
ON THE 12TH MARCH, 1872.*

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between Can-
ada and
Ontario, and
other proceed-
ings, after the
Hudson's Bay
Company's
surrender.*

Order in Coun-
cil (Can.),
12th March,
1872.

The Committee have had before them a memorandum, dated 11th March, 1872, from the Honourable the Minister of Justice, stating that reference having been made to him of the Order in Council of the 28th November last, on the subject of applications for mining locations and patents for land in the neighbourhood of Lake Shebandowan, and about the head of Lake Superior, and also of the despatch of the Lieutenant-Governor of Ontario on such Order in Council; he reports,

That the Lieutenant-Governor in his despatch of the 6th of January, states as follows:—"In the meantime I concur in the views expressed in the Minute of the Privy Council that the boundary line in question should be ascertained and fixed with all possible speed, and to prevent unnecessary delay, would suggest that a draft of the instructions proposed to be given by the Government of the Dominion to the Commissioner appointed be transmitted for the consideration of the Government of this Province at the earliest moment."

That with the view, therefore, of meeting the desire expressed by the Lieutenant-Governor, and after consultation with Surveyor-General Dennis, he, the Minister of Justice, recommends that a copy of the draft instructions annexed to his memorandum be transmitted to the Government of Ontario.

The Committee submit the above recommendations for Your Excellency's approval.

Certified.

WM. H. LEE,
Clerk P.C.

20

ORDER IN COUNCIL (ONTARIO), APPROVED BY THE LIEUTENANT-GOVERNOR ON THE 25TH MARCH, 1872.*

The Committee of Council have had under consideration the despatch, dated 14th March instant, from the Secretary of State for the Provinces to Your Excellency, together with the instructions transmitted therewith, and the report of the President of the Council, dated 22nd March instant, in reference thereto.

Order in Coun-
cil (Ont.),
25th March,
1872.

The Committee advise that the Government of Canada be informed that the Province of Ontario claims that the boundary line is very different from the one defined by the said instructions, and cannot consent to the prosecution of the Commission for the purpose of marking on the ground the line so defined, and that the Commissioner appointed by the Government of Ontario should be instructed to abstain from taking any further action under his Commission.

30

Certified.

J. G. SCOTT,
Clerk E. C.

THE PROVINCIAL SECRETARY (ONTARIO), TO THE ONTARIO BOUNDARY COMMISSIONER.†

PROVINCIAL SECRETARY'S OFFICE,
TORONTO, 26th March, 1872.

SIR,—I have the honour to transmit herewith a copy of an Order in Council, approved of by His Excellency the Lieutenant-Governor, having reference to the proposed settlement of the boundary line between the Province of Ontario and the North-West Territories; and also, a copy of the instructions given by the Dominion Government to the Commissioner appointed to act on its behalf in the matter. I am at the same time commanded by His Excellency the Lieutenant-Governor to direct you to abstain from taking any further action as Commissioner for this Province.

Provincial Sec-
retary to On-
tario Bound-
ary Commis-
sioner, 26th
March, 1872.

I have the honour to be, Sir,
Your obedient servant,

PETER GOW,
Secretary.

Hon. William McDougall, C.B.,
Toronto.

* House of Commons Return, March 19, 1881, No. 37, p. 5.

† Sess. Papers, Ontario, 1873, No. 44, p. 17.

THE LIEUTENANT-GOVERNOR OF ONTARIO TO THE SECRETARY OF STATE (CANADA).*

GOVERNMENT HOUSE,

TORONTO, 26th March, 1872.

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ada and
Ontario, and
other proceed-
ings, after the
Hudson's Bay
Company's
surrender.*Lieut.-Gov-
ernor to Sec.
State (Can.),
26th March,
1872.

SIR,—With reference to your despatch, dated 14th instant, relating to the location of the boundary line between the Province of Ontario and the North-West Territories, I have the honour to transmit herewith a copy of an Order in Council approved on the 25th instant, having regard to that matter.

I have, at the same time, to intimate that the Commissioner appointed on behalf of my Government has been instructed to abstain from any further action under his Commission.

I have the honour to be, Sir,

Your obedient servant,

W. P. HOWLAND.

10

Hon. Secretary of State (Provinces), Ottawa.

REPORT OF A COMMITTEE OF THE PRIVY COUNCIL (CANADA), APPROVED BY THE GOVERNOR-GENERAL ON THE 9TH APRIL, 1872.†

Order in Coun-
cil (Can.),
29th April,
1872.

On the despatch of the Lieutenant-Governor of Ontario, dated 26th March last, on the subject of the location of the boundary line between the Province of Ontario and the North-West Territories, the Committee of the Privy Council beg leave to report:—

That in a despatch from the Secretary of State for the Provinces to the Lieutenant-Governor of Ontario, dated 30th November last, based upon a Minute of Council of the 28th November, it was suggested to the Government of Ontario that it was of great consequence that the ascertaining and 20 fixing on the ground of the boundary line in question should be, as far as possible, expedited.

That the Lieutenant-Governor, in his despatch of the 6th of January last, expressed his concurrence in the necessity for immediate action, and to prevent unnecessary delay, suggested that a draft of the instructions proposed to be given to the Commissioner appointed on behalf of the Dominion to locate the line, should be transmitted for the consideration of the Government of Ontario at the earliest moment.

That with the view of meeting the desire so expressed, a draft of the proposed instructions was transmitted to the Lieutenant-Governor by despatch dated the 14th of March last, and

That the Lieutenant-Governor, in reply, transmitted with the despatch of the 26th of March now under consideration, an Order of his Executive Council to the following effect:— 30

“The Committee advise that the Government of Canada be informed that the Province of Ontario claims that the boundary line is very different from the one defined by the said instructions, and cannot consent to the prosecution of the Commission for the purpose of marking on the ground the line so defined, and that the Commissioner appointed by the Government of Ontario should be instructed to abstain from taking any further action under his Commission.”

The Committee of the Privy Council regret that the Government of Ontario, while expressing their difference of opinion from that of the Dominion, omitted to give their own views on the subject, and they did not state what their claim as to the location of the boundary line was.

As it is of the greatest consequence to the peace and well-being of the country in the vicinity of the dividing line, that no questions as to jurisdiction, or the means of prevention or punishment of crime 40 should arise or be allowed to continue, the Committee recommend that the Government of Ontario be invited to communicate their opinion on the subject to Your Excellency, together with a description of the boundary line which they would suggest as the correct one. Should it be found, after an interchange of opinions, that the two Governments cannot agree as to the location of the line, the Committee do not doubt that both Governments will feel it their duty to settle without delay upon some proper mode of determining, in an authoritative manner, the true position of such boundary.

Certified.

WM. H. LEE,
Clerk P.C.

* Sess. Papers, Ontario, 1873, No. 44, p. 16.

† Sess. Papers, Ontario, 1873, No. 44, p. 18.

THE SECRETARY OF STATE (CANADA), TO THE LIEUTENANT-GOVERNOR OF ONTARIO.*

DEPARTMENT OF THE SECRETARY OF STATE FOR THE PROVINCES,

OTTAWA, 10th April, 1872.

JOINT
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*Negotiations
between Can-
ada and
Ontario, and
other proceed-
ings, after the
Hudson's Bay
Company's
surrender.*Secretary of
State (Canr.),
to the Lieut.-
Governor,
10th April,
1872.

Sir,—I have the honour to transmit for the consideration of your Government, a certified copy of an Order of His Excellency the Governor-General in Council, on your despatch of the 24th ult., on the subject of the location of the boundary line between the Province of Ontario and the North-West Territories.

Permit me to call your attention to the concluding paragraph of the Order in Council, and for the reason therein set forth, to invite your Government to communicate their opinion on the subject discussed in the Order, together with a description of the boundary line which they could suggest as the correct one.

I have the honour to be, Sir,

Your obedient servant,

JOSEPH HOWE,

Secretary of State for the Provinces.

Hon. W. P. Howland, C. B., Lieutenant-Governor, Toronto.

ORDER IN COUNCIL (ONTARIO), APPROVED BY THE LIEUTENANT-GOVERNOR ON THE 19TH APRIL, 1872.†

The Committee of Council have had under consideration the despatch from the Secretary of State for the Provinces of the 10th instant, on the subject of the boundary line of Ontario, and the copy of an approved Minute of the Privy Council of Canada enclosed. In this Minute the Privy Council regrets, "That the Government of Ontario, while expressing their difference of opinion from that of the Dominion, omitted to give their own views on the subject, and did not state what their claim as to the location of the boundary was."

Order in Coun-
cil (Ont.),
19th April,
1872.

The Committee would observe that the despatch on which their Minute was founded did not contain any invitation to the Government of Ontario to express its views or state its claim.

The Government of Ontario is now invited to do so, and the Committee advise that the Government of Canada should be informed that this Government proposes the boundary contained in the annexed description.

The Committee further advise that the Government of Canada should be informed that as to the western limit, in the opinion of this Government, there are grounds for maintaining the contention of former Governments of Canada, that the limit of Ontario is further west than the one proposed in the description, and that, while this Government is prepared, in view of all the circumstances, to agree to the western limit so proposed, in case the same is accepted by the Government of Canada, this Government does not consider itself bound by the proposal in any other event.

As to the northern limit it will be observed from the description that this Government maintains the position which is supported by the contentions of all former Governments, and by the indisputable facts that the northern boundary lies north of the watershed of the St. Lawrence system, the line of which watershed is the northern boundary laid down by the Government of Canada; and the Committee advise that the Government of Canada should be informed that, in view of all the circumstances, this Government will be prepared, in case its position as to the northern boundary is agreed to by the Government of Canada, to consider any proposal which may be made by that Government for the establishment of a conventional limit to the north of that watershed.

Certified,

J. G. SCOTT,

Clerk, E. C.

* Sess. Papers, Ontario, 1873, No. 44, p. 17. † *Ibid.*, p. 19.

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Order in Coun-
cil (Ont.),
19th April,
1872.

PROPOSED DESCRIPTION.

*(Referred to in the annexed Minute of Council.)**

The boundary line of Ontario is the international boundary from the mouth of the Pigeon River, on Lake Superior, to a point west of the Lake of the Woods, where the international boundary line would be intersected by a line drawn north from the source of the Mississippi River; thence the boundary line of Ontario runs north to the point of intersection of the southern boundaries of the Hudson's Bay Territories; thence the boundary line of Ontario is the southern boundary of those Territories to the point where that boundary would be intersected by a line drawn north from the head of Lake Temiscaming.

REPORT OF THE MINISTER OF JUSTICE (CANADA).†

DEPARTMENT OF JUSTICE,

10

OTTAWA, 1st May, 1872.

Report of Min-
ister of Jus-
tice (Can.),
1st May, 1872.

With reference to a despatch of the Lieutenant-Governor of Ontario, of the 19th April, transmitting an Order in Council of that Province of the same date, on the subject of the northern and western boundaries of the Province of Ontario, and in which the Government of that Province transmits a description of what it holds those boundaries to be,

The undersigned has the honour to report that a considerable difference exists between the Government of Canada and that of Ontario, in respect to the said northern and western boundaries of Ontario, and until such boundaries are properly ascertained and defined, no criminal jurisdiction can be effectively established or exercised in the disputed territory.

Having reference to the prospect of a large influx of people into the North-West Territories, it is very material that crime should not go unpunished or unprevented, and in this view the undersigned has the honour to suggest that the Government of Ontario be invited to concur in a statement of the case for immediate reference to the Judicial Committee of the Privy Council of England, with a view to the settlement, by a judgment or decision of that tribunal, of the western and northern boundaries of Ontario.

This is the more necessary as no conventional arrangement between the two Governments, as to boundary, can confer criminal jurisdiction on the Courts of Ontario, unless the place where any crime may be committed is, by law, within the Province.

The undersigned has the honour also to call attention to the fact that the mineral wealth of the North-West country is likely to attract a large immigration into those parts, and, with a view to its development, as well as to prevent the confusion and strife that is certain to arise and continue among the miners and other settlers so long as the uncertainty as to boundary exists, the undersigned begs leave to recommend that the Government of Ontario be urged to arrange with that of the Dominion for some joint course of action as to the granting of land and of mining licenses, reservation of royal ties, etc., and for this purpose he would suggest that the Government of Ontario be moved to appoint a Commissioner to meet the Hon. J. C. Aikins, and arrange some joint system; and that any such arrangement, when ratified by the two Governments, shall be held to bind both, and shall be subject to the decision of the Judicial Committee of the Privy Council upon the question of the boundary; and that after such decision, titles to lands or mining rights shall be confirmed by the Government, whether of Canada or of Ontario, as shall, under the decision of the Judicial Committee, be the proper party to legalize the same.

All which is respectfully submitted.

JOHN A. MACDONALD.

* Sess. Papers, Ontario, 1873, No. 44, p. 19.

† Sess. Papers, Ontario, 1873, No. 44, p. 20.

REPORT OF A COMMITTEE OF THE PRIVY COUNCIL (CANADA), APPROVED BY THE GOVERNOR-GENERAL
ON THE 16TH MAY, 1872.*

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The Committee of Council have had under consideration the annexed Memorandum, dated May 1st, 1872, from the Honourable the Minister of Justice, having reference to the settlement of the question of the northern and western boundaries of the Province of Ontario, and they respectfully report their concurrence in the recommendations submitted in the said Memorandum, and advise that the same be approved and adopted.

Sec. IV.
Negotiations between Canada and Ontario, and other proceedings, after the Hudson's Bay Company's surrender.

Certified.

WM. H. LEE,
Clerk, P. C.

Order in Council (Can.), 16th May, 1872.

10

To the Honourable the Secretary of State, etc., etc.,
for the Provinces.

THE SECRETARY OF STATE (CANADA), TO THE LIEUTENANT-GOVERNOR OF ONTARIO.†

OTTAWA, 16th May, 1872.

SIR,—Referring to your despatch of the 19th ultimo, covering an Order in Council of the Govern- Secretary of State (Can.), to Lieut. Governor (Ont.), 16th May, 1872.

20 2. I am, at the same time, for reasons set forth in the memorandum, to invite the Government of Ontario to concur with the Government of Canada in a statement of the case now in dispute between the said Governments, respecting such boundaries, for immediate reference to the Judicial Committee of the Privy Council, with the view to a settlement, by a judgment or decision of that tribunal, of the western and northern boundaries of Ontario.

3. I am also to urge upon the Government of Ontario the necessity, in view of the facts stated in the last paragraph of the accompanying memorandum, of arranging with the Government of the Dominion for some joint course of action as to the granting of land and of mining licenses, reservation of royalties, etc., in the portion of territory in controversy, and for this purpose I have to request you to move your Government to appoint a Commissioner to meet the Honourable J. C. Aikins to arrange such joint system, on the understanding that any such arrangement when ratified by the two Governments shall be held to bind both, and shall be subject to the decision of the Judicial Committee of the Privy Council upon the question of the boundaries, and that after such decision titles to lands or mining rights shall be confirmed by the Government, whether of Canada or of Ontario, as shall under the decision of the Privy Council be the proper party to legalize the same.

I have the honour to be, Sir,

Your most obedient servant,

JOSEPH HOWE,
Secretary of State for the Provinces.

40 The Honourable Wm. P. Howland, C.B.,
Lieutenant-Governor, Toronto.

ORDER IN COUNCIL, (ONTARIO), APPROVED BY THE LIEUTENANT-GOVERNOR ON THE 31ST MAY, 1872‡

The Committee of Council have had under consideration the despatch from the Secretary of State for the Provinces, of the 16th May, with the Minute of Council and memorandum of the Minister of Justice enclosed in that despatch, all relating to the settlement of the question of the northern and

Order in Council (Ont.), 31st May, 1872.

* *Sess. Papers, Ontario, 1873, No. 44, p. 21.*

† *Ibid.*, p. 20.

‡ *Ibid.*, p. 21.

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ada and
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ings, after the
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western boundaries of the Province of Ontario. The Committee of Council regrets that the Government of Canada does not propose in any respect to modify its views with reference to these boundaries, opposed as these views are to the general tenor of the expressions and conduct of the Governments of the late Province of Canada, and of the Dominion in the past. The Committee of Council also regrets that the Government of Canada is not prepared to negotiate for the arriving at a conventional arrangement as regards the boundaries. The Committee infers that the Government of Canada disapproves of that course in consequence of the difficulty stated in the following extract from the memorandum of the Minister of Justice.

Order in Council (Ont. 31st May, 1872.

"This is the more necessary as no conventional arrangement between the two Governments, as to boundary, can confer criminal jurisdiction on the Courts of Ontario, unless the place where any crime may be committed is, by law, within the Province."

The Committee desires to call attention to the third clause of the Act of the Imperial Parliament, passed 29th June, 1871, chap. 28, which is in these words :

"The Parliament of Canada may, from time to time, with the consent of the Legislature of any Province of the said Dominion, increase, diminish, or otherwise alter the limits of such Province upon such terms and conditions as may be agreed to by the said Legislature, and may, with the like consent, make provision respecting the effect and operation of any such increase or diminution or alteration of territory in relation to any Province affected thereby."

It appears to the Committee that under the operation of this clause it is quite possible to arrive at a conventional settlement of the question by the joint action of the Executive and Legislative authorities of the Dominion and of the Province.

With reference to the emergency arising out of the expected immigration during this spring and summer, it appears to the Committee that a short Act of the Parliament of Canada, providing that the boundaries of the Province of Ontario should, for the purposes of criminal jurisdiction, and so far as the Parliament of Canada can provide, be deemed, pending the settlement of the question, to extend as far as the limits which are specified in the memorandum transmitted to the Government of Canada by this Government, would, though open to some objection, afford the best practicable solution of that difficulty.

With reference to the proposed submission to the Judicial Committee of the Privy Council, this Committee begs to observe that the solution of the boundary question depends upon numerous facts, the evidence as to many of which is procurable only in America, and the collection of which would involve the expenditure of much time; and upon the whole the Committee is of opinion that the more satisfactory way of settling the question, should the Government of Canada still decline to negotiate for a conventional boundary, would be by reference to a Commission sitting on this side of the Atlantic, and the Committee recommends that, without for the present dealing definitely with the proposal of the Government of Canada for a reference to the Judicial Committee, this counter-suggestion should be made to that Government.

The Committee of Council entertains a strong conviction that it is the duty of the Government of Ontario to retain in the meantime the control of the lands within the boundaries claimed by it; but as it is anxious that the policy of the Government with reference to the disposition of these lands should, so far as practicable, conform to the views of the Government of Canada, the Committee agrees that an effort should be made to avoid the possible difficulties arising from the claims put forward by that Government, and with this view the Committee recommends that the Honourable R. W. Scott should be requested to confer with the Honourable J. C. Aikins, as proposed by the despatch of the 16th May.

Certified.

J. G. SCOTT,

Clerk E. C.

REPORT OF A COMMITTEE OF THE PRIVY COUNCIL, (CANADA,) APPROVED BY THE GOVERNOR-GENERAL
ON THE 7TH NOVEMBER, 1872.*

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surrender.

Order in Coun-
cil (Can.), 7th
November,
1872.

The Committee of Council have had under consideration the despatch from the Lieutenant-Governor of Ontario of the 31st May last, transmitting a further Order in Council of that Province on the subject of its northern and western boundaries.

The Committee have the honour to report that the importance of obtaining an authoritative decision as to the limits, to the north and to the west of the Province of Ontario, has already been affirmed by Minute in Council.

That the establishment of criminal and civil jurisdiction, and the necessity of meeting the demands of settlers and miners for the acquisition of titles to lands, combine to render such a decision indispensable.

In reference to the northern boundary, the Government of Ontario contend that it lies to the north of the watershed which divides the waters running to the south from those which run towards Hudson's Bay, and offer, "should this view be acceded to by the Government of the Dominion, to consider any proposal which may be made to them by that Government for the establishment of a conventional limit to the north of that watershed"—and as regards the western boundary line, they state that it may be defined by a line drawn north from a point west of the Lake of the Woods and on the 49th parallel of north latitude, where that parallel would be intersected by a line drawn north from the source of the Mississippi River, and from thence to the point of intersection with the southern boundary of the Hudson's Bay Territory, but reserve, in the event of such a line not being agreed to by the Canadian Government, the right to contend that the boundary of Ontario is still farther to the west.

The northern boundary of Ontario, the Government of the Dominion believe to be the line of the watershed separating the waters which run towards Lake Superior from those which run towards Hudson's Bay; and the western boundary, a line drawn in accordance with the provisions of 14 George III, chapter 83, from the conflux of the Mississippi and Ohio rivers northward (i.e., by the shortest northward course) to the southern boundary of the Hudson's Bay Company's Territories.

With the divergent views thus held by the respective Governments, and considering the limits within which the Government of Ontario propose to circumscribe the possible conventional boundaries, the difficulties which would attend an attempt to arrive at a settlement of the present difficulties between the two Governments in that mode are manifest, and in the opinion of the Committee too great to render such an attempt expedient.

To place the territory in dispute, pending the settlement of the question, within the limits of Ontario for criminal purposes, as suggested in the Order in Council of that Province of the 31st May, whilst not at all providing for the sale or management of lands or granting titles thereto, or for civil jurisdiction, would, there is good reason to apprehend, be beyond the powers conferred by the "British North America Act, 1867," and would be objectionable, not only as tending to render one party to the dispute less anxious possibly for its settlement, but, also, as calculated to exercise a prejudicial influence on the ultimate assertion of the rights of the Dominion.

The Government of Ontario without, for the time, definitely dealing with the proposal of the Government of Canada for a reference to the Judicial Committee of the Privy Council, observe that "the solution of the boundary question depends upon numerous facts, the evidence of many of which is procurable only in America, and the collection of which would involve much time, and suggest that the more satisfactory way of settling the question, should the Government of Canada still decline to negotiate for a conventional boundary, would be by a reference to a Commission sitting on this side of the Atlantic."

The Committee are of opinion that the evidence upon which the decision of the boundaries in question would depend, is chiefly, if not altogether, of a documentary character, and would be found rather in the Imperial Archives than in America, and that any which exists here might readily be supplied, whilst an authoritative decision by the Judicial Committee of the Privy Council would be final, and command that general assent which is so important in endeavouring to adjust questions of an inter-provincial character.

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There are objections also to this proposal as regards the mode of conferring legal powers upon such a Commission, which it would be found very difficult, if not impossible to deal with, and the Committee doubt whether any other tribunal than that of the Queen in Council would be satisfactory to the other Provinces of the Dominion in the decision of questions in which they have a large interest, the importance of which is, by current events, being constantly and rapidly augmented, and they respectfully recommend that the proposition for a reference to Her Majesty in Council be renewed to the Government of Ontario.

They recommend, therefore, that a copy of this Minute, if approved, be transmitted to the Lieutenant-Governor of Ontario by the Secretary of State for the Provinces.

Certified.

10

W. A. HIMSWORTH.

C. P. C.

THE SECRETARY OF STATE (CANADA), TO THE LIEUTENANT-GOVERNOR OF ONTARIO.

DEPARTMENT OF THE SECRETARY OF STATE,

OTTAWA, 26th December, 1873.

Secretary of
State (Can.),
26th Decem-
ber, 1873.

SIR,—I have the honour to invite your attention to the letter addressed to your predecessor on the 12th November, 1872, covering a copy of a report of His Excellency the Governor-General in Council, on the subject of the northern and western boundaries of the Province of Ontario.

May I request that you will have the goodness to bring the matter under the early notice of your Government, with a view to their coming to a decision on the proposition contained in the Order in Council in question, to submit the question of the boundary to the decision of the Judicial Committee of the Privy Council.

I have the honour to be, Sir,

Your obedient servant,

D. CHRISTIE,

Secretary of State.

His Honour the Lieutenant-Governor of Ontario,
Toronto.

RESOLUTION OF THE LEGISLATIVE ASSEMBLY OF ONTARIO, PASSED 23RD MARCH, 1874.

Resolution of
Legislature of
Ontario, 23rd
March, 1874.

Resolved, That this House approves of the reference of the question of the western boundary of this Province to arbitration, or to the Privy Council, according as the Lieutenant-Governor in Council shall see fit, and approves likewise of the adoption of a provisional boundary line in the meantime, on such terms as may be agreed upon between the Government of the Dominion and the Government of this Province.

DOMINION ACT, 39 VIC., CAP. 21 (1876).

AN ACT RESPECTING THE NORTH-WEST TERRITORIES, AND TO CREATE A SEPARATE TERRITORY OUT OF PART THEREOF.†

Dominion Act,
39 Vic., cap.
21, 1876

Whereas it is expedient, pending the settlement of the western boundary of Ontario, to create a separate territory of the eastern part of the North-West Territories: Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. All that portion of the North-West Territories bounded as follows, that is to say:—

Beginning at the westerly boundary of the Province of Ontario, on the international boundary line dividing Canada from the United States of America; then westerly, following upon the said international boundary line, to the easterly boundary of the Province of Manitoba; thence due north,

along the said easterly boundary of Manitoba, to the north-east angle of the said Province; thence due west, on the north boundary of said Province, to the intersection by the said boundary of the westerly shore of Lake Manitoba; thence northerly, following the said westerly shore of the said lake, to the easterly terminus thereon of the Portage connecting the southerly end of Lake Winnipegosis with the said Lake Manitoba, known as "The Meadow Portage;" thence westerly, following upon the trail of the said Portage, to the westerly terminus of the same, being on the easterly shore of the said Lake Winnipegosis; thence northerly, following the line of the said easterly shore of the said lake to the southerly end of the Portage leading from the head of the said lake into Cedar Lake, known as the "Cedar" or "Mossy Portage;" thence northerly, following the trail of the said Portage, to the north end of the same on the shore of Cedar Lake; thence due north, to the northerly limits of Canada; thence easterly, following upon the said northerly limits of Canada, to the northerly extremity of Hudson's Bay; thence southerly, following upon the westerly shore of the said Hudson's Bay, to the point where it would be intersected by a line drawn due north from the place of beginning; and thence due south, on the said line last mentioned, to the said place of beginning; shall be, and is hereby set apart as a separate district of the said North-West Territories by the name of the District of Keewatin.

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Dominion Act,
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21, 1876.

ACT OF THE PROVINCE OF MANITOBA, 40 VIC., CAP. 2, (1877.)
AN ACT FOR THE DEFINITION OF THE BOUNDARIES OF THE PROVINCE.

Whereas the boundaries of the Province of Manitoba, as defined by the Act of Canada commonly called the Manitoba Act, and passed in the thirty-third year of Her Majesty's reign, have never been surveyed; and whereas, in consequence of the uncertainty arising therefrom, questions of jurisdiction in civil and criminal matters may arise; and whereas it is desirable to obviate such inconvenience by the temporary adoption of certain known and defined lines as the boundary of the Province; and whereas under authority of the Act of the Parliament of the United Kingdom of Great Britain and Ireland passed in the session held in the thirty-fourth and thirty-fifth year of the reign of Her Majesty Queen Victoria, which may be cited as the British North America Act of 1871, the Parliament of Canada may, with the consent of the Legislature of any Province of the Dominion, alter the boundary of any such Province;

Act of Mani-
toba, 40 Vic.,
cap. 2, 1877.

Her Majesty, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

1. The Legislature of Manitoba agrees and consents that the limits of the Province may be altered by the Parliament of Canada by the temporary establishment of certain known and defined lines as the boundaries of the Province, in place and stead of the boundaries established by the Act of Canada passed in the thirty-third year of Her Majesty's reign, and chaptered three; and which boundaries that may be so established, and which are hereby consented to, shall be as follows:

Commencing at the intersection of the international boundary, or forty-ninth parallel of north latitude, by the westerly boundary of township number one in the twelfth range west of the principal meridian in Manitoba; thence due north, following the westerly boundaries respectively of townships one and two, to the intersection thereof by the southerly limit of the road allowance on the first correction line; thence due west along the latter to the intersection thereof by the westerly limit of township three in the aforesaid twelfth range west; thence due north, following the westerly limits respectively of townships three, four, five and six in the said twelfth range, to the southerly limit of the road allowance on the second correction line; thence westerly upon the latter to the intersection thereof by the westerly limit of township seven in the aforesaid twelfth range; thence due north, upon the westerly limit respectively of townships seven, eight, nine and ten, to the southerly limit of the road allowance on the third correction line; thence due west along the latter to the intersection thereof by the westerly limit of township eleven in the said twelfth range west of the principal meridian; thence due north along the westerly limit respectively of townships eleven, twelve, thirteen and fourteen, to the southerly limit of the road allowance on the fourth correction line; thence westerly along the latter to the intersection thereof by the westerly limit of township fifteen in the said twelfth

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toba, 40 Vic.,
cap. 2, 1877.

range west of the principal meridian ; thence due north along the westerly limit respectively of townships fifteen, sixteen and seventeen in the said twelfth range west, to the southerly limit of the road allowance, the northerly boundary of the said township number seventeen ; thence due east, following the said southerly limit of road allowance between townships seventeen and eighteen in the system of Dominion lands surveys (the said line crossing Lakes Manitoba and Winnipeg), to the easterly boundary of township seventeen in the tenth range east of the principal meridian ; thence due south along the easterly boundary respectively of townships seventeen, sixteen and fifteen, to the southerly limit of the road allowance on the fourth correction line ; thence due west along the latter to its intersection by the easterly limit of township fourteen in the aforesaid tenth range east ; thence due south along the easterly limit respectively of townships fourteen, thirteen, twelve and eleven, to its intersection with the southerly limit of the road allowance on the third correction line ; thence due west along the latter to its intersection with the easterly limit of township ten in the said tenth range east ; thence due south along to the easterly limit respectively, of townships ten, nine, eight and seven to the intersection thereof by the southerly limit of the road allowance on the second correction line ; thence due west along the latter to its intersection with the easterly limit of township six in the said tenth range east of the principal meridian ; thence due south along the easterly limit respectively of townships six, five, four and three, to the intersection thereof by the southerly limit of the road allowance on the first correction line ; thence due west along the latter to its intersection with the easterly limit of township two in the said tenth range east ; thence due south along the easterly limit respectively of townships two and one, to the intersection thereof by the forty-ninth parallel of north latitude, or the international boundary line aforesaid ; and thence due west, following upon the said forty-ninth parallel of north latitude, or the international boundary line, to the place of beginning ;

Provided always, that that portion of the eastern boundary of the Province hereby consented to be established which has not yet been surveyed, as also that portion of the northern boundary which has not been surveyed, shall be forthwith surveyed and marked out on the ground by the proper authority of the Dominion of Canada.

2. Nothing in this Act contained shall be held to repeal or innovate in any way upon the Act passed by the Legislature of Manitoba, in the thirty-seventh year of Her Majesty's reign, intituled "An Act to provide for the enlargement of the boundaries of Manitoba on equitable terms," and the said Act shall continue in full force and effect.

V.
Imperial Statutes and Acts of State

HEARING ON THE QUESTION OF THE BOUNDARIES.

THE CHARTER INCORPORATING THE HUDSON'S BAY COMPANY,

GRANTED BY HIS MAJESTY, KING CHARLES THE SECOND, IN THE 22ND YEAR OF HIS REIGN,
2ND MAY, 1670.

CHARLES THE SECOND, by the grace of God, King of England, Scotland, France, and Ireland, Defender
of the Faith, &c.

To all to whom these presents shall come, greeting:

10 WHEREAS our dear entirely beloved Cousin, Prince Rupert, Count Palatine of the Rhine, Duke of
Bavaria and Cumberland, &c.; Christopher Duke of Albermarle, William Earl of Craven, Henry Lord
Arlington, Anthony Lord Ashley, Sir John Robinson, and Sir Robert Vyner, Knights and Baronets;
Sir Peter Colleton, Baronet; Sir Edward Hungerford, Knight of the Bath: Sir Paul Neele, Knight;
Sir John Griffith and Sir Philip Carteret, Knights; James Hayes, John Kirke, Francis Millington,
William Prettyman, John Fenn, Esquires, and John Portman, Citizen and Goldsmith of London, have,
at their own great cost, and charges, undertaken an expedition for Hudson's Bay, in the north-west
part of America, for the discovery of a new passage into the South Sea, and for the finding some trade
for furs, minerals, and other considerable commodities, and by such their undertaking have already
made such discoveries as to encourage them to proceed further in pursuance of their said design, by
20 means whereof there may probably arise very great advantages to us and our kingdom.

AND WHEREAS the said undertakers, for their further encouragement in the said design, have
humbly besought us to incorporate them, and grant unto them and their successors the sole trade and
commerce of all those seas, straits, bays, rivers, lakes, creeks, and sounds, in whatsoever latitude they
shall be, that lie within the entrance of the straits commonly called the Hudson's Straits, together
with all the lands, countries and territories upon the coasts and confines of the seas, straits, bays, lakes,
rivers, creeks, and sounds aforesaid, which are not now actually possessed by any of our subjects, or
by the subjects of any other Christian Prince or State.

Now KNOW YE, that we, being desirous to promote all endeavours tending to the public good of
our people, and to encourage the said undertaking, HAVE, of our especial grace, certain knowledge, and
30 mere motion, given, granted, ratified and confirmed, and by these presents, for us, our heirs and succes-
sors, do give, grant, ratify and confirm, unto our said Cousin, Prince Rupert, Christopher Duke of Alber-
marle, William Earl of Craven, Henry Lord Arlington, Anthony Lord Ashley, Sir John Robinson, Sir
Robert Vyner, Sir Peter Colleton, Sir Edward Hungerford, Sir Paul Neele, Sir John Griffith and Sir
Philip Carteret, James Hayes, John Kirke, Francis Millington, William Prettyman, John Fenn, and
John Portman, that they and such others as shall be admitted in the said society as is hereafter
expressed, shall be one body corporate and politic, in deed and in name by the name of "The Governor
and Company of Adventurers of England trading into Hudson's Bay," and them by the name of "The
Governor and Company of Adventurers of England trading into Hudson's Bay," one body corporate
and politic, in deed and in name, really and fully forever, for us, our heirs, and successors, WE DO make,
40 ordain, constitute, establish, confirm and declare by these presents, and that by the same name of The
Governor and Company of Adventurers of England trading into Hudson's Bay, they shall have per-
petual succession, and that they and their successors, by the name of The Governor and Company of

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Adventurers of England trading into Hudson's Bay, be, and at all times hereafter shall be personable and capable in law to have, purchase, receive, possess, enjoy and retain lands, rents, privileges, liberties, jurisdictions, franchises and hereditaments, of what kind, nature or quality soever they be, to them and their successors; and also to give, grant, demise, alien, assign and dispose lands, tenements and hereditaments, and to do and execute all and singular other things by the same name that to them shall or may appertain to do; and that they and their successors, by the name of The Governor and Company of Adventurers of England trading into Hudson's Bay, may plead and be impleaded, answer and be answered, defend and be defended, in whatsoever courts and places, before whatsoever judges and justices, and other persons and officers, in all and singular actions, pleas, suits, quarrels, and causes demands whatsoever, of whatsoever kind, nature, or sort, in such manner and form as any other our liege people of this our realm of England, being persons able and capable in law, may or can have, purchase, receive, possess, enjoy, retain, give, grant, demise, alien, assign, dispose, plead, defend and be defended, do, permit and execute; and that the said Governor and Company of Adventurers of England trading into Hudson's Bay, and their successors, may have a common seal to serve for all the causes and businesses of them and their successors, and that it shall and may be lawful to the said Governor and Company, and their successors, the same seal from time to time, at their will and pleasure, to break, change, and to make anew or alter, as to them shall seem expedient.

AND FURTHER WE WILL, and by these presents, for us, our heirs and successors, WE DO ordain that there shall be from henceforth one of the same Company to be elected and appointed in such form as hereafter in these presents is expressed, which shall be called the Governor of the said Company; and that the said Governor and Company shall or may select seven of their number, in such form as hereafter in these presents is expressed, which shall be called the Committee of the said Company, which Committee of seven, or any three of them, together with the Governor or Deputy-Governor of the said Company for the time being, shall have the direction of the voyages of and for the said Company, and the provision of the shipping and merchandizes thereunto belonging, and also the sale of all merchandizes, goods and other things returned, in all or any the voyages or ships of or for the said Company, and the managing and handling of all other business affairs and things belonging to the said Company; AND WE WILL, ordain and grant by these presents, for us, our heirs and successors, unto the said Governor and Company, and their successors, that they the said Governor and Company, and their successors, shall from henceforth for ever be ruled, ordered and governed according to such manner and form as is hereafter in these presents expressed, and not otherwise; and that they shall have, hold, retain and enjoy the grants, liberties, privileges, jurisdictions and immunities only hereafter in these presents granted and expressed, and no other: And for the better execution of our will and grant in this behalf WE HAVE ASSIGNED, nominated, constituted and made, and by these presents, for us, our heirs and successors, WE DO ASSIGN, constitute and make our said Cousin PRINCE RUPERT, to be the first and present Governor of the said Company, and to continue in the said office, from the date of these presents until the 10th November then next following, if he, the said Prince Rupert, shall so long live, and so until a new Governor be chosen by the said Company in form hereafter expressed: AND ALSO WE HAVE assigned, nominated and appointed, and by these presents, for us, our heirs and successors, WE DO assign, nominate and constitute, the said Sir John Robinson, Sir Robert Vyner, Sir Peter Colleton, James Hayes, John Kirk, Francis Millington, and John Portman to be the seven first and present Committees of the said Company, from the date of these presents until the said 10th day of November then also next following, and so on until new Committees shall be chosen in form hereafter expressed: AND FURTHER WE WILL and grant by these presents, for us, our heirs and successors, until the said Governor and Company, and their successors, that it shall and may be lawful to and for the said Governor and Company for the time being, or the greater part of them present at any public assembly, commonly called the Court General, to be holden for the said Company, the Governor of the said Company being always one, from time to time to elect, nominate and appoint one of the said Company to be Deputy to the said Governor, which Deputy shall take a corporal oath, before the Governor and three or more of the Committee of the said Company for the time being, well, truly, and faithfully, to execute his said office of Deputy to the Governor of the said Company, and after his oath is so taken,

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themselves in such convenient place as they shall think fit, for the election of the Governor or the Deputy Governor of the said Company; and that the said Company, or the greater part of them, being then and there present, shall and may, then and there, before their departure from the said place, elect and nominate one other of the said Company to be Governor or Deputy Governor for the said Company in the place and stead of him that so died or was removed; which person being so elected and nominated to the office of Governor or Deputy Governor of the said Company, shall have and exercise the said office for and during the residue of the next year, taking first a corporal oath, as is aforesaid, for the due execution thereof; and this to be done from time to time so often as the case shall so require: AND ALSO, our will and pleasure is, and by these presents for us, our heirs and successors, WE DO GRANT unto the said Governor and Company, that when and as often as it shall happen any person or persons 10 of the said Committee of the said Company for the time being, at any time within one year next after that they or any of them shall be nominated, elected and sworn to the office of Committee of the said Company as is aforesaid, to die or be removed from the said office, which Committees not demeaning themselves well in their said office, WE WILL to be removed at the pleasure of the said Governor and Company or the greater part of them, whereof the Governor of the said Company for the time being or his Deputy to be one, that then and so often, it shall and may be lawful to and for the said Governor and the rest of the Company for the time being, or the greater part of them, whereof the Governor for the time being or his Deputy to be one, within convenient time after the death or removing of any of the said Committee, to assemble themselves in such convenient place as is or shall be usual and accustomed for the election of the Governor of the said Company, or where else the Governor of the said 20 Company for the time being or his Deputy shall appoint: And that the said Governor and Company, or the greater part of them, whereof the Governor for the time being or his Deputy to be one, being then and there present, shall and may, then and there, before their departure from the said place, elect and nominate one or more of the said Company to be the Committee of the said Company in the place and stead of him or them that so died, or were or was so removed, which person or persons so nominated and elected to the office of Committee of the said Company, shall have and exercise the said office for and during the residue of the said year, taking first a corporal oath, as is aforesaid, for the due execution thereof, and this to be done from time to time, so often as the case shall require:

And to the end the said Governor and Company of Adventurers of England trading into Hudson's Bay may be encouraged to undertake and effectually to prosecute the said design, of our more especial grace, certain knowledge and mere motion, WE HAVE given, granted and confirmed, and by these presents, for us, our heirs and successors, DO give, grant and confirm, unto the said Governor and Company, and their successors, the sole trade and commerce of all the seas, straits, bays, rivers, lakes, creeks and sounds, in whatsoever latitude they shall be, that lie within the entrance of the straits, commonly called Hudson's Straits, together with all the lands and territories upon the countries, coasts, and confines of the seas, bays, lakes, rivers, creeks and sounds aforesaid, that are not already actually possessed by or granted to, any of our subjects, or possessed by the subjects of any other Christian Prince or State, with the fishing of all sorts of fish, whales, sturgeons and all other royal fishes, in the seas, bays, inlets and rivers within the premises, and the fish therein taken, together with the royalty of the sea upon the coasts within the limits aforesaid, and all mines royal, as well discovered as not discovered, of gold, 40 silver, gems and precious stones, to be found or discovered within the territories, limits and places aforesaid, and that the said land be from henceforth reckoned and reputed as one of our plantations or colonies in America, called "Rupert's Land."

AND FURTHER WE DO, by these presents, for us, our heirs and successors, make, create, and constitute the said Governor and Company for the time being, and their successors, the true and absolute lords and proprietors of the same territory, limits and places, and of all other the premises, SAVING ALWAYS the faith, allegiance and sovereign dominion due to us, our heirs and successors, for the same, to HAVE, HOLD, possess and enjoy the said territory, limits and places, and all and singular other the premises hereby granted as aforesaid, with their and every of their rights, members, jurisdictions, prerogatives, royalties and appurtenances whatsoever, to them the said Governor and Company, and their successors 50

for ever, TO BE HOLDEN of us, our heirs and successors, as of our manor at East Greenwich, in our county of Kent, in free and common socage, and not in capite or by Knight's service, YIELDING AND PAYING yearly to us, our heirs and successors, for the same, two elks and two black beavers, whensoever and as often as we, our heirs and successors, shall happen to enter into the said countries, territories and regions hereby granted.

AND FURTHER, our will and pleasure is, and by these presents, for us, our heirs and successors, WE DO GRANT unto the said Governor and Company, and their successors, that it shall and may be lawful to and for the said Governor and Company and their successors, from time to time, to assemble themselves, for or about any the matters, causes, affairs or businesses of the said trade, in any place or places for the same convenient, within our dominions or elsewhere, and there to hold Court for the said Company and the affairs thereof; and that, also, it shall and may be lawful to and for them, and the greater part of them, being so assembled, and that shall then and there be present, in any such place or places, whereof the Governor or his Deputy for the time being to be one, to make, ordain and constitute such and so many reasonable laws, constitutions, orders and ordinances as to them, or the greater part of them, being then and there present, shall seem necessary and convenient for the good government of the said Company, and of all governors of colonies, forts and plantations, factors, masters, mariners and other officers employed or to be employed in any of the territories and lands aforesaid, and in any of their voyages, and for the better advancement and continuance of the said trade or traffic and plantations, and the same laws, constitutions, orders and ordinances so made, to put in use and execute accordingly, and at their pleasure to revoke and alter the same or any of them, as the occasion shall require; And that the said Governor and Company, so often as they shall make, ordain or establish any such laws, constitutions, orders and ordinances, in such form as aforesaid, shall and may lawfully impose, ordain, limit and provide such pains, penalties and punishments upon all offenders, contrary to such laws, constitutions, orders and ordinances, or any of them, as to the said Governor and Company for the time being, or the greater part of them, then and there being present, the said Governor or his Deputy being always one, shall seem necessary, requisite or convenient for the observation of the same laws, constitutions, orders and ordinances; and the same fines and americiaments shall and may, by their officers and servants from time to time to be appointed for that purpose, levy, take and have, to the use of the said Governor and Company, and their successors, without the impediment of us, our heirs or successors, or any of the officers or ministers of us, our heirs or successors, and without any account therefor to us, our heirs or successors, to be made: All and singular which laws, constitutions, orders, and ordinances, so as aforesaid to be made, WE WILL to be duly observed and kept under the pains and penalties therein to be contained; so always as the said laws, constitutions, orders and ordinances, fines and americiaments, be reasonable and not contrary or repugnant, but as near as may be agreeable to the laws, statutes or customs of this our realm.

AND FURTHERMORE, of our ample and abundant grace, certain knowledge and mere motion, WE HAVE granted, and by these presents, for us, our heirs and successors, DO grant unto the said Governor and Company, and their successors, that they and their successors, and their factors, servants and agents, for them and on their behalf, and not otherwise, shall for ever hereafter have, use and enjoy, not only the whole, entire, and only trade and traffic, and the whole, entire, and only liberty, use and privilege of trading and trafficking to and from the territory, limits and places aforesaid, but also the whole and entire trade and traffic to and from all havens, bays, creeks, rivers, lakes and seas, into which they shall find entrance or passage by water or land out of the territories, limits and places aforesaid; and to and with all the natives and people inhabiting, or which shall inhabit within the territories, limits and places aforesaid; and to and with all other nations inhabiting any the coasts adjacent to the said territories, limits and places which are not already possessed as aforesaid, or whereof the sole liberty or privilege of trade and traffic is not granted to any other of our subjects.

AND WE, of our further Royal favour, and of our more especial grace, certain knowledge and mere motion, HAVE granted, and by these presents, for us, our heirs and successors, DO grant to the said Governor and Company, and to their successors, that neither the said territories, limits and places hereby granted as aforesaid, nor any part thereof, nor the islands, havens, ports, cities, towns, or places thereof

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or therein contained, shall be visited, frequented or haunted by any of the subjects of us, our heirs or successors, contrary to the true meaning of these presents, and by virtue of our prerogative royal, which we will not have in that behalf argued or brought into question: WE STRAITLY charge, command and prohibit for us, our heirs and successors, all the subjects of us, our heirs and successors, of what degree or quality soever they be, that none of them, directly or indirectly do visit, haunt, frequent or trade, traffic, or adventure, by way of merchandise, into or from any of the said territories, limits or places hereby granted or any or either of them, other than the said Governor or Company, and such particular persons as now be or hereafter shall be of that Company, their agents, factors and assigns, unless it be by the license and agreement of the said Governor and Company in writing first had and obtained, under their common seal, to be granted, upon pain that every such person or persons that shall trade or traffic into or from any of the countries, territories, or limits aforesaid, other than the said Governor and Company, and their successors, shall incur our indignation, and the forfeiture and the loss of the goods, merchandizes and other things whatsoever, which so shall be brought into this realm of England, or any of the dominions of the same, contrary to our said prohibition, or the purport or true meaning of these presents, or which the said Governor and Company shall find, take and seize in other places out of our dominion, where the said Company, their agents, factors or ministers shall trade, traffic or inhabit by the virtue of these our letters patent, as also the ship and ships, with the furniture thereof, wherein such goods, merchandizes and other things shall be brought and found; and one-half of all the said forfeitures to be to us, our heirs and successors, and the other half thereof WE DO, by these presents, clearly and wholly, for us, our heirs and successors, give and grant unto the said Governor and Company, and their successors: AND FURTHER, all and every the said offenders, for their said contempt, to suffer such other punishment as to us, our heirs and successors, for so high a contempt, shall seem meet and convenient, and not be in any wise delivered until they and every of them shall become bound unto the said Governor for the time being in the sum of One thousand pounds at the least, at no time then after to trade or traffic into any of the said places, seas, straits, bays, ports, havens or territories aforesaid, contrary to our express commandment in that behalf set down and published: AND FURTHER, of our more especial grace, WE HAVE condescended and granted, and by these presents, for us, our heirs and successors, DO grant unto the said Governor and Company, and their successors, that we, our heirs and successors, will not grant liberty, license or power to any person or persons whatsoever, contrary to the tenor of these our letters patent, to trade, traffic or inhabit, unto or upon any of the territories, limits or places afore specified, contrary to the true meaning of these presents, without the consent of the said Governor and Company, or the most part of them: AND, of our more abundant grace and favour of the said Governor and Company, WE DO hereby declare our will and pleasure to be, that if it shall so happen that any of the persons free or to be free of the said Company of Adventurers of England trading into Hudson's Bay, who shall, before the going forth of any ship or ships appointed for a voyage or otherwise, promise or agree, by writing under his or their hands, to adventure any sum or sums of money towards the furnishing any provision, or maintenance of any voyage or voyages, set forth or to be set forth, or intended or meant to be set forth, by the said Governor and Company, or the most part of them present at any public assembly, commonly called their General Court, shall not, within the space of twenty days next after warning given to him or them by the said Governor or Company, or their known officer or minister, bring in and deliver to the Treasurer or Treasurers appointed for the Company, such sums of money as shall have been expressed and set down in writing by the said person or persons, subscribed with the name of said Adventurer or Adventurers, that then and at all times after it shall and may be lawful to and for the said Governor and Company, or the more part of them present, whereof the said Governor or his Deputy to be one, at any of their General Courts or general assemblies, to remove and disfranchise him or them, and every such person and persons at their wills and pleasures, and he or they so removed and disfranchised, not to be permitted to trade into the countries, territories, and limits aforesaid, or any part thereof, nor to have any adventure or stock going or remaining with or amongst the said Company, without the special license of the said Governor and Company, or the more part of them present at any General Court, first had and obtained in that behalf, any thing before in these presents to the contrary thereof in any wise notwithstanding. AND OUR WILL AND PLEASURE IS, and hereby we do also ordain, that it shall and may be lawful to and for the said

Governor and Company, or the greater part of them, whereof the Governor for the time being or his Deputy to be one, to admit into and to be, of the said Company all such servants or factors, of or for the said Company, and all such others as to them or the most part of them present, at any Court held for the said Company, the Governor or his Deputy being one, shall be thought fit and agreeable with the orders and ordinances made and to be made for the government of the said Company: AND FURTHER our will and pleasure is, and by these presents for us, our heirs and successors, WE DO grant unto the said Governor and Company, and to their successors, that it shall and may be lawful in all elections and by-laws to be made by the General Court of the Adventurers of the said Company, that every person shall have a number of votes according to his stock, that is to say, for every hundred pounds by him subscribed or brought into the present stock, one vote, and that any of those that have subscribed less than One hundred pounds, may join their respective sums to make up one hundred pounds, and have one vote jointly for the same, and not otherwise: AND FURTHER, of our especial grace, certain knowledge and mere motion, WE DO, for us, our heirs and successors, grant to and with the said Governor and Company of Adventurers of England trading into Hudson's Bay, that all lands, islands, territories, plantations, forts, fortifications, factories or colonies, where the said Company's factories and trade are or shall be, within any of the ports or places afore limited, shall be immediately and from henceforth under the power and command of the said Governor and Company, their successors and assigns; SAVING the faith and allegiance due to be performed to us, our heirs and successors, as aforesaid; and that the said Governor and Company shall have liberty, full power and authority to appoint and establish Governors and all other officers to govern them, and that the Governor and his Council of the several and respective places where the said Company shall have plantations, forts, factories, colonies or places of trade within any of the countries, lands or territories hereby granted, may have power to judge all persons belonging to the said Governor and Company, or that shall live under them, in all causes, whether civil or criminal, according to the laws of the kingdom, and to execute justice accordingly; and in case any crime or misdemeanor shall be committed in any of the said Company's plantations, forts, factories, or places of trade within the limits aforesaid, where judicature cannot be executed for want of a Governor and Council there, then in such case it shall and may be lawful for the chief Factor of that place and his Council to transmit the party, together with the offence, to such other plantation, factory or fort where there shall be a Governor and Council, where justice may be executed, or into this kingdom of England, as shall be thought most convenient, there to receive such punishment as the nature of his offence shall deserve: AND MOREOVER, our will and pleasure is, and by these presents, for us, our heirs and successors, WE DO GIVE and grant unto the said Governor and Company, and their successors, free liberty and license, in case they conceive it necessary, to send either ships of war, men or ammunition into any of their plantations, forts, factories, or places of trade aforesaid, for the security and defence of the same, and to choose commanders and officers over them, and to give them power and authority, by commission under their common seal, or otherwise, to continue to make peace or war with any prince or people whatsoever, that are not Christians, in any place where the said Company shall have any plantations, forts or factories, or adjacent thereto, and shall be most for the advantage and benefit of the said Governor and Company, or of their trade; and also to right and recompense themselves upon the goods, estates, or people of those parts, by whom the said Governor and Company shall sustain any injury, loss, or damage, or upon any other people whatsoever, that shall in any way, contrary to the intent of these presents, interrupt, wrong or injure them in their trade, within the said places, territories and limits granted by this Charter: And that it shall and may be lawful to and for the said Governor and Company, and their successors, from time to time, and at all times from henceforth, to erect and build such castles, fortifications, forts, garrisons, colonies or plantations, towns or villages, in any parts or places within the limits and bounds granted before in these presents unto the said Governor and Company, as they in their discretion shall think fit and requisite, and for the supply of such as shall be needful and convenient, to keep and be in the same, to send out of this kingdom, to the said castles, forts, fortifications, garrisons, colonies, plantations, towns or villages, all kinds of clothing, provisions or victuals, ammunition and implements necessary for such purpose, paying the duties and customs for the same, as also to transport and carry over such number of men being willing thereunto, or not prohibited, as they shall think fit, and also to govern them in such legal and reasonable manner as the said Governor and Company shall think best, and to inflict punishment for misdemeanours, or impose such fines

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upon them for breach of their orders as in these presents are formally expressed: AND FURTHER, our will and pleasure is, and by these presents, for us, our heirs and successors, WE DO grant unto the said Governor and Company, and to their successors, full power and lawful authority to seize upon the persons of all such English, or any other our subjects, which shall sail into Hudson's Bay, or inhabit in any of the countries, islands, or territories hereby granted to the said Governor and Company, without their leave and license, and in that behalf first had and obtained, or that shall contemn or disobey their orders, and send them to England; and that all and every person or persons, being our subjects, any ways employed by the said Governor and Company, within any the parts, places, and limits aforesaid, shall be liable unto and suffer such punishment for any offences by them committed in the parts aforesaid, as the President and Council for the said Governor and Company there shall think fit, and the 10 merit of the offence shall require, as aforesaid; and in case any person or persons being convicted and sentenced by the President and Council of the said Governor and Company, in the countries, lands, or limits aforesaid, their factors or agents there, for any offence by them done, shall appeal from the same that then and in such case it shall and may be lawful to and for the said President and Council, factors or agents, to seize upon him or them, and to carry him or them home prisoners into England, to the said Governor and Company, there to receive such condign punishment as his case shall require, and the law of this nation allow of; and for the better discovery of abuses and injuries to be done unto the said Governor and Company, or their successors, by any servant by them to be employed in the said voyages and plantations, it shall and may be lawful to and for the said Governor and Company, and their respective President, Chief Agent, or Governor in the parts aforesaid, to examine upon oath all factors, masters 20 pursers, supercargoes, commanders of castles, forts, fortifications, plantations or colonies, or other persons, touching or concerning any matter or thing in which by law or usage an oath may be administered, so as the said oath, and the matter therein contained be not repugnant, but agreeable to the laws of this realm: AND WE DO hereby straitly charge and command all and singular our Admirals, Vice-Admirals, Justices, Mayors, Sheriffs, Constables, Bailiffs, and all and singular other our officers, ministers, liege men and subjects whatsoever to be aiding, favouring, helping, and assisting, to the said Governor and Company, and to their successors, and their deputies, officers, factors, servants, assigns and ministers, and every of them, in executing and enjoying the premises, as well on land as on sea, from time to time, when any of you shall thereunto be required; ANY STATUTE, act, ordinance, proviso, proclamation or restraint heretofore had, made, set forth, ordained, or provided, or any other matter, cause or thing 30 whatsoever to the contrary in anywise notwithstanding.

IN WITNESS WHEREOF we have caused these our Letters to be made Patent.

WITNESS OURSELF at Winchester, the second day of May, in the two-and-twentieth year of our reign.

By Writ of Privy Seal.

PIGOTT.

IMPERIAL ACT, 2 W. & M., CAP. 15, SESS. 1 (1690).

1690. CONFIRMING THE HUDSON'S BAY COMPANY'S CHARTER FOR SEVEN YEARS.

AN ACT FOR CONFIRMING TO THE GOVERNOR AND COMPANY TRADING TO HUDSON'S BAY THEIR PRIVILEGES AND TRADING.*

*Imperial Act,
2 W. & M.,
Cap. 15,
Sess. 1, 1690.*

FORASMUCH as His late Majesty King Charles the Second, by his Letters Patent or Charter, under 40 the Great Seal of England, bearing date the second day of May, in the two-and-twentieth year of his reign, reciting, or taking notice, that his then Highness Prince Rupert, Christopher Duke of Albemarle, William Earl of Craven, and divers other Lords therein particularly named had, at their own great costs and charges, undertaken an expedition to Hudson's Bay, in the north-west parts of America, for the discovery of a new passage into the South Seas, and for finding some trade for furs, minerals and other considerable commodities, and that by such their undertaking they had made such discoveries whereby might probably arise much advantage to his said Majesty and this Kingdom; for which, and

* 2 William and Mary, Cap. 15, 1st Session (Private Acts)

for other reasons and motives in the said Charter mentioned, his said late Majesty was graciously pleased thereby to incorporate, create and make the said Prince Rupert, Duke of Albemarle, Earl of Craven, and other the Lords and persons therein particularly named, and such others as should be admitted into the Society (as therein is mentioned), one body corporate and politic in deed and name, by the name of the Governor and Company of Adventurers of England trading into Hudson's Bay, and by that name to have perpetual succession, and to sue and be sued, take, purchase or grant; and by the said Letters Patent or Charter of incorporation provision was made as well for the appointment and constitution of the first and present, as well as for the choosing, appointing and admitting of all future governors, deputy-governors, committees, members and officers of the said Company, and for the making of laws, constitutions and ordinances, and for the government of the said Company and trade, and otherwise, and the sole trade and commerce of all the seas, straits, bays, lakes, rivers, creeks and sounds, in whatsoever latitude they shall be, that are within the entrance of the straits commonly called Hudson's Straights, together with all the lands and the territories upon the countries, coasts and confines of the seas, bays, lakes, rivers, creeks and sounds aforesaid, which were not then actually possessed by or granted to any of his said late Majesty's subjects, or possessed by the subjects of any other Christian prince or state, with divers and sundry privileges, liberties, jurisdictions, franchises, powers and authorities to punish offenders, to sue for and recover penalties, with other powers and authorities, matters and things, in the said Letters Patent or Charter of incorporation mentioned and expressed, were thereby granted to and invested in the same said Company and their successors for ever, in such sort, manner and form as in and by the said Charter or Letters Patent, or enrollment thereof, is mentioned and expressed, and as thereby more fully appears: And forasmuch as the said Governor and Company, at their great charges and with much difficulty and hazard, have settled and made great improvements of the trade to the said seas, straits and places aforesaid, which as now and for several years past hath been found to be useful and profitable to this Kingdom, and the navigation thereof, for furs, minerals and other considerable commodities; and it appearing that the said trade cannot be carried on or managed so advantageously either to the honour or interest of this realm as in a Company and with a joint stock, and it being necessary that such a Company should have sufficient and undoubted powers and authorities, privileges and liberties to manage, order and carry on the said trade, and to make by-laws, orders, rules and constitutions for the due management and regulation as well of the said Company as trade, and for the punishment of offenders, and recovering of forfeitures and penalties, which cannot be so effectually done as by authority of Parliament: Be it therefore enacted by the King and Queen's most excellent Majesties, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that the present Governor and Company of Adventurers of England trading into Hudson's Bay, and their successors, shall at all times from henceforth stand, continue and be a body politic and corporate in deed and name, by the name aforesaid, and according to the purport and effect of the said Letters Patent or Charter hereinbefore mentioned, and that the said Letters Patent or Charter hereinbefore mentioned, bearing date the said second day of May, in the two-and-twentieth year of the reign of his said late Majesty, King Charles the Second, and all things therein contained, be, and by virtue of this present Act shall be from henceforth ratified, established and confirmed unto the present Governor and Company of Adventurers of England trading into Hudson's Bay, and to their successors for ever, and also that the said Governor and Company and their successors shall and may have, do, use, exercise and enjoy all and singular the liberties, privileges, powers, authorities, matters and things in the said Letters Patent or Charter mentioned to be granted to them, and also that the said Letters Patent or Charter, and all and every the liberties, franchises, immunities, privileges, jurisdictions, powers, royalties, hereditaments, matters and things whatsoever, and of what nature and kind soever thereby given, granted or demitted, or mentioned to be given, granted or demitted to the said Prince Rupert, Duke of Albemarle, Earl of Craven, and other the Lords and persons therein particularly named, and thereby incorporated, and to the Governor and Company thereby created, made or erected, and to their successors, and to all governors, deputy-governors, committees, and other members, officers and servants, of or upon the said Governor and Company for the time being, and their successors, or otherwise howsoever, with and under such restraints and prohibitions, and subject and liable to such forfeitures and remedies for recovering thereof, as in the said

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Charter are contained, shall from henceforth be good and effectual, and available in the law, and to all intents, constructions and purposes, to the aforesaid now Governor and Company, and their successors for evermore, and shall and may be by the now Governor and Company and their successors from time to time for ever hereafter, holden and enjoyed, and put in execution after and according to the form, words, sentences, purport, effect, and true meaning of the said Letters Patent or Charter, and that as amply, fully and largely, to all intents, constructions and purposes, as if the same Letters Patent or Charter, and the general matters and things therein mentioned, and thereby granted or mentioned to be granted, were word for word recited and set down at large in this present Act of Parliament, any law, statute, usage, custom or other matter or thing to the contrary notwithstanding. Provided always, and be it further enacted, by the authority aforesaid, that the said Governor and Company 10 shall make at least two public sales of coat beaver in every year, and not exceeding four, and that they shall proportion the same into lots each of about 100*l.* *stg.*, but not exceeding 200*l.* value; and that in the intervals of public sales the said Company may not sell coat beaver by private contract, and at any lower price than it was set up at the last public sale, and that the coat beaver now in the Company's hands shall be liable to the same rules. Provided always, that this Act shall continue and be in force for the time of seven years, and from thence to the end of the next Session of Parliament and no longer.

IMPERIAL ACT, 6 ANNE, CAP. 37, (1707).

AN ACT FOR THE ENCOURAGEMENT OF THE TRADE TO AMERICA.

*Imperial Act,
6 Anne, Cap.
37, 1707.*

- [Sec. 1. For advancement of the Trade to America; All prize offices in America suppressed. 20
- Sec. 2. Officers and seamen, etc., to have the sole property in all prize ships, etc.
- Sec. 3. Encouragement for the increase of private ships of war; Altered and explained by 9 Anne, c. 27, fo. 1.
- Sec. 4. Manner of condemning prize ships; Claimants to give security for payment of captors.
- Sec. 5. Refusing to give such security, captors to give security, etc.
- Sec. 6. Captures brought into America, to stay there until cleared or condemned, etc.
- Sec. 7. Fees payable to the officers of the Admiralty on condemning prize ships; Penalty on neglect of duty.
- Sec. 8. Party aggrieved may appeal to the Queen in Council; 22 Geo. II., c. 3.
- Sec. 9. No mariner serving on board privateer, or trading-ship in America, or being on shore there, 30 liable to be impressed unless deserters; Penalty.
- Sec. 10. No privateer or trading-ship to entertain deserters from ships of war; Penalty.
- Sec. 11. From 25th April, 1708, Commanders, etc., before they set sail from port, to deliver a list of their men to officers of customs, etc.; Penalty.
- Sec. 12. Officers to return to master an attested copy of such list, etc.
- Sec. 13. Trading ships and packet boats to America, to carry with them mariners for the Queen's ships there, etc.; On Penalty.
- Sec. 14. Queen (during war) may grant commissions, etc., to take or destroy enemies' ships, goods, etc., in any part of America, etc.; And assure to them what ships, etc., they shall so take, etc.
- Sec. 15. Queen's subjects to enjoy a free trade to America. 40
- Sec. 16. No ship to molest the subjects of Spain in their trade, etc., between Rio la Hucha and the Chagres; 3 and 4 Anne, c. 13.

Sec. 17. Commanders of privateers, etc., to be subject to the laws in relation to slaves.

Sec. 18. During war privateers or trading ships may be navigated by Foreign seamen; so as one fourth be British; 12 Car. 2, c. 18.

Sec. 19. Foreign seamen serving two years on board any British ships to be deemed natural-born subjects.

Sec. 20. Queen may license 20 ships bought in foreign parts, to be used for privateers; And at the end of the war be deemed British ships; 12 Car. 2. c. 18.

Sec. 21. Queen's subjects may trade to any part of America.

22. PROVIDED always and be it further enacted and declared, That it shall and may be lawful to 10 and for all Her Majesty's subjects of this Kingdom to trade into any part of America to which they might lawfully have traded before the making of this Act and not otherwise.

23. PROVIDED always that nothing in this Act shall any ways extend or be construed to take away or prejudice any of the estates, rights or privileges of or belonging to the Governor and Company of adventurers of England trading in Hudson's Bay.

IMPERIAL ACT, 18 GEO. II., CAP. XVII., (1745).

AN ACT FOR GIVING A PUBLIC REWARD TO SUCH PERSON OR PERSONS HIS MAJESTY'S SUBJECT OR SUBJECTS AS SHALL DISCOVER A NORTH-WEST PASSAGE THROUGH HUDSON'S STREIGHTS TO THE WESTERN AND SOUTHERN OCEAN OF AMERICA.

Whereas the discovering of a North-West Passage through Hudson's Straights, to the Western 20 American Ocean, will be of great benefit and advantage to the trade of this kingdom: And whereas it will be a great encouragement to adventurers to attempt the fame, if a public reward was given to such person or persons as shall make a perfect discovery of the said passage: May it therefore please your Majesty that it may be enacted; and be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That if any ship or vessel, ships or vessels, belonging to any of His Majesty's subjects, shall find out and sail through any passage by sea between Hudson's Bay and the Western and Southern Ocean of America, the owner or owners of such ship or ships, vessel or vessels as aforesaid, so first finding out and sailing through the said passage, his or their executors, administrators, or assigns, shall be entitled to receive, and shall receive as a reward for such discovery, 30 the sum of twenty thousand pounds.

[Sec. 2. Commissioners for the discovery; empowered to examine the claimants' witnesses; and grant a certificate to the person entitled.]

Sec. 3. Adventurers to be assisted in distress.]

IV. Provided always that nothing in this Act shall any ways extend, or be construed to take away or prejudice any of the estates, rights or privileges of, or belonging to the Governor and company of adventurers of England trading into Hudson's Bay.

ROYAL PROCLAMATION OF 1763. ESTABLISHING QUEBEC AND OTHER PROVINCES.

GEORGE R.

Whereas we have taken into our royal consideration the extensive and valuable acquisitions in 40 America, secured to our Crown by the late definitive treaty of peace, concluded at Paris the 10th day of February last; and being desirous that all our loving subjects, as well of our kingdoms as of our colonies in America, may avail themselves, with all convenient speed, of the great benefits and advantages which must accrue therefrom to their commerce, manufactures, and navigation, we have thought

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fit, with the advice of our Privy Council, to issue this our Royal Proclamation hereby to publish and declare to all our loving subjects that we have, with the advice of our said Privy Council, granted our letters patent under our great seal of Great Britain, to erect within the countries and islands ceded and confirmed to us by the said treaty, four distinct and separate governments, styled and called by the names of Quebec, East Florida, West Florida, and Grenada, and limited and bounded as follows, viz.:

First, The government of Quebec, bounded on the Labrador coast by the river St. John, and from thence by a line drawn from the head of that river, through the lake St. John, to the south end of the lake Nipissim; from whence the said line, crossing the river St. Lawrence and the lake Champlain in forty-five degrees north latitude, passes along the high lands which divide the rivers that empty themselves into the said river St. Lawrence from those which fall into the sea; and also along the north coast of the *Baye des Chaleurs*, and the coast of the gulph of St. Lawrence to cape Rosiers, and from thence crossing the mouth of the river St. Lawrence by the west end of the island of Anticosti, terminates at the aforesaid river St. John.

Secondly, The government of East Florida, bounded to the westward by the gulph of Mexico and the Apalachicola river; to the northward by a line drawn from that part of the said river where the Catahouchee and Flint rivers meet, to the source of St. Mary's river, and by the course of the said river to the Atlantic ocean; and to the east and south by the Atlantic ocean and the gulph of Florida, including all the islands within six leagues of the sea coast.

Thirdly, The government of West Florida, bounded to the southward by the gulph of Mexico, including all islands within six leagues of the coast from the river Apalachicola to lake Pontchartrain; to the westward by the said lake, the lake Maurepas, and the river Mississippi; to the northward by a line drawn east from that part of the river Mississippi which lies in thirty-one degrees of north latitude, to the river Apalachicola, or Catahouchee; and to the eastward by the said river.

Fourthly, The government of Grenada, comprehending the island of that name, together with the Grenadines, and the islands of Dominica, St. Vincent, and Tobago.

And to the end that the open and free fishery of our subjects may be extended to, and carried on upon, the coast of Labrador and the adjacent islands, we have thought fit, with the advice of our said Privy Council, to put all that coast, from the River St. John's to Hudson's Straights, together with the islands of Anticosti and Madelaine, and all smaller islands lying upon the said coast, under the care and inspection of our Governor of Newfoundland.

We have also, with the advice of our Privy Council, thought fit to annex the islands of St. John and Cape Breton, or Isle Royale, with the lesser islands, adjacent thereto, to our Government of Nova Scotia.

We have also, with the advice of our Privy Council aforesaid, annexed to our Province of Georgia all the lands lying between the rivers Attamaha and St. Mary's.

And, whereas, it will greatly contribute to the speedy settling our said new governments, that our loving subjects should be informed of our paternal care for the security of the liberty and properties of those who are and shall become inhabitants thereof; we have thought fit to publish and declare, by this our proclamation, that we have, in the letters patent under our great seal of Great Britain, by which the said governments are constituted, given express power and direction to our governors of our said colonies respectively, that so soon as the state and circumstance of the said colonies will admit thereof, they shall, with the advice and consent of the members of our Council, summon and call general assemblies within the said governments respectively, in such manner and form as is used and directed in those colonies and provinces in America which are under our immediate government; and we have also given power to the said governors, with the consent of our said Council and the representatives of the people so to be summoned as aforesaid, to make, constitute, and ordain laws, statutes, and ordinances for the public peace, welfare, and good government of our said colonies, and of the people and inhabitants thereof, as near as may be agreeable to the laws of England, and under such regulations and restrictions as are used in other colonies; and in the meantime, and until such assemblies can be called

as aforesaid, all persons inhabiting in, or resorting to, our said colonies, may confide in our royal protection for the enjoyment of the benefit of the laws of our realm of England, for which purpose we have given power under our great seal to the governors of our said colonies respectively, to erect and constitute, with the advice of our said Councils respectively, courts of judicature and public justice within our said colonies, for the hearing and determining all causes, as well criminal as civil, according to law and equity, and, as near as may be agreeable to the laws of England, with liberty to all persons who may think themselves aggrieved by the sentence of such courts, in all civil cases, to appeal under the usual limitations and restrictions, to us in our Privy Council.

10 We have also thought fit, with the advice of our Privy Council as aforesaid, to give unto the governors and councils of our said three new colonies upon the continent, full power and authority to settle and agree with the inhabitants of our said new colonies, or any other person who shall resort thereto, for such lands, tenements, and hereditaments, as are now, or hereafter shall be, in our power to dispose of, and them to grant to any such person or persons, upon such terms, and under such moderate quit-rents, services, and acknowledgments as have been appointed and settled in other colonies, and under such other conditions as shall appear to us to be necessary and expedient for the advantage of the grantees, and the improvement and settlement of our said colonies.

And whereas we are desirous, upon all occasions, to testify our royal sense and approbation of the conduct and bravery of the officers and soldiers of our armies, and to reward the same, we do hereby command and empower our governors of our said three new colonies, and other our governors of our 20 several provinces on the continent of North America, to grant, without fee or reward, to such reduced officers and soldiers as have served in North America during the late war, and are actually residing there, and shall personally apply for the same, the following quantities of land, subject, at the expiration of ten years, to the same quit-rents as other lands are subject to in the Province within which they are granted, as also subject to the same conditions of cultivation and improvement, viz. :

To every person having the rank of a field officer, 5,000 acres.

To every captain, 3,000 acres.

To every subaltern or staff-officer, 2,000 acres.

To every non-commissioned officer, 200 acres.

To every private man, 50 acres.

30 We do likewise authorize and require the governors and commanders in chief of all our said colonies upon the continent of North America, to grant the like quantities of land, and upon the same conditions, to such reduced officers of our navy of like rank as served on board our ships of war in North America at the times of the reduction of Louisbourg and Quebec, in the late war, and who shall personally apply to our respective governors for such grants.

And whereas it is just and reasonable, and essential to our interest, and the security of our colonies, that the several nations or tribes of Indians, with whom we are connected, and who live under our protection, should not be molested or disturbed in the possession of such parts of our dominions and territories as, not having been ceded to us, are reserved to them, or any of them, as their hunting grounds; we do therefore, with the advice of our Privy Council, declare it to be our royal will and 40 pleasure, that no governor or commander-in-chief in any of our colonies of Quebec, East Florida or West Florida, do presume, upon any pretence whatever, to grant warrants of survey, or pass any patents, for lands beyond the bounds of their respective governments, as described in their commissions; as also that no governor or commander-in-chief of our other colonies or plantations in America do presume, for the present, and until our further pleasure be known, to grant warrants of survey, or pass patents, for any lands beyond the heads or sources of any of the rivers which fall into the Atlantic Ocean from the west or north-west, or upon any lands whatever, which, not having been ceded to or purchased by us as aforesaid, are reserved to the said Indians or any of them.

And we do further declare it to be our royal will and pleasure, for the present, as aforesaid, to reserve under our Sovereignty, protection, and dominion, for the use of the said Indians, all the land and territories not included within the limits of our said three new Governments, or within the limits

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of the territory granted to the Hudson's Bay Company; as also all the land and territories lying to the westward of the sources of the rivers which fall into the sea from the west and north-west as aforesaid; and we do hereby strictly forbid, on pain of our displeasure, all our loving subjects from making any purchases or settlements whatsoever, or taking possession of any of the lands above reserved, without our especial leave or license for that purpose first obtained.

And we do further strictly enjoin and require all persons whatsoever, who have either wilfully or inadvertently seated themselves upon any lands within the countries above described, or upon any other lands which, not having been ceded to or purchased by us, are still reserved to the said Indians as aforesaid, forthwith to remove themselves from such settlements.

And whereas great frauds and abuses have been committed in the purchasing lands of the Indians, 10 to the great prejudice of our interests, and to the great dissatisfaction of the said Indians, in order therefore to prevent such irregularities for the future, and to the end that the Indians may be convinced of our justice and determined resolution to remove all reasonable cause of discontent, we do, with the advice of our Privy Council, strictly enjoin and require, that no private person do presume to make any purchase from the said Indians of any lands reserved to the said Indians within those parts of our colonies where we have thought proper to allow settlement; but if at any time any of the said Indians should be inclined to dispose of the said lands, the same shall be purchased only for us, in our name, in some public meeting or assembly of the said Indians, to be held for that purpose by the Governor or Commander-in-Chief of our colony respectively within which they shall lie: and in case they shall lie within the limits of any proprietaries, conformable to such 20 directions and instructions as we or they shall think proper to give for that purpose. And we do, by the advice of our Privy Council, declare and enjoin, that the trade with the said Indians shall be free and open to all our subjects whatever, provided that every person who may incline to trade with the said Indians do take out a license for carrying on such trade from the Governor or Commander-in-Chief of any of our colonies respectively where such person shall reside, and also give security to observe such regulations as we shall at any time think fit, by ourselves or commissaries to be appointed for this purpose, to direct and appoint for the benefit of the said trade: and we do hereby authorize, enjoin, and require the Governors and Commanders-in-Chief of all our colonies respectively, as well those under our immediate government, as those under the government and direction of pro- 20 prietaries, to grant such licenses without fee or reward, taking especial care to insert therein a condition 30 that such license shall be void, and the security forfeited, in case the person to whom the same is granted shall refuse or neglect to observe such regulations as we shall think proper to prescribe as aforesaid.

And we do further expressly enjoin and require all officers whatever, as well military as those employed in the management and direction of the Indian affairs within the territories reserved as aforesaid, for the use of the said Indians, to seize and apprehend all persons whatever, who standing charged with treason, misprision of treason, murder, or other felonies or misdemeanors, shall fly from justice and take refuge in the said territory, and to send them under a proper guard to the colony where the crime was committed of which they shall stand accused, in order to take their trial for the same.

Given at our Court at St. James's the 7th day of October, 1763, in the third year of our reign. 40

BOUNDARY DESCRIPTIONS IN IMPERIAL COMMISSIONS TO THE GOVERNOR OF
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30TH APRIL, 1763.

HENRY ELLIS, ESQUIRE,—*Clerk of the Council of the Province of Canada, Commissary or Steward-General of Provisions and Stores, and Clerk of the Enrolments.*

GEORGE THE THIRD, by the Grace of God, of Great Britain, France and Ireland, King, Defender of the Faith, &c.

To all to whom these presents shall come, greeting :

Know ye that We, reposing especial trust and confidence in the faithfulness, experience and ability of Our trusty and well-beloved Henry Ellis, Esquire, of Our special grace, certain knowledge and mere motion, have given and granted, and by these presents for Us, Our heirs and successors, do give and grant unto the said Henry Ellis, the offices and places of Secretary and Clerk of the Council of Our Province of Canada, and of Commissary or Steward-General of all such provisions and stores as are or shall be from time to time provided and sent for the forces of Us, Our heirs or successors, in Our said Province, and Clerk for the enrolling and registering all deeds and conveyances made and passed in that Our Province, and also all bills of sale and letters patent, or other acts or matters usually enrolled, or which by the laws of that Province shall be directed to be enrolled.

And him, the said Henry Ellis, Secretary and Clerk of the Council of Our said Province of Canada, and Commissary or Steward-General of all such provisions and stores as are or shall be, from time to time, provided and sent for the forces of Us, Our heirs or successors, in Our said Province of Canada, and Clerk of Enrolments, for enrolling and registering of all deeds and conveyances made and passed in that Our Province, and also all bills of sale and letters patent, or other acts or matters usually enrolled, or which by the laws of that Our Province shall be directed to be enrolled, We do make, ordain and constitute by these presents.

[Commissions of Justices of the Peace, under the Public Seal of the Province for the District of Montreal or Quebec, as the case might be, contained the words "in our Province of Quebec."

23RD SEPTEMBER, 1763.

NICHOLAS TURNER, ESQUIRE,—*Provost Marshal of the Province of Canada.*

GEORGE THE THIRD, by the Grace of God, of Great Britain, France and Ireland, King, Defender of the Faith, &c.

To all to whom these presents shall come, greeting :

Know ye that We, for divers good causes and considerations Us hereunto moving, of our special grace, certain knowledge and mere motion, have given and granted, and by these presents for Us, Our heirs and successors, do give and grant unto Our trusty and well-beloved Nicholas Turner, Esquire, the office of Provost-Marshal of Our said Province of Canada, and him the said Nicholas Turner, Provost-Marshal of our said Province of Canada, We do, for Us, Our heirs and successors, make, ordain and constitute by these presents, &c.

23rd Septem-
ber, 1763.



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21ST NOVEMBER, 1763.

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GEORGE THE THIRD, by the Grace of God, of Great Britain, France and Ireland, King, Defender of the Faith, &c.

To our trusty and well-beloved James Murray, Esquire, greeting:

We, reposing especial trust and confidence in the prudence, courage and loyalty of you, the said James Murray, of our especial grace, certain knowledge and mere motion, have thought fit to constitute and appoint, and by these presents do constitute and appoint you, the said James Murray, to be Our Captain-General and Governor-in-Chief in and over Our Province of Quebec, in America; bounded on the Labrador Coast by the River St. John, and from thence by a line drawn from the head of that river, through Lake St John, to the south end of Lake Nipissim, from whence the said line, crossing the River St. Lawrence and the Lake Champlain, in forty-five degrees of northern latitude, passes along the highlands which divide the rivers that empty themselves into the said River St. Lawrence from those which fall into the sea; and also along the north coast of the Baye des Chaleurs and the coast of the Gulf of St. Lawrence to Cape Rosiers; and from thence crossing the mouth of the River St. Lawrence by the west end of the Island of Anticosti, terminates at the aforesaid River St. John.

19TH MARCH, 1764.

JAMES MURRAY, ESQUIRE,—*Vice-Admiral, Commissary, &c., in our Province of Quebec, and territories thereon depending.*

GEORGE THE THIRD, by the Grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, &c.

19th March,
1764.

To our beloved James Murray, Esquire, Our Captain-General and Governor-in-Chief in and over Our Province of Quebec, in America, greeting:

We, confiding very much in your fidelity, care, and circumspection in this behalf, do by these presents, which are to continue during Our pleasure only, constitute and depute you, the said James Murray, Esquire, Our Captain-General and Governor-in-Chief aforesaid, our Vice-Admiral, Commissary, and Deputy in the office of Vice-Admiralty in Our Province of Quebec aforesaid, and territories thereon depending, and in the maritime parts of the same and thereto adjoining whatsoever; with power of taking and receiving all and every the fees, profits, advantages, emoluments, commodities, and appurtenances whatsoever due and belonging to the said office of Vice-Admiral, Commissary, and Deputy, in Our said Province of Quebec, and territories depending thereon, and maritime parts of the same and adjoining to them whatsoever, according to the ordinances and statutes of Our High Court of Admiralty in England.

And We do hereby remit and grant unto you, the aforesaid James Murray, Esquire, Our power and authority in and throughout Our Province of Quebec aforementioned, and territories thereof, and maritime parts whatsoever of the same and thereto adjacent, and also throughout all and every the sea-shores, public streams, ports, fresh water rivers, creeks and arms as well of the sea as of the rivers and coasts whatsoever of Our said Province of Quebec, and territories dependent thereon, and maritime parts whatsoever of the same and thereto adjacent, as well within liberties and franchises as without.

PROCLAMATION OF GENERAL GAGE TO THE FRENCH SETTLERS OF THE
ILLINOIS, 1764.†

40

*Proclamation
of General
Gage, 30th
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1764.*

[Captain Stirling was despatched in 1765 by General Gage to take possession of the posts and settlements of the French in the Illinois country east of the Mississippi. Upon his arrival, St. Ange surrendered Fort Chartres, and retired with the garrison of twenty-one men, and a third of the inha-

*Lib. A (1) Imperial Commissions, fol. 1. Recorded in the Registrar's Office in Quebec, June 7, 1766.

† Albach's Annals, p. 183.

bitants of that settlement, to St. Louis, where he exercised the duties of commandant by the general consent of the people, till he was superseded by the Spanish governor, Piernes, in 1770. Upon assuming the government of the country, Captain Stirling published the following proclamation from General Gage, who was at this time the Commander-in-Chief of the British forces in North America.] :-

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Imperial Statutes and Acts of State bearing on the question of the Boundaries.

Proclamation of General Gage, 30th December, 1764.

Whereas by the peace concluded at Paris, the tenth day of February, 1763, the country of Illinois has been ceded to His Britannic Majesty, and the taking possession of the said country of the Illinois by the troops of His Majesty, though delayed, has been determined upon: We have found it good to make known to the inhabitants—

That His Majesty grants to the inhabitants of the Illinois the liberty of the Catholic religion, as has already been granted to his subjects in Canada. He has consequently given the most precise and effective orders to the end that his new Roman Catholic subjects of the Illinois may exercise the worship of their religion according to the rites of the Romish Church, in the same manner as in Canada.

That His Majesty moreover agrees that the French inhabitants or others, who have been subjects of the Most Christian King, may retire in full safety and freedom wherever they please, even to New Orleans, or any part of Louisiana, although it should happen that the Spaniards take possession of it in the name of his Catholic Majesty; and they may sell their estates, provided it be to the subjects of His Majesty, and transport their effects as well as their persons, without restraint upon their emigration, under any pretence whatever, except in consequence of debts or of criminal processes.

That those who choose to retain their lands and become subjects of His Majesty shall enjoy the same rights and privileges, the same security for their persons and effects, and the liberty of trade, as the old subjects of the King.

That they are commanded by these presents to take the oath of fidelity and obedience to His Majesty in presence of Sieur Stirling, Captain of the Highland Regiment, the bearer hereof, and furnished with our full powers for this purpose.

That we recommend forcibly to the inhabitants to conduct themselves like good and faithful subjects, avoiding, by a wise and prudent demeanor, all causes of complaint against them.

That they act in concert with His Majesty's officers, so that his troops may take possession of all the forts, and order be kept in the country. By this means alone they will spare His Majesty the necessity of recurring to force of arms, and will find themselves saved from the scourge of a bloody war, and of all the evils which a march of an army into their country would draw after it.

We direct that these presents be read, published and posted up in the usual places.

Done and given at head-quarters, New York, signed with our hand, sealed with our seal at arms, and countersigned by our Secretary, this 30th of December, 1764.

By His Excellency:

THOMAS GAGE.

G. MASTURIN.

BOUNDARY DESCRIPTION IN IMPERIAL COMMISSION TO THE LIEUTENANT-GOVERNOR OF QUEBEC, 1766-1768.

Imperial Commission, 7th April, 1766.

7TH APRIL, 1766.

GUY CARLETON, ESQUIRE,—Lieutenant-Governor of the "Province of Quebec, in America."

COMMISSION FROM LIEUTENANT-GOVERNOR CARLETON TO ATTORNEY-GENERAL MASSERES, 1766.

Commission to Attorney-General Masseres, of Quebec, 25th September, 1766.

25TH SEPTEMBER, 1766.

In Lieutenant-Governor Carleton's appointment of Francis Masseres as Attorney-General, the attesting clause of the commission reads—

Witness Our trusty and well-beloved the Honourable Guy Carleton, Esquire, Our Lieutenant-Governor and Commander-in-Chief in and over Our said Province of Quebec, and the territories depend-

JOINT
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Sec. V.

*Imperial
Statutes and
Acts of State,
bearing on
the Question
of the
Boundaries.**Imperial Com-
mission, 12th
April, 1768.*

in thereon in America, at our Castle of St. Lewis, in our City of Quebec, the twenty-fifth day of September, in the year of our Lord one thousand seven hundred and sixty-six, and in the sixth year of Our reign.

GUY CARLETON.

BOUNDARY DESCRIPTION IN IMPERIAL COMMISSION TO THE GOVERNOR OF
QUEBEC, 1768.

12TH APRIL, 1768.

SIR GUY CARLETON, *Captain-General and Governor-in-Chief of the Province of Quebec.**

Our Province of Quebec in America, bounded on the Labrador Coast by the River St. John, and from thence by a line drawn from the head of that river through the Lake St. John to the south end 10 of Lake Nipissim, from whence the said line crossing the River Saint Lawrence and the Lake Champlain in forty-five degrees northern latitude, passes along the high lands which divide the rivers that empty themselves into the said River Saint Lawrence from those which fall into the sea, and also along the north coast of the Bay Des Chaleurs and the coast of the Gulf of St. Lawrence to Cape Roziers, and from thence crossing the mouth of the River Saint Lawrence by the west end of the Island of Anticosti, terminates at the aforesaid River of St. John, together with all the rights, members, and appurtenances whatsoever thereto belonging.

IMPERIAL ORDER IN COUNCIL, 1768,

CONFIRMING THE BOUNDARY LINE BETWEEN THE PROVINCES OF NEW YORK AND QUEBEC, FIXED BY SIR HENRY MOORE, THE GOVERNOR OF NEW YORK, AND BRIGADIER-GENERAL CARLETON, 20 LIEUTENANT-GOVERNOR OF QUEBEC, AT A MEETING HELD FOR THAT PURPOSE; AND REGULATING THE CLAIMS MADE BY HIS MAJESTY'S NEW CANADIAN SUBJECTS TO LANDS SITUATED ON THE SOUTH SIDE OF THAT LINE.

At the Court of St. James, the 12th day of August, 1768 :

*Imperial
Order-in-
Council, 12th
August 1768.*

Present,—The King's Most Excellent Majesty, Duke of Grafton, Duke of Rutland, Duke of Queensbury, Marquis of Granby, Earl of Litchfield, Earl of Hillsborough, Earl of Shelburne, Viscount Weymouth, Viscount Falmouth, Viscount Barrington, Viscount Villiers, Lord North, James Stewart McKenzie, Esq., Thomas Hartley, Esq., Sir Edward Hawke.

Whereas there was this day read at the Board a report from the Right Honourable the Lords of the Committee of Council for Plantation affairs, dated the ninth of this instant, upon considering a 30 report made by the Lords Commissioners for Trade and Plantations, upon an extract of a letter from Sir Henry Moore, Governor of New York, to the Earl of Shelburne, dated the 16th January last, relative to the settling of the boundary line between that Province and Quebec; by which report it appears that it having been mutually agreed upon between Sir Henry Moore and the Commander-in-Chief of the Province of Quebec, at a meeting for that purpose appointed, that the line of division between these provinces should be fixed at the 45th degree of north latitude, conformable to the limits laid down in His Majesty's proclamation of October, 1763; and it having been ascertained and determined by proper observations where the said line would pass, it is therefore proposed that these proceedings above stated should be confirmed by His Majesty.

His Majesty, taking the said report into consideration, was pleased, with the advice of His Privy 40 Council, to approve thereof, and doth hereby confirm the said proceedings above stated, and order that the said line of division be run out and continued as far as each Province respectively extends.

Provided that nothing herein contained shall extend to affect the properties of His Majesty's new subjects having possessions under proper titles on those parts of the lands on the south side of the line, the dominion of which was not disputed on the part of the Crown of Great Britain.

* Lib. c. (3), Imperial Commissions, fol. 33.

* New York Council Minutes, xvi. London Documents, xli. N. Y. Hist. Coll., Vol. i., p. 550.

And provided also that this determination shall not operate wholly to deprive His Majesty's new subjects of such concessions on the south side of the said line, on which they may have made actual settlement and improvement, although the lands may have been disputed by Great Britain; but that such possessors shall be entitled to so much of the said concessions as shall be proportioned to their improvements, at the rate of fifty acres for every three acres of improvements, provided they take out grants for the same under the seal of the Province of New York, subject to the usual quit rents.

And provided also that the grant to no one person shall exceed twenty thousand acres.

And the governors or commanders-in-chief of His Majesty's said Provinces of New York and Quebec for the time being, and all others whom it may concern, are to take notice of His Majesty's pleasure hereby signified, and govern themselves accordingly.

STEPH. COTTRELL.

PAPERS AS TO THE ESTABLISHING OF CIVIL GOVERNMENT IN THE ILLINOIS, 1773.

THE EARL OF DARTMOUTH TO LIEUTENANT-GENERAL GAGE.*

WHITEHALL, March 3rd, 1773.

SIR,—Your dispatches of the 5th and 6th of January, No. 4 and 5, have been received and laid before the King.

The propositions towards forming a Government for the Illinois Country, suggested to you long ago by the inhabitants of that District, were certainly in the outline of them too absurd and extravagant to afford the least ground for consideration; but it has always appeared and does still appear to me that if those inhabitants have (as I conceive they have) a right, under the Treaty of Paris, to continue in their possessions, it is both dangerous and disgraceful to leave that district without such regulations, as may on the one hand ensure to the inhabitants that protection in their civil rights which they are entitled to expect, or on the other hand, secure their allegiance as subjects. I shall, therefore, think it my duty to make this an object of my attention, and I shall hope, upon your return to England, to receive such lights from you as may direct my judgment in a business of so great intricacy, and enable me to form an opinion of what may be finally proper to be done.

You will therefore not omit to bring with you every paper relative to that country which you think may be useful in such a consideration, and that may be necessary to explain, as well the causes as the effects of those abuses and disorders, which, in some of your former dispatches you say had prevailed to a great degree of enormity in that country.

The state of the settlement at Post St. Vincent on the Ouabach, will necessarily make a part of this consideration, seeing that the inhabitants there no longer appear a lawless vagabond banditti, as they have been represented to be, but in the light of subjects claiming the King's protection and countenance in right of possessions held under regular titles.

When I reflect upon the importance of the objects I have already mentioned, and view the danger to which the interior of America is exposed from the appearance of ill-humor and confederacy amongst the Savages, I feel impatient for the advice and information I may expect to receive from you on subjects of so much importance, and I very much lament that the business respecting the question that has arisen touching the legality of General Haldimand's taking the command should be still in such a state as to make it necessary for me to desire your longer continuance in America, but as the Bill which is prepared for removing this difficulty has but just found its way to the House of Commons, I am unavoidably obliged to desire you will not leave your command till you hear further from me; in the meantime you will inform General Haldimand that it will be highly necessary that he should, as soon as possible, transmit to me a proper certificate of his having qualified himself to enjoy the benefits of a

* Public Record Office—Colonial Office Records, America and West Indies, No. 128, Military Correspondence 1772-1773.

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Sec. V.
Imperial Statutes and Acts of State bearing on the question of the Boundaries.

Imperial Order-in-Council, 12th August, 1768.

Papers as to establishing Civil Government in the Illinois, 1773.

Earl of Dartmouth to Lieutenant-General Gage, 3rd March, 1773.

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Sec. V.

*Imperial
Statutes and
Acts of State,
bearing on
the Question
of the
Boundaries.*Daniel Blouin
to Earl of
Dartmouth,
4th Novem-
ber, 1773.

natural born subject, according to the forms prescribed by the Act of the 2nd of His present Majesty, and I believe you will think that it may be proper to give the like intimation to all the foreign officers under the same predicament.

I am, &c.,

DARTMOUTH.

Lieutenant-General Gage.

M. DANIEL BLOUIN, AGENT FOR THE ILLINOIS COMPANY, TO THE EARL OF DARTMOUTH.*

MY LORD:

I have delivered to General Haldimand a literal copy of the Sketch I mentioned to your Lordship in the Letter, of which I now enclose the duplicate, with another copy and translation of that Sketch. 10

We cannot believe the possibility of that Form of Government ever being adopted, unless our enemies succeed in falsely representing, that it is earnestly desired by the inhabitants.

However, it is so evidently tyrannical that, should it be established, it could be of no long duration; for, the disgrace which Great Britain must necessarily undergo, by establishing, in a country ceded to her, a form of government, much worse than those which now exist in any of the French, or even of the Spanish Colonies, would soon make His Majesty sensible of the necessity of its being for ever abolished.

Selfish men, who endeavoured to disguise their motives, when opposing the establishment of a civil government in the Illinois country, have artfully insinuated, that the expense would be too great for such an inconsiderable settlement: it is not even improbable, that they may have found 20 many, who were so weak and unguarded as to suffer themselves to be deluded by their sophistry. But, My Lord, besides the justice that there is in fulfilling the repeated promises made to us, "that we would enjoy that blessing," we know how much France and Spain dread that event; and, therefore, we can easily conceive that the expense attending that Measure would be most amply compensated by advantages of the highest nature, and of which narrow minds can have no idea.

As justice, humanity, and policy itself, concur in defeating the opposition of our enemies, we trust that your Lordship will patronize our cause; and, instead of establishing in the Illinois country and under the sanction of His Majesty's authority an absurd and oppressive form of government, we hope that those despotic states, that may at any time become the enemies of Great Britain, will be terrified at the effects, which liberty, legally established in the most inconsiderable countries acquired 30 by her, will naturally produce in the minds of their unhappy and oppressed subjects.

I have the honour to be, with unbounded confidence and the greatest respect,

My Lord, your Lordship's most humble, most obedient and most devoted servant,

DANIEL BLOUIN.

NEW YORK, November the 4th, 1773.

SKETCH OF GOVERNMENT PROPOSED TO THE INHABITANTS OF THE BRITISH PART OF THE ILLINOIS COUNTRY.

Sketch of Gov-
ernment
proposed for
the Illinois,
1773.

D'autant que les Habitants du Pais des Illinois ont souhaités qu'un Gouvernement Civil fût établi chez eux, et qu'il ne dependrait plus sur le Commandant des Troupes pour Gouverner le dit Pais, on 40 voudrait eouter leurs Prieres, taut que la Situation du Pais le permettroit, et on leur donne une Esquisse du Projet qu'on a formé.

PROJET D'UN GOUVERNEMENT POUR LES ILLINOIS.

Officiers du Gouvernement.

Un Gouverneur.

Un Magistrat pour les Kaskaskies.

Un Magistrat pour Kahoquie.

* Public Record Office, Colonial Office Records, America and West Indies, Plantations General, 1772, 1773, No. 277.

Un Magistrat pour les Trois Villages de la Prairie du Rocher St. Philippe, and Fort de Chartres. Cinq ou Six Personnes choisies des principaux Commerçants ou Habitants du Païs, doivent être nommés Conseillers, et formeront avec le Gouverneur le grand Conseil.

Il y aura un Sous Magistrat dans chaq'un des Villages des Kaskaskias, et de Kahokia et un troisième pour les Villages de la Prairie du Rocher St. Philippe, et Fort de Chartres. Ils doivent obeir et aider aux autres, seront pris annuellement des Habitants a tour de Rolle, et serviront une Année.

Les Magistrats auront soin de maintenir la Paix chaq'un dans son Quartier, auront droit de Prise de Corps pour les crimes qui seront spécifiés, punir pour le Mepris d'Autorité, peuvent decider jusqu'à la valeur de Cinquante Livres sans Appel, et condamner à des petites amandes pour des crimes legers, comme il sera réglé par le Gouverneur en Conseil.

Pour des Causes au dessus de la valeur de Cinquante Livres, les Magistrats tacheront de les compromettre à l'amiable, en faisant choisir par les Parties des Arbitres pour en decider, autrement les Parties seront renvoyés a la Chambre de Kaskaskias, ou les trois Magistrats seront obligés de s'assembler et de tenir séance quatre fois l'Année.

La Partie perdante peut appeller de la Sentence de la Chambre de Kaskaskias au Gouverneur et Conseil dont la Sentence sera definitive.

La Chambre peut Condamner a des Peines Pecuniaires, ou Corporelles, comme il sera réglé par le Gouverneur et Conseil dans des Cas Criminelles; mais elle ne condamnera a la Mort que dans le cas seul du meurtre.

Rapport sera fait de toutes Procédures en Cas Criminelles au Gouverneur en Conseil, et les Peines ne seront infligés sans leur Approbation.

Comme la Misericorde est attaché au Chef de chaq'un Gouvernement que ce soit, le Gouverneur aura droit d'adonner les Peines prononcés, ou pardonnera jusqu'à la Mort.

Le Gouverneur avec l'avis du Conseil fera des Reglemens pour bien gouverner le Païs, que tous sans exception seront obligés d'obeir, fixera de même les Amandes, lesquelles ne seront jamais excédés sous aucun Pretexte, et publiera les Edits en consequence.

Les Amandes, comme aussi les Confiscations doivent servir aux besoins extraordinaires du Gouvernement.

Le Gouverneur et Conseil fixeront de même les Honoraires (Fees) qu'on doit payer, qui doivent subvenir aux Frais des Chambres et Greffe, &c., &c.

Le Gouverneur, etant General du Païs, commandera toute la Milice; et ayant le Pouvoir Executive, aura soin que les Loix sont obeis, et que la Police est maintenue, et veillera sur la conduite des Magistrats, et publiera les Ordonnances a ces effets, quand il sera necessaire.

Les Anciennes Loix et Contumes du Païs feront la base de tout ce qui sera ordonné par le Gouverneur et Conseil.

Tous les Officiers du Gouvernement, avant que d'entrer en charge, doivent preter Serment de Fidelité à Sa Majesté, aussi de s'aquitter de leurs emplois respectives pour le Bien public, de rendre Justice fidelle et désinteressée, &c., &c.

Je soussigné Notaire Public au Païs des Illinois certifie à tous ceux qu'il appartiendra avoir copie mot a mot la précédante sur une semblable pièce qui m'a été exhibé sans Date et sans Signature par quelques habitans de ce Païs a l'un desquels ils ont déclaré lui avoir été remise par Monsieur le Capitaine Lord notre Commandant a l'effet de sa teneur; en foy de quoy Je leur ai délivré la presente copie que J'ai collationné et trouvé exactement conforme a celle exhibé en mon etude aux Kaskaskias le 17^e Juin, 1773.

(Signé)

VIEAULT L'ESPÉRANCE,
Notaire Public.

A TRANSLATION OF THE PRECEDING PIECE WITH THE ABOVE NOTARY'S CERTIFICATE.

Whereas, the Inhabitants of the Illinois Country have desired that a Civil Government might be established amongst them, and that the Commanant of the King's Forces should no more govern the said Country, it is intended to grant them their Petition, as far as the situation of the Country will permit; and herein is a Sketch of the Plan made to that effect.

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Sec. V.

Imperial
Statutes and
Acts of State,
bearing on
the Question
of the
Boundaries.

Sketch of
Government
proposed
for the
Illinois, 1773.

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A PLAN OF GOVERNMENT FOR THE ILLINOIS COUNTRY.

Of the Officers of the Government.

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*Imperial
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bearing on
the question
of the
Boundaries.*
Sketch of
Government
proposed
for the
Illinois, 1773.

The Governor; one Magistrate for Kaskaskias; one Magistrate for Kahoquia; one Magistrate for the Three Villages of the Rock's Meadow, St. Philip, and Fort Chartres.

Five or Six Persons, chosen amongst the principal Merchants or Inhabitants of the Country, are to be appointed Members of the Council, and shall, together with the Governor, form the Great Council.

There will be an inferior Magistrate in each of the villages of Kaskaskias and Kahoquias, and a third for the villages of the Rock's Meadow, St. Philip, and Fort Chartres. They are to obey and assist the others; they shall be annually taken amongst the Inhabitants in their turn, and serve one year.

10

The Magistrates are to keep the Peace, each in his respective District; they are to have the right of imprisoning for specified crimes, of punishing for the Contempt of Authority; they may determine Causes under the value of Fifty Livres, without appeal, and impose small Fines for slight offences, as may be regulated by the Governor in Council.

As to Causes above the value of Fifty Livres, the Magistrates shall endeavour to settle them in a friendly manner, by procuring Arbitrators chosen by the Parties; otherwise, the Parties shall be referred to the Chamber of Kaskaskias, where the Three Magistrates shall be under the obligation of meeting and holding Four Sessions every Year.

The Party who shall lose the Action may appeal from the Chamber of Kaskaskias to the Governor and Council, the Sentence of whom shall be definitive.

20

The Chamber may decree pecuniary Penalties or bodily Punishments, as may be enacted by the Governor and Council, in Criminal Cases; but they shall not sentence any one to Death, except only for murder.

Report shall be made to the Governor in Council of all the Proceedings in Criminal Cases, and no Punishment shall be inflicted without their approbation.

As Mercy is the Prerogative of the Head of any Government whatever, the Governor shall have the right of mitigating the Punishments which may be decreed, or grant Pardon, even in case of Death.

The Governor, with the advice of the Council, may make Ordinances for the good Government of the Country; which Ordinances every one, without exception, shall be obliged to obey. He shall likewise limit Fines, which, never, under any pretence, shall be;* and he shall publish Edicts to that

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Fines, as also Forfeitures, shall be applied to the extraordinary Exigencies of Government.

The Governor and Council shall likewise limit the Fees to be paid, which are to defray the Expense of the Chambers, Clerk's Office, &c., &c.

The Governor for the time being, as Commander in Chief in and over the Country, shall command the Militia; and, being vested with the Executive Power, shall take care that the Laws be executed effect.

and good order maintained; and he shall watch over the conduct of the Magistrates; and, whenever necessary, he shall publish suitable Proclamations.

The ancient Laws and Customs of the Country shall be the Basis of whatever may be commanded by the Governor and Council.

40

All the Officers of the Government, before they enter into Office, are to take the Oath of Allegiance to His Majesty, and swear also that they will discharge the Duties of their respective Offices for the good of the Public, and administer Justice faithfully and impartially, &c., &c.

40

I, the underwritten Notary Public, in the Illinois Country, do hereby certify to all those whom it may concern, that I have copied word for word the preceding writing from a similar piece, exhibited to me without Date and Signature by some of the Inhabitants of this country, to one of whom, they have declared to me that Captain Lord, our Commandant, delivered the same to him for the purpose

[Note by Translator]:—The French word here is *excedés*, which cannot be translated by the word *exceeded*, which corresponds to it in the English language. It is probable that the word in the original was *exemptés*, which the person who may have written that which the Notary copied mistook for *excedés*. Then, the English would be *remitted*, and be well understood, notwithstanding the Anglicism.

therein mentioned. In witness whereof, I have delivered to them the present Copy, which I have collated with, and found exactly like, that exhibited to me in my Office at Kaskaskias, this 17th day of June, 1773.

(Signed)

VIEAULT L'ESPÉRANCE,

Notary Public.

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Imperial
Statutes and
Acts of State,
bearing on the
question of the
Boundaries.Papers as to
establishing
Civil Govern-
ment in
the Illinois,
1773.

NEW YORK. SS.

Personally appeared before me, Francis Filkin, Esquire, one of His Majesty's Justices of the Peace for the City and County of New York, in the Province of New York, Matthew Kennedy, late of the Village of Kaskaskias, in the British part of the Illinois Country, Merchant, who, being duly sworn on the Holy Evangelists of the Almighty God, deposeth and saith, that Vieault L'Espérance was, to the best of this Deponent's understanding and belief, a Notary Public in the said Illinois Country, on the seventeenth day of June last past, and that this Deponent believeth that the said Notary subscribed the same, for that his hand-writing is well known to this Deponent. Furthermore, this Deponent saith, that he hath heard from sundry of the said Inhabitants, that none of them had signed any Paper tending to solicit the Government therein described and sketched out; and that the said Inhabitants were, on the contrary, averse to the Proposal made to them to that effect; that this Deponent hath heard, understands, and believes that Captain Hugh Lord, of His Majesty's Eighteenth Regiment of Foot, and Commandant in the said Illinois Country, delivered to one or more of the said Inhabitants an anonymous Paper, of which the within Copy, attested by the Notary aforesaid, is a true Copy, to the best of this Deponent's remembrance or belief; and that the said Captain Lord delivered it so, as by the direction of His Excellency General Gage, late Commander-in-Chief of His Majesty's Forces in North America; and that this Deponent understood that the sundry of the said Inhabitants disbelieved that the said General Gage had given any such directions yet they imputed nothing to the said Captain Lord, as he did not act in a clandestine manner in communicating the said Paper, but, on the contrary, in an open and public Assembly or Meeting of the Inhabitants, whom he called to that effect. And further this Deponent saith not.

Sworn before me this 9th day of October, 1773.

(Signed) FRANCIS FILKIN.

(Signed)

MATTHEW KENNEDY.

I do hereby certify that, at the request of Daniel Bloüin, Esquire, Agent for the Illinois Country, I have copied word for word the preceding writing, therein styled *A Plan of Government for the Illinois Country*, and that I have translated the same into English as literally as the genius of both the French and English languages and my capacity enabled me to do the same.

NEW YORK, November the 4th, 1773.

WM. CLAJON.

THE EARL OF DARTMOUTH TO M. BLOÛIN.*

WHITEHALL, 1st December, 1773.

MR. BLOÛIN:

SIR,—Your letter of the 16th of October, which I received on the 17th of last month, states to me two very different objects of consideration.

The papers which have been communicated to me, respecting complaints against Colonel Wilkins, for injuries done by him to individuals during his command in the Illinois country, are very general in their contents, and do not answer to the description of those which you say you delivered to General Gage; but if they had been ever so particular and minute, as Colonel Wilkins is no longer in the service of the Crown, injuries done by him to individuals cannot be redressed by any authority of my office.

With regard to the wishes of the inhabitants in the several districts in the Illinois country, to be put under some form of Civil Government, neither the Memorial to the Lords of Trade, nor any other

* Public Record Office—Colonial Office Records, America and West Indies, Plantations General, 1772-1773, No. 277.

The Earl of
Dartmouth
to M. Bloüin,
1st Decem-
ber, 1773.

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proposition that has fallen under my consideration, corresponds, in my opinion, with the state and circumstances of that colony.

See V.

*Copy of
Sole's and
Vila's State,
bearing on
the Question
of the
Boundaries.*

Some form of government, however, seems essentially necessary. I do not think that a civil establishment independent of any other of the King's colonies ought to be adopted; yet I can venture to assure you, that the interests of His Majesty's new subjects there will not be neglected, and they may rest assured of the King's protection and the enjoyment of every privilege that their situation can, with propriety, admit of.

I am, etc.,

DARTMOUTH.

PAPERS RELATING TO THE PROPOSED EXTENSION OF THE LIMITS OF QUEBEC, 10
1773-1774.*

THE CANADIAN INHABITANTS OF QUEBEC TO THE EARL OF DARTMOUTH.†

À Son Excellence le très Honorable Comte Dartmouth, l'un des principaux Ministres, et Secrétaire d'Etat de sa Majesté.‡

Papers relating to proposed extension of limits of Quebec, 1773-4.

The Canadians to the Earl of Dartmouth.

MONSIEUR,—La place importante que vous occupez de notre très gracieux Souverain, nous enhardit à supplier Votre Excellence de vouloir bien présenter à sa Majesté le très humble placet ci-joint, nous espérons de vos bontés que vous voudrez bien l'appuyer et nous accorder l'honneur de votre protection; nous joignons pour V. E. un Mémoire pour appuyer nos demandes que nous croyons avantageuses pour la mère Patrie et pour cette colonie.

Nous supplions votre Excellence de recevoir les témoignages du très profond respect et de la vive 20
reconnaissance avec laquelle nous avons l'honneur d'être,

Monseigneur,

Vos très humbles et très obéissants serviteurs,

(Signed by) FR. SIMONNET

AND 65 OTHERS.*

ADDRESS OF THE NEW SUBJECTS OF CANADA TO THE KING, TRANSMITTED WITH THE PRECEDING.

(Presented to Parliament, 1st June, 1774—Journals, House of Commons, Vol. 31, pp. 796.)

AU ROI.

Address of the Canadians to the King, 1773.

SIRE,—Vos très soumis et très fidèles nouveaux sujets de la Province de Canada, prennent la liberté de se prosterner au pied du Trône, pour y porter les sentiments de respect, d'amour et de soumission, 30
dans leurs coeurs envers votre auguste personne, et pour lui rendre de très humbles actions de grace de ses soins paternels. * * * * *

Dans l'année 1764, votre Majesté daigna faire cesser le gouvernement militaire dans cette colonies pour y introduire le gouvernement civil, et dès l'époque de ce changement, nous commençâmes à nous apercevoir des inconvénients qui résultoient des Loix Britanniques qui nous étoient jusqu' alors totalement inconnus, nos anciens citoyens qui avaient réglés sans frais nos difficultés furent remerciés, cette milice qui se faisoit une gloire de porter ce beau nom sous votre empire fut apprécée, on nou-

* Public Record Office—Colonial Office Records, America and West Indies, No. 376, 1772 to 1777, Quebec Entry Book, No. 2.

†To His EXCELLENCY THE MOST HONOURABLE EARL OF DARTMOUTH, one of the Principal Ministers, and Secretary of State of His Majesty :

My LORD—The important position that you occupy under our most Gracious Sovereign emboldens us to entreat your Excellency to be pleased to present to His Majesty the humble petition herewith annexed.

We trust to your kindness to support it, and to grant us the honour of your protection. We annex for your Excellency a memorial in support of our demands, the granting of which would be advantageous for the mother country and to this colony.

We beg your Excellency to receive the assurance of our most profound respect and lively gratitude, with which we have the honour to be, my Lord,

Your most humble and very obedient servants,

FR. SIMONNET,

and 65 others.

accordà la verité, le droit d'être jurés, mais en même tems on nous fit éprouver qu'il y avoit des obstacles pour nous à la possession des emplois; on parla d'introduire les Loix d'Angleterre infiniment sages et utiles pour la mère patrie, mais qui ne pouvaient s'allier avec nos coutumes, sans renverser nos fortunes, et détruire entièrement nos possessions; Tels ont été depuis ce tems, et tels sont encore nos justes sujets de crainte, toujours tempérés néanmoins par la douceur du gouvernement de votre Majesté.

Daignez, illustre et Généreux Monarque, dissiper ces craintes, en nous accordant nos anciennes Loix, Coutumes et Privilèges, avec les Limites du Canada telles qu'elles étoient ci-devant. * * *

Nous sommes avec la soumission la plus profonde, de votre Majesté, les très obéissans, très zélés et très fidèles sujets.

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(Signed by) FR. SIMONNET
AND 65 OTHERS.*

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Imperial Statutes and Acts of State, bearing on the Question of the Boundaries.
Address of the Canadians to the King, 1773.

MEMORIAL ENCLOSED IN THE PRECEDING ADDRESS. †

(Presented to Parliament, 1st June, 1774—Journals, House of Commons, Vol. 34, pp. 796.)

Mémoire pour appuyer les Demandes des très soumis et très fidèles nouveaux sujets de sa Majesté en Canada.

L'augmentation d'un si vaste Pais tel qu'il étoit lors du Gouvernement François, dont le nombre des habitans excède actuellement plus de cent milles âmes dont les dix-neuf vingtième sont nouveaux sujets, l'avancement de son agriculture, l'encouragement de sa navigation et de son commerce, un arrangement à faire sur des fondemens inébranlables, qui puisse déraciner la confusion qui y règne, 20 faute de loix fixés et autorisés sont de points présentement en considération qui sont dignes de la sagesse du Gouvernement. * * *

Memorial of the Canadians, 1773.

* TO THE KING :

SIRE,—Your most humble and very faithful new subjects of the Province of Canada take the liberty to prostrate themselves at the foot of the Throne, to make known the sentiments of respect, of love, and of submission in their hearts towards your august person, and to render you most humble thanks for your fatherly care. * * *

In the year 1764, your Majesty deigned to bring to a close the military Government in this Province for the purpose of introducing the civil government, and from the time of this change we realized the inconvenience which resulted from the British laws, which until that time were totally unknown to us. Our ancient citizens who had regulated our difficulties without expense were barely thanked; the militia, whose glory it was to bear that name under your Empire, was disbanded. It is true we were granted the right to be jurés, but at the same time we were made to feel that there were obstacles to our holding certain positions. The proposed introduction of the laws of England, infinitely wise and useful for the mother country, could not be made to accord with our customs, without reversing our fortunes and entirely destroying our possessions.

Such have been up to this time, and such are yet our just subjects of fear, tempered nevertheless by the kindness of your Majesty's Government.

Deign Illustrious and Generous Monarch, to dissipate these fears, in according us our ancient laws, customs, and privileges, with the boundaries of Canada such as they have formerly been. * * *

We are with the most profound submission your Majesty's most obedient, most zealous, and most faithful subjects.

(Signed by) FR. SIMONNET,
and 65 others.

† MEMORIAL to support the demands of the humble and very faithful new subjects of His Majesty in Canada.

The addition of so vast a territory as that which was formerly under the French Government of which the number of inhabitants actually exceeds a hundred thousand souls, of whom nineteen-twentieths are new subjects; the advancement of its agriculture; the encouragement of its navigation and of its commerce; an arrangement to be placed on immovable foundations, which would disentangle the confusion which reigns there for the want of fixed and authorized laws—these are points presented for consideration as worthy of the wisdom of the Government. * * *

The colony as it is now limited, by latitude forty-five degrees, is too restricted in its boundaries. The parallel which bounds it passes about fifteen leagues below Montreal, and yet it is at this side alone that the lands are fertile, and capable of being placed under cultivation with advantage.

We beg that, as under the French Government, all the upper districts known under the names of Missilimakinac, Detroit, and other adjacent places as far as the River Mississippi, may be left to our colony. The retention of these posts will be so much more necessary to our country, as there being no laws established there, dishonest traders, to whom we furnish merchandise to barter with the Indians, remain there with our goods with impunity, which entirely ruins this colony, and makes these posts a refuge for robbers, capable of inciting the Indian nations to insurrection. * * *

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*Memorial
submitted
to the
House of
Commons
on the
question of the
boundaries.**Memorial of
the Cana-
dians, 1773.*

La colonie telle qu'elle est fixée maintenant par la ligne de 45 degrés est trop resserrée dans ses limites. Cette ligne qui la borne passe à environ quinze lieues au-dessus de Montréal, et cependant c'est de ce seul côté que les Terres se trouvent fertiles, et que peut s'étendre avec plus d'avantage l'agriculture. Nous supplions que comme sous le tems du Gouvernement François on laissa à notre colonie tous les Pais d'en haut, connus sous les noms de Missilimakinie, du Détroit, et autres adjacentes, jusqu'au delve du Mississippi, la Réunion de ces Postes seroit d'autant plus nécessaire à notre Pais que n'y ayant point de justice établie, les Voyageurs de mauvaise Foi auxquels nous fournissons des marchandises pour faire le commerce avec les Sauvages, y restent impunément avec nos effets, ce qui ruine entièrement cette colonie, et fait de ces Postes une Retraite de Brigands capable de soulever les nations sauvages.

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THE EARL OF DARTMOUTH TO LIEUTENANT-GOVERNOR CRAMAHÉ OF QUEBEC, IN REFERENCE TO THE TWO PRECEDING PETITIONS.

WHITEHALL, 4th May, 1774.

*Earl of Dart-
mouth to the
Lieut-Gover-
nor Cramahé,
4th May, 1774.*

SIR,—I have received your letters, No. 13 and 14, and have laid them before the King, together with the two Petitions transmitted therewith.

The manner in which the Petitioners have expressed their wishes, is decent and respectful, but I am fully convinced from your account of the steps taken to procure those Petitions, that it was become highly necessary that the arrangements for the government of Quebec should be no longer delayed, and I have the satisfaction to acquaint you that I did on Monday last present to the House of Lords a Bill for the Regulation of that Government, which is calculated to lay the foundation for those Establishments, that I hope will give full satisfaction to all His Majesty's [*sic.*] and remove those difficulties with which the administration of the Government in that Province has been so greatly embarrassed.

I am, &c.,

DARTMOUTH.

Lieutenant Governor Cramahé.

IMPERIAL ACT, 14 GEO. III., c. 83 (1774)—THE QUEBEC ACT.

AN ACT FOR MAKING MORE EFFECTUAL PROVISION FOR THE GOVERNMENT OF THE PROVINCE OF QUEBEC IN NORTH AMERICA.

*The Quebec
Act, 1774.*

WHEREAS His Majesty, by His Royal Proclamation, bearing date this Seventh day of October, in the third year of his Reign, thought fit to declare the provisions which had been made in respect to certain countries, territories and islands in America, ceded to His Majesty by the definitive Treaty of Peace concluded at Paris on the Tenth day of February, one thousand seven hundred and sixty-three; and whereas by the arrangements made by the said Royal Proclamation, a very large extent of country, within which there were several colonies and settlements of the subjects of France, who claimed to remain therein under the faith of the said Treaty, was left without any provision being made for the administration of civil government therein; and certain parts of the territory of Canada, where salutary fisheries had been established and carried on by the subjects of France, inhabitants of the said Province of Canada, under grants and concessions from the government thereof, were annexed to the government of Newfoundland, and thereby subjected to regulations inconsistent with the nature of such fisheries: May it therefore please Your Most Excellent Majesty, that it may be enacted, and be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of

That all the territories, islands and countries in North America, belonging to the crown of Great Britain, 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 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 of the said Province, until the said western boundary strike the Ohio; but in case the said bank of the said lake shall not be found to be 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 strike the River Ohio; and along the bank of the said river, westward, to the banks of the Mississippi, and northward to the southern boundary of the territory granted to the Merchants Adventurers of England trading to Hudson's Bay; and also all such territories, islands, and countries, which have, since the Tenth of February, one thousand seven hundred and sixty-three, been made part of the Government of Newfoundland, be, and they are hereby, during His Majesty's pleasure, annexed to, and made part and parcel of the Province of Quebec as created and established by the said Royal Proclamation of the Seventh of October, one thousand seven hundred and sixty-three.

20 II. Provided always that nothing herein contained relative to the boundary of the Province of Quebec shall in any wise affect the boundary of any other colony.

III. Provided always, and be it enacted, that nothing in this Act contained shall extend, or be construed to extend, to make void, or to vary, or alter any right, title, or possession derived under any grant, conveyance, or otherwise, howsoever of or to any lands within the said Province, or the Provinces thereto adjoining, but that the same shall remain and be in force, and have effect as if this Act had never been made.

[Other sections omitted as not affecting the question.]

DEBATE ON THE QUEBEC BILL, 1774.

EXTRACTS FROM THE DEBATE IN THE HOUSE OF COMMONS ON THE BILL, SO FAR AS RELATES TO THE BOUNDARIES.*

30 *Mr. T. Townshend, Jun.*—Although I bow very low to all great authorities, I must venture to mention one thing, that when I was calling for regulations for Canada, little did I think that I was calling for regulations for a country much larger than Canada, a country "extending," in the words of the Bill, "southward to the banks of the River Ohio, westward to the banks of the Mississippi, and northward to the southern boundary of the territory granted to the Merchants Adventurers of England trading to Hudson's Bay." I say, Sir, that when I was calling for regulations for Canada, little did I think that I was calling for an arrangement which, I will venture to say, is oppressive to the English subject, and disagreeable and hateful to the Canadian. . . . I know there prevails an opinion that the best thing that you can do with this country is to make it a French colony, to keep the English 40 out of it as much as possible, that they may not mix with the Canadians. . . . Now, for what purpose are they (the English settlers) to be placed under French laws, unless it is meant to be laid as a foundation that, for the future, French laws are to be the laws of America? If this is to be the case, Sir, that may be a good reason for extending French law to the whole of Illinois, and to all that is intermediate between Illinois and Canada. You have given up to Canada almost all that country which was the subject of dispute, and for which we went to war. We went to war calling it the Province of Virginia. You tell the French it was only a pretext for going to war; that you knew then, you know now, that it was a part of the Province of Canada. . . . I should wish to know why

* From Cavendish's Debates; compared with History of the Debates, etc., from 1743 to 1774, Vol. VII.

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Canada may not be reduced to some less limits; why not the same limits England and France have ever given it; and why not within some bounds, a little less than that which is given to it here?

Lord North.—The first thing objected to by the honourable gentleman is the very great extent of territory given to the Province. Why, he asks, is it so extensive? There are added undoubtedly to it two countries which were not in the original limits of Canada, as settled in the Proclamation of 1763; one, the Labrador coast, the other, the country westward of the Ohio and Mississippi, and a few scattered posts to the west. Sir, the addition of the Labrador coast has been made in consequence of information received from those best acquainted with Canada and the fishery upon that coast, who deem it absolutely necessary, for the preservation of that fishery, that the Labrador coast should no longer be considered as a part of the government of Newfoundland, but be annexed to that country. 10
With respect to the other additions, these questions very fairly occur. It is well known that settlers are in the habit of going to the interior parts from time to time. Now, however undesirable, it is open to Parliament to consider whether it is fit there should be no government in the country, or, on the contrary, separate and distinct governments; or whether the scattered posts should be annexed to Canada. The House of Lords have thought proper to annex them to Canada; but when we consider that there must be some government, and that it is the desire of all those who trade from Canada to those countries, that there should be some government, my opinion is that if gentlemen will weigh the inconvenience of separate governments, they will think the least inconvenient method is to annex those posts, though few in population, great in extent of territory, rather than to leave them without government at all, or make them separate ones. Sir, the annexation likewise is the result of the desire 20 of the Canadians and of those who trade to those settlements, who think they cannot trade with safety as long as they remain separate.

Mr. P. Townshend, Jun.—Near the Illinois and Fort Du Cane, I am informed, there are at this time upwards of five-and-twenty thousand British settlers.

Mr. Dunning.—The first object of this Bill is to make out that to be Canada, which it was the struggle of this country to say was not Canada. Now, Sir, if this Province should ever be given back to its old masters—and I am not without an inclination to think that the best way would be to give it back to its old masters—if it should ever become right to give back Canada, with what consistency can its future negotiator say to France: We will give you back Canada; not that Canada which you asserted to be Canada, but that stated in the proclamation, having discovered that we were mistaken in the 30 extent of it, which error has been corrected by the highest authority in this country? Then, suppose Canada, thus extended, should be given back to France, the English settled there will then have a line of frontier to an extent undefined by this Bill; for this country is bounded by the Ohio upon the west—God knows where! I wish God alone may not know where. I wish any gentleman would tell us where. I observe in this description of the frontier a studied ambiguity of phrase. I cannot tell what it means; but I conjecture that it means something bad. The Ohio is stated as a boundary confirmed by the Crown; but what act, what confirmation by the Crown has passed upon this subject? I know of no such act, of no such confirmation. I know, by the terms of the Charter, the colonists suppose, and I think they are well grounded in the supposition, that they are entitled to settle back as far as they please to the east [west] to the sea, their natural boundary. They did not like a different 40 barrier. I know some assert this right, and others content themselves with a less extensive claim. Whether so extensive a claim has been allowed, I know not; but I do understand, in point of fact, that there has been long subsisting a dispute about the western frontier, which was never discussed, still less decided; and when this Bill shall become a law, those colonists will then learn that this Parliament, at this hour, have decided this dispute without knowing what the dispute was, and without hearing the parties. Looking, Sir, at the map, I see the River Ohio takes its rise in a part of Pennsylvania, and runs through the Province of Virginia; that, supposing myself walking down the river, all the country to the right, which is at this moment a part of the Province of Virginia, has been lopped off from this part, and has become instead a part of Canada; for, we tell them, the instant they pass that river, which by the terms of the Charter they may pass, that matter is now forever at rest: 50 the moment, say we, you get beyond that river, you are in the condition in which this Bill professes to put Canada—the Indian finds himself out of the protection of that law under which he was bred.

Sir, do we treat the proprietors of the next province, Indiana, well? Some of them are resident in this country. I apprehend, at this very hour they are unapprised of this Bill to stop them. To decide questions without exactly knowing whether such questions are existing, is an obvious injustice. I should be glad to learn what is the good intended to be effected by this extent of territory? The noble lord says it is to comprise a few straggling posts under some form of government. If I should admit the necessity of so comprising a few straggling posts, does it follow that this is a form of government fit to be established? Does it follow from any local reasons why Canada should be so extensive, or that the English settlers should be likewise involved? What objections are there to making more settlements? Whatever they are, they will be found trivial compared to the consequence of involving this whole region in this form of government.

Attorney-General Thurlow.—The honourable gentlemen complain that the bounds of Canada extend a great way beyond what they were acknowledged to do formerly, and that it was peculiarly bad policy, as far as it regarded the French, to give the limits so great an extension. Now, the House will remember that the whole of Canada, as we allowed it to extend, was not included in the proclamation; that the bounds were not co-equal with it as it stood then, and that it is not included in the present Act of Parliament, if that were material. But I will not, Sir, consider it as the Province that formerly belonged to France, nor as called by the same name; it is a new scheme of a constitution adapted for a part of the country, not that part only which was under French government, but embracing many other parts of great extent which were formerly not under French government, but were certainly occupied in different parts by French settlers, and French settlers only. The honourable gentlemen are mistaken if they suppose that the bounds described embrace in point of fact any English settlement. I know of no English settlement embraced by it. I have heard a great deal of the commencement of English settlements; but as far as I have read, they all lie upon the other side of the Ohio. I know at the same time, that there have been for nearly a century past, settlements in different parts of all this tract, especially in the southern parts of it and in the eastern (? western) bounded by the Ohio and Mississippi; but with regard to that part, there have been different tracts of French settlements established. As far as they are inhabited by any but Indians, I take those settlements to have been altogether French; so that the objection certainly wants foundation. . . . It is undoubtedly true, if you read the French history, that the bounds prescribed neither are nor ever were the bounds of the Province of Canada, as stated by the French; and therefore the argument is not itself a proper one to proceed upon. . . . With regard to the more southern part of the country, I do not take it that Virginia has ever made a single claim within more than a hundred miles of the bounds prescribed for the present Province. The most extensive claim I ever heard of went to what is called the Endless Mountains, just in a nook of the Province of Virginia. I know of none that ever pretended to exceed that, nor ever heard that some new settlements, which were applied for between these mountains and the Ohio, have ever been looked upon as an invasion of the rights of those who have claims upon the Province of Virginia. . . . I have always understood, also, that it was under that authority, and in conformity with the rule and measure of law, that in every instance, through every period of English history, the King has given to newly-conquered countries their constitution; subject to be corrected by the joint interposition of the King, Lords, and Commons of the country; and that such a constitution might be reformed, by correcting the ill advice, if any ill advice had been given, under which the King had acted in giving them a constitution upon the event and at the moment of the conquest.

Col. Barré.—The honourable and learned gentleman was not precise in stating the limits of our colonies. He seemed unwilling for the House to think that any one of the colonies, especially Pennsylvania and Virginia, had a right to settle beyond the Endless Mountains [Alleghenies]; as if the honourable and learned gentleman could be ignorant of the fact that many thousands of English subjects are established some hundred miles beyond the Endless Mountains, upon the very spot which you are now going to make a part of this country of Canada. . . . It was, says the noble lord, necessary to take in and to annex the scattered Posts in the neighbourhood of Detroit and Lake Michigan. If the noble lord will be so good as to look at the map, he will find he could have taken in every one of those Posts, and never thrown out any doubt about the shape of Canada, at the same time that all that part between the lake and the Ohio would have been kept out by this Bill—and all the purposes of the Bill, except

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the reference to settling upon the Ohio, would have been answered by his taking that boundary. If there had been any doubt, what would have removed that doubt, would have been looking at the course pursued between the English and French negotiators, when the French offered to withdraw from that part of the country which they had taken possession of on the south of the Ohio, and retire to the north side, making that river the boundary of the colony. The English Minister said, "No; we will not submit to those terms. They are not the boundaries; the River St. Lawrence and the lakes are our boundary—we will agree to no other." Their language now is, "the River St. Lawrence is the centre, not the frontier; we will not be deprived of our property in the country."

Mr. Sergeant Glynn.—You are incompetent to decide upon the limits of the country, or whether the description of it in the Bill is most conformable to the claim of the French, or to our claim before the war; but I shall take it as I find it stated on both sides of the House, namely, that there is to be a newly-erected Province, comprehending a great part of North America, partly inhabited, partly uninhabited; that such parts are to be erected into a Province, in hopes that the population will increase, and that all those parts by degrees will become peopled. . . . In times past, a Minister of the Crown was censured for proposing an arbitrary form of government for the colonies. However objectionable that proposed form of government may have been, we do not find that the powers given to the governor, on that occasion, were so extensive as those vested in him by this measure. The principles which prevailed in the days of Charles the Second will not, I trust, receive the sanction of the legislature of the present day.

Solicitor-General Wedderburn.—It is one object of this measure that these persons (the English) should not settle in Canada. The subjects of this country, in Holland, in the Baltic, and in different parts of the world, where they may go to push their commercial views, look upon England as their home; and it should be our care to keep alive in their breasts this attachment to their native soil. With regard to the other portion of the inhabitants of North America, I think the consideration alters; if the geographical limits are rightly stated, I think one great advantage of this extension of territory is this, that they will have little temptation to stretch themselves northward. I would not say, "Cross the Ohio; you will find the Utopia of some great and mighty empire." I would say, "This is the border beyond which, for the advantage of the whole empire, you shall not extend yourselves." It is a regular government; and that government will have authority to make inquiry into the views of native adventurers. As to British subjects within the limits, I believe that there are not five in the whole country. I think that this limitation of the boundary will be a better mode than any restriction laid upon government. In the grant of lands, we ought to confine the inhabitants to keep them, according to the ancient policy of the country, along the line of the sea and river.

Mr. Charles Fox.—It is not right for this country to originate and establish a constitution in which there is not a spark of semblance of liberty. A learned gentleman has said that by this means we should deter our own countrymen from settling there. Now, Sir, as it is my notion that it is the policy of this country to induce Englishmen to mix as much as possible with the Canadians, I certainly must come to a different conclusion.

Monday, June 6.

The House resolved itself into a Committee upon the Bill, Sir Charles Whitworth in the Chair. The first clause was read, viz: "And whereas, by the arrangements made by the said Royal Proclamation, a very large part of the territory of Canada, within which there were several colonies and settlements of the subjects of France, who claimed to remain therein under the faith of the said treaty, was left without any provision being made for the administration of civil government therein, and other parts of the said country, where sedentary fisheries had been established and carried on by the subjects of France, inhabitants of the said Province of Canada, under grants and concessions from the government thereof, were annexed to the government of Newfoundland, etc., be it enacted that all the said territories, islands, and countries heretofore a part of the territory of Canada, in North America, extending southward to the banks of the River Ohio, westward to the banks of the Mississippi, and northward to the southern boundary of the territory granted to the Merchants Adventurers of England trading to Hudson's Bay, and which said territories, islands, and countries are not within the limits of some other

British colony, as allowed and confirmed by the Crown, or which have, since the 10th of February, 1763, been made part of the government of Newfoundland, be, and they are hereby, during his Majesty's pleasure, annexed to and made part and parcel of the Province of Quebec, as created and established by the said Royal Proclamation of the 7th of October, 1763."

Lord North.—There are great difficulties as to the best mode of proceeding. I apprehend the alteration I am about to propose will save every doubt where there is a right. I will explain the amendment I intend to make; if that should not give satisfaction, gentlemen will state what it is they propose to substitute in its stead. We shall then ascertain how far we shall be able to make anything more precise. The question is an extremely difficult one. It is usual to have different boundaries laid down in different manners. Where the King is master of the country, then they are drawn by his Majesty's officers only; where there has been any grant or charter, and it has been necessary to draw any boundary line, then not only his Majesty's officers, but commissioners have been appointed, and together they draw a line, subject afterwards, to an appeal to the Privy Council—therefore that distinction is made here. It is intended, immediately after the passing of this Act, to go on with the project of running the boundary line between Quebec and New York and Pennsylvania, etc., belonging to the Crown. This is done to prevent the Province of Quebec from encroaching on the limits of any of those grants where no boundary has been settled. I find many gentlemen are desirous of having something more precise, if possible. To this I have no objection; but we are so much in the dark as to the situation of this country, that it is not possible to do anything more safe than saving the rights of the other colonies, leaving them to be settled on the spot by commissioners. Persons possessing local knowledge can act better than we can. For that reason I propose to leave out the words "*heretofore part of the territory of Canada*," and insert "*extent of country*," and also leave out the words "*said country*," and insert "*territory of Canada*."

Governor Johnstone.—My objection to it is, you are going to extend a despotic government over too large a surface; and that you are going to establish a boundary line, with a pretence of bringing it within the line of justice, where God and nature, are against you. The pretence that is held out, to induce this House to accede to the measure is, first, that with the former government of Quebec, Canada did extend so far, and that as we are about to give the Canadians back their old laws, we ought at the same time to give them back what has been asserted in this House to have been their ancient territory. . . . Now, Sir, as I had the honour of being appointed Governor of West Florida, it became my duty to make myself acquainted with the boundaries of Louisiana, and I accordingly endeavoured to obtain the best information upon that subject. I was surprised, therefore, to hear it given in evidence, not directly, but insinuated, that the former Government of Canada extended as far as you propose to make it. One of the reasons given by General Carleton for this extension of country, was that the inhabitants of these remote parts might be under the direction of the Government of Canada.

Mr. Edmund Burke.—If we had originated this measure above stairs, where maps might have been laid upon the table, no doubt the whole dispute of this day would have been avoided. I shall ask for the attention of the Committee, partly that they may understand me; partly that I may understand myself. In the first place when I heard that this Bill was to be brought in on the principle that Parliament were to draw a line of circumscription about our colonies, and to establish a siege of arbitrary power, by bringing round about Canada the control of other people, different in manners, language, and laws from those of the inhabitants of this colony, I thought it of the highest importance that we should endeavour to make this boundary as clear as possible. I conceived it necessary for those who are to be besieged in this manner; and also necessary for the British subject, who should be restricted, and not be allowed unknowingly to venture into the colony to disturb its possessors. I wish these limits to be ascertained, and fixed with precision, for the sake of both parties. Having this object in my view, I shall first consider the line drawn in the proclamation of 1763. It was drawn from a point taken in the lake called Nipissim; that lake stands to the north of this point. I entreat the attention of the Committee; for the escape of a word is the escape of a whole argument. Sir, this boundary was fixed by a line drawn obliquely from Lake Nipissim, which line, crossing the St. Lawrence and the Lake Champlain, formed an angle in the latitude of forty-five degrees. This constituted the south-west boundary of Canada; beyond that the Province was to extend no further—and confined within this

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limit it remained from the year 1763 to this time. That was then the boundary of Canada; and when that boundary was formed, that was the boundary of the Government—and that boundary was fixed there because it was the boundary of the possession. There was then no considerable settlement to the south-west of that line. This line the people of Canada acquiesced in. They have since come before His Majesty's government, and have laid before it a complaint in which they state that this was a line drawn especially for the purpose of territorial jurisdiction, and the security of property; but they represent that it is a line ill-suited for a growing country. They do not complain that they have not the legal limits, but they complain of the climate to which they are restricted. "The Province," they say, "as it is now bounded, by a line passing through the forty-fifth degree of north latitude, is confined within too narrow limits; this line is only fifteen leagues distant from Montreal, and yet it is only on this side that the lands of the Province are fertile, and that agriculture can be cultivated to much advantage." Sir, if no injustice will thereby be done to any one, I don't know a more reasonable request than that their complaints should be attended to. . . . The noble lord showed me the amendment, which by no means relieved my apprehensions. The reason why I feel so anxious is, that the line proposed is not a line of geographical distinction merely; it is not a line between New York and some other English settlement; it is not a question whether you shall receive English law and English government upon the side of New York, or whether you shall receive a more advantageous government upon the side of Connecticut; or whether you are restrained upon the side of New Jersey. In all these you will find English laws, English customs, English juries, and English assemblies wherever you go. But this is a line which is to separate a man from the right of an Englishman. First, the clause provides nothing at all for the territorial jurisdiction of the Province. The Crown has the power of carrying the greatest portion of the actually settled portion of the Province of New York into Canada. . . . The Bill turns freedom itself into slavery. These are the reasons that compel me not to acquiesce by any means, either in the proposition originally in the Bill, or in the amendment. Nay, the proposition in the amendment is a great deal worse, because you therein make a saving of the right of interference with, and may fix your boundary line at the very gates of New York, perhaps in the very town itself and subject that colony to the liability of becoming a Province of France. It was this state of things Sir, that made me wish to establish a boundary of certainty. The noble lord has spoken upon this subject with a great deal of fairness. He says that if any gentleman will find a boundary of certainty, he will accept it. Whether, if we should be able to find such a boundary, the colony of New York will be satisfied with it I know not; but speaking here as a member of Parliament, I do think the colony had better have a boundary much less in extent, yet reduced to such a certainty that they may exactly know when and where they cease to be English subjects. The boundary originally settled between Canada and New York was entitled to contest with the Crown under the first proclamation That was given up. I am glad the noble lord has got a map before him. They gave up a vast extent of country. I recommended them to give up for peace all that part which lies between that country and the River St. Lawrence, and to take their departure from a line drawn through Lake Champlain in forty-five degrees of latitude, as far as the River St. Lawrence, then following the course of that river through Lake Ontario and Lake Erie, to make it the western bound of the colony of Pennsylvania. These limits and bounds would give New York a territory sufficient to enable it to meet every exigency of government. It would give the Crown a boundary of certainty; it would give the people of Canada a certainty of knowing upon what side of the water their territory began; and it would give the subjects of Great Britain the power of knowing where they can be free. . . . He does not know enough of the state of that country to be able to adopt the line which he has drawn; whereas nothing can be more geographically distinguished than water and land. This boundary is physically distinguished; it is astronomically distinguished. It has been fixed by actual observation, and agreed upon by the surveyors. We have everything that geography, astronomy, and general convenience, stronger sometimes than either, can give to make this boundary definite. I shall therefore now move the boundary which I have proposed, viz, by a line drawn from a point on the east side of Lake Champlain, in 45 degrees north latitude, and by a line drawn in that parallel west to the River St. Lawrence, and up that river to Lake Ontario, and across that Lake to the River Niagara, and from Niagara across Lake Erie to the north-west point of the boundary of Pennsylvania, and down the east boundary of that Province, by a line drawn from thence till it strikes the Ohio. If the noble lord admits

this proposition, the Committee will no doubt be able to express it in proper words; if not, I must beg that we may receive information from a gentleman who can abundantly inform the House, and who is as ready to communicate it as any man I ever knew.*

Lord North.—We agree in principle, and I hope we shall succeed in drawing a clear boundary line; but I am doubtful whether a clear boundary line can be drawn by Parliament. It strikes me that the only method is to leave it to be drawn after the passing of the Act, leaving it in such a manner that the line where drawn shall actually form a clear line between the Province of Canada and New York. The line as far as it appears by the map is very distinct. The objection I have is precisely what the honourable gentleman has mentioned. I am not clear whether there are not on the south-east part of the River St. Lawrence, Canadian settlements. I have been informed there are. I am sure there are no New York settlements in that part of the world. I think it more prudent to have the boundary line settled upon the spot, reserving, in the Act, all those lands that have been granted, under any authority, to the old settlers. . . . It is my opinion that all this uninhabited country added to Canada or added to New York should not be immediately considered as country which the Government are to grant away. . . . I rise up at present to confirm the declaration I have made, that if a clear line can be made to the satisfaction of gentlemen, so that they are not likely to involve themselves by drawing a line in Westminster which would be better drawn in America, I shall not *opiniâtre* it, but shall be very thankful to the gentleman who can draw that line.

Mr. Burke.—If Canada is in future to have boundaries determined by the choice of the Crown, the Crown is to have the power of putting a great part of the subjects of England under laws which are not the laws of England. The government of France is good—all government is good—but compared with the English government, that of France is slavery. . . . The parties here are, English liberty and French law; and the whole province of New York, further than it is defined by actual bound, is in the power of the Crown, not to adjudicate, but to grant, and hand over to the French. I do not suppose that if the Crown were under the necessity of adjudging that it would adjudge amiss; but it is in the power of the Crown to grant even its power of adjudging. Where put on the English side, they are put in the power of the laws; where put on the French side, they are put out of the power of the laws. Let us consider, then, whether it is not worth while to give a clear boundary, and let the man know whether he is or is not an Englishman. I shall take the sense of the Committee upon it. I am as much in earnest as ever I was in my life. I have produced a practical idea; I can produce practical words.

After a long and desultory conversation, the words proposed by Mr. Burke were inserted. The words—"Until it strike the Ohio; and along the bank of the said river, westward to the banks of the Mississippi, and northward to the southern boundary of the territory of the Merchants Adventurers of England trading to Hudson's Bay; and also all such territories, islands and countries, which have, since the 10th of February, 1763, been made part of the government of Newfoundland, be, and they are hereby, during His Majesty's pleasure, annexed to and made part and parcel of the Province of Quebec."—were next read.

On June 10th, Sir Charles Whitworth reported to the House the amendments which the Committee had made to the Bill. The first clause being read there was much puzzling about settling the boundary line. Mr. Edmund Burke, Mr. Jackson, Mr. Barker, and Sir Charles Whitworth went up stairs, in order to settle it, while the House was supposed to be proceeding upon it. The House continued for at least half an hour, doing nothing in the meantime. The difference was, whether the tract of country not inhabited should belong to New York or Canada? At five o'clock, Mr. Burke returned with the amendments, some of which were agreed to, others not. The following is the clause, as finally agreed to by the House:

"That all the territories, islands, and countries in North America, belonging to the Crown of Great Britain, 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 the

* Mr. Powall, the Under-Secretary for the American colonies.

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River St. Lawrence; from thence up the eastern bank of the said river to 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 of the said Province until the said western boundary strike the Ohio; but in case the said bank of the said lake shall not be found to be so intersected, then following the said bank until it shall arrive at that point of the said bank which shall be the 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 strike the River Ohio; and along the bank of the said river, westward to the 10 banks of the Mississippi, and northward to the southern boundary of the territory granted to the Merchants Adventurers of England trading to Hudson's Bay; and also all such territories, islands and countries which have, since the 10th of February, 1763, been made part of the government of Newfoundland, be, and they are hereby, during His Majesty's pleasure, annexed to and made part and parcel of the Province of Quebec, as created and established by the said Royal Proclamation of the 7th of October, 1763. Provided always, that nothing herein contained, relative to the boundary of the Province of Quebec, shall in anywise affect the boundaries of any other colony."

REPORT OF THE LORDS OF COMMITTEE OF COUNCIL FOR PLANTATION AFFAIRS,
10TH DECEMBER, 1774,

REFERRING THE DRAFT OF NEW COMMISSION OF GOVERNOR CARLETON, OF QUEBEC, TO THE ATTOR- 20
NEY AND SOLICITOR-GENERAL FOR THEIR OPINION.*

AT THE COUNCIL CHAMBER, WHITEHALL,

the 10th day of December, 1774.

By the Right Honourable the Lords of the Committee of Council for Plantation Affairs.

Present—Lord President, Earl of Dartmouth, Earl Rochford, Charles Jenkinson, Esq.

Reference of
draft Com-
mission of
Governor
Carleton to
the Attorney
and Solicitor-
General for
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His Majesty having been pleased by His Order in Council, of the 9th of this instant, to refer unto this Committee a representation from the Lords Commissioners for Trade and Plantations, setting forth that in obedience to His Majesty's commands, signified to them by the Earl of Dartmouth, one of His Majesty's Principal Secretaries of State, the said Lords Commissioners had prepared the draught of a Commission revoking the present Commission, by which Guy Carleton, Esquire, is appointed Governor 30 of the Province of Quebec, in North America, and re-appointing him to that command in such manner and form, and with such powers and authorities as correspond with the provisions made for the Government of that Province by an Act passed in the last session of the late Parliament, and the only case in which this draught either contains anything further than what that Act provides for or differs from such of the powers given to the Governor by his present Commission, as do not require to be altered or omitted in consequence of the said Act, is in the clause which provides for the devolution of Government upon the eldest Councillor, when, upon the death or absence of the Governor, there shall happen to be no Lieutenant-Governor upon the spot; and in this clause the said Lords Commissioners have thought fit to insert a proviso, that in such case the eldest Councillor being a Canadian, professing the religion of the Church of Rome, shall not be capable of taking the Administration of Government, 40 upon which the said Lords Commissioners submit as in their opinion a necessary and proper restriction.

The Lords of the Committee this day took the said representation and draught of a Commission into consideration, and are hereby pleased to refer the same to His Majesty's Attorney and Solicitor-General to consider thereof, and report their opinion forthwith, whether the powers and authorities inserted in the said Commission, so far as the same have reference to the Act passed in the last Session

* From Privy Council Register.

of the late Parliament, for making more effectual provision for the Government of the Province of Quebec, in North America, do correspond with the provisions of the said Act, and are proper in point of Law.

[Search has been made for the opinion of the Attorney and Solicitor-General under the above reference to them, but without success.]

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IMPERIAL ORDER IN COUNCIL, 19TH DECEMBER, 1774,
APPROVING OF THE DRAFT COMMISSION TO GOVERNOR CARLETON, OF QUEBEC*

AT THE COURT AT ST. JAMES',
the 19th day of December, 1774.

10 Present—The King's Most Excellent Majesty; Lord President, Lord Edgecumbe, Earl of Suffolk, George Onslow, Esq., Earl of Buckinghamshire, Charles Jenkinson, Esq., Viscount Falkmouth, Sir John Goodricke.

Imperial
Order in
Council, 19th
Dec., 1774.

Whereas there was this day read at the Board, a report from the Right Honourable the Lords of the Committee of Council for Plantation Affairs, dated this day, upon considering the draught of a new Commission prepared by the Lords Commissioners for Trade and Plantations, revoking the present Commission by which Guy Carleton, Esquire, is appointed Governor of the Province of Quebec, in North America, and re-appointing him to that command in such manner and form, and *which* such powers and authorities as correspond with the Provisions made for the Government of that Province, by an Act passed in the last Session of the late Parliament; His Majesty taking the same into consideration, is pleased, with the advice of his Privy Council, to approve of the said draught of a Commission (which is hereunto annexed,) and to order, as it is hereby ordered, that the Right Honourable the Earl of Dartmouth, one of His Majesty's Principal Secretaries of State, do cause a warrant to be prepared for His Majesty's Royal Signature for passing a Commission conformable to the said draught, under the Great Seal of Great Britain.

BOUNDARY DESCRIPTION IN IMPERIAL COMMISSION TO GOVERNOR-GENERAL
CARLETON OF QUEBEC, 27TH DECEMBER, 1774.

SIR GUY CARLETON,—*Captain-General and Governor-in-Chief of the Province of Quebec.*†

Imperial
Commission
to Governor
Carleton, of
Quebec, 1774.

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 30 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 highlands 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 Saint 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 40 Pennsylvania, in case the same shall be so intersected, and from thence along the said northern and western boundaries of the said Province, until the said western boundary strikes the Ohio; but in case the said bank of the said lake shall not be found to be 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 Mississippi, and northward along the eastern bank of the said river to the southern boundary of the territory granted to the Merchants

*From Privy Council Register.

† Lib. B. (2), Imperial Commissions, fol. 1.

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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.

PAPERS RELATING TO THE EXTENSION OF THE BOUNDS OF QUEBEC, 1774.*

GOVERNOR CARLETON TO THE EARL OF DARTMOUTH.

Governor
Carleton to
Earl of Dart-
mouth, 11th
Nov., 1774.

QUEBEC, 11th November, 1774.

MY LORD,—The inclosed address of His Majesty's Canadian subjects at Montreal was delivered to me, yesterday, with their request, that the same might be transmitted to Your Lordship, in order to be laid at the foot of His Majesty's Throne; I really believe, it contains the genuine effusion of their hearts, upon the late extension of his paternal regard to their happiness and welfare, and that the tender, therein offered, of every grateful return they can make for so much favour shewn them, is as hearty and sincere, as can be wished or desired.

I am, with much esteem and respect,

Your Lordship's most obedient and most humble servant,

GUY CARLETON.

EARL OF DARTMOUTH,

One of His Majesty's Principal Secretaries of State.

PETITION OF THE CANADIAN INHABITANTS OF MONTREAL, REFERRED TO IN THE FOREGOING
DESPATCH.*

20

Au Roi.†

SIRE,

Petition of
Canadians of
Montreal to
the King,
1774.

Qu' il soit permit à nous vos très fideles sujets les citoiens Canadiens de la Ville de Montréal de nous prosterner aux piés du Trône de vôtre Majesté pour lui témoigner les vifs sentimens de reconnoissance dont nous sommes pénétrés en considération des grâces et des avantages inexprimables dont nous sommes comblés par l'acte émané de vôtre auguste Parlement, auquel par une affection singulière pour vôtre peuple Canadien, il vous a plût, Sire, donner vôtre approbation Roiale. Les expressions nous manquent pour convaincre vôtre Majesté, de toute la plénitude de nos obligations pour l'éffusion de tant de bienfaits; mais nous disons du Fond de nos coeurs sineèrement et judicieusement que nos vies, nos fortunes, et tout ce que nous avons de cher d'ailleurs est acquis à vôtre Majesté 30

* Public Record Office—Colonial Correspondence, Canada (Quebec), 1775, Vol. XI.

* *Ibid.*

† *To the King.*

SIRE,

May it be permitted to us, your most faithful subjects, the Canadian citizens of the City of Montreal, to prostrate ourselves at the foot of your Majesty's throne to prove the deep feeling of gratitude with which we are penetrated, in view of the favours and inexpressible advantages heaped upon us by the Act of your august Parliament, to which, by a singular affection for your Canadian people, it has pleased you, Sire, to grant your Royal assent. Words fail us in which to convince your Majesty of the plénitude of our obligation for the bestowal of so many benefits; but we say, from the bottom of our hearts, sincerely and deliberately, that our lives, our fortunes, and all else that we hold dear are devoted to your Majesty, who will be convinced thereof when the occasion arises; as we presume to flatter ourselves, he is already convinced of our fidelity, of our submission, and of our obedience, during, alas! a trial of fourteen years. To thus comport ourselves is a first duty, in which we will not fail.

What satisfaction are we not about to taste! We are adopted as sons, and as English citizens. We are maintained in the religion of our fathers; our civil laws are restored to us; our country remains according to its ancient limits. And to all these favours your Majesty has added the return—so earnestly desired amongst us—of our worthy and generous Governor.

Behold us then, Sire, in the highest degree of happiness, with nothing left for us to desire, if your Majesty will but preserve the Seminary of Montreal, even as it has subsisted since its establishment; it is useful for the consolation of the widow and the orphan and for the education of our children. We also ask a similar favour for our hospitals, founded solely for the relief of our poor and our sick.

May Heaven, in hearing our prayers, grant that your Majesty may enjoy a reign as long as glorious. We also pray to the Eternal for the preservation of our illustrious Queen and of the Royal Family.

And with these sentiments, we have the honour to call ourselves, with the most profound respect and the greatest veneration, Sire, your most Excellent Majesty's most humble, most submissive, most obedient and most faithful servants and subjects.

qui en sera persuadée lorsque les occasions naîtront; comme nous osons nous flatter qu'elle l'est de notre fidélité, de notre soumission, et de notre obéissance, depuis une épreuve de quatorze ans hélas! nous inciter ainsi à un juste devoir auquel nous ne saurions manquer: Quelle satisfaction ne sommes nous pas au moment de goûter! nous sommes adoptés comme Fils de la Patrie et citoyens Anglois; maintenus dans la Religion de nos Pères; nos lois civiles nous sont rendues; notre Pais reste suivant ses anciennes limites; et à tous ces dons votre Majesté y a ajouté le retour si désiré parmi nous de notre digne et généreux Gouverneur nous-voilà, Sire, au comble du bonheur, et il ne nous restera rien à désirer s'il plait à votre Majesté, nous conserver le séminaire de Montréal tel qu'il subsiste depuis son établissement: il est utile pour le soulagement de la veuve et de l'orphelin pour l'éducation de nos enfans, nous demandons aussi pareille grâce pour nos hôpitaux uniquement fondés pour le soulagement de nos pauvres et de nos malades. Fasse le Ciel, en exauçant nos vœux, que votre Majesté jouisse d'un règne aussi long que glorieux nous les adressons aussi à l'Eternel pour la conservation de notre illustre Reine et de la Famille Royale; c'est dans ces sentimens que nous avons l'honneur de nous dire avec le plus profond respect et la plus grande vénération, de votre très Excellente Majesté. Sire, Les très humbles, très soumis, très obéissans et très fidèles serviteurs et sujets:

Picottée de Belestrey, Lacorne, St. Ours, Cuiry, Montigny, Louvigny, Louquerii, Richambault, Hestel de Rouville, Montigny fils, Lavallery, Lemoine, Fr. Simomet, Mezière, Lacorne, Desrivières, Nodière, Chaboillier, Jobert, Panet Frère, Lemoine, Sanguinet, Beaubassin, Boucheville, Louis Briquier, Sre Sorelier, L. Sorelier, Pe. Pillé, Chomont, Ch. Sanguine, Jean Crillat, Th. Lacroix, Jn. Poëlier, 20 Poudret, C. Latour, Eange, J. Sanguinée, Jn. Vienne, Coté, Cavillie, Remond Menard, Etne. Dumeyniou, Pierre Luceau, Guy Cardinet, L. D'Efond, L. Baby, Vallée, Berthelot, Sibenbergen, Amable Raunne, Hypolite Derrioux, Chles. Sanguinet, St. Disier, C. Lefebvre, Mee. Hondeau, Chr. de St. Ours, Debonne, Charles de St. Ours, St. Ours, Laverien, Herveux, Lacote fils, Lacote, L'hermieux, Contrecoeur, Laplat, Lamarque, St. George, Dupré, Lequens.

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OFFICIAL PAPEPS RELATING TO THE ROYAL INSTRUCTIONS TO GOVERNOR
CARLETON OF QUEBEC, 1774.

THE LORDS COMMISSIONERS FOR TRADE AND PLANTATIONS TO THE KING.*

To the King's Most Excellent Majesty.

May it please Your Majesty.

30 In obedience to Your Majesty's commands signified to us by the Earl of Dartmouth, one of Your Majesty's principal Secretaries of State, we have prepared, and herewith humbly beg leave to lay before Your Majesty a draught of general instructions to Guy Carleton, Esquire, whom Your Majesty has been pleased to appoint to be Governor of Your Majesty's Province of Quebec.

This draught contains not only such instructions as are usually given to other Governors, so far as the same are applicable to this Province under its new constitution of government; but also such other directions for the establishment of Judicature; the reform and regulation of ecclesiastical matters; and the arrangements proper to be made in respect of the coast of Labrador, and the interior country, as appear to us to be necessary in consequence of the Act passed in the last session of the late Parliament; it also contains an appointment of the Council conformable to that Act, and directs the provisions to be made for the support of the civil establishment of government.

40 We also humbly beg leave to lay before Your Majesty a draught of such instructions to Your Majesty's Governor of Quebec, as are usually given to the Governors of Your Majesty's other colonies respecting the observance and the execution of the laws for regulating the plantation trade.

All which is most humbly submitted.

WHITSHED KEENE,
SOAME JENYNS,
C. F. GREVILLE,
W. JOLLIFFE.

Whitehall, December 22nd, 1774.

* Colonial Office Records—Board of Trade, Canada (Quebec), 1768 to 1781, Entry Book B, No. 16.

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REPORT OF THE LORDS OF COMMITTEE OF COUNCIL FOR PLANTATION AFFAIRS TO THE KING.*

AT THE COUNCIL CHAMBER, WHITEHALL,
the 28th day of December, 1774.

By the Right Honourable the Lords of the Committee of Council for Plantation Affairs.

Present—Archbishop of Canterbury, Bishop of London, Lord President, Wellbore Ellis, Esq., Earl of Dartmouth, Sir Gilbert Elliott, Viscount Clare, Charles Jenkinson, Esq.

Your Majesty having been pleased by your Order in Council of the 23rd of this instant to refer unto this Committee a representation from the Lords Commissioners for Trade and Plantations, setting forth, That in obedience to Your Majesty's commands, signified by the Earl of Dartmouth, one of Your Majesty's principal Secretaries of State, they had prepared a draught of general instructions for Guy 10 Carleton, Esquire, whom Your Majesty has been pleased to appoint to be Governor of Your Majesty's Province of Quebec; That this draught contains not only such instructions as are usually given to other governors so far as the same are applicable to this Province under its new constitution of government, but also such other directions for the establishment of judicature, the reform and regulation of ecclesiastical matters, and the arrangements proper to be made in respect the coast of Labrador and the interior country as appear to the said Lords Commissioners to be necessary in consequence of the Act passed in the last session of the late parliament; That it also contains an appointment of the council conformable to that Act and directs the two provisions to be made for the support of the civil establishment of government; That the said Lords Commissioners also beg leave to lay before Your Majesty a draught of such instructions to Your Majesty's Governor of Quebec, as are usually given to 20 the governors of Your Majesty's other colonies respecting the observance and the execution of the laws for regulating the Plantation Trade. The Lords of the Committee in obedience to Your Majesty's said order of reference, this day took the said representation and draughts of instructions into consideration and do agree humbly to report as their opinion to Your Majesty that the said instructions do appear to contain the several regulations necessary in consequence of the Act passed in the last session of the late parliament, intituled "An Act for the making more effectual provision for the Government of the Province of Quebec in North America," and are applicable to the said province under its new constitution of government. But the Lords of the Committee upon considering the 56th article of the draught of general instructions which provides for the support of government within Your Majesty's Province of Quebec, by fixing the salaries and allowances to the several officers therein mentioned are of opinion 30 that it may greatly tend to the good of the Province, to increase the salaries of the six judges of the Common Pleas from three hundred pounds to five hundred pounds per annum each, and that the two schoolmasters should be allowed a stipend of one hundred pounds per annum each to the end that the respective offices may be more readily supplied by persons of learning and abilities; with which alterations the Lords of the Committee do agree humbly to lay the said draughts of instruction before Your Majesty as proper for Your Royal approbation.

IMPERIAL ORDER IN COUNCIL, 28 DECEMBER, 1774,

APPROVING OF THE FOREGOING REPORT OF THE DRAFT INSTRUCTIONS TO GOVERNOR CARLETON AS
THEREBY AMENDED AND ALTERED.*AT THE COURT AT ST. JAMES'S, 40
The 28th day of December, 1774.Imperial
Order in-
Council, 28th
December,
1774.

Present—The King's Most Excellent Majesty, Archbishop of Canterbury, Viscount Falmouth, Lord Chancellor, Lord President, Lord Chamberlain, Earl of Suffolk, Earl of Bristol, Viscount Clare, Bishop of London, Wellbore Ellis, Esq., Humphrey Morris, Esq.

WHEREAS, there was this day read at the Board a report from the Right Honourable the Lords of the Committee of Council for Plantation Affairs, dated this day, in the words following, viz.:

* From Privy Council Register.

[Here the foregoing Committee Report upon the draughts of new instructions for Guy Carleton, Esquire, Governor of the Province of Quebec, inserted at length].

His Majesty, taking the said report into consideration, is pleased, with the advices of the Privy Council, to approve thereof, and also of the said draughts of instructions so amended and altered, and to order, as it is hereby ordered, that the Right Honourable the Earl of Dartmouth, one of His Majesty's Principal Secretaries of State, do cause the said draughts of instructions to be prepared for His Majesty's Royal Signature.

JOINT
APPENDIX.

Sec. V.
Imperial
Statutes and
Acts of State
bearing on the
question of the
boundaries.

Imperial
Order-in-
Council, 28th
December,
1774.

ROYAL INSTRUCTIONS TO GOVERNOR-GENERAL CARLETON, 3RD JANUARY, 1775.*

GEORGE R.

10 [L. S.]

INSTRUCTIONS to Our Trusty and Well-beloved Guy Carleton, Esquire, Our Captain General and Governor in Chief in and over Our Province of Quebec, in America, and of all Our Territories dependant thereupon. Given at Our Court at St. James's, the 3rd Day of January, 1775, in the Fifteenth Year of Our Reign.

Royal Instruc-
tions to
Governor-
General
Carleton,
1775.

1. WITH these Our Instructions you will receive Our Commission under Our Great Seal of Great Britain, constituting you Our Captain General and Governor in Chief in and over Our Province of Quebec, in America, and all Our Territories thereunto belonging, as the said Province and Territories are bounded and described in and by the said Commission; You are therefore to take upon you the Execution of the Office and Trust We have reposed in you, and the Administration of the Government, and to do and execute all Things in due Manner that shall belong to your Command, according to the several powers and Authorities of Our said Commission under Our Great Seal of Great Britain, and these Our Instructions to you, or according to such further Powers and Instructions as shall at any time hereafter be granted, appointed under Our Signet or Sign Manual, or by Our Order in Our Privy Council; and you are to call together at Quebec (which We do hereby appoint to be the Place of your ordinary Residence and the principal seat of Government) the following persons:—

14. With regard to the nature and number of the Courts of Justice which it may be proper to establish either for the whole Province at large or separately for its dependencies and the times and places for holding the said Courts, no certain rule can be laid down in a case in which the judgment must, in many respects at least, be altogether guided by circumstances of local convenience and con- sideration.

15. In general it may be proper that there should be a Superior or Supreme Court of criminal justice and jurisdiction for the cognizance of all pleas of the Crown and for the trial of all manner of offences whatsoever, to be held before the Chief Justice for the time being, at such times and places as shall be most convenient for the due and speedy administration of justice, and the preventing long imprisonments,—the said Court to be called and known by the name of the Court of King's Bench. That for the more orderly establishment and regulation of Courts of civil jurisdiction the Province of Quebec as limited and bounded by the aforesaid Act of Parliament, "for making more effectual provision for the Government of the Province of Quebec, in North America," be divided into two districts, by the the names of Quebec and Montreal, each district to be limited and bounded in such manner as shall be thought best adapted to the object of the jurisdiction to be established therein. That there be established in each of the said districts a Court of Common Pleas to be held at such times and places as shall be judged most convenient, and to have full power, jurisdiction and authority to hear and determine all civil suits and actions cognizable by the Court of Common Pleas in Westminster Hall according to the rules prescribed by the said Act of Parliament "for making more effectual provision for the government of the Province of Quebec in North America," and according to such laws and ordinances as shall from time to time be enacted by the Legislature of the said Province in manner therein directed. That there be three judges in each of the said Courts of Common Pleas, that is to say, two of our natural born subjects of Great Britain, Ireland or our other plantations, and one

* Parliamentary Papers relative to the Province of Quebec, ordered to be printed 21st April, 1791.

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question of the
boundaries.*
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tions to
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General
Carleton,
1775.

Canadian, and also one Sheriff appointed for each district. That besides the foregoing Courts of criminal and civil jurisdiction for the Province at large, there be also an inferior Court of criminal and civil jurisdiction in each of the districts of the Illinois, Saint Vincenne, Detroit, Missilimakinac and Gaspé, by the names of the Court of King's Bench for such district, to be held at such times as shall be thought most convenient; with authority to hear and determine in all matters of a civil nature according to the laws of England, and the laws of the Province hereafter made and passed, and in all civil matters according to the rules prescribed by the said Act of Parliament "for making more effectual provision for the government of Quebec in North America," and each of the said Courts shall consist of one Judge, being a natural born subject of Great Britain, Ireland, or our other plantations; and of one other person, being a Canadian, by the name of assistant or assessor, to give advice to the Judge in any matter when it may be necessary, but to have no authority or power to attest or issue any process, or to give any vote in any order, judgment or decree. That the said Judges to be appointed as aforesaid for each district shall have the same power and authority in criminal cases as is vested in the Chief Justice of our said Province, and also the same power and authority in civil cases as any other Judge of Common Pleas within our said Province excepting only that in cases of treason, murder or other capital felonies the said Judges shall have no other authority than that of arrest and commitment to the gaols of Quebec or of Montreal, where alone offenders in such cases shall be tried before our Chief Justice. That a Sheriff be appointed in each of the said districts for the execution of civil and criminal process; that the Governor and Council (of which, in the absence of the Governor and Lieutenant-Governor, the Chief Justice is to be President) shall be a Court of civil jurisdiction for the hearing and determining all appeals from the judgment of the other Courts where the matter in dispute is above the value of ten pounds. That any five of the said Council, with the Governor, Lieutenant-Governor, or Chief Justice, shall constitute a Court for that purpose, and that their judgment shall be final in all cases not exceeding the value of five hundred pounds sterling, in which cases an appeal from their judgment is to be admitted to us in our Privy Council. It is, however, our will and pleasure that no appeal be allowed unless security be first duly given by the appellant that he will effectually prosecute the same, and answer the condemnation, as also pay such costs and damages as shall be awarded by us in case the sentence be affirmed. Provided, nevertheless, where the matter in question relates to the taking or demanding any duty payable to us, or to any fee of office or annual rents, or other such like matter or thing where the right of a party may be bound; in all such cases appeal to us in our Privy Council, is to be admitted though the immediate sum or value appealed for be of less value. And it is our further will and pleasure, that in all cases where appeals are admitted unto us in our Privy Council execution be suspended until the final determination of such appeal, unless good and sufficient security be given by the appellee to make ample restitution of all that the appellant shall have lost by means of such decree or judgment in case upon the determination of such appeal such decree or judgment should be reversed and restitution awarded to the appellant. Appeals unto us in our Privy Council are also to be admitted in all cases of fines imposed for misdemeanors, provided the fines so imposed amount to or exceed the sum of one hundred pounds sterling, the appellant first giving good security that he will effectually prosecute the same, and answer the condemnation, if the sentence by which such fine was imposed in Quebec be affirmed.

30. The Extension of the Limits of the Province of Quebec necessarily calls forth your attention to a variety of new matter and new objects of consideration; the protection and controul of the various settlements of Canadian subjects, and the regulation of the Peltry trade in the upper or interior country on the one hand, and the protection of the Fisheries in the Gulph of St. Lawrence, and on the Labrador Coast, on the other hand, point to Regulations that require deliberation and dispatch.

31. The institution of inferior judicatures with limited jurisdiction in criminal and civil matters for the Illinois, Poste Saint Vincenne, the Detroit, Missilimakinac and Gaspé has been already pointed out, and the appointment of a Superintendent at each of those posts is all that is further necessary for their civil concerns; but it will be highly proper that the limits of each of those posts and of every other in the interior country should be fixed and ascertained, and that no settlement be allowed beyond those limits, seeing that such settlements must have the consequence to disgust the savages, to excite

their enmity, and at length totally destroy the peltry trade, which ought to be cherished and encouraged by every means in your power.

52. It is Our Royal Intention that the Peltry trade of the interior country should be free and open to all our subjects, inhabitants of any of Our colonies, who shall, pursuant to what was directed by Our Royal Proclamation of 1763, obtain Licenses from the Governors of any of Our said Colonies for that purpose, under penalties to observe such regulations as shall be made by Our Legislature of Quebec for that purpose; these Regulations, therefore when established, must be made public throughout all Our American possessions, and they must have for their object the giving every possible facility to that trade which the nature of it will admit, and as may consist with fair and just dealing towards the savages with whom it is carried on: The fixing stated times and places for carrying on the trade, and adjusting modes of settling tariffs of the prices of goods and furs, and above all the restraining the sale of spirituous liquors to the Indians, will be the most probable and effectual means of answering the ends proposed: these and a variety of other regulations, incident to the nature and purpose of the Peltry trade in the interior country, are fully stated in a plan proposed by Our Commissioners for Trade and Plantations in 1764, a copy of which is hereunto annexed, and which will serve as a guide in a variety of cases in which it may be necessary to make provision by law for that important branch of the American Commerce.

56. And whereas We are desirous that a proper Provision should be made for the Support of Our Government within Our said Province of Quebec, We do therefore hereby declare it to be Our Royal Intention, that the following Annual Salaries and Allowances be discharged and paid out of any Revenues arising to Us within the same, or out of such other moneys as shall be granted or appropriated to the uses and services of Our said Province of Quebec, (that is to say:)

To the Governor, <i>per Annum</i>	£2,000
To the Lieut-Governor	600
To the Chief Justice	1,200
To Six Judges of Common Pleas, at £500 each	3,000
To the Attorney-General	300
To the Clerk of the Crown and Pleas	100
To Two Sheriffs, at £100 each	200
To the Secretary and Registrar	400
To the Clerk of the Council	100
To the Surveyor of Lands	300
To the Surveyor of Woods	200
To the Commissary for Indians	300
To the Captain of the Port	100
To the Naval Officer	100
To the Receiver-General of the Revenues	400
To Twenty-three Councillors, at £100 each	2,300
To the Lieut-Governors or Superintendents at the	
40 Illinois	} at £200 each
Poste St. Vincenne	
Detroit	
Missilimakinac	
Caspi	
To One Judge of the Inferior Courts of King's Bench and Common Pleas, at each of the above	
Five Posts, at £100 each Judge	500
To an Assistant or Assessor at each Post at £50 <i>per annum</i>	250
To a Sheriff for each District, at £20 <i>per annum</i>	100
To a Grandvoyer	200
50 To a French Secretary	200
To Four Ministers of the Protestant Church, at £200 <i>per annum</i> each	800
To Two Schoolmasters, at £100 <i>per annum</i> each	200

JOINT APPENDIX.
 Sec. V.
Imperial Statutes and Acts of State bearing on the question of the Boundaries.
 Royal Instructions to Governor-General Carleton, 1775.

<p>JOINT APPENDIX. Sec. V. <i>Imperial Statutes and Acts of State bearing on the question of the Boundaries.</i> Royal Instructions to Governor-General Carleton, 1775.</p>	<p>To an Allowance to the Person licensed to Superintend the Romish Church.....</p> <p>To Pensions to the Officers of a Corps of Canadians employed in the last War, and discharged without any Allowance, as follows, viz.:—</p> <p>To Monsieur Rigauville, the Commandant of said Corps.....</p> <p>To Five Captains, at £100 each</p> <p>To Ten Lieutenants, at £50 each.....</p> <p>To the Commandant of the Savages</p> <p>To the Annual Contingent Expenses</p>	<p>200</p> <p>.....</p> <p>200</p> <p>500</p> <p>500</p> <p>100</p> <p>1,000</p> <hr/> <p>£17,350</p>
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All which Salaries and Allowances are to commence on, and be payable from and after the First Day of May next ensuing.

BOUNDARY DESCRIPTIONS—IMPERIAL COMMISSIONS TO LIEUTENANT-GOVERNORS OF THE INTERIOR POSTS OF QUEBEC, 1775.

17TH APRIL, 1775.

EDWARD ABBOTT, ESQUIRE,—*Lieutenant-Governor and Superintendent of St. Vincenne.**

Imperial Commissions to Lieut.-Governors of Interior Posts of Quebec, 1775.

GEORGE THE THIRD, by the Grace of God, of Great Britain, France and Ireland, King, Defender of the Faith, etc.

To our trusty and well-beloved Edward Abbott, Esquire, greeting :

We, reposing especial trust and confidence in your loyalty, integrity and ability, do, by these presents, constitute you and appoint you to be Lieutenant-Governor and Superintendent of the Post established upon the River Wabache, heretofore called St. Vincenne, in our Province of Quebec, in America, to have, hold, exercise and enjoy the same from and after the first day of May next, during our pleasure, with all the rights, privileges, profits and perquisites to the same belonging or appertaining and you are to obey such orders and directions as you shall from time to time receive from our Captain-General and Governor-in-Chief of our Province of Quebec, or from the Lieutenant-Governor or Commander-in-Chief of our said Province for the time being.

Given at Our Court at St. James's, the seventh day of April, 1775, in the fifteenth year of Our Reign.

By His Majesty's command,

DARTMOUTH. 30

7TH APRIL, 1775.

HENRY HAMILTON, ESQUIRE,—*Lieutenant-Governor and Superintendent at the Detroit.**

GEORGE THE THIRD, ETC.

To our trusty and well-beloved Henry Hamilton, Esquire, greeting :

We, reposing especial trust and confidence in your loyalty, integrity and ability, do, by these presents, constitute and appoint you to be Lieutenant-Governor and Superintendent of the Post situate between the Lakes Huron and Erie, heretofore called the Detroit, in our Province of Quebec, in America. To have, hold, exercise and enjoy the same, from and after the 1st day of May next, during our pleasure, with all the rights, privileges, profits, perquisites and advantages to the same belonging or appertaining; and you are to obey such orders and directions as you shall, from time to time, receive from our Captain-

* Colonial Office Records—Book "Grants and Warrants," from 1st Jan., 1773, to 7th Aug., 1777, Vol. I.

General and Governor-in-Chief of our Province of Quebec, or from the Lieutenant-Governor or Commander-in-Chief of our said Province for the time being.

Given at Our Court at St. James's, the seventh day of April, 1775, in the fifteenth year of Our Reign.

By His Majesty's command,

DARTMOUTH.

7TH APRIL, 1775.

PATRICK SINCLAIR, ESQUIRE—*Lieutenant-Governor and Superintendent at Missilimackinac.**

10 GEORGE THE THIRD, by the Grace of God, King of Great Britain, France and Ireland, Defender of the Faith, etc.

To our trusty and well-beloved Patrick Sinclair, Esquire, greeting :

We, reposing especial trust and confidence in your loyalty, integrity and ability, do, by these presents, constitute and appoint you to be Lieutenant-Governor and Superintendent of the post situated between the Lakes Huron and Michigan, heretofore called Missilimackinac, in the Province of Quebec, in America. To have, hold, exercise and enjoy the same, from and after the 1st day of May next, during our pleasure, with all rights, privileges, profits, perquisites and advantages to the same belonging or appertaining; and you are to obey such orders and directions as you shall, from time to time, receive from our Captain General and Governor-in-Chief of our Province of Quebec, or from the Lieutenant-Governor or Commander-in-Chief of our said Province for the time being.

20 Given at Our Court at St. James's, the seventh day of April, 1775, in the fifteenth year of Our Reign.

By His Majesty's command,

DARTMOUTH.

7TH APRIL, 1775.

MATTHEW JOHNSON, ESQUIRE—*Lieutenant-Governor and Superintendent at the Illinois.**

GEORGE THE THIRD, ETC.

To our trusty and well-beloved Matthew Johnson, Esquire, Greeting :—

We, reposing especial trust and confidence in your loyalty, integrity and ability, do, by these presents, constitute and appoint you to be Lieutenant-Governor and Superintendent of the Post and its dependencies established, or to be established, within the Illinois District, in Our Province of Quebec, in America; To have, hold, exercise and enjoy the same, from and after the first day of May next, during our pleasure, with all the rights, privileges, profits, perquisites and advantages to the same belonging or appertaining: And you are to obey such orders and directions as you shall, from time to time receive from Our Captain-General and Governor-in-Chief of Our Province of Quebec, or from the Lieutenant-Governor or Commander-in-Chief of Our said Province for the time being.

Given at Our Court at St. James's, the seventh day of April, 1775, in the fifteenth year of Our Reign.

By His Majesty's command,

DARTMOUTH.

7TH APRIL, 1775.

NICHOLAS COXE, ESQUIRE—*Lieutenant-Governor and Superintendent at Gaspé.**

[In the same terms as the four preceding commissions.]

* Colonial Office Records—Book "Grants and Warrants," from 1st January, 1773, to 7th August, 1777, Vol. I."

JOINT APPENDIX. Sec. V. Imperial Statutes and Acts of State bearing on the question of the boundaries. Imperial Commissions to Lieut.-Governors of Interior Posts of Quebec, 1775.

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APPENDIX.

Sec. V.

*Imperial
Statutes and
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bearing on the
question of the
Boundaries.*Under-Sec.
of State to
Lieut.-Gov-
ernors, 8
April, 1775.THE UNDER-SECRETARY OF STATE TO THE RESPECTIVE LIEUTENANT-GOVERNORS
OF THE INTERIOR POSTS OF QUEBEC, AS TO THEIR APPOINTMENT, 1775.*

WHITEHALL, 8TH APRIL, 1775.

SIR,—I am directed by the Earl of Dartmouth to acquaint you that His Majesty has been graciously pleased to appoint you to be Lieutenant-Governor and Superintendent of the Illinois within the Province of Quebec, with a salary of two hundred pounds per annum, to commence from the first day of May next; and I am to desire that you will forthwith repair to Quebec, where your attendance upon the Governor will be necessary in the arrangements that are to be made for that Post.

I beg leave to congratulate you upon this mark of His Majesty's favour, and am, &c.,

JOHN POWNALL. 10

Matthew Johnson, Esquire.

[A like letter to Nicholas Coxe, Esq., Edward Hamilton, Esq., Patrick Smelair, Esq., Edward Abbott, Esq., Lieutenant-Governors and Superintendents of Gaspé, the Detroit, Missilimakinac and Post St. Vienne, respectively, with the like salary.]

BOUNDARY DESCRIPTION IN IMPERIAL COMMISSION TO GOVERNOR HALDIMAND
OF QUEBEC, 1777.

18TH SEPTEMBER, 1777.

SIR FREDERICK HALDIMAND,—*Captain-General and Governor-in-Chief of the Province of Quebec*†*Imperial
Commission
to Governor
Haldimand,
1777.*

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, 20
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 highlands 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 30
Pennsylvania, in case the same shall be so intersected, and from thence along the said northern and western boundaries of the said Province, until the said western boundary strikes the Ohio; but in case the said bank of the said lake shall not be found to be 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 Mississippi, and northward along the eastern bank of the said river to the southern boundary of the territory granted to the Merchants 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 40
part of the Government of Newfoundland as aforesaid, together with all the rights, members and appurtenances whatsoever thereunto belonging.

* Colonial Office Records—Book marked "Quebec, 6th March, 1768, to 5th April, 1787, Vol. 1."
† Lib. B. (2), Imperial Commissions, Fol. 24.

CASE OF M. DE ROCHEBLAVE, COMMANDANT OF THE ILLINOIS, 1785.

MINUTES OF THE COUNCIL OF STATE FOR THE PROVINCE OF QUEBEC, 23rd May, 1785.*

On Monday, the 23rd May, 1785, at the council chamber in the Bishop's Palace :

Present,

The Honourable Henry Hamilton, Esq., Lieutenant-Governor and Commander-in-Chief.

Hugh Finlay, Thomas Dunn, Edward Harrison, John Collins, Adam Mabaue, George Pownal, J. G. C. DeLery, Henry Caldwell, Francis Baby, and Samuel Holland, Esqrs.

Mr. Finlay, chairman of the committee on the Public Accounts of the Province, presented a further Report, which was read together with the former Report.

Mr. Mabane read, and delivered to be entered on the minutes, the following paper, viz :

"I observe in the Acting Receiver-General's account current, an article of the 3rd March, 1785, viz. :

"To Philip De Rocheblave, Esq., for his salary as commandant of the Illinois from the 13th of January, 1784, to the 15th January, 1785, pursuant to Lieutenant-Governor Hamilton's warrant, dated 2nd March, 1785..... £200.

"To this article I cannot assent, as it is unprecedented, and as it introduces a new appointment upon the Civil Establishment of the Province, and the more especially as His Excellency Governor Haldimand declined issuing warrants for the six months ending 1st of November, 1784, for the salaries of Lieutenant-Governors Abbot and Johnson, though commissioned by the King, as St. Vincent and the Illinois were without the limits assigned to the Province by the definitive Treaty, and not occupied by the King's troops or subjects.

"A. MABANE."

LIEUTENANT-GOVERNOR HAMILTON, OF QUEBEC, TO LORD SYDNEY, SECRETARY OF STATE.*

QUEBEC, 9th June, 1785.

MY LORD,—Having on the 23rd day of May laid before His Majesty's Council of State for this Province the public accounts for their approbation and consent agreeable to His Majesty's additional instruction, and objection having been made to the payment of the appointments formerly allowed and paid to Phillip Rocheblave, Esq., as will appear from the minutes, I think myself called upon to state as fully as possible that gentleman's actual situation, his pretensions, and the grounds on which I humbly presume to solicit His Majesty's most gracious favour in behalf of a person, from absence unable to vindicate his character, or reclaim His Majesty's bounty, of which his numerous family so greatly stand in need.

In displaying the following facts as far as come within my own knowledge, I but do my duty to a meritorious person to whose sufferings I have been in part an eye witness, and of whose zeal for His Majesty's service, Sir Guy Carleton's letters accompanying this will be the most satisfactory proofs.

Mr. Rocheblave having been honoured with Sir Guy Carleton's commands after the recall of Captain Lord of the Royal Irish, who had the command of two companies at Kaskaskias, was left without defence. Being attacked by a party of the rebels in the night, he was carried off from his wife and family, thrown into a sty, and treated with every severity and indignity, till at length he was marched to Williamsburg in Virginia, where being at a distance from all means of relief, he was hard pressed by his necessities, the rebels having sold or pillaged his stock and effects, and left Mrs. Rocheblave to the precarious support of the charitably disposed people at the Illinois. This happened in the year 1778.

In the year 1780 he effected his escape from Williamsburg to the eastern shore of the Bay of Chesapeake, from whence he proceeded in an open boat to New York. In what manner Mr. Rocheblave

* Public Record Office—Colonial Office Records, America and West Indies, Canada, 1785, No. 519.

Join-
APPENDIX.

Sec. V.

Imperial
Statutes and
Acts of State
bearing on the
question of the
Boundaries.

Case of M.
Rocheblave,
Commandant
of the Illinois,
1785.

Min. of Coun-
cil, 23 May,
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Lieut.-Gov. of
Quebec, to
Sec. of State,
9 June, 1785.

GOVERNORS
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Imperial
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bearing on the
question of the
Boundaries.Case of M.
Rocheblave,
Commandant
of the Illinois
1775.

made his way to Canada I know not, but at New York Sir Henry Clinton honoured my drafts upon the Commander-in-Chief in Canada, and I continued to pay him his appointments of £200 per annum as allowed by Sir Guy Carleton.

I have always understood that honours or emoluments granted by the King can only be resumed by him or forfeited by the crimes or misdemeanours of the grantee. Major Matthew Johnston, to my particular knowledge, received his salary as Lieutenant-Governor of the Illinois while residing in London, and enjoying a post about the Court—this for several years.

General Haldimand had ordered payment of his appointments to Mr. Rocheblave, and I cannot find that any conduct of Mr. Rocheblave has given room to a retrenchment of his appointments, the accounts in which they are included, having passed the Treasury repeatedly. 10

I have the honour to submit most humbly the above in a perfect reliance on your Lordship's impartiality, and beg leave to subscribe myself

Your Lordship's

Most obedient and most humble servant,

HENRY HAMILTON.

Right Honourable Lord Sydney,
Secretary of State, etc., etc., etc.

IMPERIAL ORDER IN COUNCIL, 7TH APRIL, 1786,

APPROVING OF THE DRAFT COMMISSION TO GOVERNOR CARLETON OF QUEBEC.*

AT THE COURT AT ST. JAMES'S, 20
the 7th of April, 1786.

Present—The King's Most Excellent Majesty, Lord President, Lord Privy Seal, Marquis of Carmarthen, Viscount Howe, Lord Sydney, Sir George Yonge.

Imperial
Order-in-
Council, 7th
April, 1786.

Whereas there was this day read at the Board a report from the Right Honourable the Lords of the Committee of Council, appointed for the consideration of all matters relating to Trade and Foreign Plantations, dated the 6th of this instant, in the words following, viz.:

"Your Majesty having been pleased by your Order in Council, of the 13th January last, to refer unto this Committee a letter from the Right Honourable Lord Sydney, one of Your Majesty's principal Secretaries of State, to the Lord President of the Council, in the words following, viz.:

"My Lord,—His Majesty having been graciously pleased to appoint Sir Guy Carleton, Knight of the Order of the Bath, to be Captain-General and Governor-in-Chief of the Province of Quebec, in America, and also to be Captain-General and Governor-in-Chief of the Provinces of Nova Scotia (including therein the Islands of St. John and Cape Breton) and of New Brunswick, I must request your Lordship will lay before His Majesty in Council, for His Royal approbation, the several draughts of the Commission to be given to Sir Guy Carleton upon this occasion, and which I have the honour to transmit. 30

"I must beg leave to observe to your Lordship that the Commissions for the Provinces of Nova Scotia and New Brunswick are in every respect similar to those under which the present Governors of those Provinces now act; but as it may happen in case of the death, removal, or absence of a Lieutenant Governor, when the administration of Government would, by the power of the Commissions, 40 devolve upon the eldest councillor, that such a succession may not appear to be for the good of His Majesty's service. It is judged expedient that in such an event the Governor may be authorized to appoint any member of the Council he may think most fit to be Lieutenant-Governor until His Majesty's pleasure therein shall be known. I therefore transmit your Lordship clauses proposed to be inscribed for that purpose in the Commissions for these provinces, as well as in that for Quebec, if they shall be approved by His Majesty in Council.

* From Privy Council Register.

"Exclusive of the addition above proposed in the Commission for Quebec, it was necessary to describe and ascertain the boundaries of that Province, as settled by the Treaty with the United States of America; And also to direct that no leases of the trading posts should in future be made or granted to any persons whatsoever, until His Majesty's pleasure in that respect should be signified: These are the only particulars in which it differs from the Commission given to the late Governor Sir Frederik Haldimand."

"The Lords of the Committee in obedience to Your Majesty's said Order of reference have taken the said letter from the Right Honourable Lord Sydney, together with the said Draughts of Commissions, into their consideration, as also the Clause proposed to be inserted in each of the said Commissions, giving authority to Your Majesty's Governor in case of the death, absence or removal of the Lieutenant-Governor of either of the said Provinces, to appoint any member of the Council for the said Province, to be Lieutenant-Governor thereof until Your Majesty's pleasure be known; And the Committee having received the opinion of Your Majesty's Attorney and Solicitor-General, that there was not any legal objection to the said Draughts of Commissions, but that Your Majesty's Governor cannot legally exercise the authority intended to be given him by the above recited clause, during his residence in another province; the Committee thereupon thought it expedient further to consult Your Majesty's Attorney and Solicitor-General whether Your Majesty could, by your Commission, give to the Governor of any of Your Majesty's Provinces, even during their residence in the said Province, a power of appointing Lieutenant-Governors in case of a vacancy, upon which question Your Majesty's Attorney and Solicitor-General have reported to this Committee "that if it shall be deemed necessary to vest so great a power in Sir Guy Carleton, Your Majesty may by your Letters Patent authorize the said Sir Guy Carleton, in case of the death, absence or removal of any of the Lieutenant-Governors, to appoint or nominate by a Commission under the great seal of the Province where such vacancy shall happen, any member of the Council of the said Province whom he shall judge most proper and fitting to be Lieutenant-Governor thereof, until Your Majesty's pleasure shall be known; And that in the year 1714 the same powers were granted to Robert Hunter, Esquire, who was appointed Governor of New York, and likewise by separate Letters Patent of the same date, Governor of New Jersey."

"Upon full consideration, therefore, of the whole matter, this Committee concurring in opinion with Your Majesty's Attorney and Solicitor-General, have altered the proposed clause giving authority to Your Majesty's Governor to nominate or appoint a Lieutenant-Governor in case of a vacancy, so as to make the same conformable to the above opinion, and do agree humbly to lay the said Draughts of Commissions, with the said clause so altered before Your Majesty for Your Royal approbation."

His Majesty having taken the said Report into consideration was pleased, with the advice of His Privy Council, to approve thereof, as also of the said Draughts of Commissions, and the clause proposed to be inserted in each of the said Draughts, and to order as it is hereby ordered, that the Right Honourable Lord Sydney, one of His Majesty's principal Secretaries of State, do cause the said clause to be inserted in each of the said Commissions; and that His Lordship do also cause Warrants to be prepared for passing Commissions agreeable to the said Draughts (which are hereunto annexed) under the Great Seal of Great Britain.

40 BOUNDARY DESCRIPTION IN IMPERIAL COMMISSION TO GOVERNOR CARLETON OF QUEBEC, AFTER THE TREATY OF PEACE WITH THE UNITED STATES, 1786.

22ND APRIL, 1786.

SIR GUY CARLETON, K. B. [afterwards Lord Dorchester]—*Captain-General and Governor-in-Chief of the Province of Quebec.*‡

And further know ye that we, reposing especial trust and confidence in the prudence, courage and loyalty of you, the said Sir Guy Carleton, of our especial grace, certain knowledge and mere motion, have thought fit to appoint you, the said Sir 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

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Imperial Statutes and Acts of State bearing on the question of the Boundaries.

Imperial Order-in-Council, 7th April, 1786.

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*Imperial
Commission
to Governor
Carleton,
1786.*

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 Saint Lawrence from those which fall into the Atlantic Ocean. to the north-westmost head of the Connecticut River; thence down along the middle of that river to the forty-fifth degree of north latitude; from thence by a line due west on said latitude until it strikes the River Iroquois or Cataragui; thence along the middle of the said river into Lake Ontario; through the middle of said lake until it strikes the communication by water between that lake and Lake Erie; through the middle of said lake until it arrives at the water communication between that lake and Lake Huron; thence along the middle of said water communication into the Lake Huron; thence through the middle of the said lake to the water communication between that lake and Lake Superior; thence through Lake Superior northward of the Isles Royal and Phillipeaux 10 to the Long Lake; thence through the middle of said Long Lake and the water communication between it and the Lake of the Woods to the said Lake of the Woods; thence through the said lake to the most north-western point thereof, and from thence on a due west course to the River Mississippi; and northward to the southern boundary of the territory granted to the Merchants Adventurers of England trading to Hudson's Bay; and also all such Territories, Islands, and Countries which have, since the tenth of February, one thousand seven hundred and sixty-three, been made part of the government of Newfoundland, together with all the rights, members, and appurtenances whatsoever thereunto belonging.

IMPERIAL ORDER IN COUNCIL, 18TH AUGUST, 1786, APPROVING OF DRAFT
INSTRUCTIONS TO GOVERNOR CARLETON, OF QUEBEC.*

20

AT THE COURT AT ST. JAMES'S,

18th of August, 1786.

PRESENT—The King's Most Excellent Majesty, Archbishop of Canterbury, Earl of Ailesbury. Duke of Chandos, Viscount Galway, Marquis Carmarthen, Lord Sydney, Earl of Salisbury, Mr. Pitt.

*Imperial
Order-in-
Council, 18th
August, 1786.*

WHEREAS, there was this day read at the Board a report from the Right Honourable the Lords of the Committee of Council, appointed for the consideration of all matters relating to trade and foreign plantations, upon Drafts of General Instructions for the Right Honourable Lord Dorchester, Governor of the Province of Quebec and of Nova Scotia, with its dependencies, and of New Brunswick, and upon Drafts of Instructions for a due observance of the laws of trade, and likewise upon the Draft of a particular Instruction to the said Governor, which has become necessary, in regard His Majesty has been 30 pleased to unite the governments of the above provinces in one Governor, and from some particular, circumstances which arise at this juncture in the Province of Quebec, and require distinct instructions His Majesty, taking the said Report and Drafts of Instructions into consideration, was pleased, with the advice of His Privy Council, to approve of the said several drafts of instructions, and to order as it is hereby ordered, that the Right Honourable Lord Sydney, one of His Majesty's principal Secretaries of State, do cause the said drafts of Instructions (which are hereunto annexed) to be prepared for His Majesty's royal signature.

[Search has been made for the particular and distinct Instructions referred to in the above Order but without success.]

OFFICIAL CORRESPONDENCE RELATING TO THE PROPOSED BOUNDARIES OF UPPER 40
CANADA, 1789-1791.†

THE RIGHT HONOURABLE W. W. GRENVILLE TO GOVERNOR LORD DORCHESTER.

WHITEHALL, 20th October, 1789.

*Official Cor-
respondence
as to the
proposed
boundaries of
Upper Can-
ada, 1789-
1791:*

*Mr. Grenville
to Lord
Dorchester,
20th October,
1789.*

MY LORD,—It having been determined to bring under the consideration of Parliament early in the next Session, the propriety of making further provision for the good government of the Province of Quebec, I enclose to your Lordship the draught of a Bill prepared for this purpose.

With respect to the intended Boundaries of these Provinces a blank is left in the Bill in order that your Lordship may, with the assistance of the Surveyor General, who is now in Quebec, consider

* From Privy Council Register.

† Public Record Office—Colonial Correspondence, Canada (Quebec), 1789, No. 42.

of such a description of those Boundaries as may be sufficiently intelligible and certain, so as to leave no room for future difficulties on that subject. The division between the two Provinces is meant to be the same as is mentioned to your Lordship in Lord Sydney's letter of 3rd September, 1788, with the alteration suggested by your Lordship in your letter of the 8th November following.

There will, however, be a considerable difficulty in the mode of describing the Boundary between the District of Upper Canada and the Territories of the United States, as the adhering to the line mentioned in the Treaty with America would exclude the Posts which are still in His Majesty's possession, and which the infraction of the Treaty on the part of America has induced His Majesty to retain, while on the other hand, the including them by express words within the limits to be established for the Province by an Act of the British Parliament would probably excite a considerable degree of resentment among the inhabitants of the United States, and might, perhaps, provoke them to measures detrimental to our commercial interests.

Possibly the best solution for this difficulty might be to describe the Upper District by some general words, such as "All the territories &c. &c. &c., possessed by, and subject to His Majesty, and being to the West or Southwest of the Boundary Line of Lower Canada, except such as are included within the present Boundaries of the Government of New Brunswick."

I am, etc.,
W. W. GRENVILLE.

LORD DORCHESTER TO MR. GRENVILLE.*

QUEBEC, 8th February, 1790.

SIR,

I received the triplicate of your despatch No. 2, on the 20th of last month, and avail myself, of the first opportunity to submit to His Majesty's Ministers such observations on the proposed Bill, as occur to me in the moment.

The inclosed draught comprehends the corresponding alterations engrafted upon the Bill transmitted in your letter.

The attainment of a free course of Justice throughout every part of His Majesty's possessions, in the way least likely to give umbrage to the United States appears to me very desirable. For this reason the Boundaries of the two proposed Provinces are described by a precise partition line only of the country of Canada, with the addition of such general words, as I hoped might include the Territories subject to, or possessed by, His Majesty, to the southward of the forty-fifth degree of north latitude on the side of Lake Champlain, as well as on the side of Oswego, Niagara, Detroit, and Michilimakinac, corresponding as nearly as could be, with the idea expressed in your letter.

But upon consulting the Chief Justice relative to the operation of this description of the Boundary I find that he does not think it will answer the desired end. * * *

I inclose a copy of a letter from the Chief Justice, with some additional clauses, upon this subject prepared by him at my request, together with his draught of another proposed addition to the Bill to provide for the trial of foreign treason and murder, as also a copy of his letter respecting the operation of the Boundary, as described in the Bill, with his idea of the addition necessary to give free scope to our Courts of Justice. The clause above referred to under the letter B. was also prepared by him at my request.

I am with much respect and esteem, Sir,

Your most obedient, and most humble servant

DORCHESTER.

PROPOSED DESCRIPTION OF THE BOUNDARIES OF UPPER AND LOWER CANADA, PREPARED AT THE REQUEST OF LORD DORCHESTER,

(Enclosed in the foregoing Despatch.)

I. May it therefore please your most excellent Majesty that it may be enacted, and be it enacted, by the King's most excellent Majesty, by and with the advice and consent of the Lords

* Public Record Office—Colonial office Records, America and West Indies, Canada, 1790, No. 524.

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Imperial Statutes and Acts of State bearing on the question of the Boundaries.

Official Correspondence as to the proposed Boundaries of Upper Canada, 1789-1791:

Mr. Grenville to Lord Dorchester, 20th October, 1789.

Lord Dorchester to Mr. Grenville, 8th February, 1790.

Proposed description of the Boundaries.

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spiritual, and temporal, and Commons in this present Parliament assembled, and by the authority of the same. * * *

2. And be it also enacted by the authority aforesaid, that the country of Canada shall be, and the same is hereby, divided into two Provinces, to be called the Province of Upper Canada, and the Province of Lower Canada, which Provinces shall be separated by a partition line of various courses, running due south from a stone boundary fixed on the north bank of the Lake Saint Francis in a cove of the River of Saint Lawrence, west of point au Boudet, in the limit between the township of Lancaster and the Seignory of New Longueuil to the southernmost extent of His Majesty's Dominions, and running in a northerly direction from the aforesaid Stone boundary along the western or inland boundary of the said Seignory of New Longueuil and of the Seignory of Vaudreuil, according to 10 their various courses, until it strikes the Uttawas River, thence in a direct line to the nearest point in the centre of the navigable channel of the said river, thence ascending the middle of the navigable channel of the said River to the Lake Temiscaming, thence through the middle of the said Lake to the most northerly extremity thereof, and thence running due north to the Boundary of the Territory granted to the Merchants Adventurers of England trading to Hudson's Bay. The Province of Upper Canada to comprehend all the Territories, Land, and Countries which are now subject to, or possessed by His Majesty, to the westward and southward of the said partition line; and the Province of Lower Canada to comprehend all the Territories, Lands, and Countries which are now subject to, or possessed by His Majesty, to the eastward of the said partition line, and to the southward of the Southern Boundary of the said Territories granted to the Merchants Adventurers 20 of England trading to Hudson's Bay, being no part of the Government of Newfoundland or any other of His Majesty's Provinces in North America at the time of passing this Act.

CHIEF JUSTICE SMITH TO LORD DORCHESTER.

(Enclosed in the above Despatch of Lord Dorchester.)

QUEBEC, 6th February, 1790.

MY LORD,

Chief Justice
Smith to
Lord Dor-
chester, 6th
February,
1790.

I suppose it is intended, that Upper and Lower Canada shall divide between them, what remains of His Majesty's Dominions in this quarter of North America, and is not part of Newfoundland, nor of other British Provinces, and shall include portions, at least for a time of what was ceded to the United States. 30

Care is to be had therefore not to estopp ourselves in our claims against Spain, south and west. Beyond the Mississippi the United States have no claim; but His Majesty has the double title to be argued from the old grants of the English Colonies to the South Sea, and the conquest of New France, and I have learnt, that there is a Canada Grant for Lands on the Missouri. There is a use therefore in that part of your Lordship's description of the new Provinces, which supposes the Province of Quebec to be not the whole, but a *Parcel* of Canada.

The retention of the first clause of Mr. Grenville's Bill to repeal the Boundaries in the Quebec Act of 1774 will make it necessary to adopt the words of that Act, so far as to give certainty to the limits of Lower Canada on the side of the sea, and Newfoundland.

It will be very difficult to frame any clause to continue our dominion over the lines of the late 40 cession, that will not be complained of by the neighbouring States, and the words proposed of "subject to and possessed by, etc.," will not free the new provinces from an uncertain boundary, embarrassing both to their Legislatures and their Courts.

The difficulty will remain as to any territory, of which we have not a *Pedis positio*, by Fort, Post or settlement, at the passing of the Act; and supposing that so much *southing* is to be our extent in the part possessed, what shall be the eastern and western breadths *from the possessed spots*, as at Oswego, Niagara, Detroit, and Point au Fer; which are not to have one line of latitude to include whatever is on the north side of that, which shall be most south.

If to your Lordship's description, there be an addition, importing, that by Canada is meant whatever the French claimed as New France, until His Majesty shall otherwise declare by Proclamation, the Boundaries of the new Provinces will be what the wisdom of the Crown shall see expedient, without waiting for the intervention of Parliament, and the Colony Legislatures and Courts be unembarrassed; the French Government having made grants down to the south end of Lake George, and, asserting a dominion all round the Inland Great Lakes. A clause to this effect is inclosed and submitted to your Lordship's pleasure.

All this is upon the supposition, that it is *necessary* to parcel out His Majesty's Dominions by *Act of Parliament*. If not, then Mr. Grenville's first clause for the Repeal will stand unaltered, 10 and the two provinces take such limits, as the Royal Commissions to their Governors shall assign, Before these will create alarm to our neighbours the provinces may be organized, and the instructions accompanying the commissions, and from time to time issuable according to His Majesty's wisdom and pleasure will be equal to the exigencies of the day.

I have the honour to be, my Lord,

Your Lordship's most obedient, humble servant,

Right Hon. Lord Dorchester.

WM. SMITH.

PROPOSED ADDITIONAL DESCRIPTION OF THE BOUNDARIES OF UPPER AND LOWER CANADA.

(*Referred to in the above Despatch of Lord Dorchester.*)

And the country of Canada hereinbefore mentioned shall be deemed and adjudged to include all 20 the Dominions of New France, as claimed by the French Crown before the conquest, until His Majesty shall otherwise declare by an Instrument to be issued with the advice of His Privy Council under the Great Seal of Great Britain.

MR. GRENVILLE TO LORD DORCHESTER.*

WHITEHALL, 5th June, 1790.

My LORD,—Your Lordship's despatch, No. 15, was not received here till the 18th of April. The session of Parliament was then so far advanced that it was not thought proper to bring forward at that time the proposed bill for regulating the Government of Quebec, especially as several of the observations stated by your Lordship on the subject were of a nature to require previous consideration, and as it then appeared probable that I might receive from your Lordship any further suggestions which might 30 occur on a fuller examination of the plan, and that I might perhaps be able to avail myself of your Lordship's personal assistance in t' course of the summer.

The discussions which have arisen with Spain, having induced His Majesty to direct me to state to your Lordship the necessity of your continuing for the present in Quebec, and it being uncertain whether even in the supposition of an amicable adjustment of that business, it could be terminated soon enough to allow of my transmitting to your Lordship this season His Majesty's permission to return to England, I have thought it right to state to your Lordship in this manner some particulars which have occurred to me on the subject of your Lordship's despatch above mentioned, and its enclosures. There will certainly be considerable difficulty in any mode of describing the boundaries of Upper Canada, till some precise adjustment is made with the United States relative to those points in which 40 the Treaty of 1783 has not been carried into execution by the contracting parties. The subject is now under the consideration of Government, and it is not improbable that some person may be sent from this country with powers to settle those points. But if such settlement shall not have taken place previous to the time of bringing forward the Quebec Bill in the next session of Parliament; I am inclined to believe the most advisable mode of avoiding the difficulty in question, will be that of leaving the boundaries to be fixed by His Majesty. This would enable the King to provide for the point to which the Clause B inclosed in your Lordship's despatch relates. If any other mode should be adopted the object of that clause will be attended to.

* Colonial Office Record—Book marked "Quebec, from 2nd June, 1787, to 5th May, 1795, Vol. 2."

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*Imperial
Statutes and
Acts of State
bearing on the
question of the
Boundaries.*

Chief-Justice
Smith to
Lord Dor-
chester, 8th
February,
1790.

Mr. Grenville
to Lord
Dorchester,
5th June,
1790.

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Sec. V.

*Imperial
Statute and
Acts of State
bearing on the
question of the
Boundaries.*Mr. Grenville
to Lord
Dorchester,
5th June,
1790.

Proper attention will be paid to your Lordship's suggestions with respect to the commencement of the Bill, but the intermediate establishment of a separate Government in Upper Canada, according to the form of that created by the present Quebec Act, does not appear advisable.

The formation of a general Legislative Government for all the King's Provinces in America is a point which has been under consideration, but I think it liable to considerable objection. The principle of uniting the Executive Government, has already been acted upon, and is one which I think of material importance to the British interests in America.

The other clauses suggested by the Chief Justice, will be considered by His Majesty's law servants.

I am, &c.,

W. W. GRENVILLE.

10

LORD DORCHESTER.

LORD GRENVILLE TO LORD DORCHESTER.*

WHITEHALL,

7 March, 1791.

Lord Gren-
ville to Lord
Dorchester,
5th March,
1791.

MY LORD,—I have the honour to inclose to your Lordship a copy of His Majesty's most gracious message to both Houses of Parliament on the subject of the proposed division and new constitution of the Province of Canada.

This message was presented by Mr. Pitt to the House of Commons on 25th of last month; and being taken into consideration on Friday, the 4th instant, Mr. Pitt then moved for leave to bring in a Bill to repeal certain parts of the Quebec Act of 1774, and to make further provision for the government of that Province.

The Bill will be presented in the course of the present week, and I have herewith the honour of transmitting to your Lordship a copy of the Bill in its present state.

I am, etc.,

GRENVILLE.

The Right Honourable
Lord Dorchester.MR. LYMBURNER, AGENT IN LONDON OF THE BRITISH INHABITANTS OF QUEBEC, TO LORD GRENVILLE.†
MY LORD,Mr. Lym-
burner to
Lord Gren-
ville, 5th
April, 1791.

I am sorry to find that other business has deprived me of the honour of seeing your Lordship to-day, as the report of the Quebec Bill is appointed by the House to be received this evening.

Though I am satisfied that your Lordship is fully sensible of the importance of the object of that Bill yet I wish to impress on your Lordship the propriety of some further consideration before the report of the committee is received, or any debate has ensued thereon.

If the division of the Province is resolved on, which is an operation that I consider will materially injure the Province—that it will involve the people of the whole country in difficulties, and at same time must be injurious to the interests of Great Britain, I apprehend there may be more difficulty about the division than is expected from the complexion of the Bill. This it is scarcely possible to state to your Lordship without laying certain papers before your Lordship, which from accident time will not now permit. If the report is deferred to-night I will attend your Lordship any day that may suit your Lordship's convenience.

I have the honour to be,

5th April, 1791,
2 o'clock.

Your Lordship's most obedient and most humble Servant,

The Right Hon. Lord Grenville.

ADAM LYMBURNER,

*Colonial Office Record—Book marked "Quebec, from 2 June, 1787, to 5 May, 1795, Vol. 2."
† Public Record Office—Colonial Correspondence, Canada, (Quebec), 1790 to 1800, No. 57.

IMPERIAL ACT 31 GEO. III, CAP. 31, (1791).—THE CONSTITUTIONAL ACT.

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Force of Statute Acts of Great Britain bearing on the question of the Boundaries.

AN ACT TO REPEAL CERTAIN PARTS OF AN ACT PASSED IN THE FOURTEENTH YEAR OF HIS MAJESTY'S REIGN, ENTITLED, AN ACT FOR MAKING MORE EFFECTUAL PROVISION FOR THE GOVERNMENT OF THE PROVINCE OF QUEBEC, IN NORTH AMERICA; AND TO MAKE FURTHER PROVISION FOR THE GOVERNMENT OF THE SAID PROVINCE.

WHEREAS an Act was passed in the fourteenth year of the reign of His present Majesty, entitled "An Act for making more effectual provision for the government of the Province of Quebec, in North America;" and whereas the said Act is in many respects inapplicable to the present condition and circumstances of the said Province; and whereas it is expedient and necessary that further provision should now be made for the good government and prosperity thereof; may it therefore please your most excellent Majesty that it may be enacted, and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that so much of the said Act as in any manner relates to the appointment of a Council for the affairs of the said Province of Quebec, or to the powers given by the said Act to the said Council, or to the major part of them, to make ordinances for the peace, welfare and good government of the said Province, with the consent of His Majesty's Governor, Lieutenant-Governor, or Commander-in-Chief for the time being, shall be and the same is hereby repealed.

Imperial Act, 31 Geo. III, Cap. 31, 1791.

II. And whereas 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, to be called the Province of Upper Canada, and the Province of Lower Canada; be it enacted by the authority aforesaid, that there shall be within each of the said Provinces respectively, a Legislative Council, and an Assembly, to be severally composed and constituted in the manner hereinafter described; and that in each of the said Provinces respectively, His Majesty, His heirs or successors, shall have power during the continuance of this Act, by and with the advice and consent of the Legislative Council and Assembly of such Provinces respectively, to make laws for the peace, welfare, and good government thereof, such laws not being repugnant to this Act; and that all such laws being passed by the Legislative Council and Assembly of either of the said Provinces respectively, and assented to by His Majesty, His heirs or successors, or assented to in His Majesty's name, by such person as His Majesty, His heirs or successors, shall from time to time appoint to be the Governor, or Lieutenant-Governor of such Province, or by such person as His Majesty, His heirs and successors, shall from time to time appoint to administer the government within the same, shall be, and the same are hereby declared to be, by virtue of and under the authority of this Act, valid and binding to all intents and purposes whatever, within the Province in which the same shall have been so passed.

[The other sections omitted as not affecting the question.]

PAPER PRESENTED TO PARLIAMENT, CONTAINING THE PROPOSED DESCRIPTION OF THE LINE OF DIVISION BETWEEN THE PROVINCES OF UPPER AND LOWER CANADA, 1791.

(1.)

[The following is the Copy of the Paper in question, as furnished by the Public Record Office, London, and set out in official documents.]

To commence at a stone boundary on the north bank of the Lake St. Francis, at the Cove west of Point au Baudet, in the limit between the Township of Lancaster and the Seigneurie of New Lougueuil, running along the said limit in the direction of north thirty-four degrees West, to the westernmost angle of the said Seigneurie of New Lougueuil, thence along the north-western boundary of the Seigneurie of

Proposed line of Division between Upper and Lower Canada, 1791.

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of Division
between
Upper and
Lower Can-
ada, 1791.*

Vaudreuil, running north twenty-five degrees East, until it strikes the Ottawas River, to ascend the said River into the Lake Temiscaming, and from the head of the said Lake by a line drawn due north until it strikes the boundary line of Hudson's Bay, including all the territory to the westward and southward of the said line to the utmost extent of the country commonly called or known by the name of Canada.

(2.)

[The following Paper is printed, as No. 46, among "Papers relating to the Province of Quebec," ordered [by the House of Commons] to be printed 21st April, 1791.]

Description of the intended Boundary Line between the Provinces of Upper Canada
and Lower Canada.

The Boundary Line to run due south, from a stone boundary fixed on the north bank of the lake Saint Francis, in a cove of the river Saint Lawrence, west of Pointe-au-Boudet, in the limit between the Township of Lancaster and the Seigniory of New Longueuil, to the southernmost extent of His Majesty's dominions, and in a northerly direction from the aforesaid stone boundary, along the western or inland bounds of the said Seigniory of New Longueuil, and of the Seigniory of Vaudreuil, according to the various courses, until it strikes the Ottawa's River; thence in a direct line to the nearest point in the centre of the navigable channel of the said river; thence, ascending the middle of the navigable channel of the said river, to the Lake Temiscaming; thence, through the middle of the said lake, to the most northerly extremity thereof; and thence, running due north, to the boundary of the territory granted to the Merchants' Adventurers of England trading to Hudson's Bay.

OFFICIAL CORRESPONDENCE AND PAPERS RELATING TO THE PROPOSED BOUNDARIES OF UPPER CANADA, 1791.

MR. LYMBURNER, AGENT IN LONDON OF THE BRITISH INHABITANTS OF QUEBEC, TO THE RIGHT HONOURABLE HENRY DUNDAS.*

SIR,

*Official Cor-
respondence
and Papers
relating to
the proposed
Boundaries of
Upper
Canada,
1791:**Mr. Lym-
burner to Mr.
Dundas, 1st
July, 1791.*

As you were pleased, when I had the honour of waiting on you on Wednesday last, to express a desire for some information on the articles usually exported from the Province of Quebec, for the reimbursement of the advances made by the British merchants for the annual supplies they send there, I take the liberty of enclosing copies of the exports of the years 1787 and 1788, to which I have added valuation which I suppose will be found, on the general scale, very near the truth. I likewise inclose two papers concerning the general affairs of the Province for your consideration, and I request I may be permitted the honour of waiting on you next week, if convenient, on these affairs.

I have the honour to be with respect,

Sir,

Your most obedient and most humble servant,

ADAM LYMBURNER.

No. 157, Fenchurch Street,

1st July 1791.

The Right Honourable Henry Dundas.

(Enclosure in the foregoing Letter)

BOUNDARY LINE OF THE TWO PROVINCES OF UPPER CANADA AND LOWER CANADA.

All the lands within His Majesty's Dominions to the South of the river St. Lawrence or Cataraqui to be within the Province of Lower Canada. And the division of the two provinces on the north side of the said river to begin from a stone boundary fixed on the north bank of the Lake St. Francis, in a cove of the River St. Lawrence, or Cataraqui, west of Point Baudet in the limit

* Public Record Office—Colonial Correspondence, Canada (Quebec), 1790 to 1800, No. 57.

between the township of Lancaster and the Seigneurie of New Longueuil, and to proceed in a northerly direction along the western or inland bounds of the said Seigneurie of New Longueuil and the Seigneurie of Vaudreuil, according to the various channels, until it strikes the Ottawa River, thence in a direct line to the middle of the navigable channel of the said River, thence ascending the middle of the navigable channel of the said river to the Portage of La Gallette, thence by the nearest and most common line of communication to the Lake Nipissing, thence through the middle of the navigable channel of said Lake Nipissing to the middle of the navigable channel at the head of the River des François, thence descending the middle of the navigable channel of the said River des François to the Lake Huron, and from thence by a straight line to the nearest southern boundary of His Majesty's dominions in the middle of the said Lake Huron.

The reason why I propose a deviation in the boundary line between the two provinces from that laid before Parliament, is because the whole trade with the savages in the northern and western parts of the British Territories is carried on from Montreal, and, as far as I can judge of futurity, must continue to be carried on from thence. If the boundary line is carried up as it stands at present, to the Lake Temiscaming, some impediments may be thrown in the way of the trade by the Government of Upper Canada, which may be extremely injurious to it without benefiting them; in case of murder or other crimes being committed in the Indian countries, the traders must bring the culprits to Montreal; but as the line now stands these people could not be tried at that place; but must be sent to Detroit for that purpose, which is nearly 600 miles distance, and when delivered there the criminal courts of that Province will not have the power to summon and command the attendance of the necessary witnesses from Montreal. In cases of account or debt the same difficulties will arise. I do not desire to deprive the Upper Province of any lands or countries which can be supposed advantageous or profitable to their province; but the land to the north of Lake Nipissing, Riviere des François and Lake Huron are not worth cultivating, and from their situation cannot be settled or cultivated for several centuries.

(Enclosure in the foregoing letter.)

OBSERVATIONS ON MATTERS RELATING TO THE TWO NEW PROVINCES.

It is admitted that the prerogative may, by the Act of the 14th of His Majesty, separate from the Province of Quebec those countries or territories which were annexed by that Act to the Province during pleasure. It must at the same time be granted that the prerogative is not authorized by that Act to *alter, change, or divide* the Province of Quebec, *properly so called*. His Majesty, in his message to Parliament, says that it was his intention (*i. e.* desire) to divide the Province of Quebec whenever His Majesty shall be enabled by Act of Parliament; and the whole of the Act of this year proceeds upon the idea that the Province of Quebec *actually would be divided*. But Parliament has not in any part of the new Act given His Majesty any power to divide the Province or to alter it in any manner, or to change the name of the Province of Quebec.

The Province of Quebec was clearly established and fully recognized by the Act of the 14th of His Majesty to be, and consist of, all the lands, countries, and territories comprehended within the lines or bounds marked out and described by the Royal Proclamation of the 7th October, 1763—those countries or lands which were joined to it by the Act of the 14th of His Majesty were not blended with the Province of Quebec and *made an absolute constituent part thereof*—but were only to remain annexed thereto, or dependent thereon, so long as it pleased His Majesty, for a month or a year, in short, during His Majesty's pleasure, that union thereof could only be considered as a temporary expedient until it was convenient to Government to provide a proper establishment for those countries so annexed.

Parliament has by the new Act arranged two Legislatures, and enacted other regulations for two Provinces, which are intended by the Act to be formed out of the Province of Quebec, and are to be called the Province of Upper Canada and the Province of Lower Canada, but Parliament has not settled

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to what part or parts of that country those legislatures and regulations, or either of them, are to extend or be applied. The Act supposes the Province of Quebec is to be divided, but no power is given to make the division, and a Province cannot be done away or annihilated by an *inuendo*, or by *implication*, or by *forced explanation*. The name of the Province of Quebec has not been taken away or annulled, and nothing less than an Act of Parliament, in express and clear terms, can do away with the *existence* of the Province of Quebec.

Official Cor-
respondence
and Papers
relating to
the proposed
boundaries of
Upper Can-
ada, 1791.

As the Prerogative has not the power to divide the Province of Quebec, it cannot be supposed that His Majesty can in any manner alter, or change *the name* of that Province, for the boundaries which were described by the proclamation of 1763, and recognized by the Act of 1774, were for a Province therein particularly mentioned by *name*, but the moment the name is taken away the province so described, and so bounded and called the Province of Quebec, will be *annihilated* and *extinguished*. By the first clause of the Act of the present year, the present legislature of the Province of Quebec is expressly repealed or destroyed. But as the Act has not annulled or destroyed the Province of Quebec, nor has authorized any person for that purpose, neither the new legislature, nor any of the regulations provided by the Act can be applied to that Province or to any part thereof, nor can the name of Upper Canada, or of Lower Canada, be applied or substituted *for that* of the Province of Quebec.

There is no part of the Act of the 14th of His Majesty repealed, except that clause which established a Legislative Council for the affairs of the Province, and that clause is near the end of the Act. Now it is by the first clause of the Act of 1774, and which remains unrepealed, that certain countries were fully established and recognized *under the name* of the Province of Quebec. If therefore it was considered necessary to insert in the new Act *an express clause* to repeal or destroy a part of the form of the civil constitution of the Province, that is the present legislature, it must surely require as much, if not more, *formality* to destroy or annihilate the whole Province. At the same time, it is evident from the Act, that both Upper Canada and Lower Canada should consist or be formed of part or parts of the present Province of Quebec, for it was on the supposition that the Province of Quebec was to be divided, that the establishments for these two new provinces have been enacted; but if the Province of Quebec cannot be divided neither of these two new provinces can be brought into existence.

The legislature and regulations enacted by the new Act for the new province which is to be called Upper Canada, cannot be applied to the countries west of the Province of Quebec, which were annexed thereto by the Act of 1774 during His Majesty's pleasure. These countries are not mentioned in the Act. They do not form any part of the Province of Quebec, they were only annexed to it and made subject to its government while or so long as it should please His Majesty. The legislature and regulations for Upper Canada cannot therefore be construed as applicable to those countries, for that new province is clearly to be formed out of the Province of Quebec; for a similar reason the legislature and regulations enacted for the Province of Lower Canada cannot be applied to the countries now properly called the Province of Quebec, for until *the name* of the Province of Quebec is *constitutionally* taken away and the countries which now form the Province of Quebec are *legally* divided, His Majesty's intentions, as expressed in the royal message to Parliament and as they are recited in the second clause of the new Act, will not be carried into effect, and the two new Provinces of Upper Canada and Lower Canada which His Majesty proposed to form out of the Province of Quebec, and for which the legislatures and regulations enacted in the Act of this year, are intended, cannot be brought into existence. The whole of that country must, therefore, remain as it is for the present. His Majesty may, in consequence of the reservation in the Act of 1774, subtract or take away a part, or the whole of those countries which by that Act were conditionally joined to the Province of Quebec. But those countries when so separated cannot by any construction of the law be understood to form what was intended by the Act of the present year to be the Province of Upper Canada. If these countries were intended to form that upper province the clause should have been very differently worded.

THE RIGHT HONOURABLE HENRY DUNDAS TO THE LORD PRESIDENT. *
(Being the letter referred to in the Imperial Order in Council of 24th August, 1791.)

WHITEHALL, 17th August, 1791.

LORD PRESIDENT,

MY LORD,—An Act having passed in the last Session of Parliament entitled "An Act to repeal certain parts of an Act passed in the Fourteenth year of His Majesty's Reign, intituled an Act for making more effectual provision for the Government of the Province of Quebec in North America, and to make further Provision for the Government of the said Province," and it being provided by the 48th Section of the said Act, that by reason of the distance of the said Provinces from this country, and of the change to be made by this Act in the Government thereof; it may be necessary that there should be some interval or time between the notification of this Act to the said provinces respectively, and the day of its commencement within the said Provinces respectively, it shall and may be lawful for His Majesty with the advice of His Privy Council to fix and declare, or to authorize the Governor or Lieutenant-Governor of the Province of Quebec, or the person administering the Government there, to fix and declare the day of the commencement of the said Act within the said Provinces respectively, provided that such day shall not be later than the 31st December, 1791.

I transmit to your Lordship herewith, by His Majesty's command, a printed copy of the said Act, together with a copy of a paper presented to Parliament previous to the passing of the said Act, describing the line proposed to be drawn for separating the Province of Upper Canada and Province of Lower Canada; and I am to desire that your Lordship will be pleased to lay the same before His Majesty in Council, for His Royal consideration with respect to the fixing and declaring the day of the commencement of the said Act, as well as the Boundaries of the said Provinces respectively.

I have, etc.,

HENRY DUNDAS.

(Enclosure in the preceding letter.)

THE PROPOSED LINE OF DIVISION.

To commence at a stone boundary on the North Bank of the Lake St. Francis at the cove west of Pointe au Boudet in the limit between the Township of Lancaster and the Seigneurie of New Longueuil, running along the said limit in the direction of north, thirty-four degrees West, to the westernmost angle of the said Seigneurie of New Longueuil, thence along the north-western boundary of the Seigneurie of Vaudreuil running north twenty-five degrees East, until it strikes the Ottawas River, to ascend the said River into the Lake Tomisanning, and from the head of the said lake by a line drawn due north until it strikes the boundary line of Hudson's Bay, including all the territory to the westward and southward of the said line to the utmost extent of the country commonly called or known by the name of Canada.

IMPERIAL ORDER IN COUNCIL, 24TH AUGUST, 1791, ESTABLISHING THE PROVINCES OF UPPER AND LOWER CANADA.

[Copy from the Public Record Office, London.]

AT THE COURT OF ST. JAMES, THE 24TH OF AUGUST, 1791.

PRESENT:

The King's most Excellent Majesty in Council.

Whereas there was this day read at the Board a Report from the Right Honourable the Lords of the Committee of Council, dated the 19th of this instant, in the words following, viz.:

- "Your Majesty having been pleased by your Order in Council, bearing date the 17th of this instant, to refer unto this Committee, a letter from the Right Honourable Henry Dundas, one of Your Majesty's Principal Secretaries of State, to the Lord President of the Council, transmitting a printed copy of an Act passed in the last session of Parliament, entitled An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's Reign, entitled an Act for making

* Public Record Office—Colonial Office Records, America and West Indies, Orders in Council 1729 to 1792, No. 119.

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Official Correspondence and Papers on proposed Boundaries of Upper Canada, 1781.

Proposed line of division.

Imperial Order-in-Council, 24th August 1791.

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“ more effectual provision for the Government of the Province of Quebec, in North America, and to
“ make further provision for the Government of the said Province; And also copy of a Paper *
“ presented to Parliament previous to the passing of the said Act, describing the line proposed to be
“ drawn for dividing the Province of Quebec into two separate Provinces, agreeable to your
“ Majesty’s Royal intention, signified by Message to both Houses of Parliament, to be called the
“ Province of Upper Canada and the Province of Lower Canada; and stating that by Section 48 of
“ said Act, it is provided that by reason of the distance of the said Provinces from this country, and of
“ the change to be made by the said Act in the Government thereof, it may be necessary that there
“ should be some interval of time between the notification of the said Act to the said Provinces re-
“ spectively, and the day of its commencement within the said Provinces respectively, 10
“ and that it should be lawful for Your Majesty, with the advice of your Privy Council,
“ to fix and declare, or to authorize the Governor or Lieutenant-Governor of the Province of
“ Quebec, or the person administering the Government there, to fix and declare the day of
“ commencement of the said Act within the said Provinces respectively, provided that such day
“ shall not be later than the thirty-first day of December, one thousand seven hundred and ninety-
“ one:

“ The Lords of the Committee, in obedience to Your Majesty’s said Order of Reference, this
“ day took the said letter into their consideration, together with the Act of Parliament therein
“ referred to, and likewise copy of the said Paper, describing the line proposed to be drawn for
“ separating the Province of Upper Canada and the Province of Lower Canada: And their 20
“ Lordships do thereupon agree humbly to report, as their opinion, to Your Majesty, by Your
“ Order in Council, to divide the Province of Quebec into two distinct Provinces, by separating the
“ Province of Upper Canada and Province of Lower Canada, according to the said line of division
“ described in the said Paper; And the Lords of the Committee are further of opinion that it may
“ be advisable for Your Majesty, by warrant under Your Royal Sign Manual, to authorize the
“ Governor or Lieutenant of the Province of Quebec, or the person administering the Government
“ there, to fix and declare such day for the commencement of the said before-mentioned Act, within
“ the said two Provinces of Upper and Lower Canada respectively, as the said Governor or
“ Lieutenant-Governor of the Province of Quebec, or the person administering the Government
“ there, shall judge most advisable; provided that such day shall not be later than the thirty- 30
“ first day of December in the present year, one thousand seven hundred and ninety-one.”

His Majesty this day took the said Report into His Royal consideration, and approving of what is
therein proposed, was pleased, by and with the advice of His Privy Council, to order that the Province
of Quebec be divided into two distinct Provinces, to be called the Province of Upper Canada and the
Province of Lower Canada, by separating the said two Provinces, according to the line of division
inserted in said Order: And his Majesty is hereby further pleased to order, that the Right Honourable
Henry Dundas, one of His Majesty’s Principal Secretaries of State, do prepare a Warrant, to be
passed under His Majesty’s Royal Sign Manual, to authorize the Governor or Lieutenant-Governor of the
Province of Quebec, or the person administering the Government there, to fix and declare such day as
they shall judge most advisable, for the commencement, within the Province of Upper Canada and the 40
Province of Lower Canada respectively, of the said Act passed in the last session of Parliament,
entitled “An Act to repeal certain parts of an Act passed in the fourteenth year of His
Majesty’s reign, entitled An Act for making more effectual provision for the Government of the
Province of Quebec, in North America, and to make further provision for the Government of the
said Province,” provided that such day, so to be fixed and declared for the commencement of the said Act,
within the said two Provinces respectively, shall not be later than the thirty-first day of December, one
thousand seven hundred and ninety-one.

STEPH. COTTRELL.

Endorsed,

Order in Council, 24th August, 1791,
Ordering the division of the Province of Quebec into two
Provinces, to be called the Province of Upper Canada
and the Province of Lower Canada.

IMPERIAL ORDER IN COUNCIL, 24TH AUGUST, 1791, ESTABLISHING THE
PROVINCES OF UPPER AND LOWER CANADA.

[Copy furnished by the Privy Council Office, London.]

At the Court at St. James's, the 24th of August, 1791.

Present :

THE KING'S MOST EXCELLENT MAJESTY.

Lord Chamberlain,
Lord Frederick Campbell,
Lord Grenville.

Lord Dover,
Mr. Secretary Dundas,
Mr. Chancellor of the Exchequer.

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10 **W**HEREAS there was this day read at the Board a Report from the Right Honorable the Lords of the Committee of Council, dated the 19th of this instant, in the words following, viz:
"YOUR MAJESTY having been pleased by your Order in Council, bearing date the 17th of this instant, to refer unto this Committee a letter from the Right Honorable Henry Dundas, one of Your Majesty's principal Secretaries of State, to the Lord President of the Council, transmitting a printed copy of an Act passed in the last session of Parliament, entitled 'An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, entitled, An Act for making more effectual provision for the government of the Province of Quebec in North America, and to make further provision for the government of the said Province'; and also copy of a paper presented to Parliament previous to the passing of the said Act, describing the line proposed to be drawn for dividing the Province of Quebec into two separate provinces, agreeable to Your Majesty's royal intention, signified by message to both Houses of Parliament, to be called the Province of Upper Canada and the Province of Lower Canada, and stating, that by Section 48 of the said Act, it is provided, that by reason of the distance of the said Provinces from this country and of the change to be made by the said Act in the government thereof, it may be necessary that there should be some interval of time between the notification of the said Act to the said Provinces respectively, and the day of its commencement within the said Provinces respectively, and that it should be lawful for Your Majesty, with the advice of your Privy Council, to fix and declare, or to authorize the Governor or Lieutenant-Governor of the Province of Quebec, or the person administering the government there, to fix and declare the day of the commencement of the said Act within the said Provinces respectively, provided that such day shall not be later than the 31st of December, 1791: The Lords of the Committee, in obedience to Your Majesty's said Order of Reference, this day took the said letter into their consideration, together with the Act of Parliament therein referred to, and likewise copy of the said paper describing the line proposed to be drawn for separating the Province of Upper Canada and the Province of Lower Canada; and their Lordships do thereupon agree humbly to report as their opinion to Your Majesty, that it may be advisable for Your Majesty by your Order in Council to divide the Province of Quebec into two distinct provinces, by separating the Province of Upper Canada and the Province of Lower Canada, according to the said line of division described in the said paper, *copy of which is herewith annexed*: And the Lords of the Committee are further of opinion that it may be advisable for Your Majesty, by warrant under your Royal Sign Manual, to authorize the Governor or Lieutenant-Governor of the Province of Quebec, or the person administering the government there, to fix and declare such day for the commencement of the said before mentioned Act within the said two Provinces of Upper and Lower Canada respectively, as the said Governor or Lieutenant-Governor of the Province of Quebec, or the person administering the government there, shall judge most advisable, provided that such day shall not be later than the 31st day of December in the present year, 1791.

"The Proposed Line of Division to commence at a stone boundary on the north bank of the Lake St. Francis, at the cove west of Pointe au Bondet, in the limit between the Township of Lancaster and the Seigneurie of New Longueuil, running along the said limit in the direction of north thirty-four degrees west to the westernmost angle of the said Seigneurie of New Longueuil, thence along the north-western boundary of the Seigneurie of Vaudreuil, running north twenty-five degrees East until it strikes the Ottawas River, to ascend the said River into the Lake Tomisanning, and from the head of the

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said Lake by a line drawn due north until it strikes the boundary line of Hudson's Bay, *including all* the territory to the westward and southward of the said line to the utmost extent of the country commonly called or known by the name of Canada."

His Majesty this day took the said report into His royal consideration and approving of what is therein proposed, is pleased, by and with the advice of His Privy Council, to order, as it is hereby ordered, that the Province of Quebec be divided into two distinct provinces, to be called the Province of Upper Canada and the Province of Lower Canada, by separating the said two provinces, according to the following line of division, viz. :

"To commence at a stone boundary on the north bank of the Lake St. Francis, at the cove west of Pointe au Boudet, in the limit between the Township of Lancaster and the Seigneurie of New Longueuil, running along the said limit in the direction of north thirty-four degrees; West to the westernmost angle of the said Seigneurie of New Longueuil, thence along the north-western boundary of the Seigneurie of Vaudreuil, running north twenty-five degrees, East until it strikes the Ottawas River, to ascend the said River into the Lake Tomiscanning, and from the head of the said Lake, by a line drawn due north until it strikes the boundary line of Hudson's Bay, *including all* the territory to the westward and southward of the said line, to the utmost extent of the country commonly called or known by the name of Canada."

Whereof the Governor, Lieutenant-Governor, or Commander-in-Chief of the Province of Quebec and all other His Majesty's officers in the said Provinces, and all whom it may concern, are to take notice and yield due obedience to His Majesty's pleasure, hereby signified.

20

BOUNDARY DESCRIPTION IN IMPERIAL COMMISSION TO GOVERNOR-GENERAL
LORD DORCHESTER, 1791.

GUY, LORD DORCHESTER,—*Captain-General and Governor-in-Chief of the Provinces of Upper Canada and Lower Canada.*

12TH SEPTEMBER, 1791.

Greeting :

WHEREAS, We did by Our Letters Patent, under Our Great Seal of Great Britain, bearing date the twenty-second day of April, in the twenty-sixth year of Our reign, constitute and appoint you Guy, Lord Dorchester [then Sir 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, then bounded as in Our said recited Letters Patent was mentioned and expressed.

Now Know Ye, that we have revoked, determined, and by these presents do revoke and determine the said recited Letters Patent, and every clause, article or thing therein contained.

And Whereas, we have thought fit by Our order, made in Our Privy Council on the nineteenth day of August, one thousand seven hundred and ninety-one, to divide Our said Province of Quebec into two separate Provinces, to be called the Province of Upper Canada and the Province of Lower Canada, by a line to commence at a stone boundry on the north Bank of the Lake St. Francis at the Cove west of the Pointe au Boudet, in the limit between the Township of Lancaster and the Seigneurie of New Longueuil, running along the said limit in the direction of North thirty-four degrees West to the westernmost angle of the said Seigneurie of New Longueuil; thence along the north-western boundary of the Seigneurie of Vaudreuil, running North twenty-five degrees East, until it strikes the Ottawas River, to ascend the said river into the Lake Tomiscanning, and from the head of the said lake by a line drawn due north until it strikes the boundary line of Hudson's Bay; the Province of Upper Canada to comprehend all such lands, territories and islands, lying to the westward of said line of division, as were part of Our said Province of Quebec, and the Province of Lower Canada to comprehend all such lands, territories and islands lying to the eastward of the said line of division, as were part of Our said Province of Quebec.

*Imperial
Commission
to Lord Dor-
chester, 1791.*

And whereas, by an Act passed in the present year of Our Reign, intituled "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's Reign, intituled 'An Act for making more effectual provision for the Government of Quebec, in North America,' and to make further provision for the Government of the said Province," further provision is thereby made for the good government and prosperity of Our said Provinces of Upper and Lower Canada.

Further, Know Ye that we, reposing especial trust and confidence in the prudence, courage and loyalty of you, the said Guy, Lord Dorchester, of Our especial Grace, certain knowledge, and mere motion, have thought fit to constitute and appoint you, the said Guy, Lord Dorchester, to be our Captain-General and Governor-in-Chief of Our said Province of Upper Canada, and of Our said Province of Lower Canada, respectively, bounded as hereinbefore described.

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PROCLAMATION OF LIEUTENANT-GOVERNOR ALURED CLARKE, 1791.

DECLARING WHEN THE CONSTITUTIONAL ACT SHALL HAVE EFFECT IN THE PROVINCES OF UPPER AND LOWER CANADA.

ALURED CLARKE:

GEORGE THE THIRD, by the Grace of God, of Great Britain, France and Ireland, King, Defender of the Faith, and so forth.

To all our loving subjects whom these presents may concern, greeting:

Whereas we have thought fit by and with the advice of our Privy Council, by our Order in Council, dated in the month of August last, to order that our Province of Quebec should be divided into two distinct Provinces, to be called the Province of Upper Canada and the Province of Lower Canada, by separating the said two Provinces according to the following line of division, viz:—"To commence at a stone boundary on the north bank of the Lake St. Francis, at the Cove West of Pointe au Boudet, in the limit between the Township of Lancaster and the Seigneurie of New Longueuil, running along said limit in the direction of north thirty-four degrees West to the westernmost angle of the said Seigneurie of New Longueuil; thence along the north-western boundary of the Seigneurie of Vaudreuil, running north twenty-five degrees East until it strikes the Ottawa River to ascend the said river into the Lake Tomiseanning, and from the head of the said lake by a line drawn due north until it strikes the boundary line of the Hudson's Bay, including all the territory to the westward and southward of the said line to the utmost extent of the country commonly called or known by the name of Canada."

And whereas by an Act passed in the last session of Parliament, intituled, "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, intituled, 'An Act for making more effectual provision for the Government of the Province of Quebec, in North America,' and to make further provision for the Government of the said Province," it is provided that by reason of the distance of the said Provinces from Great Britain, and the change to be made by the said Act in the Government thereof, it may be necessary that there should be some interval of time between the notification of the said Act to the said Provinces respectively, and the day of its commencement within the said Provinces respectively; and that it should be lawful for us, with the advice of our Privy Council, to fix and declare, or to authorize the Governor or Lieutenant-Governor of our Province of Quebec, or the person administering the Government there, to fix and declare the day of the commencement of the said Act within the said Provinces respectively, provided that such day shall not be later than the thirty-first day of December, one thousand seven hundred and ninety-one. And whereas, in pursuance of the said Act, we have thought fit by another Order in Council, bearing date the twenty-fourth day of August last, to authorize our Governor, or, in his absence, our Lieutenant-Governor, or the person administering the Government of our said Province of Quebec, to fix and declare such day as he should judge most advisable for the commencement of the said Act within the Province of Upper Canada and the Province of Lower Canada respectively, and to that effect have, by

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Proclamation
of Lieut.-
Gov. Alured
Clarke, 1791.

our warrant to our right trusty and well-beloved Guy, Lord Dorchester, Captain-General and Governor-in-Chief in and over our said Province of Quebec, or in his absence, to our Lieutenant-Governor or Commander-in-Chief of our said Province for the time being, under our signet and Royal sign-manual, bearing date at St. James's, the twelfth day of September last, signified our will and pleasure that he take the necessary measures accordingly.

Know ye, therefore, that our trusty and well-beloved Alured Clarke, Esquire, our Lieutenant-Governor of our said Province of Quebec, in the absence of our said Governor thereof, hath judged it most advisable to fix upon Monday, the twenty-sixth day of December next, for the commencement of the said Act within the Provinces aforesaid respectively; and it is accordingly hereby declared that the said Act of Parliament, intituled "An Act to repeal certain parts of an Act passed in the fourteenth 10 year of His Majesty's reign, intituled 'An Act for making more effectual provision for the Government of the Province of Quebec in North America, and to make further provision for the Government of the said Province,'" shall commence within the said Provinces of Upper Canada and Lower Canada respectively, on Monday, the said twenty-sixth day of December, in this present year one thousand seven hundred and ninety-one, of which all our loving subjects, and all others concerned, are to take notice and govern themselves accordingly.

In testimony whereof we have caused these our Letters to be made Patent, and the Great Seal of our said Province of Quebec to be hereunto affixed. Witness, our trusty and well-beloved Alured Clarke Esquire, our Lieutenant Governor and Commander-in-Chief of our said Province of Quebec, Major-General commanding our forces in North America, &c., &c., at our castle of St. Lewis in the City of 20 Quebec, this eighteenth day of November in the year of our Lord one thousand seven hundred and ninety-one, and in the thirty-second year of our reign.

HUGH FINLAY,
Acting Secretary.

A. C.

OFFICIAL CORRESPONDENCE RESPECTING THE DIFFERENCE IN THE DESCRIPTION
OF THE BOUNDARIES, AS CONTAINED IN LORD DORCHESTER'S COMMISSION
AND THE ORDER IN COUNCIL ESTABLISHING THE PROVINCES, 1791-2.

LIEUTENANT-GOVERNOR ALURED CLARKE TO THE RIGHT HONOURABLE HENRY DUNDAS.*
[No. 12.]

QUEBEC, 1st December, 1791

Lieut.-Gov.
Clarke to Mr.
Dundas, 1st
December,
1791.

SIR,—Herewith you will receive duplicate of my letter (No. 11) of the 23rd ult., inclosing a copy 30 of a proclamation issued for dividing the Province of Quebec into two distinct provinces, and fixing and declaring the day of the commencement of the Act passed in the last Session of Parliament relative to this Country.

Although I have every reason to believe it has not escaped the observation of His Majesty's Ministers, I think it my duty to remark to you, Sir, that the terms in Lord Dorchester's Commission describing the boundaries of Upper and Lower Canada are not the same as those used in the Order in Council of the 24th August.

I have the honor to be with great respect, Sir,
Your most obedient and most faithful, humble servant,

ALURED CLARKE.

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The Right Hon. Henry Dundas.

MR. DUNDAS TO LIEUTENANT-GOVERNOR CLARKE.*

[Extract.]

WHITEHALL, 10th April, 1792.

Mr. Dundas
to Lieut.-
Gov. Clarke,
10th April,
1792.

Lieutenant-Governor Clarke,

Sir,—I have received your letters No. 9 and from No. 12 to 20 inclusive and have had the honour of laying them before His Majesty.

* Public Record Office—Colonial Correspondence, Lower Canada, 1791-1792. Vol. 58.

Upon examination, I observe, that Lord Dorchester's commission and the Order of Council respecting the boundaries of the two Provinces, are not precisely the same, but as the difference lies only in what is explanatory, it does not, I conceive, amount at all to a variance between them, and is therefore perfectly immaterial.

The warrant which I transmit you respecting a Provincial Great Seal for Lower Canada will obviate all difficulties on that head.

I am, etc.

HENRY DUNDAS.

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—
—
Sec. V.

Imperial Statutes and Acts of State bearing on the question of the Boundaries.

PROCLAMATION OF LIEUTENANT-GOVERNOR SIMCOE, DIVIDING UPPER CANADA INTO COUNTIES, 1792.

J. GRAVES SIMCOE.

GEORGE THE THIRD, by the Grace of God, of Great Britain, France and Ireland, King, Defender of the Faith, &c., &c. To all our loving subjects whom these presents may concern:

WHEREAS, in pursuance of an Act of Parliament lately made and provided, passed in the thirty-first year of our reign, and of authority by us given for that purpose, our late Province of Quebec is become divided into the two Provinces of Upper Canada and Lower Canada, and our Lieutenant-Governor of the said Province of Upper Canada, by power from us derived, is authorized in the absence of our right trusty and well-beloved Guy, Lord Dorchester, Captain General and Governor-in-Chief of our said Province of Upper Canada, to divide the said Province of Upper Canada into districts, counties, circles or towns and townships, for the purpose of effectuating the intent of the said Act of Parliament, and to declare and appoint the number of representatives to be chosen by each to serve in the Assembly of the said Province.

Proclamation of Lieut.-Gov. Simcoe, 1792.

Know ye, therefore, that our trusty and well-beloved John Graves Simcoe, Esquire, our Lieutenant-Governor of our said Province of Upper Canada, in the absence of the said Governor-in-Chief, hath and by this Our Proclamation doth divide the said Province of Upper Canada into counties, and hath and doth appoint and declare the number of representatives of them and each of them to be as hereinafter limited, named, declared, and appointed; that is to say: That the first of the said counties be hereinafter called by the name of the county of Glengarry, which county is to be bounded on the east by the lines that divide Upper from Lower Canada, on the south by the river St. Lawrence, and westerly by the easternmost boundary of the late township of Cornwall, running north twenty-four degrees west until it intersects the Ottawa or Grand River, thence descending the said river until it meets the divisional lines aforesaid; the said county is to comprehend all the islands in the said river St. Lawrence nearest to the said county, and in the whole or greater part fronting the same. * * * *

That the seventeenth of the said counties be hereinafter called by the name of the County of Suffolk: which county is to be bounded on the east by the county of Norfolk, on the south by Lake Erie, until it meets the carrying-place from Point au Pins unto the Thames; on the west by the said carrying-place, thence up the said river Thames until it meets the northwesternmost boundary of the county of Norfolk.

That the eighteenth of the said counties be hereafter called by the name of the county of Essex: which county is to be bounded on the east by the county of Suffolk, on the south by Lake Erie, on the west by the river Detroit to Maisonville's Mill, from thence by a line running parallel to the river Detroit and lake St. Clair, at the distance of four miles, until it reaches the river La Tranche or Thames, thence up the said river to the northwest boundary of the county of Suffolk.

That the nineteenth of the said counties be hereafter called by the name of the county of Kent: which county is to comprehend all the country not being territories of the Indians not already included in the several counties hereinbefore described, extending northward to the boundary line of Hudson's Bay, including all the territory to the westward and southward of the said line, to the utmost extent of the country commonly called or known by the name of Canada. * * * *

Of which our loving subjects and all others concerned are to take notice and govern themselves accordingly.

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Sec. V.

*Imperial
Statutes and
Acts of State
bearing on the
question of the
Boundaries.*

In testimony whereof, we have caused these our letters to be made patent, and the great seal of our said Province of Upper Canada to be hereunto affixed. Witness our trusty and well-beloved John Graves Simcoe, Esquire, our Lieutenant-Governor of our said Province of Upper Canada, and Colonel commanding our forces in Upper Canada, &c., &c., at our Government House, in the town of Kingston, this sixteenth day of July, in the year of Our Lord one thousand seven hundred and ninety-two, and in the thirty-second year of our reign.

WM. JARVIS, *Secretary.*

J. G. S.

BOUNDARY DESCRIPTION IN IMPERIAL COMMISSION TO RECEIVER-GENERAL OF
LOWER CANADA, 1794.

7TH JUNE, 1794.

HENRY CALDWELL, ESQUIRE,—*Receiver-General of the Province of Lower Canada.**

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*Imperial
Commission
to Receiver-
General of
Lower Can-
ada, 1794.*

WHEREAS We thought fit, by an Order made in Our Privy Council on the nineteenth day of August, one thousand seven hundred and ninety-one, to divide our Province of Quebec into two separate Provinces, to be called the Province of Upper Canada, and Province of Lower Canada, by a line to commence at a stone boundary on the north bank of the Lake St. Francis, at the cove west of Point au Baudet, in the limit between the Township of Lancaster and the Seigneurie of New Longueuil, running along the said limit in the direction of north, thirty-four degrees West, to the westernmost angle of the said Seigneurie of New Longueuil; thence along the north-western boundary of the Seigneurie of Vaudreuil, running north twenty-five degrees East, until it strikes the Ottawa River, to ascend the said river into the Lake Tomisaming, and from the head of the said lake, by a line drawn due north until it strikes the boundary line of Hudson's Bay; the Province of Upper Canada to comprehend all such lands, territories, and islands, lying to the westward of the said line of division, as were part of Our said Province of Quebec; and the Province of Lower Canada to comprehend all such lands, territories and islands, lying to the eastward of the said line of division, as were part of our said Province of Quebec.

BOUNDARY DESCRIPTIONS IN IMPERIAL COMMISSIONS TO GOVERNORS OF UPPER
AND LOWER CANADA, 1796-1839.

15TH DECEMBER, 1796.

ROBERT PRESCOTT, ESQUIRE,—*Captain-General and Governor-in-Chief of the Province of Upper and Lower Canada.***Imperial
Commissions
to Governors
of Upper and
Lower Can-
ada, 1796-
1811.*

Of our Province of Upper Canada and of our Province of Lower Canada, respectively, bounded 30 by a line to commence at a stone boundary on the north bank of the Lake Saint Francis, at the Cove west of Point au Baudet, in the limit between the Township of Lancaster and the Seigneurie of New Longueuil, running along the said limit in the direction of North, thirty-four degrees West, to the westernmost angle of the said Seigneurie of New Longueuil, thence along the north-western boundary of the Seigneurie of Vaudreuil, running North, twenty-five degrees East, until it strikes the Ottawa River, to ascend the said river into the Lake Tomisaming, and from the head of the said lake by a line drawn due north until it strikes the boundary line of Hudson's Bay—the Province of Upper Canada to comprehend all such lands, territories and islands lying to the westward of the said line of division as were part of Our Province of Quebec; and the Province of Lower Canada to comprehend all such lands, territories and islands lying to the eastward of the said line of division as were part of 40 our said Province of Quebec.

[The following nine Commissions contain Boundary Line descriptions similar to those contained in the next preceding Commission of 15th December, 1796.]

*Book marked "Quebec Commissions, from 27th Dec., 1775, to 4th Nov., 1797," in Privy Council Office, Ottawa.

29TH AUGUST, 1807.
SIR JAMES HENRY CRAIG,—*Captain-General and Governor-in-Chief of the Provinces of Upper and Lower Canada.**

21ST OCTOBER, 1811.
SIR GEORGE PREVOST,—*Captain-General and Governor-in-Chief of the Provinces of Upper and Lower Canada.†*

28TH DECEMBER, 1814.
GORDON DRUMMOND, ESQUIRE,—*Administrator of the Government of the Provinces of Upper and Lower Canada.‡*

25TH MARCH, 1816.
SIR JOHN COAPE SHERBROOKE,—*Captain-General and Governor-in-Chief of the Provinces of Upper and Lower Canada.§*

8TH MAY, 1818.
CHARLES, DUKE OF RICHMOND,—*Captain-General and Governor-in-Chief of the Provinces of Upper and Lower Canada.||*

12TH APRIL, 1820.
GEORGE, EARL OF DALHOUSIE,—*Captain-General and Governor-in-Chief of the Provinces of Upper and Lower Canada.¶*

24TH NOVEMBER, 1830.
20 MATTHEW, LORD AYLMER,—*Captain-General and Governor-in-Chief of the Provinces of Upper and Lower Canada.***

24TH NOVEMBER, 1830.
MATTHEW, LORD AYLMER,—*Captain-General and Governor-in-Chief of the Provinces of Upper and Lower Canada.††*

1ST JULY, 1835.
ARCHIBALD, EARL OF GOSFORD,—*Captain-General and Governor-in-Chief of the Provinces of Upper and Lower Canada.‡‡*

30TH MARCH, 1838.
JOHN GEORGE, EARL OF DURHAM,—*Captain-General and Governor-in-Chief of the Province of Lower Canada.§§*

Our said Province of Lower Canada; the said Province being bounded by the adjacent Province of Upper Canada and the boundary line between the said Provinces, commencing at a stone boundary on the north bank of the St. Francis, at the Cove West of the Pointe au Baudet, in the limit between the Township of La Plante and the Seigneurie of New Longueuil, running along the said limit in the direction of north, thirty-four degrees west, to the westernmost angle of the said Seigneurie of New Longueuil; thence along the north-western boundary of the Seigneurie of Vaudreuil, running north, twenty-five degrees East, until it strikes the Ottawas River, to ascend the said river into the Lake Temiscanning; and which said Province of Lower Canada is also bounded by a line drawn due north from the head of the said lake until it strikes the shore of Hudson's Bay.

* Lib. E. (5), Imperial Commissions, Fol. 40.

† *Ibid.*, Fol. 89. ‡ *Ibid.*, Fol. 138.

§ *Ibid.*, Fol. 157. || *Ibid.*, Fol. 189. ¶ *Ibid.*, Fol. 223.

** *Ibid.*, Fol. 255.

‡‡ *Ibid.*, Fol. 296.

†† Lib. F. (6), Imperial Commissions, Fol. 47.

§§ *Ibid.*, Fol. 108. §§ *Ibid.*, Fol. 132.

¶ Lib. F. (6). *Ibid.*, Fol. 150.

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Imperial
Statutes and
Acts of State
bearing on the
question of the
Boundaries.

Imperial
Commissions
to Governors
of Upper and
Lower Can-
ada, 1814-
1839.

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30TH MARCH, 1838.

JOHN GEORGE, EARL OF DURHAM,—*Captain-General and Governor-in-Chief of the Province of Upper Canada.*

*Imperial
Statutes and
Acts of State
bearing on the
question of the
Boundaries.*

*Imperial
Commissions
to Governors
of Upper and
Lower Can-
ada, 1814-
1839.*

Our said Province of Upper Canada; the said Province being bounded on the east by the line dividing that Province from Lower Canada, beginning at a stone boundary on the north bank of the Lake St. Francis, at the cove west of the Point au Baudet, in the limit between the Township of Lancaster and the Seigneurie of New Longueuil, running along the said limit in the direction of north thirty-four degrees West, to the westernmost angle of the said Seigneurie of New Longueuil, thence along the north-western boundary of the Seigneurie of Vaudreuil, running north twenty-five degrees east, until it strikes the Ottawa River, to ascend the said river into the Lake Temiscanning; the said Province of Upper Canada being also bounded by a line drawn due north from the head of the said lake until it reaches the shore of Hudson's Bay; the said Province of Upper Canada being bounded on the south, beginning at the said stone boundary between Lancaster and New Longueuil, by the Lake St. Francis, the River St. Lawrence, the Lake of the Thousand Islands, Lake Ontario, the River Niagara, which falls into Lake Erie, and along the middle of that lake; on the west by the channel of Detroit, Lake St. Clair, up the River St. Clair, Lake Huron, the west shore of Drummond Island; that of Saint Joseph and Sugar Island, thence into Lake Superior.

[The following Commission contains boundary description similar to that in the next preceding commission.]

13TH DECEMBER, 1838.

SIR JOHN COLBORNE,—*Captain-General and Governor-in-Chief of the Province of Upper Canada.** 20

[The two following Commissions contain Boundary Line descriptions similar to that of 30th March, 1838, to the Earl of Durham as Captain-General and General-in-Chief of Lower Canada].

13TH DECEMBER, 1838.

SIR JOHN COLBORNE,—*Captain-General and Governor-in-Chief of the Province of Lower Canada.**

6TH SEPTEMBER, 1839.

CHARLES POULETT THOMSON, ESQUIRE,—*Captain-General and Governor-in-Chief of the Province of Lower Canada.**

[The following Commission contains boundary descriptions exactly the same as those in the above Commission of 13th December, 1838, to the Earl of Durham as Governor-in-Chief of Upper Canada:—] 30

6TH SEPTEMBER, 1839.

THE RIGHT HONOURABLE CHARLES POULETT THOMSON—*Captain-General and Governor-in-Chief of the Province of Upper Canada.**

IMPERIAL ACT, 43 GEO. III., CAP. 138 (1803).

AN ACT FOR EXTENDING THE JURISDICTION OF THE COURTS OF JUSTICE, IN THE PROVINCES OF LOWER AND UPPER CANADA, TO THE TRIAL AND PUNISHMENT OF PERSONS GUILTY OF CRIMES AND OFFENCES WITHIN CERTAIN PARTS OF NORTH AMERICA ADJOINING TO THE SAID PROVINCES.†

*Imperial
Act, 43 Geo.
III., Cap. 38,
1803.*

WHEREAS crimes and offences have been committed in the Indian Territories, and other parts of America, not within the limits of the Provinces of Lower or Upper Canada, or either of them, or of the jurisdiction of any of the Courts established in those Provinces, or within the limits of any civil

* Lib. F. (6), Imperial Commissions, Fol. 171.

† State Book, Upper Canada, L. P. 383, (in Privy Council Office, Ottawa).

government of the United States of America, and are therefore not cognizable by any jurisdiction whatever, and by reason thereof great crimes and offences have gone and may hereafter go unpunished, and greatly increase: For remedy whereof may it please Your Majesty that it may be enacted, and be it enacted, by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the passing of this Act, all offences committed within any of the Indian Territories, or parts of America not within the limits of either of the said Provinces of Lower or Upper Canada, or of any Civil Government of the United States of America, shall be and be deemed to be offences of the same nature, and shall be tried in the same manner and subject to the same punishment, as if the same had been committed within the Provinces of Lower or Upper Canada.

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bearing on the
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*Imperial Act,
43, Geo. III.,
Cap. 38, 1803.*

II. And be it further enacted, that it shall be lawful for the Governor or Lieutenant-Governor, or person administering the Government for the time being of the Province of Lower Canada, by Commission under his Hand and Seal, to authorize and empower any person or persons, wheresoever resident or being at the time, to Act as Civil Magistrates and Justices of the Peace for any of the Indian Territories or parts of America not within the limits of either of the said Provinces, or of any Civil Government of the United States of America, as well as within the limits of either of the said Provinces, either upon information taken or given within the said Provinces of Lower or Upper Canada, or out of the said Provinces in any part of the Indian Territories or parts of America aforesaid, for the purpose only of hearing crimes and offences, and committing any person or persons guilty of any crime or offence to safe custody, in order to his or their being conveyed to the said Province of Lower Canada, to be dealt with according to Law; and it shall be lawful for any person or persons whatever to apprehend and take before any persons so commissioned as aforesaid, or to apprehend and convey, or cause to be safely conveyed with all convenient speed, to the Province of Lower Canada, any person or persons guilty of any crime or offence, there to be delivered into safe custody for the purpose of being dealt with according to Law.

III. And be it further enacted, that every such offender may and shall be prosecuted and tried in the Courts of the Province of Lower Canada (or if the Governor or Lieutenant-Governor, or person administering the Government for the time being, shall, from any of the circumstances of the crime or offence, or the local situation of any of the witnesses for the prosecution or defence, think that justice may more conveniently be administered in relation to such crime or offence in the Province of Upper Canada, and shall by any Instrument under the Great Seal of the Province of Lower Canada, declare the same, then that every such offender may and shall be prosecuted and tried in the Court of the Province of Upper Canada), in which crimes or offences of the like nature are usually tried, and where the same would have been tried if such crime or offence had been committed within the limits of the Province where the same shall be tried under this Act; and every offender tried and convicted under this Act shall be liable and subject to such punishment as may by any Law, in force in the Province where he or she shall be tried, be inflicted for such crime or offence; and such crime or offence may and shall be laid and charged to have been committed within the jurisdiction of such Court, and such Court may and shall proceed therein to trial, judgment and execution, or other punishment for such crime or offence in the same manner in every respect as if such crime or offence had been really committed within the jurisdiction of such Court; and it shall also be lawful for the Judges and other Officers of the said Courts to issue subpoenas and other processes for enforcing the attendances of witnesses on any such trial; and such subpoenas and other processes shall be as valid and effectual, and be in full force and put in execution in any parts of the Indian Territories, or other parts of America out of and not within the limits of the Civil Government of the United States of America, as well as within the limits of either of the said Provinces of Lower or Upper Canada, in relation to the trial of any crimes or offences by this Act made cognizable in such Court, or to the more speedily and effectually bringing any offender or offenders to justice under this Act, as fully and amply as any subpoenas or other processes are within the limits of the jurisdiction of the Court from which any such subpoenas or other processes shall issue as aforesaid, any Act or Acts, Law or Laws, custom, usage, matter or thing to the contrary notwithstanding.

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*Imperial
Statutes and
Acts of State
bearing on the
question of the
boundaries.**Imperial Act,
43 Geo. III.,
Cap. 38,
(1803).*

IV. Provided always, and be it further enacted, that if any crime or offence charged and prosecuted under this Act shall be proved to have been committed by any person or persons, not being a subject or subjects of His Majesty, and also within the limits of any colony, settlement or territory belonging to any European State, the Court before which such prosecution shall be had shall forthwith acquit such person or persons, not being such subject or subjects as aforesaid, of such charge.

V. Provided, nevertheless, that it shall and may be lawful for such court to proceed in the trial of any other person, being a subject or subjects of His Majesty, who shall be charged with the same or any other offence, notwithstanding such offence shall appear to have been committed within the limits of any colony, settlement or territory belonging to any European State as aforesaid.

IMPERIAL ACT, 49 GEO. III., CAP. 27 (1809).

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AN ACT FOR ESTABLISHING COURTS OF JUDICATURE IN THE ISLAND OF NEWFOUNDLAND AND THE ISLANDS ADJACENT; AND FOR RE-ANNEXING PART OF THE COAST OF LABRADOR AND THE ISLANDS LYING ON THE SAID COASTS TO THE GOVERNMENT OF NEWFOUNDLAND.

*Imperial Act,
49 Geo. III.,
Cap. 27,
(1809).*

XIV. And whereas His Majesty by his Proclamation of the seventh day of October one thousand seven hundred and sixty-three, was pleased to declare that he had put the Coast of Labrador from the River Saint John to Hudson's Straights, with the Islands of Anticosti and Madelaine, and all other smaller islands lying on the said coast, under the care and inspection of the Governor of Newfoundland: And whereas by an Act passed in the fourteenth year of the reign of his present Majesty, intituled, *An Act for making more effectual provision for the government of the Province of Quebec in North America*, all such territory, islands and countries, as since the tenth day of February one thousand seven hundred and sixty-three had been made part of the government of Newfoundland were, during His Majesty's pleasure, annexed to and made part of the Province of Quebec, as created by the said Proclamation: And whereas, in pursuance of an Act passed in the thirty-first year of his present Majesty's reign, intituled, *An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, intituled, 'An Act for making more effectual provision for the government of the Province of Quebec in North America,' and to make further provision for the government of the said Province*, the said Province of Quebec was divided into two Provinces of Upper and Lower Canada, the latter including the parts of the coast of Labrador and the said islands so formerly annexed to the government of Newfoundland: And whereas it is expedient that the said coast of Labrador, and the adjacent islands (except the Islands of Madelaine) should be re-annexed to 30 the government of Newfoundland:

Be it therefore enacted, that such parts of the coast of Labrador from the River St. John to Hudson's Straights, and the said island of Anticosti, and all other smaller islands so annexed to the government of Newfoundland by the said Proclamation of the seventh day of October one thousand seven hundred and sixty-three, (except the said Islands of Madelaine) shall be separated from the said government of Lower Canada, and be again re-annexed to the government of Newfoundland; any thing in the said Act passed in the thirty-first year of his present Majesty's reign, or any other Act, to the contrary notwithstanding.

PROCLAMATION OF GOVERNOR-GENERAL SHERBROOKE IN REFERENCE TO NORTH-
WEST TROUBLES, 1816.

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*Proclamation
of Gov.-Gen.
Sherbrooke,
1816.*

By His Excellency Sir JOHN COPE SHERBROOKE, Knight Grand Cross of the Most Honourable Military Order of the Bath, Captain-General and Governor-in-Chief in and over the Provinces of Lower Canada, Upper Canada, Nova Scotia, New Brunswick, and their several dependencies, Vice-Admiral of the same, Lieutenant-General and Commander of all His Majesty's Forces in the said Provinces of Lower Canada and Upper Canada, Nova Scotia and New Brunswick, and their several dependencies, and in the Islands of Newfoundland, Prince Edward, Cape Breton and Bermuda, etc, etc.

A PROCLAMATION.

Whereas, in and by a certain Statute of the Parliament of the United Kingdom of Great Britain and Ireland, made and passed in the forty-third year of His Majesty's Reign, intituled: 'An Act for extending the Jurisdiction of the Courts of Justice in the Provinces of Lower Canada and Upper Canada to the trial and punishment of persons guilty of crimes and offences within certain parts of North America, adjoining the said Provinces,' it is amongst other things enacted and declared that from and after the passing of the said Statute, 'All offences committed within any of the Indian territories or parts of America, not within the limits of either of the said Provinces of Lower or Upper Canada, or of any Civil Government of the United States of America, shall and be deemed to be offences of the same nature, and shall be tried in the same manner and subject to the same punishment as if the same had been committed within the Province of Lower or Upper Canada.'

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Sherbrooke,
1816.

And whereas, under and by virtue of the above in part recited Statute, Justices of the Peace have been duly nominated and appointed, with power and authority to apprehend within the Indian territories aforesaid, and to convey to this Province of Lower Canada for trial, all and every person and persons guilty of any crime or offence whatever;

And whereas, there is reason to believe that divers breaches of the peace, by acts of force and violence, have lately been committed within the aforesaid Indian territories, and jurisdiction of the aforesaid Justices of the Peace;

I have therefore thought fit, and by and with the advice of His Majesty's Executive Council, of and for the Province of Lower Canada, to issue this Proclamation for the purpose of bringing to punishment all persons who may have been or shall be guilty of any such act or acts of force or violence as aforesaid, and other offence whatever, and to deter all others from following their pernicious example, thereby requiring all His Majesty's subjects and others within the said territories, to avoid and discourage all acts of force and violence whatsoever, and all proceedings whatever tending to produce tumult and riots, or in any way to disturb the public peace.

And I do hereby strictly charge and command all Justices of the Peace as aforesaid, nominated and appointed under and by virtue of the above mentioned Statute, and all Magistrates throughout this Province, and do require all others of His Majesty's subjects generally in their respective stations, to make diligent enquiry and search to discover, apprehend and commit, or cause to be committed to lawful custody for trial, in due course of Law, pursuant to the provision in the above-mentioned Statute contained, all persons who have been, or shall be guilty of any act or acts of force or violence as aforesaid, or of any other crime or crimes, offence or offences, within the said Indian territories, to the end that the laws may be carried into prompt execution, against all such offenders, for the preservation of peace and good order therein.

Given under my Hand and Seal at Arms, at the Castle of St. Lewis, in the City of Quebec, in the said Province of Lower Canada, this 16th Day of July, in the Year of Our Lord one thousand eight hundred and sixteen, and in the Forty-sixth year of His Majesty's reign.

By His Excellency's Command.

J. C. SHERBROOKE.

JOHN TAYLOR,

Deputy Secretary.

ACT OF UPPER CANADA, 59 GEO. III., CAP. X. (1818).

AN ACT TO AUTHORIZE THE INQUIRY AND TRIAL OF CRIMES AND OFFENCES COMMITTED WITHIN THIS PROVINCE, WITHOUT THE LIMITS OF ANY DESCRIBED TOWNSHIP OR COUNTY, TO BE HAD IN ANY DISTRICT THEREOF.

WHEREAS by an Act passed in the thirty-eighth year of His Majesty's reign, entitled, "An Act for the better division of this province," large tracts of country are comprehended in the several districts of this province, which are not within the limits of any township or county therein; and

Act of Upper
Canada, 59
Geo. III.,
Cap. 10,
(1818).

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(1818).

whereas crimes and offences have been committed, and may hereafter be committed, in such tracts of country, which it might be inconvenient to try in the particular districts wherein the same may have been committed; be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, entitled, "An Act to repeal certain parts of an act passed in the fourteenth year of His Majesty's reign, entitled, 'An Act for making more effectual provision for the government of the Province of Quebec, in North America, and to make further provision for the government of the said Province,'" and by the authority of the same, That all crimes and offences committed in any of the said tracts of country or parts of this province, not being within the limits of any described county or township, may be inquired 10 of and tried within any district of this Province, and may and shall be laid and charged to have been committed within the jurisdiction of the court which shall try the same, and such court may and shall proceed thereon to trial, judgment, and execution, or other punishment for such crime or offence, in the same manner, as if such crime or offence had been really committed within the district where such trial may be had, any law, usage, or custom, to the contrary notwithstanding.

II. Provided always, That when and so soon as any new county or counties, town or township, shall be laid out, described, and established in any of the tracts of country aforesaid, and shall be so declared by law or by proclamation, under the hand and seal of the Governor, Lieutenant-Governor, or person administering the government of this Province for the time being, by and with the advice and consent of His Majesty's Executive Council, all crimes and offences committed within the limits of any 20 such new county or counties, township or townships, shall be inquired of and tried, in the district or districts wherein such new county or counties, township or townships, shall be respectively comprehended, in like manner as such crimes or offences would have been inquired of and tried, if this present Act had not been made or passed.

PETITION OF THE EARL OF SELKIRK, 30th JULY, 1819,*

IN REFERENCE TO THE FOREGOING ACT OF UPPER CANADA AND THE EXERCISE OF JURISDICTION BY THAT PROVINCE TO THE WESTWARD OF LAKE SUPERIOR.

To the Right Honourable the Lords of the Committee of Privy Council for the affairs of Trade and Foreign Plantations.

The Memorial of Thomas, Earl of Selkirk—

30

SHEWETH :

Petition, Earl
of Selkirk,
30th July,
1819.

That in the month of September, one thousand eight hundred and eighteen, a Bill of Indictment was preferred against your memorialist at Sandwich, in the Western District of Upper Canada, for a conspiracy to destroy the trade of certain fur traders calling themselves the North-West Company of Montreal.

That when the said Bill was before the Grand Jury, the Attorney-General of the Province claimed a right to attend them in their private room, and to examine the witnesses for the prosecution.

That your memorialist appealed to the Court against this proceeding, which appeared to him highly irregular * * * but the Chief Justice declared from the Bench that the Attorney-General, as a law officer of the Crown, had a right to examine the witnesses before the Grand Jury, and that 40 such was the practice in England.

That though your memorialist took the liberty of contradicting this assertion in open court, the Grand Jury in obedience to the authority of the Chief Justice, was induced to permit the Attorney-General to attend them three days successively, for the purpose of marshalling and examining his witnesses; all of whom were partners, clerks or hired servants of the said Fur Traders, or otherwise paid by or dependent upon them; That after the Attorney-General had finished this examination, the Grand Jury continued two days more deliberating upon the said Bill, during which time they called in

* Public Record Office—Colonial Correspondence, Lower Canada, 1819, Vol. 153.

other evidence, and also again questioned several of the same witnesses who had already appeared before them; That on the morning of the sixth day, when it was generally believed, from the purport of several questions publicly put by the Foreman to the Chief Justice, and from other circumstances, that the Bill against your memorialist would be immediately thrown out. The Chief Justice, without calling before him the Grand Jury (who were sitting in the adjoining room), or enquiring of them, if they had any presentment to make, and without permitting them to fulfil the duties required of them, or regularly discharging them from their legal functions, unexpectedly and suddenly broke up the Court, thereby improperly interrupting and putting a total stop to the proceedings of the Grand Jury.

That upon the Chief Justice thus breaking up the Court, the Attorney-General immediately went into the room where the Grand Jury were sitting, and carried off the Bill of Indictment upon which they were then legally summoned and sworn to deliberate.

That your memorialist humbly conceived the Chief Justice of Upper Canada, in thus abruptly breaking up the Court, acted in a manner highly unbecoming as a judge, and most improperly and unjustly towards your memorialist; and particularly so as he was not called away by any other judicial engagement, having himself appointed the assizes then held at Sandwich to be the last in rotation upon that circuit, expressly and avowedly in order that no other business might interfere with or interrupt the necessary proceedings to be then held at that place.

That after this failure on the part of the Attorney-General and the North-West Company to procure a true Bill for the alleged conspiracy, your memorialist did not suppose that any prosecution of a similar description would be again contemplated against him; and he therefore permitted his witnesses (who in consequence of numerous vexatious proceedings instituted by the said Company had been long detained by him in Canada at a heavy expense) to go back into the interior, or otherwise to disperse upon their own concerns; and that shortly afterwards your memorialist himself returned to England.

That soon after his return, however, he received information that in order to give another chance, and to afford a better opportunity of having an indictment found against your memorialist in some other district, a Bill was brought into the Legislature of Upper Canada which, it was expected, would produce that result. It was introduced into the House of Assembly at the very commencement of the session (held in October last), and passed through that House with unusual rapidity, without waiting for the arrival of the members who represented the distant districts of the Province, or who were peculiarly interested in the question, and who it was generally understood would have opposed the Bill.

That the Bill having passed the House of Assembly, was immediately sent up to the Legislative Council, where, in order to prevent it having a retrospective effect (which it bore as originally framed), an amendment leaving out the word "heretofore" before the word "committed," was moved and carried, notwithstanding the opposition of the Chief Justice, under whose auspices the Bill had been originally introduced; the Bill so amended was then taken back to the House of Assembly and passed: after which it received the assent of the Provincial Government.

That by the said Act (a copy of which accompanies this memorial) a most unusual and dangerous power is given to the law officers of the Crown in Upper Canada, of removing at pleasure the trial of alleged offences to a distance of many hundred miles from the District Courts before which they are regularly and constitutionally cognizable; and of dragging accused persons, to the most remote parts of the Province, where juries, not of their own districts, may be packed for the purpose of convicting them; and where the prisoners, from the great distance, and expense of conveyance, may be unable to bring with them any witnesses to prove their innocence, or to obtain any Counsel to assist them in their defence.

That in the said Act no reason is given for the alteration thus made in the established Law and Judicature of Upper Canada, unless indeed the vague words appearing in the preamble, namely—"that it might be inconvenient" (to try offences in the courts where they ought to be tried) can be deemed a reason for such an extraordinary and unconstitutional innovation.

Your memorialist submits that not only is this Act in itself highly unjust and contrary to any principle of the Law of England—which is the recognized law of Upper Canada—but that in spite of

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the amendment made upon it for the purpose of preventing it having the effect of an *ex post facto* enactment, the Chief Justice of the Province and the Attorney-General have thought fit to interpret, and act upon it as having a retrospective effect.

That as they could not succeed in their endeavours to obtain from the Grand Jury in the Western District a true bill against your memorialist for the alleged conspiracy, another bill was, immediately after the passing of this new Act, preferred against him on the same charge, and supported by the very same witnesses, before a Grand Jury of the Home District, and for offences alleged to have been committed no less than two years before the passing of the said Act had given jurisdiction to the courts of that District.

That the Grand Jury at York, before whom this second Bill of Indictment was preferred as above 10 mentioned, were prevailed upon, at the instance and upon the opinion of the said Attorney-General, to admit into their private room the principal agent and partner of the North-West Company, for the purpose of assisting as interpreter and examiner of the witnesses, most of whom spoke a language not understood by the jurors, in consequence of which improper and irregular proceedings the Bill has been found against your memorialist and nineteen other persons, most of whose names have been inserted in the Indictment evidently for no other purpose than to prevent them being called as witnesses in your memorialist's defence.

That your memorialist further submits that Fort William, a trading post occupied by the said North-West Company, and the place where the alleged offences charged against him are stated to have been committed, is not situated within the jurisdiction of the Courts of Upper Canada, as settled by the 20 Act of Parliament of 14 George 3rd, c. 83, which defines the boundary of that Province, and therefore that these charges cannot be legally brought to trial in any Court of Upper Canada.

That the Chief Justice of Upper Canada, in defiance of the Act of Parliament which declares the western boundary of Canada to be a line drawn northward from the point of junction of the Rivers Ohio and Mississippi, and in opposition to the unanimous decision of the Court at Quebec, asserts that the western district of Upper Canada extends westward to an indefinite distance. That, in consequence of this extraordinary doctrine, your memorialist is apprehensive that under the provisions of this New Provincial Act, the Chief Justice will not hesitate to issue Bench Warrants for the purpose of arresting several persons now resident at the Red River settlement, and that if such warrants are submitted to, or enforced, he will bring away the parties to a distance of two thousand miles, without their having 30 any opportunity of bringing witnesses along with them, or the means for obtaining an impartial jury, or a fair trial. Your memorialist ought also to observe that as the settlers at Red River have obtained the opinion of several of the most eminent counsel in England, declaring that the Red River cannot be considered as in Canada, it is not unlikely that warrants issued (under the new Act) for the apprehension of any of the settlers at that place will be forcibly and, as your memorialist conceives, lawfully resisted.

That your memorialist further submits that as the provincial enactment above mentioned is of an unusual and extraordinary nature, your memorialist conceives that the Lieutenant-Governor ought not to have expressed the Royal assent to the Bill, without seeing that it contained a clause to suspend its operation till the pleasure of His Royal Highness the Prince Regent should be known; that in consequence of the omission of such a clause and the opportunity thereby allowed for the Bill to be 40 immediately acted upon, your memorialist has sustained grievous prejudice; that though the Bill in question was passed in the month of November last it appears that no copy thereof, as directed by the Act of 31 George 3rd, has yet been transmitted to this country, by which omission a further opportunity has been afforded of carrying the same into effect before His Royal Highness the Prince Regent can have an opportunity of exercising his constitutional prerogative on the subject, and of determining whether the Act shall be allowed or disallowed.

Your memorialist therefore prays that your Lordships will take the said Provincial Act into consideration as early as possible, and will advise His Royal Highness the Prince Regent in Council to disallow the same, and your memorialist further prays that when the said Act is to be taken under your Lordships' consideration he may be heard by Counsel on the subject.

SELKIRK.

50

PETITION OF THE HUDSON'S BAY COMPANY, 3RD AUGUST, 1819,*

IN REFERENCE TO THE UPPER CANADA ACT, 59 GEO. 3, CAP. 10 (1818), AND THE JURISDICTION OF THAT PROVINCE TO THE WESTWARD OF LAKE SUPERIOR.

To the Right Honourable the Lords of the Committee of Privy Council for Trade and Foreign Plantations.

The Memorial of the Hudson's Bay Company—

SHEWETH:—

That His Majesty, King Charles the Second, by His Royal Charter dated the second day of May, in the twenty-second year of His Reign, incorporated your memorialists by the name of the Governor and Company of Adventurers of England trading into Hudson's Bay, constituting them to be a Body Corporate and Politic for ever, and granting to them various lands, rights, immunities and privileges, as may particularly appear by reference to their Charter, a copy of which accompanies this memorial.

That the territory so granted to your memorialists forms the northern and north-western boundary of the Province of Upper Canada, and that your memorialists have been in the practice of carrying on trade in that part of Upper Canada which borders upon their territories.

That the parts of Canada in which your memorialists have traded are not situated within the limits of any described township or county therein.

That in the month of November last, an Act passed through the several branches of the Legislature of that Province, a copy of which is hereunto annexed, entitled "An Act to authorize the enquiry and trial of crimes and offences committed within this Province, without the limits of any described township or county to be had in any district thereof;" but that your memorialists understand that no regular copy thereof has been received in this country so as to enable His Royal Highness, the Prince Regent in Council, to exercise his constitutional power of signifying his pleasure with respect to the said Act.

That it appears to your memorialists that by this Colonial Law, which was acted upon as soon as it was assented to by the Provincial Government, not only a most essential innovation is made in the long established system of judicature in Upper Canada, but by the interpretation which has been put upon it by the Chief Justice and the Law Officers in that Province, it has had the effect of operating, as an *ex post facto* law with respect to several of your memorialists' officers and servants, contrary to the established principles of justice and to the law of England. For in consequence of such interpretation criminal prosecutions were immediately commenced, and a Bill of Indictment preferred against certain of their officers and servants for a conspiracy to destroy the trade of the North-West Company in having committed certain acts alleged to have taken place at Fort William (a trading post of that Company), two years prior to the passing of the said Colonial Law.

Your memorialists further submit that Fort William, where the said acts were alleged to have been committed, is not in Upper Canada, being situated to the west of the boundary line of that Province (as established by Act of Parliament, 14th Geo. 3rd, c. 83), and therefore not within the jurisdiction or subject to the Legislature of that Province.

That in the proceedings which have thus been taken against your memorialists' officers and servants as last mentioned, it appears that the principal agent and partner of the North-West Company was permitted, at the instance of the Attorney-General, to examine before the Grand Jury the witnesses for the prosecution, almost all of the said witnesses being clerks, servants and dependants of the said Company; That in consequence of these improper proceedings, a Bill of Indictment has been found against several of your memorialists' officers and servants, who may accordingly be called upon to appear in Upper Canada, and take their trial for offences alleged to have been committed long prior to the passing of the said Act.

Your memorialists therefore humbly pray that they may be heard by their Counsel, for the purpose of stating fully the reasons why the assent of His Royal Highness, the Prince Regent in Council, should not be given to the Act so passed by the Legislature of Upper Canada.

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Imperial Statutes and Acts of State bearing on the question of the Boundaries.

Petition Hudson's Bay Company, 3rd August, 1819.

* Public Record Office—Colonial Correspondence, Canada (Upper), 1819, No. 326.

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All of which is humbly submitted by your memorialists to Your Lordships' consideration and wisdom.

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By order of the Governor and Committee of the said Company.

HUDSON'S BAY HOUSE,
LONDON, 3rd August, 1819.

WILLIAM SMITH,
Secretary.

DESPATCH OF LIEUTENANT-GOVERNOR SIR PEREGRINE MAITLAND TO EARL
BATHURST, 30TH NOVEMBER, 1819.*

CONCERNING THE UPPER CANADA ACT 59 GEO. III., CAP. 10, COMPLAINED OF IN THE FOREGOING
PETITIONS OF THE EARL OF SELKIRK AND THE HUDSON'S BAY COMPANY.

UPPER CANADA,

10

YORK, 30th November, 1819.

Lieut. Gov.
Maitland to
Earl
Bathurst,
30th Novem-
ber, 1819.]

MY LORD,—I have had the honour of receiving Your Lordship's despatch of the 6th of August, with its enclosures, respecting an Act passed by the Legislature of this Province, entitled "An Act to authorize the inquiry and trial of crimes and offences committed within this Province, without the limits of any described township or county, to be had in any district thereof," and I hasten to comply with your Lordship's commands by communicating such circumstances within my knowledge, respecting the passing of the Bill in question, as may afford the information required by Your Lordship's letter.

The session of the Legislature in which that Bill was passed was opened on the 12th of October, and closed on the 27th of November. In the course of the session, about the 29th of October, the date of Mr. Gale's letter to me, which has been submitted to Your Lordship, it was communicated to me in 20 the common official way, that a Bill for authorizing the trial in any district of this Province of offences committed in those wild and unorganized parts of it, which by a Provincial Statute of 1798 had been made part of the Western District, had passed both branches of the Legislature and was ready for the Royal assent.

I had been informed that the year before (previous to my arrival in the Province) a bill of the same nature had passed the Legislative Council, at the suggestion of the Judges, and had been sent down to the House of Assembly, where, after having been taken up, gone through two readings, and passed into Committee, it shared the fate of other Bills, which a difference on a question of privilege had caused to be postponed.

At the time of my receiving notice of this Bill having passed, the Assizes were sitting in this 30 district, and the Court, in obedience to Great Seal Instruments transmitted from the Government of Lower Canada, under the British Act of 1803, were then actually occupied in trials in which I understood the Earl of Selkirk and his agents were prosecutors, and some partners of the North-West Company, and persons engaged in their service, were defendants.

It was matter of notoriety that the defendants under trial had preferred various charges against the persons who were now their prosecutors, for offences stated to have been committed at Fort William, upon Lake Superior, in a country considered to be within the limits of Upper Canada, but as completely removed from all connexion with any inhabited or organized part of this Province, and as little within the knowledge of its inhabitants, as the scene of the offences which they were then investigating.

I had been informed that the agents of the North-West Company had, in the year 1817, brought 40 down a great number of witnesses from the interior of the country to Sandwich, in the Western District, to prefer charges of alleged violences against the Earl of Selkirk and other persons; but that they arrived a few days after the termination of the assizes, which are there held annually, and which happened to be that year somewhat earlier than usual. I knew that at the assizes of 1818 the same witnesses were again assembled at Sandwich, having travelled many hundred miles to prefer the same charges, and that their object was then defeated by the adjournment of the court while the proceedings

* Public Record Office—Colonial Correspondence, Canada (Upper), 1819, No. 325.

were depending, under circumstances of which former communications will enable your lordship to judge.

No other tribunal was open, because the Legislature in dividing this Province into districts, in 1798 having found it necessary to attach the unorganized territories to some district, had attached them to the Western by a general clause in the Bill for that purpose, which declares that "so much of this Province as is not included within any other district thereof, do constitute and form part of the Western District." Therefore, without a contrary provision, while offenders in the Indian territories out of the limits of this Province, which it seems are not very certainly defined, may, under the British Act of the 43rd of the King, be tried in any district of either Province; crimes committed at Fort William, situate in the midst of territories equally wild and uninhabited by any civilized population, can be tried nowhere but at Sandwich.

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Both parties complained that an opportunity was not afforded them of bringing these charges to an end. The Bill just passed at the suggestion of the Judges appeared to me obviously intended to guard against further inconveniences and delays from a restraint for which I can see no substantial reason or necessity, and it occurred to me that, by assenting to the Bill before the termination of the session, and while the assizes were sitting, the witnesses, prosecutors, and defendants being assembled, it would admit of the immediate trial of every criminal charge between the parties at a time when they were better prepared with witnesses than it was probable they ever would be again. * * *

As it may be satisfactory to Your Lordship to learn the impression made on my mind by what I have observed connected with this Bill, I state to Your Lordship without hesitation that my own conviction is decidedly in favour of its propriety and expediency; and nothing could have more tended to confirm me in this opinion than the anxiety betrayed by Lord Selkirk, and the perseverance manifested, by his agents and friends in opposing it in every stage. It is a Bill which originated with the Judges, upon considerations of general expediency, before any prosecution against the Earl of Selkirk had been preferred. It passed not hastily, nor by surprise, but in the usual manner, and after having been discussed by a committee of the whole house in the preceding session. * * *

The Bill had no sooner passed, however, than the Earl of Selkirk's law agent entreated me to withhold the Royal assent.

In the recess between the two sessions an indictment of the same nature with that which had been preferred against Lord Selkirk and his followers for their proceedings at Fort William, had been found in this district, by a grand jury, as free, I believe, from any connexion with either party as any that could have been empanelled in England. * * *

It is observable that the Earl, in a letter of which Your Lordship was pleased to send me a copy, some months ago, remonstrates against this Bill upon grounds at which Mr. Halket does not even hint, at the same time that he objects to the Bill as affecting rights which are in this case entirely imaginary and consist only in words, as Your Lordship will be convinced by an inspection of the map, which shows that Fort William is about the same distance from York as it is from the only place at which Lord Selkirk seems willing to be brought to trial, and that it is at least eight hundred miles distant from either.

How far it would tend to the pure administration of justice, were the cognizance of offences arising out of this contest confined to the officers of the Hudson's Bay Company, as spoken of in the Earl of Selkirk's letter to my Lord Liverpool, will appear to Your Lordship from a perusal of the documents marked No. 3, civil proceedings, accompanying the Attorney-General's report of the judicial proceedings in Upper Canada. These very extraordinary papers, to which I wish to direct Your Lordship's particular attention, will shew how far the views of the Earl and those employed under him are confined to colonization, and what probability there would be of their disinterested decision upon matters affecting the interests of the North-West traders.

Since Your Lordship has submitted to me the letters of the Earl of Selkirk and Mr. Halket, I cannot forbear remarking upon those passages in them which may be considered as charges against the Chief Justice and Attorney-General of this Province, that they are persons who, in the discharge of their public duties, have ever hitherto maintained characters above reproach and suspicion, and that, as

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far as I can discover, they are as free as myself from any private interest, family connexion, or ties of friendship that should lead them to make their conduct in this instance a singular exception.

I have the honour to be,

My Lord,

Your Lordship's most obedient, humble servant,

P. MAITLAND,

Lieutenant-Governor.

To EARL BATHURST, K.G.,
etc., etc., etc.

P. S.—The documents referred to in the Attorney-General's Report, under the letters A and C, 10 have been transmitted to Your Lordship, the former in my Despatch No. 15, of the 10th December, 1818, and the latter in Despatch No. 31, of 3rd April, 1819.

STATEMENT OF CHIEF JUSTICE POWELL, OF UPPER CANADA, 27TH OCTOBER, 1819,*

IN REFERENCE TO THE MATTERS COMPLAINED OF IN THE FOREGOING PETITIONS OF THE EARL OF SELKIRK AND THE HUDSON'S BAY COMPANY.

(Transmitted in the foregoing despatch of Lieutenant-Governor Maitland.)

Statement
Chief Justice
Powell, (U.
C.), 27th
October,
1819.

In 1803 an Act passed the Parliament of the United Kingdom, giving jurisdiction to the Courts of Upper Canada, over offences committed in the Indian Territory in North America, not being within the limits of any civil government of the United States of America, or of Upper or Lower Canada. By this description the territory of the Hudson's Bay Company was not excepted. The limits of Upper Canada were unsettled, at least there was great difference of opinion on that point. Under the provision of 43rd of His Majesty about thirty indictments, chiefly for capital crimes, had been preferred by the Earl of Selkirk in Lower Canada, for offences supposed to have been committed in the Indian Territory, and had been transmitted to be tried in Upper Canada. These thirty indictments might be supposed to attract an immense concourse of parties and witnesses at a great expense from distances of one and two thousand miles. The whole business was of the first impression there had been an adjudication upon the Act in Upper Canada. It was natural to consider the difficulties probably to arise in its execution. Amongst others, the question of jurisdiction was the most prominent.

The outrages at Fort William were presented in the Western District of Upper Canada, that Post having been ever considered part of that district by the proprietors of the Governments and the Courts, yet the Supreme Court of Lower Canada had adjudged that it was without the Province of Upper Canada, and that offences committed there were, under the 43rd of His Majesty, to be tried there. In every point of view it was desirable that the trials should be had at the seat of Government, where all the Judges could attend to consult each other on points arising under a new and peculiar jurisdiction

When these considerations are fully comprehended, it may be fair to consult the map of the two Canadas, and of the Indian Territory, when it will be seen that a great part of Upper Canada, and especially the Western District, is not organized into townships or counties, and has no population but Indians, and the traders, their followers. That from the last organized population to Fort William there is an interval of a thousand miles without white inhabitants, excepting the Military Post at Drummond's Island. So that the legal idea of vicinage in the ancient estimation of civil jurisdiction is lost, and it must be indifferent to offenders at that distance to be conveyed for trial at York or Sandwich, and by inspecting the map it will be seen that York is nearest. * * * *

WM. DUMMER POWELL.

York, 27th October, 1819.

IMPERIAL ORDER IN COUNCIL, 9TH JUNE, 1821, RATIFYING AND CONFIRMING THE
ACT OF UPPER CANADA, 59 GEO. III, CAP. 10.*

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*Imperial
Order in
Council, rati-
fying U. C.
Act, 9th
June, 1821.*

At the Court at Carlton House the 9th of June, 1821:

Present,

The King's most Excellent Majesty,

Archbishop of Canterbury, Lord President, Lord Privy Seal, Duke of Montrose, Duke of Wellington,
Lord Steward, Lord Chamberlain, Earl Bathurst, Earl of Liverpool, Lord Charles Bentinck, Viscount
Melville, Mr. Wellesley Pole.

WHEREAS, there was this day read at the Board a Report from a Committee of the Lords of His
10 Majesty's Most Honourable Privy Council, dated the 23rd of last month, in the words following, viz.:

"Your Majesty having been pleased by your Order in Council, of the 20th of November, 1819, to
refer unto this Committee an Act, passed by the Legislature of the Province of Upper Canada, in the
month of November, 1818, intituled, 'An Act to authorize the enquiry and trial of crimes and offences
committed within this Province, without the limits of any described township or county,' to be had
in any district thereof, and Your Majesty also been pleased to refer unto this Committee, sundry
memorials praying to be heard by counsel against the confirmation of the said Act; the Lords of this
Committee, in obedience to Your Majesty's said Order of Reference, did on the 28th December, 1819,
take the said Act, and memorials in objection thereto in consideration, and heard counsel on behalf of
the several memorialists, and their Lordships having this day resumed the consideration of the said Act
20 and memorials, do agree humbly to report, as their opinion to Your Majesty, that the said Act ought to
be confirmed."

His Majesty having taken the said Report into consideration, was pleased by and with the advice
of His Privy Council, to approve thereof, and doth hereby declare his approbation of the said Act, and
pursuant to His Majesty's royal pleasure thereupon expressed, the said Act is hereby confirmed, finally
enacted, and ratified accordingly. Whereof the Governor, Lieutenant-Governor, or Commander-in-Chief
of His Majesty's said Provinces of Upper Canada, for the time being, and all other persons whom it
may concern, are to take notice and govern themselves accordingly.

IMPERIAL ACT, 1-2 GEO. IV., C. 66 (1821).

AN ACT FOR REGULATING THE FUR TRADE, AND ESTABLISHING A CRIMINAL AND CIVIL JURISDIC-
30 TION WITHIN CERTAIN PARTS OF NORTH AMERICA.

WHEREAS the competition in the Fur Trade between the Governor and the Company of Adventurers
of England trading into Hudson's Bay, and certain associations of persons trading under the name of
"The North-West Company of Montreal," has been found for some years past to be productive of great
inconvenience and loss, not only to the said Company and associations but to the said trade in general,
and also of great injury to the native Indians, and of other persons subjects of His Majesty: And
whereas the animosities and feuds arising from such competition have also for some years past
kept the interior of America, to the northward and westward of the Provinces of Upper and Lower
Canada, and of the territories of the United States of America, in a state of continued disturbance:
And whereas many breaches of the peace, and violence extending to the loss of lives and considerable
40 destruction of property, have continually occurred therein: And whereas for remedy of such evils,
it is expedient and necessary that some more effectual regulations should be established for
the apprehending, securing, and bringing to justice all persons committing such offences, and
that His Majesty should be empowered to regulate the said trade: And whereas doubts have
been entertained whether the provisions of an Act passed in the forty-third year of the reign
of His late Majesty King George the Third, intituled, "An Act for extending the Jurisdiction
of the Courts of Justice in the Provinces of Lower and Upper Canada, to the trial and punishment

*Imperial Act
1-2 Geo. IV,
c. 66 (1821).*

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of persons guilty of crimes and offences within certain parts of North America adjoining to the said Provinces," extended to the territories granted by Charter to the said Governor and Company, and it is expedient that such doubts should be removed, and that the said Act should be further extended: Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the passing of this Act, it shall be lawful for His Majesty, his heirs or successors, to make Grants, or give His Royal License, under the hand and seal of one of His Majesty's Principal Secretaries of State, to any body corporate, or company, or person or persons, of or for the exclusive privilege of trading with the Indians in all such parts of North America as shall be specified in any such Grants or Licenses respectively, not being part of the lands or territories heretofore granted to the said Governor and Company of Adventurers of England trading to Hudson's Bay, and not being part of any of His Majesty's Provinces in North America, or of any lands or territories belonging to the United States of America; and all such Grants and Licenses shall be good, valid and effectual for the purpose of securing to all such bodies corporate, or companies, or persons, the sole and exclusive privilege of trading with the Indians in all such parts of North America (except as hereinafter excepted) as shall be specified in such Grants or Licenses; anything contained in any Act or Acts of Parliament, or any law to the contrary notwithstanding.

II. Provided always, and be it further enacted, that no such Grant or License, made or given by His Majesty, his heirs or successors, of any such exclusive privileges of trading with the Indians in such parts of North America as aforesaid, shall be made or given for any longer period than twenty-one years; and no rent shall be required or demanded for or in respect of any such Grant or License, or any privileges given thereby under the provisions of this Act, for the first period of twenty-one years; and from and after the expiration of such first period of twenty-one years, it shall be lawful for His Majesty, his heirs or successors, to reserve such rents in any future Grants or Licenses to be made to the same or any other parties, as shall be deemed just and reasonable, with security for the payment thereof; and such rents shall be deemed part of the land revenues of His Majesty, his heirs and successors, and be applied and accounted for as the other land revenues of His Majesty, his heirs or successors, shall at the time of payment of any such rent being made, be applied and accounted for.

III. And be it further enacted, that from and after the passing of this Act, the Governor and Company of Adventurers trading to Hudson's Bay, and every body corporate and company and person to whom every such Grant or License shall be made or given as aforesaid, shall respectively keep accurate registers of all persons in their employ in any part of North America, and shall, once in each year, return to His Majesty's Secretary of State, accurate duplicates of such registers, and shall also enter into such security as shall be required by His Majesty for the due execution of all processes, criminal and civil, as well within the territories included in any such grant as within those granted by Charter to the Governor and Company of Adventurers trading to Hudson's Bay, and for the producing or delivering into safe custody, for purposes of trial, of all persons in their employ or acting under their authority, who shall be charged with any criminal offence, and also for the due and faithful observance of all such rules, regulations, and stipulations as shall be contained in any such Grant or License, either for diminishing or preventing the sale or distribution of spirituous liquors to the Indians, or for promoting their moral and religious improvement, or for any other object which His Majesty may deem necessary for the remedy or prevention of the other evils which have hitherto been found to exist.

IV. And whereas, by a Convention entered into between His Majesty and the United States of America, it was stipulated and agreed that any country on the north-west coast of America to the westward of the Stoney Mountains, should be free and open to the citizens and subjects of the two Powers, for the term of ten years from the date of the signature of that Convention; be it therefore enacted, that nothing in this Act contained shall be deemed or construed to authorize any body corporate, company or person, to whom His Majesty may have, under the provisions of this Act, made a Grant or given a License of exclusive trade with the Indians in such parts of North America as aforesaid, to claim or exercise any such exclusive trade within the limits specified in the said Article, to the prejudice or exclusion of any citizens of the said United States of America, who may be engaged in the

said trade: Provided always, that no British subject shall trade with the Indians within such limits, without such Grant or License as is by this Act required.

V. And be it declared and enacted, that the said Act passed in the forty-third year of the reign of His late Majesty, intituled "An Act for extending the Jurisdiction of the Courts of Justice in the Provinces of Lower and Upper Canada, to the Trial and Punishment of persons guilty of crimes and offences within certain parts of North America, adjoining to the said Provinces," and all the clauses and provisos therein contained, shall be deemed and construed, and it is and are hereby respectively declared, to extend to and over and to be in full force in and through all the territories heretofore granted to the Company of Adventurers of England trading to Hudson's Bay; anything in any Act or Acts of Parliament or this Act or in any grant or Charter to the Company, to the contrary notwithstanding.

VI. And be it further enacted, that from and after the passing of this Act, the Courts of judicature now existing, or which may be hereafter established in the Province of Upper Canada, shall have the same civil jurisdiction, power and authority, as well in the cognizance of suits as in the issuing process, mesne and final, and in all other respects whatsoever, within the said Indian Territories and other parts of America not within the limits of either of the Provinces of Lower or Upper Canada, or of any civil government of the United States, as the said Courts have or are invested with within the limits of the said Provinces of Lower or Upper Canada respectively; and that all and every contract, agreement, debt, liability and demand whatsoever, made, entered into, incurred, or arising within the said Indian Territories and other parts of America, and all and every wrong and injury to the person or to property real or personal, committed or done within the same, shall be and be deemed to be of the same nature, and be cognizable to the same Courts, Magistrates, or Justices of the Peace, and be tried in the same manner and subject to the same consequences in all respects as if the same had been made, entered into, incurred, arisen, committed or done within the said Province of Upper Canada, anything in any Act or Acts of Parliament or Grant, or Charter, to the contrary notwithstanding: Provided always, that all such suits and actions relating to lands or to any claims in respect of land not being within the Province of Upper Canada, shall be decided according to the laws of that part of the United Kingdom called England, and shall not be subject to or affected by any local Acts, Statutes, or Laws of the Legislature of Upper Canada.

VII. And be it further enacted, that all process, writs, orders, judgments, decrees, and acts whatsoever, to be issued, made, delivered, given and done by or under the authority of the said courts, or either of them, shall have the same force, authority, and effect within the said Indian Territory and other parts of America as aforesaid, as the same now have within the said Province of Upper Canada.

VIII. And be it further enacted, that it shall be lawful for the Governor, or Lieutenant-Governor, or person administering the Government for the time being of Lower Canada, by Commission under his hand and Seal, to authorize all persons who shall be appointed Justices of the Peace under the provisions of this Act, within the said Indian Territories, or other parts of America as aforesaid, or any other person who shall be specially named in any such Commission, to act as a Commissioner within the same, for the purpose of executing, enforcing and carrying into effect, all such process, writs, orders, judgments, decrees and acts which shall be issued, made, delivered, given or done by the said Courts of judicature, and which may require to be enforced and executed within the said Indian Territories, or such other parts of North America as aforesaid; and in case any person or persons whatsoever, residing or being within the said Indian Territories, or such other parts of America as aforesaid, shall refuse to obey or perform any such process, writ, order, judgment, decree, or act of the said Courts, or shall resist or oppose the execution thereof, it shall and may be lawful for the said Justices of the Peace or Commissioners, and they or any of them are and is hereby required, on the same being proved before him, by the oath or affidavit of one credible witness, to commit the said person or persons so offending as aforesaid, to custody, in order to his or their being conveyed to Upper Canada; and that it shall be lawful for any such Justice of the Peace or Commissioner, or any person or persons acting under his authority, to convey or cause to be conveyed such person or persons so offending as aforesaid to Upper Canada, in pursuance of such process, writ, order, decree, judgment, or act, and such person and persons shall be committed to

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gaol by the said Court, on his, her, or their being so brought into the said Province of Upper Canada, by which such process, writ, order, decree, judgment or act was issued, made, delivered, given or done, until a final judgment or decree shall have been pronounced in such suit, and shall have been duly performed, and all costs paid, in case such person or persons shall be a party or parties in such suit, or until the trial of such suit shall have been concluded, in case such person or persons shall be a witness or witnesses therein; Provided always, that if any person or persons so apprehended, as aforesaid, shall enter into a bond recognizance to any such Justice of the Peace or Commissioner, with two sufficient sureties, to the satisfaction of such Justice of the Peace or Commissioner, or the said Courts, conditioned to obey and perform such process, writ, order, judgment, decree, or act as aforesaid, then, and in such case, it shall and may be lawful for the said Justice of the Peace or Commissioner, or the said Courts, 10 to discharge such person or persons out of custody,

IX. And be it further enacted, that in case such person or persons shall not perform and fulfil the condition or conditions of such recognizance, then, and in such case, it shall and may be lawful for any such Justice or Commissioner, and he is hereby required to assign such recognizance to the plaintiff or plaintiffs, in any suit in which such process, writ, order, decree, judgment, or act shall have been issued, made, delivered, given, or done, who may maintain an action in the said Courts, in his own name, against the said sureties, and recover against such sureties the full amount of such loss or damage as such plaintiff shall prove to have been sustained by him, by reason of the original cause of action in respect of which such process, writ, order, decree, judgment, or act of the said Courts were issued, made, delivered, given, or done as aforesaid, notwithstanding anything contained in any 20 Charter granted to the said Governor and Company of Adventurers of England trading to Hudson's Bay.

X. And be it further enacted, that it shall be lawful for His Majesty, if he shall deem it convenient so to do, to issue a Commission or Commissions to any person or persons to be and act as Justices of the Peace, within such parts of America as aforesaid, as well within any territories heretofore granted to the Company of Adventurers of England trading to Hudson's Bay, as within the Indian Territories of such other parts of America as aforesaid, and it shall be lawful for the Court in the Province of Upper Canada, in any case in which it shall appear expedient to have any evidence taken by Commission, or any facts or issue, or any cause or suit ascertained, to issue a Commission to any 30 three or more of such Justices to take such evidence, and return the same, or try such issue, and for that purpose to hold Courts, and to issue subpoenas or other processes to compel attendance of plaintiffs, defendants, jurors, witnesses, and all other persons requisite and essential to the execution of the several purposes for which such Commission or Commissions had issued, and with the like power and authority as are vested in the Courts of the said Provinces of Upper Canada; and any order, verdict, judgment, or decree, that shall be made, found, declared, or published by or before any Court or Courts 30 held under and by virtue of such Commission or Commissions, shall be considered to be of as full effect and enforced in like manner, as if the same had been made, found, declared, or published within the jurisdiction of the Court of the said Province; and at the time of issuing such Commission or Commissions shall be declared the place or places where such Commission is to be opened, and the Courts and proceedings thereunder held; and it shall be at the same time provided how and by what 40 means the expenses of such Commission, and the execution thereof, shall be raised and provided for.

XI. And be it further enacted, that it shall be lawful for His Majesty, notwithstanding anything contained in this Act, or in any Charter granted to the said Governor and Company of Adventurers of England trading to Hudson's Bay, from time to time by any Commission under the Great Seal, to authorize and empower any such persons so appointed Justices of the Peace as aforesaid, to sit and hold Courts of Record for the trial of criminal offences and misdemeanors, and also of civil causes; and it shall be lawful for His Majesty to order, direct and authorize the appointment of proper officers to act in aid of such Courts and Justices within the jurisdiction assigned to such Courts and Justices in any such Commission; anything in this Act or in any Charter of the Governor and Company of the Merchant Adventurers of England trading to Hudson's Bay, to the contrary notwithstanding. 50

XII. Provided always, and be it further enacted, that such Courts shall be constituted, as to the number of Justices to preside therein, and as to such places within the said territories of the said

Company, or any Indian territories or other parts of North America as aforesaid, and the times and manner of holding the same, as His Majesty shall from time to time order and direct; but shall not try any offender upon any charge or indictment for any felony made the subject of capital punishment, or for any offence or passing sentence affecting the life of any offender, or adjudge or cause any offender to suffer capital punishment or transportation, or take cognizance of or try any civil action or suit, in which the cause of such suit or action shall exceed in value the amount or sum of two hundred pounds; and in every case of any offence subjecting the person committing the same to capital punishment, or transportation, the Court or any Judge of any such Court, or any Justice or Justices of the Peace, before whom any such offender shall be brought, shall commit such offender to save custody, and cause 10 such offender to be sent in such custody for trial in the Court of the Province of Upper Canada.

XIII. And be it further enacted, that all judgments given in any civil suit shall be subject to appeal to His Majesty in Council, in like manner as in other cases in His Majesty's Province of Upper Canada, and also in any case in which the right or title to any land shall be in question.

XIV. And be it further enacted, that nothing in this Act contained shall be taken or construed to affect any right, privilege, authority or jurisdiction, which the Governor and Company of Adventurers trading to Hudson's Bay are by law entitled to claim and exercise under their Charter, but that all such rights, privileges, authorities and jurisdictions shall remain in as full force, virtue and effect, as if this Act had never been made; anything in this Act to the contrary notwithstanding.

LICENSE OF EXCLUSIVE TRADE TO THE HUDSON'S BAY COMPANY AND THE NORTH-WEST COMPANY, JOINTLY, 5TH DECEMBER, 1821.

GEORGE R.

GEORGE THE FOURTH, by the Grace of God, of the United Kingdom of Great Britain and Ireland, King Defender of the Faith.

To all to whom these presents shall come, greeting:

WHEREAS an Act passed in the second year of our reign, intituled, "An Act for regulating the Fur Trade, and for establishing a Criminal and Civil Jurisdiction within certain parts of North America;" wherein it is amongst other things enacted, that from and after the passing of the said Act, it should be lawful for us, our heirs or successors, to make Grants or give our Royal License, under the hand and seal of one of our Principal Secretaries of State, to any body corporate or company, or person or persons 30 of or for the exclusive privilege of trading with the Indians in all such parts of North America as should be specified in any such Grants or Licenses respectively, not being part of the lands or territories heretofore granted to the Governor and Company of Adventurers of England trading to Hudson's Bay, and not being part of any of our provinces in North America, or of any lands or territories belonging to the United States of America, and that all such Grants and Licenses should be good, valid, and effectual, for the purpose of securing to all such bodies corporate, or companies, or persons, the sole and exclusive privilege of trading with the Indians, in all such parts of North America (except as therein-after excepted) as should be specified in such Grants or Licenses, anything contained in any Act or Acts of Parliament, or any law to the contrary notwithstanding; and it was in the said Act further enacted, that no such Grant or License made or given by us, our heirs or successors, of any such exclusive privi- 40 leges of trading with the Indians in such parts of North America as aforesaid, should be made or given for any longer period than 21 years, and that no rent should be required or demanded for or in respect of any such Grant or License, or any privileges given thereby, under the provisions of the said Act, for the first period of 21 years; and it was further enacted, that from and after the passing of the said Act, the Governor and Company of Adventurers of England trading to Hudson's Bay, and every body corporate, and company, and person, to whom every such Grant or License should be made or given as aforesaid, should respectively keep accurate registers of all persons in their employ, in any parts of North America, and should once in each year return to our Principal Secretaries of State accurate duplicates of such registers, and should also enter into such security as should be required by us for the

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due execution of all criminal processes, and of any civil process in any suit where the matter in dispute shall exceed £200, and as well within the territories included in any such Grant as within those granted by Charter to the Governor and Company of Adventurers of England trading to Hudson's Bay, and for the producing and delivering into safe custody for the purpose of trial, all persons in their employ, or acting under their authority, who should be charged with any criminal offence, and also for the due and faithful observance of all such rules, regulations and stipulations as should be contained in any such Grant or License, either for gradually diminishing and ultimately preventing the sale or distribution of spirituous liquors to the Indians, or for promoting their moral and religious improvement; or for any other object which we might deem necessary for the remedy or prevention of any other evils which have been hitherto found to exist: And whereas it was also in the said Act recited, that by a Convention entered into between his late Majesty and the United States of America, it was stipulated and agreed, that every country on the north-west coast of America, to the westward of the Stoney Mountains should be free and open to the citizens and subjects of the two powers for the term of ten years from the date of the signature of that Convention; and it was therefore enacted, that nothing in the said Act contained should be deemed or construed to authorize any body corporate, company or person to whom His Majesty might, under the provisions of the said Act, make or grant or give a License of exclusive trade with the Indians in such parts of North America as aforesaid, to claim or exercise any such exclusive trade within the limits specified in the said Article, to the prejudice or exclusion of any citizens of the said United States of America, who might be engaged in the said trade: Provided always that no British subject should trade with the Indians within such limits without such Grant or License 10 as was by the said Act required. 20

And whereas the said Governor and Company of Adventurers of England trading into Hudson's Bay, and certain associations of persons trading under the name of the "North-west Company, of Montreal," have respectively extended the fur trade over many parts of North America, which had not been before explored: And whereas the competition in the said trade has been found for some years past to be productive of great inconvenience and loss, not only to the said Company and associations, but to the said trade in general, and also of great injury to the native Indians, and of other persons our subjects: And whereas the said Governor and Company of Adventurers of England trading into Hudson's Bay, and William M'Gillivray, of Montreal, in the Province of Lower Canada, esquire, Simon M'Gillivray, of Suffolk Lane, in the City of London, merchant, and Edward Ellice, of Spring Gardens, in the County 30 of Middlesex, esquire, have represented to us; that they have entered into an agreement, on the 26th day of March last, for putting an end to the said competition, and carrying on the said trade for 21 years, commencing with the outfit of 1821, and ending with the returns of 1841, to be carried on in the name of the said Governor and Company exclusively:

And whereas the said Governor and Company and William M'Gillivray, Simon M'Gillivray, and Edward Ellice, have humbly besought us to make a Grant, and give our Royal License to them jointly, of and for the exclusive privilege of trading with the Indians in North America, under the restrictions and upon the terms and conditions specified in the said recited Act: Now KNOW YE, That we, being desirous of encouraging the said trade and remedying the evils which have arisen from the competition which has heretofore existed therein, do grant and give our Royal License under the hand and seal of 40 one of our Principal Secretaries of State, to the said Governor and Company, and William M'Gillivray, Simon M'Gillivray, and Edward Ellice, for the exclusive privilege of trading with the Indians in all such parts of North America to the northward and westward of the lands and territories belonging to the United States of America as shall not form part of any of our provinces in North America, or of any lands or territories belonging to the said United States of America, or to any European government, state or power; and we do by these presents give, grant and secure to the said Governor and Company, William M'Gillivray, Simon M'Gillivray, and Edward Ellice, jointly, the sole and exclusive privilege, for the full period of 21 years from the date of this our Grant, of trading with the Indians in all such parts of North America as aforesaid [except as hereinafter excepted]; and we do hereby declare that no rent shall be required or demanded for or in respect of this our Grant and License, or any privileges given thereby, 50 for the said period of 21 years, but that the said Governor and Company, and the said William M'Gillivray, Simon M'Gillivray, and Edward Ellice shall, during the period of this our Grant and License,

keep accurate registers of all persons in their employ in any parts of North America, and shall once in each year return to our Secretary of State accurate duplicates of such registers, and shall also enter in and give security to us, our heirs and successors, in the penal sum of £5,000, for ensuring, as far as in them may lie, the due execution of all criminal processes, and of any civil process in any suit where the matter in dispute shall exceed £200, by the officers and persons legally empowered to execute such processes within all the territories included in this our Grant, and for the producing and delivering into safe custody, for purposes of trial, any persons in their employ, or acting under their authority within the said territories, who may be charged with any criminal offence.

And we do also hereby require, that the said Governor and Company, and William M'Gillivray, 10 Simon M'Gillivray, and Edward Ellice shall, as soon as the same shall be conveniently done, make and submit for our consideration and approval such rules and regulations for the management and carrying on the said fur trade with the Indians, and the conduct of the persons employed by them therein, as may appear for us to be effectual for gradually diminishing or ultimately preventing the sale or distribution of spirituous liquors to the Indians, and for promoting their moral and religious improvement.

And we do hereby declare that nothing in this our Grant contained shall be deemed or construed to authorize the said Governor and Company, or William M'Gillivray, Simon M'Gillivray, and Edward Ellice, or any person in their employ, to claim or exercise any trade with the Indians on the north-west coast of America to the westward of the Stony Mountains, to the prejudice or exclusion of any citizens of the United States of America who may be engaged in the said trade: Provided always that no British 20 subjects other than and except the said Governor and Company, and the said William M'Gillivray, Simon M'Gillivray, and Edward Ellice, and persons authorized to carry on exclusive trade by them on Grant, shall trade with the Indians within such limits during the period of this our Grant.

Given at our Court at Carlton House, the 5th day of December, 1821, in the second year of our reign.

By His Majesty's command,
BATHURST.

NEW LICENSE OF EXCLUSIVE TRADE TO THE HUDSON'S BAY COMPANY,

(REPRESENTING AS WELL THE HUDSON'S BAY COMPANY AS THE NORTH-WEST COMPANY), UPON
THE SURRENDER OF THE FORMER LICENSE, 30TH MAY, 1838.

30 VICTORIA R.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland,
Queen, Defender of the Faith.

To all to whom these Presents shall come, greeting.

WHEREAS by an Act passed in the Session of Parliament holden in the first and second year of the reign of his late Majesty, King George the Fourth, intituled "An Act for regulating the Fur Trade, and establishing a Criminal and Civil Jurisdiction within certain parts of North America," it was amongst other things enacted, that from and after the passing of the said Act, it should be lawful for His said Majesty, his heirs or successors, to make grants, or give His or their Royal License, under the hand and seal of one of His or their Principal Secretaries of State, to any body corporate or company 40 or person or persons, of or for the exclusive privilege of trading with the Indians in all such parts of North America as should be specified in any such grants or licenses respectively, not being part of the lands and territories theretofore granted to the Governor and Company of Adventurers of England trading to Hudson Bay, and not being part of any of our Provinces in North America, or of any lands or territories belonging to the United States of America, and that all such grants and licenses should be good, valid and effectual for the purpose of securing to all such bodies corporate, or companies, or persons, the sole and exclusive privilege of trading with the Indians in all such parts of North America (except as thereafter excepted) as should be specified in such grants or licenses, anything contained in any Act or Acts of Parliament, or any law to the contrary notwithstanding; and it was further enacted, that no such grant or license made or given by His said Majesty, His heirs or successors, of any such exclusive 50 privileges of trading with the Indians in such parts of North America as aforesaid, should be made or

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given for any longer period than 21 years, and that no rent should be required or demanded for or in respect of any such grant or license, or any privileges given thereby under the provisions of the said Act, for the first period of 21 years; and it was further enacted, that from and after the passing of the said Act, the Governor and Company of Adventurers trading to Hudson Bay, and every body corporate and company and person to whom any such grant or license should be made or given as aforesaid, should respectively keep accurate registers of all persons in their employ in any parts of North America, and should once in each year return to the Principal Secretaries of State accurate duplicates of such registers, and should also enter into such security as should be required for the due execution of all processes criminal and civil, as well within the territories included within any such grant, as within those granted by charter to the Governor and Company of Adventurers of England trading to Hudson Bay, and for the producing or delivering into safe custody, for the purpose of trial, all persons in their employ or acting under their authority, who should be charged with any criminal offence, and also for the due and faithful observance of all such rules, regulations and stipulations as should be contained in any such grant or license, either for gradually diminishing and ultimately preventing the sale or distribution of spirituous liquors to the Indians, or for promoting their moral and religious improvement, or for any other object which might be deemed necessary for the remedy or prevention of any other evils which had hitherto been found to exist: And whereas it was in the said Act recited, that by a convention entered into between His said late Majesty and the United States of America, it was stipulated and agreed, that every country on the north-west coasts of America to the westward of the Stoney Mountains should be free and open to the citizens and subjects of the two powers for the term of ten years 20 from the date of the signature of that convention; and it was therefore enacted, that nothing in the said Act contained should be deemed or construed to authorize any body corporate, company or person to whom His said Majesty might, under the provisions of the said Act, make or grant or give a license of exclusive trade with the Indians in such parts of North America as aforesaid, to claim or exercise any such exclusive trade within the limits specified in the said article, to the prejudice or exclusion of any citizens of the said United States of America who might be engaged in the said trade; with a proviso, that no British subject should trade with the Indians within such limits without such grant or license as was by the said Act required.

And whereas by an instrument under the hand and seal of the Right Honorable Earl Bathurst then one of His said late Majesty's Secretaries of State, and dated the 6th day of December, 1821, after 30 reciting therein, as or to the effect aforesaid, and also reciting that the said Governor and Company of Adventurers of England trading to Hudson Bay, and certain associations of persons trading under the name of "The North-West Company of Montreal," had respectively extended the fur trade over many parts of North America which had not been before explored, and that the competition in the said trade had been found, for some years then past, to be productive of great inconvenience and loss, not only to the said Company and associations, but to the said trade in general, and also of great injury to the native Indians and of other persons, His said Majesty's subjects; and that the said Governor and Company of Adventurers trading to Hudson Bay; and William M'Gillivray, of Montreal, in the Province of Lower Canada, Esquire; Simon M'Gillivray, of Suffolk-lane, in the City of London, merchant; and Edward Ellice, of Spring-gardens, in the County of Middlesex, Esquire; had represented to His said 40 Majesty that they had entered into an agreement, on the 26th day of March last, for putting an end to the said competition, and carrying on the said trade for twenty-one years, commencing with the outfit of 1821, and ending with the returns of the outfit of 1841, to be carried on in the name of the said Governor and Company exclusively, and that the said Governor and Company, and William M'Gillivray, Simon M'Gillivray and Edward Ellice had humbly besought His said late Majesty to make a grant and give His Royal License to them jointly of and for the exclusive privilege of trading with the Indians in North America, under the restrictions and upon the terms and conditions specified in the said recited Act: His said late Majesty, being desirous of encouraging the said trade, and remedying the evils which had arisen from the competition which had theretofore existed therein, did give and grant his Royal License, under the hand and seal of one of His Principal Secretaries of State, to the said Governor 50 and Company, and William M'Gillivray, Simon M'Gillivray and Edward Ellice, for the exclusive privileges of trading with the Indians in all such parts of North America to the northward and to the

westward of the said lands and territories belonging to the United States of America, as should not form part of any of His said Majesty's Provinces in North America, or of any lands or territories belonging to the said United States of America, or to any European Government, state or power; and His said late Majesty did also give and grant and secure to the said Governor and Company, and William M'Gillivray, Simon M'Gillivray and Edward Ellice, the sole and exclusive privilege, for the full period of 21 years, from the date of that grant, of trading with the Indians in all such parts of North America as aforesaid (except as hereinafter excepted), and did thereby declare that no rent should be required or demanded for or in respect of that grant and license, or any privileges given thereby for said period of 21 years, but that the said Governor and Company of Adventurers trading to Hudson Bay, and the said William M'Gillivray, Simon M'Gillivray and Edward Ellice, should, during the period of that grant and license, keep accurate registers of all persons in their employ in any parts of North America, and should once in each year return to His said Majesty's Secretary of State accurate duplicates of such registers, and enter into and give security to His said Majesty, his heirs and successors, in the penal sum of £5,000 for ensuring, as far as in them might lay, or as they could by their authority over the servants and persons in their employ, the due execution of all criminal processes, and of every civil process in any suit where the matter in dispute shall exceed £200, by the officers and persons legally empowered to execute such processes within all the territories included in that grant, and for the producing or delivering into custody for purposes of trial all persons in their employ or acting under their authority within the said territories, who should be charged with any criminal offence; and His said Majesty did thereby require that the said Governor and Company, and William M'Gillivray, Simon M'Gillivray and Edward Ellice, should, as soon as the same could be conveniently done, make and submit for His said Majesty's consideration and approval, such rules and regulations for the management and carrying on of the said fur trade with the Indians, and the conduct of the persons employed by them therein, as might appear to His said Majesty to be effectual for diminishing or preventing the sale or distribution of spirituous liquors to the Indians, and for promoting their moral and religious improvement; and His said Majesty did thereby declare, that nothing in that grant contained should be deemed or construed to authorize the said Governor and Company, and William M'Gillivray, Simon M'Gillivray and Edward Ellice, or any persons in their employ, to claim or exercise any trade with the Indians on the north-west coast of America, to the westward of the Stoney Mountains, to the prejudice or exclusion of any citizens of the United States of America who might be engaged in the said trade; and providing also by the now recited grant, that no British subjects other than and except the said Governor and Company, and the said William M'Gillivray, Simon M'Gillivray and Edward Ellice, and the persons authorized to carry on exclusive trade by them on grant, should trade with the Indians within such limits during the period of that grant.

And whereas the said Governor and Company have acquired to themselves all the rights and interests of the said William M'Gillivray, Simon M'Gillivray and Edward Ellice, under the said recited grant, and the said Governor and Company having humbly besought us to accept a surrender of the said grant, and in consideration thereof to make a grant to them, and give to them our Royal License and authority of, and for the like exclusive privilege of trading with the Indians in North America, for the like period, and upon similar terms and conditions to those specified and referred to in the said recited grant. Now, know ye, that in consideration of the surrender made to us of the said recited grant, and being desirous of encouraging the said trade, and of preventing as much as possible a recurrence of the evils mentioned or referred to in the said recited grant; as also in consideration of the yearly rent hereinafter reserved to us: We do hereby grant and give our License, under the hand and seal of one of our Principal Secretaries of State, to the said Governor and Company, and their successors, for the exclusive privilege of trading with the Indians in all such parts of North America, to the northward and to the westward of the lands and territories belonging to the United States of America, as shall not form part of any of our provinces in North America, or of any lands or territories belonging to the said United States of America, or to any European government, state or power, but subject nevertheless as hereinafter mentioned: And we do by these presents give, grant and secure to the said Governor and Company, and their successors, the sole and exclusive privilege, for the full period of 21 years from the date of this our grant, of trading with the Indians in all such parts of North America, as aforesaid (except as hereinafter mentioned): And we do hereby declare, that no rent shall be required or

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manded for or in respect of this our grant and license, or any privileges given thereby, for the first four years, of the said term of 21 years; and we do hereby reserve to ourselves, our heirs and successors, for the remainder of the said term of 21 years, the yearly rent or sum of 5s. to be paid by the said Governor and Company, or their successors, on the first day of June in every year, into our Exchequer, on the account of us, our heirs and successors; and we do hereby declare, that the said Governor and Company, and their successors, shall, during the period of this our grant and license, keep accurate registers of all persons in their employ in any parts of North America, and shall once in each year return to our Secretary of State accurate duplicates of such registers; and shall also enter into and give security to us, our heirs and successors, in the penal sum of 5,000*l.*, for ensuring, as far as in them may lie, or as they can by their authority over the servants and persons in their employ, the due execution of all criminal and civil processes by the officers and persons legally empowered to execute such processes within all the territories included in this our grant, and for the producing or delivering into custody for the purposes of trial all persons in their employ or acting under their authority within the said territories who shall be charged with any criminal offence; and we do also hereby require, that the said Governor and Company, and their successors, shall, as soon as the same can be conveniently done, make and submit for our consideration and approval such rules and regulations for the management and carrying on the said fur trade with the Indians, and the conduct of the persons employed by them therein, as may appear to us to be effectual for diminishing or preventing the sale or distribution of spirituous liquors to the Indians, and for promoting their moral and religious improvement; but we do hereby declare, that nothing in this our grant contained, shall be deemed or construed to authorize the said Governor and Company, or their successors, or any persons in their employ, to claim or exercise any trade with the Indians on the North-west coast of America to the westward of the Stony Mountains, to the prejudice or exclusion of any of the subjects of any foreign states, who, under or by force of any convention for the time being between us and such foreign states, respectively, may be entitled to, and shall be engaged in the same trade; provided, nevertheless, and we do hereby declare our pleasure to be, that nothing herein contained shall extend or be construed to prevent the establishment by us, our heirs or successors, within the territories aforesaid, or any of them, of any colony or colonies, province or provinces, or for annexing any part of the aforesaid territories to any existing colony or colonies to us, in right of our Imperial Crown, belonging, or for constituting any such form of civil government as to us may seem meet, within any such colony or colonies, province or provinces: 30

And we do hereby reserve to us, our heirs and successors, full power and authority to revoke these presents, or any part thereof, in so far as the same may embrace or extend to any of the territories aforesaid, which may hereafter be comprised within any colony or colonies, province or provinces as aforesaid:

It being, nevertheless, hereby declared, that no British subjects other than and except the said Governor and Company, and their successors, and the persons authorized to carry on exclusive trade by them, shall trade with the Indians during the period of this our grant within the limits aforesaid, or within that part thereof which shall not be comprised within any such colony or province aforesaid.

Given at our Court at Buckingham Palace, 30th day of May, 1838.

By Her Majesty's command.

GLENELG.

40

COVENANT BY THE HUDSON BAY COMPANY FOR PERFORMANCE OF THE CONDITIONS OF THE NEW LICENSE OF 30TH MAY, 1838.

*Hudson's Bay
Company,
covenant for
performance
under New
License, 30th
May, 1838.*

Whereas, Her Majesty hath, by an instrument under the hand and seal of the Secretary of State the Right Honourable Charles, Lord Glenelg, bearing even date herewith, granted and given Her Royal License to us, the Governor and Company of Adventurers of England, trading into Hudson Bay, and our successors, the exclusive privilege of trading with the Indians in all such parts of North America to the northward and to the westward of the lands and territories belonging to the United States of America as shall not form part of any of Her Majesty's provinces in North America, or any lands or territories belonging to the United States of America, or to any European government, state or power, and hath 50

secured to us, the said Governor and Company, and our successors, the sole and exclusive privilege, for the full period of 21 years from the date of the said grant, of trading with the Indians in all such parts of North America as aforesaid (except and with such restrictions as hereinafter excepted), and hath thereby declared that no rent shall be required or demanded for or in respect of the said grant or license, or any privileges given thereby, for the first four years of the said term of 21 years, and hath thereby reserved to Her Majesty, her heirs and successors, for the remainder of the said period of 21 years the yearly rent of 5s., to be paid by us, the said Governor and Company, and our successors, on the 1st day of June in every year, into Her Majesty's Exchequer, on account of Her Majesty, her heirs and successors: We, therefore, the said Governor and Company of Adventurers of England trading into Hudson Bay do hereby covenant and bind ourselves and our successors, that we and they shall yearly and every year, and on every 1st day of June, from and after the expiration of the first four years of the said term of 21 years, and thenceforth during the continuance of the said grant and license, pay or cause to be paid the said yearly rent of 5s. into Her Majesty's Exchequer, and on account of Her Majesty, her heirs and successors; and that we and our successors shall, during the period of the said grant and license keep accurate registers of all persons employed by us or our successors in any parts of North America, and shall once in each year return to Her Majesty's Secretary of State accurate duplicates of such registers; and we, the said Governor and Company, do hereby bind ourselves and our successors in the penal sum of 5,000*l.*, that we will, as far as in us may lie, ensure the due execution of all criminal and civil processes by the officers and persons legally empowered to execute such process within all the territories, for the time being, included in the said grant, and for the producing or delivering into safe custody for the purpose of trial of any person in our employ or acting under our authority within the said territories who may be charged with any criminal offence; and we do also hereby covenant that we will, as soon as the same can be conveniently done, make and submit to the consideration and approval of Her Majesty such rules and regulations for the management and carrying on the said fur trade, and the conduct of the persons employed by us therein, as have appeared or may appear to us to be most effectual for gradually diminishing and ultimately preventing the sale or distribution of spirituous liquors to the Indians, and for promoting their moral and religious improvement. Witness the seal of the said Company, the 30th day of May, 1838.

By Order of the Governor and Committee.

W. G. SMITH, *Assistant-Secretary.*

Sealed under the common seal of the within-mentioned Governor and Company, and delivered by William Gregory Smith, their Assistant-Secretary, pursuant to their order and appointment, being first duly stamped in the presence of.

THOMAS CROSSE,
Threadneedle Street, *Solicitor.*

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Hudson's Bay Company, covenant for performance under New License, 30th May, 1838.

IMPERIAL ACT, 3 & 4 VIC, CAP. 35 (1840)—THE UNION ACT.

AN ACT TO RE-UNITE THE PROVINCES OF UPPER AND LOWER CANADA, AND FOR THE GOVERNMENT OF CANADA.

WHEREAS it is necessary that provision be made for the good government of the Provinces of Upper Canada and Lower Canada, in such manner as may secure the rights and liberties and promote the interests of all classes of Her Majesty's subjects within the same; And whereas to this end it is expedient that the said Provinces be re-united and form one Province for the purposes of Executive Government and legislation; Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That it shall be lawful for Her Majesty, with the advice of Her Privy Council, to declare, or to authorize the Governor-General of the said two Provinces of Upper and Lower Canada to declare, by Proclamation, that the said Provinces, upon, from, and after a certain day in such Proclamation to be appointed, which day shall be within fifteen calendar months next after the passing of this Act, shall form and be one Province, under the name of the Province of Canada,

Imperial Act 3-4 Vic, c. 35 (1840).

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and thenceforth the said Provinces shall constitute and be one Province, under the name aforesaid, upon from, and after the day so appointed as aforesaid.

[The other sections omitted, as not affecting the question.]

BOUNDARY DESCRIPTIONS IN IMPERIAL COMMISSIONS TO GOVERNORS OF CANADA, 1840-1846.

*Imperial
Commissions
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29TH AUGUST, 1840.

CHARLES, BARON SYDENHAM,—*Captain-General and Governor-in-Chief of the Province of Canada.**

Our Province of Canada, comprising Upper Canada and Lower Canada, the former being bounded on the east by a line dividing it from Lower Canada, commencing at a stone boundary on the north bank of Lake St. Francis, at the cove west of the Pointe au Bandet, in the limit between the Township of Lancaster and the Seigneurie of New Longueuil, running along the said limit in the direction of north thirty-four degrees West to the westernmost angle of the said Seigneurie of New Longueuil, thence along the north-western boundary of the Seigneurie of Vaudreuil, running north twenty-five degrees East, until it strikes the Ottawas River, to ascend the said river into the Lake Temisaming, by a line drawn due north from the head of the said lake until it reaches the shore of Hudson's Bay; and being bounded on the south, beginning at the said stone boundary between Lancaster and Longueuil by the Lake St. Francis, the River St. Lawrence, the Lake of the Thousand Islands, Lake Ontario, the River Niagara, which falls [leads] into Lake Erie, and along the middle of that lake; on the west by the Channel of Detroit, Lake St. Clair, up the River St. Clair, Lake Huron, the west shore of Drummond Island, that of St. Joseph and Sugar Island, thence into Lake Superior. 20

[The two following Commissions contain Boundary line descriptions similar to that of 29th August, 1840.]

24TH FEBRUARY, 1843.

SIR CHARLES THEOPHILUS METCALFE,—*Captain-General and Governor-in-Chief of the Province of Canada.†*

16TH MARCH, 1846.

CHARLES MURRAY, EARL CATHCART,—*Captain-General and Governor-in-Chief of the Province of Canada.‡*

1ST OCTOBER, 1846.

JAMES, EARL OF ELGIN AND KINCARDINE,—*Captain-General and Governor-in-Chief of the Province of Canada.§* 30

Our said Province of Canada, comprising Upper Canada and Lower Canada, the former being bounded on the east by the line dividing it from Lower Canada, commencing at a stone boundary on the north bank of the lake St. Francis, at the cove west of the Pointe au Bandet, in the limit between the Township of Lancaster and the Seigneurie of New Longueuil, running along the said limit in the direction of north, 24 degrees West, to the westernmost angle of the said Seigneurie of New Longueuil, thence along the north-western boundary of the Seigneurie of Vaudreuil, running north 25 degrees East until it strikes the Ottawas River, to ascend the said river into the Lake Temisaming, by a line drawn due north from the head of the said lake until it reaches the shore of Hudson's Bay; and being bounded on the south, beginning at the said stone boundary between Lancaster and Longueuil, by the Lake St.

* *Ibid.* Fol. 183.

† *Lib. AA. Commissions, Fol. 405.*

‡ *Lib. AS. Commissions, &c., Fol. 141.*

§ *Ibid.* Fol. 207.

Francis, the River St. Lawrence, the Lake of the Thousand Islands, Lake Ontario, the River Niagara, Lake Erie, and along the middle of that lake; on the west, by the Channel of Detroit, Lake St. Clair, up the River St. Clair, Lake Huron, the west shore of Drummond Island, that of St. Joseph and Sugar Island, thence into Lake Superior. The said Province of Lower Canada being bounded by the adjacent Province of Upper Canada, and the boundary line between the said two Provinces, commencing at a stone boundary on the north bank of the Lake St. Francis, at the cove west of the Pointe au Baudet, in the limit between the township of Lancaster and the Seigneurie of New Longueuil, running along the said limit in the direction of north 34 degrees West, to the westernmost angle of the said Seigneurie of New Longueuil, thence along the north-western boundary of the Seigneurie of Vandrenil, running north 25 degrees East until it strikes the Ottawa's River, to ascend the said river into the Lake Temisaming: and which said Province of Lower Canada is also bounded by a line drawn due north from the head of the said lake until it strikes the shore of Hudson's Bay.

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[The Commissions of Captains-General and Governors-in-Chief, etc., subsequent to that of the Earl of Elgin and Kincardine, 1st October, 1846, contain no boundary line descriptions.]

LETTERS PATENT FOUNDING THE SEE OF RUPERT'S LAND
AND APPOINTING DAVID ANDERSON, D.D., BISHOP, 21ST MAY, 1849.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen Defender of the Faith, to all to whom these presents shall come, greeting: Whereas His Majesty, King Charles the Second, by Letters Patent under the Great Seal of England bearing date at Westminster, the second day of May, in the twenty-second year of His reign, and in the year of our Lord one thousand six hundred and seventy, did incorporate a certain company by the name of "The Governor and Company of Adventurers of England trading into Hudson's Bay," and did, in and by the said letters patent, among other things, give, grant and confirm to the said Governor and Company "all the lands and territories upon the countries, coasts and confines of the seas, bays, lakes, rivers, creeks and sounds, in what-ever latitude they shall be, that lie within the entrance of the straits commonly called Hudson's Straits, that were not already actually possessed, or granted to any of his subjects, or possessed by the subjects of any other Christian prince or state;" and did, moreover, ordain and direct that the land within the said limits, territories and places, should thenceforth be reckoned and reputed as one of his plantations and colonies in America, called Rupert's Land; and whereas the doctrine and discipline of the united Church of England and Ireland are possessed and observed by many of our loving subjects resident within the said territories and places called Rupert's Land, and our said subjects are deprived of some of the offices prescribed by the Liturgy and usage of the Church aforesaid, by reason that there is not a bishop residing or exercising jurisdiction and canonical functions within the same, for remedy of the aforesaid inconveniences we have determined to erect the said colony of Rupert's Land into a bishop's see or diocese, to be styled the Bishoprick of Rupert's Land: Now know ye that in pursuance of such Our Royal intention, we, by these our Letters Patent under the Great Seal of Our United Kingdom of Great Britain and Ireland, do erect, found, make, ordain and constitute the said colony of Rupert's Land into a bishop's see or diocese, and do declare and ordain that the same shall be styled the Bishoprick of Rupert's Land, saving, nevertheless, unto us, our heirs and successors, the powers of altering from time to time, with the consent of the Archbishop of Canterbury, for the time being, if the said see be vacant or otherwise, of the said Archbishop and of the Bishop of the see for the time being, the limits of the said diocese or of the jurisdiction of the bishop thereof, and to the end that this our intention may be carried into due effect, we, having great confidence in the learning, morals and probity of our well-beloved David Anderson, Doctor in Divinity, do name and appoint him to be ordained and consecrated Bishop of the said See of Rupert's Land, and we do hereby signify to the most Reverend Father in God, John Bird, by Divine Providence Lord Archbishop of Canterbury, Primate of all England and Metropolitan, the erection and constitution of the said see and diocese, and our nomination of the said David Anderson, requiring and by the faith and love whereby he is bound unto us, commanding the said Most Rever-

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end Father in God to ordain and consecrate the said David Anderson to be bishop of the said see and diocese in manner accustomed, and diligently to do and perform all other things appertaining to his office in this behalf with effect, and we do ordain and declare that the said David Anderson so by us nominated and appointed, after having been ordained and consecrated thereunto as aforesaid, may, by virtue of such appointment and consecration into and possess the said bishop's see as bishop thereof, without let or impediment from us, our heirs and successors, for the term of his natural life, subject, nevertheless, to the right of resignation, hereinafter more particularly expressed; moreover, we will and grant by these presents that the said Bishop of Rupert's Land shall be a body corporate, and do ordain, make and constitute him to be a perpetual corporation, and to have perpetual succession, and that he and his successors be for ever, hereafter, called or known by the name or title of the Lord Bishop of Rupert's Land, and that he and his successors by the name and title aforesaid shall be able and capable in the law and have full power to purchase, have, take, hold and enjoy manors, messuages, lands, rents, tenements, annuities and hereditaments of what nature or kind soever, in fee and in perpetuity, or for a term of life or years, and also all manner of goods, chattels and things personal whatsoever, of what nature or value soever; and that he and his successors, by and under the said name or title, may prosecute, claim, plead and be impleaded, defend and be defended, answer and be answered in all manner of courts, of us, our heirs and successors and elsewhere in and upon all and singular causes, actions, suits, writs and demands, real and personal, and mixed as well spiritual as temporal, and in all other things, causes and matters whatsoever; and that the said Bishop of Rupert's Land, and his successors, shall and may for ever hereafter have and use a corporate seal, and the said seal, from time to time, at his and their will and pleasure, break, change, alter or make anew as he or they shall deem expedient; and we do further by these presents ordain that it shall be competent to the Bishop, from time to time, to select any suitable church already erected, or which may hereafter be erected within the limits of "Rupert's Land" to be used as his cathedral church, and we further ordain and declare that the said Bishop of Rupert's Land and his successors shall be subject and subordinate to the Archbishop of Canterbury and his successors; and we do further will and ordain that every Bishop of Rupert's Land shall take an oath of obedience to the Archbishop of Canterbury, for the time being as his Metropolitan, which oath shall and may be ministered by the said Archbishop, or by any other person by him duly appointed or authorized for that purpose; and we do further by these presents expressly declare that the said Bishop of Rupert's Land, and also his successors, having been respectively by us, our heirs and successors named and appointed, and by the said Archbishop of Canterbury canonically ordained and consecrated according to the form of the United Church of England and Ireland, may perform all the functions peculiar and appropriate to the office of bishop within the said diocese of Rupert's Land; and for a declaration of the spiritual causes and matters in which the aforesaid jurisdiction may be more specially exercised, we do by these presents further declare that the aforesaid Bishop of Rupert's Land and his successors may exercise and enjoy full power and authority, by himself or themselves, or by the archdeacon or archdeacons, or the vicar-general, or other officer or officers hereinafter mentioned, to give institution to benefices, to grant licenses to officiate to all rectors, curates, ministers and chaplains of all the churches or chapels or other places within the said diocese wherein divine service shall be celebrated according to the rites and liturgy of the Church of England, and to visit all rectors, curates, ministers and chaplains, and all priests and deacons, in holy orders of the United Church of England and Ireland resident within the said diocese, as also to call before him or them, or before the archdeacon or archdeacons or the vicar-general or other officer or officers hereinafter mentioned, at such competent days, hours and places, when and so often as to him or them shall seem meet and convenient, the aforesaid rectors, curates, ministers, chaplains, priests and deacons, or any of them, and to enquire as well concerning their morals as their behaviour in their said offices and stations respectively, subject nevertheless to such rights of review and appeal as are hereinafter given and reserved, and for the better accomplishment of the purposes aforesaid we do hereby grant and declare that the said Bishop of Rupert's Land and his successors may found and constitute one or more dignities in his Cathedral Church, and also one or more archdeaconries within the said diocese, and may collate fit and proper persons to be dignitaries of the Cathedral Church, and one or more fit and proper persons to be the archdeacons of the said archdeaconries respectively: provided always that such dignitaries and archdeacons shall exercise such jurisdiction only as

shall be committed to them by the said Bishop or his successors, and the said bishop and his successors may also from time to time nominate and appoint fit and proper persons to be respectively the officers hereinafter mentioned, that is to say, to be vicar-general, official principal, rural deans and commissaries, either general or special, and may also appoint one or more fit and proper persons to be registrars and actuaries: provided always that the dignitaries and archdeacons aforesaid shall be subject and subordinate to the said Bishop of Rupert's Land and his successors, and shall be assisting to him and them in the exercise of his and their jurisdiction and functions, and we will and declare that during a vacancy of the said See of Rupert's Land by the demise of the Bishop thereof or otherwise, the dignitaries and archdeacons and vicar-general, and other officers respectively appointed as aforesaid, shall continue to exercise, so far as by law they may or can, the jurisdiction and functions delegated to them, and that the said registrars and actuaries shall respectively continue to discharge the duties whereunto they have been appointed until a new bishop of the said See of Rupert's Land shall have been nominated and consecrated, and his arrival within the limits of the said diocese shall have been notified to the said parties respectively; and we further will and do by these presents declare and ordain that it shall be lawful for any party against whom any judgment, decree or sentence shall be pronounced by any of the said archdeacons or by the vicar-general or other officer or officers of the said bishop or his successors, to demand a re-examination and review of such judgment, decree or sentence before the bishop or his successors in person, who upon such demand made shall take cognizance thereof, and shall have full power and authority to affirm, reverse or alter the said judgment, sentence or decree, and if any party shall consider himself aggrieved by any judgment, decree or sentence pronounced by the said Bishop of Rupert's Land or his successors, either in case of such review or in any cause originally instituted before the said bishop or his successors, it shall be lawful for the said party to appeal to the Archbishop of Canterbury or his successors, who shall finally decide and determine the said appeals; provided always that in any such case of appeal or review notice of the intention of the party to make such appeal or demand such review shall be given to the bishop or subordinate judge by whom the sentence appealed from or to be reviewed shall have been pronounced, within fifteen days from the promulgation thereof, and we do further and by these presents ordain that in all cases in which an appeal shall be made or review demanded as aforesaid, a copy of the judgment or sentence in such case promulgated or given, setting forth the causes thereof, together with a copy of the evidence on which the same was founded, shall without delay be certified and transmitted by such subordinate Judge to the said Bishop or his successors, or by the said Bishop or his successors to the said Archbishop of Canterbury, as the case may require; moreover, it is our will and pleasure, and we do hereby declare and ordain, that nothing in these presents contained shall extend or be construed to extend to repeal, vary, or alter the provisions of any charter whereby ecclesiastical jurisdiction has been given to any Court of Judicature within the limits of the said diocese; and for removing doubts with respect to the validity of the resignation of the said office and dignity of Bishop of Rupert's Land it is our further will that if the said bishop or any of his successors shall, by instrument under his hand and seal delivered and sent to the Archbishop of Canterbury for the time being, and by him accepted and registered in the office of the vicar-general of the said Archbishop, resign the office and dignity of Bishop of Rupert's Land, such bishop shall, from the time of such acceptance and registration, cease to be Bishop of Rupert's Land to all intents and purposes, but without prejudice to any responsibility to which he may be liable in law or equity in respect of his conduct in his said office; and lastly, to the end that all things aforesaid may be firmly holden and done, we will and grant to the aforesaid David Anderson that he shall have our Letters Patent under our Great Seal of our said United Kingdom duly made and sealed. In witness, etc., the twenty-first day of May.

By Writ of Privy Seal.

IMPERIAL ACT, 29 & 30 VIC., CAP. 67—THE BRITISH COLUMBIA ACT, 1866.
AN ACT FOR THE UNION OF VANCOUVER ISLAND WITH THE COLONY OF BRITISH COLUMBIA.

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

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umbia Act,
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1. This Act may be cited as "The British Columbia Act, 1866."
2. In this Act the term "Governor" means any officer for the time being lawfully administering the Government.

3. From and immediately after the proclamation of this Act by the Governor of British Columbia the colony of Vancouver Island shall be, and the same is hereby united with the colony of British Columbia, and thenceforth those two colonies shall form and be one colony, with name of British Columbia, (which union is in this Act referred to as the union.)

4. On the union taking effect, the form of Government existing in Vancouver Island as a separate colony shall cease, and the power and authority of the Executive Government and of the legislature existing in British Columbia, shall extend to and over Vancouver Island; but in order that provision may be made for the representation of Vancouver Island in the Legislature of British Columbia, after the union, the maximum number of Councillors in the Legislative Council of British Columbia, after the union, shall, until it is otherwise provided by lawful authority, be twenty-three instead of fifteen.

5. After and notwithstanding the union, the laws in force in the separate colonies of British Columbia and Vancouver Island respectively at the time of the union taking effect shall, until it is otherwise provided by lawful authority, remain in force as if this Act had not been passed or proclaimed: save only that the laws relative to the Revenue of Customs in force in British Columbia at the time of the union taking effect shall, until it is otherwise provided by lawful authority, extend and apply to Vancouver Island: and until it is otherwise provided by lawful authority, the Governor of British Columbia shall have, in relation to the territory for the time being under his Government, all the powers and authorities for the time being vested, in relation to the United Kingdom, in the Commissioners of Her Majesty's Treasury, or in the Commissioners of Customs with respect to the appointment of Warehousing Ports, and the approval and appointment of warehouses or places of security in such ports, and everything consequent thereon or relative thereto.

6. Nothing in this Act shall take away or restrict the authority of the Governor of British Columbia, with the advice and consent of the Legislative Council thereof, to make laws for the peace, order and good government of British Columbia either before or after the union: nor shall anything in this Act interfere with the exercise of any power that would have been exercisable by Her Majesty in Council if this Act had not been passed.

7. Until the union, British Columbia shall comprise all such territories, within the dominions of Her Majesty, as are bounded to the south by the territories of the United States of America; to the west by the Pacific Ocean and the frontier of the Russian territories in North America; to the north by the sixtieth parallel of north latitude; and to the east from the boundary of the United States northwards by the Rocky Mountains and the one hundred and twentieth meridian of west longitude; and shall include Queen Charlotte's Island, and all other islands adjacent to the said territories, except Vancouver Island and the islands adjacent thereto.

8. After the union, British Columbia shall comprise all the territories and islands aforesaid, and Vancouver Island and the islands adjacent thereto.

9. The Acts described in the Schedule to this Act are hereby repealed; but this repeal shall not invalidate any Order in Council or any other Instrument under the authority of those Acts or either of them, or any act done, or right or title acquired by virtue of those Acts, or of either of them, or of any such order or instrument.

IMPERIAL ACT, 30 & 31 VIC., CAP. 3—THE BRITISH NORTH AMERICA ACT, 1867.

AN ACT FOR THE UNION OF CANADA, NOVA SCOTIA, AND NEW BRUNSWICK, AND THE GOVERNMENT THEREOF; AND FOR PURPOSES CONNECTED THEREWITH.

*British North
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WHEREAS the Provinces of Canada, Nova Scotia and New Brunswick have expressed their desire to be federally united into One Dominion under the Crown of the United Kingdom of Great Britain and Ireland, with a Constitution similar in principle to that of the United Kingdom:

And whereas such a Union would conduce to the welfare of the Provinces and promote the interests of the British Empire :

And whereas on the establishment of the Union by authority of Parliament it is expedient not only that the Constitution of the Legislative Authority in the Dominion be provided for, but also that the nature of the Executive Government therein be declared :

And whereas it is expedient that provision be made for the eventual admission into the Union of other Parts of British North America :

Be it therefore enacted and declared by the Queen's Most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

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I.—PRELIMINARY.

1. This Act may be cited as "The British North America Act, 1867."
2. The provisions of this Act referring to Her Majesty the Queen extend also to the heirs and successors of Her Majesty, Kings and Queens of the United Kingdom of Great Britain and Ireland.

II.—UNION.

3. It shall be lawful for the Queen, by and with the advice of Her Majesty's Most Honorable Privy Council, to declare by Proclamation that, on and after a day therein appointed, not being more than six months after the passing of this Act, the Provinces of Canada, Nova Scotia and New Brunswick shall form and be one Dominion under the name of Canada; and on and after that day those three Provinces shall form and be one Dominion under that name accordingly.
4. The subsequent provisions of this Act shall, unless it is otherwise expressed or implied, commence and have effect on and after the Union, that is to say, on and after the day appointed for the Union taking effect in the Queen's Proclamation; and in the same provisions, unless it is otherwise expressed or implied, the name Canada shall be taken to mean Canada as constituted under this Act.
5. Canada shall be divided into four Provinces, named Ontario, Quebec, Nova Scotia, and New Brunswick.
6. The parts of the Province of Canada (as it exists at the passing of this Act) which formerly constituted respectively the Provinces of Upper Canada and Lower Canada shall be deemed to be severed, and shall form two separate Provinces. The part which formerly constituted the Province of Upper Canada shall constitute the Province of Ontario; and the part which formerly constituted the Province of Lower Canada shall constitute the Province of Quebec.

III.—EXECUTIVE POWER.

9. The Executive Government and authority of and over Canada is hereby declared to continue and be vested in the Queen.
10. The Provisions of this Act referring to the Governor-General extend and apply to the Governor-General for the time being of Canada, or other the Chief Executive Officer or Administrator for the time being carrying on the Government of Canada on behalf and in the name of the Queen, by whatever title he is designated.
11. There shall be a Council to aid and advise in the Government of Canada, to be styled the Queen's Privy Council for Canada; and the persons who are to be members of that Council shall be from time to time chosen and summoned by the Governor-General and sworn in as Privy Counsellors, and members thereof may be from time to time removed by the Governor-General.
12. All powers, authorities, and functions which under any Act of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the Legislature of Upper Canada, Lower Canada, Canada, Nova Scotia or New Brunswick, are at the Union vested in or exercisable by the respective Governors or Lieutenant-Governors of those Provinces, with the advice, or with the advice and consent, of the respective Executive Councils thereof, or in conjunction with those Councils, or with any number of members thereof, or by those Governors or Lieutenant-Governors individually, shall, as far as the same continue in exist-

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tence and capable of being exercised after the Union in relation to the Government of Canada, be vested in and exercisable by the Governor-General, with the advice, or with the advice and consent of, or in conjunction with the Queen's Privy Council for Canada, or any members thereof, or by the Governor-General individually, as the case requires, subject nevertheless (except with respect to such as exist under Acts of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland) to be abolished or altered by the Parliament of Canada.

13. The provisions of this Act referring to the Governor-General in Council shall be construed as referring to the Governor-General acting by and with the advice of the Queen's Privy Council for Canada.

14. It shall be lawful for the Queen, if Her Majesty thinks fit, to authorize the Governor-General from time to time to appoint any person or any persons jointly or severally to be his Deputy or Deputies within any Part or Parts of Canada, and in that capacity to exercise, during the pleasure of the Governor-General such of the powers, authorities, and functions of the Governor-General as the Governor-General deems it necessary or expedient to assign to him or them, subject to any limitations or directions expressed or given by the Queen; but the appointment of such a Deputy or Deputies, shall not affect the exercise by the Governor-General himself of any power, authority, or function.

15. The Command-in-Chief of the Land and Naval Militia, and of all Naval and Military Forces of and in Canada, is hereby declared to continue and be vested in the Queen.

16. Until the Queen otherwise directs, the Seat of Government of Canada shall be Ottawa.

IV.—LEGISLATIVE POWER.

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17. There shall be one Parliament for Canada, consisting of the Queen, an Upper House styled the Senate, and the House of Commons.

18. The privileges, immunities, and powers to be held, enjoyed and exercised by the Senate and by the House of Commons and by the Members thereof respectively, shall be such as are from time to time defined by Act of the Parliament of Canada, but so that any Act of the Parliament of Canada defining such privileges, immunities and powers, shall not confer any privileges, immunities or powers exceeding those at the passing of such Act held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland and by the members thereof.

19. The Parliament of Canada shall be called together not later than six months after the Union.

20. There shall be a Session of the Parliament of Canada once at least in every year, so that twelve months shall not intervene between the last sitting of the Parliament in one Session and its first sitting in the next Session.

The Senate.

21. The Senate shall, subject to the provisions of this Act, consist of seventy-two members, who shall be styled Senators.

22. In relation to the constitution of the Senate, Canada shall be deemed to consist of three divisions—

1. Ontario;
2. Quebec;

3. The Maritime Provinces, Nova Scotia and New Brunswick; which three divisions shall (subject to the provisions of this Act) be equally represented in the Senate as follows: Ontario by twenty-four Senators; Quebec by twenty-four Senators; and the Maritime Provinces by twenty-four Senators, twelve thereof representing Nova Scotia, and twelve thereof representing New Brunswick.

In the case of Quebec each of the twenty-four Senators representing that Province shall be appointed for one of the twenty-four Electoral Divisions of Lower Canada specified in Schedule A to chapter one of the Consolidated Statutes of Canada.

23. The qualification of a Senator shall be as follows:—

- (1.) He shall be of the full age of thirty years.
- (2.) He shall be either a natural-born subject of the Queen, or a subject of the Queen naturalized by an Act of the Parliament of Great Britain, or of the Parliament of the United Kingdom

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of Great Britain and Ireland, or of the Legislature of one of the Provinces of Upper Canada, Lower Canada, Canada, Nova Scotia, or New Brunswick, before the Union, or of the Parliament of Canada after the Union.

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- (3.) He shall be legally or equitably seized as of Fee hold for his own Use and Benefit of Lands or Tenements held in free and common socage, or held or possessed for his own use and benefit of lands or tenements held in the franc-alieu or in roture, within the Province for which he is appointed, of the value of four thousand dollars, over and above all rents, dues, debts, charges, mortgages, and incumbrances due or payable out of, or charged on, or affecting, the same :
- (4.) His real and personal property shall be together worth four thousand dollars over and above his debts and liabilities :
- (5.) He shall be resident in the Province for which he is appointed :
- (6.) In the case of Quebec, he shall have his real property qualification in the Electoral Division for which he is appointed, or shall be resident in that Division.
24. The Governor-General shall from time to time, in the Queen's name, by instrument under the Great Seal of Canada, summon qualified persons to the Senate ; and, subject to the provisions of this Act, every person so summoned shall become and be a member of the Senate and a Senator.
25. Such persons shall be first summoned to the Senate as the Queen by Warrant under Her Majesty's Royal Sign Manual thinks fit to approve, and their names shall be inserted in the Queen's Proclamation of Union.
- 20 26. If at any time, on the recommendation of the Governor-General, the Queen thinks fit to direct that three or six members be added to the Senate, the Governor-General may, by summons to three or six qualified persons (as the case may be), representing equally the three divisions of Canada, add to the Senate accordingly.
27. In case of such addition being at any time made, the Governor-General shall not summon any person to the Senate, except on a further like direction by the Queen on the like recommendation, until each of the three divisions of Canada is represented by twenty-four Senators, and no more.
28. The number of Senators shall not at any time exceed seventy-eight.
29. A Senator shall, subject to the provisions of this Act, hold his place in the Senate for life.
30. A Senator may, by writing under his hand, addressed to the Governor-General, resign his 30 place in the Senate, and thereupon the same shall be vacant.
31. The place of a Senator shall become vacant in any of the following cases :—
- (1.) If for two consecutive sessions of the Parliament he fails to give his attendance in the Senate :
- (2.) If he takes an oath or makes a declaration or acknowledgment of allegiance, obedience or adherence to a foreign power, or does an act whereby he becomes a subject or citizen, or entitled to the rights or privileges of a subject or citizen of a foreign power :
- (3.) If he is adjudged bankrupt or insolvent, or applies for the benefit of any law relating to insolvent debtors, or becomes a public defaulter :
- (4.) If he is attainted of treason, or convicted of felony or of any infamous crime :
- 40 (5.) If he ceases to be qualified in respect of property or of residence : provided that a Senator shall not be deemed to have ceased to be qualified in respect of residence by reason only of his residing at the seat of the Government of Canada while holding an office under that Government requiring his presence there.
32. When a vacancy happens in the Senate, by resignation, death or otherwise, the Governor-General shall, by summons to a fit and qualified person, fill the vacancy.
33. If any question arises respecting the qualification of a Senator, or a vacancy in the Senate, the same shall be heard and determined by the Senate.
34. The Governor-General may from time to time, by instrument under the Great Seal of Canada, appoint a Senator to be Speaker of the Senate, and may remove him and appoint another in his stead.
- 50 35. Until the Parliament of Canada otherwise provides, the presence of at least Fifteen Senators,

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including the Speaker, shall be necessary to constitute a Meeting of the Senate for the exercise of its powers.

36. Questions arising in the Senate shall be decided by a majority of voices, and the Speaker shall in all cases have a vote, and when the voices are equal the decision shall be deemed to be in the Negative.

The House of Commons.

37. The House of Commons shall, subject to the Provisions of this Act, consist of one hundred and eighty-one members, of whom eighty-two shall be elected for Ontario, sixty-five for Quebec, nineteen for Nova Scotia, and fifteen for New Brunswick.

38. The Governor-General shall from time to time, in the Queen's name, by instrument under 10 the Great Seal of Canada, summon and call together the House of Commons.

39. A Senator shall not be capable of being elected or of sitting or voting as a member of the House of Commons.

40. Until the Parliament of Canada otherwise provides, Ontario, Quebec, Nova Scotia and New Brunswick shall, for the purposes of the election of members to serve in the House of Commons, be divided into Electoral Districts as follows:—

1.—ONTARIO.

Ontario shall be divided into the Counties, Ridings of Counties, Cities, parts of Cities, and Towns enumerated in the First Schedule to this Act, each whereof shall be an Electoral District, each such District as numbered in that Schedule being entitled to return one member. 20

2.—QUEBEC.

Quebec shall be divided into sixty-five Electoral Districts, composed of the sixty-five Electoral Districts into which Lower Canada is at the passing of this Act divided under Chapter Two of the Consolidated Statutes of Canada, chapter seventy-five of the Consolidated Statutes for Lower Canada, and the Act of the Province of Canada of the twenty-third year of the Queen, Chapter one, or any other Act amending the same in force at the Union, so that each such Electoral Division shall be for the purposes of this Act an Electoral District entitled to return one member.

3.—NOVA SCOTIA.

Each of the eighteen Counties of Nova Scotia shall be an Electoral District. The County of Halifax shall be entitled to return two members, and each of the other Counties one member. 30

4.—NEW BRUNSWICK.

Each of the fourteen Counties into which New Brunswick is divided, including the City and County of St. John, shall be an Electoral District; The City of St. John shall also be a separate Electoral District. Each of those fifteen Electoral Districts shall be entitled to return one member.

41. Until the Parliament of Canada otherwise provides, all laws in force in the several Provinces at the Union relative to the following matters or any of them, namely,—the qualifications and disqualifications of persons to be elected or to sit or vote as members of the House of Assembly or Legislative Assembly in the several Provinces, the voters at elections of such members, the oaths to be taken by voters, the Returning Officers, their powers and duties, the proceedings at elections, the periods during which elections may be continued, the trial of controverted elections, and proceedings incident thereto, the vacating of seats of members, and the execution of new writs in case of seats vacated otherwise than by dissolution,—shall respectively apply to elections of members to serve in the House of Commons for the same several Provinces. 40

Provided that, until the Parliament of Canada otherwise provides, at any election for a member of the House of Commons for the District of Algoma, in addition to persons qualified by the law of the Province of Canada to vote, every male British subject, aged twenty-one years or upwards, being a householder, shall have a vote.

42. For the first election of members to serve in the House of Commons the Governor-General shall cause writs to be issued by such person, in such form, and addressed to such Returning Officers as he thinks fit. 50

The Person issuing writs under this section shall have the like powers as are possessed at the Union by the officers charged with the issuing of writs for the election of members to serve in the respective House of Assembly or Legislative Assembly of the Province of Canada, Nova Scotia or New Brunswick; and the Returning Officers to whom writs are directed under this section shall have the like powers as are possessed at the Union by the officers charged with the returning of writs for the election of members to serve in the same respective House of Assembly or Legislative Assembly.

43. In case a vacancy in the representation in the House of Commons of any Electoral District happens before the meeting of the Parliament, or after the meeting of the Parliament before provision is made by the Parliament in this behalf, the provisions of the last foregoing section of this Act shall extend and apply to the issuing and returning of a writ in respect of such vacant District.

44. The House of Commons, on its first assembling after a general election, shall proceed with all practicable speed to elect one of its members to be Speaker.

45. In case of a vacancy happening in the office of Speaker, by death, resignation or otherwise, the House of Commons shall, with all practicable speed, proceed to elect another of its members to be Speaker.

46. The Speaker shall preside at all meetings of the House of Commons.

47. Until the Parliament of Canada otherwise provides, in case of the absence, for any reason, of the Speaker from the chair of the House of Commons for a period of forty-eight consecutive hours, the House may elect another of its members to act as Speaker, and the member so elected shall, during the continuance of such absence of the Speaker, have and execute all the powers, privileges and duties of Speaker.

48. The presence of at least twenty members of the House of Commons shall be necessary to constitute a meeting of the House for the exercise of its powers; and for that purpose the Speaker shall be reckoned as a member.

49. Questions arising in the House of Commons shall be decided by a majority of voices other than that of the speaker, and when the voices are equal, but not otherwise, the Speaker shall have a vote.

50. Every House of Commons shall continue for five years from the day of the return of the Writs for choosing the House (subject to be sooner dissolved by the Governor-General), and no longer.

51. On the completion of the census in the year one thousand eight hundred and seventy-one, and of each subsequent decennial census, the representation of the four Provinces shall be readjusted by such authority, in such manner, and from such time as the Parliament of Canada from time to time provides, subject and according to the following rules:—

- (1.) Quebec shall have the fixed number of sixty-five members.
- (2.) There shall be assigned to each of the other Provinces such a number of members as will bear the same proportion to the number of its population (ascertained at such census) as the number sixty-five bears to the number of the Population of Quebec (so ascertained).
- (3.) In the computation of the number of members for a Province a fractional part not exceeding one half of the whole number requisite for entitling the Province to a member shall be disregarded; but a fractional part exceeding one half of that number shall be equivalent to the whole number:
- (4.) On any such re-adjustment the number of members for a Province shall not be reduced unless the proportion which the number of the population of the Province bore to the number of the aggregate population of Canada at the then last preceding re-adjustment of the number of members for the Province is ascertained at the then latest census to be diminished by one-twentieth part or upwards:
- (5.) Such re-adjustment shall not take effect until the termination of the then existing Parliament.

52. The number of members of the House of Commons may be from time to time increased by the Parliament of Canada, provided the proportionate representation of the Provinces prescribed by this Act is not thereby disturbed.

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53. Bills for appropriating any part of the public revenue, or for imposing any tax or impost, shall originate in the House of Commons.

54. It shall not be lawful for the House of Commons to adopt or pass any vote, resolution, address, or bill for the appropriation of any part of the public revenue, or of any tax or impost, any purpose that has not been first recommended to that House by message of the Governor-General in the session in which such vote, resolution, address, or bill is proposed.

55. Where a Bill passed by the Houses of the Parliament is presented to the Governor-General for the Queen's assent, he shall declare, according to his discretion, but subject to the provisions of this Act and to Her Majesty's instructions, either that he assents thereto in the Queen's Name, or that he withholds the Queen's assent, or that he reserves the bill for the signification of the Queen's pleasure.

56. Where the Governor-General assents to a bill in the Queen's name, he shall by the first convenient opportunity send an authentic copy of the Act to one of Her Majesty's principal Secretaries of State; and if the Queen in Council within two years after receipt thereof by the Secretary of State thinks fit to disallow the Act, such disallowance (with a certificate of the Secretary of State of the day on which the Act was received by him) being signified by the Governor-General, by speech or message to each of the Houses of the Parliament, or by Proclamation, shall annul the Act from and after the day of such signification.

57. A Bill reserved for the signification of the Queen's pleasure shall not have any force unless and until within two years from the day on which it was presented to the Governor-General for the Queen's assent, the Governor-General signifies, by speech or message to each of the Houses of the Parliament or by proclamation, that it has received the assent of the Queen in Council.

An entry of every such speech, message, or proclamation shall be made in the Journal of each House, and a duplicate thereof duly attested shall be delivered to the proper officer to be kept among the Records of Canada.

V.—PROVINCIAL CONSTITUTIONS.

Executive Power.

58. For each Province there shall be an Officer, styled the Lieutenant-Governor, appointed by the Governor General in Council by instrument under the Great Seal of Canada. 30

59. A Lieutenant-Governor shall hold office during the pleasure of the Governor-General; but any Lieutenant-Governor appointed after the commencement of the first session of the Parliament of Canada shall not be removable within five years from his appointment, except for cause assigned, which shall be communicated to him in writing within one month after the order for his removal is made, and shall be communicated by message to the Senate and to the House of Commons within one week thereafter if the Parliament is then sitting, and if not then within one week after the commencement of the next Session of the Parliament.

60. The salaries of the Lieutenant-Governor shall be fixed and provided by the Parliament of Canada.

61. Every Lieutenant-Governor shall, before assuming the duties of his office, make and subscribe before the Governor-General or some person authorized by him, oaths of allegiance and office similar to those taken by the Governor-General. 40

62. The provisions of this Act referring to the Lieutenant-Governor extend and apply to the Lieutenant-Governor for the time being of each Province, or other the chief executive officer or administrator for the time being carrying on the government of the Province, by whatever title he is designated.

63. The Executive Council of Ontario and of Quebec shall be composed of such persons as the Lieutenant-Governor from time to time thinks fit, and in the first instance of the following officers, namely: the Attorney-General, the Secretary and Registrar of the Province, the Treasurer of the

Province, the Commissioner of Crown Lands, and the Commissioner of Agriculture and Public Works, within Quebec, the Speaker of the Legislative Council and the Solicitor-General.

64. The Constitution of the Executive Authority in each of the Provinces of Nova Scotia and New Brunswick shall, subject to the provisions of this Act, continue as it exists at the Union until altered under the authority of this Act.

65. All powers, authorities, and functions which under any Act of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the Legislature of Upper Canada, Lower Canada, or Canada, were or are before or at the Union vested in or exercisable by the respective Governors or Lieutenant-Governors of those Provinces, with the advice, or with the advice and consent, of the respective Executive Councils thereof, or in conjunction with those Councils or with any number of members thereof, or by those Governors or Lieutenant-Governors individually, shall, as far as the same are capable of being exercised after the Union in relation to the Government of Ontario and Quebec respectively, be vested in and shall or may be exercised by the Lieutenant-Governor of Ontario and Quebec respectively, with the advice or with the advice and consent of or in conjunction with the respective Executive Councils or any Members thereof, or by the Lieutenant-Governor individually, as the case requires, subject nevertheless (except with respect to such as exist under Acts of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland), to be abolished or altered by the respective Legislatures of Ontario and Quebec.

66. The Provisions of this Act referring to the Lieutenant-Governor in Council shall be construed as referring to the Lieutenant-Governor of the Province acting by and with the advice of the Executive Council thereof.

67. The Governor-General in Council may from time to time appoint an administrator to execute the office and functions of Lieutenant-Governor during his absence, illness, or other inability.

68. Unless and until the Executive Government of any Province otherwise directs with respect to that Province, the seats of Government of the Provinces shall be as follows, namely,—of Ontario, the City of Toronto; of Quebec, the City of Quebec; of Nova Scotia, the City of Halifax; and of New Brunswick, the City of Fredericton.

LEGISLATIVE POWER.

1.—Ontario.

69. There shall be a Legislature for Ontario, consisting of the Lieutenant-Governor and of one House, styled the Legislative Assembly of Ontario.

70. The Legislative Assembly of Ontario shall be composed of eighty-two members, to be elected to represent the eighty-two Electoral Districts set forth in the first Schedule to this Act.

2.—Quebec.

71. There shall be a Legislature for Quebec consisting of the Lieutenant-Governor and of two Houses, styled the Legislative Council of Quebec and the Legislative Assembly of Quebec.

72. The Legislative Council of Quebec shall be composed of twenty-four members, to be appointed by the Lieutenant-Governor in the Queen's name by instrument under the Great Seal of Quebec, one being appointed to represent each of the twenty-four Electoral Divisions of Lower Canada in this Act referred to, and each holding office for the term of his life, unless the Legislature of Quebec otherwise provides under the Provisions of this Act.

73. The qualifications of the Legislative Councillors of Quebec shall be the same as those of the Senators for Quebec.

74. The place of a Legislative Councillor of Quebec shall become vacant in the cases, *mutatis mutandis*, in which the place of Senator becomes vacant.

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75. When a vacancy happens in the Legislative Council of Quebec by resignation, death, or otherwise, the Lieutenant-Governor, in the Queen's name, by instrument under the Great Seal of Quebec, shall appoint a fit and qualified person to fill the vacancy.

76. If any question arises respecting the qualification of a Legislative Councillor of Quebec, or a vacancy in the Legislative Council of Quebec, the same shall be heard and determined by the Legislative Council.

77. The Lieutenant-Governor may from time to time, by instrument under the Great Seal of Quebec, appoint a member of the Legislative Council of Quebec to be Speaker thereof, and may remove him and appoint another in his stead.

78. Until the Legislature of Quebec otherwise provides, the presence of at least ten Members of the Legislative Council, including the Speaker, shall be necessary to constitute a meeting for the exercise of its powers.

79. Questions arising in the Legislative Council of Quebec shall be decided by a majority of voices, and the Speaker shall in all cases have a vote, and when the voices are equal the decision shall be deemed to be in the negative.

80. The Legislative Assembly of Quebec shall be composed of sixty-five members, to be elected to represent the sixty-five Electoral Divisions or Districts of Lower Canada in this Act referred to subject to alteration thereof by the Legislature of Quebec: Provided that it shall not be lawful to present to the Lieutenant-Governor of Quebec for assent any bill for altering the limits of any of the Electoral Divisions or Districts mentioned in the second Schedule to this Act, unless the second and third readings of such bill have been passed in the Legislative Assembly with the concurrence of the majority of the members representing all those Electoral Divisions or Districts, and the assent shall not be given to such bill unless an address has been presented by the Legislative Assembly to the Lieutenant-Governor stating that it has been so passed.

3.—ONTARIO AND QUEBEC.

81. The Legislatures of Ontario and Quebec respectively shall be called together not later than six months after the Union.

82. The Lieutenant-Governor of Ontario and of Quebec shall, from time to time, in the Queen's name, by instrument under the Great Seal of the Province, summon and call together the Legislative Assembly of the Province.

83. Until the Legislature of Ontario or of Quebec otherwise provides, a person accepting or holding in Ontario or in Quebec, any office, commission or employment, permanent or temporary, at the nomination of the Lieutenant-Governor, to which an annual salary, or any fee, allowance, emolument or profit of any kind or amount whatever from the Province is attached, shall not be eligible as a Member of the Legislative Assembly of the respective Province, nor shall he sit or vote as such; but nothing in this section shall make ineligible any person being a member of the Executive Council of the respective Province, or holding any of the following offices, that is to say, the offices of Attorney-General, Secretary and Registrar of the Province, Treasurer of the Province, Commissioner of Crown Lands, and Commissioner of Agriculture and Public Works, and in Quebec Solicitor-General, or shall disqualify him to sit or vote in the House for which he is elected, provided he is elected while holding such office.

84. Until the Legislatures of Ontario and Quebec respectively otherwise provide, all laws which at the Union are in force in those Provinces respectively, relative to the following matters, or any of them, namely,—the qualifications and disqualifications of persons to be elected or to sit or vote as members of the Assembly of Canada, the qualifications or disqualifications of voters, the oaths to be taken by voters, the Returning Officers, their powers and duties, the proceedings at elections, the periods during which such elections may be continued, and the trial of controverted elections and the proceedings incident thereto, the vacating of the seats of members, and the issuing and execution of new writs in case of seats vacated otherwise than by dissolution, shall respectively apply to elections of members to serve in the respective Legislative Assemblies of Ontario and Quebec.

Provided that until the Legislature of Ontario otherwise provides, at any election for a member of the Legislative Assembly of Ontario for the District of Algoma, in addition to persons qualified by the law of the Province of Canada to vote, every male British subject, aged twenty-one years, or upwards, being a householder, shall have a vote.

85. Every Legislative Assembly of Ontario and every Legislative Assembly of Quebec shall continue for four years from the day of the return of the writs for choosing the same (subject nevertheless to either the Legislative Assembly of Ontario or the Legislative Assembly of Quebec being sooner dissolved by the Lieutenant-Governor of the Province), and no longer.

86. There shall be a session of the Legislature of Ontario and of that of Quebec once at least in every year, so that twelve months shall not intervene between the last sitting of the Legislature in each Province in one session and its first sitting in the next session.

87. The following provisions of this Act respecting the House of Commons of Canada shall extend and apply to the Legislative Assemblies of Ontario and Quebec, that is to say,—the provisions relating to the election of a Speaker originally and on vacancies, the duties of the Speaker, the absence of the Speaker, the quorum, and the mode of voting, as if those provisions were here re-enacted and made applicable in terms to each such Legislative Assembly.

4.—NOVA SCOTIA AND NEW BRUNSWICK.

88. The constitution of the Legislature of each of the Provinces of Nova Scotia and New Brunswick shall, subject to the provisions of this Act, continue as it exists at the Union until altered under the authority of this Act; and the House of Assembly of New Brunswick existing at the passing of this Act shall, unless sooner dissolved, continue for the period for which it was elected.

5.—ONTARIO, QUEBEC AND NOVA SCOTIA.

89. Each of the Lieutenant-Governors of Ontario, Quebec, and Nova Scotia, shall cause writs to be issued for the first election of members of the Legislative Assembly thereof in such form and by such person as he thinks fit, and at such time and addressed to such Returning Officer as the Governor General directs, and so that the first election of member of Assembly for any Electoral District or any subdivision thereof shall be held at the same time and at the same places as the election for a member to serve in the House of Commons of Canada for that Electoral District.

6.—THE FOUR PROVINCES.

90. The following provisions of this Act respecting the Parliament of Canada, namely,—the provisions relating to appropriation and tax bills, the recommendation of money votes, the assent to bills, the disallowance of Acts and the signification of pleasure on bills reserved,—shall extend and apply to the Legislatures of the several Provinces and the Legislatures thereof, with the substitution of the Lieutenant-Governor of the Province for the Governor-General of the Governor-General for the Queen and for a Secretary of State, of one year for two years, and of the Province for Canada.

VI.—DISTRIBUTION OF LEGISLATIVE POWERS.

Powers of the Parliament.

91. It shall be lawful for the Queen, by and with the advice and consent of the Senate and House of Commons, to make laws for the peace, order and good government of Canada, in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater certainty, but not so as to restrict the generality of the foregoing terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive legislative authority of the Parliament of Canada extends to all matters coming within the classes of subjects next hereinafter enumerated; that is to say:—

1. The Public Debt and Property.
2. The regulation of Trade and Commerce.
3. The raising of money by any mode or system of taxation.
4. The borrowing of money on the public credit.

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5. Postal Service.
 6. The Census and Statistics.
 7. Militia, Military and Naval Service, and Defence.
 8. The fixing of and providing for the salaries and allowances of civil and other officers of the Government of Canada.
 9. Beacons, Buoys, Lighthouses, and Sable Island.
 10. Navigation and Shipping.
 11. Quarantine and the establishment and maintenance of Marine Hospitals.
 12. Sea coast and inland Fisheries.
 13. Ferries between a Province and any British or Foreign country, or between two Provinces.
 14. Currency and Coinage.
 15. Banking, incorporation of banks and the issue of paper money.
 16. Savings Banks.
 17. Weights and Measures.
 18. Bills of Exchange and Promissory Notes.
 19. Interest.
 20. Legal tender.
 21. Bankruptcy and Insolvency.
 22. Patents of invention and discovery.
 23. Copyrights.
 24. Indians, and lands reserved for the Indians. 20
 25. Naturalization and Aliens.
 26. Marriage and Divorce.
 27. The Criminal Law, except the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters.
 28. The Establishment, Maintenance, and Management of Penitentiaries.
 29. Such classes of subjects as are expressly excepted in the enumeration of the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces.
- And any matter coming within any of the classes of subjects enumerated in this section shall not be deemed to come within the class of matters of a local or private nature comprised in the enumeration 30 of the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces.

Exclusive Powers of Provincial Legislatures.

92. In each Province the Legislature may exclusively make laws in relation to matters coming within the classes of subjects next hereinafter enumerated, that is to say,—
1. The Amendment from time to time, notwithstanding anything in this Act, of the Constitution of the Province, except as regards the office of Lieutenant-Governor.
 2. Direct Taxation within the Province in order to the raising of a revenue for Provincial purposes.
 3. The borrowing of money on the sole credit of the Province.
 4. The establishment and tenure of Provincial offices, and the appointment and payment of 40 Provincial officers.
 5. The Management and Sale of the Public Lands belonging to the Province and of the timber and wood thereon.
 6. The Establishment, Maintenance and Management of Public and Reformatory Prisons in and for the Province.
 7. The Establishment, Maintenance, and Management of Hospitals, Asylums, Charities, and Eleemosynary Institutions in and for the Province, other than Marine Hospitals.
 8. Municipal Institutions in the Province.
 9. Shop, Saloon, Tavern, and Auctioneer, and other Licenses, in order to the raising of a Revenue for Provincial, local, or municipal purposes. 50

10. Local Works and Undertakings, other than such as are of the following Classes,—
- a. Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other works and undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province;
 - b. Lines of Steamships between the Province and any British or Foreign Country;
 - c. Such works as, although wholly situate within the Province, are before or after their execution declared by the Parliament of Canada to be for the general advantage of Canada or for the advantage of two or more of the Provinces.
11. The Incorporation of Companies with Provincial objects.
 12. Solemnization of Marriage in the Province.
 13. Property and Civil Rights in the Province.
 14. The Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.
 15. The Imposition of punishment by fine, penalty, or imprisonment for enforcing any law of the Province made in relation to any matter coming within any of the classes of subjects enumerated in this section.
 16. Generally all matters of a merely local or private nature in the Province.

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EDUCATION.

- 20 98. In and for each Province the Legislature may exclusively make laws in relation to Education, subject and according to the following Provisions:—
- (1.) Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law in the Province at the Union;
 - (2.) All the powers, privileges, and duties at the Union by law conferred and imposed in Upper Canada on the separate schools and school trustees of the Queen's Roman Catholic subjects, shall be and the same are hereby extended to the dissentient schools of the Queen's Protestant and Roman Catholic subjects in Quebec;
 - (3.) Where in any Province a system of separate or dissentient Schools exists by law at the Union or is thereafter established by the Legislature of the Province, an appeal shall lie to the Governor-General in Council from any Act or decision of any Provincial authority affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to Education.
 - (4.) In case any such Provincial law as from time to time seems to the Governor-General in Council requisite for the due execution of the provisions of this section is not made, or in case any decision of the Governor-General in Council on any appeal under this section is not duly executed by the proper Provincial authority in that behalf, then and in every such case, and as far only as the circumstances of each case require, the Parliament of Canada may make remedial laws for the due execution of the provisions of this section, and of any decision of the Governor-General in Council under this section.
- 40 129. Except as otherwise provided by this Act, all laws in force in Canada, Nova Scotia, or New Brunswick at the Union, and all Courts of civil and criminal jurisdiction, and all legal commissions, powers and authorities, and all officers, judicial, administrative, and ministerial, existing therein at the Union, shall continue in Ontario, Quebec, Nova Scotia, and New Brunswick respectively, as if the Union had not been made; subject, nevertheless (except with respect to such as are enacted by or exist under Acts of the Parliaments of Great Britain or of the Parliament of the United Kingdom of Great Britain and Ireland), to be repealed, abolished, or altered by the Parliament of Canada, or by the Legislature of the respective Provinces, according to the authority of the Parliament or of that Legislature under this Act.
- 50 130. Until the Parliament of Canada otherwise provides, all officers of the several Provinces having duties to discharge in relation to matters other than those coming within the classes of subjects by

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this Act assigned exclusively to the Legislatures of the Provinces shall be officers of Canada, and shall continue to discharge the duties of their respective offices under the same liabilities, responsibilities, and penalties as if the Union had not been made.

131. Until the Parliament of Canada otherwise provides, the Governor-General in Council may from time to time appoint such officers as the Governor-General in Council deems necessary or proper for the effectual execution of this Act.

ONTARIO AND QUEBEC.

134. Until the Legislature of Ontario or of Quebec otherwise provides, the Lieutenant-Governors of Ontario and Quebec may each appoint under the Great Seal of the Province, the following officers, to hold office during pleasure, that is to say—the Attorney-General, the Secretary and Registrar of the Province, the Treasurer of the Province, the Commissioner of Crown Lands; and the Commissioner of Agriculture and Public Works, and in the case of Quebec, the Solicitor-General; and may, by order of the Lieutenant-Governor in Council, from time to time prescribe the duties of those officers and of the several departments over which they shall preside or to which they shall belong, and of the officers and clerks thereof; and may also appoint other and additional officers to hold office during pleasure, and may from time to time prescribe the duties of those officers, and of the several departments over which they shall preside or to which they shall belong, and of the officers and clerks thereof.

135. Until the Legislature of Ontario or Quebec otherwise provides, all rights, powers, duties, functions, responsibilities or authorities at the passing of this Act vested in or imposed on the Attorney-General, Solicitor-General, Secretary and Registrar of the Province of Canada, Minister of Finance, Commissioner of Crown Lands, Commissioner of Public Works and Minister of Agriculture and Receiver General, by any law, statute or ordinance of Upper Canada, Lower Canada or Canada, and not repugnant to this Act, shall be vested in or imposed on any officer to be appointed by the Lieutenant-Governor for the discharge of the same or any of them; and the Commissioner of Agriculture and Public Works shall perform the duties and functions of the office of Minister of Agriculture at the passing of this Act imposed by the law of the Province of Canada, as well as those of the Commissioner of Public Works.

136. Until altered by the Lieutenant-Governor in Council, the Great Seals of Ontario and Quebec respectively shall be the same, or of the same design, as those used in the Provinces of Upper Canada and Lower Canada respectively, before their Union as the Province of Canada.

140. Any Proclamation which is authorized by any Act of the Legislature of the Province of Canada to be issued under the Great Seal of the Province of Canada, whether relating to that Province, or to Upper Canada, or to Lower Canada, and which is now issued before the Union, may be issued by the Lieutenant-Governor of Ontario or of Quebec, as its subject matter requires, under the Great Seal thereof; and from and after the issue of such Proclamation, the same and the several matters and things therein proclaimed, shall be and continue of the like force and effect in Ontario or Quebec as if the Union had not been made.

XI.—ADMISSION OF OTHER COLONIES.

146. It shall be lawful for the Queen, by and with the advice of Her Majesty's Most Honourable Privy Council, on Addresses from the Houses of Parliament of Canada, and from the Houses of the respective Legislatures of the Colonies or Provinces of Newfoundland, Prince Edward Island, and British Columbia, to admit those Colonies or Provinces, or any of them, into the Union, and on Address from the Houses of the Parliament in Canada, to admit Rupert's Land and the North-western Territory, or either of them, into the Union, on such terms and conditions in each case as are in the Addresses expressed and as the Queen thinks fit to approve, subject to the provisions of this Act; and the provisions of any Order in Council in that behalf shall have effect as if they had been enacted by the Parliament of the United Kingdom of Great Britain and Ireland.

147. In case of the admission of Newfoundland and Prince Edward Island, or either of them, each shall be entitled to a representation, in the Senate of Canada, of four members, and (notwithstanding anything in this Act) in case of the admission of Newfoundland, the normal number of Senators shall

be seventy-six and their maximum number shall be eighty-two; but Prince Edward Island when admitted shall be deemed to be comprised in the third of the three divisions into which Canada is, in relation to the constitution of the Senate, divided by this Act, and accordingly, after the admission of Prince Edward Island, whether Newfoundland is admitted or not, the representation of Nova Scotia and New Brunswick in the Senate shall, as vacancies occur, be reduced from twelve to ten Members respectively, and the Representation of each of those Provinces shall not be increased at any time beyond ten, except under the Provisions of this Act, for the appointment of three or six additional Senators under the Direction of the Queen.

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THE FIRST SCHEDULE.

Electoral Districts of Ontario.

- 10 [Here are set out the eighty-two Electoral Districts of the Province, under their respective numbers, from 1 to 82. The forty-fourth Electoral District is described therein as follows:]
"The Provisional Judicial District of ALGOMA."

IMPERIAL ACT, 31 & 32 VIC, CAP. 106—RUPERT'S LAND ACT, 1868.

AN ACT FOR ENABLING HER MAJESTY TO ACCEPT A SURRENDER UPON TERMS OF THE LANDS, PRIVILEGES, AND RIGHTS OF "THE GOVERNOR AND COMPANY OF ADVENTURERS OF ENGLAND TRADING INTO HUDSON'S BAY," AND FOR ADMITTING THE SAME INTO THE DOMINION OF CANADA.

Whereas by certain letters patent, granted by His late Majesty King Charles the Second, in the twenty-second year of His Reign, certain persons therein named were incorporated by the name of "The Governor and Company of Adventurers of England trading into Hudson's Bay," and certain lands and territories, rights of government and other rights, privileges, liberties, franchises, powers and authorities, were thereby granted, or purported to be granted, to the said Governor and Company in His Majesty's Dominions in North America:

And whereas, by the British North America Act, 1867, it was (amongst other things) enacted that it should be lawful for Her Majesty, by and with the advice and consent of Her Majesty's most Honourable Privy Council, on Address from the Houses of the Parliament of Canada, to admit Rupert's Land and the North-western Territory, or either of them, into the union, on such terms and conditions as are in the Address expressed and as Her Majesty thinks fit to approve, subject to the provisions of the said Act:

And whereas, for the purpose of carrying into effect the provisions of the said British North America Act, 1867, and of admitting Rupert's Land into the said Dominion as aforesaid, upon such terms as Her Majesty thinks fit to approve, it is expedient that the said lands, territories, rights, privileges, liberties, franchises, powers and authorities, so far as the same have been lawfully granted to the said Company, should be surrendered to Her Majesty, Her heirs and successors, upon such terms and conditions as may be agreed upon by and between Her Majesty and the said Governor and Company as hereinafter mentioned:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as "Rupert's Land Act, 1868."
2. For the purposes of this Act, the term "Rupert's Land" shall include the whole of the lands and territories held, or claimed to be held, by the said Governor and Company.
3. It shall be competent for the said Governor and Company to surrender to Her Majesty, and for Her Majesty, by any instrument, under her sign manual and signet, to accept a surrender of all or any of the lands, territories, rights, privileges, liberties, franchises, powers, and authorities whatsoever granted, or purported to be granted, by the said letters patent, to the said Governor and Company, within

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Rupert's Land, upon such terms and conditions as shall be agreed upon, by and between Her Majesty and the said Governor and Company: Provided, however, that such surrender shall not be accepted by Her Majesty until the terms and conditions upon which Rupert's Land shall be admitted into the said Dominion of Canada shall have been approved of by Her Majesty, and embodied in an Address to Her Majesty from both the Houses of the Parliament of Canada, in pursuance of the one hundred and forty-sixth section of the British North America Act, 1867; and that the said surrender and acceptance thereof shall be null and void, unless within a month from the date of such acceptance Her Majesty does, by Order in Council, under the provisions of the said last recited Act, admit Rupert's Land into the said Dominion: Provided further that no charge shall be imposed by such terms upon the Consolidated Fund of the United Kingdom.

4. Upon the acceptance by Her Majesty of such surrender, all rights of government and proprietary rights, and all other privileges, liberties, franchises, powers, and authorities whatsoever, granted, or purported to be granted, by the said letters patent to the said Governor and Company, within Rupert's Land, and which shall have been so surrendered, shall be absolutely extinguished: Provided that nothing herein contained shall prevent the said Governor and Company from continuing to carry on in Rupert's Land, or elsewhere, trade and commerce.

5. It shall be competent to Her Majesty, by any such Order or Orders in Council as aforesaid, on Address from the Houses of the Parliament of Canada, to declare that Rupert's Land shall, from a date to be therein mentioned, be admitted into and become part of the Dominion of Canada; and thereupon it shall be lawful for the Parliament of Canada, from the date aforesaid, to make, ordain and establish within the land and territory so admitted as aforesaid, all such laws, institutions, and ordinances, and to constitute such Courts and officers, as may be necessary for the peace, order and good government of Her Majesty's subjects and others therein: Provided that, until otherwise enacted by the said Parliament of Canada, all the powers, authorities, and jurisdiction of the several Courts of Justice now established in Rupert's Land, and of the several officers thereof, and of all magistrates and justices now acting within the said limits, shall continue in full force and effect therein.

IMPERIAL ORDER IN COUNCIL RESPECTING RUPERT'S LAND AND THE NORTH-WESTERN TERRITORY, 1870.

At the Court at Windsor, the 23rd day of June, 1870.

PRESENT:

The Queen's Most Excellent Majesty,
Lord President,
Lord Privy Seal,
Lord Chamberlain,
Mr. Gladstone.

Imperial
Order-in-
Council
respecting
Rupert's
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Whereas, by the "British North America Act, 1867," it was (amongst other things) enacted, that it should be lawful for the Queen, by and with the advice of Her Majesty's Most Honourable Privy Council, on Address from the Houses of the Parliament of Canada, to admit Rupert's Land and the North-Western Territory, or either of them, into the Union, on such terms and conditions, in each case, as should be in the Addresses expressed, and as the Queen should think fit to approve, subject to the provisions of the said Act:

And it was further enacted that the provisions of any Order in Council in that behalf should have effect as if they had been enacted by the Parliament of the United Kingdom of Great Britain and Ireland:

And whereas by an Address from the Houses of the Parliament of Canada, of which Address a copy is contained in the Schedule to this Order annexed, marked A, Her Majesty was prayed, by and with the advice of Her Most Honourable Privy Council, to unite Rupert's Land and the North-Western

Territory with the Dominion of Canada, and to grant to the Parliament of Canada authority to legislate for their future welfare and good government, upon the terms and conditions therein stated :

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And whereas by the "Rupert's Land Act, 1868," it was (amongst other things) enacted, that it should be competent for the Governor and Company of Adventurers of England trading into Hudson's Bay (hereinafter called the Company), to surrender to Her Majesty, and for Her Majesty, by any instrument under Her Sign Manual and Signet, to accept a surrender of all or any of the lands, territories, rights, privileges, liberties, franchises, powers, and authorities whatsoever, granted, or purported to be granted, by certain Letters Patent, therein recited, to the said Company, within Rupert's Land, upon such terms and conditions as should be agreed upon by and between Her Majesty and the said Company :

10 Provided, however, that such surrender should not be accepted by Her Majesty until the terms and conditions upon which Rupert's Land should be admitted into the said Dominion of Canada should have been approved of by Her Majesty, and embodied in an Address to Her Majesty from both the Houses of the Parliament of Canada, in pursuance of the 146th section of the "British North America Act, 1867 :

And it was, by the same Act, further enacted, that it should be competent to Her Majesty, by Order or Orders in Council, on Addresses from the Houses of the Parliament of Canada, to declare that Rupert's Land should, from a date to be therein mentioned, be admitted into, and become part of the Dominion of Canada :

20 And whereas a second Address from both the Houses of the Parliament of Canada has been received by Her Majesty, praying that Her Majesty will be pleased, under the provisions of the hereinbefore recited Acts, to unite Rupert's Land, on the terms and conditions expressed in certain resolutions therein referred to, and approved of by Her Majesty, of which said resolutions and addresses copies are contained in the schedule to this Order annexed, marked B, and also to unite the North-Western Territory with the Dominion of Canada, as prayed for by, and on the terms and conditions contained in the hereinbefore first recited Address, and also approved of by Her Majesty :

And whereas a draft Surrender has been submitted to the Governor-General of Canada, containing 30 stipulations to the following effect, viz.:-

1. The sum of £300,000 (being the sum hereinafter mentioned), shall be paid by the Canadian Government into the Bank of England to the credit of the Company within six calendar months after acceptance of the surrender aforesaid, with interest on the said sum at the rate of 5 per cent. per annum, computed from the date of such acceptance until the time of such payment.

2. The size of the blocks which the Company are to select adjoining each of their forts in the Red River limits, shall be as follows :-

	Acres.
Upper Fort Garry and Town of Winnipeg, including the enclosed park around shop, and ground at the entrance of the town.....	500
40 Lower Fort Garry (including the farm the Company now have under cultivation)	500
White Horse Plain.....	500

3. The deduction to be made, as hereinafter mentioned, from the price of the materials of the electric telegraph in respect of deterioration thereof, is to be certified within three calendar months from such acceptance as aforesaid by the Agents of the Company in charge of the depôts where the materials are stored, and the said price is to be paid by the Canadian Government into the Bank of England, to the credit of the Company, within six calendar months of such acceptance, with interest at the rate of 5 per cent. per annum on the amount of such price, computed from the date of such acceptance until the time of payment.

And whereas the said draft was on the fifth day of July, one thousand eight hundred and sixty- 50 nine, approved by the said Governor-General, in accordance with a report from the Committee of the Queen's Privy Council for Canada ; but it was not expedient that the said stipulations, not being contained in the aforesaid second address, should be included in the surrender by the said Company to Her Majesty of their rights aforesaid, or in this Order in Council :

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Sec. V.
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question of the
boundaries.*
Imperial
Order in
Council
respecting
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Land and N.
W. T., 1870.

And whereas the said Company did, by deed, under the seal of the said Company, and bearing date the nineteenth day of November, one thousand eight hundred and sixty-nine, of which deed a copy is contained in the schedule to this Order annexed, marked C, surrender to Her Majesty all the rights of government, and other rights, privileges, liberties, franchises, powers and authorities granted, or purported to be granted to the said Company by the said Letters Patent herein and hereinbefore referred to, and also all similar rights which may have been exercised or assumed by the said Company in any part of British North America not forming part of Rupert's Land, or of Canada, or of British Columbia, and all the lands and territories (except and subject as in the terms and conditions therein mentioned) granted or purported to be granted to the said Company by the said Letters Patent :

And whereas such surrender has been duly accepted by Her Majesty, by an instrument under Her Sign Manual and Signet, bearing date at Windsor, the twenty-second day of June, one thousand eight hundred and seventy :

It is hereby ordered and declared by Her Majesty, by and with the advice of the Privy Council, in pursuance and exercise of the powers vested in Her Majesty by the said Acts of Parliament, that from and after the fifteenth day of July, one thousand eight hundred and seventy, the said North-Western Territory shall be admitted into and become part of the Dominion of Canada, upon the terms and conditions set forth in the first hereinbefore recited Address, and that the Parliament of Canada shall, from the day aforesaid, have full power and authority to legislate for the future welfare and good government of the said Territory. And it is further ordered that, without prejudice to any obligations arising from the aforesaid approved report, Rupert's Land shall, from and after the said date, be admitted into and become part of the Dominion of Canada, upon the following terms and conditions being the terms and conditions still remaining to be performed of those embodied in the said second Address of the Parliament of Canada, and approved of by Her Majesty, as aforesaid :—

1. Canada is to pay to the Company £300,000, when Rupert's Land is transferred to the Dominion of Canada.
2. The Company are to retain the posts they actually occupy in the North-Western Territory, and may, within twelve months of the surrender, select a block of land adjoining each of its posts within any part of British North America, not comprised in Canada and British Columbia, in conformity, except as regards the Red River Territory, with a list made out by the Company and communicated to the Canadian Ministers, being the list in the schedule of the aforesaid Deed of Surrender. The actual 30 survey is to be proceeded with with all convenient speed.
3. The size of each block is not to exceed [10] acres round Upper Fort Garry; [300] acres round Lower Fort Garry; in the rest of the Red River Territory a number of acres to be settled at once between the Governor in Council and the Company but so that the aggregate extent of the blocks is not to exceed 50,000 acres.
4. So far as the configuration of the country admits, the blocks shall front the river or road by which means of access are provided, and shall be approximately in the shape of parallelograms, of which the frontage shall not be more than half the depth.
5. The Company may, for fifty years after the surrender, claim, in any township or district within the Fertile Belt, in which land is set out for settlement, grants of land not exceeding one twentieth part of the land so set out. The blocks so granted to be determined by lot, and the Company to pay a rateable share of the survey expenses, not exceeding eight cents Canadian, an acre. The Company may defer the exercise of their right of claiming the portion of each township for not more than ten years after it is set out; but their claim must be limited to an allotment from the lands remaining unsold at the time they declare their intention to make it.
6. For the purpose of the last Article, the Fertile Belt is to be bounded as follows :—On the south by the United States boundary; on the west by the Rocky Mountains; on the north by the northern branch of the Saskatchewan; on the east by Lake Winnipeg, the Lake of the Woods, and the waters connecting them.

7. If any township shall be formed abutting on the north bank of the northern branch of the Saskatchewan River, the Company may take their one-twentieth of any such township, which for the purpose of this Article shall not extend more than five miles inland from the river, giving to the Canadian Dominion an equal quantity of the portion of lands coming to them of townships established on the southern bank.

8. In laying out any public roads, canals, etc., through any block of land reserved to the Company, the Canadian Government may take, without compensation, such land as is necessary for the purpose, not exceeding one twenty-fifth of the total acreage of the block; but if the Canadian Government require any land which is actually under cultivation, or which has been built upon, or which is necessary for giving the Company's servants access to any river or lake, or as a frontage to any river or lake, they shall pay to the Company the fair value of the same, and shall make compensation for any injury done to the Company or their servants.

9. It is understood that the whole of the land to be appropriated, within the meaning of the last preceding clause, shall be appropriated for public purposes.

10. All titles to land up to the eighth day of March, one thousand eight hundred and sixty nine conferred by the Company, are to be confirmed.

11. The Company is to be at liberty to carry on its trade, without hindrance, in its corporate capacity, and no exceptional tax is to be placed on the Company's land, trade, or servants, nor any import duties on goods introduced by them previous to the 1st of January, 1871.

12. Canada is to take over the materials of the electric telegraph at cost price—such price including transport, but not including interest for money, and subject to a deduction for ascertained deterioration.

13. The Company's claim to land, under agreements of Messrs. Vankoughnet and Hopkins, is to be withdrawn.

14. Any claims of Indians to compensation, for lands required for purposes of settlement, shall be disposed of by the Canadian Government, in communication with the Imperial Government; and the Company shall be relieved of all responsibility in respect of them.

15. The Governor in Council is authorized and empowered to arrange any details that may be necessary to carry out the above terms and conditions.

And the Right Honourable Earl Granville, one of Her Majesty's Principal Secretaries of State, is to give the necessary directions herein accordingly.

IMPERIAL ACT, 34 & 35 VIC., CAP. 28—THE BRITISH NORTH AMERICA ACT, 1871.

AN ACT RESPECTING THE ESTABLISHMENT OF PROVINCES IN THE DOMINION OF CANADA.

Whereas doubts have been entertained respecting the powers of the Parliament of Canada to establish Provinces in territories admitted, or which may hereafter be admitted, into the Dominion of Canada, and to provide for the representation of such Provinces in the said Parliament, and it is expedient to remove such doubts, and to vest such powers in the said Parliament:

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited for all purposes as "The British North America Act, 1871."

2. The Parliament of Canada may, from time to time, establish new Provinces in any territories forming for the time being part of the Dominion of Canada, but not included in any Province thereof, and may, at the time of such establishment, make provision for the constitution and administration of any such Province, and for the passing of laws for the peace, order, and good government of such Province, and for its representation in the said Parliament.

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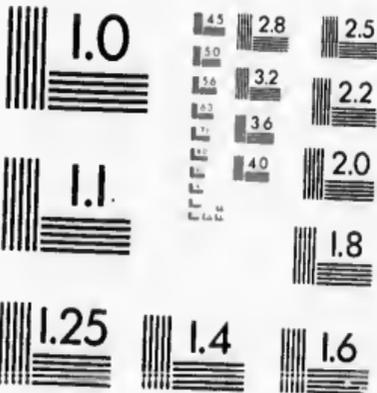
Imperial
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British North
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3. The Parliament of Canada may, from time to time, with the consent of the Legislature of any Province of the said Dominion, increase, diminish, or otherwise alter the limits of such Province, upon such terms and conditions as may be agreed to by the said Legislature, and may, with the like consent, make provision respecting the effect and operation of any such increase or diminution or alteration of territory in relation to any Province affected thereby.

4. The Parliament of Canada may, from time to time, make provision for the administration, peace, order, and good government of any territory not for the time being included in any Province.

5. The following Acts passed by the said Parliament of Canada, and intituled respectively, "An Act for the temporary government of Rupert's Land and the North-Western Territory when united with Canada," and "An Act to amend and continue the Act thirty-two and thirty-three Victoria, chapter three, and to establish and provide for the government of the Province of Manitoba," shall be and be deemed to have been valid and effectual for all the purposes whatsoever from the date at which they respectively received the assent, in the Queen's name, of the Governor-General of the said Dominion of Canada.

6. Except as provided by the third section of this Act, it shall not be competent for the Parliament of Canada to alter the provisions of the last-mentioned Act of the said Parliament in so far as it relates to the Province of Manitoba, or of any other Act hereafter establishing new Provinces in the said Dominion, subject always to the right of the Legislature of the Province of Manitoba to alter from time to time the provisions of any law respecting the qualifications of electors and members of the Legislative Assembly, and to make laws respecting elections in the said Province.

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IMPERIAL ORDER IN COUNCIL, 31 JULY, 1880, UNITING TO CANADA ALL TERRITORIES
OF BRITISH NORTH AMERICA EXCEPT NEWFOUNDLAND.

AT THE COURT AT OSBORNE HOUSE,

ISLE OF WIGHT, the 31st day of July, 1880.

Present :

The Queen's Most Excellent Majesty,

Lord President,

Lord Steward,

Lord Chamberlain.

*Imperial
Order in
Council, 31st
July, 1880.*

Whereas it is expedient that all British territories and possessions in North America, and the 30 islands adjacent to such territories and possessions, which are not already included in the Dominion of Canada, should (with the exception of the colony of Newfoundland and its dependencies) be annexed to and form part of the said Dominion ;

And whereas the Senate and Commons of Canada in Parliament assembled, have in and by an address, dated the 3rd day of May, 1878, represented to Her Majesty "That it is desirable that the Parliament of Canada, on the transfer of the beforementioned territories being completed, should have authority to legislate for their future welfare and good government, and the power to make all needful rules and regulations respecting them, the same as in the case of the other territories (of the Dominion); and that the Parliament of Canada expressed its willingness to assume the duties and obligations consequent thereon ;"

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And whereas Her Majesty is graciously pleased to accede to the desire expressed in and by the said address.

Now, therefore, it is hereby ordered and declared by Her Majesty, by and with the advice of her most Honourable Privy Council, as follows:—

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From and after the first day of September, 1880, all British territories and possessions in North America, not already included within the Dominion of Canada, and all islands adjacent to any of such territories or possessions, shall (with the exception of the colony of Newfoundland and its dependencies) become, and be annexed to, and form part of the said Dominion of Canada, and become and be subject to the laws for the time being in force in the said Dominion, in so far as such laws may be applicable thereto.

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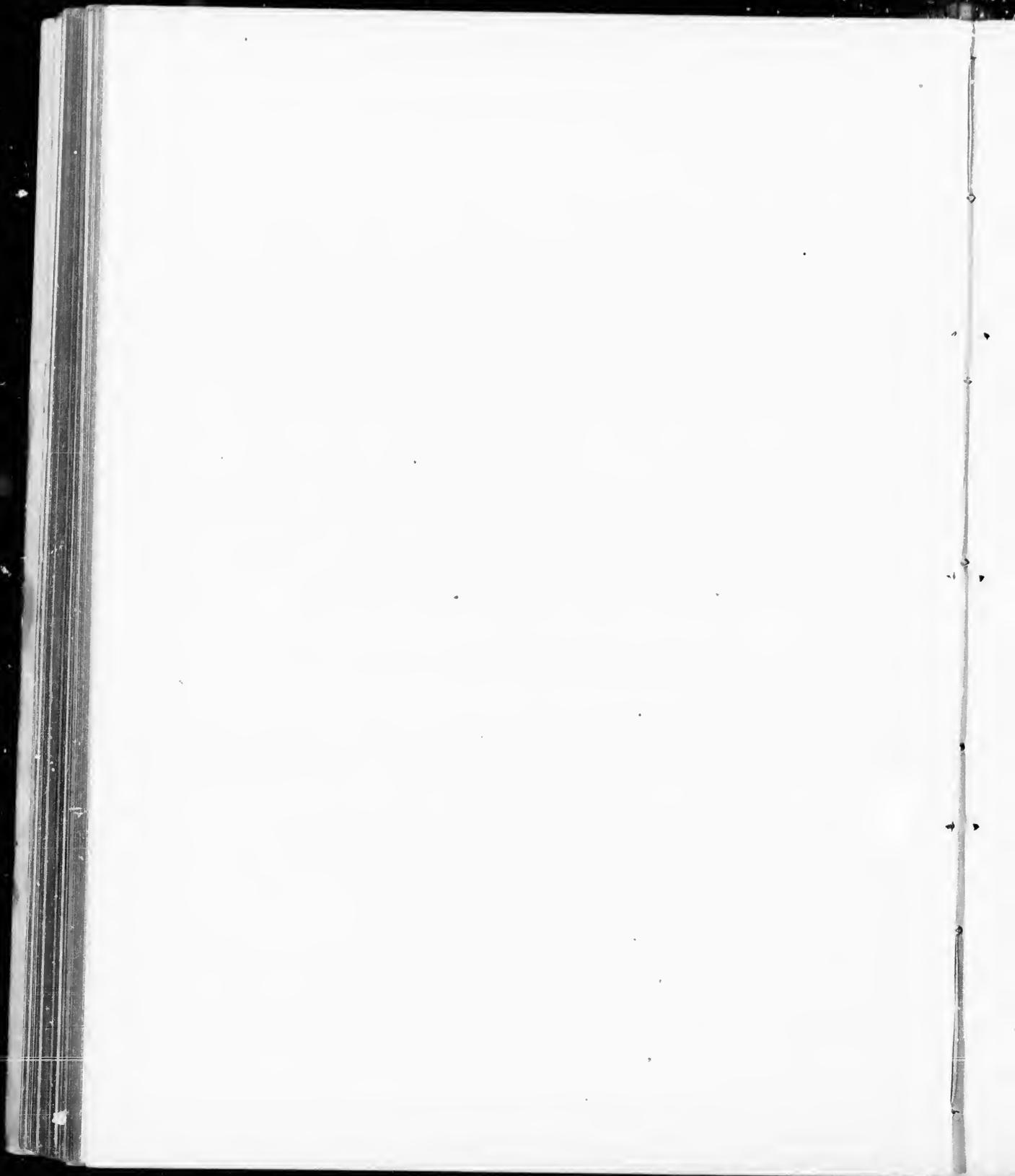
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VI.
Treaties and Conventions.

I. GREAT BRITAIN AND FRANCE.

TREATY OF ST. GERMAIN-EN-LAYE, 29TH MARCH, 1632,

BETWEEN LOUIS XIII., KING OF FRANCE, AND CHARLES I., KING OF ENGLAND.

III. On the part of the King of Great Britain, the said Ambassador, in virtue of the powers with which he is vested, and which shall be inserted at the end of these presents, has promised and promises in the name of his said Majesty to give up and restore (*rendre et restituer*) all the places occupied in New France, Acadia, and Canada, by the subjects of the King of Great Britain, by whom these places shall be restored; and to this end the said Ambassador shall deliver at the time of the signature of these presents to the Commissioners of His Most Christian Majesty, in due form, the authority which he received from the King of Great Britain for the restitution of the said places, together with the orders of his said Majesty to all those who had command in Fort Royal, the Fort of Quebec and Cape Breton for the restoration of the said places and forts, to be given up into the hands of those whom it may please His Most Christian Majesty to appoint, eight days after these orders shall have been notified to those who command or may then command; the said time of eight days being given to them to remove from those places and forts their arms, baggage, merchandise or money, utensils, and generally everything that belongs to them; to whom and to all who are in the said places, the term of three weeks, after the expiration of the eight days, is given, that they may during that time, or sooner if possible, retire to their vessels with their arms, munitions, baggage or money, utensils merchandise, furs, and generally everything that belongs to them, for the purpose of going thence to England without remaining longer in the said countries. And as it is necessary for the English to send to those places to fetch their people and to take them back to England, it is agreed that General de Caën shall pay the necessary expenses of equipping a vessel of two hundred tons, or two hundred and fifty tons' burthen, which the English shall send to those places; that is to say, the cost of chartering a vessel for the passage to and fro, the provisions of the sailors who work the vessel as well as of those who being on land are to be taken away, the wages of the men, and generally all that is necessary for the equipage of a vessel of the said tonnage for such a voyage, according to the usages and customs of England; and besides for the merchandise remaining unsold in the hands of the English, satisfaction shall be given, according to the cost in England, with thirty per cent. of profit, in consideration of the risk of the sea and port charges.

TREATY OF BRED A, 1667.

Art. X. The before mentioned seigneur, King of Great Britain, shall restore and give up to the above-named seigneur, the Most Christian King, or to those who shall be charged and authorized on his part, sealed in proper form with the Great Seal of France, the country called Acadia, situated in North America, of which the Most Christian King was previously in enjoyment.

[See CHARTER OF THE HUDSON'S BAY COMPANY, 1670, Sec. V., ante.]

TREATY OF NIMEGUEN, 1678.

ARTICLES OF PEACE BETWEEN THE EMPEROR AND THE FRENCH KING, CONCLUDED AND SIGNED AT NIMEGUEN, THE 3RD OF DECEMBER, 1678.

Their Imperial and Most Christian Majesties, retaining a grateful sense of the offices and continual endeavours the Most Serene King of Great Britain hath used to restore a general peace and public

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Treaties and
Conventions—
(1) Great
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France.

Treaty of St.
Germain-en-
Laye, 29th
March, 1632.

Treaty of
Breda, 1667.

Treaty of
Nimeguen,
1678.

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*Treaties and
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(1) Great
Britain and
France.*

*Treaty of
Nimègue, 1678.*

tranquillity, it is mutually agreed between the parties that he with his kingdom be included in this treaty, after the best and most effectual manner that may be.

Art. I. That there be a Christian, universal, true and sincere peace and friendship between their Imperial and Most Christian Majesties, their heirs and successors, kingdoms and provinces, as also between all and every the confederates of his said Imperial Majesty, more particularly the electors princes and states of the empire, comprehended in this peace, their heirs and successors, on the one part, and all and every of the confederates of his said Most Christian Majesty, comprehended in this peace: their heirs and successors, on the other; which said peace and friendship shall be so sincerely observed and improved that each party shall promote the honour, advantage, and interest of the other. And there shall be so perpetual an oblivion and amnesty of all hostilities committed on each side since the beginning of the present troubles, that neither party shall, upon that or any other account or pretence, give or cause to be given hereafter to the other any trouble, directly or indirectly, under colour of law or way of fact, within or without the empire, any formal agreement to the contrary, notwithstanding; but all and every the injuries, violences, hostilities, damages and charges sustained on each side by words, writing or deeds, shall, without respect of persons or things, be so entirely abolished that whatsoever may upon that account be pretended against the other, shall be buried in perpetual oblivion.

TREATY OF NEUTRALITY, 1686.

BETWEEN LOUIS XIV., KING OF FRANCE AND JAMES II., KING OF ENGLAND. CONCLUDED AT LONDON, THE 16TH OF NOVEMBER, 1686.

*Treaty of
Neutrality,
1686.*

It has been concluded and agreed that from the day of the present Treaty there shall be between the English and French nations a firm peace, union, concord, and good correspondence as well by sea as land in North and South America, and in the isles, colonies, forts and towns, without exception, in the territories of his Most Christian Majesty, and of his Britannic Majesty, and governed by the Commandants of their said Majesties respectively.

II. That no vessel or boat, large or small, belonging to his Most Christian Majesty, shall be equipped or employed in the said isles, colonies, fortresses, towns and governments of his said Majesty, for the purpose of attacking the subjects of his Britannic Majesty, in the isles, colonies, fortresses, towns and governments of his said Majesty, or doing there any harm or damage. And in this manner, likewise, that no vessel or boat, great or small, belonging to the subjects of his Britannic Majesty shall be equipped or employed in the isles, colonies, fortresses, towns and governments of his said Majesty, for the purpose of attacking the subjects of his most Christian Majesty in the isles, colonies, fortresses, towns and governments of his said Majesty, or to do them any injury or damage.

III. That no soldiers, or men-at-arms, or any other persons whatsoever, residing or living in the said isles, towns, or governments of his Most Christian Majesty, or come there from Europe in garrison shall exercise any act of hostility, or to do any injury or damage, directly or indirectly, to the subjects of his Britannic Majesty in the said isles, colonies, fortresses, towns and governments of his said Majesty; or lend or give any aid or assistance, in men or provisions, to savages against whom his Britannic Majesty shall be at war. And in like manner, no soldiers or men-at arms, or any other persons whatsoever, residing or being in the said isles, colonies, fortresses, towns and governments of his said Britannic Majesty, or come there from Europe in garrison, shall exercise any act of hostility or do any injury or damage to subjects of his Most Christian Majesty in the said isles, colonies, fortresses, towns and governments of His Majesty; or lend or give any aid or assistance, in men or provisions, to savages with whom his Most Christian Majesty shall be at war.

IV. It has been agreed that each of the said Kings shall have and hold the domains, rights and pre-eminences in the seas, straits, and other waters of America, and in the same extent which of right belongs to them, and in the same way they enjoy them at present.

V. And therefore the subjects, inhabitants, merchants, commanders of ships, masters and mariners of the Kingdoms, provinces and dominions of each King respectively shall abstain and forbear to trade and fish in all the places possessed, or which shall be possessed, by one or the other party in America, viz.: The King of Great Britain's subjects shall not drive their trade and commerce, nor fish in the harbours, bays, creeks, roads, shoals, or places which the Most Christian King holds or shall hereafter hold in America: And in like manner, the Most Christian King's subjects shall not drive their commerce and trade, nor fish in the waters, bays, creeks, roads, shoals or places which the King of Great Britain possesses or shall hereafter possess in America. And if any ship or vessel shall be found trading or fishing contrary to the tenor of this Treaty, the said ship or vessel, with its lading, proof being given thereof, shall be confiscated; nevertheless, the party who shall find himself aggrieved by such sentence or confiscation, shall have liberty to apply himself to the Privy Council of the King, by whose governors or judges the sentence has been given against him. But it is always to be understood that the liberty of navigation ought in no manner to be disturbed, where nothing is committed against the genuine sense of this treaty. * * *

XI. The commandants, officers, subjects of either of the two Kings, shall not molest the subjects of the other King in the establishment of their colonies respectively, or in their commerce and navigation.

XII. For the greater security of the subjects of his Most Christian Majesty as well as those of his Britannic Majesty, and to prevent vessels of war, or other vessels owned by private persons, doing injury or damage, all captains of vessels, as well of his Most Christian Majesty as those of his Britannic Majesty, and all their subjects who equip vessels at their own expense, also persons in the enjoyment of privileges, and companies, shall be forbidden to do any injury or damage to those of the other nation on pain of being punished in case of contravention, and be liable for all damages, either by the seizure of their goods or the imprisonment of their persons.

[By Art. XIII. all captains of war vessels, armed at the expense of private persons, were hereafter to give bonds in the sum of £1,000 stg., or 13,000 livres, and when the number of men is more than 150 in £2,000 stg., or 26,000 livres, that they would make good all damages which they or their officers might cause, in the course of their navigation, against the present treaty.]

[By Art. XIV the governors and officers of the two Kings were to discountenance all pirates; not giving them any aid nor allowing them to take shelter in their ports respectively; "and that the said governors and officers should be expressly ordered to punish as pirates all those who might be found to have armed one or more vessels sailing without commission or legitimate authority."]

[Art. XV. made the taking by the subject of either King, of any commission in the army of a sovereign at war with the other, piracy.]

[Art. XVII. If disputes arise between the subjects of the two Crowns in the isles, colonies, ports, towns and governments under their dominion, they are not to be allowed to interrupt the peace, but are to be decided by those having authority on the spot, and in case they cannot decide them, they are to remit them at once to the two Crowns, to be settled by their Majesties.]

XVIII. Further, it has been concluded and agreed that if ever, which God forbid, any rupture should take place in Europe between the said Crowns, the garrisons, armed forces, or subjects of whatever condition of his Most Christian Majesty, being in the isles, colonies, forts, towns and governments which are at present, or may hereafter be, under the dominion of his said Majesty in America, shall not exercise any act of hostility by sea or land against the subjects of his Britannic Majesty, inhabitants of any of the colonies of America. And in like manner, in case of a rupture in Europe, the garrisons, armed forces, or subjects of whatever condition of his Britannic Majesty, being in the isles, colonies, forts, towns and governments which are at present, or may hereafter be, under the dominion of his Britannic Majesty in America, shall not exercise any act of hostility, either by sea or land, against the subjects of his Most Christian Majesty inhabiting any colony whatever in America. But there shall always be a firm peace and neutrality between the said peoples of France and Great Britain, just as if no such rupture had taken place.

[XIX. This treaty, not to derogate from the Treaty of Breda, July, 1667, all the articles of which are to remain in force and vigour to be observed.]

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Sec. VI.

*Treaties and
Conventions—
(1) Great
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and France.*Transactions
of English
and French
Commission-
ers, 1687:

The Sieur Barillon and the Sieur De Bonrepaus, Commrs. appointed by the Most Christian King, with the Earl of Sunderland, the Earl of Middleton and Lord Godolphin, for Executing the Treaty of Neutrality in America.

At a meeting the 18th May, 1687, Memorials and other papers touching His Majesty's Right to the Hudson's Bay, with the answers of the French Commissioners

TRANSACTIONS OF THE ENGLISH AND FRENCH COMMISSIONERS APPOINTED TO EXECUTE THE TREATY OF NEUTRALITY, 1687.

THE COMMISSIONERS.

The Most Christian King having empowered the Sieur Barillon, his Ambassador Extraordinary at this Court and the Sieur Dusson de Bonrepaus, his Envoy Extraordinary, to treat as his Commissioners with such as should be appointed by his Majesty in order to the adjusting all differences that have arisen or might arise between both nations in America, and particularly for the better execution of the late Treaty of Neutrality between both Crowns in those parts; and His Majesty having been pleased to appoint the Right Honorable the Earl of 10 Sunderland, Lord President of the Council and principal Secretary of State, the Earl of Middleton, principal Secretary of State, and the Lord Godolphin, one of the Lords Commissioners of the Treasury, to treat with the said French Commissioners, their Lordships had their first Conference with them on the 18th of May, 1687, and upon the application of the Company of Adventurers trading to Hudson's Bay, their Lordships delivered to the French Commissioners a Representation of his Majesty's Right to the Streights and Bay of Hudson, as likewise a Memorial of Damages the Company had suffered by the invasion of the French, which, with the preceding Papers and the answers of the French Commissioners are as follows:

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MEMORIALS WHICH PASSED BETWEEN THE COMMISSIONERS.

To the King's Most Excellent Majesty:

Hudson's Bay
Company's
petition to
the King.

Petition of the Ad-
venturers of Eng-
land Trading to
Hudson's Bay.

The humble Petition of the Governor and Company of Adventurers of England trading into Hudson's Bay, most humbly sheweth:—

That the Ports and Places within Hudson's Bay in America, were first discovered by the subjects of the Imperial Crown of this Kingdom, denominated frequented, and sailed to, only by them successively for upwards of one hundred years.

That the Petitioners have traded into those parts above twenty years, and in that time have expended near two hundred thousand pounds sterling in erecting and making Forts and Factories there, and in settling a trade and other necessaries thereunto within the limits of their Charter, and have now arrived to a very considerable trade therein to the honour and profit of this Kingdom, and the increase of your Majesty's customs and shipping, and never were disturbed or any way molested therein, until the year 1682, when one Monsieur de la Cheney and other private merchants of Canada without any commission or colour of authority from His Most Christian Majesty, or from the Governor of Canada, did set out ships, and in a piratical manner disturb and annoy the petitioners in their Factories and Settlements at Port Nelson and did burn their houses and robbed them of their trade there, of all which the several memorials were sent to the Court of France by his late Majesty of ever blessed memory in behalf of the petitioners demanding satisfaction for the same, yet none was obtained.

And in November, 1685, the petitioners renewed their complaints by an humble petition to Your Majesty setting forth they had then received fresh intelligence that the French had, in an open hostile manner, in the time of peace and good correspondence of the two Crowns, seized within Hudson's Streights one of the petitioners' ships commanded by one Edward Humes, and carried her, with all her lading and several of your majesty's subjects upon her, prisoners to Quebec.

That His Most Christian Majesty gave answer thereunto and promised that as to the said ship, he would forthwith send necessary orders to Canada to have an account of what had happened in that

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affair, and after information thereof, would order what should be just and reasonable, but instead thereof Richard Smithsend, mate of the said ship, and some of her crew, were kept prisoners at Quebec for above eleven months, and for the most part were fed only with bread and water, and at last sent away as slaves to Martinico in the West Indies, as the petitioners have been lately assured by the said Smithsend, who made his escape and is within a few days since arrived in London, and his affidavit attesting the same and the French their proceedings against your petitioners in taking the bottom of the Bay is herewith annexed.

That in February, 1683, the petitioners made reply to the said answer, and at the same time made their petition and memorial of complaint to Your Majesty, setting forth the great injuries and depredations done to the petitioners in their trade, factories and estates in the Hudson's Bay, by the subjects of His Most Christian Majesty, and did annex to the same a deduction of their several losses and sufferings by the French of Canada, amounting to threescore thousand pounds.

That the Petitioners have advice that the Canada ships are this year arrived at Rochelle, and nowise doubt but His Most Christian Majesty has by them received an account about the petitioners' said ship, and other their great sufferings and losses by his subjects.

That the petitioners have had the honour to receive many gracious favours and encouragements from Your Majesty's late royal brother (of ever blessed memory), and not only then had the glory to be under your royal care as their Governor, but also lately upon their humble application and complaint to Your Majesty of the continued injuries they yearly receive from the subjects of the French King, Your Majesty was graciously pleased to give them from your own royal mouth, the assurance of Your Majesty's protection and care to see them righted.

And in steadfast assurance of Your Majesty's most gracious and royal word, but in the most humble and dutiful manner,

The petitioners do presume to represent to Your Majesty—

That within these two months the petitioners have received repeated advices and intelligence from France and several other places, whereby it appears that the French of Canada, this year, have in a piratical manner taken and totally despoiled the petitioners of three of their forts and factories in the bottom of Hudson's Bay, three of their ships or vessels, fifty thousand beaver skins, and a great quantity of provisions, stores and merchandizes laid in for many years' trade; and have in a small vessel turned out to sea above fifty of Your Majesty's subjects, who then were in the petitioners' service, to shift for themselves or perish miserably, besides those whom they have either killed or detained prisoners.

And the French of Canada give out to the native Indians, that they, the said French, will have Hudson's Bay and trade into their own hands and utterly out the petitioners of the same, which if they effect, will prove a very great loss to Your Majesty and this kingdom, and will utterly ruin the petitioners.

All which is humbly submitted to Your Majesty's most gracious consideration.

And the petitioners humbly pray, that Your Majesty will be graciously pleased to afford them your royal assistance and protection, and that Your Majesty will demand and procure satisfaction to be made to them for all the losses and damages they have, as well formerly as by this last invasion, sustained from the subjects of His Most Christian Majesty, and that His Most Christian Majesty may be instantly pressed to give effectual commands to his Governor at Canada and other his subjects to quit and deliver up to the petitioners, their agents and servants, all the forts, factories, ships and whatever else they have taken from the petitioners in Hudson's Bay, and for the more sincere and effectual obtaining of the same, that His Most Christian Majesty may now, before the departure of the petitioners' ships this spring, send unto Your Majesty a positive mandate to go by the petitioners' own ships this expedition, commanding all the subjects of His Most Christian Majesty which shall be found in the bottom of the Bay, or any other the factories or territories of the petitioners on sight thereof, to quit and surrender all the said places with all that did to them belong, and to depart from thence and leave the quiet and entire possession of the same to the petitioners, their agents, factors and servants, and that

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no ships or subjects of that Crown may for the future annoy or molest the petitioners in their rights, possessions and trade, and that the petitioners may have the sole trade of Hudson's Bay, according to the purport and gracious intention of Your Majesty's royal charter.

And your Petitioners (as in duty bound) shall ever pray, &c.

CHURCHILL, Governor.

Memorial of the Committee of Hudson's Bay Company to their Lordships.

Your Lordships have doubtless heard of (as well as all Europe admired at) the many insults committed by the French on his Majesty's subjects in Hudson's Bay for five years last past in the time of peace and good correspondence between the two Crowns, after more than an hundred years entire and quiet possession of the said Bay by His Majesty's subjects, your Lordships have also been acquainted with the Company's several Memorials of complaints and repeated petitions to His Majesty to cause restitution to be made of the ships, merchandize, and forts, taken from them, and also for reparation of the vast damage they have sustained thereby; nor can your Lordships (we hope) be ignorant of His Majesty's most gracious answer to our petition delivered in February last, when he was pleased to tell us that his honour was concerned with our interests, and he would have reparation for both, which royal assurance from his sacred mouth had so reanimated our desponding spirits that we have again prepared fresh supplies of provisions for our servants in the Bay (if any survive their miseries) as well as new cargoes of merchandize, for our trade with the natives, the happy success whereof will be entirely owing to your Lordships' favour and despatch, and we cannot but acknowledge it as the first good step to the prosperity of our Company, that Providence hath so kindly inclined His Majesty to refer the Company's welfare, to persons of so much real worth, honour and integrity.

We are sufficiently sensible that it is our duty to wait your Lordships' hours and to attend your motions and commands in all things, but we humbly beg leave also to assure you that the cogency of our affairs is so urgent in this juncture, that we are compelled to make this humble address to beg your Lordships' consideration of these preliminary propositions, viz:—

1st. That it hath been the Company's care to dispatch their ships for the Bay in the beginning of May, because there is but one season of the year to go and come, and if they have not an early dispatch they will be frozen in and lose their voyage.

2ndly. That this year, by reason of the Treaty your Lordships are entering upon, we have delayed our expedition as much as possible, nevertheless, we have contracted by charter party, with the owners and masters of those ships which we hire, that they shall sail before or at furthest on the 25th day of this instant month of May, beyond which time if we detain them, we shall not only break our charter party and pay great demurrage for our delay, but also highly endanger the total loss of our voyage as is aforesaid.

Now because we are sensible that the adjusting of all differences betwixt us and the French (and especially in agreeing to the districts of the Company's country for trade, and the particulars of their damages sustained) may take up too much of your Lordships' time to effect the same before the necessary departure of our ships, at present we can only pray, that your Lordships will endeavour immediately to obtain from the French Plenipotentiaries here a positive mandate to all the French in the Bay to be sent in our vessels, commanding them to deliver us all the ships, factories and merchandizes, &c., which they took from us last year at the bottom of the Bay.

This we are humbly of opinion they will not deny, because they never made any claim nor visited it, till the last summer, when they destroyed His Majesty's subjects there by surprise, even at the instant when a Treaty was on foot for a good correspondence and a perpetual peace between the two Crowns. And this we hope your Lordships will agree to be essentially necessary to the welfare of the Company that it would be very imprudent (if our servants could live there without a supply of provisions from England) to send any ships thither without the said mandate; as well because the French there have doubtless received the publication of the late Treaty for confirming the possessions they had the sixth day of November last, and consequently will treat our servants as enemies, and seize our ships and

effects, as heretofore, as also for that we shall find it very difficult to engage hired ships and men to expose themselves to the mercy of the French (who have already treated His Majesty's subjects so ill) and when they carry no force to oppose their violence.

All which we most humbly submit to your Lordships' serious and timely consideration.

E. Dering, Dep-Governour, Jo. Husband, Wm. Young, Richard Cradock, Jo. Letten, Stephen Pitts,
Nic. Hayward, Saml. Clarke,
Hudson's Bay House in Noble Street, London, 13th May, 1687.

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LES DROITS DE SA MAJESTÉ SUR LA BAIE D'HUDSON.

10 Memorial to the French Commissioners touching Hudson's Bay. La partie Septentrionale de l'Amérique dans laquelle est la Baie d'Hudson fut découverte vers l'année 1497 par le chevalier Sebastien Cabot en vertu d'une commission du Roi Henri Sept.

English
Memorial
touching
Hudson's
Bay, French
version.

En l'année 1610 Henry Hudson, sujet de Sa Majesté, navigua dans les détroits et dans la Baie d'Hudson, en prit possession et donna des noms à divers lieux situés dans la Baie et les Détroits, par lesquels ils ont toujours été nommés et connus depuis ce temps là, dans les cartes qui ont été faites tant dans les pays étrangers qu'en Angleterre.

En l'année 1612, le Chevalier Thomas Button, Anglais, fit un voyage dans les détroits et dans la Baie susdite et prit possession de diverses places (et particulièrement de la Rivière du Port Nelson et des Terres voisines au nom du Roi Jacques premier, et nomma la dite rivière et le fort où lui et sa compagnie passèrent l'hiver, Port Nelson, du nom du capitaine du vaisseau qui s'appelait Nelson.

20 En 1631 le capitaine Luc Fox fit un voyage à Hudson-Bay par ordre du Roi Charles premier et entre plusieurs lieux de la dite Baie où il entra, il alla dans la rivière du Port Nelson et trouvant là une croix qui avait été plantée par le Chevalier Thomas Button, il la releva et en renouvela l'inscription déclarant le droit et la possession que Sa Majesté y avait et nomma ensuite les pays voisins de cette rivière New-North-Wales.

En 1667 Zacharie Gilham, Anglais, fit un autre voyage dans cette baie et entra dans l'embouchure d'une rivière qui est au fond de la Baie, et la nomma la Rivière de Rupert en l'honneur de feu Son Altesse le Prince Rupert qui était le principal des intéressés dans cette expédition, le dit Gilham bâtit aussi là un fort à qui il donna le nom de Charles, en l'honneur du roi défunt, et ayant pris possession de la dite rivière et des terres voisines, il y établit le commerce et une bonne correspondance avec les 30 naturels du pays.

En 1669 le capitaine Newland entra dans le Port Nelson et déclara les titres et droits de Sa Majesty sur cette rivière et terres voisines en y plantant les armes du Roi comme une marque de sa souveraineté sur les dits lieux.

En 1670 le Roi défunt octroya une Chartre aux dits intéressés et en forma une compagnie leur donnant pouvoir et privilège de trafiquer (à l'exclusion de tous autres) dans la dite Baie, Détroits, Terres, Rivières et Iles, qui sont tant au dedans qu'aux environs de la Baie et des Détroits.

En 1672 la compagnie envoya Charles Bayley en qualité de Gouverneur de leurs Factories établies dans la dite Baie, avec qui le Sieur de Frontenac, Gouverneur du Canada, entretint une bonne correspondance sans jamais se plaindre d'aucun dommage ou tort fait par la compagnie ou par ses agents, soit en y établissant son commerce ou en bâtissant des forts au fond de la Baie, et en 1673, le dit Bayley envoya un navire appelé l'Employ au Port Nelson pour y négocier et y faire un établissement comme fit aussi le capitaine Draper, en 1680, qui y envoya un vaisseau nommé l'Albemarle.

40 En 1682, les agents et les facteurs de la compagnie bâtirent un fort et travaillaient à y établir une factorie dans le Port Nelson quand ils furent troublés pour la première fois par les Français, nonobstant un établissement et une possession continue de vingt ans durant lequel temps les intéressés ont fait une dépense de près 200,000 livres sterling, tant pour bâtir des forts que pour établir des factories.

Le droit de Sa Majesté sur la Baie d'Hudson et pays voisins ayant aussi été conservé, sans inter-

His Majesty's Right to Hudson's Bay and Territories thereunto belonging, being thus deduced without any interruption or dispute, until the year 1682, is likewise confirmed by subsequent Treaties, and particularly by the Treaty concluded between His Majesty and the Most Christian King on the 6th November, 1686, wherein it is stipulated that both Kings shall have and retain to themselves all the dominion, rights, and pre-eminences in the American seas, roads and waters, in as full and ample manner, as of right belonged to them, and in such manner as they then possessed the same, which as it certainly establishes and confirms a right in His Majesty to those places in Hudson's Bay and Streights whereof the English were then actually possessed, so doth it likewise of those places which were lately seized by the merchants of France, which, at the signing of the Treaty, were understood by both parties to be in the possession of His Majesty's subjects, such dispossession as lately happened having been certainly made in the time of peace, and therefore cannot be deemed a rightful possession of the French within the genuine intention of the Treaty.

Lastly, if any objections should be made to the facts and arguments herein set forth to prove His Majesty's title to Hudson's Bay and Territories thereunto belonging, or if any right shall be pretended by the French to those places, the Company of Adventurers most humbly pray that leave and opportunity may be given them to make their reply, not doubting to give His Majesty full satisfaction therein.

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English Memorial touching Hudson's Bay.

*Réponse.**

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Answer of the French Commissioners to the Memorial touching Hudson's Bay.

Ce pays qui est appelé dans toutes les anciennes cartes, la Côte de Labrador a été ainsi nommé par les Espagnols qui en firent la découverte longtemps avant que les Anglais y eussent été.

On voit par les Relations que le dit Sebastien Cabot n'y a passé que par occasion comme les autres navigateurs en cherchant un passage du côté de l'Ouest pour aller aux Indes, ce sont des faits connus par tous les navigateurs. Les Français y ont été en divers temps, mais on n'a jamais cru que ces voyages pussent servir de titre.

**ANSWER.*

This country, which is called the coast of Labrador in all the old maps, has been so named by the Spaniards, who discovered it long before the English had visited it.

It is seen in the accounts that Sebastian Cabot only touched there occasionally, like other navigators, seeking a passage on the western side, to go to the Indies—these are facts known to all navigators. The French have been there at various times, but they have never thought these voyages could stand instead of title. Henry Hudson may have sailed in the strait of the Bay to the north of Canada, as many others have done, but it is certain that he took no possession of it, having no deed, in which mention was made of it, nor the slightest proof of any settlement made by the English.

Copie du Mémoire remis par Messrs. les Commissaires de Sa Majesté Britannique au sujet de la Baie d'Hudson.†

La partie septentrionale de l'Amérique dans laquelle est la Baie d'Hudson fut découverte vers l'année 1497 par le chevalier Sebastien Cabot en vertu d'une commission du Roi Henri Sept.

Reply of the French Commissioners.

†COPY of the Memorial sent by the Commissioners of Her Britannic Majesty upon the subject of Hudson Bay.

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*Reply of the
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missioners.*

Henry Hudson peut avoir navigué dans le Dé-
troit de la Baie du Nord du Canada comme plu-
sieurs autres ont fait, mais il est constant qu'il
n'en prit point possession n'y ayant aucun acte
qui en fasse mention ni aucun vestige d'établis-
sement fait par les Anglais.

Le droit qu'on voudrait prendre par les cartes
modernes et sans aucun fondement, ces sortes d'ou-
vrages n'étant point faits par ordre ni par parti-
cipation des Souverains, ceux qui les composent ne
cherchent que la nouveauté pour en avoir un plus
grand débit, et prennent les dernières relations
qu'ils trouvent sans s'informer d'où elles viennent.

Si on veut admettre ces sortes de preuves, les
Français feront voir par plusieurs relations impr-
mées à Londres avec privilège que tous les pays
en question leur ont appartenu avant que les An-
glais les eussent connus, et cela seul finirait la
contestation; mais il me semble qu'il serait plus
convenable et qu'on connaîtra mieux le fond du
droit des deux nations en examinant les titres qui
seront produits par les deux compagnies de com-
merce, ceux de la compagnie Française seront mis
ci-après.

Les Français occupaient en ce temps là toutes
ces terres, et l'on prouvera par les procès-verbaux
du Sieur Champlain, qu'il en prit possession et de
celles qui sont cinq cents lieues par delà, le pays
des Iroquois et de la Rivière de Saguenay, et y fit
des établissements qui ont été continués. Au lieu
que parceque est dit dans l'article ci-à côté, il
paraît qu'après le voyage du Chevalier Thomas
Button en 1612, les Anglais n'y sont retournés
qu'en 1631, ce qui justifie qu'ils n'ont jamais été
en ce pays là pour s'y établir mais seulement par
occasion, et comme il a été dit ci-dessus pour cher-
cher un passage du côté de l'Ouest pour aller aux
Indes.

The right which it is wished to claim from modern maps
is without any foundation, these works not being made by
the order or participation of the sovereigns, and those who
compose them, seek only innovation, in order to have a
larger traffic, and take the latest accounts, without ascer-
taining from whence they come.

If these sorts of evidences are to be admitted, the
French could show, in several accounts, printed by autho-
rity in London, that all the countries in question belonged
to them before the English ever knew them, and that alone
should end the dispute; but, it seems that it would be
more suitable, and one would know better the ground of
the rights of the two nations, by examining the titles
which will be brought forward by the two companies of
commerce: those of the French Company will be placed
hereafter.

En l'année 1610 Henry Hudson, sujet de Sa
Majesté, navigua dans les Détroits et dans la Baie
d'Hudson en prit possession et donna des noms à
divers lieux situés dans la Baie et les Détroits, par
lesquels ils ont toujours été nommés et connus
depuis ce temps là dans les cartes qui ont été faites
tant dans les pays étrangers qu'en Angleterre.

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En l'année 1612 le chevalier Thomas Button
Anglais, fit un voyage dans les Détroits et dans la
Baie susdite, et prit possession de diverses places
et particulièrement de la rivière du Port Nelson
et des terres voisines, au nom du Roi Jacques pre-
mier, et nomma la dite rivière et le port, où lui et 30
sa compagnie passèrent l'hiver, Port Nelson, du
nom du capitaine du vaisseau qui s'appelait Nelson

A l'égard du lieu de Nelson, ils peuvent y avoir mouillé par occasion, mais il n'y a jamais eu aucun vestige d'établissement qu'en l'année 1682 qu'ils y vinrent qu'après que les Français y eurent bâti un fort sur la rivière de Bourbon, et une marque certaine qu'ils n'y ont point pris d'établissement ni qu'ils n'ont pas eu dessein de s'y établir en ce temps là, c'est qu'ils n'ont eu le pouvoir de leur Souverain de le faire qu'en l'année 1670 par lettres du Roi Charles Second.

Cette croix n'a pu être plantée que par les Français, et c'est une preuve infallible qu'ils ont été les premiers occupants de ces terres.

Le nom de New-North Wales donné à cette contrée en 1631 ne prouve rien contre la première possession des Français qui est depuis l'année 1640, outre que ce lieu là ne peut avoir aucun rapport avec celui de Nelson en étant éloigné d'environ 400 lieues. On convient qu'en ce temps là les Anglais entrèrent dans la rivière qu'ils nommèrent Rupert, où ils ont bâti ensuite un fort, mais ce pays leur était si peu connu qu'ils furent obligés de s'y faire introduire par les nommés Grosseliers et Radisson, Français, habitants du Canada, qui quit-

The French occupied at that time all these lands, and they will prove it by the verbal proceedings of Mr. Champlain that he took possession of them, and of those which are five hundred leagues on the other side, the country of the Iroquois, and the Saguenay River, and there made settlements, which have been carried on. Instead of, as is said in the article at hand, it appears that after the voyage of the Knight, Thomas Button, in 1612, the English returned only in 1631, which proves that they had never been in that country to settle themselves, but only occasionally, and, as it has been afore said, to find a passage on the western side to go to the Indies.

As for the place Nelson, they may have occasionally cast anchor there, but there was never any trace of a settlement till the year 1682, when they came there. After that the French had built a fort upon the Bourbon River; and a proof positive that they made no settlement there, nor had any intention to settle themselves there at that time, is that they had no authority from their King to do so, until the year 1670, by letters from King Charles the Second. This cross can only have been erected by the French, and it is an infallible proof that they were the first possessors of these lands.

The name New North Wales given to this country in 1631, is no proof against the first possession by the French, which is since the year 1640, besides that, this place can have no connection with that of Nelson, being at a distance of about four hundred leagues. It is understood that at that time the English entered the river, which they named Rupert, where they afterwards built a fort, but this country was so little known to them, that they were obliged to gain an

En 1631 le Capitaine Luc Fox fit un voyage à Hudson's Bay par ordre du Roi Charles Premier, et entre plusieurs lieux de la dite Baie où il entra, il alla dans la rivière du Port Nelson, et trouvant là une croix qui y avait été plantée par le chevalier Thomas Button, il la releva et en renouvela l'inscription, déclarant le droit et la possession que Sa Majesté y avait; et nomma ensuite les pays de cette rivière New-North-Wales.

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En 1667 Zacharie Gilham, Anglais, fit un autre voyage dans cette baie, et entra dans l'embouchure d'une rivière qui est au fond de la Baie, et la nomma la Rivière Rupert, en l'honneur de feu Son Altesse le Prince Rupert, qui était le principal des intéressés dans cette expédition; le dit Gilham bâtit aussi un fort à qui il donna le nom de Charles, en l'honneur du roi défunt, et ayant pris possession de la dite rivière et des terres voisines, il y établit le commerce et une bonne correspondance avec les naturels du pays.

*Reply of the
French Com-
missioners.*

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tèrent pour la première fois la compagnie Française qu'ils servaient.

Il n'est pas vraisemblable que la trahison de ces deux hommes puisse servir de titre contre la compagnie Française qui en fit ses plaintes en ce temps là et a continué depuis à demander raison de cette usurpation ; les affaires qui survinrent en Europe peu de temps après ont fait négliger la poursuite de celle-ci, dont la compagnie Française ne s'est jamais désistée.

Les Français n'ont aucune connaissance de cette prise de possession qui ne pourrait avoir aucun lieu quand elle serait véritable, puisque les Français étaient les premiers occupants fondés en titre, et qu'il n'y avait point de guerre entre les deux rois, et qu'au contraire le traité de Bréda fait en 1667 les maintenait dans leur ancien droit.

Cette concession faite depuis le Traité de Bréda, qui porte que les sujets des deux rois demeureront en possession des terres qu'ils possédaient au premier Janvier, 1665, ne peut avoir lieu contre le droit des premiers occupants, que les Français ont par un titre antécédent.

La négociation qu'il y avait en ce temps là entre les deux rois pour un traité général de commerce, où cette affaire devait être comprise, fit qu'on donna à monsieur de Frontenac de n'entreprendre rien contre les Anglais dans cet établissement jusqu'à nouvel ordre.

introduction to it through two Frenchmen, inhabitants of Canada, named Desgrossellier and Radisson, who, for the first time left the French Company which they served.

It is not probable that the perfidy of these two men can be used as a right against the French Company, which at that time made complaints about it, and has since continued to demand an explanation of that encroachment. The matters which happened unexpectedly in Europe shortly afterwards caused the search about this to be neglected, from which the French Company has never desisted.

The French had no knowledge of this taking possession, which could have no place, even if true, since the French were the first possessors, established by title, and that there was no war between the two Kings, and on the contrary, the Treaty of Bréda, signed in 1667, upheld them in their old claim.

This grant made since the Treaty of Bréda, which conveys that the subjects of the two Kings shall remain in

En 1669 le Capitaine Newland entra dans le Port Nelson, et déclara les titres et droits de Sa Majesté sur cette rivière et terres voisines en y plantant les armes du Roi comme une marque de sa souveraineté sur les dits lieux.

En 1670 le roi défunt octroya une Chartre aux dits intéressés et en forma une compagnie, leur donnant pouvoir et privilège de trafiquer, (à l'exclusion de tous autres), dans la dite baie, détroits, rivières et îles qui sont tant au dedans qu'aux environs de la baie et des détroits.

En 1672 la compagnie envoya Charles Bayley en qualité de gouverneur de leurs factoreries établies dans la dite baie avec qui le Sieur de Frontenac, Gouverneur du Canada, entretint une bonne correspondance sans jamais se plaindre d'aucun dommage ou tort fait par la compagnie ou par ses agents, soit en y établissant son commerce ou en bâtissant des forts au fond de la baie, et en le dit Bayley envoya un navire appelé l'Employ au Port Nelson, pour y négocier et y faire un établissement comme fit aussi le Capitaine Draper en 1680, qui y envoya un vaisseau nommé l'Albemarle.

Il a déjà été dit ci-dessus que les Français bâtirent près d'un lieu appelé Nelson, sur la rivière de Bourbon, et que les Anglais n'y sont venus qu'après eux, leur premier droit et celui de l'établissement qu'ils venaient d'y faire, les obligea de repousser les Anglais s'il les venaient troubler, et la Compagnie Française demeura toujours satisfaite de l'enlèvement de ce fort et de tous ses effets pillés en 1683 par la trahison du nommé Radisson.

10 Le traité conclu au mois de Novembre 1686, serait plus favorable aux Français qu'aux Anglais, si on voulait l'expliquer à la lettre, mais il me semble que les deux rois étant convenus de décider l'affaire au fond sur les pièces et titres qui seront rapportés par les deux compagnies de commerce, il ne s'agit à présent que d'examiner ces titres et de rendre justice en connaissance de cause à qui il appartient.

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possession of the lands which they possess on the 1st of January, 1665, cannot operate against the right of the first possessors, which the French have by a prior title.

The negotiation which at that time took place the two Kings for a general Treaty of Commerce, where this matter ought to be included, issued an order to Monsieur de Frontenac not to attempt anything against the English in this settlement until a new order should be issued.

It has already been said above that the French built a fort near to a place called Nelson, upon the Bourbon River, and that the English came there after them, their first claim and that of the settlement they had made, obliged them to repulse the English who came there to disturb them, and the French Company still demand satisfaction for the abduction of this Fort, and of all its belongings, plundered in 1683, by the treason of the man named Radisson. The Treaty signed in the month of November, 1686, would be more favourable to the French than to the English, if it could be explained literally, but it appears that the two Kings having agreed to decide the matter in reality upon the documents and deeds which should be brought by the two Companies of Commerce, it remains only now to examine these deeds, and to render justice in the hearing of the cause, to whom it shall belong.

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En 1682 les agents et les facteurs de la compagnie bâtirent un fort et travaillaient à établir une factorie dans le Port Nelson, quand ils furent troublés pour la première fois par les Français, nonobstant un établissement et une possession continuelle de vingt ans, durant lequel temps les intéressés ont fait une dépense de près de 200,000 livres sterling, tant pour bâtir des forts que pour établir leurs factories.

Le droit de Sa Majesté sur la Baie d'Hudson et pays voisins ayant été ainsi conservé sans interruption ni contestation quelconque jusqu'en 1682, a été aussi confirmé par le traité conclu entre Sa Majesté et le Roi Très-Chrétien le 16 Novembre 1686, par lequel il est stipulé que les deux rois auront tous les domaines, droits et pré-éminences dans les mers, détroits et autres eaux de l'Amérique d'une manière aussi ample et étendue qu'ils en jouissaient alors, et comme ceci établit et confirme le droit de Sa Majesté sur les places qui sont dans la Baie et dans les Détroits de Hudson aussi l'établit-il et le confirme sur celles dont les marchands Français se sont depuis quelque temps emparés, lesquelles places à la signature du traité, étaient réputés par les deux parties être en la possession des sujets de Sa Majesté, la dite saisie étant sans contradiction commise en temps de paix, par conséquent ne peut être réputée une juste et légitime possession selon l'intention véritable du traité.

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Sec. VI.

Treaties and
Conventions—
(1) Great
Britain and
France.

Transactions
of English
and French
Commissioners,
1687:

Reply of the
French Com-
missioners.

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*Treaties and
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(1) Great Bri-
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Transactions
of English
and French
Commission-
ers, 1687.

Proofs by
French Com-
missioners in
answer to
English
Memorial,
touching
Hudson's
Bay.

La Compagnie Française de la Baie du Nord du Canada produit : *

Proofs produced by the French Commissioners in answers to the memorial touching Hudson's Bay.

(1^o). Une commission en forme d'édit du Roi François premier, donnée en l'année 1540 en faveur du Sieur Roberval, pour prendre possession de toutes les terres que le dit roi avait fait découvrir en l'année 1525 par le nommé Verazzano Florentin et par Jean Cartier de St. Malo en 1534 et 1535, dans laquelle commission la Baie du Nord du Canada qui a été depuis appelée Hudson est comprise.

2^o. Lettres patentes du Roi Henri le Grand de l'année 1598, par lesquelles il établit le marquis de la Roche, Cottenmel (†) son lieutenant au pays du Canada, Hochelaga, Terres Neuves, Labrador Rivières de la Grande Baie, Rivière de Norembugue et terres adjacentes des dites provinces et rivières. Ces lettres patentes, en forme de commission, sont enregistrées au Parlement de Rouen et portent en termes formels que les dites terres n'étaient habitées en ce temps là par aucuns sujets des princes Chrétiens.

3^o. Les actes d'une société de marchands, établie sous le nom de Caën, qui y ont fait actuellement leur commerce jusqu'en 1627.

4^o. Les lettres patentes du Roi Louis Treize, en date du 29 avril 1627, qui forma une nouvelle compagnie à laquelle il concéda tout le pays du Canada, tant le long des côtes depuis la Floride que les rois, ses prédécesseurs, avait fait habiter en rangeant les côtes de la mer jusqu'au cercle Arctique pour latitude et longitude depuis l'Île de Terre-neuve, tirant à l'ouest jusqu'au Lac dit la mer douce, et au-delà que dedans les terres et le long des rivières qui y passent, et se déchargent dans le fleuve St. Laurent et dans tous les autres fleuves qui les portent à la mer. Dans lequel espace de pays est comprise sans difficulté la Baie du Nord du Canada appelé par les Anglais Hudson.

5. Un Acte tiré des registres du Conseil Souverain de Québec en date du 26 avril 1656, signé Pevoret secrétaire du dit Conseil, par lequel il est prouvé qu'un nommé Jean Bourbon, commandant un vaisseau de la dite compagnie courut toute la côte du Nord du Canada, entra et fit de nouveaux actes de prise de possession dans la dite baie.

* The French Company of the Bay to the north of Canada produces :

1. A commission in the form of an edict from King Francis the First, given in the year 1540, in favour of M Roberval, to take possession of all the lands which the said King had caused to be discovered in the year 1525, by Verazzano Florentin, and by Jacques Cartier, of St. Malo, in 1534 and 1535, in which commission the Bay to the north of Canada, which has since been called "Hudson," is included :—

2. Letters patent of King Henry the Great, in the year 1598, by which he appointed the Marquis de la Roche Cottenmeal, † his Lieutenant in the countries of Canada, Hochelaga, New Lands, Labrador, Great Bay Rivers, Norembugue River, and lands adjoining the said provinces and rivers. These letters patent, in form of commission, are registered in the Parliament of Rouen, and convey in set terms that the said lands at that time were not inhabited by any subjects of the Christian Princes.

3. The deeds of a society of merchants, established under the name of M. de Caën, who did actually trade there until the year 1627.

4. Letters patent from King Louis the Thirteenth, dated the 29th April, 1627, who formed a new company to which he granted all the country of Canada, as much along the coasts from Florida, as the Kings, his predecessors, had caused to be inhabited, coasting along the sea to the Arctic circle for latitude, and longitude from the Island of the New Land, inclining to the west, to the great lake called the "Quiet Sea," [Lake Huron] and beyond, and within the lands, and along the rivers which pass there, and empty themselves into the river St. Lawrence, and into all other streams which carry their waters to the sea. In which extent of country is included, without objection, the bay to the north of Canada, called by the English "Hudson."

5. A deed taken from the records of the Sovereign Council at Quebec, dated the 26th April, 1656, signed by Peuvret, Secretary to the said Council, by which it is proved that John Bourbon, commanding a ship belonging to the said company, sailed along all the coast of the north of Canada, entered, and made new acts of the taking possession of the said bay.

(†) Cottenmeal, *vide* Charlevoix. Tome I, p. 103. Note.

6. Les certificats du Sieur de la Vallière, officier, et du Père Dablon, missionnaire, qui prouvent qu'en l'année 1661 les sauvages de la Baie du Nord du Canada vinrent exprès à Québec pour confirmer qu'ils voulaient continuer de vivre sous la domination des Français et pour demander un missionnaire. Le dit père Dablon y fut envoyé par terre avec le dit Sieur de la Vallière, accompagné de cinq soldats.

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(1) Great
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and France.*

7. Une commission du Sieur d'Avaugour pour lors Gouverneur de la Nouvelle France, en date du 10e Mai 1663, portant ordre et permission au Sieur Couture de se transporter avec cinq hommes au fond de la Baie du Nord du Canada, pour en conséquence de la réquisition des Sauvages qui étaient revenus à Québec pour lui demander secours, les conduire et assister dans leurs affaires. A cette commission est joint un certificat du dit Sieur Couture, portant qu'il fit ce voyage en l'année 1663, et fait planter de nouveau sur les terres du fond de la dite baie une croix et les armes du roi, gravées en cuivre, et placées entre deux plaques de plomb au pied d'un grand arbre.

*Transactions
of English
and French
Commission-
ers, 1687.*

8. Le procès-verbal du Sieur de la Chesnay de la dite prise de possession.

9. Les lettres patentes de Sa Majesté de l'année 1663 par lesquelles elle réunit à la Couronne la propriété des susdites terres sur la cession de la dite compagnie.

10. Autres lettres patentes du Roi de l'année 1664 par lesquelles Sa Majesté ayant établi une nouvelle compagnie des Indes Occidentales, lui concède la Nouvelle France avec la même étendue que Louis XIII. l'avait concédé à la compagnie qui fut établie en 1627.

*Proof by
French Com-
missioners in
answer to
English
Memorial,
touching
Hudson's
Bay.*

11. Un procès-verbal fait en l'année 1671 par le Sieur de St. Lusson envoyé par ordre du Roi à Ste. Marie du Sault chez les Outouac, où se rendirent toutes les nations de plus cent lieues à la ronde au nombre de dix-sept, lesquelles se soumirent volontairement à la domination de Sa Majesté. Le dit Sieur de St. Lusson y planta ensuite la croix et y arbora les armes de Sa Majesté. Ces dix-sept nations comprenaient toutes celles des Outouacs et de tout le Lac de Huron, celles du Lac Supérieur, de toutes les terres du Nord et de la Baie d'Hudson, celles de la Baie des Puans et du Lac des Illinois, comme il est amplement justifié par le dit procès-verbal de prise de possession.

6. Certificates of M. de la Vallière, officer, and of Father Dablon, missionary, which prove that in the year 1661, the savages from the bay to the north of Canada, came expressly to Quebec, to confirm that they wished to continue living under the dominion of the French, and to ask for a missionary. The said Father Dablon was sent there by land, with the said M. de la Vallière, accompanied by five soldiers.

7. A commission from M. d'Avaugour then Governor of New France, dated the 10th May, 1663, conveying order and permission to M. Couture to remove, with five men, to the bottom of the bay to the north of Canada, consequent upon the requisition of the savages, who had returned to Quebec to ask for aid to conduct and assist them in their affairs. To this commission is added a certificate from the said M. Couture, conveying that he made this voyage in the year 1663, and erected anew upon the lands at the bottom of the said bay a cross, and the arms of the King engraved on copper, and placed between two plates of lead, at the foot of a large tree.

8. The *procès verbal* of M. de la Chesnay of the said taking of possession.

9. The letters patent of His Majesty, of the year 1663, by which he re-unites to the Crown the property of aforesaid lands, upon the cession of the said Company.

10. Other letters patent of the King, of the year 1664, by which His Majesty, having established a new Company in the West Indies, concedes New France to it, with the same extension that Louis the Thirteenth had conceded to the Company which was established in 1627.

11. A *procès verbal* made in the year 1671, by M. de St. Lusson, sent by order of the King to St. Marie du Sault to the Outouacs, where resorted all the nations for more than a hundred leagues round, numbering seventeen, who willingly submitted to His Majesty's dominion. The said M. de St. Lusson then erected there the cross, and erected the arms of His Majesty. These seventeen nations included all those of the Outouacs, and of Lake Huron, those of Lake Superior, of all the lands in the north, and of Hudson's Bay, those of the Bay des Puans, and the Lake of the Illinois, as is fully proved by the said *procès verbal* of taking possession.

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Sec. VI. Memorial
of damages
suffered by
the English
Company,
with the
answer of
the French
Commissioners,
1687 :

*Réponse.**

La Compagnie Française du Canada soutient et prouvera que les Anglais n'ont eu ni établissement ni factories dans le Port de Nelson avant l'année 1682. Voici le fait qu'ils certifient véritable et qui servira de réponse à ce qui est dit ci-à-côté.

En l'année 1682 la Compagnie Française équipa deux vaisseaux à Québec, sur lesquels étaient Radisson et de Grosseliers, qui avaient obtenu en France le pardon de la trahison qu'ils avaient faite en l'année 1667, en introduisant les Anglais à la rivière qu'ils appellent Rupert et autres lieux circonvoisins dans la Baie du Nord du Canada.

English
Memorial of
damages, and
the French
answer
thereto.

Ces deux vaisseaux étant arrivés dans la dite baie descendirent à la rivière appelée Bourbon où ils avaient auparavant établis un commerce par terre avec les sauvages des environs qui les reçurent bien et leur facilitèrent le bâtiment d'un fort et d'un magasin qu'ils y établirent pour commencer leur commerce avec les dits sauvages.

Trois jours après cet établissement il y relâcha une barque de Boston, montée de dix hommes, que les Français reçurent comme amis, et quatre jours après on vit paraître au bas de la rivière un grand

**REPLY.*

The French Company of Canada maintains, and will prove, that the English have had neither settlement nor factory in Port Nelson before the year 1682. Here is the fact which it certifies as true, and which will serve as an answer to that which is said alongside :

In the year 1682 the said French Company equipped two ships at Quebec, upon which were Radisson and Desgroseliers, who had obtained, in France, pardon for their treason in the year 1667, in introducing the English to the River, which they call Rupert, and to other places adjacent in the Bay to the north of Canada.

These two ships having arrived in the said Bay, descended the river named Bourbon, where they had before established a trade by land with the savages of the vicinity, who received them well, and facilitated their building a fort and a magazine, which they established there in order to begin their trade with the said savages.

Three days after this settlement, there put into port a boat from Boston, manned by ten men, whom the French received as friends, and four days after, in the river below, appeared a large ship, from London, of which the English in the boat from Boston were afraid, because, as they have since confessed, they had no Commission. The captain of the said ship of London said he had come there to settle, upon which the French presented to him their

[Memorial of Damages suffered by the English Company.]

Copie du mémoire remis par messieurs les commissaires du roi d'Angleterre au sujet des dommages soufferts par la compagnie d'Hudson Bay.

En l'année 1682 le Sieur de la Chenay et autres marchands du Canada équipèrent plusieurs bâtimens et entrèrent avec main-forte dans les établissemens et factories de la compagnie au Port Nelson, où ils brûlèrent leurs maisons, se saisirent de leurs effets et provisions, et ruinèrent la factorie que la compagnie y avait établie, emmenèrent prisonniers au Canada le Sieur Bridgar, gouverneur de la factorie, et seize autres personnes sujets de Sa Majesté.

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De plus, la compagnie perdit au même temps le navire nommé Prince Rupert, commandé par Zacharie Gilham, avec sa charge, provisions et munitions ; le dit Gilham et cinq autres personnes ayant

† COPY of the Memorial sent by the Commissioners of the King of England upon the subject of the damages suffered by the Hudson Bay Company.

In the year 1682, M. De la Chenay, and other Canadian merchants, equipped several ships, and entered by force into the settlements and factories of the Company at Port Nelson, where they burned their houses, seized their goods and provisions, and ruined the factory which the Company had established there, and led as prisoners to Canada, Mr. Bridgar, Governor of the Factory, and sixteen other persons, subjects of His Majesty.

Besides, the Company lost at the same time the ship named Prince Rupert, commanded by Zachariah Gilham, with its cargo, provisions, and ammunition,—the said Gilham, and five other persons, having perished with the ship, and six other subjects of His Majesty having been also obliged, by this invasion, to withdraw into the woods, where they died of hunger and exposure. These losses, being calculated with all possible abatement, amount at least to more than twenty-five thousand pounds sterling of loss to the parties concerned.

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vaisseau de Londres dont les Anglais de la barque de Boston eurent peur parcequ'ils n'avaient point de commission, comme ils l'ont avoué depuis. Le capitaine du navire de Londres dit qu'il était venu pour s'y établir, sur quoi les Français lui présentèrent leur ancien droit sur ces terres et qu'outro cela ils s'y trouvaient premiers occupants.

Ils en étaient dans cette contestation lorsque les glaces poussées par la marée coupèrent les câbles 10 du vaisseau Anglais, le firent dériver en large, où il fit naufrage, les gens de l'équipage s'étant sauvés à terre dans des chaloupes, demandèrent du secours aux Français, qui le leur accordèrent, et leur donnèrent même une barque et des vivres pour se retirer où ils voudraient aller.

Une partie des Français qui étaient dans le dit fort de la rivière de Bourbon après avoir laissé les gens nécessaires pour la garde de leur poste et pour continuer leur commerce avec les sauvages s'en 20 retournèrent à Québec avec la barque de Boston et son équipage que le Gouverneur de la Nouvelle France fit relâcher, quoiqu'elle fut sans commission et par conséquent sujette à confiscation.

Messieurs les commissaires pourront juger par les faits ci-dessus dont plusieurs Anglais qui en ont connaissance rendront témoignage, si la compagnie d'Hudson's Bay est bien fondée dans les prétendus 30 dommages et intérêts qu'elle doit avoir souffert en cette occasion.

ancient right over these lands, and that moreover they were the first possessors.

They were in this dispute when the ice, driven by the tide, cut the cables of the English ship, caused her to drift from shore, where she was wrecked, the people manning her, getting safe to land in long-boats—asked help from the French, who gave it them, and even gave them a boat and the means to exist, that they might go where they wished.

One party of Frenchmen, who were in the said Fort of the Bourbon River, after having left enough people for the protection of their station, and for continuing their trade with the savages, returned to Quebec with the Boston boat and crew, which the Governor of New France suffered to depart, although being without Commission and consequently subject to confiscation.

The Commissioners can judge, by the above facts, to which several Englishmen, who have knowledge of them, will give testimony, whether the Company of Hudson's Bay is well founded in the damages and interest which it claims to have suffered on that occasion.

It has already been urged in reply to this complaint, that the French ventured nothing against the English in 1684, and that these two ships having found the English

péri avec le vaisseau, et six autres sujets de Sa Majesté ayant été aussi obligés par cette invasion, de se retirer dans les bois où ils moururent de faim et de misère. Ces dommages étant supputés avec toute la modération possible montent du moins à plus de vingt-cinq mille livres sterling de perte aux intéressés.

En 1684 les Français, en vertu d'une commission du Sieur de la Barre, Gouverneur du Canada, entrèrent avec deux vaisseaux et cinquante hommes dans la dite baie et allèrent au Port Nelson, où ils entrèrent avec main-forte et y bâtirent un Fort au-dessus de celui de la factorie de la compagnie, et par ce moyen firent cette année le commerce avec les Indiens, ce qui est une perte aux intéressés du moins de dix mille livres sterling.

Au mois de juillet de l'année 1685 les deux vaisseaux susdits retournant au Canada rencontrèrent à l'embouchure des détroits un navire de la compagnie nommé le Marchand de Perpetuana, Edouard Humes, maître, qui allait rendre son bord à Port Nelson avec sa charge et provisions, qui étaient destinées pour le service et pour l'avancement des établissements et factories des intéressés, et s'en étant emparé, ils l'emmenèrent à Québec, en Canada, avec le maître, l'équipage et quatorze passagers qui furent faits prisonniers, ce qui a causé une perte à la compagnie du moins de cinq mille livres sterling, comme aussi aux propriétaires du vaisseau,

In 1684 the French, by virtue of a commission from M. de la Barre, Governor of Canada, entered the said Bay with two ships and fifty men, and went to Port Nelson, which they entered with violence, and built a fort above that belonging to the Company's factory, and by this means took that year the Company's trade with the Indians, which is a loss to the parties concerned of at least ten thousand pounds sterling.

In the month of July of the year 1685, the two above-mentioned ships, returning to Canada, met, at the mouth of the Straits, one of the Company's ships, named the Merchant of Perpetuana, Edward Humes, master, who was going to east anchor at Port Nelson, with his cargo and provisions which were destined for the service, and for the advancement of the settlements and factories belonging to the parties concerned, and having seized upon her, they brought her to Quebec in Canada, with the master, crew, and fourteen passengers, who were made prisoners, which caused a loss to the Company of at least five thousand pounds sterling, likewise to the owners of the ship, for the loss of their sailing vessel, freight, wages and clothes of the master and crew, of at least twelve hundred and fifty-five pieces.

In the year 1686 the French of Canada took and ruined, by violence, three forts and settlements belonging to the Company, situated at the bottom of the Bay, and three of

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Sec. VI.

Treaties and Conventions—(1) Great Britain and France.

Transactions of English and French Commissioners, 1687 ;

English Memorial of damages, and the French answer thereto.

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Treaties and
Conventions—
(1) *Treaty*
Britain
*and France.*Transactions
of English
and French
Commission-
ers, 1687:

Il a déjà été répondu à cette plainte que les Français n'ont rien entrepris contre les Anglais en 1684, et que ces deux vaisseaux ayant trouvé les Anglais établis par Radisson ne touchèrent ni à leurs forts ni à leurs habitations, quoiqu'ils les possédaient contre toute sorte de justice et de raison, et se contentèrent d'entrer dans une petite rivière nommée La Gargouse à demie lieu de là, où ils furent obligés de passer l'hiver, et ils s'en retournèrent ensuite à Québec.

Ce vaisseau n'a pu être pris par les Français, lesquels au contraire demandent la restitution des agrès, poudres et au munitions enlevées à un bâtiment Français.

La compagnie du Canada convient que n'ayant pu avoir raison en Angleterre ni en France de Milord Preston au sujet de l'enlèvement qui fut fait en l'année 1683 de son fort, magasin et marchandises à la rivière de Bourbon, le dit milord Preston ayant dit à leur agent que cette affaire ne regardait point le roi, son maître, ne s'agissant que des intérêts des marchands. Elle prit la résolution au mois de juin de l'année 1686, n'ayant point assez de vaisseaux pour reprendre son fort de la rivière de Bourbon, d'envoyer quatre vingt-dix hommes par terre aux forts Rupert, Monssipi et Chichitchouan, desquels ils se rendirent les maîtres et enlevèrent les marchandises qu'ils y trouvèrent pour répressailles de ce que la compagnie de la Baie d'Hudson leur avait enlevé au dit fort de la rivière de Bourbon en l'année 1683.

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Memorial of
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thereto.

settled by Radisson, touched neither their forts, nor their habitations, although they possessed them contrary to all sort of justice or right, and contented themselves with entering a small river called La Gargouse (the *Cartrulgy*), half a league from thence, where they were forced to remain the winter, and then they returned to Quebec. This ship cannot have been taken by the French, who, on the contrary, demand the restitution of rigging, powder and other ammunition carried away from a French ship.

The Company of Canada agreeing that not being able to have satisfaction in England, nor in France, from Lord Preston, upon the subject of the seizure which took place in the year 1683, of its fort, magazine and commodities at the Bourbon River, the said Lord Preston having told its agent, that this matter was no concern of the King his master, as it related only to the interests of merchants, the Company formed the resolution in the month of June, in the year 1686, not having enough ships to retake its Fort on the Bourbon River, to send ninety men, by land, to the Forts Rupert, Monssipi and Chichitchouan, make themselves masters of them, and carry off the goods which they found there in retaliation for what the Hudson's Bay Company had carried off from the said Fort on the Bourbon River in the year 1683.

par la perte de leur bâtiment et de son fret, gages et habits du maître, et de l'équipage, du moins de douze cent cinquante-cinq pièces.

En l'année 1686 les Français du Canada prirent et ruinèrent par force trois forts et établissements de la compagnie situés au fond de la baie et trois de leurs vaisseaux, avec une grande quantité d'effets, provisions et munitions que les intéressés avaient amassés pour s'en servir dans leur négoce durant plusieurs années. Ils enlevèrent aussi plus de cinquante mille peaux de castor et exposèrent à la merci des vagues dans un petit et vieux bâtiment tout ruiné environ cinquante sujets de Sa Majesté pour les faire périr misérablement en mer, outre plusieurs autres qu'ils tuèrent ou emmenèrent prisonniers. Cette perte se monte à plus de cinquante mille livres sterling.

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their ships with a large quantity of goods, provisions and ammunition that the parties concerned had laid up to be of use for several years in their commerce. They carried away also, more than fifty thousand beaver skins, and exposed to the mercy of the waves, about fifty of His Majesty's subjects, in a small and unseaworthy boat, that they might perish miserably at sea, besides several others they killed or led away as prisoners. This loss amounts to more than fifty thousand pounds sterling.

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Et à l'égard des pertes, dommages et intérêts soufferts de part et d'autre, elle consent volontiers qu'ils soient jugés et liquidés par messieurs les commissaires nommés par les deux rois. Il serait à souhaiter, pour l'utilité des deux compagnies, que leurs agents se tiussent chacun dans leurs postes pour faire leur commerce sans se traverser les uns les autres, ce procédé n'étant qu'à l'avantage des sauvages qui, par cet désunion, leur vendent plus cher leurs pelleteries.

Sa Majesté très-Chrétienne a donné en dernier lieu ses ordres pour empêcher les courses de ceux qu'on appelle Coureurs de Bois ou Gens sans aveu qui causent ces déordres. Lorsque Sa Majesté Britannique en aura donné de semblables de sa part, le commerce des deux compagnies en ira beaucoup mieux.

De plus les Français du Canada ont depuis cinq ans négocié et fréquenté dans les limites mentionnés et prescrits dans la chartre de la compagnie se cachant aux environs, et espionnant leurs factoreries s'attirant ainsi indument le commerce des intéressés avec les naturels du pays, par où la compagnie perd du moins dix mille peaux de castor par an de la valeur de vingt mille livres sterling.

Le total des sommes susdites montent à cent onze mille deux cent cinquante-cinq livres sterling.

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of English
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Memorial of
damages, and
the French
answer
thereto.

To which papers of the French Commissioners there was delivered the reply following:—

20 Reply to the answer given by the French Commissioners to the memorial concerning the right of His Majesty of Great Britain to the Bay and Streights of Hudson, and of the damages which His Majesty's subjects have sustained by the violence of the French, together with an answer to what is alleged by the French for justifying the right and title to that country and streights.

English
reply to the
preceding
French
answer.

30 Reply to the answer of the French Commissioners to the Memorial touching Hudson's Bay. Sr. Sebastian Cabot discovered this part of America now in question, not by chance, but by particular Order from King Henry the seventh in quality of Great Pilot of England. It would be easy to prove the discovery and taking possession before the Spaniards had set footing in that country should they pretend to dispute the right thereof which they never yet undertook to do to the prejudice of His Majesty's Title.

It is not necessary to prove settlements made by the said Cabot or by Hudson, seeing the French never began to make any till the year 1682, above twelve years after the English had built several 30 forts and established factories under the immediate protection of his present Majesty who was Governor thereof.

There is no intention of establishing a right by maps, yet the names given in them to places and countries are convincing arguments of the propriety.

It would seem very strange that had they some years before had any thoughts of making pretensions to this colony they would have permitted the printing maps at Paris (licensed by the King's authority, and dedicated to the Dauphin in France) in which are seen none but English names for all that part of America.

And as to the losses, damages, and profits on one side or the other, the Company willingly consents that they be judged and liquidated by Messrs. the Commissioners named by the two Kings. It is to be wished, for the benefit of the two companies, that their agents should keep each to his own station, to carry on trade without interfering one with the other, this quarrel being only to the advantage of the savages, who, by reason of the disunion, sell their skins much higher in price.

His Christian Majesty has given, in the last place, his orders to prevent the incursions of those so-called *Coureurs de Bois* or vagrants, who cause these disorders.

When His Britannic Majesty shall have given like orders, on his part, the trade of the two companies will be carried on much better.

Again, the French in Canada have, for five years, traded and frequented in the limits mentioned, and imposed in the Company's Charter, hiding themselves in the vicinity, and spying into their factories, thus unduly attracting to themselves the trade of the parties concerned with the natives of the country, by which means the Company loses at least ten thousand beaver skins a year, worth twenty thousand pounds sterling.

The whole amount of the aforesaid sums is one hundred and eleven thousand two hundred and fifty-five pounds sterling.

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It hath been already said that the French never made any apparent settlements in the Bay and Streights of Hudson before that which they made by force of arms in the year 1682.

If Captain Henry Hudson in the year 1610, Sr. Thomas Button, in 1612, and Captain Luke Fox, in 1631, have made notable voyages into those parts by the express commands of their Sovereigns, it is not to be imagined, but there have likewise been private voyages made within that time, in which as well as in the other, they did not only take possession, but continued there for some time, and left the usual marks of the sovereignty of their masters, besides the names which have not been since changed, there needed not at that time any other so considerable navigators to maintain His Majesty's right which other nations never disputed.

As to the Cross planted and erected by the English Captains, the truth of it is beyond all dispute, 10 this erecting of Crosses having been practised by the English in every reign as the Public Acts of all times do testify on like occasions, and hitherto nothing was ever usurped where the Cross was a certain mark of the taking possession.

The name of the North Wales given by Sr. Thomas Button to the neighbouring country after a formal possession taken of Hudson's Bay and the Streights, doth sufficiently justify His Majesty's right to those parts, and leaves no room for other nations to make their pretensions. The expedition made in 1657, is alone solemn enough to establish the right of the English, and is not the less valid for the service they reapel therein from Grosseliers and Radisson said to be Frenchmen. The Venetians might as well pretend to the English Colonies, because Cabot made the discovery, and the Genoese might demand reason of Spain for their possessions in the Indies, because Colomb was a native of that 20 State. There are few expeditions or voyages, and scarce any conquests made where there is not a mixture of foreigners, 'tis sufficient that those people were not forced but hired into the service of the English nation.

It hath been made appear that the French never had any right to these countries, so that the Treaty of Breda makes nothing for them, but rather confirms His Majesty's right and title.

The right to the Bay and Streights of Hudson, being thus plainly made out, it will not be necessary to prove His Majesty's title to the river, coasts and Port Nelson, which are but members or a small part of the former inclosed within His Majesty's continent under those names. It is likewise needless to rehearse that in the year 1612, Captain Nelson going in person dwelt there till his death, leaving his name to that place; and that the French never came into that river or road before the year 30 1682, when they first began to build a small fort upon the ruins of his Majesty's subjects, after having by mere violence caused great loss and damage to the English nation. It is owned that the two French vessels came in the year 1682 to the western coasts of Hudson's Bay, called by the Indians Kakiakioway, the name of Bourbon being given it upon the spot. But it can at the same time be proved by authentic witnesses that these ships arrived after the vessel from Boston, whereof young Guilham was master, being his Majesty's subject who had no need of commission to verify his Majesty's title, and who, though he did not own the English Company, was nevertheless under the royal protection of England, and as a subject to the Crown, might establish the same right for his nation as the French ships pretended to do for theirs.

This late taking of possession on which there is no necessity of founding our right, was seconded 40 few days after by the arrival of another vessel from England, whereof Guilham the father was master, at which time Mr. Bridgard, Governor for the English Company, made known to the French his Majesty's right and title, and the privileges of the Company to the trade of that country. Notwithstanding which, these new comers overcame by strength or policy, both the father and the son, and destroyed or took their vessels with what they had on board, though in time of peace and within the possessions of the Crown of England, which never were disputed there before, even in time of war.

It is acknowledged that the grant or letters given by his Majesty to the English Company do not of themselves give any right, but the establishment of a Company privileged for so considerable a commerce, and the actual trading they have maintained with the inhabitants in pursuance of the said grant or letters, the forts they have built in several places, and the factories they have kept at so vast 50

English reply
to the pre-
ceding
French
answer.

a charge, do plainly shew that His Majesty was not deceived, but that the grant was founded in his own right which hath been yet further confirmed by this last taking of possession, and the continual trading of his subjects under his royal authority.

The English Company doth not think itself obliged to answer the damages sustained by the French in 1683, seeing what they did on that occasion was against the intrusion of the French, and in pursuance of the powers and privileges granted them by His Majesty for the trade of those parts.

What is here meant is little to the purpose either in regard to the last treaty or to his Majesty's former or present title, whereof the dispute, and proceeding by such ways in time of peace and under the shadow of a treaty of good correspondence, seem very extraordinary, and may prove of dangerous 10 consequence.

As to the titles produced by the French Commissioners, the commission given by King Francis the First is of no force in respect to these countries, there having never been any actual possession taken, and in effect all the other letters patents can signify nothing in prejudice to his Majesty's right, seeing no prince whatsoever can be hindered from giving to his Governors, Agents and Companies, such titles as he shall think best. Those given by Henry the Great and Louis the 13th, comprehend all that the Crown of England possesses or hath possessed on the Continent of America, together with several large islands, which nevertheless cannot in the least eclipse or diminish His Majesty's claim. Now, if the Commissioners should insist on titles of that nature, there would be no safety for His Majesty's subjects in America. Carolina, Pennsylvania, and other places possessed by His Majesty's 20 subjects even since the Treaty at Breda would be in danger, should the French think fit to surprise them, after which it would not be difficult for them to allege imaginary discoveries, or even to prove that five or six French had passed that way before, and made some contract with the Indians. It is much more just and reasonable to rely upon actual discoveries, and upon possession taken in view of all the world, and which have continued for a long time together, and are too clearly proved by the violence of the French in their enterprize in the years 1682 and 1686.

As to the damages sustained by the subjects of France, the English Company maintain they are not obliged to indemnify them after so manifest an invasion.

It shall not be the fault of the Company of Hudson's Bay, if their agents and those of the Company of Canada do not keep within their respective bounds, the one pretending only to the trade 30 of the Bay and Straights above mentioned, whilst the other keeps to that of Canada—and that the forts, habitations, factories and establishments of the English Company be restored, and their limits made good as the first discoverers, possessors and traders thither, being the lawful marks of sovereignty, and this for above twelve years together before ever the French thought of attacking it or troubling the trade of the English within the bounds of the said Company, for otherwise how may subjects of England trust to a treaty of neutrality in case of a rupture, if even in time of peace they see themselves bereaved of their possessions and estates without such entire reparation and satisfaction as proceedings so violent and unjust do require.

Replique à la reponse donnée par Messrs. les Commissaires de France, au memoire des droits du Roi de la Grande Bretagne sur la Baie et Détroits d'Hudson, et des dommages que les sujets de Sa 4) Majesté ont souffert par la violence des Français, ensemble la reponse aux titres produits pour la justification des droits de la France sur le même pays et Détroits.

Replique à la reponse donnée par les Commissaires de France au Mémoire touchant Hudson's Baie, Le Chevalier Sebastien Cabot découvrit cette partie de l'Amérique dont il est question non pas à l'aventure mais par ordre expres du Roi Henry Sept en qualité de Grand Pilot d'Angleterre. Il seroit facile de justifier cette decouverte et la prise de possession auparavant que les Espagnols eussent mis le pied dans le pays, s'ils s'avisent d'en vouloir disputer le droit, ce qu'ils n'ont jamais entrepris de faire au prejudice des titres de Sa Majesté. Il n'est pas necessaire de prouver des établissements faits par le dit Chevalier Cabot ou par Hudson, puisque les Français n'ont jamais commencé d'en faire avant l'année 1682, plus de douze ans après que les Anglais ont bâti plusieurs forts et établi des factories sous l'aveu et protection particulière de Sa Majesté qui etait Gouverneur. On ne pretend pas s'établir un droit certain sur les cartes, 50 mais les noms qu'elles donnent généralement aux pays sont des marques convaincantes de la propriété.

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Il paraîtrait fort étrange que si l'on avait en il y a quelques années la pensée de former des prétentions sur cette colonie on eût voulu permettre qu'on imprimât à Paris des Cartes dédiées au Dauphin de France même avec privilège du Roi très Chrétien dans lesquelles on ne voit que des noms Anglois pour toute cette partie de l'Amérique.

Il a déjà été dit que les Français n'ont jamais fait aucun établissement apparent sur la Baie et Detroits de Hudson avant celui que les Français à main armée au l'année 1682.

Si le Capitaine Henry Hudson en 1609 le Chevalier Thomas Button en 1612, et le Capitaine Luc Fox en 1631, on fait des voyages notables dans ces pays et Detroits par les ordres exprès de leurs souverains, on ne doit pas conclure qu'il ne s'en est point fait d'autres particuliers. Les uns et les autres n'en prirent pas véritablement possession, mais ils y demeurèrent quelque temps et y laissèrent des marques ordinaires de la souveraineté de leurs maîtres outre les noms qui n'ont point changé depuis. Il n'est pas nécessaire qu'il y ait eu dans ce temps là d'autres navigateurs si considerables pour soutenir le droit de Sa Majesté que d'autres nations n'ont pas disputé.

Pour ce qui est de la Croix plantée et relevée par les Capitaines Anglois, la vérité en est incontestable et cette erection de Croix a été pratiquée par les Anglois dans tous les reignes comme les Actes publics en font foi de tout temps et en pareilles occasions, et l'on n'a jamais auparavant usurpé sur les prises de possession dont les Croix étaient les marques certaines.

Le nom de North-Wales qu'imposa le Chevalier Thomas Button aux pays voisins après une prise de possession formelle de la Baie et Detroits de Hudson, justifie assez le droit de Sa Majesté sur ces pays contigus et ne laisse aucun moyen aux autres nations, d'y porter leurs prétensions, même au delà sur les possessions de Sa Majesté, l'expédition qui se fit en 1667 est seule assez solennelle pour établir le droit des Anglois, et elle n'est pas moins legitime et valable pour le service qu'ils tirèrent des nommés de Grosseliers et Radisson qu'on dit être Français. Les Venitiens prétendront-ils aux colonies d'Angleterre parceque Cabot en fit la decouverte, et les Genoïs demanderont-ils raison de l'Espagne pour leurs possessions aux Indes, parceque Colomb était natif de leur état? Il ne se fait guerres ni d'expéditions ni de voyages ni même de conquête où il n'y ait quelque melange de nations étrangères. Il suffit que ces gens n'ont pas été forcés mais reçus à gages au service de la nation Anglaise.

Au reste on fait voir que les Français n'ont jamais eu aucun droit sur le Pays en question, de sorte que le Traité de Breda ne fait rien pour eux et justifie seulement le Droit de Sa Majesté.

Tellement que ces droits étant si bien établis sur la Baie et Detroits de Hudson il n'est pas nécessaire d'entrer dans les preuves de ses Titres sur la Rivière, Côte et Port de Nelson qui n'en est qu'un membre et une petite partie renfermée dans l'étendue du Domaine de Sa Majesté sous les sūdits noms. Il est même inutile de redire qu'en l'année 1612 le Capitaine Nelson y étant en personne et y ayant demeuré jusqu'à sa mort, il y laissa son nom et que les Français ne sont jamais entrés dans cette Rivière et rade avant 1682 quand ils commencèrent d'y bâtir un petit fort sur les Ruines des Sujets de Sa Majesté et après leur avoir eusé par des violences extraordinaires des pertes et dommages considerables à la Nation Anglaise. On avoue bien que les deux vaisseaux Français abordèrent en l'an 1682 à la Côte de l'Ouest de la Baie de Hudson appelée par les Indiens Kakiakioway, le nom de Bourbon y ayant été donné sur le champ. Mais on peut aussi prouver par des temoignages autentiques que ces vaisseaux y arrivèrent après le Bâtiment de Boston, monté par le jeune Gilham sujet de Sa Majesté qui n'avait pas besoin de Commission pour faire valoir le Droit de Sa Majesté et qui, quoiqu'il ne reconnu point la Compagnie Anglaise était toujours sous la Protection Royale d'Angleterre et comme sujet de la Couronne, pouvait établir le même droit pour Sa Majesté que les deux vaisseaux Français prétendaient faire pour la leur.

Cette nouvelle prise de Possession sur laquelle il n'est pas nécessaire d'établir son droit, fut encore secondée peu de jours après par l'arrivée d'un autre navire de Londres monté par Gilham le Père, quand le sieur Bridgard, Gouverneur pour la Compagnie Anglaise, déclara aux Français les Titres de Sa Majesté et les Privilèges de la Compagnie pour le Commerce du dit Pays. Mais nonobstant tout cela nos nouveaux venus accablèrent ou par force ou par surprise les deux Capitaines Père et fils et ruinèrent ou prirent

deux vaisseaux avec tout ce qui restait dessus quoiqu'en temps de Paix et sur le Domaine de la Couronne d'Angleterre, qu'on n'avait jamais contesté auparavant même en temps de guerre.

On sait bien que la Concession ou Lettres du Roi octroyées à la Compagnie Anglaise ne peut simplement former un droit, mais l'Etablissement d'une Compagnie privilégiée pour un Commerce si considerable et le Commerce actuel qu'elle a entretenu avec les Natifs du Pays en consequence de cette concession. Les Forts qu'elle a bâtis en plusieurs endroits et les Factories qu'elle a maintenues si long temps avec de si grandes Depenses, font bien voir que Sa Majesté s'est fondée sur son ancien Droit qu'elle a cependant affermi par cette dernière possession et commerce continuel de ses sujets sous la faveur de son Autorité Royale.

10 La Compagnie Anglaise ne croit pas devoir tenir compte aux Français des dommages qu'ils souffrirent en l'an 1683 puisqu'elle n'a agi en cette occasion contre l'Intrusion des Français qu'en consequence des pouvoirs et Privilèges donnés par le Roi pour le Commerce de tous ces Pays.

Il importe peu à l'interet de Sa Majesté à quoi on se rapporte ou au dernier Traité ou à son ancien et premier droit, dont la Contestation et Procédures par des voies de fait en temps de Paix et sous l'ombre d'un Traité de bonne correspondance parraissent fort extraordinaires et peuvent avoir de fort dangereuses suites.

Pour Réponse aux Titres produits par Messrs les Commissaires de France, on dira que la Commission du Roi Français premier n'est d'aucune valeur à l'égard des pays en question, n'y ayant point eu de Possession actuelle et même toutes les autres Lettres patentes mentionnées ne peuvent rien opérer

20 au prejudice de Sa Majesté puisqu'on ne saurait empêcher que tout autre Prince ne donne à ses Gouverneurs, Agents et Compagnies tels Titres qu'il lui plaira. Ceux que les Rois Henri le Grand et Louis Treize ont donné aux leurs, comprennent tout ce que la couronne d'Angleterre a possédé et posséde en la Terre ferme de l'Amérique et plusieurs Grandes Iles ce qui pourtant ne peut rien diminuer du droit de Sa Majesté. Et si Messieurs les Commissaires insistaient sur des Titres de cette nature, il n'y aurait point de sûreté pour les sujets de Sa Majesté dans l'Amérique, et il y aurait toujours à craindre pour la Caroline, la Pennsilvanie et autres pays possédés par les sujets d'Angleterre, même depuis le Traité de Breda, si les Français trouvaient seulement à propos de les surprendre après quoi il ne leur serait pas difficile d'alleguer des découvertes imaginaires et de prouver même que cinq ou six Français y auraient passé et fait quelque contrat avec les Indiens quelque temps auparavant. Il est bien plus juste

30 de se fonder sur des découvertes actuelles et sur des prises de possession dont tout le monde est convenu et dont la Continuation pendant une longue suite de temps est trop clairement prouvée par la violence même des Français en ce qu'ils ont entrepris en l'année 1682 et 1686.

Pour ce qui est des Pertes souffertes par les sujets de la France, la Compagnie Angloise soutient qu'elle n'est pas tenue à les en dedommager après une invasion si manifeste.

Il ne tiendra pas à la compagnie de la Baie d'Hudson que ses agents et ceux de la Compagnie de Canada ne gardent chacun leurs Postes l'une ne pretendant qu'au Commerce de la Baie et Détroits sudits, pourvu que l'autre ne fasse de son côté que celui de Canada et que les Forts, Habitations, Factories et Etablissement de la dite Compagnie Angloise soient restitués et ses Limites évacués en consideration de la première occupation, les poursuites et marques legitimes de souveraineté, et la Possession continuelle de plus de douze ans de suite des dits Etablissements avant que les Français eussent songés à les attaquer ou troubler le commerce des Anglais, dans les limites de la dite Compagnie puis

40 qu'autrement comment les sujets d'Angleterre se peuvent-ils fier à un Traité de Neutralité en cas de Rupture, si en temps de paix même, ils se voyent dépouillés de leurs possessions et de leurs Biens sans une Reparation entière et satisfaction telle que demandent des Procédés si violents et si injustes.

Whereupon the French Commissioners delivered the Paper following:—

DEUXIEME MEMOIRE de la Compagnie Française pour servir de Réponse à la Replique fournie par la Compagnie Anglaise.*

1°. La Compagnie Française de Canada ne pretend pas établir le Droit qu'elle a sur les cotes de la Baie d'Hudson par de simples citations de concessions accordées par les Rois, comme la Compagnie

* SECOND MEMORIAL from the French Company, to serve as Answer to the Reply furnished by the English Company:—

1. The French Company of Canada does not pretend to establish the right it has over the shores of Hudson Bay, by simple quotations of grants accorded by the Kings, as the English Company take for granted, on the contrary, it will only

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Anglaise le presuppose, au contraire elle ne veut se servir que de Titres authentiques et des Actes, qui justifient les prises de Possession des Terres, la construction des Forts et Magasins et l'Etablissement effectif des Compagnies qui y ont fait et continué un commerce actuel.

2°. C'est par ces sortes de preuves qu'on pretend détruire ce qui est avancé sans fondement par la Compagnie Anglaise qu'avant l'année 1682 les Français n'avaient aucun Etablissement sur les cotes de la Baie d'Hudson.

3°. Messrs. les Commissaires pourront examiner comme ils sont suppliés de faire les Faits ci-après rapportés sur les Cartes et pièces que la Compagnie Française produit en bonne forme.

4°. Pour ne plus parler des Anciens Titres qui ont déjà été cités on se réduit à l'Etablissement de la Compagnie Française en l'année 1627 qui avait été précédée par d'autres. Elle fut autorisée par une 10

Déclaration en forme d'Edit de Louis 13 qui lui concéda le Fort et Habitation de Québec avec tout le pays de la Nouvelle France dite Canada, jusques au Cérèle Arctique par latitude et de Longitude depuis l'Isle de Terre-Neuve tirant à l'Ouest jusques au Lac dit la Mer douce et audelà plus les Terres et le long des Rivières qui passent et se déchargent dans le fleuve St. Laurents et qui les portent à la mer.

5°. Et sur ce que les Anglais disent que cette concession comprend toute l'Amérique Septentrionale et que par là les Français seraient en droit de demander la Caroline, Pennsilvanie et autres pays qu'ils y habitent on leur répond que ces terres étant demeurées par le Traité de 1632, les Français n'y prétendent rien, comme les Anglais ne peuvent legitiment rien pretendre sur le Canada et autres Terres des cotés du Nord que les Français occupaient ou dont ils avaient prit possession avant le dit Traité. 20

6. Chacun sait que les Colonies ne peuvent s'établir dans toute leur etendue qu'avec le temps et les soins que ceux qui en ont la conduite y apportent.

7. La Compagnie Française ayant à établir des Missionnaires pour instruire les Sauvages dans la véritable Religion Chretienne et des Forts et Factories pour son commerce, envoya d'abord les dits Missionnaires avec des Agents dans tous les lieux ou sa concession s'étendait pour en prendre possession, comme il sera justifié par les pièces et commença son Etablissement à Tadoussac, Québec, aux Trois Rivières et à Montreal, en attendant l'occasion de le pouvoir pousser plus avant comme elle a fait dans les suites.

make use of authentic titles, and deeds, which prove the taking possession of the lands, the building of forts, magazines, and the effectual settlement of the Companies, which have made and continued a real trade there.

2. It is by these kinds of proofs that it hopes to destroy that which is put forward, without foundation, by the English Company, that before the year 1682 the French had no settlement upon the coasts of Hudson Bay.

3. The Commissioners can examine, as they are requested to do, the facts hereafter referred to, upon the maps and plans which the French Company produce in good order.

4. Not to speak again of the ancient titles which have already been quoted, they fall back upon the settlement of the French Company, in the year 1627, which had been preceded by others. It was authorized by a declaration in the form of an edict, from Louis XIII., who conceded to it the fort and habitation of Quebec, with all the country of New France, called Canada, to the Arctic circle, by latitude and longitude from the Island of New-land, including to the west, to the lake, called the Fresh Sea, and far beyond the lands, and along the rivers which flow and empty themselves into the St. Lawrence River, which carries them to the Sea.

5. And as to what the English say, that this concession includes all Northern America, and that by it the French would have the right to claim Carolina, Pennsylvania and other countries which they inhabit there—it is answered that these lands having remained by the Treaty of 1632, the French lay no claim to them; as the English cannot legitimately lay claim to Canada and other lands on the northern coasts, which the French occupied, or of which they took possession, before the said Treaty.

6. Every one knows that the colonies can only in time establish themselves in all their extent, and with the attention which those who have the command give to them.

7. The French Company having to settle Missionaries to instruct the savages in the true Christian religion, and forts, and factories for its trade, sent first of all the said Missionaries with agents in all the places where its concession extended, to take possession of them, as it will be proved by the plans, and began its settlement at Tadoussac, Quebec, Three Rivers, and at Montreal—waiting the opportunity to be able to push farther, as it has done in the sequel.

Acte tiré des Registres du Conseil Souverain de Québec du 26 avril 1656.

de la Terre que du côté de la mer à cause de la facilité quelle avait par le moyen du Lac et des Rivières de transporter les Pelleteries à Québec, Elle n'en fit pour lors aucun du côté de la mer dans la dite Baie, ayant toujours en vue d'y venir de proche en proche comme elle a fait.

Cette Rivière des Français est marquée sur une Carte imprimée à Londres.

Le Gouverneur de la Nouvelle-France y envoya le Sieur de la Vallière avec cinq soldats et le père Dablon missionnaire suivant les Certificats rapportés.

Commission du Sieur Davaugour pour lors Gouverneur de Nouvelle France en date du 10e mai 1663, et les Certificats du Sieur Couture.

gravée sur une plaque de cuivre.

20 Lettres de reunion du mois de mars 1663.

Edict d'Etablissement de la Compagnie des Indes Occidentales du mois de mai 1664.

Deed taken from the registers of the council at Quebec, 26th April, 1656.

its settlements on the land side, rather than the sea side, because of the ease it would have, by means of the lake and rivers, for transporting skins to Quebec, it then made no settlement on the side of the sea, in the said Bay, having always in view to arrive at it by degrees, as it has done since.

This River of the French is marked upon a map printed in London.

The Governor of New France sent Mr. de la Vallière with five soldiers, and Father Dablon, missionary, according to the certificates brought forward.

Commission of Mr. Davaugour, then Governor of New France, dated 10th May, 1663, and the certificates of Mr. Couture.

Letters of re-union for March, 1663.

Edict of settlement of the West Indies Company, May, 1664.

14. In 1665, a fort and a factory were established upon the lake called Superior, or Tracy.

8. En l'année 1656, Elle envoya un de ses vaisseaux commandé par Jean Bourbon, dans toutes les cotes du Nord de Canada, lequel entra et fit de nouveaux actes de prise de possession dans la Baie appelée à present Hudson, mais comme il etait plus commode à la dite Compagnie de faire ses Etablissements du côté de la Terre que du côté de la mer à cause de la facilité quelle avait par le moyen du Lac et des Rivières de transporter les Pelleteries à Québec, Elle n'en fit pour lors aucun du côté de la mer dans la dite Baie, ayant toujours en vue d'y venir de proche en proche comme elle a fait.

9. Pour cet effet en l'année 1661 elle fit bâtir un Fort sur la Rivière Nemiskua appelée par les Anglais la Rivière des Français qui se dégorge dans le Fond de la Baie d'Hudson, à deux ou trois lieues de la Rivière appelée depuis Rupert.

10. Cette meme année 1661 les sauvages de la Baie vinrent expres à Quebec pour confirmer la Resolution qu'ils avaient eue devant prise de vivre sous la domination des Français. Ils demandèrent un Missionnaire pour les Instruire et un officier pour les conduire ce qui fut accordé.

11. En l'année 1663 les dits sauvages etant revenus à Quebec pour demander du secours, et quelques autres personnes pour les conduire et assister dans leurs affaires, le Sieur Couture Missionnaire y fut envoyé avec cinq hommes, lequel fit planter de nouveau sur les Terres du fond de la Baie une Croix et les Armes du Roi.

12. En la dite année 1663 Sa Majesté reunit à sa Couronne la propriété de toutes les Terres de la Nouvelle-France sur la cession de la Compagnie qui comprenait toutes les Terres qui lui avaient été concedées par l'Edit de 1628.

13. En 1664 Sa Majesté établit une nouvelle Compagnie des Indes Occidentales à laquelle il conceda toutes les memes Terres qui avaient été concedés à la precedente Compagnie.

14. En 1665 Il fut établi un Fort et une Factorie sur le Lac appellé Superieur ou de Tracy.

8. In the year 1656, the company sent one of its ships, commanded by John Bourbon, round all the coasts in the north of Canada, entered and made new deeds of taking possession in the Bay, now called Hudson, but, as it was more convenient to the said company to make its settlements on the land side, rather than the sea side, because of the ease it would have, by means of the lake and rivers, for transporting skins to Quebec, it then made no settlement on the side of the sea, in the said Bay, having always in view to arrive at it by degrees, as it has done since.

9. To this effect, in the year 1661, the company built a fort upon the River Nemiskau, called by the English the Frenchmen's River, which empties itself into the lower part of Hudson Bay, two or three leagues from the river since named Rupert.

10. This same year, 1661, the savages of the Bay came expressly to Quebec, to ratify the resolution they had before taken, to live under the Dominion of the French. They asked for a missionary to teach them, and an officer to conduct them, which was granted.

11. In the year, 1663, the said savages returning to Quebec, asking for help and other persons to conduct and assist in their matters, M. Couture, missionary, was sent with five men, and he erected anew upon the lands at the foot of the Bay, a cross and the arms of the King engraved upon a copper plate.

12. In the said year, 1663, His Majesty re-united to his crown the property of all lands of New France, upon the cession of the company, which included all the lands which had been conceded to it by the Edict of 1628.

13. In 1664 His Majesty established a new company of the Western Indies, to which he yielded all the same lands which had been conceded to the former company.

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- Traité des 22 Mai, 7 Juillet et 13 Decembre 1665.
- Procès verbal de prise de possession du 17 Octobre 1666.
- Procès verbal de prise de possession de 1671.
- Acte du 9e et 19 juillet 1672 signé du Père Albel et du sieur de St-Simon avec les marques des principaux chefs des Nations sauvages.
- Second Memorial put in by the French Commissioners.
15. En la meme année 1665 toutes les Nations Iroquoises se mirent par un Traité solennel sous la protection de Sa Majesté.
16. En l'année 1666 le Sieur du Bois prit possession au nom de Sa Majesté de tous les Forts des Iroquois.
17. En 1671, le Sr de la St-Lusson fut envoyé par ordre du Roi à Ste-Marie du Sault chez, les Outaouacs, où se rendirent les 17 Nations qui habitent les Cotés de la Baie, lesquelles se soumirent volontairement à la Domir.ation de Sa Majesté. Ces 17 Nations comprennent celles des Outaouacs, des Lacs de Huron et Supérieur des Terres du Nord et de la Baie d'Hudson, celle de la Baie des Puans et du Lac des Illinois.
18. En 1672 le Pere Albel Missionnaire, et le Sieur de St. Simon envoyés 10 par ordre du Roi prirent de nouveau Possession des Terres qui se trouvent depuis le Fleuve St Laurens, jusqu'au Detroit, de Davis et d'Hudson. Ils se rendirent à la Rivière de Nemiskau, appelée par les Anglais la Rivière des Français où les sauvages s'assemblèrent ordinairement pour vendre leurs Pelleteries. Le dit Père Albel et le dit Sieur de St-Simon y plantèrent une croix et y arborèrent les armes de Sa Majesté du consentement du Capitaine Kiaskou, chef de tous les sauvages qui habitent la mer du Nord et la Baie d'Hudson. Ils allèrent ensuite à la Rivière de Minaligwskat où ils firent la même chose du consentement du capitaine Sisibahourat, Chef des Mustasirinins.
19. En l'année 1673 il fut bâti un Fort à Catarakio sur le Lac Ontario, un autre au haut du Lac des Illinois et un autre sur la Rivière Divine, que les Français nomment le Fort de Cœur Cœur, un 20 autre sur la Rivière de Tabitibis, un sur le Lac de Piscoutagany et un autre entre les Outoulibis et les Assenipoels.
- On établit avec ces Forts des Factories partout recevoir la pelleterie des sauvages.
- La Compagnie Française ayant ainsi établi solidement son commerce du coté de Terre et ayant fait construire plusieurs vaisseaux pour étendre sa Navigation fit bâtir un Fort et une Factorie sur la Rivière appelée Bourbon auprès du Port Nelson.
20. Il a été déjà dit que les Anglais n'avaient pris aucun Etablissement en ce lieu là avant la dite année 1682, qu'il y vint une barque de Boston pour se mettre à couvert du mauvais temps et quelques jours après un vaisseau de Londres y relâcha et ses cables ayant été coupés par les Glaces y fit naufrage et bien loin que les Anglais y ayant été maltraités par les Français ils y ont reçu toute sorte de 30 secours. Ce sont des Faits constants et faciles à prouver.
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- Treaty of 22nd May, 7th July, 13th December, 1665.
- Procès verbal of taking possession, October 17th, 1666.
- Procès verbal of taking possession, 1671.
15. In the same year, 1665, all the Iroquois nations placed themselves, by a solemn treaty, under the protection of His Majesty.
16. In the year 1666, M. du Bois took possession, in the name of His Majesty, of all the forts of the Iroquois.
17. In 1671, M. de la St. Lusson, was sent, by order of the King, to St. Marie du Sault, to the Outaouacs, where resorted the seventeen nations which inhabited the coasts of the Bay, which nations submitted willingly to the Dominion of His Majesty. These seventeen nations include those of the Outaouacs of Lakes Huron and Superior, of the lands of the North, and Hudson Bay, those of the Bay of the Puans, and Lake of the Illinois.
18. In 1672, Father Albel, missionary, and M. de St. Simon, sent by order of the King, took possession anew of the lands which lie between the River St. Lawrence, to Davis and Hudson's Strait. They visited the Nemiskau River, called by the English the Frenchman's River, where the savages generally assembled to sell their skins. The said father Albel and the said M. de St. Simon erected there a cross, and engraved the arms of His Majesty, with the consent of Captain Kiaskou, head of all the savages who inhabited the North Sea and Hudson Bay. They then visited the Minaliguskat River, where they performed the same action, with the consent of Captain Sisibahourat, chief of the Mustasirinins.
19. In the year 1673, there was built a fort at Catarakio, upon Lake Ontario, another above the Lake of the Illinois, and another upon the Divine River, which the French named the Fort of Broken-Heart, another upon the Tabitibis River, one on the Piscoutagany Lake, and another between the Antontibis and the Assenipoels. With these forts were established everywhere factories for receiving the skins from the savages.
- The French Company, having thus strongly established its commerce on the land side, and having constructed several ships for extending its navigation—built a fort and a warehouse upon the Bourbon River, near Port Nelson.
20. It has been already said that the English had taken no settlement in that place before the said year 1682; that there came a ship from Boston, for shelter from the bad weather, and some days after a ship from London put into port, and

21. Messieurs les Commissaires jugeront si après toutes ces preuves produites en bonne forme la Compagnie Anglaise a raison de dire que les Français n'ont eu aucune connaissance de ce Pays là avant l'année 1682.

23. A l'égard de ce que la dite Compagnie dit pour autoriser son Etablissement dans la Rivière appelée Rupert, qui est dans le fond de la Baie, qu'elle en a obtenu des lettres de concession de Sa Majesté Britannique, en 1670 la Compagnie Française répondit que est Etablissement n'a pu être fait à son préjudice dans les maximes même de la Compagnie Anglaise, qui avance que les Concessions des Rois ne prevaleut point contre une première Possession puisqu'il est constant que la dite Compagnie Française prouve une possession plus ancienne en ce même lieu là. Ce qui est confirmé par la conduite des Anglais, lesquels pour s'y venir établir ont été obligés de s'y faire conduire par les Grosseliers et Radisson, Habitants de Canada et Domestiques de la Compagnie Française.

23. Et à l'égard de leur paisible Possession sans y avoir été troublés on justifie qu'aussitôt que les Français en ont en connaissance, Monsieur de Frontenac pour lors Gouverneur de la Nouvelle-France en fit ses plaintes au chef de la Factorie des Anglais qui répondit qu'il n'était là que pour fort peu de temps et qu'il ne troublerait en rien le commerce des Français, de quoi le dit sieur de Frontenac ayant rendu conte à Sa Majesté, Elle en fit ses plaintes à l'Ambassadeur de Sa Majesté Britannique qui était pour lors en France, lequel promit d'en écrire pour savoir la vérité du fait, mais diverses autres affaires plus importantes étant survenues entre les deux Rois, on remit à régler celle là dans un autre temps, ainsi cet Etablissement ayant été fait depuis le Traité de Breda, et ayant été convenu en dernier lieu qu'il serait nommé des commissaires de part et d'autre pour régler les affaires de l'Amérique qui sont en contestation, Il n'y a rien qui empêche les Français de demander avec justice la possession de toutes ces Terres comme leur appartenant de Droit.

24. L'ancienne possession et le Droit de premier occupant sur toutes les Terres des environs de la Baie d'Hudson suffisent pour autoriser la plainte que les Français font d'avoir été dépossédés dans un temps de Paix de l'Etablissement fait par eux sur la Rivière de Bourbon près le Port de Nelson et leurs magasins pillés sans que le sieur de Comporte, l'un des Intéressés en la Compagnie Française de Canada, qui vint exprès en France et en Angleterre pour en demander raison, put obtenir aucune justice ni d'autre réponse sinon que c'était une affaire entre marchands. C'est ce qui a obligé la Compagnie Française de prendre les Forts qu'elle a trouvés occupés par les Anglais, et elle continue à demander la paisible possession des Terres qui sont sur les cotés de la Baie du Nord et la restitution du Fort, Magazin, et Marehandises qui leur ont été pris en 1663 par les Anglais à Nelson.

her cables being cut by the ice, was wrecked there, and far from the English being ill-used by the French they received all kinds of succour. These are well grounded and easily proven facts.

21. Messrs. the Commissioners will judge if, after all these proofs, produced in good order, the English Company is correct in saying that the French knew nothing about that country before the year 1682.

22. As to what the said Company says to authorize its settlement on the River, called Rupert, which is at the end of the Bay, that it obtained letters of Concession from His Britannic Majesty in 1670, the French Company replies that this settlement cannot have been made to its prejudice even in the maxims of the English Company, which advance, that the Concessions of Kings does not prevail over a first possession, since it is certain that the said French Company proves a more ancient possession in this same place, which is strengthened by the conduct of the English, who, in order to settle there, were obliged to be guided by Desgrosseliers and Radisson, inhabitants of Canada, and servants in the employ of the French Company.

23. And with respect to their peaceable possession, without having been disturbed there, it is certain, that as soon as the French had knowledge of it, M. de Frontenac, for the time being Governor of New France, made complaint to the Chief of the English Factory, who replied that he was there for only a very short time, and that he would in no way disturb the French trade; upon which the said M. de Frontenac, having rendered an account to His Majesty, he made complaints to His Britannic Majesty's Ambassador, who was then in France, who promised to write to know the truth of the matter: but many other important matters intervening between the two Kings, the regulating of this was put off to another period, so, this settlement having been made since the Treaty of Breda, and having been finally determined that Commissioners should be appointed on each side to regulate the affairs of America which are in dispute, there is nothing to hinder the French from demanding with justice the possession of all these lands as belonging to them by right.

24. The ancient possession, and the right of a first occupant upon all the lands in the vicinity of Hudson Bay, is sufficient to warrant the complaint made by the French, of having been dispossessed in a time of peace, of the settlement made by them upon the Bourbon River, near Port Nelson, and their magazines pillaged without M. de Comporte, one of the parties interested in the French Company of Canada, who came expressly to France and England for an ex-

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25. De tout ce qui est contenu ci dessus il resulte que les Français ont de temps en temps fait des Etablissements nouveaux, et se sont etendus dans les lieux qu'ils pretendent leur appartenir, qu'ils n'ont jamais été empêchés de le faire ni troublés que lorsqu'on est venu les depousseder par violence et voie de fait, d'un lieu où ils avaient autant de Droit de s'établir que dans les autres Forts dont la possession ne leur est pas contestée ni pretendue par les Anglais. Que cette violence faite par les Anglais n'a pas dû être exercée en pleine paix.

Que ce qui a été fait par les Français dans la prise des Forts des Anglais en l'année dernière, est de droit naturel, par lequel il est permis de repousser la Force par la Force et d'agir par voie de faite contre ceux qui s'en servent les premiers.

In answer to which His Majesty's Commissioners delivered the paper following :

10

ANSWER to the last paper delivered in behalf of the French Company of Canada touching the Rights and demands of the English Company of Hudson's Bay.

English
answer to
the second
French
Memorial.

The Company of Canada having already waved the establishment of a Right to Hudson's Bay and Streights from the mere Grants and Concessions of their Kings, which indeed cannot operate to the prejudice of others that have the touching Hudson's Bay. Right of Discovery and continued possession on their side. It is again averred that His Majesty's subjects only are possessed of such a Right to the coasts, bays and streights of Hudson, and whatever chance voyage may have been made or Missions sent for the sake of religion with soldiers to protect the missionaries, the same could not bring any prejudice to the right of His Majesty's subjects deduced from the time of the first discoveries of America, and that if before the year 1682 any establishments were really made by any other nation upon the said bay and streights (which is yet denied and not proved by the French), yet the same (if any such will appear), subsequent to those of the English, and so be manifest invasions of His Majesty's Sovereignty and property of his subjects.

20

Mention has been made of Carolina and Pennsylvania only to show the insufficiency of grants and concessions not preceded or followed by discoveries and rightful possession, and His Majesty is too much concerned in the consequence of such a position to esteem it of the least validity since at the same time (as hath been already alleged), His Majesty's plantations aforementioned, and other provinces and countries in America would be laid open to the pretensions and like invasions of the French, founded upon so notable a precedent as this would be, if the Crown of England should upon such a suggestion, part with so considerable an extent of her dominions and sovereignty (de ses domaines), nor does the Treaty of 1632, any ways distinguish the rights of England to any lands or possessions in America, as is alleged in the French paper, that treaty concerning Canada barely, and not any countries either southward or northward, which needed no elucidation or concession of the French to establish the English rights, and it will be sufficient answer to the greatest part of the French paper to assert that the country of Canada and that of Hudson's Bay are two different provinces, and have no relation but that of neighbourhood as may appear by ancient and modern maps, nor did the English when they were possessed of Canada itself esteem the country of Hudson's Bay as appertaining to it, and it is to be hoped that it will not now be reputed a dependence of Canada, which would be a pretension not to be advanced between two Crowns that entertain so good a correspondence together, and which would 40

planation, being able to obtain any justice, or other reply, than that it was a matter between merchants only. This is what obliged the French Company to take the forts it found occupied by the English, and it continues to demand the peaceful possession of the lands which are upon the coasts of the North Bay, and the restitution of the fort, magazine and commodities which were taken from it in 1663 by the English at Nelson.

25. Of all which is contained above, it remains that the French have from time to time made new settlements, and have extended into places which they assert belong to them, that they have never been hindered from so doing nor disturbed, until they were dispossessed by violence and unlawful means from one place where they had as much right to settle themselves, as in the other forts of which their possession is neither contested nor disputed by the English. That this violence exerted by the English, should not have been so exercised in a time of peace.

That which was done by the French in taking the English forts in the past year, is a natural right, by which it is allowable to repulse force by force, and to act by unlawful means against those who make use of them first.

quite destroy the end of the late Treaty of Neutrality, since instead of preserving peace in time of war it will be looked upon as the occasion of the worst effects of war in the time of peace, if so notorious an invasion should remain unpunished or satisfaction refused for the losses that have been sustained.

All that are acquainted with the nature of the Indians well know their wandering and variable dispositions, and it is easy to produce on His Majesty's part submissions and capitulations of those people, which do very much effect the French interest and pretensions in those parts, but it is enough to say that no action or resolution of those savages can alter an established right. The English Company do not pretend that the French had no knowledge of the Bay and Streights of Hudson before the year 1682, being very sensible that the French have of a long time been acquainted with and
 10 envied the prosperity of the trade and settlement of the English, and often attempted to undermine them in their commerce with the Indians, which nevertheless they could never accomplish in any part till the assault made upon His Majesty's subjects in 1682 which is averred to be the first pretended settlement of the French upon the bay after twelve years' uninterrupted possession of the English Company of that name.

It is a certain mark that the French stand in need of arguments to maintain their right, since they insist upon the service of des Grosseliers and Radisson made use of and paid by the English, when it is well known that the most famous conquests and discoveries of the world have in all times been carried on with the help of strangers, without diminution of the right of the Prince, under whose banner the same was made.

20 It may well be that Mousr. Frontenac might have some complaint of the English, but did the French ever openly question the establishment of the English in the bay, or interrupt their trade, till the year 1682? The possession of this trade is of too great a consequence to have been passed in silence upon any such account for so long an interval of time as twelve years. It will rather be believed that the French did not think it seasonable, for other reasons, to make their advances, *de proche et proche et s'étendre sur les Lieux appartenants à la Compagnie Anglaise*, till the year 1682. Upon further reflection it is to be hoped the French will disown this method of acquisition and taking possession which is so injurious to good neighbourhood and so contrary to the intent and meaning of treaties.

Finally, His Majesty's subjects refer themselves to all the constitutions of right that are allowed by treaties and the law of nations, and could as well as the French have availed themselves even of the
 30 law of nature (*du droit naturel*) if they had not hoped to have received from the justice of the most Christian King (who hath disowned the whole proceedings of his subjects in this affair) entire satisfaction of the injury and losses they have suffered by the invasion of his subjects, which has been often demanded by the reiterated memorials of His Majesty's envoy in the Court of France and is now expected with impatience, lest, by the Company's being kept out of possession of their property by continued delays, their commerce in those parts may suffer irreparable damage.

RÉPONSE au dernier memoire de la Compagnie Française de Canada touchant les Detroits et Demandes de la Compagnie Anglaise de la Baie d'Hudson.

40 Réponse au dernier
memoire de Française
touchant la Baie
d'Hudson.

La Compagnie de Canada ne pretendant plus de s'établir un droit sur la Baie et Detroits d'Hudson par les simples concessions et Lettres Patentes de ses Rois lesquelles ne peuvent véritablement porter aucun préjudice à ceux qui ont de leur coté le Droit de la Découverte et d'une possession continue, on soutient toujours que les sujets de Sa Majesté sont seuls en possession de ce droit sur les cotès, Baie et Detroits d'Hudson, et que tous les voyages qui peuvent y avoir été faits par hasard, ou les missions qu'on y a envoyés pour la religion avec des soldats pour protéger et seconder les missionnaires ne peuvent non plus avoir alteré le droit des sujets de Sa Majesté qui leur a été acquis depuis le temps des premières decouvertes de l'Amérique. Et que si même avant l'année, 1682. Il a été faite quelque Etablissement par aucune autre nation sur la dite Baie et Detroits dont on ne demeurera d'accord, qu'après avoir vu les preuves de la Compagnie Française.

De telles Entreprises toutefois ne peuvent avoir été faites qu'après que les Anglais en ont été les

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maitres et doivent par consequent être reputées pour des attentats manifestes à la Souveraineté de Sa Majesté et à la propriété de ses sujets.

Il a été fait mention de la Caroline et de la Pennsilvanie, pour faire voir seulement, l'insuffisance et l'invalidité des concessions et actes publics qui n'ont été précédés ni suivis d'aucunes découvertes valables ni juste possession.

Une telle possession touche de trop près l'interet de Sa Majesté pour la croire tant soit peu bien fondée puisqu'il faudrait en meme temps comme on a déjà dit que les sud-est plantations de Sa Majesté les autre provinces et pays de l'Amérique fussent toujours sujets aux pretentions et à de pareilles invasions des Français qui auraient encore pour fondement un exemple aussi considerable que celui-ci le serait, si pour des raisons comme celles-ci la couronne d'Angleterre voulait abandonner une si grande étendue de ses terres et domaines.

Le traité de l'année 1632 ne fait aucune distinction ou concession des droits des Anglais sur aucune pays ou provinces de l'Amérique comme il est rapporté par le Memoire Français. Ce traité là concernant purement le Canada sans qu'il y soit parlé d'aucun autre pays soit du côté du sud, ou du côté du nord, n'étant pas besoin d'éclaircissement la dessus ni de concession des Français pour affermir le droit de Sa Majesté et l'on aura suffisamment répondu à la plus grande partie du mémoire des Français en leur soutenant par des preuves incontestables que le pays du Canada et celui de la Baie d'Hudson sont deux provinces différentes et qu'elles n'ont aucun rapport entre elles, horsnis celui du voisinage, comme on le peut voir par les cartes anciennes et modernes, les Anglais même lorsqu'ils etaient en possession du Canada, n'ayant jamais reputé les côtés, de la baie et detroits d'Hudson pour une partie du Canada. Et il y a aussi lieu d'esperer que ces pays là ne seront point maintenant censes de la dependance ce qui serait assurément une sorte de pretention qu'on ne doit point attendre de l'amitié et bonne correspondance des deux couronnes et qui detruirait entièrement l'intention des derniers traités de neutralité d'autant qu'au lieu de maintenir la paix en temps de guerre, il aurait produit à l'égard des Anglais les plus fâcheux effets de la guerre en temps de paix. Si une invasion si manifeste demeurait impunie et qu'on refusât de faire satisfaction aux sujets de Sa Majesté pour les dommages qu'ils ont souffert.

Tous ceux qui ont eu affaire avec les Indiens savent combien ils sont inconstants et variables, et il serait facile de produire des soumissions et des capitulations de ces peuples faites en faveur de Sa Majesté qui touchent de fort près l'interet et les pretensions des Français en cette partie du monde, mais il suffira de dire que ni les actions ni les resolutions de ces Sauvages ne peuvent blesser un droit établi.

La Compagnie Anglaise ne pretend pas de dire que les Français n'ont eu aucune connaissance de la baie et detroits d'Hudson avant l'an 1682 etant bien persuadée que par la connaissance qu'ils en ont eue, et l'envie qu'ils ont portée depuis longtemps à la prosperité des Anglais en ces pays là ils ont souvent enterpris de soustraire et ruiner leur commerce avec les Indiens auquel pourtant ils n'ont jamais peu porter une atteinte considerable avant l'année 1682 qu'on croit pouvoir justifier etre le premier pretendu etablissement des Français sur la Baie d'Hudson, qui ne fut fait qu'après la Compagnie Anglaise de ce nom avait joni d'une possession paisible pendant douze ans conseutifs.

Il parait evidemment que les Français ont une grande disette de raisons pour soutenir leur droit, puisqu'ils insistent sur les services de Grosseliers et de Radisson que les Anglais ont employés et payés dans les occasions, d'autant qu'il est très certain que les plus fameuses conquêtes et découvertes qui ayant été faites dans le monde, ont été de tout temps conduites avec l'aide des étrangers, sans que cela ait en rien diminué les droits du Prince sous le Bannière duquel elles ont été faites.

Il peut etre vrai que Monsieur de Frontenac ait fait quelques plaintes contre les Anglais, mais les Français ont ils jamais contesté ouvertement l'etablissement et le droit des Anglais dans la Baie d'Hudson ou troublé leur commerce avant l'an 1682 la possession de ce commerce était d'une trop grande consequence pour avoir été oubliée ou passée sous silence pendant douze ans pour les considerations qu'on allegue.

Il est bien plus juste de croire que les Français n'ont pas jugé pour d'autres raisons qu'ils fut temps

French copy
of the preced-
ing English
answer.

encore de faire leurs établissements de proche en proche ni de s'étendre sur les lieux appartenant à la Compagnie Anglaise on espère qu'après que les Français auront fait de plus grandes réflexions, ils se porteront de ces manières d'acquisition et de prise de possession si préjudiciables au bon voisinage et si contraires à l'intention et à la nature des traités.

Enfin les sujets de Sa Majesté s'en rapportent à toutes les constitutions de droit qui sont établies par les traités et par le droit des gens, ils auraient pu, encore aussi bien que les Français se servir du droit naturel, s'ils n'avaient pas espéré de recevoir de la Justice du Roi Très Chrétien une entière satisfaction des forts et des pertes qu'ils ont soufferts par l'invasion des Français qui a été sans l'aveu de leur Souverain. Cette justice a souvent été demandée par les mémoires reiterés de l'envoyé de Sa Majesté à la Cour de France, et on l'attend presentement avec impatience, afin qu'après des procédés si violents, les sujets de Sa Majesté qui se trouvent destitués de leur biens ne souffrent pas de plus longs délais des dommages irréparables.

Whereupon His Majesty's Commissioners having fully debated the matter with the Commissioners of France on the 10th of August, 1687, their Lordships desire the said French Commissioners to make some proposal in writing to be sent to Hudson's Bay Company for their answer therein, which proposal was accordingly delivered as follows:*

Les deux compagnies de l'Amérique septentrionale ne pouvant convenir ensemble de la propriété de la Baie d'Hudson, il semble que pour parvenir à un accommodement convenable aux deux nations la Compagnie Française pourrait rendre les Trois Forts qu'elle prit l'année dernière à la Compagnie Anglaise au fond de la baie et que la dit compagnie rendit en même temps à la Française le fort et magasins de Nelson qui furent pris sur les Français en l'année 1683.

Et qu'en conséquence de cet accommodement il fut réglé et fixé des limites dans toute cette partie de l'Amérique en sorte que les deux compagnies ne pussent empiéter à l'avenir l'une sur l'autre et que chacune de son côté fit un commerce utile sans se troubler et sans aucun des embarras qui ne sont que trop souvent arrivés au préjudice des sujets de deux nations.

La compagnie d'Hudson Bay n'a jamais fait un commerce si utile que pendant le temps qu'elle n'occupait que les trois Forts du Fond de la Baie, les Pelletteries y sont à beaucoup meilleur marché parce que les sauvages de ce côté-là n'ont pas tant de chemin à faire pour les transporter jusqu'au bord de la mer aulieu que d'un côté du Port Nelson, il faut que les sauvages viennent de fort loin. Cet échange est l'expédient qui parait le plus convenable pour l'avantage des deux compagnies dans la Résolution où les deux Rois sont de ne se point céder l'un à l'autre la propriété de la Baie entière.

Si la compagnie Anglaise a quelque autre expédient à proposer qui puisse mieux convenir aux deux Nations sur ce fondement qu'aucun des deux Rois ne veut céder la propriété de la dite Baie, Elle en peut dresser un mémoire qui sera de nouveau examiné par Messrs les Commissaires.

* The two Companies of Northern America not being able to agree together upon the Hudson Bay property, it appears that in order to arrive at a convenient accommodation to the two nations, the French Company should give up the three forts it took last year from the English Company at the bottom of the Bay, and that the said Company should give up at the same time to the French the fort and magazines of Nelson, which were taken from the French in the year 1683. And, in consequence of this arrangement, it was resolved and fixed in the limits in all that part of America, so that the two companies could not in the future encroach one upon the other, and that each on its side should make a beneficial trade without hindering the other, and without any troubles which only too often occur to the prejudice of the subjects of the two nations.

The Hudson Bay Company never made so successful a trade, as during the time it occupied only three forts at the bottom of the Bay. The skins there are much cheaper, because the savages of that side have not so great a distance to travel in order to transport them to the sea side, whereas on the side of Port Nelson, the savages are obliged to come a great distance. This exchange is the expedient which seems the most suitable for the advantage of the two Companies, in the resolution which the two Kings maintain not to yield one to the other the whole property of the Bay. If the English Company has any other arrangement to suggest, which may better suit the two nations, with this foundation, that neither King will yield the property of the said Bay, it can prepare a memorial, which shall be examined anew by Messrs. the Commissioners.

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Transactions
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and French
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of the preced-
ing English
answer.

French
proposal for
settlement.

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*Treaties and
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(1) Great
Britain and
France.**Transactions
of English
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ers, 1687:*

To which the Hudson's Bay Company returned the answer following:—

The Hudson's Bay Company having received a paper containing a proposal of an expedient made by the French Commissioners to exchange the three forts surprised by the French the last year in the bottom of the bay, for the Fort and Factory of Port Nelson, altho' the said proposal in it hath neither justice, reason nor equity, and therefore can expect no formal answer, yet that they may know the said English Company's Resolutions, they answer.

That the Hudson's Bay Company having made out His Majesty's right and title to all the bay within Hudson's Streights, with the rivers, lakes and creeks therein, and the lands and territories thereto adjoining, in which is comprehended Port Nelson as part of the whole, and the said Company's 10 right and property being thereby established past all dispute, and to the satisfaction of the Lords Commissioners appointed by His Majesty to examine this matter; it cannot but seem strange and dissonant from all reason that the French Commissioners should now come to offer the said Company their own, which they took by violence in exchange for another part of their own, which the French had never had any colour of right to.

That both places by a proper and genuine construction of the last treaty of the year 1686, as well as by ancient right, must abide and belong to His Majesty in Great Britain.

That the Hudson's Bay Company having evidently made out His Majesty's right and consequently their own, and done all which hath been required on their parts, having nothing more now but with all dutiful submission to wait and expect His Majesty's Justice, for the restitution of their places, and 20 full satisfaction for their damages as they have been exhibited to the Right Honourable the Lords Commissioners.

And whereas the said paper doth so often repeat that both Kings are resolved not to part with the entire propriety of the bay, the right being apparently on His Majesty's side as much as any [of] his other plantations in America; this seems only a stiffness in the French to try to get that by treaty which they can no way make out by right.

But the said English Company cannot but hope better from the justice of His Most Christian Majesty, who having declared his disapproval of his subjects' proceedings in this affair in so plain a case, will not infringe the good correspondence that is between the two Crowns.

Upon the whole matter the Hudson's Bay Company cannot accept a proposal of an expedient so 30 much against His Majesty's Honour and their own just right, that after an expense of above two hundred thousand pounds, and many years' establishment (besides the injuries of above one hundred thousand pounds) that the French should come now to reap where the English have sowed, and have the confidence to propound to share the better half of their right and property with them. But the said English Company for obtaining their right and full satisfaction, do humbly cast themselves upon His Majesty's royal favour and protection.

Most humbly representing to His Majesty that in case the French be suffered to be sharers in the Bay and Streights of Hudson, or be permitted to trade therein, the Company cannot any longer subsist, but must inevitably be dissolved; and by the monopoly of the French, a trade of so great importance to this nation be utterly lost, having been hitherto wholly supported by His Majesty's favour to them in the enjoyment of the sole trade of the bay.

40

REPORT OF THE ENGLISH COMMISSIONERS TO THE KING.

Whereupon their Lordships agree to report their opinions to His Majesty as follows:

We your Majesty's Commissioners appointed to treat with the Ambassador and Envoy Extraordinary of his most Christian Majesty concerning the differences that have happened between Your Majesty and the French in America, have had frequent conferences with the said Ambassador and Envoy Extraordinary, in order to obtain satisfaction for the damages your Majesty's subjects have lately sustained from the French in Hudson's Bay, with restitution of the three fort-50 which by surprise were seized on by them, as also touching several other differences depending between the two Crowns, and as to the business of the Hudson's Bay having already

*Report of the
English Com-
missioners to
the King,
16th Novem-
ber, 1687.*

Their Lordships report to His Majesty touching Hudson's Bay, and other matters depending between the French and the English in America.

*Answer of the
Hudson's Bay Com-
pany to the
French
proposal.*

acquainted Your Majesty with our proceedings therein, We do further add our humble opinion, that as it plainly appears Your Majesty and your subjects have a right to the whole bay and straits of Hudson, and to the sole trade thereof, so it may be fit for Your Majesty, to support the company of Hudson's Bay in the recovery and maintenance of their right since otherwise that trade will be totally lost and fall into the hands of the French, if they be permitted to continue in the possession of those forts, or of any fort or place of trade within the said bay or straits.

Whereas the French Commissioners have declared that they are ready to do all that is necessary for the regulation of limits between the dominions of both Crowns in America, we humbly propose that Your Majesty be pleased to order and empower us to treat with them for the adjusting the same, which may be the best means to remove the occasion of differences that happen between the two nations.

All which is most humbly submitted, the 16th of November, 1687.

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of English
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Report of the
English Com-
missioners to
the King,
16th Novem-
ber, 1687 :

Memorandum. His Majesty's Commissioners and the Commissioners of France, appointed to treat concerning differences in America being met, their Lordships delivered to the French Commissioners a General Memorial declaring his Majesty's pleasure touching the several matters in difference and that his Majesty had empowered them to treat concerning the settling of limits in America whereupon the French Commissioners do promise to return an answer to such points wherein they are enabled so to do and to receive the directions of the King their master concerning the others, and do likewise propose that the subjects of both Kings be restrained from all acts of hostility during their further treaty, wherein the Lords Commissioners undertake to receive his Majesty's pleasure.

20

THE ENGLISH KING'S RESOLUTIONS.

A General Memorial of their Lordships touching Hudson's Bay. His Majesty's Commissioners appointed to treat with the Commissioners of the most Christian King for the execution of the Treaty of neutrality in America, have received His Majesty's orders to acquaint the said Commissioners that, having maturely considered his own right and the right of his subjects to the whole Bay and Streights of Hudson, and having been also informed of the reasons alleged on the part of the French to justify their late proceedings in seizing three Forts, which for many years past have been possessed by the English, and in committing several other acts of hostility, to the very great damage of the English Company of Hudson's Bay; His Majesty doth, upon the whole matter, conceive the said Company well founded in their demands, and hath therefore ordered us to insist upon his own right and the right of his subjects, to the whole Bay and Streights of Hudson, and the sole trade thereof, as also upon the demand of full satisfaction, for the damages they have received, and restitution of the three Forts surprised by the French.

The English
King's
Resolutions.

We are also ordered to declare to the French Commissioners that His Majesty hath given us powers and directions to enter into a Treaty with the said Commissioners, for the adjusting of limits between the dominions of both Crowns in America, and doing everything else that may conduce to the removing all occasion of differences between the two nations.

Mémoire General de Messieurs les Commissaires d'Angleterre, touchant la Baie d'Hudson.

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Les Commissaires Deputés de Sa Majesté pour l'exécution du Traité de Neutralité en Amérique ont reçu ordre de Sa Majesté d'aller savoir à Messieurs les Commissaires du Roi Très Chrétien, qu'elle a méurement considéré son propre droit celui de ses sujets sur toute la baie et detroits d'Hudson, et qu'ayant aussi été informée des raisons alléguées par les Français pour justifier leur procédé tant à l'égard des trois forts qu'ils ont depuis peu pris sur les Anglais qui en avaient eu la possession durant plusieurs années, qu'à l'égard de plusieurs autres actes d'hostilité par eux commis au grand préjudice de la compagnie Anglaise de la Baie d'Hudson, Sa Majesté croit que les demandes et pretensions de la dite compagnie sont tres bien fondées, et pour cette raison elle a ordonné à ses dits Commissaires d'insister positivement tant sur son propre droit et celui de ses sujets sur toute la Baie et Detroits de Hudson, que sur

French copy
of the
foregoing.

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*Trentia and
Conventions—
(1) Great
Britain
and France.**Transactions
of English
and French
Commission-
ers, 1687.*

le Commerce de la dite Baie et Detroits à l'exclusion de tout autre et de demander pleine et entière satisfaction des dommages que les Français ont fait souffrir à ses sujets, comme aussi la restitution des Trois Forts dont ils se sont injustement emparés.

Les dits Commissaires de Sa Majesté ont aussi ordre de faire savoir à Messieurs les Commissaires de France, que Sa Majesté leur a donné plein pouvoir de traiter avec eux du Règlement des limites des Terres et pays des deux Couronnes en Amérique et de faire en même temps tout ce qui pourra contribuer à prévenir les occasions de disputes entre les deux nations. Fait à Whitehall ce 16e jour de Novembre, 1687.

AGREEMENT EXECUTED BY THE COMMISSIONERS.

Their Lordships having in pursuance of His Majesty's pleasure, agreed on an instrument with the French Commissioners for the cessation of acts of hostility and determining the limits in America, which instrument is as follows:—

Instrument agreed on with the French Commissioners for cessation of Acts of Hostility and determining the limits in America.

Agreement executed by the Commissioners, 11th December, 1687.

Whereas the most serene and mighty Prince James the Second King of Great Britain and the most Christian King have thought fit to constitute Commissioners, viz, the said King of Great Britain, the Right Honourable Earl of Sunderland, President of his Majesty's Privy Council and one of the principal Secretaries of State, Charles Earl of Middleton, also principal Secretary of State, and Sidney Lord Godolphin Lords of his Majesty's Privy Council, and on the other side the said most Christian King hath thought fit to appoint the Sieur Paul Barillon d'Amoucourt Marquis de Branges, one of the Councillors of State in ordinary and his Ambassador Extraordinary, as likewise the Sieur Frances Dusson de Bonrepas, Councillor in all his Councils, Reader in Ordinary of his Bedchamber and Intendant General of the Marine Affairs for the execution of the treaty concluded the 11th of November in the year 1686, for the guiding and determining all controversies and disputes that have arisen or may hereafter arise between the subjects of both Crowns in America as also to settle and determine the bounds or limits of the colonies, islands, lands and territories belonging to the said kings and governed by their respective governors or otherwise depending on the said kings respectively in America. We the above named Commissioners by virtue of the powers granted unto us by the said kings our masters, do by this present instrument in their names promise, agree and stipulate that until the 1st day of January, 1688, and afterwards from that day forwards until their said most serene Majesties shall send any new and express orders in writing concerning this matter; it shall not be lawful for any Governor or Commander in Chief of the colonies, islands, lands and territories, belonging to either kings' dominions being in America, to commit any act of hostility against or to invade the subjects of the other king, nor shall the said Governors or Commanders in Chief upon any pretence whatever suffer that any violence be done to them under corporal punishment and penalty of making satisfaction with their goods for the damages arising by such contravention nor shall any others do the same under the like penalty.

And to the end the said agreement may have the better effect, we do likewise agree that the said serene kings shall immediately send necessary orders in that behalf to their respective Governors in America, and cause authentic copies thereof to be also forthwith delivered to the other party. In witness whereof we have mutually hereunto set our hands and seals. Given at the Palace at Whitehall, the 1st day of December, 1687.

SUNDERLAND P.	[L.S.]	BARILLON D'AMONCOURT	[L.S.]
MIDDLETON	[L.S.]	DUSSON DE BONREPAUS	[L.S.]
GODOLPHIN	[L.S.]		

The Latin copy of the preceding.

Latin instrument agreed on with the French Commissioners for cessation of acts of hostility and determining the limits in America.

Quando quidem Serenissimo et Potentissimo Principe Jacobo Secundo Magnæ Britanniae Regi et Serenissimo ac Potentissimo Principe Ludovico Decimo Quarto Galliarum et Navarriae Regi Christianissimo visum fuerit Commissarios suos constituere scilicet alte memoratus Magnæ Britanniae Rex Dominos Robertem Comitem de Sunderland Presidem Consilii sui privati et primarium Status secretariorum, Carolum Comitem de Middleton Primarium Status secretariorum alterum et sid nemim Dominum 50 Godolphin Majestatis suae Consiliarios intimos et alte memoratus Christianissimus Rex Dominum

Paulum Barillon d'Amoncourt merchonem de Bruges Consiliarum Ordinarium in Concilio status et Legatum suum Extraordinarium et Dominum Franciscum Dusson de Bonrepaus Consiliarum suum in omnibus conciliis, Lectorem Ordinarium cubiculi sui et prefectum generalem rerum maritimarum, pro Executione Tractatus die 4^{ta} Novembris anni 1686 conclusi ad sapiendas et determinandas quascunque Controversias et differentias que inter subditos utriusque Coronæ in America jam exortæ sint aut in posterum exoriri possint, ac etiam ad assignandos et statoendos Terminos sive limites Coloniarum, Insularum, Terrarum et Regionum subditiõne dictorum Regum in America sitarum et Prefectis utriusque Regis respective gubernatorum vel ab ipsis Regibus Dominis nostris concessarum per present hoc Instrumentum Ipsorum nomine promittimus convenimus et stipulamur quod usque ad

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Treaties and
Injunctions
between Great
Britain and
France.Translations
of English
and French
Commission-
ers, 1687.

10 primum diem Januarii anno Domini 1687 et deinceps adieto die usquedum Prefati undecimum

Serenissimi Regis aliqua super hac re de novo mandata dederint expressa et de scripto prohibitum omnino sit singulis prefectis vel Gubernatoribus Coloniarum, Insularum, Terrarum et Regionum que sub alterutris Regibus Dominis in America sunt, ullum Hostilitatis Actum exercere contra alternis dictorum Regum subditos, vel eos aggredi, neque sub quocunque pretextu dicti prefecti vel Gubernatores permitant ut vis ulla iis in feratur sin Secus faciant, pœnas luent, ac etiam obstructi erunt, sub obligatione personæ bonorum que de damno ex tali contraventione illato satisfacere neque hæc faciant alii quicunque sub iisdem pœnis

The Latin
copy of the
preceding.

Quoque stipulatio hæc omni meliori modo effectum sicut sortiat, insuper convenimus quod dicti Serenissimi Reges mandata sua hac in parte necessaria, quam primum prefectis, respective in America, 20 authenticâ que corlem exemplaria utrique vicissim partit radi quamprimum etiam curabunt.

In quorum fidem Præsentes manus nostris et sigillis mutuis subsignavimus et munivimus.

Datum in Palatio Regio de Whitehall, 1^{ta} die Decembris An. Di. 1687.

SUNDERLAND P. (L.S.)	BARILLON D'AMONCOURT, (L.S.)
MIDDLETON, (L.S.)	
GODOLPHIN (L.S.)	DUSSON DE BONREPAUS, (L.S.)

ROYAL ORDERS TO THE GOVERNORS OF THE ENGLISH COLONIES IN AMERICA.

The Letter appointed to be written to the several Governors in pursuance of the said Treaties is as follows:—

30 Trusty and well beloved, We greet you well. Whereas for the composing of several disputes and differences that have arisen between our subjects and the subjects of our good Brother the most Christian King in America, and for the preventing further occasions of controversy in those parts, We have lately thought fit to constitute and appoint Commissioners to treat with the Commissioners appointed by our said good brother the most Christian King for the purpose aforesaid, as also to settle and determine the bounds and limits of the colonies, islands and territories within our respective dominions or depending on us in America, for the accomplishment whereof a further time will be requisite in regard of the distance of those places, from whence the necessary informations are to be received. We have therefore authorized and empowered our said Commissioners to sign and seal an instrument with the Commissioners of the most Christian King, for the preventing all acts of hostility 40 or violent proceeding between our respective subjects, a copy whereof is herewith sent to you, and we do accordingly expect from you a conformity to our directions herein by avoiding all occasions of misunderstandings between our subjects and those of the most Christian King without permitting any hurt to be done them in their persons or estates until the 1st day of January 1687 and after that time, until we shall send you new orders under our sign manual.

Royal Orders
to Governors
of the
English
American
Colonies,
22nd January
1687.

It being our pleasure that you entertain a good correspondence with the Governors and officers of the said King in those parts, and take care that no just complaint be brought unto us against you in

[L.S.]
[L.S.]

ando Magnæ
cimo Quarto
es suos con-
bertem Co-
secretarior
a Dominum
Dominum

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*Treaties and
Conventions—
(I) Great
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France.*

that behalf, and so we bid you farewell. From our Court at Whitehall this 22nd day of January, 1687, in the third year of our reign.

By His Majesty's command,

SUNDERLAND, P.

To the Governor of New York
and the rest of His Majesty's Governors in the Plantations.

THE TREATY OF RYSWICK, 1697.*

Treaty of
Ryswick,
697

I. That there be an universal perpetual peace, and a true and sincere friendship between the most Serene and Mighty Prince William the Third, King of Great Britain, and the Most Serene and Mighty Prince Lewis the Fourteenth, the most Christian King, their heirs and successors, and between the kingdoms, states and subjects of both; and that the same be so sincerely and inviolably observed and kept, that the one shall promote the interest, honor, and advantage of the other, and that on both sides a faithful neighbourhood, and true observation of peace and friendship, may daily flourish and increase. ¹⁰

II. That all enmities, hostilities, discords, and wars between the said King of Great Britain and the Most Christian King, and their subjects, cease and be abolished so that on both sides they forbear and abstain hereafter from all plundering, depredations, harm-doing, injuries, and infestation whatsoever, as well by land as by sea, and on fresh waters everywhere; and especially throughout all the kingdoms, territories, dominions and places belonging to each other, of what condition soever they be.

III. That all offences, injuries, damages, which the said King of Great Britain and his subjects, or the said Most Christian King and his subjects, have suffered from each other during this war, shall be forgotten, so that neither on account of them, or for any other cause or pretence, neither party, or the subjects of either shall hereafter do, cause, or suffer to be done, any hostility, enmity, molestation, or hindrance to the other, by himself or others, secretly or openly, directly or indirectly, by color of right or way of fact. ²⁰

IV. And since the Most Christian King was never more desirous of anything than that the peace be firm and inviolable, the said King promises and agrees for himself and his successors, that he will on no account whatsoever disturb the said King of Great Britain in the free possession of the kingdoms, countries, lands, or dominions which he now enjoys; and therefore engages his honour upon the faith and word of a king, that he will not give or afford any assistance directly or indirectly to any enemy or enemies of the said King of Great Britain; and that he will in no manner whatsoever favour the conspiracies or plots which any rebels, or ill-disposed persons, may in any place excite or contrive against the said king; and for that end promises and engages that he will not assist with arms, ammunition, ships, provisions or money, or in any other way, by sea or land, any person or persons who shall hereafter, under any pretence whatsoever, disturb or molest the said King of Great Britain, in the free and full possession of his kingdoms, countries, lands, and dominions. The King of Great Britain likewise promises and engages for himself and successors, Kings of Great Britain, that he will inviolably do and perform the same towards the said Most Christian King, his kingdoms, countries, lands, and dominions. ³⁰

V. That there be a free use of navigation and commerce between the subjects of both the said kings as was formerly in the time of peace, and before the declaration of the late war, so that every one of them may freely come into the kingdoms, marts, ports, and rivers of either of the said kings with their merchandises, and may there continue and trade without any molestation, and shall use and enjoy all liberties, immunities, and privileges, granted by solemn treaties and ancient custom.

VI. That the ordinary administration of justice shall be restored and set open throughout the kingdoms and dominions of both kings, so that it shall be free for all the subjects of either to claim and obtain their rights, pretensions, and actions, according to the laws, constitution, and statutes of each kingdom.

* Chalmers' Treaties, 1790, Vol. 1, p. 332.

VII. The Most Christian King shall restore to the said King of Great Britain all countries, islands, forts and colonies, wheresoever situated, which the English did possess before the declaration of this present war. And in like manner the King of Great Britain shall restore to the Most Christian King all countries, islands, forts and colonies, wheresoever situated, which the French did possess before the declaration of war; and this restitution shall be made on both sides within the space of six months, or sooner if it can be done. And to that end, immediately after the ratification of this Treaty, each of the said Kings shall deliver or cause to be delivered to the other, or to commissioners authorized in his name for that purpose, all acts of concession, instruments and necessary orders duly made and in proper form, so that they may have their effect.

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(1) Great
Britain and
France.

10 VIII. Commissioners shall be appointed on both sides to examine and determine the rights and pretensions which either of the said Kings hath to the places situated in Hudson's Bay; but the possession of those places which were taken by the French, during the peace that preceded this present war, and were retaken by the English during this war, shall be left to the French by virtue of the foregoing articles. The capitulation made by the English on the 5th September, 1695, shall be observed according to its form and tenor; the merchandise therein mentioned shall be restored; the Governor at the fort taken there shall be set at liberty, if it be not already done; the differences which have arisen concerning the execution of the said capitulation and the value of the goods there lost, shall be adjudicated and determined by the said commissioners; who, immediately after the ratification of the present Treaty, shall be invested with sufficient authority for the settling of the limits and confines 20 of the lands to be restored on either side, by virtue of the foregoing Article, and likewise for exchanging of lands, as may conduce to the mutual interest and advantage of both Kings.

The Treaty of
Ryswick,
1697.

And to this end the commissioners so appointed shall within the space of three months from the time of the ratification of the present treaty, meet in the city of London, and within six months, to be reckoned from their first meeting, shall determine all differences and disputes which may arise concerning this matter; after which the articles the said commissioners shall agree to shall be ratified by both kings, and shall have the same force and vigour as if they were inserted word for word in the present treaty.

[The remaining articles seem immaterial for the present purpose.]

PROPOSED EXCHANGE OF PLACES IN HUDSON'S BAY, 1700.

30 MR. VERNON, SECRETARY OF STATE, TO LORD LEXINGTON, COMMUNICATING TO THE BOARD OF TRADE AND PLANTATIONS THE ALTERNATIVES PROPOSED BY THE AMBASSADOR OF FRANCE REGARDING THE BOUNDARIES BETWEEN FRANCE AND ENGLAND IN AMERICA, APRIL 29, 1700.

MY LORD,—Having received the alternative from the French Ambassador, I send your Lordship a copy of it, that it may be considered at your Board by Wednesday next.

I am, my Lord, &c.,

JA. VERNON.

Proposal for
exchange of
places in
Hudson's
Bay, 1700.

By the first alternative, I propose that France keep Fort Bourbon, and England that of Chichitouan, having for limits between the two nations in that quarter the——, which is exactly half way between the two Forts; and in that case the limits of France on the side of Acadie shall be restricted to the River St. George.

40 By the second alternative, I propose that Fort Chichitouan shall remain with France, and that of Bourbon with England, having for limits the same place of which I spoke above; but in that case I demand that the limits of France, on the side of Acadie, should extend to the River Kenebec.

As to the fishery, as all commerce between the colonies of the two nations is forbidden, and as under the pretext of fishing a contraband trade would be sure to be carried on, it is thought, according to the usage established in that country, the fishery should be prevented, as far as the eye can reach; but as difficulties always arise when a determin'd distance is not agreed upon, it is proposed to fix it at

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eight leagues, and that for the same reason, and for fear of the same inconvenience, the islands which are found comprised within this space should belong to whichever of the two nations on the shores of which they are situated.

—
OBSERVATIONS OF THE BOARD OF TRADE AND PLANTATIONS ON THE ABOVE, 1700.

What the interest of the Hudson Bay Company may be in keeping Fort Chichitonan, alias Fort Albany, or exchanging it for Fort Bourbon, alias York, they themselves can best determine. * * *

Proposals for
exchange of
places in
Hudson's
Bay, 1700.

The proposal for settling limits between the English and French in Hudson's Bay is groundless; for by the late Treaty of Peace, Art. 8, the only right reserved to the French in Hudson's Bay is in relation to those places which were taken from the English by the French during the peace which preceded the late war, and retaken from them by the English during the said war, which cannot imply 10 any extent of territory more than the places so taken and possessed; and the Hudson's Bay Company challenging an undoubted right to the whole Bay, antecedent to any pretence of the French, it is necessary they be consulted before any concession of territories be made to the French in those parts. * * *

—
NEGOTIATIONS FOR THE PEACE OF UTRECHT, 1711-1713.

—
OVERTURE FROM FRANCE.

Negotiations
for Peace of
Utrecht,
1711-1713 :

Overture from
France, 22nd
April, 1711.

That, as it could not be doubted but the King was in a condition of continuing the war with honour, so it could not be looked on as a mark of weakness in His Majesty to break the silence he had kept since the conference of Gertruydenberg, and that before the opening of the campaign; he now gives farther proof of the desire he always had to procure the repose of Europe. But after what he hath found, by experience, of the sentiments of those persons who now govern the Republic of Holland, and 20 of their industry in rendering all negotiations without effect, His Majesty will, for the public good, offer to the English nation those propositions which he thinks fit to make for terminating the war, and settling the tranquillity of Europe upon a solid foundation. It is with this view that he offers to enter into a Treaty of Peace, founded upon the following conditions:—

First. The English nation shall have real securities for carrying on their trade in Spain, the Indies and the ports of the Mediterranean.

Secondly. The King will consent to form a sufficient barrier in the Low Countries for the security of the Republic of Holland; and this barrier shall be such as England shall agree upon and approve; His Majesty promising at the same time an entire liberty and security to the trade of the Dutch.

Thirdly. All reasonable methods shall be thought of with sincerity and truth, for giving satis- 30 faction to the allies of England and Holland.

Fourthly. Whereas, the affairs of the King of Spain are in so good a condition as to furnish new expedients for putting an end to the disputes about that monarchy, and for the settling it to the satisfaction of the several parties concerned, all sincere endeavours shall be used for surmounting the difficulties arisen upon this occasion; and the trade and interest of all parties engaged in the present war shall be secured.

Fifthly. The conferences, in order to treat of a peace upon these conditions, shall be immediately opened, and the Plenipotentiaries, whom the King shall name to assist thereat, shall treat with those of England and Holland, either alone or in conjunction with those of their allies, as England shall choose.

Sixthly. His Majesty proposes the Towns of Aix-la-Chapelle or Laize for the place where the Plenipotentiaries shall assemble, leaving the choice likewise to England of either of the said Towns, wherein to treat of a general peace.

Done at Marlay, the 22nd of April, 1711.

DE TORCY.

TO LORD RABY.

WHITEHALL, April 27, 1711.

MY LORD,—I send Your Excellency enclosed, by Her Majesty's order, the copy of an overture from France, which came a few days since to our hands.

The Queen's pleasure is, that Your Excellency do take the first opportunity of communicating it to the Pensionary,† and of letting that Minister know, that Her Majesty, who is resolved, in making peace as in making war, to act in perfect consort with the States, would not lose a moment in transmitting to him a paper of this importance.

Your Excellency will please to add that the Queen earnestly desires this secret may be kept among as few as possible, and that she hopes the Pensionary will advise upon this occasion with no person whatever, except such as are by the constitution of that government, unavoidably necessary.

As soon as the matter has been considered in Holland, Your Excellency will please to despatch Barlow, who brings you this pocket-book, with the opinion of the Dutch Ministers.

Mr. Prior is fully instructed and authorized to communicate our preliminary demands to France and to report the answer to us.

A. R.

LORD BOLINGBROKE TO THE QUEEN.

WHITEHALL, September 20th, 1711.

He (M. Mesnager) has put into our hands the answer signed by the King of France to the demands last sent over by Your Majesty's order, and this answer complies with every article except the 20 8th, relating to North America. We find, however, that we shall be able to compound this point with him in the manner which Your Majesty some time ago proposed to pass it in, provided France gave you satisfaction on the 7th article, as she has now entirely done.

PRELIMINARY DEMANDS OF GREAT BRITAIN MORE PARTICULARLY.

1. The succession to the Crown of these Kingdoms, according to the present establishment, shall be acknowledged.
2. A new Treaty of Commerce between Great Britain and France shall be made in the most just and reasonable manner.
3. Dunkirk shall be demolished.
4. Gibraltar and Port Mahon shall remain in the hands of those who now possess them.
- 30 5. The Treaty of the Assiento shall be made with the English in the same manner as the French hold it at present; and such places in Spanish America shall be assigned to those concerned in the traffic, for the refreshment and sale of their negroes, as shall be found necessary and convenient.
6. All advantages, rights and privileges now granted, or which may be hereafter granted by Spain to the subjects of France, or of any other nation whatever, shall be in like manner granted to the subjects of Great Britain.
7. And for the better protection of commerce in Spanish America, the English shall then be put into possession of such places as shall be named in the Treaty of Peace. France having offered a real security for the trade of Her Majesty's subjects in Spanish America, no one doubted but that such places were intended; and in confirmation of this opinion, France proposed Gibraltar as a security to the commerce to Spain and the Mediterranean. The advantages and privileges offered by M. Mesnager cannot be considered as real securities; it will always be in the power of Spain to resume them, therefore it is supposed that France is under an engagement either to cause to be ceded to Great Britain the places demanded in that Article, or to procure for that nation some new advantages, such as the love of peace may induce them to look upon as an equivalent; upon this they consider themselves as under an obligation to insist that the Minister aforesaid be furnished with full powers. And to mark still

† Boys.

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plainer the sincerity with which the treaty is carried on, and the desire of her Britannic Majesty to promote a general peace, she judges it expedient to declare that the difficulty which occurs upon that Article may be removed by granting to her the following:—

That the Pacte de Assiento be made with Great Britain for the term of 30 years.

That the entire island of St. Christopher be assured to Great Britain.

That the advantages and exemptions from duties promised by M. Mesnager, and which he affirms to amount to 15 per cent, on all merchandise of the growth or manufacture of Great Britain, be effectually allowed.

Great Britain can refresh the negroes at Jamaica, and there distribute those to be sent to La Vera Cruz, to Portobello, and to the other factories in that part of the Indies. But as on the coast of the River de la Plata the English have no colony, it is required that an extent of land be assigned upon this river, where they may not only refresh their negroes, but keep them in safety until they be sold to the Spaniards. And as in this demand no trick is meant, they shall be in this respect subject to the inspection of an officer to be appointed for this purpose by the King of Spain.

8. Newfoundland, Hudson's Bay and Straits shall be completely restored to the English. Great Britain and France shall respectively keep and possess all the countries, domains and territories in North America that each nation shall be in possession of at the time when the ratification of the treaty shall be published in those parts of the world.

THE ANSWER OF FRANCE TO THE PRELIMINARY DEMANDS OF GREAT BRITAIN MORE PARTICULARLY.

Answer of
France.

The King being particularly informed by the last memorial which the British Minister delivered to M. Mesnager, of the dispositions of that Crown to facilitate a general peace to the satisfaction of all parties concerned in the war; and His Majesty finding in effect, as the said memorial declares, that he runs no hazard by engaging himself in the manner therein declared, since the preliminary will be of no force until the signing of the general peace, and being besides sincerely desirous to advance to the utmost of his power the re-establishment of the repose of Europe, especially by a way so agreeable to His Majesty as the interposition of a Princess, whom so many ties of blood ought to unite to him, and whose sentiments for the public tranquillity cannot be doubted.

His Majesty, moved by these considerations, has ordered M. Mesnager, Knight of His Order of St. Michael, Deputy of the Council of Commerce, to give the following answers, in writing, to the articles contained in the memorial transmitted to him, intituled "Preliminary Demands of Great Britain more Particularly."

1. His Majesty will acknowledge the King of Great Britain in that quality, as also the succession of that Crown according to the present establishment.

2. The King consents to make a new Treaty of Commerce with Great Britain in a manner most just, reasonable, and advantageous to both nations.

3. Although Dunkirk has cost His Majesty very large sums, as well in the purchase of it as in its fortifications, and though it be necessary still to be at a considerable charge to destroy the works, the King will, nevertheless, engage to demolish them immediately after the conclusion of a peace, provided that for the fortifications of this place he receive a proper equivalent; and, as England cannot furnish that equivalent, the discussion of it shall be deferred to the conferences to be held for the negotiations of a general peace.

4. The King promises, in the name of his grandson, the King of Spain, and pursuant to the power which His Majesty has received from that Prince, that Gibraltar and Port Mahon shall remain in the hands of the English, who at present possess both.

5. After the conclusion of peace, the English shall have the transportation of Guinea negroes to the West Indies, otherwise called the Pacte de Assiento, on the same conditions as were entered into by the King of Spain with the French, so that the company which will consequently be established in England shall be privileged to refresh, sell, and dispose of the negroes in all the towns and ports of America, of

the North Sea, Buenos Ayres, and generally in all places and ports where permission was granted to the vessels of the Company established in France, under the title of the Assiento.

6. The King promises, for himself and for the King of Spain, according to the power in His Majesty's hands, that in case a peace is concluded, this Article shall be granted, in like manner as the preceding, and that it shall be punctually executed.

7. Though the King of Spain at the beginning of his reign was induced to favour the French nation when he wanted supplies of money for the expenses of an impending war, that Prince, notwithstanding, granted the privilege of transporting negroes to the French for a term of ten years only; it would therefore be a great favour to the English to give up to them for twenty years a prerogative of which it seems all European nations would wish to partake each in its turn. Nevertheless, His Majesty promises that the King, his grandson, shall grant to the English during twenty successive years, the transportation of negroes from Guinea to the West Indies, otherwise called the Pacte de Assiento, with the same conditions, prerogatives, and privileges granted to the French Company, and which they do or might enjoy from the 1st of May, 1702, to the present time.

The King consents to this Article.

His Majesty in like matter promises, in the name of the King of Spain, the advantages and exemptions from duties mentioned in that Article, and which the English shall enjoy immediately after the conclusion of the peace, upon the exchange of the ratifications.

The general peace being effected, an assignment shall be made to the English Assiento Company of an extent of land on the River de la Plata, where they may not only refresh their negroes, but keep them in safety until they be sold, according to the conditions stipulated in the agreement to be entered into for the Assiento. And to prevent any abuse of this concession, the King of Spain will nominate an officer as Superintendent, to whose inspection those interested in the Company, and in general those employed in their service, shall be subject.

8. The discussion of this Article shall be deferred to the general conferences for the peace, it being well understood that the right of fishing and drying cod upon the island of Newfoundland be reserved to the French.

In the execution of the King's order, we, the undersigned, Knight of His Order of St. Michael, Deputy of the Council of Commerce, have stated the present answer to the preliminary demands for Great Britain, to the amount of eight Articles, by virtue of authority from His Majesty, of which we have delivered a copy, signed by us: and we promise, in the name of His said Majesty, that the said answers shall be regarded as conditions which he agrees to grant, the Articles of which shall be put into the common form of treaties, and explained in the plainest and most intelligible manner to the common satisfaction of the Crowns of France and Great Britain, and this in case of the signing of a treaty for a general peace.

In faith of which we have signed and sealed. Done, &c.

MESNAGER.

ACCEPTANCE BY GREAT BRITAIN OF THE ABOVE EIGHT ARTICLES.

The Most Christian Prince having signified to Her Majesty, his sincere desire for the re-establishment of the general tranquility of Europe by a peace definitive, sure, lasting, and suitable to the interests of all the allies, and having expressed his desire that the Queen would promote the negotiations of such a peace, it has been found just and reasonable that the interests of Great Britain should be, in the first place, adjusted and ascertained. On this account His Most Christian Majesty has sent over M. Mesnager, Knight, &c.; he has stated the above eight Articles by authority from His Most Christian Majesty, a copy of which he has given us, signed by him; of which Articles we, the undersigned, declare by virtue of the express order of Her Majesty, her acceptance as preliminaries which contain only those securities and advantages which Her Majesty thinks she has a right to expect, whoever be the Prince who may acquire the monarchy of Spain. And these articles must be regarded

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Acceptance by Great Britain, 27th October, 1711.

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as conditions which His Most Christian Majesty agrees to grant. These Articles to be put into the common form of treaties, &c., &c.

Done at London, 27th September, O. S., 8th October, N. S., 1711.

DARTMOUTH,
H. ST. JOHN.

PRELIMINARY ARTICLES ON THE PART OF FRANCE FOR THE ATTAINMENT OF A GENERAL PEACE.

The King being willing to contribute all that is in his power to the re-establishment of a general peace, His Majesty declares:—

1st. That he will acknowledge the Queen of Great Britain in that quality, as well as the succession to the Crown according to the present settlement. 10

2nd. That he will freely and *bona fide* consent to the taking all just and reasonable measures to prevent the re-union of the Crowns of France and Spain on the head of the same prince, His Majesty being persuaded that that excess of power would be contrary to the welfare and peace of Europe.

3rd. The King's intention is, that all the parties engaged in the present war, without excepting any one, may find their reasonable satisfaction in the treaty of peace to be made, that commerce may be re-established and maintained for the future, to the advantage of Great Britain, of Holland, and of other nations who have been accustomed to carry it on.

4th. As the King will also strictly support the observance of the peace when concluded; and as the object of His Majesty is to secure the frontiers of his kingdom without molesting, in the smallest degree, the neighbouring States, he promises to agree by the future treaty of peace that the Dutch shall have in their possession the fortress which shall be named in the Netherlands to serve in future as their barrier, which may secure the quiet of the Republic of Holland against any enterprise from France. 20

5th. The King consents likewise that a secure and convenient barrier should be formed for the Empire and for the House of Austria.

6th. Though Dunkirk has cost the King large sums, as well in its purchase as in its fortification and though it be necessary still to be at very considerable expense to raze the works, His Majesty will nevertheless, engage to demolish them after the conclusion of the peace, on condition that he do receive a proper equivalent for the fortification of that place; and as England cannot provide that equivalent, the discussion shall be deferred to the conference to be held for the negotiation of a peace.

7th. When the conferences for the negotiation of the peace shall be formed, all the pretensions of 30 the Princes and States engaged in the present war shall there be discussed, *bona fide* and amicably, and nothing shall be omitted to regulate and terminate them to the satisfaction of all parties.

By virtue of the King's authority, we, &c.

MESNAGER.

GENERAL PLAN OF PEACE, 1712.

[O. Offers of France confidentially communicated to the British Ministry by Count De Torcy. D. Further demands of Great Britain. R. Reply of the King of France to those further demands.]

*For Great Britain.*General Plan
of Peace,
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O. 1. The King promises to consent without difficulty to everything contained in the 1st, 2nd, 3rd, 4th and 5th Articles of the specific demands of the Queen of Great Britain. 40

O. 2. The King will demolish the fortifications at Dunkirk, as well those of the town as the citadel, the Rysbanks, and the other forts on the sea side, and in three months after, those on the land side; to be computed from the day of exchanging the ratifications, the whole at his own expense, and with a promise never to repair them, in the whole or in part.

O. 3. The King will give up the island of St. Christopher to Great Britain, as also Newfoundland, on condition that the Town of Placentia be razed, [and] that the French retain the free right to fish and dry cod at Newfoundland, in the place where they have been accustomed so to do. The small islands adjoining, and in the neighbourhood of Newfoundland, shall be likewise ceded to England, it

being well understood that the island of Cape Breton, and others in the Gulf and mouth of the River St. Lawrence, of which France is actually in possession, shall remain to the King.

O. 4. The King will give up the Province of Acadia, with the Town of Port Royal and its dependencies, to Great Britain, as also the Straits of Hudson's Bay.*

O. 5. In the countries of North America, ceded to Great Britain, the French shall be at liberty to withdraw their effects, as also His Majesty to withdraw the cannon and warlike stores.

D. England demands that the town of Placentia remain in its present state.

That the cannon and warlike stores in Hudson's Bay remain for England.

R. His Majesty offers to let the fortifications of Placentia remain as they are, upon giving up that place to England; to consent to the demand made of the cannon in Hudson's Bay; and, besides, to cede the Island of St. Bartholomew; to give up even the right to fish and dry cod on the coast of Newfoundland—if the English will restore Acadia, for these new concessions proposed as an equivalent.

In this case, His Majesty consents that the River St. George shall be the boundary of Acadia, as England insists.

Should the Plenipotentiaries of that Crown refuse to enter into any expedient for the restitution of Acadia, the King, rather than break off the negotiations, will comply with their demands already made; that is to say, to give up Placentia, fortified, and the cannon in Hudson's Bay; it being well understood that the offer to cede the Islands of St. Martin and St. Bartholomew, and that of the foregoing right to fish and dry cod upon the coast of Newfoundland, are also to be considered as if they had never been made.

O. 6. After the peace, Commissioners shall be appointed on both sides to ascertain, within the compass of a year, the boundaries of Canada, or New France, on one side, and those of Acadia and the lands of Hudson's Bay on the other, and to settle, in a friendly manner, all just and reasonable recompenes insisted upon on both sides for injuries done prejudicial to the rights of peace and war.

O. 7. The boundaries being once settled, the subjects of both Crowns shall be reciprocally prohibited from passing the same, whether by sea or land; as also from disturbing the trade of the subjects of each nation, and molesting the Indian nations, allies or subjects of the Crown.

O. 8. The King will permit the House of Hamilton, Colonel Charles Douglas, and others, to represent to him their several rights and pretentions, and will do them strict justice.

D. That the Duke of Richmond be considered as the heir of his mother.

R. The Duke of Richmond having obtained the King's letters of naturalization, shall, when peace is made, enjoy the privilege attached to the favour granted to him by His Majesty.

D. That the 4th Article of the Treaty of Ryswick be established, and that the King do give no opposition to the regulating of affairs of religion in the empire, pursuant to the Treaty of Munster.

R. In consideration of England, the King wishes this affair should be regulated with the empire; His Majesty having no intention to derogate from the Treaties of Westphalia, on the subject of religion.

O. 9. The King, in the name of the King of Spain, his grandson, promises that Gibraltar and Port Mahon shall remain in the hands of the English.

D. That the extent of country round Gibraltar, equal to two cannon shot, and the whole island of 40 Minorea, be ceded to England.

R. The King had great difficulty to induce the King of Spain to give up Gibraltar to the English, that Prince's intention being, as he often declared, not to yield an inch of land in Spain. It will be still much more difficult to obtain from him the smallest concession, on so important a point, now when he is urged to renounce his rights to the Crown of France, and look upon Spain as the only patrimony he can leave to his descendants.

So that this new demand will be sure of a refusal; and the power which His Majesty has received from the Catholic King is directly contrary to such a pretension.

As he has not explained himself with regard to the entire cession of the Island of Minorea, the King will use his endeavours to obtain it, as a sort of equivalent for territory around Gibraltar; and

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on this consideration, and from this time, His Majesty promises that the whole Island of Minorea shall be ceded.

O. 10. After the conclusion of peace, the English shall have the transportation of negroes to the West Indies, otherwise called the Assiento Treaty for negroes, upon the same conditions as agreed upon between the King of Spain and the French; so that the Company which for the purpose will be established in England, shall have the privilege of refreshing, selling, and delivering their negroes in all places and ports of America, upon the North Sea, in Buenos Ayres, and generally in all places and ports where the ships of the Company established in France, under the name of Assiento, are permitted to enter.

D. That the French do not withdraw their Assiento effects, otherwise than by English or Spanish 10 vessels.

R. Those concerned in the Assiento Company will strictly observe the terms of their agreement; consequently they cannot, under the pretence of bringing away their effects, trade to the Indies direct and they would absolutely lose them, should they be forced to put them on board other vessels than those of their Company.

*General Plan
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The peace having for its object the general benefit of both French and English, it would be unjust that one of the first advantages which results to England, should be to the prejudice of France; if the English will enter into a bargain to purchase the effects of the French Company, this inconvenience will be avoided.

O. 11. The said treaty shall be for thirty years, and there shall be assigned to the English Assiento 20 Company an extent of land upon the River de la Plata, where they may not only refresh their negroes, but keep them in safety until they be sold according to terms to be stipulated in the Assiento contract; and to prevent any abuse of this concession, the King of Spain will appoint an officer to superintend, to whose inspection those concerned in the said Company, and generally those whom they shall employ in their service, shall be subject.

D. That this extent of territory be submitted to the choice of the English, and that the Spanish Inspector be suppressed.

R. The demands made to the King in this Article are known in England: His Majesty obtained them from the King, his grandson, with great difficulty. He can neither demand nor grant in his name any further addition to what has been acceded to for the sake of peace; if the English think proper 30 to insist upon further advantages, they must make a direct application to the Spanish Plenipotentiaries, who, for this purpose, must have the necessary passports sent to them, that they may repair to Utrecht

O. 12. All advantages, rights and privileges now granted, or which hereafter may be granted by Spain to the subjects of France, or to any other nation whatever, shall be in like manner granted to the subjects of the Queen of Great Britain.

O. 13. His Majesty promises in like manner that all merchandise of the growth of Great Britain going from the ports of Spain, from whence vessels are dispatched for the Spanish Indies, shall be free of all duties of import and export, as well in Spain as in the Indies.

O. 14. All the above articles shall be understood in the most ample and proper manner in the treaty of peace, and to them shall be added clauses for the cessation of hostilities, and other mutual 40 assurances, according to the custom of preceding treaties, which shall be acknowledged to possess and have their former force and effect, except where they are repealed by this; and this clause shall be added at the end of each instrument.

MEMORIAL SENT BY M. GAULTIER.

March 4th, 1711

*Memorial sent
by M.
Gaultier, 4th
March, 1712.*

From the commencement of the correspondence between Great Britain and France on the subject of peace, it has been an established maxim that we must not, if it can be avoided, expose ourselves to the events of the campaign; the Queen continues of this opinion, and has taken all necessary precautions, on her part, to bring the negotiations at Utrecht to a happy conclusion. From what has lately

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occurred here, one may have remarked the favourable disposition of the House of Commons, which, according to the constitution of this Government, is principally to be looked up to in concerns of peace and war. . . . Mr. Harley sets off to-morrow for Utrecht; he is amply instructed in Her Majesty's intentions upon all the essential points that may come to be discussed in the negotiations, and he carries their last orders to the Plenipotentiaries. . . . The Queen has been sensibly affected by the misfortunes lately happened to France; she does not doubt that the death of those princes may be used as an argument by those who desire the continuance of the war, but she believes the surest means of rendering their scheme fruitless will be to agree, without loss of time, upon the necessary measures to prevent the union of the two crowns. For this purpose the Queen suggests a proposal that the Prince now in the possession of the Crown of Spain should, for himself and his issue, execute a formal renunciation of that of France, and that the line of succession to both should be declared and fixed in the treaty of peace; it were also to be wished that the Cortes or States of Spain should one way or other concur with this act.

REPLY TO THE MEMORIAL DELIVERED BY M. GAULTIER.

March 23rd, 1712.

The Kings desires, as sincerely as the Queen of Great Britain, to prevent the events of the campaign, and to agree, before it opens, on terms of peace. . . . The King is assured that those who with so much ability manage the affairs of the Queen of Great Britain, will know well how to make the party submit, and oblige them to conform to the true interests of the nation, whenever the Plenipotentiaries of France and England at Utrecht shall have agreed upon a just and reasonable plan of peace. To forward this, His Majesty has directed his Plenipotentiaries to grant further compliances, of which they will inform Mr. Harley. He learns with pleasure that the Queen of Great Britain has fully instructed him in her intentions, and has given him her last orders, not doubting that Princes restraining within the bounds of justice and reason, the vague terms, "reasonable satisfaction" and "real security;" which her allies extend not only to the most extravagant demands, which they have actually made, but also to those which they have not yet thought of, and which they reserve with the apparent intention of protracting the negotiation. . . . France will never consent to become a Province of Spain; Spain says the same thing with respect to France. The question then is, What well-founded means can be used to prevent the union of the two Monarchies? But we should absolutely go from the point we aim at, and fall into infinite dangers, worse, if possible, than that we anxiously desire to avoid, were we to contravene the fundamental laws of this Kingdom. According to these laws, the Prince next the Crown is the necessary heir to it; it is a patrimony which he receives neither from the King, his predecessor, nor from the people, but by virtue of the law; so that upon the demise of a king, another immediately succeeds him without awaiting the consent of any one. He succeeds not as heir, but as monarch of the kingdom, the lordship of which belongs to him not from election, but from right of birth alone; he is indebted for his crown neither to the will of his predecessor nor to any act or decree, nor, in a word, to the generosity of any one, but to the law; this law we consider as the work of Him who hath founded all monarchies, and we in France are persuaded that God alone can abolish it.

No renunciation can then destroy it, and if the King of Spain gave in his for the sake of the peace, and in obedience to his grandfather, we should deceive ourselves if we received it as a sufficient expedient to prevent the evil we propose to avoid. It would, on the contrary, be the source of the greatest evils; it would open the door for civil war in the kingdom, the flame of which would again spread itself through Europe. We must then look out for other expedients to prevent forever an union equally dangerous to France, to Spain and to all Europe.

Reply to
 foregoing,
23 March
1712.

MARQUIS DE TORCY TO LORD BOLINGBROKE.

VERSAILLES, March 20th, 1712.

SIR,—The King's Plenipotentiaries receive new orders from His Majesty, to agree with the Bishop of Bristol and the Earl of Stafford, upon the conditions he can grant to the demands of Great Britain.

De Torcy to
Bolingbroke
20 March,
1712

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As His Majesty cannot suppose your Plenipotentiaries have orders to exact such terms as would prove the ruin of the trade of his subjects and of the navigation of his kingdom, so is he persuaded that these new concessions, both for Great Britain and for those powers whose interests she espouses, will promote the success of the negotiation. But in the meantime, sir, the King expects your Plenipotentiaries will show less eagerness in the support of the demands of the House of Austria, of the States-General, and of many princes of the Empire, who only complain because they are urged so to do by the enemies to the peace. The most effectual way to promote it is for the Queen of Great Britain also to send new directions to her Ministers at Utrecht, to act in future more in concert with the King's Plenipotentiaries.

Suffer me again to entreat your best exertions for so great a blessing, and do me the justice to believe that I am, etc.

DE TORCY.

VERSAILLES, March 28th, 1712.

*De Torcy to
Bolingbroke,
8th March,
1712.*

SIR,—However great the pleasure I have in receiving the honor of your letters, I shall be no longer uneasy at their delay, finding by your last that the period of your silence is employed so usefully towards the success of that important business which I hope you will conduct to a fortunate conclusion. Monsieur Gaultier has given me an account of all the measures you have taken to promote it. He goes to Utrecht, where I judge his presence necessary to strengthen the union and confidence between the King's and the British Plenipotentiaries. I hope the last orders given by Her Majesty to her Ministers will establish this good understanding upon solid grounds, and that you will finish what remains to the glory of the Queen your Mistress.

DE TORCY.

*Report French
Plenipoten-
taries, 18th
April, 1712.*

FROM THE REPORT OF THE FRENCH PLENIPOTENTIARIES TO THE KING, APRIL 18, 1712.

We have made every possible effort to regain Acadia, or at least to retain Newfoundland; but it has been impossible for us to conclude the matter. They (the English Plenipotentiaries) have protested a hundred times that they had express orders to break off the negotiations rather than to give way on either point, or upon that of Hudson's Bay, where they claim even the cannon. We should not have taken their word for this if le Sieur Gaultier had not confirmed what they said.

Count de Pontchartrain remarked, on the project of the English, that it would have to be considered whether the savages were subjects. If so, they could not pass the limits that would afterwards be fixed; if not, there would be no right to make any rule regarding them. Lord Bolingbroke agreed to prohibit the subjects of France and England from passing over the boundary when it had once been established.

LORD BOLINGBROKE TO MARQUIS DE TORCY.—MEMORIAL CONCERNING NORTH AMERICA.

To terminate all existing disputes concerning North America, the Queen proposes :—

*Bolingbroke,
to De Torcy,
24th May,
1712.*

First.—That His Most Christian Majesty do cede to her the Island of Newfoundland, with Placentia, and the fortifications, artillery, and ammunition thereto belonging; the adjacent small islands nearest to the Island of Newfoundland; as also Nova Scotia or Acadia, according to its ancient boundaries.

Secondly.—That the subjects of His Most Christian Majesty may continue to fish and dry their fish, on that part of Newfoundland which is called the Petit Nord, but upon no other part whatever.

Thirdly.—That the subjects of His Most Christian Majesty may possess, in common with those of the Queen, the Island of Cape Breton.

Fourthly.—That the islands in the Gulf of St. Lawrence, and in the mouth of the river of that name, which are now occupied by the French, remain to His Most Christian Majesty; but upon this express condition, that his said Majesty do engage, neither to build or suffer to be built, any fortifications upon those islands or upon those of Great Breton. Her Majesty the Queen, engaging also not to fortify or suffer to be fortified, the islands adjacent and nearest to Newfoundland, or those of Cape Breton.

Fifthly.—The Queen insists to have the guns and ammunition in all the forts and places in Hudson's Bay and Straits. . . .

[Here follow articles concerning commerce, and concerning the suspension of arms.]

Whitehall, May 24, O.S., 1712.

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THE KING'S ANSWER TO THE MEMORIAL SENT FROM LONDON, MAY 24, O.S., JUNE 5, N.S.—SENT TO LORD BOLINGBROKE BY MARQUIS DE TORCY.

Article 1.—His Majesty consents to cede to the Queen of Great Britain, the Island of Newfoundland, with the town of Placentia, fortified; but the artillery and ammunition in this place shall be withdrawn, and not comprehended in the cession of that place and island, as not being attached to either; and, to use a common comparison, the ammunition and artillery of a place may be considered as the furniture of a house which the individual takes away with him, when by voluntary agreement he gives up the house. The isles adjacent to Newfoundland were neither demanded nor promised in the articles signed at London in October last. As these have been from the beginning considered as the basis of the present negotiations, the King's intention is to comply with them exactly, as the most sure method of arriving at a conclusive treaty; and His Majesty is persuaded that the Queen of Great Britain, true to her word, will not insist upon a new demand, and which cannot be found in the agreement signed in her name. The King will add to that agreement the cession of Acadia, according to its ancient boundaries, as demanded by the Queen of Great Britain.

*Answer to
 foregoing
16th June,
1712.*

Secondly.—The articles signed at London, reserve to the King's subjects, the right to fish and dry their cod upon the Island of Newfoundland; an arrangement which both sides have agreed to, cannot be restricted nor altered but by mutual agreement for their common advantage. Upon this plan, His Majesty offers to England to give up the artillery and ammunition of Placentia, the isles adjacent to Newfoundland, to forbid his subjects the liberty of fishing and drying cod on the coast of that island, even the district called the Petit Nord; to add to these conditions the cession of the islands of St. Martin and St. Bartholomew, close to that of St. Christopher, on condition that the Queen of Great Britain do consent to restore Acadia, of which the river St. George is in future to be the boundary, as the English formerly required. It is then submitted to the choice of the Queen of Great Britain, either to abide by the articles signed at London, or to accept the exchange proposed by His Majesty. In the latter case, His Majesty would promote, by every means in his power, the settlement of the business relating to the ransom of Nevis to the satisfaction of Great Britain.

Thirdly.—As one of the chief advantages of the peace will be, if it pleases God, the good understanding which the King proposes to establish between his subjects and those of the Queen of Great Britain, everything which can disturb that happy union should be removed; experience has too well proved how impossible it was to preserve it in places inhabited in common by French and English; this reason alone would therefore be sufficient to prevent His Majesty's consent to the proposal of permitting the English to possess Cape Breton with the French. But a consideration of still greater importance may be urged against the proposition, and as it too often occurs, that nations, the most friendly to each other, become enemies, it is a point of prudence that the King should retain possession of the only island, which can in future keep the river St. Lawrence open to him. It would be absolutely shut to his ships, if the English are masters of Acadia and Newfoundland, they should also be in possession of Cape Breton, in common with the French; and Canada would be lost to France, as soon as any event should occur to rekindle the war between the two nations, which God long forbid! But the surest method to prevent it, is frequently to call to mind that it may happen.

Fourthly.—We should not dissemble that it is for the same reason, that the King will reserve to himself the liberty natural and general among all sovereigns, to erect in the islands of the Gulf and River St. Lawrence as well as in Cape Breton, such fortifications as His Majesty shall judge necessary. These works, intended solely for the security of the country, can never be of prejudice to the neighbouring islands and provinces. It is just that the Queen of Great Britain should have the same liberty of fortifying where she may judge it necessary, whether in Acadia or in Newfoundland; and upon this

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DE TORCY.

28th, 1712.

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DE TORCY.

18, 1712.

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article the King does not pretend to demand anything contrary to the rights which property and possession naturally give to the Princess.

Fifthly.—From his particular regard for the Queen of Great Britain, the King will leave to her the artillery and ammunition in the forts and places in Hudson's Bay and Straits, notwithstanding the urgent reasons His Majesty has to withdraw them, and to appropriate them elsewhere. * * *

[Here follow articles relating to commerce and the suspension of arms.]
Marli, June 10th, N.S., 1712.

LORD BOLINGBROKE TO MONSIEUR DE TORCY.

WHITEHALL, Nov. O.S., 1712.

Bolingbroke
to De Torcy
November,
1712.

I have examined the projects of treaty drawn up by the Plenipotentiaries of the King as well as by those of the Queen, and I do not find any great difference except in two articles—that on North America and that on Commerce. I do not desire to enter into this detail; it would be too long an affair and too long a discussion, and instead of writing you a letter I should send you a book. Mr Prior will discuss these points with you, and I confine myself to praying you to agree with him upon some expedient, in order that the Ministers at Utrecht, having no subject of dispute, may unanimously entertain pacific sentiments.

MARQUIS DE TORCY TO LORD BOLINGBROKE.

Dec. 29th, 1712.

De Torcy to
Bolingbroke,
29th Decem-
ber, 1712.

In the name of God, sir, order your Plenipotentiaries to be less excellent grammarians. Ours, who also understand the force of Latin expressions, are out of patience when they see difficulties, which have been long adjusted, started again, and the difference between *cession* and *restitution*, and the meaning of those terms. In truth, sir, such questions ought not to be the amusement of honourable men. They are at best excusable only to those to whom we may apply *amantium ira*. Finish these disputes, which, if they continue longer, will only profit our enemies.

LORD BOLINGBROKE TO MARQUIS DE TORCY.

7th January, 1713.

Bolingbroke
to De Torcy,
7th January,
1713.

There are certain things which derive their consequence purely from being disputed; the difference between the expression *cedendis* and *restituendis*, between *assumpsit* and *usurpavit* or *arrogavit* is not very essential; the mind was, however, not a little heated in the dispute, and it required some trouble to convince certain people that the matter was not worthy of attention.

30

MEMORIAL FROM M. DE TORCY FOR MR. PRIOR. RECEIVED 7TH JANUARY, 1713.

De Torcy to
Prior, 7th
January,
1713.

The 9th (10th) article of the plan imports, that the King shall give up to the Queen of Great Britain, Hudson's Bay, &c., in the manner they are now possessed by the King and the French.

The Plenipotentiaries of Great Britain insist that it shall be expressed that France shall restore not only what has been taken from the English, but also all that England has ever possessed in that quarter. This new clause differs from the plan, and would be a source of perpetual difficulties; but to avoid them, the King has sent to his Plenipotentiaries the same map of North America as had been furnished by the Plenipotentiaries of Great Britain. His Majesty has caused to be drawn upon this map a line which describes the boundaries in such a manner as he has reason to think they easily may agree [upon] this point on both sides.

40

If, however, there should be any obstacle which the Plenipotentiaries cannot remove, the decision must be referred to Commissaries to be named for the adjustment of the boundaries of America. The same article says that the King's subjects shall be at liberty to depart from their lands, in places ceded

by his Majesty to the Crown of Great Britain, to carry with them their goods and moveables, and to go wherever they please, by sea or land. The Plenipotentiaries of France have also reserved to them the right of disposing of their immoveable effects in the space of three years.

The Plenipotentiaries of Great Britain agree to one year. . . . Under the name of places ceded, they include Acadia and the Island of St. Christopher. Under the name of places restored, Hudson's Bay and Straits, and the Island of Newfoundland.

Upon article 10 (11) the Plenipotentiaries of France demand that the English, obtaining the right to prefer their complaints of loss sustained in Hudson's Bay before the Commissaries, the King's subjects should have the same right with regard to the business of Nevis and Gambia.

10 This mutuality, which the Plenipotentiaries of Great Britain have not yet been willing to grant, seems just. The English shall have the same liberty to represent their losses at Montserrat, and to solicit a reparation, which shall be granted to them.

MR. PRIOR TO LORD BOLINGBROKE, 8TH JANUARY, N.S., 1713.

As to the limits of Hudson's Bay, and what the ministry here seem to apprehend, at least in virtue of the general expression, *tout ce que l'Angleterre a jamais possédé de ce côté là* (which they assert to be wholly new, and which I think is really so, since our Plenipotentiaries make no mention of it), may give us occasion to encroach at any time upon their dominions in Canada, I have answered, that since, according to the *carte* which came from our Plenipotentiaries, marked with the extent of what was thought our dominion, and returned by the French with what they judged the extent of theirs, there was no very great difference, and that the parties who determined that difference, must be guided by the same *carte*, I thought the article would admit no dispute. In case it be either determined immediately by the Plenipotentiaries or referred to Commissioners, I take leave to add to your Lordship that these limitations are no otherwise advantageous or prejudicial to Great Britain than as we are better or worse with the native Indians, and that the whole is a matter rather of industry than dominion. If there be any real difference between *restitution* and *cession*, *queritur*? Yet, since in either case, the right of the inhabitant as to transferring his goods and effects, or disposing of his person and family is always provided for in treaty, I leave it to your Lordship's better judgment if a fixed time in either case (suppose eighteen months or two years), does not put the subject, who is to have the benefit which *restitution*, or *cession* grants him, upon a more equal foot, &c.

30 MEMORIAL CONCERTED WITH MARQUIS DE TORCY, 19TH JANUARY, 1713, AND FORWARDED TO LORD BOLINGBROKE, BY THE DUKE OF SHREWSBURY.

The inhabitants of Hudson's Bay, subjects of the Queen of Great Britain, who have been dispossessed of their lands by France, in time of peace, shall be entirely and immediately after the ratification of the treaty, restored to the possession of their said lands; and such proprietors shall also have a just and reasonable satisfaction for the losses they have suffered, with respect to their goods, moveables, and effects; which losses shall be settled by the judgment of Commissaries, to be named for this purpose, and sworn to do justice to the parties interested.

THE DUKE OF SHREWSBURY TO LORD BOLINGBROKE.

40 In the Treaty of Peace, they [the French King and M. de Torcy] said there still remained two difficulties: one is about the immoveable estates to be disposed of in the places which France is to yield up or restore, which we thought was adjusted by the paper sent by Mr. Prior, January 19th, and which

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January,
1713.

Prior to
Bolingbroke,
8th January,
1713.

Memorial, 19th
January,
1713.

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Bolingbroke,
22nd Febru-
ary, 1713.

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you have likewise herein enclosed; it certainly is so as to Hudson's Bay in particular. Monsieur de Torcy says that, as far as he knows, the whole affair stands at Utrecht in the manner as this enclosed paper specifies.

The Plenipotentiaries of Great Britain had hitherto made a distinction between places ceded by the King to the Queen of Great Britain, and the places which they denominated restored. Under the name of places restored they included Hudson's Bay and Straits, and the island of Newfoundland. They agreed to allow the French settled in places ceded, the liberty to sell their immoveable effects but insisted that the same liberty ought not to be allowed in places restored, upon a plea that such effects were taken from the English, who had a right to have them restored. The Plenipotentiaries now make no distinction between places ceded and places restored, though the same expression remains 10 in Article 14.

FROM THE MEMOIRS OF THE MARQUIS DE TORCY.*

De Torcy
Memoirs.

His Majesty gave orders to Mesnager to add to the cession of Newfoundland, that of the Bay and Strait of Hudson; and in order to show the Queen of Great Britain and her Ministers the desire which he had to facilitate their intentions, he permitted Mesnager, by private clause, separate from the Memoir, to remit to the general negotiation of the peace the entire discussion on the article of North America. . . .

On the morrow of the second conference, Saint John, on his return from Windsor to London, notified Mesnager that he was awaiting him at Prior's house. . . . The Queen with her Council had resolved not to dwell on (*s'arrêter*) the observations made on some expressions of the King that 20 appeared ambiguous. The Secretary of State said the desire for peace had obtained the ascendancy in the mind of his Royal mistress over every other consideration; she only desired to change the term from North America (*d'Amérique Septentrionale*), and confined herself to demanding that this part of America should be designated by the expression America on the North Sea (*d'Amérique sur la mer du Nord*).

The difficulty of leaving to the French the right of fishing and drying fish on the shores of Newfoundland was raised; the Queen gave her consent. Mesnager was too wise to contest the change of term which this princess desired; thus he and St. John were equally satisfied.

MEMOIRE DE MONSIEUR DE TORCY TOUCHANT LES BONA IMMOBILIA.

[*This paper, without date, is communicated by the Earl of Shrewsbury to Lord Bolingbroke, from Versailles, March 3, 30 1713, N.S.*]

The King consented to leave to Commissaries, to be named after the peace, authority to give possession to the English who should prove that they were proprietors, or the heirs of proprietors, of those who possessed such property in Hudson's Bay.

[The instructions of the English Commissioners, C. Whitworth, J. Murray, Esq., Jos. Martin, Knt., and Frederick Herne, Esq., appointed under the 9th Article of the Treaty of Navigation and Commerce concluded at Utrecht, 31st March, 1711, were dated February 15, 1713-14. On the 15th May, the French Commissioners stated that they had no authority to treat of Hudson's Bay.]

LORD BOLINGBROKE TO THE DUKE OF SHREWSBURY.

May 29, 1713. 40

Bolingbroke
to Shrews-
bury, 29th
May, 1713.

In Monsieur de Pontchartrain's letter to the Marquis de Vaudreuil, the latter is directed to yield the forts and settlements belonging to the Hudson's Bay Company. This order, my Lord, the merchants are afraid will not answer their ends. They are dispatching two ships to the Bay, which being at a considerable distance from Quebec, where the Marquis de Vaudreuil resides, the French who are in possession of the forts on the Bay may either be ignorant, or pretend ignorance, of His Most Christian

* By Messieurs A. Petitot and Momméque, T. II., pp. 54, 64.

Majesty's orders, may refuse to evacuate these places, and the season may by consequence be lost, which your Grace knows continues in these northern seas but a very few months. The merchants therefore desire, and Her Majesty would have your Grace endeavour to obtain, either direct orders to the commanders in these places, or authentic duplicates of the orders sent to the Marquis of Vaudreuil, which may be put into the hands of the officers appointed to go to the Bay of Hudson, and to take possession of the places the French are to evacuate.

THE DUKE OF SHREWSBURY TO LORD BOLINGBROKE.

PARIS, June 23, 1713, N.S.

Concerning the letters which this Court sends to the French Governor of the forts in Hudson's Bay, which your Lordship desires to be transmitted to you, in order to their being sent thither more immediately by the two ships which we dispatched thither, Mr. Prior has spoken to Monsieur Pontchartrain, who promises that your Lordship shall have such letters; but as you say that M. Nicholson will have Her Majesty's orders to give the French subjects the liberty of selling their immoveable estates, Monsieur Pontchartrain desires that authentic copies of such orders may be sent hither, or delivered to the Duke d'Aumont. The Hudson's Bay Company have some moveable effects upon the place, for which they are now sending, and they hope they will find no opposition there on our part to their so doing.

TREATY OF UTRECHT, 1713.

TREATY OF PEACE AND FRIENDSHIP BETWEEN QUEEN ANNE OF GREAT BRITAIN AND KING LOUIS THE XIVTH OF FRANCE, CONCLUDED 31 March, 1713. *

11 April,

IV. Furthermore, for adding a greater strength to the peace which is restored, and to the faithful friendship which is never to be violated, and for cutting off all occasions of distrust, which might at any time arise from the established right and order of the hereditary succession to the Crown of Great Britain, and the limitation thereof by the laws of Great Britain (made and enacted in the reigns of the late King William the Third, of glorious memory, and of the present Queen) to the issue of the above said Queen, and in default thereof, to the most serene Princess Sophia, Dowager of Brunswick-Hanover, and her heirs in the Protestant line of Hanover. That therefore the said succession may remain safe and secure, the most Christian King sincerely and solemnly acknowledges the above said limitation of the succession to the Kingdom of Great Britain, and on the faith and word of a King, on the pledge of his own and his successor's honour, he does declare and engage, that he accepts and approves the same, and that his heirs and successors do and shall accept and approve the same for ever. And under the same obligation of the word and honour of a King, the most Christian King promises that no one besides the Queen herself, and her successors, according to the series of the said limitation, shall ever by him, or by his heirs or successors, be acknowledged or reputed to be King or Queen of Great Britain. And for adding more ample credit to the said acknowledgment and promises, the most Christian King does engage that whereas the person who in the lifetime of the late King James the Second, did take upon him the title of Prince of Wales, and since his decease that of King of Great Britain, is lately gone, of his own accord, out of the Kingdom of France to reside in some other place, he the aforesaid most Christian King, his heirs and successors, will take all possible care that he shall not at any time hereafter, or under any pretence whatsoever, return into the Kingdom of France, or any of the dominions thereof.

VI. Whereas the most destructive flame of war, which is to be extinguished by this peace, arose chiefly from thence, that the security and liberties of Europe could by no means bear the union of the kingdoms of France and Spain under one and the same King; and whereas it has at length been brought to pass, by the assistance of the Divine Power, upon the most earnest instances of her Sacred Royal Majesty of Great Britain, and with the consent both of the most Christian and of the Catholic King, that this evil should in all times to come be obviated, by means of renunciations drawn in the most effectual form, and executed in the most solemn manner, the tenor whereof is as follows:—

* Chalmers' Treaties, Vol. 1, p. 340.

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Bolingbroke,
23rd January,
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[Here follow the "Letters Patent by the King, which admit the renunciation of the King of Spain to the Crown of France, and those of M. the Duke of Orleans, to the Crown of Spain." Here also follow the various instruments of renunciation.]

Now whereas it is provided and settled by the preceding renunciation (which is always to have the force of a pragmatic, fundamental, and inviolable law) that at no time whatever either the Catholic King himself, or any of his lineage, shall seek to obtain the Crown of France, or ascend the throne thereof, and by reciprocal renunciations on the part of France, and by settlement of the hereditary succession there, tending to the same purpose, the Crowns of France and Spain are so divided and separated from each other that the aforesaid renunciations, and the other transactions relating thereto, remaining in force, and being truly and faithfully observed, they can never be joined in one. Where- 10 fore the most Serene Queen of Great Britain, and the most Serene the most Christian King, engage to each other solemnly, and on their Royal words, that nothing ever shall be done by them, or their heirs and successors, or allowed to be done by others, whereby the aforesaid renunciations and the other, transactions aforementioned may not have their full effect; but rather, on the contrary, their Royal Majesties, with joint counsels and forces, will always sincerely take that care, and use those endeavours, that the full foundations of the public safety may remain unshaken, and be preserved untouched for ever. Moreover, the most Christian King consents and engages, that he will not, for the interest of his subjects, hereafter endeavour to obtain, or accept any other usage of navigation and trade to Spain, and the Spanish Indies, than what was practised there in the reign of the late King Charles the Second of Spain, or than what shall likewise be fully given and granted, at the same time, to 20 other nations and people concerned in the trade.

X. The said Most Christian King shall restore to the kingdom and Queen of Great Britain, to be possessed in full right forever, the Bay and Streights of Hudson, together with all lands, seas, sea-coasts, rivers and places situate in the said Bay and Streights, and which belong thereunto,* no tracts of land or of sea being excepted, which are at present possessed by the subjects of France. All which, as well as any buildings there made, in the condition they now are, and likewise all fortresses there erected either before or since the French seized the same, shall, within six months from the ratification of the present treaty, or sooner, if possible, be well and truly delivered to the British subjects having commission from the Queen of Great Britain to demand and receive the same, entire and undemolished, together with all the cannon and cannon-ball which are therein, as also with a quantity of powder if 30 it be there found, in proportion to the cannon-ball, and with the other provisions of war usually belonging to cannon. It is, however, provided, that it may be entirely free for the Company of Quebec, and all other the subjects of the Most Christian King whatsoever, to go by land or by sea whithersoever they please, out of the lands of the said Bay, together with all their goods, merchandizes, arms and effects of what nature and condition soever, except such things as are above referred to in this article. But it is agreed on both sides, to determine within a year, by Commissaries to be forthwith named by each party, the limits which are to be fixed between the said Bay of Hudson and the places appertaining to the French; which limits both the British and French subjects shall be wholly forbid to pass over, or thereby to go to each other by sea or by land. The same Commissioners shall also have orders to describe and settle, in like manner, the boundaries between the other British and 40 French colonies in those parts.

XI. The above mentioned Most Christian King shall take care that satisfaction be given, according to the rule of justice and equity, to the English Company trading to the Bay of Hudson, for all damages and spoil done to their colonies, ships, persons, and goods by the hostile incursions and depredations of the French, in time of peace, an estimate being made thereof by Commissioners to be named at the requisition of each party. The same Commissioners shall moreover enquire as well into the complaints of the British subjects concerning ships taken by the French in time of peace, as also concerning

* There were two originals of this Treaty, one in Latin, the other in French. This translation is that published by authority of the English Government at the time. The expression here rendered "and which belong thereunto," is in the Latin copy "*spectantibus ad eadem,*" and in the French copy, "*et lieux qui en dependent.*" Chalmers' Treaties, Vol. 1; Le Clerq, Recueil, tom. 1; Proceedings of the Commissaries, 1719-20.

the damage sustained last year in the island called Montserrat and others, as into those things of which the French subjects complain, relating to the capitulation in the island of Nevis, and castle of Gambia, also to French ships if perchance any such have been taken by British subjects in time of peace; and in like manner into all disputes of this kind which shall be found to have arisen between both nations, and which are not yet ended; and due justice shall be done on both sides without delay.

XII. The Most Christian King shall take care to have delivered to the Queen of Great Britain, on the day that the ratification of this treaty shall be exchanged, solemn and authentic letters, or instruments, by virtue whereof it shall appear, that the island of St. Christopher is to be possessed alone hereafter by British subjects, likewise all Nova Scotia or Acadia, with its ancient boundaries, as also the city of Port Royal, now called Annapolis Royal, and all other things in those parts which depend on the said lands and islands, together with the dominion, propriety, and possession of the said islands, lands and places, and all right whatsoever, by treaties, or by any other way obtained, which the Most Christian King, the Crown of France, or any of the subjects thereof, have hitherto had to the said islands, lands and places, and the inhabitants of the same, are yielded and made over to the Queen of Great Britain, and to her Crown forever, as the Most Christian King doth at present yield and make over all the particulars above said, and that in such ample manner and form, that the subjects of the Most Christian King shall hereafter be excluded from all kinds of fishing in the said seas, bays and other places, on the coasts of Nova Scotia, that is to say, on those which lie towards the east within thirty leagues, beginning from the island commonly called Sable inclusively, and thence 20 stretching along towards the south-west.

XIII. The island called Newfoundland, with the adjacent islands, shall from this time forward belong of right wholly to Britain; and to that end the town and fortress of Placentia, and whatever other places in the said island are in the possession of the French shall be yielded and given up, within seven months from the exchange of the ratifications of this treaty, or sooner, if possible, by the Most Christian King, to those who have a commission from the Queen of Great Britain for that purpose. Nor shall the Most Christian King, his heirs or successors, or any of their subjects, at any time hereafter lay claim to any right to the said island and islands, or to any part of it or them. Moreover, it shall not be lawful for the subjects of France to fortify any place in the said island of Newfoundland or to erect any buildings there, besides stages made of boards, and huts necessary and usual for drying 30 of fish; or to resort to the said island beyond the time necessary for fishing and drying of fish. But it shall be allowed to the subjects of France to catch fish and to dry them on land in that part only, and in no other besides that, of the said island of Newfoundland, which stretches from the place called Cape Bonavista to the northern point of the said island, and from thence running down by the western side, reaches as far as the place called Point Riche. But the island called Cape Breton, as also all others both in the mouth of River St. Lawrence and in the gulf of the same name, shall hereafter belong of right to the French, and the Most Christian King shall have all manner of liberty to fortify any place or places there.

XIV. It is expressly provided that in all the said places and colonies to be yielded and restored by the Most Christian King, in pursuance of this treaty, the subjects of the said King may have liberty to 40 remove themselves within a year to any other place as they shall think fit, together with all their moveable effects. But those who are willing to remain there, and to be subjects to the Kingdom of Great Britain, are to enjoy the free exercise of their religion according to the usage of the Church of Rome, as far as the laws of Great Britain do allow the same.

XV. The subjects of France inhabiting Canada, and others, shall hereafter give no hindrance or molestation to the five nations or cantons of Indians subject to the dominion of Great Britain, nor to the other natives of America who are friends to the same. In like manner the subjects of Great Britain shall behave themselves peaceably towards the Americans who are subjects or friends to France; and on both sides they shall enjoy full liberty of going and coming on account of trade. As also the natives of those countries shall with the same liberty, resort, as they please, to the British and French Colonies, 50 for promoting trade on one side and the other, without any molestation or hindrance, either on the part of the British subjects or of the French. But it is to be exactly and distinctly settled by Commissioners, who are, and who ought to be, accounted the subjects and friends of Britain or of France.

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Britain and
France.*

XXI. The most Christian King will, in consideration of the friendship of the Queen of Great Britain, grant that, in making the treaty with the Empire, all things concerning the state of religion, in the aforesaid Empire, shall be settled conformable to the tenor of the treaties of Westphalia, so that it shall plainly appear that the most Christian King neither will have, nor would have had, any alteration made in the said treaties.

PAPERS RELATING TO THE PROCEEDINGS OF THE ENGLISH AND FRENCH COMMISSARIES, UNDER THE TREATY OF PEACE OF UTRECHT, 1719-20.

(Copies furnished by the Public Record Office, London.)

THE COMMISSARIES.

Proceedings of
the Commis-
saries, under
Treaty of
Utrecht,
1719-20:

[The English Commissaries were Daniel Pulteney and Martin Bladen, Esquires 10 They appear to have been of the Lords of Trade. The Commission of Queen Anne appointing them, is dated 3rd September, 1719, and is signed by Lords Justices—

PARKER, C.
ARGYLE AND GREENWICH.
ROXBURGH.
BERKELEY; and by
J. CRAGGS.

The French Commissaries were the Marechal Comte d'Estrées, and the Sr Abbé Dubois, Minister and Secretary of State. The Commission is dated the 24th 20 October, 1719, and is signed LOUIS. Par le Roy, le DUC D'ORLEANS, REGENT, present,—LE BLANC.

(The English Commissaries, under the Treaty of Commerce of 1713, were Charles Whitworth, James Murray, Joseph Martin and Frederick Herne; their Commission being dated 13th December, 1713.—The French Commissaries, under the same treaty, were the Srs Anisson and Fenelon: they were commissioned 10th February, 1714.)]

MR. BLADEN TO MR. DELAFAYE, SECRETARY OF THE LORDS JUSTICES.

LONDON, July 3rd, 1719.

Mr. Bladen to
Mr. Dela-
faye, July 3,
1719.

SIR,—Since you were pleased to do me the honour to propose, in behalf of their Excellencies, the 30 Lords Justices of Great Britain, that I should go to France in order to Treat there with such persons as shall be appointed by His Most Christian Majesty, concerning the several matters left undecided by the late Treaty of Peace, concluded at Utrecht, and referred to Commissarys to be hereafter named for the purpose,

I take the liberty to acquaint you, that I have perused the said Treaty, and do find that...the twelve articles provide for the surrender of the Island of St. Christopher, and of Nova Scotia in its fullest extent, to the Crown of Great Britain. But, as there have lately happened some disputes between the subjects of the two Crowns upon the interpretation of the thirteenth Article of the said Treaty, relating to the Boundaries of Nova Scotia, (the French Article upon this head being worded very different from the Latin one,) I presume their Excellencies, the Lords Justices, will be of opinion 40 it may be for His Majesty's Service that the said boundaries should be settled, as soon as may be, by Commissarys in behalfe of Great Britain and France; but previous thereunto, it will certainly be necessary that the true sense and meaning of the Treaty of Utrecht upon this subject should be so fully explained that the said Commissarys may have a certain rule to walk by.....

It will be proper that the person, who shall have the honour to be charged with their Excellencies' Commands concerning them, should be fully apprized of the demands which the Hudson's Bay

Company and His Majesty's subjects of the Island of Montserat, have to make upon those of France, and this will be best done by their Excellencies' Orders to the Board of Trade to examine the same, who may likewise, if their Excellencies please, be directed to make a collection of all such papers and memorials now remaining in the Plantation Office, as may serve to fix the Boundrys of Nova Scotia and of Hudson Bay.....

If it should be my lot to go upon this Commission [I shall only ask] that one of my instructions may be to communicate and consult upon all occasions with the Earle of Stairs, His Majesty's Ambassador at Paris, and that the said Earle may be empowered, if he pleases, to be present and assist at all the conferences that shall be held upon the subject matter of my Commission.

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Conventions—
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France.

Proceedings of
Commissaries
under Treaty
of Utrecht,
1719-20:

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REPRESENTATION OF THE LORDS OF TRADE RESPECTING THE POWERS AND INSTRUCTIONS OF THE ENGLISH COMMISSARIES, 26 AUG., 1719.

To Their Excellencies, the Lords Justices :

May it please Your Excellencies :

In obedience to Your Excellencies' Commands signify'd to us by Mr. Delafaye, in his letter of the 16th of July, 1719, we have prepar'd the inclos'd commission and instructions for Mr. Bladen, to treat, as His Majesty's Commissary or Deputy, with the Commissary or Commissaries to be appointed on the part of France, concerning several matters left undetermin'd by the 10th, 11th, 12th, 13th, 14th and 15th Articles of the Treaty of Peace concluded at Utrecht, the $\frac{11}{11}$ day of ^{March} April, 1713, between Her late Majesty and the late French King, Louis the 14th.

The Lords
of Trade to
the Lords
Justices, 26th
Aug., 1719.

It was not in our power to give more dispatch to this matter, by reason of the multiplicity of books and papers which were necessary to be read and well consider'd upon this subject, besides that we were oblig'd to consult with several persons, and to wait for such lights as the Company of British merchants trading to Hudson's Bay, the African Company and several other parties concern'd in the success of this negotiation cou'd give us, touching their respective interests and demands, for which we have made the most effectual provision we cou'd think of, in Mr. Bladen's instructions.

We have perus'd and consider'd the several Charters granted by His Majesty's royal predecessors to the respective British Colonies on the Continent of America, from Hudson's Bay and Nova Scotia, as far as the Bay of Mexico, of which many are very extensive, stretching from sea to sea; but as the French wou'd not perhaps be determin'd by these authorities only, and since we have not hitherto been able to get such maps of the said plantations as may be depended on, or to obtain such further informations as might be requir'd to support the right and title of His Majesty or any of his subjects, to places which the French possess or pretend to, either on the back of the British plantations or westward from New England down to the Gulf of Mexico, we thought it proper to leave out of Mr. Bladen's full powers, that part of the Tenth Article which relates to a general settlement of the boundaries between the colonies of the two nations in America, and to restrain his commission to the boundaries of Hudson's Bay and Nova Scotia only, where we have proofs and authorities against which, we think, no exception can reasonably be made.

In all other matters, Mr. Bladen's commission and instructions are made agreeable to the several Articles of the Treaty of Utrecht above mention'd, comprehending the mutual pretensions of both nations then left undetermin'd; and we hope, may prove to Your Excellencies' satisfaction.

Upon this occasion, we beg leave to represent to Your Excellencies that, considering the several accounts we have receiv'd from the Governors of his Majesty's plantations, as well as from persons with whom we have discours'd, concerning the progress of the French settlements, from the mouth of the River St. Lawrence northward to that of the Mississippi southward, in the Bay of Mexico, and the daily increase of their power in those parts, we cannot but be something alarm'd at a scheme that seems one day to threaten the destruction of all the British Colonies in America, for which reason, we have prepar'd an instruction for Mr. Bladen, directing him to get the best information he can, of the state of the French colonies in those parts, and of the constitution of the Mississippi Company. In

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Utrecht,
1719-20:The Lords of
Trade to the
Lords
Justices, 20th
Aug., 1719.

the meantime, we cannot help observing to Your Excellencies, that among the other grants that we have perus'd upon this occasion, we have seen one from King Charles the First, to Sir Robert Heath, which, by several mean conveyances, is become the property of Doctor Cox, and contains not only the greatest part of Florida, but likewise extends itself westward beyond the River Mississippi.

It were heartily to be wish'd that, in imitation of our industrious neighbours of France, some means could be found to extend our settlements likewise towards the Bay of Mexico, more especially while we are at war with Spain, and might possibly preserve by a future Treaty whatever might be now acquir'd.

Your Excellencies will find by the maps of those countries that the Fort of St. Augustine, which lyes on the coast of Florida to the southward of Carolina, wou'd be a great security to our plantations 10 on that side, and by the best information we have had thereupon, might be reduced at a very small expense.

All which is most humbly submitted.

CHARLES COOKE,
P. DOCMINIQUE,
D. PULTENEY,
MARTIN BLADEN.

Whitehall, Aug'st ye 26th, 1719.

INSTRUCTIONS TO COMMISSARY BLADEN, 1719.

*Instructions for Martin Bladen, Esq., appointed His Majesty's Commissary to treat with the 20
Commissary or Commissaries to be appointed by the most Christian King.—GIVEN.*

Instructions
to Commis-
sary Bladen,
1719.

Together with those instructions, you will receive His Majesty's Commission under the Great Seal of Great Britain, appointing you, the said Martin Bladen, to be His Majesty's Commissary for treating of and concluding, with the Commissary or Commissaries on the part of the French King, all such matters and things as are referred to your cognizance and determination by the said Commission, in pursuance of the 10th, 11th, 12th, 13th, 14th and 15th Articles of the Treaty of Peace, concluded at Utrecht the 21 day of ^{March} April, in the year of our Lord 1713, between Her late Majesty Queen Anne and Lewis the 14th late Most Christian King. * * *

It being provided by the 10th Article of the Treaty of Utrecht, that the limits and boundaries between Hudson's Bay and the places appertaining to the French, be settled by Commissaries on each 30 part, "which limits both the British and French subjects shall be wholly forbid to pass over, or thereby to go to each other by sea or by land," you are to endeavour to get the said limits settled in the following manner, that is to say:—

That the same begin from the Island called Grimington's Island, or Cape Perdrix, in the latitude of 58½ north, which the Company desire may be the boundary between the British and French subjects, on the coast of Laboradore towards Rupert's Land, on the East Main, and Nova Britannia on the French side; and that no French ships, barque, boat or vessel whatsoever shall pass to the northwestward of Cape Perdrix or Grimington's Island towards or into the Streights or Bay of Hudson, on any pretence whatsoever. And further, that a line be drawn from the south-westward of the Island of Grimington or Cape Perdrix (so as to include the same within the Limits of the Bay) to the great Lake Miscosinke 40 alias Mistoveny, dividing the said lake into parts (as in the map to be delivered to you); and that where the said line shall cut the 49th degree of northern latitude, another line shall begin, and be extended westward from the said lake, upon the 49th degree of northern latitude; over which said line, so to be described as above mentioned, the French and all persons by them employed, shall be prohibited to pass to the northward of the said 49th degree of latitude, and to the north or north-westward of the said lake or supposed line, by land or water, on or through any rivers, lakes or countries, to trade, or erect any forts or settlements. And the British subjects shall likewise be forbid to pass the said supposed line, either to the southward or eastward.

But you are to take especial care, in wording such articles as shall be agreed on with the Commissary of His Most Christian Majesty, upon this head, that the said boundaries be understood to regard the trade of the Hudson's Bay Company only; that His Majesty does not thereby recede from the right to any lands in America, not comprized within the said boundaries; and that no pretension be thereby given to the French to claim any tracts of land in America, southward or south-west of the said boundaries.

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Proceedings of Commissioners under Treaty of Utrecht, 1719-20.
Instructions to Commissary Bladen, 1719.

And whereas it hath been represented by the said Company that the French have, since the Peace of Utrecht, viz, in 1715, made a settlement at the head of Albany River, upon which river the Company's principal factory is settled, whereby the French may intercept the Indian trade from coming to the said factory, and may in time utterly ruin the trade of the Company if not prevented; you are to insist that the said fort be given up, or demolished by the French, and their subjects be withdrawn from that settlement.

And it being further provided, by the 11th Article of the said Treaty, that satisfaction be made according to justice and equity, to the Hudson's Bay Company for the "damages and spoil done to their colonies, ships, persons and goods, by the hostile incursions and depredations of the French, in time of peace;" and the said Company having delivered to his Majesty's Commissioners for Trade and Plantations, an account under their common seal, of the losses sustained by them from the French in times of peace, which will be delivered to you, with proper vouchers for the same; you are in like manner to insist that satisfaction be made to the said Company pursuant to the said Article. * * *

20 If the French Commissary or Commissaries should pretend to ground a more extensive claim upon the French Treaty than does appertain to them by the Latin one, you are to insist upon it, that the Latin Treaty is to be your guide in all cases, though even by the French Treaty they can have no title to any islands lying in the Bay or Gut of Canceau.

Whereas it has not been thought proper to empower you by your Commission to treat of any boundaries besides those of Hudson's Bay and Nova Scotia; nevertheless, lest the French should take this as a tacit acknowledgment of their pretended right to several settlements they have made on the back and westward of the British Plantations on the continent of America; you are to declare to the French Commissary or Commissaries, that His Majesty has reason to believe the French have made several encroachments upon the British settlements in those parts, which may be discussed when His Majesty shall have received, from the respective Governors of his colonies in those parts, a full and particular account of all such encroachments as they have already complained of. And in the meanwhile, you are to take particular care in the wording of such articles as shall be agreed to between you and the French Commissaries, in relation to the boundaries of Hudson's Bay and Nova Scotia, that His Majesty be not thereby concluded with respect to the boundaries of any other lands or territories His Majesty or his subjects may have a right to on the continent of America.

30 You are hereby directed, during the time of your residence in France, to get the best information you can concerning the situation, trade, strength, laws and government of the French colonies in America, but more particularly, concerning the establishment and constitution of the Mississippi Company, which you are to transmit to one of His Majesty's principal Secretaries of State, and to His Majesty's Commissioners for Trade and Plantations.

40 You are hereby required to communicate, from time to time, all your proceedings, during the course of your negotiations, unto the Earl of Stair, His Majesty's Ambassador Extraordinary, now residing at the French Court, and to confer and consult with the said Earl on all matters relating thereto.

And whereas divers matters and difficulties may arise during the course of your negotiation, which could not be sufficiently foreseen and provided for by these instructions, you are hereby directed to keep a constant correspondence with one of His Majesty's principal Secretaries of State, whom you shall by all occasions transmit an exact account of your proceedings, and you are to govern yourself by such further instructions as you shall from time to time receive from him thereupon.

50 At your return from the French Court, you are to lay before His Majesty a full and particular account of your proceedings in the several matters contained in His Majesty's said Commission and in

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these instructions; as likewise in all such other matters as shall from time to time be referred to your negotiation by one of His Majesty's principal Secreturys of State; and you are to deliver to His Majesty's Commissioners for Trade and Plantations a duplicate of the said account, so far as the same may relate to their cognizance.

[The above were the instructions prepared by the Commissioners of Trade for Mr. Bladen. On the same 3rd day of September, 1719, the like instructions were prepared for Messrs. Pulteney and Bladen, by order of, and signed by, the Lords Justices. The two Commissaries were, by their Commission, empowered to act jointly and severally.]

MR. BLADEN TO MR. DELAFAYE.

PARIS, November y^e 1st, n.s. 1719. 10

Mr. Bladen to Mr. Delafaye, 1st Nov., 1719. * * * The meeting first intended for Saturday took not place till yesterday. My Lord Stair was present at the opening of the Commissions, and judging their powers to be sufficient, we proceeded to fix the method of treating.

It was agreed to take the several matters separately and distinctly, in the order the Treaty of Utrecht has ranged them, and at our next meeting, which will be on Saturday, we are to enter on the pretensions of the Company trading to the Hudson's Bay.

As you know the particular regard I have for the Earl of Stair, and the great opinion I have of his abilities, you will easily imagine how great a consolation it must be to me to have his assistance in an affair of this consequence.

I am glad to understand, by your favour of the 15th past, o.s., which I received last night, that 20 my brother Pulteney thinks of leaving London. His presence will likewise be of great use to His Majesty's affairs. * * *

MR. BLADEN TO MR. DELAFAYE.

PARIS, November ye 7th, 1719, n.s.

7th Nov., 1719. I was not a little surprized to see the copy of a deposition from Barbadoes this morning in my Lord Stair's hands, relative to the actual seizure of *Santa Lucia*, by ye French, especia.ly after the answer I had receiv'd from the Abbé Dubois, upon that subject, but it seems he was very little informed of the state of this matter, for the Regent, with whom my Lord Stair had a conversation about it this morning, avows the fact, and says the Marechal d'Estrées assured him the French had a constant possession and an undoubted right to ye said island, by treaty. 30

On Saturday last, my Lord Stair and I met Marechal d'Estrées and Abbé Dubois. Our time was spent in preparatory discourses concerning the intent of the 10th Article of the Treaty of Utrecht, relating to the boundaries of Hudson's Bay; and at our next meeting, which will be to morrow, at my Lord Stair's house, we design to give in the claim of the Hudson's Bay Company, in writing, with some few additions pretty material for their service, in case the Abbé Dubois his health will allow him to be there, which I fear it will not, for he is confined at present to his bed. * * *

But I confess, I cannot help thinking it will be to very little purpose to puzzle ourselves about settling boundaries, by treaty, in the North of America, if the French have so concise a way of fixing theirs in the South, without asking our concurrence; it is to be hoped they will have the modesty to recede to 40
relish either of their friendship or discretion. * * *

I cannot leave this subject without observing how much it imports us to be upon our guard in our American Colonys. It were to be wis'd that the several Governments of his Majesty's plantations would pay the respect they owe to their instructions, and if those of Barbados for some time past had observed theirs, relating to *Santa Lucia*, the settlement of a hundred French families there could never have been put upon us at this day as a proof of their right to that island. 40

BOUNDARIES CLAIMED BY THE ENGLISH COMMISSARIES, 1719.

MEMOIR ON THE SUBJECT OF THE LIMITS OF HUDSON'S BAY, SENT BY THE ENGLISH COMMISSARIES, THROUGH LORD STAIR, TO THE MARECHAL D'ESTRÉES, ONE OF THE FRENCH COMMISSARIES, 1719.

His Majesty the late Most Christian King having stipulated, by Article 10 of the Treaty of Peace concluded at Utrecht, that Hudson's Bay and Streight, with all the lands, seas, coasts, rivers, and places which appertain to them, shall be restored to the Kingdom of Great Britain; and that Commissaries shall be named on each side to determine the limits of each nation; which limits, the subjects of each nation shall not be permitted to pass by sea or land.

The Commissaries named by His Britannic Majesty demand that the said limits may be defined in the manner following, viz.: That the limits shall commence from the North Cape of Davis' Bay, in lat. 56° 30', which shall serve as limits between the English and the French, on the coast of Laboradore, toward Rupert's Land on the east main, and of New Britain on the French side; and that no French vessel, boat, or ship whatsoever shall be allowed to pass to the north or the west side of the north cape of Davis' Bay, towards or into the Streight or Bay of Hudson, under any pretext whatsoever; and furthermore, that a line shall be drawn from the said north cape of Davis' Bay, towards the great lake Miscosinque or Mistoveny, dividing the said lake in two parts, and that at the place where the said line shall intersect the 49th parallel of north latitude, another line shall commence, and shall be extended on the west side from the said lake along the 49th parallel of north latitude; beyond which lines thus described, neither the French nor any other person employed by them shall pass towards the north of the said 49th parallel of north latitude, or towards the north [or] the north-west of the said lake, or supposed line, neither by land nor by water, nor traverse any river, lake or country, for the purpose of trading, nor build any fort, nor found any settlement.

And forasmuch as the subjects of His Most Christian Majesty have made, since the Peace of Utrecht, a settlement at the source of the River Albany, the Commissaries of His Britannic Majesty insist that the French shall quit the said settlement, and that the fort, if there be any such building, shall be given up to the Company of English merchants trading in Hudson's Bay aforesaid.

The said Commissaries further demand that the subjects of His Most Christian Majesty shall not build forts, or found settlements upon any of the rivers which empty into Hudson's Bay, under any pretext whatsoever, and that the stream, and the entire navigation of all the said rivers,* shall be left free to the Company of English merchants trading into Hudson's Bay, and to such Indians as shall wish to traffic with them.

MR. BLADEN TO MR. DELAFAYE.

PARIS, November 11th, 1719, n.s.

On Wednesday last, my Lord Stair and I delivered to the Marechal d'Estrées the demand of the Hudson's Bay Company, with respect to their limits, and by comparing the inclosed, which is a copy of that demand, with the instruction upon this head, you will perceive the same has been fully comply'd with.*

So soon as I shall have the French Commissarys' answer to our demand, I shall likewise take care to transmit you a copy of it, to be laid before their Excellencies the Lord Justices.

Mr. Bladen
to Mr. Delafaye,
11th
November,
1719.

MR. PULTENEY TO MR. SECRETARY CRAGGS.

PARIS, May the 4th, n.s., 1720.

My Lord Stair has spoke to the Regent, who said immediately that the Conferences shall be renewed whenever we please; his Excellency then desired His Royal Highness would appoint a day,

Mr. Pulteney
to Mr. Sec.
Craggs, 4th
May, 1720.

*See the preceding paper.

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Proceedings
of Commis-
saries under
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Boundaries
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which he promised to do. This is what the Regent has promised my Lord Stair once every week, for four or five months past, without any effect, and His Excellency does not expect any more from the promise now, tho' possibly a Conference may be appointed for form sake. I have been here near six months, and have seen only one Conference, which was appointed by my Lord Stanhope's desire; I think there had been two Conferences before I came; at the first of them the Commissions were read, and at the second my Lord Stair and Mr. Bladen gave in a memorial about the limits of the Hudson Bay Company, to which no answer has been made. . . . I must own that I never could expect much success from this Commission, since the French interests and ours are so directly opposite, and our respective pretensions interfere so much with each other on the several points we were to treat about; but that the French have not been willing to entertain us now and then with a Conference, and try how far 10 we might be disposed to comply with any of the views they had in desiring the Commission, cannot, I should think, be accounted for, but by supposing they knew we came prepared to reject all their demands, and to make very considerable ones for ourselves. . . . I shall expect your further directions as to my stay or return; I cannot help owning I heartily wish for the latter, but I shall always submit to what His Majesty likes best, and shall only desire in this case that I may have a supply from the Treasury, since I have not had the good fortune to be concerned in either of the Misiseppis.

FRENCH MEMOIRS, 1719--20, RELATING TO THE LIMITS OF HUDSON'S BAY UNDER
THE TREATY OF UTRECHT. 20

EXTRACTS FROM TWO MEMOIRS OF M. D'AUTEUIL, RESPECTING THE LIMITS OF HUDSON'S BAY,
1719--20.

(Copies obtained from the Archives of the Department of Marine and the Colonies, Paris.)

FIRST MEMOIR.

French
memoirs re-
lating to
limits of
Hudson's
Bay, 1719-20:

* * * All these facts being laid down, of which my Lords the Commissaries will make such use as they may judge proper, I come to that which concerns the limits. On the supposition that it may be necessary, in virtue of the 10th Article of the Treaty of Utrecht, to cede to England Fort Bourbon, and all the other establishments which are on the shores of the Bay, I say:

1st. That it is well to remark that the English, in all the places of the said Bay and Streights which they have occupied, have always stopped at the border of the sea, carrying on trade with the 30 savages who went there to find them; whilst the French, from the foundation of the colony of Canada, have not ceased to traverse all the lands and rivers bordering on the said Bay, taking possession of all the places, and founding everywhere posts and missions.

2nd. They cannot say that any land, or river, or lake belongs to Hudson's Bay; because if all the rivers which enter into this Bay, or which communicate with it, belongs to it, it might be said that all M. D'Auteuil, first Memoir. New France belonged to them, the Saguenay and St. Lawrence communicating with the Bay by the Lakes.

That this being incontestable, it is for France to regulate the limits in this particular quarter (*à régler les limites de ce côté là*); and that of the little which she may cede, she will always cede that which is her own, as the English cannot pretend to anything except a very small extent of the country 40 adjoining the forts which they have possessed at the bottom of the Bay. Nevertheless their pretensions amount to nothing less than to overrun nearly all the north and west of New France, as they would also do on the south coast by extending the boundaries of Acadia as far as the Fort at Quebec, these being the propositions which the Commissaries named by the King of England have made, but which they have never signed.

[He then quotes the English claims as submitted by Lord Stair.]

The simple reading of these propositions renders it apparent that there can be no other response to make to them than to reject them absolutely, as not having any foundation which can support them. By what right indeed, and in virtue of what Treaty, do these gentlemen break the Treaty of Breda, 50 which placed our limits at the 60th parallel, in order to place them at the 49th, not only from the shores of the Bay which has been ceded to them, but stretching towards the west in every longitude. The

Treaty of Utrecht speaks only of restitution—let the English show that which the French have taken from them and they will restore it to them; but all that they demand beyond this, they demand without any appearance of right. Article 10 of the Treaty of Utrecht restores Hudson's Strait; why then wish that the boundary on this side should commence at the North Cape of Davis' Bay in the 56th degree of latitude, since this cape is more than 120 leagues from the Cape of Button's Island, at the 61st degree or thereabouts, which is the commencement of Hudson's Straits? This excessive claim would carry away a large portion of the land of Labrador, which France has not ceded.

The line of separation should then commence at Cape Bouton, pass through the middle of the territory which is between Port Rupert and Lake Nemiskau, of which Père Albanel, Jesuit, and Mr. de St. Simon, took possession in the name of the King, in 1672;† follow, at the same distance from the Bay, along the eastern side, in such manner as to divide in the middle the territory between the Lake of the Abitibis and Fort Monsipi or St. Louis; continuing, at a similar distance from the shores of the Bay, at the western side, until beyond the rivers of St. Thérèse and Bourbon.

That if on the territory which by these lines belongs to England, there should be found French settlements, they shall be destroyed; but those that may have been founded on our own lands shall be continued, each one being master of his own.

SECOND MEMOIR.

The 10th Article of the Treaty of Peace of Utrecht says, precisely, that the Strait and the Bay of Hudson shall be restored to England. Therefore, there does not appear any reason for the demand that the limits of the territory in question should commence at the North Cape of Davis' Bay, in 56° 30', north latitude, since this cape is more than 120 leagues from the Cape of Isle Bouton, close to the 61st degree or thereabouts, which is the commencement of Hudson's Straits, and this excessive claim which they demand, would carry away a great part of the lands of Labrador, which appertain to the Government of Canada, and which France has neither ceded nor intended to cede. Thus the commencement of the dividing line should be at Cape Bouton, which is the first cape that forms the entrance into Hudson's Straits, as is explained by the preceding memoir: this line should run to the middle of the territory between Fort Rupert and that of Nemisco, an old French post.

Further, their demand to draw a line from the North Cape of Davis' Bay as far as the Great Lake of the Mistassins, separating the said lake in two parts, has no more foundation, seeing that the King of France has never said that he would give any part of the lands appertaining to the Government of Canada, but that he would restore those which appertain to Hudson Bay; if the English pretend that the territory which they demand should come back to them, it will be for them to prove it.

To conclude, the English Commissaries, not content with wishing to have half of the Lake of the Mistassins, demand that the line shall continue as far as the 49th parallel of north latitude, and that from thence, there shall be drawn a line to the west along the said 49th parallel.

One cannot see upon what ground these gentlemen can authorize this pretension, and demand that France lose all the territory which is to be found between the 60th degree, which belongs to it by the Treaty of Breda, to the 49th degree, in every longitude discovered and to be discovered; this pretension also is a novelty, of which no mention is made in the Articles of the Treaty of Peace of Utrecht.

LAMOTHE-CADILLAC ON THE LIMITS, 1720.

(Copy obtained from the Department de la Marine, Paris.)

EXTRACT FROM A MEMOIR CONCERNING THE LIMITS OF ACADIA AND OF HUDSON'S BAY, GIVEN, IN 1720, TO THE DUKE OF ORLEANS, REGENT, BY THE SR. DE LAMOTHE DE CADILLAC, FORMERLY CAPTAIN IN CANADA, AND GOVERNOR OF MISSISSIPPI.

Lamothe has examined the 10th Article of the Treaty of Utrecht, and has remarked that there can be no contestation upon the word *restituera* (*shall restore*), because it is certain that where there has been no unjust possession there is no place for restitution.

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relating to
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M. D'Auteuil,
first Memoir.

M. D'Auteuil,
second
Memoir.

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Lamoignon
Cahillac,
1720.

The English have never possessed the lands that the French have at Hudson's Bay, therefore it is impossible for the King of France to restore them to them, for one cannot restore more than that which has been taken by usurpation.

The fact is, that at the time of the said Treaty of Utrecht, the French possessed one part of the Strait and Bay of Hudson, and the English possessed the other. It is very true that the King of France had, some time before, conquered the English part, and it [is] of this that it has been understood that restitution is to be made, that is to say to trouble them no more in their enjoyment; but with regard to the said lands possessed by the French in the said Bay, if they have previously belonged to the English, the King will bind himself in the same manner, to make restitution of them. But there must be a real and incontestable proof of proprietorship; and this the Crown of England cannot 10 produce.

THE TREATY OF AIX-LA-CHAPELLE, 1748.

Treaty of Aix-
La-Chapelle,
1748.

Art. V. All the conquests that have been made since the commencement of the present war, or, which, since the conclusion of the preliminary articles, signed the 30th April last, may have been or shall be made, either in Europe or the East and West Indies, or in any part of the world whatsoever, being to be restored without exception, in conformity to what was stipulated by the said preliminary articles, and by the declaration since signed, the high contracting parties agree to give orders immediately for proceeding to the restitution, as well as to the putting the Most Serene Infant Don Philip in possession of the states which are to be yielded to him by virtue of the said preliminaries, the said parties solemnly renouncing, as well for themselves as their heirs and successors, all rights and claims, by what title or 20 pretence soever, to all the states, countries, and places that they respectively engage to restore or yield; saving, however, the reversion stipulated of the states yielded to the Most Serene Infant Don Philip.

FRENCH MEMOIRS AND PAPERS, 1750-1761, RELATING TO THE LIMITS OF HUDSON'S BAY UNDER THE TREATY OF UTRECHT.

EXTRACTS FROM M. DE LA GALISSONNIÈRE'S MEMOIR ON THE FRENCH COLONIES IN NORTH AMERICA, DATED DECEMBER, 1750.*

French Mem-
oirs relating
to Hudson's
Bay, 1750-61;
Galissonnière
on French
Colonies,
1750.

Having treated of Canada in general, we consider ourselves bound to enter into some details respecting its different parts, and shall commence with those of the north.

Hudson's Bay, which was one of its most lucrative establishments, has been *ceded* to the English by the Treaty of Utrecht, under the denomination or title of *restitution*. They carry on a profitable 30 trade there, but the excessive cold and the difficulty of subsistence, will never permit them to form establishments there, capable of affording any uneasiness to Canada; and if the strength of the latter country be agumented, as proposed, it will possibly be in a condition, in the first war, to wrest Hudson's Bay from the English.

The Treaty of Utrecht had provided for the appointment of Commissioners to regulate the boundaries of Hudson's Bay; but nothing has been done in that matter. The term *restitution*, which has been used in the Treaty, conveys the idea clearly, that the English can claim only what they have possessed, and as they never had but a few establishments on the sea coast, it is evident that the interior of the country is considered as belonging to France.

EXTRACT FROM A MEMOIR, DATED APRIL, 1755, ON THE LIMITS BETWEEN FRANCE AND ENGLAND, AS 40 WELL IN SOUTHERN AS IN NORTHERN AMERICA.

(Copy obtained from the Archives of the Marine, Paris.)

Memoir,
April, 1755.

The 10th Article of the Treaty of Utrecht has stipulated in favour of England, the restitution of the Bay and Strait of Hudson, with the lands, seas, coasts, rivers and places which appertain to them.

* N. Y. Hist. Col., Vol. X., pp. 224-5.

As the English have never occupied more than the lower part and mouth of the rivers, it is to that portion that the restitution which has been made to them has been limited. There are no indications that the English Commissaries who have been named to receive this restitution, have demanded or required that the French should abandon the upper part of the rivers and the lakes which they have occupied of old, or of those more recently occupied, and whose waters, nevertheless flow into Hudson's Bay.

The French have therefore preserved the settlements which they had there, and which have always been regarded as forming part of Canada. It seems that, among others, they have some actually on the Lake of the Abbitibis, and on that of the Mistassins, the waters of which are shewn on some maps as falling into Hudson's Bay.

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French Me-
mours relating
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EXTRACTS FROM THE PRIVATE INSTRUCTIONS TO M. DE VAUDREUIL, DATED VERSAILLES 1ST APRIL 1755.†

By Article 10 of the Treaty of Utrecht, it had been agreed that Commissioners should be named on both sides, to settle the boundaries between the French and British American colonies.

On occasion of an expedition that the English fitted out in 1718, against the fishing posts which the French had in the Islands of Canso, the two Courts did, in fact, nominate Commissioners to decide the property of these islands. The Commissioners met at Paris. At the very first conference, those of the King of England, who claimed that the Islands of Canso were dependent on Acadia, which was ceded to the English by the Treaty of Utrecht, were convinced, on inspecting the map which they presented themselves, that those islands were, on the contrary, included in the reserves expressed in the Article of the Treaty of Utrecht containing the cession of Acadia, and that, consequently, France had retained the property thereof. They withdrew, saying they required new instructions from their Court, and did not again make their appearance. Although there had been question on different occasions that since presented themselves, of naming other Commissioners in execution of the Treaty, the English had always eluded it until the last war; and *Sieur de Vaudreuil* is better informed than any person how they abused the moderation which had always governed his Majesty's proceedings and views, since he has been a witness of their unceasing usurpations, on the Territory of Canada, during the long peace which followed the Treaty of Utrecht.

Private In-
structions to
M. Vaudreuil,
1 April, 1755.

His Majesty did flatter himself that he should eventually succeed in placing bounds to their enterprises, and securing tranquillity to his colonies, by a definite fixation of the respective limits.

In consequence of the last Treaty of Aix-la-Chapelle, whereby that of Utrecht has been renewed Commissioners have been named on both sides, and did meet at Paris, to regulate all the disputes concerning the French and British possessions.

But whatever earnestness and facilities His Majesty had lent to this settlement, the success of the labour of these Commissaries is far from corresponding, up to the present time, to the hopes he had entertained thereof, from the dispositions his Britannic Majesty had caused to be evinced in that regard.

As yet the Commissioners have not entered upon the limits of Canada, further than what regards Acadia. * * *

They [the English] have not yet explained themselves respecting the extent they propose giving their Hudson Bay boundaries. But it is to be expected that they will wish to stretch them to the centre of the Colony of Canada, in order to enclose it on all sides.

However that be, His Majesty is firmly resolved to maintain his rights and his possessions against pretensions so excessive and so unjust; and whatever be his love for peace, will not make for its preservation any sacrifices, but those which will accord with the dignity of his Crown, and the protection he owes to his subjects.

Such is the principle on which his Ambassador at the Court of England has orders to labour in a negotiation that has been entered into with that Court, for the termination of all those differences, by

† N. Y. Hist. Col., Vol. 10, pp. 290-3.

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a provisional or definitive treaty; and it is also on that principle that His Majesty wills that Sieur de Vaudreuil do regulate his conduct, in relation to these objects, until the issue of that negotiation, whereof His Majesty will have him informed.

He is, in consequence, to be on his guard against all attempts the English might make against His Majesty's possessions; carefully to avoid affording them any just cause of complaint; to act on occasions wherein there may possibly be acts of violence, in such a manner that he might not appear the aggressor; and to confine himself to the adoption of all possible measures to enable him to repel force by force.

His Majesty's intention is, in fact, that he confine himself to a strict defensive, so long as the English will not make any attack, which is to be regarded as a rupture on their part. 10

If, to ensure this defensive, he considers it necessary to make the Indians act offensively against the English, he will be at liberty to have recourse to that expedient.

But His Majesty desires that he do not determine on that course, except so far as the conduct of the English will render it indispensable for the safety and tranquillity of his government.

Supposing, in the mean time, that, notwithstanding what ought to be naturally expected from the equitable and pacific dispositions whereof the King of Great Britain does not cease to give assurances hostilities on the part of England should reach the point that they must be regarded as a rupture he should not, in that case, confine himself to a simple defensive, and His Majesty wills that, in such contingency, he makes use of all the powers that have been confided in him, for the operations which will be best adapted to the good of his service and the glory of his arms. 20

As these operations must depend on circumstances, His Majesty relies on Sieur de Vaudreuil's zeal and prudence, and experience for undertaking those that will appear to him the most advantageous and the most honourable. He recommends only to him to observe, in the selection of those that he will think he can undertake, to give the preference to such as will have for object the English posts that can be wholly destroyed,—such as that of Choueguen, and even Fort Beaubassin; or will deserve to be preserved, after he shall have become master of them, either for the purpose of increasing the colony of Canada, as would be the case with Acadia; or of being used for exchange, according to the circumstances which will possibly occur or happen, whenever there will be question of a peace, and such would be the capture of Hudson's Bay.

But before coming thus to operations of an open war, His Majesty desires that Sieur de Vaudreuil 30 do assure himself that the English will have in fact committed absolute hostilities, either against the French settlements or forts of Canada, or against some other colonies, or at sea.

In this category may be regarded the usurpations they will possibly attempt on the *unsettled lands of Canada*, and on which they have undertaken to set up unfounded pretensions. His Majesty's intention meanwhile is, that so long as they will confine themselves to operations of that sort, Sieur de Vaudreuil do content himself with opposing them, and even employ force for that purpose, only after he has protested and made the summons which time and circumstances will have possibly permitted. And in this regard, His Majesty is very glad to enter into a fuller explanation of the pretensions of the English, in order to enable Sieur de Vaudreuil to act more understandingly, on occasions relative thereto. 40

Independent of the Hudson Bay boundary, of which there has, as yet, been no question with the English, their pretensions, as has been already observed, have for object, to extend the limits of Acadia, on one side as far as the south shore of the River St. Lawrence, and, on the other, as far as the frontiers of New England; to include in those of Virginia the lands that reach to Lake Erie, and those of the Beautiful River (Ohio), and to penetrate into the Lakes of Canada; so that in this system they would wrest from the French all the posts the latter possess south of the River St. Lawrence; and the colony of Canada would find itself reduced to those they have on the north of that river, and wherein it would be soon crippled, in consequence of the extension the English will not fail to desire to give the Hudson's Bay boundary.

[THE DUC DE CHOISEUL, in 1761, referring to the same boundaries of Hudson's Bay, says 50 "Nothing was done."]

CAPITULATION OF MONTREAL AND SURRENDER OF CANADA TO THE BRITISH, 1760.*

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Britain and
France.*M. De Vaudreuil to Gen.
Amherst, 7
Sept., 1760.

THE MARQUIS DE VAUDREUIL TO GENERAL AMHERST.*

I have received the letter with which your Excellency has honoured me this day, as well as the answer to the Articles which I had caused to be proposed to you by Mr. Bougainville. I send the said Colonel back to your Excellency; and I persuade myself, that you will allow him to make, by word of mouth, a representation to your Excellency, which I cannot dispense with myself from making.

GENERAL AMHERST TO THE MARQUIS DE VAUDREUIL.*

Major Abererombie has this moment delivered to me the letter with which your Excellency has honoured me, in answer to that which I had addressed to you, with the conditions on which I expect 10 Canada shall surrender: I have already had the honour to inform your Excellency, that I should not make any alteration in them. I cannot deviate from this resolution. Your Excellency will therefore be pleased to take a determination immediately, and acquaint me in your answer, whether you will accept them or not.

Gen. Amherst
to M. De Vau-
dreuil, 7
Sept., 1760.

ARTICLES OF CAPITULATION,

BETWEEN THEIR EXCELLENCIES MAJOR GENERAL AMHERST, COMMANDER-IN-CHIEF OF HIS BRITANNIC MAJESTY'S TROOPS AND FORCES IN NORTH AMERICA, ON THE ONE PART, AND THE MARQUIS DE VAUDREUIL, ETC., GOVERNOR AND LIEUTENANT-GENERAL FOR THE KING IN CANADA, ON THE OTHER. †

Art. 3. The troops and militia who are in garrison in the fort of Jacques Cartier, and in the Island 20 of St. Helen, and other forts, shall be treated in the same manner, and shall have the same honours; and these troops shall go to Montreal, or the Three Rivers or Quebec; to be there embarked for the first sea port in France, by the shortest way. The troops, who are in our posts, situated on our frontiers, on the side of Acadia, at Detroit, Michilimackinac and other posts, shall enjoy the same honours, and be treated in the same manner. . . . "All these troops are not to serve during the present war, and shall likewise lay down their arms, the rest is granted."

Articles of
Capitulation,
8 Sept., 1760.

Art. 7. The Magazines, the artillery, firelocks, sabres, ammunition of war, and, in general every thing that belongs to his most Christian Majesty, as well in the towns of Montreal and Three Rivers, as in the forts and posts mentioned in the Third article, shall be delivered up, according to exact inventories, to the commissaries who shall be appointed to receive the same in the name of his Britannic 30 Majesty. Duplicates of the said Inventories shall be given to the Marquis de Vaudreuil.—"This is every thing that can be asked on this article."

Art. 25. A passage to France shall likewise be granted, on board of his Britannic Majesty's ships, as well as victuals, to such officers of the Indian Company as shall be willing to go thither, and they shall take with them their families, servants and baggage. The Chief agent of the said Company, in case he should chuse to go to France, shall be allowed to leave such person as he shall think proper till next year, to settle the affairs of the said Company, and to recover such sums as are due to them. The said Chief agent shall keep possession of all the papers belonging to the said Company, and they shall not be liable to inspection.—"Granted."

Art. 26. The said Company shall be maintained in the property of the Ecarlatines, and Castors 40 which they may have in the Town of Montreal; they shall not be touched under any pretence whatever, and the necessary Licences shall be given to the Chief Agent, to send this year his Castors to France, on board his Britannic Majesty's ships, paying the freight on the same footing as the British would pay it.—"Granted," with regard to what may belong to the "Company, or to private persons; but if his most Christian Majesty has any share in it, that must become the property of the King."

* Smith's History of Canada, p. 360.

† *Ibid.*, pp. 362-371.

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Capitulation,
8th Sept.,
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Art. 27. The free exercise of the Catholic, Apostolic, and Roman Religion, shall subsist entire, in such manner that all the states and the people of the towns and countries, places and distant posts, shall continue to assemble in the churches, and to frequent the sacraments as heretofore, without being molested in any manner, directly or indirectly. These people shall be obliged, by the English Government, to pay their Priests the tithes, and all the taxes they were used to pay under the Government of His Most Christian Majesty.—“Granted, as to the free exercise of their Religion, the obligation of paying the tithes to the Priests will depend on the King’s pleasure.”

Art. 37. The Lords of Manors, the Military and Civil officers, the Canadians, as well in the Towns as in the country, the French settled or trading in the whole extent of the Colony of Canada, and all other persons whatsoever, shall preserve the entire peaceable property and possession of the goods, noble and ignoble, moveable and immoveable, merchandizes, furs and other effects, even their ships; they shall not be touched, nor the least damage done to them, on any pretence whatever. They shall have liberty to keep, let or sell them, as well to the French as to the British; to take away the produce of them in Bills of exchange, furs, specie or other returns, whenever they shall judge proper to go to France, paying their freight, as in the 26th Article. They shall also have the furs which are in the posts above, and which belong to them, and may be on the way to Montreal; and for this purpose they shall have leave to send, this year, or the next, canoes fitted out, to fetch such of the furs as shall have remained in those posts.”—Granted, as in the 26th Article.”

Art. 39. None of the Canadians, Acadians, or French, who are now in Canada, and on the frontiers of the Colony, on the side of Acadia, Detroit, Michilimackinac, and other places and posts of the 20 countries above, the married and unmarried soldiers remaining in Canada, shall be carried or transported into the British Colonies, or to Great Britain, and they shall not be troubled for having carried arms.—“Granted, except with regard to the Acadians.”

Art. 46. The Inhabitants and Merchants shall enjoy all the privileges of trade, under the same favours and conditions granted to the subjects of his Britannic Majesty, as well in the countries above as the interior of the Colony.—“Granted.”

Done at Montreal, the 8th of September, 1760.

VAUDREUIL.

Granted except what regards the Acadians. Done in the Camp before Montreal, the 8th September, 1760.

JEFFERY AMHERST.

CORRESPONDENCE BETWEEN GENERALS AMHERST AND HALDIMAND, AND LETTER OF THE MARQUIS DE VAUDREUIL, RESPECTING THE SURRENDER OF CANADA, 1761-2.

M. DE VAUDREUIL TO THE DUC DE CHOISEUL.

October 30, 1761.

MY LORD,—I was astonished to see, by the historical account of the Memorial of the negotiations between France and England, what I am charged with by the English, with regard to the limits of Canada, as it is entirely false and groundless. I shall give your Grace a true account of what passed between Mr. Amherst and me on that head. When I capitulated, I traced no limits whatever, and in all the messages that passed between the English General and me, I made use of the word “Canada” only. Eight or ten days after the surrender of the country, he sent an officer to me for maps, to inform him of the extent of the colony. I returned for answer, that I had none, my maps having been taken away with my baggage at Quebec, in breach of the capitulation of that place; and the officer then showing me a map which he had in his hand, I told him the limits marked on it were not just and verbally mentioned others, extending Louisiana, on one side, to the carrying place of the Miamis, which is the height of the lands whose rivers run into the Ouabache, and on the other, to the head waters of the Illinois.

What I have the honour to tell you, my lord, is strictly true; I am not afraid that the English can produce any proof of the contrary—for nothing passed in writing, on this head, nor was any line

drawn on any map. I take the first opportunity to acquaint you with this, to prevent any further imposition.

GENERAL AMHERST TO COL. HALDIMAND.*

NEW YORK, 1st Nov., 1762.

DEAR SIR,—I have been twenty times at the point of writing to you on a subject which, though of no consequence, I should be glad to know the exact transactions that passed. When I made a report of Canada to the Secretary of State, I transmitted a copy of the part of the map where the limits between Canada and Louisiana were marked, which you delivered to me, and which I acquainted the Secretary of State were done by M. de Vaudreuil. Whether by him, or done in his presence by his
10 direction, comes to the same thing, and the thing itself is of no sort of consequence, as the letter and orders he (Monsieur de Vaudreuil) sent to the officers commanding at Michilimackinac, the Bay, Occi-
20 atation, Miamis, etc., mark out the boundaries and expressly include those posts in Canada, so that there can be no dispute about it; yet as I see some alteration has passed in England and France about Monsieur de Vaudreuil's giving the boundaries, I should be glad to know whether he marked the map himself, or whether it was done in his presence, and what passed on that subject; that I may hereafter be able to say all that was done regarding the whole affair.

I am, with great truth, dear sir,

Your most obedient, humble servant,

JEFF. AMHERST.

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Sec. VI.

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Conventions—
(1) Great
Britain and
France.

Gen. Amherst
to Col. Haldi-
mand, 1st
Nov., 1762.

20

COL. HALDIMAND TO GENERAL AMHERST.†

THREE RIVERS, 10th December, 1762.

DESPATCHED 16th do.

SIR,—I have received with pleasure the letter your Excellency did me the honour of writing on the first of December, respecting what passed between Mons. de Vaudreuil and myself on the subject of the limits of Canada. Several times I thought of forestalling it, but I deemed myself obliged to await these orders, to which I intend to conform with all the exactness possible.

About five or six days after I had entered Montreal I asked M. de Vaudreuil if he had no plans, memoirs, or instructive maps concerning Canada. I asked him to let me have them in order that I might forward them to your Excellency; he replied that he had none, having lost them all at Quebec
30 and (to avoid hearing the enumeration he wished to make of his other losses), I contented myself for the time with this reply; but having occasion to speak of it again some days after, he told me that he had found a couple of maps, and passing into another room he had a large map of Western America brought; it was made by hand and folded in the cover of an atlas. There were also some bad plans of forts in a separate roll. Not finding anything instructive on this map, and remembering that I had seen it printed, I called Lieutenant Herring of our battalion, who was in the parlour, and I gave it to him with the other papers which he took to my house. Finally, on the morning of the day that Mons. de Vaudreuil left † [being engaged arranging the rest of the papers I had received from different persons] this map came under my notice and reminded me of the vain attempts I had made to discover from him and from others the extent of this country, and gave birth to the idea of examining it with M. de
40 Vaudreuil. I immediately went to him, getting Ensign Monin to carry the map. I found M. de Vaudreuil, with several members of his household, in the room that overlooks the street; [after having paid my respects] I begged him without any other preamble to be kind enough to show me the limits [that separated] of Canada, [from Louisiana] and conducting him towards the table which was at the end of the room, I opened the map, and after examining it a few moments, I reiterated my request. He appeared very much surprised, and as he did not answer me I passed my finger along the Illinois river, saying: Here is the Illinois. Then he replied that the Illinois had been contested by the two Governors, but that it had been decided they should belong to Louisiana, upon which I took a pencil out of my pocket, and resting my elbows on the map, while M. de Vaudreuil stood beside me, [I marked

Col. Haldi-
mand to Gen.
Amherst,
10th Dec.,
1762.

* Report of Committee, Ho. Coms. (Canada), p. 232. † *Ibid.*, pp. 233-4.

† This and the other portions within brackets thus, [] appear in the original as having been effaced by Haldimand.

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A spot at the source of the Illinois, and showing him the north, I asked if the line passed that, and having said yes] I asked him, showing him the north of the Mississippi, if the line passed that; and he having said yes, I marked the points from the source of the Illinois, returning up the Mississippi; and asking him once again if I marked correctly, he answered me in these words, (he, M. le Marquis de Vaudreuil, having his eyes fixed upon the map) "*take all the north, take all the north.*" Then I pointed to Red Lake, which seemed to me the natural limit, without his making the slightest objection; after which I returned on the other side of the Illinois, and not fancying that Loio could even be contested, I said to him, Here we undoubtedly take the mouth of the Wabache; and putting my pencil on the confluence of the Loio and the Mississippi, I traced a line, again coming up this first river and the Wabache, and joining the point where I had [marked] commenced at the source of the Illinois, M. de 10 Vaudreuil still stood beside me and looked at the map without making any objection [whatsoever.] This line through its different windings, though made off-hand, (with a simple tracing of the pencil) still gave him plenty of time. But whether being occupied with his departure he said yes, indifferently, [or supposing that what I had been doing was of no consequence, he was careless] and without giving it the necessary attention, [and having said yes too lightly, the account] or that in giving a tacit approbation, he sought to give me an erroneous impression—the account which I have related to you, sir, is none the less [exact] the most exact truth.

M. de Vaudreuil, and all the French who remained at Mont Real, were to leave this [morning] day. The companies of militia having assembled to give up their arms, and to take the oath of allegiance, I had no time to [lose] examine this map, and as I thought I understood what was meant by the name of 20 Canada, and that the line was well marked, I closed the map and sent it home by Ensign Monin. Finally, sir, you may rest assured that the map which you have in your hands is the same that was given to me by M. de Vaudreuil eight or ten days after the taking of Mont Real, and that Lieutenant Herring, who is, I believe, at New York [received from my hand in his room to carry] carried to my house; that it is the same map that was brought back by Ensign Monin to M. de Vaudreuil on the morning of his departure; and that when I opened it in his room, there were neither lines, nor marks nor anything to designate the limits; that the line which now marks them has been traced solely by myself under the eyes of M. de Vaudreuil, to whom alone I addressed myself; and by all that he told me, I never for a moment doubted that he gave me this line as the true limits of Canada; and that from the moment I closed this map in his room until I remitted it to your hands, there has been no 30 alteration of any kind whatsoever made in this line.

This, sir, is, on my word, the simple truth of this transaction.

I must own to you, sir, that being convinced that you would ask for intelligence at an earlier date (of the extent of a country which, I believe, never had any fixed limits) of an authentic Act made in virtue of the capitulation, I did not think it seemly to have the map signed by M. de Vaudreuil, which would have been as easy a matter as to make him give me the limits of Canada in writing, which he could not have refused to do in virtue of the capitulation, and which would have rendered this act incontestable; whilst having no signature to show, he can always make his party believe that we tried 30 to over-reach him.

If I have misunderstood Your Excellency, I am very sorry, and make my apologies; and when I 40 sent the map to Your Excellency, and told you that the limits had been drawn by M. de Vaudreuil, I meant that they had been drawn under his own eyes and received his approbation, which is true to the letter.

I am further much pleased that [this disagreement] this ugly piece of chicanery of M. de Vaudreuil does not prejudice our affairs in the slightest; but, on the other hand, it has given me a good lesson which I will remember, if at any future time I am fortunate enough to be able to put it into practice.

I have, Sir,

the honour to be,

with profound respect,

Your Excellency's most humble and most obedient servant,

FRED. HALDIMAND.

50

10th Xbre.

GENERAL AMHERST TO GENERAL HALDIMAND.*

NEW YORK, 25th January, 1763.

DEAR SIR—I am much obliged to you for the particular and exact detail you have sent to me of what passed between yourself and Monsieur de Vaudrenil. It is almost precisely as I imagined. It is of no consequence whatever; but if it was, there could be none but good proceeding from what you did in that affair, which has my thorough approbation to every part of it.....

I am, with great truth, dear Sir,

Your most obedient humble servant,

JEFF. AMHERST.

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France.Gen. Amherst
to Gen.
Halifax,
25th Jan.,
1763.

10

NEGOTIATIONS FOR THE CESSION OF CANADA, 1761.

MEMORIAL OF FRENCH PROPOSITIONS, 15TH OF JULY, 1761.

I. The King cedes and guarantees Canada to the King of England, such as it has been, and in right ought to be possessed by France, without restriction, and without the liberty of returning upon any pretence whatever against this cession or guaranty, and without interrupting the Crown of England in the entire possession of Canada.

Negotiations
for cession of
Canada, 1761:

II. The King, in making over his full right of Sovereignty over Canada to the King of England, annexes four conditions to the cession:

First.—That the free exercise of the Roman Catholic religion shall be maintained there, and that the King of England will give the most precise and effectual orders that his nev. Roman Catholic subjects may, as heretofore, make public profession of their religion, according to the rights of the Roman Church.

Secondly.—That the French inhabitants or others, who have been subjects of the King in Canada may retire into the French colonies with all possible freedom and security; that they may be allowed to sell their effects and to transport their property as well as their persons, without being restrained in their emigration, on any pretence whatever (except for debt); and the English Government shall engage to procure them the means of transportation at as little expense as possible.

French Pro-
positions,
15th July,
1761.

Thirdly.—That the limits of Canada, with regard to Louisiana, shall be clearly and firmly established, as well as those of Louisiana and Virginia, in such manner that after the execution of peace there may be no more difficulties between the two nations on the interpretation of the limits relative to Canada, or the other possessions of England.

[N.B.—M. Bussy has a memorial on the subject of the limits of Louisiana, which gives him power to come to a final treaty on that article with the Ministry of his Britannic Majesty.†]

Fourthly.—That the liberty of fishing, and of drying their codfish may, on the banks of Newfoundland, be confirmed to the French as heretofore; and as this confirmation would be illusory if French vessels had not a shelter in those parts appertaining to their nation in these countries, the King of Great Britain, in consideration of the guaranty of his new conquests, shall restore Isle Royal, or Cape Breton, to be enjoyed by France in entire sovereignty. It is agreed to fix a value on this restitution, that France shall not, under any denomination whatever, erect any fortifications on the island, and shall confine herself to maintaining a civil establishment there, and the port, for the convenience of the fishing vessels landing there.

PRIVATE MEMORIAL OF FRANCE, OF JULY 15, 1761, RELATING TO SPAIN.

[The Duc de Choiseul proposes that Spain should be invited to guarantee the future Treaty of Peace. And he says:]—

The King will not disguise from His Majesty, that the differences of Spain with England fill him

Private
French
memorial,
July 15, 1761.

* Report of Committee, Ho. Cons. (Canada), 1880, p. 235.

† Note by the Duc de Choiseul.

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with apprehensions, and give him room to fear that, if they are not adjusted, they will occasion a fresh war in Europe and America. The King of Spain has communicated to his Majesty the three Articles which remain to be discussed between his Crown and the Crown of Britain, which are . . .

1. The restitution of some captures which have been made during the present war upon the Spanish Flag.
2. The privilege for the Spanish nation to fish upon the Banks of Newfoundland.
3. The demolition of the English settlements made upon the Spanish territories in the Bay of Honduras.

FROM M. BUSSY'S NOTE TO MR. PITT.

M. Bussy to
Mr. Pitt.

Since the Memorial of the Propositions from France was formed, and at the instant that the 10 courier was ready to set out for London, the King received the consent of the Empress-Queen to a separate peace with England, but upon two conditions:

1. To keep possession of the countries belonging to the King of Prussia.
 2. That it shall be stipulated that the King of Great Britain, neither in his capacity of King or Elector, shall afford any succour, either in troops or of any kind whatever, to the King of Prussia; and that His Britannic Majesty will undertake that the Hanoverian, Hessian, Brunswickian, and other auxiliaries in alliance with Hanover, shall not join the forces of the King of Prussia, in like manner as France shall engage on her part not to yield succour of any kind to the Empress-Queen nor her allies.
- Both these conditions appear so natural and equitable in themselves, that His Majesty could not do otherwise than acquiesce in them, and he hopes that the King of Great Britain will be ready to adopt 20 them.

FROM MR. PITT'S LETTER TO M. BUSSY.

July 24, 1761.

Mr. Pitt to M.
Bussy, July
24, 1761.

It is my duty to declare further to you in plain terms, in the name of His Majesty, that he will not suffer the disputes with Spain to be blended in any manner whatever in the negotiation of peace between the two Crowns; to which I must add, that it will be considered an affront to His Majesty's dignity, and as a thing incompatible with the sincerity of the negotiation, to make further mention of such a circumstance.

Moreover it is expected that France will not at any time presume a right of intermeddling in such disputes between Great Britain and Spain. These considerations, so just and indispensable, have 30 determined His Majesty to order me to return you the Memorial which occasions this, as wholly inadmissible.

I likewise return you, Sir, as totally inadmissible, the Memorial relative to the King of Prussia, as implying an attempt upon the honour of Great Britain, and the fidelity with which His Majesty will always fulfil his engagement with his allies.

BRITISH ANSWER TO MEMORIAL OF FRENCH PROPOSITIONS.

British answer
to French
propositions,
27th April,
1761.

[On the 27th of July, 1761, the answer of the British Court to the Memorial of French propositions was forwarded to Mr. Hans Stanley, the English Envoy at Paris. The first two relate to Canada.]

1. His Britannic Majesty will never recede from the entire and total cession, on the part of France without any new limits, or any exception whatever, of all Canada with its appurtenances; and His Majesty will never relax, with regard to the full and complete cession on the part of France, of the Isle of Cape Breton, and of the other islands in the Gulf and River of St. Lawrence, with the right of fishing which is inseparably incident to the possession of the aforesaid coasts, and of the canals or straits which lead to them.

2. With respect to fixing the limits of Louisiana with regard to Canada, or the English possessions situate on the Ohio, as also on the coast of Virginia, it never can be allowed that whatever does not belong to Canada shall appertain to Louisiana, nor that the boundaries of the last Province shall extend to Virginia, or to the British possessions on the borders of the Ohio; the nations and countries which lie intermediate, and which form the true barriers between the aforesaid Provinces, not being proper, on any account, to be directly or by necessary consequence ceded to France, even admitting them to be included in the limits of Louisiana. * * *

10. The demand of the restitution of the captures at sea before the declaration of war cannot be admitted, such a claim not being founded on any particular convention, and by no means resulting from the law of nations, as there is no principle more incontestable than this, viz. that the absolute right of all hostile operations does not result from a formal declaration of the war, but from the hostilities which the aggressor had first offered.

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swer to
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FROM THE ULTIMATUM OF FRANCE IN REPLY TO ENGLAND, AUGUST 6, 1761, REMITTED BY THE
DUC DE CHOISEUL TO MR. STANLEY.

The King renews the declaration which he made to His Britannic Majesty, to the Memorial of Propositions for Peace, which has been transmitted to Mr. Stanley, and to which the Court of England has given no answer, either by word of mouth or in writing. His Majesty again declares that if the negotiation entered into at London and Paris for the re-establishment of peace between the two Crowns has not the desired success, all the articles agreed to in that negotiation by France cannot be represented, 20 on any occasion, as settled points, any more than the Memorial of the month of March last, relative to the *Uti possidetis*.

I. The King consents to cede Canada to England in the most extensive form, as specified in the Memorial of Propositions, but His Majesty will not receive from the conditions which he has annexed to the said Memorial, relative to the Catholic religion, and to the power, facility, and liberty of emigration for the ancient subjects of the King. With regard to the Fishery in the Gulf of St. Lawrence the King means to maintain the immemorial right which his subjects have of fishing in the said Gulf; and of drying their fish on the banks of Newfoundland, as it was agreed by the Treaty of Utrecht. As this privilege would be granted in vain if the French vessels had not some shelter appertaining to France in the Gulf, His Majesty proposed to the King of Great Britain the restitution of the Island of Cape 30 Breton; he again proposes either that Island, or St. John [Prince Edward], or such other port, without fortifications, in the Gulf, or within reach of the Gulf, which may serve the French as a shelter, and secure to France the liberty of fishing, from whence his Majesty has no intention to recede.

II. The King has, in no part of his Memorial of Propositions, affirmed that all which did not belong to Canada, appertained to Louisiana; it is even difficult to conceive such an assertion could be advanced. France, on the contrary, demands that the intermediate nations between Canada and Louisiana, as also between Virginia and Louisiana, shall be considered as neutral nations, independent of the Sovereignty of the two Crowns, and serve as a barrier between them. If the English Minister would have attended to the instructions of M. Bussy on this subject, he would have seen that France agreed with England as to this proposition.

French Ulti-
matum, 6th
August, 1761.

MR. PITT TO M. BUSSY.

August 15th, 1761.

It belongs, Sir, to Europe, to judge whether this is the Court which has shown an aversion to peace, or whether it is not that which, after so many variations and delays on her part, arbitrarily continues to insist on objects in America, which we have a right to by the *Uti possidetis*, and which would make a direct attempt on the essential right of our conquests in Canada and its appurtenances in the Gulf of St. Lawrence; which, in Germany, not only refuses to give up her conquests, gained over His Majesty's allies, as a just compensation for the important restitutions with which His Majesty is willing to accommodate France, but even pretends to impose an obligation on His Majesty not to fulfil the

Mr. Pitt to
M. Bussy,
15th August,
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engagements of his Crown towards the King of Prussia; which, moreover, not satisfied with throwing so many obstacles in the way of peace, has not scrupled to interpose new perplexities in opposition to this precious blessing, for which the nation sighs, by intermixing, too late, matters so foreign to the present negotiation between the two Crowns as the discussions between Great Britain and Spain.

FROM THE ANSWER OF THE BRITISH MINISTER TO THE ULTIMATUM OF FRANCE, DELIVERED TO
M. BUSSY.

August 16th, 1761.

His most Christian Majesty having repeatedly declared, in the *ultimatum* of the Court of France, remitted to Mr. Pitt by M. Bussy, as well as in the Memorial of the propositions of Peace, which was remitted by the Duke de Choiseul to Mr. Stanley, that if the negotiation entered into between the two Crowns has not the desired effect, all the articles conceded in that negotiation by France cannot be considered in any case as points agreed upon, any more than the memorial of the month of March last, in relation to the *Uti possidetis*. The King declares, in return, that if the concessions His Majesty has made to bring about peace shall not be accepted by his Most Christian Majesty, the important restitutions offered to France, as well as the other circumstances hereinafter expressed, cannot for the future be considered as given up.

ARTICLE I.—The King will not desert his claim to the entire and total cession of all Canada and its dependencies, without any limits or exceptions whatever; and likewise insists on the complete cession of the Island of Cape Breton, and of other islands in the Gulf and River St. Lawrence.

Canada, according to the lines of its limits traced by the Marquis de Vaudreuil himself, when that Governor surrendered the said Province, by capitulation, to the British General, Sir J. Amherst, comprehends on one side the Lakes Huron, Michigan, and Superior; and the said line, drawn to Red Lake, takes in, by a serpentine progress, the River Onabach, [Wabash], as far as its junction with the Ohio, and from thence extends itself along the latter river as far, inclusively, as its influx into the Mississippi.

It is in conformity to this state of the limits made by the French Governor, that the King claims the cession of Canada; a Province which the Court of France, moreover, has offered anew by their *ultimatum* to cede to His Britannic Majesty, in the most extensive manner, as expressed in the Memorial of Propositions of Peace of 13th July.

As to what concerns the public profession and exercise of the Roman Catholic religion in Canada, the new subjects of His Britannic Majesty shall be maintained in that privilege without interruption or molestation; and the French inhabitants or others, who may have been subjects of the most Christian King in Canada, shall have full power and liberty to sell their effects, provided they dispose of them to the subjects of His Britannic Majesty, and to transport their property, as well as their persons without being restrained from their emigration, under any pretence whatever (unless in case of debt, or for a breach of criminal laws); it being always understood that the time granted for the said emigration shall be limited to the space of one year, to be computed from the day of the ratification of the Definitive Treaty.

ARTICLE II.—As to what respects the line to be drawn from Rio-Perdido, as contained in the note remitted by M. Bussy, of the 18th of this month, with regard to the limits of Louisiana, His Majesty is obliged to reject so unexpected a proposition, as by no means admissible in two respects.

1. Because the said line, under colour of fixing the limits of Louisiana, annexes vast countries to that Province, which, with the commanding posts and forts, the Marquis de Vaudreuil has, by the most solemn capitulation, incontestably yielded into the possession of His Britannic Majesty, under the description of Canada, and that consequently, however contentious the pretensions of the two crowns may have been before the war, and particularly with respect to the course of the Ohio, and the territories in that part, since the surrender of Canada, and the line of its limits has been traced, as aforesaid, by the Marquis de Vaudreuil, all those opposite titles are united, and become valid without contradiction, to confirm to Great Britain, with all the rest of Canada, the possession of those countries on that part of Ohio which have hitherto been contested.

2. The line proposed to fix the bounds of Louisiana cannot be admitted, because it would compromise in another part, on the side of the Carolinas, very extensive countries and numerous nations, who have always been reputed to be under the protection of the King, a right which His Majesty has no intention of renouncing; and then the King, for the advantage of peace, might consent to leave the intermediate countries under the protection of Great Britain, and particularly the Cherokees, the Creeks, the Chicosaus, the Chactaws, and another nation, situate between the British settlements and the Mississippi.

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16th
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ARTICLE IV.—The important privilege granted by the 13th Article of the Treaty of Utrecht, under certain limitations and restrictions, to the subjects of France, for fishing and drying their codfish on a certain part of the Banks of Newfoundland, has not been refused by Great Britain, but connected with a reciprocal satisfaction on the part of France, with regard to the indispensable object of Dunkirk, which the King has required, and still requires; it is, therefore, on condition that the town and Port of Dunkirk shall be put in the condition it ought to have been in by the last Treaty of Aix la Chapelle, that His Majesty consents to renew to France the privilege of fishing and of drying their fish, by virtue of the Treaty of Utrecht, upon the aforesaid district of Newfoundland.

H. STANLEY.

FROM THE LAST MEMORIAL OF FRANCE TO ENGLAND, DATED SEPTEMBER 9, DELIVERED TO
MR. PITT BY M. BUSSY, SEPT. 13, 1761.

The King accepts the declaration of the King of England contained in the preamble of the 20 answer, and renews that which he before made to His Majesty on this head, in such manner that it is concluded between the two Courts finally and without ambiguity, that if peace is not the result of the present negotiation, all that has been said, written and negotiated between the two Crowns, since the memorial of the 26th March inclusive, to the moment of the rupture, shall be void and of no effect, and shall not be brought as an argument in favour of either of the parties in any future negotiation of peace.

*Memorial—
France to
England—
9th Sept.,
1761.*

ARTICLE I.—The King has declared in his first memorial of propositions, and in his *ultimatum* that he will cede and guarantee to England the possession of Canada, in the most ample manner. His Majesty still persists in that offer, and without discussing the line of its limits marked on a map presented by Mr. Stanley,—as that line, on which England rests its demands, is without doubt the 30 most extensive bound which can be given to the cession,—the King is willing to grant it.

His Majesty has annexed four conditions to his guaranty; it seems that England agrees to them; only the King conceives that the term of one year for the sale of the French effects and for emigration is too short, and his Majesty desires that it may be agreed to extend the term of one year to eighteen months at least.

As the Court of England has added to the first article of its answer to the entire and total cession of Canada, as agreed between the two Courts, the word *dependencies*, it is necessary that she should give a specific explanation of this word, that the cession might not in the end occasion difficulties between the two Courts with regard to what she understands by the word "dependencies."

ARTICLE II.—The first paragraph, with regard to the limits of Louisiana, contained in the second 40 article of the answer from England, is agreed to by France. The second paragraph is neither just nor explicit, and it is finally proposed to express it in the following terms:—

The intermediate savage nations between the lakes and the Mississippi, and within the line traced out, shall be neuter and independent, under the protection of the King, and those without the line, on the side of the English, shall likewise be neuter and independent, under the protection of England. The English traders also shall be prohibital from going among the savage nations beyond the line, on either side; but the said nations shall not be restrained in their freedom of commerce with the French and English, as they have exercised it heretofore.

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ARTICLE IV.— . . . England always endeavours to connect the liberty of fishing and drying codfish on part of the coast of Newfoundland, granted by the fifteenth article of the Treaty of Utrecht with the ninth article of the same Treaty, which stipulates the demolition of Dunkirk. It is given in answer to England for the fourth and last time that the two stipulations of the Treaty of Utrecht have nothing in common between them, unless that they are both comprised in the said Treaty; and that the concession expressed in favour of the French in the thirteenth article of that Treaty, is a compensation for the cession of Newfoundland and Annapolis Royal, made on the part of France to England by the twelfth and thirteenth articles of the same Treaty.

DUMAS' MEMOIR ON THE BOUNDARIES OF CANADA, 1761.*

Dumas on the
Boundaries
of Canada,
1761.

'Tis supposed that the Plenipotentiaries named for the future Congress, are incapable of adopting 10 the frivolous ideas entertained in France respecting our possessions in Canada; statesmen have notions different from the simple vulgar. The French are too volatile and too superficial to trouble themselves about the future; but ministers, whom wisdom has selected and ability directs, will of themselves observe that the interests of commerce, the progress of navigation, the good of the State, and the King's glory necessarily require that the restitution of Canada be laid down as a preliminary in the Treaty of Peace.

In more favourable conjunctures, we would be justified in demanding of the English, damages corresponding to the enormous depredation of our marine, as well commercial as national; but the circumstances which will exist at the conclusion of the peace are to decide the sacrifices we shall be obliged to make, or the advantages which are possibly to result therefrom. Commerce has changed 20 the face of Europe; it is now evident that, in the long run, the more commercial nation will become the more powerful.

We can no longer dispense with America, without falling sensibly from our state of splendour.

On the restitution of Canada depends the fate of the rest of our colonies.

These principles, clearer than the day, once admitted, that restitution ought to form the basis and foundation of the Treaty of Peace.

But will the work of our ministers be durable? For want of local knowledge, will they be in a condition to manage beneficially the interests of the King and nation in this regard? Will they prevent the subtleties in which English trickery will not fail to envelope them? If the English desire peace, do they desire it to be lasting? Will they renounce that system of maritime despotism which 30 constitutes the sole object of their policy? Will they not preserve a constant hankering to render themselves masters of the whole of America? And will they not allow it to appear when we shall be least on our guard? Incapable of accomplishing that project now, in consequence of the exhaustion of their finances, will they not renew it at another time? In front of an enemy so active, so ambitious, so enterprising, conjectures are as good as demonstrations; the past cannot render us too cautious for the future.

By a fatality which cannot be comprehended, the English were better acquainted than we were before the war with the topographical map of our possessions. Aided by similar help, what advantage do they not possess to cheat us? To this object, then, should be directed all the prudence and sagacity of our Plenipotentiaries.

BOUNDARIES.

40

I limit their labors, respecting Canada to four general objects:

- 1st. The entire property of both shores of the River and Gulf of St. Lawrence.
- 2nd. The property of the lakes and rivers which form the natural communication between Canada and Louisiana; they consist of Lake Ontario, Lake Erie, and the Ohio.
- 3rd. That neither of the two nations can form any establishments on the rivers watering the possessions of the other.

* *Paris Documents*, XVII., p 1154.

4th. That both colonies shall exist and increase by population without covering their frontiers with advanced posts, which is a principle of jealousy, suspicion, and distrust; an occasion always at hand, or a pretext often specious, for a rupture between the two nations.

As for the first article—to cede to the English, as they pretend, the entire peninsula of Acadia, is to reduce ourselves evidently to a precarious possession. That peninsula is susceptible of an immense population; its position is one of the most advantageous, both for the erection of fortifications, and of posts there; solid settlements of every description can be formed there; agriculture can be followed with the greatest success. In vain would France flatter herself that she should preserve in peace the possessions of the mouth of the river, if the English obtained the entire cession of that peninsula. 10 Already masters of Newfoundland, they should grant us the property of a country whereof they would guard the entrance.

The peace will scarcely be signed, when the activity of that ambitious people will be revived; soon will they be seen establishing themselves on the north side of that peninsula, and neglecting the remainder, if necessary, in order to transport to that quarter all their industry in favour of plantations.

What service would not the Plenipotentiaries be rendering the State if, by their ability, they would induce the English to consent to a division of that peninsula, so that France, should preserve the property of the northern part, from cape Canso to Minas?

But if their zeal become useless, if English firmness leave no hope on that point, they ought to be prepared to rather break all conference, than to give up an inch of ground on that continent. 'Tis 20 evident that our colony would lose thereby all communication with the metropolis; we should no longer possess the free entrance of the river except so far as the English would think proper. The lines of demarcation which separate the respective possessions on the map annexed to this memoir,* are drawn in accordance with the largest sacrifices that it is possible for France to make. 'Tis for the Plenipotentiaries to take advantage of favourable events, to obtain the best terms; but in all possible reverses, 'twill be more advantageous for the King and the State to renounce Canada, and consequently, Louisiana, which cannot exist without it, than to cede an inch of territory beyond that division.

The blue colour indicates the French possessions.

The red indicate the English possessions.

The green, what can be ceded towards Hudson's Bay—should events require France to make fur- 30 ther additional sacrifices.

I have said, and repeat it, Louisiana cannot exist for us without Canada. But 'tis more advantageous for France promptly to cede these two colonies to the English, than to accept conditions worse than those indicated by the lines drawn on that map.

On this hypothesis, let the river Pentagouet be the boundary of the English possessions on the continent, on the N. E., and let them be precluded from settling only the right bank.

Let the River St. John bound the French settlements, and let them be precluded from settling only the left bank.

The territory between these two rivers shall perpetually remain neutral and undivided between both nations, as marked on the map by the yellow colour.

40 The second object of the labour of our Plenipotentiaries relative to Canada, regards the communication of that colony with Louisiana. The projects of the English would be accomplished beyond their hopes, were the freedom of that communication not stipulated and solidly established by the treaty of peace; 'twould be separating two colonies, which cannot sustain themselves except by their immediate affinity. Now that communication can occur only by the Ohio: by every other route it is very difficult, often even impracticable. 'Tis essential, then, to insist strongly on the entire possession of the Ohio.

That river, navigable throughout all its course for very large craft, threatens Louisiana afar, and combines the advantage of distance in concealing preparations, with that of extreme rapidity of current for promptitude of execution.

* [The map is wanting.]

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To make the Ohio the boundary of the respective colonies, is to surrender it entirely to the English. In fact, already the English population is advancing towards that river; it has only one step to take to clear the Apalachies, and that step would be taken on the day after the signing of the treaty. The left bank of the Ohio would be under English cultivation in less than four years, whilst our population would not reach that point in the space of a century. Who does not perceive in that explanation the approaching and inevitable fall of Louisiana?

The entire possession of the Ohio cannot, then, be too much insisted on, the Apalachies constituting the limits; but, if events were such as to force us to give way on that important article, the only middle course to adopt is marked on the map by the yellow colour, viz, to leave the course of that river neutral, unsettled, without ownership, free to both nations to convey on it their goods for moveable trade, with the express reservation to France of the communication between her colonies.

The possession of Lakes Ontario and Erie, which are the continuation of that communication, is a point of the greatest interest to us, the rather as for want thereof, those lakes assure another passage by the Miamis and Ouabache rivers, more difficult, more uncertain, but which furnishes nevertheless a resource in times of misfortune. I admit that very favourable events would be required to reduce the English to abandon the south shore of Lake Ontario, of which they are a long time in possession, through Fort Chouequen—a possession usurped, but constant, and, as it were, unopposed, and only protest by the French Government, when the first foundations of that post were laid, is the only contradiction they have experienced.

If circumstances were such, on the conclusion of the peace, as that France had to make good its advantages, that would be the moment to protest against that usurpation. This important object merits the greatest attention of our Plenipotentiaries. It is sufficient to consider the course of the waters to perceive that the lake commands the whole of Canada. General Amherst has found no route more certain for invasion; the event has not over-justified his principles and mind.

If, on the contrary, we are reduced to take back Canada in the same condition that we possessed it before the war, France might consent to confine its cultivated settlements to the north shore of Lake Ontario, leaving the south shore free from the Bay of Niaouré to the River Niagara.

The English would preserve the freedom of conveying their merchandise for moveable trade to the mouth of the Chouequin river, and could extend themselves only to the Onondaga river on one side and as far as the River à la Famine on the other.

But nothing should make France give up the property of the soil, so that the freedom of trade granted to the English could not at any time invest them with a title thereto.

Let their possessions be always confined to the heads of the rivers by which they are watered, and let the height of the land be constantly the limit between the two nations.

The entire possession of Lake Erie ought to belong to France incontestably, up to the head waters of the streams that empty into that lake on the south side; the rivers flowing towards the Ohio are included in the neutrality proposed by that river.

The third object proposed at the head of this Memoir will be rendered clearer by a brief reflection

The English are ten to our one in America. But if passing the height of lands, we should push our posts as far as the heads of the rivers which water the English colonies, all their superiority in numbers, means and resources would not guarantee them against an invasion when it should please us to attempt it.

He who meditates an expedition, prepares it secretly, and when 'tis time to put it in execution, if he have in his favour the current of the stream, which conveys him with rapidity, he surprises his enemy and infallibly succeeds; the same is not the case where the aggressor has to ascend the rivers, has portages to make, lakes to traverse, and mountains to pass. The immense preparations necessary to be made for that purpose discover the movement, and the slowness of the execution affords time of the menaced province to place itself in a state of defence.

The English Colonies are in the latter position in respect to Canada, and Canada would be in the first relative to the English Colonies were the English to advance their settlements on Lake Champlain, Lake Ontario, or the Ohio.

I am fully convinced, and every man of sense who is conversant with the manner in which war can be carried on in that country, will agree with me that all the resources of the State will never preserve Canada if the English are once settled at the head of our rivers. 'Tis, again, one of the conditions that must never be consented to. Should peace be concluded under favourable circumstances to France, I point out the only middle course to be adopted, which is, the neutrality of certain districts; such might Lake St. Sacrament be without prejudice to us, provided the English confine their settlements to the sources of the water flowing into the River of Orange [the Hudson]

Come we now to the fourth principle:

I know nothing more useless in that country than forts to cover the frontiers; they are equally a burden to both nations, which have an equal interest in demolishing them: they are, in time of peace a source of useless expense, and experience has demonstrated that, in time of war they would be good for nothing. These frontier posts are adapted only to create difficulties, to afford umbrage, and sometimes furnish pretexts for a rupture.

They would favour that nation which would preserve the desire to seize the possessions of the other. By aid of the stand-points, it would pounce on its enemy when least expected, whilst every considerable enterprise becomes more difficult, more tedious, were they no longer in existence. Entrepôts must be established, the step forward is a cry "To arms!"

The French Plenipotentiaries will be our usefully for that Colony, and more profitably still for the Royal Treasury, if they agree with the British Ministers on not preserving any post on the frontiers on either side; thus Chonequen and Niagara will be demolished.

That does not exclude useful settlements in the interior of the possessions, either relatively to trade or otherwise, which each nation is to be at liberty to direct, according to its interests, but merely on what is called frontier, an outlet which may tend to supply means of an invasion.

To place matters at the worst, if the fortune of war be unfavourable to France in this campaign and peace be concluded in an unpropitious moment for us:

If, in order to obtain the conditions I propose, we be under the necessity of making new sacrifice in any part of Canada, the least dangerous for us would be to allow more extent to the English possessions in the direction of Hudson's Bay. Let us cede to them the whole of Lake Superior, rather than so much of territory in the south part, at this side the height of land or the Apalachies. That sacrifice which is to be made by France at the most critical moment, is marked by the green colour on the map.

Anything beyond those lines of demarcation and France must give up Canada, inasmuch as it is evident she cannot preserve it; moreover, to maintain ourselves in that state, the Minister must essentially and constantly occupy himself therewith; but above all things must men be carefully selected, to whom the Government, the Police and Finances are to be confided.

Otherwise we shall labour for our enemies. Canada, bathed in the blood of our unfortunate colonists, will soon be the appendage of the English. Our clearances, our settlements, our villages, will be so much fruit to be gathered by them when they have arrived at maturity.

Let the height of land and the Apalachies be the limits between the two peoples. Nature appears to have marked them expressly.

The caprice of man cannot change that barrier, always permanent, and always ready to protest against the usurper. People aspire to a fictitious peace when they seek to establish it on arbitrary lines which the revolutions of time or the interests of men can destroy. 'Tis, perhaps, a fault into which have fallen our ablest negotiators, yet 'tis the most important object of a treaty of peace, since it destroys or foment the fatal germ which is the occasion of most wars. The height of land and the Apalachies once determined on as the line of separation between the two colonies, the modifications,

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the compromises I propose, neutralizing certain districts, may be admitted according as circumstances will be more or less favourable to France, when peace will be concluded.

One reflection more remains to be submitted, which, although not bearing directly on the boundaries, is, nevertheless, very intimately connected with them.

Considering the enormous expense entailed on us by the service of Indians in the war, I have always thought that the King would maintain at much less expense, in Canada, a permanent corps of troops, capable of defending it at all times; and when I have weighed with reflection the utility of their assistance, I have found it to be only one of opinion and prejudice. But this prejudice is founded on the terror inspired by their cruelty and barbarity in their customs; it consequently will preserve its power.

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This terror will be always very useful to the nation which will best be able to manage the alliance and attachment of those people. We possess one real advantage over the English in this regard; let us carefully avoid doing it the smallest damage by any convention with our enemies which would cause the Indians to suspect our alliance and good faith. However simple and natural such an accord might be, the English would not fail to present it to the Indians in the light that would render it odious to them. These people are proud, jealous, suspicious, and vindictive: an appearance of defection on our part, after all the blood they have poured out in our defence, would render these irreconcilable to us from generation to generation, and that would be the greatest of misfortunes for both our colonies.

Our Plenipotentiaries ought to be distrustful on this point. I am fully convinced that the British Ministers will set snares for them on this point, which is of more importance for them in America than 20 the gain of many battles.

As for the rest, a Governor-General, instructive and attentive, will know how to maintain the alliance of all the people of this continent, in peace as in war, without those enormous expenses which knavery conducts and ignorance tolerates.

DUMAS.

Paris, 5th April, 1761.

THE TREATY OF PARIS, 1763.

THE DEFINITIVE TREATY OF FRIENDSHIP AND PEACE BETWEEN HIS BRITANNIC MAJESTY, THE MOST CHRISTIAN KING, AND THE KING OF SPAIN. CONCLUDED AT PARIS, THE 10TH OF FEBRUARY, 1763.*

*Treaty of
Paris, 1763.*

Art. II. The Treaties of Westphalia of 1648; those of Madrid, between the Crowns of Great Britain 30 and Spain, of 1667 and 1670; the Treaties of Peace of Nimeguen, of 1678 and 1679; of Ryswick, of 1697; those of Peace and Commerce of Utrecht, of 1713; that of Baden, of 1714; the Treaty of the Triple Alliance of the Hague, of 1717; that of the Quadruple Alliance of London, of 1718; the Treaty of Peace of Vienna, of 1738; the Definitive Treaty of Aix-La-Chapelle, of 1748; and that of Madrid, between the Crowns of Great Britain and Spain, of 1750; as well as the Treaties between the Crowns of Spain and Portugal, of the 13th February, 1668; of the 6th of February, 1715; and of the 12th February, 1761; and that of the 11th of April, 1713, between France and Portugal, with the Guarantees of Great Britain, serve as a basis and foundation to the peace and the present Treaty; and for this purpose they are all renewed and confirmed in the best form, as well as all the Treaties in general, which subsisted between the high contracting parties before the war, as if they were inserted here word for word, 40 so that they are to be exactly observed for the future, in their whole tenor, and religiously executed on all sides, in all their points, which shall not be derogated from by the present Treaty, notwithstanding all that may have been stipulated to the contrary by any of the high contracting parties; and all the said parties declare that they will not suffer any privilege, favour, or indulgence to subsist, contrary to the Treaties above confirmed, except what shall have been agreed and stipulated by the present Treaty.

Art. IV. His Most Christian Majesty renounces all pretensions which he has heretofore formed, or might form, to Nova Scotia or Acadia in all its parts, and guarantees the whole of it, with all its dependencies to the King of Great Britain; moreover, His Most Christian Majesty cedes and guarantees to

* To which the King of Portugal acceded on the same day.

his said Britannic Majesty, in full right, Canada, with all its dependencies, as well as the Island of Cape Breton, and all the other islands and coasts in the Gulf and River St. Lawrence, and in general, everything that depends on the said countries, lands, islands, and coasts, with the sovereignty, property, possession, and all rights, acquired by treaty or otherwise, which the Most Christian King and the Crown of France have had till now over the said countries, islands, lands, places, coasts and their inhabitants, so that the Most Christian King cedes and makes over the whole to the said King and to the Crown of Great Britain, and that in the most ample form without restriction, and without any liberty to depart from the said cession and guaranty under any pretence, or to disturb Great Britain in the possessions above mentioned.

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Art. VII. In order to re-establish peace on solid and durable foundations, and to remove for ever all subjects of dispute with regard to the limits of the British and French territories on the continent of America, it is agreed that, for the future, the confines between the dominions of His Britannic Majesty and those of His Most Christian Majesty, in that part of the world, shall be fixed irrevocably by a line drawn along the middle of the River Mississippi, from its source to the River Iberville, and from thence by a line drawn along the middle of this river and the Lakes Maurepas and Pontchartrain, to the sea; and for this purpose the Most Christian King cedes in full right, and guarantees to his Britannic Majesty the river and port of the Mobile, and everything which he possesses, or ought to possess, on the left side of the Mississippi, except the town of New Orleans, and the island in which it is situated,
20 which shall remain to France; provided, that the navigation of the Mississippi shall be equally free as well to the subjects of Great Britain as to those of France, in its whole breadth and length, from its source to the sea, and expressly that part which is between the said Island of New Orleans and the right bank of that river, as well as the passage both in and out of its mouth.

IX. The most Christian King cedes and guarantees to His Britannic Majesty, in full right, the islands of Grenada and of the Grenadines, with the same stipulation in favour of the inhabitants of this colony, inserted in the IVth article for those of Canada; and the partition of the islands, called Neutral, is agreed and fixed, so that those of St. Vincent, Dominica, and Tobago shall remain in full right to Great Britain, and that of St. Lucia shall be delivered to France, to enjoy the same likewise in full right; and the high contracting parties guarantee the partition so stipulated.

X. His Britannic Majesty shall restore to France the island of Goree, in the condition it was in
30 when conquered; and his most Christian Majesty cedes, in full right, and guarantees to the King of Great Britain, the river Senegal, with the forts and factories of St. Lewis, Podor, and Galam; and with all the rights and dependencies of the said river Senegal.

XI. In the East Indies, Great Britain shall restore to France, in the condition they are now in, the different factories which that crown possessed, as well on the coast of Coromandel and Orixá, as on that of Malabar, as also in Bengal, at the beginning of the year 1749. And His most christian Majesty renounces all pretensions to the acquisition which he had made on the coast of Coromandel and Orixá, since the said beginning of the year 1749. His most Christian Majesty shall restore on his side all that he may have conquered from Great Britain, in the East Indies, during the present war; and will expressly
40 cause Natal, and Tapanouly, in the island of Sumatra, to be restored; he engages further, not to erect fortifications, or to keep troops in any part of the dominions of the Subah of Bengal. And in order to preserve future peace on the coast of Coromandel and Orixá, the English and French shall acknowledge Mahomet Ally Khan for lawful Nabob of the Carnatic, and Salabat Ging for lawful Subah of the Deccan; and both parties shall renounce all demands and pretensions of satisfaction with which they might charge each other, or their Indian allies, for the depredations or pillage committed, on the one side or on the other, during the war.

XII. The Island of Minorea shall be restored to his Britannic Majesty, as well as Fort St. Philip, in the same condition they were in when conquered by the arms of the most Christian King, and with the artillery which was there when the said island and the said fort were taken.

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XIII. The town and port of Dunkirk shall be put into the state fixed by the last treaty of Aix-la-Chapelle, and by former treaties. The Cuneite shall be destroyed immediately after the exchange of the ratifications of the present treaty, as well as the forts and batteries which defend the entrance on the side of the sea; and provision shall be made at the same time for the wholesomeness of the air, and for the health of the inhabitants, by some other means, to the satisfaction of the King of Great Britain.

XIV. France shall restore all the countries belonging to the electorate of Hanover to the Landgrave of Hesse, to the Duke of Brunswick, and to the Count of La Lippe Buekebourg, which are or shall be occupied by his most Christian Majesty's arms; the fortresses of these different countries shall be restored in the same condition they were in when conquered by the French arms; and the pieces of artillery which shall have been carried elsewhere shall be replaced by the same number, of the same bore, weight and metal. 10

XV. In case the stipulations contained in the XIIIth article of the preliminaries should not be completed at the time of the signature of the present treaty, as well with regard to the evacuations to be made by the armies of France of the fortresses of Cleves, Wesel, Guelders, and of all the countries belonging to the King of Prussia, as with regard to the evacuations to be made by the British and French armies of the countries which they occupy in Westphalia, Lower Saxony, on the Lower Rhine the Upper Rhine, and in all the empire, and to the retreat of the troops into the dominions of their respective sovereigns, their Britannic and most Christian Majesties, promise to proceed, *bona fide*, with all the despatch the case will permit of, to the said evacuations, the entire completion whereof they stipulate before the 15th of March next, or sooner if it can be done; and their Britannic and most Christian Majesties further engage and promise to each other not to furnish any succours of any kind to their respective allies, who shall continue engaged in the war in Germany. 20

XVII. His Britannic Majesty shall cause to be demolished all the fortifications which his subjects shall have erected in the Bay of Honduras, and other places of the territory of Spain in that part of the world, four months after the ratification of the present treaty; and His Catholic Majesty shall not permit his Britannic Majesty's subjects, or their workmen, to be disturbed or molested, under any pretence whatsoever, in the said places, in their occupation of cutting, loading, and carrying away logwood; and for this purpose they may build without hindrance, and occupy without interruption, the houses and magazines which are necessary for them, for their families and for their effects; and His Catholic Majesty assures to them, by this article, the full enjoyment of those advantages and powers on the Spanish coasts and territories, as above stipulated, immediately after the ratification of the present treaty. 30

XVIII. His Catholic Majesty desists, as well for himself, as for his successors, from all pretension which he may have formed in favor of the Guipuseans, and other his subjects, to the right of fishing in the neighbourhood of the Island of Newfoundland.

XIX. The King of Great Britain shall restore to Spain all the territory which he has conquered in the Island of Cuba, with the fortress of the Havana and this fortress, as well as all the other fortresses of the said island, shall be restored in the same condition they were in when conquered by His Britannic Majesty's arms, provided that His Britannic Majesty's subjects, who shall have settled in the said island, restored to Spain by the present treaty, or those who shall have any commercial affairs to settle there shall have liberty to sell their lands and their estates, to settle their affairs, to recover their debts, and to bring away their effects, as well as their persons, on board vessels which they shall be permitted to send to the said island restored as above, and which shall serve for that use only, without being restrained on account of their religion, or under any other pretence whatsoever, except that of debts, or of criminal prosecutions; and for this purpose the term of eighteen months is allowed to His Britannic Majesty's subjects, to be computed from the day of the exchange of the ratifications of the present treaty; but as the liberty, granted to His Britannic Majesty's subjects to bring away their persons and their effects, in vessels of their nation, may be liable to abuses, if precautions were not taken to prevent them; it has been expressly agreed between His Britannic Majesty and His Catholic Majesty that the number of English vessels which shall have leave to go to the said island restored to Spain shall be limited, as well as the number of tons of each one; that they shall go in ballast; shall set sail at a 40 50

fixed time; and shall make one voyage only; all the effects belonging to the English being to be embarked at the same time; it has been further agreed that His Catholic Majesty shall cause the necessary passports to be given to the said vessels; that, for the greater security, it shall be allowed to place two Spanish clerks, or guards, in each of the said vessels, which shall be visited in the landing-places and ports of the said island restored to Spain, and that the merchandise which shall be found therein shall be confiscated.

XX. In consequence of the restitution stipulated in the preceding article, His Catholic Majesty cedes and guarantees, in full right, to His Britannic Majesty, Florida with Fort St. Augustin, and the Bay of Pensacola, as well as all that Spain possesses on the continent of North America, to the east or to the south-east, of the river Mississippi; and, in general, everything that depends on the said countries, and lands, with the sovereignty, property, possession, and all rights, acquired by treaties or otherwise, which the Catholic King and the crown of Spain have had till now, over the said countries, lands, places, and their inhabitants; so that the Catholic King cedes and makes over the whole to the said King, and to the crown of Great Britain, and that in the most ample manner and form. His Britannic Majesty agrees, on his side, to grant to the inhabitants of the countries, above ceded, the liberty of the Catholic religion; he will consequently give the most express and the most effectual orders, that his new Roman Catholic subjects may profess the worship of their religion, according to the rights of the Romish church, as far as the laws of Great Britain permit. His Britannic Majesty further agrees, that the Spanish inhabitants, or others, who had been subjects of the Catholic King in the said countries, may retire, with all safety and freedom, wherever they think proper; and may sell their estates, provided it be to His Britannic Majesty's subjects, and bring away their effects, as well as their persons, without being restrained in their emigration, under any pretence whatsoever, except that of debts, or of criminal prosecutions; the term limited for this emigration being fixed to the space of eighteen months, to be computed from the day of the exchange of the ratifications of the present treaty. It is moreover stipulated, that His Catholic Majesty shall have power to cause all the effects, that may belong to him, to be brought away, whether it be artillery or other things.

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II.—GREAT BRITAIN AND THE UNITED STATES, 1783-1846.

TREATY OF VERSAILLES, 1783.

DEFINITIVE TREATY OF PEACE AND FRIENDSHIP

BETWEEN HIS BRITANNIC MAJESTY AND THE UNITED STATES OF AMERICA. SIGNED AT PARIS THE 3RD OF SEPTEMBER, 1783.

ARTICLE I.—His Britannic Majesty acknowledges the said United States, viz., New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, to be free, sovereign, and independent States; that he treats with them as such, and for himself, his heirs and successors, relinquishes all claims to the government, propriety, and territorial rights of the same, and every part thereof.

Treaties and
Conventions—
(2) between
Great Britain
and the
United States,
1783-1846.

ARTICLE II.—And that all disputes which might arise in future on the subject of the boundaries of the said United States may be prevented, it is hereby agreed and declared, that the following are and shall be the boundaries, viz., from the north-west angle of Nova Scotia, viz., that angle which is formed by a line drawn due north, from the source of St. Croix River to the highlands, along the highlands which divide those rivers that empty themselves into the River St. Lawrence, from those which fall into the Atlantic Ocean, to the north-westernmost head of Connecticut River; thence down along the middle of that river to the forty-fifth degree of north latitude; from thence by a line due west on said latitude until it strikes the River Iroquois or Cataraguy; thence along the middle of said river into Lake Ontario, through the middle of said lake until it strikes the communication by water between that lake and Lake Erie; thence along the middle of said communication into Lake Erie;

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through the middle of said lake, until it arrives at the water communication between that lake and Lake Huron; thence along the middle of said water communication into the Lake Huron; thence through the middle of said lake to the water communication between that lake and Lake Superior; thence through Lake Superior, northward of the isles Royal and Philippeaux, to the Long Lake; thence through the middle of said Long Lake, and the water communication between it and the Lake of the Woods, to the said Lake of the Woods; thence through the said lake to the most north-western point thereof, and from thence on a due west course to the River Mississippi; thence by a line to be drawn along the middle of the said River Mississippi until it shall intersect the northernmost part of the thirty-first degree of north latitude. South, by a line to be drawn due east from the determination of the line last mentioned, in the latitude of thirty-one degrees north of the equator, to the middle of the River Apalachicola or Catahouche; thence along the middle thereof to its junction with the Flint River; thence straight to the head of St. Mary's River, and thence down along the middle of St. Mary's River to the Atlantic Ocean. East, by a line to be drawn along the middle of the River St. Croix, from its mouth in the Bay of Fundy to its source, and from its source directly north to the aforesaid highlands, which divide the rivers that fall into the Atlantic Ocean from those which fall into the River St. Lawrence; comprehending all islands within twenty leagues of any part of the shores of the United States, and lying between lines to be drawn due east from the points where the aforesaid boundaries between Nova Scotia on the one part, and east Florida on the other, shall respectively touch the Bay of Fundy and the Atlantic Ocean; excepting such islands as now are, or heretofore have been, within the limits of the said Province of Nova Scotia.

ARTICLE IV.—It is agreed that creditors on either side shall meet with no lawful impediment to the recovery of the full value, in sterling money, of all *bona fide* debts heretofore contracted. 20

ARTICLE VII.—There shall be a firm and perpetual peace between His Britannic Majesty and the said States, and between the subjects of the one and the citizens of the other, wherefore all hostilities both by sea and land, shall from henceforth cease: All prisoners on both sides shall be set at liberty and His Britannic Majesty shall, with all convenient speed, and without causing any destruction, or carrying away any negroes or other property of the American inhabitants, withdraw all his armies, garrisons, and fleets from the said United States and from every port, place, and harbour within the same; leaving in all fortifications the American artillery that may be therein: And shall also order and cause all archives, records, deeds, and papers, belonging to any of the said States, or their citizens 30 which, in the course of the war, may have fallen into the hands of his officers, to be forthwith restored and delivered to the proper States and persons to whom they belong.

PROCEEDINGS IN AMERICA BETWEEN THE TWO NATIONS, 1783-1794.*

THE RIGHT HONORABLE HENRY SIDNEY TO GENERAL HALDIMAND, ON HIS REFUSAL TO DELIVER UP THE UPPER POSTS TO GENERAL WASHINGTON, 1783.

Proceedings in
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[In 1784, the Ministry at home, through Henry Sidney, according with General Haldimand's refusal, wrote]:

With regard to your refusal to Baron Stewben, you were justified doing it.

Right Hon. H.
Sidney to
Gen. Haldi-
mand, 1784.

The 7th Article of Definitive Treaty stipulates they should be evacuated with all convenient speed 40 but no time is fixed; and as it is not confined to the 1st Article, until we can secure the Traders in the interior of the country, and withdraw their property, etc.

12th May, 1784

Evacuation of Forts delayed as the means of obliging Congress to prolong the time of one year granted by the Treaty, for the Loyalists to obtain, if possible, the recovery of their estates. But from the want of government and good order in the different States, it is impossible for Loyalists to go among them.

* Simcoe Papers, MSS. in Library of Parliament at Ottawa, Vol. 1, pp. 430-3, 463, 487-8, 517-18, 559, 580-7; Vol. III, pp. 12, 71-3, 96-8, 127, 143-4, 360-1, 399, 400; "Upper Canada" MSS. in Library of Parliament at Ottawa, pp. 7-11, 17, 34, 42-3, 95, 97, 99, 107, 109, 110, 130-7, 142, 157-9, 131-4.

August 29th, 1785.

Death of Lieutenant-Governor Hay, of Detroit, after twenty-nine years' service. Alexander McKay recommended to succeed him, and got the appointment.

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FROM GOVERNOR HOPE, (PRO TEM.) TO EVAN NEPEAN, ESQ., UNDER-SECRETARY OF STATE WHITEHALL.

QUEBEC, Sept. 1st, 1785.

The death of poor Lieutenant-Governor Hay is another event that occasions my deviating from my proposed silence; for, Lieutenant-Governor Hamilton having done me the honor to ask my opinion on the subject of nominating a successor to him in the Civil Government of Detroit, and communicating his own ideas with respect to the person he thought for that situation, it becomes in some degree necessary that I should thus explain the predilection I am still in, when it might so naturally be imagined at home that I was actually in the command, which you have seen is not the case: and since the Lieutenant-Governor has further done me the honour to concur in my opinion so far (which was, to take no resolution in the matter, at least till the arrival of Sir John Johnson), that I should also explain the grounds upon which I gave him that opinion.

Exclusive then, of the considerations that make it eligible, at all events, to defer any partial arrangements for which the necessity was not pressing, till it should be seen if any, or what, general one for the Province at large, and particularly for the upper country, was made at home, and the orders that were accordingly given; there were some others that induced me more immediately to urge that opinion, such as:

First—The objections that exist as to there being any such appointment at all as Lieutenant-Governor to any of the upper posts, it having been hitherto (constituted as it is), rather a source of dissension than of any extraordinary benefit, that might not be equally expected from its being entirely military, and consequently vested in the officer sent by the General with the command of the troops in that garrison.

Secondly.—That absolute necessity, in my opinion, if there must be a Lieutenant-Governor, that he should be a person of military education, experience, and character, whom you put into such a situation at such a post. Thereby his commission (as it runs at present), gives him the command, in his own Government, of every officer, under the rank of Brigadier-General, whom the service should require to be stationed at Detroit (though General Haldimand thought it only for the absolute advantage and security of the upper country to give the same powers to the field officer charged with the immediate defence and care of the whole upper posts, as to a Brigadier-General when there was one there), and

Lastly—Finding that Governor Hamilton's choice (however plausible in some points of view) was inclined to fall upon a very improper person, according to my conception, in many other most essential ones, viz: upon a Mr. McGee, the Indian Agent of that post, employed under Sir John Johnson; who though a man of much merit by all accounts, for his loyalty, immediate knowledge of the Indians and their language, as a brave and active partizan in their excursions, yet at the same time who is not of that consideration (nor ever had any rank in the army at all), whilst the troops who actually compose the garrison at Detroit are commanded by an officer of long standing and reputation, Major Ancram, of the 34th Regiment, who has likewise served in the Indian country when that regiment garrisoned the Mississippi, and consequently cannot be deficient in the manner of acting with those people; to whom, or to any other officer of similar services and pretensions, I leave you to conceive whether it must not be most mortifying to come under the immediate orders of a person taken from Mr. McGee's present capacity, to be made a Lieutenant-Governor, even should such an appointment, against which there are so many other objections, be thought at present necessary.

Besides, as Mr. McGee is now the only Indian Agent at that post, which employment he could not continue to exercise with Lieutenant-Governor, by the well-judged regulations made by General Haldimand two years ago, in order to strike at the root of the upper country abuses; so, till Sir John Johnson's arrival and being consulted with for a proper person in that event, to supply Mr. McGee's place as Agent, between whom and the Lieutenant-Governor of Detroit, there is the source of discord laid by these necessary regulations, unless both are honest, liberal men, with no other views but to promote the

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service. It was another reason why I could not but think that such a nomination would only increase confusion, that upon the whole, therefore, I hope that since Lieut-Governor Hamilton has so far acquiesced in my opinion as to postpone his intentions till we have accounts by Sir John from England, that he will come into it altogether under present circumstances, and be satisfied that Detroit shall remain under the total direction of Major Ancram, the actual commanding officer, until the pleasure of the government shall be known from home on the subject.

MR. ADAMS, UNITED STATES MINISTER TO ENGLAND, TO LORD CARMARTHEN*.

The subscriber, Minister Plenipotentiary from the United States of America, has the honour to represent to the Ministry of His Britannic Majesty, that by the Seventh Article of the preliminary Treaty of Peace, between His Majesty and the United States of America, signed at Paris on the thirtieth 10 day of November, one thousand seven hundred and eighty-two, confirmed by the Definitive Treaty of Peace, signed at Paris on the third day of September, one thousand seven hundred and eighty-three, it was stipulated that His Britannic Majesty should, with all convenient speed, and without causing any destruction or carrying away any negroes or other property of the American inhabitants, withdraw all his armies, garrisons, and fleets from the United States, and from every port, place, and harbour within the same, leaving in all fortifications the American artillery that may be therein

That although a period of three years has elapsed since the signature of the Preliminary Treaty, and of more than two years since that of the Definitive Treaty, the posts of Oswegatchy, Oswego, Niagara, Presque Isle, Sandusky, Detroit, Michillimackinac, with others not necessary to be particularly enumerated, and a considerable territory round each of them, all within the incontestable limits of the 20 said United States, are still held by British garrisons, to the loss and injury of the said United States.

The subscriber, therefore, in the name and on behalf of the said United States, and in obedience to their express commands, has the honour to require of His Britannic Majesty's Ministry, that all His Majesty's armies and garrisons be forthwith withdrawn from the said United States, from all and every of the posts herebefore enumerated, and from every port, place, and harbour within the territory of the said United States, according to the true intention of the treaties aforesaid.

Done at Westminster, this thirtieth day of November, one thousand seven hundred and eighty-five

JOHN ADAMS.

LORD GRENVILLE TO LORD DORCHESTER.

WHITEHALL, April 5, 1787.

Lord Gren-
ville to Lord
Dorchester,
5th April,
1787.

The affairs of the Indians, from Colonel Brant's letter to Col. Butler, appear to be in a very critical situation, and such as will certainly reduce them to the necessity of taking a decided part one way or the other in a very short time. It is natural for those people to look up to us for those supplies which they have been accustomed to receive, and that they will think themselves neglected and forsaken, whenever such supplies are discontinued, and perhaps may be induced from disappointment to give much perplexity, though they may refrain from committing acts of hostility. Your Lordship has judged very wisely in executing every means to confine the war between them and the Americans to as narrow a scale as possible, but if it should extend itself to the northward, which will most likely be the case, and the Americans should carry their threats into execution of attempting to gain the forcible possession of the posts in the upper country, we cannot but look upon the assistance to be derived from 40 the Indians as extremely desirable, and perhaps the most effectual impediment to such an undertaking. Were we to be governed only by the expectation of further advantage from the friendly disposition of the people, it might, even in such case, be prudent to attend to their reasonable wants; but, considering their former services, and the sacrifices many of them have made, there cannot remain a doubt of the conduct we ought to observe towards them.

*Adams' works, Vol. 8.

Whilst the post of Michilimackinac remains in the possession of His Majesty's troops, and Mr. Sinclair continues in the exercise of duty, it is His Majesty's intention that he shall receive his salary; but if it should hereafter happen that His Majesty should withdraw his forces from that post, and Mr. Sinclair's services are unnecessary, it will be proper that his office should be abolished, and in such case His Majesty will have his pretensions to further favour under his Royal consideration.

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MR. ROBERT HAMILTON TO LIEUTENANT-GOVERNOR SIMCOE.

NIAGARA, January 4th, 1792.

SIR,—The trouble this letter gives you does not arise from vanity, in wishing to correspond with a person high in office, as you are. My only motives are the good of my native country, and my attachment to the interests of this part of her dominions, in which I have resided for many years. We have just heard of your arrival in America, invested with power to terminate all differences and to form new treaties between Great Britain and these States. The line of division between their western frontiers and our possessions, and between them and our friends the Indians, must necessarily be an object of considerable consequence in your arrangements with them. Any information on these subjects I trust will be acceptable; the obscurity of the source from whence it comes, is not the question.

Mr. Hamilton
to Gov.
Simcoe, 4
Jan., 1792.

When Mr. Oswald made a peace with the Americans in 1783, he evinced his total ignorance of this country and its true interests, in the line he fixed as the boundary between us and them, from the place it joins the St. Lawrence, above Montreal, to its termination in the unknown regions of the North-West.

Navigable rivers and lakes surely form the worst possible boundaries betwixt commercial nations settled on the same continent, as on a highway their carriages must certainly meet. They will often jostle, and endless contention and strife must ensue. By this line we should have given up every post and possession we then held in this country, the small picketed posts of Fort Erie only excepted, Oswegatchie, Carleton Island, Oswego, Niagara, Detroit and Michilimackinac, all must have been yielded up to the Americans: nor was this all. By this line, a free opening was afforded our rivals to reach our most distant and most valuable trading posts. In many of the most essential articles for the fur trade, they have considerable advantages over the adventurers in the Province. I shall only mention Spirits, the produce of one of their most considerable manufactures, and East India goods, now a material article in their commerce. Soon, in consequence of this ill-judged line, must our fur trade have been annihilated, had not our rulers, possessed of better information, declined, for this and other reasons, to fulfil that part of the Treaty which respected the surrender of the posts. Thus has the business remained undecided to this day.

On this last point I would gladly hope my present address may be found to have some merit. Between the Americans and the Indians, some line along the Ohio from some determined latitude to its most northerly source, will probably constitute the bounds. Between us and them, this line, continued across the High Grounds, from the northern head of the Ohio to the western head of the Genesee River, and down that stream until it falls into Lake Ontario, about sixty miles east of the Fort of Niagara, would in all probability constitute a boundary which would not encroach on either party's present possessions, and would secure both from that intervention of mercantile interests which will otherwise involve us in constant disputes, and in eternal quarrels. Neither the higher part of the Ohio, nor any part of the Genesee River, being calculated for the purposes of extension [of] navigation, promise a more peaceful boundary than that fixed by Mr. Oswald.

Let me here observe that long before the English held a foot of land in the Province, the French on this very ground, had formed a plan of an empire, perhaps as grand as was ever devised by man. They projected the site of this on two of the finest rivers in the world—on the banks of the St. Lawrence and of the Mississippi, whose streams in some places almost unite. Such a plan was, however, only calculated for the first commercial country in Europe, and who might command at sea. Possessed of the two ports of Quebec and New Orleans, without any further effort than regulating to the best advantage the internal police of this extensive country, without further expense than might be neces-

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sary to render the inhabitants prosperous, happy and free, she would in time enjoy a market for her manufactures, extensive almost beyond calculation. In return, she would exclusively receive the furs of the north, with all the most desirable products of perhaps the finest soil of the world, in all the different latitudes from Michillimackinac to New Orleans. Whether Britain may ever have had this in her power, or whether the day may not yet return with an offer of those manifold advantages, it is not for me to decide. It might be worthy of the exalted character at present at the helm of her affairs, to have so glorious a prospect in his eyes. Already have I sufficiently trespassed on your patience.

That every success may attend your important negotiation, is the sincere prayer of,

Sir,

Your most obedient, very humble servant,

R. HAMILTON.

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LIEUTENANT-GOVERNOR SIMCOE TO THE LORDS OF TRADE AND PLANTATIONS.—1792.

Lt.-Gov.
Simcoe to
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The fur trade has hitherto been the staple of Canada, and the protection of it, until the established Government of Upper Canada, seems to have been the primary object of all the military arrangements and consequent settlements in the Upper Province.

The actual state and general importance of this trade must be perfectly known to their lordships, by the very advantageous circumstance, in all respects, of the port of Quebec being the sole place from whence its produce can be exported to Great Britain. My observations on this head will, therefore, be confined to what may tend to the present protection or future increase of some of its branches. The trade to the North-West, which is carried on by a powerful and enterprising Company, is at the most 20 valuable branch of this commerce. Although the route of this traffic be through the Province of Upper Canada, it is so far without the inhabited part of it that I cannot offer any report on the general state of this branch of the trade, but what your lordships can better collect from that of Lower Canada.

The trade carried on from Michillimackinac, which is at present the general place of deposit upon Lake Huron, to those rivers which flow into the Mississippi, appears of the utmost importance, as offering the greatest probability of future advantages.

I beg leave to submit to your lordships that, under the singular regulations which now subsist between Great Britain, Spain, and the United States, it might be of great public advantage if, without exciting the jealousy of Spain, a British factory could be established on the western banks of Mississippi, perhaps opposite to the mouth of the Onseosing, in some spot of land well adapted to the follow- 30 ing purposes: general protection, the building of houses, store-houses, and shipping. The factory might be established on nearly the same plan offered to consideration for the Miami.

The lands of the Indians might be purchased by the Crown with all due solemnity, and an annual quantity of goods, to the amount possibly of £500, might be punctually delivered at Michillimackinac, by the King's Superintendent, to the agent of the factory.

The factors should have no monopoly of the trade; their advantages should result from the occupation of such parts of the territory to be purchased, as might not at present, or at any future period, be wanted for the purpose of the Crown, and from the influence which they must naturally acquire as the distributors of the annual presents, which should be given to the savages for the free passage of the British traders by the Fox and Onseosing [? Onseosing] Rivers. The presents may be deducted from the general allotment made to the Indians, and need not be additional to the annual quantity; means 40 may be easily devised to secure the annual delivery of these presents by the factors to the Indians.

The advantages would be many; a considerable trade might be opened with the Spanish as well as with the Indians; such presents as are suitable to the Indian trade which the Spanish Government annually permit to be sent from Great Britain to New Orleans, would probably, by this channel of communication, operate to a wider extent, and become of greater benefit to the British nation. It is generally asserted, though perhaps without solid foundation, that the subjects of the United States on the Ohio and on the other rivers which flow into the Mississippi, will find it advantageous to build

ships, and loading them with the produce of these countries, send them down the Mississippi, and sell both the ships and cargo at a foreign market. The establishment provided would effect a similar advantage and with fewer difficulties, for if, as concurrent circumstances seem to be necessary, the Spanish Government should wish for an open or understood guarantee of her American dominions by Great Britain, it is obvious she would rather encourage than oppose an establishment on the Mississippi, whose object should by no means whatsoever be the extension of territory or of force, but simply of commerce. She would also particularly encourage that commerce if, as is probable, it would alienate the inhabitants of Kentucky and Cumberland Rivers from the United States, and render them totally independent of the Atlantic for their manufactures. This purpose would be effected by the British factory being able to furnish such manufactures in exchange for the cotton, tobacco, and other articles of commerce of those increasing countries, and by such means divert them from their attention to the forcing of the passage of the Mississippi, in opposition to the Spanish interests, but which their present dependency on the United States imposes upon them. The intercourse which this factory would have with Kentucky, etc., might probably contribute to turn the course of trade, in taking articles from the circuitous channel the European commodities must take to pass by the Gulph of Florida into the Mississippi, to the communication of those rivers which intersect with Lake Michigan, the Illinois, or Ouseconsing, it being by no means incredible that this will eventually be found the cheapest route to the London market, to the inevitable benefit of Great Britain and her Colonies. The Atlantic Governments of the United States seem totally to have forgotten that their colonies (such may be considered 20 all settlements since the peace of 1783, beyond the Alleganys), in the room of continuing the mediums by which they are to possess themselves of the fur trade, and other imaginary sources of wealth, will most undoubtedly make every due advantage of their own situation, and, in the business of commerce at least, not sacrifice their interests to those of the great Confederacy. If the Atlantic [Governments] cannot subsist, as seems to be admitted, without credit, the principle is applicable in a greater degree to their colonists. If it be the interest of the British merchant to give that credit, he may do it as safely upon the returns of the Cumberland River by the way of the Mississippi and the Ouseconsing, as risk it by those of James River in Virginia, or the Delaware. It is true the British merchant is in the habit of giving such to one set of planters but not to the other.

The proposed factory seems to be an advanced station from whence a commerce, its advantages 30 and disadvantages, may be contemplated, duly compared, and properly balanced. To the observations on this important subject, which I respectfully submit to your Lordships' consideration, I beg to make the following deduction,—that as Kentucky establishes her credit or her capital, she will, in setting up for herself, not only make use of all the commercial advantages she can obtain from the United States, but she will extend her views to the fur trade on the western side of the Mississippi, unless some such permanent factory, on a greater or less plan, shall bar the avenues to the ports of the river, by pre-occupying the good will of the nations, and by underselling all rivals, or possibly by diverting the attention and jealousy of those who may be disposed to become rivals, by displaying the advantages that a more general and less precarious traffic shall offer between the colonists on the eastern side of the Mississippi and the British Empire. It may be also of serious consideration that, if the credit and 40 capital of the British merchants invigorate the merchants of Philadelphia, Baltimore, etc., it is evident that the merchants of Kentucky, deriving their means of traffic from the credit which those of Philadelphia, etc., give to them, have no intermediate intercourse with the original fountain of supply, and are totally uninfluenced by any connections with them from whom they draw their primary support. The basis of this traffic arises from the product of the original loan or credit of the British merchants. It seems, therefore, in a national view, that this intermediate agent, the Atlantic American merchant, should, as far as possible, not be the medium through which British credit supports the inhabitant of Kentucky in his mercantile or agricultural pursuits, but that such a medium should be sought for in a British subject, the inhabitant of Upper Canada. By these means the inhabitants of 50 Kentucky, having a nearer interest and more intimate transaction with Great Britain, through her subjects, would naturally be disposed to support a mutual alliance and friendship with that nation beneficial to both countries, so opposite to the views of the popular party, who have given their present supposed leaders. It is generally understood that above half of the inhabitants of Kentucky and the western waters are already inclined to a connection with Great Britain.

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In the course of these observations, the trade of Detroit next comes under consideration. The war that has so long continued on the frontier of this district, has materially affected its commerce with the Indians; in particular, those on the Wabash some time since retired below a post that the United States held at Vincennes, and of course the produce of their hunts centred among those people. It is understood that these nations have now returned to their former place of residence, and that the commerce will revert to its former channel, unless the armies of the United States take post on the Miami River, the channel by which the most considerable part of the peltries are conveyed to Detroit.

It is said that in consequence of the Indian warriors, who are the best hunters, being so often called off to defend their country, the increase of deer, etc., has been prodigious. Some boats are sent from Detroit to the St. Joseph's, on Lake Michigan, as well as to Sandusky [and] Cayhaga [Cleveland], but 10 their returns are of no great value. This settlement supplies the North-West trade annually with eighty thousand barrels of flour, and the quantity is increasing.

The consequence of Detroit, depending on the trade it has hitherto drawn to itself, by being as it were the factory in this part of the country, must necessarily be gradually opening as their settlements are forming by the British or United States in its vicinity in the Niagara district, which may be included from Long Point, on Lake Erie, to York, on Lake Ontario. The peltries are considerable, but in general they are smuggled into the United States, where the high price they bear, added to the facility that a woody and unsettled country gives for contraband traffic, are inducements which there is reason to believe few or none of the traders or factors resist. * *

The inhabitants of Lower Canada are almost entirely settled on the banks of the St. Lawrence, and 20 at no great distance from its waters in the Upper Colonies. Factories in the Upper country were formed on the same system when Upper Canada was erected into a Province. It was apprehended by some merchants that its settlements must be continued in the same manner, and no doubt they would have been so, were such persons to limit the views of mankind by what they fancy to be their own immediate interests. * *

The regulation of the Indian Traders, when it should be seasonable, so far as to restrain those distant people by the dread of some legitimate authority, will be a work of difficulty, but of the most absolute necessity. The outrages and misconduct of many persons in that country loudly call for intervention; a closer knowledge and communication with those countries within the jurisdiction of Upper Canada, but without its habitable parts, will be required by the alteration I have proposed. * * 30

It would be worthy of mature consideration, whether a systematic extension of factories on the principles which I have submitted as proper on the Mississippi, might not be the means at once of securing the Indians in that quarter, by public benefit, and personal influence, and of opening a vast mart among the inhabitants of Spanish America and those of the United States; and if any savings can be made from the average of public money hitherto allowed to the Indian Department, whether the application of such to the system proposed would not be an object of national policy, add to the strength and power of Upper Canada, and by no means invalidate the system which I must ever contend to be the best policy, that of not permitting any agricultural settlements beyond the peninsula included between the Lakes Ontario, Erie, and Huron.

THE RIGHT HONOURABLE HENRY DUNDAS TO LORD DORCHESTER.

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WHITEHALL, 15th March, 1792.

Right Hon.
H. Dundas
to Lord Dor-
chester, 15
March, 1792.

MY LORD,—Your Lordship being already apprised of the intention of His Majesty's servants to endeavour to secure whatever may operate as an effectual and lasting barrier between the frontiers or territories of the American States and his Majesty's dominions in that quarter, I shall now only refer your Lordship to my letter of the 16th September last, and to the late unhappy contest between those Indians and the States, to prove the expediency of such a measure.

To obtain so beneficial an end, and at the same time to heal the difficulties which at present exist, a plan was suggested in some late communication between your Lordship and His Majesty's servants, which your Lordship appeared to think extremely advisable, if it could be carried into execution.

The idea suggested was, that His Majesty and the American States should join in securing exclusively a certain portion of territory lying between and extending the whole length of the lines of their respective frontiers, within which both parties should stipulate not to suffer their subjects to retain, or acquire, any lands whatever.

And although, in consequence of such a cession, the frontier posts now in His Majesty's hands would be given up, your Lordship appeared to coincide with them in opinion, that the objection to this measure would be much lessened by the circumstance of their not being to come into the possession of the American States, but for to be ceded for the express purpose of becoming part of such territory as is to be reserved for the undisturbed and independent possession of the Indians. By placing the Indians in such a position, they will become a natural barrier against mutual encroachments, and at the same time hold a situation in which their attachment and friendly disposition to His Majesty's subjects may be capable of the most serviceable operation. These and various other considerations, from which the most beneficial consequences must accrue to this country, have induced His Majesty's servants to adopt such measures as appear best calculated to carry the plan into execution. Lord Grenville has in consequence received the King's directions to authorize Mr. Hammond to propose His Majesty's good offices between the American States and the Indians, for the establishment of a permanent peace between them, founded on the principles of securing to the latter such a tract of country as has been already mentioned, and in furtherance of which the King is most graciously pleased to grant his aid and assistance, and to relinquish, if need be, the posts actually in his possession, the more effectually to secure and establish so important an object.

For this purpose, I must desire your Lordship to lose no time in transmitting to me your ideas in respect to such precise limits (whether the same are in a greater or less degree favourable to the interests of this country) as, being secured to the Indians, would in your judgment be sufficient to answer the end proposed.

In doing this, I wish particularly to call your attention to that part of the country in question which lies to the south and south-east of Lake Ontario, and the upper part of the St. Lawrence, as a proposal made to your Lordship on this subject by some of the Indians, previous to your leaving Quebec, does not appear to be quite distinct, and as the near approach of the American frontier, in that quarter, to the settled part of His Majesty's Provinces, appears to render this an object deserving of particular consideration.

Your Lordship's intimate acquaintance with His Majesty's interest in that quarter of the world and with the relative situations of his subjects, and of those who are to form the barrier between them and the American States, makes it unnecessary for me to enter into any detail.

I shall only add that, in ascertaining the territory to be granted to the Indians, three points I can see are principally to be attended to: one, to secure as much as possible our intercourse and trade with the Indians; the second is, that the interposed country, to serve as a barrier, should extend along the whole line of the frontier of His Majesty's dominions, and that of the United States of America. And lastly, to take care that their intervention, and the space to be allotted them, shall be most considerable in such parts of His Majesty's frontier, as from their situation are most obvious to attack or interruption from any quarter belonging to the American States.

I am, &c., &c.,

HENRY DUNDAS.

To Lord Dorchester.

GEORGE HAMMOND, ESQ., TO LIEUTENANT-GOVERNOR SIMCOE.

PHILADELPHIA, April 21st, 1792.

I was fully sensible of all the advantages which Great Britain would have derived from her mediation being admitted; but I saw from the first that the jealousy of her acquiring either an additional influence over the Indian tribes, or the right of intervening in any future disputes, would be an insuperable impediment to the request or acceptance of that expedient on the part of this country.

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QUEBEC, April 28th 1792.

I am happy to find that these communications have appeared of importance to Mr. Hammond, as in a letter of the 3rd March, he says: "Capt. Stevenson was so obliging as to leave with me a copy of a representation addressed to you by the merchants of Montreal; and also a map of the country to the northward of Lakes Huron and Superior. When my negotiations with this Government are more advanced than they are at present, these documents will be of essential service to me, as they convey to my mind a much more correct idea of the nature and importance of that country than I had ever before entertained. I could, however, have wished that the position of the Grand Portage, on Lake Superior, had been laid down on the map with somewhat greater precision."

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LIEUTENANT-GOVERNOR SIMCOE TO MR. DUNDAS.

QUEBEC, April 28, 1792.

*Lieut. Gov.
Simcoe to
Right Hon.
H. Dundas,
28th April,
1792.*

I beg to observe that, understanding that the agent of the United States holds out the language that all our trade with the American Indians, in that territory which had been ceded by the treaty of peace to the United States, would become illegal and contraband in case the forts should be given up, I thought it my duty to state to Mr. Hammond such a dangerous assumption unwarranted by the definitive construction placed by the Treaty of Utrecht upon the intercourse which Great Britain and France had with the Indians, and which, considering them as free nations, gave to the subjects of both countries the right of treating with them, and carefully secured to the Indians the liberty attached to independent nations, of carrying their commercial articles to such places in the dominions of either nation as they should prefer. And this Article of the Treaty of Utrecht was never contravened till in the year 1756, when the violation of it on the part of the French, as is generally known (but particularly as stated by an author of the United States, Gordon, professedly writing under the directions of Mr. Washington and Congress), was the occasion of the war that broke out between Great Britain and France; nor can the claims of the American Indians to the natural privileges of independent nations, guaranteed to them by their European neighbours in the compact of Utrecht, be more amply expressed and implied than in the general representation of the state of the Indian Department, by Sir William Johnson, in 1763, to the Lords of Trade, that although fair speeches, promises, and the convenience of trade induced them to afford both us and the French a settlement in the country, yet they never understood such settlements as a dominion. And the Indian sense of their own dependency is brought down to so late a period previous to the late war, as the 22d of February, 1769, when a Seneca chief, in his complaints against the officer commanding at Niagara, said, as appears by Sir William Johnson's report, "We are free people and accustomed to sell whatever we have, to whom and where we like best." I think it may not be improper to communicate this statement to you, Sir, as elucidating the ground the merchants of Montreal, in their Memoir No. 2, have taken up. At the same time I am well aware that His Majesty's Ministers, being masters of all the documents which establish or counterbalance the value of the fur trade to Great Britain, in that point of view already possess more precise information than can be collected in this country; but it is possible that a particular view of this commerce, considered in the light of an open trade, common to the British colonies, as the representatives of France, and the United States, as those of Great Britain, prior to the year 1763, and subject to no other difficulty than those of amicable competition, appearing to be a matter of great magnitude, may be illustrated by some observations on the actual state of this country..... I consider the fur trade in its present foundation to be of no use whatever to the colony of Upper Canada; an open trade may result from the happy form of Government that is to be established in that country, but it appears doubtful whether even that would add to its prosperity; it certainly would detract from its population, and ultimately, debasing the morals of the country, by the ill habits of the *coureurs des bois*, would injure its industry, the source of its future revenue. But, Sir, it would appear to me to be productive of great advantages, if, leaving the fur trade of the North-West parts in the hands of the Companies who possess or contend for the monopoly of that trade, the Indians themselves, who live near the settled parts of Upper Canada, will be induced to bring the produce of their hunts to those towns and settlements which are about to arise in their vicinity.

MEMORANDUM ENCLOSED IN THE FOREGOING DESPATCH OF LIEUTENANT-GOVERNOR SIMCOE, TAKEN
FROM "GORDON'S HISTORY OF THE REVOLUTION."

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"The year after the Peace, a grant of 600,000 acres of land, in the neighbourhood of the Ohio, of the finest American land, was made out to certain noblemen, merchants, and others, of Westminster, London, and Virginia, who associated under the title of the Ohio Company. The Governor of Canada obtained early intelligence of it, and was alarmed with the apprehension that a scheme was in agitation which would for ever deprive the French of the advantages arising from the trade with the Twightwees, and cut off the communication so beneficial to the Colonies of Louisiana and Canada. He wrote, therefore, to the Governors of New York and Pennsylvania, acquainting them that the English traders had encroached on the French territories by trading with their Indians, and that if they did not desist, he should be obliged to seize them wherever they were found. This was the first time that either French or British had pretended to any exclusive trade with the Indians, or even the declared friends and allies of either, for it was expressly stipulated at the Treaty of Utrecht that on both sides the two nations should enjoy full liberty of going and coming among the Indians of either side, on account of trade, and that the natives of the Indian countries should, with the same liberty, resort as they pleased to the British or French Colonies for the purposes of trade, without any molestation from either the British or French subjects."

P. CAMPBELL TO ROBERT HAMILTON, ESQ., 1792.

I fell in with several gentlemen of the United Statesand officers of all ranksand found that attacking the British outposts would be a very popular measure..... the only stop to it is the war with the Indians, and that they are after to attempt it by a *coup de main*, or surprise them by open force.

P. Campbell
to R. Hamil-
ton.

They say if the first should fail the last would not. I cannot, therefore, help thinking, that Colonel Simcoe ought to support the Indians openly, even at the risk of being recalled; and if the British Government allow them to be crushed, that they will repent it when too late, and beyond their power to retrieve. It haunts me most to think that these designing political rascals will wrench the outposts out of your hands, probably when least suspected, and brave you to the face when it is done.

LIEUTENANT-GOVERNOR SIMCOE AND COLONEL A. MCKEE TO GEORGE HAMMOND, ESQ., 1792.

Suppose a boundary should be settled on the following terms :

1. The Indian territory to form a line separating the British territory and that of the States.
2. The posts of Niagara, Oswego, Detroit, to be demolished and not held by either, and included in the Indian territory.
3. Michillimackinac to be evacuated.
4. The Genessee territory, but no posts, to be continued to the United States, and as a proper balance to Great Britain.
5. From the Rapids of the Miami River, or from the Rivière au Raisin, on the east, to the River St. Clair on the west, and two leagues deep to the south: this seems to have been the original allotment of Congress, therefore, more reasonable to presume that they would admit it. By these proposals being adopted, the settlement of Detroit would be amenable to the British jurisdiction, otherwise they would become lawless vagabonds, and, it is obvious, injurious to the system of peace so necessary to the United States Indians, and the British. The settlements extend to the Miami Rapids.

This arrangement, it is probable, would perpetuate peace between the different nations.

J. G. SIMCOE,
A. MCKEE.

To His Excellency, G. Hammond.

Lieut. Gov.
Simcoe and
Col. McKee
to G. Ham-
mond, 1792.



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LIEUTENANT-GOVERNOR SIMCOE TO MAJOR-GENERAL CLARKE, COMMANDER-IN-CHIEF, QUEBEC.
NAVY HALL, NIAGARA, Nov. 25th, 1792.

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SIR,—I must beg leave to call Your Excellency's attention to a circumstance that may happen should it be the determination of Washington, as I believe it is, to carry on the Indian war, and in consequence to refuse the British intervention.

In this event, as he seems already to have quitted the original and untenable grounds of the war—that this Indian territory was ceded by Great Britain—he will probably, from our influence with the savages, deduct the necessity of perseverance in his operations.

The main body of General Wayne's army..... I conceive may be employed to cut off all communication between the Six Nations and Western Indians by proceeding up the Alleghany to Fort 10 Franklin, and ultimately to Presqu' Isle. By this position General Wayne.....will be on the most practical and direct route, by land, to NiagaraTheir establishment at Presqu' Isle would include the building of batteries and proper gun-boats, and ultimately the forming an establishment at Miamis Bay. It is in the possible event of the United States equipping a naval armament at this or any part of the Lakes that I wish for Your Excellency's instructions, whether I shall not consider it hostility. That it would be so in the event cannot be denied; that the possession of the Forts has always hitherto been supposed to secure that of the navigation of the lakes is a known fact; and that popular conversation has led the minds of the inhabitants of this country to expect an immediate opposition on our part, of any armament appearing upon the lakes, is a matter of general notoriety. I find no general order to direct my conduct, but that force must be repelled by force; and this interpretation I should 20 certainly place upon any attempt of the United States to pass through those communications, both shores of which are in His Majesty's possession.

Lieut. Gov.
Simcoe to
Major-Gen.
Clarke, 25th
Nov., 1792.

LIEUTENANT-GOVERNOR SIMCOE TO MAJOR-GENERAL CLARKE.

NAVY HALL, NIAGARA,

June 14th, 1793.

The Commissioners for making peace with the United States have remained in this house since the 17th May. They are in expectation of hearing from Colonel McKee when the Indian nations shall be assembled. All the public conversations that I have had with those gentlemen is detailed in the enclosed papers, to which I am to add that, upon my reading to them Lord Dorchester's speech of the 15th August, 1791, to the deputies of the several nations, and the boundary line then given to Your 30 Excellency, they have desired copies thereof, particularly as it stated those documents to be those on which I founded my answers to the speeches that have hitherto passed between me and the Indian Americans.

Lieut. Gov.
Simcoe to
Major-Gen.
Clarke, 14th
June, 1793.

LORD DORCHESTER'S ADDRESS TO THE DEPUTIES OF THE INDIAN CONFEDERACY, FEBRUARY, 1794.*

I was in expectation of hearing from the people of the United States what was required by them; I hoped that I should have been able to bring you together and make you friends. I have waited long and listened with great attention, but have not heard one word from them. I flattered myself with the hope that the line proposed in the year '83, to separate us from the United States, which was immediately broken by themselves as soon as the Peace was signed, would have been mended or a new one drawn in an amicable manner, but here also I have been disappointed. Since my return I find no appearance of 40 a line remains; and from the manner in which the people of the United States rush on and act and talk on this side, and from what I learn of their conduct towards the sea, I shall not be surprised if we are at war with them in the course of the present year; and if so a line must be drawn by the warriors.

You talk of selling your lands to the State of New York. I have told you that there is no line between them and us. I shall acknowledge no lands to be theirs which have been encroached on by

Lord Dorches-
ter's address
to Indian
Deputies,
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* Albach's Annals, p. 633.

them since the year 1783. They then broke the peace; as they kept it not on their part, it do not bind on ours. They then destroyed their right of pre-emption. Therefore all their reproaches towards us since that time, and all the purchases made by them, I consider as infringement on the King's rights. And when a line is drawn between them and us, be it peace or war, they must lose all their improvements and houses on our side of it. Those people must all be gone who do not obtain leave to become the King's subjects.

LORD DORCHESTER TO LIEUTENANT-GOVERNOR SIMCOE.

QUEBEC, 17th March, 1794.

SIR,—The account received by Lieut.-Col. England of Mr. Wayne's intention to close us up at Detroit, I think the more probable from the conduct which I find has been pursued for the two last summers on the side of Lake Champlain, where the King's sovereignty has been completely overturned within the posts; and they now impudently tell the Commandant that his jurisdiction extends no further than his guns; even this, I expect, in a short time they will not allow.

Self defence, therefore, requires we should prevent similar evils from extending further, and that, for our own security at the Detroit, we should occupy nearly the same posts on the Miamis River which were demolished after the peace. This, I think, would cover Detroit and our communication with that settlement from Lake Erie; but if given up, the post, I apprehend, cannot be maintained. At the same time that all necessary measures for our defence are taken on the land side, the lakes must not be neglected; it may for this purpose be necessary to arm the ships and vessels completely, in order to preserve our command on the water also; and if you find this expedient, you will order it accordingly. Your own experience and local knowledge will point out to you the force to occupy the Miamis, as well as the most advantageous positions, without confining yourself to the spots we occupied in 1783. You will therefore order such force from Detroit to the Miamis River as you may judge sufficient for that service, as soon as the season and other circumstances will permit, observing only the general directions to preserve Detroit from being straightened either by land or water. At the same time that you order a portion of troops from Detroit, with the artillery requisite for that purpose it may not be amiss to consider what reinforcement you may draw from other parts within your command without exposing any to insult, and what assistance you may have from the militia; also whether, by collecting all the force in your power to assemble, you would be in a condition to resist Wayne's attack, should he attempt by force to take possession of the country. I enclose a copy of my answer to the message from the Indians of the upper nations, which will sufficiently explain itself.

I am, with regard, Sir,
Your most obedient, humble servant,
DORCHESTER.

Colonel Simcoe,
Commanding the Forces in Upper Canada.

LORD DORCHESTER TO LIEUTENANT-GOVERNOR SIMCOE.

QUEBEC, 16th April, 1794.

SIR,—The frequent frauds and embezzlements of the King's stores belonging to the Indian department at Michilimackinac (notwithstanding the vigilance of the Commandant) have induced me to consign the supplies of this year to Colonel McKee, and I have appointed him Superintendent of Indian affairs for the districts of Michilimackinac and Detroit, that he may the better check all abuses, and introduce due order into the department. * *

Governor Simcoe.

DORCHESTER.

LIEUTENANT-GOVERNOR SIMCOE TO LORD DORCHESTER.

NAVY HALL, April 20th, 1794.

MY LORD,—I take the earliest opportunity of forwarding to your Lordship a letter which I received from the Spanish Governor of Louisiana, together with my answer.

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The Lieut.-Governor of that Province, Captain Trudeau, who has been remarkably civil to our traders, forwarded the message by a white man, a Shawanese, well known to Colonel McKee. In a very polite letter which he writes to me, this gentleman observes: "Le Gouverneur en a donné connoissance du contenu, ce qui me fait présumer qu'il n'avoit pas des notions bien parfaites du local, lorsqu'il a porté ses vœux sur votre continent." The Shawanese was twenty days from St. Louis, and expected to be only fourteen on his return.

It has been intimated to him that it would be easy for the Spanish, if requisite, to co-operate with us by their gun-boats which they have on the Ohio, and, by occupying the mouth of the Wabash, to give a similar support to the intermediate Indians, as our possessions at the mouth of the Miamis of the Lake affords. 10

I must observe to your Lordship, that a few days previous to my arrival at the Miamis, a speech had been sent by the Spanish Lieut.-Governor to the neighbouring nations, and which had been transmitted to Detroit, calling upon them for their assistance, and promising the most active support. The speech, it is believed, has produced the most important effects, scarcely leaving a single Indian nation without the determined resolution of attacking the United States; in particular, the Chicawas, before the departure of the Shawanese, had cut off ten of the Kaskaskias, suspected of being well affected to the United States. It was also intimated to the Shawanese, that by the route of Chicago it was extremely practicable for British troops to pass.

I have always been of opinion that a post at Chicago would be more eminently necessary to His Majesty's interests, in case of war, than that of Michilimackinac. I am confirmed in this belief by 20 existing circumstances as represented by Colonel McKee.

At this place there are some people, refugees from Detroit, and a black chief, who have constantly been in the pay of the United States, and who, by some possible means, have endeavoured to alienate the Indians from the British interests. Colonel McKee thinks it very necessary that an Agent should reside in that quarter, as till of late has been usual.

In my answer to Mr. Trudeau, I enclosed to him your Lordship's late proclamation against the Jacobin emissaries; observed to him that the French inhabitants of the Illinois and at Vincennes were eminently of this description. By the account of the Shawanese, the Spanish Government acts with great vigour in that part of the country, and he expressed his surprise at the very different language 30 which was held by the British Canadians, in respect to the subject of the United States, to what was permitted at St. Louis. * * *

J. G. SIMCOE.

Lord Dorchester.

LIEUTENANT-GOVERNOR SIMCOE, TO THE RIGHT HONOURABLE HENRY DUNDAS.

NAVY HALL, July 3rd, 1794.

Lieut.-Gov.
Simcoe to
Right Hon.
H. Dundas,
3 July,
1794.

It may not be improper to observe that the original and material aggression of the United States appears to have been their Government immediately changing the relative situation in which the peace of 1783 had left the contending parties, namely, themselves and Great Britain, by endeavouring to possess themselves of the whole of the Indian territories by fraudulent or by forcible means; and in consequence, by the annihilation of this intermediate power between them and the British possessions, occasioning the destruction of the whole of the commerce, and endangering the safety of His Majesty's Provinces. To prove this intended alteration, the Act of Congress for the formation of the new States, and the names given them by the committee of which Mr. Jefferson was President, are sufficient evidences. That it was some fraudulent means used, appears upon the face of the purchases made from the Indians, and His Majesty's honoured name is brought into attainment by the governors of the country, to give a sanction to their purposes. The fraud consists in the affirmation that the Indian territory had been given away as "the price of peace." This is the term which Governor St. Clair made use of, and which the Corn Planter in February 8th, 1791, intimates in his speech to the President, Washington, to be the language of the people who purchased the lands from the Indians, and demands from him an 50 explanation. * * *

J. G. SIMCOE.

Rt. Hon. Henry Dundas.

LIEUTENANT-GOVERNOR SIMCOE TO LORD DORCHESTER.

NAVY HALL, Aug. 18, 1794.

MY LORD,—I do myself the honour of enclosing to your Lordship the communication which I received late last night from Lieut.-Col. England and Col. McKee.

I shall lose no time in proceeding to Detroit with all the force I can muster, leaving the garrison of Niagara with its usual compliment of infantry, and ordering the artillery then at Kingston to supply in part those whom I shall think necessary to carry with me to Detroit.

The whole detail of this arrangement will be transmitted to your Lordship so soon as it shall be decided upon. I cannot flatter myself with much hopes of repelling Mr. Wayne, and feel that my own character as a military officer must suffer in the extreme; but an honourable devotion to the public service bears me up above all personal consideration, and it is possible that my character as Civil Lieut.-Governor may enable me to promote His Majesty's interests. The people of the States, as predicted, have heavy artillery at Le Beauf. The Six Nations, I believe, remain steadfast in their opposition to the establishment at Presque Isle.

Should your Lordship be reinforced, and at this crisis augment the force in this Province so as to enable me to meet Mr. Wayne on equal terms, and His Majesty's troops in such an event be successful I cannot but foresee the perfect safety of the Canadas as the result of such a measure, as, in all probability, if he be permitted to establish himself at the Detroit, it may eventually occasion their loss.

I have the honour to be, etc.,

J. G. SIMCOE.

DESPATCH FROM LIEUTENANT-GOVERNOR SIMCOE.

NAVY HALL, August 30, 1794.

SIR,—Since the close of my despatch of the 10th instant, information of the most serious aspect has been received from the Indian country.

General Chapin, the Agent for the United States to the Six Nations, has sent to meet those people immediately at Buffalo Creek; and his messenger intimates that Mr. Washington has complied with their demand so far as to give directions that Presque Isle shall not be occupied, and the Forts at Le Beauf shall be abandoned. Lieutenant-Colonel England informs me that Wayne is rapidly advancing (by report) with near four thousand troops. But what is alarming, the Hurons have peremptorily returned the hatchet which they had formerly received from Governor Hamilton, demanding him to sharpen it and instantly to join them, or they must cease to defend their country. The next step, in all probability, would be to defend ours. The report in Wayne's army is, that he has positive orders to reduce our post at the Miamis, and in the ensuing spring to attack Detroit. I have despatched Captain Bunburg, of the 8th Regiment, to occupy Turtle Island, at the entrance of the Miamis Bay, hoping by a continuation of our gun-boats and vessels at that place to prevent any access to the Miamis River or egress from it. If Mr. Wayne pushes on to Detroit, you, Sir, must of course be prepared to hear that it is in his possession. I have characterized it truly to Lord Dorchester, on his arrival, as a "nominal fortress, with a nominal garrison."

I have the honour to be, with all respect, etc., etc.,

J. G. SIMCOE.

TREATY OF AMITY (JAY'S TREATY), 1794.

TREATY OF AMITY, COMMERCE AND NAVIGATION, 1794, BETWEEN HIS BRITANNIC MAJESTY AND THE UNITED STATES OF AMERICA. CONCLUDED THE 19TH OF NOVEMBER, 1794.

ARTICLE II.—His Majesty will withdraw all his troops and garrisons from all posts and places within the boundary lines assigned by the treaty of peace to the United States. This evacuation shall take place on or before the first day of June, one thousand seven hundred and ninety-six, and all the

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Despatch from Lieut.-Gov. Simcoe, 30 Aug., 1794.

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proper measures shall in the interval be taken by concert between the Government of the United States and His Majesty's Governor-General in America, for settling the previous arrangements which may be necessary respecting the delivery of the said posts; the United States in the meantime, at their discretion, extending their settlements to any part within the said boundary line, except within the precincts or jurisdiction of any of the said posts. All settlers and traders, within the precincts or jurisdiction of the said posts, shall continue to enjoy, unmolested, all their property of every kind, and shall be protected therein. They shall be at full liberty to remain there or to remove with all or any part of their effects, and it shall also be free to them to sell their lands, houses or effects, or to retain the property thereof, at their discretion. Such of them as shall continue to reside within the said boundary lines, shall not be compelled to become citizens of the United States, or to take any oath of allegiance to the Government thereof; but they shall be at full liberty so to do if they think proper, and they shall make and declare their election within one year after the evacuation aforesaid. And all persons who shall continue there after the expiration of the said year, without having declared their intention of remaining subjects of His Britannic Majesty, shall be considered as having elected to become citizens of the United States.

Treaty of 1794.

ARTICLE III.—It is agreed that it shall at all times be free to His Majesty's subjects, and to the citizens of the United States, and also to the Indians dwelling on either side of the said boundary line, freely to pass and re-pass by land or inland navigation, into the respective territories and countries of the two parties on the continent of America (the country within the limits of the Hudson's Bay Company only excepted), and to navigate all the lakes, rivers, and waters thereof, and freely to carry on trade and commerce with each other. But it is understood that this Article does not extend to the admission of vessels of the United States into the sea ports, harbours, bays, or creeks of His Majesty's said territories, nor into such parts of the rivers in His Majesty's said territories as are between the mouth there and the highest port of entry from the sea, except in small vessel trading *bona fide* between Montreal and Quebec, under such regulations as shall be established to prevent the possibility of any fraud in this respect. Nor to the admission of British vessels from the sea into the rivers of the United States, beyond the highest ports of entry for foreign vessels from the sea. The River Mississippi shall, however, according to the treaty of peace, be entirely open to both parties; and it is further agreed that all the ports and places on the eastern side, to whichever of the parties belonging, may freely be resorted to and used by both parties, in as ample a manner as any of the Atlantic ports or places of the United States, or any of the ports or places of His Majesty in Great Britain.

All goods and merchandize whose importation into His Majesty's said territories in America shall not be entirely prohibited, may freely, for the purposes of commerce, be carried into the same in the manner aforesaid, by the citizens of the United States, and such goods and merchandize shall be subject to no higher or other duties than would be payable by His Majesty's subjects on the importation of the same from Europe into the said territories. And in like manner, all goods and merchandize, whose importation into the United States shall not be wholly prohibited, may freely, for the purposes of commerce, be carried into the same, in the manner aforesaid, by His Majesty's subjects, and such goods and merchandize shall be subject to no higher or other duties than would be payable by the citizens of the United States on the importation of the same in American vessels into the Atlantic ports of the said States; and all goods not prohibited to be exported from the said territories respectively, may in like manner be carried out of the same by the two parties respectively, paying duty as aforesaid.

No duty of entry shall ever be levied by either party on peltries brought by land or inland navigation into the said territories respectively; nor shall the Indians passing or repassing with their own proper goods and effects of whatever nature, pay for the same any import or duty whatever; but goods in bales, or other large packages, unusual among Indians, shall not be considered as goods belonging *bona fide* to Indians.

No higher or other tolls or rates of ferriage than what are or shall be payable by natives, shall be demanded on either side; and no duties shall be payable on any goods which shall merely be carried over any of the portages or carrying-places on either side for the purpose of being immediately re-imbarked and carried to some other place or places; but as by this stipulation it is only meant to secure

to each party a free passage across the portages on both sides, it is agreed that this exemption from duty shall extend only to such goods as are carried in the usual and direct road across the portage, and are not attempted to be in any manner sold or exchanged during their passage across the same, and proper regulations may be established to prevent the possibility of any frauds in this respect.

As this article is intended to render in a great degree the local advantages of each party common to both, and thereby to promote a disposition favourable to friendship and good neighbourhood, it is agreed that the respective Governments will mutually promote this amicable intercourse by causing speedy and impartial justice to be done, and necessary protection to be extended to all who may be concerned therein.

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10 ARTICLE IV.—Whereas it is uncertain whether the River Mississippi extends so far to the northward as to be intersected by a line to be drawn due west from the Lake of the Woods, in the manner mentioned in the Treaty of Peace between His Majesty and the United States; it is agreed, that measures should be taken in concert with His Majesty's Government in America, and the Government of the United States, for making a joint survey of the said river from one degree of latitude below the Falls of St. Anthony, to the principal source or sources of the said river, and also the parts adjacent thereto; and that if, on the result of such survey, it should appear that the said river would not be intersected by such a line as is above mentioned, the two parties will thereupon proceed by amicable negotiation, to regulate the boundary line in that quarter as well as all other points to be adjusted between the said parties, according to justice and mutual convenience, and in conformity to the intent 20 of the said Treaty.

Treaty of 1763.

TREATY OF GHENT, BETWEEN GREAT BRITAIN AND THE UNITED STATES,
CONCLUDED THE 24TH OF DECEMBER, 1814.

ARTICLE VI.—Whereas by the former Treaty of Peace, that portion of the boundary of the United States from the point where the forty-fifth degree of north latitude strikes the River Iroquois or Cataraqui, to the Lake Superior, was declared to be "along the middle of said river into Lake Ontario through the middle of said lake until it strikes the communication by water between that lake and Lake Erie; thence along the middle of said communication into Lake Erie; through the middle of said lake until it arrives at the water communication between that lake and Lake Huron; thence along the middle of said water communication into the Lake Huron; thence through the middle of said lake to the water communication between that lake and Lake Superior;" and whereas doubts have arisen what was the middle of the said river, lakes, and water communications, and whether certain islands lying in the same were within the dominions of His Britannic Majesty or of the United States. In order therefore finally to decide these doubts, they shall be referred to two Commissioners, to be appointed, sworn, and authorized to act exactly in the manner directed with respect to those mentioned in the next preceding article, unless otherwise specified in this present article. The said Commissioners shall meet, in the first instance, at Albany, in the State of New York, and shall have power to adjourn to such other place or places as they shall think fit. The said Commissioners shall, by a report or declaration, under their hands and seals, designate the boundary through the said river, lakes, and water communications, and decide to which of the two contracting parties the several islands lying 40 within the said river, lakes, and water communications, do respectively belong, in conformity with the true intent of the said Treaty of one thousand seven hundred and eighty-three. And both parties agree to consider such designation and decision as final and conclusive. And in the event of the said two Commissioners differing, or both or either of them refusing, declining, or wilfully omitting to act, such reports, declarations, or statements shall be made by them, or either of them, and such reference to a friendly Sovereign or State shall be made in all respects as in the latter part of the Fourth Article is contained, and in as full a manner as if the same was herein repeated.

Treaty of
Ghent, 1814.

CONVENTION BETWEEN GREAT BRITAIN AND THE UNITED STATES,

CONCLUDED THE 20TH OF OCTOBER, 1818.

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(2) Great
Britain and
United
States.**Proceedings in
America,
1783-1794.**Convention of
20th Oct.,
1818.*

ARTICLE II.—It is agreed that a line drawn from the most north-western point of the Lake of the Woods, along the forty-ninth parallel of north latitude, or, if the said point shall not be in the forty-ninth parallel of north latitude, then that a line drawn from the said point due north or south, as the case may be, until the said line shall intersect the said parallel of north latitude, and from the point of such intersection due west along and with the said parallel, shall be the line of demarcation between the Territories of the United States and those of His Britannic Majesty, and that the said line shall form the northern boundary of the said Territories of the United States, and the southern boundary of the Territories of His Britannic Majesty, from the Lake of the Woods to the Stony Mountains.

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TREATY BETWEEN GREAT BRITAIN AND THE UNITED STATES,

CONCLUDED THE 9TH OF AUGUST, 1842.

ARTICLE II.—It is, moreover, agreed that, from the place where the Joint Commissioners terminated their labours, under the VI. Article of the Treaty of Ghent, to wit, at a point in the Neebish Channel, near Muddy Lake, the line shall run into and along the ship channel between St. Joseph's and St. Tammany Islands, to the division of the channel at or near the head of St. Joseph's Island; thence turning eastwardly and northwardly around the lower end of St. George's or Sugar Island, and following the middle of the channel which divides St. George's from St. Joseph's Island; thence up the East Neebish Channel nearest to St. George's Island, through the middle of Lake George; thence west of Jonas' Island into St. Mary's River, to a point in the middle of that River, about one mile above St. George's or Sugar Island, so as to appropriate and assign the said island to the United States; thence adopting the line traced on the maps by the Commissioners, through the River St. Mary and Lake Superior, to a point north of Ile Royale, in said lake, one hundred yards to the north and east of Ile Chapeau, which last mentioned island lies near the north-eastern point of Ile Royale, where the line marked by the Commissioners terminates; and from the last mentioned point south-westerly through the middle of the sound between Ile Royale and the north-western main land, to the mouth of Pigeon River, and up the said river to and through the North and South Fowl Lakes, to the lakes of the height of land between Lake Superior and the Lake of the Woods; thence along the water communication to Lake Saisaginaga, and through that lake; thence to and through Cypress Lake, Lac du Bois, Blanc Lac La Croix, Little Vermillion Lake, and Lake Namecan, and through the several smaller lakes, 30 straits, or streams connecting the lakes here mentioned, to that point in Lac la Pluie, or Rainy Lake, at the Chaudière Falls, from which the Commissioners traced the line to the most north-western point of the Lake of the Woods; thence along the said line to the said most north-western point, being in latitude 49° 23' 55" north, and in longitude 95° 14' 38" west from the Observatory at Greenwich; thence according to existing Treaties, due south to its intersection with the 49th parallel of north latitude, and along that parallel to the Rocky Mountains. It being understood that all the water communications and all the usual portages along the line from Lake Superior to the Lake of the Woods, and also Grand Portage, from the shore of Lake Superior to the Pigeon River, as now actually used, shall be free and open to the use of the subjects and citizens of both countries.

TREATY BETWEEN GREAT BRITAIN AND THE UNITED STATES FOR THE SETTLEMENT OF THE OREGON BOUNDARY,

CONCLUDED THE 15TH OF JUNE, 1846.

*Oregon
Boundary
Treaty, 1846*

ARTICLE I.—From the point on the 49th parallel of north latitude, where the boundary laid down in existing Treaties and Conventions between Great Britain and the United States terminates, the line of boundary between the territories of Her Britannic Majesty and those of the United States shall be continued westward along the said 49th parallel of north latitude, to the middle of the channel which

separates the continent from Vancouver's Island, and thence southerly, through the middle of the said channel and of Fuen's Straits, to the Pacific Ocean; provided, however, that the navigation of the whole of the said channel and straits, south of the 49th parallel of north latitude, remain free and open to both parties.

II.—From the point at which the 49th parallel of north latitude shall be found to intersect the great northern branch of the Columbia River, the navigation of the said branch shall be free and open to the Hudson's Bay Company, and to all British subjects trading with the same, to the point where the said branch meets the main stream of the Columbia, and thence down the said main stream to the ocean, with free access into and through the said river or rivers, it being understood that all the usual portages along the line thus described shall in like manner be free and open. In navigating the said river or rivers, British subjects, with their goods and produce, shall be treated on the same footing as citizens of the United States; it being, however, always understood that nothing in this article shall be construed as preventing, or intended to prevent, the Government of the United States from making any regulations respecting the navigation of the said river or rivers not inconsistent with the present Treaty.

III.—In the future appropriation of the territory south of the 49th parallel of north latitude, as provided in the first Article of this Treaty, the possessory rights of the Hudson's Bay Company, and of all British subjects who may be already in the occupation of land or other property lawfully acquired within the said territory, shall be respected.

IV.—The farms, lands, and other property of every description belonging to the Puget's Sound Agricultural Company on the north side of the Columbia River, shall be confirmed to the said Company. In case, however, the situation of those farms and lands should be considered by the United States to be of public and political importance, and the United States Government should signify a desire to obtain possession of the whole or of any part thereof, the property so required shall be transferred to the said Government at a proper valuation to be agreed upon between the parties.

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Sec. VI.

*Treaties and
Conventions—
(2) Great
Britain and
United States.*

*Proceedings in
America,
1683-1794.*

*Oregon
Boundary,
Treaty, 1846.*

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The Hudson's Bay Company's Rights and Claims.

[For the Company's Charter of 2nd May, 1670, see Sec. V., *supra*.]

PETITION OF THE HUDSON'S BAY COMPANY TO CHARLES II., IN 1682*

May it please Your Majesty:

We, the Governor and Committee of the Company of the Adventurers of England trading into Hudson's Bay, have by Your Majesty's gracious allowance seen and preserved an extract of a late letter from Monsieur de la Barre, the present Governor of Canada, which hath been delivered by the French ambassador as a memorial of complaint that the Hudson's Bay Company do begin to make habitations and to erect forts upon the land within the said Bay, of which he assumes that the King, his master, hath taken possession above twenty years since, in which cause if they proceed, he threatens to drive them out of the country by force, but desires Your Majesty should be advertised that he is not willing to do anything which may displease, except he may be forced thereunto.

Whereupon Your Majesty having commanded us, who have the government of the affairs of the said Company, to give an account of their title and to the Bay and to the lands and territories thereabout, and to the trade and commerce which they have with the Indians.

We do in all humility represent to Your Majesty, that the subjects of Your Imperial Crown have for above one hundred years last past, discovered and frequented the said bay and the rivers, islands and territories thereabout, and from time to time in the reigns of several of Your Majesty's Royal predecessors have taken possession of several places there, and that none of the subjects of His Most Christian Majesty have ever been known to sail or traffic within the said Bay.

20 That about fifteen years since, some members of the said Company did adventure to make discoveries within the said bay, and by the good conduct of one Zachary Gillam, in the *Nonsuch* ketch, they discovered a river at the bottom of the said bay upon the East main, where he met with native Indians, and having made a league of friendship with the captain of the said river, and formally purchased both the river itself and the lands thereabouts, he gave it the name of Rupert's river (his highness Prince Rupert being principally concerned in that expedition), and built a fort which, in honour of Your Majesty, was called Charles fort, and took possession of the said *river and all the land and territory* thereabout in the name of Your Majesty, and then and there entered into a trade and commerce with the natives, which hath been ever since maintained without any interruption either from the French or others.

30 That therefore Your Majesty was graciously pleased by Your royal letters Patent under Your great seal of England, to incorporate the said Adventurers, and to grant unto them and their successors for ever, all the said Bay and the streights tending thereunto called Hudson's streights, with all the lands and territories, rivers and islands in and about the said bay, and the sole trade and commerce there.

That the forementioned agreement made by Zachary Gillam with the Indians, was afterwards repeated and confirmed with one Charles Bailly, who was sent as Governor of the affairs of the Company within the said Bay, with whom Monsieur Frontenac, by his letters bearing date the 8th October, 1673 did conciliate a good intelligence and amity, without complaining of any injury done by the Company in building forts and making settlements and commerce there, or without making any pretence to the lands thereabout, as Monsieur De la Barre, his successor, hath now done.

* MS. in Office of Trade and Plantations, obtained from Chief Justice Draper.

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Rights and
Charms*

*Hudson's Bay
Company's
petition to
Charles II.,
1682.*

That since that time we have erected other forts upon the coasts of the said bay, in places more remote from Canada than Charles Fort is, still making solemn compacts and agreements with the natives for the rivers and territories where we have, with great expense, discovered and maintained a trade and commerce which we hope will in time turn to our benefit, and also produce a considerable emolument to Your Majesty and the nation.

Wherefore we doubt not by Your Majesty's royal authority and protection, the Company which hath been of Your Majesty's creation, shall be enabled to defend Your Majesty's undoubted right and their own, within the said bay—wherein never any nation but the subjects of Your Imperial Crown has made discoveries or had any commerce.

All which is humbly submitted to Your Majesty's gracious consideration and Your Royal pleasure 10
By command of His Royal Highness the Governor, and the Committee of said Company.

ONESEPHORUS ALBIN,
Secretary.

[Treaty of Neutrality, 1686, Sec. VI., *supra*.
Transactions of the Commissioners appointed to execute the Treaty, Sec. VI. *supra*.
Act confirming the Hudson's Bay Company's Charter, for seven years, *supra*, Sec. V.
Treaty of Ryswick, 1697, Sec. VI. *supra*.]

ANSWER OF THE HUDSON'S BAY COMPANY,* 1699, TO THE FRENCH PAPER INTITLED "A MEMORIAL FOR JUSTIFYING THE PRETENTIONS OF FRANCE TO FORT BOURBON."

(Copy obtained from the Public Record Office, London.)

*Hudson's Bay
Company's
answer to pre-
tensions of
France, 17th
Sept., 1699.*

Since the French desire a more express answer to their First Paper, wherein they demand to be maintained in the possession of Fort Bourbon (which they acknowledge the English called Port Nelson) upon this ground of their having made the first discovery and the first settlements, and being dispossessed thereof by the English in a time of peace, saving the right which the Hudson's Bay Company claims under the Imperial Crown of England, both to this particular place of Port Nelson, and all the rest of the Bay, within Hudson's Straits, by the Law of Nations,—we deny the French to be the first discoverers of that place, or to have made the first settlements there, and are ready to prove the contrary on the English side. And the French, in this paper bringing their pretended right of discovery and settlements no higher than the year 1682, and their being dispossessed in 1684, we shall briefly show what sort of possession that was, and how those two actions were conducted. 20

Mr. Radisson, mentioned in the French paper to have made this settlement for the French at Port Nelson, in 1682, was many years before in England, settled and married an English wife, Sir John Kerk's daughter, was in the interest and service of the English, upon private adventures, before as well as after the incorporation of the Hudson Bay Company. In 1667, when Prince Rupert and other nobles sett out two shipp, Radisson went in the *Eagle*, Captain Stanard, commander, and in that voyage the name of Rupert's River was given. Again [in] 1668, and againe in 1669: in this voyage Radisson directed his course to Port Nelson and cast anchore before it, went on shoar with one Baley (designed Governour for the English), fixed the King of England's arms there, and left some goods there for trading. In 1671, three ships were sett out from London by the Hudson Bay Company then incorporated, and Mr. Radisson in one of them, in the Company's service, settled Moose River, went to Port Nelson, left some goods there, and wintered at Rupert's River. In 1673, upon some difference with the Hudson Bay Company, Mr. Radisson returned into France, and is there persuaded to go to Canada againe; there he formed several dessigns of going on some French private expeditions into Hudson Bay, which the Governour, Mons^r. Frontenac, would by no means permit, as declaring it would break the union between the two Kings. But at last, the said Radisson was secretly sett out with two ships by one La Chaney, and other private persons, without the Governour's knowledge without any 40

* Endorsed—"Answer left with Mr. Secr. Vernon [Secretary of State], 17th April, 1699." The memorial to which this is a reply has not been found.

orders from any powers; and in August, 1682, arrived at a river to them unknowne, but being in the latitude of Port Nelson; resolved to go in, found an English ship, whose company were building an house; saw another ship coming in, belonging to the Hudson Bay Company of London, which had brought a governour to settle a factorie in that Port. Radisson, and the French with him tooke the English ship, the Company's governour and men, and carried them to Canada, where he found Monsr. La Barre governour in the roome of Monsr. Frontenac, who ordered the said Radisson forthwith to release the said English ship, and ordered La Chaney [Chesnaye], the merchant who had sett out the said Radisson upon the said expedition, to give satisfaction to the English for some goods disposed of by Radisson, but was never performed.

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10 This was the expedition in 1682, and the first time that ever French men or French vessell sailed into Hudson Bay, conducted thus by Radisson in a piraticall manner, without any publick authority, by the experience he had learnt in the voyages for the Hudson Bay Company, and this was y^e man who then designed to have given the name of Fort Bourbon to the place now in question, which had been denominated by the English (and so found in all mapps) by the name of Port Nelson, about 70 years before, and upon such rights of discovery and possession, and of this date, is the title of the French founded to this place of Port Nelson.

The manner how they were dispossessed of this unjust acquisition two years after, in 1684, as they complain in their paper, was as followeth, and right was done to the English by the same hand of Radisson who did us the wrong.

20 Complaint being immediately made by the Hudson Bay Company, Radisson, as soon as he returned into France, in 1683, found the effects of it by the many memorials given in against him at the French Court by the several public ministers of the King of England from time to time. The action was disowned by his most Christian Majesty, and satisfaction promised, which was directed by a great minister in France in this manner, viz: That Radisson should goe for London, where he should ship himself on board the Company's ships to goe to Port Nelson and withdraw the French whom he had left there, restore the effects to the English, and the Court of France nor Canada should ever pretend any right to the Bay of Hudson. Accordingly, Radisson came to London, presented himself to King Charles and the Duke of York, then Governor of the Hudson Bay Company; by their recommendation is reconciled to the Company and goes with only two ships in the Company's service, whereof Captain Bond and 30 Captain Outlaw were Commanders, arrived at Port Nelson, where the Sieur Chavert, whom Mr. Radisson had left, and the rest of the men came over to him and complied with the justice to be done to the English (who afterwards took service in the Hudson Bay Company), and brought into England and restored to the Company about 12,000 beaver skins and other furs (short of sixty thousand beavers as the French suggest in their paper), the greatest part of which were traded with English goods taken from them in the expedition before.

And this, we conceive, is a answer to the French paper, whereby they pretend a right to this place of Port Nelson, as it is a true account of the matter-of-fact which we are ready to justify and prove, and we demand to be restored to the ancient and undoubted right of the Imperial Crowne of England and our own, derivative from thence; and whereas they talk of injuries and dispossessing in 40 a time of peace, who were the first aggressors and begun a private and piraticall war is plaine by this narrative, and was the continual subject of our complaints which his Majesty was pleased to take notice of when he declared the warr against France.

[See the French Answer to the preceding, Sec. IX, *Infra*.]

REPLY OF THE HUDSON BAY COMPANY TO Y^e ANSWER OF THE FRENCH COMMISSARIES TO THE MEMORIAL OF DEDUCTION OF THE RIGHT AND TITLE OF THE CROWNE OF ENGLAND TO HUDSON BAY, ETC., JUNE, 1699.

[Copy obtained from the Public Record Office, London.]

Altho' the said French papers have given noe substantiall answer to the Memorial or Deduction of the Right and Title of the Crowne of England to Hudson Bay, and that we are ready to maintaine in fact and in right all that is inserted in the said Memorial, yett we think it convenient to give a full

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French Com-
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June, 1699.*

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missaries,
June, 1699.*

reply to some things untruly grounded, and others, improperly inferred, by the French in their said pretended answer.

It is like a willfull shutting their eyes against the light to alleadge that the English knew not the northern countries from the year 1497. We appeale to all faithfull Relations of forreigne colonies, to all anthantick mapps, ancient and moderne, and to all histories and books of cosmography, and we are ready to make out the severall discoveries and rightfull possessions made for the Crowne of England, as they are exhibited in our Memorial or Deduction of our title, and we could goe higher, if it were material, and shew that the Brittaines, many hundred years before the Union of England and Wales, made voyages to those Northern countries, which is sufficient to confute the assertion of the French that those countries were unknown to the English. But it will suffice that we maintaine our discoveries, our severall voyages, our taking possession in the right of the Crowne of England, our English denominations of the places, which they justly retaine to this day, our trading with the savage nations and our actual settlements in trade, habitations, forts and factories, before ever the French pretend'd, to an emulation or knowledge of the place as we have laid it down in our said Title. 10

It is not denyed but that some of those ancient voyages we have mentioned might be made in search of a passage into the South Sea, but that doth not hinder but that a discovery might be made of a countrey, seas or bayes, whilst they are in that pursuite is a proper discovery; and the possession taken of such places, in the name of the king or prince of such navigators, is a rightfull possession or the whole tract and territory belonging to such place against any other prince or person whatsoever. But we will maintaine all the marks of our rightfull possession in behalf of the Crowne of England, none of which the French can pretend to but with the same confidence as they may lay claim to all England, which would be dangerous to them since all the world knows with what juster right we might invert that claim upon France.

It may be observed with what caution the French, in this paper, doe industeriously avoid the naming or owning of the Hudson Bay, but all along call it the Bay to the North of Canada, which signifies nothing but to show how ill founded their pretences is to it, and that the very name (which yett they cannot deny) betrays the emptiness of their Title; and yet in all former Memorials, in 1687 and in divers since, they have owned the name of Hudson Bay, and we are not beholden to them whether they will call it so or noe, nor doth it avail them any more than their late giving the name of Fort Bourbon in their St. Thereza River to our York Fort in Port Nelson, and to shew how little knowledge they have had of the place and the man whose name the said Bay bears to this day, they have affirmed in a late memorial that the said Hudson passing in 1665 towards the North, to search for a passage into the South Sea, discovered the same without entering into it and called it by his name, which contains two notorious errors or falsities in it, first because Hudson's voyage was 55 years before the time alledged, and secondly, because he entered into the Bay, gave it his name and many other English names to other places, wintered there, but perished himself in the voyage. With equal ignorance they alleadge in their said Memorial, that in their said expedition, in 1682, they meeting an English barke from Boston, in New England, in the place, there happened to be one Nelson in the said barke, who upon his arrival called the mouth of that River Port Nelson, which was called so 70 years before by Sr. Thomas Button, from one Nelson his pilott, whom he buried there as we have sett forth, in our Title, but these are sufficient to show the skill and reading of the French in those places as well as their right. 30 40

The interruption we mention of prosecuting those voyages, and the formel settling of a trade, by all prudent and ratioll men, may well be imputed to the troubles arising and continuing in England, not well quietted till the restoration of King Charles the Second, and then resumed and found most convenient to be managed by a joynt stock, as they were afterwards incorporated. But we ask the French, whether during those troubles here or afterwards, until the year 1682, they ever took the least notice of Hudson's Bay, or visited any part of it, by sea or land, but then it was that their envy began to rise against a trade which we had brought to yield 50,000 beavers a yeare, which never produced one skin before, nor ever had navigation in the Bay but by the English. And we are ready to prove that some private Frenchmen, designing secret expeditions to invade our places, they were forbid by the Governor of Canada, and charged by such an invasion not to disturb the good correspondence between 50

the two Crownes, for that the place belonged to the English, and, though they did afterwards do it in a secret and piraticale way, expressly against orders, in the yeare 1682, under the conduct of Radisson, yet that and twenty invasions more, and wrongs suffered since, cannot impeach our rights and possessions which we had for so many yeares before.

How far the French could avail themselves upon pretences to Carrolina we know not, nor is it our present dispute, but we believe it has no better foundation than their pretences to Hudson Bay, and they might with as good presumption lay claim to New England and Virginia and what they pleased. But we doubt not but the one and the other will be equally defended and maintained by His Majesty as the absolute rights of the Imperial Crowne of England. If the authors they mean, who write of 10 Canada or New France, do give it no bounds to the northward as they say, [they] must be taken for partial French authors, or ignorant of that part of the world, the grants of the French Kings signifying nothing to another prince his right, and they may name what they will in their grants, places known or unknown, but nobody is so weak to think that anything passeth by those grants but what the King is rightfully and truly possessed of or intitled to; for *Nil dat quod non habet* is a maxim understood of all; but whereas the French would have no bounds to Canada to the Northward, nor indeed to any parts of their Dominions in the world if they could, it is plain by all maps that Terra Corterialis and Estotiland are on the north of Canada, both lying northward between Canada and Hudson Bay, and we do not hear that they have yet laid claim to those two countries between us. As for the wrong 20 inference which they make, that if the English had had any knowledge of the Bay or any pretensions to it, they would not have failed to have made a reservation thereof in the Treaty of 1632, for restoring of Canada to the French, what need was there of reserving that which was so remote, not in the least contiguous to or dependant on Canada, the known rights of the Crowne of England, and not so much as known to the French, but navigated in the time of the then King Charles the First, and Canada itself for several years possessed by his subjects. And here we take the occasion they justly give us, to affirme, that if treaties avails anything with them, they are in no just possession of Canada itself, for that there was a great sum of money to be paid to ye Kirks family upon the surrender of it which never was paid to this day, and of which there will be just complaint. The French in the said answer, do confess that they had no forts on the coasts of the said Bay, and as they have confessed in another paper they date their discovery and first settlement but from 1682, but their excuse for it is very 30 weake, because they had a trade by lakes and rivers, since those lakes and rivers were as free a communication to the benefit of the English in Hudson Bay as to the French in Quebec, in Canada, which are 700 leagues distance by sea, and they may as well say because the channel passeth between England and France and is communicable to both, that the French claim the English shore by that contiguity. We believe no authentic acts about takeing possession can be produced that the saviages acknowledge the sovereignty of the French King, that can any way affect the English to the prejudice of their right in Hudson Bay. We know the French have used many indirect ways and fore to oblige the poor Indians not to come to trade at the Company's Factories. But we conceive they ought to be free and are so, to trade where they please and like best, as all other nations doe.

We have said already that severall expeditions were sett out, for tryall to find a trade and whither 40 it would be worth the ingaging in a Joint Stock before the Company was incorporated; and if Mr. Radisson and Desgrozilliers were entertained as servants to the adventurers in those first endeavours and beginnings, what is to be inferred from that? Had they been Spaniards, Portuguese or Venetians, it was free for any nation to entertaine and employ them in their service. But we deny what is pretended that we had no knowledge of the Bay, before we employed them; for Radisson and Desgrozilliers were no navigators or skilled in sailing to make a discovery, but only usefull when we should arrive there, having the language of the savages, and so capable to invite them downe to trade. But the voyages were conducted by English seamen and English pilotts. We will agree that the Letters of Incorporation or Charter in 1670, by King Charles the Second to the Hudson Bay Company, cannot give them any right, or dispose of any lands or countries whereof France was in legall possession, but 50 we have denyed any legall possession of France or that France had ever occupied those places without opposition (as this paper pretends), or at all, till their unjust incroachments and invasions in 1682 aforesaid, to which they have given no answer; which was a private piratical expedition, complained of by

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us in 1686, and disowned by his most Christian Majesty as we have repeated almost in all our papers. And therefore by their own arguments here laid down, we do insist upon the validity of the said Charter and Grant, and that King Charles had full power to dispose of those places and countries in the right of his crown, which France never had, nor can claim or dispose of, and by purity of reason overthrows all pretended Grants of France to places she never was legally possessed of.

The answer saith that in 1675 the inhabitants of Canada sent a ship into the Northern Bay, entered into Bourbon River and wintered there, which the English call Port Nelson. We know nothing of this action but challenging them to name the ship and commander, and we desire to know when they first called it Bourbon River or Fort Bourbon; we maintain that it was never actually called soe until the year 1694, when they took it in the late war, and we retook it in 1696. And if the confident imposing of French names upon places but as yesterday, will create them a title they may soon lay claim to not only to Hudson Bay but to half the world besides.

In the next paragraph they recite again the action of 1682, and they speak truly that the inhabitants of Canada sent two ships with the said Radisson and Desgrozillier, but had they any authority or order from France or from ye Governor of Canada? On the contrary were forbid and afterwards prosecuted in France as pirates. We have often insisted upon this, and we desire it may be observed that Mr. Radisson will acknowledge that he could not have undertaken that expedition but by the experience he had got by ye voyages he went in the service of the English many years before from England. Mr. Radisson (as the paper saith) is in London. Lett him give a full narrative of that expedition, *in vivo* or in writing, when the Lords Commissioners shall command it, though we have given a particular account of it in one of our papers lately delivered in. And the French pretensions are very ill grounded, when they are forced to build upon the private undertaking of a merchant of Canada, who went even against command and order, for lucre's sake, to rob and to plunder those that were in good amity with his prince, and he was accordingly soe treated when he returned back. Mr. Radisson did not goe over in 1684, in the service of the Ministers of France and by the directions of His Majesty of England, to restore those places he unjustly took from the English and those goods he robbed them of in 1682, under the celebrated expedition of the merchants of Canada, which the French make the date of their possession and of their right, and though the French say we make no mention of what passed in 1684 we think they do not observe that our complaints begun from the injury that piratical expedition in 1682, and tho' in some measure we righted ourselves in 1684, yet we had just grounds of continu'd complaints, which we prosecuted in the Court of France; and what passed in the yeares 1686 and 1687, when Messrs. De Barillon and Bonrepos were here on behalf of the French, is to be found on record, as also what the sence of the then Lords Commissioners was upon the whole matter, and the final resolution of the King.

The French reflect upon our surprize in 1684—to recover our right upon their unjust invasions in 1682—as done in a time of peace, and as if their farther injury in 1686, when they dispossessed us of the bottom of the Bay, were the consequences of that. We know the French too well not to be aware that they which invaded us so unjustly in 1682, would prosecute their advantage and pursue us with injury upon injuries. But we admit at their urging that it was a time of peace in 1684. Was it not a time of peace in 1682? Were not they the first aggressors? We will put the whole matter upon that issue—who were the first aggressors? If 1682 be before the yeares 1684 and 1686, we think it will need no further examination. Did not they begin a piratical warr, in a time of peace between the two Crowns? Is it not lawful in time of peace as well as warr to repell force with force? This seems to be urged only as it were to prevent our agravating our complaints by such injuries rec'd in a time of peace, which nevertheless hath and will be tooke notice of.

It may be admired at last to see the French pretend their losses at the retaking of Port Nelson, (which they still call Fort Bourbon, without any reason) do exceed the losses suffered by the English in their invasion at the bottom of the Bay, not to insist further that their invasion was in a time of peace, in 1686 as before noted, and our recovery of Port Nelson was in a time of warr, in 1696, besides our damages made out in those yeares, from 1682 to 1687, when the same complaints were under debate.

We have now lately exhibited an account of our losses and damages whereby the truth of the allegation will appear, and we insist upon full satisfaction for the same accordingly; and for the better illustration of all that we have said in point of fact we have hereto annexed an affidavit of Mr Radisson, the person so often mentioned and insisted upon in the French papers for the author of their possession under his conduct of 1683 sworn in 1697, which cannot but be a finale and satisfactory closing of the whole dispute.

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Wherefore it being obvious that the Hudson Bay Company have clearly made out the right of the Imperial Crowne of England that the said Company have an indefeazable right from the said Crowne which cannot be alienated, that the French have made out no title, but in this their pretended answer brought only wronge suggestions and undue inferences which are here fully replied to, that there can be no damages given nor restitution of places but what is founded in right, that all the matters in controversie (except what hath fallen out since the late warr) were heard and examined by Commissaries on both sides, whereupon his then Majesty's Commissaries, viz.:—The Right Honourable the Earl of Sunderland, the Earl of Middleton, and my Lord Godolphin did, in the year 1687, Report to His Majesty in these words following, viz.:—That Your Majesty and your subjects have a right to the whole Bay and Straits of Hudson and to the sole trade thereof, soe it may be fitt for Your Majesty to support the Company of Hudson Bay in the recovery and maintenance of their rights, since otherwise that trade will be totally lost and fall into the hands of the French, if they be permitted to continue in the possession of those forts, or any fort or place of trade within the said Bay or Streights; upon which his then Majesty declared, viz.:—That he conceived the said Company well founded in their demands and did therefore order the said Commissioner to insist upon his own right and the right of his subjects to the whole Bay and Streights of Hudson, to the sole trade thereof as also upon ye demand of full satisfaction for the damages they had received and restitution of the 3 forts surprized by the French in the bottom of the Bay.

*Hudson's Bay
Company's
reply to the
French Com-
missaries,
June, 1699.*

That the warr falling out since cannot alter the merritts of the case, the injuries done the Company being declared one of the causes of the warr. The said Hudson Bay Company doe therefore demand in their own proper right not only to be maintained in the possession of all their places in the bottom of the Bay but also to be restored to their factory of the York Fort in Port Nelson, with satisfaction for all our damages and a full recognition of the said places and territories to the Crowne of England for the future, and the sole trade and sailing to the whole Bay and Streights of Hudson as rightfull proprietors of the same.

HUDSON'S BAY COMPANY'S STATEMENT OF THEIR TITLE AFTER TREATY OF RYSWICK, 1700.*

A deduction of the Right and Title of the Crown of Great Britain, and therein of Our Most Gracious Sovereign Lady Queen Anne, to all the Streights, Bays, Seas, Rivers, Lakes, Creeks, Islands, Shores, Lands, Territories and Places whatsoever within Hudson's Streights and Hudson's Bay, and of the Rights and Property of the Hudson's Bay Company, derived from the Imperial Crown of Great Britain by Letters Patent of Incorporation, and a Free Grant of all the Premises, from King Charles ye Second, Ao. 1670.

*Hudson's Bay
Company's
deduction of
right, 1700.*

40 That Hudson's Bay (with all that belongs thereto, within Hudson's Streights, in North America) was first discovered by Sr. Sebastián Cabbat, Grand Pilot to King Henry the Seventh, who gave English names to several places of the said Bay.

Sr. Martin Furbisher, in Queen Elizabeth's time, made three voyages to the said Bay in 1576, 1577 and 1578, and gave English names to several places there.

Captain Davis made three voyages thither in the years 1585, 1587 and 1588, and gave English names to several parts of the said Bay.

Henry Hudson, an Englishman, sailed to the Streights and Bay, from him called Hudson's Streights and Hudson's Bay, and keeps that denomination to this day in all the authentic maps in ye

* Pownall's Manuscripts, "Trade," Vol. I, p. 64. For the French answer to this Deduction of Right, see Sec. IX, *post*.

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world, and even in the maps of the best geographers of France. The said Hudson stayed a whole winter there, took possession thereof in the name of the King of England, traded with the savages, and gave names to several other parts of the Streights and Bay.

Sir Thomas Button pursued the discovery and possessions of the aforesaid Hudson, sailed into the Streights and Bay with two ships and particularly into Port Nelson where he wintered and buried the commander of his ship there, in memory of whom he gave it the name of Port Nelson, and called that particular bay Button's Bay (as it is still called in the maps), took possession thereof in the name of his master, King James the First, and gave several other English names to other places in the bay, and erected a cross there declaring thereon the right of the Crown of England.

Captain Luke Fox, by command of King Charles the First, made a voyage to Hudson's Bay, and amongst other places entered Port Nelson, and finding there the cross erected by Sir William Button, with the inscription defaced, and almost worn-out, he erected it again with a new inscription, declaring the right and possession of his then Majesty King Charles the First, named the adjacent country New North Wales, and published a journal of his voyage.

Note.—That the troubles and civil wars which soon after broke out in England, might be one principal cause why these voyages were not prosecuted, trade in general then failing, and navigation and discoveries wanting the encouragement of the Government—till after the Restoration of King Charles the Second. Yet it is observable that all that while (for so many years) that those places and countries lay neglected and unfrequented of the navigation or commerce of any European nation, the French do not in the least pretend to have then visited those parts, or to have formed a possession, or attempted any commerce with any people upon those coasts, nor do they pretend that ever any French vessel sailed Hudson's Streights or Hudson's Bay till of late years.

It was, then after the happy Restoration of King Charles the Second, that trade and commerce began to revive, and in particular that from noblemen and other public-spirited Englishmen, not unmindful of the discovery and right of the Crown of England to those parts in America, designed at their own charge to adventure the establishing of a regular and constant trade to Hudson's Bay, and to settle forts and factories, whereby to invite the Indian nations (who live like savages, many hundred leagues up the country), down to their factories, for a constant and yearly intercourse of trade, which was never attempted by such settlements, and to reside in that inhospitable country, before the aforesaid English Adventurers undertook the same.

Wherefore, after a long time of consultation, and the necessary preparations for so great a charge, in the year 1667, one Zachary Gillham was provided of a ship and goods in London, sailed through Hudson's Bay to the bottom of the Bay, settled a trade, and built a fort there, which he called Charles Fort, on a river which he named Rupert's River, in honour to Prince Rupert, who was pleased to be concerned with, and was one of those Adventurers; in which place the Hudson's Bay Company continued a trade, and had there a factory, until the same was unjustly taken from them by the French in time of peace.

Another voyage was undertaken by the same Adventurers, and one Captain Newland was sent, who entered Port Nelson, settled there, and anew declared right and title of His Majesty to that river and the countrys adjacent, and there fixed up His Majesty's Arms, as a mark of his sovereignty over the said places.

After the charge of those voyages, and the experience by these settlements, that a great trade might be brought to England by beavers, furs and other commodities, for the just encouragement of so good and public a benefit, and the persons that had laboured in it, his then Majesty King Charles the Second was graciously pleased, in the year 1670, according to the undoubted and inherent right of His Imperial Crown in England by his Royal Letters Patent to incorporate the said Adventurers, and to grant unto His Highness Prince Rupert, the Duke of Albemarle, Earl of Craven, Lord Arlington, Lord Ashley, and divers others and their successors for ever, all the lands and territories aforesaid, to be reckoned and reputed as one of His Majesty's plantations and colonies in America, by the name of Rupert's Land, and further, to create and constitute them and their successors the true and absolute lords and proprietors of the same, and of all the territories, limits and places thereto belonging to have,

hold, possess, and enjoy the same for ever, as of His Majesty's manor of East Greenwich, in free and common soeage, &c.

In the same year the Company so incorporated sent out one Charles Baily as Governor of their factories and settlements in the Bay, with whom Monsieur Frontenac, then Governor of Canada, by letters and otherwise, entertained a good correspondence, not in the least complaining in several years of any pretended injury done to the French, by the said Company's settling a trade and building of Forts at the bottom of the Bay.

The said Charles Baily (as the Company's Governor) sent a ship from the bottom of the Bay, called the *Imploy*, to Port Nelson, to settle a trade there with the natives.

10 As did also Captain Draper, with the ship *Albermarle*.

But after about fifteen years' labour and charge, continual voyages, Factorys and Settlements, and the trade with the natives established, the French began to annoy this new and growing trade, and thought it worth their while to study some pretences to invade and rob the English, and to deprive them of some part of the said country.

When the English Company were building a Fort and settling a Trade at Port Nelson, the French, having formed a private expedition at Quebec, in Canada, by confederacy of one of La Chanay, and other private persons, came suddenly with two ships into the said river of Port Nelson, and with a stronger force surprised the said Company's men, and dispossessed them of their place and settlement, carried them prisoners to Canada, and pretended to settle a trade there themselves; but this was the first time 20 that ever the French did sail a vessel into the Hudson's Bay since the beginning of the world. This was a piratical expedition, and the authors of it were prosecuted as such, by frequent memorials from hence at the Court of France, where the same was disowned by His Most Christian Majesty, and satisfaction promised by him accordingly.

But as the French seldom want assurance for their pretensions or claim to anything for their advantage, so they never failed of artifice or force (when they can) to back such their pretensions; and when by violence, rapine and murder, they got themselves into an unjust possession, as aforesaid, then they pretended to expostulate all by a treaty (as if they were upon an even foot with the right possessor), and they seconded this injurious invasion and assault, a year or two after, and by taking a ship of the Company's, one Edward Humes, Commander, with the goods, and carried the men away prisoners, 30 and for above a year fed them on bread and water.

They formed a greater design, and went with a considerable force over land from Canada to the bottom of the Bay, and by force or treachery, surprised and took all the Company's factorys there, with all the ammunition, goods, stores and merchandize therein, to a very great value, murdered and destroyed many of His Majesty's subjects; and all these invasions, seizures and depredations were in a time of peace, and the best correspondence between the two Crowns; which is an action scarce to be paralleled by any civilized nation, when the way is open for complaints to the Prince on either side.

Upon these repeated injuries, the said Company complained several times to His then Majesty King James the Second. Several memorials were presented at the French Court by the public Ministers then there, My Lord Preston, Sir Wm. Trumbal and Mr. Skelton: at last His Most Christian 40 Majesty did appoint Commissioners to meet at London, to treat of those matters, and Monsieur Bonrepos was sent over thither, to be joined with Monsieur Barillon, the French Ambassador, in that affair, whereas many papers were exchanged on both sides (but were in that reign so advantageous to the French interest), they did not obtain one inch from the right of the Imperial Crown of Great Britain, nor from the property of the Hudson Bay Company. But on the contrary, His then Majesty did declare that his honour and the Company's interest were concerned therein, and would have reparation for both.

At His late Majesty, King William the Third, his happy accession to the throne, the said Company put in a fresh petition and memorial to His Majesty, of their grievous suffering from the French, which His Majesty was greatly pleased to resent so far that he made it one of the articles and grounds of a 50 declaration of war against France.

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And then by the late Treaty of Ryswick, Commissioners were appointed on both sides to examine and determine the rights and pretensions which either king had to the places situated in Hudson's Bay; before which Commissioners the right and title of the Crown of England to the whole Streights and Bay of Hudson was then clearly made out, which the French could never disprove; yet they still most unjustly keep possession of the greatest part thereof, which if they be permitted to enjoy, they will become sole masters of all Her Majesty's dominions and territories in those parts, which are of great extent, and the undoubted right of the Crown of Great Britain, and of very great concern to all Her Majesty's subjects, especially to those that inhabit or trade to the northern parts of Her Majesty's plantations in America.

THE COMPANY'S CLAIMS AFTER THE TREATY OF RYSWICK.

10

[To the Right Honourable the Lords Commissioners of Trade and Plantations.]

*Hudson's Bay
Company's
petition to
the Lords
Commissioners
of Trade,
10th July,
1700.*

The limits which the Hudson's Bay Company conceive to be necessary as boundaries between the French and them in case of an exchange of places, and that the Company cannot obtain the whole Streights and Bay, which of right belongs to them, viz.:-

1. That the French be limited not to trade by wood-runners, or otherwise, nor build any House, Factory, or Fort, beyond the bounds of 53 degrees, or Albany River, vulgarly called Chechewan, to the northward, on the west or main coast.

2. That the French be likewise limited not to trade by wood-runners, or otherwise, nor build any House, Factory, or Fort, beyond Rupert's River, to the northward, on the east or main coast.

3. On the contrary, the English shall be obliged not to trade by wood-runners, or otherwise, nor build any House, Factory, or Fort, beyond the aforesaid latitude of 53 degrees, or Albany River vulgarly called Chechewan, south-east towards Canada, on any land which belongs to the Hudson's Bay Company.

4. As also the English be likewise obliged not to trade by wood-runners, or otherwise, nor build any House, Factory, or Fort, beyond Rupert's River, to the south-east, towards Canada, on any land which belongs to the Hudson's Bay Company.

5. As likewise, that neither the French or English shall at any time hereafter extend their bounds contrary to the aforesaid limitations, nor instigate the natives to make war, or join with either, in any acts of hostility to the disturbance or detriment of the trade of either nation, which the French may very reasonably comply with, for that they by such limitations will have all the country south-east-ward betwixt Albany Fort and Canada to themselves, which is not only the best and most fertile part, but also a much larger tract of land than can be supposed to be to the northward, and the Company deprived of that which was always their undoubted right.

And unless the Company can be secured according to these propositions, they think it will be impossible for them to continue long at York Fort (should they exchange with the French), nor will the trade answer their charge; and therefore if your lordships cannot obtain these so reasonable propositions from the French, but that they insist to have the limits settled between [Albany and] York and Albany Fort, as in the latitude of 55 degrees or thereabouts, the Company can by no means agree thereto, for they by such an agreement will be the instruments of their own ruin, never to be retrieved.

By order of the General Court,

WM. POTTER,

Secretary.

40

Confirmed by the Court }
of the said Company, 10th July, 1700. }

To the Governor or Deputy-Governor of the Hudson's Bay Company, or either of them.

*Lords Com-
missioners of
Trade to
Hudson's
Bay Com-
pany, 22 Jan.,
1701.*

GENTLEMEN,—Upon consideration of what was this day offered to the Lords Commissioners for Trade and Plantations, by yourselves and other members of the Hudson's Bay Company, their Lordships have commanded me to acquaint you with their desire, that the Resolution of your

Court may be taken and communicated to them, whether (in case the French cannot be prevailed with to consent to the settlement of the boundaries proposed in your Court of the 10th July last), the said Court will not think fit to consent, that the limits on the east side of the Bay be extended to the latitude of $52\frac{1}{2}$ degrees, with whatever further that Court may think advisable to propose, in reference to their own affairs, for the more easy settlement of all disputes between the Company and the French in Hudson's Bay.

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Whitehall, January 22nd, 1709.

W. P[OPPLE].

To the Right Honourable the Lords Commissioners for Trade and Plantations.

10 The Hudson's Bay Company having lately exhibited to your Lordships their resolution of their Court, the 10th of July last, concerning limits between them and the French in Hudson's Bay, and though the Company cannot but still insist upon their undoubted right to the whole Bay and Straights of Hudson, as has been clearly made out by them :

*Hudson's Bay
Company to
Lords Com-
missioners of
Trade, 19
Jan., 1701.*

Yet in obedience to your Lordships' letter of the 22nd inst., and to show how desirous they are to comply therewith as much as in them lies, and is consistent with their future safety, they do further offer to your Lordships the following proposals of limits between them and the French in Hudson's Bay, viz. :—

1. That the French be limited not to trade by wood-runners or otherwise, nor build any House, Factory, or Fort to the northward of Albany River, vulgarly called Checheawan, on the west main or 20 coast.

2. That the French be likewise limited not to trade by wood-runners or otherwise, nor build any House, Factory, or Fort to the northward of Hudson's River, vulgarly called Canuse River, on the east main or coast.

3. On the contrary, the English, upon such an agreement, do engage not to trade by wood-runners nor build any House, Factory, or Fort to the southward of Albany River, vulgarly called Checheawan, on the west coast, on any ground belonging to the Hudson's Bay Company.

4. As also, the English be likewise limited not to trade by wood-runners or otherwise, nor build any House, Factory, or Fort to the southward of Hudson's River, vulgarly called Canuse River, on the east coast, on any ground belonging to the Hudson's Bay Company.

30 5. That all the Islands in the said Bay and Straights of Hudson, lying to the northward of Albany River, on the west coast, and of Hudson's River, vulgarly called Canuse River, on the east coast, shall be and remain to the English.

6. Likewise that all the Islands in the said Bay of Hudson, lying to the southward of Albany River, on the west coast, and of Hudson's River, vulgarly called Canuse River, on the east coast, shall be and remain to the French.

7. That neither the French or English shall at any time hereafter extend their bounds contrary to the aforesaid limitations, or instigate the natives to make war, or join with either in any acts of hostility, to the disturbance or detriment of the trade of either nation.

40 These terms the Company are willing to agree to, upon condition they may be secured from any claim that has been, or may be made on them by virtue of the 8th Article of the Treaty of Ryswick, or by any other matter or thing relating to the said treaty. And if the French think fit to accept thereof, the Company are willing to exchange places with them, but not without settling of limits; for that the said 8th Article which saith there shall be an exchange of places, doth also say, that limits shall be likewise settled, and it would seem very unreasonable that one should be performed without the other. As to the Company's naming of rivers as boundaries, and not latitudes, the same is more certain and obvious, both to the natives as well as Europeans, and the contrary impracticable; nor can the latitude be so well laid down in that wild country, the Indians well knowing the one, but not the other.

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But should the French refuse the limits now proposed by the Company, the Company think themselves not bound by this or any former concessions of the like nature, but must, as they have always done, insist upon their prior and undoubted right to the whole Bay and Streights of Hudson, which the French never yet would strictly dispute, or suffer to be examined into (as knowing the weakness of their claim), though the first step in the said Article of Ryswick directs the doing of it.

By Order of the General Court of the said Company.

WM. POTTER,
Secretary.

January 29th, 1701.

STATE OF THE COMPANY'S AFFAIRS, 1701-2.

10

To the Deputy Governor of the Hudson's Bay Company.

The Lords Commissioners for Trade and Plantations have commanded me to signify to you their desire that the Hudson's Bay Company would lay before them whatever they may think fit to offer in relation to the trade and security of that place at this time.

I am,

Sir,

Your humble servant,

W. P[OPPLE].

Whitehall, January 9th, 1701.

To the Honourable the Lords Commissioners for Trade and Plantations.

20

Hudson's Bay
Company to
Lord Com-
missioners of
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The humble representation of the Governor and Company of Adventurers of England trading into Hudson's Bay.

SHREWETH :

That the said Company being required by your Lordships to give in what they thought necessary in relation to their trade, and the security of their factory in Hudson's Bay, do, with all submission, lay before your Lordships the true state and condition thereof.

They will not trouble your Lordships with a repetition of their undoubted rights to all Hudson's Bay, and that the French never laid claim to the same, or ever sailed a ship or vessel into those parts since the creation of the world, till the year 1682 (many years after the incorporation of this Company), and then in a piratical manner, without any commission or authority from His Most Christian Majesty, who was afterwards pleased to disown the said proceeding, as the Company have and are still ready to prove.

These matters have been so fully and clearly made out by them that even the French themselves with all their sophistry and equivocation, have not been able to disprove.

Therefore we shall proceed to inform your Lordships of the present melancholy prospect of their trade and settlement in Hudson's Bay, and that none of His Majesty's plantations are left in such a deplorable state as those of this Company, for by their great losses by the French, both in times of peace as well as during the late war, together with the hardships they lie under by the late Treaty of Ryswick, they may be said to be the only mourners by the peace.

They cannot but inform your Lordships that the only settlement the Company have now left in Hudson's Bay (of seven they formerly possessed) is Albany Fort, vulgarly called Checchewan, in the bottom of the said Bay, where they are surrounded by the French on every side, viz, by their settlements on the lakes and rivers from Canada to the northwards, towards Hudson's Bay, as also from Port Nelson (Old York Fort) to the southward; but beside this, the Company have, by the return of their ship this year, received certain intelligence that the French have made another settlement at a place called New Severn, 'twixt Port Nelson and Albany Fort, whereby they have hindered the Indians from coming to trade at the Company's factory, at the bottom of the Bay, so that the Company this

year have not received above one-fifth part of the returns they usually had from thence, insomuch that the same doth not answer the expense of their expedition.

The Company being by these and other their misfortunes reduced to such a low and miserable condition, that, without His Majesty's favour and assistance, they are in no ways able to keep that little remainder they are yet possessed of in Hudson's Bay, but may justly fear in a short time to be deprived of all their trade in those parts, which is solely negotiated by the manufacturers of this kingdom.

Upon the whole matter, the Company humbly conceive they can be no ways safe from the insults and encroachments of the French, so long as they are suffered to remain possessed of any place in Hudson's Bay, and that in order to dislodge them from thence (which the Company are no ways able to do), a force of three men-of-war, one bomb-vessel, and two hundred and fifty soldiers besides the ships' company will be necessary, whereby that vast tract of land which is of so great concern, not only to this Company in particular, but likewise to the whole nation in general, may not be utterly lost to this kingdom.

All of which is humbly submitted to your Lordships' great wisdom and judgment.

By the Governor and Company of Adventurers of England trading into Hudson's Bay.

WM. POTTER,
Secretary.

Hudson's Bay House, the 19th January, 170½.

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[Imperial Act, 6 Anne, Cap. 37, 1707, saving the rights of the Company, Sec. V., *supra*.]

DISCOVERIES AND NATIONAL RIVALRIES IN AND AROUND HUDSON'S BAY.*

THE ENGLISH ACCOUNT FROM THE HUDSON'S BAY COMPANY'S POINT OF VIEW.†

In the year 1576, Cap. Martin Frobisher made his first voyage for the discovery of a passage to China and Cathay by the north-west; and on the 12th of June he discovered Tierra de Labrador in 63 degrees 8 minutes, and entered a Streight which he called by his name. On the 1st of October he return'd to England. In the following year, he went a second time on the same discovery, came to the same Streight, and us'd all possible means to bring the natives to trade, or give him some account of themselves, but they were so wild, that they only study'd to destroy the English. Cap. Frobisher stay'd here till winter drew on, and then he return'd to England. He made the same voyage the following year, and with the like success.

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Six years afterwards, A. D. 1585, John Davis sail'd from Dartmouth on the same adventure, came into the latitude of 64 degrees 15 minutes, and proceeded to 66 degrees 40 minutes. In the year ensuing he ran to 66 degrees 20 minutes, and coasted southward again to 56 degrees. Sailing thence in 54 degrees, he found an open sea, tending westward, which he hoped might be the passage so long sought for; but the weather proving tempestuous, he return'd to England. In October, the next year, he did the same. After which there were no more adventures this way, till the year 1607, when Cap. Henry Hudson discover'd as far as 80 degrees 23 minutes. In 1608, he set out again; and, having added little to his former discoveries, return'd. Two years after, he again undertook a voyage to find out the north-

* This account from Oldmixon's *British Empire in America*, is taken from "An Investigation of the Unsettled Boundaries of Ontario," by Charles Lindsey, p. 146.

† This account may be regarded as semi-official, much of the materials being derived from the Hudson's Bay Company.

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west passage, proceeded 100 leagues further than any man had done before him, till he could not go forward for ice and shoal water; and finding himself imbay'd, he resolv'd to winter there. In the spring of 1611, pursuing a further discovery, he and seven more of his company were seiz'd, the rest of his men put into an open boat, and committed to the mercy of the waves and savages.

We know 'tis pretended, that a Dane made the Discovery of this Streight, and that he call'd it Christiana, from the King of Denmark, Christian the IVth then reigning. But Cap. Hudson was the man who discovered it to the English, and who indeed first sail'd so near the bottom of the Bay, as he did within a degree or two.

The same year that he dy'd, Sir Thomas Button, at the instigation of Prince Henry, pursu'd the same discovery. He pass'd Hudson's Streights, and leaving Hudson's Bay to the south, settled above 200 leagues to the south-west, and discover'd a great continent, by him called New Wales. He winter'd at the place afterwards call'd Port Nelson, carefully search'd all the Bay, from him call'd Button's Bay, and return'd to Digg's Island.

In 1616, Mr. Baffin enter'd Sir Thomas Smith's Bay, in 78 degrees, and return'd despairing to find any passage that way. All the adventures made to the north-west, were in hopes of passing to China. In 1631, Capt. James sail'd to the north-west, and arrived at Charlton Island, where he winter'd in 52 degrees. Cap. Fox went out this year on the same account, but proceeded no further than Port Nelson

The civil wars in England put discoveries out of men's heads; and we hear of no more such adventures till the year 1667, when Zachariah Gillam, in the *Nonsuch*, ketch, pass'd thro' Hudson's Streights, and then into Baffin's Bay to 75 degrees; and thence southward into 51 degrees; where in a river 20 afterwards call'd Prince Rupert's River, he had a friendly correspondence with the natives, built a fort, nam'd it Charles Fort, and return'd with success.

The occasion of Gillam's going was this: Monsieur Radisson and Monsieur Gooselier [de Groisselier], two Frenchmen, meeting with some savages in the Lake of Assiniponals, in Canada, they learnt of them, that they might go by land to the bottom of the Bay, where the English had not yet been. Upon which they desir'd them to conduct them thither, and the savages accordingly did it. The two Frenchmen return'd to the Upper Lake the same way they came, and thence to Quebec, the capital of Canada; where they offer'd the principal merchants to carry ships to Hudson's Bay, but their project was rejected. Thence they went to France, in hopes of a more favourable hearing at court; but after presenting several memorials, and spending a great deal of time and money, they were answer'd as they 30 had been at Quebec, and their project looked upon as chimerical. The King of England's ambassador at Paris, hearing what proposals they had made, imagin'd he should do his country a good service in engaging them to serve the English, who had already pretences to the Bay, persuaded them to go to London, where they met with a favourable reception from some men of quality, merchants and others, who employ'd Gillam, before-mention'd, a New England captain, in the voyage; and Radisson and Gooselier accompanying, they arrived at the bottom of the Bay, and succeeded as we have hinted already.

When Gillam return'd, the adventurers concern'd in fitting him out apply'd themselves to King Charles II. for a patent; who granted one to them and their successors, for the bay call'd Hudson's Bay and the streights called Hudson's Streights. The patent bears date the 2nd of May, in the 22nd year 40 of that King's reign, A.D. 1670.

On the west side of the Bay, the English made a settlement, and built a fort, at Port Nelson. The Bay there is call'd Button's; and Hudson's Bay is broadest in this place. The two opposite shores are call'd the East Main and West Main. The former is Labrador, and the latter New Wales. The continent at the bottom of the Bay is by the French pretended to be part of New France; and indeed to cross the country from the St. Margaret's River, which runs into the River of Canada, to Rupert's

River, at the bottom of Hudson's Bay, is not above 150 miles. At Rupert's River, the English built their first fort, which they call Charles Fort.

In the year 1670, the Company sent off Charles Baily, Esq., Governour, with whom went Mr. Radisson and 10 or 20 men, who were to stay on the place; his residence being at Rupert River, where a mean fort has been built. Mr. Baily appointed Mr. Thomas Gorst to be his secretary, and order'd him to keep a journal of their proceedings there, which is now in my custody.

The English had now worse huts, than afterwards, and no covering for them but moose skins. There was at this time a factory at Port Nelson, where Captain Gooselier arrived in August, 1673. He search'd the river for Indians, but met with none. He saw several wigwams, where they had lately been, and suppos'd them to be gone up the country. This captain was order'd to search for Severn River, but could not find it, tho' 'twas in the old draughts of this Bay.

Now Mr. Baily and his little colony fell to patching up their cabbins, and prepare for the enemy. The 23rd of October several Indians came to the Fort to trade, and among others one from Quebec.

Several Indians came in March, and built their wigwams at the east end of the Fort, intending to stay there all winter, that they might be ready for trade in the spring. About the 20th of March it began to thaw; and the Nodways still threatening the English with war, the Governour prepar'd every thing necessary in the Fort for his defence. On the 25th of March, six men, as Ambassadors, came from King Cuscudidah, to notify his approach, and that he would be at the Fort next day, which he made good, and was troubled that the Governour was absent. He brought a retinue with him, but 20 little beaver, the Indians having sent their best to Canada.

The English at the Fort stood on their guard, and Mr. Cole commanded them in the Governour's absence; for whom the King sent two Indians. And the 31st of March, the Governour returned, with a small supply of Moose flesh.

All this while the Indian King stayed at the wigwams, near the Fort; and the reason of it was they were apprehensive of being attack'd by some Indians, whom the French Jesuits had animated against the English, and all that dealt with them. The French us'd many artifices to hinder the natives trading with the English; they gave them great rates for their goods, and oblig'd Mr. Baily to lower the prices of his, to oblige the Indians who dwelt about Moose River, with whom they drove the greatest trade.

30 The French, to ruin their commerce with the natives, came and made a settlement not above eight days' journey up that river, from the place where the English traded. 'Twas therefore debated whether the Company's agents should not remove from Rupert's to Moose River, to prevent their traffick being intercepted by the French.

On the 3rd of April, 1674, a council of the principal persons in the Fort was held, where Mr. Baily the Governour, Capt. Gooselier, and Capt. Cole, were present, and gave their several opinions. The Governour inclin'd to remove. Capt. Cole was against it, as dangerous; and Capt. Gooselier for going thither in their bark to trade, when the Indians belonging to King Cuscudidah were gone a hunting, and there was no fear of the Fort's being surpriz'd.

The Indians went to building their wigwams near the Fort, and rais'd their Wauscoheigin, or fort, 40 so near the English, that the palisadoes join'd. On the 20th of May, 12 Indians, subjects to King Cuscudidah, came in seven canoes, and the King meeting them, conducted them to the Fort, where they told him there would be few or no Upland Indians come to trade that season, the French having

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perswaded them to come to Canada. However, Mr. Baily order'd the sloop to be got ready, and resolv'd to go up the river.

Upon the arrival of this ~~the~~ company, ~~among~~ whom was the King's brother, a feast was made.

The next day (May 23), the ~~(the)~~ ~~French~~ and some English and Indians arm'd, went down to the bottom of the Bay, to Frenchmen's River, to seek for the Nodways, but could meet with none. On the 27th of May, about 50 men, women and children, came in 22 canoes, to trade but brought little or no beaver with them. They were of the nation called Pishapocanoes, near a-kin to the Eskeimoes, and, both alike, a poor beggarly people: by which we may perceive the French ran away with the best of the trade.

The Governour having got every thing ready for a voyage to Moose River, sent Capt. Gooselier 10 Capt. Cole, Mr. Gorst my author, and other English Indians, to trade there. They got about 250 skins and the Captain of the Tabitsee Indians informed them the French Jesuits had not brib'd the Indians not to deal with the English, but to live in friendship with the Indian nations in league with the French. He blam'd the English for trading with such pitiful nations as the Cuscudilahs and Pishapocanoes advising them to settle at Moose Sebee, and the Upland Indians would come down and trade with them. The reason they got no more peltry now, was, because the Indians thought Gooselier was too hard for them, and few would come down to deal with him.

Mr. Baily sail'd himself for Moose Sebee, and brought home 1,500 skins; the Shechittawams, 50 leagues from that river, having come to trade with him. By the 24th of June all the Indians had left their wigwams near the fort, and were gone abroad to hunt and trade some with the English and some 20 by themselves.

The Governour undertook a voyage to discover Shechittawam River; and thence intended to coast along to Port Nelson, where as yet was no Fort. In the meantime Mr. Gorst, who was left deputy at the fort, sent a sloop, and four men well arm'd, up the Nodways River, which, as high as they could go for the Falls, was 5 miles broad. After about 2 months' voyage, Mr. Baily return'd and gave this account of his voyage in the sloop. On the 16th July he sail'd from Moose River, and arriv'd at Schettawam River on the 18th, where no Englishman had been before. He stayed there till the 21st, but could meet with little or no beaver.

'Tis a fine river, and a good channel to the N. W. in 52 degrees, N. L. He treated with the King, and his son made them a promise to come with a ship and trade with them the next year. In return, they assured him they would provide store of beaver, and bring the Upland Indians down.

On the 27th July, the sloop ran upon ice, and had like to have founder'd.

After he had returned to the fort, on the 30th August, a canoe arriv'd at Rupert's River, with a missionary Jesuit, a Frenchman, born of English parents, attended by one of Cuscudilah's family, a young Indian. The Frier brought a letter to Mr. Baily from the Governour of Quebec, dated the 8th of October, 1673. For the priest should have been at Rupert's River several months before, but that he was stop'd by the Indians. The Governour of Quebec desired Mr. Baily to treat the Jesuit civilly on account of the great amity between the two crowns; and Mr. Baily resolv'd to keep the Jesuit till ships came from England.

The Tabitsee Indians being within the Hudson's Bay Company's Patent, 'twas an encroachment for the French to trade with them; the Jesuit confessed they did it. Mr. Baily clothed him, the Indians having rob'd him; and entertained him with great kindness. The Priest resolving to return to Europe in an English ship, did not like another journey of 400 miles length, thro' many barbarous nations, overland, and a country almost impassible.

The English were frequently alarm'd with reports of incursions from the Nodways and Moose River Indians, whose quarrel with them was their selling too dear.

In the evening, September 24, the sloop appeared in the river, but having no ensign out, they concluded they were all lost men; and in this extremity of sorrow, they were soon revived by the sight of five Englishmen, whom they had not seen before, and from whom they understood the *Prince Rupert*, Capt. Gillam, commander, was arriv'd, with the new Governour, William Lyddal, Esq.

The next day, the old Governour, and Mr. Gorst, sailed for Point Comfort, where the *Shaftsbury*, Capt. Shepherd, commander, arriv'd also from England. And the new Governour's commission and instructions being read, all hands set to work, to refit and load the ships home as soon as possible.

On the 18th September, Mr. Lyddal landed and took possession of the fort, Mr. Baily deliver'd him the patent. Mr. Lyddal, finding the season would be so far spent, before the ships could be unloaden and loaden again, that it would be impracticable to return; after several councils, 'twas resolv'd they should winter at Rupert's River; and Capt. Gillam, and Capt. Shepherd's ships' crews were employed to cut timber, to build houses for them, as also a brew-house and bake-house in the fort.

Mr. Baily, who had very well discharged his trust, returning to England, inform'd the Company fully of their affairs; and now as they advanced in reputation, so they were industrious to increase their trade and settlements. They appointed a trader to act under the Governour, and chiefs of the factories at other rivers, according as they were settled.

Port Nelson was the next settlement which they made, and thither they sent John Bridger, Esq., with the character of Governour for the Hudson's Bay Company, of the West Main, from Cape Henrietta Maria, which was included in the Governour of the East Main's patent.

Mr. Lyddal was succeeded by John Nixon, Esq., in whose time the Company thought of removing their chief factory from Rupert's River to Chiekwan River, as the place most resorted to by the Indians. Charlton Island was now frequented by the ships bound to Hudson's Bay, and made the place of rendezvous for all the factors to bring their merchandize to and load it there aboard the Company's ship.

In the year 1682, Mr. Bridger embarked for Port Nelson, where a factory was to be established and a fort built, but before he arrived, Captain Benjamin Gillam, master of a New England ship, and a son of Captain Gillam, commander of the *Prince Rupert*, then in the Company's service, settled at that factory, but had not been there above fourteen days before Mr. Raddisson and Captain Gooselier, who deserted the English, arrived from Canada.

The Company having dismissed them their service, these two Frenchmen in revenge procured some merchants of Canada to undertake a settlement there. Gillam was not strong enough to repel them, but he remained at Port Nelson, where, ten days after Raddisson and Gooselier's arrival, came Mr. Bridger. The French no sooner perceived he was come, but they sent aboard his ship immediately and commanded him to begone, for that Mr. Raddisson and Captain Gooselier had taken possession of the place for the French King, their master.

Mr. Bridger, being warranted so to do by the Company's commission, unloaded some of his goods and with all hands went to work in order to make a settlement. Raddisson continued at Port Nelson and Mr. Bridger and he became very intimate, which intimacy lasted from October, 1682, to the February following, when Raddisson seized Bridger and Gillam with all their people and effects.

Having kept them some months in a sort of imprisonment, about August, the French put several of the Company's and Gillam's people aboard a rotten bark, and they were taken up by an English ship near Cape Henrietta Maria. Bridger and Gillam they carried with them to Canada, where Raddisson and Gooselier ran some of their cargo ashore, intending to defraud their employers. After which they made their escape and got into France. The Company having notice of it, wrote to him, and he to the

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Company, promising, if they would forgive the injury he had done them, and employ him again at such a salary, he would undertake to deliver the French, whom he had left there till he came again, to them, and seize all the furs they had traded for, which would make them satisfaction for the wrong he had done them. Accordingly they forgave him and employ'd him again, and he took Port Nelson from his countrymen. But before his arrival Cap. John Abraham had been there with supplies of stores; and finding Mr. Bridger was gone, he stay'd himself and was continu'd Governour by the Company, in 1684.

In the preceding year, Mr. Nixon, Governour of Rupert's River, was recall'd, and Henry Sergeant, Esq., made Governour, by whose instructions we find the chief factory was remov'd from Rupert's to Moose-sebec, or Chickewan River, which has ever since been call'd Albany River; where a fort was built, a factory settled, and the Governour made it the place of his residence. 'Tis the bottom of the 10 Bay, below Rupert's River.

He was ordered to come every spring, as soon as the trade was over, to Charlton Island and bring what goods he had with him, to wait for the arrival of the Company's ships. From thence he was to visit the other factories, and see that their merchandize was sent in due time to Charlton Island, to attend the ship's arrival.

The Governor of Canada, having given the Hudson's Bay Company to understand the French were very much offended at their discoveries in these parts, Mr. Sergeant was ordered to be careful that he was not surprised by them.

There is an island in the bottom of the Bay, called Hayes Island, where a factory had been settled. This isle and Rupert's River were near the French, Albany being more to the southward; and of these 20 factories the Company were most apprehensive that their enemies would endeavour to dispossess them.

The Company intended to plant a colony at Charlton Island, and order'd Mr. Sergeant to build a fort there, and always keep some men upon it. Warehouses were also built to receive the furs that were brought thither from the factories, and conveniences were made for the reception of such as were obliged to winter there.

Orders were also given to dismiss Cap. Gillam from their service for his son's offences and Cap. Sandford had the same usage, on account of his relation to the Gillams. Cap. William Bond, who had been under Mr. Baily, was sent for home; and other regulations made in the management of affairs, but all could not hinder the ruin of them all by the enemy.

The Company, by their Governours and agents, made such compacts with the captains or kings of 30 the rivers and territories where they had settlements, for the freedom of trade there, exclusive of all others, that the Indians could not pretend they had encroached upon them. These compacts were rendered as firm as the Indians could make them, by such ceremonies as were most sacred and obligatory among them.

Now were the Company in possession of five settlements, viz., Albany River, Hayes Island, Rupert River, Port Nelson, and New Severn. Their trade at each of them was considerable. From Albany River they had generally 3,500 beavers a year; and by Mr. Sergeant's great care and fidelity, their commerce increased so much that the French began to be afraid that all the Upland Indians might be drawn down to the Bay. They knew they could do anything with King James II, who then reigned in England, and that no affront would make that prince break with Louis the XIV. Wherefore they 40 resolved to drive the English out of all their places in the bottom of the Bay. First they took Hayes Island and then the fort on Rupert's River. The French Company at Canada procured a detachment of soldiers to be sent under the Chevalier de Troyes, who came overland from Quebec, and in a time of profound peace committed these acts of hostility.

The 8th of July, 1686, the Chevalier de Troyes came before the fort at Albany River, where the Governour, Mr. Sergeant then resided. Two Indians had informed him of their having surpriz'd the

forts at Hayes Island and Rupert River, and having brought with them the great guns from those places.

Two hours after, the English heard them discharging their guns, and saw some of them at a distance. Upon which, part of the Company's servants declar'd they would not venture their lives unless they might be assur'd of pay, and sent John Parsons and John Garret, two of their number, in all their names, to the Governour, to tell him their resolutions. Mr. Sergeant, by promises and giving them cloaths and other necessaries, prevail'd with them to return to their charge. But in a day or two they mutiny'd again, and Elias Turner, the gunner, possess'd the people with an apprehension that it was impossible to hold out the place, declaring that for his part he would throw himself on the French. Accordingly he went to the Governour, and desir'd leave so to do; but being threat'n'd to be shot to death in case he attempted it, he was at last perswaded to return to his post.

The English shot at the French as long as they appeared in the rushes, and forc'd them to retire under the banks, where the guns from the fort could not hit them.

The French had found a way to bring their great guns through the woods, and had planted them on their battery before the English saw them. The enemy's shot had made a breach in the flankers and damaged the houses in the fort; upon which, and the repeated desires of the men, the Governour consented to a parley; Mr. Bridger assuring him the enemy were mining them, and they should certainly be blown up. Cap. Outlaw also agreed to capitulate, and the white flag was hung out; after which a treaty was concluded.

At this time Thomas Phips, Esq., was Governour of Port Nelson, which was not then taken by the French; and the Company expected Fort Albany would have been restor'd to them in King James' time; but all their solicitations were in vain, and all the settlements they had, Port Nelson excepted, were abandoned to the French.

The war breaking out, as has been said, between the two nations, the Hudson's Bay Company solicited for soldiers to be sent thither to recover their settlements, and in the year 1693 they retook all the forts and factories which the French had taken from them in time of peace.

In which expedition they met with no more difficulties than the Chevalier de Troyes had met with Capt. Grinnington was the person employ'd for this service; and John Knight, Esq., was appointed Governor of Fort Albany; but his government was of no long continuance, for in a little time the French sent such a power against the English, that they again drove them from all their settlements in the bottom of the Bay.

The French Company made Monsieur de la Fores, Governour of Fort Albany, and garrison'd all forts they had taken, which made it necessary for the Government to send a stronger power than the Company could raise to recover them.

The King of England, to protect their trade, assign'd two men-of-war for their services in the year 1696, as the *Bonaventure*, Cap. Allen, Commander, and the *Seaford*. Cap. Allen coming into the River Hayes, sent to summon all the forts to surrender, and the French Governour finding he could not defend them against the English, capitulated, and on the 2nd of August, 1696, surrender'd Albany Fort.

Cap. Allen took the Governour and some of his men aboard his own ship; some he put aboard the *Seaford*, and the rest aboard a merchantman call'd the *Dering*. In his return he fought the *Mary Rose*, frigate, then a French privateer of 50 guns, and was killed in the engagement, which gave the Frenchman an opportunity to bear away.

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As to the other two forts, they followed the fate of Albany, and Mr. Knight was restored to his government; at which time John Geyer, Esq, was governour of Port Nelson. Mr. Knight had serv'd Mr. Sergeant, while he was Governour of Fort Albany, and was well acquainted with the trade.

In the year 1697, the *Hampshire*, frigate, and *Owner's Love*, fire-ship, two of the King's ships, were lost in this Bay, and all the men drown'd. Indeed, the ice renders it so dangerous that the commerce seems to be not worth the risk that is run for it. Whether those two ships ran against those frozen mountains that float in that sea, or founder'd, is not known; but 'tis certain they were lost, and all the men perish'd.

In the present war they lost Port Nelson to the French, and have either given up or deserted all their settlements, except Fort Albany, where Mr. Knight managed their affairs till the year 1706, when he was succeeded by John Fullerton, Esq, the present Governour at Albany River.

CLAIMS AND MEMORIALS OF THE HUDSON'S BAY COMPANY, 1711-1714.

To the Queen's Most Excellent Majesty.

The Petition [1711] of the Governor and Company of Adventurers of England trading into Hudson's Bay.

HUMBLY SHEWETH:

The Com-
pany's peti-
tion to Queen
Anne, 1711.

That your petitioners are far from enquiring into the great affairs of your Majesty's glorious Government, especially as what relates to war and peace, both which they know your high wisdom will so order as shall be most for the good of your whole people; but believing the justice of your cause and the terror of your arms must soon reduce the French King to sue for such a peace as all Europe desires and wants, your petitioners crave leave with the profoundest duty, to submit the hardships of their case to your Royal consideration.

That the French, in a time of perfect amity between the two kingdoms, viz., Anno 1682, did arbitrarily invade the Company's territories at Port Nelson, burn their houses and seize their effects.

That in the years 1684 and 1685, they continued their depredations.

That in the year 1686, they forcibly took from the Company three Factories, viz.: Albany Fort Rupert and Moose River Fort, which violent proceeding they continued the years 1687 and 1688, the whole damages done by the French to the Company in times of peace amounting to £108,514 19s. 8d. as your petitioners are ready to make appear, besides interest for the same.

That in the year 1685, they supplicated his then Majesty King James the Second to interpose on their behalf, and by his Ambassadors at the French Court to demand reparation for the damages done to the Company, and restitution of the places unjustly taken from them by the French in time of peace, whereupon Commissioners were appointed by His Majesty, viz., the Earl of Sunderland, the Earl of Middleton, and the Lord Godolphin, to treat with the French Commissioners, before whom the Company clearly made out their right to the whole Bay and Streights of Hudson—to the satisfaction of the English Commissioners, who, on the 10th November, 1687, reported the right of your petitioners, upon

which King James was pleased to declare, that he conceived the company well founded in their demands, and therefore did insist upon his own right, and the right of his subjects to the whole Bay and Streights of Hudson, and to the sole trade thereof; as also upon the demand of full satisfaction for the damages they had received, &c., the copy of which report and His Majesty's resolutions thereon, is hereby annexed. This was translated and declared towards the latter end of 1687, at which time the Lord Churchill, Duke of Marlborough, was Governor of the Company, and memorials were repeated by the said King's command at the French Court so pressingly for satisfaction and restitution, that your petitioners had certainly been relieved and restored to their rights, but for the war which soon after broke out between the two Kingdoms.

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10 That upon the late King William's accession to the Throne, the Company renewed their claim to their territories and for reparation of damages suffered from the French in times of full peace, of which his said Majesty was so sensible, that he was pleased to make the proceedings of France in that affair one of the causes and articles of his declaration of war against the French King *in hæc verba*: "But that the French King should invade our Charibee Islands and possess himself of our territories of the Province of New York and Hudson's Bay in an hostile manner, seizing our Forts, burning our subjects' houses, and enriching his people with the spoil of their goods and merchandises, detaining some of our subjects under the hardships of imprisonment, causing others to be inhumanly killed, and driving the rest to sea in a small vessel, without food and necessaries to support them, are actions not even becoming an enemy, and yet he was so far from declaring himself so, that at that very time he was negotiating here in England by his Ministers, a treaty of neutrality and good correspondence in America," so that your petitioners did patiently wait the end of that war, not doubting but to have justice to them, when a peace was concluded.

But so it is, may it please your most Excellent Majesty, that the Company found their interest not comprehended in the Treaty of Ryswick, which they are far from attributing to any want of care in that gracious Prince of this Kingdom's honour and trade, and rather think their rights and claims were then overweighed by matters of higher consequence depending in that juncture; for by the said treaty they found their condition much worse than it was before,—by the 8th article whereof, the French were left in possession of such places situated in Hudson's Bay, as had been taken by them during the peace which had preceded that war.

30 That at a meeting of Commissioners on both sides (as directed by the said treaty, to adjust these differences) the Company did again set forth the undoubted right of the Crown of England to the whole Bay and Streights of Hudson, against which nothing but sophistry and cavils were offered on the French side, and the matter remained undetermined.

That the only settlement now remaining to the Company in those parts (of seven they formerly had) is Albany Fort, on the Chechewan, where they are surrounded by the French on every side, viz.: By their settlements on the lakes and rivers from Canada to the northward towards Hudson's Bay, as also from Port Nelson (at York Fort), to the southward. The French have likewise made another settlement between Port Nelson and Albany Fort, whereby the Indians are hindered from coming to trade with the English factory at the bottom of the Bay, and if they are suffered to fix and fortify in those parts, beyond all question they will deprive your Majesty's subjects of that tract of land, which is 40 those parts, beyond all question they will deprive your Majesty's subjects of that tract of land, which is so large a part of your American dominions, and rightly belongs to the Crown of Great Britain.

That not only your Majesty's glory is concerned to preserve these plantations, but it very much imports the general trade of your Kingdom, since your petitioners, notwithstanding the losses and discouragements they have laboured under, and during the war, have brought from thence between 30,000 and 40,000 skins *per annum*, and doubt not if they were reinstated in their possessions, according to their charter, to bring the said importations to 100,000 skins *per annum*.

That the said country doth abound with several other commodities (of which your petitioners have not been able to begin a trade, by reason of the interruptions they have met with from the French), as with whale-oil, whale-bone, (of which last your subjects now purchase from Holland and

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Germany, to the value of about £26,000 *per annum*, which may be had in your own dominions) besides many other valuable commodities, which in time may be discovered.

That if the French come to be once entirely possessed of Hudson's Bay, they will undoubtedly set up whale fishing in those parts, which will greatly tend to the increase of their navigation, and to their breed of seamen.

That there is carried thither, and consumed there, nothing but of the product and manufacture of England, your petitioners encouraging and daily bringing the Indians to wear coarse cloth instead of skins, which in process of time will considerably advance the woollen trade at home.

That it needs must reflect upon the honour of Britain to relinquish to the French that territory of which their violent usurpation in a time of peace was alleged as a main article in the first declaration 10 of war against that Kingdom.

That if the French could pretend to any right to the said territories by the peace of Ryswick this right must needs be determined by their notorious infraction of the said treaty.

The premises considered, when your Majesty, in your high wisdom, shall think fit to give peace to those enemies whom your victorious arms have so reduced and humbled, and when your Majesty shall judge it for your people's good to enter into a treaty of peace with the French King, your Petitioners pray that the said Prince be obliged by such treaty, to renounce all right and pretensions to the Bay and Streights of Hudson, to quit and surrender all posts and settlements erected by the French, or which are now in their possession, as likewise not to sail any ships or vessels within the limits of the Company's charter, and to make restitution of the £108,514, 19s. 8d., of which they robbed and despoiled 20 your petitioners in times of perfect amity between the two Kingdoms.

And your petitioners, as in duty bound, shall ever pray.

To the Right Honourable the Lords Commissioners of Trade and Plantations.

The Memorandum of the Governor and Company of Adventurers of England trading into Hudson's Bay.

That for avoiding all disputes and differences that may in time to come arise between the said Company and the French, settled in Canada, they humbly represent and conceive it necessary:

That no wood-runners, either French or Indians, or any other person whatsoever, be permitted to travel, or seek for trade, beyond the limits hereinafter mentioned.

That the said limits begin from the island called Grimington's Island, or Cape Perdrix, in the latitude of 58½ north, which they desire may be the boundary between the English and French, on the coast of Labrador, towards Rupert's Land, on the east main, and Nova Britannia on the French side and that no French ship, bark, boat, or vessel whatsoever, shall pass to the northward at Cape Perdrix or Grimington's Island, towards or into the Streights or Bay of Hudson, on any pretence whatever.

That a line be supposed to pass to the south-westward of the said Island of Grimington, or Cape Perdrix, to the great Lake Miscosinke, *alias* Mistoveny, dividing the same into two parts (as in the map now delivered), and that the French, nor any others employed by them, shall come to the north or north-westward of the said lake, or supposed line, by land or water, on or through any rivers, lakes, or countries, to trade, or erect any forts or settlements whatsoever; and the English, on the contrary, not to pass the said supposed line either to the southward or eastward.

That the French be likewise obliged to quit, surrender, and deliver up to the English, upon demand, York Fort (by them called Bourbon) undemolished; together with all forts, factories, settlements, and buildings whatsoever, taken from the English, or since erected, or built by the French, with all the artillery and ammunition, in the condition they are now in; together with all other places they are possessed of within the limits aforesaid, or within the Bay and Streights of Hudson.

These limits being first settled and adjusted, the Company are willing to refer their losses and damages formerly sustained by the French in time of peace, to the consideration of Commissioners to be appointed for that purpose.

By order of the Governor and Company of Adventurers of England, trading into Hudson's Bay.
Hudson's Bay House, 7th February, 1714.

NOTE.—The said Company are by their Charter constituted Lords Proprietors of all those lands territories, seas, streights, bays, rivers, lakes, and sounds, within the entrance of the Streights, to hold the same, as of Her Majesty's manor of East Greenwich, in the County of Kent.

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Sec. VII.

*Hudson's Bay
Company's
Rights and
Claims.*

*Hudson's Bay
Company's
memo, as
to limits, 7
Feb., 1712.*

THE LORDS OF TRADE TO THE EARL OF DARTMOUTH.

10 *To the Right Honourable the Earl of Dartmouth.*

MY LORD,—In obedience to Her Majesty's commands, signified to us, we have considered the enclosed petition from the Hudson's Bay Company to Her Majesty, and are humbly of opinion that the said Company have a good right and just title to the whole Bay and Streights of Hudson.

Since the receipt of which petition, the said Company have delivered us a memorial, relating to the settlement of boundaries between them and the French of Canada, a copy whereof is enclosed, and upon which we take leave to offer, that as it will be for the advantage of the said Company that their boundaries be settled, it will also be necessary that the boundaries between Her Majesty's colonies on the continent of America and the said French of Canada be likewise agreed and settled; wherefore we humbly offer these matters may be recommended to Her Majesty's Plenipotentiaries at Utrecht.

20

We are,

My Lord,

Your Lordship's most obedient, and most humble servants,

WINCHELSEA, GEO. BAILLIE,
PH. MEADOWS, ARTH. MOORE,
CHAS. TURNER, FRA. GWYN.

Whitehall, February 19th, 1714.

[Treaty of Peace of Utrecht, 1713, in Sec. VI, *ante*.]

THE COMPANY'S PETITION TO QUEEN ANNE FOR ACT OF CESSION.

To the Queen's Most Excellent Majesty.

30 The humble petition of the Governor and Company of Adventurers of England trading into Hudson's Bay.

SHEWETH :

That your petitioners, being informed that the Act of Cession is come over, whereby (among other matters thereby concerted), the French King obliges himself to restore to your Majesty (or to whom your Majesty shall appoint to take possession thereof) the Bay and Streights of Hudson, together with all the lands, seas, sea-coasts, rivers and places situate in the said Bay and Streights, as also all forts and edifices whatsoever, entire and not demolished, together with guns, shot, powder and other warlike provisions (as mentioned in the 10th Article of the present treaty of peace), within six months after the ratification thereof, or sooner, if possible it may be done.

40 Your petitioners do most humbly pray your Majesty will be graciously pleased to direct the said Act of Cession may be transmitted to your petitioners, as also your Majesty's commission to Captain James Knight and Mr. Henry Kelsey, gentleman, to authorize them, or either of them, to take possession of the premises above mentioned, and to constitute Captain James Knight to be Governor of the fortress called Fort Nelson, and all other forts and edifices, lands, seas, rivers and places aforesaid; and the better to enable your petitioners to recover the same, they humbly pray your Majesty to give orders that they may have a small man-of-war to depart with their ships, by the 12th day of June next ensuing, which ship may in all probability return in the month of October.

And your petitioners as in duty bound shall ever pray.

By order of the Company.

50

per Wm. POTTER,
Secretary.

Lords of Trade
to Earl Dart-
mouth, 19
Feb., 1712.

The Com-
pany's peti-
tion to Queen
Anne for Act
of Cession.

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*Hudson's Bay
Company's
Rights and
Claims.*Earl Dart-
mouth to
Lords of
Trade, 27
May, 1713.

THE EARL OF DARTMOUTH TO THE LORDS OF TRADE.

To the Right Honourable the Lords Commissioners of Plantations.

MY LORDS AND GENTLEMEN,—The Queen has commanded me to transmit to you the enclosed Petition of the Hudson's Bay Company, that you may consider of it and report your opinion, what orders may properly be given upon the several particulars mentioned. In the meantime, I am to acquaint you that the places and countries therein named, belonging of right to British subjects, Her Majesty did not think fit to receive any Act of Cession from the French King, and has therefore insisted only upon an order from that Court for delivering possession to such persons as should be authorized by Her Majesty to take it; by this means the title of the Company is acknowledged, and they will come into the immediate enjoyment of their property without further trouble;

I am,

My Lords and Gentlemen,

Your most humble servant,

DARTMOUTH.

Whitehall, May 27th, 1713,

ORDER OF THE KING OF FRANCE FOR SURRENDER OF HUDSON'S BAY.

Order by the King of France.

Order for sur-
render of
Hudson's
Bay, 6 Aug.,
1713.

M. Jérémie, Commander of the Forts and Streights of Hudson's Bay, is commanded to deliver up to the bearer of the Queen of Great Britain's order, the Bay and Streights of Hudson, together with all buildings and forts there erected, in the condition they now are, with all the cannon and cannon-ball, as also a quantity of powder (if it be there found), in proportion to the cannon-ball and the other things belonging to the artillery, according to, and in execution of, the tenth Article of the Treaty of Peace concluded at Utrecht, the 11th of April last, between his Majesty's Plenipotentiaries and those of the Queen of Great Britain. Done at Marley, the sixth of August, 1713.

To the Queen's Most Excellent Majesty.

THE COMPANY'S MEMORIAL TO THE QUEEN AS TO DAMAGES.

The Com-
pany's memo-
rial as to
damages.

The humble memorial of the Governor and Company of Adventurers of England trading into Hudson's Bay.

That the said Company do, with the utmost gratitude, return your Majesty their most humble and hearty thanks for the great care your Majesty has taken for them by the Treaty of Utrecht, whereby the French are obliged to restore the whole Bay of Hudson and the Streights, being the undoubted right of the Crown of Great Britain.

And whereas, by the 11th Article of the said Treaty, satisfaction is to be made to the said Company for all damages sustained from the French in times of peace, for which commissaries are to be named on both sides to adjust the same: the said Company humbly presume to acquaint your Majesty that whenever your Majesty in your great wisdom shall think fit to name commissaries for that purpose, they are ready to make out their demand of damages sustained from the French, according to the said 11th Article.

All which they nevertheless submit to your Majesty's wisdom and goodness.

The Hudson's Bay Company,

WM. POTTER,

Secretary.

LORD BOLINGBROKE TO THE LORDS OF TRADE.

*To the Right Honourable the Lords Commissioners of Trade and Plantations.*Lord Boling-
broke to
Lords of
Trade, 13
April, 1714.

MY LORDS,—I send your lordships enclosed, by the Queen's command, a memorandum of the Governor and Company of Hudson's Bay, and a petition of several persons on behalf of themselves and the inhabitants of Mountserrat. It is Her Majesty's pleasure that your lordships should consider

the said memorandum and petition, as likewise the several matters which are referred to commissaries by the tenth, eleventh, and fifteenth Articles of the late Treaty of Peace with the Most Christian King, and upon the whole make your representation, to be laid before Her Majesty, for her further pleasure therein.

I am,

My Lords,

Your most humble servant,

BOLINGBROKE.

Whitehall, April 13th, 1714.

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*Hudson's Bay
Company's
Rights and
Claims.*

Lord Boling-
broke to
Lords of
Trade, 13
April, 1714.

10

THE COMPANY TO THE SECRETARY OF THE LORDS OF TRADE.

To Wm. Popple, Esq.

STR,—I, being one the Commissioners for the Hudson's Bay Company, give me leave to take this opportunity to inform you we are sending a gentleman to take possession of our country very speedily. If the Lords have any commands touching the memorial lately presented to Her Majesty by us, relating to the damages the French did us in times of peace, this gentleman, who was in Hudson's Bay at that time, can give their Lordships some information in that matter.

The Company
to the Lords
of Trade, 3
June, 1714.

I am,

Your very humble servant,

JNO. PERY.

20 June 3rd, 1714.

THE LORDS OF TRADE TO LORD BOLINGBROKE.

To the Right Honourable the Lord Viscount Bolingbroke.

MY LORD,—In obedience to Her Majesty's commands, signified to us by your Lordship's letter of the 13th of the last month, we have considered the memorial of the Governor and Company of Hudson's Bay, and the Petition relating to Mountserratt, and thereupon take leave to offer that Her Majesty be pleased to signify to the Court of France the necessity of appointing commissaries to treat the several matters pursuant to the 10th, 11th and 15th Articles of the Treaty of Peace with France, we being informed that the French commissaries who are here have not full powers to treat on those matters and as soon as we have their answer we shall lay it before your Lordship.

Lords of
Trade to
Bolingbroke,
18 June, 1714

30

My Lord,

Your Lordship's most obedient and most humble servants,

GUILDFORD,
R. MONCKTON,
ARTHUR MOORE,
JNO. COTTON,
JNO. SHARPE,
SAMUEL PYTTS,
THOS. VERNON.

June 18th.

40

THE COMPANY TO THE LORDS OF TRADE AS TO LIMITS.

To the Honourable the Lords Commissioners of Trade and Plantations.

The humble representation of the Governor and Company of Adventurers of England trading into Hudson's Bay,

SHEWETH:

That pursuant to the 10th Article of the Treaty of Utrecht, they did, the beginning of June last: send a ship for Hudson's Bay, and therein a Governor, one Captain Knight, and his Deputy, one Mr. Kelsey, to take possession of the whole Bay and Streights of Hudson, together with all other places

The Company
to the Lords
of Trade, 4
August, 1714.

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The Company
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of Trade, 4
Aug., 1714.

relating thereto, as mentined in the said articles, they having not only her late Majesty (of blessed memory) her commission for the same purpose, together with one from the Company, but likewise the most Christian King's order, under his hand and seal, with a power from the Canada Company, to deliver up the same according to the said Treaty, which ship, at the request of the said Canada Company, is not only to bring away the French settled in Hudson's Bay, but likewise their effects, pursuant to the aforesaid treaty, they paying freight for the same, which ship may be expected the latter end of September, or beginning of October next.

They further represent to your Lordships that, according to a memorial formerly delivered this Honourable Board, relating to the limits or boundaries to be settled by commissaries 'twixt the English and French in those parts, they humbly prayed, that for avoiding all disputes and differences that may in time arise between the Company and the French settled in Canada, that no wood-runners, either French or Indians, or any other person whatsoever, be permitted to travel or seek for trade beyond the limits thereafter mentioned.

That the said limits, beginning from the island called Grimington Island, or Cape Perdrix, in the latitude of 58½ north, may be the boundary between the English and the French, on the coast of Labrador towards Rupert's Land on the east main, and Nova Britannia on the French side.

That no French ship, barque, boat or vessel whatsoever, shall pass to the north-westward of Cape Perdrix, or Grimington's Island, towards or into the Streights or Bay of Hudson, on any pretence whatsoever.

That a line supposed to pass to the south-westward from the said island of Grimington, or Cape 20 Perdrix, to the great lake, Miscosinke, *alias* Mistoveny, dividing the same into two parts (as in the map now delivered), and from the said lake, a line to run south-westward into 49 degrees north latitude, as by the red line may more particularly appear, and that that latitude be the limit; that the French do not come to the north of it nor the English to the south of it.

That the French, nor any others employed by them, shall come to the north or north-westward of the said lake, or supposed line, by land or water, on or through any rivers, lakes or countries, to trade or erect any forts or settlements whatsoever; and the English, on the contrary, not to pass the said supposed line, either to the southward or eastward.

The said Company having already delivered to your Lordships an abstract of the damages sustained by the French in times of peace, amounting to £100,543 13s. 9d., according to the direction of 30 the 11th Article of the aforesaid Treaty, which they humbly entreat your Lordships to take care of, to the relief of the great hardships they have so long labored under.

By order of the Governor and Company of Adventurers of England trading into Hudson's Bay.
WM. POTTER,
Secretary.

Hudson's Bay House, 4th August, 1714.

LORD BOLINGBROKE TO THE LORDS OF TRADE.

To the Right Honourable the Lords Commissioners of Trade, &c.

Bolingbroke to
Lords of
Trade, 12
August, 1714.

MY LORDS,—The Lords Justices desire to have an account forthwith laid before them of what has been done since the peace, relating to Hudson's Bay, Nova Scotia and St. Christopher's. Some things 40 have passed in my office, others, I believe, in the Treasury, and a considerable deal I doubt not has been done by your Lordships; wherefore, if your Lordships be pleased to collect a perfect state of the whole I will furnish you with what you want from me.

I am likewise on this occasion to put your Lordships in mind of the point referred by the Treaty of Peace with France, to the discussion of commissaries, that their Excellencies may be acquainted with the orders given to the commissaries of commerce in these matters, and their proceedings thereupon.

Your letter of the 30th July, relating to Captain Van Estegle, has been laid before the Lords Justices, and the orders their Excellencies have been pleased to give thereupon, have been sent to the

Treasury and Admiralty. It is likewise thought fit that your Lordships, in your station, should advertise the governors and other officers in the plantations of their duty in the particulars mentioned in your letter, both with respect to the trading to the French settlements and to the illegal landing of goods from thence.

I am,
My Lords,

Your Lordships' most humble servant,

BOLINGBROKE.

Whitehall, August 12th, 1714.

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Company's
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Bolingbroke
to Lords of
Trade, 12
Aug., 1714.

10

THE LORDS OF TRADE TO LORD BOLINGBROKE.

To the Viscount Bolingbroke.

MY LORD,—In obedience to their Excellencies the Lords Justices' commands, signified to us by your Lordship's letter of the 12th inst., requiring to know what has been done since the peace relating to Hudson's Bay, Nova Scotia, and St. Christopher's, we take leave to represent:

Lords of Trade
to Lord
Bolingbroke,
14 Aug., 1714.

That upon your Lordship's letter of the 22nd July, requiring us to prepare proper instructions for the British commissaries who are appointed to treat with those of France upon the 10th, 11th, and 15th Articles of the Treaty of Peace, we wrote letters to several persons concerned in the Leeward Islands, and several parts of the continent, for what they might have to offer to such parts of the said Articles as did relate to them respectively, and have received answers from some of them. We pray your Lordship will please lay the enclosed copies thereof before their Excellencies, the Lords Justices, as follows:

Copy of a memorial from the Hudson's Bay Company, describing the limits which they desire may be fixed between them and the French in those parts, as also an abstract of the damages they have sustained by the French in times of peace.

In relation to St. Christopher's we further take leave to represent that upon several references from Her late Majesty in Council, from the Lord High Treasurer, and from the Secretary of State, we prepared a representation relating to the settlement of the French part of that Island, as also a letter to the late Lord Treasurer upon the same subject, copies whereof are here enclosed, which your Lordship will please also lay before their Excellencies the Lords Justices.

Since which time we have received some other petitions from French refugees, also referred to us of the same nature as those mentioned in our above said representations, which we have not yet been able to consider so as to be able to make a report thereon.

We shall take care by the next opportunity to send directions to the governors and other officers in the Plantations, in relation to the illegal trade between the said Plantations and the said French settlements.

We are,

My Lord,

Your most obedient and humble servants,

PH. MEADOWS,

SAMUEL PYTTS,

ARTHUR MOORE,

THOS. VERNON.

JNO. SHARPE,

40

Whitehall, Aug. 14th, 1714.

MEMORIAL OF THE COMPANY, 1719.

To the Right Honourable The Lords Commissioners for Trade and Plantations.

The Memorial of the Governor and Company of Adventurers of England, trading into Hudson's Bay.

Hudson's Bay
Company's
memorial to
Lords of
Trade, 1719.

SHEWETH:

That at the Treaty concluded at Utrecht, it was agreed between the Crowns of Great Britain and France, that the Straights and Bay of Hudson should be delivered up to the British subjects, and that the limits should be settled between the said Bay of Hudson and the places appertaining

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*Hudson's Bay
Company's
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Company's
memorial to
Lords of
Trade, 1719.*

to the French, and also that satisfaction should be given to the Company for all depredations committed against them by the French in a time of peace, according to an estimate thereof to be made at the requisition of the several parties.

Now, may it please your Lordships :

The First of these Articles, the surrender of the Straights and Bay aforesaid, has been made according to the tenour of the Treaty, at least in such manner that the Company acquiesce therein, and have nothing to object or desire further on that head.

The other two, viz., the running of a line between the English and French Territories and the making reparations to the Company for their losses and damages, yet remain to be done.

Whereupon the Governor and Company most humbly present to your Lordships that they conceive it absolutely necessary that the limits between the two nations be settled without delay, for that the French have, since the conclusion of peace, viz., in 1715, made a settlement at the head of Albany River, upon which very river our principal factory is settled, whereby they intercept the Indian trade from coming to the Company's factories, and will, in time, utterly ruin the trade, if not prevented. It is, therefore, proposed and desired that a boundary or dividend may be drawn, so as to exclude the French from coming anywhere to the northward of the latitude of 49, except on the coast of Labrador; unless this be done the Company's factories at the bottom of Hudson's Bay cannot be secure nor their trade preserved.

As to the article of the Company's losses, it will appear by a true and exact estimate, to this memorial annexed, that the French took from the Company, in full peace, viz., between the years '82 and '88, seven ships with their cargoes, and six forts and factories, in which they had carried away great stores of goods, laid up for trading with the Indians, the whole amount to £38,332 15s. principal money, and £62,210 18s. 9d. interest, computed to the year 1713, which two sums being added together make the total amount £100,543 13s. 9d.

The Company, humbly referring your Lordships to the estimate itself for particulars, crave leave to make two remarks upon it.

1st. That the loss of the forts is not charged therein, nor are the damages valued which the Company suffered by the depredations of the French, which must be very great considering how long they held possession of our forts, and enjoyed the trading depending thereon; particularly they held Albany Fort and all the places of trade in the bottom of the Bay for six years. The bare interest only is charged, which is always supposed necessarily to grow out of the principal and to be inseparable from it.

2nd. That the proofs and vouchers which support the account are such as the reason and nature of the thing will admit of, especially considering the distance of time and place where the injuries complained of were committed. The seizure of the several forts, and capture of the respective ships, being acts of a notorious and public nature, it is presumed they will not be denied; besides that there are living witnesses here to some of them. The cost of the ships and goods are extracted out of the Company's books, where every article was fairly entered when there could be no foresight of their misfortunes which afterwards happened; the tradesmen's several bills are likewise ready to be produced, to confirm the account.

Wherefore, the Governor and Company most humbly pray, that your Lordships will be pleased to espouse their just cause, and so recommend it to His Majesty that they may have full reparation made as was agreed and promised by the late King of France, at the Treaty of Utrecht.

CAPTAIN MIDDLETON TO A DOBBS, ESQ., JANUARY, 1742-3.*

Capt. Middleton to A. Dobbs, Jan 1742-3.

I have seriously considered your proposition of laying open the Hudson's Bay trade, and settling the country higher up, upon those great rivers which run into the Bay; and though I may agree with

* Middleton was a Commander in the Royal Navy who had served as master in the employ of the Hudson's Bay Company for many voyages. Mr. Dobbs was the author of "An account of the countries adjoining Hudson's Bay, and of certain voyages thither (1714)..." which he himself had made.

you in the great advantage the public would receive from such a settlement (could it be made), but as to their trade, and the cutting off communication with the Mississippi, yet I must declare my opinion that it is altogether impracticable upon many accounts; for I cannot see where we could find people enough that would be willing or able to undergo the fatigue of travelling in those frozen climates, or what encouragements would be sufficient to make them attempt it, with such dangerous enemies on every side; no Europeans could undergo such hardships as those French that intercept the English trade, who are inured to it, and are called by us wood-runners (or *coureurs des bois*), for they endure fatigues just the same as the native Indians, with whom they have been mixed and intermarried for two or three or more generations.

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Hudson's Bay
Company's
Rights and
Claims.

Capt. Middleton
to A.
Dobbs, Jan.,
1742-3.

10 As to the rivers you mention, none of them are navigable with anything but canoes, so small that they carry but two men, and they are forced to make use of land carriages nearly the fourth part of the way, by reason of water-falls, during that little summer they enjoy.

Out of 120 men and officers the Company have in the Bay, not five are capable of venturing in one of those canoes, they are so apt to overturn and drown them. Many of our people have been twenty years and upwards there, and yet are not dexterous enough to manage a canoe; so there would be no transporting people that way.

[Imperial Act, 18, Geo. 2, Cap. 17, saving the rights of the Hudson's Bay Company, *supra*, Sec. V.]

REPORT OF THE PARLIAMENTARY COMMITTEE OF 1749, APPOINTED TO ENQUIRE INTO THE AFFAIRS OF THE HUDSON'S BAY COMPANY.*

20

EXTRACTS FROM THE EVIDENCE OF WITNESSES.

JOSEPH ROBSON:—"Thinks that the beavers which are brought down to the Company are refused by the French from their being a heavy commodity; for the natives who come to trade with the Company dispose of their small valuable furs to the French, and bring down their heavy goods to the Company in summer, when the rivers are open, which they sell, and supply the French with European goods purchased from the Company."

Report of
Committee,
House of
Commons,
1749.

RICHARD WHITE:—"The French intercept the Indians coming down with their trade as the witness believes, he having seen them with guns and clothing of French manufacture; and that an Indian told him there was a French settlement up Moose River, something to the southward of the West, at the distance, as the witness apprehends, of about 50 miles. . . . The French deal in light furs, and take all of that sort they can get, and the Indians bring the heavy to us. Sometimes the Indians bring down marten's skins, but that is when they don't meet with the French; but he never knew any Indians who had met the French bring down any light furs. . . . The French settlement on Moose River is on Abbitibis Lake. . . . The trade might be further extended by sending up Europeans to winter among the natives, which, though the Company have not lately attempted, the French actually do."

ROBERT GRIFFIN:—"The French intercept the trade; to prevent which the Company some time ago built Henly House, which did in some measure answer the purpose; but if they would build further in the country it would have a better effect. The French went there first and are better beloved, but if we would go up into the country the French Indians would trade with us."

ALEXANDER BROWN:—"The French intercepting the southern Indians, and by that means obtaining the valuable furs. . . Has been informed by the Indians that the French Canadese Indians come within six score miles of the English factories. . . . The French Indians come to Albany to trade for their heavy goods. . . Has heard Mr. Norton [the Governor] say that the French ran away with our trade. . . . If the trade was opened the French would not intercept the Indians, since in that case the separate traders must have out-factories in the same manner the French have, which the Company have

* Report from the Committee appointed to enquire into the state and condition of the countries adjoining to Hudson's Bay, and of the trade carried on there, together with an Appendix. Reported by Lord Strange, April 24, 1749. (pp. 216, 218, 226-7, 234.)

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—
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Company's
Rights and
Claims.*
—
Report of
Committee,
House of
Commons,
1743.

not:" and being asked "In case those out-settlements were erected, whether the same trade could be carried on at the present settlements?" he said "That was impossible, but the trade would be extended, and by that means they would take it from the French. That if these settlements were near the French, they must have garrisons to secure them against the French, and the Indians who trade with and are in friendship with them, (whom he distinguished by the name of French Indians). . . . He heard the Indians tell Governor Norton, in the year 1739, that the French had a settlement at about the distance of 100 or six score miles from Churchill, which had then been built about a year, and contained sixty men with small arms. . . . That the witness was informed by an Indian and his whole family that this settlement was upon Seel River, which was navigable up to it for canoes."

WILLIAM WANSEY:—"Has been told the French draw the Indians from Hudson's Bay. . . . The 10 creating settlements up in the country would be the most proper method to increase the trade."

EXTRACTS FROM THE APPENDIX TO THE SAME REPORT.

No. IX.

AN ACCOUNT OF THE NAMES OF THE HUDSON'S BAY COMPANY'S FORTS AND SETTLEMENTS IN THE BAY SITUATED IN OR NEAR THE FOLLOWING LATITUDES:

Hudson's Bay Company's Forts.		DEG.	MIN.	
Moose Fort.....		51	28	
Henly House or Fort.....		52		
The East Main House.....		52	10	
Albany Fort.....		52	18	
York Fort.....		57	10	20
Prince of Wales Fort.....		59		

No. XV.

AN ACCOUNT OF THE NUMBER OF SHIPS, AND THE BURDEN OF EACH, EMPLOYED IN THE HUDSON'S BAY COMPANY IN THEIR TRADE TO THE SAID BAY FOR TEN YEARS LAST PAST, DISTINGUISHING EACH YEAR

Hudson's Bay Company's ships.		BURDEN OF EACH.		
Anno 1739.....	Three ships.....	170,	130,	120, Tons
1740.....	Three ships.....	170,	130,	120, "
1741.....	Two ships.....	170,	120,	"
1742.....	Two ships.....	170,	120,	"
1743.....	Two ships.....	170,	120,	"
1744.....	Four ships.....	190,	170,	130, "
1745.....	Four ships.....	190,	170,	130, "
1746.....	Four ships.....	190,	170,	130, "
1747.....	Four ships.....	190,	170,	130, "
1748.....	Four ships.....	190,	170,	130, "

N.B.—The above mentioned ships' only employ has been in carrying on the trade between the port of London and Hudson's Bay.

No. XVIII.

AN ACCOUNT OF THE ORIGINAL STOCK OF THE HUDSON'S BAY COMPANY WITH THE INCREASE OF THE 40 SAME.

Hudson's Bay
Company's
stock. In obedience to the Order from the Committee of the Honourable the House of Commons, dated 10th March, 1748, requiring an account of the original subscribed stock, and whether it hath been increased, etc.

1676. October 16.	It appears by the Company's books that their stock then was.	£10,500
1690. September.	The same being trebled, is.....	21,000
	Which makes the stock to be.....	£31,500
1720. August.	This stock being again trebled is.....	63,000
	Which makes the stock to be.....	£94,500
	And a subscription was then taken in of 10 per cent.	
	amounting to.....	£3,150
December 23.	Which being trebled is.....	6,300
	Additional stock	9,450
10	Which makes the present amount of their stock to be.....	£103,950

JOINT
APPENDIX.
—
Sec. VII.
Hudson's Bay
Company's
Rights and
Claims.
—
Hudson's Bay
Company's
stock.

No. XXV.

EXTRACTS FROM THE ORDERS GIVEN BY THE HUDSON'S BAY COMPANY TO THEIR CHIEF FACTORS IN THE BAY, IN ANTICIPATION OF AN ATTACK OVERLAND FROM CANADA.

Mr. Joseph Isbister and Council, at Albany Fort.

LONDON, 10th May, 1744.

Orders of
Hudson's
Bay Com-
pany to Chief
Factors:
To Joseph
Isbister and
Council, 10
May, 1744.

GENTLEMEN :

- 5th. The English and French having declared war against each other, and the war with Spain still continuing, we do hereby strictly direct you to be always on your guard, and to keep a good watch, and that you keep all your men as near home as possible.
- 20 8th. We do also direct that you fix your cannon in the most proper places to defend yourselves and annoy an enemy, after which you are to fire each cannon once with powder to see how they prove, and instruct your men to the use of them without firing; and that you keep them constantly loaded with powder and ball, ready for service. You are also to keep your small arms loaded and in good order and at hand, to be easily come at; and that those loaded arms be drawn or discharged once a month, and be well cleaned; and you are to exercise your men once a week till they are well disciplined, and afterwards once a month. And you are also to keep a sufficient number of your trading guns loaded and at hand in case of an attack; and if there be any Indians you can confide in, and will be of service in your defence, we recommend it to you to employ them in such manner as you think proper.
- 30 15th. We have wrote to the factory at Moose River, that in case they have any intelligence of the French coming down their river to attack them, they are immediately to send you notice thereof, that you may make the necessary preparations for your defence, and that there be a constant correspondence and intelligence between each factory for the safety of both.
- 16th. As we rely on the courage and conduct of Mr. Isbister, our chief, in case of an attack from the enemy, which, if done at all on your factory, we apprehend it will be by land, in the winter, from Canada; in which case the enemy not being able to bring down any cannon with them, we doubt not of your frustrating their designs and repulsing them.
- 18th. In case you are attacked at Henly House, and notwithstanding a vigorous resistance you should have the misfortune to be overpowered, then you are to nail up the cannon, blow up the House, and destroy everything that can be of service to the enemy, and make the best retreat you can to the 40 factory.
- 19th. We direct that you get the best information you can from the trading Indians whether the French are making any preparations to come down to the factory, or have lodged any provisions, stores, or ammunition at certain distances for their supply. We also direct you, for your better security, at all times to keep two Indians in the factory, with civil and kind usage, and send them out every morning, for intelligence to a proper distance, so as that they may return in the evening, and provided they do not return that it be an alarm to you, and that you thereupon prepare yourselves for a vigorous defence. But you must not upon any consideration let those Indians have the least knowledge of the use you intend to make of their not returning.

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JOINT
APPENDIX.

Mr. Joseph Isbister and Council, at Albany Fort.

LONDON, 3rd May, 1745.

Sec. VII
*Hudson's Bay
Company's
Rights and
Claims.*

GENTLEMEN :

4th. As the war continues with France and Spain we cannot be too strict in ordering and directing you to be always on your guard, and to keep a good watch and all your men as near home as possible.

To Joseph
Isbister and
Council, 3
May, 1745.

11th. We have augmented the complement of men (as you desired) at your factory and Moose Fort, that in case of need you may assist each other, and thereby we hope you will be enabled to baffle the designs of the enemy.

13th. We do direct that not only a continual correspondence be kept between you and Moose Fort but that you correspond with the factory at Slude River, York Fort, and Prince of Wales' Fort as often as you can, and if under any apprehensions of an attack to give immediate notice to Moose Fort.

15th. We still recommend your diligence in getting intelligence and information of the designs of 10 the French.

Mr. Robert Pilgrim and Council, at Prince of Wales' Fort.

LONDON, 6th May, 1747.

GENTLEMEN :

To Robert
Pilgrim and
Council, 6
May, 1747.

3rd. War still continuing with France and Spain, we renew our former order of being always on your guard, and to keep a good watch and your men near home, except those that are guarding the battery at Cape Merry, but not to hinder a proper number to be employed in providing a sufficient quantity of the country provisions to prevent the complaint of those persons that murmur for want of victuals; and we recommend sobriety that you may be capable of making a vigorous defence if attacked.

4th. We again recommend your keeping the land, round the Fort and the Battery at Cape Merry, 20 free from everything that may possibly conceal or shelter an enemy, that you may thereby prevent being surprised.

10th. We again direct that you keep up a general correspondence with all the Factories, and get what intelligence you can of the designs of the French.

Mr. Spence and Council, at Albany Fort.

LONDON, 5th May, 1748.

GENTLEMEN :

To Mr. Spence
and Council,
5 May, 1748.

4th. War still continuing with France and Spain we again hereby strictly order you to be always on your guard, and to keep a good watch and your men near home, but not to hinder a proper number to be employed in providing a sufficient quantity of the country provisions, particularly geese, which 30 we find you constantly employ the Indians only to kill for you, and which we are dissatisfied with; that being such a material article, you ought always to blend some of your people with the natives in the goose seasons, that they may understand how to kill them, and thereby lessen your dependence on the native hunters.

Mr. Joseph Isbister and Council, at Prince of Wales' Fort.

LONDON, 5th May, 1748.

GENTLEMEN :

To Joseph
Isbister and
Council, 5
May, 1748.

7th. We do also direct that you constantly keep your great guns loaded with powder and ball ready for service during the time the rivers are open; you are also to keep your small arms loaded and in good order, and at hand, to be easily come at, which loaded arms and cannon are to be drawn once a 40 month and well cleaned, and to exercise your men as often as requisite, whom we expect by this time are artists, not only in the use of small arms but also of cannon, that the great expense we have been at in this particular may answer the end proposed thereby in case of an attack. You are also to keep a sufficient number of your trading guns loaded and at hand, which charges are also to be drawn every month, and if there be any Indians you can confide in, and will be of service to you in your defence, we recommend it to you to employ them in such manner as you think proper.

CORRESPONDENCE BETWEEN THE COMPANY AND THEIR AGENTS ON THE BAY.

SETTLEMENT OF PORT NELSON.

To John Bridgar, Governor of Port Nelson.

MAY 15th, 1682.

We having thought fit to make a Settlement in the River of Port Nelson, in Hudson's Bay, have chosen you out from amongst those who have formerly served our company, as a person whom we judge qualified for such a charge, wherein we hope you will never give us reason to think ourselves mistaken; but that you will behave yourself with that prudence, integrity and industry that becomes you in so great a trust, both for your own reputation and the interest and advantage of the Company.

In the first place, upon your arrival there, you are, with the advice of Captain Guilham, to choose out the most convenient place for building a house and fort for your safety and accommodation.

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*Hudson's Bay
Company's
Rights and
Claims.*Orders of
Hudson's
Bay Com-
pany—Hudson's Bay
Company to
John Bridgar,
15 May, 1682.

TRADE WITH THE INTERIOR.

To Henry Sargeant, Esq.

APRIL 27th, 1683.

You are to choose out from amongst our servants, such as are best qualified with strength of body and the country language, to travel and to penetrate into the country, to draw down the Indians by fair and gentle means to trade with us.

To Henry
Sargeant,
27th April,
1683.

CHARLTON ISLAND, 13th September, 1683.

20 From Henry Sargeant.

I shall not be neglectful as soon as I find any man capable and willing for to send up into the country with the Indians, to endeavour to penetrate into what the country will and may produce, and to use their utmost in bringing down the Indians to our Factory; but your honours should give good encouragement to those who undertake such extraordinary service, or else I fear there will be but few that will embrace such employment.

From H.
Sargeant,
13th Sept.,
1683.

To Henry Sargeant, Esq.

22ND May, 1685.

We perceive our servants are unwilling to travel up into the country by reason of danger and want of encouragement. The danger we judge is not more now than formerly, and for their encouragement we shall plentifully reward them when we find they deserve it by bringing down Indians to our Factories, of which you may assure them. We judge Robert Sandford a fit person to travel, having the *lingue* and understanding the trade of the country; and upon a promise of Mr. Young (one of our adventurers), that he should travel, for which reasons we have advanced his wages to thirty pounds *per annum*; and William Arrington, called, in the Bay, Red-Cap, whom we have again entertained in our service, as also John Vincent; both which we do also judge fit persons for you to send up into the country to bring down trade.

To H. Sar-
geant, 22nd
May, 1685.

CHARLTON ISLAND, August 24th, 1685.

From Governor Sargeant.

Mr. Sandford does not accept the terms your honours propose, but rather chooses to go home. Neither he nor any of your servants will travel up the country, although your honours have earnestly desired it, and I pressed it upon those proposals you have hinted.

From Henry
Sargeant,
24th Aug.,
1685.

[B.]

JOINT APPENDIX. VALUE OF EXPORTS AND IMPORTS FROM HUDSON'S BAY IN THE UNDERWRITTEN YEARS, AS THEY STAND IN THE INSPECTOR-GENERAL'S BOOKS AT THE CUSTOM HOUSE.

Sec. VII.
Hudson's Bay
Company's
Rights and
Claims.
H. B. Co.'s
exports and
imports.

		EXPORTS.		IMPORTS.	
From Christmas, 1735, to Christmas	1736.....	£1519	16 10	£ 992	8 7
	1737.....	4124	18 2	10813	5 8
	1738.....	3869	17 7	10821	11 7
	1739.....	3984	4 4	13659	10 5
	1740.....	3837	2 8	11869	3 7
	1741.....	4203	17 1	9656	3 6
	1742.....	3028	17 0	12647	9 10
	1743.....	3644	2 9	12466	3 11
	1744.....	4871	10 1	11036	3 9
	1745.....	3795	4 9	11380	16 4
	1746.....	3320	9 10	8560	9 0
		£40241	1 1	£122835	6 3

JOHN OXFORD,
Inspector-General.

N. B.—These values are cast up by fixed and standing estimates, and not at the real cost they were bought and sold at.

Custom House, London, 13th March, 1748.

CLAIMS OF HUDSON'S BAY COMPANY, 1750, 1752, 1755, 1759.

(Copies of these papers were obtained from the Public Records Office, London.)

MEMORANDUM OF 1752, ANNEXED TO THE FOLLOWING LETTER.

Memorial,
1752.

The Hudson's Bay Company claim.

The lands to the northward of a line drawn from 59½ degrees of north latitude in the Atlantick Ocean, south-westward to the Lake Miscosink, otherwise Mistoseney, and through the same Lake, down to the 49th degree of north latitude (as described in a mapp delivered to the Lords of Trade), and thence continued by a meridian line of the said latitude of 49 degrees, westward.

These boundaries, together with a demand of £108,514 19s. 8d. sterling, was claimed by the Company in the year 1709, and afterwards by the Commissaries appointed by virtue of the Treaty of Utrecht.

To the Right Hon. Sir Thos. Robinson, Knt.,
One of His Majesty's Principal Secretaries of State,
&c. &c. &c.

THE COMPANY TO THE LORDS OF TRADE.

SIR,—I am directed by the Governor and Committee of the Hudson Bay Company to inform His Majesty's Ministers that in the year 1752, by the orders of the Lords of Trade, they laid before their Lordships a statement of their claims, which hath subsisted ever since; and in consequence of the Treaty of Utrecht, and as they are desirous of having your assistance and support, they order me to inform you that they will be ready to give such further information as to their rights as may be wanted to prove the justice of their said claim.

I am with the greatest respect, Sir,

Your most obedient, humble servant,

Hudson's Bay House, 19th Feb., 1755.
Right Hon. Sir Thos. Robinson.

CHAS. HAYS.

MEMORIAL OF THE COMPANY REFERRED TO IN THE NEXT SUCCEEDING REPORT, 1759.

To the Right Honourable the Lords Commissioners of Trade and Plantations.

The humble Memorial of the Governor and Company of Adventurers of England trading into Hudson's Bay.

May it please Your Lordships :

In prospect of an approaching Treaty of Peace between this nation and France, and in hope that the great success His Majesty's arms have been blessed with, and the many acquisitions that have been thereby gained from the enemy, will enable His Majesty to secure to your memorialists satisfaction [for] the injuries and depredations they have long since suffered from the French, which stands acknowledged by Treaty, and are stipulated to be made satisfaction for, but through the perfidy of the enemy, and in disregard of the Treaty, have hitherto remained unsatisfy'd; in which the honour of the nation, as well as justice to the individuals, loudly call for redress. To that end your memorialists beg leave to represent to your Lordships :

That the French, before the Treaty of Utrecht, in the time of peace, under some pretended claim of right, disturbed the Hudson's Bay Company in the quiet possession of Hudson's Bay and the territories thereto belonging, and in a hostile manner with ships of war and an armed land force, attacked and took several of the Hudson's Bay Company's ships in harbour in the bay, and also took, plundered and dispossessed them of several factories and settlements on the coast thereof, which matters, having been under consideration at the Treaty of Utrecht, were admitted, and agreed to be settled and satisfy'd by the following articles thereof :

[Here follow the 10th and 11th articles of the Treaty of Utrecht.]

That in pursuance of the said Treaty, and an Especial Commission of her said late Majesty, Queen Anne, dated the 20th of July, 1713, the said Bay and lands then in possession of the French, were delivered up to Governor Knight and Kelsey, who took possession thereof for the English Hudson's Bay Company, and Commissarys were appointed to settle the said limits, and adjust the damages the Company had sustained, which for the ships and goods of the Company taken by the French appears by an account stated in the year 1713, and delivered to the then Lords Commissioners of Trade and Plantations, amounted to upwards of one hundred thousand pounds, besides the damages the Company sustained by the enemies burning three of their forts and factorys at Charlton Island, Moose River, and New Severn. And proceedings were had by the said Commissarys towards settling the same; but they were never able to bring the settlement of the said limits to a final conclusion, nor did the said Hudson's Bay Company ever receive any satisfaction for their said damages.

That the papers which were laid before the said Commissarys and the minutes of their proceedings, as also a memorial relative to this matter, which in the year 1750, after the conclusion of the last war, was presented to your Lordships, remaining, as your memorialists believe, in your Lordships' office, it is conceived from thence will appear the best state of the rights of both Crowns and of the territories and claims of the said Company that can be laid before your Lordships, whereto your memorialists beg leave to refer.

Your memorialists therefore humbly hope, in case any Treaty of Peace shall be set on foot between this nation and France, that your Lordships will intercede with His Majesty to take the premises into His Royal consideration; and that he will be graciously pleased to cause your memorialists to have full satisfaction made them, pursuant to the said Treaty of Utrecht, for the aforesaid depredations they are thereby acknowledged to have sustained from the French in time of peace; and for which satisfaction is by the said Treaty agreed to be made to the Company; and that the limits of the said Company's territory may be settled, as by the said Treaty is also agreed.

All which is humbly submitted to your Lordships' consideration.

By order of the Governor and Committee of the said Company.

CHAS. HAYS,
Secretary.

50 Hudson's Bay House,
6th December, 1759.

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Sec. VII.
Hudson's Bay
Company's
Rights and
Claims.

Memorial of
Hudson's
Bay Com-
pany to
Lords of
Trade, 6 Dec.,
1759.

AS THEY STAND

REPORTS.

24 8 7
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21 11 7
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69 3 7
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66 3 11
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THE LORDS OF TRADE TO MR. PITT.

WHITEHALL, December 19th, 1759.

JOINT
APPENDIX.Sec. VII.
*Hudson's Bay
Company's
Rights and
Claims.*Lords of
Trade to Mr.
Pitt, 19th
Dec., 1759.

SIR,—the Governor and Company of Merchants trading to Hudson's Bay having presented a Memorial to us, stating their claims with respect to limits and other matters provided for by the Treaty of Utrecht, and praying that in case of a peace with France, His Majesty would be graciously pleased to cause satisfaction to be made to them, with respect to such claims, pursuant to the stipulations of the tenth and eleventh articles of the said Treaty; We beg leave to transmit to you the inclosed copy of the said memorial for His Majesty's directions thereupon.

We are, Sir,

Your most obedient and most humble servants,

Right Honourable Wm. Pitt,
One of His Majesty's Principal Secretaries of State.

DUNK, HALIFAX,
SOAME JENYNS,
W. G. HAMILTON,
W. SLOPER.

10

[Treaty of Paris, ceding Canada and dependencies to Great Britain, *Supra*, Sec. VI.]

HUDSON'S BAY COMPANY'S POSTS, 1775-1798.

H. B. Co's
Posts
1775-98.

1775.—“The Hudson's Bay Company has at present four factories: Churchill, Fort York, Albany and that of Moose River. Fort York is reputed the most important: it is situated on the south branch of the Hayes River, five leagues above the point where it runs into the sea, at 37 deg. 20 min. lat., and 93 deg. 58 min. long.”*

20

1795.—Winterbotham† gives the following as the forts occupied by the Hudson's Bay Company They were all on the shores of the Bay:—

	N. Lat.	W. Lon.
Churchill,	59° 0'	94° 30'
York Fort,	57° 10'	93° 0'
Severn House,	56° 12'	88° 57'
Albany Fort,	52° 18'	85° 18'
Moose Fort,	51° 28'	83° 15'
East Main,	53° 24'	78° 50'

And he adds:

30

“The country lying round Hudson's Bay, or the country of the Esquimaux, comprehended Labrador, New Britain, and North Wales, has obtained the general name of New Britain, and is attached to the Government of Lower Canada. A superintendent of trade, appointed by the Governor-General of the four Provinces, and responsible to him, resides at Labrador.

“Before the Canadian merchants pursued the fur trade with such diligence as they now do through the lakes, and had penetrated into the interior parts of the Hudson's Bay, a great number of Indians used to come annually down to the Company's settlements to barter their skins; and although the Company have now, in a great measure, lost the benefit of this lucrative traffic, it may not be amiss to mention the manner in which the Indians prosecute their voyages to the factories.

“The merchants from Canada have been heard to acknowledge that were the Hudson's Bay Company to prosecute their inland trade in a spirited manner, they must soon be obliged to give up all thoughts of penetrating into the country, as from the vicinity of the Company's factories to the inland posts, they can afford to undersell them in every branch.

“To explain this emulation between the Company and the Canadian traders, it will be necessary to review the state of the Company in the year 1773. About that time, the Canadian traders from Montreal, actuated by a laudable spirit of industry and adventure, and experiencing the peculiar

* Histoire et Commerce des Colonies Anglaises dans l'Amérique Septentrionale. London 1775.

† Historical, Geographical, and Philosophical View of the United States, and of the European Settlements in America and the West Indies, 1795.

advantages that resulted from their exertions, had become so numerous and indefatigable at the head of the rivers which led to the Company's settlement, that the trade of the latter was in a great measure cut off from its usual channels. The Indians, being supplied with everything they could wish for at their own doors, had no longer occasion, as they had hitherto done, to build canoes, and paddle several hundred miles, for the sake of cultivating a commerce with the Company, in which peregrination they were frequently exposed to much danger from hunger; so much so, that at one time seven canoes of Upland Indians perished on their return to their own country."

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Company's
Rights and
Claims.
Hudson's Bay
Company's
Posts, 1776-98

1798.—"The whole of the settlements in New Britain are as follows:—Abbitibbi, Frederick, East Main and Brunswick Houses, Moose Fort, Henley, Gloucester and Osnaburg Houses, and a House of Winnipeg Lake, Severn or New Severn, York Fort or Nelson, Churchill Fort or Prince of Wales' Fort, South Branch, Hudson's, Manchester and Buckingham Houses; the last is the westernmost settlement, and lately erected (1798).

"Hudson's House, one of the Company's factories on the S. W. side of Saskatchewan River, 100 miles east of Manchester House, and 167 S. E. of Buckingham House, or lat. 55° 32', W. long. 106° 27' 20".*

[Imperial Act, 49 Geo. 3, cap. 29, for reannexing part of Labrador to Newfoundland, etc., *supra*, Sec. VI.]

PROCLAMATION OF MILES McDONELL, 1814,

SETTING FORTH THE LIMITS OF THE HUDSON'S BAY COMPANY'S GRANT TO THE EARL OF SELKIRK.

20 WHEREAS the Governor and Company of Hudson's Bay have ceded to the Right Honourable Thomas, Earl of Selkirk, his heirs, and successors, for ever, all that tract of land or territory, bounded by a line running as follows, viz.: Beginning on the western shore of Lake Winnipeg, at a point in fifty-two degrees and thirty minutes north latitude; and thence running due west to Lake Winnipegashish, otherwise called Little Winnipeg; then in a southerly direction through the said lake, so as to strike its western shore in latitude fifty-two degrees; then due west to the place where the parallel of fifty-two degrees north latitude intersects the western branch of Red River, otherwise called Assiniboine; then due south from that point of intersection to the height of land which separates the waters running into Hudson's Bay from those of the Missouri and Mississippi Rivers; then in an easterly direction along the height of land to the source of the River Winnipeg (meaning by such last-named river the principal branch of the waters which unite in the Lake Saginagas); thence along the main stream of those waters and the middle of the several lakes through which they pass, to the mouth of the Winnipeg River; and thence in a northerly direction through the middle of the Lake Winnipeg, to the place of beginning: which territory is called Assiniboia, and of which I, the undersigned, have been duly appointed Governor:

30 And whereas, the welfare of the families at present forming settlements on the Red River, within the said territory, with those on the way to it, passing the winter at York and Churchill Forts in Hudson's Bay, as also those who are expected to arrive next autumn, renders it a necessary and indispensable part of my duty to provide for their support in the yet uncultivated state of the country, and the ordinary resources derived from the buffalo and other wild animals hunted within the territory are not deemed more than adequate for the requisite supply: Wherefore, it is hereby ordered, that no person, trading in furs or provisions within the territory, for the Honourable Hudson's Bay Company or the North-west Company, or any individual or unconnected traders or persons whatever, shall take out any provisions, either of flesh, fish, grain or vegetables, procured or raised within the said territory, by water or land carriage, for one twelvemonth from the date hereof, save and except what may be judged necessary for the trading parties at this present time within the territory to carry them to their respective destinations, and who may on due application to me obtain a license for the same. The provisions procured and raised as above shall be taken for the use of the colony; and that no loss may

Proclamation
grant to Earl
of Selkirk.
1814.

*American Gazetteer. By Jedediah Morse, D.D., London, 1798.—In another place this fort is said to be 600 miles west of Fort Churchill. The same statement is made in the folio edition of 1794.

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*Hudson's Bay
Company's
Rights and
Claims.*
—
Proclamation
grant to Earl
of Selkirk,
1814.

acerve to the parties concerned, they will be paid for by British bills at the customary rates. And be it further made known, that whosoever shall be detected in attempting to convey out, or shall aid or assist in carrying out, or attempting to carry out, any provisions prohibited as above, either by water or land, shall be taken into custody, and prosecuted as the laws in such cases direct; and the provisions so taken, as well as any goods and chattels of what nature soever, which may be taken along with them, and also the craft, carriages and cattle instrumental in carrying away the same to any part but to the settlement on Red River, shall be forfeited.

Given under my hand at Fort Daer [Pembina], the 8th of January, 1814.

MILES McDONELL, *Governor.*

By order of the Governor,

JOHN SPENCER, *Secretary.*

10

STATIONS OF THE HUDSON'S BAY COMPANY, AND THE NORTH-WEST COMPANY,
RESPECTIVELY, AT THE PERIOD OF THEIR COALITION, 1820-21.*

HUDSON'S BAY COMPANY'S STATIONS:

NORTHERN DEPARTMENT.

- | | |
|--------------------|------------------------|
| 1. York. | 12. Upper Red River. |
| 2. Severn. | 13. Manitouba. |
| 3. Churchill. | 14. Swan River. |
| 4. De Island. | 15. Cumberland. |
| 5. Deers Lake. | 16. Carlton. |
| 6. Rock Depôt. | 17. Edmonton. |
| 7. Island Lake. | 18. Lesser Slave Lake. |
| 8. Norway House. | 19. Isle à la Crosse. |
| 9. Beren River. | 20. Athabasca. |
| 10. Lake La Pluie. | 21. Peace River. |
| 11. Red River. | 22. Great Slave Lake. |

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SOUTHERN DEPARTMENT.

- | | |
|--------------------|---------------------|
| 1. Moose. | 8. Osnaburgh. |
| 2. New Brunswick. | 9. Red Lake. |
| 3. Kunogumesee. | 10. East Main. |
| 4. Michipioton. | 11. Neisquisear. |
| 5. Albany. | 12. Waswonappy. |
| 6. Henley. | 13. Rupert's Store. |
| 7. Martin's Falls. | 14. Whale River. |

30

NORTH-WEST COMPANY'S STATIONS.

- | | |
|---------------------------------|--|
| 1. Fort William Depôt. | 20. Fort Vermilion. |
| 2. Mils Laes. | 21. Fond du Lac. |
| 3. Fort George (Columbia). | 22. Moose Deer Island. |
| 4. Williamette River. | 23. Fort Providence. |
| 5. Ney Percés. | 24. Rivière au Liard. |
| 6. Thomson's River. | 25. Fort Alexandria. |
| 7. Okenagan. | 26. Fort Good Hope. |
| 8. Spokane. | 27. Lesser Slave Lake. |
| 9. Flat Heads. | 28. Lac la Biche. |
| 10. Koutonnais. | 29. Isle a la Crosse (English River). |
| 11. Rocky Mountain House. | 30. Green Lake. |
| 12. Fort Chipewyan (Athabasca). | 31. Lac la Roche. |
| 13. Forks, Fraser River. | 32. Lac la Rouge. |
| 14. Fraser's Lake. | 33. Lac Carribaux. |
| 15. Stewart's Lake. | 34. Fort Augustus (Fort des Prairies). |
| 16. McLeod's Lake. | 35. Rocky Mountain House. |
| 17. St. Johns. | 36. Pembina River. |
| 18. Dunvegan. | 37. Moose Lake. |
| 19. Isle aux Sources. | 38. Montee or Crossing Place. |

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* Statement furnished by the Hudson's Bay Company to the Dominion Government for the purposes of the arbitration.

NORTH-WEST COMPANY'S STATIONS.—Continued.

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| | 39. Cumberland House. | 69. Long Lake. |
| | 40. Moose Lake House. | 70. Black River. |
| | 41. Swan River. | 71. Michipicoton. |
| | 42. Fort Dauphin. | 72. Matagame. |
| | 43. Alexandria. | 73. New Brunswick. |
| | 44. Rivière la Biche. | 74. Batchewanan Bay. |
| | 45. Fala Perdrix. | 75. Petoubean. |
| 10 | 46. Beaver Creek (Red River). | 76. Sault Ste. Marie. |
| | 47. Rivière la Souris. | 77. Mitsisague (Lake Huron). |
| | 48. Grand Pointe. | 78. La Cloche. |
| | 49. Rivière au Pembina. | 79. Island Post. |
| | 50. Forks. | 80. S. E. Lake. |
| | 51. Fort Alexander (Lake Winnipeg). | 81. Lake Temiscamingue. |
| | 52. Rivière au Morts. | 82. Abitibi. |
| | 53. Tête au Brochet. | 83. Waswanipi. |
| | 54. Lac du Bonnet. | 84. Grand Lac. |
| | 55. Grand Etère. | 85. Matawacamingue. |
| 20 | 56. Lac la Pluie. | 86. Flying Post. |
| | 57. Vermilion Lake. | 87. Fort Coulogne (Ottawa River.) |
| | 58. War Road. | 88. Sandy Lake. |
| | 59. White Fish Lake. | 89. Round Lake. |
| | 60. Lac des Isles. | 90. Tadousac (King's Posts.) |
| | 61. Lake Nipigon. | 91. Chicoutimi. |
| 20 | 62. Sturgeon Lake. | 92. Lake St. John. |
| | 63. Lake Lat. | 93. Isle de Jérémie (Mingan.) |
| | 64. Scabitechewan. | 94. Seven Islands. |
| | 65. Red Lake. | 95. Mingan. |
| 30 | 66. Lesser Sturgeon Lake. | 96. Lake of the Two Mountains. |
| | 67. Abimond Lake. | 97. Chats. |
| | 68. Pic. | |

[License to Trade to the Hudson's Bay Company and the North-West Company, jointly, *Supra*, Sec. V.

New License to Trade to the Hudson's Bay Company (representing both companies), *Supra*, Sec. V. Covenant by the Company for performance of conditions of new License, *Supra*, Sec. V.]

HUDSON'S BAY COMPANY'S STATEMENT OF RIGHTS, 1850.

STATEMENT OF THE RIGHTS, AS TO TERRITORY, TRADE, TAXATION, AND GOVERNMENT, CLAIMED AND EXERCISED BY THE HUDSON'S BAY COMPANY ON THE CONTINENT OF NORTH AMERICA, 1850.*

By the Charter of His Majesty King Charles the Second, dated 2nd May, 1670, by which the Hudson's Bay Company was constituted, His Majesty granted to the Company as follows:—

"We have given, granted and confirmed, and by these presents, for us, our heirs and successors do give, grant and confirm, unto the said Governor and Company, and their successors, the sole trade and commerce of all these seas, straits, bays, rivers, lakes, creeks and sounds, in whatsoever latitude they shall be, that lie within the entrance of the straits commonly called Hudson's Straits, together with all the lands and territories upon the countries, coasts and confines of the seas, bays, lakes, rivers creeks and sounds aforesaid, that are not already actually possessed by, or granted to any of our subjects, or possessed by the subjects of any other Christian Prince or State, with the fishing of all sorts of fish, whales, sturgeons and all other royal fishes in the seas, bays, inlets and rivers within the premises, and the fish therein taken, together with the royalty of the sea upon the coasts within the limits aforesaid, and all mines royal, as well discovered as not discovered, of gold, silver, gems and precious stones, to be found or discovered within the territories, limits and places aforesaid, and that the said land be from henceforth reckoned and reputed as one of our plantations or colonies in America, called Rupert's Land.

*Appendix No. 17, Sess. Papers, Canada, Vol. XV., 1857.

JOINT
APPENDIX
— I.
Sec. VII.
Hudson's Bay
Company's
Rights and
Claims.
—
Stations of
Hudson's
Bay and N.
W. Com-
panies, 1820-1

Hudson's Bay
Company's
statement of
rights, 1850.

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Sec. VII.
*Hudson's Bay
Company's
Rights and
Claims.*
Hudson's Bay
Company's
statement of
rights, 1850.

And further we do, by these presents, for us, our heirs and successors, make, create, and constitute the said Governor and Company for the time being, and their successors, the true and absolute lords and proprietors of the same territory, limits and places aforesaid, and of all other the premises, saving always the faith, allegiance and sovereign dominion due to us, our heirs and successors for the same; to have, hold, possess and enjoy the said territory, limits and places, and all and singular other the premises hereby granted as aforesaid, with their and every of their rights, members, jurisdictions, prerogatives, royalties and appurtenances whatsoever, to them the said Governor and Company, and their successors for ever, to be holden of us, our heirs and successors, as of our manor of East Greenwich, in our County of Kent, in free and common socage, and not *in capite* or by Knight's service, yielding and paying yearly to us, our heirs and successors, for the same, two elks and two black beavers, whensoever 10 and as often as we, our heirs and successors, shall happen to enter into the said countries, territories and regions hereby granted."

Under this grant the Company have always claimed and exercised dominion as absolute proprietors of the soil in the territories understood to be embraced by the terms of the grant, and which are more particularly defined in the accompanying map: and they have also claimed and enjoyed the exclusive right of trading in those territories.

It may be right here to mention that although the original title to the territory and trade in question was derived under the Charter above referred to, the rights of the Company have, in various instances, received the recognition of the Legislature.

The Act 14 Geo. 3, chap. 83, which is intitled, "An Act for making more effectual provision for 20 the government of the Province of Quebec, in North America," in describing the boundaries of Canada, expressly refers to their lying "northward to the southern boundary of the territories granted to the Merchants Adventurers of England trading into Hudson's Bay;" thereby distinctly recognizing the existence of such a grant, and referring to the known boundary on the south of the territory so granted

Again, an Act was passed in the 43rd year of the reign of Geo. 3, c. 138 intitled "An Act for extending the Jurisdiction of the Courts of Justice in the Provinces of Lower and Upper Canada to the Trial and Punishment of Persons guilty of Crimes and Offences within certain Parts of North America adjoining to the said Provinces;" and this Act, having stated in the preamble that crimes committed in the Indian territories were not then cognizable by any jurisdiction whatever, declares that such crimes 30 should be considered as if committed within the jurisdiction of the Canadian courts.

A doubt having arisen whether this provision extended to the territories possessed by the Hudson's Bay Company, because, although they formed part of the Indian territories, crimes therein committed could not be said not to be cognizable by any jurisdiction whatever, inasmuch as the Hudson's Bay Company had a distinct jurisdiction conferred upon it by its Charter, an Act was passed in the 1st and 2nd Geo. 4, c. 66, intitled "An Act for regulating the Fur Trade, and establishing a Criminal and Civil Jurisdiction within certain parts of North America," by which, after reciting that doubts had been entertained whether the provisions of the Act of Geo. 3 extended to the territories granted by charter to the Governor and Company of Adventurers of England trading into Hudson's Bay, and that it was expedient that such doubts should be removed, and the said Act should be further extended, it was declared and enacted, that the provisions of the Act of 43 Geo. 3, should be deemed and construed, "to 40 extend to and over, and to be in full force in and through all the territories theretofore granted to the Hudson's Bay Company," thus again distinctly recognizing the existence of the grant of the soil, as well as the jurisdiction; for the Act contains an express reservation that nothing therein contained should affect the rights, privileges, authority or jurisdiction of the Hudson's Bay Company; and, in consequence, from that period, the Company and the Canadian Courts have exercised a concurrent jurisdiction as to offences committed within the territories of the Company. By this Act also, power was given to the Court to make, grant, or give licenses for the exclusive privilege of trading with the Indians in all such parts of North America as should be specified in any such grants or licenses not being part of the land and territories granted to the Governor and Company of Adventurers of England trading to Hudson's Bay, and not being part of any of the Crown Provinces in North America, or of any lands or territories 50 belonging to the United States of America.

By virtue of licenses granted under the powers of this Act, the Company are entitled to certain exclusive rights of trading beyond the limits of their own territories; but this Act is referred to here as distinctly recognizing the rights of the Company to exclusive trade within their own territories.

With regard to taxation and government, the Company under their Charter, are invested with power "to make, ordain and constitute such and so many reasonable laws, constitutions, orders and ordinances as to them, or the greater part of them, being then and there present, shall seem necessary and convenient for the good government of the said Company, and of all governors of colonies, forts and plantations, factors, masters, mariners and other officers employed or to be employed in any of the territories and lands aforesaid, and in any of their voyages, and for the better advancement and con-
 10 tinuance of the said trade or traffic and plantations, and the same laws, constitutions, orders and ordinances so made, to put in use and execute accordingly, and at their pleasure to revoke and alter the same or any of them, as the occasion shall require: And it is provided that the said Governor and Company, so often as they shall make, ordain or establish any such laws, constitutions, orders and ordinances, in such form as aforesaid, shall and may lawfully impose, ordain, limit and provide such pains, penalties and punishment upon all offenders, contrary to such laws, constitutions, orders and ordinances, or any of them, as to the said Governor and Company for the time being, or the greater part of them, then and there being present (the said Governor or his Deputy being always one), shall seem necessary, requisite or convenient for the observation of the same laws, constitutions, orders and ordinances; and the same fines and amerciaments shall and may, by their officers and servants from
 20 time to time to be appointed for that purpose, levy, take and have, to the use of the said Governor and Company, and their successors, without the impediment of us, our heirs and successors, or of any of the officers or ministers of us, our heirs or successors, and without any account therefor to us, our heirs or successors to be made, so always as the said laws, constitutions, orders and ordinances, fines and amerciaments, be reasonable, and not contrary or repugnant, but as near as may be agreeable to the laws, statutes or customs of this our realm." And it is further provided, "that all lands, islands, territories, plantations, forts, fortifications, factories or colonies, where the said Company's factories and trade are or shall be, within any parts or places afore limited, shall be immediately and from henceforth under the power and command of the said Governor and Company, their successors and assigns; and the said Governor and Company are empowered to appoint and establish Governors and all other
 30 officers to govern them." And it is provided, "that the Governor and his Council of the several and respective places where the said Company shall have plantations, forts, fortifications, colonies or places of trade within any of the countries, lands or territories hereby granted, may have power to judge all persons belonging to the said Governor and Company, or that shall live under them, in all causes, whether civil or criminal, according to the laws of this Kingdom, and to execute justice accordingly; and in case any crime or misdemeanor shall be committed in any of the said Company's plantations, forts, factories, or places of trade within the limits of the aforesaid, where judicature cannot be executed for want of a Governor and Council there, then, in such case, it shall and may be lawful for the chief Factor of that place and his Council to transmit the party, together with the offence, to such other plantation, factory or fort where there shall be a Governor and Council, where justice may be executed,
 40 or into this kingdom of England, as shall be thought most convenient, there to receive such punishment as the nature of his offences shall deserve."

In pursuance of this authority thus given, the Company have invariably exercised all the power of government necessary for the administration of justice in their territory, and for that purpose have appointed proper officers, who have acted judicially in all matters arising therein.

As already observed, the Canadian Courts have now a concurrent jurisdiction with the Company.

It may be right here to refer to several Acts of the Legislature which have recognized the general rights and privileges claimed and exercised by the Company:

An Act passed in the sixth year of the reign of Queen Anne, c. 37, intituled "An Act for the Encouragement of the Trade to America," and this Act contains an express proviso, that "nothing
 50 therein contained shall extend or be construed to take away or prejudice any of the estates, rights or privileges of or belonging to the Governor and Company of Adventurers trading into Hudson's Bay."

JOINT
APPENDIX.

Sec. VII.
*Hudson's Bay
Company's
Rights and
Claims.*

*Hudson's Bay
Company's
statement of
rights, 1850.*

JOINT
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Sec. VII.
Hudson's Bay
Company's
Rights and
Claims.

Hudson's Bay
Company's
statement of
rights, 1850.

In like manner, in 1745, when an Act was passed (18 Geo. 2, c. 17), for granting a reward for the discovery of a north-west passage through Hudson's Straits, it was expressly provided that ' nothing therein contained should extend or be construed to take away or prejudice any of the estates, rights or privileges of or belonging to the Hudson's Bay Company."

No exact system of taxation has been claimed or exercised by the Company, and until a colony of resident settlers was established other than the Company's own servants, the Company defrayed the whole expenses of the government of their territories without the aid of any contribution whatever; but since a colony was formed, it has been made a stipulation with the community, upon their becoming settlers, and receiving parcels of land, that they should contribute towards the expenses of the government of the colony; but the main charge has continued to be borne by the Company.

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THE HUDSON'S BAY COMPANY'S STATEMENT AS TO THEIR TRADE WITH THE INTERIOR, PRIOR TO 1763.*

Hudson's Bay
Company's
trade with
interior, prior
to 1763.

As long as Canada was held by the French the opposition of wandering traders (*coureurs des bois*) was insufficient to induce the Company to give up their usual method of trading. Their servants waited at the forts built on the coast of the bay, and there bought by barter the furs which the Indians brought from the interior.

But after the cession of Canada to Great Britain in 1763, British traders following in the track of the French, penetrated into the countries lying to the north-west of the Company's territories, and by their building factories brought the market for furs nearer to the Indian seller.

The Company finding their trade seriously affected, extended the field of their operations, and sent 20 parties to establish themselves in the interior. In process of time all smaller opposing interests were absorbed either by purchase or coalition in the North-West Company of Montreal, which thus became the sole rival and competitor to the Hudson's Bay Company. During many successive years a most disastrous contest was carried on between these two companies. Wherever one Company established a trading post, there at once the other Company also commenced operations. This system of close competition rapidly produced a general state of disorganization, resulting in scenes of violence and bloodshed between the Indians, the trappers, and the traders, in the interests of the rival Companies.

THE RIGHT HONOURABLE GEORGE G. GOSCHEN, CHAIRMAN OF THE HUDSON'S BAY COMPANY, TO THE SECRETARY OF STATE (CANADA), WITH INFORMATION RELATING TO THE BOUNDARIES.

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HUDSON'S BAY HOUSE,

LONDON, 12th December, 1876.

SIR,

Right Hon.
Mr. Goschen
to Sec'y of
State (Can-
ada), 12 Dec.,
1876.

I have the honour to acknowledge your letters requesting information relating to the boundary between the Province of Upper Canada and the Territory held by the Hudson's Bay Company.

I enclose a map, No. 1, showing the Territories claimed by the Company in virtue of the Charter granted to them by King Charles the Second. The map in question was prepared by Mr. John Arrow-smith, and was ordered by the House of Commons to be printed 31st July, and 11th August, 1857.

I also enclose a statement No. 2, prepared for the Company in 1857, with reference to the Parliamentary enquiry which took place in that year. The boundaries were then asserted to be, on the side of the United States, by the 49th parallel of latitude; on the side of Canada, by the height of land whose waters flow into Hudson's Bay; and on the north by the Arctic Ocean.

At the time of the passing of the Quebec Act, 1774, the Company had not extended their posts and

* From the "Statement of the Hudson's Bay Company, 1857," pp. 4, 5. This printed statement was furnished by the Company to the Dominion Government for the purposes of the Arbitration.

operations far from the shores of Hudson's Bay. Journals of the following trading stations have been preserved, bearing that date, namely: Albany, Henley, Moose, Eastmain, York, Severn, and Churchill.

These Journals give no information upon the subject of the boundaries between Canada and the Territory of the Company, nor was the question raised in 1748, when the House of Lords held an enquiry with reference to the Company's affairs as at that time conducted.

A map No. 3, no doubt prepared for that occasion, and sent herewith, shows the extent of country to which these operations were then confined.

At a subsequent period, namely in 1777, a map was published in London by John Andrews, giving the height of land, near Lake Abitibi and other quarters, and showing certain boundaries for the Province of Upper Canada.

I am to request that the maps and documents accompanying this letter may be returned to the Company when the enquiry to which you refer has been completed.

I shall be glad if you find them useful for the purpose of defining the boundary line between the Dominion and Ontario.

I have, etc.,

GEORGE G. GOSCHEN.

The Honourable R. W. Scott,
Secretary of State for Canada,
Ottawa.

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APPENDIX.
Sec. VII.

*Hudson's Bay
Company's
Rights and
Claims.*

Right Hon.
Mr. Goschen
to Sec'y of
State (Can-
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VIII.
Other English Documents.

THE LORDS OF TRADE AS TO THE FRENCH POSSESSIONS, AND THE ROUTES THEY
HAD TO THE MISSISSIPPI, 1721.*

JOINT
APPENDIX.

Sec. VIII.

*Other English
Documents.*

FROM A REPRESENTATION OF THE LORDS COMMISSIONERS FOR TRADE AND PLANTATIONS TO THE KING,
UPON THE STATE OF HIS MAJESTY'S COLONIES AND PLANTATIONS ON THE CONTINENT OF NORTH
AMERICA. DATED SEPTEMBER THE 8th, 1721.

The French territories in America extend from the mouth of the River St. Lawrence to the
embouchure of the Mississippi, forming one continued line from north to south on the back of your
10 Majesty's plantations, and although their garrisons, in many parts, are hitherto but very inconsiderable,
yet as they have, by means of their missionaries, debauched several of the Indian nations to their
interest, your Majesty's subjects along the continent have the utmost danger to apprehend from this
new settlement, unless timely care be taken to prevent its increase.

Lords of
Trade as to
the French
routes to the
Mississippi,
8th Septem-
ber, 1721.

From this lake [Erie] to the Mississippi they have three different routes. The shortest by water
is up the River Miamis, or Ouamis, on the south-west of Lake Erie, on which river they sail about 150
leagues without interruption, when they find themselves stopped by another landing of about three
leagues, which they call a carrying place, because they are generally obliged to carry their canoes over-
land in those places to the next river, and that where they next embark is a very shallow one called
La Rivière de Portage; hence they row about forty leagues to the River Oubach, and from thence about
20 120 leagues to the River Ohio, into which the Oubach falls, as the River Ohio does, about eighty leagues
lower, into the Mississippi, which continues its course for about 350 leagues, directly to the Bay of
Mexico.

There are likewise two other passages, much longer than this, which are particularly pricked down
in Hennipen's map, and may be described in the following manner:—

From the north-west of Lake Erie to a town on the Lake St. Clair called Pont Chartrin [Detroit],
is about eight leagues sail. Here the French have a settlement, and often four hundred traders meet
there. Along this lake they proceed about seven leagues further, and thence to the great Lake Huron
about ten leagues; hence they proceed to the Straits of Michillimackinack, 120 leagues. Here is a
garrison of about thirty French, and a vast concourse of traders, sometimes not less than 1,000, besides
30 Indians, being a common place of rendezvous. At and near this place the Outarwas, an Indian nation,
are settled.

From the Lake Huron they pass by the Straight of Michillimackinack four leagues, being two in
breadth, and of a great depth, to the Lake Illinois; thence 150 leagues on the lake to Fort Miamis,
situated on the mouth of the River Chigagoe; from hence came those Indians of the same name, viz.
Miamis, who are settled on the forementioned river that runs into Erie.

Up the River Chigagoe they sail but three leagues to a passage of one-fourth of a league; then
enter a small lake of about a mile, and have another very small portage; and again another of two
miles to the River Illinois; thence down the stream 130 leagues to the Mississippi.

The next route is from Michillimackinack on the Lake Illinois to the Lake de Puans, ninety leagues;
40 thence to the River Puans, eighty leagues; thence up the same to a portage of about four miles before
they come to the River Owisconsinag; thence forty leagues to Mississippi.

* London Documents, N. Y. Hist. Col., Vol. V. pp., 620-2.

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Sec. VIII.
*Other English
Documents.*

These distances are as the traders reckon them, but they appear generally to be much overdone, which may be owing to those people coasting along the shores of the lakes and taking in all the windings of the rivers.

Joint opinion,
Sir D. Ryder
and Sir W.
Murray,
1748.

JOINT OPINION OF THE ATTORNEY AND SOLICITOR-GENERAL, SIR DUDLEY RYDER
AND SIR WILLIAM MURRAY, ON THE HUDSON'S BAY CO.'S CHARTER, 1748.

To the Right Honourable the Lords of Committee of His Majesty's Most Honourable Privy Council.

May it please your Lordships:

In humble obedience to Your Lordships' Order in Council of the 4th of February last, representing that by an Order in Council, bearing date the 26th day of January last, there was referred to Your Lordships the humble petition of Arthur Dobbs, Esq., and the rest of the Committee appointed by the 10 subscribers for finding out a passage to the Western and Southern Ocean of America, for themselves and the other adventurers, and that Your Lordships having taken the said petition into consideration were pleased to refer the same to us to consider thereof, and to report our opinion thereupon to Your Lordships.

Which petition sets forth that the petitioners, in the year 1746, did, at their own costs and charges fit out two ships upon an expedition in search of the north-west passage to the western and southern ocean of America, in order to extend the trade and increase the wealth and power of Great Britain by finding out new countries and nations to trade with us, as well in the great north-western continent of America, beyond Hudson's Bay, as in countries still further distant and hitherto unknown to the Europeans, and also to many large and populous islands in that great western ocean. 20

That the petitioners, by means of the said expedition, have made several discoveries of bays, inlets, and coasts, before unknown, and have a reasonable prospect of finding a passage to the Southern Ocean by sea, although the discovery may not be perfected without repeated trials, upon account of the difficulties and dangers of searching different unknown inlets and streights, and sailing through new seas, and of procuring men of resolution, capacity, and integrity to pursue it effectually.

That the petitioners find that the reward of £20,000 given by Parliament is not adequate to the expense the adventurers must be at to perfect the discovery, they having already expended above that sum in their late expedition.

That the petitioners find that upon a former attempt his Majesty's predecessor, King Charles the Second, as a suitable encouragement granted a Royal Charter to the Governor and Company of Adventurers of England trading to Hudson's Bay, making them a body corporate forever, upon their petition setting forth that they had, at their own proper costs and charges, made an expedition to discover a new passage into the South Sea, and for finding some trade of furs, mines, and other commodities, and gave them the sole property of all the lands they should discover, together with an exclusive trade to all the countries within Hudson's Streights, not in possession of any of his subjects, or of any other Christian power, with the royalties of mines, minerals, gems, and royal fish, to enable them to find out the passage, extend the trade, and to plant the countries they should discover, paying two elks and two black beavers whenever and as often as His Majesty and his successors should enter their territories, granting to them the greatest privileges as lord proprietors, saving only their faith and allegiance to the Crown of Great Britain. 40

The petitioners beg leave to observe that the said Company have not since effectually or in earnest searched for the said passage, but have rather endeavoured to conceal the same and to obstruct the discovery thereof by others; nor have they made any new discovery either upon the coast or in the inland countries adjoining to Hudson's Bay since the grant of their charter, nor have they taken possession of or occupied any of the lands granted to them, or extended their trade into the inland parts of the adjoining continent, nor made any plantations or settlements, except four factories and one small trading house, in all which they have maintained in time of peace about one hundred and twenty persons, servants to the Company, nor have they allowed any other of His Majesty's subjects to plant, settle, or trade in any of the countries adjoining to the Bay, granted to them by their charter, yet have connived

at or allowed the French to encroach, settle and trade within their limits on the south side of the Bay to the great detriment and loss of Great Britain.

That the petitioners being desirous to pursue the discovery of the passage to the Southern Ocean of America, by land or by water, will engage not only to prosecute the same until it be thoroughly discovered as far as practicable, but also to settle and improve the land in all the countries on that northern continent, by making alliances with and civilizing the natives and incorporating with them and by that means lay a foundation for their becoming Christians and industrious subjects of His Majesty, and also extend the British trade into the heart of that northern continent around the Bay, and into such countries as they may discover beyond it in the Western Ocean, and to use their utmost endeavours to prevent the French encroachments upon the British rights and trade in that continent.

In order, therefore, to enable the petitioners to prosecute and bring to perfection so valuable a discovery, and to civilize the natives and settle the lands without loss of time, and that the trade and settlement of such extensive countries may not be longer delayed or perhaps forever lost to His Majesty and his successors by the encroachments of the French.

The petitioners most humbly pray that His Majesty would be graciously pleased to incorporate the petitioners and the other subscribers for finding out the said passage or such of them and such other persons as they shall engage in the said undertaking, and their successors forever, and grant to them the property of all the lands which they shall discover, settle, and plant in a limited time in the northern continent of America, adjoining to Hudson's Bay and Streights, not already occupied and settled by the present Company of Adventurers trading to Hudson's Bay, with the like privileges and royalties as were granted to the said Company, and that His Majesty would be pleased to grant unto the petitioners (during the infancy of their settlements,) an exclusive trade, for such a term of years as may be granted to discoverers of new arts and trade, to all such countries into which they shall extend their trade by land or by water, not already granted by Act of Parliament to other companies, reserving to the present Company of Adventurers trading to Hudson's Bay all the forts, factories and settlements, they at present occupy and possess, with a reasonable district round each of their possessions and factories; or that His Majesty would be pleased to grant the petitioners such other relief and encouragement as to His Majesty in his great wisdom should seem meet.

We have taken the same into consideration, and have been attended by counsel both in behalf of the petitioners and the Hudson's Bay Company, who oppose the petition as it interferes with their Charter.

The petitioners insisted on two general things: that the Company's Charter was either void in its original creation, or became forfeited by the Company's conduct under it.

That the petitioners have by their late attempts to discover the North-West Passage and navigation in those parts merited the favour petitioned for.

As to the first, the petitioners endeavoured to show, that the grant of the country and territories included in the Company's Charter was void for the uncertainty of its extent, being bounded by no limits of mountains, rivers, seas, latitude or longitude, and that the grant of the exclusive trade within such limits as there were, was a monopoly, and void on that account.

With respect to both these, considering how long the Company have enjoyed and acted under this charter without interruption or encroachment, we cannot think it advisable for His Majesty to make any express or implied declaration against the validity of it, till there has been some judgment of a Court of Justice to warrant it; and the rather because if the charter is void in either respect, there is nothing to hinder the petitioners from exercising the same trade which the Company now carries on; and the petitioners' own grant, if obtained, will itself be liable in a great degree to the same objection.

As to the supposed forfeiture of the Company's Charter by non-user or abuser, the charge upon that head is of several sorts, viz: That they have not discovered nor sufficiently attempted to discover the North-West Passage into the South Seas or Western Ocean.

That they have not extended their settlements through the limits of their Charter.

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APPENDIX.

Sec. VIII.
*Other English
Documents.*

Joint opinion
Sir D. Ryder
and Sir W.
Murray,
1748.

JOINT
APPENDIX.
Sec. VIII.
*Other English
Documents.*

That they have designedly confined their trade to a very narrow compass, and have for that purpose abused the Indians, neglected their own Forts, ill-treated their own servants, and encouraged the French.

Joint opinion,
Sir D. Ryder
and Sir W.
Murray,
1748.

But on consideration of all the evidence laid before us, by many affidavits on both sides (herewith enclosed), we think these charges are either not sufficiently supported in point of fact, or in a great measure accounted for from the nature or circumstances of the case.

As to the petitioners' merit, it consists in the late attempts made to discover the same passage which, however, as yet unsuccessful in the main point, may probably be of use hereafter in that discovery, if it should ever be made, or in opening some trade or other, if any should hereafter be found practicable; and have certainly lost the petitioners considerable sums of money. 10

But as the grant proposed is not necessary in order to prosecute any future attempt of the like kind, and the Charter of the Hudson's Bay Company does not prohibit the petitioners from the use of any of the ports, rivers, or seas included in their charter, or deprive them of the protection of the present settlements there, we humbly submit to your Lordships' consideration whether it will be proper at present to grant a charter to the petitioners, which must necessarily break in upon that of the Hudson's Bay Company, and may occasion great confusion by the interfering interest of two companies setting up the same trade against each other in the same parts and under like exclusive charters.

All which is humbly submitted to your Lordships' consideration.

August 10th, 1748.

D. RYDER,
W. MURRAY.

20

SHOULD THE OBJECT OF VOYAGES BE TAKEN INTO ACCOUNT ?

THE FRENCH VIEW.

Memoir,
French Com-
missioners,
4 October,
1751.

Memoir of the French Commissioners, October 4, 1751, in reply to the Memoirs of the Commissioners of His Britannic Majesty of the 21st September, 1750, and the 11th January, 1751.

A distinction ought to be made between the voyages that have been directed towards the continent of North America, with the design of making plantations and establishing colonies, and those which have not been undertaken with this view; and among the latter, those which were confined to simple attempts which proved unproductive, with those which have been followed by the formation of solid establishments, actually existing, or which would have subsisted if some European power had not 30 destroyed them.

THE ENGLISH VIEW.

Memorial of
British Com-
missioners in
reply to
foregoing.

Memorial presented by His Majesty's Commissaires to the Commissaires of His Most Christian Majesty, in reply to their Memorial of the 4th October, 1751, concerning Nova Scotia or Acadia.

The French Commissaires, in the two first articles of their Memorial, have given an historical summary account of the first voyages made by the English and French, for the discovery and settlement of North America, to which, and to the arguments drawn from it, it would be sufficient to answer in general, that the question now in discussion is not which nation has the right to Acadia or Nova Scotia, but what were the ancient limits of that country; that several treaties between the two Crowns have long since interposed to determine upon, and indeed annul, any claim from the earliest discovery or set- 40 tlement, and that very little information can be reasonably expected for deciding what were the ancient boundaries of this country from the proceedings of those who first discovered it, or the relations of their voyages, it being well known how indistinctly first discoveries of all countries have been made (overly pilot or admiral taking possession of a vast tract of a country he never saw, upon the pretence of having landed in a part of it), and in how very imperfect and suspicious a manner the relations of those voyages have come down to us. [To correct the mistakes and show that they do not acquiesce in the claim of precedency set up by the French Commissaires, the English Commissioners consent to enter

into this matter, and for this purpose only.] To enter more minutely than this into the examination of the history contained in these articles, would be to depart from the proper subject before us, to assist in a certain degree towards changing the real object of the present inquiry, and in part to rest the decision of it upon insufficient evidence and improper inquiry.

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As to the distinction, in such national discussions, of rights founded upon earliest discovery, was there ever any further enquiry made than which was the earliest discovery?—and such discovery once proved, was it ever afterwards examined whether it was made accidentally in the course of another undertaking, or whether the ships were originally destined for that particular design, or if the single object of the voyage was the settling of a plantation on that particular coast? Surely this way of reasoning is entirely new, nor has any nation ever yet suffered a title founded upon earliest discovery to be arraigned upon such a subtle but groundless distinction. As to the particulars brought in support of it, such of them as would be of any weight if they were true, are mistakes, and such as are true signify nothing. It would be some argument to show this voyage was the adventure of Cabot, not made on the part of Henry VII., if all the ships which sailed under Cabot's command had been defrayed at his expense, and been his property; but it appears from the best authority, that, besides the ships he bought by the King's permission, several others accompanied him, fitted out by private merchants, subjects of Great Britain, who became parties to the undertaking. It would also be a circumstance very favourable to the interpretation the French Commissaires put upon this voyage, if Henry VII. had not in his Letters Patent inserted a word by which he reserves to himself and to his crown, dominion and royalty in all the lands which shall be discovered or settled by Cabot; but it is expressly there said, that Cabot and his heirs shall hold all such lands as he shall discover and settle, as vassals of the Crown, though the immediate profit of the voyage, and various exemptions in holding what lands shall be discovered, are granted to Cabot and his heirs as rewards for their industry, and a recompense for their expense. These two objections, therefore, which if they were well grounded would have some weight, are founded upon circumstances which are not true.

EXTRACTS FROM GOVERNOR POWNALL'S OFFICIAL ACCOUNT OF THE FRENCH
POSTS AND THE FRENCH DOMINION IN NORTH AMERICA, 1756.*

The French in their first attempts to settle themselves in these parts, endeavoured to penetrate by force of arms, to fix their possessions by military expeditions. . . . But . . . they fell afterwards into that only path, in which the real spirit and nature of the service led.

Governor
Pownall's
account of
French posts,
etc., 1756.

The native inhabitants (the Indians) of this country are all hunters; all the laws of nations they know or acknowledge are the laws of sporting, and the chief idea which they have of landed possessions is that of a hunt. The French settlers of Canada universally commenced hunters, and so incorporated themselves into a connection with these natives.

While the French kept themselves thus allied with the Indians as hunters, and communicated with them in, and strictly maintained all the laws and rights of sporting, the Indians did easily and readily admit them to a local landed possession; a grant which, rightly acquired and applied, they are always ready to make, as none of the rights or interests of their nation are hurt by it. While, on the contrary, they experience and receive great use, benefits and profits from the commerce which the Europeans therein establish with them. * * *

The French possessions interfere not with the Indians' rights, but aid and assist their interest, and become a means of their support. This will more clearly and better appear, by a more minute and particular attention to the French measures in these matters.

1st. No Canadian is suffered to trade with the Indians, but by license from the Government, and under such regulations as that license ordains. The main police of which is this: The Government divides the Indian countries into so many hunts, according as they are divided by the Indians them-

* A Memorial stating the nature of the service in North America, and proposing a general plan of operations as founded thereon. Drawn up by order of, and presented to, His Royal Highness the Duke of Cumberland, 1756. 3rd ed. London: 1766.

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account of
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etc., 1756.

selves. To these several hunts there are licenses respectively adapted, with regulations respecting the spirit of the nation whose hunt it is; respecting the commerce and interest of that nation; respecting the nature of that hunt.

The Canadian having such license ought not to trade and hunt within the limits of such hunt, but according to the above regulations; and he is hereby absolutely excluded under severe penalties to trade or hunt beyond these limits, on any account whatever.

It were needless to point out the many good and beneficial effects arising from this police, which gave thus a right attention to the interest of the Indians, which observe the true spirit of the alliance in putting the trade upon a fair foundation, and which maintained all the rights and laws of the hunt, that the Indians most indispensably exact.

But the consequence of the most important service which arises out of this police, is a regular, definite, precise, assured knowledge of the country.

A man whose interest and commerce are circumscribed within a certain department, will pry into and scrutinize every hole and corner of that district. When such a hunt is, by these means, as full of these *coureurs des bois* as the commerce of it will bear, whoever applies for a license must betake himself to some new tract or hunt, by which again begins an opening to new discoveries and fresh acquisitions.

When the French have by these means established a hunt, a commerce, alliance and influence amongst the Indians of that tract, and have by these means acquired a knowledge of all the waters, passes, portages, and posts, that may hold the command of that country—in short a military knowledge of the 20 ground—then, and not before, they ask and obtain leave of the Indians to strengthen their trading house, to make it a fort, to put a garrison in it.

In this manner, by becoming hunters and creating alliances with the Indians as brother sportsmen, by founding that alliance upon, and maintaining it (according to the true spirit of the Indian law of nations) in a right communication and exercise of the true interest of the hunt, they have insinuated themselves into an influence over the Indians, have been admitted into a landed possession, and by locating and fixing those possessions in alliance with, and by the friendly guidance of the waters [of the St. Lawrence and Mississippi, and of the Winnipeg system] whose influence extends throughout the whole, they are become possessed of a real interest in, and real command over the country.

They have thus throughout the country sixty or seventy forts, and almost as many settlements, 30 which take the lead in the command of the country, not even one of which forts, without the above true spirit of policy could they support, with all the expense and force of Canada; not all the power of France could; 'tis the Indian interest alone, that does maintain these posts.

Having thus got possession in any certain tract, and having one principal fort, they get leave to build other trading houses and entrepôts, at length to strengthen such, and in fine to take possession of more advanced posts, and to fortify and garrison them, as little subordinate forts under the command of the principal one.

Though these principal forts have subordinate forts dependent on them, they are yet independent of each other, and only under the command of the Governor-General; there is a routine of duty settled for these, and the officers and commanders are removed to better and better commands. What the 40 particulars of this are, and of the distribution of the troops, I have not yet learned as to Canada; but in general the present establishment for this service is three thousand men, of which there are generally two thousand three or four hundred effective.

I have not been able yet to get an exact list of the forts in Canada, but the following is sufficient to sketch out the manner in which they conduct this service.

It will be necessary first to describe the line which now divides Canada and Louisiana in the Illinois country. It begins from the Oubasch, at the mouth of Vermillion River, thence to the post called Le Rocher on the River Paeries, and from thence to the peninsula formed at the confluence of Rocky River and Mississippi.

FORTS IN CANADA [amongst others.]

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MISSILIMAKINAK AND ITS DEPENDENCIES.

DU QUESNE..... { Presqu' Isle.
 Rivière au Bœuf.
 One other [? Machault.]

LE DETROIT.....Two..... { 'Twas proposed to the Court in the year 1752, to erect this into a Lieutenancy du Roy.

THE POST MIAMIS, AND SIOUX.

NIPIGON { Two or three.
 One on the River Michipicoton.
 One other on the Long River.
 And one other.

ST. JOSEPH.
 LE PETIT PARIS.
 ALIBI.
 SAGUENAY.

* * * Most of these forts have fine settlements around them, and they do entirely support themselves; it being usual for both officers and men to defer receiving their pay till the garrison is relieved, which is generally in six years; and scarce anything is sent to these garrisons, but dry goods and ammunition.

There is a fine settlement at Detroit, of near two hundred families; a better still at St. Joseph, of about two hundred; a fine one at St. Antoine: many fine ones about Petit Paris. * * *

THE ESTABLISHMENTS, POSTS AND SETTLEMENTS OF LOUISIANA, ARE [AMONGST OTHERS] AS FOLLOWS:—* * *

THE ILLINOISsix Companies.....300

The posts were, in 1752 { Caskasias.
 Fort de Chartres.
 Village de St. Philip.
 Prairie de Rocher.
 Cohokias.
 Village de Ste. Jeune Veuve.

THE ARKANSAS, a less principal post, one company..... 50

THE NATCHES.....one company..... 50

THE NACHITOCHEsone company..... 50

THE POINT COUPEone company..... 50

THE GERMAN SETTLEMENT.....one company..... 50

* * * As to the posts in the Illinois country, I am not able to describe them particularly; but what appears to be of more consequence, I collect from Mr. Vaudreuil's letters (from 1743 to 1752) the general idea upon which the fortifying and securing that country is founded.

40 The first fort of their plan in fortifying the Illinois country, was on the peninsula, in latitude 41° 30'. This was a check upon, and a barrier against the several nations of Sioux (not then in confederacy with them). The next post in this plan was on the River Dorias (so called after the junction of the Illinois River and Theakiki), which would be of more especial use, if situated on the north of the lake of that river, whence the roads divide, that lead to Missilinnackinac and St. Joseph. This he describes as the key to the Illinois country from Canada.

The next is the garrisoning and fortifying the country, from the mouth of Missouri to Kaskasias, where there are five posts. Mr. Vaudreuil thinks that Kaskasias is the principal, as it is the pass

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and inlet of the convoys of Louisiana, as also of those of Canada, and of the traders and hunters of the post Detroit, and that of the greatest part of the savage nations.....But Mr. McCarty, who was on the spot, thinks the environs of Chartres a far better situation to place this post in.* * *

Mr. Jouquière proposes another fort at the mouth of Rocky River (this is in the Government of Canada) which, he says, would secure the tranquility of the fourth of Canada. This, says Mr. Vaudreuil, together with the post of the Illinois, would restrain and become a barrier against the English, and cover all our Indian allies to the west from our enemies, the English, the Cherokees, Catawabas and others.

By these posts above, and the posts of the Miamis, this whole country is secured and fortified.* * *

Thus the French do not only settle the country but also take possession of it; and by the form, site, and police of such possessions (led on and established by the guidance of, and in alliance with the waters), a natural foundation of a one command. have they acquired and become possessed of the command of this country.

By these means, I repeat it, have they created an alliance, an interest with all the Indians on the continent; by these means have they acquired an influence, a command throughout the country.

They know too well the spirit of Indian politics to affect a superiority, a government over the Indians, yet they have in reality and truth of more solid effect an influence, an ascendancy in all the councils of all the Indians on the continent, and lead and direct their measures, not even our own allies, the Five Nations, excepted; unless in that remains of our interest, which partly the good effects of our trading house at Oswego, and partly General Johnson, has preserved to the English, by the great esteem and high opinion the Indians have of his spirit, truth, and honour.

[INDIANS OF THE AMERICAN CONTINENT.]

20

East.

West.
 French.

Esquimaux,
 St. Johns,
 Micmacks,
 Penobscots,
 Noridgwulks,
 Abenakais,
 St. Francis Indians,
 Cuchnewage,
 Seautecoke,
 Oswegatchie.

} In the French Interest.

Sioux,
 Nadouesseries,
 Illinois,
 Twigtwaes,
 Miamis,
 Piankeshunnaes,
 Wawynactaes,
 Picques,
 Kaskuskies,

30

Senekees,
 Onondagas,
 Cayugas,
 Oneidas,
 Tuskaroras,

} Supposed to be in the British interests, but greatly debauched by the French.

Cawetas,
 Abekas,
 Telaponches,
 Alibamous,

} The four nations of the Creeks as above.

North.

Wholly French.

Mohawks,
 Mehikanders,

} Wholly in the British interest.

Assinipoeles,
 Adirondaeks,
 Algonkins,

40

Delawares,
 Shawenese,

} Lost to the English, except a few on the Susquehanah.

Otawawaes,
 Choninderbes

Catawbas,
 Cherokees,
 Chickasaws,

} Supposed in the English interest, but much debauched by the French.

or Hurons,
 Messisagnes,
 Outagamies,

} Skaniadereroennes.

[INDIANS OF THE AMERICAN CONTINENT.]—Continued.

East.

West.

Sakis,
Christanaux,
Aimipogins,
Nipisenis.

South.

Osagaes,
Akansaes,
Chactaws,
Panimaes,
Adiges.

} Wholly French.

10

FRENCH SETTLEMENTS OF THE ILLINOIS, 1764.

COLONEL BRADSTREET ON THE FRENCH POPULATION OF THE ILLINOIS AND THE MEANS OF SUBJECTING IT.*

I am assured, by persons lately from Illinois, that exclusively of the French garrison there, the inhabitants are six hundred fighting men, have one thousand negroes, well accustomed to the use of arms, averse to our taking of the country, and having painted us such in colours to the numerous savages near them, that the latter will certainly endeavour to prevent the troops getting there by the Mississippi even should the Indians near the sea allow them to pass, which they think they will not, unless well paid for it, which will not answer what may perhaps be expected. They add that this is their opinion also, that all attempts to get possession of the Illinois with less than three thousand men will fail, and that those troops should go down the Ohio River, and that the expedition be carried on with such secrecy, that they may enter the Mississippi ninety miles below Fort Chartres, before the inhabitants can have intelligence of it, and time to apprise all the savages.

Colonel
Bradstreet on
French
population of
the Illinois,
1764.

GOVERNOR MURRAY OF QUEBEC TO THE LORDS OF TRADE.†

QUEBEC, 8th September, 1764.

My LORDS,—I very lately received your favour of the 29th May, and can with truth assure your Lordships that I have and ever shall pay due obedience to His Majesty's orders and instructions, and that I am not conscious of having any ways failed therein.

Governor
Murray as to
the French
settlements,
1764.

From a true zeal for the service of my Royal Master, I communicated to the Secretary of State my thoughts in a matter entirely foreign to my Government and relative to a country with which I could have little or no communication, that was actually in a hostile state, and where, consequently, the Royal commands only could be conveyed, at least as I apprehended, through the channel of the Commander in Chief.

As to the information your Lordships require of me, I can say nothing further than that I am well assured the lands of Detroit were considered by the French Government as belonging to the King's Domaine, that concessions were granted to individuals who settled there, most of whom were Canadians, on condition, as it is usual elsewhere, of paying *cens et rentes*, and a twelfth of the purchase money on each mutation of property; they are said to consist of about sixty families, or six hundred souls.

At the Illinois, I am told, are many more.

If it is thought expedient to move the people in question from their present habitations, there is enough of land in the Province of Quebec, not occupied, where they may be advantageously placed,

* From Thoughts on Indian Affairs, by Colonel Bradstreet, N. Y. Hist. Col., vol. VIII., p. 693.

† Public Record Office—Colonial Office Records, Board of Trade, Canada (Quebec), 1763 to 1764, No. 1.

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but no doubt they will expect a valuable consideration, as they must leave a fine climate, fine cultivated lands, and comfortable houses, for lands in a frozen region in the state of nature. What that consideration should be your Lordships are the best judges; I know it costs thirty shillings to clear an acre of land fit for the plow, in this part of the world. A Canadian settlement consists, generally, of between three and four hundred acres, two hundred and fifty of which is cleared. The house and offices of such a settlement may be valued at forty pounds at least, to inclose it may cost as much more, which is all the light I can give in answer to your Lordships' demand. And now I am to assure you that in my present station, or any other, I shall ever have a proper deference for the respectable Board which superintends the commerce and Colonies of Great Britain, the true sources of our national wealth and greatness.

I have the honour to be, with great truth and regard, My Lords, Your Lordships' most obedient and most humble servant,

P. S.—Since I wrote the above I have been able to procure the inclosed accounts which may be depended upon.

JAS. MURRAY.

J. M.

MEMORIAL ENCLOSED IN THE FOREGOING DESPATCH OF GOVERNOR MURRAY.†
ILLINOIS.

Memorial as
to the
Illinois
settlements,
1764.

Les établissements de l'est du fleuve du Mississippi, cédés a Sa Majesté Britanique, commencent a environ 400 lieues de la Mer, par le cours du fleuve, a la riviere apellée des Kas on est une petite ville qui port ce nom et qui est située a environ 8 lieues dans cette meme riviere. Ensuite et en montant 20 ce fleuve est une lisiere d'habitans établis Sur des terres de 3 arpens on y lus de front, jusqu' a la distance de 6 lieues on est située le fort appellé de Chartres, dans le quel étoit les troupes. Et au dela du fort de Chartres est une pareille lisiere d'habitans qui remplit une partie de la distance, qui est de 15 lieues, entre ce dernier fort et celui appellé Les Cahos, on il y avoit aussi des troupes.

Je crois que les terres de ces habitans ont été concédées pas les commandans de ces forts, au nom du Roy; en censire aux memes charges que celles Du Detroit, et qu' il pent y avoir dans ce Continent a mon estime 1000 a 1200 hommes dont la plus grande partie sont métifs.

Je n'ai pas oui dire qu'il ent été concédé des terres a titre de seigneurie.

Les Peres Jesuites ont une maison dans la ville des Kas dont ils desservent la cure.

Proche de la même ville est un village de sauvages Illinois desservi par la maison des Jesuites 30 A environ une lieue au dessus du fort de Chartres est un autre village Illinois desservi par les prestres des Missions Etrangeres. Et a la vué du fort des Cahos est un 3^e village de la même nation, desservi par les mêmes. Ces 3 villages, il y a 20 ans, pouvoient composer environ 1000 hommes portant les armes.

Les terres sont en general tres fertiles en tous grains. Les habitans ou métifs du lieu, ont quantité de negres et Panis dont ils se servent a la culture des terres, a la quelle les blancs s'occupent tres peu.

A Quebec le 10 Septembre, 1764.

LA MAURJURRE.

†TRANSLATION.

ILLINOIS.—The settlements on the east side of the River Mississippi, ceded to His Britannic Majesty, commenced about 400 leagues from the sea, along the course of the stream to the river called des Kas, where lies a small town which bears that name and which is situated about eight leagues on this same river. Then in going up this river is a narrow belt of settlements having three acres or more of frontage extending a distance of six leagues, to Fort de Chartres, where the troops were stationed. And beyond Fort de Chartres is a similar belt of settlements, covering a part of the space of fifteen leagues, between the fort last named and that called Les Cahos, where there were troops also.

I believe that the lands of the settlers have been granted by the commandants of these forts, in the name of the King, in quit-rent, subject to the same charges as those of Detroit; and that there may be in this district, according to my estimate, 1,000 to 1,200 men, of whom the greater portion are half-breeds. I have not heard it said that lands have been granted under title of seigniorie.

The Jesuit Fathers have a house in the town of Kas, of which they hold the cure. Near the same town is a village of Illinois Indians, served by the house of the Jesuits.

About a league below Fort de Chartres is another Illinois village, served by the priests of the Foreign Missions; and in sight of fort des Cahos is a third village of the same nation, also served by them. Twenty years ago these three villages were composed of about 1,000 men capable of bearing arms.

The lands are generally very productive of all kinds of grain. The inhabitants or half-breeds of the place have many Negroes and Panis, whom they use to cultivate the earth, at which the whites work but little.

Quebec, 10th September, 1764.

LA MAURJURRE.

DEPUTY-SUPERINTENDENT CROGHAN, ON THE FRENCH SETTLEMENTS OF THE
WABASH AND ILLINOIS—1764-5.*

[Colonel George Croghan, the Commissioner of Sir William Johnson, went to the west to learn the disposition of the French inhabitants, and to secure, if possible, their adhesion to the English interest; and to prevent a second Indian War. He left Fort Pitt on the 15th of May, 1764, and was taken prisoner on the 8th of June, by a party of Indians, and was carried to Vincennes. He says]:

On my arrival there [VINCENNES—POST VINCENT—ST. VINCENNES], I found a village of about eighty or ninety French families settled on the east side of this river, being one of the finest situations that can be found. The country is level and clear, and the soil very rich, producing wheat and tobacco, I think the latter preferable to that of Maryland or Virginia. The French inhabitants hereabout, are an idle, lazy people, a parcel of renegaders from Canada, and are much worse than the Indians. They took a secret pleasure at our misfortunes, and the moment we arrived, they came to the Indians exchanging trifles for their valuable plunder. As the savages took from me a considerable quantity of gold and silver in specie, the French traders extorted two half-johannes from them for one pound of vermilion.

Here is likewise an Indian village of the Pyankeshaws, who were much displeased with the party that took me, telling them 'our chiefs and your chiefs have gone to make peace; and you have begun a war, for which our women and children will have reason to cry.' From this post the Indians permitted me to write to the Commander at Fort Chartres, but would not suffer me to write to any body else (this, I apprehended, was a precaution of the French, lest their villainy should be perceived too soon), although the Indians had given me permission to write to Sir William Johnson and Fort Pitt on our march, before we arrived at this place. But immediately after our arrival, they had a private council with the French, in which the Indians urged (as they afterwards informed me) that as the French had engaged them in so bad an affair, which was likely to bring a war on their nation, they now expected a proof of their promise and assistance. They delivered the French a scalp and a part of the plunder, and wanted to deliver some presents to the Pyankeshaws, but they refused to accept of any, and declared that they would not be concerned in the affair. This last information I got from the Pyankeshaws, as I have been well acquainted with them several years before this time.

Post Vincent is a place of great consequence for trade, being a fine hunting country all along the Ouabache [Wabash], and too far for the Indians, which reside hereabouts, to go either to the Illinois or elsewhere to fetch their necessaries.

June 23, [1764].—The distance from Post Vincent to OUICATANON is 210 miles. This place is situated on the Ouabache. About fourteen French families are living in the Fort, which stands on the north side of the river. The Kickapoos and Musquattinees, whose warriors had taken us, live nigh the fort, on the same side of the river, where they have two villages; and the Ouicatanons have a village on the south side of the river. At our arrival at this post, several of the Wawcattonans (or Ouicatanons) with whom I had been formerly acquainted, came to visit me, and seemed greatly concerned at what had happened. They went immediately to the Kickapoos and Musquattinees, and charged them to take the greatest care of us till their chiefs should arrive from the Illinois, where they were gone to meet me some time ago, and who were entirely ignorant of this affair, and said the French had spirited up this party to go and strike us.

The French have a great influence over these Indians, and they never fail in telling them many lies to the prejudice of His Majesty's interest, by making the English nation odious and hateful to them. I had the greatest difficulties in removing these prejudices. As these Indians are a weak, foolish, and credulous people, they are easily imposed on by a designing people, who have led them hitherto as they pleased. The French told them that as the Southern Indians had for two years past made war on them, it must have been at the instigation of the English, who are a bad people. However, I have been fortunate enough to remove their prejudice, and in a great measure their suspicions against the English. The country hereabouts is exceedingly pleasant, being open and clear for many miles, the soil very rich and

* See also N. Y. Hist. Col., Vol. VIII., p. 781.

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well watered, all plants have a quick vegetation, and the climate very temperate through the winter. This post has always been a very considerable trading place. The great plenty of furs taken in this country, induced the French to establish this post, which was the first upon the Ouabache; and by a very advantageous trade, they have been richly recompensed for their labour.

August 1, [1764].—The TWIGTWEE village is situated on both sides of a river called the St. Joseph. This river, where it falls into the Miami River, about a quarter of a mile from this place, is about one hundred yards wide, on the east side of which stands a stockade fort, somewhat ruinous.

The Indian village consists of about forty or fifty cabins, besides nine or ten French houses, a runaway colony from Detroit, during the Indian War; they were concerned in it and being afraid of punishment, came to this post, where, ever since, they have spirited up the Indians against the English. All the French residing here are a lazy, indolent people, fond of breeding mischief and spiring up the Indians against the English, and should by no means be suffered to remain here. The country is pleasant, the soil rich and well watered. After several conferences with these Indians, and their delivering me up all the English prisoners they had, on the 6th of August we set out for Detroit, down the Miami River, in a canoe.

August 17, [1764].—In the morning we arrived at the Fort [OF DETROIT], which is a large stockade inclosing about eighty houses; it stands close on the north side of the river, on a high bank, and commands a very pleasant prospect for nine miles above and nine miles below the fort; the country is thickly settled with French; their plantations are generally laid out about three or four acres in breadth on the river, and eighty acres in depth; the soil is good, producing plenty of grain. All the people here are generally poor wretches, and consist of three or four hundred French families, a lazy, idle people depending chiefly on the savages for their subsistence; though the land, with little labour, produces plenty of grain, they scarcely raise as much as will supply their wants, in imitation of the Indians, whose manners and customs they have entirely adopted, and cannot subsist without them. The men, women, and children speak the Indian tongue perfectly well. In the last Indian war, the most part of the French were concerned in it (although the whole settlement had taken the oath of allegiance to His Britannic Majesty); they have therefore great reason to be thankful to the English clemency in not bringing them to deserved punishment. Before the late Indian war, there resided three nations of Indians at this place—the Putawatimes, whose village was on the west side of the river, about one mile below the fort; the Ottawas on the east side about three miles above the fort; and the Wyandottes, whose village lies on the east side, two miles below the fort. The former two Nations have removed to a considerable distance, and the latter still remain where they were, and are remarkable for their good sense and hospitality. They have a particular attachment to the Roman Catholic religion; the French by their priests have taken uncommon pains to instruct them.

July 18, [1765].—I set off for the Illinois with the Chiefs of all those nations, when by the way, we met with Pondiac, together with the deputies of the Six Nations, Delawares, and Shawanees, which accompanied Mr. Frazer and myself down the Ohio, and also deputies with speeches from the four nations living in the Illinois country, to me and Six Nations, Delawares, and Shawanees, on which we returned to Ouitanon, and there held a conference, in which I settled all matters with the Illinois Indians, Pondiac and they agreeing to everything the other nations had done. . . . The French had informed them that the English intended to take their country from them, and give it to the Cherokees to settle on, and that if ever they suffered the English to take possession of their country, they would make slaves of them, that this was the reason of their opposing the English hitherto from taking possession of Fort Chartres. . . . They desired that their Father, the King of England, might not look upon his taking possession of the forts which the French had formerly possessed, as a title for its subjects to possess their country as they have never sold any part of it to the French, and that I might rest satisfied that whenever the English came to take possession, they would receive them with open arms.

GOVERNOR CARLETON'S OFFICIAL REPORT AS TO THE FRENCH POSTS OF THE
INTERIOR, 1768.

GOVERNOR CARLETON TO THE EARL OF SHELBURNE.*

QUEBEC, 2nd March, 1768.

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Carleton's
Official
Report on
French
posts, 1768.

MY LORD,—I have received your Lordship's letter of the 14th November, and one since, wrote from the office by your directions, dated the 8th of October last. The drawing † hereto annexed is taken from different maps and the best memoirs and relations I have hitherto been able to procure. 'Tis intended chiefly to shew the western posts which the French formerly occupied, and how far they extend beyond Michilimackinac. This end, I believe, it answers tolerably well, though their exact positions on the globe must be erroneous. As I have not met with any of those gentlemen who understand the use of any mathematical instrument, but they all agree that Pascoyat is two and a half or three months' journey beyond Michilimackinac, and reckon the distance about nine hundred leagues. Probably this is far beyond the true distance, as they follow the serpentine course of lakes and rivers. The river on which Pascoyat stands is said to be five hundred leagues long. A fort was erected one hundred leagues beyond Pascoyat, but I have not information enough to put either the fort or the full extent of the river in the map.

The annexed return of the French posts, of the troops for the protection of trade, with the number of canoes sent up in the year 1754 shews in some measure the extent of their trade, and the system pursued by the French Government in Indian affairs; they did not depend on the number of troops, but on the discretion of their officers, who learned the language of the natives, acted as magistrates, compelled the traders to deal equitably and distributed the King's presents. By this conduct they avoided giving jealousy, and gained the affections of an ignorant, credulous and brave people, whose ruling passions are in lependence, gratitude and revenge, with an unconquerable love of strong drink, which must prove destructive to them and the fur trade if permitted to be sent among them; thus managing them by address, where force could not avail, they reconciled them to their troops, and by degrees strengthened the post of Niagara, Detroit and Michilimackinac without giving offence.

The country was divided into certain districts, and the only restraints laid on the Traders were, first, not to go beyond the bounds of that district they obtained passes for; and secondly, not to carry more spirituous liquors than was necessary for their own use, nor sell any of that to the Indians; the King's Posts, or rather the Intendant's, were the only ones excepted from this general rule.

Under these regulations the canoes went first to the post of the District, from whence they had full liberty to go among the Indians, and accompany them to their hunting grounds; they likewise called on their return. If any were ill-treated they complained to the Commandant, who assembled the Chiefs, and procured redress; the Savages also made their complaints, and obtained immediate satisfaction, an exact report of all which was sent to the Governor. This return may be depended upon for so much as it contains, but as the King of France was greatly concerned in all this trade, a corrupt administration did not think it their interest that all these matters should appear in a full, clear and lasting manner.

Your Lordship will be pleased to observe that the great inlets to the north-east, from the Mississippi, are by the Ohio, and from thence up the Ouabach, which leads towards the sources of the River Miamis and Lake Erie, by the Illinois that leads to Fort St. Joseph and Lake Michigan, and the Onisconcing that leads to Fox River and Bay des Puans; besides these, the different streams that run into the Mississippi carry them towards Lake Superior and the western lakes.

The French or Spaniards have a Settlement two hundred and fifty leagues above New Orleans, at Arkonka, which serves for a deposit, and three, opposite to Fort Chartres, formed since the conquest. From these magazines they are enabled with ease to transport their merchandise into the interior parts of the King's Territory, to the north of the Mississippi, and to the western lakes; while even the extra

* Public Record Office—Colonial Correspondence, Canada (Quebec), 1768, No. 5.

† Search made but cannot be found.

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Provincial Canadians in the neighbourhood of our Posts, particularly at Detroit, and those scattered about the country, rather buy the goods that come from New Orleans, tho' at a higher price, than submit to the great restraints on trade at our Posts.

I shall easily find in the troops here many officers and men very ready to undertake to explore any part of this Continent, who require no further encouragement than to be told such service will be acceptable to the King, and if properly executed, will recommend them to his favour; but as they are unacquainted with the country, the Indian languages and manners, 'tis necessary to join with them some Canadians to serve as guides and interpreters. The gentlemen here are mostly poor, and have families; in order to induce them to attach themselves thoroughly to the King's interests, 'tis necessary they should be assured of their being taken into his service for life, and in case they perish on these 10 expeditions, that their widows will enjoy their pay, to support and educate their children.

Should His Majesty think proper to allow the Traders to go up to the western lakes, as formerly, I think a party might winter in one of those Posts, set out early in spring for the Pacific Ocean, find out a good port, take its latitude, longitude, and describe it so accurately as to enable our ships from the East Indies to find it out with ease, and then return the year following. Your Lordship will readily perceive the advantage of such discoveries, and how difficult attempts to explore unknown parts must prove to the English, unless we avail ourselves of the knowledge of the Canadians, who are well acquainted with the country, the language and manners of the natives.

Your Lordship has likewise herewith enclosed the observations of the Traders here on Sir William Johnson's Regulations, together with a petition they presented to me at the same time. I was rather 20 displeas'd with some of the expressions they made use of in their observations, but on close examination, found it was more owing to their not sufficiently understanding the force of their own words than to any unwillingness to submit to proper orders and regulations, for which they seem at present to be perfectly disposed.

I am, with much respect and esteem,

Your Lordship's

Most obedient, humble servant,

GUY CARLETON.

The Earl of Shelburne,

One of His Majesty's Principal Secretaries of State.

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LIST OF THE UPPER POSTS UNDER THE FRENCH GOVERNMENT, OF THE GARRISONS THEREAT POSTED,
AND OF THE NUMBER OF CANOES USUALLY SENT UP EVERY YEAR.

(Enclosed in the foregoing despatch of Governor Carleton.)

Southern Posts.

*Fort of Niagara.....	Officers..... 5	one detached.	
	Serjeants... 2	to Little Niagara.	
	Drummers... 1		
	Soldiers..... 24		
	Chaplain.... 1		
	Storekeeper. 1		
	Surgeon..... 1		
			40
			Canoes—10.
*Toronto.....	Officers..... 1		
	Serjeants.... 2		
	Soldiers..... 4		
	Storekeeper. 1		
			Canoes— 5.

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* Thus marked were King's Posts, and the trade thither was carried on for his account, and the furs that were brought in return were disposed of at Montreal by public auction.

The merchants paid from five hundred to one thousand livres for licenses to send to the other posts, and the produce of these licenses formed a fund for pensioning the widows and poor families of deceased officers, at the disposal of the Governor-General; some were farmed out to the commandants themselves or to traders.

The European goods necessary for the equipment of a canoe, in the time of the French, were computed to cost about seven thousand French livres; it is alleged that they now stand in about nine thousand.—G. C.

TREATY OF FORT STANWIX DETERMINING THE BOUNDARY LINE BETWEEN THE 10
ENGLISH ATLANTIC PROVINCES AND THE INDIANS, 1768.

DEED DETERMINING THE BOUNDARY LINE BETWEEN THE WHITES AND INDIANS.*

[Plantations General, Vol. 30, v. 8.]

Treaty of Fort
Stanwix,
1768.

To all to whom these presents shall come or may concern :

We, the Sachems and Chiefs of the Six confederate Nations, and of the Shawanese, Delawares, Mingoese of Ohio, and other dependent tribes, on behalf of ourselves and of the rest of our several nations, the chiefs and warriors of whom are now here convened by Sir William Johnson, Baronet, His Majesty's Superintendent of our affairs, send

GREETING :

WHEREAS, His Majesty was graciously pleased to propose to us, in the year one thousand seven 20
hundred and sixty-five, that a boundary line should be fixed between the English and us, to ascertain and establish our limits and prevent those intrusions and encroachments of which we had so long and loudly complained, and to put a stop to the many fraudulent advantages which had been so often taken of us in land affairs, which boundary appearing to us a wise and good measure, we did then agree to a part of a line, and promised to settle the whole finally whensoever Sir William Johnson should be fully empowered to treat with us for that purpose ;

AND WHEREAS, His said Majesty has at length given Sir William Johnson orders to complete the said boundary line between the Provinces and Indians, in conformity to which orders Sir William Johnson has convened the chiefs and warriors of our respective nations, who are the true and absolute proprietors of the lands in question, and who are here now to a very considerable number ;

AND WHEREAS, many uneasinesses and doubts have arisen amongst us which have given rise to an apprehension that the Line may not be strictly observed on the part of the English, in which case matters may be worse than before, which apprehension, together with the dependent state of some of our tribes and other circumstances which retarded the settlement and became the subject of some debate, Sir William Johnson has at length so far satisfied us upon as to induce us to come to an agreement concerning the Line which is now brought to a conclusion, the whole being fully explained to us in a large assembly of our people before Sir William Johnson and in the presence of His Excellency the Governor of New Jersey, the Commissioners from the Provinces of Virginia and Pennsylvania and sundry other gentlemen, by which Line so agreed upon a considerable tract of country along several Provinces is by us ceded to His said Majesty, which we are induced to and do hereby ratify and confirm to His said 40
Majesty from the expectation and confidence we place in His royal goodness that he will graciously comply with our humble requests as the same are expressed in the Speech of the several Nations addressed to His Majesty through Sir William Johnson on Tuesday, the 1st of the present month of November, wherein we have declared our expectation of the continuance of His Majesty's favour, and our desire that our ancient engagements be observed and our affairs attended to by the officer

* New York Hist. Coll. vol. viii, p. 136.

who has the management thereof, enabling him to discharge all these matters properly for our interest. That the lands occupied by the Mohocks around their villages as well as by any other Nation affected by this our cession may effectually remain to them and to their posterity, and that any engagements regarding property which they may now be under may be prosecuted and our present grants deemed valid on our parts, which the several other humble requests contained in our said Speech. AND WHEREAS at the settling of the said Line it appeared that the Line described by His Majesty's order was not extended to the northward of Oswego or to the southward of Great Kanawha River, we have agreed to and continued the Line to the northward on a supposition that it was omitted by reason of our not having come to any determination concerning its course at the Congress held in one thousand seven hundred and sixty-five, and inasmuch as the Line to the northward became the most necessary of any for preventing encroachments at our very towns and residences we have given the Line more favorably to Pennsylvania for the reasons and considerations mentioned in the Treaty. We have likewise continued it south to Cherokee River, because the same is and we do declare it to be our true Bounds with the Southern Indians, and that we have an undoubted right to the country as far south as that river which makes our cession to His Majesty much more advantageous than that proposed.

NOW THEREFORE KNOW YE that we the Sachems and Chiefs aforementioned, native Indians and proprietors of the lands hereinafter described, for, and in behalf of ourselves, and the whole of our confederacy, for the considerations herein before mentioned, and also for and in consideration of a valuable present of the several articles in use amongst Indians, which together with a large sum of money, amounts in the whole to the sum of ten thousand four hundred and sixty pounds, seven shillings and three pence sterling, to us now delivered, and paid by Sir William Johnson, Baronet, His Majesty's sole Agent, and Superintendent of Indian Affairs, for the Northern Department of America; in the name and on behalf of our Sovereign Lord George the Third, by the Grace of God of Great Britain, France, and Ireland, King, Defender of the Faith, the receipt whereof we do hereby acknowledge, We the said Indians HAVE for us and our heirs and successors, granted, bargained, sold, released and confirmed, and by these presents DO grant, bargain, sell, release and confirm unto our said Sovereign Lord King George the Third, ALL that tract of land situate in North America, at the back of the British settlements, bounded by a line which we have now agreed upon and do hereby establish as the boundary between us and the British colonies in America, beginning at the mouth of Cherokee or Hogohege River where it empties into the River Ohio, and running from thence upwards along the south side of said river to Kittanning, which is above Fort Pitt, from thence by a direct line to the nearest fork of the west branch of Susquehanna, thence through the Allegheny Mountains along the south side of the said west branch, until it comes opposite to the mouth of a creek called Tiadaghton thence across the west branch and along the south side of that creek, and along the north side of Burnett's Hills to a creek called Awandâc, thence down the same to the east branch of Susquehanna and across the same and up the east side of that river to Oswego; from thence east to Delaware River and up that river to opposite where Tianderha falls into Susquehanna; thence to Tianderha and up the west side of its west branch to the head thereof, and thence by a direct line to Canada Creek, where it empties into the wood creek at the west of the carrying place beyond Fort Stanwix, and extending eastward from every part of the said line as far as the lands formerly purchased, so as to comprehend the whole of the lands between the said line and the purchased lands or settlements, except what is within the Province of Pennsylvania, together with all the hereditaments and appurtenances to the same belonging or appertaining, in the fullest and most ample manner, and all the Estate, Right, Title, Interest, Property, Claim and Demand, either in Law or Equity, of each and every of us, of, in or to the same or any part thereof, TO HAVE AND TO HOLD the whole lands and premises hereby granted, bargained, sold, released and confirmed as aforesaid, with the hereditaments and appurtenances thereunto belonging, under the reservations made in a treaty unto our said Sovereign Lord King George the Third, his heirs and successors, to and for his and their own proper use and behoof forever.

IN WITNESS whereof, We the Chiefs of the Confederacy have hereunto set our marks and seals at Fort Stanwix, the fifth day of November, one thousand seven hundred and sixty-eight, in the ninth year of His Majesty's reign.

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—
Treaty of Fort
Stanwix,
1768.

TYORHANSERE ALS ABRAHAM,	For the Mohocks,	(Totem.)	[L. s.]
CANAGHQUIESON,	for the Oneidas,	(Totem.)	[L. s.]
SEQUARUSERA,	for the Tuscaroras,	(Totem.)	[L. s.]
OTSINOHIYATA ALS BUNT,	for the Onondagas,	(Totem.)	[L. s.]
TEGAATA,	for the Cayugas,	(Totem.)	[L. s.]
GUASTRAX,	for the Senecas,	(Totem.)	[L. s.]

Sealed and delivered and the consideration paid in the presence of
Wm. Franklin, Governor of New Jersey;

Fre Smyth, Chief-Justice of New Jersey;

Thomas Walker, Commissioner for Virginia;

Richard Peters, James Lilgham, of the Council of Pennsylvania.

The above Deed was executed in my presence at Fort Stanwix the day and year above written.

W. JOHNSON.

SIR WILLIAM JOHNSON ON THE ILLINOIS COUNTRY, 1776.*

SIR WILLIAM JOHNSON TO THE LORDS OF TRADE AND PLANTATIONS.

JOHNSON'S HALL, Jan. 31, 1776.

Sir William
Johnson on
the Illinois
country,
1776.

MY LORDS.—.....I have received the agreeable news of our being in actual possession of the Illinois, the Indians, in consequence of their engagements to Mr. Crogan, having given no obstruction to Captain Stirling or his party, who arrived at Fort Chartres in October last, and were well received.

As the possession of this fine country has been earnestly desired and often in vain attempted since the reduction of Canada, and now proceeds from the late negotiations of my Deputy with the Indians in that quarter, it may not be amiss to offer my thoughts on the best manner for possessing so valuable an acquisition, and render it of real use to the Crown. It will be needless to enlarge upon the natural advantages of soil and situation which this country peculiarly enjoys, these being matters pretty well known; but to avail ourselves of these advantages, it is highly necessary that we should do all in our power to keep the Indians contented, easy, and reconciled to our manners and government, without which we can neither keep up the communication or retain it for any time, and the difficulties and obstructions which have hitherto prevented our possessing it, by way of the Mississippi, are convincing proof of this. Neither is it in our power, with any force to be spared for that service, to ascend the river or cross the country by land to that settlement, if the Indians are at all disposed to obstruct their progress.

The settlements at the Illinois extend for many miles above the Kaskaski River along the Mississippi; the land is extremely fine, and capable of raising anything. Some of the present inhabitants may possibly incline to go home, and our traders will, I dare say, choose to purchase their rights; this may be a foundation for a valuable colony in that country, which, once established, would prove very beneficial to Great Britain, as well as a great check to large cessions obtained of the natives. But to effect this, and every other purpose, their jealousies and dislikes must be conquered, and they must be convinced by a series of good management and occasional generosity that their suspicions are groundless.

* N. Y. His. Doc., Vol. VIII.

INSTRUCTIONS OF ADMIRALTY TO CAPT. VANCOUVER, 1791, FOR EXPEDITION TO
THE NORTH-WEST COAST OF AMERICA.

JOINT
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—
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Documents.*
—
Instructions to
Captain
Vancouver,
1791.

[Captain Vancouver undertook a voyage of discovery to the North Pacific Ocean, in 1791, principally with a view to ascertain the existence of any navigable communication between the North Pacific and Atlantic Oceans, having command of the *Discovery*, sloop of war, and the armed tender *Chatham*. His instructions were prepared]

BY THE COMMISSIONERS FOR EXECUTING THE
OFFICE OF LORD HIGH ADMIRAL OF
GREAT BRITAIN AND IRELAND, ETC.

10 The King having judged it expedient that an expedition should be immediately undertaken for acquiring a more complete knowledge, than has yet been obtained, of the north-west coast of America; and the sloop you command, together with the *Chatham*, armed tender (the Lieutenant commanding which has been directed to follow your orders), having been equipped for that service, you are, in pursuance of His Majesty's pleasure, signified to us by Lord Grenville, one of his principal Secretaries of State, hereby required and directed to proceed without loss of time, with the said sloop and tender, to the Sandwich Islands, in the North Pacific Ocean, where you are to remain during the next winter; employing yourself very diligently in the examination and survey of the said islands; and, as soon as the weather shall be favourable (which may be expected to be in February, or at latest in March, 1792), you are to repair to the north-west coast of America, for the purpose of acquiring a more complete
20 knowledge of it, as above mentioned.

It having been agreed, by the late Convention between his Majesty and the Catholic King (a printed copy of which you will receive herewith), that the buildings and tracts of land situated on the north-west coast above mentioned, or on islands adjacent thereto, of which the subjects of his Britannic Majesty were dispossessed, about the month of April, 1789, by a Spanish officer, shall be restored to the said British subjects, the Court of Spain has agreed to send orders for that purpose to its officers in that part of the world; but as the particular specification of the parts to be restored may still require some further time, it is intended that the King's orders, for this purpose shall be sent out to the Sandwich Islands, by a vessel to be employed to carry thither a further store of provisions for the sloop and armed tender above mentioned, which it is meant shall sail from this country in time to reach those
30 islands in the course of next winter.

If, therefore, in consequence of the arrangement to be made with the Court of Spain, it should hereafter be determined that you should proceed, in the first instance, to Nootka, or elsewhere, in order to receive, from the Spanish officers, such lands or buildings as are to be restored to the British subjects, orders to that effect will be sent out by the vessel above mentioned. But if no such orders should be received by you previous to the end of January, 1792, you are not to wait for them at the Sandwich Islands, but to proceed, in such course as you may judge most expedient, for the examination of the coast above mentioned, comprized between latitude 60 deg. north, and 30 deg. north.

In which examination the principal objects which you are to keep in view, are,

1st. The acquiring accurate information with respect to the nature and extent of any water com-
40 munication which may tend, in any considerable degree, to facilitate an intercourse for the purpose of commerce, between the north-west coast and the countries upon the opposite side of the continent which are inhabited or occupied by His Majesty's subjects.

2dly. The ascertaining, with as much precision as possible, the number, extent and situation of any settlements which have been made within the limits above mentioned by any European nation, and the time when such settlement was first made.

With respect to the first object, it would be of great importance if it should be found that, by means of any considerable inlets of the sea, or even of large rivers communicating with the lakes in the interior of the continent, such an intercourse as hath been already mentioned, could be established; it will, therefore, be necessary, for the purpose of ascertaining this point that the survey should be so

[L. s.]

[L. s.]

[L. s.]

[L. s.]

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[L. s.]

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above written.
W. JOHNSON.

31, 1776.

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Instructions to
Captain
Vancouver,
1791.

conducted as not only to ascertain the general line of the sea coast, but also the direction and extent of all such considerable inlets, whether made by arms of the sea, or by mouths of large rivers, as may be likely to lead to, or facilitate, such communication as is above described.

This being the principal object of the examination, so far as relates to that part of the subject, it necessarily follows that a considerable degree of discretion must be left, and is therefore left to you, as to the means of executing the service which his Majesty has in view; but, as far as any general instructions can here be given on the subject, it seems desirable that, in order to avoid any unnecessary loss of time, you should not, and are therefore hereby required and directed not to pursue any inlet or river further than it shall appear to be navigable by vessels of such burden as might safely navigate the Pacific Ocean; but, as the navigation of such inlets and rivers, to the extent here stated, may possibly require that you should proceed up them further than it might be safe for the sloop you command to go, you are, in such case, to take the command of the armed tender in person, at all such times, and in such situations as you shall judge it necessary and expedient.

The particular course of the survey must depend on the different circumstances which may arise in the execution of a service of this nature; it is, however, proper that you should, and you are, therefore, hereby required and directed to pay a particular attention to the examination of the supposed straits of Juan de Fuca, said to be situated between 48 deg. and 49 deg. north latitude and to lead to an opening through which the sloop *Washington* is reported to have passed in 1789, and to have come out again to the northward of Nootka. The discovery of a near communication between any such sea or strait, and any river running into or from the Lake of the Woods, would be particularly useful.

If you should fail of discovering any such inlet as is above mentioned, to the southward of Cook's River, there is the greatest probability that it will be found that the said river rises in some of the lakes already known to the Canadian traders, and to the servants of the Hudson's Bay Company; which point it would, in that case, be material to ascertain; and you are, therefore, to endeavour to ascertain accordingly, with as much precision as the circumstances existing at the time may allow. But the discovery of any similar communication more to the southward (should any such exist), would be much more advantageous for the purposes of commerce, and should, therefore, be preferably attended to; and you are, therefore, to give it a preferable attention accordingly.....

Given under our hands the 8th of March, 1791.

CHATHAM,
RD. HOPKINS,
HOOD,
J. T. TOWNSEND.

To George Vancouver, Esq.,
Commander of His Majesty's
Sloop the *Discovery*, at Ful-
mouth.

By command of their Lordships,
PH. STEPHENS.

OPINION OF THE ATTORNEY AND SOLICITOR-GENERAL, SIR RICHARD BETHELL
AND SIR HENRY S. KEATING, ON THE HUDSON'S BAY COMPANY'S CHARTER, 1857.*

Opinion of Sir
R. Bethell
and Sir H.
S. Keating
on Hudson's
Bay Com-
pany's
Charter,
July, 1857.

SIR,—We are favoured with Mr. Merivale's letter of the 9th of June ultimo, in which he stated that he was directed by you to transmit to us copies of two despatches from the Governor of Canada, inclosing the copy of a Minute of his Executive Council, and extract from another Minute of the same, in reference to the questions respecting the affairs of the Hudson's Bay Company, then under investigation by a Committee of the House of Commons.

LINCOLN'S INN, July, 1857.

* Printed with the Report from the Select Committee [of the House of Commons] on the Hudson's Bay Company, etc., 1857, p. 403.

We were also requested to observe, from the former of these Minutes, that the Executive Council suggest, on the part of Canada, a territorial claim over a considerable extent of country, which is also claimed by the Hudson's Bay Company, as owners of the soil, and with rights of government and exclusive trade under their Charter.

We were also requested to observe, by the annexed parliamentary papers of the 12th of July, 1850 that the statement of the Hudson's Bay Company's rights as to territory, trade, taxation, and government, made by them to Earl Grey, as Secretary of the Colonies, on the 13th September, 1849, was submitted to the then law officers of the Crown, who reported that they were of opinion that the rights so claimed by the Company properly belonged to them, but suggested, at the same time, a mode of testing those 10 claims by petition to Her Majesty, which might be referred to the Judicial Committee.

Mr. Merivale was further to annex a Parliamentary Return, made in 1842, containing the Charter of the Company, and documents relating thereto; and another of 23rd April, 1849, containing, among other papers, an Act of 2nd William and Mary, "for confirming to the Governor and Company trading to Hudson's Bay their privileges and trade."

The rights so claimed by the Company have been repeatedly questioned since 1850, by private persons in correspondence with the Secretary of State, and were then questioned to a certain extent, as appears by those despatches, by the present local Government of Canada.

Mr. Merivale was also to request that we should take those papers into our consideration, and report—

- 20 Whether we thought the Crown could lawfully and constitutionally raise for legal decision, all or either of the following questions:

The validity, at the present day, of the Charter itself.

The validity of the several claims of territorial right of government, exclusive trade and taxation, insisted on by the Company.

The geographical extent of this territorial claim (supposing it to be well founded to any extent.)

And if we were of the opinion that the Crown could do so, we were requested further to state the proper steps to be taken, in our opinion, by the Crown, and the proper tribunal to be resorted to; and whether the Crown should act on behalf of the local Government of Canada, as exercising a delegated share of the Royal authority, or in any other way.

- 30 And lastly, if we should be of the opinion that the Crown could not properly so act, whether we saw any objection to the questions being raised by the local Government of Canada, acting independently of the Crown, or whether they could be raised by some private party, in the manner suggested by the law advisers in 1850, the Crown undertaking to bear the expense of the proceedings.

In obedience to your request, we have taken the papers into our consideration, and have the honour to report—

That the questions of the validity and construction of the Hudson's Bay Company's Charter cannot be considered apart from the enjoyment that has been had under it during nearly two centuries, and the recognition made of the rights of the Company in various acts, both of the Government and the Legislature.

- 40 Nothing could be more unjust, or more opposed to the spirit of our law, than to try this Charter as a thing of yesterday, upon principles which might be deemed applicable to it if it had been granted within the last ten or twenty years.

These observations, however, must be considered as limited in their application to the territorial rights of the Company under the Charter, and to the necessary incidents or consequences of that territorial ownership. They do not extend to the monopoly of trade (save as territorial ownership justifies the exclusion of intruders), or to the right of an exclusive administration of justice.

- 50 But we do not understand the Hudson's Bay Company as claiming anything beyond the territorial ownership of the country they are in possession of, and the right, as an incident to such ownership, of excluding persons who would compete with them in the fur trade carried on with the Indians resorting to their districts.

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Opinion of Sir
R. Bethell
and Sir H.
S. Keating
on Hudson's
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pany's
Charter,
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Opinion of Sir
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and Sir H.
S. Keating
on Hudson's
Bay Com-
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With these preliminary remarks we beg leave to state, in answer to the questions submitted to us, that in our opinion the Crown could not now, with justice, raise the question of the general validity of the Charter; but that on every legal principle the Company's territorial ownership of the lands, and the rights necessarily incidental thereto (as, for example, the right of excluding from their territory persons acting in violation of their regulations,) ought to be deemed to be valid.

But with respect to any rights of government, taxation, exclusive administration of justice, or exclusive trade, otherwise than as a consequence of the right of ownership of the land, such rights could not be legally insisted on by the Hudson's Bay Company as having been legally granted to them by the Crown.

This remark, however, requires some explanation.

The Company has, under the Charter, power to make ordinances (which would be in the nature of by-laws) for the government of the persons employed by them, and also power to exercise jurisdiction in all matters, civil and criminal; but no ordinance would be valid that was contrary to the Common Law, nor could the Company insist on its right to administer justice as against the Crown's prerogative right to establish courts of civil and criminal justice within the territory.

We do not think, therefore that the Charter should be treated as invalid because it professes to confer these powers upon the Company; for to a certain extent they may be lawfully used, and for an abuse of them the Company would be amenable to law.

The remaining subject for consideration is the question of the geographical extent of the territory granted by the Charter, and whether its boundaries can in any and what manner be ascertained. In the case of grants of considerable age, such as this Charter, when the words, as is often the case, are indefinite or ambiguous, the rule is, that they are construed by usage and enjoyment, including in these latter terms the assertion of ownership by the Company on important public occasions, such as the Treaties of Ryswick and Utrecht, and again in 1750.

To these elements of consideration upon this question must be added to the enquiry (as suggested by the following words of the Charter, viz: "not possessed by the subjects of any other Christian Prince or State") whether, at the time of the Charter, any part of the territory now claimed by the Hudson's Bay Company could have been rightfully claimed by the French as falling within the boundaries of Canada or Nouvelle France, and also the effect of the Acts of Parliament passed in 1774 and 1791.

Under these circumstances, we cannot but feel that the important question of the boundaries of the Hudson's Bay Company might with great utility, as between the Company and Canada, be made the subject of a quasi-judicial inquiry.

But this cannot be done except by the consent of both parties, namely, Canada and the Hudson's Bay Company; nor would the decision of a Committee of the Privy Council have any effect as a binding judicial determination.

But if the Hudson's Bay Company agree to the proposal of the Chief Justice of Canada, that the question of the boundaries should be referred to the Privy Council, it being further understood by both parties that the determination of the Council shall be carried into effect by a declaratory Act of Parliament, we think the proceeding would be the best mode of determining that which is, or ought to be, the only real subject of controversy.

The form of procedure might be a petition to the Queen by Chief Justice Draper, describing himself as acting under the direction of the Executive Council of Canada, unless, which would be the more solemn mode, an address were presented to Her Majesty by the Canadian Parliament.

Counsel would be heard on behalf of Canada, and of the Company.

We are, &c.,

RICHARD BETHELL,
HENRY S. KEATING.

The Right Honourable
H. Labouchere, M.P., &c.

IX.

French Rights and Claims.

CORRESPONDENCE AND PAPERS, 1670-1759.

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French Rights
and Claims.[Charter of La Compagnie des Cent Associés ou de la Nouvelle France, 1627, Sec. X., *post.*]

THE INTENDANT TALON TO M. COLBERT, THE FRENCH MINISTER.*

Quebec, Nov. 10, 1670.

I learn by the return of the Algonquins, who will winter this year at Tadoussac, that the two European vessels have been seen very near Hudson's Bay, where they wigwam (*cabanent*), as the Indians express it. After reflecting on all the nations that might have penetrated as far north as that I can only light on the English, who, under the guidance of a man named Des Grozeliere, formerly an inhabitant of Canada, might possibly have attempted that navigation, of itself not much known—and not less dangerous. I intend despatching thither, overland, some man of resolution to invite the Killistons, who are in great numbers in the vicinity of the Bay, to come down to see us, as the Ottawas do, in order that we may have the first pick of what the latter savages bring us, who, acting as pedlars between those nations and us, make us pay for a round-about of three or four hundred leagues.

M. Talon to
M. Colbert,
10th Novem-
ber, 1670.

RECORD OF THE TAKING POSSESSION, IN THE KING'S NAME, OF THE COUNTRIES OF THE WEST AND NORTH, BY THE SIEUR DE ST. LUSSON, SUB-DELEGATE OF THE INTENDANT TALON, 1671.†

SIMON FRANÇOIS DAUMONT, Esquire, Sieur de St. Lusson, Commissioner Sub-delegate of my Lord the Intendant of New France, to search for the copper mines in the countries of the Outaouais, Nesperceez, Illinois and other Indian nations discovered and to be discovered in North America, near Lake Superior, or the Fresh Sea.

Sieur de St.
Lusson,
taking
possession of
the countries
West and
North, 14th
June, 1671.

On the orders by us received on the third of September last from my Lord the Intendant of New France, signed and paraphéd TALON, and underneath by my Lord VARNIER, with paraph. to proceed forthwith to the countries of the Outaouais, Nesperceez, Illinois, and other nations discovered and to be discovered in North America, near Lake Superior, or the Fresh Sea, to make search and discovery there for all sorts of mines, particularly that of copper; commanding us moreover to take possession in the King's name of all the country inhabited and uninhabited wherever we should pass, planting in the first village at which we land the cross, in order to produce there the fruits of Christianity, and the escutcheon (écu) of France to confirm His Majesty's authority and the French dominion over it.

We having made, in virtue of our commission, our first landing at the village or hamlet of St. Mary of the Falls, the place where the Reverend Jesuit Fathers are making their mission, and the Indian nations called Chepoëts, Malamechs, Noquets and others do actually reside; we caused the greatest portion possible of the other neighbouring tribes to be assembled there, who attended to the number of fourteen nations,

To wit: the Etchipoëts, the Malamechs and the Noquets, inhabiting the said place of St. Mary of the Sault; and the Banabouiks and Makamitek; the Poulxteatemis, Ounabonims, Sassassaoua Cottous, inhabiting the bay called *des Puants*, and who have undertaken to make it known to their neighbours who are the Illinois, Mascoutins, Outtongamis and other tribes; the Christinos Assinipoals, Aumoussouniks, Outavünis, Bouscouthons, Nisecks and Masquikoukiecks, all inhabitants of the northern

* N. Y. Hist. Coll., Vol. IX., p. 57.
† Ounabonims, i. e., Menominee.† N. Y. Hist. Col., Vol. IX. p. 803.
*Maitoualin.

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country and near neighbours of the sea, who undertook to tell and communicate it to their neighbours who are very numerous, inhabiting even the sea coast; To whom, in the presence of the Reverend Fathers of the Company of Jesus and of all the French hereafter mentioned, we have caused to be read our said commission and had it interpreted in their language by Sieur Nicolas Perrot, his Majesty's interpreter in that part, so that they may not be ignorant of it; afterwards causing a cross to be prepared in order that the fruits of Christianity be produced there, and near it a cedar pole to which we have affixed the arms of France, saying three times in a loud voice and with public outcry, that *In the name of the Most High, Most Mighty and Most Redoubtable Monarch Louis the XIV, of the Christian name King of France and Navarre*, we take possession of the said place of St. Mary of the Falls as well as of Lakes Huron and Superior, the Island of Caientolon and of all other countries, rivers, lakes 10 and tributaries, contiguous and adjacent thereunto, as well discovered as to be discovered, which are bounded on the one side by the Northern and Western Seas and on the other side by the South Sea including all its length or breadth; raising at each of the said three times a sod of earth, whilst crying *Vive le Roi* and making the whole of the assembly, as well French as Indians, repeat the same; declaring to the aforesaid nations that henceforward as from this moment they were dependent on his Majesty, subject to be controlled by his laws and to follow his customs, promising them all protection and succor on his part against the incursion or invasion of their enemies, declaring unto all other Potentates, Princes and Sovereigns, States and Republics, to them and their subjects, that they cannot or ought not seize on, or settle in, any places in said country, except with the good pleasure of his said Most Christian Majesty and of him who will govern the country in his behalf, on pain of incurring his hatred and the 20 effects of his arms; and in order that no one plead cause of ignorance, we have attached to the back of the Arms of France thus much of the present our minute of the taking possession: Signed by us and the under named persons, who were all present:

Done at St. Mary of the Falls on the 14th June in the year of Grace 1671, in the presence of the Reverend Fathers: the Reverend Father Claude Dablon, Superior of the missions in this country; the Rev. Father Gabriel Drouillete, the Rev. Father Claude Allouëz, the Rev. Father André, all of the Company of Jesus; and of Sieur Nas. Perrot, His Majesty's interpreter in these parts; Sieur Jolliet, Jaques Mogras, an inhabitant of Three Rivers; Pierre Moreau dt. de la Touppine, a soldier belonging to the garrison of the Castle of Quebec, Denis Masse, Fçois. de Chavigny Sr de la Chevriottière, Jaques Lagillier, Jeanne Mayséré, Nas. Dapuis, Fçois. Bidaud, Jaques Joniel, Prre. Portcet, Robert Duprat, Vital 30 Oriol, Guillaume.

THE INTENDANT TALON TO THE KING, RESPECTING THE MISSION OF ALBANEL AND ST. SIMON TO HUDSON'S BAY. *

Quebec, Nov. 2, 1671.

M. Talon to
the King—
Albanel's
Mission to
Hudson's
Bay, 2nd
November,
1671.

Three months ago I despatched with Father Albanel, a Jesuit, Sieur de St. Simon, a young Canadian gentleman recently honoured by His Majesty with that title. They are to penetrate as far as Hudson's Bay, draw up a memoir of all they will discover, drive a trade in furs with the Indians, and especially reconnoitre whether there be any means of wintering ships in that quarter, in order to establish a factory that might, when necessary, supply provisions to the vessels that will possibly hereafter discover, by that channel, the communication between the two seas—the north and the south. Since their 40 departure I have received letters from them three times. The last, brought from one hundred leagues from here, informs me that the Indians whom they met on the way have assured them that two English vessels and three barks have wintered in the neighbourhood of the Bay, and made a vast collection of beavers there. If my letters, in reply, are safely delivered to the said Father, this establishment will be thoroughly examined, and His Majesty will have full information about it. As those countries have been long ago (*anciennement*) originally discovered by the French, I have commissioned the said Sieur de St. Simon to take renewed possession in His Majesty's name, with orders to set up the escutcheon of France, with which he is entrusted, and to draw up a procès verbal, in the form I have furnished him.

It is proposed to me to despatch a bark of sixty tons hence to Hudson's Bay, whereby it is expected that something will be discovered of the communication between the two seas. If the adventurers who form this design subject the King to no expense, I shall give them hopes of some mark of honour if they succeed, besides indemnifying themselves from the fur trade which they will carry on with the Indians.

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TRAITE DE TADOUSSAC—DESPATCH FROM GOVERNOR COMTE DE FRONTENAC, 2D 9BRE, 1672.*

The Company's Commissary demanding this year a passport, to winter four men at Lake St. John, on the pretext of the Tadoussac trade, urged me strongly to insert in it a prohibition to all those who would trade on Lake St John.

Traite de
Tadoussac,
1672.

- 10 He pretended that the Limits of (*Traite de*) Tadoussac† extended as far as that, and even to Hudson's Bay, which would be giving him an extent of five or six hundred leagues, and preventing the inhabitants of that colony going to the places the Company had never meant to reserve. In the meantime, in order not to make a noise, M. Talon thought proper that I should grant it to him, with a clause that it would be only for this year, on condition that it would not serve as a precedent for the future so as to confer any title to the places.

[This passport, granted by M. de Frontenac, at Quebec, bears date the twenty-second of September 1672, for Father Crespin, Jesuit, and for Sieurs Montagne, Maquard, Dantray, and Pelletier, sent by the West India Company to trade with the Indians, and to winter at Lake St. John, called Peakoutagamy, about 70 leagues above Tadoussac.]

20 GOVERNOR COMTE DE FRONTENAC, RESPECTING JOLIET'S VOYAGE TO HUDSON'S BAY.**

6th and 8th Nov., 1679.

[I] send the narrative and map of the voyage Sieur Joliet has made to Hudson's Bay, which the farmers of the revenue of Canada have demanded of him. This relation is dated 27th October, 1679, and signed JOLIET.

Joliet's
Voyage to
Hudson's
Bay, Novem-
ber, 1679.

RECORD OF THE TAKING POSSESSION, IN THE KING'S NAME, OF THE COUNTRIES OF THE UPPER MISSISSIPPI, 1680.†

CANADA, BAY DES PUANTS.

- 30 Record of the taking possession, in His Majesty's name, of the Bay des Puants (Green Bay), of the lake and rivers of the Outagamis (Fox River), and Maskoutins (Lake Winnebago), of the River Ouiskonche (Wisconsin), and that of the Mississippi the country of the Nadouesioux (Sioux), the rivers St. Croix and St. Peter, and other places more remote, 8th May, 1689. (*sic.*)

Nicholas Perrot, commanding for the King at the post of the Nadouesioux, commissioned by the Marquis de Denonville, Governor and Lieutenant-General of all New France, to manage the interest of commerce among all the Indian tribes and peoples of the Bay des Puants, Nadouesioux, Mascoutins, and other western nations of the Upper Mississippi, and to take possession, in the King's name, of all the places where he has hitherto been, and whither he will go.

Taking pos-
session of the
Upper
Mississippi
Countries,
8th May,
1680.

- 40 We, this day, the eighth of May, one thousand six hundred and eighty, (*sic.*) do, in presence of the Reverend Father Marest, of the Society of Jesus, missionary among the Nadouesioux; of Mons. de Borie-Guillot, commanding the French in the neighbourhood of Ouiskonche, on the Mississippi; Augustin Legardeur, Esquire, Sieur de Caumont, and of Messieurs Le Sueur, Hebert, Lemire, and Blein, declare to all to whom it may concern, that, having come from the Bay des Puants, and to the Lake of the Ouiskonches, and to the River Mississippi, we did transport ourselves to the country of

*N. Y. Hist. Col., Vol. 12., p. 751.

**N. Y. Hist. Col. p. 795.

†See Ordinance of Intendant Hocquart, May 23rd, 1733, *post.*

‡*Historical Collections of Louisiana and Florida.* By B. F. French (second series), p. 122.

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Countries,
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the Nadouesioux, on the Border of the River Saint Croix, and at the mouth of the River Saint Peter, on the bank of which were the Mantantans, and farther up into the interior to the north-east of the Mississippi as far as the Menchokatox, with whom dwell the majority of the Songestikons and other Nadouesioux, who are to the north-east of the Mississippi, to take possession for and in the name of the King, of the countries and rivers inhabited by the said tribes, and of which they are proprietors.

The present Act, done in our presence, signed with our hand, and subscribed by the Reverend Father Marest, Messrs. de Borie-Guillot and Caumont, and the Sieurs Le Sueur, Hebert, Lemire, and Blein.

Done at the Post St. Anthony, the day and year aforesaid. These presents are in duplicate. Signed to the original: Joseph Jean Marest, of the Society of Jesus, N. Perrot, Legardeur de Caumont, 10 Le Sueur, Jean Hebert, Joseph Lemire, and F. Blein.

COMTE DE FRONTENAC, 2ND NOV., 1681.*

Comte de
Frontenac,
2nd Novem-
ber, 1681.

Sieur Radisson, who is married in England, had returned to Canada from the Islands, where he had served under Marshal D'Estrées. He had applied to him for permission to go in a vessel belonging to Sieur de la Chesnay, to form establishments along the coasts leading towards Hudson's Bay.

THE INTENDANT DUCHESNEAU'S† MEMOIR TOUCHING HUDSON'S BAY,‡

13th Nov., 1681.

M. Duches-
neau's
Memoir, 13th
November,
1681.

* They [the English] are still at Hudson's Bay, on the north, and do great damage to our fur trade. The farmers (of the revenue) suffer in consequence by the diminution of the trade at Tadoussac, and throughout that entire country, because the English draw off the Outawm nations; for the one and the 20 other design, they have two forts in the said Bay—the one towards Tadoussac, and the other at Cape Henriette Marie, on the side of the Assinibouetz.

The sole means to prevent them succeeding in what is prejudicial to us in this regard, would be to drive them by main force from that Bay, which belongs to us; or if there would be an objection to coming to that extremity, to construct forts on the rivers falling into the lakes, in order to stop the Indians at these points.

Should the King adopt the resolution to arrange with the Duke of York for his possessions in this quarter, in which case Boston could not resist, the only thing to fear would be that this country might go to ruin, the French being naturally inconstant and fond of novelty.

But as this could be remedied by rigorous prohibitions, that consideration ought not to prevail over 30 the great benefit which would accrue, and the great advantages which His Majesty and his subjects must eventually derive from the transaction.

REPORT OF PROCEEDINGS AT PORT NELSON.§

Proceedings
at Port
Nelson, 1682.

The Ambassador of the King of England, at Paris, complained that the man named Radisson and other Frenchmen having gone with two barks, called *Le St. Pierre* and *La St. Anne*, into the river and port of Nelson, in 1682, seized a fort and some property of which the English had been in possession for several years.

Radisson and Desgrozelliens maintained that these allegations are not true; but that having found a spot on the River Nelson adapted to their trade, more than 150 leagues distant from the place where the English were settled in Hudson's Bay, they took possession of it in the King's name, in the month of August, 1682, and had commenced building a fort and some houses there.

* N. Y. Hist. Col., Vol. IX., p. 795.

† The Sieur Jacques Duchesneau, appointed by the King Intendant in Canada, &c., in 1675.

‡ N. Y. Hist. Col., Vol. IX., p. 166.

§ Ibid, pp. 797-8.

That on the 14th September following, having heard cannon, they went out to examine, and on the 26th found some beginning of houses on an island, and a vessel aground near the coast.

That these houses had been begun since they entered the river and had set about working at their fort and building, and, therefore, that they were the first occupants.

That, since then, each having wished to maintain his establishment, the French were become the masters.

That the ice and bad weather having caused the destruction of an English ship, some men belonging to it had died; but that they had, on their part, treated them with great moderation and kindness and rendered every assistance to the English, who appeared satisfied.

JOSEPH
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at Port
Nelson, 1682.

10 M. DE LA BARRE, GOVERNOR OF CANADA, AS TO OPERATIONS OF THE ENGLISH AT HUDSON'S BAY.*

Quebec, Nov. 12, 1682.

As to what relates to Hudson's Bay, the Company in old England advanced some small houses along a river which leads from Lake Superior. As possession was taken of this country several years ago, he will put an end to this disorder, and report next year the success of his design.

De La Barre,
12th Novem-
ber, 1682.

M. DE LA BARRE TO M. DE SEIGNELAY, FRENCH MINISTER, 30th April, 1683, AS TO OVERLAND EXPEDITIONS TO THE BAY.†

Two detachments of Frenchmen have proceeded to the north for the purpose of preventing the English of Hudson's Bay entering on French territory, and obstructing the trade the French carried on with the Asselibois, Themiscaming, Puisseamains, and Christinos.

Overland Ex-
peditions to
Hudson's
Bay, 1683.

20 LOUIS XIV. TO M. DE LA BARRE, GIVING INSTRUCTIONS AS TO HUDSON'S BAY.‡

Fontainebleau, 5th Aug., 1683.

I recommend you to prevent the English, as much as possible, from establishing themselves in Hudson's Bay, possession whereof was taken in my name several years ago; and as Col. d'Unguent [Bongan], appointed Governor of New York by the King of England, has had precise orders on the part of the said King to maintain good correspondence with us, and carefully to avoid whatever may interrupt it, I doubt not the difficulties you have experienced on the side of the English will cease for the future.

Louis XIV. to
D. De La
Barre, 5th
August, 1683.

M. DE LA BARRE TO M. DE SEIGNELAY, FRENCH MINISTER, AS TO OPERATIONS IN THE BAY.‡

Quebec, 4th Nov., 1683.

30 The English of Hudson's Bay have this year attracted many of our northern Indians, who for this reason have not come to trade to Montreal. When they learned by expresses sent to them by Du L'Hut, on his arrival at Missilimakinak, that he was coming, they sent him word to come quickly, and they would unite with him to prevent all the others going thither any more. If I stop that pass, as I hope, and as it is necessary to do, as the English of that Bay excite amongst us the savages, whom Sieur Du L'Hut alone can quieten, I shall enter into arrangements with those of New York for the surrender to me of any of the guilty fugitives. They appear well satisfied with me, but were desirous to obtain an order to that effect from the Duke of York. I judge from the state of European affairs that it is important to manage that nation, and I shall assiduously apply myself thereto * * *

M. De La
Barre, as to
operations in
Hudson's
Bay, 1683.

A small vessel had just arrived from Hudson's Gulf, two hundred leagues further north than the 40 Bay. She brings back those who were sent there last year by order of Count de Frontenac. You will

* N. Y. Hist. Col., Vol. IX., p. 798.

† Ibid, p. 200.

‡ Ibid, pp. 205, 209.

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operations in
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Bay, 1783.

receive herewith an exact map of the place. But divers little rencontres have occurred between our Frenchmen and the English, of which I send you a particular relation, in order, should any complaint be made to the King of England, and he speak of it to M. Barillon, the latter may be able to inform him of the truth. It is proper that you let me know early whether the King desires to retain that post so that it may be done, or the withdrawal of the French; for which purpose I shall dispose matters in order to aid them overland beyond Lake Superior, through Sieur Du L'Hut, and to send to them by sea to bring back the merchandize and peltries.

THE KING TO M. DE LA BARRE, 10th April, 1684, AS TO AFFAIRS AT NELSON RIVER.†

Louis XIV.
to De La
Barre, 10th
April, 1684.

The King of England has authorized his ambassador to speak to me respecting what occurred in the River Nelson, between the English, Radisson and Des Grosseillers; whereupon I am happy to inform you that as I am unwilling to afford the King of England any cause of complaint, and as I think it important, nevertheless, to prevent the English from establishing themselves on that river, it would be well for you to have a proposal made to the Commandant at Hudson's Bay, that neither the French nor the English should have power to make any new establishments; to which I am persuaded he will give his consent the more readily, as he is not in a position to prevent those which my subjects would wish to form in the said Nelson's River.

M. DE SEIGNELAY TO M. DE LA BARRE, AS TO OPERATIONS IN HUDSON'S BAY.*

De Seignelay
to De La
Barre, 10th
April, 1684.

Versailles, April 10, 1684.

It is impossible to imagine what you pretended when, of your own authority, without calling on the Intendant and submitting the matter to the Sovereign Council, you ordered a vessel to be restored to one Guillam, which had been captured by Radisson and De Groszeliers, and in truth you ought to prevent these sort of proceedings, which are entirely unwarranted, coming under His Majesty's eyes. You have herein done what the English will be able to make a handle of, since in virtue of your ordinance you caused a vessel to be surrendered which ought strictly to be considered a pirate, as it had no commission; and the English will not fail to say that you so fully recognized the regularity of the ship's papers that you surrendered it to the proprietors, and they will thence pretend to conclude that they had taken legitimate possession of the River Nelson before Messrs. Radisson and De Groszeliers had been there, which will be very prejudicial to the colony.

THE SIEUR DU L'HUT TO M. DE LA BARRE, AS TO OPERATIONS IN THE NEIGHBOURHOOD OF HUDSON'S BAY.

Sieur Du
L'Hut, as to
operations in
the North,
1684.

10th September, 1684. 30

As I was leaving the Lake of Almepigon I made, in June, all the presents necessary to prevent the savages from further carrying their beaver to the English. I have met the Sieur de la Croix with his two comrades, who gave me your despatches, wherein you tell me to omit nothing in forwarding your letters to the Sieur Chouart, at Nelson River. To carry out your instructions there was but Mons. Péré, who would have to go himself, the savages having all, at that time, withdrawn into the interior to secure their blueberries. The said Sieur Péré will have left in the month of August last. He will have remitted your letters to the said Sieur Chouart.

It remains for me, Sir, to assure you that all the savages of the north have great confidence in me, and that enables me to promise you that, before the lapse of two years, not a single savage will visit the English at Hudson's Bay. This they have all promised me, and have bound themselves thereto by the presents which I have given, or caused to be given to them. The Klistinos, the Assenepolacs, the people from the Sapinière, the Openens, Dachiling, the Outoubouhys and Tabitibis, which comprises all the nations which are to the west of the Northern Sea, have promised to be, next spring, at the fort which I have constructed near the River à la Maune, at the bottom of Lake Almepigon; and next summer, I will construct one in the country of the Klistinos, which will be an effectual barrier. Finally, Sir, I wish to lose my life if I do not absolutely prevent the savages from visiting the English.

* N. Y. Hist. Col. vol. IX., p. 798.

† *Ibid.*, p. 799.

M. DE LA BARRE TO THE KING, FOR INSTRUCTIONS AS TO HUDSON'S BAY.*

Quebec, Nov. 13, 1684.

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to the King,
14th Novem-
ber, 1684.

It remains for me to request Your Majesty's orders in regard to the English, as well those of New York as those settled on Hudson's Bay. I fear they have attacked the French posts last year in Nelson's Gulf, and that Radisson, who I learn is at their head, has opposed force and violence to the justice of our cause, of which Your Majesty shall be informed. Whether I must oppose force to force, and venture by land against those who might have committed some outrage against your subjects at sea, is a matter on which Your Majesty will please furnish me with some precise and decisive orders whereunto I shall conform my conduct and actions.

APPLICATION FOR A GRANT OF THE BOUHHON (NELSON) RIVER BY GAULTIER DE COMPORTÉ,
PRÉVOTÉ OF CANADA, 1684.

10 Gaultier de Comporté, Prévoté of Canada, has heretofore presented a memoir, by which he requests the grant unto himself and his associates, of the ownership of the River de Bourbon—de Nelson—in Hudson's Bay, of which possession had been taken in the name of the King, for as long a time as it should please, with permission to establish three posts in the river which descends into the said bay, at seventy leagues from the place where the farmers are settled.†

Application
for grant of
River de
Bourbon
(Nelson)
River, 1684.THE SIEUR DE CALLIÈRES, GOVERNOR OF MONTREAL,‡ TO THE MARQUIS DE SEIGNELAY, AS TO THE
FRENCH AND ENGLISH CLAIMS TO HUDSON'S BAY.§

Feb. 25th, 1685.

The third pretension of the English is to drive the French from Hudson's Bay, the whole of which country they claim as their property. And, in consequence of this pretension, they despatched some vessels last year to that Bay, which carried off several Frenchmen, whom a Company, formed at 20 Quebec, settled in that quarter at a place called the River Bourbon, and conveyed them to London with the beaver and other peltries belonging to the said French Company to the value of nearly two hundred thousand livres. * * * *

M. De Calli-
ères 1685, as
to title to
Hudson's
Bay, 1685.

As regards Hudson's Bay, the French settled there in 1656, by virtue of an *arrêt* of the Sovereign Council of Quebec, authorizing Sieur Burdon, its Attorney-General, to make the discovery thereof, who went to the north of said Bay, and took possession thereof in His Majesty's name.

In 1661, Father Dablon, a Jesuit, was ordered by Sieur d'Argenson, at the time Governor of Canada, to proceed to said country. He went thither accordingly, and the Indians, who then came from thence to Quebec, declared they had never seen any European there.

In 1663, Sieur d'Avauour, Governor of Canada, sent Sieur Couture, Seneschal of the Côte de 30 Beauport, to the north of the said Hudson's Bay, in company with a number of Indians of that country, with whom he went to take possession thereof and he set up the King's arms there.

In the same year, 1663, Sieur Duquet, King's Attorney to the *Prévôté* of Quebec, and Jean l'Anglois, a Canadian colonist, went thither again by order of the said Sieur d'Argenson, and renewed the act of taking possession by setting up His Majesty's arms there a second time. This is proved by the *arrêt* of the said Sovereign Council of Quebec, and by the orders in writing of said Sieurs d'Argenson and d'Avauour.

The English allege that the north coast of Hudson's Bay, where the French established themselves, had been discovered by Chevalier Button, an Englishman, as early as 1621. || But we answer that he

* N. Y. Hist. Col., Vol. IX., p. 251.

† Archives de Paris, 2nd Series, Vol. IV., p. 227.

‡ A veteran who had served twenty years in the French armies. He was Governor of Montreal; and subsequently, on the death of Frontenac, succeeded him as Governor and Lieutenant-General of Canada.

§ N. Y. Hist. Col., Vol. IX., pp. 265-8.

|| This should be 1612; that being the year of Button's discovery.

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eres, 1685,
as to title of
Hudson's
Bay.

made no record there of taking possession, and that they did not have any settlement there before the year 1667, when the Frenchmen, named Desgrozelliens and Radisson, conducted the English thither to a place called Nelson's River: and in 1676 the said Desgrozelliens and Radisson, having returned from England, and having obtained pardon for their defection, a company was formed at Quebec who sent them to Hudson's Bay, where they founded a settlement north of the said Bay on the River Bourbon, which is the one the English seized last year, in consequence of a new treachery on the part of said Radisson who re-entered their service and conducted them thither. Meanwhile, the company formed at Quebec sent two ships to the said Bay last year, under the impression that they would find their people, with a quantity of peltries, at the settlement on the River Bourbon, of right belonging to them, where the company is in a condition to maintain itself if protected by His Majesty.

10

THE MARQUIS DE DENONVILLE, GOVERNOR OF CANADA, TO M. DE SEIGNELAY, THE 12TH OF NOVEMBER, 1685, ON THE RIGHT OF THE FRENCH TO HUDSON'S BAY.*

M. De Denon-
ville, 1685,
on the
French right
to Hudson's
Bay.

We also see them [the English] establishing themselves at the North Bay, where they will be more injurious to us than in the direction of Acadia; for if their establishments continue as they have begun, at the three places on that bay which they actually occupy, and on the River Bourbon, or Port Nelson, we must expect to see all the best of the beaver trade both as to quality and quantity in the hands of the English. If not expelled thence, they will get all the fat beaver from an infinite number of nations in the north, which are being discovered every day; they will abstract the greatest portion of the peltries that reach us at Montreal, through the Ottawas and Assinibois, and other neighbouring tribes, for these will derive a double advantage from going in search of the English at Port Nelson. They will not have so far to go, and will find goods at a much lower rate than with us. That is evident from the fact that our Frenchmen have seen quite recently at Port Nelson some Indians who are known to have traded several years ago at Montreal. The ports at the head of the Bay, adjoining the Rivers Abitibis and Nemiseo, can be reached through the woods and seas; our Frenchmen are acquainted with the road. But in regard to the Ports occupied by the English in the River Bourbon, or Port Nelson, it is impossible to hold any posts below them and convey merchandise thither, except by sea. Some pretend that it is feasible to go there overland, but the river to reach that quarter remains yet to be discovered, and when discovered could only admit the conveyance of a few men and not of any merchandise; the best informed on this subject agree herein. In regard to Hudson's Bay, should the King not think proper for enforcing the reasons His Majesty has for opposing the usurpations of the English on his lands, by the just titles, proving His Majesty's possession long before the English had any knowledge of the country—nothing is to be done but to find means to support the Company of the said Bay, formed in Canada, by the privilege His Majesty has been pleased this year to grant to his subjects of New France, and to furnish them for some years a few vessels of one hundred and twenty tons, only well armed and equipped. I hope with this aid, our Canadiens will support this business, which will otherwise perish of itself; whilst the English merchants more powerful than our Canadians will, with good ships, continue their trade, whereby they will enrich themselves at the expense of the colony and the King's revenue.

20

30

M. DE DENONVILLE'S INSTRUCTIONS TO THE CHEVALIER DE TROYES, COMMANDER OF THE OVERLAND EXPEDITION TO HUDSON'S BAY, FEB. 12TH, 1686.

40

Instructions
to Chevalier
De Troyes,
12th Feb.,
1686.

The Marquis de Denonville, Feb. 12, 1686, appointed le Sieur de Trois (*sic*) to go in search of the most advantageous posts and occupy the shores of the Baie du Nord and the embouchures of the rivers that enter therein, "to entrench and fortify the said posts, to seize the robbers, *coureurs des bois* and others, whom we know to have taken and arrested several of our French engaged in the Indian trade, whom we order him to arrest, especially the said Radisson and his adherents, wherever they may be found, and bring them to be punished as deserters, according to the rigour of the ordinances."

CAPITULATION OF ALBANY FORT, 1686.*

THE ENGLISH ARTICLES.

Articles agreed upon between the Chevalier de Troyes, Commander-in-Chief of the detachment of the North-West, for the French Company of Canada, and Henry Sergeant, Esq., Governor for the English Company of Hudson's Bay, July 16, 1686.

I. It is agreed upon to deliver up the Fort, together with all the goods belonging to the said Company, which are to be scheduled for the mutual clearing, of us, the forenamed, and satisfaction of all parties.

II. That all the Company's servants at Albany River shall enjoy all wearing apparel belonging to themselves.

10 III. That the aforesaid Henry Sergeant, Esq., Governor, shall enjoy and possess all that belongs to himself; and that his minister, his three men servants and maid servant shall constantly be permitted to remain with him and attend him.

IV. That the Chevalier de Troyes shall convey all the Company's servants to Charleton Island, there to expect English ships for their transportation; and if English ships should not arrive, then the aforesaid Chevalier de Troyes is to assist them with what vessels the country affords, for their conveyance into England.

V. That the said Chevalier de Troyes shall deliver to the said Henry Sergeant, Esq., Governor, or to his storehouse keeper, such provisions as shall be thought fitting and necessary to carry them to England, if no ships come from thence, and in the meantime give them such sustenance as shall be sufficient for them.

VI. That all the storehouses shall be locked up, and the keys delivered to the said Chevalier de Troyes' Lieutenant, that nothing may in the said storehouses be embezzled, till the account be taken, according to the first article.

Lastly. That the Governor and all the Company's servants at Albany River shall come out of the Fort and deliver it up to the said Chevalier de Troyes; all the men, the Governor and his son excepted, being without arms, which is to be forthwith.

[The French version which follows is probably the original, though the heading of the English version is fuller, for the French Commander, who denied the honours of war to the retiring garrison, would not likely allow the capitulation to be drawn up in English, especially as its terms must have been dictated by him. Potherie adds that the Treaty was signed by the two contracting parties; that Ste Hélène and Herville entered the Fort, and afterwards took the Governor to the Isle of Charles Eston (Charleton), and the rest of the English went to Monsipi. Afterwards Herville took the English to France.]†

THE FRENCH ARTICLES.

Articles accordées entre M. le Chevalier de Troyes, Commandant le détachement de partie du Nord, et le Sieur Henri Sergent, Gouverneur pour la Compagnie Angloise de la Baye de Hudson, le 16 Juillet, 1686.

Premièrement Il a été accordé que le Fort seroit rendu avec tout ce qui appartient à la dite Compagnie, dont on doit prendre une fracture pour notre satisfaction particulière, et pour celle des deux parties en général.

Il a été accordé que tous les domestiques de la Compagnie qui sont à la rivière Albany, jouiront de ce qui leur appartient en propre.

Que le dit Henri-Sergent, Gouverneur, jouira et possèdera tout ce qui lui appartient en propre, et qui son ministre, ses trois domestiques et sa servante resteront avec lui et l'attendront.

Que le dit Sieur Chevalier de Troyes renverra les domestiques de la Compagnie à l'Isle de Charles Eston, pour y attendre les navires qui doivent venir d'Angleterre pour les y passer. Et en cas que les dudit navires n'arrivent point, le Sieur Chevalier de Troyes les assistera d'un vaisseau tes qu'il pourra pour les renvoyer en Angleterre.

*From "The British Empire in America," Oldmixon, p. 408

† Voyage de L'Amérique, Par. M. de la Potherie. Amsterdam, 1723, t. I. pp. 161-2.

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Que le dit Sieur Chevalier de Troyes donnera au dit Henri-Sergent, Gouverneur, ou à son commis, les vivres qu'il croira lui être nécessaires pour lui et pour son monde, pour les reconduire en Angleterre, si les bâtimens n'arrivent pas à son port, et pendant ce temps là leur donnera des vivres pour attendre leur vaisseaux.

Que ses magazins seront fermez et scellez, et les clefs seront delivrez au Lieutenant du dit Sieur Chevalier de Troyes, afin que rien ne soit détourné pour en prendre une facture, suivant le premier Article.

Que le Gouverneur et tous les domestiques de la compagnie qui sont à la rivière Albani, sortiront hors du Fort, et se rendront au dit Sieur Chevalier de Troyes, et tous seront sans armes, excepte le Gouverneur et son fils, qui auront l'épée au côté.

10

M. DE DENONVILLE ON THE OVERLAND ROUTES TO HUDSON'S BAY.

October 10, 1686.

M. De Denon-
ville, on
overland
routes to
Hudson's
Bay, 1686.

We have experienced that by the Temiskamins and Abitibis, the road is terrible, and that all that could be done would be to carry a sufficient supply of provisions for the round trip. It is believed that that of Nemisco by Tadoussac is better; but in truth it is long and painful enough: besides, the navigation of the rivers is so difficult, that it is only possible to pass underneath the trees that lie across the narrow river; but that may be overcome in time. These, Monseigneur, are the only two roads that lead to the bottom of the Bay [James's Bay].

It is reckoned 250 leagues from the post of Quichichouanne [Fort Albany] to Port Nelson. The overland road is not yet well known to our French; the next year will not pass without their becoming 20 acquainted with it; it is not practicable to carry merchandize there.

M. DE DENONVILLE TO M. DE SEIGNELAY, ON THE RIGHT OF THE FRENCH TO HUDSON'S BAY.*

November 8th, 1686.

M. De Denon-
ville on the
rights of
French to
Hudson's
Bay.

On the 29th April, 1627, a new [company] was organized, to which the King [Louis XIII.] conceded the entire country of New France, called Canada, in latitude from Florida which His Majesty's Royal predecessors had had settled, keeping along the sea coasts as far as the Arctic Circle, and in longitude from the Island of Newfoundland westward to the Great Lake called the Fresh Sea, and beyond, both along the coasts and into the interior.

Since that time the French have continued their commerce within the countries of the said grant.

In 1656, Jean Bourdon ran along the entire coast of Labrador with a vessel of thirty tons, entered and took possession of the North Bay. This is proved by an extract of the ancient Register of the 30 Council of New France of the 26th of August of said year.

In 1661, the Indians of said North Bay came expressly to Quebec to confirm the good understanding that existed with the French, and to ask for a missionary. Father Dablon went overland thither with Sieur De La Vallière and others. Father Dablon has given his certificate of the fact. In 1663, those Indians returned to Quebec to demand other Frenchmen. Sieur D'Avagour, then Governor, sent Sieur Couture thither with five others. Said Sieur Couture took possession anew of the head (*fonds*) of said Bay, whither he went overland, and there set up the king's arms, engraved on copper. This is proved by Sieur D'Avagour's order of the 20th May, 1663, and the certificates of those who were sent there.

In 1671, Sieur de Saint Lussou was sent by Sieur Talon, Intendant in Canada, to the Sault Saint Mary of the Outawas, where all the nations a hundred leagues around, to the number of seventeen, repaired and voluntarily submitted themselves to His Majesty's dominion. Said Sieur de Saint Lussou afterwards erected the cross there, and affixed thereto His Majesty's Arms. These seventeen nations

* N. Y. Hist. Col., Vol. IX., p. 303.

included all those of the Outawas, and of the entire of Lake Huron, those of Lake Superior, of the whole northern country and of Hudson's Bay, of la Baie des Puans [Green Bay], and of the lake of the Illinois [Lake Michigan], as is proved by the relations thereof, which were sent by the said Sieur Talon, and by the *procès-verbal* of the taking of possession.

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The English cannot derive any advantage from all their voyages, because those who went as far as the 56th degree have only explored some small portions of the coasts of Labrador without entering into the North Bay, and without making any sojourn or establishment there, and the others who proceeded further, were merely in search of the passage whereby they could go westward to the East Indies without intending to make any settlement, and he who approached the nearest to Port Nelson was only about the 63rd degree. Had the English in making their voyages any other design than to discover the said passages, they would not have failed to obtain grants of the countries they discovered as they had done of Florida in 1607, and of the North Bay when they were conducted thither.

M. De Denonville on the rights of French to Hudson's Bay.

The settlement made by the English in 1662 at the head of the North Bay does not give them any title, because it has been already remarked that the French were in possession of those countries, and had traded with the Indians of that Bay, which is proved still better by the knowledge the men named Desgroselliers and Radisson had of those parts where they introduced the English. They had traded there no doubt with the old French *Coureurs des bois*. Besides, it is a thing unheard of that rebellious subjects could convey any right to countries belonging to their Sovereign.

20 MARQUIS DE DENONVILLE, 13TH OCTOBER, AND 10TH AND 16TH NOVEMBER, 1686, AS TO THE POSTS ON HUDSON'S BAY.*

M. De Denonville as to the Posts on Hudson's Bay.

Affairs are becoming more and more embroiled, and the English who urge on the Iroquois are but too well aware of their evil design.

The French *Coureurs des bois*, with 100 men, took from them three forts they were occupying in Hudson's Bay.

30 The convention concluded with England, that the River Bourbon or Port Nelson shall remain in joint occupation of the two crowns, is not advantageous to the French, for the voyages of the English are too dangerous on account of their attracting the *Coureurs des bois* as much as possible, besides purchasing the beaver at a higher rate, and furnishing their goods cheaper than the French. In his opinion it would be more beneficial for the company and colony that the French merchants restore the posts at the head of the Bay which they took, than that the French should leave them Port Nelson or River Bourbon. If this arrangement were feasible, the Indians could be thus intercepted by land, for it would be useless to attempt to become masters of the upper part of the Rivers Bourbon and Ste. Thérèse, inasmuch as it is impossible to prevent the Indians trading with the English.

The latter could, by this means, be intercepted by land, and we should have an opportunity of discovering an infinitude of nations yet unknown, through whom a great many peltries can yet be procured, and, possibly, the passage and entrance to the Pacific Ocean eventually discovered.

M. DE DENONVILLE TO M. DE SEIGNELAY ON THE FRENCH OPERATIONS IN AND AROUND THE BAY.*

M. De Denonville on French operations on the Bay, 1687.

Ville Marie, August 25th, 1687.

40 Du Lhut's brother, who has recently arrived from the rivers above the Lake of the Allenemipigon, assures me that he saw more than 1,500 persons come to trade with him. They were very sorry to find he had not sufficient goods to satisfy them. They are of the tribes accustomed to resort to the English at Port Nelson or River Bourbon, where they say they did not go this year, through Sieur du Lhut's influence. It remains to be seen whether they speak the truth.

* N. Y. Hist. Col., Vol. IX., p. 801.

• *Ibid.*, pp. 343-4.

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ville on the
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The overland route to them is frightful, on account of its length and of the difficulty of finding food. He says there is a multitude of people beyond these, and that no trade is to be expected with them except by sea, for by the rivers the expense is too great. * * *

I have just received news from our forts at the head of Hudson's Bay (*du Nord*), where d'Iberville is in command. He has had advices this fall that an English ship was in the nip near Charleston Island. He sent four men thither across the ice to reconnoitre. One gave up through sickness; the others were surprised, taken, and bound. One of the latter escaped, though tired at several times—the he communicated the news—and the other two were put, bound, into the bottom of the hold, where they passed the winter. The commander of the vessel, hunting on the Island in the spring, was drowned, The time being arrived for setting sail, the pilot and the others, to the number of six, caused the weaker 10 of the two Canadians to work, and obliged him to assist them. One day whilst most of the English were aloft, the Canadian, seeing only two on deck, grasped an axe with which he split both their skulls, then ran to release his comrade; they seized the arms and went on deck, where from being slaves they became masters. They next steered the ship towards our forts, and met Sieur d'Iberville on the way, who had fitted out a vessel to go and release his men at the moment the ice would permit him. The English ship was laden with merchandize and provisions, which have been of great service to our forts.

THE MARQUIS DE DENONVILLE ON THE FRENCH LIMITS IN NORTH AMERICA.†

De Denonville
on the
French
Limits in
North
America,
8th March,
1688.

Memorial explanatory of the right the French have to the property of the countries of North America, especially the south part of Acadia, from Plantagouët to the River Kinibeky, of the coun- 20 tries of the Iroquois and Hudson's Bay, with the posts occupied there by them and by the English, sent to the Court for its information, by the Marquis de Denonville, the King's Governor and Lieutenant-General in New France. Done at Versailles, the 8th March of the present year, 1688.

LOUIS.
COLBERT.

Sieur de Champlain has treated the question very fully in his book entitled, *Les Voyages de la Nouvelle France occidentale, dite Canada, par le Sr. de Champlain. A Paris, chez Pierre Le Mue, dans la grande salle du Palais*, 1632. At p. 200, towards the end of that work, Sieur de Champlain makes a sort of dissertation which clearly decides the question. He gives it this title: "Abstract of the discoveries of New France, as well what we, as of what the English have discovered, from the 30 Virginias to Davis Strait, as of what they and we can pretend to, according to the report of the historians who have written thereupon, as I report below, which will enable every one to judge of the whole."

If a desire exist, then, to treat this matter thoroughly, and to be perfectly informed of the right of the French and of the English, it is necessary only to read that abstract of Sieur de Champlain; everything will be found very well examined, and it will appear that the French have taken possession of all the countries from Florida to Cape Breton, prior to any other Christian Prince. For, to quote only a few words of what that abstract contains, it will be seen there that:

In 1504, the Bretons and the Normans first discovered the Great Bank and Newfoundland, as can be seen in the History of Willet, Sieur de Magin, printed at Douay. 40

In 1523, Jean Varason, in virtue of a commission from Francis I., took possession of the territory beginning at the 33rd degree of latitude, as far as 47th.

In 1535, Gibault and Laudonnière having gone to Florida by authority of King Charles IX., to inhabit and cultivate that country, founded Carolina there in the 35th and 36th degrees.

But particularly in 1603 and following years, Sieur de Champlain being in Canada, was in command of that colony, and in 1609, went with other Frenchmen into Lake Champlain, of which he took possession in the name of King Henry IV., and called it after himself; and he relates in his book of voyages, that after he had discovered Lake Champlain, he was as far as the country of the

† Paris Documents, N. Y. Hist. Col., Vol. IX. p. 377.

Iroquois. In the years 1611 and 1612 he ascended the Grand River as far as Lake Huron, called the Fresh Sea; he went thence to the Petun Nation, next to the Neutral Nation, and to the Macontins, who were then residing near the place called Sakinau; from that he went to the Algonquin and Huron tribes, at war against the Iroquois. He passed by places he has himself described in his book, which are no other than Detroit and Lake Erie.

And as it is an established custom and right recognized among all Christian nations, that the first discoverers of an unknown country, not inhabited by Europeans, who plant the arms of their prince there, acquire the property of that country for that prince in whose name they have taken possession of it: On that principle, and no author being found who states that the English had taken possession of the countries of Canada or discovered them, unless subsequently to the French, they having come to the countries of Canada, Virginia and Florida only in 1594, whilst the French took possession of them in 1504, 1523 and 1564, which fact the English cannot question, inasmuch as Jacques Cartier visited in 1534 all the coasts of that country; his Relations and those of Alphonse Xaintongois and Varason attest it, and are inserted at length in the collection of divers accounts which Purchas and Hackluit, Englishmen, have published in London in their language. And it is notorious that Sieur Champlain did for many years prosecute the fur-trade at the place where Boston now stands, and further down towards the north and east, along the same coast, during more than ten years, before any English or Dutch inhabited that quarter.

The foundation of the English pretences is:—About the year 1594, some Englishmen being on the coast of Florida, arrived at a place called Moensa, and which they since named Virginia. James, King of England, granted them, for their encouragement, great privileges, among others to extend their right from the 33rd degree to the 45th or 46th. The Royal Charter was issued on the 10th of April, 1607, in these words:—"Potestatem facimus occupandi possidentisque tractus omnes ad gradum usque quadragesimum quintum ita si christianorum principe nulli teneantur." This is all the foundation the English have; it is manifestly null, because it is stated in the above letters patent of King James:—We grant them all the countries up to the 45th degree, not possessed by any Christian Prince. Now it is indubitable that at the date of the aforesaid grant, the King of France was in possession of at least up to the 40th degree of latitude, the place where the Dutch since settled.

And in 1603, Commander de Chastes was Lieutenant-General for the most Christian King in New France, from the 40th to the 52nd degree, and it is even certain, as already stated, that as early as the year 1523, Jean Varason took possession of all the countries from the 33rd to the 47th degree.

In 1656, M. De Lauzon, the King's Governor and Lieutenant-General in New France, sent at the solicitation of the Iroquois themselves, into their country, to a place called Ganentaa, as many as sixty Frenchmen, including a garrison of twelve soldiers under the command of Sieur Dupuis, who caused to be constructed at that place a royal fort, whither were conveyed four pieces of bronze cannon, which have remained there, and will be found again by the French who were there at the time, and are still living. This is proved by said Sieur Dupuis' commission of the 15th May, 1656 (App. D.), by the discharges (congés) granted by said Sieur Dupuis to some of the soldiers of the garrison of Ganentaa, on the 1st and 8th of September, 1657; by the account of the said soldiers; by an Order of the Council of the last of April, 1658, and by another of said Council of the 19th May, 1656 for the payment of the repair (réfraction) of the arms of said soldiers, the whole being on the same sheet, signed Penveet* (App. E). In which country the said sixty Frenchmen cleared and planted lands with French grain and other légumes, built many large houses (statement of the payments and wages made to said Sieur Dupuis and soldiers by the commissary of stores, from 26th November, 1657, also signed Penveet—App. F.), and lived there peacefully and without any opposition on the part of those who were then in possession of Manat [Manhattan] and Orange [Albany], who, far from being masters of the country of the Iroquois, purchased from them some parcels of their lands, when they wished for any, as they do still at present. And what is worthy of remark is that the Iroquois themselves came in 1655 on an embassy to Quebec, to request of said Sieur de Lauzon those sixty soldiers aforesaid, and conducted them, the following year, to the said place of Ganentaa, where they located, established and put them in possession (inquest made by the Lieutenant-Governor of Quebec, the 29th and 30th October, 1658—App. G.), and where

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French Rights and Claims.

De Denonville on the French Limits in North America, 8th. March, 1688.

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they remained until the Iroquois, having committed some acts of hostility in the direction of Montreal, the commander of said fort thought proper to retire with his garrison, in order to protect the sixty men aforesaid from the wicked designs the Iroquois had concocted against them.

And, in order to show that the country of the Iroquois was at the disposition of the Governor of Quebec to make grants thereof in the same manner as of the other lands of this Government, it is worthy of remark that, at the time Sieur Dupuis was sent with his soldiers on the part of the king, to construct the aforesaid Fort of Chénenta and garrison it, M. de Lauzon made a grant in due form of a part of said lands to the Jesuit missionary fathers, who were of the sixty Frenchmen aforesaid (the deed is dated the 12th of April, 1656—App. H.)

Since that time our Frenchmen have always carried on trade with the Iroquois: M. Coureelles, 10 having gone up with a number of French to Lake Ontario, to the place named Kataraki [Kingston], where the said Iroquois being, they were (he was) received by the latter as their Father; and in the year 1673, Count de Frontenac having gone to Kataraki, likewise accompanied by a number of Frenchmen, had a royal fort to be erected there, where the king has always kept a garrison and a Governor, whom Sieur de Frontenac caused to build at the said Kataraki divers barks which have always navigated and traded with the Senecas and other Iroquois as far as Niagara, where Sieur de la Salle (as is proved by two writings drawn up by Sieur de la Salle for the benefit of Moyses Hilser, dated at Fort Crèvecoeur, the 1st and 2nd March, 1680, which affords evidence of said Sieur de la Salle's residence and trade at Niagara in 1676—App. N.), had built in 1676, a store, a forge, and other buildings for the greater accommodation of the trade with the said Senecas and other Iroquois, who used to come to 20 us in the French settlements at Kataraki and Niagara (see the *Procès Verbal*, of the new entry into possession of said place of Niagara by the Marquis de Denonville, last July, 1687, on the return march of the army commanded by him against the Senecas, signed by collation, Penveet—App. O.), and this trade has continued, and our Frenchmen have always had peaceable possession of the Iroquois country going and coming to their villages, and many residing with the missionaries there, until the war with the Iroquois having broke out, the Frenchmen, missionaries and others, were obliged to withdraw (see also the last two depositions in said inquest theretofore lettered G., and by the Act of the new entry into possession of the country of the Senecas, dated 19th July, 1687—App. 21), whereupon Colonel Dongan, Governor of New York, took occasion, in 1684, to send to the Iroquois' village to set up the 30 arms of the King of England therein and to take possession thereof, offering them powder and other munitions of war, to induce them to admit the necessity that existed of giving themselves to him. But this entry into possession being illegitimate and posterior, by so many years, to that of the French cannot convey any right to the English over those lands, which already belong to the French by so many anterior titles, as has been previously remarked, and by so many lawful and incontestable rights.

The futility of Sieur Dongan's claim to the property of the country of the Iroquois, and that the latter are within his Government (that is proved by the said pieces signed by collation, Penveet, and lettered P.), is manifest, according to what Sieur de Champlain hath done and what has been heretofore stated, and, among other things, by a letter written by the Council of Quebec, the 20th of June, 1651, to the Commissioners of New England, to the effect that the Iroquois had no connection with nor dependence on the English, which is sustained by the commission to the Deputies therein named, from 40 M. d'Aillebout, then Governor of New France. (This is again confirmed by the articles of peace made with M. de Tracy and the Iroquois in 1665, lettered already I, and by the Act and Declaration recently made by them at Montreal, the 15th June, 1688—App. L.) For, as regards Colonel Dongan's assertions that the country of the Iroquois belongs to his Government, because, according to him, it is south of his jurisdiction, we answer, in the first place, that it is not south, but in fact west-north-west of Manatte. Secondly, though it were south, that cannot derogate from the rights of the French, who had taken possession of it even before the Dutch or English had set foot at Manatte, and who, since they are there, never opposed it, until within three or four years, which cannot confer any right on them.

To come now to the possessions and establishments (these will be proved by the Acts which M. 50

* The name, Penveet, in this document—and so spelled in the N. Y. Hist. Col.—should doubtless be Pevvret—Jean Baptiste Louis Pevvret, Sieur de Mesnu, Greffier et Secrétaire du Conseil Supérieur de Québec.—(Edits, &c.)

Talon has in Paris), which have been required in ascending the St. Lawrence, besides the post of Niagara;—Sieur de la Salle, with thirty Frenchmen, of which number was M. Jollier, priest, Superior of the Seminary of Montreal, made the tour of Lake Erie, and took possession of the circumjacent lands, after Sieur Jolliet, with Father Marquet, Jesuit, had long before done the same thing, in order to renew the entry into possession of Sieur de Champlain in 1612.

And, after that in 1676, (proved by a writing of said Sieur de la Salle, for the benefit of Moyse Hillers, in March, 1860, App. N.; by the *procès verbal* of the M. de Denonville, of last July, 1687, App. O.; and by the inquisition of the said Lieutenant-General of Quebec, also App. *supra*, G.), said Sieur de la Salle caused a ship and a large house to be built above the Falls of Niagara, within three or four leagues of Lake Erie, where are still visible the stocks whereon was built the said vessel, which having been completed in 1677, about the feast of St. John the Baptist, was conducted, freighted with merchandise, into the said Lake Erie, and thence passed through the Detroit, where Fort St. Joseph or Du Luth is built (where Sieur de la Durantaye renewed the entry into possession, which is dated 7th June, 1687, App. R.), and navigated Lake Huron as far as Missilimakinac, and thence through that of the Illinois, or Missagans, beyond the Huron Islands. Which said bark was constructed for the greater convenience of trading with the French, who inhabited the said place of Missilimakinac for more than forty years, some French established at the Bay des Puans, with those at Fort St. Louis, established by Sieur de la Salle, who had discovered the great river of Mississippi, and descended it as far as the South Sea. For the continuation of which trade he caused a fort and buildings to be erected, and a 20 bark to be begun at a place called Crève-cœur, in order to proceed as far as the said South Sea, two-thirds of which bark only were built, the said Sieur de la Salle having afterwards employed canoes for his trade in said countries, as he had already done for several years in the rivers Oyo, Ouabache, and others in the surrounding neighbourhood, which flow into the said river Mississippi, whereof possession was taken by him in the King's name, as appears by the relations made thereof. The countries and rivers of Oyo, or Abache, and circumjacent territory were inhabited by our Indians, the Chaouanous, Miamis and Illinois.

It is to be remarked that, as early as the year 1633, a good many Frenchmen having gone up to the Hurons with the Jesuit Fathers and missionaries, settled there; and ten years afterwards the King sent thirty soldiers thither, who remained there until the destruction of all the Hurons by the 30 Iroquois obliged the French to retire for a time; but they returned thither shortly afterwards in a much more considerable number, and spread themselves throughout those vast countries. (It is proved by an *Arrêt* of the Council of State of the 5th March, 1648, that His Majesty had authorized the sending to the Huron country a company of thirty men, commanded by a captain, for the purpose of escorting the Hurons and other Indian tribes, and to accompany the missionaries, who were no longer able to continue their missions without aid.)

Thirdly, what is more authentic in this matter, is the entry into possession of all those countries, made by M. Talon, Intendant of New France, who, in 1671, sent Sieur de St. Lussou, his sub-delegate, into the country of the Outaouas, who invited the deputies of all the tribes within a circumference of more than a hundred leagues, to meet at Ste. Mary of the Sault. On the 4th of June of the same year, 40 fourteen tribes, by their ambassadors, repaired thither, and in their presence and that of a number of Frenchmen, Sieur de St. Lussou erected there a post, to which he affixed the King's arms, and declared to all those people that he had convoked them in order to receive them into the King's protection, and in his name to take possession of all their lands, so that henceforth ours and theirs should be but one; which all those tribes very readily accepted. The commission of said sub-delegate contained these very words, viz.: That he was sent to take possession of the countries lying between the east and west of Montreal to the South Sea, as much and as far as was in his power. This entry into possession was made with all those formalities, as is to be seen in the Relation of 1671, and more expressly in the record of the entry into possession, drawn up by the said sub-delegate. (See hereupon, M. Talon, who must have the *procès verbal* of the entry into possession by Sieur de St. Lussou.)

50 The next year, 1672, the River Mississippi, and, at the same time, the Illinois, Chaouanous and other tribes unknown to Europeans, were discovered by Sieur Jolliet and the Jesuit Father Marquet, who were as far as the thirty-second degree, and set up the King's arms, taking possession in his name of all those recently discovered nations.

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French Rights
and Claims.

De Denonville
on the
French
Limits in
North
America, 8th
March, 1688.

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and Claims.De Denonville
on the
French
Limits in
North
America, 8th
March, 1698.

And, some years after, Sieur de la Salle extended the same discovery farther, even unto the sea taking everywhere possession by the King's arms, which he erected there.

All the foregoing demonstrates sufficiently the incontestable rights the French have to the Iroquois lands, to those of the Outaouas, and all the other tribes inhabiting the countries aforementioned, and others whereof possession has also been taken in His Majesty's name, along the River St. Lawrence, the lakes it forms, and the rivers discharging therein, which constitute the continuation of the waters of the said River St. Lawrence (the River St. Lawrence is proved by the concession of M. de Lauzon of the 15th May, 1656, to Sieur Dupuy, already mentioned under App. D.), from the Gulf, always following the same point of the compass, and extends beyond Lake Superior, proceeding from the Lake des Alépinigons (Nepigon), without any interruption of the navigation. Our barks have 10 always sailed from lake to lake along said river, the one making the voyage from the place called La Galette, to Niagara, on Lake Ontario, or Frontenac, and the others from above the Falls of Niagara unto the head of Lake Missigamé, or Illinois, passing through that of Erié; then following said River St. Lawrence by the Detroit and Fort St. Joseph, or Du Luth, and thence into Lake Huron, or the Fresh Sea, which communicates (respond) with the said Lake of the Illinois, as well as the said Lakes Superior and Des Alépinigons, where the French actually are trading and have divers establishments, and it demonstrates their possession of the great River Mississippi, which they have discovered as far as the South Sea, on which river also they have divers establishments, as well as on that of Oyo, Ouabache, &c., which flow into the said River Mississippi, and of the countries and lands in the vicinity of said rivers, where they actually carry on trade, which countries are easily recognized on the general maps of North America.

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M. DE DENONVILLE TO M. DE SEIGNELAY, ON THE FRENCH OPERATIONS IN AND AROUND THE BAY.
January, 15, 1690.

M. De Denonville on the
French
operations on
the Bay, 15th
January,
1690.

Our affairs at Hudson's Bay will prosper if the Northern Company continue to co-operate with, and second the designs of D'Iberville, one of the sons of the late Le Moyne, whom I left resolved to go and seize Port Nelson, the only remaining post in the possession of the English. For that purpose it is absolutely necessary, I believe, that my Lord the Marquis de Seignelay inform Monsieur de Lagny that the King intends that the Northern Company undertake the capture of that post, and furnish said Iberville with everything he requires to render his design successful. He will want two ships. He has already, at Quebec, one that he took this winter from the English. In truth, my Lord, it would be very advantageous to the King's service had said Iberville some honourable rank in the navy, in order to 30 excite emulation among the Canadians who will follow the sea. A commission of lieutenant would work marvels. He is a very fine fellow, and very capable of rendering himself expert, and doing good service.

The Iroquois war continuing, as there is every appearance it will, both against us and the Indians, in the direction of the Outawas who traffic with us, the greatest part of the trade will be diverted towards Port Nelson, on the River Bourbon. What I have learned of the facilities possessed by the Indians beyond Lake Superior to reach the sea in that direction, very strongly convinces me of the necessity we are under to bethink ourselves of driving the English from that commerce. But it must be effected without fail, for they will get up this year some expeditions against us.

MEMORIAL OF LA COMPAGNIE DU NORD, NOV. 15TH, 1690, AS TO PROCEEDINGS OF THE
ENGLISH IN HUDSON'S BAY.

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Memorial of
Compagnie
du Nord,
15th Novem-
ber, 1690.

The commercial Company of the North, established at Quebec, by permission and patent of His Majesty, has had the misfortune, after having taken possession of the north country, and the rich and large river of Bourbon, in 1682, to have been robbed, on land, in 1683, by the English, when their vessel had returned to Quebec, by whom were taken from their magazine more than 200,000 livres of beavers, martin and other peltries, at a time when there was no war between the two nations, and by means of bribing two or three Frenchmen in whose charge the peltries in the magazine were.

This occurred at the time when His Majesty had agreed with the King of England that the boundaries of their territories should be fixed by Commissioners, to be appointed on the part of the two kingdoms; they had, however, forbidden their subjects to commit any act of hostility, in which respect the English proved disobedient; arriving, near the end of the year 1688, at the foot of *la Baie Du Nord* [James' Bay], occupied by the French, they wintered there with two vessels and about a hundred men belonging to the ships, and built a fort to the north of that of the French.

[The Company asked the assistance of the French Government in the emergency.]

GOBIN,
PACHOT,
CHARLES AUBERT DE LA CHESNAYS.

JONY
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and Claims.*
—
Memorial of
Compagnie
du Nord,
18th Novem-
ber, 1690.

LA COMPAGNIE DU NORD OF CANADA TO MONSIEUR DE PONTCHARTRAIN, 1693, RESPECTING
OPERATIONS IN THE BAY.

The favour which your Excellency has granted to the Compagnie du Nord of Canada of the King's vessel, the *Poli*, did not produce the effect intended, owing to Captain Iberville having arrived at Quebec only on the 8th of August, too late to undertake anything against the English.

La Compagnie
du Nord to
Mons. De
Pontchar-
train, 1693.

It is hoped you will continue your protection, Monseigneur, in favour of this company, which is ruined and suffers greatly from the necessity of carrying on the war against the London company, by whom, in a time of peace, Port Nelson, one of the most considerable on the great Bay, was taken from them with 400,000 livres of effects.

This London company, composed of merchants and noblemen of the first quality, estimate at so high a price the commerce of the Bay, that they had given orders to the Commander of the Fort to burn all their effects if the French made their appearance. At the sight of a single vessel of the company, in 1690, they effectively burnt the fort and over 30,000 *écus* worth of merchandise, which fort, to show this esteem, they rebuilt the next year, because the Company of Quebec was not in a condition to occupy it.

It is difficult to speak in terms of deserved eulogy of this great Bay in respect to the commerce which has already been carried on there, and which might be established on the sea coast and in the interior, and as a basis of new discoveries.

The Company could hold everything there if it could seize Port Nelson; but the expense of the war sustained against England has greatly weakened it, and obliged it to have recourse to your Excellency, to obtain sufficient force, and in a suitable time to drive out the English.

By your very respectful and very obedient servants,

ROUER DE VILLERAY, for the Ancient Company,
F. RAZEUR,
MACART,
LE PICART,
PACHOT,
BENACE, for MM. Cutignon and Duprat,
GOBIN,
FAUVEL.

LA COMPAGNIE DU NORD OF CANADA TO MONSIEUR DE PONTCHARTRAIN, 1693, ON THE
SAME SUBJECT.

The enterprise of Port Nelson could not be carried out in 1691, because M. du Tas, since dead arrived at Quebec on the 1st of July, to whom you had ordered to make this voyage, alleged, when here, that it was too late to set out for the north.

Your Excellency, in 1692, gave the Sieur d'Iberville, Captain of His Majesty's vessel the *Poli*, his orders for this voyage and the management of the fleet of merchant vessels of this country, who did not arrive till the 18th August, at which season it was absolutely impossible to think of this enterprise.

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and Claims.*
La Compagnie
du Nord to
M. De
Pontchar-
trian, 1693.

Why, Monseigneur, this single Fort, which remains in possession of the English, is of so much importance that the gain or loss of everything in Hudson's Bay depends upon it. The Company's establishment at Quebec, to carry on this commerce, claims anew the protection of Your Excellency, that you may give it a sufficient force to enable it to become master of Port Nelson, which the English took by an Act of Treason against this company in a time of peace. This they hope from the strong desire which you have for the aggrandizement of the kingdom and from your affection for this colony.

By your very respectful and obedient servants,

HARYON,
THAZEUR,
PACHOT,
CHARLES AUBERT DE LA CHESNAYS,

MIGEON,
DE BRAUNSAAC,
MACART,
LE PICART,
GOBIN.

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FROM M. DE FRONTENAC, ON THE SUBJECT OF ATTACKING FORT NELSON.

August 7th, 1693.

M. De
Frontenac,
7th August,
1693.

His Majesty having made known to us by his despatch of the 28th March last, that it was his intention that we should cause Sieur d'Iberville to set out without delay, with his vessels, the *Poli*, the *Intendant*, and that of the Compagnie du Nord to go to Hudson's Bay, in order to attack Fort Nelson, according to the private memoir which His Majesty has sent us to this effect, and the instruction of the said Sieur d'Iberville, captain of the *Poli* we have conferred with Monsieur de Champigny 20 Intendant of the country, on the execution of the said orders, and on the 26th of July ordered the said Sieur d'Iberville, charged with the said expedition to the said Fort Nelson, and the gentlemen interested in *la Baie du Nord* (Hudson's Bay), to set out on that expedition.

CAPITULATION OF FORT YORK, 1696.

Articles of capitulation between William Allen, Commandant-in-Chief at Hays or St. Therese River, and Sieur G. de la Forest, Commandant of Fort York or Bourbon, August 31, 1696.

I consent to give up to you my fort on the following conditions:

Articles of
Capitulation,
Fort York,
31st August,
1696.

1. That I and all my men, French as well as Indians, and my English servant, shall have our lives and liberty granted to us, and that no wrong or violence shall be exercised upon us or whatever belongs to us.
2. We shall march out of the Fort with our arms, to the beat of the drum, match lighted, ball in 30 mouth, flags unfurled, and carry with us the two cannon which we brought from France.
3. We shall be transported all together, in our own vessel, to Plaisance, a French port in Newfoundland. We do not wish to give up the fort till we have embarked, and we shall keep the French flag over the fort till we march out.
4. If we meet with our vessels, there shall be a truce between us, and it shall be permitted to transport us with whatever belongs to us.
5. We shall take with us all the beaver skins and other merchandize obtained in trade this year, which shall be embarked with us upon our vessels.
6. All my men shall embark their clothes and whatever belongs to them without being subject to visitation or robbed of anything.
7. In case of sickness during the voyage, you shall furnish us with all the remedies and medicines which we may require.
8. The two Frenchmen who ought to return with the Indians shall be received in the Fort on their return, where they shall be treated the same as the English, and sent to Europe during the same year, or they shall be furnished with everything necessary to take them to Rochelle.

We shall have the full exercise of our religion, and the Jesuit priest, our missionary, shall publicly perform the functions of his ministry.

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OPERATIONS DURING THE PEACE PRECEDING THE WAR WHICH ENDED WITH THE TREATY OF RYSWICK, 1697.

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Countries taken by the English during the peace: Fort Bourbon in Hudson's Bay; the French had expelled them from it in 1693; the English took it back from them in 1696. To be surrendered by the English.

French Rights
and Claims.

Operations
during the
Peace before
1697.

Taken by the French during the peace: The two Forts on the South of Hudson's Bay; the English recaptured them during the war. — *Correspondance officielle relative au Gouvernement du Canada, 3me Serie, 1. Archives de Paris.*

THE COUNT DE FRONTENAC TO THE MINISTER, 1697, RESPECTING THE RECALL, NEXT YEAR, OF VOYAGEURS AND SOLDIERS.

Quebec, the 15th October, 1697.

We have caused the King's Ordinance to be published, and have begun to carry it into execution with the utmost severity, and orders are given, generally, to recall generally, next year, not only all the *voyageurs*, but also all the soldiers who are at the posts with the commandants, without excepting the Sr. de Tonty, invalided captain, to whom I had given orders, in case the Sr. de la Mothe Cadillac should descend with the convoy of Frenchmen and savages that we were expecting, to re-ascend with these last and five Frenchmen, and with the utmost pleasure to go to Missilimakinac, and there to take command in the absence of the said Sr. de la M.

Count De
Frontenac,
recall of
voyageurs
and soldiers,
15th October,
1697.

FRENCH ANSWER TO THE MEMORIAL PRESENTED BY THE COMMISSARIES OF THE KING OF ENGLAND, THE 7 OF MARCH, 1699.

(Copy obtained from the Public Record Office, London.)

It will appear by the contents of this Memorial that the French made the first discovery of the Bay to the North of Canada, that they made the first settlements to maintain their trade there, and that the trouble hath happened only from the English.

We shall not insist to dispute about the voyages mentioned in the Memorial, from 1497 to the year 1631, but shall only say, in general, that it is not seen in any relation about the foreign colonies that the English knew the Northern countries from the year 1497. On the contrary it is observed that the Normans and Basques went, at that time, on fishing voyages to Newfoundland, to the Gulf of St. Lawrence, the Coast of Labrador and to the North of the Island of Newfoundland, and of this an infinite number of voyages might be quoted. It is certain that if any English or Danish navigators or those of other nations did make any voyages thither, it was only to seek a passage into the South Sea, and it cannot be proved that any of the said navigators did ever make any settlements nor trade in the Bay of the North of Canada nor even knew the places mentioned in the old Charts or Maps of which they now pretend to make use, for that those Charts were not made till within these 30 or 40 years, that is to say, since the English were introduced into the said Bay.

French
answer to
Memorial of
English
Commissa-
ries, 17th
March, 1699.

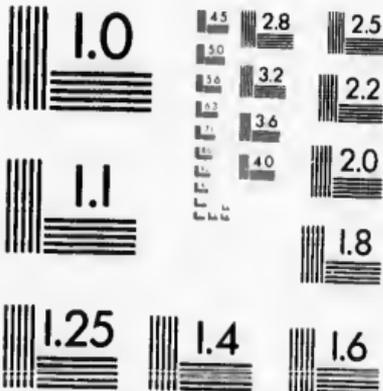
It cannot be denied but that for establishing the right upon the possession of a country is not sufficient to have discovered the same, and to have lived there some time, but there must be an ancient possession and a continued habitation, or at least a Trade maintained, to enable the parties to claim or contest the property, which the English cannot maintain as to the Bay to the North of Canada. There was an interruption even of their possession from the years 1631 to 1667. The troubles and evil warrs which they allege as a pretence of this interruption, did not begin till towards the year 1640, and during those troubles they maintained their other colonies and did also augment the trade and extent thereof.

If the French, according to the example of the English, would insist on or make use of the several voyages which they have made at several times, and of the possessions by them taken of countries where they have been, [they] might rightfully at this day claime Carolina, for that they have had Forts there ever since the time of Francis the First, Henry the Second, and Charles the Ninth; and also of



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answer to
Memorial of
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Commissa-
ries, 17th
March, 1699.

all New England and the New Netherlands, it being evident that they have had Commanders and Settlements there from 1604 to 1610, and that the English, who at that time possessed Virginia, only began to settle on those coasts but about the year 1626.

The several authors who write of Canada or New France, give it no bounds to the northward; and by the Letters of Corporation or grants at severall times granted by the King of France to the Companies established in New France, and particularly in the year 1623, all the Northern Bay [Baie du Nord] was comprehended in the limitts therein sett downe and described. If the English had had any knowledge of the said Bay, or any pretentions thereunto, they would not have failed to make a reservation thereof, and cause particuler mention to be made of the same in the Treaty, in 1632, for restoring to the French the New France which they had possessed during the warr.

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It is true that at that time, and a long time afterwards, the French had no Forts on the coast of the said Bay. For that they being masters of the country within-land, the Savages, with whom they kept a continual trade, br^o their skins, by Lakes and Rivers. The communication from Tadousa to the Bottom of the Bay, hath allways been easy by the River of Saguenay; they goe thither also by the other Rivers and Lakes on the other side of Montreal; and those places are not above 120 leagues distance on that side. There are also Rivers that lead into the Lakes of the Hurrones and into the Upper Lake [Superior], on the upper part whereof the French have always had settlements for carrying on the trade of skins with the natives who are to the westward of the Northern Bay. Several acts about taking possession might be produced, to prove that all the savages acknowledged the Sovereignty of the King before the English ever thought of going thither, and there needs no more to be convinced of the truth of these facts than only to examine the scituation of the countrie, as also of the reasons which the French had not to have any Forts along the coast.

The English pretend in their Memorial, that in 1663 they formed the designe of going to settle in the Northern Bay, and that in 1667, one Zachary Gilham went first to the Bottom of ye said Bay, where he built ye Fort Charles on Rupert River, but they take no notice that the designs of those settlements were suggested to them, in 1662, by one Radisson and Desgroziliers, subjects of the King, and inhabitants of Canada, who conducted them to the Bottom of the Bay, of which the English had no knowledge.

The Letters of Corporation or Charter granted in 1670, by Charles the Second, to the Hudson Bay Company, cannot give them any right, by reason that Prince could not dispose of any lands or country whereof France was in legall possession, and which France had always occupied without any opposition.

The warrs which France had afterwards to maintaine against almost all Europe, hindred the French from opposing the new enterprizes of the English, and the engagements to which we were entered into, with King Charles the Second, did not permit the going about to revive matters of dispute. However, in the yeare 1675, the inhabitants of Canada sent a ship into the Northern Bay to putt a stopp to the undertakings of the English. The French who were sent thither entered into Bourbon River and wintered there. This is the River which the English call Port Nelson, in which, at that time, there [was] no signe of settlement or habitation.

The inhabitants of Canada, in 1682, sent two ships more thither with the said Radisson and Desgroziliers, who were return'd to New France, the King having pardoned them for their desertion. They arrived in the month of August, and made a settlement in the River of St. Thereza [Hayes River], a league and a half distant from the River Bourbon, calling it Bourbon Fort. The English had not yet at that time any knowledge of this River St. Thereza. In the same year, at the same time, when the French were busied in making their establishments, an English ship, coming from England, arrived there, and afterwards a barke from Boston, which were left in the ice. The French gave leave to the men to winter in Bourbon River on their promise they should not fortify themselves; but the men of the ship that came from England breaking their word, they were made prisoners. When the ice was open the French gave them one of their ships, in 1683, to returne to England. As to the men belonging to the barque from Boston, they were taken up out of charity, carried to Quebec, and from thence sent to Boston.

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It was sett forth, in the memorial already delivered, how Radisson went over ag into England and engaged himself to the Hudson Bay Company to goe and surprize and plunder, in 1684, Bourbon Fort. The said Radisson is still in London, and the said Company actually payes him part of the pention which they promised him at the time of his becoming ingaged.

The English make no mention in the memorial of what passed in 1684, although in the years 1686 and 1687, Messrs. De Barrillion and Bonrepos made strong instances for ye restitution of Bourbon Fort and the effects carrie'd thence.

The enterprize of the English, in 1684, in the time of peace, engaged those of Canada to goe, in 1686 to attack the posts at the bottom of the Bay, from whence the English were driven.

10 The losses sustained by the French by the taking of Fort Bourbon, and of the effects which were there, doe farr exceed the losses suffered by the English by their being driven from ye Forts at the bottome of the Bay, and they must impute the fault to themselves, they being the first agressors, and for that they would, contrary to all manner of justice, disturb the trade of the French and settle themselves on the lands of which the French had peaceable possession.

Wherefore, it being certaine that the old voyages made at several times, were not undertaken but onley to seek a passage into the South Sea—that the like voyages doe not give a right without a possession, habitation or trade continued; that the Northern Bay has allways been comprehended within the limits of New France; that the restitution made by the English by so solemne an Act as the Treaty of 1632, without reserving any pretensions to themselves, is a certaine prooffe that they had none to make. That on the other side, the French have traded continually with all the savages who live on the Coast of the said Bay, in which Trade they have not been troubled but only since the English were introduced by two deserters, subjects of the King.

The said French do demand, not only to be maintained in the possession of Fort Bourbon, but also [that] all the bottome of the Bay of the North of Canada may be restored to them.

GOVERNOR THE MARQUIS DE VAUDREUIL AND THE INTENDANT BEAUHARNOIS, AS TO ASSISTING LA
 COMPAGNIE DU NORD AT HUDSON'S BAY.

19th September, 1705.

The Compagnie du Nord is not in a condition to send next year a vessel to Hudson's Bay with necessary provisions for the garrison, and to bring back beaver skins and other furs which have been obtained in trade, and to take there new merchandize; and as the armaments raised in this country cost immense sums, and as this post is in a better position to be conducted from France than this country we pray you, Monseigneur, to send a vessel there; for without such assistance the garrison will perish for lack of provisions: Sieur de Grandville, Keeper of Marine, has already made this voyage.

Marquis De
 Vaudreuil
 and Beau-
 harnois, on
 the state of
 the Com-
 pagnie du
 Nord, 19th
 September,
 1705.

M. DE CLERAMBAUT D'AIGREMONT TO M. DE PONTCHARTRAIN, 18TH NOV., 1710, AS TO THE TRADE
 OF THE INTERIOR.*

Though it would not be possible to prevent all the inconveniences that might ensue on re-establishing the licenses in the manner I propose, I believe it will be indispensable to do it, in consequence of the greater inconveniences which would inevitably result. Firstly, it must not be expected to oblige all the *Coueurs des bois* to return to the colony, nor even to retain in it those who are obedient there, except by re-establishing the licenses. Those people not being accustomed to till the soil, will never submit to do so, however they may be punished. This country is composed of persons of various characters and of different inclinations; one and the other ought to be managed, and can contribute to render it flourishing. The *Coueurs des bois* are useful in Canada for the fur trade, which is the sole branch that can be relied on, for it is certain that if the articles required by the upper

M. D'Aigre-
 mont on the
 trade of the
 Interior,
 1710.

* N. Y. Hist. Col., vol. 8, p. 852.

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 answer to
 Memorial of
 English
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 rics, 17th
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nations be not sent to Michilimakinak, they will go in search of them to the English at Hudson's Bay, to whom they will convey all their peltries, and will detach themselves entirely from us, which would inflict a notable prejudice on that colony. Experience sufficiently proves that it is not to be expected that these nations will come in quest of them to Montreal; witness the few canoes that have come down within eight or nine years, except in 1708, when about 60 descended. When these Indians will be obliged to go to a great distance to get their necessaries, they will always go to the cheapest market; whereas, were they to obtain their supplies at their door, they would take them, whatever the price may be. Moreover, the means of preventing them waging war against one another is to be continually carrying on trade with them; for by that means the commandant at Michilimackinac can be informed of everything that happens, and by his mediation terminate all differences that might arise. Religion will derive an advantage therefrom, for the more French there are among these nations, the greater will be the authority of the Missionaries there. This active intercourse may afford them also facilities to learn our language, and render them more docile and submissive to the instructions which will be given them.

M. DE JÉRÉMIE, FRENCH COMMANDANT AT FORT NELSON (BOURBON), IN REFERENCE TO THAT POST.*

M. Jérémie—
Fort Bour-
bon, 1708-
1714.

The Fort was named Bourbon, and the river on which it was situated was named Ste. Therese because the Fort was brought under the authority of the French on the day of St. Therese, October 14. . . . I had the honour to be in command of the Fort for six years, and I had the honour to be stationed there by express orders of the King, whose commissions I still preserve. None of my predecessors had been appointed in the same way.

In 1714 I received the orders of the Court, with letters from the Count de Pontchartrain, to hand over the post to the English, according to the terms of the Treaty of Utrecht.

Though the fort was built on the River Ste. Therese, it is by the River Bourbon that the savages come to trade. The first great lake through which this river passes is called by the savages Tatasquayou Secahigan, which signifies the Lake of Forts, in which discharges a river called Quissiquatchiouen, or strong current.

[Jérémie estimates the annual profit of the trade of Fort Bourbon to the French at 100,000 livres. In 1713 the goods they brought out cost 8,000 livres, and in 1714 he made over 120,000, which he took away when relieved by the English.]

CONSEIL DE MARINE—MEMORANDUM AS TO M. DE VAUDREUIL ESTABLISHING POSTS IN THE
NORTH-WEST, 1717.

Conseil De
Marine,
establishing
Posts in the
North-West,
1717.

Messieurs de Vaudreuil and Begon having written last year that the discovery of the Western Sea would be advantageous to the colony, it was approved that, to reach it, M. de Vaudreuil should establish three posts, which he had proposed, and he was instructed at the same time to have the same established without any expense accruing to the King—as the person establishing them would be remunerated by trade—and to send a detailed schedule of the cost of continuing the discovery. In reply it is stated that M. de Vaudreuil in the month of July last caused the Sieur de la Noüe, Lieutenant, to set out with eight cannon to carry out this scheme of discovery. He gave him instructions to establish the first post at the River Kamanistiquoya, to the north of Lake Superior, after which he is to go to Takamanigen [Takamamiononio],* near the Lake of the Christineaux to establish a second, and to acquire through the Indians the information necessary for the establishment of the third at the Lake of the Assinipoëlles [Winnipeg].

This journey costs the King nothing, because those engaged in it will be remunerated for their outlay by the trade which they will engage in; but to follow up the discovery it is absolutely necessary

* From Relation du Detroit et de La Baie D'Hudson, Par Monsieur Jérémie.
Library of Parliament MSS., 3rd series, vol. 6, pp. 529, 530.

that His Majesty should bear the expense, because the persons employed in it will have to give up all idea of trade.

They estimate that 50 good *voyageurs* will be required; of these, 24 will occupy the three posts, and the 26 others will be engaged in making the discovery from the Lake of Assenipelles to the Western Sea. They calculate the wages of these men at 300 francs a year each, and estimate that the expenditure, as well for provisions and canoes, as for goods for presents, will amount to . . . f.29,023 10

There will have to be added, for supplementary outfit, 600 francs for each of the six officers employed in the discovery 3,600 00

10 Total f.32,623 10

As it will take about two years to make this journey, they estimate that the expenditure may amount to fifty thousand francs.

RECAPITULATION OF THE LICENSES (CONGÉS) SIGNED BY VAUDREUIL AND THE INTENDANT BEGON, FORWARDED IN 1717.

(Extract.)

	LICENSES WHICH HAVE BEEN MADE USE OF.		UNUSED LICENSES.	TOTAL LICENSES.	Licenses issued in 1717.
	IN 1717.	IN 1718.			
20 For Missilimakina	2	4	1	7	
For La Baie (Green Bay)	0	9	0	9	
For the Ouyatanons (on the Wabash)	0	3	1	4	
For River St. Joseph	0	6	0	6	
For the Illinois	0	3	1	4	
	2	25	3	30	

M. BEGON TO THE MINISTER RESPECTING POSTS IN THE NORTH-WEST, 1718.

Quebec, December 11, 1718.

30 Le Sieur de Vaudreuil has been informed by the letters of Sieur de la Noüe, that having arrived very late at Kaministiquoya, where he found but few Indians, he was unable to send any of the canoes to Kamanionen,* and that he will send them after the return of those which he sent this spring to Michilmakinac, in search of provisions; he adds that the Indians of his post were well satisfied with this establishment, and promised to bring there all those who have been accustomed to trade at Hudson's Bay; that he wrote through a Frenchman, who was at Point Chagouamigon, to a chief of the Scioux Nation, and he hopes to succeed in making peace between this nation and that of the Christineaux; the accomplishment of which would put him in a condition to pursue with less risk the execution of his orders for the discovery of the Western Ocean.

M. Begon, respecting Posts in the North-West, 1718.

In the margin is written: This first article approved.

40 MM. DE VAUDREUIL AND BEGON TO THE CONSEIL DE MARINE RESPECTING THE PROGRESS OF LA NOÛE, TOWARDS THE WEST, 1719.*

Quebec, 14th October, 1719.

The Sieur de Vaudreuil has not received, in the present year, any letter from the Sieur de la Noüe; he has only learnt, by way of Chagouamion, which is to the south of the bottom of Lake Superior, and where, since last year, the Sieur de St. Pierre commands, that the Sieur Pachot had passed through

Progress of La Noüe towards the West, 1719.

* Takamamionen—Rainy Lake.

† Archives de Paris, 3rd series, Vol. VI., p. 943.

* Archives de Paris, 3rd series, Vol. VII., p. 616.

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the West,
1819.

there on his way to the country of the Scioux, where he had been sent by the Sieur de la Noüe, with respect to the peace that he was trying to bring about between that nation and that of the Christineaux; but that the Sieur Pachot not having returned to Chagoamion at the date when the last canoes left, no information as to the result of his voyage had been there obtained. The silence of the Sieur de la Noüe creates the belief that he has preferred to await the return of the Sieur Pachot, before giving account to the Sieur de Vaudreuil of what he has done in execution of the orders which he had given him, and that he was not able to do so at the date of the Sieur Pachot's arrival at Gamanistigoya because the season was then too far advanced.

The Sieur de Vaudreuil believes that the absence of the Sieur Pachot will have prevented the Sieur de la Noüe from sending this year to Takamamionen, but that that officer will have found means to attract to his post the savages who were in the habit of trading at Hudson's Bay.

GOVERNOR THE MARQUIS DE BEAUHARNOIS AND THE INTENDANT HOCQUART TO THE MINISTER, AS TO THE CLAIMS OF THE LATE FARMER OF TEMISCAMINGUE.

Oct. 15, 1730.

Claims of the
Farmer of
Fort Temis-
camingue,
1730.

The Post of Temiscamingue had been taken from the Sieur Gorgendière, who claims to have incurred considerable expense during his year of possession, in presents which he had caused to be given to the savages of the different nations living in the neighbourhood of his post, in order to attract them there, and also in the advances which he had made to them, according to the usual custom of traders. [They urged that as one or even two years' possession of a post give no chance of profit, he ought to be relieved from the obligation to pay 200 livres for goods furnished from the King's stores.] 20

M. DE BEAUHARNOIS TO COUNT DE MAUREPAS, RESPECTING THE PROPOSED ATTACK ON THE ENGLISH POSTS IN HUDSON'S BAY.*

October 8, 1744.

De Beauhar-
nois, proposed
attack on the
English, 1744.

In regard to the posts on Hudson's Bay and those they [the English] have established on this side in the direction of Temiscaming, and which His Majesty has been pleased to recommend me to endeavour to neutralize, or to utterly destroy if possible: I have accordingly instructed Sieur Guillet, who farms the post of Temiscaming, and has gained the good opinion of all the nations thereabouts, to prevail on them to assemble together, in the course of this winter, in order to fall, at the opening of the spring, as well on Fort Rupert as on the other posts in the direction of Hudson's Bay. I have in like manner, on receiving news of the war, sent orders to Missilimakinae, to be transmitted to Alepimegon and the other posts in that neighbourhood, so that they may all co-operate in the destruction of the English establishments at the north, and among the rest, of that newly built, about twenty leagues above Michipicoton, by a Canadian refugee, who has conducted thither seven or eight Englishmen who trade there; and I have ordered not only the forcible destruction of that establishment, but also that the Canadian be killed, if it be possible to seize him. I have also given Sieur Guillet notice that I should, at the very opening of spring, despatch a party of Frenchmen and Indians, under the command of an officer and some others, so as to make a simultaneous attack on those posts. Sieur Guillet is to warn those Indians of this expedition, in order that they may hold themselves in readiness to join it, and, in fact, I calculate on sending it thither as soon as the season will permit, and I beg you, my Lord to assure His Majesty that I will not neglect anything to utterly destroy, if possible, the English establishments in that quarter, as well as all those the difficulties whereof I shall be able to surmount. 40

M. DE BEAUHARNOIS TO COUNT DE MAUREPAS, AS TO HIS INABILITY, FOR WANT OF SUPPLIES, TO ACT ON THE OFFENSIVE AGAINST THE ENGLISH.†

Montreal, June 18, 1745.

De Beauhar-
nois to De
Maurepas,
18th June,
1745.

I am on my guard and merely on the defensive, not being able to act offensively, as I had the honour to inform you, either against New England or the posts on Hudson's Bay, in consequence of the

* N. Y. Hist. Col., Vol. IX., p. 1105.

† Ibid., Vol. X., p. 2

want in the King's stores, and even in those of the merchants, of the supplies necessary for such expeditions, a circumstance I was not informed of last autumn. Besides, the preservation of our possessions and forts in the interior of the Colony being my principle object, I consider it more prudent *not* to divest ourselves of our small means of resistance in case of attack, and to suspend the *other* projects until I be in a condition to execute them.

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M. BELLIN, AS TO THE FRENCH POSTS IN THE WEST AND NORTH-WEST AND NORTH, 1755.

Albany River, when the French settled upon it, was called Quitchide Chouen by the Indians; but we gave the name of Ste. Anne to the fort and river. That name long existed, and it is to be found in old maps. The river flows out of a lake of the same name, on the shores of which we had a post called 10 St. Germain. The English built a factory there, and called it Henley, but it amounted to very little.

M. Bellin—the
French Post
in the West
and North-
West, 1755.

Moose River, situate at the head of Hudson's Bay, is not the only stream flowing into the bay, at the entrance to which Fort Moose is built. On the western shore of that bay, River Perré is found flowing from the west, and connecting with Lake Alimipegon about one hundred leagues from Fort Moose. The river derives its name from its discoverer—a Canadian—who reached Hudson's Bay by that route.

A large number of rivers, some of considerable size, flow into Lake Superior. About half-way up the north shore are situated St. Ignace Islands, opposite the entrance of a river through which Lake Alimipegon, 25 to 30 leagues from Lake Superior, is reached. Although these parts have long been occupied by our traders and missionaries, my knowledge of the subject lacks the requisite precision. I am ignorant of the size or configuration of Lake Alimipegon or its tributary rivers, or even of the greater part of the rivers flowing into Lake Superior.

On the west coast of Lake Alimipegon, there is a river through which the head of Hudson's Bay may be reached. A Frenchman, from Canada, named Perray, was the first discoverer of that route, and gave his name to the river. On leaving the lake, the river is ascended for about forty leagues, several small lakes crossed, and a few portages made; then comes a more considerable lake whence the water flows east, into the head of the bay, at the entrance of which the English Fort, Moose is built.

We have long been aware of the existence of an extensive chain of lakes, and river connections, to the west and north-west of Lake Superior, forming a convenient highway to the far West; it was even supposed the ocean might be reached in that direction; hence the later discoveries of the French in 20 those parts have only confirmed our previous conjectures, and almost converted them into certainty.

In a MS. map deposited in the Map Department of the Marine Bureau, and drawn in 1687, by Sieur Franquelin, geographical engineer employed in New France, are found, to the west of Lake Superior, certain rivers communicating with two large and contiguous lakes, respectively named Assiniboile and Christinaux; from the latter a river (Bourbon) runs to Fort Nelson, on Hudson's Bay. These two lakes are now called Lakes Ouinipique and Bourbon, and we have factories on both.

Another map, fully as interesting as the former, is that drawn up from information received from Indian Ochagat, the original copy being deposited in the office, which indicates several lakes and river connections tending far towards the west. Although the distances are derived from approximations liable to error, a certain vein of truth is observed and confirmed by more recent investigations in those 40 parts, such as furnished by the memoirs of M. de la Veranderie, father and son, sent to establish various forts for the protection of the newly-discovered territory; and the journal of M. le Gardeur de St. Pierre an officer of the troops in Canada, who visited the forts in 1750, with instructions to extend his discoveries to the utmost practicable extent, make treaties, and establish trading relations with the most distant Indian nations.

Although I have said the sources of the Missouri were unknown, the French ascended that river, to a great distance, and formed several establishments; one, especially, named Fort of Orleans, over 80 leagues from the sea, in the midst of the Missouri, Osage, Kansés and other Indian tribes.

*These extracts are translated from his "Remarques sur la Carte de l'Amérique Septentrionale, comprise entre le 28e et le 72e degré de latitude," pp. 12, 70-2, 122-4.

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M. Bellin—the
French Posts
in the West
and North-
West, 1755.

The Illinois River is only a few leagues distant from the Missouri, but on the other side. We have already seen the forts built in 1679 on that river by M. de la Salle; and in addition, we have since built a fort at Peoria, 20 leagues from its mouth.

On the east side of the Mississippi is found the River Ouiseonsing, at the mouth of which Sieur Perrot, a Canadian, built Fort St. Nicolas. Lead mines are found on both sides of the main stream below that point. From River Ouiseonsing to Lake Pepin, the distance is about 30 leagues; that lake is merely an expansion of the river, about a league in width, by 5 or 6 in length. A small fort was built at its entrance by Sieur Perrot, and another a little higher, on account of the adjacent lead mines; he named them respectively de Bonsecours and de Lac des Pleurs. A few leagues further are several islands, on the largest of which Fort Le Sueur was built in 1695. The River St. Croix flows from the east, a little above that place, its sources not being far distant from Lake Superior. A fort, also named St. Croix, has been built on that river, about forty leagues from its mouth, and not more than 25 leagues from Lake Superior, which was easily reached from there. Thence remains but a small portage of some leagues, a little beyond which is found the River de Neouatsicoten, or Neouissacouat, which discharges itself near the foot of the lake. The distance from the River St. Croix to the River St. Pierre is estimated at 5 to 6 leagues. The stream is studded in this interval with a number of beautiful islands of varying size. The River St. Pierre, thus named by the French, but by the savages called Onalebamenisouté [Minnesota], flows from the west. It rises in Lake des Tintons, flows over 50 leagues to the east, and then turns and runs at least 30 leagues north-east to the Mississippi. At the elbow it receives Rivers Verte and St. Rémi. At this point old Fort L'Hullier or Fort Vert—thus called on account of a deposit of green earth in the neighbourhood—was built by us. The latitude of Fort Vert is $44^{\circ} 20'$; the mouth of River St. Pierre, $44^{\circ} 55'$. The latitudes are from observations taken in 1700, by Sieur Le Sueur.

COLONEL DE BOUGAINVILLE'S ACCOUNT OF THE FRENCH POSTS, 1757.*

De Bougain-
ville's account
of the French
Posts, 1757.

MICHILLIMAKINAC.—Michillimakinac is distant from Montreal, travelling by the *Grande Rivière* some three hundred leagues, and some one hundred leagues and more from Detroit. This post is situated between Lake Michigan and Lake Huron. . . . The Governor-General receives generally from the voyageurs five hundred francs upon each canoe laden with merchandizes, and the proceeds thereof are distributed among the officers and the poor families. In ordinary times, six or seven hundred bundles (*paquets*) of furs are forwarded from the fort *per annum*. . . . Michillimackinac is 30 the entrepôt of all the northern posts, as Detroit is of the southern ones.

ILLINOIS POST.—The principal *entrepôt* of the post of Illinois is Fort Chartres, situated upon the Mississippi. There are, for all these posts, a garrison of six companies, furnished, as is also the commandant, by New Orleans. The divisions of the Illinois are . . . the Cahoo [Cahokias] . . . the Metchi . . . the Kas [Kaskaskias] . . . These three nations are now comprised under the name of the Illinois. This post is worked by means of licenses, whose price is six hundred francs per canoe. . . . There is another post on the River of the Illinois, where resides a commandant in a fort called Pimiteoui. The tribes which trade there are the Peorias. Seven hundred men produce two hundred bundles of furs.

POST OF THE WESTERN SEA (LA MER DE L'OUEST).—The post of the Western Sea is the most advanced towards the north; it is situated amidst many Indian tribes, with whom we trade, and who have intercourse also with the English towards Hudson's Bay. We have there seven forts built of stockades, trusted, generally, to the care of one or two officers, seven or eight soldiers, and eighty *engagés Canadiens*. We can push further the discoveries we have made in that country, and communicate even with California.

The post of *La Mer d'Ouest* includes the forts ST. PIERRE, ST. CHARLES, BOURBON, DE LA REINE DAUPHIN, POSKOTA, [and] DES PRAIRIES, all of which are built with palisades that can give protection

* From Bougainville's Memoir of the State of New France at the time of the Seven Years' War (1757.) The French original is given in "Relations et Mémoires Inédits," etc., par Pierre Margry, Paris, 1867, p. 41.

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(1757.) The French

only against the Indians. Fort St. Pierre is situated on the left shore of Lake Tekamamionen, or Lac de la Pluie [Rainy Lake], at 500 leagues from Michillimackinac and 300 from Kamanistigouya, or Les Trois Rivières [Three Rivers], to the north-west of Lake Superior. Fort St. Charles is situated sixty leagues from Fort St. Pierre, on a peninsula that goes far into Lac Des Bois [Lake of the Woods]. Fort Bourbon is at one hundred and fifty leagues from the preceding one, and at the entrance of Lake Ouinipeg. Fort la Reine is situated on the right shore of the River of the Assinibois, at seventy leagues from Fort Bourbon. This country is composed of vast prairies; it is the route to go through to the upper part of the Missouri. Fort Dauphin at eighty leagues from the preceding one, on the River Minanghenachequéc, or Eau Trouble. Fort Poskoin is built on the river of that name [now 10 Saskatchewan], at 180 leagues from the preceding one; it takes ten days from this fort to reach Nelson River. The Fort des Prairies is at eighty leagues from Fort Poskoin, in the upper part of the river of that name. This post has been farmed in consideration of a sum of eight thousand francs; the commandant is its farmer, with a fourth interest in its trade. The Indians who trade there are the Christinaux and the Assinibois; these two tribes form each twelve villages inhabited respectively by two hundred and fifty men (*hommes*). This post produces usually from three to four hundred bundles of furs; we must take into account also fifty to sixty slaves, Rouges or Panis, of Jatihiline, a nation situated on the Missouri, and which plays the same *role* in America that the negroes do in Europe. This is the only post where this traffic takes place.

The post of *La Mer d'Ouest* merits special attention for two reasons—the first, that it is the 20 nearest to the establishments of the English at Hudson's Bay, and from which their movements can be watched; the second, that from this post the discovery of the Western Sea may be accomplished; but to make this discovery it will be necessary that the travellers (*voyageurs*) give up all views of personal interest.

NÉPIGON.—Les Népigons, a post established to the north of Lake Superior; the commandant is its farmer, and pays for that privilege about 4,000 francs; it includes the Lake à la Carpe. . . . The Indians who trade at the post are the Saulteux; this tribe, one of the most numerous in these regions, is wandering, plants nothing, and subsists solely by the chase and fishing. The post produces generally every year from eighty to one hundred bundles of fur.

TEMISCAMINGUE.—A post situated on a lake of that name, and farmed in consideration of the sum 30 of 7,000 francs; the Indians call the place where stands the post *Aubatswenanek*. The tribes that trade there are the Têtes de Boule, or Gens des Terres and the *Namcosakio* who come from the shores of Hudson's Bay.

TABITIBI is a post dependent upon Temiscamingue, situated at one hundred and twenty leagues from the preceding fort, towards Hudson's Bay; each post may contain one hundred men; they subsist on game and fish; they sow no grain, and have no village. All this country is mountainous and not at all fertile. The post produces about 120 bundles of furs.

TRADING POSTS.

Northern Posts.—1. Themiskaming (no commandant there); 2. Michillimackinac; 3. La Baie; 4. La Mer d'Ouest; 5. Sault Ste. Marie (the seigniory and the exclusive trade are granted in perpetuity to 40 M. Debonne or his heirs); 6. Chagouamigon; 7. Kamanistigouya; 8. Népigon; 9. Michipicoton (no commandant); 10. St. Joseph; 11. The River of the Illinois (no commandant has yet been appointed for that post). The General sells licenses to the traders in order to allow them to trade with the Indians.

THE MARQUIS DE MONTCALM TO MARSHAL DE BELLE ISLE, ON THE STATE AND PROSPECTS OF CANADA.*

MONTREAL, 12th April, 1759.

Canada will be taken this campaign, and assuredly during the next, if there be not some unfore- seen good luck, a powerful diversion by sea against the English Colonies, or some gross blunders on the part of the enemy.

JOSEPH
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ville's account
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posts, 1767.

M. De Mont-
calm on the
state of
Canada, 1759

* N. Y. Hist. Col., Vol. X., p. 960.

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calm on the
state of
Canada, 1759.

The English have 60,000 men, we, at most, from 10 to 11,000. Our Government is good for nothing; money and provisions will fail. Through want of provisions, the English will begin first; the farms scarcely tilled, cattle lack; the Canadians are dispirited; no confidence in M. de Vaudreuil or in M. Bigot. M. de Vaudreuil is incapable of preparing a plan of operations; he has no activity; he lends his confidence to empirics rather than to the General sent by the King. M. Bigot appears occupied only in making a large fortune for himself, his adherents and sycophants; cupidity has seized officers, store-keepers; the commissaries also, who are about the River St. John or the Ohio, or with the Indians in the upper country, are amassing astonishing fortunes. It is nothing but forged certificates, legally advanced. If the Indians had a fourth of what is supposed to be expended for them, the King would have all those in America; the English, none.

This interest has an influence on the war. M. de Vaudreuil, with whom men are equal, led by a knavish Secretary and interested associates, would confide a vast operation to his brother, or any other colonial officer, the same as to Chevalier de Levis. The choice concerns those who divide the cake; therefore has there never been any desire to send M. de Bourlamaque, or M. de Senezergues, commandant of the battalion of La Sarre, to Fort Duquesne. I did propose it; the King had gained by it; but what Superintendents in a country whose humblest cadet, a sergent, a gunner, returned with twenty, thirty thousand livres in certificates, for goods issued for the Indians on account of His Majesty. * *

Everybody appears to be in a hurry to make his fortune before the Colony is lost, which event many perhaps desire as an impenetrable veil over their conduct. The craving after wealth has an influence on the war, and M. de Vaudreuil does not doubt it. Instead of reducing the expenses of Canada, people wish to retain all; how abandon positions which serve as a pretext to make private fortunes. Transportation is distributed to favourites. The agreement with the contractor is as unknown to me as it is to the public. It is reported that those who have invaded commerce participate in it. Has the King need of purchasing goods for the Indians? Instead of buying them directly, a favourite is notified, who purchases at any price whatever. Then, M. Bigot has them removed to the King's stores, allowing a profit of one hundred and even one hundred and fifty *per cent.* to those who it is desired to favour. Is artillery to be transported, gun-carriages, carts, implements to be made? M. Mercier, Commandant of the Artillery, is the contractor, under other people's names. Everything is done badly and at a high price. This officer, who came out twenty years ago a simple soldier, will be soon worth about six or seven hundred thousand livres, perhaps a million, if these things continue. I have often respectfully spoken to M. de Vaudreuil and M. Bigot of these expenses; each throws the blame on his colleague. The people, alarmed at these expenses, fear a depreciation in the paper money of the country; the evil effect is, the Canadians who do not participate in those illicit profits, hate the Government. * *

It is foreign to my character to blame M. de Vaudreuil and M. Bigot, depositaries of His Majesty's authority in Canada. I am even attached to M. Bigot, who is an amiable man and a near relative of M. de Pussieux and Marshal D'Estrees, who honour me with their friendship. * * *

If there be peace, the Colony is lost if the entire government is not changed. The maxims of the book entitled *L'ami de l'homme* must be followed: to disgrace those who will return from Colonies with wealth, and to reward those who will return from them with the staff and scrip with which they have gone forth.

The general census of Canada has been at last completed. Though it has not been communicated to me, I think I'm correct, that there are not more than 82,000 souls in the Colony; of these, twelve thousand at most, are men capable of bearing arms; deducting from this number those employed in works, transports, bateaux, in the upper countries, no more than seven thousand Canadians will ever be collected together, and then it must not be either seed time or harvest, otherwise by calling all out, the ground would remain uncultivated, famine would follow. Our eight battalions will make three thousand two hundred men; the Colonials, at most fifteen hundred men in the field. What is that against at least fifty thousand men, which the English have?

French Official Description of Boundaries,

LETTERS PATENT APPOINTING SIEUR DE LA ROCHE, JANUARY 12, 1598.*

They make him Lieutenant-General of "Canada, Hochelaga, Newfoundland, Labrador, the River of the Great Bay of Norembegue, and the lands adjacent to the said provinces and rivers, which are the whole length and depth of the country, provided they are not inhabited by the subjects of any other Christian Prince."

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of Boundaries.

Appointment
of De La
Roche, 12th
January,
1598.

DESCRIPTION IN THE COMMISSION OF SIEUR DE MONTS, NOVEMBER 8, 1603.†

We constitute and appoint you our Lieutenant-General, to represent our person in the countries, 20 territories, coasts and confines of Acadia: Commencing at the fortieth degree of latitude and extending to the forty-sixth, and within these limits, or such part thereof as it may be possible to penetrate, and therein make known our name and extend our power and authority; and to bring into subjection, submission, and obedience all the people within the said limits and those of the adjoining country."

De Monts'
Commission,
8th Novem-
ber, 1603.

DECLARATION OF THE KING ON THE SUBJECT OF THE COMMISSION OF DE MONTS, FEBRUARY 8, 1605.

The description in this declaration is in different words from the preceding‡;—"To represent our person on the coasts and in the interior of the limits of Acadia, Canada, and other places in New France and to colonize the country."

De Monts,
Commission,
8th Feb.,
1605.

COMMISSION TO CHAMPLAIN, 15 OCTOBER, 1612.

CHARLES DE BOURBON, Count de Soissons, Peer and Grand Master of France, the King's 20 Lieutenant-General in New France, in virtue of the power which the King had conferred upon him, commissioned Champlain, October 15, 1612,§ to build forts "not only in Quebec, but in other places where our authority extends, and so far in the interior as he may be able, to establish and make known the name, power and authority of His Majesty, and therein to bring under subjection, submission and obedience, all the people of this and the surrounding country. . . for this purpose to make discoveries and explorations in the said territories, especially above the place called Quebec, as far in the interior as he can penetrate, whether overland or by means of the rivers which discharge into the said great river, the St. Lawrence, with the view of attempting to find a practicable road through the said country to China and the East Indies, or taking another route as far as he can penetrate along the coasts or in the interior."

Champlain's
Commission
15th October
1712.

30 CHARTER OF THE COMPANY OF THE HUNDRED ASSOCIATES, OTHERWISE THE COMPANY OF NEW FRANCE, 1627.

[Extracts relating to the Boundaries and concession of Commerce.]

ACTE POUR L'ÉTABLISSEMENT DE LA COMPAGNIE DES CENT ASSOCIÉS, CONTENANT LES ARTICLES ACCORDÉS A LA DITE COMPAGNIE PAR M. LE CARDINAL DE RICHELIEU, LE 29 AVRIL, 1627.¶

IV. Et pour aucunement récompenser la dite compagnie, des grands frais et avances qu'il lui conviendra faire pour parvenir à la dite peuplade, entretien et conservation d'icelle, Sa Majesté donnera à perpétuité aux dits cent associés, leurs hoirs et ayans cause, en toute propriété, justice et seigneurie, le

Charter of the
Company of
the Hundred
Associates,
29th April,
1627.

* Histoire de la Nouvelle France, par Marc L'Escarbot, ed. 1618, p. 408.

† L'Escarbot, p. 419.

‡ Ibid. p. 427.

§ Voyages des Sieur Champlain, Ed. 1830, pp. 307-8.

¶ *Edits, Ordonnances Royaux, Déclarations et Arrêts du Conseil d'Etat du Roi concernant le Canada.* Imprimés sur une adresse de l'Assemblée Législative du Canada. . . . Québec. 1854; pp. 5, 6.

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aries.

Charter of the
Company of the
Hundred
Associates
29th April,
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fort et habitation de Québec, avec tout le pays de la Nouvelle France, dite Canada, tant le long des côtes depuis la Floride, que les précédenseurs rois de Sa Majesté ont fait habiter, en rangeant les côtes de la mer jusqu'au cercle Arctique pour latitude, et de longitude depuis l'Isle de Terre-Neuve, tirant à l'ouest, jusqu'au grand lac, dit la mer douce, et au delà que dedans les terres et le long des rivières qui y passent, et se déchargent dans le fleuve appelé St.-Laurent, autrement la grande rivière de Canada, et dans tous les autres fleuves qui les portent à la mer, terres, mines, minières, pour jouir toutefois des dites mines conformément à l'ordonnance, ports et havres, fleuves, rivières, étangs, isles, islots et généralement toute l'étendue du dit pays au long et au large et par de là, tant et si avant qu'ils pourront étendre et faire connoître le nom de Sa Majesté, ne se réservant Sa dite Majesté, que le ressort de la foi et hommage qui lui sera portée, et à ses successeurs rois, par les dits associés ou l'un d'eux, avec une couronne d'or du poids de huit marques à chaque mutation de rois, et la provision des officiers de la justice souveraine, qui lui seront nommés et présentés par les dits associés lorsqu'il sera jugé à propos d'y en établir: permettant aux dits associés faire fondre canons, boulets, forger toutes sortes d'armes offensives et défensives, faire poudre à canon, bâtir et fortifier places, et faire généralement es dits lieux toutes choses nécessaires, soit pour la sûreté du pays, soit pour la conservation du commerce.

VII. D'avantage, Sa Majesté accordera aux dits associés, pour toujours, le trafic de tous cuirs, peaux et pelleterie de la dite Nouvelle-France; et pour quinze années seulement, à commencer au premier jour de janvier de l'année 1628, et finissant au dernier de décembre que l'on comptera 1643, tout autre commerce, soit terrestre ou naval, qui se pourra faire, tirer, traiter et traffiquer, en quelque sorte ou manière que ce soit, en l'étendue du dit pays, et autant qu'il se pourra étendre; à la réserve de la pêche des morues et baleines seulement, que Sa Majesté veut être libre à tous ses sujets, révoquant à cet effet toutes autres concessions contraires à l'effet que dessus, même les articles ci-devant accordés à Guillaume de Caen et ses associés; et à ces fins interdira Sa dite Majesté, pour le dit temps, tout le dit commerce, tant au dit de Caen qu'à ses autres sujets, à peine de confiscation de vaisseaux et marchandises, laquelle confiscation appartiendra à la dite compagnie; et mon dit seigneur le grand-maitre ne baillera aucun congé, passeport ou permission à autres qu'aux dits associés pour les voyages et commerces susdits en tout ou en partie des dits lieux.†

Fait à Paris, ce vingt-neuf avril mil six cent vingt-sept.

Signé : ARMAND, Cardinal de Richelieu,
DE ROUQUEMONT,
HOUEL, tant pour moi que pour les dits Duchesne et
Lataignant,
DABLON, syndic de Dieppe, et
CASTILLON.

† The following is an English translation of the above sections :

IV. And to recompense the said Company in some measure for the great outlays and advances which it will be necessary for it to make in order to reach the said people, and for their support and preservation, his Majesty will give in perpetuity to the said hundred associates, their heirs and assigns, in all propriety, right and seignory the fort and habitation of Quebec, with all the said country of New France, called Canada, as far along the east from Florida, which the kings, predecessors of His Majesty, had caused to be settled, ranging along the sea coasts to the Arctic Circle for latitude, and for longitude from the island of Newfoundland, drawn to the west, to the great lake called the Fresh Sea, and from there within the lands and along the rivers which pass there and discharge themselves into the river called Saint Lawrence, otherwise the great river of Canada, and into all the other streams which flow to the sea, lands, rivers, minerals, to enjoy forever the said mines, in accordance with the ordinance, and the forts and harbours, streams, rivers, ponds, islands and islets, and in short the whole extent of the said country both in length and breadth and beyond so far and as much further as they can extend and make known the name of His Majesty, reserving for his said Majesty only the jurisdiction of the faith and homage which shall be borne him and the kings, his successors, by the said associates, or one of them, with a crown of gold of the weight of eight marks at each change of king, and the appointment of the officers of sovereign justice, who will be nominated and presented to him by the said associates whenever he will judge it proper to establish any; permitting the said associates to found cannon bullets, forge all manner of offensive and defensive arms, manufacture gunpowder, build and fortify places, and make generally in the said places all things necessary either for the security of the country or for the preservation of commerce.

VII. Furthermore, His Majesty will grant to the said associates, for ever, the trade of all leathers, skins and furs of the said New France; and for fifteen years only, commencing on the 1st day of January, of the year 1628, and ending on the last day of December, 1643, all other commerce, whether by land or sea, which can be created, derived from, negotiated

DESCRIPTIONS IN COMMISSIONS OF GOVERNORS, 1645-1663.

THE SIEUR HUULT DE MONTMAGNY, 6TH JUNE, 1645.

"The description in the prolongation of the Commission of Governor and Lieutenant-General at Quebec, granted by the King to SIEUR HUULT DE MONTMAGNY, of the 6th of June, 1645, makes him Lieutenant-General representing the person of the Sovereign at Quebec, "and in the Provinces watered by the St. Lawrence, and the rivers which discharge into it, and the places that depend thereon in new France."

JUNY
APPENDIX,
Sec. X.
French official
Descriptions
of bound-
aries.
Montmagny's
Commission,
6th June,
1645.

10

THE SIEUR DE LAUZON, 17TH JANUARY, 1651.

Provision in favour of SIEUR DE LAUZON, appointing him Governor and Lieutenant of the King, January 17th, 1651, "over the whole extent of the River St. Lawrence, in New France, the isles and lands adjacent, on both sides of the river and the other rivers that discharge therein, as far as its mouth, taking ten leagues near to Miscou on the south, and on the north as far as the lands of the said country extend, (dne nord, autant s'étendent les terres du dit pays) in the same manner that it was held and exercised by Sieur Daïebout."*

De Lauzon's
Commission,
17th Jan.,
1651.

THE VICOMTE D'ARGENSON, 26TH JANUARY, 1657.

The extent of the country mentioned in the Commission of Sieur de Lauzon, is repeated in the "Lettres Patentes du Gouverneur de la Nouvelle France," in favour of VICOMTE D'ARGENSON, of 26th January, 1657.

D'Argenson's
Commission,
26th Jan.,
1657.

THE SIEUR DE MEZY, 1663.

Letters Patent appointing SIEUR DE MEZY, Governor, for three years, over "the country traversed by the St. Lawrence, in New France, in the place of Sieur de Bois d'Avangour, recalled by the King on the 1st May, 1663.

De Mezy's
Commission,
1663.

COMMISSION APPOINTING SIEUR TALON TO BE INTENDANT OF CANADA, 1665.†

LOUIS, by the Grace of God, King of France and Navarre, to Our trusty and beloved Councillor in Our Councils, Sieur Talon, Greeting :

Considering it expedient for the good of Our people, and the regulation of Justice, Police and Finances, in Our Country of Canada, to establish in the office of Intendant, on the spot, a person capable of worthily serving Us, We have to this end laid eyes on you, by reason of the special confidence we repose in your experience, good conduct and integrity, qualities of which you have given proofs on all occasions in which you were called to manifest your affection for Our service. For these and other reasons Us moving, We have commissioned, ordered and deputed, and by these presents, signed by Our hand, commission, order and depute you Intendant of Justice, Police and Finance in Our Country of Canada, Acadie, and the Island of Newfoundland and other Countries of Northern France [de la Franco Septentrionale],‡ to assist in that quality at the Councils of War which shall be holden by Our

Commission of
Sieur Talon
as Intendant,
1665.

and carried on in any manner whatsoever over the extent of the said country, or as far as it can be extended, reserving the cod and whale fisheries only, which His Majesty wishes to leave free to all his subjects, revoking, to this end, all other concessions contrary to the above, even the afore-mentioned articles granted to William de Caën and his associates; and to these ends his said Majesty will, for the said time, interdict all the said commerce as well to de Caën as to his other subjects, under penalty of the confiscation of vessels and merchandise, which confiscation shall belong to the said Company, and the said My Lord the Grand Master shall grant no leave, passport or permission to any others than to the said associates for the above voyages and commerce to the whole or any portion of the said places.

* Commissions des Gouverneurs et Intendants, T. H.

† N. Y. History, Col., Vol. IX., p. 22.

‡ This expression is frequently to be met with in French official documents of this period and subsequently. It would appear to be a short rendering of the longer expression:—"Canada.....et autre pays de la France en Amerique Septentrionale."

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daries.*
—
Commission of
Sieur Talon
as Intendant,
1665.

Lieutenant-General in America, and by the Governor and Our Lieutenant-General in said Country of Canada; to hear the complaints which shall be made to you by our people of said Country, by the military and all others, of excesses, wrongs and violences: render them good and quick justice; take information touching all enterprises, practices and intrigues committed against Our Service; proceed against those guilty of any crime, of what quality or condition soever they may be; prosecute and perfect the trial, unto definite judgment and execution thereon, inclusive; to call to you the number of Judges and Graduates fixed by the Ordinances; and take cognizance generally of all crimes and delicts, abuses and malversations that may be committed, by whomsoever he may be, in Our said Countries; to preside in the Sovereign Council in the absence of Sieur de Tracy our Lieutenant-General in America, and of Courcelles, Governor and Our Lieutenant-General in Our said Countries of Canada; to judge sovereignly, alone, in civil matters, and to order everything as you shall see just and fit: confirming from this present time, as well as then, the judgments which shall be rendered thus by you in the same manner as if they had issued from our Sovereign Courts, all exceptions, citations (*prises à partie*), edicts, ordinances and other things to the contrary notwithstanding. We will, likewise, that you superintend the direction, management and distribution of Our funds destined, and hereafter intended, for the support of the military; also of the provisions, ammunition, repairs, fortifications, contingencies, loans and contributions which may have been, or may be for the expenses therein, and other disbursements which shall be made there for our service; to verify and adjust (*arrêter*) the statements and ordinances thereof, which shall be expedited by Our Lieutenant-General-in-Chief, and, in his absence by Our other Lieutenant-Generals, to the payers whom it shall concern; to cause to be reported to you the rolls and musters, to check and register them; and in all the above circumstances and appurtenances to do and order what you shall deem necessary and expedient for the good and advantage of Our service and what will relate to the duty and exercise of the office of Intendant of Justice, Police and Finances in Our said Country. 20

The honours, powers, authorities, prerogatives, pre-eminences, appertaining thereto, We intend that you enjoy, with the appointments which shall be ordered you by us; to do which we give you power, authority, commission and special order; We command the said Sieur de Tracy and de Courcelles to place you in the enjoyment of the effect and contents of these presents; We order the officers of the Sovereign Council and all others, our officers, justices, subjects to acknowledge, hear and obey you in said quality, to assist you and lend you efficient aid, and prisons if necessary, for the execution of these 03 presents; for such is Our pleasure.

Given at Paris, the 23rd day of March, in the year of Grace, 1665, and of Our Reign the 22nd.

LOUIS.

By the King,
D'LIONNE.

[And sealed with the Great Seal in yellow wax.]

DESCRIPTIONS IN OTHER COMMISSIONS, 1665-1688.

M. LE BARROIS, AGENT GENERAL OF THE WEST INDIA COMPANY, 1665.

Commissions
1665-88.

The expression, "depuis le Nord du Canada jusques à la Virginie," is used in the Commission of M. LE BARROIS, April 8, 1665, as agent-general for the Compagnie des Indes Occidentales. 40

M. LE BOUTEROÛE AS INTENDANT, 1688.

The Commission of M. DE BOUTEROÛE, April 8, 1688, Intendant, is in the same terms as that of M. Talon (1665.)

DESCRIPTION IN CHARTER OF LOUISIANA, GRANTED BY LOUIS XIV. TO M. CROZAT,
SEPTEMBER, 1712.*

JOINT
APPENDIX.

Sec. X.

*French Official
Descriptions
of Boundaries.*

Charter of
Louisiana,
Louis XIV.
to M. Crozat,
Sept., 1712.

We, by these presents, signed by our hand, have appointed and do appoint the said Sieur Crozat solely, to carry on a trade in all the lands possessed by us, and bounded by New Mexico, and by the lands of the English of Carolina, all the establishments, ports, havens, rivers, and principally the port and haven of the Isle Dauphine, heretofore called Massacre; the River of St. Louis, heretofore called Mississippi, from the edge of the sea as far as the Illinois; together with the River of St. Philip, heretofore called the Missouri, and of St. Jerome, heretofore called Oüabache, with all the countries, territories lakes within land, and the rivers which fall directly or indirectly into that part of the River St. Louis.

I.—Our pleasure is, that all the aforesaid Lands, Countries, Streams, Rivers and Islands be and remain under the Government of Louisiana, which shall be dependent upon the General Government of New France, to which it is subordinate; and further, that all the lands which we possess from the Illinois be united, so far as occasion requires, to the General Government of New France, and become part thereof, reserving, however, to ourselves the liberty of enlarging, as we shall think fit, the extent of the Government of the Country of Louisiana.

LETTERS PATENT GRANTED TO THE WESTERN COMPANY, 1717.†

II.—We grant to the said Company, for the space of twenty-five years, beginning from the day of the registration of the present Letters, the exclusive right of trading in our Province and Government of Louisiana, and also the privilege of receiving to the exclusion of all other persons, in our colony of Canada, from the 1st of January, 1718, until and including the last day of December, 1742, all the beaver, fat and dry, which the inhabitants of the said colony shall have traded for, whilst we shall regulate, according to the accounts which shall be sent over to us from the said country, the quantities of the different sorts of beaver that the Company shall be bound to receive each year from the said inhabitants of Canada, and the prices they shall be bound to pay for them.

V. With a view to give the said Western Company the means of forming a firm establishment and enable it to execute all the speculations it may undertake, we have given, granted, and conceded, do give, grant, and concede to it, by these present letters, and for ever, the same way and extent as we have granted them to M. Crozat, by our letters patent of 14th September, 1712, to enjoy the same in full property, seignior, and jurisdiction, keeping to ourselves no other rights or duties than the fealty and liege homage the said Company shall be bound to pay us, and to the kings our successors at every new reign, with a golden crown of the weight of thirty marks.

X. The said Company shall be at liberty to establish such governors, officers, majors, and others as they may think fit, to command the troops, and the said governors and major officers shall be presented to us by the directors of the Company, in order that we may deliver to them our commissions.

ORDER OF THE KING IN COUNCIL ANNEXING THE ILLINOIS TO LOUISIANA.‡

The King in Council, having under consideration the Letters Patent, in form of an edict, of the month of August last, establishing a commercial company under the name of the Western Company (Compagnie d'Occident), together with those of the 14th September, 1712, granted to Sieur Crozat, and being of opinion that it would be conducive to the service of the King, and of use and advantage to the Western Company, to extend the Government of the Province of Louisiana, by adding to it the

* *Edits, Ordonnances Royales, etc.*, T. I., p. 328. See also *French's Hist. Coll. of Louisiana*, part III., p. 39. Crozat, Marquis du Chatel, one of the great financiers of the reign of Louis XIV., from whom he obtained this Charter. He died June 7th, 1738.

† *Ed., Ord., etc.*, T. I., pp. 377-8; *French's Hist. Coll. of Louisiana*, p. 50.

‡ *Ed., Ord., etc.*, T. I., pp. 375-6.

Order of King
in Council,
annexing
Illinois to
Louisiana,
27th Sept.,
1717.

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—
Order of King
in Council,
annexing
Illinois to
Louisiana,
27th Sept.,
1717.

country of the savages, called the Illinois; the report being read and everything considered, His Majesty in Council, on the advice of the Duke of Orleans, his uncle, Regent, has united and incorporated the country of the savages to the Government of the Province of Louisiana; desires and intends that the said Western Company shall enjoy the lands comprised under the name of the said country in the same way that it ought to enjoy those granted to it by the said letters patent in the month of August last, and that the commandants, officers, soldiers, inhabitants and others, who are or who may be in the said country will recognize the authority of the General in command of Louisiana, and yield obedience to him, without any kind of opposition, on pain of disobedience. Done at the King's Council of State, in the presence of His Majesty, held at Paris, on the twenty-seventh of September, 1717.

PHILIPPEAUX. 10

Compared with the original by our esquire, councillor-secretary of the King, House and Crown of France, and of his finances.

LE NOIR.

PAPERS RELATING TO THE POST OF TEMISCAMINGUE, 1722-1725.

MEMOIR AS TO THE LIMITS, 1722.

Limits of
Temiscamingue,
1722.

His (the King's) intention was to settle the single post of Temiscamingue within the limits to which it ought naturally to be confined, to the land watered by the river of this name, and others that discharge therein, without comprising the lands that are below or above the said river.—*Mémoire des Représentations sur l'adjudication qui vient d'être faite du poste de Temiscamingue, 1722.*

THE INTENDANT BEGON TO MONSIEUR, ON THE SAME SUBJECT.

20

June 10, 1725.

Begon on the
same, 10th
June, 1725.

It was agreed (*convenu*) at the time of the adjudication in regard to the limits of the post of Temiscamingue, that it is necessary to embrace the River Lièvre, as well to give certain limits for the front and the depth, as because if the river did not belong to it (*n'en dépendait point*), those who may have permission to carry on this trade there would be able to attract there a part of the savages of the post of Temiscamingue. It is for the same reason that Lake Nepissingue and a part of the grand river of the Ottawa, from the River du Lièvre, which also discharges into the Ottawa River, on the south side was included.

THE INTENDANT BEGON, EXPLAINING THE ANCIENT LIMITS, OCTOBER 20, 1725.

Begon
describes the
ancient limits,
20th
October,
1725.

The ancient limits of this post were, on the front, from and comprising the River du Lièvre, which discharges in the grand river of the Ottawas, on the north side as far as and comprising Lake Nepissingue, and in depth up to Hudson's Bay, where it is possible to go only by the River Monsipy or Monsipy, which discharges into the sea at the head of the said bay. [From Mataouan to Temiscamingue the Ottawa River used to be called la Rivière de Temiscamingue.] The height of land is at the Rivers Labyrinthe and Tabitibis, sixty leagues from Lake Temiscamingue. At this portage is a post for trading with the Indians of the environs and those of Hudson's Bay, and who come up the River Monsipy. The course of this river to the ocean is about eighty leagues.

This is the most advanced post towards Hudson's Bay. The French, in order not to expose themselves to the insults of savages who may be in the pay of the English on Hudson's Bay, where Fort Monsipy is situated, do not go further for fur trading. This is the only river of the post which conducts to Hudson's Bay.

When one is at Mataouan, in order to reach Lake Nepissingue, it is necessary to ascend, for fourteen leagues, a river, called La Petite Rivière, as far as a place known as the Portage des Vases, where is the height of the lands. Three portages, amounting together to five quarter-leagues, are here made. Afterwards, for the space of two leagues, the descent is through a small river which empties itself in Lake Nepissingue, at the head of which, at its northern extremity, is a river called La Fontaine. The course of this river is ascended for about forty leagues to within about ten leagues of Lake Temiscamingue.

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ORDINANCE OF THE INTENDANT HOCQUART ON THE LIMITS OF TADOUSSAC, 1733

ORDINANCE ON THE SUBJECT OF THE BOUNDARIES OF THE KING'S DOMAIN, CALLED THE LIMITS (TRAITE) OF TADOUSSAC, MAY 23RD, 1733.*

10 GILLES HOCQUART, † ETC.

Reference being had to the request presented to us by M. Pierre Carlier, Adjudicator-General of the united farms of France and of the domain of the West, stipulating for himself and Sieur Cugnet director of the said Western domain in this country, seeing that for the reasons therein contained, it is our pleasure (reference being had to the decree (arrêt) of the King's Council of State, May 16, 1677, and the decree of the Superior Council of Quebec, of the 19th October, 1658, giving control of the trade of Tadoussac to Sieur Demaure, the ordinance of M. Raudot of the 25th September, 1707, and the ordinance of M. Begon of the 5th April, 1720), to ordain that the said Carlier, his successors, farmers of the said Western domain, their attorneys, deputies, and overseers, continue to enjoy (faire) alone, to the exclusion of all others, the trade (traite), hunting, fishery, in the extent of the King's domain, from the 20 Isle aux Coudres to a point two leagues below the Seven Islands, and in the posts of Tadoussac, Chekoutimy, Lake St John, Nekoubau, Mistassinoc, Papinachois, Naskapis, River Moisy, the Seven Islands, and the places dependent on them, comprising the lands and Seigneurie of Malbaye;

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Consequently all persons, of whatever quality and condition they may be, as well merchants and habitants of the colony, captains and masters of fishing-boats, barques, bateaux, ships, crews and passengers, and all others whomsoever, are forbidden to trade, hunt, fish, or to carry on any commerce under any pretext, directly or indirectly, by themselves or by sending merchandise, provisions, liquors, or ammunition through friendly Savages, in the country dependent on the said limits (traites) of His Majesty's domain, without the express commission in writing of the said Carlier, the farmers his successors, their attorneys, deputies, overseers, on pain of the confiscation of the arms, products of the hunt 30 (chase), merchandise intended to be used in trade, furs and other effects obtained in trade, canoes, large boats, barques, fishing-boats, bateaux, and all other vessels whatever, and a fine of two thousand livres, which can neither be remitted nor lessened under any pretext whatever; of which confiscations and fines two-thirds shall belong to the said Carlier, and the other one-third to the informer;

All persons, of whatever quality and condition, who descend the river St. Lawrence in canoes, large boats, fishing-boats, or other small vessels, are equally forbidden to land on this domain otherwise than at the posts and French establishments on the said river, on pain of being regarded as having traded with the Savages, in fraud of the privilege of the said Carlier and the penalties above mentioned;

The said Carlier is to have the liberty of sending to the posts dependent on the domain, such 40 persons and by such routes as he may judge proper, to guard the limits and to prevent trading that might be made to his prejudice; but they are not to trade on the way, outside of the bounds of the domain, under the penalties which such illicit trading would incur;

The said Carlier, his attorneys, deputies or overseers are to be empowered to seize all canoes found within the extent of the said domain, laden with merchandise, suitable for trading, or with furs and other objects of trade, wines and liquors (boissons) and ammunition and other effects, whether concealed

* *Edits, Ordonnances, etc.*, II., p. 358.

† Intendant, etc., of Canada.

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(en cache) or exposed, in the country dependent on the said domain, to whomsoever they may belong, and also to seize and arrest all vessels whatever which are found trading or have traded with the Savages in the extent of the said domain, and the confiscation of the goods is to be made public by a minute of the transaction drawn up by the deputies of the said Carlier and affirmed by them ;

And for the execution of our ordinance, the said Carlier is permitted to cause it to be posted up where it may be, or he may judge it to be, necessary ;

Our ordinance delivered on the said request of March 30, 1731, by which, before giving judgment, and in execution of private orders which we have received from His Majesty on the subject, to fix in an invariable manner the boundaries of the Limits of Tadoussac, in the country reserved for the domain of His Majesty, according to the said arrêt of the King's Council of State of the 16th May, 1677, and the 10 ordinance of M. Begon of the 5th April, 1720 ;

We have ordered that the diligence of Sieur Cugnet should be engaged to make an exact map of the extent of the said domain, on which shall be designated the banks of the river Saint Lawrence from the Isle aux Coudres to the River Moisy and, in the interior of the country, the rivers and lakes which discharge into the Saguenay River, with their magnetic bearings, the extent of the country through which they run, from their source to their embouchure, and the names of the principal posts where trading is or can be carried on with the Savages ;

In consequence of which we have commissioned Sieur Louis Aubert de la Chenaye to reckon up and measure the banks of the River Saint Lawrence, comprised in the extent of the said domain of His Majesty, from the Isle aux Coudres to the River Moisy, as well as the Saguenay River and the rivers 20 and lakes which discharge into it, with their magnetic bearings and the extent of ground through which they run from their source to their embouchure ; to make figured plans, and to draw up an account of the same in the form of a journal, marking the points to which navigation by barques, bateaux or canoes extends ; the falls or rapids where portages have to be made ; the names of the lakes and rivers, and the countries situated upon them ; the establishments and magazines where trade is carried on with the Savages, and the seal and salmon fishing ; together with the ancient establishments where trade was previously carried on, the vestiges of which still remain ; the names of the Savage nations inhabiting the country ; and generally everything which can contribute to determine precisely the extent of the said limits, and make their advantages known, according to the private instruction annexed to our said ordinance ;

30

Another ordinance rendered by us, May 12th, 1732, by which we named and destined Sieur Joseph-Laurent Normandin to execute, conjointly with Sieur de la Ganière, our ordinance of 30th March, 1731, instead of the Sieur Aubert de la Chenaye, who was obliged to return to Quebec, having broken his thigh at the Petit Rivière, at the house of a person named Simard, in the same way it would have been done by the said Sieur de la Chenaye, conformably to our instruction of the said day, March 30, 1731 ; and for this purpose they are to traverse all the rivers and lakes which discharge into the River Saguenay, taking a westerly direction, from the post of Cheecoutiny to the height of land, marking the limits there by placing the lilies of France (*jeur-de-lis*) on the trees, and keep'ng a journal containing all the observations mentioned in our said ordinance and instruction ;

The *procès verbaux* of the said Sieurs de la Chenaye and Normandin, in the form of a journal, the 40 map which we have caused to be drawn up therefrom ;

Reference being had also to our ordinance of the twelfth of the present month, between M. Pierre Carlier, Adjudicator-General of the united farms of France and of the domain of the West, stipulating by the said Sieur Cugnet, Plaintiff, to reply to us on the 26th September, 1732, of one part, and Francis Bissoe, as much in his own name as having had ceded to him the rights of the deceased Sieur de Vallerenne, and Jeanne Bissot his wife, and of the deceased Sieur Charles Bissot, Sieur Joseph Fleury de Logorgendièrè and Claire Jolliet, his wife, daughter of the deceased Louis Jolliet, and Claire Françoise Bissot, as much for themselves as for the co-heirs of the said deceased Sieur and Madame Jolliet, Defendants, and Sieur Jacques Gourdeau, son of the deceased Jacques Gourdeau and Marie Bissot, heir of his said father, acting as much for himself as for the co-heirs of the said deceased Bissot, his mother also 50

Defendant, of the other part, by which we have given effect to the abandonment made by them, in writing of the 12th April last, of the land conceded to the deceased François Bissot, Sieur de la Rivière by the Company of New France, of the 25th February, 1661, from the Isle-aux-Ceufs to the River Moisy; and have in consequence regard to the demand of the said Sieur Cugnet, in said name, conveyed by his written reply of the 31st March last;

We have, as far as necessary, re-united to the domain of His Majesty, the land granted to the said Sieur Bissot, from the said Isle-aux-Ceufs inclusive, to Point des Cormorans, which is five or six leagues below the said River Moisy; doing this,

We have forbidden the said defendants and *intervenants*, as well as all others to carry on, directly or indirectly any trade, hunting, fishing, commerce, or establishments within the extent of this land, either in the River Moisy or other lakes and rivers which form its affluents, or to disturb Monsieur Cugnet in the enjoyment, possession and improvement of the said land and rivers, under the penalties which the law provides:

The arrêt of the Superior Council of Quebec, vesting Sieur Demaure with jurisdiction over the farm of the limits of Tadoussac, containing the limits and privileges of the said trade;

The arrêt of the King's Council of State, of May 16th, 1677;

Ordinance of Monsieur Raudot, of September 26th, 1707, forbidding all persons, even foreign Savages, to trade or hunt within the extent of the Limits of Tadoussac;

Another ordinance of my said Sieur Raudot, of the 7th September, 1709, prohibiting all persons to treat (*faire festin*) the Savages of Tadoussac, or to draw them away in any manner, and permitting the sub-farmers of the limits of Tadoussac to plunder the French whom they shall find trading within the extent of the said limits;

Another ordinance of my said Sieur Raudot, of April 7th, 1710, giving permission to seize merchandise found in the hands of the French who had traded within the extent of the Limits of Tadoussac, even that which may be found concealed in the said limits;

Ordinance of M. Begon, of April 5th, 1720, prohibiting, trading, hunting, and fishing within the extent of the Limits of Tadoussac;

And every thing considered:

We have bounded the extent of the domain of the King called the Limits of Tadoussac, that is to say, on the north bank of the river Saint Lawrence from the bottom of the seignory of Eboulemens, which is opposite the north-east point of the Isle-aux-Coudres, to the Point or Cape of Cormorans, being about ninety-five leagues of front, with the Isle-aux-Ceufs and other isles, islets, and shallows adjacent; on the western side, by a supposed line drawn east and west, to commence from the bottom of the Seignory of Eboulemens to the height of land at the portage of Lake Patitachekao, latitude $47^{\circ} 15'$, on which portage the said Sieur Normandin has planted four fleurs-de-lis on four balsam firs, in which Lake Patitachekao the River Metabetchouanon has its source, and discharges into Lake St. John, whence it falls into the Saguenay; further to the west by Lakes Spamoskoutin, Sagnigan, and Kaouakounabiscat, at the height of lands, in the latitude of $47^{\circ} 27'$, where the said Sieur Normandin has also placed four fleurs-de-lis on four balsam firs; the said Lake Kaouakounabiscat forming other lakes, and the River Quiatechouanon, which discharges into the Saguenay through the said Lake St. John, which two lakes form the boundary of the hunting country in the depths of Batiscan; and running still to the west, beside Three Rivers, and in depth by the height of land, about two leagues from the little lake Patitaouaganiche, latitude $48^{\circ} 18'$, where the said Sieur Normandin has also placed four fleurs-de-lis on four balsam firs, which lake flows through Lake Askatiche where it falls into the River Nekoubau, where flow also the waters of Lake Nekoubau; all of which lakes and rivers pass through Lake St. John into the Saguenay, and form the boundary which separates the lands of the domain from the hunting country of Three Rivers and Rivière-du-Lièvre; the said boundaries above designated, according to the journals of the said Sieur de la Chenaye and Normandin, and the map which we have caused to be made therefrom, the minutes of which will remain deposited in our Secretary's office; in the extent of which boundaries are found the posts of Tadoussac, Malbaie, Bondésir, Papinachois, Islets-de-Jérémie and Pointe-des-Bersiamites, Chekoutimy, Lake St. John, Nekoubau, Chomonthouane,

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Mistassins, and behind the Mistassins as far as the Hudson's Bay; and on the lower part of the river, the domain will be bounded, in consequence of our said ordinance of the twelfth of the present month, by Cape Cormorans as far as the height of land, in which extent will be comprised the River Moisy, the Lake of the Kiehestigaux, the Lake of the Naskapis, and other rivers and lakes which discharge therein.

We ordain that the said M. Pierre Carlier, his successors, farmers of the western domain, their attorneys, deputies and overseers, continue to carry on alone, to the exclusion of all others, the trade, hunting and fishing, in the whole extent of the country, included within the limits above designated.

We forbid all persons of whatever quality and condition, as well merchants as habitants of the colony, captains and masters of fishing-boats, bateaux and vessels, the men employed to manage them and passengers, and all others whomsoever, even foreign Savages who do not reside in the lands of the 10 domain, to trade, hunt, fish, or carry on any commerce under any pretext whatever, directly or indirectly, whether by themselves or by sending in merchandise, victuals, liquors and ammunition, through friendly Savages, in any part of the country designated by our present ordinance, and generally in any rivers or lakes of which the waters flow through the Saguenay River, and the River Moisy, though they may not be specially named in our said ordinance; to treat the Savages who live in the same extent of country, or to draw them away in any manner, or even to approach within ten leagues of the limits above drawn in the lands, for the purpose of trading with the Savages or other establish- 20 ments without the express permission in writing of the said Carlier, the farmers his successors, their attorneys, deputies, and overseers, on the pain of the confiscation of the arms, products of the hunt merchandise for trading, furs and other objects obtained in trade, canoes, large boats, barques, fishing boats, bateaux, and other vessels of whatever kind, and a fine of two thousand livres, which can neither be remitted nor lessened under any pretext, of which confiscation and fine two-thirds are to belong to the said Carlier, and the other third to the informers.

We permit the said Carlier, the farmers his successors, their attorneys, deputies and overseers, to send into the said posts dependent on the domain, to guard its limits, and to prevent trading which might be made to the prejudice of the above prohibition, such persons and by such roads, as they shall judge proper, but they are to be charged not to pass beyond the limits assigned by our present ordinance, without having previously obtained permission from us in writing, on pain of all the costs, damages, and interests payable to those to whom it belongs.

We also permit the said Carlier, his successors, their attorneys, deputies and overseers, to seize 30 and hold all the canoes which shall be found within the extent of the said domain laden with merchandise, provisions, liquors, and ammunition suitable for trade, or furs and negotiable effects, which shall be found hidden or not hidden in the country dependent on the said domain, to whomsoever they may belong; as also to seize and hold all vessels whatever which shall be found trading, or to have traded, with the Savages, within the extent of the said domain, and to proceed before us, with the confiscation of the articles seized, upon the *procès verbaux* of the said attorneys and overseers duly affirmed.

And our present ordinance shall be read, published and posted up wherever need be.

We order, &c.

Done in our house, at Quebec, the 23rd May, 1733.

HOCQUART. 40

DESCRIPTION IN THE COMMISSION OF THE INTENDANT BIGOT, 1748.

The Intendant Bigot's Commission, 1st January, 1748. The Commission of M. BIGOT, January 1st, 1748, makes him Intendant of Justice, Police, Finances, and Marine, in "our country of Canada, Louisiana, and in all the lands and islands dependent on New France."

GRANT OF THE POST À LA CARPE—GOVERNOR LA JONQUIÈRE TO SIEUR
SIMBLIN, 1751.

(Copy obtained from the archives of the Department of the Marine and Colonies, Paris.)

DECREE OF M. DE LA JONQUIÈRE, WHICH PERMITS SR. SIMBLIN, ENSIGN OF THE TROOPS IN CANADA, TO
CONSTRUCT AT HIS OWN EXPENSE AT LAC À LA CARPE, A FORT, A HOUSE AND A STOREHOUSE, WITH
THE POWER TO COMMAND THEM, AND THERE TO CARRY ON EXCLUSIVE COMMERCE DURING THE TERM OF
SIX YEARS.

27th February, 1751.

SEEING THE PETITION which has been presented to us by the Sr. de Simblin, second ensign in the
10 troops of this colony, with the petition [plan] appended to it, after having given attention to the rea-
sons contained in the said petition, and having seen with evidence, by the said plan, that the savage
nations which are in the interior of the northern part of the said lands, and of whom certain are yet to
be known, the French are obliged to supply their need at Hudson's Bay, and there to carry on their
commerce with the English in passing by way of the three arms of the river marked on the said plan
not being in a position to carry on their traffic elsewhere. We, having been assured that they have
never carried it on at Nepigon, nor in any other French post, that it would be very possible to cut all
commerce and connection of the savages with the English in establishing a fort at the lake called Lac
à la Carpe, which has not been up to the present occupied by the French, nor comprised in the limits
of any of our posts, and we not being able ourselves to refuse the invitation which a chief of the said
20 savages has given to us by the Sr. de Simblin, in the name of the said nations, to found the said
establishment;

Persuaded in other respects that the said establishment could not but be, in every way, very
advantageous to the benefit of the King's service, to the interests and to the service of the colony;

Taking into account the excellent evidence which has been given to us of the zeal, the fidelity, the
experience, the credit which the said Sr. de Simblin has acquired amongst these savage nations, and
that he is very capable of forming the said establishment, and the closest alliance between the said
nations and the French;

We, in virtue of the power which has been given to us by the King, have received and receive the
offer which has been made to us by the said Sr. de Simblin, to found the said establishment at his own
30 expense; and in consequence have appointed, and appoint him, under the good pleasure of His Majesty,
to proceed next spring to the said Lac à la Carpe, there to establish a fort, a house, and a storehouse,
the whole to be built of logs; of which we have given to him, and give by these presents, the command
and the exclusive trade from the said Lac à la Carpe, extending from the shore of Hudson's Bay in the
eastern section, and from the west to 30 leagues of distance, for the time and term of six consecutive
years, which shall commence in the spring-time of the next year, 1752, and will finish in the spring-
time of the year 1758;

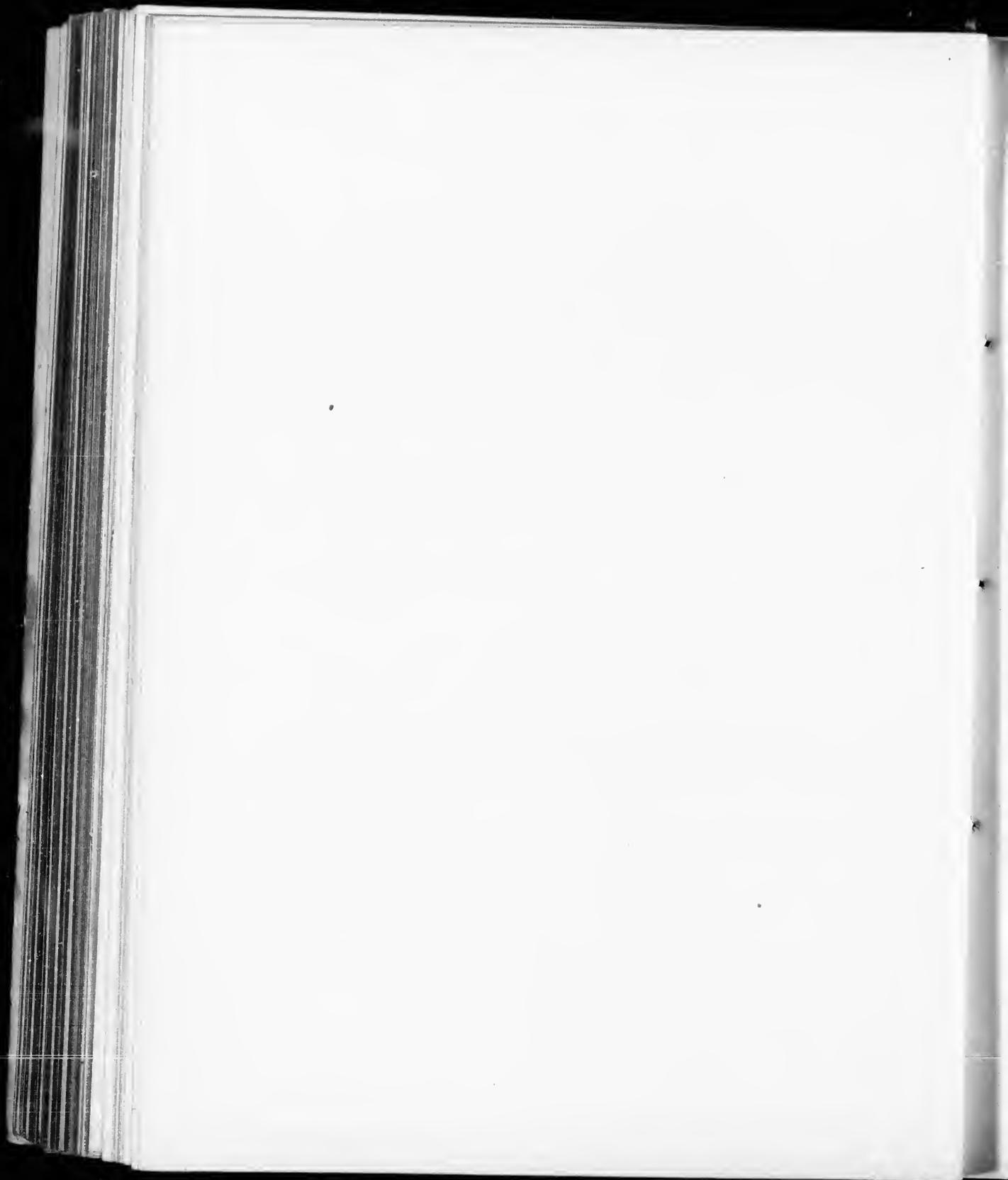
ON CONDITION:

First, that he will bear the expenses of the said establishment at his risk and with his fortune,
without His Majesty being liable on anything, directly or indirectly; that he will not lay claim to any
40 annual indemnification during the said six years, nor to any compensation when the said six years are
finished; that he will not carry on any trade except with the nations which shall go to the said post.

Second, that he shall have caused the said fort, house, and storehouse, to be constructed in the
spring-time of the next year, 1752; that he shall have there during the said year, and until the end of
his command, the merchandise necessary to carry on trade with the savages; and that he shall not
found any establishment, nor winter on the River du Cassetête, having only the liberty to pass by the
Lake of the Nepigon and the said River du Cassetête in order to proceed to his post; and neglecting
one of these conditions these presents will remain void.

And on this condition we shall send forward to him, *gratis*, each year, our permission for the depart-
50 ure of the canoes which shall make the transport of the said merchandise, and it will be free to him
to buy the bark canoes and his provisions at Missilimakinac for these purposes. In testimony
whereof, etc.

Done at Quebec, etc.



XI.
Judicial Proceedings involving the Question of the Boundaries.

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Proceedings
involving
the question
of the
Boundaries.

The De Rein-
hard case,
1818:

THE CASE OF CHARLES DE REINHARD, 1818.*

[Charles De Reinhard was tried in the District of Quebec on the 18th day of May, 1818, before Chief Justice Sewell and Mr. Justice Bowen, under the authority of a Special Commission, issued by Hon. John C. Sherbrooke, Governor of Lower Canada, dated 29th April, 1818, and authorizing such trial under the Act, 43 Geo. III, chap. 138, for murder committed at the Dalles, on the assumption that this place was situate in the Indian Territory, or parts of America not within the limits of Upper or Lower Canada, or of any Civil Government of the United States of America; and the jurisdiction depended on whether the place where the murder was committed was within Upper Canada. The following evidence on this point was given:]—

THE EVIDENCE.

WILLIAM SAX, Sworn—I am a surveyer; I am acquainted, according to the map which I have here, with the limits of Upper Canada, that is to say, of the old Province of Quebec; the western limit, the mouth of the River Ohio, is in longitude 88° 50' west from Greenwich, and latitude 37° 10' north. That appears by a map which I have made and have in my hand, to be the latitude and longitude of the junction of the Ohio River with the Mississippi. The evidence.

Chief Justice Sewell.—When you speak of the junction of the Ohio River with the Mississippi River, do you mean where the Ohio River empties itself into the banks of the Mississippi?

20 Mr. Sax.—That is the understanding, and the statute provides also—

Chief Justice Sewell.—We do not require any information or assistance in the construction of the statute; we require it as to the fact. The construction of the statute, it is our province to decide on.

Attorney-General.—Would a line running north, from the junction of the Ohio and Mississippi Rivers strike, in its passage to the Hudson's Bay territory, the great lakes, and where would it strike Lake Superior? And where would it leave Fort William?

Mr. Sax.—Such a line drawn due north, would strike Lake Superior on its passage, and at or about a degree east of Fort William, or perhaps three-quarters of a degree.

Attorney-General.—That is to say, the west end of Lake Superior?

Mr. Sax.—Yes, nearly so—when I say that such a line would strike east of Fort William, I mean 30 that it would leave Fort William about three-quarters of a degree to the west of it. It is so laid down in all the maps.

Attorney-General.—From your knowledge of maps, will you then explain in French to the jury, this line?

Mr. Sax having done so, continued his evidence. I am acquainted with the River Winnipic by the maps, and it is between the 50th and 51st degree of north latitude. The Portage des Rats is in 49½° by this map, or 49° 45', and longitude 94° 6' west from Greenwich, and the River Winnipic is consequently about 5° west of the line running north from the junction of the Rivers Ohio and Mississippi, and certainly, without the old Province of Quebec.

Chief Justice Sewell.—What are you speaking of now?

40 Mr. Sax.—That a line, supposing it ran due north from the junction of the Ohio and Mississippi Rivers, would leave the River Winnipic five degrees out of the Province of Upper Canada,—not a northward line, but a due north line.

Attorney-General.—Do you mean to say that a northward line is not a north line?

* From the Report in the "Canadian Pamphleteer," vol. 5.

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Mr. Sax.—It is not always; it may be north by east, or north by west, or north-north-west, or many other points of the compass. A due north line is one that goes direct to the north pole without any deviation whatever.

Attorney-General.—And does not a northward line go to the north pole? If you had a northward line to run, would you not run it to the north pole?

Mr. Sax.—Perhaps I might, and perhaps not; I would certainly run it northerly, though I might not run it due north.

Attorney-General.—What is to prevent you taking it due north? If you had a line to run from a given point till it struck a river, and thence to continue along the course of that river northward, would you call that drawing a northern line. 10

Mr. Sax.—Undoubtedly it would be a northern line, but not a due north line.

Attorney-General.—Would it not? Could it be east or west?

Mr. Sax.—It might, according to circumstances, be a north-eastward or north-westwardly line, and yet a northern line, that is a line having a northward course, or drawing nearer to the north pole as it progressed, though not an astronomical north line.

Attorney-General.—Is not a north line a line northward?

Mr. Sax.—Certainly, a line running due north is undoubtedly a northward line.

Attorney-General.—And a line *due* north-westward you would call a north-westward line?

Mr. Sax.—Certainly; a line due north-west is a north-westward line, but a line, for instance, that runs towards the north, notwithstanding it may gain in its course more northing than westing or 20 easting, is not therefore necessarily a due north line, but is a northern or northward line.

Chief Justice Sewell.—I really do not comprehend the distinction; to say that a northward line is not a north line, I confess appears to me to approach the "*reductio ad absurdum.*" Suppose that we had a compass here, and from a given point I draw a line north-westward, that is to say, terminating at a point north-westward, would not that be a due north-west line?

Mr. Sax.—It would, if drawn due north-west, but if in drawing it you gained northerly, it would from the course of its deviation, be a line north-ward, though not a north line.

Chief Justice Sewell.—Then its course northward must unquestionable be north—if a line north-westwardly is a north-west line.

Mr. Vallière de St. Réal.—Your honour will observe that he added, "but if it deviated so as to 30 gain a little north, it would then be a northward line."

Chief Justice Sewell.—If a line is to be drawn from a given point of the compass, say from the west in a northward direction, to say that such a line would not be a due north line, appears to me to be a contradiction to the plainest principle of common sense, and totally irreconcilable. I will put the question to you again, Sir. Do I understand you to say, that a line drawn from a given point northward is not a north line?

Mr. Sax.—Surveyors usually call lines running—

Chief Justice Sewell.—I am not asking you what surveyors usually call—I want to know whether in point of fact, a fact that any man can tell as well as a surveyor, whether a line from the eastern or western point of the compass, drawn northward, is, or is not a north line? Just answer that question, 40 yes or no, and then you may explain that answer in any way you think proper.

Mr. Sax.—It certainly must be, to a certain extent, a north line, but not a due north line.

Chief Justice Sewell.—Why not?

Mr. Sax.—A line drawn from any point, between two cardinal points of the compass, direct to any cardinal point, is a due north or west line, as the case may be; but a line may be so drawn between two points as to be called by surveyors a northward or a southward line, as it may chance to gain, in the course of running it, upon that point of the compass to which it is approaching; as I might draw a

line from a point north-westwardly, but gaining in a northerly direction in its course, so that at its termination it would be a line northward, from having more northing there than at the point from which it started.

Chief Justice Sewell.—Would not a line drawn from a westerly point, one half north and one half east, be a due north-east line, or must not lines drawn from any point in one half the compass between east and west be north, and, in the other half, a south line?

Mr. Sax.—Certainly, while progressing north or south, but they might be gaining east or west.

Chief Justice Sewell.—Is it then equally true, that lines running east from points between north and south are due east lines?

10 *Mr. Sax.*—Yes, if progressing east.

Attorney-General.—Then they cannot be northward any more than north.

Mr. Sax.—An identical line from any point running a direct course east is undoubtedly an eastern line, but if inclining in its course half north and half east it is a north-east line.

Chief Justice Sewell.—Am I to understand you that one and the same line can be a northern and eastern line?

Mr. Sax.—The same line may be a north-east line.

Chief Justice Sewell.—Let me be clearly understood by you, because at present I do not at all comprehend what you mean. Taking as a point of departure a centre, and travelling on the radius of a circle, would not the line, according to what you say, be at one and the same time a due north-east and 20 a due north-west line—which appears to be completely a "*reductio ad absurdum*," though you certainly have said so.

Attorney-General.—If your Honour will permit me, I will ask him a question.—If you were directed simply to draw a boundary line northward, would you qualify it in any way by drawing it to the east or west, or would you go as nearly in a direct north course as possible?

Which question being repeated in French—

Mr. Sax.—If I were directed to draw a northward line, without any other instruction, I should draw it as due north as I could. It would also depend upon whether I was desired to draw it astronomically or magnetically, for the variations between an astronomical and a magnetic line extend in some places from twenty to thirty degrees, and in some places they agree. The astronomical line is the 30 true parallel.

Attorney-General.—But whether you run the line astronomically or magnetically, still in running an unqualified northward line, you would get as much to the north as you could?

Mr. Sax.—Yes; if I had to draw a line northward, without other instruction, I should draw it due north, either astronomically or magnetically; magnetically if there was any variation, and astronomically if there was none.

Attorney-General.—Will the Court have the goodness to take that down? How, Sir, would a line drawn due west from the Portage des Rats strike the River Mississippi?

Mr. Sax.—A line drawn due west from the Portage Des Rats would never strike it at all.

Chief Justice Sewell.—What line are you speaking of now—the American line?

40 *Attorney-General.*—Yes; your Honour. Well, but if a line was drawn from Portage des Rats, any way, to the Mississippi, would it in its passage strike the lake or River Winnipie, or how would it leave them?

Mr. Sax.—A line drawn from Portage des Rats to the River Mississippi would leave the whole of the River Winnipie to the north-west of such a line.

Chief Justice Sewell.—But Portage des Rats is not the point of departure; it is "the most north-western point of the Lake of the Woods" which we want.

Attorney-General.—The most north-western corner of the Lake of the Woods is Portage des Rats. Do not the English and American maps agree in that particular?

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Mr. Sax.—Yes; they both make that the most north-western point of the Lake of the Woods; and a line drawn from there to the Mississippi would leave both the lake and River Winnipic entirely to the north-west of it.

Attorney-General.—*ADD* If a line were drawn due west, as the Americans contend it ought to be, would the effect be the same?

Mr. Sax.—Yes, a line drawn due west would leave the whole of the River Winnipic to the north-west.

[Mellish's Map of the United States produced by the Attorney-General.]

Attorney-General.—Are you acquainted with the map which Mr. Mellish has published, under the auspices of the Government of the United States? Look at it, if you please, and tell the Court and the gentlemen of the jury how it lays down the Portage des Rats or the River Winnipic.

Mr. Sax.—The map leaves it wholly to the north-west, excepting perhaps a particular elbow, where the River runs into the Lake of the Woods.

Attorney-General.—It must be so entirely, for if not, you do not draw your line correctly after the statute; it must be from the dead water of the lake you start, or you take your departure from a river.

Mr. Sax.—It may be and actually is the proper point of departure, at the very point where the two join. And that is in conformity with the best charts or maps, both English and American.

Attorney-General.—Will your Honour please to take that down?

Cross-examined by Mr. Vallière de St. Réal.

20

Mr. Sax.—I have seen many charts and maps, and it is from them I derive my knowledge of the latitudes and longitudes of which I spoke. The maps of Jefferys and Bouchette, I believe, agree, and in these maps the western limit of the old Province of Quebec runs from the junction of the Ohio and the Mississippi, following the Mississippi until its source, which is called Turtle Lake, in latitude 47° 38' north, and longitude 94°, or more correctly, 95° west.

Mr. Vallière de St. Réal.—Of Greenwich?

Mr. Sax.—Yes, west from Greenwich.

Mr. Justice Bowen.—What did you say was the latitude?

Mr. Sax.—47° 38' north.

Chief Justice Sewell.—Do I understand you right, Sir, when I take you to say that the head of the Mississippi in Turtle Lake has about 47° 38' northern latitude, and about 95° western longitude, calculating it from the meridian of Greenwich?

Mr. Sax.—Yes, that is about the latitude and longitude.

Mr. Justice Bowen.—From whence does the line go?

Mr. Vallière de St. Réal.—Northward or due north, is it?

Attorney-General.—I beg my learned friend will permit the Court to put their own questions as they think proper.

Chief Justice Sewell.—You are certainly right. The Court can have no desire but that which is common to all parties—that of obtaining truly and correctly the facts of the case, and if, Mr. Vallière, the Court does not obtain thereby the information you think important to obtain, you can extract it yourself. Our question does not deprive you of your right of cross-examination. How does the line run?

Mr. Sax.—From the source of the River Mississippi it runs by a line due north to Hudson's Bay. It is thus drawn in Bouchette's map—30 miles in Jeffery's map at Turtle Lake—and consequently it will leave the source (beginning) of the Lake of the Woods to the east of such a line, and the Dalles is also to the east.

Mr. Vallière de St. Réal.—You only know that from maps, I believe; you were never there, I imagine?

Mr. Sax.—I was never there; it is only from maps that I speak.

Mr. Vallière de St. Réal.—I have done with Mr. Sax.

Attorney-General.—Respecting these maps—what nation does Jefferys belong to?

Mr. Sax.—Jefferys is an English author or geographer.

Mr. Vallière de St. Réal.—I wish that to be taken down.

Attorney-General.—Where was his map published?

Mr. Sax.—I do not know; it does not mention on the map.

MR. JOSEPH BOUCHETTE, JUN., Sworn.

Attorney-General.—You, Sir, are, I believe, Deputy Surveyor-General of this Province, and can you give us the western line of Upper Canada?

Mr. Bouchette.—I am Deputy Surveyor-General of this Province. The western limit of Upper Canada is a line running due north from the junction of the Rivers Ohio and Mississippi to the southern limits of the Bay of Fundy.

Attorney-General.—Not Fundy, I believe?

Mr. Bouchette.—No, Hudson's Bay; and the latitude of the junction of those rivers is 37° 10' north, and the longitude is 88° 58' west from the meridian of Greenwich; and this line will leave the whole of the River Winnipic to the west. The Portage des Rats is in latitude 49° 51' north, and longitude 94° 10' west from Greenwich.

Attorney-General.—Do you know the Dalles?

Mr. Bouchette.—I have discovered it laid down in Arrowsmith's chart, as being about twelve miles above, that is further north than Portage des Rats. The place called the Dalles is twelve miles to the north of Portage des Rats, according to Arrowsmith. The most north-western point of the Lake of the Woods is in latitude 49° 28' north, and longitude 94° 25' west from Greenwich.

Attorney-General.—How would a line drawn from there to the Mississippi leave the Winnipic, as relates to the United States of America?

Mr. Bouchette.—It would leave the whole of the River Winnipic to the north, and consequently out of the limits of the United States of America; it would leave the head of the Mississippi to the south.

Attorney-General.—Yes, but I want the Winnipic only; and also tell us what would be the effect of a line drawn due west from the most north-western point of the Lake of the Woods?

Mr. Bouchette.—A line running from the most north-western point of the Lake of the Woods to any part of the River Mississippi will leave the whole of the River Winnipic to the north, and the same thing will happen if a line be drawn due west; and consequently that river is without the boundaries of the United States of America.

Attorney-General.—Now, Sir, you say you know the Dalles?

Mr. Bouchette.—According to Mr. Arrowsmith's map, they are four leagues to the north of Portage des Rats, and consequently not within the United States.

Chief Justice Sewell.—The Dalles, are they on the Winnipic?

Mr. Bouchette.—Yes; to the north of the Lake of the Woods, and also of Portage des Rats.

Cross-examined by Mr. Stuart.

Mr. Stuart.—What age are you, Sir?

Mr. Bouchette.—I am nineteen years old.

Mr. Stuart.—I observe you have a map before you; what map is it?

Mr. Bouchette.—It is the map lately published by my father, the Surveyor-General.

Mr. Stuart.—I believe you never were at any of these places beyond Upper Canada, or at the mouth of the Ohio, or ever out of Lower Canada; never I believe in the United States?

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Mr. Bouchette.—I never was at the mouth of the River Ohio, nor at the Lake of the Woods, nor at the River Winnipic; I have been out of Lower Canada, and in the United States, but not in that part. My sole knowledge of the latitudes and longitudes is derived from my father's map now before me, and Mr. Arrowsmith's, published in 1795.

Mr. Stuart.—You have spoken of a line as being the boundary of Upper Canada. Does it appear upon your father's map?

Mr. Bouchette.—The green line upon the manuscript map before me prolonged from longitude 88° 58' west and running due north, was copied from a map by Emanuel Bowen, in 1775, at London. It runs due north from the confluence of the rivers. In other maps the western limit of Upper Canada is drawn as running from the mouth of the River Ohio in the Mississippi until its source in Turtle Lake. 10

Mr. Stuart.—Here is a purple line, what does that show?

Mr. Bouchette.—That is principally for a heading to the map; it is, however, copied from some map, but I do not recollect of what geography.

Mr. Stuart.—I observe another line, but I hardly know what colour to call it (though blue I believe) as marking some boundary.

Mr. Bouchette.—It is a line denoting the boundary fixed by the Treaty of Utrecht, and is taken also from Emanuel Bowen, and there is also a line in the map taken from Bennett's, being the boundary of the Hudson's Bay territory.

Mr. Stuart.—I imagine, Sir, you know nothing of the correctness of any line under the Treaty of Utrecht. 20

Mr. Bouchette.—No, I have read the treaty, that is all.

Mr. Stuart.—The same I presume, with respect to the Hudson's Bay territory?

Mr. Bouchette.—Yes, certainly; I never was there.

Attorney-General.—I really do not see what we have to do with the Hudson's Bay territory or Mr. Bouchette's knowledge of it.

Mr. Stuart.—It may probably appear very immaterial to my learned friend, the Attorney-General, but it is very material to us.

[The map was here handed to the Court].

Mr. Justice Bowen.—From what geographer is the south boundary of the Hudson's Bay taken?

Mr. Bouchette.—From Emanuel Bowen. 30

Chief Justice Sewell.—I thought, and you certainly did say just now, that that line was copied from Bennett.

Mr. Bouchette.—No, Sir, the line from Bennett is the line running from St. Croix River to the highlands, and thence along them.

Chief Justice Sewell.—Here is a line on 49° latitude.

Mr. Bouchette.—That is from Emanuel Bowen also, and drawn by the Commissioners, under the Treaty of Utrecht, and the line coloured violet, is the southern limit of the territory of Hudson's Bay, according to Emanuel Bowen's map.

WM. BACHELOR COLTMAN, ESQ., SWORN.

Attorney-General.—Are you, Sir, a magistrate for the Indian territories, as well as for this District? 40

Mr. Coltman.—I am a magistrate for this District, and a Commissioner in the Indian territory.

Mr. Justice Bowen.—Let the examination be in French, if you please.*

Attorney-General.—Have you been in the Indian territory, and when?

Mr. Coltman.—I have been in the Indian territories; I was there last year.

Attorney-General.—What do you consider the most north-west point of the Lake of the Woods?

Mr. Coltman.—My mind being occupied by the business of my mission, I did not make any particular local observations, but I always understood, and I myself consider, the Portage des Rats to be the

* This was done, but it has been thought sufficient to print here the English translation.

most north-western part of the Lake of the Woods, and that also according to what I observed; but I had no opportunity of making exact observations on the spot.

Attorney-General.—You have, no doubt, a knowledge of the River Winnipic. Does it run out of the Lake of the Woods, or into it?

Mr. Coltman.—It is true that the River Winnipic runs out of the Lake of the Woods, and into Lake Winnipic.

Attorney-General.—What is the distance between them?

Mr. Coltman.—I cannot say exactly.

Attorney-General.—Not exactly; but how many leagues do you think; twenty or thirty?

10 *Mr. Coltman.*—I think about one hundred leagues; probably from eighty to a hundred leagues.

Attorney-General.—What is the general course of the River Winnipic?

Mr. Coltman.—The general course of the River Winnipic is north-west, or about that course; but it is necessary that I should repeat, that I had no time to make particular observations.

Attorney-General.—Is any part south of a line drawn due west from the north-west angle of the Lake of the Woods?

Mr. Coltman.—I think assuredly not. I do not believe that any part of the River Winnipic would be to the south of a line running west from the most north-western point of the Lake of the Woods, or at most a very small portion. The evidence, 1818;

Attorney-General.—It is hardly necessary to ask you if a line drawn from that point to the Mississippi would leave any part of the Winnipic to the south?

Mr. Coltman.—Without doubt it would not. It is more to the south, and a line running from the Lake of the Woods to the Mississippi will leave the whole of the River Winnipic to the north-west of such a line.

Chief Justice Sewell.—Such a line must necessarily run due south.

Attorney-General.—Do you know a place called the Dalles?

Mr. Coltman.—I do know a place called the Dalles: I passed it twice.

Chief Justice Sewell.—Are the Dalles upon the River Winnipic?

Mr. Coltman.—The spot called the Dalles is part of that river.

Attorney-General.—At what distance are the Dalles from the Portage des Rats?

30 *Mr. Coltman.*—I cannot say with accuracy, being always accustomed to read whilst travelling in a canoe in the Indian countries; but the places are not very near to each other; they are, I should think, at the distance of two or three hours' march.

Attorney-General.—At what rate, Sir, do you generally travel in the canoes?

Mr. Coltman.—We go just according to the currents we meet with. Our progress is entirely regulated by them, but perhaps generally a league and a half or two leagues per hour.

Chief Justice Sewell.—Then it is perhaps about fourteen miles?

Mr. Coltman.—I should think it more; I should imagine it to be about five or six leagues from Portage des Rats.

40 *Mr. Justice Bowen.*—To the north, Sir, of Portage des Rats and Lac des Bois?

Mr. Coltman.—It is by a line running to the north with a little westing, and they are distant from five to six leagues, I believe, from Portage des Rats and the Lake of the Woods.

Attorney-General.—Are you, Sir, acquainted with the place where Owen Keveny was killed, or said to be killed?

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Mr. Stuart.—I object to that question being put, for, if answered, it could not be made evidence. The place must have a name, and must be identified before any question can be put relative to anything whatever that may be supposed to have occurred there.

Chief Justice Sewell.—It can be a matter of no consequence to put the question; we know enough of this case to know that if the murder was committed at all, it was committed at the Dalles, or very near to them; but you must first establish the fact.

Attorney-General.—For the present I have done with Mr. Coltman, reserving to myself the right hereafter, should it be necessary, to examine Mr. Coltman again.

Chief Justice Sewell.—Certainly, Mr. Attorney-General.

Cross-examined by Mr. Stuart.

10

Mr. Stuart.—You speak, I think you have said, Mr. Coltman, about the boundaries, and other places you have mentioned in your examination in chief, only from belief?

Mr. Coltman.—I speak about the lines and other places, only from belief.

Chief Justice Sewell.—But from having been there also?

Mr. Stuart.—Yes, your Honour, but Mr. Coltman adds to his having been there, from belief only. Will you give your former answer to the jury, in French, Sir?

The evidence. Mr. Coltman.—I speak only according to my belief, being generally engaged in reading whilst travelling in those parts, and I had not an opportunity of making particular observations in the localities of the River Winnipic.

Mr. Stuart.—Am I to understand you as speaking in the same way, when you say that the 20 Portage des Rats is the most north-western point of the Lake of the Woods?

Mr. Coltman.—Yes. I speak according to the same belief, a belief likewise founded upon this circumstance. I was told that it was the most north-western point, and when I passed it I saw nothing that could make me call this in doubt. I was informed that that was the point whence the boundary line ran between the United States of America and the English, agreeably to the treaty of 1783.

Mr. Stuart.—Can you say, Sir, when it was you were told this, or at what time, whether before or after passing it?

Mr. Coltman.—I cannot say, but it was on the passage, or during the time I was in the upper country, that I was informed it was the most north-western point of the Lake of the Woods.

Mr. Stuart.—You made no astronomical observations, or any other, so as accurately to ascertain 30 the latitudes and longitudes?

Mr. Coltman.—None whatever; my only observations were those of the eye, in passing accidental remarks.

Chief Justice Sewell.—Then I will add, Sir, "according to my observations, or remarks made in passing."

Mr. Stuart.—Your Honour will remark that my question was not only whether Mr. Coltman made any astronomical observations on the places, but also whether they came under his eye in such a manner as accurately to observe these two places, and Mr. Coltman's answer is in the negative—they did not.

Chief Justice Sewell.—You spoke of Portage des Rats.

Mr. Stuart.—I spoke, or intended to speak, of both places, your Honour, and Mr. Coltman's answer 40 referred to both. Is not Fort William, Sir, reputed generally to be in the Province of Upper Canada?

Mr. Coltman.—Yes; Fort William is usually considered to be in the Province of Upper Canada, and I understand it to be so.

Solicitor-General.—I submit to your Honour, that there is nothing in this case to which this can apply.

Mr. Stuart.—We are not called upon at present to show its application; it is a fact, and therefore evidence.

Solicitor-General.—But I contend that my learned friend, Mr. Stuart, ought to show how he intends to apply evidence, which *prima facie* has no bearing on the case, before he is entitled to proceed in such a course of examination; I therefore thought it right to check it in the commencement.

Chief Justice Sewell.—All that Mr. Stuart has obtained, is the naked fact that Fort William is, according to general repute, in Upper Canada. Whether any or what use he may propose to make of it, we cannot say; as a fact it is evidence.

Mr. Stuart.—Do not write issue in the Western District of Upper Canada on that presumption?

Mr. Colman.—The Chief Justice of Upper Canada told me—

Solicitor-General.—You must not tell us that, Mr. Coltman.

10 *Mr. Stuart.*—I will ask you, Sir, is it not a matter of *public notoriety*, that the processes of the magistrates of the Western District, are issued for offences at Fort William, and executed there?

Mr. Coltman.—Yes, it is a matter of notoriety that writs are issued by the magistrates of the Western District of Upper Canada, to be executed at Fort William.

Mr. Stuart.—You have traversed a good deal, Sir, in that country; did you observe any vestiges of French Forts above Fort William in your way to Red River?

Mr. Coltman.—I do not recollect that I did; I do not think I did.

Chief Justice Sewell.—Is it worth while to take that?

Mr. Stuart.—No, it is not necessary. I have done with Mr. Coltman at present; we propose to examine him on the defence.

20 SAMUEL GALE, ESQ., SWORN.

Attorney-General.—You have been in the Indian territory, I believe, Sir?

Mr. Gale.—I was in the Indian territory last summer.

Attorney-General.—Did you go down the River Winnipeg?

Mr. Gale.—Yes, I went down the River Winnipeg, from the Lake of the Woods, to within Lake Winnipeg.

Attorney-General.—Do you know the Portage des Rats?

Mr. Gale.—I do know Portage des Rats.

Attorney-General.—What course has the River Winnipeg from Portage des Rats to Lake Winnipeg?

30 *Mr. Gale.*—Its course from Portage des Rats to Lake Winnipeg is the same as before, north of north-west.

Chief Justice Sewell.—North, tending a little west.

Mr. Gale.—Yes; nevertheless, less to the west than to the north.

Attorney-General.—Then the whole is north; is it not?

Mr. Gale.—I should not like to speak positively, but I believe that a line drawn from the source (beginning) of the River Winnipeg to Lake Winnipeg, would be to the north of north-west, but, as a lawyer, I would not say that such a line was a north line.

Chief Justice Sewell.—From what we have heard this morning, I should think it would puzzle a dozen lawyers to describe a line.

40 *Attorney-General.*—Are you, Sir, acquainted with the Hudson's Bay territory, and its line of separation from the Province of Upper Canada, by maps or any other way?

Mr. Gale.—I have never seen a map in which they were correctly delineated, according to my idea.

Attorney-General.—By the Treaty of Utrecht, was not the boundary established?

Mr. Gale.—I know that by the Treaty of Utrecht no line was given, nor any boundary fixed as to the Hudson's Bay territory south, or on the side of Upper Canada. I have examined that treaty for the purpose of ascertaining. I do not know that any line has been drawn between the territories of Hudson's Bay and Canada in pursuance of the Treaty of Utrecht, and that treaty did not describe a boundary line.

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Mr. Stuart.—Do you mean, Sir, to say positively that no part of the River Winnipic is in a more southern latitude than Portage des Rats ?

Mr. Gale.—I, perhaps, do not know precisely where it commences. I considered that I entered it at Portage des Rats, and I do not think that any part is more south ; but it may perhaps begin a mile or two before.

Mr. Stuart.—Will you undertake to say positively, one way or the other ?

Mr. Gale.—I should not like to be positive, but I will mention why I think I am correct as to its course. [Intimated to speak French.] I had a small compass before me, and I observed that the general course of the River Winnipic is, as I have said, for a short distance, more north than afterwards, 10

Chief Justice Sewell.—For what distance, Sir, does its progress preserve the more northerly course ?

Mr. Gale.—Perhaps about ten or twelve leagues from the Portage des Rats. The whole course of the river is certainly not due north, but if a line was drawn from its commencement at the one lake to its discharging itself into the other, the course of the river would certainly be more north than any other

THE ARGUMENT.

[The following was the argument on the point on a subsequent day :]—

Mr. Stuart.—In excepting to the jurisdiction of the Court, I beg leave to remark, that the exception is made as an exception by the counsel of the prisoner only. Our opposition does not arise from any apprehension as to the verdict of the jury ultimately being that De Reinhard is innocent ; but we are counsel for the prisoner, and your Honours know that even of technical objections, where the life 20 of a defendant is at stake, it is the duty of his counsel to avail themselves ; and, although they entertain no doubt of the acquittal of the prisoner, in the duty which, as his legal advisers, we have to perform, and a trying and distressing duty it is, we feel ourselves compelled to neglect nothing that, by possibility can lead to his acquittal ; we therefore except to the jurisdiction of the Court ; and as I shall have the honour of being followed by a learned friend with me, who has bestowed considerable time and attention to the subject, I shall trouble the Court very shortly in opening, as I shall have an opportunity of again addressing the Court in reply to the Crown officers. The first objection I shall have the honour to submit is, that the offence charged in the indictment, if committed at all, was not committed in the Indian territory as alleged, but in His Majesty's Province of Upper Canada.

Chief Justice Sewell.—Will you stay one moment. If I understand you correctly, it is a geograph- 30 ical objection you make. You argue that the spot, "en haut des Dalles," is not in the Indian territory, but in the Province of Upper Canada ?

Mr. Stuart.—That is my proposition, and in support of it, I proceed to remark that the first enactment relative to the management of this portion of His Majesty's Dominions took place in 1763. It is known to all of us, that the conquest of this portion of North America by the British arms took place in 1759 and 1760, but from that period to 1763, nothing was done to provide a government for, or to regulate, this conquered country. In that year (1763) a Province called Quebec was created by Proclamation. The affairs of this territory, notwithstanding the Proclamation of 1763, remained in a very unsettled state till the year 1783, when the whole of the country called Canada was ceded to the English, who have retained possession ever since. According to the most respectable historians, we 40 contend that the portion of country thus ceded was exceedingly extensive, going, agreeably to some writers, as far as the River Ohio. The pretensions of the French, as we gather from history, carried them into countries distant, remote, and, in fact, unconnected altogether with the Province created in 1763. The people of Montreal and Quebec, we shall show, had long traded in those wilds which are now so fancifully called the Hudson's Bay Territory, and from which, after an uninterrupted enjoyment of traffic for ages by the French traders, it is now sought to exclude enterprise and competition. It must be apparent to every one, that after the conquest, this immense tract of country required a government adapted to the change which had taken place in its circumstances by becoming a Province of another nation. Its remote situation from the parent state, rendered it impossible, as well as unad-

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visible, to legislate hastily for its necessities, but the Parliament proceeded to provide what it stood most in need of. Accordingly, by the 14th of the King, the Province of Quebec was enlarged. And here let me remark that a great deal of the misapprehension which exists on the subject, arises from confounding the Province of Quebec as thus erected and enlarged, with what, under the French régime, was denominated Canada. This Act merely provided a government for a portion of the conquered country, as will immediately appear on referring to history. Adverting to the 14th of the King, the Act of 1774, it will be seen that the country, erected and enlarged thereby into the Province of Quebec, was not commensurate to the country known by the name of Canada as a French colony, and recognized as such by the French and British governments. The object of this legislative provision was to provide a government for that portion of His Majesty's Province whose necessities required it. It was to establish a temporary government for a portion of an immense continent larger than England herself that this Act of the British Parliament provided. As settlers pushed themselves into the settlements of Upper Canada, as civilization extended its stride, it became necessary to adopt a government for the whole, and the interval from 1774 to 1791 afforded time to maturely form a suitable government for the immense territory known as Old Canada.

Chief Justice Sewell.—You are making a small mistake; it was not to provide a government for Old Canada that the Act of 1791 provided, but for the new Province of Quebec.

Mr. Stuart.—I know the Act of 1791 mentions the Province of Quebec, and it speaks also of Canada. The Proclamation issued in consequence of this Act, I contend, must be construed liberally. It must be looked at, not as a deed of property, in which only a minute survey can be taken; we must not look at it like lawyers, in our study; we must not contemplate it as the act of an attorney surrounded by his musty papers and parchments; but we must view it as the Act of great and enlightened statesmen legislating for the population of an immense and distant territory, with whose wants they were acquainted, and whose affections they were desirous of securing by liberal and magnanimous policy. But even looking into this Proclamation strictly and minutely, we shall find this country, where it is alleged the offence was committed, to be strictly and minutely the Province of Upper Canada, agreeably to the Act of 1791, upon which the Proclamation was grounded. This Act, in providing for the more suitable government of the Province, created by the former one of 1774, divided it into two parts, and we think, even in a strict construction of the provisions of that statute, and the Proclamation issued in consequence of it, that, if this offence had been committed at all, it had been committed in the Province of Upper Canada, and consequently beyond the jurisdiction of this Court. But let us look into this Act and Proclamation with a broad, liberal and enlarged disposition, and we must arrive at the same conclusion, that, agreeably to this Act, this country must form a part of the Province of Upper Canada. I am well aware that in the preamble to this Act, the Province of Quebec is adverted to, but the preambles of Acts of Parliament are never looked at as explaining the design of the Legislature, except doubt arises in the construction of the enacting clauses. It is almost superfluous to remark that, for ascertaining the spirit of an Act of Parliament, we must refer to its enacting clauses; if they are clear, there is no necessity for reference to the preamble, which is but an introduction—a sort of preface, setting forth the necessity for legislative provision on the subject of the Act, but not making the provision. On the other hand, I freely admit, if the words of the Act are uncertain, if different constructions may be put on the enacting sections, then we ought to go back to the preamble for the intention of the Legislature; but that should never be done except doubt and uncertainty prevail in the body of the Act. Adopting this sound principle, let us take up the Act we are at this moment considering, and we shall find it so clear that misunderstanding cannot exist for a moment. In the Proclamation issued in consequence of the 31st of the King, cap. 31, we find the boundaries of His Majesty's Province of Upper Canada thus set forth: After a short introduction, stating that His Majesty had thought fit, by and with the advice of His Privy Council, by an Order of Council, to divide his Province of Quebec into two distinct provinces, to be called the Province of Upper Canada, and the Province of Lower Canada, by separating the said line of Provinces according to the following line of division, viz.: "To commence at a stone boundary on the north bank of Lake St. Francis, at the cove west of Point au Bodet, in the limit between the Township of Lancaster and the seigneurie of New

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Longueuil, running along the said limit in the direction of north, thirty-four degrees West, to the westernmost angle of the said seigneurie of New Longueuil, thence along the north-western boundary of the seigneurie of Vaudreuil, running north, twenty-five degrees East, until it strikes the Ottawa river, to ascend the said river into the Lake Temisaming, and from the head of the said lake, by a line drawn due north, until it strikes the boundary line of Hudson's Bay, including all the territory to the westward and southward of the said line to the utmost extent of the country commonly called or known by the name of Canada."

Now, what was the utmost extent of the country commonly called or known by the name of Canada, we all know. It is that territory conquered by British arms in 1759, and ceded finally in 1763 to the British Crown; it was Canada, recognized as such in treaties of peace, and other most important documents entered into between France and England. This is Canada; the whole of which, after the act of the thirty-first of the King, by the advice of his Privy Council, His Majesty declared it his royal will and pleasure, should form the Province of Upper Canada, with the exception of the comparatively small part situated to the north and east of those boundaries, which constitutes the Province of Lower Canada. The Province of Quebec was quite another thing, and could not have been meant as designating the boundaries of Upper Canada. If that had been intended to form its limits, that is, the limits of the new province, the course was simple and easy: it was to have said, the utmost extent of country commonly known as His Majesty's Province of Quebec; but that is not the case; the boon was not so circumscribed. Let us now, for a moment, examine the fact strictly and minutely, according to rigorous municipal principles, and we shall, I think, arrive at a similar result. His Majesty's Province of Quebec was always defined, whereas Canada was more undefined. Had the Province of Quebec been intended as exhibiting the proposed boundaries of the about-to-be-created province, a word could have sufficed to express His Majesty's pleasure. It would merely have been necessary to have referred to the royal Proclamation of 1763, founded on the Treaty of Paris, in conjunction with the Act of 1774, and we should immediately have known the extent of Upper Canada; but it is manifest that such was not the intention, but that instead of the then Province of Quebec, as established by the Act of 1774, it was intended, as clearly expressed in the Proclamation issued in consequence of the 31st of the King—the Act by which it was constituted a Province—that Upper Canada was to include "all the territory to the westward and southward of the said line" (the line of its boundaries), "to the utmost extent of the country commonly called or known by the name of Canada." I am fully aware that I may be told that in the preamble of this Act and of the Proclamation, the term "His Majesty's Province of Quebec" is made use of. It is almost unnecessary for me again to remark that the preambles of Acts of Parliament are, in general, loosely and vaguely drawn up, and ought to form no criterion by which to estimate the objects contemplated by the Acts themselves. That this is the case is known to every lawyer and every legislature. It is to the enacting clauses of any statute that we must refer to ascertain with accuracy the provisions of the Act. Adopting this certain rule for our guide here, we have a clear manifestation of the intention of Parliament in the Act of 1791; it was to create two Provinces of Canada, and, in defining the limits of the Upper, it declares that it shall, in a certain direction, include "the utmost extent of the country commonly called"—what?—the Province of Quebec? no; it shall include "the utmost extent of country commonly called and known by the name of Canada;" the utmost extent of that country which, as I have before remarked, was the conquest, of British valour in 1759, by force of arms, and which finally ceded to Britain by the Treaty of Paris, of 1763; of that immense territory which has never, by any treaty, been surrendered, which as it is, and has, from the time of its discovery, as well as its cession, been known as Canada, must be the territory which was intended by this municipal enactment to form the Province of Upper Canada. That being the case (and I think it is the only construction, even in a minute point of view, that can with propriety be given to the statute), we find that the Dalles was strictly within the Province of Upper Canada, consequently out of the jurisdiction of this Court, and the offence charged, if committed at all, is not cognizable under the Act upon which the indictment is founded.

I come now to the more broad and liberal interpretation of the Act, and I shall, as I apprehend, have no difficulty in showing that we can not arrive at any other conclusion. The 14th of the King was evidently intended to provide a temporary government for that part of the newly-acquired ter-

territory, which stood most in need of it. It was passed at a season of great difficulty, when anxiety and alarm pervaded all classes of society in England relative to the issue of the disputes between the parent state and those of the colonies which she has since acknowledged as the United States of America; at a period when the intercourse between the Province and the mother country was so limited that it could hardly be said to belong to it. Such was the moment in which the Act erecting the Province of Quebec was passed—an Act whose temporary nature may be clearly deduced upon a single reference thereto. This Province was to subsist only, by the Act of 1774, till the King should see fit to alter its limits. In 1791, the situation of affairs relative to this portion of the British possessions was widely different, and the British Parliament proceeded to form a people whose loyalty during a contest which had severed such numerous colonies from the dominion of Britain, had well entitled them to be distinguished, and distinguishing privileges secured to them, by the munificent Act of 1791. Refer to the Acts of 1774 and 1791, and surveying the difference, is it possible for a moment to imagine that the government of 1791 intended only to legislate for a part of Canada? Is it, I would ask, reasonable to consider that the Minister of a great nation such as England,—contemplating an extensive and valuable, though distant territory, belonging alike by conquest and affection to the mother country, and entitled to protection in time of war from its superior strength, in time of peace from its extensive and unequalled trade, entitled to receive and have secured to it the due administration of justice and the unrestricted enjoyment of religious freedom,—is it, I ask, reasonable to suppose that from 1763 to 1791, the great men who presided over the councils of Britain, intended at that period to propose a government for a part of Canada? To suppose so is to suppose they were sleeping at their post. Can it, I ask, be imagined that a Minister could be found so regardless of his duty, so ignorant of the necessities, so insensible to the loyalty, of this country, or so negligent to the interests of his master as, in 1791, to propose a government to a part of Canada? We cannot suppose it; they have not so neglected us. They have given us a government, and a constitution, superior to any on earth, excepting their own, after which it was modelled; a government suited to our necessities and gained by our unshaken and persevering loyalty, when revolution tore our sister provinces from their allegiance, and strove to associate us in the revolt. I ask, then, is it for a moment to be believed, that such magnanimity would be tarnished by these advantages being confirmed to only a part of a people of the same blood, equally brave, loyal, and grateful, and equally standing in need of, and equally entitled to all, these privileges? If any should be found disposed to support by argument a contrary opinion, they ought to be confound, before they make so heavy a charge as is involved therein, that they can substantiate it beyond the power of contradiction. But there is no occasion to apprehend such an argument, for the Proclamation is clear as the noon-day sun upon the subject. It tells us that the Act of 1791 has provided a liberal and equitable, and a permanent Government for the brave, the loyal, and grateful population of an extensive tract of country, within certain latitudes and longitudes, “including all the territory to the westward and southward of a line drawn due north from the head of the Lake Temiscaming until it strikes the boundary of Hudson’s Bay, to the utmost extent of the country commonly called or known by the name of Canada.” What that country consisted in I have had the honour of submitting to the Court, in the early part of the argument I have had the honour of addressing to the Court. In conclusion, I contend on this part or view of the subject, namely, the broad and liberal construction of the Act of 1791, that by Canada must be meant Canada as known to the French, from whom it was taken, and who, in ceding this part of North America to the British Crown, in 1763, actually, as a part of Canada, ceded the Dalles. Reverting to the whole question, I contend that, whether the Act of 1791 is construed according to strict, rigid, municipal rules, or contemplated with a broad, liberal and statesman-like spirit, the Dalles form a part of His Majesty’s Province of Upper Canada, and if the offence has been committed at all, it has been committed out of the jurisdiction of this Court.

Mr. Vallière de St. Réal.—May it please the Court; I have the honour to submit that it appears to me that the statute of the fourteenth of the King (upon which the Crown officers rely) must instantly strike the reader as being a temporary Act, and that it never was intended to be a permanent one. It is true that the boundaries were given by this Act to the old Province of Quebec, but these boundaries were only to remain during the King’s pleasure, and his will is clearly made known by the Act of 1791. But the principal objection which my learned brethren, the counsel for the Crown, make to our

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construction of that Act is this, that in the preamble or title to it, the Province of Quebec is mentioned. But it was well remarked by my learned brother Stuart, that the preamble of an Act is nothing, that it is like the preface of a book, but that we must look at the enacting clauses to discover its spirit. We know that it is necessary in the preamble of one Act to recite the title of the old Act which is amended, and it is perhaps to that circumstance that may be ascribed the introduction of the words, "the Province of Quebec," in the Act of 1791. But that does not signify; it is impossible to consider the Proclamation of the King, or his Order in Council, otherwise than as giving to the Province of Upper Canada, "All the country to the west of a line drawn due north, from the head of Lake Temiscaming to the boundary of Hudson's Bay, which was known as Canada." Let us look at the boundaries and we shall see that the boundary line between the Provinces is this, namely, from "a stone 10 boundary on the north bank of the Lake St. Francis, at the Cove West of Pointe au Bodet, in the limit between the Township of Lancaster and the seignory of New Longueuil, running along the said limit in the direction of north thirty-four degrees West, to the westernmost angle of the said seignory of New Longueuil, thence along the north-western boundary of the seignory of Vaudreuil, running north twenty-five degrees East, until it strikes the Ottawas River, to ascend the said river into Lake Temiscaming, and from the head of the same Lake by a line drawn due north until it strikes the boundary line of Hudson's Bay, including all the territory to the westward and southward of the said line to the utmost extent of the country commonly called or known by the name of Canada." I beg to remark that these limits are very well known, and also that they were well known before the Proclamation. My learned brother, Stuart, has well explained the extent of these limits, and he has not taken 20 too wide a purview of them. The words of the Proclamation are very remarkable. After having described the lines which separated the Province of Upper Canada from the Province of Lower Canada it adds, "*including*," (a very remarkable expression) "*including* all the territory to the west and south of the said line," (the line drawn due north from the head of Lake Temiscaming until it strikes the boundary of Hudson's Bay), "to the utmost extent of the country commonly called or known by the name of Canada." Let us consider these words, "the utmost extent of the country commonly called or known by the name of Canada." The words are not "of the country commonly called or known by the name of the Province of Quebec;" no, not at all; but they say: "by the name of Canada." The question therefore is, what is the utmost extent of the country known as Canada? The Abbé Raynal in his "History of the Indies," speaking of this country, vol. 8, book 17, page 238, says, "the year 1764 30 beheld the rise of a new system. Canada was dismembered of the coast of Labrador, which was added to Newfoundland; of Lake Champlain and the whole tract of land to the south of the 45° of latitude with which New York was augmented; of the immense territory to the westward of Fort Golette and of Lake Nipissim, which was left without a Government; and the remainder, under the designation of the Province of Quebec, was placed under one governor." The description which this respectable historian here gives of the territory thus dismembered gives a correct idea of the country known as Canada. This new system, he says, gave a part of Canada to Newfoundland. New York was increased by another part, namely, the tract to the southward of the 45° of latitude. "The immense territory to the west of Fort Golette and of Lake Nipissim was left without any government," (and as my learned brother Stuart has well maintained, it is this immenso territory which the Proclamation of the year 1791 gave to 40 Upper Canada as being a part of the country called or known by the name of Canada) "whilst the remainder" (*to wit*, of the country known by the name of Canada) "was placed, under the designation of the Province of Quebec, under one governor." I have the honour to submit to your honours, that looking at the words of the Proclamation of 1791, and comparing them with this description of the Abbé Raynal, of the territory left without any government, we shall find it to be the country which, by this Proclamation, it was proposed to make a part of Upper Canada, at the time when it was declared that the line should be "drawn from the head of Lake Temiscaming due north until it strikes the boundary line of Hudson's Bay," and moreover, "including all the territory to the westward and southward of the said line to the utmost extent of the country commonly called or known by the name of Canada." This territory was then known by the name of Canada, it is situated 50 to the westward of that line, and therefore it proves to be a part of Upper Canada. Again I beg the attention of the Court to the work of Mr. Pinkerton, a well-known English geographer. This dis-

inguished author, speaking of the extent of Canada, gives very large bounds to it; vol. 3rd, page 234, he says: "This country" (Canada) "is computed to extend from the Gulf of St. Lawrence and Isle of Anticosti, in the east, to the Lake of Winnipeg in the west, or from longitude 64° to 97° west from London: 33°, which, in that latitude, may be about 1,200 geographical miles. The breadth from the Lake of Erie in the south or latitude 43°, may extend to latitude 49°, or 360 geographical miles, but the medial breadth is not above 200." So far he speaks of the absolute geographical extent of Canada; the subsequent observation which he makes, relative to the original population of the country, strongly supports the argument which we have the honour to submit to the Court, viz.:—that this country described by the Abbé Raynal as "*L'immense territoire qui fut laissé sans aucun gouvernement*," is the very country intended by the Proclamation of 1791, to receive a government and become a part of Upper Canada. "The original population," (says Mr. Pinkerton,) "consisted of several savage tribes, whose names and manners may be traced in the early French accounts, which may also be consulted for the progressive discovery, the first settlement being in Quebec in 1608. During a century and a half that the French possessed Canada, they made many discoveries towards the west, and Lahontan, in the end of the 17th century, has given a tolerable account of some lakes beyond that called Superior, and of the River Missouri. Quebec being conquered by Wolfe, in 1759, Canada was ceded to Great Britain by the Treaty of Paris, in 1763." I therefore confidently submit that this western territory which had been discovered by the French, and is described by Lahontan, and other writers, under the name of Canada, became in reality a part of Upper Canada by the Proclamation of 1791, and consequently does not form a part of the Indian territory, nor is it within the jurisdiction of this Court. The Abbé Raynal and Mr. Pinkerton agree in their description of the western boundary of Canada, and for the southern boundary of Canada let us again look at the Abbé Raynal's work. This writer, in the same volume of his "History of the Indies," treating of the extent, soil and climate of Louisiana, says (book xvi., page 111);—"Louisiana is a vast country, bounded on the south by the sea, on the east by Florida and Carolina, on the west by New Mexico, and on the north by Canada, and by unknown lands which may extend to Hudson's Bay. It is not possible to fix its length with precision, but its medium breadth is 200 leagues." Here we see that the northern limit of Louisiana is Canada and unknown lands, which may extend to Hudson's Bay. With the Proclamation of 1791 before our eyes, which tells us that the boundaries of Upper Canada include the whole of the country to the west and south known under the name of Canada to the utmost extent of that country, it is impossible to say but that that country which bounds Louisiana to the northward according to the Abbé Raynal, must at this moment form, in conformity with that Proclamation, a part of Upper Canada. The country known as Canada extends to the south as far as Louisiana, and to the west as far as the 97° of longitude. There remains now for us to consider the northern limits of Canada, and here we have not the same certainty. In the maps of New France, it is true that the whole of the River Winnipeg is included in it, and the northern boundary line is drawn in conformity with the interpretation of the limits of Canada which we have submitted to the Court. To prove that this interpretation is a correct one, and that it in effect agrees with the limits of Canada as they were known to the French Government, I will take the liberty of praying the attention of the Court to what we look upon as a very strong authority. It is an Act of the Duke of Ventadour, dated in 1625, and will be found in the "Edicts and Ordinances," vol. 2, page 11, under the title of "Commission of Commandant in New France, of the 15th February, 1625, by his Grace the Duke of Ventadour, who was Viceroy of the country, in favor of the Sieur de Champlain." This instrument begins by reciting other patents of Commission obtained by him, and proceeds in the 12th page, to declare in the most precise manner, the view taken by the Government of France, of the extent of this part of their possessions. This instrument will support the position that the territory which the French knew as being called by the name of Canada, to the south and west of the line so frequently mentioned in the course of my speech, proves to be ordered, by the King's Proclamation of 1791, to make, and that it will be found actually to make part of his Province of Upper Canada "as far as the utmost extent of that country." Let us look at this Act, and we shall perceive from it, that the most extended powers were given to the Sieur de Champlain, powers which, it must also be maintained, did not at the time awaken any doubts as to the right which France had to grant them, nor any impediment to their exercise, on the part of any other nation. This Commission, in the

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first place, ordains and deposes, "The Sieur de Champlain, our Lieutenant, to represent our person in the country of New France, and to that effect, we have ordered him to go and reside with all his people at the place called Quebec, being within the River St. Lawrence, otherwise called the great river of Canada, in the said country of New France." Now, we will look at the powers which were granted by this Commission: "and in the said place, and in other places which the said Sieur de Champlain may think fit, to cause to be erected, and built, such forts and fortresses as may be wanted, and necessary to him for the preservation of his people, which fort or forts he shall keep for us in his power, in order, at the said place of Quebec, and other places and stations within the extent of our said power (vice-royalty), as much and as far as may be, to establish, extend and make known the name, power and authority of His Majesty, and in the premises to conquer, subject, and bring to obedience all the people of the said 10 country, and of the circumjacent countries, and by means thereof, and of other lawful means, to call them, cause them to be instructed, excited, and moved towards the knowledge and service of God, and of the Catholic, Apostolic, and Roman religion; to establish it there, and in the exercise and profession thereof to maintain, guard, and keep the same places, under the obedience and authority of his said Majesty; and in order to have regard thereunto, and more surely to fulfil the same, we have in virtue of our said authority (vice-regal) permitted to the said Sieur de Champlain, to commission, appoint and substitute such captains and lieutenants for us as need may be, and in the like manner to commission officers for the distribution of justice, and the observance of the police regulations and ordinances, until by us otherwise may be provided; to treat for and contract, to the same effect, peace, alliances, confederations, good friendship, correspondence and communication with the said people and their princes or 20 others having the command over them; to maintain, observe, and carefully keep, the treaties and alliances which he may enter into with them, provided that they fulfil the same on their parts, and in default thereof to make open war upon them, to constrain them, and bring them to such terms as he shall deem requisite for the honour, the obedience, and the service of God, and the establishment, maintenance, and preservation of the authority of his said Majesty amongst them; at least, to reside amongst them, and frequent them, in all safety, freedom, frequentation and communication; to trade and traffic amicably and peaceably; for that purpose to cause to be made discoveries in the said countries, and specially from the said place of Quebec, until as far as he may be able to penetrate beyond the same, within the lands and rivers which discharge themselves into the River St. Lawrence, in order to endeavour to discover a convenient way to go through the said country into the Kingdom of China and the East Indies." Here 30 may it please your Honours, we hold powers the most extensive, granted by the Government of France for all the objects which might require attention; to make peace or war; to spread the name, power, and authority of the King of France over a country, the bounds of which were not exactly known to themselves; to establish religion; to commission and in the like manner establish military and civil officers; to treat for and contract peace, alliances, and good friendship with other nations and their princes, and on their being in default thereof, to wage open war against them. In fine, powers are granted by this Commission which would not have been granted unless by a government which, by the law of nations, was entitled to grant them. These powers extend over all the lands and rivers which discharge themselves into the River St. Lawrence. Assuredly the river Winnipic does not discharge 40 itself into that river, but by the old maps that river (Winnipic) is situated within the country known to the French as Canada. After this proof of what was at the time considered as the territories of France by herself, it is only necessary to inquire whether the possession thereof was actually held by that kingdom. The species of possession, which the law of nations admits as a proof of actual sovereignty, will equally appear to be maintained. We see that by this commission, power is given to cause to be erected and built such forts and fortresses as may be wanted and necessary to him, the Sieur de Champlain; now forts and fortresses were erected, and to this day there are ruins of French forts remaining in that country which incontestably prove actual possession. We therefore now take up this position; that, neither at the time of the actual possession of the country by the French, nor since its conquest by the English, have the boundaries of Canada been actually defined. In support of this position, which is especially true as regards the northern limits, I submit that Charlevoix, the Abbé Raynal, Mr. Pinkerton, and all authors agree in representing that the boundaries of Canada under the French régime were 50 not positively fixed or known. As an authority for saying that they are not fixed even at the present,

time, I produce the Topography of Mr. Bouchette, the Surveyor-General of this Province, who has bestowed great attention to everything that is interesting on this subject. I flatter myself that his work must be esteemed very strong authority. Mr. Bouchette, speaking of Upper Canada, says, page 590 of his Topography, "on the west and north-west no limits have been assigned to it." I pray the particular attention of the Court to the expression "no limits have been assigned to it; therefore it may be supposed to extend over the vast regions that spread towards the Pacific and the Northern Oceans. The separation between it and the United States is so vague and ill-defined, and the prolific source of so many disagreements between the two powers, that it has long called for the revision which is now about to be performed in fulfilment of the fourth and fifth articles of the Treaty of Peace of 1815." Here we have the declaration of the Surveyor-General of this Province, that on the west and north-west no limits have been assigned to the country called Canada. Mr. Bouchette speaks of the Proclamation of 1791, but this is his opinion. In case there are no precise limits fixed, we must inquire how those who were contemporaries, and who had a knowledge of the country—how the geographers of those days understood the matter. Let us look at the maps and we shall find that the whole of the River Winnipeg is delineated as belonging to Canada. When Mr. Bouchette, speaking of this country in his Topography, says that it has no limits assigned to it, and adds, "therefore it may be supposed to extend over the vast regions that spread towards the Pacific and the Northern Oceans," it is very certain, as it appears to me, that he alludes to the Proclamation of 1791, which bestows the whole country, to its utmost extent, commonly called or known by the name of Canada, upon the Province of Upper Canada. The Indian Territories are to the north of a line drawn as above, because the whole of the country to the south and to the west is within Upper Canada. The only point to consider seems to me to be this: that the Proclamation of 1791 did not give the boundary of the Province of Quebec for the limits of the two Provinces, but, that, in the actual words of the Proclamation the limits of Upper Canada extend on the one side from the head of the Lake Temiscaming by a line drawn due north until it strikes the boundary line of Hudson's Bay, including all the territory to the westward and southward of the said line, to the utmost extent of the country commonly called or known by the name of Canada.

By Fort Bourbon and Fort Dauphin, and by many other circumstances, it is also beyond a doubt that the country where the Dalles are situated was in possession of the French, and, as we say, and as I hope, we have proved by the maps and by enlightened authors (with whom the Surveyor-General of this Province agrees) the country to the southward and westward was called and known by the name of Canada. In conclusion, I say the French knew the country as Canada, and that nothing to the contrary can be brought forward, and moreover, that if we do not produce positive evidence that the Dalles are within the limits of Upper Canada, we have proved that no fixed limits have been assigned to it, and, by the same authority (an authority well entitled to respect on account of the official situation held by the writer), that it is considered to extend over the vast regions to the west and north. It is for your Honours to decide whether the Dalles are within it or not.

Attorney-General.—The point before the Court appears to me to be so clear that it is almost unnecessary to argue it. A great deal of learning has been produced, and much ingenuity exercised by my learned friends to prove the point with which they set out, viz., that if the offence alleged in the indictment has been perpetrated, and that by the prisoner at the bar, has been committed at all, it must have been in the Province of Upper Canada, and consequently out of the jurisdiction of this Court. In support of this position, a variety of arguments have been resorted to, and numerous authors have been referred to. Fortunately for us, standing in a Court of law, there is positive law upon the subject; there is, therefore, no occasion to have recourse to the Abbé Raynal, or to Charlevoix, or any other of the speculative writers (writers, at the same time, for whom I entertain great respect), to whom my learned friend who last addressed the Court has referred as furnishing authorities upon the question. It is our advantage that, in this case, without referring to authors who, however respectable they may be, were exposed to the too common failing of endeavouring to secure the favour of their respective Governments. I do not intend to throw the slightest imputation on the veracity of the very eminent writers whose opinions and arguments have been with so much ability brought forward, but merely to state that reference to them is completely unnecessary, as we have

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positive Acts of the British Parliament to guide both the examination and decision of the question. But we do not differ at all with our learned friends as to the extent of territory formerly claimed by the French, and which, undoubtedly, came into the possession of the British Crown at the Treaty of Paris of 1763; but all we submit to the Court is, that the whole of the French possessions did not constitute Canada, but that the country known by the name of Canada was much more circumscribed in its extent than my learned friends have described (and, I doubt not, very accurately, too,) the old French possessions to have been. The argument of my learned friend who opened this question is, that in construing this and every other Act of Parliament, we should proceed in a liberal and statesmanlike manner to apply its provisions. If we trace the movements of the British Government, we shall see the impossibility of that construction, which my learned friends contend for, being admitted to be correct. In 1760 these colonies were conquered and capitulated to the British forces. By the Treaty of Paris, 1763, the whole conquest was finally ceded to His Majesty. In 1763 a part of this conquest was, by Proclamation, erected into a Province, denominated the Province of Quebec. By the Act of 1774, the Province of Quebec was enlarged. By the Treaty of Peace with the United States of America, the situation and boundaries between the late Colonies and Province of Quebec and other of His Majesty's dominions in North America were clearly defined, and in 1791 this series of legislative and diplomatic measures were completed by His Majesty dividing his then Province of Quebec into his two Provinces of Upper and Lower Canada. Let us for a moment look at what the Act of 1791 proposes to effect, and everything like difficulty disappears in a moment. It was to divide a large Province, namely, that of Quebec, into two small ones, to be called Upper and Lower Canada: 20 and consequently the boundaries of these two Provinces could only be commensurate to that of Quebec and Upper Canada must be a part of the former Province, and of that only; otherwise the Act, instead of being an Act to divide the Province of Quebec, ought to have been denominated an Act to enlarge its boundaries, and from its extended limits to form the two Provinces therein created. The error of my learned friend is this: that because Canada happens to be mentioned, therefore the avowed object of the Act, viz, that of dividing the Province of Quebec, must be abandoned, or give place to what my learned friend calls the broad and enlightened policy of providing a government for the whole of His Majesty's dominions in North America. I again take up the Act, and looking at its title, I find it to be an Act to repeal certain parts of an Act passed in the 14th year of His Majesty's reign, entitled an Act for making more effectual provision for the government of the Province of Quebec in North 30 America. What the Province of Quebec comprehended is as well known as the limits of this room. The Act of the 14th of the King, commonly called the Quebec Act, defines them precisely, and how then did this Act of 1791 amend that of 1774? Why, His Majesty having been pleased to signify by Message to both Houses of Parliament his royal intention to divide his Province of Quebec into two Provinces, it was enacted by this statute that it should be so divided, and that two Provinces should be created. If my learned friend's observations are correct, then the 14th of the King amounts to nothing, because, though the Act of 1791 is professedly an Act to amend, not to repeal, the Act of 1774, still it is indispensable to a correct interpretation of the Act to divide the Province of Quebec, (according to my learned friend's doctrine,) that you add a very considerable territory to it—a mode of division I confess I am not acquainted with. The Act being to divide the Province of Quebec, I contend that 40 the limits of the two Provinces must be found in those which constitute the Province out of which they were formed, and that whilst on the one hand they must be commensurate to those limits, so on the other hand they cannot exceed them; that more cannot be included in the two than in the one Province; and, that being the case, the Province of Upper Canada can consist only of that part of the former Province of Quebec which does not form the Province of Lower Canada. This proposition I consider so clear—that a Province, any more than anything else, cannot comprehend or contain more when divided into two Provinces than it did when a whole—that I should feel myself very unjustifiably taking up the time of the Court were I to pursue the argument further: If any other construction is to be given to the Act, then the 14th of the King, defining the Province of Quebec, amounts to nothing, and the Act of the 31st, instead of being an Act to divide, is in reality an Act to enlarge the Province 50 of Quebec under the new title of Upper and Lower Canada

Solicitor-General.—I consider the point so extremely plain, that it is not only wasting, but almost

trifling with, the time of the Court, seriously to argue whether the division of a Province into two parts can, by any possibility, be construed to mean the addition thereto of a vast and almost (according as my learned friends contend) immeasurable territory. In support of this apparently most novel and extraordinary proposition, my learned friend, Stuart, contends that the expression in the designation of the boundaries, "the country commonly called or known by the name of Canada," is conclusive that it was in this manner that His Majesty intended to divide the Province of Quebec. The enquiry, and the only enquiry upon the subject, appears to me to be one extremely easy of decision. It is simply whether that one sentence is to preclude or set aside the whole of the first clause of the Act in which the intention of His Majesty and of Parliament is so clearly expressed. "The Act of 1791, after reciting the title of the fourteenth of the King, assigns the reason which induced the Legislature to pass the Act for the internal regulation of the two separate Provinces, which His Majesty had signified his royal intention of forming, by the division of his then Province of Quebec, namely, "that the said Act is, in many respects, inapplicable to the present condition and circumstances of the said Province, and that it was expedient and necessary that further provision should now be made for the good government and prosperity thereof." It is not said that it is necessary or expedient to enlarge the said Province of Quebec but that further provision should be made for the good government thereof; of it, as it thus stood: of that Province which had, by Proclamation, been created in 1763 and whose limits have been extended to what they then were by the Act of the 14th of the King, commonly called the Quebec Act. My learned friend must most surely be driven to the last state of despair, when he sets up a loose expression in a declaratory Act which he well knows is the weakest of all Acts of the Crown, in affording a just ground or foundation for such an opinion. I know that it is not to the preamble of an Act of Parliament that we generally must look for a clear exposition of its objects; but, whilst I admit the correctness of that position, I would also remind my learned friend, that there is a wide difference between the enacting and declaratory clauses of a Statute, and that we ought not to set aside the obvious meaning, and overturn the avowed intention of an Act of Parliament because of a loose expression in the declaratory clause. I cannot think so meanly of the whole French nation as to suppose they ever claimed these territories and wildernesses, as belonging to or forming a part of Canada. As to the authorities my learned friend who spoke second has advanced, they cannot, in a court of law be styled authorities. I have a very great respect for the Abbé Raynal, but his work is merely speculative and philosophical, and is no geographical authority upon a question of territory; the same remark will apply to Pinkerton,—we all esteem it as a very useful work, but it forms no geographical authority in a court. Upon the whole, I contend, with the Attorney-General, that the former Province of Quebec, must be found in the Provinces of Upper and Lower Canada, and that no more can be included in them than what was contained in that Province; for the Act by which they were created into Provinces was nothing more but an Act to divide it into two parts thereafter to be designated Upper and Lower Canada. Again, the learned gentlemen say, that all to the south and west of this line, from Temiscaming Lake to Hudson's Bay, must be esteemed Canada; what then was the use of this Act of the forty-third of the King? The Legislature, if my learned friends' argument was correct, were idly passing an Act that could have no object. Instead of Indian territories it is all Upper Canada, according to my learned friends' statement. But it is a position completely untenable for a moment. Upper Canada extends no farther south and west than the Province of Quebec did, any more than does Lower Canada to the north and east. In the two Provinces are now to be found that which before the separation constituted the Province of Quebec, and Upper Canada consists of that part, and of that part thereof only, which is south and west of the Province of Lower Canada. I refrain from enlarging, confident that, in the view we take of the subject, we are correctly construing the intention of the Legislature, and that we shall have our own opinion strengthened and confirmed by your Honours' decision.

Mr. Stuart.—I confess I look in vain for those grounds of confidence on which my learned friends rely. If supporting their opinions by confident assertions entitle them to expect the result they anticipate, they have certainly gone a good way towards obtaining it; but I look in vain for anything that can be called argument upon the question that is now before the Court, in the observations that have been submitted by the officers of the Crown. If there was anything that demanded attention, it was the remark of my learned friend the Solicitor-General, on the Act of the 43rd of the King; but

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Judicial Proceedings involving the question of the Boundaries.

The 1st Reitin-
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1818:

Argument of
Counsel—
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in that the learned gentleman has made a mistake; for if my learned friend referred to the chart, he would perceive that nine-tenths of the whole Indian territories, according to the description of them, lie beyond the boundary which we claim as that given to Upper Canada by the Act of 1791. If my learned friend traced the parallel of 52° he would perceive that nearly the whole of the North-West Company's stations, and the whole of those of the Hudson's Bay Company, are to the north of that line. Then surely it is obvious that this was not an Act without an object. It was an Act to extend the jurisdiction of the Provincial Courts to the trial and punishment of offences committed in the Indian territories, and they are to be found in the immense and almost boundless wilderness to the north and the west of the Province of Upper Canada, as established by the Act of 1791. The Act of the 14th of the King was obviously temporary; the Proclamation of 1791, defining the boundaries of the two Provinces—and which, I must confess, I was extremely surprised to hear so slightly spoken of by the Crown officers—was founded upon an act of a very different description. The former was merely a temporary, whilst this was a permanent, Act.

Mr. Justice Bowen.—From what part of the Act of 1774 do you conclude that it was only a temporary Act? I see no part of it that warrants such a conclusion, except with reference to the last clause.

Argument of
Counsel—
Mr. Stuart.

Mr. Stuart.—The words there made use of are general, and, as I conceive, must be understood to refer to the whole of the Act. I mean, however, independently to contend that the time at which that Act was passed, and the situation of England with reference to her American Colonies, concur to show that this Act was merely temporary. But it is needless to refer to the Act of 1774, as it does not bear upon the case, being completely done away with by the broad and liberal Proclamation of 1791. That Proclamation created two Provinces. I am surprised that the Crown officers should treat so lightly His Majesty's Proclamation; it is certainly not the quarter from which we should expect it. How was the Province of Quebec created? By Proclamation—and surely my learned friends will allow as much weight to one of His Majesty's Proclamations as to another. They will not deny the same power to His Majesty in 1791 which he exercised in 1765 [1763]. If Proclamations are such weak acts, what are we to think of the Proclamation that has been put in evidence on the present trial and has been resorted to upon all occasions as the justification for all the apparent aggressions which have marked the progress of these unfortunate disputes? But I differ in opinion with my learned friends on that point; if, in 1763 His Majesty could create a Province by Proclamation, he, in 1791, could divide and enlarge a Province in the same way. This he has been pleased to do, and all we have to do with this expression of the royal will and pleasure is, to adopt it as the rule by which we are to be governed in considering and deciding the question of jurisdiction now before the Court; and we contend that, looking at this Proclamation, it is impossible to say that this offence, if committed at all, was committed within the jurisdiction of this Court, being perpetrated at the Dalles, which form a part of His Majesty's Province of Upper Canada, as created by his Royal Proclamation of 1791.

Friday, 29th May, 1818.

Chief Justice
Sewell.

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 principle 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?

- 10 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 those 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 head of Lake Temiscaming till it strikes the boundary 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 the opinion that it is to the west of this line, then I am giving you our unanimous opinion when I declare that the Dalles are in the Indian territory, and not within the limits of the Province of Upper or Lower Canada but clearly within the jurisdiction of this Court by the Act 43rd of the King, cap. 138, which extends our power to "the trial and punishment of persons guilty of offences within certain parts of North America."

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The De Reinhard case,
1818:
Chief Justice
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CHARGE OF CHIEF JUSTICE SEWELL TO THE JURY.

- 30 GENTLEMEN OF THE JURY: The prisoner at the bar is accused of having killed and murdered Owen Keveney in the Indian Territories. The substance of this long indictment is this, that Charles de Reinhard, the prisoner, and one named Mainville (who is not here), killed him with a gun, or a sword, or both, and that the others, McLellan, Grant, Cadotte and Desmarais, were accomplices, that is to say, that they did, before or at the time of the murder, aid in or advise the same, but at present it is only with De Reinhard that you have to do. The indictment comprehends several counts, which is usual, because the officers of the Crown do not always know to what part of the case they apply, or what proof they are able to produce. The charge is contained, generally, in the eight counts, of which I will give you an abstract. The charge in the first count is, that De Reinhard killed Owen Keveney, with a sword, and that the others were present, that is to say, actually assisted in the murder, or ready to have 40 assisted if it had been necessary.

Charge of
Chief Justice
Sewell.

Before reciting the evidence, it will be necessary to take notice of the authority by which the court possesses the right of judging the prisoner's case. By the statute of 1803, power was given to the Court of Upper Canada and to the Court of Lower Canada, to try and punish those persons who had committed crimes in the Indian Territories, and the statute clearly explains what was meant by the Indian

*A manifest error, probably on the part of the person who prepared the report for the press. It may be presumed that the description of the western boundary given by the Chief Justice on this occasion was in the words which he subsequently employed in describing it in his charge to the jury (p. 445 of the Report), viz.:—"La limite ouest du Haut Canada est une ligne tirée vrai nord de la jonction des Rivières Ohio et Mississippi, dans la latitude de 37° 10' nord, et la longitude de 83° 50' ouest." [The western boundary of Upper Canada is a line drawn due north from the junction of the Rivers Ohio and Mississippi, in the latitude of 37° 10' north, and the longitude of 83° 50' west.]

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Territories. It says: "Whereas crimes and offences have been committed in the Indian Territories, and
" other parts of America not within the limits of the Provinces of Upper and Lower Canada, or either of
" them, or of the jurisdiction of any of the courts established in those Provinces, or within the limits of
" any civil government of the United States of America, and are therefore not cognizable by any jurisdic-
" tion whatever, and by reason thereof great crimes and offences have gone, and may hereafter go, unpun-
" ished, and greatly increase. For remedy whereof, may it please your Majesty, that it may be enacted,
" and be it enacted by the King's most excellent Majesty, by and with the consent and advice of the
" Lords spiritual and temporal, and Commons, in the present Parliament assembled, and by the
" authority of the same, that from and after the passing of this Act, all offences committed within any
" of the Indian Territories, or parts of America, not within the limit of either of the said Provinces of 10
" Upper and Lower Canada, or of any civil government of the United States of America, shall be, and be
" deemed to be offences of the same nature, and shall be tried in the same manner, and subject to the same
" punishment, as if they had been committed within the Province of Upper or Lower Canada." It is
in consequence, absolutely necessary to know whether the place where the death occurred, where the
murder was committed, is without the limits of Upper or Lower Canada, or of the United States of
America, for if it is without those limits we have the power of trying the prisoner, and on the contrary
if it is not so, then we have not the right of trying him. The first question for you, therefore, to
determine will be, where was it that Keveney met his death? Not in the Province of Lower Canada
certainly. First, Upper Canada, the western boundary of Upper Canada is a line drawn due north
from the junction of the rivers Ohio and Mississippi, in the latitude $37^{\circ} 10'$ north, and $88^{\circ} 50'$ west 20
longitude. I am bound to tell you that it is we who are to decide upon the law, and you who are to
judge of the facts, and, according to law, we have heard the arguments of counsel on the subject
yesterday, and to-day we decided that the western limit of Upper Canada is such a line, and if the
Dalles are to the east of such a line, they are in the Province of Upper Canada, and consequently not
within our jurisdiction. Let us now look at the evidence. The first witness on the part of the Crown
is Mr. Sax. He said, "I am acquainted with the boundary of the Province of Upper Canada, according to
" the map. A line drawn due north from there will cross Lake Superior and will leave Fort
" William three-quarters of a degree to the westward. Lake Winnipeg is between the 50th and 51st
" degrees of north latitude. The Portage des Rats is in the latitude of $49^{\circ} 45'$ north, and longitude
" $94^{\circ} 6'$ west. The whole of the River Winnipeg is, at least, five degrees to the west of the line drawn due 30
" north from the mouth of the Ohio." It is, therefore, manifest that a spot which is in the longitude of
 $94^{\circ} 6'$, west, must be much to the westward of the boundary of Upper Canada. There is another witness,
Mr. Joseph Bouchette, who says the same thing. "The boundary of the late Province of Quebec is a
" line drawn from the mouth of the River Ohio, to the north, unto the boundary of the territory of the
" Hudson's Bay Company. The latitude of this mouth is $37^{\circ} 10'$ north, and the longitude, $88^{\circ} 58'$ west
" from Greenwich. The place called the Dalles is upon the River Winnipeg, four leagues beyond, and to
" the northwards of Portage des Rats." But that belongs to another part of the evidence. You see
that Mr. Bouchette and Mr. Sax entirely agree. There was some other evidence to this point, but
perhaps you have no doubt of the Dalles being to the westward of the line of which these gentlemen
spoke. If you have any doubt, I will read other evidence to you. 40

Mr. L. V.—It is not necessary.

Another matter for your consideration is, whether the Dalles are to the north of the line
between the United States, and the Province of Upper Canada. It is of importance to ascertain this,
because if the spot is to the north of such a line, it is in truth in the Indian Territories, and if it is to the
south of such a line, it is in the United States, and consequently not within our jurisdiction. On this
point the evidence is equally as strong as on the other. Mr. Bouchette's evidence is as follows:—"The
" place which is called the Dalles, is upon the River Winnipeg, four leagues beyond, and to the north of
" Portage des Rats, and of the Lake of the Woods, according to Arrowsmith's Map, in latitude $49^{\circ} 51'$
" north, and longitude $94^{\circ} 10'$ west." This evidence is most distinct; but I wish now to explain the
evidence of Mr. Coltman. He says, "I do not believe that any part of the River Winnipeg will be 50
" found to be to the southward of a line running west from the Lake of the Woods, or, at least only a
" very small part, and most certainly a line running from the Lake of the Woods to the River Missis-

"sippi, will leave the whole of the River Winnipeg to the north-west of such a line. I twice passed the place called the Dalles, which is part of the River Winnipeg. They are from five to six leagues distant from Portage des Rats, and from the Lake of the Woods to the north, tending a little towards the west." Mr. Gale, who was examined after Mr. Coltman, says the same thing, and confirms Mr. Coltman in every particular. This is all the evidence with respect to our jurisdiction, and to the locality of the Dalles, and it proves that the Dalles lie to the west of the boundary of Upper Canada, and to the north of the United States, consequently it is in the country designated in the Act of 1803, as Indian Territories.

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OFFICIAL PAPERS RELATING TO THE CASE OF DE REINHARD, 1819-1821.

10

MR. ADMINISTRATOR MONK TO EARL BATHURST,*

CASTLE OF ST. LEWIS,

QUEBEC, 17th November, 1819.

MY LORD,—I have the honour to transmit to your Lordship an authenticated record that exhibits the charge, plea, trial and judgment upon the case of De Reinhard. I have endeavoured for several weeks passed to obtain the state of the evidence and proceedings in detail from the Judge's notes, but have not been able to accomplish it. As soon as it may be in my power I shall lose no time in transmitting it, and hope it will be done before the closing of the navigation of the River St. Lawrence.

The De-Reinhard case, 1818. Official papers, 1819-21. Mr. Administrator Monk to Earl Bathurst, 17 Nov., 1819.

The Chief Justice assures me that he delivered to Sir John Sherbrooke soon after the trial, about the 18th of July, 1818, a state of the case and proceedings unto the final judgment, for the express purpose of being transmitted to your Lordship, and that he entertained no doubt that the same were soon after transmitted by a vessel from Quebec; but no trace of any such transmission being made appears among the copies of Sir John Sherbrooke's despatches to your Lordship (nor has his late private secretary any knowledge of any such transmission of the trial being made) altho' several copies of despatches from Sir John Sherbrooke are entered in his Copy Book from the 6th of June to the 30th of July, 1818, when Sir John resigned his situation of Governor in Chief, nor is there any trace to be discovered among his private papers left in this country of any such transmission being made to your Lordship.

The miscarriage of that trial is the more to be regretted as your Lordship will perceive that the execution of sentence on De Reinhard was respited over to afford time for your Lordship's directions upon the subject (as I understand) in respect to the Court's competency of jurisdiction.

The commission of Oyer and Terminer was dated the 19th of April, 1818, and has by several adjournments been kept open to this time, where prosecutions are carried on by the Solicitor General.

Your Lordship will perceive from the Judge's notes of the trial that De Reinhard's sentence is further respited by the Court over to the twenty-first day of January next, to which day the said Court is further adjourned, and I must conclude that the execution of the sentence of De Reinhard will be further respited over as it is scarcely possible to receive your Lordship's instructions on the points submitted by that period. I need not express to your Lordship how important it will be that an early determination should be made upon the doubts that have arisen and induced the Court of Oyer and Terminer to suspend the execution of its sentence, as that determination will operate upon future cases, where similar cases may arise.

The record and case of Colin Robertson and others, for a riot and pulling down and destroying houses, etc., accompanies the present dispatch, lest the same (altho' the defendants were acquitted) should prove useful to be laid before your Lordship, which was the only prosecution for crimes and aggressions in the Indian territories that came to issue and trial before the Courts at Montreal.

I have the honour to be,

Your Lordship's most obedient servant,

I. MONK.

The Right Honourable

Earl Bathurst, K.C., etc., etc., etc.

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ADMINISTRATOR MONK TO EARL BATHURST.*

CASTLE OF ST. LEWIS,
QUEBEC, Nov. 26th, 1819.

MY LORD,—After continued exertions, since the 25th of September last, I have only, at the hour of closing the mail, in the last ship from this river, been enabled to obtain the sheets enclosed in two stitched covers that contain the judge's reports of the trials of De Reinhard and others, which I have the honour to transmit to your Lordship; and it is a justice to add that from the lateness of their coming to my hands, and under the state of the navigation, I have not been enabled to peruse them or suggest any observation upon the proceedings if the nature of them required such, from

Your Lordship's most obedient and faithful servant,

10

I. MONK.

The Right Honourable the Earl of Bathurst, K.G., &c., &c., &c.

THE UNDER-SECRETARY OF STATE FOR THE COLONIES TO THE UNDER-SECRETARY FOR THE HOME DEPARTMENT.†

DOWNING STREET,
21st February, 1820.Colonial
Under-Sec'y
to Home
Under-Sec'y,
21 Feb., 1820.

SIR,—I am directed by Lord Bathurst to transmit to you the enclosed despatches from the Administrator of the Government of Canada, enclosing copies of the evidence taken on the trial of Charles de Reinhard who was on the 5th June, 1818, tried and convicted at Quebec of the murder of Owen Keveney.

20

You will observe that he was at the time respited with the view of submitting his case to the consideration of the Government at home, but that either owing to some neglect in transmitting the documents, or to the loss of them on their passage from Quebec, the case has only been within these few days brought under Lord Bathurst's consideration. I have only further to request that you would submit the documents in question to Lord Sidmouth, in order that he may take His Majesty's pleasure as to the course which it may be proper to pursue with respect to the execution or commutation of the sentence pronounced against this individual.

I have, &c.,

HENRY GOULBURN.

H Hobhouse, Esq.

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THE UNDER SECRETARY OF STATE FOR THE COLONIES TO THE UNDER SECRETARY FOR THE HOME DEPARTMENT.†

DOWNING STREET,
23th February, 1820.Colonial
Under-Sec'y
to Home
Under-Sec'y,
25 Feb. 1820.

SIR,—With reference to my letter of the 21st instant, transmitting for the consideration of Viscount Sidmouth the report of the trial of Charles de Reinhard for the murder of Owen Keveney, in the Indian Territory, I am now directed by Lord Bathurst to forward a despatch from the officer administering the government of Lower Canada, enclosing a petition and memorial from Charles de Reinhard, praying that the Royal Mercy may be extended to him, and I am to request that you will lay these papers before Viscount Sidmouth for his Lordship's consideration, with the other documents upon this case.

40

I am, etc.,

(Signed.)

HENRY GOULBURN.

H. Hobhouse, Esq.

* Public Record Office.—Colonial Correspondence, Lower Canada, 1819, Vol. 152.
† Colonial Office Records—Book "North America and Sierra Leone, Domestic, Vol. II."

GOVERNOR-GENERAL LORD DALHOUSIE TO EARL BATHURST.*

QUEBEC, 28th June, 1821.

MY LORD,—I am anxious to draw your Lordship's attention to the dispatch from Mr. Monk, of the 19th November, 1819, No. 13, transmitting to your Lordship an authenticated record of the trial of De Reinhard, a man in the service of the North-West Company, sentenced to be executed on the 5th of June, 1818, for the murder of Owen Kavanagh, the execution of which sentence has been respited over from that day, to afford time for your Lordship's direction upon the subject, in respect to the court's competency of jurisdiction.

Under the circumstances of this man's long confinement in prison, and the misery under which he has suffered—considering also the feelings prevalent in that wild district at the time, and the union of these companies just now taking place, I entreat His Majesty's gracious pardon, and that this poor man may be sent to his native country, Germany.

I have the honour to be,

My Lord,

Your Lordship's most obedient and faithful

DALHOUSIE.

The Right Honourable the Earl Bathurst, K.G.,
etc., etc., etc.

RECOMMENDATION ENDORSED ON THE PRECEDING DESPATCH AT THE COLONIAL OFFICE.*

20 "Recommend to the Home Department and in so doing state the period at which the difficulty in point of law was referred to that office."

THE UNDER-SECRETARY OF STATE FOR THE COLONIES TO THE UNDER-SECRETARY FOR THE HOME DEPARTMENT.†

DOWNING STREET, 17th August, 1821.

SIR,—I am directed by Earl Bathurst, with reference to my letters to you of the 21st and 28th of February, 1820, to transmit to you the copy of a despatch from Lord Dalhousie, regarding the case of De Reinhard, found guilty of murder in 1818, and sentenced to be executed, but which sentence has been respited over from that day; and I am to request that in laying this despatch before Lord Sidmouth you will at the same time convey to his Lordship Lord Bathurst's recommendation, that 30 under all the circumstances of the case the Royal Mercy should be extended to De Reinhard.

I am, etc.,

HENRY GOULBURN.

Henry Hobhouse, Esq.

THE UNDER-SECRETARY FOR THE HOME DEPARTMENT TO THE UNDER-SECRETARY OF STATE FOR THE COLONIES.‡

WHITEHALL, 22nd September, 1821.

SIR,—Lord Sidmouth having taken into consideration the case referred to in your letters of the 21st and 28th February, 1820, and 17th ultimo, of De Reinhard, who was convicted in the month of June, 1818, in the Province of Lower Canada, of murder, and his Lordship having laid the same before 40 the king, His Majesty has been pleased to grant the prisoner a free pardon, which I herewith enclose, and I am directed by Lord Sidmouth to desire that you will move Lord Bathurst to be pleased to forward the same to the Governor of the Province of Lower Canada, in order that the prisoner may receive the benefit thereof.

I am, Sir,

Your most obedient, humble servant,

HENRY CLIVE.

Henry Goulburn, Esq.,
etc., etc., etc.

* Public Record Office—Colonial Correspondence, Lower Canada, 1821, No. 157.

† Colonial Office Record—Book "North America and Sierra Leone, Domestic, vol. 13."

‡ Public Record Office—Colonial Correspondence, Lower Canada, 1821, vol. 159.

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EARL BATHURST TO GOVERNOR-GENERAL LORD DALHOUSIE.*

DOWNING STREET,

20th September, 1821.

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MY LORD,—In acknowledging the receipt of Your Lordship's despatch, No. 49 of the 28th of June last, referring to a letter addressed to me by Mr. Monck, transmitting an authenticated record of the trial of De Reinhard, a man in the service of the North-West Company, who was sentenced to be executed for the murder of Owen Kevnagh, but in consequence of the circumstances therein represented the execution of whose sentence was respited and he was recommended to mercy. I have the honour to acquaint your Lordship that the case of De Reinhard having been submitted to the King, by Viscount Sidmouth, His Majesty has been graciously pleased to grant to the prisoner a free pardon, which I do have herewith the honour to transmit to your Lordship, in order that he may receive the benefit thereof.

I have the honour to be, etc.,

BATHURST.

Lieutenant-General The Earl of Dalhousie, G.C.B.
etc., etc., etc.

[Search has been made to ascertain the grounds upon which the free pardon was granted to De Reinhard; but the reasons have not been discovered.]

MCLELLAN'S CASE,† 1818.

McLellan's
case, 1818 :

[Archibald McLellan was tried under the same Commission as De Reinhard, on the 12th June, 20 1818, on a charge of murder committed in the Indian territory. The question of jurisdiction arose in this case also.]

EXTRACTS FROM CHIEF JUSTICE SEWELL'S CHARGE.

Extracts
from C. J.
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The indictment now under trial is founded upon the Act of the forty-third of the King, which extends the jurisdiction of the Courts of Justice of the Provinces of Lower and Upper Canada, to the trial and punishment of persons guilty of crimes and offences within certain parts of North America adjoining to the said Provinces. In the recent trial we had an opportunity largely to consider the boundaries of Upper Canada, as settled by the statute of 1791. We were called upon then to declare or decide, what was the western boundary of that Province, and, as in duty bound, according to the light we possessed upon the subject, we charged the jury that the western boundary of the Province of Upper Canada was, "a line drawn from the head of Lake Tomiseanning, due north, till it strikes the boundary line of Hudson's Bay,"‡ but also including "all the territory to the westward and southward of such line, to the utmost extent of the country commonly called or known by the name of Canada;" and we are also clearly of opinion that in so charging the jury, we only gave them as the western boundary of Upper Canada that which formed part of the western boundary of the ancient Province of Quebec. In this opinion the Court are unanimous, for I have consulted my learned brothers who sat with me in the late trials. We also concur in declaring that the western boundary of Canada is a line drawn astronomically "North from the junction of the Ohio and Mississippi Rivers, till it strikes the southern boundary of the Hudson's Bay territory," and we consider the point of departure to be in 88° 58' of western longitude. As we, gentlemen, are bound to take from you all decisions upon questions of fact, so you are bound to receive from us decisions upon questions of law. Having given you our decision as to the limits of Upper Canada, and the line of separation between the United States and the two Provinces, it remains only for you to settle one point: are, or are not, the Dalles within those limits? That is a question completely with you. It is a matter of fact, and is exclusively your province to decide. I shall now call your attention to the evidence that has been produced, as it relates to locality, because by that will, indeed I might say must, your judgment be guided, in declaring

* Colonial Office Record—Book "Lower Canada, vol. 4."

† From the "Canadian Pamphleteer," Vol. 5.

‡ As to this mistake, see note p. 679, ante.

whether the Dalles are or are not without the lines which separate the United States and the Province of Upper Canada from the Indian territories. Upon this subject, we have first the evidence of Mr. Coltman, who knows and has visited the spot. He tells us that "during the last year he has passed through the Lake of the Woods into the River Winnipic, that the course of that river is northerly, inclining a little west, and that he conceives the Dalles to be from twelve to perhaps twenty miles from the beginning of the river at the Lake of the Woods," and Mr. Coltman also states that "he always considered and understood Portage des Rats to be the north-westernmost point of the Lake of the Woods," and on this part of the question he concludes his evidence by saying, "a due west line from Portage des Rats would leave, as he thinks, the whole of the river Winnipic to the north of it."

- 10 Mr. Bouchette's testimony corroborates that of Mr. Coltman as to the locality of the Dalles, which are therefore stated to be situated from twelve to fifteen leagues (miles) farther north than the boundary line described. We, therefore, think it right to tell you (as we told the jury in the late case), that if, in examining the fact, you find that the Dalles are to the north of a line drawn due west from the most north-western point of the Lake of the Woods, then you are bound to say that it is not in the United States of America; for whether such a line would reach the Mississippi or not is of no consequence to this trial, as a line drawn to that river would have just the same effect. It remains only to inquire: Is it within the Province of Upper Canada? As I abstain from reading more evidence than I consider necessary to show, and I presume satisfy you on, the point to which I am directing your attention, upon this branch of the question, involving our jurisdiction, I shall read you the testimony of
- 20 Mr. Bouchette, which is exceedingly clear as to the locality of the Dalles in reference to Upper Canada. Mr. Bouchette says, "from different authors and maps I am acquainted with the latitude of Portage des Rats. It is in 49° 39' north latitude, and 94° 5' western longitude, calculating from the meridian of Greenwich." He says further, "that the western boundary of Canada is a line drawn astronomically north from the junction of the Ohio and Mississippi Rivers to the Hudson's Bay territory, and that such a line would leave the Lake of the Woods, and the River Winnipic entirely to the west; about six leagues to the west." You have now, gentlemen, before you, the whole of the evidence on the subject of the jurisdiction, and there can be no manner of doubt, if you credit the testimony, that the Dalles are to the north and west of these lines which we have, as the expositors of the law, felt ourselves bound to tell you, constitute the boundaries of Upper and Lower Canada in relation to each other and to the
- 30 United States of America. This question will be submitted to the decision of His Majesty in Council, as it is only by His Majesty, with the assistance of his Council, that the boundaries or limits of his territories can be legitimately and permanently defined. The question, however, having been incidentally brought before us, we have been compelled to declare the limits of Upper Canada. As judges of the law we have done that which we could not avoid; and as the same authority which appoints you the sole judges on matters of fact, constitutes us equally so on points of law, we are bound to tell you that our decision upon the law of the case must be your guide; for, if, on the one hand, we are bound to receive your decisions on matters of positive evidence, so on the other, you are equally obligated to adopt our decisions on points of law, as your only guide. If, ultimately, our judgment, or rather decision, should be set aside, by the competent authority, any inconvenience which may result from our
- 40 erroneous direction will assuredly be obviated, but at present we feel it our duty thus to define the boundary lines: and, comparing our decision with the evidence which I have recapitulated, it is, I think, apparent that the spot, "*en haut des Dalles*," is from eighteen to twenty miles beyond the American line, and from four to five leagues without the boundary of the Province of Upper Canada. Relative to the Lower Province, it is unnecessary to say anything.

CASE OF BROWN AND BOUCHER, 1818.*

[These persons were charged with the crime of murder, said to have been committed in the Indian Territory, and tried, under Commission, at York, Upper Canada, 19th October, 1818. The question of jurisdiction arose. The following evidence was given:—

* Report of the proceedings connected with the disputes between the Earl of Selkirk and the North-West Company, Montreal, 1819.

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The Honourable WM. BACHELOR COLTMAN, sworn.

Examined by the Attorney-General.

Mr. Coltman.—I went up into the Indian country in the year 1817, and to the place where the settlement at the Red River was established. I never made any survey of the distance which it was from Lake Winnipic, but I should think that it was about sixty miles, and having about a south bearing from the nearest point, but as to distance I cannot speak so positively. It was situated at the Forks of the Red and Assiniboin Rivers, which I have generally understood to be in about 49° 30' north latitude, and the Red River Settlement commenced at a short distance below the Forks. Its longitude I do not recollect, so as to speak with any degree of certainty, but I should judge it to be in between 90° to 100° of west longitude; my recollection, however, is very imperfect, but I should think it had something more than 90°; it certainly was more than 80°, and according to my recollection and own idea, rather more than 90°. The Red River Settlement was to the west of the River Winnipic, to the south-east of the Lake Manitobah, and between that lake and the River and Lake Winnipic. Upon consideration I should think, according to the best of my recollection, that its longitude must have been nearly 100° west * * *

*Cross-examination conducted by Mr. Sherwood.*Evidence
of Mr. Colt-
man.

Mr. Coltman.—I have been at Fort Douglas, and also at the spot where it was represented to me that the affair of the 19th June took place. I did not go farther north into the Indian country than into the Red River country, through the River Winnipic and part of the lake of that name. It is certainly a matter of notoriety that the Red River country was formerly frequented by the French traders, that is, before the conquest by the English; but I do not know whether Nouvelle France was considered as taking in this part of the Indian territory. 20

Chief Justice.—I am tolerably conversant with maps myself, but not sufficiently so as to say whether this part of the country was or was not a part of Canada. I never understood, extensive as were the limits of what the French called Louisiana, that they spread so far north as this; nor can I say distinctly that it formed a part of Canada. Relative to Nouvelle France, it was never, I believe defined with sufficient accuracy to enable us to say what were its limits. If they have been, it is beyond my knowledge.

Attorney-General.—There is one more question, Mr. Coltman, which I will trouble you with, whether as a magistrate of the Indian territory you acted at Red River in virtue of your commission under the Act of the 43rd Geo. III. 30

Mr. Coltman.—Yes, it was in prosecution of my duties under the commission that I went into that country, and proceeded to the investigation of the difficulties which had occurred there.

EXTRACTS FROM CHIEF JUSTICE POWELL'S CHARGE.

It only remains that we consider our jurisdiction, connected with locality, to give us a right to try them under the Act upon which they are indicted. The offence must have been committed out of the limits of this Province; whether we have a right or not, I declare I am at a loss to decide. Mr Attorney-General has put in evidence the latitude and longitude of the Frog Plains, but he does not put in the evidence whether this latitude and longitude is without or within the boundaries of Upper Canada, and I do not know whether from 90° to 100° or 150° form the western limit of Upper Canada, nor do I know whether a place at that longitude, and having 49° or 49½° north latitude, is within the Province of Upper Canada or beyond its boundaries. 40

Chief Justice
Sewell's
Charge.

Attorney-General.—Your Lordships will remember that by the questions which I put to Colonel Coltman, I ascertained the precise situation of the place in which Mr. Semple was killed; that is, I proved it be somewhere between 90° and 100° west longitude, nearer, as Mr. Coltman said, to 100°, and in 49½° north latitude. I proved it to be at the Forks of the Red River, formed by its junction with the Assiniboin, and that it was situated between the River Winnipic and Lake Manitouba, about twenty miles west of the former. I had thus established the situation of the place by immutable boundaries, and I conceive it is for your Lordship to instruct the jury, whether a place so situate, be or be not, without the Provinces of Upper or Lower Canada, and part of the Indian territories. This I 50

conceive to be a matter of law, and not matter of fact, deducible from treaties, acts of parliament and proclamations, a point self-evident, and not depending upon extrinsic testimony.

Your Lordship sees that the opinion of an illiterate, uninformed man upon this point would have been in fact no evidence. Mr. Coltman was the most proper person to interrogate on the subject. I therefore ascertained from him the exact situation of the *locus in quo* and thus laid the foundation for our discussion, if there appeared to be doubt on the subject of jurisdiction. I also prove by him that, when at the Forks, commissioned to investigate offences that had arisen out of the unhappy differences in that country, he had acted, by virtue of his commission as a magistrate of the Indian territories, and not as a justice of either province of Canada; this showed, at least, his impression. I could push him no farther. I could not, my lord, ask Mr. Coltman to swear positively an oath respecting a matter of opinion, which I have reason to know engages at this moment the doubt of many men who have given the matter most serious investigation; and, even if he had, I conceive it would not have been conclusive evidence. I have proved the latitude and longitude of the Red River settlement; it is for the Court to instruct the jury within what territory a place so situated is comprehended, by treaties or acts of parliament, which are matters of public law; and I have always considered that, if this appeared to the Court to require discussion, they would direct the jury, if they should find the prisoner guilty, to bring in a special verdict, declaring them guilty of murder at a place situated as I have proved by the witnesses, but whether the said place so situated be without the limits of the Provinces of Upper or Lower Canada

and of any civil government of the United States of America, and therefore within the jurisdiction of this Court, by virtue of the Great Seal instrument, produced in evidence, the jury pray the advice of the Court; a special verdict would be drawn up in form, and then the question of jurisdiction would come fairly in discussion before the Court upon the facts of locality found by the jury; and of course guilty, or not guilty, would depend upon the decision of that point.

Chief Justice.—That is what I was about saying. Brown, from their being no evidence against him, must be acquitted. If, on the testimony that has been produced, the jury shall be of opinion that the homicide was murder, and that Boucher was a principal, present, aiding, helping, abetting, comforting, assisting, and maintaining the person who committed the murder, from malice aforethought, in himself, or in those that sent him, and that this lamentable effusion of blood did not arise from a sudden impression on rude and half savage minds, from seeing their comrades assailed, or from any apprehension of death to themselves, but that it was the result of a felonious intention, then you will find him guilty on a special verdict to this effect: "We find François Firman Boucher guilty of the murder of Robert Semple. We cannot see from any evidence before us what are the limits of Upper "Canada." Then, when the case is made up for argument, it will be set forth that the spot was in about 49½° north latitude, and between 90° and 100° west longitude, and a solemn decision being had upon it, justice will eventually be administered according to the decision.

[The verdict was "Not Guilty."]

CASE OF CONNOLLY VS. WOOLRICH, 1867.*

A question in this case, which was tried before the Honourable Justice MONK, of the Superior Court, since of Quebec, 9th July, 1867, was as to the legality of a marriage by a Lower Canadian, which took place according to the Indian customs at Rat River, in the Athabasca District (latitude 58° north, and 111° west longitude), in the North-West Territory; and one point in the case was, whether this place was within the territory of the Hudson's Bay Company. The learned Judge held that it was not and the following are extracts from his judgment on this point]:—

It will be necessary for me, in the first place, to advert briefly to the discoveries made and trading posts established in those vast and remote regions of the North-West previous to the charter granted by Charles II. to the Hudson's Bay Company, in 1670.

Spain, England, and France have been the most conspicuous among the European States in the discovery and colonization of America. About the year 1627, the authority of France was successfully

*Lower Canada Jurist, Vol. XI. p. 197.

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established on the banks of the St. Lawrence, though discovery, hunting, and trading by these Europeans had extended further west previous to that time. Forty-three years after this date, the Charter of King Charles II. was granted to the Hudson Bay Company; and one hundred years later, the whole of North America belonging to France was ceded to Great Britain. Long prior to 1670, and so far back as 1605, Quebec had been established, and had become an important settlement. In the early part of the seventeenth century, anterior to 1630, the Beaver and several other companies had been organized in Quebec for carrying on the fur trade in the west, near and around the great lakes and in the North-West Territory. The enterprise and trading operations of these companies and the French colonists generally, extended over vast regions of the northern and western portions of this continent. They entered into treaties with the Indian tribes and nations, and carried on a lucrative and extensive fur trade with the natives. Neither the French Government nor any of its colonists or their trading associations, ever attempted, during an intercourse of over two hundred years, to subvert or modify the laws and usages of the aboriginal tribes, except where they had established colonies and permanent settlements, and then only by persuasion and as the fiercer and more barbarous of the Indian nations receded, or in the lapse of time, when their barbarism had been subdued by contact with the whites, or mitigated by the influences of European civilization. It is quite true, it is contended, they had no right, no lawful authority to do so, yet, as a matter of fact, they appear to have wholly abstained from the exercise of any unjust or arbitrary power in this respect. In the prosecution of their trade and other enterprises, these adventurers evinced great energy, courage and perseverance. How far they carried their hunting and trading explorations into the interior, I am unable precisely to determine; but I am inclined to think they had extended them to the Athabaska country, though perhaps not to Rivière aux Rats, where Connolly was stationed in 1803. The Rat River locality is, so near as I can ascertain, situate in latitude 58° north, and longitude west from Greenwich about 111°. It is on the north shore of the lake, and about 600 miles from the Hudson Bay coast. It is due east 300 miles from the Rocky Mountains, and due north from the boundary line of the United States 650 miles; and it is nearly the same distance, due south, from the Arctic or Frozen Ocean. Of course, the deviations along the existing lines of travel would make the distances by these routes much greater than the estimate here made. As before stated, I have no positive evidence that any French trader or hunter visited Rivière aux Rats during the sixteenth or the first half of the seventeenth century, though there is every reason to believe they had been there. It is, in my opinion, more than probable, from all I can collect or learn from a careful examination of the authorities at my command, that some portions of the Athabaska country had, before 1640, been visited and traded in, and to some extent occupied by the French colonists and traders in Canada, and their Beaver Company, formed in 1629. From that date, during the thirty years which immediately preceded the grant of King Charles II., in 1670, these discoveries and trading settlements had considerably increased in number and importance. If this be true it will be seen hereafter that, apart from the question of the Company's limits, the Athabaska region was, by a general clause, excepted from the grant of King Charles; for although neither the laws of France nor those of her contiguous colonies, may have obtained at those distant posts in 1670, the date of the Hudson Bay Charter, yet I think it is beyond all doubt that the Athabaska, and other regions bordering on it, belonged to the Crown of France at that time, to the same extent and by the same means as the countries around Hudson Bay belonged to the Crown of England—that is to say, by discovery, by hunting and trading explorations—with this difference, that in the case of the French traders there was a kind of occupation, whereas the English never occupied or settled any part of the Hudson Bay coast till 1669. * * *

In the celebrated case of Worcester against the State of Georgia (6th Peters' Reports, pages 515-542, Chief Justice Marshall—perhaps one of the greatest lawyers of our time—in delivering the judgment of Court, said:—

“The great maritime powers of Europe discovered and visited different parts of this continent at nearly the same time. The object was too immense for any of them to grasp the whole; and the claimants were too powerful to submit to the exclusive or unreasonable pretensions of any single potentate. To avoid bloody conflicts, which might terminate disastrously to all, it was necessary for

the nations of Europe to establish some principle which all would acknowledge, and which would decide their respective rights as between themselves. This principle, suggested by the actual state of things, was, 'that discovery gave title to the government by whose subjects or by whose authority it was made, against all other European governments, which title might be consummated by possession.' *Johnson vs. McIntosh*, 8 *Wheaton's Reports*, 543.

"This principle, acknowledged by all Europeans, because it was the interest of all to acknowledge it, gave to the nation making the discovery, as its inevitable consequence, the sole right of acquiring the soil and of making settlements on it. It was an exclusive principle which shut out the right of competition among those who had agreed to it.

19 "Soon after Great Britain determined on planting colonies in America, the King granted charters to companies of his subjects who associated for the purpose of carrying the views of the Crown into effect, and of enriching themselves. The first of these charters was made *before possession* was taken of any part of the country. They purport, generally, to convey the soil *from the Atlantic to the South Sea*. The soil was occupied by numerous and warlike nations, equally willing and able to defend their possessions. The extravagant and absurd idea, that the *feeble settlements made on the sea coast, or the companies under whom they were made, acquired legitimate power by them to govern the people, or occupy the lands from sea to sea, did not enter the mind of any man*. They were well understood to convey the title which, according to the common law of European sovereigns respecting America, they might rightfully convey, and no more. This was the exclusive right of purchasing such lands as the 20 natives were willing to sell. The Crown could not be understood to grant what the Crown did not affect to claim, nor was it so understood."

Phillimore in his *International Law*, CCXLI, p. 208, Ed. of 1854, says:—"The nature of occupation is not confined to any one class or description; it must be a *beneficial use and occupation (le travail d'appropriation)*, but it may be by a settlement for the purpose of prosecuting a particular trade, such as a fishery, or for working mines, or pastoral occupations, as well as agriculture, though Bynkershoek is correct in saying '*cultura utique et cura agri possessionem quam maxime indicat.*'"

Vattel justly maintains that the pastoral occupation of the Arabs entitled them to the exclusive possessions of the regions which they inhabit. "Si les Arabes pasteurs voulaient cultiver soigneusement la terre, un moindre espace pourrait leur suffire. Cependant, aucune autre nation n'est en droit 30 des les ressevier, à moins qu'elle ne manquât absolument de terre; car enfin ils possèdent leur pays; ils s'en servent à leur manière ils en tirent un usage convenable à leur genre de vie; sur lequel ils ne reçoivent la loi de personne."

It has been truly observed that, "agrecably to this rule the North American Indians would have been entitled to have excluded the British fur-traders from their hunting-grounds; and not having done so, the latter must be considered as having been admitted to a *joint occupation of the territory*, and thus to have become invested with a similar right of excluding strangers from such portions of the country as their own industrial operations pervade."

Authorities might be accumulated on this point, concerning which all writers agree.

Hudson's Bay had been discovered prior to the attempt in which Hudson perished in 1610; but 40 from the voyage of Sir Thomas Button, 1611, till the year 1667, it appears to have been wholly neglected by the English Government and nation. In the latter year, the communication between Canada and the Bay was discovered by two Canadian gentlemen, Messrs. Raddisson and DeGroselliers, who were conducted thither across the country by Indians. Succeeding in this, they returned to Quebec, and offered the merchants to conduct ships to Hudson's Bay, the proximity of which to the principal fur districts was now ascertained. This proposal was rejected, as well as a subsequent one to the French Government at Paris; there they were persuaded by the English Ambassador to go to London, where they were favourably received by some merchants and persons of high rank, who commissioned a Mr. Gillam, long accustomed to the Newfoundland trade, to prosecute the discovery. Mr. Gillam sailed in the *Nonsuch*, in 1667, into Baffin's Bay, to the height of 75° north latitude, and thence 50 to 51°, where he entered a river, to which he gave the name of Prince Rupert's; and, finding the Indians

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friendly, erected a small fort. The persons interested in this vessel, upon the return of Mr. Gillam, applied to Charles the Second for a patent, who granted them the Hudson's Bay Charter, dated the 2nd May, 1670. * * *

It is no part of my duty, upon the present occasion, to offer any opinion upon the validity of this extraordinary Charter, though that point is not without interest in this case; and it is worthy of note, that some of its clauses have given rise to doubts among lawyers, and has been the occasion for considerable controversy both in England and in this country. Several modes of testing the question have been suggested; but, as yet, none have been adopted. Apart from the immense and irresponsible powers conferred upon the Company, it has been contended that the grant in free and common socage, in fee simple, of such extensive regions of territory in the actual possession of aboriginal and powerful nations, was not in the power of the Crown, and was a violation of the plainest principles of public international law. Some have gone further, and contended that, without the authority of Parliament, such a grant of land and exclusive privileges and monopoly could not be made; that the concession of the exclusive right of trade with the Indian tribes, was an illegal exercise of the Royal Prerogative; that the Company have never carried out the intentions of the Crown, either by proper attempts to find a north-west passage to the Southern Ocean, or by making useful discoveries, and planting, settling, and colonizing the territory; that they have not attempted, by even ordinary means, to civilize the natives; nor have they by judicious and appropriate regulations, laws and government, endeavoured to render such a vast and important dominion of the Crown beneficial to the Parent State. The Company, when called upon, from time to time, have answered these charges more or less successfully, and they have further urged, that in the reign following that in which this Charter was granted, the cession received the confirmation of Parliament; however, it was specially provided that the Act of confirmation should only remain in force for the period of seven years, "and from thence to the end of the next session of Parliament and no longer." After this no re-confirmation of the Charter by Parliament ever took place, though its existence has frequently been incidentally recognized in Acts of that body, and among others may be noticed the following:—By an Act of Parliament of Great Britain (43 George III., chap. cxxxviii), passed in August 1803, it was provided that crimes committed within the Indian territories which, though not conveyed by Charter to the Company, have long been leased to them, should be cognizable by the Courts of Upper and Lower Canada. The preamble of this Act recites that crime, and offences committed within the Indian territories were not cognizable by any jurisdiction whatever. In 1821, an Act (1 and 2 George IV., ch. lxvi.) was passed, extending the provision of the above-named Act to crimes and offences committed within the territory covered by the Company's Charter, anything "in any Grant or Charter to the Company to the contrary notwithstanding."

This latter Act also gave to the Canadian Courts a right of jurisdiction within the Indian territory, as well as over Rupert's Land, which is covered by the Company's Charter. The existence of the Charter has also been referred to in Royal Proclamations.

All this may give rise to interesting investigation hereafter. * * *

Lord Brougham and his associate counsel, consulted, in 1814, by the North-West Company, were of opinion that the territorial grant was not intended to comprehend all the lands and territories that might be approached through Hudson's Straits by land or by water, but must be limited to the relation of proximity to the Straits, and to the confines of the coasts of the Bay within the Straits; and likewise that the boundary must not be such a one as is inconsistent with that view, and with the professed objects of a trading Company, intended not to found Kingdoms and establish States, but to carry on fisheries in their waters, and to trade and traffic for the acquisition of furs, peltries, etc.; and they add, that as one hundred and fifty years had then elapsed since the grant of the Charter, it must have been ascertained by the actual occupation of the Company what portion or portions of lands and territories in the vicinity, and on the coasts and confines of the waters mentioned and described as within the Straits, they had found necessary for their purposes and for forts, factories, towns, villages, settlements, or such other establishments in such vicinity and on such coasts and confines as pertain and belong to a Company established for the purposes mentioned in their Charter, and necessary, useful and convenient to them, within these prescribed limits, for the prosecution of these purposes; and they say,

that the enormous extension of land now claimed (and they had reference only to the Red River District transferred in 1812 by the Company to Lord Selkirk; for no pretence was ever made by the Hudson's Bay Company that Rebaska, Rat River, or Arthabaska, was within the chartered boundaries, till it was first put forth in this case), appears therefore, not to be warranted by any sound construction of the Charter. Sir Samuel Romilly, Scarlett, afterwards Lord Abinger, and others, consulted in 1814 by the Hudson's Bay Company, were of opinion that the grant of land contained in the Charter was good, and that, moreover, it would include all the countries the waters of which flow into Hudson's Bay.

All this is pretty vague; and what is most apparent and precise, in these opinions, is the different way in which they view the Charter and the western limits of the Company's territories. The Charter grants the right of exclusive trade and commerce of all *seas, straits, rivers, etc.*, that lie within the entrance of *Hudson's Straits*; also together with all lands and territories upon the countries, coasts and confines of the seas, bays, lakes, rivers, creeks, and sounds aforesaid. It seems to me, if these words, taken together, are susceptible of any reasonable construction or interpretation, they were intended to concede a vast extent of country round the whole coast of Hudson's Bay and the rivers flowing into it; that all the regions westward from the shores of the Bay along the great rivers, tributaries of that inland sea, so far as those streams are navigable for the purpose of trade and commerce are included in the grant; in other words, their limits extended as far west as the head of the watershed where navigation ceases, in longitude west, 95°.

Assuming this view to be correct, yet the Athabaska region would not be included within the western boundaries of the Company's territory. The Elk, or Athabaska River, rises in the Rocky Mountains, and, after flowing north and west 300 miles, discharges its waters into Lake Athabaska, otherwise known as the Lake of the Hills. By two outlets, the waters of Lake Athabaska flow into Peace River, an affluent of the MacKenzie, through it to the Frozen Ocean. It is idle, therefore, in the opinion of the Court, to contend that Rat River or the Athabaska country are or were ever within the chartered limits of the Hudson's Bay territories. * * *

By the 10th Article of the Treaty of Utrecht it is provided that:—"X. *The said Most Christian King shall restore to the Kingdom and Queen of Great Britain to be possessed in full right forever, the Bay and Straits of Hudson, together with all lands, seas, sea-coasts, rivers, and places situate in the said bay and straits, and which belong thereunto, no tracts of lands or of sea being excepted, which, are* 30 *at present possessed by the subjects of France.*"

The Hudson's Bay territory, as described in the latter treaty, would seem to be restricted to the limits contended for by Lord Brougham, rather than to those laid down by Sir Samuel Romilly; and in any case, I believe, as before stated, that the Athabaska region was beyond and without the chartered limits of the Company, and could not, therefore, come under the operation of that grant. There may, moreover, be urged another reason, and in my opinion successfully, why the Athabaska country should be excluded from the limits of the Hudson bay territory, and an argument more cogent than that to be found in the vague and doubtful terms of the Charter. It is declared by that remarkable instrument, that the grant is made of all those seas, bays, straits, etc., together with all lands and territories, etc., that are not already actually possessed by or granted to any of our subjects, or possessed by 40 *the subjects of any other Christian Prince or State.* Now, as I have before remarked, it appears to me to be beyond controversy that in 1670 the Athabaska country belonged to the Crown of France.

It had previously been discovered by French colonists, and been more or less explored by these adventurers and the trading companies of New and Old France. It is true their settlement and occupation was not precisely that of colonists; but they were traders with trading posts, explorers, hunters discoverers, carrying on a trading intercourse with the natives. If this be true, and there can be no doubt of it, the region in question was expressly excepted out of that grant; and such was the opinion of Lord Brougham and his associate counsel. * * *

It will be observed that between 1670 and 1763, nearly one hundred years had elapsed, and during that period the French colonists and French trading companies had made settlements and established 50 trading posts as far as the Rocky Mountains; that these countries were in the occupation of the French.

JOINT
APPENDIX.

Sec. XI.

Judicial
Proceedings
on the question
of the
Boundaries.Connolly vs.
Woolrich,
1867.Judgment of
Chief Justice
Monk.



XII.

Miscellaneous.

ALLEGED DISCOVERY OF HUDSON'S BAY BY THE DANES AND SPANIARDS.

The Danes pretend that this Bay had already been discovered by one of their nation, by whom the name of Christiania, after Christian IV., King of Denmark, was given. They say that the Danes, having passed the strait, continued their voyage towards the north, and finally reached the mainland at the mouth of the river, which they called the Danish River, and which the Indians called Monoteousiki, which signifies the Strangers' River. They all perished during the winter.*

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APPENDIX.
Sec. XII.
Miscellaneous.

Another writer, who has paid particular attention to North America, believed the fable of a Spanish vessel having crossed the continent from the Pacific Ocean to Hudson's Bay: "It is alleged that the Spaniards have recently found an entrance in the latitude of 47° 55' north, which in twenty-seven days brought them to the vicinity of Hudson's Bay; this latitude exactly corresponds to the ancient relation of John de Fuca, the Greek pilot, in 1592." †

Alleged
Discovery of
Hudson's
Bay by
Danes and
Spaniards.

COMMISSION OF HENRY VII, OF ENGLAND, TO THE CABOTS, 1496.‡

A.D 1496.
A.R II., H. VII. } The King, to all whom, etc.—Greeting:—

Be it known and declared that We have given and granted, and by these presents do give and grant, to our beloved John Cabot, citizen of Venice, and Lewis, Sebastian, and Sanctius, sons of the said John, or either of them, to their and each of their heirs and deputies, full authority, privilege, and power, to sail to all parts, regions, and bays, of the eastern, western, and northern sea, under our banners, standards, and insignia, with five ships or vessels, of whatever burden or quality they may be, and with so many and such sailors and men as they may choose to take with them in the said ships at their own proper expense and charges, to find, discover, and explore whatever islands, countries, regions or provinces, either of gentiles or infidels, in whatever part of the world situated, which have hitherto been unknown to all Christian people.

Royal Com-
mission to the
Cabots, 1496.

WE likewise grant and give license to the same and either of them, their or either of their heirs and deputies, to affix our aforesaid banners and insignias in any town, city, castle, island, or continent, by them newly discovered. And that the aforesaid John and his sons or heirs, and their deputies, may possess and occupy all the aforesaid towns, castles, cities, and islands, by them discovered, which of right may be subjugated and occupied, as our vassals, and their governors, lieutenants, and deputies, they obtaining for Us the dominion, title, and jurisdiction of the said towns, castles, cities, and islands and continents so discovered: So that nevertheless, the said John and his sons, and their heirs and deputies, are held and bound for every voyage as often as they shall land at our port of Bristol, at which port they are strictly bound to land, after deducting the necessary expense by them laid out, to pay unto Us one-fifth part of the whole capital profit, whether in merchandise or money, of all the fruits, emoluments, commodities, and gains, arising from the aforesaid navigation: WE giving and granting to the same and their heirs and deputies, that they shall be free and clear of all payment of customs of all and singular the goods and merchandises which they shall bring back with them from the places so newly discovered.

* Introduction a l'Histoire de l'Asie, de l'Afrique et de l'Amérique. Par M. Bruzen la Martiniere. T. II., pp. 409-10.

† Dalrymple's Plan for Promoting the Fur Trade, 1789.

‡ Chalmers' Political Annals, Bk. I., pp. 7, 8.

JOINT
APPENDIX.
Sec. XII.
Miscellaneous.
Royal Com-
mission to the
Cabots, 1496.

And moreover, WE give and grant to the same and his heirs and deputies, that all the continents, islands, towns, cities, castles, and places, whatsoever, by them discovered, or that may be discovered by them, shall not be visited or frequented by any of our subjects without the leave of the aforesaid John, his sons, and their deputies, under the penalty of forfeiture of the vessels and goods of all those who shall presume to sail to the places so discovered: WE willing and strictly commanding all our subjects, as well by land as sea, that they give all assistance to the aforesaid John and his sons, and their deputies, as well in arming the vessels and ships, as in furnishing them with all manner of stores and provisions, and all other things necessary to be purchased by them.

Witness the King, at Westminster, the fifth day of March.
By the King himself.

10

CHARTER FROM QUEEN ELIZABETH TO SIR WALTER RALEIGH, 1584.*

ELIZABETH, by the Grace of God, of England, France and Ireland, Queen, Defender of the Faith, etc.

Charter from
Queen
Elizabeth to
Sir Walter
Raleigh, 25th
May, 1584.

To all people to whom these presents shall come, greeting:

Know ye that of our especial grace, certain science, and mere motion, we have given and granted and by these presents for us, our heirs and successors, we give and grant to our trusty and well-beloved servant, Walter Raleigh, Esq., and to his heirs and assigns forever, free liberty and license, from time and at all times forever hereafter, to discover, search, find out and view such remote, heathen and barbarous lands, countries and territories not actually possessed of any Christian prince, nor inhabited by Christian people, as to him, his heirs and assigns, and to every or any of them shall seem good, and the same 20 to have, hold, occupy and enjoy to him, his heirs and assigns forever, with all prerogatives, commodities jurisdictions, royalties, privileges, franchises and pre-eminences, thereto or thereabouts, both by sea and land, whatsoever we, by our letters patents, may grant, and as we or any of our noble progenitors have heretofore granted to any person or persons, bodies politic or corporate; and the said Walter Raleigh, his heirs and assigns, and all such as from time to time, by license of us, our heirs and successors, shall go or travel thither to inhabit or remain there to build and fortify, at the discretion of the said Walter Raleigh, his heirs and assigns, the Statutes or Act of Parliament made against fugitives, or against such as shall depart, remain or continue out of our Realm of England without license, or any other statute, act, law, or any ordinance whatsoever to the contrary in anywise notwithstanding.

And we do likewise, by these presents, of our especial grace, mere motion, and certain knowledge 30 for us, our heirs and successors, give and grant full authority, liberty and power to the said Walter Raleigh, his heirs and assigns, and every of them, that he and they, and every or any of them, shall and may at all and every time and times hereafter, have, take and lead in the said voyage and travel thereafter, or inhabit there with him or them, and every or any of them, such and so many of our subjects as shall willingly accompany him or them, and every or any of them, to whom also we do by these presents, give full liberty and authority in that behalf, and also to have, take and employ, and use sufficient shipping and furniture for the transportations and navigations in that behalf, so that none of the same persons, or any of them, be such as hereafter shall be restrained by us, our heirs or successors.

And further, that the said Walter Raleigh, his heirs and assigns and every of them, shall have 40 hold, occupy and enjoy to him, his heirs and assigns and every of them for ever, all the soil of all such lands, territories and countries, so to be discovered and possessed as aforesaid, and of all such cities, castles, towns, villages and places in the same, with the right, royalties, franchises and jurisdictions, as well marine as other within the said lands or countries, or the seas thereunto adjoining, to be had or used, with full power to dispose thereof, and of every part in fee simple or otherwise, according to the laws of England, as near as the same conveniently may be, at his and their will and pleasure, to any persons then being, or that shall remain within the allegiance of us, our heirs and successors, reserving always to us, our heirs and successors, for all services, duties and demands, the fifth part of all the ore of gold and silver, that from time to time, and at all times after such discovery, subduing and possessing,

* Charters and Constitutions of the United States, etc., part 2, p. 1379.

shall be there gotten and obtained: All which lands, countries and territories shall for ever be holden of the said Walter Raleigh, his heirs and assigns, of us, our heirs and successors, by homage, and by the said payment of the said fifth part, reserved only for all services.

And moreover, we do by these presents, for us, our heirs and successors, give and grant license to the said Walter Raleigh, his heirs and assigns, and every of them, that he, and they, and every or any of them, shall and may from time to time, and at all times forever hereafter, for his or their defence, encounter and repulse, expel and resist as well by sea as by land, and by all other ways whatsoever, all and every such person and persons whatsoever, as without the especial liking and license of the said Walter Raleigh, and of his heirs and assigns, shall attempt to inhabit within the said countries, or any of them, or within the the space of two hundred leagues near to the place or places within such countries as aforesaid (if they shall not be before planted or inhabited within the limits as aforesaid with the subjects of any Christian Prince being in amity with us) where the said Walter Raleigh, his heir or assigns, or any of them, or his or their or any of their associates or company, shall, within six years (next ensuing) make their dwellings or abidings, or that shall enterprise or attempt at any time hereafter unlawfully to annoy, either by sea or land, the said Walter Raleigh, his heirs or assigns, or any of them, or his or their, or any of his or their companies; giving and granting by these presents further power and authority to the said Walter Raleigh, his heirs and assigns, and every of them, from time to time, and at all times forever hereafter, to take and surprise by all manner of means whatsoever, all and every those person or persons, with their ships, vessels, and other goods and furniture, which without the license of the said Walter Raleigh, or his heirs, or assigns, as aforesaid, shall be found trafficking into any harbor, or harbors, creek, or creeks, within the said limits aforesaid, (the subjects of our Realms and Dominions, and all other persons in amity with us, trading to the Newfound lands for fishing as heretofore, they have commonly used, or being driven by force of a tempest, or shipwreck only excepted); and those persons, and every of them, with their ships, vessels, goods and furniture to detain and possess as of good and lawful prize, according to the discretion of him the said Walter Raleigh, his heirs, and assigns, and every, or any of them. And for uniting in more perfect league and amity, of such countries, lands, and territories so to be possessed and inhabited as aforesaid with our Realms of England and Ireland, and the better encouragement of men to these enterprises, we do by these presents grant and declare that all such countries, so hereafter to be possessed and inhabited as is
30 aforesaid, from thenceforth shall be of the allegiance of us, our heirs and successors.

And we do grant to the said Walter Raleigh, his heirs, and successors and assigns, and to all and every of them, and to all and every other person and persons, being of our allegiance, whose names shall be noted or entered in some of our courts of record within our Realm of England, that with the assent of the said Walter Raleigh, his heirs or assigns, shall in his journeys for discovery, or in the journeys for conquest, hereafter travel to such lands, countries and territories, as aforesaid, and to their, and to every of their heirs, that they, and every or any of them, being either born within our said Realms of England or Ireland, or in any other place within our allegiance, and which hereafter shall be inhabiting within any the lands, countries and territories, with such license (as aforesaid) shall and may have all the privileges of free denizens and persons native of England, and within our alle-
40 giance in such like ample manner and form, as if they were born and personally resident within our said Realm of England, any law, custom or usage to the contrary notwithstanding.

And for as much as upon the finding out, discovering, or inhabiting of such remote lands, countries and territories as aforesaid, it shall be necessary, for the safety of all men that shall adventure themselves in those journeys or voyages, to determine to live together in Christian peace and civil quietness each with other, whereby every one may, with more pleasure and profit, enjoy that wherunto they shall attain with great pain and peril, we for us, our heirs and successors are likewise pleased and contented, and by these presents do give and grant to the said Walter Raleigh, his heirs and assigns for ever, that he and they, and every or any of them, shall and may from time to time for ever hereafter, within the said mentioned remote lands and countries in the way by the seas thither; and from thence,
50 have full and mere power and authority to correct, punish, pardon, govern and rule by their and every or any of their good discretions and policies, as well in causes capital or criminal as civil, both marine and other, and all such our subjects as shall from time to time adventure themselves in the said journeys

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Sec. XII.

Miscellaneous.

Charter from
Queen
Elizabeth to
Sir Walter
Raleigh, 25th
March, 1584.

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Sec. XII.
Miscellaneous.
Charter from
Queen
Elizabeth to
Sir Walter
Raleigh, 25th
March, 1584.

or voyages, or that shall at any time hereafter inhabit any such lands, countries or territories as aforesaid, or that shall abide within 200 leagues of any of the said place or places where the said Walter Raleigh, his heirs or assigns, or any of his or their associates or companies, shall inhabit, within six years next ensuing the date hereof, according to such statutes, laws and ordinances, as shall be by him, the said Walter Raleigh, his heirs and assigns, and every or any of them, devised or established, for the better government of the said people as aforesaid.

So always, as the said statutes, laws, and ordinances may be as near as conveniently may be agreeable to the form of the laws, statutes, government, or policy of England, and also so as they be not against the true Christian faith, now professed in the Church of England, nor in any wise to withdraw any of the subjects or people of those lands or places from the allegiance of us, our heirs and 10 successors, as their immediate Sovereign under God.

And further, we do by these presents for us, our heirs and successors, give and grant full power and authority to our trusty and well beloved counsellor, Sir William Cecil, Knight, Lord Burghley, our High Treasurer of England, and to the Lord Treasurer of England, for us, our heirs and successors for the time being, and to the Privy Council, of us our heirs and successors, or any four or more of them for the time being, that he, they, or any four or more of them, shall, and may from time to time, and at all times hereafter, under his or their hands or seals, by virtue of these presents, authorize and license the said Walter Raleigh, his heirs and assigns, and every or any of them, by him, and by themselves, or by their, or any of their sufficient attorneys, deputies, officers, ministers, factors and servants, to embarke and transport out of our Realm of England and Ireland, and the Dominions thereof, all or any of his, or their goods, and all or any the goods of his and their associates and companies, and every 20 or any of them, with such other necessaries and commodities of any our realms, as to the said Lord Treasurer, or four or more of the Privy Council, of us, our heirs and successors for the time being (as aforesaid) shall from time to time by his or their wisdoms or discretions, thought meet and convenient for the better relief and supportation of him, the said Walter Raleigh, his heirs and assigns, and every or any of them, and of his or their or any of their associates and companies, any act, statute, law, or other thing to the contrary in any wise notwithstanding.

Provided always, and our will and pleasure is, and we do hereby declare to all Christian Kings, Princes and states, that if the said Walter Raleigh his heirs or assigns, or any of them, or any other by their license or appointment, shall at any time or times hereafter, rob or spoil, by sea or by land, or do any act of unjust or unlawful hostility, to any of the subjects of us, our heirs or successors, or to any 30 of the subjects of any the kings, princes, rulers, governors, or estates being then in perfect league and amity with us, our heirs and successors, and that upon such injury, or upon just complaint of any such prince, ruler, governor, or estate, or their subjects, we, our heirs and successors, shall make open proclamation within any the ports of our Realm of England, that the said Walter Raleigh, his heirs and assigns, and adherents, or any to whom these our letters patent may extend, shall within the terms to be limited, by such proclamation, make full restitution and satisfaction of all such injuries done, so as both we and the said princes, or others so complaining, may hold us and themselves fully contented.

And that, if the said Walter Raleigh, his heirs and assigns, shall not make or cause to be made satisfaction accordingly, within such time so to be limited, that then it shall be lawful to us, our heirs and successors, to put the said Walter Raleigh, his heirs and assigns and adherents, and all the inhabi- 40 tants of the said places to be discovered (as is aforesaid) or any of them out of our allegiance and protection; and that from and after such time of putting out of protection the said Walter Raleigh, his heirs, assigns and adherents, and others so to be put out, and the said places within their habitation, possession and rule, shall be out of our allegiance and protection, and free for all princes and others, to pursue with hostility, as being not our subjects, nor by us any way to be avouched, maintained or defended, nor to be holden as any of ours, nor to our protection or dominion, or allegiance any way belonging, for that express mention of the clear yearly value of the certainty of the premises, or any part thereof, or of any other gift or grant by us, or any of our progenitors or predecessors, to the said Walter Raleigh, before this time made in these presents be not expressed, or any other grant, ordinance,

provision, proclamation, or restraint to the contrary thereof, be for this time given, ordained or provided, or any other thing, cause or matter whatsoever, in any wise notwithstanding.

In witness whereof, we have caused these our letters to be made patents.

Witness ourselves, at Westminster, the 25th day of March, in the six-and-twentieth year of our reign.

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Sec. XII.
Miscellaneous.
Charter from
Queen
Elizabeth to
Sir Walter
Raleigh, 25th
March, 1584.

VIRGINIA CHARTER—SECOND CHARTER OF KING JAMES, 1609.

King JAMES the First's Second Charter to the Treasurer and Company for Virginia, erecting them into a Corporation and Body-politic, and for the further enlargement and explanation of the privileges of the said Company and first Colony of Virginia. Dated March 23, 1609.

10 I. JAMES, by the Grace of God, King of England, Scotland, France and Ireland, Defender of the Faith, &c. To all, to whom these presents shall come, greeting. Whereas, at the humble suit and request of sundry of our loving and well-disposed subjects, intending to deduce a colony, and to make habitation and plantation of sundry of our people, in that part of America, commonly called Virginia, and other parts and territories in America, either appertaining unto Us, or which are not actually possessed of any Christian Prince or people, within certain bounds and regions, we have formerly, by our letter patents, bearing date the tenth day of April, in the fourth year of our reign of England France, and Ireland, and of Scotland the nine-and-thirtieth, granted to Sir Thomas Gates, Sir George Somers, and others, for the more speedy accomplishment of the said plantation and habitation, that they should divide themselves into two colonies, the one consisting of divers knights, gentlemen, 20 merchants, and others, of our city of London, called the first colony; and the other consisting of divers knights, gentlemen, and others, of our cities of Bristol, Exeter, and town of Plymouth, and other places, called the second colony; and have yielded and granted many and sundry privileges and liberties to each colony, for their quiet settling and good government therein, as by the said letters patent more at large appeareth.

Virginia
Charter, 23rd
March, 1609.

II. Now, forasmuch as divers and sundry of our loving subjects, as well adventurers, as planters of the said first colony, which have already engaged themselves in furthering the business of the said colony and plantation, and do further intend, by the assistance of Almighty God, to prosecute the same to a happy end, have of late been humble suitors unto Us, that (in respect to their great charges and the adventure of many of their lives, which they have hazarded in the said discovery and plantation 30 of the said country). We would be pleased to grant them a further enlargement and explanation of the said grant, privileges, and liberties, and that such counsellors, and other officers, may be appointed amongst them, to manage and direct their affairs, as are willing and ready to adventure with them, as also whose dwellings are not so far remote from the city of London, but that they may, at convenient times, be ready at hand, to give their advice and assistance, upon all occasions requisite.

III. We, greatly affecting the effectual prosecution and happy success of the said plantation, and commending their good desires therein, for their further encouragement in accomplishing so excellent a work, much pleasing to God, and profitable to our kingdom, do, of our especial grace, and certain knowledge, and mere motion, for Us, our heirs, and successors, give, grant, and confirm, to our trusty and well-beloved subjects, [here follow the names;] and to such, and so many, as they do, or shall 40 hereafter, admit to be joined with them, in form hereafter in these presents expressed, whether they go in their persons, to be planters there in the said plantation, or whether they go not, but adventure their moneys, goods, or chattels; that they shall be one body or commonalty perpetual, and shall have perpetual succession, and one common seal, to serve for the said body or commonalty: and that they, and their successors shall be known, called, and incorporated by the name of The Treasurer and Company of Adventurers and Planters, of the City of London, for the first Colony in Virginia.

IV. And that they, and their successors, shall be, from henceforth, for ever enabled to take, acquire, and purchase, by the name aforesaid, (*license for the same, from our heirs or successors, first had and obtained*) any manner of lands, tenements, and hereditaments, goods and chattels, within our realm of England, and dominion of Wales.

JOINT
APPENDIX.
Sec. XII.
Miscellaneous.

Virginia
Charter, 23rd
March, 1606.

V. And that they, and their successors, shall likewise be enabled, by the name aforesaid, to plead, and be impleaded, before any of our judges or justices, in any of our courts, and in any actions or suits whatsoever.

VI. And we do also, of our special grace, certain knowledge, and mere motion, give, grant, and confirm, unto the said treasurer and company, and their successors, under the reservations, limitations and declarations, hereafter expressed, all those lands, countries, and territories, situate, lying, and being, in that part of America called Virginia, from the point of land called Cape or Point Comfort, all along the sea coast, to the northward two hundred miles, and from the said Point of Cape Comfort, all along the sea-coast, to the southward two hundred miles, and all that space and circuit of land, lying from the sea-coast of the precinct aforesaid, up into the land, throughout from sea to sea, west and north-west; and also all the islands, lying within one hundred miles, along the coast of both seas of the precinct aforesaid, together with all the soils, grounds, havens, and ports, mines, as well royal mines of gold and silver, as other minerals, pearls, and precious stones, quarries, woods, rivers, waters, fishings, commodities, jurisdictions, royalties, privileges, franchises, and pre-eminences, within the said territories and the precincts thereof, whatsoever, and thereto and thereabouts, both by sea and land, being, or in any sort belonging or appertaining, and which we, by our letters patent, may or can grant, in as ample manner and sort, as we, or any of our noble progenitors, have heretofore granted to any company, body politic or corporate, or to any adventurer, or adventurers, undertaker, or undertakers, of any discoveries, plantations, or traffic, of, in or into any foreign parts whatsoever, and in as large and ample manner, as if the same were her in particularly mentioned and expressed: To have and to hold, possess and enjoy, all and singular the said lands, countries and territories, with all and singular other the premises, heretofore by these presents granted, or mentioned to be granted, to them, the said Treasurer and Company, their successors and assigns for ever; to the sole and proper use of them, the said Treasurer and Company, their successors and assigns for them: To be holden of us, our heirs, and successors, as of our manor of East-Greenwich, in free and common soccage, and not *in capite*; Yielding and paying, therefore, to us, our heirs and successors, the fifth part only of all ore of gold and silver, that from time to time, and at all times hereafter, shall be there gotten, had, or obtained, for all manner of services.

MARYLAND CHARTER, 1632,

GRANTED BY KING CHARLES THE FIRST, TO CÆCILIUS, LORD BARON OF BALTIMORE.

Maryland
Charter
granted to
Lord
Baltimore,
28th June,
1632.

CHARLES, by the grace of God, King of England, Scotland, France, and Ireland, defender of the 30
faith, etc. To all to whom these presents shall come, greeting:

Whereas our right trusty and well-beloved subject Cæcilius Calvert, baron of Baltimore, in our kingdom of Ireland, son and heir of Sir George Calvert, knight, late baron of Baltimore, in the same kingdom of Ireland, pursuing his father's intentions, being excited with a laudable and pious zeal for the propagation of the Christian faith, and the enlargement of our empire and dominion, hath humbly besought leave of us, by his industry and charge, to transport an ample colony of the English nation unto a certain country hereafter described, in the parts of America not yet cultivated and planted, though in some parts thereof inhabited by certain barbarous people, having no knowledge of Almighty God; and hath humbly besought our royal Majesty to give, grant, and confirm the said country, with certain privileges and jurisdictions, requisite for the said government and state of his colony and country aforesaid, to him and his heirs for ever.

Know ye therefore, That we, favouring the pious and noble purpose of the said barons of Baltimore, of our special grace, certain knowledge, and mere motion, have given, granted, and confirmed, and by this our present charter, for us, our heirs and successors, do give, grant, and confirm, unto the said Cæcilius, now Baron of Baltimore, his heirs and assigns, all that part of a peninsula, lying in the parts of America, between the ocean on the east, and the bay of Chesapeake on the west, and divided from the other part thereof by a right line drawn from the promontory, or cape of land, called Watkin's Point (situate in

the aforesaid bay, near the river of Wigheo) on the west, unto the main ocean on the east; and between that bound on the south unto that part of Delaware Bay on the north, which lieth under the fortieth degree of northerly latitude from the equinoctial, where New England ends; and all that tract of land between the bounds aforesaid; that is to say, passing from the aforesaid unto the aforesaid bay called Delaware Bay, in a right line by the degree aforesaid, unto the true meridian of the first fountain of the river Potowmaek, and from thence tending toward the south unto the further bank of the aforesaid river, and following the west and south side thereof unto a certain place called Cinquaek, situate near the mouth of the said river, where it falls into the bay of Chesapeak, and from thence by a straight line unto the aforesaid promontory and place called Watkin's Point (so that all that tract of land 10 divided by the line aforesaid, drawn between the main ocean and Watkin's Point, unto the promontory called Cape Charles, and all its appurtenances, do remain entirely, excepted to us, our heirs and successors, for ever).

We do also grant and confirm unto the said Lord Baltimore, his heirs and assigns, all islands and islets within the limits aforesaid, and all and singular the islands and islets which are or shall be in the ocean, within ten leagues from the eastern shore of the said country towards the east, with all and singular ports, harbours, bays, rivers and inlets, belonging unto the country and islands aforesaid; and all the soil, lands, fields, woods, mountains, fens, lakes, rivers, bays, and inlets, situate or being within the bounds and limits aforesaid; with the fishing of all sorts of fish, whales, sturgeons, and all other royal fishes in the sea, bays, inlets, or rivers, within the premises, and the fish therein taken. And 20 moreover, all veins, mines, and quarries, as well discovered as not discovered, of gold, silver, gems and precious stones, and all other whatsoever, be it of stones, metals, or of any other thing or matter whatsoever, found, or to be found, within the country, isles and limits aforesaid. And furthermore, the patronages and advowsons of all churches, which (as Christian religion shall increase within the country, isles, islets, and limits aforesaid) shall happen hereafter to be erected; together with licence and power, to build and found churches, chapels, and oratories, in convenient and fit places within the premises, and to cause them to be dedicated and consecrated according to the ecclesiastical laws of our kingdom of England: together with all and singular the like, and as ample rights, jurisdictions, privileges, prerogatives, royalties, liberties, immunities, royal rights and franchises, of what kind soever, temporal, as well by sea as by land, within the country, isles, islets, and limits aforesaid; to have, exercise, use 30 and enjoy the same, as amply as any bishop of Durham, within the bishoprick or county palatine of Durham, in our kingdom of England, hath at any time heretofore had, held, used, or enjoyed, or of right ought or might have had, held, used, or enjoyed.

And him the said now Lord Baltimore, his heirs and assigns, we do by these presents for us, our heirs and successors, make, create, and constitute the true and absolute lords and proprietaries of the said country aforesaid, and of all other the premises, (except before excepted) saving always the faith and allegiance, and sovereign dominion due unto us, our heirs and successors. To have, hold, possess, and enjoy the said country, isles, inlets, and other the premises, unto the said now Lord Baltimore, his heirs and assigns, to the sole and proper use and behoof of him the said now Lord Baltimore, his heirs and assigns, for ever.

40 To be holden of us, our heirs and successors, Kings of England, as of our castle of Windsor, in our county of Berks, in free and common socage, by fealty only, for all services, and not *in capite*, or by knight's service; yielding and paying therefore to us, our heirs and successors, two Indian arrows of those parts, to be delivered at our said castle of Windsor, every year the Tuesday in Easter week, and also the fifth part of all gold and silver ore, within the limits aforesaid, which shall, from time to time, happen to be found

Now, that the said country, thus by us granted and described, may be eminent above all other parts of the said territory, and dignified with large titles, Know ye, that we, of our further grace, certain knowledge, and mere motion, have thought fit to erect the same country and islands into a province; as out of the fulness of our royal power and prerogative, we do for us, our heirs and 50 successors, erect and incorporate them into a province, and do call it Maryland, and so from henceforth we will have it called.

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And forasmuch as we have hereby made and ordained the aforesaid now Lord Baltimore, the true lord and proprietary of all the province aforesaid: Know ye, therefore, that we, reposing special trust and confidence in the fidelity, wisdom, justice, and provident circumspection of the said now Lord Baltimore, for us, our heirs and successors, do grant free, full, and absolute power, by virtue of these presents, to him and his heirs, for the good and happy government of the said country, to ordain, make, enact, and under his and their seals to publish, any laws whatsoever appertaining either unto the public state of the said province, or unto the private utility of particular persons, according to their best discretion, by and with the advice, assent, and approbation of the freemen of the said province, or the greater part of them, or of their delegates or deputies, whom for the enacting of the said laws, when and as often as need shall require, we will, that the said now Lord Baltimore, and his heirs, shall assemble 10 in such sort and form as to him and them shall seem best, and the said laws duly to execute upon all people within the said province and limits thereof, for the time being, or that shall be constituted under the government and power of him or them, either sailing towards Maryland, or returning from thence towards England, or any other of ours or foreign dominions, by imposition of penalties, imprisonment, or any other punishment: yea, if it shall be needful, and that the quality of the offence require it, by taking away members or life, either by him the said now Lord Baltimore, and his heirs, or by his or their deputies, lieutenants, judges, justices, magistrates, officers, and ministers, to be ordained or appointed, according to the tenor and true intention of these presents; and likewise to appoint and establish any judges, justices, magistrates, and officers, whatsoever, at sea and land, for what cause soever, and with what power soever, and in such form as to the said now Lord Baltimore, or his heirs 20 shall seem most convenient; also to remit, release, pardon, and abolish, whether before judgment or after, all crimes and offences whatsoever, against the said laws, and to do all and every other thing or things, which unto the complete establishment of justice unto courts, praetories, and tribunals, forms of judicature, and manners of proceedings, do belong, altho' in these presents express mention be not made thereof; and by judges by them delegated to award process, hold pleas, and determine, in all the said, courts and tribunals, all actions, suits, and causes whatsoever, as well criminal as civil, personal, real, mixt, and praetoreal, which laws, so, as aforesaid, to be published, our pleasure is, and so we enjoin, require, and command, shall be most absolute and available in law; and that all the liege people and, subjects of us, our heirs and successors, do observe and keep the same inviolably, in those parts, so far as they concern them, under the pains therein expressed, or to be expressed; provided nevertheless, 30 That the said laws be consonant to reason, and be not repugnant or contrary, but, as near as conveniently may be, agreeable to the laws, statutes, and rights of this our kingdom of England.

And forasmuch as in the government of so great a province, sudden accidents do often happen whereunto it will be necessary to apply a remedy, before the freeholders of the said province, or their delegates or deputies, can be assembled to the making of laws; neither will it be convenient, that instantly upon every such emergent occasion, so great a multitude should be called together; therefore, for the better government of the said province, we will and ordain, and by these presents, for us, our heirs and successors, do grant unto the said now Lord Baltimore, and his heirs, by themselves, or by their magistrates and officers, in that behalf duly to be ordained, as aforesaid, to make and constitute fit and wholesome ordinances, from time to time, within the said province, to be kept and observed, as 40 well for the preservation of the peace, as for the better government of the people there inhabiting, and publicly to notify the same to all persons, whom the same doth or may any way concern; which ordinances, our pleasure is, shall be observed inviolably, within the said province, under the pains therein to be expressed; so as the said ordinances be consonant to reason, and be not repugnant nor contrary, but so far as conveniently may be, agreeable to the laws and statutes of the kingdom of England; and so as the said ordinances be not extended in any sort, to bind, charge, or take away the right or interest of any person or persons, or of their life, members, freehold, goods or chattels.

Furthermore, that this new colony may the more happily increase by the multitude of people resorting thither, and may likewise be the more strongly defended from the incursions of savages, or other enemies, pirates and robbers: therefore we, for us, our heirs and successors, do give and grant, by 50 these presents, power, licence, and liberty, unto all the liege people and subjects, both present and future, for us, our heirs and successors (excepting those who shall be specially forbidden), to transport,

themselves and families unto the said province, with convenient shipping, and fitting provisions, and there to settle themselves, dwell and inhabit, and to build and fortify castles, forts, and other places of strength for the public, and their own private defence, at the appointment of the said now Lord Baltimore, and his heirs, the statute of fugitives, or any other whatsoever, the contrary of the premises in any wise notwithstanding.

And we will also, and of our more special grace, for us, our heirs and successors, we do strictly enjoin, constitute, ordain and command, That the said province shall be of our allegiance, and that all and singular the subjects and liege people of us, our heirs and successors, transported or to be transported into the said province, and the children of them, and of such as shall descend from them, there already 10 born or hereafter to be born, be and shall be denizens and lieges of us, our heirs and successors, of our kingdoms of England and Ireland, and be in all things held, treated, reputed and esteemed, as the liege faithful people of us, our heirs and successors, born within our kingdom of England; and likewise, any lands, tenements, revenues, services and other hereditaments whatsoever, within our kingdom of England, and other our dominions, may inherit, or otherwise purchase, receive, take, have, hold, buy, and possess, and then may occupy and enjoy, give, sell, alien and bequeath, as likewise all liberties, franchises and privileges, of this our kingdom of England, freely, quietly and peaceably, have and possess, occupy and enjoy, as our liege people, born, or to be born, within our said kingdom of England, without the lett, molestation, vexation, trouble or grievance of us, our heirs and successors; any statute, act, ordinance or provision to the contrary thereof notwithstanding.

20 And furthermore, that our subjects may be the rather encouraged to undertake this expedition with ready and cheerful minds, know ye, That we, of our special grace, certain knowledge, and mere motion, do give and grant, by virtue of these presents, as well unto the said now Lord Baltimore, and his heirs, as to all others who shall, from time to time, repair unto the said country with a purpose to inhabit there, or to trade with the natives of the said province, full licence to lade and freight in any ports whatsoever, of us, our heirs and successors, into the said province of Maryland, by them, their servants, or assigns, to transport all and singular their goods, wares, and merchandises, as likewise all sorts of grain whatsoever, and all other things whatsoever necessary for food or clothing, not prohibited by the laws and statutes of our kingdoms and dominions to be carried out of the said kingdoms, any statute, act, ordinance, or other thing whatsoever to the contrary notwithstanding, without any let or molestation of us, our heirs and successors, or of any the heirs of us, our heirs and successors: saving always 30 to us, our heirs and successors, the legal impositions, customs, and other duties and payments for the said wares and merchandize, any statute, act, ordinance, or other thing whatsoever to the contrary notwithstanding.

And because in so remote a country, and situate near so many barbarous nations, the incursions as well of the savages themselves, as of other enemies, pirates, and robbers, may probably be feared, therefore we have given, and for us, our heirs and successors, do give power, by these presents, unto the said now Lord Baltimore, his heirs and assigns, by themselves or their captains, or other their officers, to levy, muster, and train all sorts of men, of what condition, or wheresoever born, in the said province of Maryland, for the time being, and to make war, and pursue the enemies and robbers aforesaid, as 40 well by sea as by land, yea, even without the limits of the said province, and (by God's assistance) to vanquish and take them; and being taken, to put them to death, by the law of war, or to save them, at their pleasure; and to do all and every other thing which unto the charge and office of a captain-general of an army belongeth, or hath accustomed to belong, as fully and freely as any captain-general of an army hath ever had the same.

Also, our will and pleasure is, and by this our charter, we do give unto the said now Lord Baltimore, his heirs and assigns, full power, liberty and authority, in case of rebellion, tumult or sedition, if any should happen (which God forbid) either upon the land, within the province aforesaid, or upon the main sea, in making a voyage thither, or returning from thence by themselves, or their captains, deputies, or other officers, to be authorized under their seals for that purpose (to whom we 50 also for us, our heirs and successors, do give and grant by these presents, full power and authority) to exercise martial law against mutinous and seditious persons of those parts, such as shall refuse to

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submit themselves to his or their government, or shall refuse to serve in the wars, or shall fly to the enemy, or forsake their ensigus, or be loiterers or stragglers, or otherways however offending against the law, custom, and discipline military, as freely and in as ample manner and form as any captain-general of an army, by virtue of his office, might, or hath accustomed to use the same.

Furthermore, that the way to honours and dignities may not seem to be altogether precluded and shut up to men well-born, and such as shall repair themselves unto this present plantation, and shall desire to deserve well of us and our kingdoms, both in peace and war, in so far distant and remote a country: Therefore we, for us, our heirs and successors, do give free and absolute power unto the said now Lord Baltimore, his heirs and assigns, to confer favours, rewards and honours, upon such inhabitants, within the province aforesaid, as shall deserve the same, and to invest them with what titles and dignities soever as he shall think fit (so as they be not such as are now used in England,) as likewise to erect and incorporate towns into boroughs, and boroughs into cities, with convenient privileges and immunities, according to the merit of the inhabitants, and fitness of the places; and to do all and every other thing or things, touching the premises, which to him or them shall seem meet and requisite; albeit they be such as of their own nature might otherwise require a more special commandment and warrant than in these presents is expressed. 10

We will also, and by these presents, for us, our heirs and successors, do give and grant license, by this our charter, unto the said now Lord Baltimore, his heirs and assigns, and to all the inhabitants and dwellers in the said province aforesaid, both present and to come, to import, unlade, by themselves or their servants, factors or assigns, all merchandizes and goods whatsoever, that shall arise of the fruits and commodities of the said province, either by land or sea, into any of the ports of us, our heirs and successors, in our kingdoms of England or Ireland, or otherwise to dispose of the said goods, in the said ports, and if need be, within one year next after the unlading of the same, to lade the said merchandizes and goods again, into the same or other ships, and to export the same into any other countries, either of our dominion or foreign (being in amity with us, our heirs and successors). Provided always, that they pay such customs, impositions, subsidies and duties for the same, to us, our heirs and successors, as the rest of our subjects of our kingdom of England, for the time being, shall be bound to pay; beyond which, we will not that the inhabitants of the aforesaid province of Maryland shall be any way charged. 20

And furthermore, of our more ample and special grace, certain knowledge, and mere motion, we do, for us, our heirs and successors, grant unto the said now Lord Baltimore, his heirs and assigns, full and absolute power and authority to make, erect, and constitute, within the said province of Maryland, and the isles and islets aforesaid, such and so many sea-ports, harbours, creeks, and other places, for discharging and unlading of goods and merchandizes out of the ships, boats and other vessels, and lading them in such and so many places, and with such rights, jurisdictions, and liberties, and privileges unto the said ports belonging, as to him or them shall seem most expedient; and that all and singular the ships, boats and other vessels, which shall come for merchandize and trade into the said province, or out of the same, shall depart, shall be laden or unladen only at such ports as shall be so erected and constituted by the said now Lord Baltimore, his heirs and assigns; any use, custom, or other things to the contrary notwithstanding: saving always unto us, our heirs and successors, and to all the subjects (of our kingdoms of England and Ireland) of us, our heirs and successors, free liberty of fishing for sea fish, as well in the sea, bays, inlets, and navigable rivers, as in the harbours, bays, and creeks of the province aforesaid, and the privileges of salting and drying their fish on the shores of the said province, and for the same cause, to cut and take under-wood or twigs there growing, and to build cottages and sheds necessary in this behalf, as they heretofore have, or might reasonably have used; which liberties and privileges, nevertheless, the subjects aforesaid of us, our heirs and successors, shall enjoy without any notable damage, or injury to be done to the said now Lord Baltimore, his heirs or assigns, or to the dwellers and inhabitants of the said province, in the ports, creeks, and shores aforesaid, and especially in the woods and copses growing within the said province. And if any shall do any such damage or injury, he shall incur the heavy displeasure of us, our heirs and successors, the punishment of the laws, and shall moreover make satisfaction. 30 40 50

We do furthermore will, appoint and ordain, and by these presents, for us, our heirs and successors, we do grant unto the said now Lord Baltimore, his heirs and assigns, that he the said Lord Baltimore, his heirs and assigns, may from time to time, for ever, have and enjoy the customs and subsidies in the ports, harbours, and other creeks and places aforesaid, within the province aforesaid, payable or due for merchandizes and wares there to be laded and unladed; the said customs and subsidies to be reasonably assessed (upon any occasion) by themselves and the people there, as aforesaid, to whom we give power, by these presents, for us, our heirs and successors, upon just cause, and in a due proportion, to assess and impose the same.

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And further, of our special grace, and of our certain knowledge, and mere motion, we have given and granted, and by these presents, for us, our heirs and successors, do give and grant, unto the said now Lord Baltimore, his heirs and assigns, full and absolute power, licence, and authority, that he the said now Lord Baltimore, his heirs and assigns, from time to time hereafter, for ever, at his and their will and pleasure, may assign, alien, grant, demise, or enfeoffe of the premises, so many and such part or parcels to him or them that shall be willing to purchase the same, as they shall think fit; to have and to hold to them the said person or persons willing to take or purchase the same, their heirs and assigns, in fee simple, or in fee tail, or for the term of life or lives, or years, to be held of the said now Lord Baltimore, his heirs and assigns, by such services, customs, and rents, as shall seem fit to the said now Lord Baltimore, his heirs and assigns, and not immediately of us, our heirs or successors: And to the same person or persons, and to all and every of them, we do give and grant, by these presents, for us, our heirs and successors, licence, authority and power, that such person or persons may take the premises, or any parcel thereof, of the said now Lord Baltimore, his heirs or assigns, and the same hold to themselves, their heirs or assigns, in what estate of inheritance soever, in fee simple, or in fee tail, or otherwise, as to them and the now Lord Baltimore, his heirs and assigns, shall seem expedient; the statute made in the parliament of Edward, son of King Henry, late King of England, our predecessor, commonly called the statute "*Quia emptores terrarum*," lately published in our kingdom of England, or any other statute, act, ordinance, use, law or custom, or any other thing, cause or matter thereupon heretofore had, done, published, ordained or provided to the contrary, in any wise notwithstanding.

And by these presents we give and grant licence unto the said now Lord Baltimore and his heirs' to erect any parcels of land within the province aforesaid into manors, in every the said manors to have and to hold a court of Baron, with all things whatsoever which to a court Baron do belong, and to have and to hold view of frank pledge (for the conservation of the peace, and the better government of those parts) by themselves or their stewards, or by the lords, for the time being, of other manors to be deputed, when they shall be erected, and in the same to use all things belonging to view of frank pledge.

And further our pleasure is, and by these presents, for us, our heirs and successors, we do covenant and grant to and with the said now Lord Baltimore, and his heirs and assigns, that we, our heirs and successors, shall at no time hereafter set, make, or cause to set any imposition, custom or other taxation, rate, or contribution whatsoever, in and upon the dwellers and inhabitants of the aforesaid province, for their lands, tenements, goods, or chattels within the said province, or in or upon any goods or merchandize within the said province, or to be laden or unladen within the ports or harbours of the said province. And our pleasure is, and for us, our heirs and successors, we charge and command, that this our declaration shall henceforward, from time to time, be received and allowed in all our courts, and before all the judges of us, our heirs and successors, for a sufficient and lawful discharge, payment and acquittance; commanding all and singular our officers and ministers of us, our heirs and successors, and enjoining them, upon pain of our high displeasure, that they do not presume, at any time, to attempt any thing to the contrary of the premises, or that they do in any sort withstand the same; but that they be at all times aiding and assisting, as fitting, unto the said now Lord Baltimore, and his heirs, and to the inhabitants and merchants of Maryland aforesaid, their servants, ministers, factors, and assigns, in the full use and fruition of the benefit of this our charter.

And further, our pleasure is, and by these presents, for us, our heirs and successors, we do grant unto the said now Lord Baltimore, his heirs and assigns, and to the tenants and inhabitants of the said province of Maryland, both present and to come, and to every of them, that the said province, tenants,

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and inhabitants of the said colony or country, shall not from henceforth be held or reputed as a member, or as part of the land of Virginia, or of any other colony whatsoever, now transported or hereafter to be transported; nor shall he be depending on, or subject to, their government in any thing, from whom we do separate that and them. And our pleasure is, by these presents, that they be separated, and that they be subject immediately to our crown of England, as depending thereof for ever.

And if perchance hereafter it should happen any doubts or questions should arise concerning the true sense or understanding of any word, clause or sentence contained in this our present charter, we will, ordain and command, that at all times, and in all things, such interpretations be made thereof and allowed, in any of our courts whatsoever, as shall be adjudged most advantageous and favourable unto the said now Lord Baltimore, his heirs and assigns; provided always, that no interpretation be admitted thereof, by which God's holy and truly Christian religion, or the allegiance due unto us, our heirs and successors, may suffer any prejudice or diminution; although express mention be not made in these presents of the true yearly value or certainty of the premises, or of any part thereof, or of other gifts and grants made by us, our progenitors or predecessors, unto the said now Lord Baltimore, or any statute, act, ordinance, provision, proclamation, or restraint heretofore had, made, published, ordained, or provided, or any other thing, cause, or matter whatsoever to the contrary thereof, in any wise notwithstanding.

In witness, &c., Witness Ourselves, at Westminster, the twenty-eighth day of June, A.D. 1632, in the eighth year of our reign.

By Writ of Privy Seal. 20

PENNSYLVANIA CHARTER, 1682,

GRANTED BY KING CHARLES II. IN THE FOURTEENTH YEAR OF HIS REIGN.

Prima Pars Patentium de Anno Regni Regis CAROLI Secundi Tricesimo Tertio.

CHARLES the Second, &c., to all to whom these presents shall come, greeting:

Pennsylvania
Charter
granted to
William
Penn, 28th
February,
1682.

Whereas our trusty and well-beloved subject William Penn, esquire, son and heir of Sir William Penn, deceased, out of commendable desire to enlarge our English empire, and promote such useful commodities as may be of benefit to us, and our dominions; as also to reduce the savage natives, by gentle and just manners, to the love of civil society and christian religion, hath humbly besought leave of us to transport an ample colony unto a certain country hereinafter described, in the parts of America not yet cultivated and planted; and hath likewise humbly besought our Royal Majesty to give, grant, and confirm all the said country, with certain privileges and jurisdictions requisite for the good government and safety of the said country and colony, to him and his heirs, for ever;

Know ye, therefore, That We, favouring the petition and good purpose of the said William Penn, and having regard to the memory and merits of his late father, in divers services, and particularly to his conduct, courage and discretion, under our dearest brother James Duke of York, in that signal battle and victory fought and obtained against the Dutch fleet, commanded by the Heere Van Obdam, in the year one thousand six hundred and sixty-five; in consideration thereof, of our special grace, certain knowledge, and mere motion, have given and granted, and by this our present Charter, for us, our heirs, and successors, do give and grant, unto the said Sir William Penn, his heirs and assigns, all that tract or part of land in America, with all the islands therein contained, as the same is bounded on the east by Delawar River, from twelve miles distance northwards of Newcastle town, unto the three-and-fortieth degree of northern latitude, if the said river doth extend so far northwards; but if the said river shall not extend so far northwards, then by the said river so far as it doth extend; and from the head of the said river the eastern bounds are to be determined by a meridian line, to be drawn from the head of the said river unto the said three-and-fortieth degree; the said land to extend westward five degrees in longitude, to be computed from the said eastern bounds; and the said lands to be bounded on the north by the beginning of the three-and-fortieth degree of northern latitude, and on the south by a circle drawn at twelve miles distance from Newcastle northwards and westwards, unto the beginning of the fortieth degree of northern latitude; and then by a straight line westwards to the limits of longitude above-mentioned.

We do also give and grant unto the said William Penn, his heirs and assigns, the free and undisturbed use, and continuance in, and passage into, and out of, all and singular ports, harbours, bays, waters, rivers, isles, and inlets belonging unto, or leading to and from the country or islands aforesaid, and all the soil, lands, fields, woods, underwoods, mountains, hills, fens, isles, lakes, rivers, waters, rivulets, bays, and inlets, situate and being within or belonging unto the limits and bounds aforesaid; together with the fishing of all sorts of fish, whales, sturgeons, and all royal and other fishes in the sea, bays, inlets, waters, or rivers, within the premises, and the fish therein taken; and also all veins, mines, quarries, as well discovered as not discovered, of gold, silver, gems, and precious stones, and all other whatsoever, be it stones, metals, or of any other thing or matter whatsoever, found or to be found within the country, isles or limits aforesaid; and him the said William Penn, his heirs and assigns, we do by this our royal Charter, for us, our heirs, and successors, make, create, and constitute the true and absolute proprietaries of the said country, aforesaid, and of all other the premises; saving always to us, our heirs and successors, the faith and allegiance of the said William Penn, his heirs and assigns, and of all other proprietaries, tenants, and inhabitants, that are, and shall be within the territories and precincts aforesaid; and saving also unto us, our heirs and successors, the sovereignty of the aforesaid country To have, hold, possess, and enjoy the said tract of land, country, isles, inlets, and other the premises, unto the said William Penn, his heirs and assigns, to the only proper use and behoof of the said William Penn, his heirs and assigns for ever. To be holden of us, our heirs and successors, Kings of England, as of our Castle of Windsor, in our county of Berks, in free and common socage, by fealty only, for all services, and not *in capite*, or by Knight's service; yielding and paying therefore to us, our heirs and successors, two beaver-skins, to be delivered at our said castle of Windsor, on the first day of January on every year; and also the fifth part of all gold and silver ore, which shall from time to time happen to be found within the limits aforesaid, clear of all charges. And of our further grace, certain knowledge, and mere motion we have thought fit to erect, and we do hereby erect the aforesaid country and island into a province and seignory, and do call it Pennsylvania, and so from henceforth we will have it called.

And forasmuch as we have hereby made and ordained the aforesaid William Penn, his heirs and assigns, the true and absolute proprietaries of all the lands and dominions aforesaid: Know ye therefore, that we reposing special trust and confidence in the fidelity, wisdom, justice, and provident circumspection of the said William Penn, for us, our heirs and successors, do grant free, full, and absolute power, by virtue of these presents, to him and his heirs, and to his and their deputies and lieutenants, for the good and happy government of the said country, to ordain, make, enact, and under his and their seals to publish any laws whatsoever, for the raising of money for the public use of the said province, and for any other end appertaining either to the public state, peace, or safety of the said country, or unto the private utility of particular persons, according to their best discretion, by and with the advice, assent, and approbation, of the freemen of the said country, or the greater part of them, or of their delegates or deputies, whom for the enacting of the said laws, when and as often as need shall require, we will, that the said William Penn, and his heirs, shall assemble in such sort and form, as to him and them shall seem best, and the said laws duly to execute unto and upon all people within the said country and limits thereof.

And we do likewise give and grant unto the said William Penn, and his heirs, and to his and their deputies and lieutenants, full power and authority to appoint and establish any justices, magistrates, and officers whatsoever, for what causes soever, for the probates of wills, and for the granting of administrations, within the precincts aforesaid, and with what power soever, and in such form as to the said William Penn, or his heirs, shall seem most convenient; also to remit, release, pardon, and abolish, whether before judgment or after, all crimes and offences whatsoever, committed within the said country, against the said laws, treason and wilful and malicious murder only excepted; and in those cases to grant reprieves until our pleasure may be known therein; and to do all and every other thing or things, which unto the complete establishment of justice unto courts and tribunals, forms of judicature, and manner of the proceedings, do belong, although in these presents express mention be not made thereof; and by judges, by them delegated, to award process, hold pleas, and determine, in all the said courts and tribunals, all actions, suits, and causes whatsoever, as well criminal as civil, personal, real, and mixt. Which laws, so, as aforesaid, to be published, our will and

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pleasure is, and so we injoin, require, and command, shall be most absolute and available in law; and that all the liege people and subjects of us, our heirs and successors, do observe and keep the same inviolably, in those parts, so far as they concern them, under the pain therein expressed or to be expressed; provided nevertheless, that the said laws be consonant to reason, and be not repugnant or contrary, but, as near as conveniently may be, agreeable to the laws, statutes, and rights of this our kingdom of England; and saving and reserving to us, our heirs and successors, the receiving, hearing, and determining of the appeal and appeals of all or any person or persons of, in, or belonging to the territories aforesaid, or touching any judgment to be there made or given.

And forasmuch as in the government of so great a country, sudden accidents do often happen, whereunto it will be necessary to apply a remedy before the freeholders of the said province, or their delegates 10 or deputies, can be assembled to the making of laws; neither will it be convenient, that instantly, upon every such emergent occasion, so great a multitude should be called together; therefore, for the better government of the said country, we will and ordain, and by these presents, for us, our heirs and successors, do grant unto the said William Penn, and his heirs, by themselves, or by their magistrates and officers, in that behalf duly to be ordained, as aforesaid, to make and constitute fit and wholesome ordinances, from time to time, within the said country, to be kept and observed, as well for the preservation of the peace, as for the better government of the people there inhabiting, and publicly to notify the same, to all persons whom the same doth or may any way concern; which ordinances, our will and pleasure is, shall be observed inviolably within the said province, under pains therein to be expressed; so as the said ordinances be consonant to reason, and be not repugnant nor contrary, but, so as may be agreeable to the laws of 20 our kingdom of England; and so as the said ordinances be not extended in any sort, to bind, charge, or take away the right or interest of any person or persons, for or in their life, members, freehold, goods or chattels.

And our further will and pleasure is, That the laws for regulating and governing of property, within the said province, as well for the descent and enjoyment of lands, as likewise for the enjoyment and succession of goods and chattels, and likewise as to felonies, shall be and continue the same as they shall be for the time being, by the general course of the law in our kingdom of England, until the said laws shall be altered by the said William Penn, his heirs or assigns, and by the freemen of the said province, their delegates or deputies, or the greater part of them. And to the end the said William Penn, or his heirs, or other the planters, owners, or inhabitants of the said province may 30 not, at any time hereafter, by misconstruction of the powers aforesaid, through inadvertency or design, depart from that faith, and due allegiance which, by the laws of this our kingdom of England, they and all our subjects in our dominions and territories always owe unto us, our heirs and successors, by colour of any extent or largeness of powers hereby given, or pretended to be given, or by force or colour of any laws hereafter to be made in the said province, by virtue of any such powers; our further will and pleasure is, that a transcript or duplicate of all laws which shall be so as aforesaid made and published within the said province, shall, within five years after the making thereof, be transmitted and delivered to the privy council, for the time being, of us, our heirs and successors; And if any of the said laws, within six months after that they shall be so transmitted and delivered, be declared by us, our heirs and successors, in our or their privy council, inconsistent with the sovereignty 40 or lawful prerogative of us, our heirs or successors, or contrary to the faith or allegiance due by the legal government of this realm, from the said William Penn, or his heirs, or of the planters and inhabitants of the said province; and that thereupon any of the said laws shall be adjudged and declared to be void by us, our heirs and successors, under our or their privy seal; that then and from thenceforth such laws, concerning which such judgment and declaration shall be made, shall become void; otherwise the said laws so transmitted shall remain and stand in full force, according to the true intent, and meaning thereof.

Furthermore, that this new colony may the more happily increase by the multitude of people resorting thither, therefore we, for us, our heirs and successors, do give and grant, by these presents, power, licence, and liberty, unto all the liege people and subjects, both present and future, of us, 50 our heirs and successors, (excepting those who shall be especially forbidden) to transport themselves and families unto the said country, with such convenient shipping, as, by the laws of this

our kingdom of England, they ought to use, and with fitting provisions, paying only the customs thereof due, and there to settle themselves, dwell and inhabit, and plant for the public and their own private advantage. And furthermore, that our subjects may be the rather encouraged to undertake this expedition with ready and cheerful minds, know ye, That we, of our special grace, certain knowledge, and mere motion, do give and grant, by virtue of these presents, as well unto the said William Penn, and his heirs, as to all others, who shall, from time to time, repair unto the said country, with a purpose to inhabit there, or to trade with the natives of the said country, full licence to lade and freight in any ports whatsoever, of us, our heirs and successors, according to the laws made, or to be made, within our kingdom of England, and into the said country, by them, their servants, or
10 assigns, to transport all and singular their goods, wares, and merchandize, as likewise all sorts of grain whatsoever, and all other things whatsoever necessary for food or clothing, not prohibited by the laws and statutes of our kingdoms and dominions to be carried out of the said kingdoms, without any lett or molestation of us, our heirs and successors, or of any the heir of us, our heirs and successors; saving always to us, our heirs and successors, the legal impositions, customs, and other duties and payments for the said wares, and merchandize, by any law or statute due, or to be due, to us, our heirs or successors.

And we do further for us, our heirs and successors, give and grant unto the said William Penn, his heirs and assigns, free and absolute power to divide the said country and islands into towns, hundreds, and counties, and to erect and incorporate towns into boroughs, and boroughs into cities,
20 and make and constitute fairs and markets therein, with all other convenient privileges and immunities, according to the merit of the inhabitants, and the fitness of the places, and to do all and every other thing and things touching the premises, which to him or them shall seem meet and requisite, albeit they be such as of their own nature might otherwise require a more especial commandment and warrant than in these presents is expressed.

We will also, and by these presents for us, our heirs and successors, we do give and grant licence by this our charter, unto the said William Penn, his heirs and assigns, and to all the inhabitants and dwellers, in the province aforesaid, both present and to come, to import and unlade, by themselves, or their servants, factors or assigns, all merchandize or goods whatsoever, as shall arise of the fruits and commodities of the said province, either by land or sea, into any the ports of us,
30 our heirs and successors, in our kingdom of England, and not into any other country whatsoever; and we give him full power to dispose of the said goods in the said ports, and if it need be, within one year next after the unlading of the same, to lade the said merchandizes and goods again into the same or other ships, and to export the same into any other countries either of our dominions or foreign, according to law: provided always, that they pay such customs and impositions, subsidies and duties, for the same, to us, our heirs and successors, as the rest of our subjects of our kingdom of England for the time being, shall be bound to pay; and do observe the acts of navigation, and other laws in that behalf made.

And furthermore, of our ample and special grace, certain knowledge, and mere motion, we do, for us, our heirs and successors, grant unto the said William Penn, his heirs and assigns, full and absolute
40 power and authority to make, erect, and constitute, within the said province, and the isles and islets aforesaid, such and so many seaports, harbours, creeks, havens, keys, and other places, for discharging and unlading of goods and merchandizes out of the ships, boats, and other vessels, and lading them in such and so many places, and with such rights, jurisdictions, and liberties, and privileges unto the said ports belonging, as to him or them shall seem most expedient; and that all and singular the ships, boats, and other vessels, which shall come for merchandize and trade unto the said province, or out of the same shall depart, shall be laden or unladen, only at such ports as shall be erected and constituted by the said William Penn, his heirs or assigns; any use, custom, or other things to the contrary notwithstanding: provided that the said William Penn, and his heirs, and the lieutenants and governors for the time being, shall admit and receive, in and about all such ports, havens, creeks, and keys, all officers and their
50 deputies, who shall from time to time be appointed for that purpose, by the farmers or commissioners of our customs for the time being. And we do further appoint and ordain, and by these presents, for us,

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our heirs and successors, we do grant unto the said William Penn, his heirs and assigns, that he the said William Penn, his heirs and assigns, may from time to time, for ever, have and enjoy the customs and subsidies in the ports, harbours, and other creeks and places aforesaid, within the province aforesaid, payable or due for merchandizes and wares there to be laded and unladed; the said customs and subsidies to be reasonably assessed (upon any occasion) by themselves and the people there, as aforesaid, to be assembled; to whom we give power, by these presents, for us, our heirs and successors, upon just cause, and in a due proportion, to assess and impose the same; saving unto us, our heirs and successors, such impositions and customs, as by act of parliament are and shall be appointed.

And it is our further will and pleasure, That the said William Penn, his heirs and assigns shall, from time to time, constitute and appoint an attorney or agent, to reside in or near our city of London, who shall make known the place where he shall dwell, or may be found, unto the clerks of our privy council for the time being, or one of them, and shall be ready to appear in any of our courts at Westminster, to answer for any misdemeanors that shall be committed, or by any wilful default or neglect permitted by the said William Penn, his heirs or assigns, against our laws of trade and navigation; and after it shall be ascertained in any of our said courts what damages we, or our heirs or successors, shall have sustained by such default or neglect, the said William Penn, his heirs and assigns, shall pay the same within one year after such taxation and demand thereof, from such attorney; or in case there shall be no such attorney, within the space of one year; or such attorney shall not make payment of such damages within the space of one year, and answer such other forfeitures and penalties within the said time, as by the acts of parliament in England are or shall be provided, according to the true intent and meaning of these presents; then it shall be lawful for us, our heirs and successors, to seize and resume the government of the said province or country, and the same to retain until payment shall be made thereof; but notwithstanding any such seizure or resumption of the government, nothing concerning the propriety or ownership of any lands, tenements, or other hereditaments, or goods, or chattels, of any of the adventurers, planters, or owners, other than the respective offenders there, shall be in any way affected or molested thereby.

Provided always, and our will and pleasure is, that neither the said William Penn, nor his heirs, nor any other the inhabitants of the said province, shall at any time hereafter have or maintain any correspondence with any other King, Prince or State, or with any of their subjects, who shall then be in war against us, our heirs or successors; nor shall the said William Penn, or his heirs, or any other the inhabitants of the said province, make war, or do any act of hostility against any other King, Prince, or state, or any of their subjects, who shall then be in league or amity with us, our heirs, or successors.

And because in so remote a country, and situate near so many barbarous nations, the incursions as well of the savages themselves, as of other enemies, pirates, and robbers, may probably be feared, therefore we have given, and for us, our heirs, and successors, do give power by these presents, unto the said William Penn, his heirs and assigns, by themselves or their captains, or other their officers, to levy, muster, and train all sorts of men, of what condition, or wheresoever born, in the said province of Pennsylvania, for the time being, and to make war, and pursue the enemies and robbers aforesaid, as well by sea, as by land, yea, even without the limits of the said province, and (by God's assistance) to vanquish and take them; and being taken, to put them to death, by the law of war, or to save them, at their pleasure; and to do all and every other thing, which unto the charge and office of a captain-general of an army belongeth, or hath accustomed to belong, as fully and freely as any captain-general of an army hath ever had the same.

And furthermore, of our special grace, and of our certain knowledge, and mere motion, we have given and granted, and by these presents, for us, our heirs and successors, do give and grant unto the said William Penn, his heirs and assigns, full and absolute power, licence, and authority, that he the said William Penn, his heirs and assigns, from time to time hereafter, for ever, at his and their will and pleasure, may assign, alien, grant, demise, or enfeof of the premises, so many and such part or parcels to him or them that shall be willing to purchase the same, as they shall think fit; to have and to hold to them the said person or persons willing to take or purchase, their heirs and assigns, in fee simple, or in fee tail, or for the term of life or lives, or years, to be held of the said William Penn, his heirs and assigns,

as of the seignory of Windsor, by such services, customs, and rents as shall seem fit to the said William Penn, his heirs and assigns, and not immediately of us, our heirs and successors: And to the same person or persons, and to all and every of them, we do give and grant, by these presents, for us, our heirs and successors, licence, authority and power that such person or persons may take the premises, or any parcel thereof, of the said William Penn, his heirs, or assigns, and the same hold to themselves, their heirs or assigns, in what estate of inheritance soever, in fee simple, or in fee tail, or otherwise, as to him the said William Penn, his heirs and assigns, shall seem expedient; the statute made in the parliament of Edward, son of King Henry, late King of England, our predecessor, commonly called the statute "*Quia emptores terrarum*," lately published in our kingdom of England, in any wise notwithstanding.

And by these presents, we give and grant licence unto the said William Penn, and his heirs, likewise to all and every such person or persons, to whom the said William Penn, or his heirs, shall, at any time hereafter, grant any estate of inheritance as aforesaid, to erect any parcels of land within the province aforesaid, into manors, by and with the licence to be first had and obtained for that purpose, under the hand and seal of the said William Penn, or his heirs, and in every of the said manors to have and to hold a court of Baron, with all things whatsoever which to a court Baron do belong, and to have and to hold view of frank pledge (for the conservation of the peace, and the better government of those parts) by themselves or their stewards, or by the lords, for the time being, of other manors to be deputed when they shall be erected, and in the same to use all things belonging to view of frank pledge. And we do further grant licence and authority, that every such person or persons who shall erect any such manor or manors as aforesaid, shall or may grant all or any part of his said lands to any person or persons in fee simple or any other estate of inheritance, to be held of the said manors respectively, so as no further tenures shall be created; but that upon all further and other alienations thereafter to be made, the said lands so aliened shall be held of the same lord, and his heirs, of whom the alienor did then before hold, and by the like services, which were before due and accustomed.

And further our pleasure is, and by these presents, for us, our heirs and successors, we do covenant and grant to and with the said William Penn, and his heirs and assigns, that we, our heirs and successors, shall at no time hereafter set or make, or cause to set any imposition, custom, or other taxation, rate, or contribution whatsoever, in and upon the dwellers and inhabitants of the aforesaid province, for their lands, tenements, goods, or chattels within the said province, or in and upon any goods and merchandize within the said province, or to be laden or unladen within the ports or harbours of the said province, unless the same be with the consent of the proprietary, or chief governor, and assembly, or by act of parliament in England. And our pleasure is, and for us, our heirs and successors, we charge and command, that this our declaration shall from henceforward, from time to time be received and allowed in all our courts, and before all the judges of us, our heirs and successors, for a sufficient discharge, payment and acquittance, commanding all and singular the officers and ministers of us, our heirs and successors, and enjoining them, upon pain of our high displeasure, that they do not presume, at any time, to attempt any thing to the contrary of the premises, or that they do in any sort withstand the same, but that they be at all times aiding and assisting, as fitting, unto the said William Penn, and his heirs, and to the inhabitants and merchants of the said province aforesaid, their servants, ministers, factors, and assigns, in the full use and fruition of the benefit of this our Charter.

And our further pleasure is, and we do hereby, for us, our heirs and successors, charge and require, that if any of the inhabitants of the said province (to the number of twenty) shall, at any time hereafter, be desirous, and shall by any writing, or by any person deputed by them, signify such their desire to the Bishop of London, for the time being, that any preacher or preachers, to be approved of by the said Bishop, may be sent unto them for their instruction, that then such preacher or preachers shall and may be and reside within the said province, without any denial or molestation whatsoever.

And if perchance hereafter it shall happen, any doubts or questions should arise concerning the true sense and meaning of any word, clause, or sentence contained in this our present Charter, we will, ordain, and command, that at all times, and in all things, such interpretations be made thereof and

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allowed, in any of our courts whatsoever, as shall be adjudged most advantageous and favourable unto the said William Penn, his heirs and assigns; provided always, that no interpretation be admitted thereof, by which the allegiance due unto us, our heirs and successors, may suffer any prejudice or diminution; although express mention be not made in these presents of the true yearly value and certainty of the premises, or of any part thereof, or of other gifts and grants made by us, our progenitors or predecessors, unto the said William; or any statute, act, ordinance, provision, proclamation, or restraint heretofore had, made, published, ordained, or provided, or any other thing, cause, or matter whatsoever, to the contrary thereof, in any wise notwithstanding. In witness, &c.

Witness Ourselves at Westminster, the eight and twentieth day of February.

By Writ of Privy Seal. 10

OFFICIAL RECOGNITION OF THE NORTH-WEST COMPANY 1819.

*From the official instructions of the Commissioners for executing the office of Lord High Admiral of the United Kingdom of Great Britain and Ireland, to William Edward Parry, Commander of the Expedition comprising the Hecla and the Griper, May 1, 1819.**

Official
recognition
of the North-
West Com-
pany, 1st
May, 1819.

You will endeavour to prevail on them [Indians or Esquimaux] by such reward, and to be paid in such manner, as may best answer the purpose, to carry to any of the settlements of the Hudson's Bay Company, or of the North-West Company, an account of your situation and proceedings; with an urgent request that it may be forwarded to England with the utmost despatch.

MELVILLE.
G. MOORE. 20
G. COCKBURN.

[The foregoing clause had previously been inserted in the official instructions of John Ross, K. S. Captain Royal Navy, who had command of His Majesty's ships the *Isabella* and the *Alexander*, March 31, 1818, signed, Melville, J. S. Yorke, George Hope, and G. Moore, Commissioners for executing the office of Lord High Admiral of the United Kingdom of Great Britain and Ireland.]†

MEMORANDUM BY S. J. DAWSON, ESQ., M.P.P. FOR ALGOMA, ON EARLY MAPS OF THE DISPUTED TERRITORY.

Mr. S. J. Dawson on early maps of disputed territory.

THE WESTERN LIMIT OF CANADA, ON A LINE DUE WEST FROM THE LAKE OF THE WOODS, ACCORDING TO THE TREATY OF 1783, CONSIDERED IN CONNECTION WITH THE MAPS AFFIXED TO THE OFFICIAL REPORTS ON THE "BOUNDARIES OF ONTARIO." 30

The Treaty of 1763, commonly known as the Treaty of Paris, by which Canada was finally ceded to Great Britain, left the territory known at that time as Louisiana in the possession of France.

This extensive country had the Mississippi, from its source downwards, for its eastern and north-eastern boundary, dividing it from Canada, up to the date of the Treaty of 1783, and from Canada and the United States, for a period of twenty years subsequent to that time.

The vast regions now forming, in whole or in part, the States or Territories of Nebraska, the western portions of Minnesota and Dakota, Iowa, Montana, Wyoming and Colorado, to the summit of the "Stony Mountains," with several other States to the south, and a portion of the Dominion of Canada, near the Rocky Mountains, to the north, are within the territory which, at the date of the Treaty of 1783, was known as Louisiana. By the second article of the Treaty of 1783, the Boundary established between the British possessions and the United States, in as far as regards the part of the continent under consideration, was a line "from the most north-western point of the Lake of the Woods, on a due western course to the Mississippi;" and in a Royal Commission issued to Governor Lord Dor- 40

* Journal of a Voyage for the discovery of a North-West passage from the Atlantic to the Pacific, performed in the years 1819-20 in His Majesty's ships *Hecla* and *Griper*, under the orders of William Edward Parry, R.N., F.R.S., and Commander of the Expedition. Second edition, 1821, p. 23.

† A Voyage of Discovery, made under the orders of the Admiralty, in His Majesty's ships *Isabella* and *Alexander*, for the purpose of exploring Baffin's Bay, and inquiring into the probability of a North-West passage. London, 1829, Second Edition, Vol. II., p. 72.

chester, in 1786, the part of Canada forming the then Province of Quebec is described as being bounded by a line "from the most north-western point thereof (i.e. the Lake of the Woods) in a due west course to the River Mississippi, and northward to the Southern Boundary of the Territories granted to the Merchants Adventurers of England trading to Hudson's Bay."

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Mr. S. J. Dawson on early maps of disputed territory.

It will thus be seen that the western limit of Canada, on the line running due west from the Lake of the Woods, was at that time a matter of interest to three nations. The United States could not go west of the Mississippi, or the boundary recognized as representing that river, nor the nation possessing Louisiana come east of it; while as regards Canada the Province of Quebec was to have both her western limit on the due west line, and her entire western boundary, running north to the territories granted to the Merchant Adventurers, determined by the point at which the boundary between the United States and Louisiana should meet the due west line from the Lake of the Woods.

It is well known that the tributary of the Mississippi - stem, now called "the Mississippi," is but a small stream in its upper reaches, having its source a little to the north of the parallel of 47°, in numerous brooks and countless lakelets, far to the south and east of a due west line from the Lake of the Woods.

It does not, therefore, meet the description, and the question arises as to whether it really is the Mississippi meant by the diplomatists who framed the Treaty of 1783, or whether it is not more reasonable to believe that both they and their predecessors who negotiated the Treaty of 1763, had in view the main artery of the vast River System to which the comprehensive name of the Mississippi was applied in those days.

The maps which it is now proposed to consider throw a good deal of light on this important question, and in reviewing the evidence to be gathered from them, it may safely be assumed that, taken collectively, they exhibit all that was known of the geography of the north-western parts of Canada and the adjoining territory of Louisiana, at the time at which the treaties to which reference has been made were entered into.

These explanations seem necessary to a full understanding of the matter at issue, for the fact that Louisiana was of such extent, and bore at one time such important relation to Canada and the United States (and the then boundaries of which are of importance even now), has been lost sight of in late years.

To avoid ambiguity, the parallel of 49° north lat., which is now the international boundary, from the Lake of the Woods westward, will be referred to, in what follows, as one and the same thing with the "due west line," although the latter is somewhat farther north. The Mississippi must necessarily be mentioned often, but only in reference to its north-western tributaries.

Mr. Mills has annexed to his report seven maps issued between the dates of 1710 and 1794, namely:

1. "A Map of North America, corrected from the observations communicated to the Royal Society at London, and the Royal Academy at Paris. By John Senex, F.R.S., 1710."

This map places the sources of the Mississippi at about 100° west longitude and 48° north latitude, and to the north-west of this point is marked "a river whose beginning or ending is unknown." A height of land, not far from being in a correct position, is indicated as existing to the north-east of the Mississippi, but the map is of too early a date to afford much information regarding a region in the interior which was but little explored in 1710, the date at which it was issued.

2. "Delisle's Map of North America, &c., Chief Geographer of His Majesty, and the Royal Academy of Sciences. Amsterdam, 1739."

This small map is by a very distinguished French author, and it is valuable as showing that the Missouri of the present day was the boundary between Louisiana and the Canada of the French.

The evident meaning of the Treaty of 1783 was, that the due west line from the Lake of the Woods should meet the boundary of Louisiana, and on this map that boundary is unmistakably indicated by the first French geographer of his day.

The east Branch of the Mississippi is set down as issuing from "Lac Missisacagan," while a very much larger river, with the words "Mississippi Riv." over it, is indicated as coming in from the north-west.

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tory.

It therefore follows that the east or Missisacagan branch, although called the Mississippi now, was not the Mississippi of Delisle's time. The large river referred to corresponds apparently, in its lower sections, with what is now called the Minnesota River. The St. Croix River is represented with wonderful accuracy for such an early map. It is to be regretted that this map—being by so distinguished a geographer—is on so small a scale.

3. "A map of Canada and the north part of Louisiana, with adjacent countries. By Thos. Jefferys, Geographer to His Majesty, 1762. Published by Thos. Jefferys, Charing Cross, London."

This map is by an English author of some eminence, who, in 1760, had published a geographical and historical work on North America. It is but reasonable to believe that the representatives of Great Britain and the United States, in framing the Treaty of 1783, would have had the map of so distinguished a geographer before them. If they had, and were in any way guided by it, they would not have supposed that a due west line from the Lake of the Woods would intersect the waters of the stream now called the Mississippi, for the map shows a *height of land and the waters of the Red River intervening between its sources and the parallel of 49°, or the due west line*—and in this it is correct although, as might be expected from its early date, in error in detail.

On the map is a note from which it may be inferred that at the date at which it was issued (1762) the "Missouri" or "Mississippi" indicated one and the same river, or that the Missouri was known by the name either of "Missouri" or "Mississippi." The east branch—evidently the stream now known as the Mississippi—is represented as issuing from Lake Missisacagan, while the main river is marked as coming from the west, with the words "Mississippi R." written over it. From this it is evident that the easterly branch was not known as the Mississippi in 1762.

4. "A map of the British Dominions in North America, according to the Treaty in 1763. By Peter Bell, Geographer, 1772."

On this map, what evidently is the tributary now known as the Mississippi, is called Lake River and it is represented as issuing from Lake Missisacagan, which, from its position in reference to the waters near it, appears to be the Leech Lake of modern maps; from this lake it has a course of some two hundred miles to its confluence with the Mississippi.

The main river, marked as the boundary of Louisiana, extends north-westward to the parallel of 47° and meridian of 102°. To continue it still further, in the same direction, on the course of its general bearing, it would intersect the parallel of 49° west of the meridian of 106°, or nearly 500 miles west of the Lake of the Woods. This map was issued *subsequent* to the Treaty of Paris (1763), and it is remarkable, in so far as that it extends the supposed Mississippi, marking it as the boundary between Louisiana and Canada, further to the west, although much in the same direction as that indicated on previous maps; and this position for the boundary line and supposed Mississippi is kept up in the maps issued subsequently to Bell's—as will be seen on reference to Pownall's, D'Anville's and Kitchin's maps. In this it is reasonable to assume that he had been guided by the information which had then, no doubt, become general among geographers, as to the line of demarcation agreed upon, *as the boundary of Louisiana*, at the Treaty of Paris.

It is worthy of remark that the course of this supposed Mississippi of the Treaties, following it to the north-westward, would make it coincide with the actual position of the Missouri for a considerable distance, at the great bend between the parallels of 47° and 48°, and the meridional lines of 101° and 104°.

5. "North America, from the French of M. D'Anville, improved with the English surveys made since the Peace."

This map, in so far as it shows the upper waters of the Mississippi and the boundary of Louisiana, is very like Bell's. The eastern branch, or Lake River, now called the Mississippi, issues from Lake Missisacagan, with tributaries from the north flowing into that lake.

The Mississippi of the Treaty of Peace is represented as stretching off, at an angle of about 15° or 20° to the north of west, which would carry it to the parallel of 49°, about the meridian of 105°, or over four hundred and fifty miles to the west of the Lake of the Woods. As if to mark emphatically which branch was to be known as the Mississippi, the words "Mississippi R." are set down over the west branch—above its confluence with the east branch.

These two maps—Bell's and D'Anville's—published after the Peace of Paris, afford conclusive evidence as to the line intended for the boundary between Louisiana and Canada. It certainly was not the tributary to which the term Mississippi is applied at the present time.

6. "Pownall's Map of the British Possessions in North America, A.D. 1775."

This map shows the eastern branch of the Mississippi issuing from "Red Lake," evidently the Missisacagan of Jeffery's, Bell's, and D'Anville's maps. It is, like the two last, quite conclusive as to the boundary of Louisiana running off to the west, and it is equally clear as to the sources of the eastern branch (or Mississippi of the present time) falling short of the latitude of the Lake of the Woods. Governor Pownall would likely have had access to official documents bearing on the matter, and with his map of 1775 before them, it will hardly be supposed that the framers of the Treaty of 1783 could have been led away with the idea that a due west line from the Lake of the Woods could intersect the river now called the Mississippi.

7. "North America, wherein are particularly distinguished the British Dominions, the United States, and the adjacent Spanish Territories. By Thomas Kitchin, Hydrographer to His Majesty. London: Published by Laurie & White, No. 53 Fleet Street, as the Act directs, 12th May, 1794."

This is an elaborate map, carefully compiled no doubt from all the sources of information available at the time at which it was issued.

It derives additional interest from having been published subsequent to the Treaty of 1783, between Great Britain and the United States, for all the others were published before that date. It is consequently the only one of the series on which the due west line from the Lake of the Woods, forming the boundary between Canada and the United States, in that section could have been exhibited.

The eastern branch of the Mississippi, or Lake River, is shown as having its source a little to the north of the parallel of 47° , in Lake Missisacagan, and this lake corresponds very nearly with the actual position of Leech Lake, so that there can be no doubt of this Lake River being the tributary now known as the Mississippi.

As regards the upper waters generally, this map differs but little from Bell's map, and the Mississippi—marked on it as the boundary of Louisiana—would, if produced north-westward, on the general bearing on which the upper part is projected, as in the case of Bell's projection, reach the parallel of 49° west of the meridian of 105° .

It will be seen that on this map a line, marked as the boundary of the United States, is drawn due west from the Lake of the Woods, and that this line—applying the scale set down on the map—would be over two hundred miles north of the Mississippi, about the meridian of Fort Garry.

Regarding the position of the Mississippi, this map agrees with Bell's map of 1772, and with D'Anville's and Pownall's maps, while Jeffery's map of 1762 is perfectly clear as to a height of land and another river system intervening between the sources of the stream now known as the Mississippi and the due west line from the Lake of the Woods. [How, then, could those who framed the Treaty believe in the existence of a Mississippi east of the Red River, which would be cut by a due west line from the Lake of the Woods?] 40

8. "Delisle's Map of Canada, or New France, 1703." (Mr. Lindsey's Report.)

This map shows that at even as early a date as 1703, the Mississippi had been to some extent explored, as far at least as the latitude of Lake Superior.

What appears to be its principal easterly branch, is marked as issuing from "Missisacagan ou Lac Buade," and flowing south-easterly to the main Mississippi. Its name on this map is Mendeouacanton, and it is clearly distinguished from the Mississippi, which latter is set down as coming for a great distance, from the north-west.

This map is referred to chiefly to show that the tributary now called the Mississippi was not the Mississippi of the early explorers. In 1703, exploration had not extended so far to the north-west as to show much of the northern water-shed; but this early map of Delisle's contains a great deal that is valuable, although it does not further bear on the immediate question under consideration.

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9. "*Carte des Nouvelles découvertes dans l'ouest du Canada, dressée sur les Mémoires de M. de la Vérandrie et donnée au Dépôt de la Marine par M. de la Galissonnière, 1750.*" (Mr. Lindsey's Report.)

This chart shows clearly that, in 1750, it was known that the country, for a considerable distance to the south of the latitude of the Lake of the Woods, was occupied by the water system of the Winnipeg; so that, with this map, or the information it conveys, before them, as it is reasonable to suppose it was, the representatives of Great Britain and the United States, in framing the Treaty of 1783, could not have adopted a Mississippi as existing between the Lake of the Woods and Red River. Otherwise, it must be supposed that they believed in the strange phenomenon of a large river flowing for hundreds of miles to the south, between the two neighbouring rivers—one on either side of it—running to the north.

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The description in the Treaty is however, perfectly intelligible, and would never have been misconstrued had these maps, now submitted to the Legislature, been generally accessible.

In reference to these maps, generally, they point to the Missouri, west of the great bend, as having been the Upper Mississippi of the Geographers of the last century, and this is accounted for by the fact that it was first explored from the direction of the Assiniboine, the tributaries of which interlace with those of the Missouri.

As early as 1742, the Chevalier de la Verandrie had crossed over from the Assiniboine, and explored the Upper Mississippi, as he named it, to the Rocky Mountains. On the 12th March, 1743, he took formal possession of the country, and interred a plate, bearing the arms of the King of France, on an eminence near his encampment.

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At the date of the Treaty of 1763, the French traders, whose head-quarters were on the Red River of the North, had establishments on the Upper Mississippi (or Missouri of the present time), as well as on the neighbouring tributaries of the Assiniboine; but there seems then, and even to a much later period, to have been a considerable interval of unexplored country between the great bend of the Missouri, near the meridian of 100°, and the Mississippi, near its point of junction with the Minnesota River; and hence the error, continued on all the maps of the time, of making the Missouri or Upper Mississippi join the easterly branch, or what is now called the Mississippi, near its confluence with the Minnesota River.

In view of all the facts, there can be no doubt that the Missouri of the present time was the Upper Mississippi of the Geographers of the last century.

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THE NORTH-WEST BOUNDARY OF CANADA, ON THE PARALLEL OF 49° NORTH LATITUDE, ACCORDING TO THE TREATY OF 1783, BETWEEN GREAT BRITAIN AND THE UNITED STATES.

It will doubtless be admitted that the maps to which reference has been made, extending, as to date, over a considerable period of time, and by different authors, some of whom were highly distinguished as geographers in their day, represent fairly the geographical knowledge existing at the date of the Treaty of 1783. Admitting this, it follows:

1st. That the diplomatists who framed the Treaty, knew perfectly well that the branch of the Mississippi River system, now called "the Mississippi," would not and could not have been intersected by a line running due west from the Lake of the Woods, because the maps of the time, *which were their sole sources of information*, agree in representing its most northerly waters as being far to the south of such a line.

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2nd. That from the evidence of the maps, it is seen that they (the framers of the Treaty) had in view a supposed river, forming the boundary of Louisiana, which would be intersected by the due west line in question, somewhere about the meridian of 105° or 106°, or at a point over four hundred and fifty miles west of the Lake of the Woods.

3rd. That a branch or tributary of the Mississippi (or Missouri, rather, which is itself a branch of the Mississippi) called the White Earth River, is actually intersected by the due west line in question,

within a comparatively short distance of the point at which the supposed river, represented on the maps as the boundary of Louisiana, and which it is evident they had in view, would have been intersected by that line.

Judging from these maps it is impossible to avoid the conclusion that the true intent, meaning and spirit of the Treaty of 1783 was, that the western boundary of Canada and the United States, and the eastern limit of Louisiana, on the due west line, should be at a point upwards of four hundred and fifty miles west of the Lake of the Woods.

The assumption that the framers of the Treaty had in view any Mississippi to the east of the Red River, is quite untenable, for some of the best maps of the time, issued by the most distinguished 10 geographers, represent the country east of the Red River, and far to the south of the due west line, as being occupied by another river system, as it really is; and all of them agree in marking the boundary of Louisiana, which was the *real line to be reached*, as leading far to the west of the Red River.

In view of these maps, it cannot for a moment be conceived that the geographers of those days had any idea, or ever represented, that a due west line from the north-west point of the Lake of the Woods would intersect the Mississippi, east of the Red River; nor can it be imagined that diplomatists, in framing an international Treaty, would adopt a conclusion relative to a matter of geography, different from that presented by the most eminent geographers of the nations interested.

It has been suggested that the difficulty would be best met by drawing a line due north from the source of what is now called the Mississippi to the parallel of 49°, but such a line would intersect that 20 parallel, *to the east of the west coast of the Lake of the Woods*, so that a due west line from that lake would meet neither this north line nor the Mississippi.

But what need to make or adopt imaginary lines, or quibble about the word "Mississippi," which is in fact the general name of an immense river system, when the true spirit and even letter of the Treaty can be met by adopting the line already run on a due west course, as expressed in the Treaty, "to the Mississippi," or at least to its first waters at the White Earth River, which this "due west line" *does intersect*, only a little way to the west of the supposed Mississippi which the representatives of the nations interested, as shown by the maps of the time, *intended* as the western boundary of Canada and the United States, and the eastern limit of Louisiana, on a "due west line from the Lake of the Woods."

They would not surely have come four hundred miles to the eastward of the boundary recognized 30 on the maps, to adopt a Mississippi where they *knew* that no such river existed, and give a vast extent of territory to Louisiana, which was then in the possession of a foreign European Power, and the enlargement of which might have affected both British and United States interests.

9th November, 1876.

S. J. D.

RESEARCHES IN ENGLAND AND FRANCE BY THE DOMINION AND ONTARIO GOVERNMENTS RESPECTIVELY, 1877-1878.

FROM MESSRS. BISCHOFF, BOMPAS AND BISCHOFF, AGENTS OF THE DOMINION.

4 GREAT WINCHESTER STREET,

LONDON, E. C., 22nd March, 1877.

SIR,—We beg to report that we have been engaged almost continuously since the date of your last 40 letter in searching the records of the Hudson's Bay Company, and regret that our efforts have not been crowned with more satisfactory results.

Researches in
England,
1877-78.

The only important documents which we have found are two maps, which we did not get in time to despatch by this mail, but which shall be forwarded to you by the next.

The first and smaller of these maps defines the boundary of the Province of Quebec as settled after the Treaty of Utrecht,—a red line being drawn, and the words "The French and English respectively not to pass this line" being written thereon.

The second is a large map of North America, published in 1755, by one Mitchell, pursuant to Act of Parliament, and under authority of the Board of Trade. This map draws the boundary line between

Messrs. Bis-
choff, Bompas
and Bischoff
to Hon. R.
W. Scott,
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the Hudson's Bay Territory and New France as extending along "the height of land" as far as the "Lake of the Woods," and there stops, owing as we imagine to there not being at that period any accurate knowledge of the country lying westward of that point. You will observe that at the point where the boundary line stops, it is running in a south-westerly direction, and here consequently, if continued, would completely cut off from New France the whole of the Red River Territory.

Both these maps are important, as showing that after the Treaty of Utrecht a boundary was fixed between the English and French Territories, as far as knowledge of the country would enable it to be done, and that the claims of the French westward so far as the Rocky Mountains, and northward to the Saskatchewan, must be without foundation, as that at the date of the map (1755) the country was only known to geographers to points far short of the pretended limits.

We also found another map of the Province of Quebec, according to Royal proclamation, of 7th October, 1763, from the French surveys. We have not sent this map, as the north-westerly boundary is the same as in the first above-mentioned map, ending at the corner of Lake Nipissing, lat. 46°, long. 78°.

Messrs.
Bischoff,
Bompas and
Bischoff to
Hon. R. W.
Scott, 22nd
March, 1877.

From a perusal of the Company's journals, we find that it was not the practice of the Company's servants to go up country to purchase peltry from the Indians; but the Indians came down to York and other forts on the bay and there exchanged their furs, etc., for the Company's merchandise. It appears that the "pedlers" [French traders—*Coureurs des Bois*], as they were called, from Quebec had for some time prior to the year 1773 gone up into the Red River district, and by so doing had cut off the Indians and bought their furs, and so prevented their taking them to York Fort and the other settlements and forts on the Bay.

It was to prevent this that in the year 1774, one Mr. Hearne was sent down to establish a station up country, which he accordingly did at Cumberland House. In the same year, Matthew Cocking started on a journey to the Red River district, but no settlement was made there until some 15 years later. In his journal of this journey he mentions "that pedlers swarmed there every year." "An old pedler called 'Young Deer' residing there;" that "the natives were corrupted by the pedlers having so long resided there," and speaks of Franceways settlement on the Saskatchewan River.

These pedlers were both English and French, but seem to have come from Quebec, though there does not seem to be any authority for alleging that they were the discoverers of this Territory.

One Joseph La France, a French Canadian [Canadese] Indian, passed through the Red River territory and Saskatchewan, on his way to York Fort, in the years 1730-42, and in his account of the 30 journey makes no mention of having met any pedlers, or other foreigners, but only natives.

This story is set out in the Appendix No. 2, to the report of the Committee of the House of Commons, in 1749, a copy of which has been sent by the Secretary of the Hudson's Bay Company. A map of the country was also prepared by a Mr. Dobbs, who published the story, under the instructions of Joseph La France. It is fairly accurate, but of course shews no boundaries. The whole country westward of Lake Winnipeg is left blank. The principal importance attaching to this story, we think is that it precludes the Quebec pedlers from claiming that district by right of discovery. In one part he says the French never pass into the countries adjoining Lac la Pluie.

The following are the dates of the establishment of the earlier posts of the Hudson's Bay Company in this district:—

Cumberland Ho	1774	Brandon Ho.....	1794
Red Lake	1790	Edmonton "	1795
S. Branch do.	1791	Carlton "	1797
Lac la Pluie.....	1790	Lake Winnipeg.....	1795
Swan River.....	1790	Assiniboils River.....	1796
La Crosse, Athabasca.....	1791	Red River	1799

We apprehend the maps, as coming direct from the custody of the Hudson's Bay Company, prove themselves. We have not taken extracts from the Post diaries, inasmuch as we can trace no direct evidence calculated to support counsel's theory of prior discovery by the Hudson's Bay Company, and the foregoing repulses [reflects] the general impression produced upon our minds by perusal of the Post 50

Diaries, as also of sundry published histories of the district, in the Company's Library, such as "Robson's Hudson's Bay," published 1752, "Remarks upon Captain Middleton's Defence, by Arthur Dobbs," 1744, and "Carver's Travels in North America," 1766.

As we have given the Company an undertaking that the two maps shall be returned to them when done with, we should deem it a favour if you will give directions for their receipt to be acknowledged on arrival, and for their return to us when done with.

We have the honour to be,
Sir,

Your most obedient servants,
BISCHOFF, BOMPAS & BISCHOFF.

Hon. R. W. Scott,
Ottawa.

FROM THE HON. SIR JOHN ROSE TO THE HON. ALEX. MACKENZIE.

BARTHOLOMEW LANE, E. C.

Sept. 26th, 1877.

The Minute of Council requesting that Mr. Crooks be accredited in reference to the boundary between Ontario and the Dominion, has reached me by last mail.

You have already heard by my previous letter that Mr. Crooks had sailed. I may mention, however, that even if he had remained, I do not think any search would have thrown more light on the matter than his Government is already in possession of. I employed a gentleman for several weeks to search at the Colonial Office and Foreign Office, as well as the Rolls' Office, and the Hudson Bay archives, and every scrap of information bearing on it was, I think, sent out, either to Mr. Campbell, whilst he was Minister of the Interior, or to Mr. Scott some months ago. I mention this to satisfy the Ontario Government; as I believe that any further search would be attended with no result.

Believe me to be,

Yours ever faithfully,

JOHN ROSE.

The Hon. Alex. Mackenzie,
Ottawa.

FROM MR. McDERMOTT, AN AGENT OF SIR JOHN ROSE.

SIR JOHN ROSE:

In accordance with your instructions, I have been engaged for some time past in searching among public documents, for papers or maps defining the western and northern boundaries of the Province of Ontario.

Having been informed that you had yourself investigated the collection of maps in the Foreign Office Library, the greater portion of which had been removed to the National Record Office in Rolls' Court, I commenced my search in the library of the latter department, receiving for several days the sole attention of Mr. Kingston, the librarian, whose assistance, I need hardly say, saved much time and labour. I may at once state that my search has been unsuccessful. The facts and quotations supplied by you have all been easily verified, but the closest search has given no clue to the discrepancies, and no additional information in regard to disputed points.

In the first place, with regard to the western boundary line of the Province of Ontario, as laid down by 14 George III. Cap. 83, no minute of the Privy Council, nor any public documents of that time, give any definition of the vague term "Northwests," nor do any of the maps of Canada indicate any boundary whatever in this region. The *Second Edition* of Mitchell's Map of 1755, in this respect does not differ in any particular from the First Edition. One of Mitchell's maps in the collection, I may add, is the identical one used by the Commissioners in settling the boundary line after the revolutionary war, and on it the western boundary line of the United States follows the course of the Mississippi, northwards from its conflux with the Ohio.

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Sir John Rose
to Hon. Alex.
Mackenzie,
26th Septem-
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Mr. McDer-
mott to Sir
John Rose.

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Mr. McDermott to Sir
John Rose.

With reference to the district in Michigan governed by Mr. Kay, I found among the papers of Governor Haldimand a Petition from the inhabitants of Detroit, forwarded in 1783 by a Lieutenant-Governor Hay; but amidst this very voluminous correspondence I could find no further mention of this gentleman; and no patent of his appointment exists. Such patent, I am told, would certainly be upon the Rolls, had his appointment emanated from this side.

As to the line of division between Upper Canada and Hudson's Bay Territory, I can find no explanation of the discrepancy pointed out by you between the definitions of the boundaries of Upper and Lower Canada, as given in the Proclamation of Governor Alured Clarke in 1791, and that assigned in the Letters Patent of the Earl of Elgin in 1846. I have read carefully through the draft instructions to the Earl of Elgin and all the correspondence relating to his appointment, but can find no mention of 10 any reason for extending his jurisdiction to the shores of Hudson's Bay, nor indeed any allusion to boundaries other than incidentally to matters in dispute between Canada and New Brunswick. The explanation given by you that the difference may be due to a slip of the pen would seem to be correct. Subsequent research among the papers at the Colonial Office affords no other explanation. I may mention here that the Order in Council dividing Upper and Lower Canada is dated 24th August, 1791, upon a report from the Lords of Committee of Council, dated 17th August, 1791.

The boundaries of the Hudson's Bay Company, as defined by the Treaty of Utrecht, are shown on both editions of Mitchell's Map as following the height of land which forms the watershed of rivers running southward to the Lakes or northward to the Bay. I do not find, however, in the Records and Correspondence of the Commissioners of Trade and Plantations (which consists of documents in French, 20 Latin and English) any mention of a decision arrived at by the Commissioners appointed to fix this boundary matter and other disputed questions. Neither could the Secretary of the Hudson's Bay Company afford me any information on this point. He states that the Company have no maps illustrating the question, and that it was always understood that their territory comprised the land in which the waters flowed to the northwards, thus fixing the boundary at the height of land before mentioned. He says he will look through the documents of the Company, but he holds out no expectation of finding anything conclusive of the matter. Should he do so, he will at once communicate with you.

Under these circumstances I have thought it best to communicate at once to you the result of my enquiries. Mr. Kingston, the Librarian of the Record Office, joins me in the belief that no more precise 30 information exists on the subject, and all older maps show that so little was known at the time, of the regions in question, that inaccuracies and discrepancies in the description of boundaries would appear to be inevitable.

E. R. McDERMOTT.

FROM LIEUT.-COL. SCOBLE, AGENT OF THE GOVERNMENT OF ONTARIO.

TORONTO, March 18th, 1878.

Lieut. Col.
Scoble, to
Hon. G.
Mowat, 18th
March, 1878.

SIR,—It having been deemed important that a search should be made for further evidence bearing on the limits of Ontario to the west and north, I received instructions from you on the 16th October last, to proceed to Paris and London for the purpose of searching the archives relating to the history of 40 the country, with a view to procure such further evidence.

Arriving in London on the 30th October, I presented my letter of credence to Sir John Rose, and by him was furnished with a letter to the Secretary of State for the Colonies; by whom, upon learning that my immediate intention was to proceed to Paris, I was furnished with a letter to Lord Tenterden, Under-Secretary of State for Foreign Affairs, who gave me letters to the British Ambassador in Paris. With these credentials, I left London for Paris on the 3rd November, and on the 5th November I presented my letters to Lord Lyons, and was furnished by him with letters to the Minister of Marine and Colonies, the Minister of Foreign Affairs, and the Minister of the Interior. I lost no time in presenting these, and stating the objects of my visit to the various Ministers; but owing to the unsettled state of French politics, and the changes in the *personnel* of the Ministry (there having been five successive changes of Ministry during the month of November), I found it very difficult to procure 50

immediate attention. Pending the official permission to search the public archives, I busied myself in the splendid libraries of Paris, where I found much information which was collaterally useful to me, and where I saw and made notes of large numbers of maps published between 1713 and 1763. I was also sufficiently fortunate to establish friendly relations with M. Pierre Margry, whose historical writings upon the early history of North America are so well known. Through his advice, and aided by his extensive knowledge of all matters relating to the early history of Canada, I was enabled to commence my researches at a point very far in advance of that which I should otherwise have done.

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Having at last procured the required permission to search the archives of the Marine and Colonies, a new difficulty presented itself. Monsieur Le Bon, the Sous-Directeur of the Department, was one of the Commissioners appointed to arbitrate between France and England upon the question of the Newfoundland Fisheries, and I found it difficult to disabuse his mind of the idea that my investigations had some relation to this subject. Consequently, my researches were carried on under certain restrictions. All the extracts I required were submitted to his eyes before I was allowed to use them, and copies were made, by the clerks of the Department, of such matter only as he judged could not be used in relation to Newfoundland. I am of the opinion, however, that the copies of the documents which I forwarded to you contain all the evidence that can be procured from that source which is material for the present purpose. I am sustained in this belief by the opinion of Mons. Margry, who was aware of the nature of my mission, and with whom I conversed frequently, as to the discoveries I made, and at to the existence of farther evidence.

Lieut. Col.
Suble to
Hon. G.
Mowat, 1878.
March, 1878.

With respect to the reference which was made in letters that passed between the Marquis de Torey and Mr. Prior, and between Mr. Prior and Lord Bolingbroke in 1713, to a map or maps that had been furnished to the Commissioners of both countries, defining the extreme pretensions of each, the most diligent search on my part, both in London and Paris, failed to bring these maps to light, although I was sufficiently fortunate to discover the original letters which accompanied them. I found a map, however, in the *Dépôt des Cartes de la Marine*, in Paris, which bore certain autograph lines upon it, that were marked as lines "according to the pretensions of the English" and "according to the memoir of M. D'Auteuil" respectively. The first of these lines is that claimed by the memorial of the British Commissaries presented through Lord Stair in 1719, as being the boundary desired by the Commissaries appointed by Great Britain under the Treaty of Utrecht. The second is probably that boundary which France, as a last resort, was willing to concede. The lines are drawn upon a map published by Guillaume de L'Isle in 1703, and the lines in question doubtless furnished the data for the lines shewn in the subsequent editions of De L'Isle's maps, which, however, followed D'Auteuil's memoir more closely than the original map. M. D'Auteuil was, at the time of his "Memoires," Procureur-General in Canada, and was engaged in Paris, in and after 1719, in the preparation of the French case for consideration of the Commissaries under the Treaty of Utrecht.

During my stay in Paris I examined some hundreds of maps, many of them original, relating to French discoveries in N. America, and made full notes as to the information furnished by upwards of sixty of them. As, however, subsequent research proved many of them to have been geographically incorrect, and they bore little or no value as historical references, I did not consider it necessary to send you more than a few of the most important.

Returning from Paris to London on the 9th December, I commenced my researches by looking at the maps in the Colonial and Foreign Offices, but without finding any maps of special value in reference to boundaries.

I received much assistance in my search in the Foreign Office from E. Hertslet, Esq., C.B., whose acquaintance with the Treaties concluded by Great Britain, enabled him to give me much valuable information. My researches served to prove that no authentic map exists in the Colonial Office, the Foreign Office or the Public Records Office, defining the extent of country ceded by the French in 1763

I found a map published by Arrowsmith, in 1795, in the Foreign Office. This map is inscribed "By permission to the Hon. Governor and Company of Adventurers trading into Hudson's Bay, in testimony of their liberal communications," and gives no boundary under the Treaty of Utrecht, but

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APPENDIX.
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Sec. XII.
Miscellaneous.
—
Researches in
England,
1877-78.
Lieut.-Col.
Scoble to
Hon. O.
Mowat, 18th
March, 1878.

bears the letter U in Upper Canada, on the parallel of 50°, and the whole word "Upper" north of the height of land; whilst in an edition of the same map, dated 1795, but, as I ascertained from the publisher, published in 1850, the words "Upper Canada" have been erased from their original position, and re-engraved close to the shore of Lake Superior, south of the height of land.

My researches in the Public Records Office were materially aided by Mr. Kingston, the librarian, through whose kindness I procured copies of important documents and correspondence having reference to the English Commission, under the Treaty of Utrecht.

Some of the documents forwarded from France having failed to reach you, I returned to Paris on the 11th January, completed my researches, and going back to London, left for Canada on the 25th February, arriving here on the 15th inst. 10

In conclusion, I beg respectfully to point out the difficulties which encompass research into such a matter as that with which I have been charged. The examination of the records of nations like those of Great Britain and France, must needs be laborious, even under the most favorable circumstances, but considering that I had been preceded in my researches by many gentlemen, who gave much time and study to the subject, I feel that I have been fortunate in being able to bring to your notice documents that have never been produced before in all the course of the discussion of the Boundary question, as to the claims of the Hudson's Bay Company, and as between the Dominion and this Province.

Trusting that the result of my labours has been satisfactory to you,

I am, Sir,

Your obedient Servant,

THOS. C. SCOBLE. 20

Hon. O. Mowat, M.P.P.,
Attorney-General, etc., etc.,
Toronto.

EXTRACTS FROM THE SPEECHES OF THE LIEUTENANT-GOVERNOR OF ONTARIO
ON THE OPENING OF THE LEGISLATURE, 1874-1878,

AS TO THE REASONS FOR DELAY IN THE MATTER OF THE BOUNDARY ARBITRATION.

1874.—The collection of evidence with respect to our North-West boundary is still going on, and the evidence for and against our claims will soon, I trust, be in a position to be referred to some tribunal for adjudication. 30

1875.—Since the dissolution of the last House, the question of the northerly and westerly boundaries of the Province has continued to receive the attention of the Government. Informal negotiations have taken place with respect to both a compromise line and the arbitration which the Legislature authorized, but no final result has been arrived at; meanwhile, steps have been taken for obtaining some additional evidence expected to be of value.

1877.—For the determination of the Provincial Boundaries by the agreed method of an arbitration the appointment of a new arbitrator on behalf of the Province recently became necessary, the distinguished Judge who was to occupy that position having requested to be relieved from it. Meanwhile, a provisional line had been mutually determined upon, in terms of the resolution of the Legislative Assembly at a former session; a considerable amount of additional materials for the ascertainment of the ultimate boundaries had been collected; a new and an exhaustive statement of the case of Ontario had been prepared; and a considerable part of the documentary and other evidence affecting the questions at issue had been printed. Almost everything is now ready for the final decision, within a few months, by able and competent referees, of questions which for two centuries have given occasion to keen controversy, and often to fierce conflicts, between the nations, as well as the great public bodies, who have from time to time claimed portions of the disputed territory.

Speeches of
the Lieut.-
Gov., 1874 &

1878.—There has been another unexpected delay in procuring a settlement of the important subject of the boundaries between Ontario and the adjoining territories of the Dominion; the absence from America of the distinguished gentleman selected as third arbitrator having made a settlement during the year impossible. The delay has been made use of to collect further facts and documents from the public archives in London and Paris, as well as from the records in possession of the Hudson's Bay Company, and from various public libraries in Europe and America. The result of these and other investigations have been embodied in an important supplement to the papers already printed for the use of the arbitrators. Copies will be laid before you. The three arbitrators are believed to be now ready to enter on the arbitration as soon as may suit the arrangements of the two Governments.

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APPENDIX.
Sec. XII.
Miscellaneous.
Speeches of
the Lieut.-
Gov., 1874-8.

10

AGREEMENT OF COUNSEL AS TO MAPS.

IN THE PRIVY COUNCIL.

IN THE MATTER OF THE BOUNDARY BETWEEN THE PROVINCES OF ONTARIO AND MANITOBA, IN THE
DOMINION OF CANADA.

BETWEEN THE PROVINCE OF ONTARIO, OF THE ONE PART;

AND

THE PROVINCE OF MANITOBA, OF THE OTHER PART.

—
Memo, us ta Maps.

It is intended that each party shall have the maps photographed which such party relies on, and shall furnish counsel for the other with copies at least ten days before the day appointed for the 20 hearing. Agreement of
Counsel as to
Maps.

Any published maps which are stated in the "Notes on Maps" in the Ontario Book of Arbitration Documents to be in existence (copies whereof are intended to be used by either side), shall be assumed to be by the author and of the date they purport to be; and the photographs thereof shall be assumed to be correct unless the contrary appears.

Either party may put in as evidence any other maps not mentioned in the said Notes to be in existence; such party giving to the other reasonable notice of the place where such maps are deposited and may be seen, and procuring and giving photographs thereof within the same time.

O. MOWAT, for Ontario.

D. MCCARTHY, for Manitoba.



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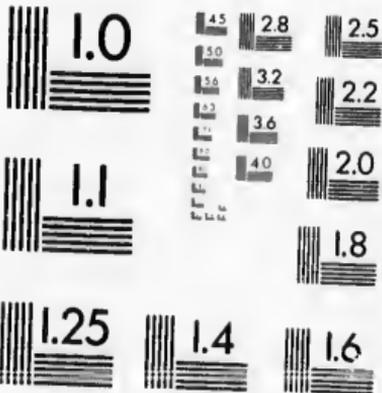
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ADDITIONS AND CORRECTIONS.

Page x—Section IX.—To 4 line from foot—For 1680 read 1689, and transfer the whole line to its proper order of date on page xi.

xii—Section X.—Insert, in proper order of date, the following: "1731, May 8. The King to MM. Beauharnois and Hocquart regarding the future dependence of Louisiana on the Government of Canada, and as to the Illinois. . . . [Add. et Corr. under page 653.]"

JOINT
APPENDIX.

- 6, line 39, read Act.
 12, " 30, before i.e., insert).
 14, " 5, read Commissions.
 18, " 37, read Connolly.
 19, " 32, after Frenchman's River and Abbitibi River, respectively, for a dash, substitute a semicolon.
 36, " 16, after Superior, insert quotation mark.
 38, " 26, read northward.
 39, " 41, omit quotation mark.
 " 43, omit in.
 41, " 4, read country.
 43, " 25, read memorial.
 44, " 45, read assurance.
 45, " 8, after possessions, insert quotation mark.
 46, " 4, after as and after line, insert comma.
 49, " 41, read northward in both places.
 50, " 34, after question and after debate, insert comma.
 55, " 14, for the semicolon, substitute a comma.
 " 27, read Tomiscanning.
 " 49, for then, read than.
 56, " 10, after Council, insert a comma; read commissions.
 56, " 23, before by, insert quotation mark.
 " 31, read Union.
 59, " 51, read p. 21.
 62, " 48, for on, read no.
 63, lines 36 and 38, read coasts.
 64, line 37, read referred.
 69, " 23, before There, insert quotation mark.
 " 34, after River, insert quotation mark.
 70, " 9, read Nemiskau.
 73, " 22, read Bonsecours, St. Nicolas, Crèveceur.
 74, " 35, read Clarke.
 75, " 6, for in, read on.
 77, " 6, for at, read as.
 " 8, for on, read or.
 " 9, after acts, insert a dash.
 79, " 29, read 1655.
 80, " 1, read 1668.
 85, " 9, omit [Appendix A, ante, pp. 340-2.]
 " 24, for 500, read 26.
 89, " 16 and 17, for that, to, read than to.
 92, " 25, after embraces, insert a comma.
 93, " 49, after Hudson, insert a semicolon.
 98, " 29, after falls, insert [leads].
 103, " 2, for da, read de.
 109, " 38, read friends.
 110, " 45, before We, insert quotation mark.
 113, " 16, after subject, insert a comma.
 114, " 17, read Reinhard.

Additions and
Corrections.

JOINT
APPENDIX.

- 115, line 16, *after started, insert quotation mark.*
 116, " 37, *after as, insert to.*
 117, " 26, *omit comma after imagine.*
 121, " 17, *read instructed.*
 " 32, *omit comma after sound.*
 122, " 11, *the like, after language.*
 131, " 11, *read Z. A. Lash, D.M.J.*
 132, " 2, *before the, insert quotation mark.*
 137, " 25, *read appointing.*
 142, " 7, *for to, read of.*
 " 23, *after obtain, insert comma.*
 163, " 7, *read Sainte.*
 " 36, *read Rivière.*
 172, " 36, *read côte.*
 " 49, *after shores, insert semi-colon.*
 173, " 11, *read Tadonssac.*
 177, " 13 and 14, *read "actual acceptance."*
 " 15, *read for she remained.*
 184, " 18, *for By which, read—by which.*
 188, " 17, *read Temiscamingue.*
 195, " 48 and 49, *after cancer and Espagnole, respectively, for comma, substitute semicolon; after Cuba, insert et.*
 197, " 41, *read Caën's.*
 201, " 41, *for "carte," read "carte."*
 203, " 11, *read Nipissing.*
 205, " 6, *read employées.*
 206, " 29 and 36, *read Vallière.*
 215, " 36, *read Bethell.*
 224, " 13, *read We.*
 240, " 28, *read discussion.*
 241, " 39, *read territory.*
 248, " 23, *after 1763, insert quotation mark.*
 251, " 16 and 20, *read Frederic.*
 253, " 34, *the like.*
 " 47, *read Sir Frederic Rogers.*
 254, " 7, *read Frederic.*
 264, " 29, *read hardly.*
 " 31, *read miles.*
 265, *last side note, substitute Resolutions of the Canadian Parliament, December, 1867.*
 293, line 25, *after colleagues, insert a period.*
 311, " 38, *read Frederic.*
 315, " 26, *after Act, insert a dash.*
 318, *in the schedule, read Qu'Appelle.*
 338, *between lines 28 and 29, insert a rule.*
 341, *lines 12 and 31, read Albemarle.*
 348, line 36, *after (1690), for period, substitute comma.*
 " 37, *omit 1690.*
 351, " 8, *after America, insert].*
 " 37, *after 1763, for period, substitute a comma.*
 357, " 39, *omit —1768.*
 " 43, *read Maserea.*
 361, " 1, *after Rocher, insert a comma; for and, read et.*
 " 5, *after Rocher, insert a comma.*
 " 7, *after Paix, the like.*
 " 23, *read jusqu'à.*
 " 24, *read gouverner.*
 " 27, *read servir.*
 " 32, *read maintenu.*
 " 34, *read coutumes.*
 " 36, *read entrer.*
 " 40, *read précédente.*
 " 41, *read m'ont.*

Additions and
Corrections.

- Page 362, line 30, *after that, insert effect.*
 " 35, *omit effect.*
 364, " 25, *omit asterisk.*
 " 37, *read en nous.*
 365, " 20, *read pointes.*
 " 31, *read positions.*
 366, " 5, *read d'en haut.*
 373, " 49, *after rivers, omit comma.*
 " 50, *after point, the like.*
 375, " 10, *read Majesty.*
 " 12, *read Goodriche.*
 " 17, *for " which," read " with."*
 376, " 27, *read singulière pour votre.*
 " 32, *omit.*
 377, " 9, *read de l'orphelinet.*
 " 11, *read voeux.*
 378, " 11, *read Majesty's.*
 " 13, *read governors.*
 " 17, *read passed.*
 383, " 25, *for at, read of.*
 384, " 20, *for Guy Carleton, read Frederick Haldimand.*
 " 21, *the like.*
 " 22, *read Governor-in-Chief.*
 386, " 5, *read Johnson.*
 387, " 21, *read Letters.*
 390, " 7, *read Point.*
 391, " 10, *after assign, insert a period.*
 " 13, *after pleasure, insert a comma.*
 393, " 40, *after question, insert comma.*
 394, " 2, *read Temiscanning.*
 " 16, *read Ottawa's.*
 " 20, *read Merchants Adventurers.*
 395, " 3, *read Outawa.*
 " 8, *read François.*
 " 15, *read Timiscoming.*
 " 23, *read Nipising.*
 400, " 11, *omit comma after degrees ; insert comma after West.*
 " 13, *omit comma after degrees ; insert comma after East.*
 " 37, *read boundary.*
 401, " 26, *after River, insert comma.*
 402, " 27, *after AND, insert IN.*
 404, " 36, *read Temiscanning.*
 406, " 15, *after falls, insert [leads].*
 407, " 12, *read administering.*
 " 32, *read Courts.*
 425, " 52, *read aforesaid.*
 " 53, *after or, read de.*
 428, " 14, *read Temiscanning.*
 430, " 5, *after consecration, insert enter.*
 445, " 13, *before the, insert 44.*
 453, *after line 36, there should be inserted the provisions of the Treaty of Breda referring to the northern boundary of Canada as being at the 60th parallel, and confirming to the powers their respective possessions held 1st January, 1665. (See Joint App. pp. 464-5, 512.)*
 456, line 37, *after which, read the.*
 458, " 26, *read preliminary.*
 459, " 31, *read Majesté.*
 461, " 22 and 23, *after pays and after Labrador, respectively, insert a comma ; after cartes, omit comma.*
 " 40 and 41, *after navigators, read in the course of search for a Western passage to the Indies.*
 " 47 and 48, *for having no deed in which mention was made of it, read there being no record thereof in any document.*
 462, " 8, *for et, read es.*

Additional and
Corrections.

colon ; after Cuba, insert et.

- Page 462, line 25, after *Button*, insert comma.
 " 31, read *que par ce qui*.
 " 53-4, for placed hereafter, read appended hereto.
 463, " 1, read *voyage à*.
 " 14, read *New-Nord*.
 " 16 and 50, insert as foot-note to 1640 the following:—*Que*, 1610, in reference to Champlain's taking of possession above referred to.
 " 24, read *Raddison*.
 " 20, for " verbal proceedings," read "*procès verbaux*."
 " 20, read *correspondence*.
 " 31, for article at hand, read clause opposite.
 " 30-7, read to find a Western passage to the Indies.
 " 39-41, read but they had there no trace of settlement till the year 1682, when they came there after the French had built.
 464, " 28, read *correspondence*.
 " 38, read *Des Grosseliers and Raddison*.
 " 40, for *perfidy*, read *treason*.
 " 49, for *peace*, read *effect*; for *truo*, read it were regular.
 " 53, for *claim*, read *right*.
 " 54, after *grant*, insert comma; read *Breda*.
 " 54-5, for *conveys*, read *declares*.
 465, " 34-7, read On the occasion of the negotiation which at that time took place between the two kings for a general Treaty of Commerce, in which this matter was to have been included, Monsieur de Frontenac was directed not.
 " 50, for *appears*, read *appearing*; for *having*, read *have*.
 " 51-2, read matter upon the footing of the documents and evidences of title to be produced by the two trading companies.
 " 53, for *deeds*, read *instruments*.
 " 54, read *shall*.
 466, " 4-5, read *Verazzano, Florentin, et*.
 " 8, after *Labrador*, insert a comma.
 " 11, read *aucun*.
 " 14, read *leur*.
 " 15, after *compa* substitute hyphen for comma.
 " 19, read *St. Laurens*.
 " 19, after *St. Laurens*, omit hyphen.
 " 23, after *Pevoret*, insert [*Peuvret*]; read *Bourdon*.
 " 29, after *Verazzano*, insert a comma.
 " 30, for the semi-colon and dash, substitute a period.
 " 32, read *Cottenmel*.
 " 32-3, read *Rivers of the Great Bay, River of Norembegue*.
 " 36, for *deeds*, read *registers*.
 " 40-4, read ranging along the sea coasts to the Arctic Circle for latitude, and in longitude from the Island of Newfoundland westward to the Lake called *Mer Douce*,* and beyond, within the lands and along the rivers which pass there and discharge into the *St. Lawrence*, and into all other streams which flow to the sea. In which extent of country, the North Bay of Canada, called by the English *Hudson's Bay*, is clearly included.
 " 45, for *deed*, read *document*.
 " 46, read *Bourdon*.
 467, " 26, read to re-affirm their wish to continue to live.
 " 29, for *conveying*, read *giving*.
 " 30, for *remove*, read *proceed*.
 " 32, for *conveying*, read to the effect; for *voyage*, read *journey*.
 " 37, for *cession*, read *surrender*.
 " 39, for *in*, read *of*.
 " 39, read in the same extent in which it had been conceded by *Louis the Thirteenth* to the.
 " 42, for to the *Outouacs*, read in the country of the *Outouacs*.
 " 43, read *submitted*.
 468, " 10, read *bâtimens*.
 " 11, read *des Grosseliers*.

**Mer Douce*—the Fresh Sea—a name applied to Lake Huron and sometimes to Lake Superior.

- Page 469, line 38, after *River*, omit comma.
 " 40-1, for *descended*, read *proceeded* to.
 " 53, for *presented*, read *represented*.
 469, " 9, read *cables*.
 " 34, for *caused*, read *causing*.
 " 35, read *wrecked*. The.
 " 36, after *long-boats*, omit the dash.
 " 50-1, read *has good grounds for its claim to the losses and damages which it pretends*.
 470, " 8, read *La Gargousse*.
 " 13, for *au*, read *autres*.
 " 34, read *La Gargousse*.
 " 35, after *waves*, omit comma.
 " 37-9, make a separate paragraph of each of these lines.
 " 40-1, read *The Company of Canada not having being able to obtain*.
 " 45, read *agent*.
 " 50, for *make*, read *whereof they made*.
 " 51, omit of them ; for *carry*, read *carried*.
 471, " 14, read *désordres*.
 " 38, for *in*, read *of*.
 " 38-9, read *frequented and traded within the limits mentioned and set forth in*.
 472, " 17, read *1667*.
 " 22, read *foreigners*. 'Tis sufficient.
 473, " 49-50, read *particulière*.
 " 51, read *convaincantes*.
 474, " 1, read *parai trait*.
 " 5, read *aucun* ; read *apparaît*.
 " 6, read *en*.
 " 9, read *particuliers*.
 " 14, read *Capitaines*.
 " 23, read *nommés des*.
 " 36, read *bâtir*.
 " 38, read *abordaient*.
 " 41 and 47, read *Guilham*.
 475, " 15, read *correspondence*.
 " 18, read *François*.
 " 37, read *suslits* ; read *côté*.
 " 48, read *côtes*.
 " 51, for *shores*, read *coasts*.
 476, " 5, read *côtes*.
 " 13, after *par*, insert [pour].
 " 14, read *qui [y] passent*, et.
 " 15, after *St. Laurens*, insert a comma.
 " 20, read *côtes*.
 " 27, after *avant*, insert comma ; after *dans*, omit comma.
 " 28, after *titles*, omit comma ; for *deeds*, read *documents*.
 " 29, read *the Companies which have carried on and still continue an actual trade there*.
 " 30-1, read *to disprove the unfounded assertion of the English Company*.
 " 32, read *hereinafter*.
 " 33, for *plans*, read *documents* ; for *good order*, read *proper form*.
 " 34, for *settlement*, read *establishment*.
 " 38-40, read *to the Arctic Circle for latitude, and for longitude from the Island of Newfoundland westward to the Lake called Mer Douce, and far beyond, the Lands and along the Rivers which pass there and discharge into the St. Lawrence, and which flow to the sea*.
 " 50, omit it ; for *plans*, read *documents*.
 477, " 2, read *côtes*.
 " 4, 5 and 6, read *côté*.
 " 6, read *transporter*.
 " 8, read *Nomiskau*.
 " 18, after *croix*, insert comma ; after *Roi*, omit period.
 " 27, read *Bourdon*.
 " 28, for *in*, read *of* ; after *Canada*, insert *who* ; for *deeds*, read *acts*.

Additions and
Corrections.

- Page 477, line 29, after Hudson, insert semicolon ; after but, omit comma.
 " 30, for ease it would have, read facilities it had.
 " 33, for effect, read end.
 " 40, for matters, read affairs.
 " 44, for cession, read surrender.
 " 46-7, read Company of the West Indies to which he conceded.
 side note, read Couture.
- 478, line 6, after Sault, insert comma ; after chez, omit comma.
 " 6, read côtes.
 " 8, after Supérieur, insert comma.
 " 21 and 49, after Piscoutagany, read as note. The fort referred to as having been built upon this lake was probably identical with Fort St. Germain, which the old maps place here. It remained with the French until the cession of Canada.
 " 23, read côté.
 " 29, read coupés.
 " 31, read prouvor.
 " 39, read Ontaouacs ; read Hudson's.
 " 42, for lie between, read extend from.
 " 43, read Frenchmen's.
 " 45-6, read Minahigwskat.
 " 48, read named Fort Crèvecoeur.
 " 49, see under line 21, supra ; read Ontonlibis.
 " 50, for strongly, read firmly.
 " 52, omit taken.
 " 53, read a ship from Boston came there for shelter.
- 479, " 4, read 22.
 " 6, after 1670, insert comma ; for est, read ect.
 " 13, after ont, for en read eu.
 " 30, read côtes.
 " 31, read 1683.
 " 32, before was, insert she.
 " 33, for grounded, read established.
 " 34, for good order, read proper form.
 " 36, for authorize, read justify ; for end, read bottom.
 " 39, for does, read do.
 " 40, after place, insert [Rupert River].
 " 49, read period. Therefore this ; after and, read it.
 " 52, for upon, read of.
- 480, " 5, read contentée.
 " 16, read side, it is.
 " 32, after 1632, omit comma.
 " 44, read 1683.
 " 45, for Of all which, read By all that ; for remains, read appears.
 " 46, read have spread themselves into the places which they claim to belong to them ; that.
 " 47, after dispossessed, insert comma ; after means, the like ; for from one, read of a.
 " 48, after themselves, omit comma.
 " 49, read veje'.
- 481, " 41, read côté.
 " 42, read côtes.
 " 45, 46 and 49, read été.
- 482, " 8, read l'Amérique.
 " 20, read côtes.
 " 34, read eu ; read porté.
 " 40, after services, for de, read des.
 " 43, for en read ou ; read été.
- 483, " 8 and 9, read été.
 " 25, 27 and 28, read côté.
 " 28, read au lieu.
 " 34-5, read upon the ownership of Hudson's Bay, it would seem that with a view to arrive at a settlement agreeable to the two nations, the French Company might give up.
 " 38, read And as a consequence of this arrangement, the limits in all that part of America should be so adjusted and settled that.

- Page 483, line 40, *after any, insert of the.*
 " 45-6, *read in view of the resolution of the two kings not to yield.*
 " 47, *for with this foundation, read upon the basis.*
 " 48, *for property, read ownership.*
 484, " 45-6, *read differences.*
 " 49, *read forts.*
 485, " 39, *read mûrement.*
 " 41, *read été.*
 486, " 3, *read empûr's.*
 " 14, *after Second, insert comma.*
 " 20, *read d'Amonecourt,*
 " 22, *read Francis.*
 " 23, *after affaires, insert comma.*
 487, *side note, omit The Latin copy of the preceding.*
 488, line 39, *read subjects.*
 495, " 4, *omit asterisk.*
 497, " 23, *read Princess.*
 " 32-3, *read receives.*
 507, " 4, *read Boundâry's.*
 511, " 29, *omit asterisk.*
 513, " 10, *omit dagger.*
 515, " 9, *for some, read the.*
 516, " 16, *after assurances, insert comma.*
 " 17, *after rupture, insert comma.*
 521, " 39, *after port, omit comma.*
 529, " 19, *read If entrepôts.*
 " 29, *read sacrifices.*
 " 31-2, *read rather than.*
 545, " 2, *read approaches.*
 " 3, *read made.*
 " 26, *read purpose.*
 548, " 22, *omit semicolon.*
 " 24, *for there, read thereof; read vessels.*
 549, *side note, for 1763, read 1794.*
 550, lines 29-30, *read Lac du Bois-Blanc, Lac La Croix.*
 555, " 36, *read an answer.*
 562, " 37, *omit [Albany and].*
 563, " 46-7, *read nor can the latitude.*
 567, " 8, *after a, insert [no].*
 " 22, *after being, omit comma.*
 570, " 27, *after Gillams, insert; for there's nothing so terrible to a monopolizer as an interloper. [sic. in orig.]*
 578, " 1, *read mentioned.*
 580, " 44, *read A. Doms.*
 585, *side note, for Orders of Hudson's Bay Company, read Correspondence between the Company and their Agents on the Bay.*
 " *read May, 1685.*
 " *read August, 1685.*
 586, *after line 21, read [Memo.—The Company's memorial of 1750, of which a complete copy could not be obtained in time to be printed in its proper place here, is given in full immediately before the Appendix of Manitoba, post.]*
 line 26, *after 59½, insert [1 56½ or 58½].*
 588, " 42, *read country.*
 589, " 1, *read head.*
 590, " 47, *read Lac la Loche.*
 591, " 17, *read Lac du Bonnet.*
 " *between lines 31 and 32, insert rule.*
 600, line 24, *read Memoir.*
 602, " 48, *read Pæorias.*
 603, " 31, *after Ste. Jeune Veuve, insert [1 Ste. Genevieve].*
 604, " 46, *read Choninderdes.*
 605, " 2, *strike out east and west.*

Additions and
Corrections.

been built upon this lake was
e here. It remained with the

men; that.
of a.

a view to arrive at a
America should be so

JOINT
APPENDIX.

Page 605, between lines 2 and 3, above Sakis, insert Miscitires. Insert as heading to this column "Indians of the North, wholly French (continued)."

- 606, line 19, for on, read ou.
 " 20, read porte.
 " 22 and 24, for on, read ou.
 " 26, read pent.
 " 28, read oul; read eut.
 " 31, read lieue.
 " 38, read Septembre.
 613, " 37, read Oswegy; read Delawar.
 618, " 25, read added the enquiry.
 619, " 36-9, read Banabeouiks; read Ounabonius^s, Sassasaouia Cottons; insert comma after Christinos; read Aumonsonniks, Outaotais; read Niscaks.
 620, " 26, read Drouilleta.
 " 30, read Dupuis.
 621, " 26, read 1689.
 " 38, after eighty, read as foot note the following:—As the Marquis de Denonville's term as Governor did not commence till 1685, the year 1689 must be taken to be the correct one.
 625, " 24, read Bourdon.
 626, " 3, after Nelson's, insert [! Rupert's].
 " 7, read re-entered.
 " 24, for seas, read seized.
 629, " 13, after 1662, insert [1667].
 " 37, for asterisk, substitute dagger.
 second foot note, the like.
 631, " 20, after Virginia, for period substitute a comma.
 " 41, the foot note on page 632 has reference to "Penveet" here, and is to be transferred to foot of this page.
 632, foot note, transfer to page 631.
 634, line 15, read (repond).
 637, " 20, read the 7th of March.
 " 31, after South, omit comma.
 638, " 23 and 26, read as foot note to 1663 and 1662 the following:—These dates require verification, not being borne out by any authorities now known to us; the printed documents indicate that they should be "1667" and "1666," respectively.
 640, " 32, for asterisk, substitute dagger.
 " 41, for asterisk, substitute †.
 second foot note, mark with dagger.
 insert third foot note thus:—†Tekamamiouen—Rainy Lake.
 642, line 10, read Tekamamiouen.
 643, " 3, read principal.
 " 26, after Fort, omit comma.
 644, " 13, for thence, read there.
 " 40, read The Post.
 " 46, the like.
 645, " 19, the like.
 647, " 2, read Descriptions.
 " 5, after Bay, insert a comma.
 " 15, read preceding.
 648, " 38, read soigniry.
 649, " 3, omit quotation mark.
 " 16, read Daillebout.
 " 24, for de, read du.
 note*, read T. II.
 651, note†, read French's.
 652, line 27, read (in both places) Ottawas.
 " 31, read Ottawas.

Additions and
Corrections.

Page 653, after line 6, insert the following:—

SURRENDER OF LOUISIANA AND THE ILLINOIS TO THE CROWN—LOUISIANA A DEPENDENCY OF CANADA—1731.

JOINT
APPENDIX.

Louis XV. to MM. Beauharnois and Hocquart.

Marly, May 8, 1731.

They (M.M. Beauharnois and Hocquart) are to be informed that His Majesty has accepted the surrender of the Province of Louisiana and of the Illinois country, from the Company of the Indies, to date from 1st of July next. They will find hereunto annexed copies of the *arrêt* on the subject. That Province will in future be dependent on the General Government of New France, as it was previous to the grant to the Company.

His Majesty has not determined whether the Illinois country is to remain dependent on the Government of Louisiana. That may, nevertheless, be most convenient, as the Governor-General will always be equally able to send his orders to it, and to be informed of what occurs there in regard to the Indians. MM. de Beauharnois and Hocquart will examine whether it be proper to leave this country in its present state, or to disconnect it from the Government of Louisiana, as was the case before it had been granted to the Company. They will be careful to report on that point, and to state the reasons for and against, when upon His Majesty will communicate his intentions. (*Book Arb. Docs. p. 43.*)

- 654, line 16, read run.
 " 40, read in.
 " 47, read Lagorgendière.
 655, " 3, read River.
 " 11, the like.
 " 20, read Tadoussac.
 " 23, read permission.
 664, " 13, read geographer.
 674, " 30, read Kingdom.
 679, " 47, before Report, insert original.
 680, " 28, 30, 47 and 50, read Winnipic.
 681, " 1, the like.
 684, " 8, for period, substitute a comma.
 685, " 26, after leagues, insert [degrees].
 " 43, the like.
 691, " 39, read possessed.
 697, " 25, after adventurers, omit comma.
 718, " 12, for then, read than.
 720, " 25, read FROM.

to this column "Indians of the

comma after Christinos; read

ville's term as Governor did
 not one.

be transferred to foot of this

require verification, not being
 indicate that they should



In the Privy Council.

IN THE MATTER OF THE BOUNDARY BETWEEN THE PROVINCES OF ONTARIO AND
MANITOBA, IN THE DOMINION OF CANADA.

BETWEEN THE PROVINCE OF ONTARIO, OF THE ONE PART,

AND

THE PROVINCE OF MANITOBA, OF THE OTHER PART.

APPENDIX OF THE PROVINCE OF ONTARIO.

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I.
French Explorations and Settlements.

I.--FRENCH DOCUMENTS.

TAKING POSSESSION OF THE COUNTRIES OF THE OUTAOÛAS AND OF THE INDIAN NATIONS OF THE NORTH AND WEST, AT SAULT STE. MARIE, 1671.

M. PERROT'S ACCOUNT.*

M. Intendant Talon asked me if I would consent to go up the country of the Outaoïas, as interpreter, and to lead there a sub-delegate that he would appoint, in order to take possession of the same. I told him that I was always ready to obey him, and that my services were at his disposal. Therefore I left with M. de Saint Lussou, his sub-delegate, and we reached Montreal, where we remained till the beginning of October (1670). We were compelled, in the course of our journey, to winter amongst the Amikouïets; the Saulteurs spent the winter also in the same localities.

They were notified to go back to their homes as early in the spring as possible, in order to listen to what M. de Saint Lussou had to say to them and to all the tribes in the name of the King. I despatched Indians also to inform the Northern tribes that they should not fail to be in their country. I dragged and removed afterwards a canoe on the other side of the island, where I landed. Thence we left for *La Baye des Renards et Miamis*, which is not very far, and I made all the chiefs come to the Sault Ste. Marie, where we intended to erect the posts and affix the arms of France, in order to take possession of the country of the Outaoïas. That event took place in the year 1669 [1671].

I went, on the fifth of the month of May, to the Sault Ste. Marie, accompanied by the principal Chiefs of the Pouteütamis, Sakis, Puans, and Malhommis (Malouminés or Folles-Avoines); those of the Foxes (Outagamis), Mascouetechs (Mascoutins), Kikabous and Miamis did not go beyond *La Boie*. . . . I found at my arrival, not only the Chiefs of the North, but also all the Kiristinons, Monsonis, and the Indians of entire neighbouring villages; the Chiefs of the Nepissings were there also, as well as the Amikouïets and all the Saulteurs who inhabited the locality. The post was set up in their presence, and the arms of France were affixed thereto with the assent of all the tribes, who, not being able to write, gave us presents instead of their signatures; they declared thus that they were putting themselves under the protection and dominion of the King. *Procès verbaux* were drawn on the subject of this taking of possession, upon which I signed as interpreter, with Sr. de Saint Lussou as sub-delegate; the Revd. Father Missionaries Dablon, Allouex, Dreüillette and Marquet [Marquette] signed afterwards, and, below, the Frenchmen who were on the spot, engaged in the fur trade. The proceedings were in conformity with the instructions given by M. Talon. All those tribes went back afterward to their homes, and lived during many years without any trouble on either side.

I have omitted to say that the Hurons and the Outaoïas did not arrive until after the taking of possession; because they had fled from Chagouamikon. . . . They were informed of what had taken place, and they assented, like all the others, to all that had been decided or concluded.†

* *Mémoire sur les Mœurs, Coutumes, et Religion des Sauvages de l'Amérique Septentrionale*, par Nicholas Perrot, pp. 126-8.

† M. Nicholas Perrot, a man of good family, was born in Canada. He was accustomed from childhood to the excitements and incidents of border life. Being for a time in the service of the Jesuits, he became familiar with most of the Indian tribes upon the borders of the Great Lakes, and with their customs and language. These held him in extraordinary esteem, and accorded him the same rights and prerogatives as their native chiefs. He appears to have established the first trading post on the Upper Mississippi. From 1665 to 1701 his name was a familiar one to both French and natives, and he used his influence with the latter largely in the interests of Canada, whose successive Governors courted his services. His family resided at Béancourt (near Three Rivers), where he himself died during the first years of the 18th century. (*Mémoire sur les Mœurs*; Noill's *Hist. of Minnesota*.)

ONTARIO
APPENDIX.

Sec. I.

French
explorations
and settle-
ments.

French
Documents:

Taking pos-
session of the
countries of
the North
and West,
1671—

M. Perrot's
account.

M. PIERRE MARGRY'S ACCOUNT.

[M. Margry is custodian of the Archives of the Department of Marine and Colonies at Paris. The present is from his article on Louis Joliet.]

Joliet witnessed on the 16th July, 1671, the act by which Simon François d'Aumont, Sieur de Saint Lussou, took possession at the Sault Ste. Marie of all the adjacent country. Saint Lussou had been ordered to go to this country in order to try to discover mines of any kind, especially those of copper. Talon, besides, had instructed Saint Lussou, wherever he would pass, to take possession of the country inhabited, and to plant there the cross of Christ and the arms of France.....

Saint Lussou, on his arrival at Sault Ste. Marie, a Jesuit mission, met the Achiponai, the Malomechs, and the Nougets, who inhabited the vicinity. There he had collected as many of the surrounding tribes as he could; they were fourteen in number, as follows: besides the nations of Lake Superior, 10 the Banabonik, the Makousitek, the Poultentomis, the Oumalhominis, the Sassassonacottons, which inhabited the Baie des Puants.

These Indians promised to inform the Illinois, Maskoutins, Outagonis, and other tribes of that taking of possession; whilst the Christianaux, the Assenipoels, the Oumonsomi, the Outawas, Bouscottous the Niscaks, and Masquikonkioeks, all inhabiting the Northern lands, and present at the Sault, were instructed to announce the same to the tribes with which they were in relations, and that were supposed to reside in great numbers on the shores of the sea.

Saint Lussou having done, read his commission by Nicholas Perrot, King's interpreter, in the presence of these Indians, the Jesuit Fathers and a few Frenchmen; erected a cross as a proof of his desire that Christianity should be fraternal in these localities. The Arms of France had been affixed 20 near this cross on a cedar tree.

Saint Lussou had said three times, and with a loud voice: That in the name of the Most High, Mighty and Most Powerful King Louis, fourteenth of that name, Most Christian King of France and Navarre, he took possession of the place of Sainte Marie du Sault, as well as of Lake Huron, Lake Superior, Ecantoton Island, and of all the other countries, rivers, lakes, and streams contiguous and adjacent to those already discovered or to be discovered, limited on one side by the seas of the North and West, and on the other by the Sea of the South, in all their length. Every time that Saint Lussou uttered these words he concluded them, raising a piece of turf, with a shout of *Vive le Roi*, which was repeated by the whole assembly of French and Indians. He declared afterwards to all those present that in the future they would be subjects of the King, that they would be governed by his laws, and 30 that no other power could occupy this country without incurring his displeasure and the effect of his arms.

Joliet signed, on this occasion, after Nicholas Perrot, the act that was drawn of this taking of possession. The other Frenchmen were, the Rev. Father Claude d'Ablon, Superior of the Missions of those countries; the Rev. Father Gabriel Dreiillettes, the Rev. Father Claude Allouez, the Rev. Father André, Jacques Maugras, inhabitant of Three Rivers, Pierre Moreau, Sieur de la Taupine, soldier of the garrison of the Castle of Quebec, Denis Masse, Thanevis de Chavigny, Sieur de la Chevrière, Jacques Lagillier, Jean Mayseré, Pierre Porteret, Robert Duprat, Vital Oriol, Gabriel Bonhomme, &c.

THE TAKING POSSESSION OF HUDSON'S BAY AND OF THE NORTHERN LANDS AND SEAS, BY ALBANEL AND St. SIMON, 1672.†

Taking pos-
session of
Hudson's Bay
and Northern
Lands and
Seas, 1672.

Father Charles Albanel, Jesuit, missionary employed in the instruction of the Indian Nations and Montagonis, and Paul Denis de St. Simon, Commissary, and deputed by M. Talon, Intendant of Canada, to take possession, in the King's name, of the countries, lands, lakes and rivers, which lie between the banks of the River St. Lawrence as far as the shores of the Straits of the Fretum Davis, including Hudson's Bay, and adjacent lands and seas, being at Misskaonto, Nagasit, places where the Indians meet to trade, and at the River Némiskau, which rises in Lake Némiskau, the residence of Captain Kiaskou, Chief of all the Indians inhabiting the North Sea and Hudson's Bay, and on the 9th of July, 1672,

† N. Y. Hist. Col. ix., p. 791.

planted the cross with the Captain's consent, and in His Majesty's name set up the arms of France, on the said Lake Némiskan, at the mouth of the river of the same name.*

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On the 19th of the same month, being at the River Minahigouskaé, Sossibahourat, Captain of the Mistasirenois, having consented, they did set up in like manner the said arms, after having turned up a sod of earth, pulled up some grass, planted some shrubs, and performed other necessary ceremonies. They made known to the Indian Nations, in their language, that they subjected them to the French nation, and that they should acknowledge in future King Louis XIV. for their Monarch and Sovereign Lord.

In witness whereof, the said minute was signed by Father Albanel, Sieur de St. Simon, and by 10 Sebastian Provero; and the chiefs of each Indian nation, to the number of eleven, made their hieroglyphical marks.

ORDINANCE OF THE FRENCH KING RESPECTING THE FUR TRADE, 1683.†

During this year an Ordinance of the King was promulgated, relating to the tax upon the fur trade, which provided, that all merchants and settlers of New France, who purchase beaver, moose, and peltries, in Hudson's Bay, Perceé Island, and other parts of New France, Acadia excepted, shall be bound to bring said beaver and moose to Quebec, that they may be paid for them, and one-fourth retained for the Farmers of the Revenue.

Ordinance respecting Fur Trade, 1683.

MILITARY EXPEDITION OF THE CHEVALIER DE TROYES, OVERLAND TO HUDSON'S BAY, 1686.‡

20 Seventy Canadians had been selected to form part of the expedition, and they were to be commanded by the Sieurs d'Iberville, de Sainte Hélène and de Marinécourt, all sons of Charles Le Moine. Thirty soldiers were added to them, and they were under the command of MM. de Troyes, Duchesnil and Catalogne. Father Sylvie accompanied them, trusting to be useful not only to the French but also to the Christinaux, and other northern tribes. The rivers were frozen, and the earth was covered with snow when that small party of vigorous men left Montreal in order to ascend the Ottawa River as far as the height of land, and, thence, to go down to St. James' Bay. . . . They arrived in the beginning of April at the Long Sault, where they prepared some canoes in order to go up the Ottawa River; from Lake Temiscamingue they went through small rivers, and after having passed many portages they reached the great Lake Abbitibi, near the entrance of which they built a small fort of 30 stockades, where they left three Canadians; they continued then their course towards St. James' Bay.

De Troyes' overland Expedition to Hudson's Bay, 1686.

PETITION OF LA COMPAGNIE DU NORD RESPECTING THE POSTS OF ABITIBYS AND NEMISCO 1698.§

The Company petition for leave "to continue to manage the dependencies of that part of the Bay of the North which comprises the Abitibys and Nemisco posts, specified and included in the letters patent granted by His Majesty to the said Company on the 20th of May 1695."

Petition of La Co. Du Nord, 1698.

GOVERNOR D'IBERVILLE ON THE COUNTRY OF THE MISSISSIPPI, 1702.||

40 THE RIVER WABASIL.—The River Wabash, as far as I know, for more than one hundred and twenty miles, is not inhabited. I wish to possess it, and have it occupied by the Illinois, who will hunt buffalo, deer, and similar animals which swarm the environs. Where the Illinois now are they are of no service, being unwilling any longer to carry on the beaver trade. Some people may say, as I have heard it said,

D'Iberville on the country of the Mississippi, 1702.

* Némiskau—Rupert's River.

† N. Y. Hist. Col. vol. IX. p. 800.

‡ Ferland, *Histoire du Canada*, Vol. II., p. 164.

§ *Archives de Paris, 2de Serie*, Vol. viii. p. 272.

|| Minnesota Historical Collection, Vol. I, pp. 341-4.

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issippi, 1702.

that they can hunt buffalo in their own country, but I do not think it would be possible. If they hunt on the Wabash it will be easy to transport the hides and tallow.

MASCOUTENS, KIKAPOUS, MIAMIS.—The Illinois having removed, we would cause it to be occupied by the Mauseoutens and Kikapous. This would bring four hundred and fifty men upon the rivers which empty into the Illinois and Mississippi. They now can only hunt the beaver, which they sell at the Bay of the Puans and in the country of the Illinois.

The Miamis, who have left the banks of the Mississippi and gone to Chicago on account of the beaver, and those who are at Orthiphientony, and at the St. Joseph, could readily remove to the Illinois, where they would join one hundred of their nation who are still at Ouseconsin, on the Mississippi.

The Miamis, Mauseoutens, and Kikapous, who were formerly on the Mississippi, placed upon the 10 Illinois or lower down, will withdraw from Canada yearly a commerce of fifteen thousand livres, the Illinois ten thousand, and the Sioux thirty thousand yearly. If Canada did not desire to trade with the Fox tribe, they would return to the Mississippi, and that would take away from the Canadian trade ten thousand yearly.

THE SIOUX.—If the Sioux remain in their own country they are useless to us, being too distant. We could have no commerce with them except that of the beaver. M. Le Sueur, who goes to France to give an account of this country, is the proper person to make these movements. He estimates the Sioux at four thousand families, who could settle upon the Missouri.

MAHAS, OTTOES, IOWAYS.—He has spoken to me of another, which he calls the Mahas, composed of more than twelve hundred families; the Ayoones (Ioways) and the Octootatas, their neighbours, are 20 about three hundred families. They occupy the lands between the Mississippi and the Missouri, about one hundred leagues from the Illinois. These savages do not know the use of urns, and a descent might be made upon them in a river, which is beyond the Wabash on the west.

ASSINIBOIN, CNISTINEAUX.—The Assinibonel, Quenistinos, and people of the north, who are upon the rivers which fall into the Mississippi, and trade at Fort Nelson (Hudson's Bay), are about four hundred men. We could prevent their going there if we wish.

VALUE OF INDIAN COMMERCE.—In four or five years we can establish a commerce with these savages of sixty or eighty thousand buffalo skins; more than one hundred thousand deer skins, which will produce, delivered in France, more than two million four hundred thousand livres yearly. One might obtain from a buffalo skin, four or five pounds of wool, which sells for twenty sous; two pounds of horse 30 hair at ten sous. Besides, from smaller peltries, two hundred thousand livres can be made yearly.

SUGGESTIONS FOR THE DOMESTICATION OF THE TRIBES.—The savage tribes located in the places that I have marked out, make it necessary to establish three posts on the Mississippi; one at the Arkansas, another at the Wabash, and the third at the Missouri. At each post it would be proper to have an officer, with a detachment of ten soldiers, with a sergeant and corporal. All Frenchmen should be allowed to settle there with their families, and trade with the Indians, and they might establish tanneries for properly dressing the buffalo and deer skins for transportation.

No Frenchman should be allowed to follow the Indians in their hunts, as it tends to keep them hunters, as is seen in Canada; and when they are in the woods, they do not desire to become tillers of the soil. * * *

I have said nothing in this memoir of which I have not personal knowledge, or the most reliable 40 sources. The most of what I propose is founded upon personal reflection, in relation to what might be done for the defence and advancement of the colony. * * *

It will be absolutely necessary that the King should define the limits of this country in relation to the Government of Canada. It is impossible that the Commandant of the Mississippi should have a report of those who inhabit the rivers that fall into the Mississippi, and principally those of the River Illinois.

The Canadians intimate to the savages that they ought not to listen to us, but to the Governor of Canada, who always speaks to them with large presents; that the Governor of the Mississippi is mean

and never sends them anything. This is true, and what I cannot do. It is imprudent to accustom the savages to be spoken to by presents, for, with so many, it would cost the King more than the revenue derived from the trade. When they come to us it will be necessary to bring them in subjection, make them no presents, and compel them to do what we wish, as if they were Frenchmen.

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The Spaniards have divided the Indians into parties on this point, and we can do the same. When one nation does wrong we can cease to trade with them, and threaten to draw down the hostility of other Indians. We rectify the difficulty by having missionaries, who will bring them into obedience secretly.

10 The Illinois and Mascoutens have detained the French canoes they find upon the Mississippi, saying that the Governors of Canada have given them permission. I do not know whether this is so; but if true it follows that we have not the liberty to send any one on the Mississippi.

D'Iberville on
the Missis-
sippi, 1702.

M. le Sueur would have been taken if he had not been the strongest. Only one of the canoes he sent to the Sioux was plundered.....

LA HARPE ON THE FRENCH IN LOUISIANA, 1699-1721.*

(1690.) M. le Sueur also came passenger in Giaonde [Dec.]. He had acquired celebrity by his travels in Canada, and was now sent on the part of M. L'Huillier, Farmer-General, to make a settlement on the Mississippi, and to work some mines there which he had discovered some years.

La Harpe on
the French
in Louisiana,
1699-1721.

20 (1700.) On the 19th [Feb.], MM, d'Iberville and Bienville, with M. Dugué and ten marines, arrived at the village of the Bayagoulas. On the same day M. le Sueur, who had set out on his journey to the Scioux Nations, also arrived there.

(1701.) On the 16th November, two canoes with *roytjeurs* arrived from the Illinois. One of them was M. Laumaine, who had been to the Missouri River. He gave an account of the nations that inhabited that country, as well as some Spanish settlements on the frontier of Mexico.

(1706.) On the 16th [Jan.] Father Gracio, a Jesuit, returned from the Illinois, severely wounded. He had much trouble in making his escape, as that nation had declared war against the French.

(1713.) At the time of the transfer [to M. Crozat] there were in the colony four hundred persons, including twenty negroes, and three hundred head of cattle.

30 (1717.) In the month of August, 1717, a company was formed in France under the title of the "Western Company." At this period there were in the colony seven hundred persons, and four hundred head of cattle. They had entirely neglected to cultivate the land.

(1718.) In the beginning of October, M. de Boisbrillant [*sic*] set out to take command in the Illinois; and at the same time M. de la Harpe embarked with fifty men for his concession at Cadodaguioa, on Red River, with orders to establish a post there and to ascertain the number of Indian tribes in that country.

40 (1719.) On the 29th December, M. de Bienville, received a letter from M. Dutisne, dated Kaskaskias, November 22, 1719, with an account of his travels to the village of the Missouris by the river and to the villages of the Osages and the Panis by land. He observed that the water of the Missouri had a strong current, was muddy, and filled with floating timber. The country was beautiful and well wooded. That two rivers from the west, the Osego and Blue Rivers, emptied into the Missouri. At a distance of eighty leagues from the mouth of the Osage are situated the village of that nation, in the neighbourhood of which there are a great number of lead mines. In travelling west he crossed very high mountains, and many streams falling into the Missouri and the Mississippi. That from Kaskaskias to the Osages is 120 leagues. This nation is not stationary like the Missouris, but spend the winter in hunting buffalo. They are stout and well made, and great warriors. The chiefs are absolute in their villages. Lead mines are abundant in their country, but they are unacquainted with the uses of

* Historical Journal of the Establishment of the French in Louisiana, by Benard de la Harpe, as translated and given in French's "Historical Collections of Louisiana," Part III. pp. 17, 34, 49, 50, 63, 66-8, 84, 87. M. Benard de la Harpe was a French officer of distinction, who went to Louisiana in 1718, to settle a colony on the Red River. He built a fort in 1719 near Natchitoches, whence he explored the country of Texas, as far as the Rio Grande. He returned to France in 1723, where he wrote his Journal.

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it. From the Osages to the Pimis villages is forty leagues in a north-west direction, and he passed over prairies and plains filled with buffalo. They are not civilized, but are accessible by making them a few presents. In fifteen days he reached the Padouchas, who are a very brave and warlike nation. Here M. Dutisme erected the arms of the King, 27th September, 1719. . . .

M. Bernard de la Harpe returned to Mobile from Red River on the 26th January, 1720, after having established a post at the village of Cadodaquiou, (*sic*).

It has been previously stated that he arrived in Louisiana in the Month of August, 1718, and set out for Red River with fifty men. He returned to New Orleans the following October, and on the 10th December again he set out for Red River, with a detachment of troops, to establish a fort among the Cadodaquiou. When he arrived at Natchitoches (where a fort is built), he found M. Blondel in command, and Father Manual at the mission of the Aayes, about nine leagues distant.

(1720). The Western Company recommended them (the Company's directors) to have a good understanding with M. de Vandreuil, Governor of Canada, in regard to the wars with the Indian; ordered that the post established by M. de Boisbriant, nine leagues above the village of the Kaskaskias, should be called Fort Charters; that at Biloxi, Fort Louis; that at Mobile, Fort Condé.

(1721). On the 24th [April] M. de Boisbriant wrote to M. de Bienville from the Illinois, that three hundred Spaniards had left Santa Fé, the capital of New Mexico, for the purpose of conquering the colony, but only seventy had put their threat into execution, who had arrived at the Kansas River where they encountered the Octotata and Panis Indians, who massacred all except a priest who had made his escape on horseback.

LA HARPE ON UPPER MISSISSIPPI TRADE, 1723.*

La Harpe on
Upper Mis-
sissippi Trade,
1723.

With respect to the lay of the lands, the longitude of Louisiana, up to the height of 39°, extends from the limits of New Mexico, that is to say, from 275°, to the frontiers of New England in about the 307th degree of longitude; but this extent varies after passing the 38th degree of latitude, because beyond this distance from the pole, we are entitled to extend westward as far as our discoveries may lead us.

The breadth of Louisiana is better ascertained. It can be run from the 29th degree of latitude, which is that of the entrance of the river, up to 42° 30', which is the height of the Strait [Detroit.] This Province is exclusively situated between the fourth and eighth zones (*climats*); and this accounts for the length of the days and the nights. Where they are the shortest, they scarcely exceed fourteen hours thirty minutes; and where they are the longest, not above fifteen hours, thirty minutes. . . .

This position of Louisiana, well described on the map which has been prepared by the Sieur de la Harpe, renders it easy of comprehension, that the first benefit from this discovery has been communication from Canada with the Gulf of New Mexico, through a wild country of nearly five hundred leagues in extent; and nevertheless, it has been very easy to establish this by the River Mississippi which runs from north to south, and finds its exit in the Gulf of Mexico, and by the rivers Ouabache and Illinois, which, taking their rise on the Canada side, empty themselves in the Mississippi. . . .

The English have allied themselves to a great many savage nations of America, and daily contract fresh alliances with the Iroquois, the Cheroquis, the Chaouanous, the Chickasas, the Cahutias, the Alibamons, and many other nations bordering on Louisiana; where we have seen them push their trade even up to the Mississippi and the gate of the Mobile. If they had carried out their project of establishing themselves on the river of the Ouabaches [Ohio,] which takes its rise in the neighbourhood of New England, but a short space of time would elapse before they appeared and enlisted on their side the Illinois, the Miamis, the Octotata, the Foxes, the Sioux, and the other nations of Upper Canada. This would greatly prejudice New France, of which the Island of Cape Breton is a dependency which is the only one where we can, with safety, fish for cod. . . .

* Memorandum intended to set forth the importance of the Colony of Louisiana and the necessity of continuing its establishment. By Bernard de la Harpe. Printed in Historical Collections of Louisiana, By B. F. French, part. iii., note pp. 112-118.

From Louisiana will be obtained skins of wild bulls, the wool of which can be turned into use. No difficulty need be experienced, since M. de Juchereau, Lieutenant-General of the jurisdiction of Mont-Réal, who in 1702, had, with thirty-four Canadians, established a post on the Onabache, in the name of a company, where he had collected in a short space of time fifteen thousand skins of bulls, as detailed in the narration in the Historical Journal of the month of January, 1705.

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From this colony will be obtained skins of fallow deer, bear, red deer, and finer peltries than from Canada, because the upper part of the Mississippi River communicates with several northern nations who reside at too great a distance from the lakes by which the descent is effected towards the St. Lawrence River, and it is for the self-same reason that these skins of bulls cannot be obtained from Canada, as the Canadians have not pushed their trade so far as that. The Sioux savages and the Assinipolis are those who, by means of the Christianaux, carry the largest part of their finest peltries to the English at Hudson's Bay; but it would be easy to renew alliances with them, and to attract their trade by the Mississippi; because in order to go to Hudson's Bay, it is necessary to make a long journey through a country always frozen and without edibles, carrying their merchandize on their backs, whilst to trade with us, they would only have to descend the Mississippi in their canoes, so far as the entrance of the River St. Pierre, where they would find a more genial climate, and a country with a greater abundance of all sorts of things. But, in this case, it would be necessary to found establishments on the banks of this river, and adhere to the plan of the late M. le Sueur in the manner agreed on with M. L'Huillier, the Farmer-General.

French Documents LaHarpe on Upper Mississippi trade, 1723

EXPLORATIONS AND DISCOVERIES OF THE VERENDRYES, 1728-1750.

LES VARENNES DE VERENDRYE.*

IN 1728, Peter Gaultier de Varenne, Sieur de la Verendrye, one of the sons of the Chevalier René Gaultier, Seigneur de Varenne, and for 22 years Governor of the City of Three Rivers, in New France, continued in sad obscurity, in the territories which surround Lake Superior, a career which had commenced brilliantly on the battle-fields of Europe.

Explorations of the Verendryes, 1728-1750.

A cadet in 1697, after two campaigns in America—the one in 1704, in New England, the other in Newfoundland in 1705—he spent the following year in Flanders, in the Grenadiers of the 1st Battalion of the Bretagne Regiment, in which his eldest brother, afterwards killed in Italy, was then captain. His conduct in this regiment merited for him the most honourable mention. Notably at Malplaquet, finding the means of distinguishing himself amongst his comrades, "who themselves did wonders,"† he won the rank of Lieutenant, having received nine wounds, from which he recovered, contrary to every hope, after having been left as dead upon the battle-field. This commencement gave promise of a brilliant future for one so young; but war had never been as destructive to the officers, of whom a great many perished of hunger,‡

M. de la Verendrye's father, a very fine man, who, according to M. de Denonville, had no fault, except the poverty which he bequeathed to his sons, forced him to return to Canada, there to accept a simple ensigncy to enable him to live.

This rank, which he partly owed to the recommendation of the Marquise de Vaudreuil,§ was inferior to the one he had so gallantly purchased with his wounds.¶ Notwithstanding these claims to a better fortune, he, for seventeen years, vainly strove to obtain for his zeal and services a position equal to the one he had held under the Marshal de Villars. He had even several times requested permission to go to France, to obtain at Court reparation for the oblivion in which he lived; and he grieved deeply at being unable to succeed.

* From the French of M. Pierre Margry.—As already stated, M. Margry is custodian of the Archives in the Department of Marine and the Colonies, at Paris, and the correspondence which passed between the French officials in Canada and the King and his Ministers, are in his custody. This account appeared as a series of articles in the *Moniteur* during the Autumn of 1852.

† Lettres de Maréchal de Contades.

‡ Lavallée Histoire de France, 2 Vols., 8vo., Chap. VI.

§ États du personnel de la Marine.

¶ Mémoire de père de Gonor.

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ments.French
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But our misfortunes often form the path we have to traverse in order to attain a success we had never hoped for. M. de la Verendrye gave new proof of this. He had at length obtained leave to go to France; and his first hopes would perhaps have been realized there, when, fortunately, he was detained by a circumstance which promised him glory conjoined with suffering. He went to the confines of the world whither he had been banished, and found the opportunity of making his name illustrious by the services he rendered his country—an advantage which men of mind esteem above honors, riches, and repose. The circumstance I refer to was one of those enterprises which the conqueror of Bing, Roland, Baron de la Galissonière,* then Governor of Canada, pronounced to be, "because of its dangers, its fatigues, and its cost, nobler than open war." As that with which M. de la Verendrye's name is associated is but little known, even to those who speak of it, I will here give a slight sketch of it, preliminary to a longer account which will appear elsewhere.

Explorations
of the Verendryes,
1723.
1750.

In 1728, M. de la Verendrye, who was then in command at Lake Nepigon, to the north of Lake Superior, having received divers accounts of a river, whose course was westward, thought it might lead to the discovery of the Western Sea; in like manner as illustrious explorers had, in the preceding century believed—some that the Chickahominy, a river of Virginia,† and others, the Ohio and Mississippi,‡ would conduct them to the Southern Ocean. Consequently he thought to utilize these accounts; and with a man of energy, action speedily follows mature consideration.

The project of discovering, by the interior, a passage to the *Grand Ocean*, and by that to China which was proposed by our officers under Henry IV., Louis XIII., and Louis XIV., had been taken up with renewed ardour during the Regency. Memorial upon memorial had been presented to the *Conseil de Marine* respecting the advisability and the advantages of making this discovery. Indeed the Père de Charlevoix was sent to America, and made his great journey from the north to the south of New France for the purpose of reliably informing the Council as to the most suitable route to pursue in order to reach the Western Sea. But the ardour which, during the life of Philip of Orleans, animated the Government regarding the exploration of the West, became feeble, and at length threatened to be totally extinguished, without any benefit being derived from the posts which they had already established in the country of the Sioux and at Kamanistigoya. When M. de Verendrye came down to Michilimakinac with the intention of letting the Governor of the Colony know what information he had obtained from the savages respecting the River of the West, he met Father Gonor, who had just arrived from the recently established posts of the Sioux, whither he had been sent during the preceding year as missionary.

The Regent, in choosing between the two plans that Father Charlevoix presented to him, at the close of his journey, for the attainment of a knowledge of the Western Sea, through an unfortunate imprudence rejected the plan which it is true was the most expensive and uncertain—an expedition up the Missouri to its source and beyond—and decided to establish a post amongst the Sioux. The Regent thus set aside the scheme which afterwards led Lewis and Clark to the Columbia; but he thought that through the establishment of this post more certain accounts than those already to hand would be obtained respecting the route to the Grand Ocean, and that then would be the time to incur the expense of the exploration. The post of the Sioux was consequently established in 1727, by Boucher de Montbrun and Father Guignas.§ Father Gonor, however, was obliged to return without having been able to discover anything that could satisfy the expectations of the Court respecting the Western Sea. The meeting at Michilimakinac with M. de la Verendrye, who, on his part was anxious to communicate to the Father the knowledge he sought, was equally pleasing to both the missionary and the officer. Each obtained what he desired—the one information, the other protection. Father Gonor took charge of the memorials of M. de la Verendrye, and promised to support them; which he afterwards really did.

* Lettre à M. de Maurepas.

† History of Virginia.

‡ MS. de l'Abbe Dolier de Casson. Relations des Jesuites.

§ Relation d'une grand riviére, qui a flux et reflux, présentée par le père de Gonor, Jésuite missionnaire des Sioux, 3 November, 1723. (Account of a large river which ebbs and flows, given by Father Gonor, a Jesuit missionary of the Sioux, 3rd November, 1723.)

Entering into the same idea as M. de la Verendrye, he concluded it would be preferable, in the interests of the discovery they had in view, to establish themselves with the Cristinaux or with the Assiniboels, than to remain with the Sioux. "This was also," wrote he, "the sentiment of Father Gnignas, whom I have often heard say that it was a vain endeavor to seek through the Sioux a path to the Western Sea." The discovery of this sea, which for the fifty years following the death of Chevalier de la Salle had been incessantly sought after, thus touched upon a new and most interesting epoch. Action and research were now to replace theory and conjecture. It is of these actions and researches that I now desire to give a summary

Not contented with his first step, and having obtained other information respecting the River of the West (*Rivière du couchant*), and having secured amongst the Indians a brave and faithful guide, capable of conducting a convoy,* M. de la Verendrye himself went to Quebec to discuss with the Governor of New France the project he had formed of going to explore first the River of the Assiniboels, and then the rivers situated towards Lake Ouinipigon, to within 500 leagues of Kamanistiguoya, thinking that at this distance one would be found leading to the sea.

The Governor who succeeded the Marquis de Vaudreuil (whose death occurred in 1725), was the Marquis Charles de Beauharnois, a member of a family that through its services, and its relationship to the Pontchartrains, held the highest position in both the naval and colonial services. As captain of his ship, remarkable for his bravery in several combats, and particularly in 1707, on board the *Achille*,† he was not less distinguished by his extensive knowledge. For these several reasons he was not indifferent to the projects of M. de la Verendrye. In the preceding year even, M. de Beauharnois had already shown his sympathy, by restoring him to the rank he held in 1710. But he was induced also by another consideration to patronize the scheme.

The glories of discovery were not unknown to the Beauharnois family. One of the Governor's brothers, Claude de Beauharnois de Beaumont, had, as ensign of a ship, taken an active part in the discovery of the Mississippi, an enterprise undertaken by sea under D'Iberville and De Surgères; and, in listening to M. de la Verendrye he must have conceived the wish to add to this precedent in the history of his family the honour to be derived from promoting an undertaking of this kind. M. de Beauharnois had, as an incentive, the thought which formerly animated Samuel Champlain, the Récollets, the Jesuits and the Sulpicians, Jean Talon, the Count de Frontenac, Chevalier de la Salle, the Marquis de Vaudreuil, and the Intendants Randot, in the execution or protection of those enterprises of which this last was a continuation. He hoped that from this expedition New France would gain considerable advantages as regarded both trade and science, and that great light would be thrown upon the geography of the new continent, even if the problem of the separation of America and Asia towards the north was not solved on this occasion,—a problem proposed from the time of Cabot's voyage in 1497, and whose solution should have been the principal object of the expedition.

The West and the North-West of America being still unknown, from California to Hudson's Bay and the remote east of Asia being equally so, as well as the sea which in that direction divided the old world from the new, there were learned men who agreed with the navigators of the 16th century, that the union of the two continents was to be found in the latitude where Behring subsequently discovered the straits that bear his name.

In 1718, Father Bobè, a priest of the *Congrégation*, who had strongly incited the Regent and his ministers to the discovery of the Western Sea, considered the space between New France and the Straits of Uriez as a vast territory.‡ This ecclesiastic, who in other respects was a very learned man, thought that in travelling between the 47th and 70th degrees of latitude no sea would be found until the Gulf of Anzur was reached, "which was formed by the countries of Japan, Tartary and Bourbonie." The latter name he gave to that imaginary country which it appeared to him should join America and Asia, and "by which," he says, "the Tartars and the Tartarized Israelites passed, after the dispersion of

* Mémoire de la Verendrye, appended to the letter of M de Beauharnois, of the 10th October, 1730.

† Gazette de France, Personnel de la Marine.

‡ Mémoire pour la découverte de la mer de l'Ouest, présentée en Avril, 1718.

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Salmanazar, as is proved by the appearance of the Sioux, who resemble the Tartars." These chimeras of an enlightened man, believed in also by others no less so, led to the wish that France, placed by her possession of Canada in a position to realize the error, would send across to North America an exploring expedition, which might dissipate the darkness resting upon the north-west of the continent.

M. de Beauharnois perceived without difficulty the importance of such an exploration, and by favourably receiving the proposal of M. de la Verendrye, he hoped to lift the veil which hid the ends of the world. Unfortunately, not daring to take that initiative which at this time, and under the pretext of this discovery, was taken by the Governor of Louisiana, M. de Bienville, a man less honest than he, he found himself unable to do anything, except under conditions which would take the honour of making the discovery of the Western Sea from France. The Russians were our rivals in the project. Before his death Peter the Great, who came to Paris in April, 1717, two months after William Delisle had presented his memoir on the Western Sea to the Regent, called to mind as well his conversations with that great geographer, as his promises to the Academy of Sciences,* and he determined that the space between Asia and America should be explored by the east. His successors, in compliance with the orders contained in his will, which was his last act on behalf of Russia, concluded to despatch Vitus Behning and Thschirikoff, who were to advance eastwards to the Western Sea, and so reach America, while the French officers, by a singular coincidence, would (under the government of one whose grand-nephews were to approach the throne of Peter the Great), explore the interior of the western territories.

But the one party were to be aided by their Princes whilst the others would have to depend solely on themselves, notwithstanding the kindness of the Governors of Canada, who were unable to proffer them anything but sympathy.

After M. de Beauharnois† had examined, with Chaussegros de Lery, the engineer, the map which had been made by the savage Ochagaeh, whom M. de la Verendrye chose as guide, he agreed with that engineer that New France "being traversed by two large streams having their sources in the centre, the one—the St. Lawrence—flowing to the east, and the other—the Mississippi—to the south, there could not be a tract of the width of 700 or 800 leagues to the westward without being likewise crossed by a large river." Such a thing would be contrary to all that had been ascertained in other countries, where so extensive a tract is always traversed by a large river. This argument rendered the reports of the savages probable, from which, and considering the rum line they gave the river, M. de Beauharnois and M. de Lery thought they could reach either the estuary discovered by D'Aguilar, or some 30

These considerations gave the Governor some hopes of success, which were increased by the character and tried intrepidity of M. de la Verendrye, whose family held distinguished positions in the army and church, and even in the Sovereign Council, where one of his brothers held the position of *Conseiller-clerc*. To him therefore he confided the execution of the enterprise of which he himself was the patron. Still, as he was not blind to the many difficulties of such an enterprise, he deemed it prudent that the explorer, before travelling through such extensive and unknown countries, should feel his way and at all events establish a post beyond the known limits, so that after having entered into relations with the Indians he might penetrate further. M. de Beauharnois doubtlessly hoped that when he would be able to speak with a better knowledge of facts, he would obtain the King's protection for the men who so generously devoted themselves to this enterprise. He commanded M. de la Verendrye to first establish a post on Lake Ouinipigon with 50 men and a missionary, and he gave him‡ in order to surmount the difficulties of the establishment, the profits of the exclusive right to the fur trade. Anxious to commence, M. de la Verendrye, by an agreement, signed on the 19th May, 1731, in presence of M. de Chassaigne, Governor of Montreal, entered into partnership with certain persons who advanced goods and equipments, and on the 26th August, after having passed Michilimackinac, where he secured Father Messenger as missionary, he found himself at the Grand Portage of Lake Superior, 15 leagues to S.S.W. of Kamanistigoya.

* *Recherches historiques et géographiques sur le Nouveau-monde*, par J. B. Schéner.

† *Lettre de M. de Beauharnois à M. de Maurepas*, 15th Octobre, 1730.

‡ 1er Août, 1731, *Lettre de la Verendrye*.

These beginnings of his enterprise proved to M. de la Verendrye how great the dangers and expense entailed by such an exploration. He had taken but a few steps in the wilderness when he again placed himself, his nephew, and his two sons at the disposal of the ministry for the purpose of commencing the expedition. On the 10th of October, 1733, two years after the departure of M. de la Verendrye, the Governor and his administrator, Hocquart, wrote to M. de Maurepas: "M. de la Jemerays, a nephew of M. de la Verendrye, informed us that if His Majesty would bear the expense, it would be easy to succeed in discovering the Western Sea; that at present they are at Lake Ouinipigon, but that they and their companions were perfectly unable to undertake this enterprise, having lost more than 43,000 livres, and the *voyageurs* would not go further without being paid what was due them, nor would those who had equipped the expedition advance any more goods to enable them to continue their journey. The outlay, monseigneur," added they, "will not be great; the cost of the *engagés* for three years, taking into account what can be furnished from the king's stores, would not, according to the calculations we made in presence of M. de la Jemerays, exceed 30,000 livres at the most. We have the honour to mention that by the agreement we cannot oblige them to go beyond Lake Ouinipigon, which we did not believe was at so great a distance." A reply was received from the Court that it was not expedient for the King to undertake the expense proposed by MM. de Beauharnois and Hocquart, and that those who had undertaken the enterprise should be in a condition to continue it by means of the profits derived from their privilege of the fur trade. The same words pretty nearly were repeated on the 12th April, 1735.

The die was cast. M. de la Verendrye had either to abandon the enterprise or continue it alone, at his own risk and peril, without any other means than the privilege of trade. With only this alternative, he followed the dictates of honour, which bade him brave dangers and impose self-sacrifices. He was already burdened with the debt of the first equipment, and he now assumed that of the second. He employed his nephew and three of his sons, and prepared a fourth, 18 years old, to accompany his brothers the following year, causing him to be taught the art of making plans and drawing maps; and he busied himself with this enterprise, which, notwithstanding all obstacles, enabled him to obtain, by his energy, such great results as to shed a lasting brilliancy upon his own name and upon that of the man who had encouraged his efforts.

II.

The chief honour won by M. de la Verendrye from his enterprise was owing not to his success but to his struggles against obstacles more easily imagined than understood at this distant day. However, we must remark that his greatest trials were not due to his enterprise in itself, but to the false and embarrassing position in which he continually found himself, without other provision than the fur trade and its profits.

The fur trade, imposed or accepted as the means of meeting the expenses of the discovery, had in countries so distant as those into which he was to penetrate, the disadvantage of retarding the explorers: a precious portion of the time, strength and energy which might have been employed in pressing forward, was consumed in travelling between Montreal and the countries they were exploring, obtaining subsistence and provisions. The necessity of trading brought with it that of the establishment of belittling posts to attract the savages, and of placing landmarks on the route, which, as it took men, time, and money, tightened the circle of difficulties by which M. de la Verendrye was surrounded. As he was inevitably obliged to obtain by trade all the means required for advancing his explorations, he was compelled to see himself by turns tormented on the one hand by the Ministry, which was dissatisfied with the progress of the exploration, and on the other hand by his covetous associates, who were anxious to recover, with high interest, the price of the equipments.

Thus it happened that M. de la Verendrye was incessantly harrassed by his associates, and reproached nearly as often by the ministry whose half protection he had obtained. In fact, if M. de Maurepas had but given even the degree of protection which should have been accorded the explorer on the advice of Father Charlevoix*—who spoke with the same freedom with which he wrote his History of New France—he might have concluded that he had done enough. The Reverend Father,

* Mémoire du Père Charlevoix, 10th Octobre, 1751.

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to whom the project of M. de la Verendrye had been communicated, at first failed to realize that as the measure of the King's protection was greater or lesser, so would the execution of the enterprise be affected; and finally he made light of the difficulties of the exploration. He said "that these establishments were useless; although they caused but small expense they prolonged the period of exploration; that they might cause it to degenerate to a fur-trading scheme, and that it was best to explore discovery at once and without consuming more than two years, aided by the fresh accounts received at the advanced posts, in thoroughly determining its route. Thus it would follow that the expense which such an expedition required would be reduced to some easily carried victuals, some ammunition, whereof a portion would serve for necessary hunting and as presents for the savages." The opinion of Father Charlevoix must have been of great weight, for he had been sent some years previously by the Duke of Orleans and the Count Toulouse to obtain information regarding the Western Sea. We have seen that it was on his advice that the establishment amongst the Sioux had been founded. His judgment in the case may have been that of one who, regretting that he had not been able to make the discovery himself, sought to depreciate beforehand the merits of those who would undertake it. I do not believe it was; but truly the Reverend Father expatiated too much upon the reminiscences of a man who in his travels had only traversed countries which had long been accessible. He thus gave countenance to the rumours which were spread by the envious and the ignorant; and M. de Maurepas, who had extended protection to so many other expeditions, having scientific purposes in view, may have regretted having given M. de la Verendrye the privilege of the trade—a privilege which the latter would willingly have exchanged for a well-equipped company of 100 men as in the case of Lewis and Clark. In fact there is nothing more disagreeable than these half-favours, which having provided wind for a man's sails desert him when he has nearly reached port, and which the donors believe give them the right of reproaching the recipient, without realizing that their assistance had, in truth, none the less condemned their protégé to the torments of Tantalus. Such was nearly the treatment experienced by M. de la Verendrye in his enterprises. M. de Beauharnois, however, seeing this officer sinking under the trouble, thought well to give him, from 1735, permission to farm, during three years, to some merchants, the posts which he had established, on condition that he would not undertake, directly or indirectly, any kind of commerce; that so he might be able to pursue his enterprise with all possible diligence, as he would have nothing else to see to. But M. de la Verendrye was none the less dependent for supplies upon traders or farmers, who were impatient to receive, but slow to remit. Besides, they did not forward all that he needed; they sent only in proportion to their own earnings, and it followed that M. de la Verendrye was obliged personally to incur debts in order to provide for all—considering himself fortunate when he escaped the most cruel privations.

This officer (left for dead upon the battle-field of Malplaquet 30 years before) pursued his project with an admirable courage and constancy, which called to mind the energy of the great discoverers and with a disinterestedness which was real although strongly attacked. Notwithstanding this and the generous aid of his four sons and his nephew, M. de la Jemerays,—all five indefatigably and fearlessly devoted to his enterprise,—he could not, after twelve years of trouble and sacrifice, because of the peculiar circumstances of his position, do more than accomplish the discovery of the territories enclosed between the Rocky Mountains, on the west, and Lakes Superior and Winnipeg on the east.

Although I cannot speak at any length in this article, I must mention a few occurrences which will throw some light upon the attractive tableau of their efforts. Therefore I will give, though briefly and drily, a few details of their journey.

If we follow M. de la Verendrye from Kaministigoya, a post near Lake Superior, established for the second time in the year 1717, by Lieutenant Robutel de la Noie, and where the discoverers arrived in the year 1731,* we shall see their parties, the same year, successively pass through Lac la Pluie, or Tekamamioeu, at the outlet of which they established Fort St. Pierre; cross Lake Minitie, or Des Bois, on one of the shores of which Fort St. Charles was erected in 1732; Lake Quinipigon, within five leagues of which, on their way up the river, they established a fort; Quinipig River, which they called Rivière Maurepas, and which, in 1734, they protected by a fort, also designated by the name of the minister; 50

*Mémoire de M. de la Verendrye, 31 October, 1744.

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the River of the Assiniboëls, otherwise called the River St. Charles, where Fort de la Reine, which was built on the 3rd October, 1738, served as an advanced post; then the River St. Pierre, a branch of the River of the Assiniboëls. This river, to which the Christian name of M. de la Verendrye and M. de Beauharnois was given, was the centre of the establishments and the point of departure of the expeditions which the explorers intended to make to the north and to the south. It is by this river that we see them, at the close of 1738, descend to the Mantannes, and in 1742 to the Upper Missouri; then re-ascend to the Yellowstone, and finally arrive, by this route, at the Rocky Mountains, amongst the Gens des Serpents, whose countries formed the limit of their explorations towards the south.

Towards the north, in expeditions, whose precise dates I cannot yet determine, they crossed Lake 10 Dauphin and Swan Lake, reached Rivière des Biches, and ascended to the fork of the Saskatchewan which they named the Poskoïac. In these countries they established two forts—one on Lake Dauphin, and the other, which they called Fort Bourbon, on the Rivière des Biches.

In considering this simple narrative of their doings, and viewing the length of time which marked each advance, showing so clearly the efforts the explorers had to make—when the miseries they endured and the dangers which they ran, and in which some of them perished, are taken into account; and finally, when the results of their enterprise are compared with the means they had at their command—the accusations that were made against them would really astound us were we not accustomed to the criminal follies of envy. But to whom did envy ever allow either honours or profit with impunity?

In the laborious efforts of the Varennes of Verendrye to extend the dominion and commerce of 20 American France to the Grand Ocean, the honour of the discovery of the most westerly regions belongs chiefly to M. de la Verendrye's sons. He himself had taken a most difficult task, and one that suited his age best,—that of directing the enterprise, of superintending the trade, of creating and maintaining friendly relations with the Indians, of stimulating the zeal of the ever tardy equippers, of having roads opened, and of sustaining the establishments which he had ordered to be commenced. He was always ready to help in person when occasion required, and the distances which he travelled on foot, in frightful weather and through wild countries, in the midst of privations, would terrify the imagination of a European. It was with truth his sons could say, "He marched, and made us march in such a way that we should have reached our goal, wherever it might be found, had he been better aided."* But his sons and his nephew most frequently went in advance to reconnoitre the route; and their journeys, always 30 full of danger and among tribes constantly at war, sometimes extended over whole years.

One of these journeys cost one of the sons his life; for the Sioux, the enemies of our allies, the Christineaux, massacred him with his whole party of twenty-one men, in June, 1736, on an island of the Lake of the Woods. Amongst the slain was Father Anneau, a Jesuit. A party of five Canadian *voyageurs* discovered the bodies several days after the event. The heads of the Frenchmen were placed upon beaver skins, the greater number of them scalped. The missionary had one knee in the ground, an arrow in his head, his breast cut open, his left hand upon the earth, and his right uplifted. The Sieur de la Verendrye lay face downward, his back hacked with a knife, a hoe buried in his loins, and his headless body ornamented with porcupine garters and bracelets.†

M. de la Verendrye, who was at this time in great destitution at Fort St. Charles, heard of the 40 massacre of his son and of the death of his nephew, La Jemerays, at the same time. The latter was the son of a sister of M. de la Verendrye—Marie-Renée de Varenne—and the brother of Mme. Youville, the foundress of the Hospitalières de Montreal. M. Dufrost de la Jemerays had associated himself with the labours and the fortunes of his uncle from the very commencement of his enterprise. Two years afterwards he had, on M. de Beauharnois' recommendation,‡ been recompensed with a second ensigney, for services rendered in these difficult commencements. When the innumerable obstacles that arose in the three and a quarter leagues of the Portage of Nantaouagan disheartened the *engagés*, he had the honour of passing beyond and of commencing the first establishment at Lac de la Pluie, or Tekamniouen. His intelligence, his devotion, and his courage, undismayed by neither dangers nor fatigues, gained him the

*Lettre du Chevalier de la Verendrye, 30 Septembre, 1750.

†Rapport du voyageur Bourassa.

‡Lettre du Ministre à M. de Beauharnois, 20 Avril, 1734.

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most complete confidence of M. de la Verendrye, who, at his death, had cause to mourn not only a very dear relation, but also a lieutenant invaluable to him in his enterprise.

If it had been possible to remedy such a loss, the courage and the ardour of M. de la Verendrye's sons would have repaired it; but their party was so small that the enterprise could not but suffer. However, the following year they found themselves with the Mandanes, a people who have been rendered most interesting to us through a book by Mr. Catlin,* the distinguished traveller. Clark thought himself to be the first to see them. As early as the year 1743, the eldest son of M. de la Verendrye, with the chevalier, his brother, reached the Rocky Mountains, in a journey that lasted from the 29th of April, 1742, to the 2nd July in the following year, by which time they had returned to Fort St. Charles, whence they had started.

I will here give some details of this journey, which must always remain famous, as the courageous action of only four men, who preceded, by nearly sixty years, the visit of the numerous troop of Lewis and Clark to the same place.† The eldest son of M. de la Verendrye having reached the Mandanes, could not, for want of the guides he had hoped to meet, advance beyond; so he returned to his father, who, however, immediately sent him back with the chevalier, his brother, and two other Frenchmen.

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This time they succeeded in reaching the Rocky Mountains, after having met on the way the villages of the Beaux-Hommes, the Poyas, the nation of Petits-Reynards and the Gens de l'Arc (Bowmen). Some of these names, which are found on the maps of Lewis, lead one to suppose that they arrived at the Rocky Mountains by the Yellowstone. On the 1st of January, 1743, these mountains rose before their eyes, and on the 12th of the same month they reached them, and the Chevalier de la Verendrye, who must have left his brother at some distance, prepared to ascend them. He was disappointed at always being led to the South by the guides whom he had asked to conduct him to the sea; he feared that by the route which he had followed he would only find a sea already known—however, he wished to contemplate it from the height of the mountains. Unfortunately, besides the natural obstacles that opposed his design, and which perhaps he did not foresee, a difficulty suddenly arose, of which he could still less have had any idea. So far, he had been led by the great Chief of the Bowmen, who, followed by other tribes, numbering 2,000 warriors, chiefly horsemen, accompanied by their families, was marching against the Gens des Serpents (Snake tribe) inhabiting these mountains. This nation was the terror of its neighbors. The Bowmen were the only ones who did not fear it. It had carried destruction everywhere, as the Chevalier de la Verendrye had witnessed. When he reached the nation of Les Gens des Chevaux he found nothing but grief and desolation, their villages having been entirely destroyed by the Gens des Serpents. In 1741, these latter had completely ruined seventeen villages and killed all the old men, and made slaves of the women and children, whom they sold on the coast in exchange for horses and other merchandise.

The march of the Bowmen against them was occasioned as much by a desire for the welfare of these countries as by a common desire for vengeance. But it seemed on this occasion, that with savages as with civilized people, it is unwise for brave men to depend upon the support of those who have nothing but numbers to recommend them. When the warriors came near the principal village they were warned by their scouts that the enemy had precipitately fled, abandoning their baggage. This news, instead of rejoicing, created disorder and division amongst them. They feared that the enemy had discovered them, and would profit by their absence to make a descent upon their own villages, and might reach them before they did. The Chief of the Bowmen, conspicuous by his intellect, nobility of manner and bravery, endeavoured to dissuade them, and incited them to follow the enemy, but in vain. No one listened to him, and the Chevalier de la Verendrye was forced to return with them, without beholding that sea the sight of which had so greatly rejoiced Balboa and Cortez two centuries before. No four men could have done better; and indeed it required immense courage on their part to penetrate to these mountains, which they had the honour of reaching sixty years before the great expedition sent thither by Jefferson.

* Letters and Notes on the Manners, Customs and Condition of the North American Indians, &c., 1842.

† Journal du Voyage fait par M. le Chevalier de la Verendrye, en 1742, pour parvenir à la découverte de la Mer de l'Ouest, adressé à M. le Marquis de Beauharnois.

That was the chief result of their journey. But there was another, which, although only secondary, must not be overlooked. On the return the Chevalier and his brother were careful to take possession of the countries of the Upper Missouri, where they arrived on the 19th March, 1743, amongst the Gens de la Petite Cerise, a nation encamped on the banks of the river. They interred to this end, on an eminence near their fort, a leaden plate inscribed with the arms of the King, and as a memorial of their journey they erected pyramids of stones in honour of the Marquis de Beauharnois. So that if the object of the enterprise had been postponed in one sense, it had in this particular the effect of establishing the rights of France on the borders of this great river, which, according to certain geographers, may be regarded as a principal branch of the Mississippi. This opinion admitted, the name of Beauharnois, already connected with the discovery of its mouth, becomes doubly associated with the discovery of both extremities of this American Nile.

Even if these expeditions, in some measure, justified the thought which made Nicholas de la Salle and Hubert, Commissioners of Louisiana, as well as Bobè and Father Charlevoix, request that the Missouri should be ascended in order to reach the ocean, still this success was not sufficient for M. de la Verendrye, nor did it satisfy the Chevalier or his brother, since by this route they feared to meet the establishments of the Spaniards, and besides they had not solved the problem of the Western Sea one of the principal objects of the enterprise. Consequently they determined to proceed by the north where, five years later, they discovered the Saskatchewan. That this discovery was not made earlier and the explorers had not advanced further, was not their fault but that of others.

M. de la Verendrye was preparing to send his sons back to the north, when the conduct of the Ministry, who refused him every preference, disgusted him. He considered that they treated him with systematic injustice. However, the Ministry were not as guilty as they seemed to M. de la Verendrye. They were excited against him by false accounts and by envious imputations. "When the discoverers outdid themselves in their fatigues and expenditures, their expeditions were represented as chiefly directed to the discovery of the beaver, their large expenditure as dissipation, and their statements as falsehoods." The Ministry might, without meaning any harm, accuse of mismanagement and negligence the men who were more occupied with work and travel than with the puffing of themselves by means of memoirs.*

On the 22nd April, 1737, *apropos* of the massacre of M. de la Verendrye's son, M. de Maarepas wrote to the Marquis de Beauharnois, who had defended the explorer against these accusations:† "All that has come to my ears concerning this accident confirms me in the suspicion I always had, and which I have not even disguised from you, that the beaver trade had, on the part of M. de la Verendrye, a larger share than anything else in the enterprise of the discovery of the Western Sea." The Minister, judging at a distance, and upon the reports of men whose interest it was to disparage, could doubtlessly be pardoned for misjudging; but for the explorer the result was the same, and this did not render the blow any the less painful. He was the oldest of the lieutenants in Canada, and he seemed to the Governor "the most worthy of the King's favours." His rare patience as a leader of men failed him when it came to a rivalry about ranks and titles. Besides, if the patience of a man who has only to think of himself can be unlimited, that of a father succumbs in the presence of the sufferings of his children. Probably, less wearied of sacrificing himself than of compromising the well-being, the advancement, and even the lives of his sons in an enterprise which had already deprived him of one of them; tired of seeing himself and them forgotten, not in the dispensation of favours, but in an equitable division of rewards due to the oldest and most meritorious services; above all, being pressed by want and sickness as well as by his creditors, he finally resolved to satisfy the envious. So, in 1743, he returned to Quebec to show what advantages he had personally gained in his many years of trials. "If," wrote he; "40,000 livres of debt that I have over my head are an advantage, I can compliment myself on being very rich, and I would have been much more so in the end if I had continued."

* *Mémoire du Chevalier de la Verendrye.*

† *Lettre au Ministre, 1er Octobre, 1736.*

‡ *31 Octobre, 1744, Lettre de M. de la Verendrye.*

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explorations
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1750.

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French
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of the Verendrye,
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Conscious that he had done all in his power for the service of the King and the good of the colony, he resigned his charge, that so the Governor might give it to those who thought themselves more worthy and more capable of fulfilling it. He did not exaggerate his own merits. Lewis and Clark, who were much better sustained, had not, in order to be successful, to make an eighth part of the efforts which M. de la Verendrye made to go half the distance.

III.

However, the Marquis de Beauharnois, who appreciated M. de la Verendrye's character at its true worth, deeply regretted* to see him desist from his enterprise. M. de Beauharnois deplored to the Ministry the explorer's mortification because of the attempts made "to give to his purity of design in seeking to compass the discovery of the Western Sea, a character so opposed to his real views." He spoke of the advantages that had been secured by the posts he had established; "finally," said he, "the idea which had been cherished by his having amassed wealth in these places falls to the ground in view of his indigence. We can assure you, Monseigneur, without any favour or predilection for him, that the twelve years spent by him at these posts did not yield him nearly 4,000 livres, which is all that can remain to him after he has paid the debts contracted on behalf of this enterprise. And finally, Monseigneur, the state in which he has left matters seems to make him worthy of your bounty." But as the Ministry could not overcome its prejudices so easily, M. de Beauharnois, in order to get rid of the evil rumours propagated by the envious, appointed M. de Noyelles to pursue the discovery. The little done by this officer, who was generally looked upon as a man of courage, accustomed to long marches and acquainted with the Upper Countries, must have made the intelligent inhabitants of the colony understand that, considering the conditions M. de la Verendrye had accepted, he had obtained great results, and that no one could do better, or even as well as he. M. de Beauharnois, satisfied with this trial which justified him in his first choice, again fixed his eyes upon the discoverer, and once more assured M. de Maurepas that this officer had been accused unjustly—that he had given himself entirely up to the discoveries, and had sacrificed to them all the proceeds of the new posts established by his care with much trouble and at great risks, and that, finally, this man united to great experience a firm yet gentle character, by which he had obtained over the savages of the West an ascendancy which he found it necessary to exercise. M. de Beauharnois had returned to France with the rank of Lieutenant-General in the army as a reward for his services, and M. de la Galissonnière, his successor, took the same stand as he, adding "that discoveries caused greater expenses, and expose to greater fatigues and greater dangers than do open wars," and, *apropos* of this, he recalled the death and ruin of Cavalier de la Salle, and many others. The Ministry gave way to these repeated assurances.† They gave M. de la Verendrye a captaincy, and some time afterwards, the decoration of the Cross of St. Louis, which he had sufficiently merited since 1709, by his wounds at Malplaquet. But, at the same time they asked him to make fresh efforts for the achievement of his enterprise. As much as this even was needed to stimulate the generous hearts of the old officer and his sons.

As early even as 1748, the Chevalier de la Verendrye had set out to continue his discoveries in the West, and he had reascended the Saskatchewan to its fork, where, every spring, the Christianaux of the mountains, of the lakes and of the prairies had their rendezvous. There they heard from the savages that this river came from a great distance—from the height of the lands, where there were very lofty mountains, and that they knew of a great lake on the other side of the mountains, whose waters could not be drunk.‡ Inspired by the acts of the Ministry, which had at last rendered him justice, M. de la Verendrye, whose sons kept him aware of all that transpired, prepared, notwithstanding his age, to leave Montreal in the month of May, 1750, at a time when navigation would be open in the upper countries, that he might reach Fort Bourbon in the first days of the month of December, whence with his sons he was to navigate for the first time the River Poskoyac. There he intended to construct a convenient fort. In the following spring, he was to send to ascertain the altitude of the mountains near which the lake in question was situated. "I intend," said he, "to be as diligent as possible, in

*Lettre du Marquis de Beauharnois, 27 Octobre, 1748.

†Lettre de M. de Beauharnois, 15 Octobre, 1746.

‡23 Octobre, 1747. Lettre du M. de la Galissonnière.

§Lettre de M. de la Jonquière, 22nd Septembre, 1749.

order to winter at Fort Bourbon at the base of the River aux Biches, which is the last of all the forts I have established, being too happy, if at the end of all the troubles, fatigues and risks I have undergone in this long discovery, I can succeed in proving my own and my children's disinterestedness, and our great zeal for the glory of the king and the welfare of the colony." He wrote these words to Quebec on the 17th September 1749; but in making this promise, he counted without that host whose name is Death, and who is ever faithful to man. On the 6th of the following December he died, taking with him, so to say, the success of the enterprise. M. de la Galissonnière had just left Canada, to give place to M. de la Jonquière; and the corruptions which were to contribute to the loss of the colony by France, commenced in the painful developments which led to the condemnation of the Intendant Bigot to exile. MM de la Verendrye were to be this Intendant's first victims. Assuredly, after the death of their father, no one in the colony was as capable of continuing and achieving the discovery which they had so far advanced. The sons of M. de la Verendrye claimed the honour of completing this enterprise as the most precious portion of their inheritance. Furthermore, it seemed impossible to refuse this to men who had already made the greater part of the preparation and undertaken engagements which absorbed their little fortune, and even more. But the Intendant Bigot and the Governor had formed an association for these discoveries and for the development of the Posts of the West; and the Varennes had to yield to their all-powerful rivals, who were more greedy of profit than of the honour imposed upon them by their high rank. M. Bigot never had money enough to waste, nor M. de la Jonquière to save. Neither of them recognized any principle of right, but entirely forgot their duty.

- 20 Having in view the two extreme points traversed, or intended to be traversed by the Verendryes, they thought to find the Western Sea by the Mississippi and Saskatchewan. Fidler Coquart, a companion of M. de la Verendrye, had about this time come to the conclusion that it would be necessary in order to reach this sea to seek the sources of the Missouri and to cross the Rocky Mountains, if it were found impossible to penetrate the defiles with their canoes, and so reach the great salt water lake. He wrote that his idea had been rejected, because here,* "discoveries are wanted that cost no money except the returns from the beaver, and I have been told that any project proposed to the Court, if it required funds for its execution, would not be listened to." However, his proposition was remembered, and these projects, born of the discoveries of the Chevalier de la Verendrye, were united to those that he and his companions had intended to carry out by the Saskatchewan. The enterprise thus conceived was confided to two officers: M. Lamargue de Marin was directed to the Upper Mississippi and the Missouri, whilst the north was the destination of Jacques Gardeur de Saint Pierre. These two officers, whose intrepidity was beyond question, do not seem to me, if I am to believe certain indications, to have been equally commendable in character. At all events, on this occasion they considered their desire for advancement and gain more than the feelings of delicacy which should have obliged them to have been careful of the interests and honour of M. de la Verendrye.

- 40 An enterprise conceived and conducted by covetous men is at all events generally advantageous to those interested; and so it proved here. If it was said without reason concerning M. de la Verendrye, that the hunting of the beaver delayed the discovery, it could be said with truth in this case. The colony seemed to gain no advantage from this expedition, excepting the establishing of a fort near the Rocky Mountains by a detachment of men, who, in accordance with the plans of the Chevalier de la Verendrye, followed the Saskatchewan.† Still the officers themselves who commanded the establishment of this post, were only honoured indirectly by it, neither of them being present. M. de Saint Pierre, who from the first step took on the road prepared by his predecessors, recognized all the difficulties of their enterprise, must, in rising the unexpected obstacles which victoriously refuted all those calumnies through which doubtless he had supplanted them, have felt the injustice of his conduct towards them. He traversed a road which had already been opened by them, yet he owned that at each step there was risk of losing not only provisions and effects, but even life itself. He realized the covetousness of the populations through which he had to pass, although he attributed it to the lenity which he pretended had been shown them. "No matter what presents are made them

* Lettre du Père Coquart, 1750.

† Mémoire ou Journal (sic), sommaire du voyage de Jacques le Gardeur de Saint Pierre . . . chargé de la découverte de mer de l'Ouest.

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they would exhaust," said he, the "king's storehouses." These facts, of which M. de St. Pierre only spoke to magnify the difficulties of his enterprise, proved a great set off to the acts of M. de la Verendrye, whose merits had been hidden by the modesty of his recital; as did also the conduct by which the new chief of the exploration, in alienating the Christinaux, compromised all the work of the first explorers, and proved that he was wrong in accusing them of lenity; the truth being that they were much more prudent and skilful than he in dealing with these nations. The Christinaux burned Fort la Reine, and nearly killed M. de St. Pierre himself. The illness, also, of his lieutenant, the Chevalier Boucher de Niverville, showed how much he had not only prejudiced his own honour, but also the success of the enterprise, in refusing the earnest request of MM. de la Verendrye to be allowed to accompany him. The Chevalier de Niverville having been sent by him to found a post at the source of the 10 Saskatchewan or Poskoyac, had been obliged to stop on the way, exhausted by the fatigues and miseries to which MM. de la Verendrye had become accustomed, and only some of his men could reach the Rocky Mountains, where they established Fort la Jonquière, in 1752. The expedition does not seem to have passed the mountains when M. de St. Pierre, who had been recalled by the Marquis Duchesne de Menneville, who succeeded M. de la Jonquière, saw M. de la Corne arrive, in 1753, to replace him in the Posts of the West. The Seven Years' War, which was about breaking out, prevented the pursuit of this enterprise, of which the English colonies, victorious over ours, were at a future day to reap the benefit.

Thus the covetousness and envy of a few agents, who were but fitting instruments of a Government that everywhere provoked its own decadence, caused France to lose the honour of a discovery which science expected of some of her sons, at the very moment when this honour, which was so earnestly wished for by MM. de la Verendrye, was snatched from them. But how could they hope for it when even their very property was at this time delivered up to shameless pillage. The *sic vos non vobis* of the poet was here realized in all its severity. Nothing can be more pathetic than the complaints of the two brothers on this subject. "At the very time," wrote the elder,* "when they all intended to pursue their discoveries, they had not only suffered considerable losses in establishing the Posts of the West, but they had also been deprived of the enjoyment of a property which they had come to regard as the reward of their labours, having spent their youth and their fortune, and even sold what they had in Canada, to complete an undertaking so beneficial to the colony. After all these expenses, they had the pain of seeing strangers gather the harvest of which they had sown the seeds the influence they had gained lost; the merchandise they had left in the posts given away without 30 their having the slightest hope of deriving any profit therefrom; their provisions eaten by strangers whilst the *engagés* whom they had to pay were still made use of." The complaints of the Chevalier being more poignant and better expressed, are still more heartrending.† "I, too, am ruined," said he "My returns of this year being but half gathered, after a thousand inconveniences, my ruin is accomplished. My father's affairs and mine being settled, I remain without either funds or patrimony. I am simply second ensign. My elder brother holds the same rank as myself, and my other brother is only a *cadet l'aiguillette*, and this is the actual fruit of all that my father and my brothers and I have done. My brother, who was assassinated some years ago by the Sioux, is not the most unfortunate of us." He was so reduced as to speak thus of death.

For a much lesser cause, in 1809, Lewis, the companion of Clark, with whom it is said the American 40 Government refused to fulfil its engagements, blew out his brains. But MM. de la Verendrye, awaited with more christian resignation, the end of their misfortunes; they left it in the hands of God. It soon arrived. They re-entered the army, and the Seven Years' War, which occasioned to us notwithstanding the heroism of Montcalm, the loss of Canada, gave them an opportunity of ending their lives nobly. In this war, several Varennes were killed, but I have been unable to discover whether they were the sons of M. de la Verendrye, or of his brother. The fate of the Chevalier alone is certain. He and another Lieutenant named Varenne perished on the 15th November, 1761, by drowning, in the wreck of the *Auguste*, a vessel *armé en cartel*. This wreck, which was an image of the fate of the French power in America, was terrible. Some Canadians, however, who in exile sought

* Mémoires des services de Pierre Gaultier de la Verendrye, l'aîné.
† Lettre au Ministre, 30th Septembre, 1750.

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Certain intelligence has also been received there from Detroit. This reinforcement will somewhat tranquilize the fort, which contained before this arrival only twenty-eight men. An Outaoua Indian, named Nequouamin, arrived on the 2nd July at the post to communicate in secret to the Commandant and the Missionary, that the Iroquois, the Huron, and the Flat-head, had come to an understanding with the English to destroy the French, and drive them to the other side of the Sea; that the Outaoua of Detroit is in the plot; that the Pontoutami will co-operate; that the Mississague and Sautour are gained over; that the Outaoua of Saguinam has already struck; that the Outaoua of Michilimackinac would have taken part against us had it not been for the portion of the village which is at Montreal, and that they would yet possibly declare against us on the arrival of seventy men from Saguinam, who are to be reinforced by the Sautours of Grosse Isle; that they were to leave in a few days, and to come in the night to speak to the Outaouas of the post, and that it were well to allow no person to go hunting, and to keep strict watch.

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M. de Noyelle, junr, adds that he will detain, until further orders, at Michilimackinac, the canoes which were to come from Montreal to the different posts, unless affairs changed and it became certain that the dispositions of the Indians at these posts were altered. We are co-operating in the adoption of the most effectual measures either to restore tranquility at the post of Michilimackinac, or at least to place in a proper state of defence against all attacks of the Indians.

October 14th.—Sieur Masse, who has been the whole year at Cape Chat, has returned. We receive letters from Michilimackinac, informing us of the arrival of Chevalier de la Verendrye, who has found that post very quiet; the Outaouas are beginning to be sorry for what occurred last year.

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EXTRACT, &c., OF WHATEVER OCCURRED OF INTEREST AT QUEBEC, AND THE VARIOUS INTELLIGENCE RECEIVED THERE SINCE THE SAILING OF THE SHIPS IN NOVEMBER, 1747.*

News from Michilimackinac.

Nov 10.—We are in receipt of letters from Michilimackinac. Lieutenant de St. Pierre, who had been selected to command the convoy sent to that post, arrived there, without any accident, in 45 days. Captain de Verchères, appointed commandant at *La Baye*, and who was to remain at Michilimackinac with his traders from Montreal, had taken his departure thence for his post, with his *voyageurs*. M. de St. Pierre writes us on October 22nd that he has not been able to speak to the Indians, who were, when he arrived, all gone to their winter quarters, without having given any token of repentance for the outrage they had perpetrated. It is hence to be presumed that they persist in their evil dispositions, that the Marquis de Beauharnois' orders, sent with Sieur de La Verendrye, in the month of August, have been badly executed; that 'twas the only means of reducing those nations; that he does not anticipate success otherwise than by depriving them of the supplies they derive for the support of their families and which they cannot dispense with. This might have been effected, were the traders prevented going to the different posts, according to the Marquis de Beauharnois' intentions; and this officer takes this occasion of saying that it would be well not to allow the canoes to leave Montreal next spring for Michilimackinac and other posts, until he have informed us of the sentiments in which the nations of that country will then be, and as soon as he shall have learned their intentions, he will take occasion to report them to us.

[Extract of a Letter from M. Berthet, Commandant at the Illinois, to Sieur Lachine, Trader at the Ouyatanons, dated Cahos, 20th October, 1747, whereof he sends us a copy.]

Sieur de La Verendrye.

March 29.—Sieur de La Verendrye, junior, has returned to Montreal with the Christinnux and other warriors of his party. In the neighborhood of Corlac [Scheneectady] he fell in with a party of

* N. Y. Hist. Col., Vol. X. pp. 157, 154, 167.

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VARIOUS INTELLIGENCE
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Lachine, Trader at the 40

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Mohawks and Dutchmen, who were coming to Sarastua, on a scouting party. He brought two Mohawk scalps, among which is that of the principal chief of that nation; one of a Dutchman; and a Dutch prisoner, who reports nothing of interest—only says that there is considerable talk about peace. This first blow on the Mohawks will not fail to frighten them.

Convoy to Michilimakinac.

June 20.—Count de la Galissonière orders the dispatch from Montreal of the convoy for Michilimakinac, under the command of Lieutenant de St Vincent. This convoy is well escorted and sufficiently well provided with provisions and merchandise to supply the post abundantly. The General writes to Lieutenant de St. Pierre, Commandant there, that the convoy was delayed in the hope of receiving news from Michilimakinac, but that the advanced season obliged him to order its dispatch, though he is uninformed of what is passing at that post; that, should the troubles continue nothing remains to be done than to abandon, as already proposed, those posts which are exposed to danger, in order to oblige the guilty to come to Michilimakinac, and even to Montreal, in search of what they want; that he must exact the surrender of the murderers, and should circumstances force him, grant peace on the same conditions as those accorded to the Hurons of Detroit, who were to bring two English prisoners for every Frenchman they had killed; the promises must, first of all, be performed, in order that these nations may not betray us, as the Hurons have done. The General leaves this officer at liberty to determine, according to circumstances, the carrying into execution the different licenses granted for the northern posts, and observes to him, nevertheless, in regard to the West Sea and Nipigon, that in case these posts were abandoned, it would be to be feared that the English might irretrievably monopolise the entire of that trade which they now share with sufficient advantage. Demands some Paris, in order to indemnify the Indians who have surrendered some English prisoners. Ensigns Laronde and Chevalier de La Verendrye have also taken their departure; the first for Point Chagouamigon, and the second for the West Sea.

COLONEL DE BOUGAINVILLE ON THE FRENCH POSTS OF CANADA, 1757.

[A portion only of this article appears in the Joint Appendix.]

DETROIT.—Detroit is an important post; it is the *entrepôt* of the southern forts, which communicate with the Illinois. The lands there are fertile and of easy cultivation; the sky beautiful and serene; the climate magnificent. There is almost no winter; very little snow; animals winter in the fields, where they find their feed; there are already two hundred habitations, or about that number, full of food and cattle, and which furnish supplies for the different posts of the upper countries. This fort is situated on the shore of the river which separates Lake Erie from Lake Huron. . . . The post of Detroit, *entrepôt* of the southern posts, is a large town, situated between Lake Erie and Lake Saint Claire. From the entrance of Lake Erie to Detroit, there is a distance of six leagues; from Detroit to Lake Saint Claire, two leagues; from the outlet of this lake, which extends seven leagues, to Lake Huron, there is a distance of eleven leagues. The site of the post is a very beautiful one, the climate is pleasant, the atmosphere very healthy, the soil excellent and good for any productions; the game is abundant. . . . On the north there are three leagues of land, inhabited by Frenchmen, and on the south two leagues and a half. . . . This post has a commandant, a major, etc.; 40 the garrison comprises men belonging to the companies detached from the marine. This post is worked by means of licenses (*congés*), whose price is generally five hundred francs, payable in cash, and whose number is not determined.

MICHELIMAKINAC.—Michilimakinac is distant from Montreal, travelling by the *Grande Rivière*,

* Memoir on the State of New France at the time of the Seven Years' war (1757). Louis Antoine de Bougainville, author of this Memoir on Canada, was one of the most distinguished French officers in the war which resulted in the conquest of Canada. His "Memoir" was submitted to General Montcalm at the time it was written, and that officer testified to the correctness of the information it contained. M. de Bougainville attained, on his return to France, a high rank in the navy, of which he became Vice-Admiral. The French original is given in "Relation et Mémoires Inédits," etc., par Pierre Morisy, Paris, 1867 p. 41.

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Col. De Bougainville on the French posts in Canada, 1757.

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some three hundred leagues, and some one hundred leagues, and more, from Detroit. This post is situated between Lake Michigan and Lake Huron. . . . The Governor-General receives generally from the voyageurs five hundred francs upon each canoe laden with merchandizes, and the proceeds thereof are distributed among the officers and the poor families. In ordinary times, six or seven hundred bundles (*paquets*) of furs are forwarded from the fort *per annum*. . . Michilimackinac is the *entrepôt* of all the northern posts, as Detroit is of the southern ones.

MIAMIS POST.—The post of the Miamis (Bellestre, Lieutenant), is situated on the right shore of the river of that name, and has a fort built with palisades. . . . This fort is farmed to the commandant for three years, in consideration of a sum of twelve hundred francs *per annum*. He has the control of the fur trade; the King delivers neither certificates nor presents to the Indians; the farmer must bear these expenses, and, moreover, pay the salary of the interpreter; he receives no gratuity. . . . This post produces generally from two hundred and fifty to three hundred bundles of furs.

OUYATANONS.—The post of Ouyatanons (Came Bayeul, Ensign), is situated on the right shore of the River Ouabache, or St. Jerome; the fort is built with palisades. This post is on the same footing with that of the Miamis; the commandant is its farmer, and pays on that account twelve hundred francs annually. . . . This post, and those that are dependent upon it, produce generally from four hundred to four hundred and fifty bundles of furs *per annum*.

VINCENNES.—The post of Vincennes is a pretty village subject to New Orleans, which sends there a commandant. It has three horse-mills, and contains seventy-five inhabitants, who labour and reap corn.

ILLINOIS POST.—The principal *entrepôt* of the post of Illinois is Fort Chartres, situated upon the Mississippi. There are, for all these posts, a garrison of six companies, furnished, as is also the commandant, by New Orleans. The divisions of the Illinois are . . . the Cahoo [Cahokians] . . . the Metchi . . . the Kas [Kaskaskias] . . . These three nations are now comprised under the name of the Illinois. This post is worked by means of licenses, whose price is six hundred francs *per canoe*. . . . There is another post on the River of the Illinois, where resides a commandant in a fort called Pimiteoui. The tribes which trade there are the Peorias. Seven hundred men produce two hundred bundles of furs.

KANSÉS.—In ascending this stream [the Missouri River] we meet the village of the Kansés. We have there a garrison with a commandant, appointed, as is the case with Pimiteoui and Fort Chartres, 30 by New Orleans. This post produces one hundred bundles of furs.

FORT DUQUESNE.—Fort Duquesne is situated on the left bank of Belle-Rivière [Ohio], at the confluence of the Malanguenle [Monongahela]. This post is worked by means of licenses, which are distributed free in order to encourage traders to forward furs there. It produces generally, *per annum*, from two hundred to two hundred and fifty bundles of furs.

FORT OF LA PRESQU' ISLE.—La Presqu' Ile is a square fort, built with squared timbers, situated on Lake Erie, at a distance of seven leagues from Rivière au Boeuf and Niagara, almost at the entrance of a large bay, about one league and a-half long, with a width of half a league. There are at the post a commandant, who receives a salary of 1,000 francs, and a garrison of from fifty to sixty men. This post is for the fur trade in the same position with the two preceding ones; it is important as a necessary *entrepôt*, and the first between Niagara and the Belle-Rivière. 40

FORT OF THE RIVIÈRE AU BOEUF.—The Fort of the Rivière au Boeuf, a square fort built with palisades, is situated at thirty leagues from Fort Machault, on the river of which it bears the name. This post is a necessary *entrepôt* for Fort Duquesne, but it should be rebuilt in order to be protected against a *coup de main*. This post is not a trading one.

FORT MACHAULT.—Fort Machault is situated at the confluence of the Rivers au Boeuf and Ohio. It is the last *entrepôt* towards Fort Duquesne. . . . It is not a trading post.

NIAGARA.—Niagara may be considered as a strong place; it is situated at the head of Lake Ontario to the south, at the confluence of Niagara River. This post is the key of the upper countries.

The soil being most fertile, the climate mild, and game and fish abundant, we should attempt to establish there a town, or at least a village. . . . The King controls the fur trade of this post, and consequently pays the salaries of the commandant and other employés, but the trade is badly managed. The post produces generally *per annum* from two hundred and fifty to three hundred bundles of furs.

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TORONTO.—Situatèd to the north of Lake Ontario, opposite Niagara, has been established in order to prevent the northern Indians from going to trade at Choueguen. Choueguen existing no more, this post becomes useless. The King controls its trade. It produces about one hundred and fifty bundles of furs.

FRONTENAC.—Frontenac, or Katarakoui, a fort in bad condition, situatèd at the entrance of Lake Ontario; had Choueguen not been destroyed, it would have been necessary to repair it. It has a commandant, with some officers under his orders, and a garrison of soldiers. . . . This post is managed by the King, who consequently defrays all its charges. It can produce annually from twenty to thirty bundles of furs.

LA PRÉSENTATION.—A Mission for the Indians of the Five Nations, established by M. l'Abbè Piquet, on the right shore of the River St. Lawrence, at . . . leagues from Montreal. There are now about one hundred Indians of the Five Nations assembled under his care. It has a fort in bad condition, built with palisades, with a commandant and a small garrison. This fort is worked for the King. It produces generally from thirty to forty bundles of furs *per annum*.

Col. De Bougainville on the French posts in Canada, 1767.

BAYE DES PUANTS.—The post of Baye des Puants [Green Bay] (Monsieur de Rigaud) is farmed in consideration of nine thousand francs; every expense on account of the King has been suppressed; the King delivers neither presents nor certificates, and does not pay the salaries of the interpreters; the farmers must bear all these expenses. The commandant (Lieut. Control) is interested in the farming, and manages the trade for his own account as well as for his associates; he receives a gratuity of two thousand francs. The post produces usually from five to six hundred bundles of furs *per annum*.

RIVER ST. JOSEPH.—The fort of River St. Joseph (Monsieur le Verrier) is situated on the right of the river of that name, at a distance of twenty leagues from the place of its discharge into Lake Michigan. This post is on the same footing with that at La Baye; the commandant is its farmer in whole or in part, according to the pleasure of the Governor-General; all the expenses rest upon him; he receives a gratuity of two thousand francs. . . . It can produce four hundred bundles of furs.

POST OF THE WESTERN SEA (LA MER DE L'OUEST).—The post of the Western Sea is the most advanced towards the north; it is situated amidst many Indian tribes, with whom we trade, and who have intercourse also with the English, towards Hudson's Bay. We have there seven forts built of stockades, trusted, generally, to the care of one or two officers, seven or eight soldiers, and eighty *engagés Canadiens*. We can push further the discoveries we have made in that country, and communicate even with California.

The post of *La Mer d' Ouest* includes the forts ST. PIERRE, ST. CHARLES, BOURBON, DE LA REINE, DAUPHIN, POSKOIA, [and] DES PRAIRIES, all of which are built with palisades that can give protection only against the Indians. Fort St. Pierre is situated on the left shore of Lake Tekamamiouen, or Lac de la Pluie [Rainy Lake], at 500 leagues from Michilimakinak and 300 from Kamanistigoya, or les Trois Rivières [Three Rivers], to the north-west of Lake Superior. Fort St. Charles is situated sixty leagues from Fort St. Pierre, on a peninsula that goes far into Lac des Bois [Lake of the Woods]. Fort Bourbon is at one hundred and fifty leagues from the preceding one, and at the entrance of Lake Quinipeg. Fort la Reine is situated on the right shore of the River of the Assiniboels, at seventy leagues from Fort Bourbon. This country is composed of vast prairies; it is the route to go through to the upper part of the Missouri. Fort Dauphin at eighty leagues from the preceding one, on the River Minanghachequekè, or Eau Trouble. Fort Poskoia is built on the river of that name [now Saskatchewan], at 180 leagues from the preceding one; it takes ten days from this fort to reach Nelson River. The Fort des Prairies is at eighty leagues from Fort Poskoia in the upper part of the river of that name. This post has been farmed in consideration of a sum of eight thousand francs; the commandant is its farmer, with a fourth interest in its trade. The Indians who trade there are the Chris-

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tinoux and the Assiniboels; these two tribes form each twelve villages inhabited respectively by two hundred and fifty men (*hommes*). This post produces usually from three to four hundred bundles of furs; we must take into account also fifty to sixty slaves, Rouges or Panis, of Jatihilinine, a nation situated on the Missouri, and which plays the same *rôle* in America that the negroes do in Europe. This is the only post where this traffic takes place.

The post of *La Mer d'Ouest* merits special attention for two reasons—the first, that it is the nearest to the establishments of the English at Hudson's Bay, and from which their movements can be watched; the second that from this post the discovery of the Western Sea may be accomplished; but to make this discovery it will be necessary that the travellers (*voyageurs*) give up all views of personal interest.

The one who advanced this discovery most was the *Sieur de la Verandrye*; he went from Fort de la Reine to reach the Missouri. Upon this river he first met the Mandanes or Blancs-Barbus, numbering seven villages surrounded by forts of staked earthworks with a moat; then the Kinongewiniris or Brochets, composing three villages; at the upper part of the river he found the Mahantas, also composing three villages, and along the Missouri in descending it to the discharge of the River Wabiek, or to the Coquille, twenty-three villages of Panis.

Col. De Hon-
gainville on
the French
posts in
Canada, 1757.

To the south-west of this river, and on the two shores of Ouonaradeba, or a la Graisse, are the Haetames or Gens du Serpent. They extend from the foot of a chain of very high mountains [the Rocky Mountains], which run north, east and south, and to the south of which is the River Karoskion or Cerise-Pelée, which is supposed to reach California.

He continued his journey, and found in those vast territories, where the Missouri has its sources, opposite to, and about forty leagues from the Mahantas, the Owilinièk or Beaux-Hommes, four villages; opposite the Brochets the Macateoulasites or Pieds-Noirs [Blackfeet], three villages of about 100 cabins each; opposite the Mandanes are the Ospekakaerousques or Gens du Plat Côté, four villages; opposite the Panis are the Gens de l'Arc, named the Atchapeviniques by the Christianaux, and Utasilaoutchactas by the Assiniboels, three villages; after these are found the Makesch or Petits Renards, two villages; the Privassa or Grands-Parleurs, three villages; the Kakakoschena, or Gens de la Pie, five villages; the Kiskipisoumouini or Gens de la Jarretière, seven villages.

He could not go further on account of the war which was then being waged between the Gens de la Jarretière and the neighbouring nation. I may here observe, that it is perhaps improper to use the term villages as I have done, for all these nations which inhabit the prairies form, like the Tartars, wandering hordes, live by the chase, and dwell in huts covered with skins.

NÉPIGON.—Les Népigons, a post established to the north of Lake Superior; the commandant is its farmer, and pays for that privilege about 4,000 francs; it includes the Lake à la Carpe. . . . The Indians who trade at the post are the Saulteux; this tribe, one of the most numerous in these regions, is wandering, plants nothing, and subsists solely by the chase and fishing. The post produces generally every year from eighty to one hundred bundles of fur.

CHAGOAMIGON POINT.—The post of point de Chagoamigon [La Pointe] (Monsieur de Beaubassin) is farmed in consideration of a sum of eight thousand francs, to *Sieur de saint Luc*, until 1758; there are neither presents nor certificates sent, only the interpreter to be paid. The commandant 40 receives a gratuity of three thousand francs. The Indians who trade at the post are the Saulteux. Generally, the post produces each year about two hundred and fifty bundles.

KAMANISTIGOYA.—The post of Kamanistigoya, or Les Trois Rivières (Monsieur de Repentigny) was farmed to the late M. Cagnet in consideration of a sum of four thousand francs. He having sub-farmed the same to M. Toussaint Portier, the Crown has granted him the surplus in order to indemnify him for the loss of the licenses of the Saint Maurice. The King bears no other expense than a gratuity of two thousand francs to the commandant; there are neither presents nor certificates; the farming of this fort will expire in 1758. The Indians who trade are the Saulteux. The fort produces annually from sixty to seventy bundles.

MICHIPICOTON.—A post situated to the north-east, as that of Kaministiquia is to the north-west, of Lake Superior. The Saulteaux trade at this post. It produces from fifty to sixty bundles of furs.

SAULT STE. MARIE.—Fort built with palisades, situated on the strait which unites Lake Superior to Lake Huron, established in 1750. The fur trade was granted gratis to the commandant in order to promote the settlement. The King gives 400 francs of gratuity charged against Michilimackinac, on which this post depends. The Indians who trade there are the Saulteaux. The post produces annually one hundred bundles. The Sieur Debonne and the Sieur de Repentigny have obtained its possession by way of a grant, as an hereditary seigniory.

TEMISCAMINGUE.—A post situated on a lake of that name, and farmed in consideration of the sum of 7,000 francs; the Indians call the place where stands the post *Aubatsweanek*. The tribes that trade there are the Têtes de Boule, or Gens des Terres and the *Namcosakio*, who come from the shores of Hudson's Bay.

TARITTI is a post dependent upon Temiscamingue, situated at one hundred any twenty leagues from the precedent fort, towards Hudson's Bay; each post may contain one hundred men; they subsist on game and fishing; they sow no grain, and have no village. All this country is mountainous and not at all fertile. The post produces about 120 bundles of furs.

FUR TRADE AND LICENSES (Congés).—In almost every post, the house occupied by the commandant, being surrounded with palisades, is honoured with the name of Fort. People in Canada give this name to public stores, (*comptoirs*), where the fur trade with the Indians takes place, who in exchange for their peltries, receive the goods wanted by them. In earlier times these posts were sold by auction, and the traders could obtain their possession, but the Governor-General disposes of them now for his favourites, with the approbation of the Court. The most important are La Mer d'Ouest, La Baie [des Puants], St. Joseph, Népigon, and Michilimackinac. The post of Detroit is granted to no one; the system of license (*conges*) prevails there.

There are posts where the fur trade goes on for the benefit of the King, such as Toronto, Frontenac, Niagara, Petit Portage, Presqui' Isle, Rivière au Boeuf, Fort Machault, Fort Duquesne. The traffic in those post, is not a profitable one for the King, who always loses money in this way; he retains it only to preserve the alliance of the Indians; the storekeepers and the commandants know, however, how to enrich themselves.

We call *conge* the licenses or permits that are granted by the Governor-General for a canoe laden with six thousand pounds of merchandizes intended to be sold in one of the posts indicated; such a license costs fifty pistoles.

The Governor-General, who is at liberty to give more or less, applies these funds for the maintenance of poor families of officers. Account is given to the King of only twenty-two licenses; the Governor sometimes gives as many as forty; the half of the fifty pistoles goes to the King, and the other half is at the disposal of the Governor for gratuities.

The post of La Baie has given in three years to M.M. Rigaud and Marin three hundred and twelve thousand francs, and at the time of M. Marin, the father, who was associated with M.M. de la Jonquiéro and Bigot, it produced more than one hundred and fifty thousand francs *per annum* all expenses paid.

TRADING POSTS.

Northern Posts.—1. Themiskaming (no commandant there); 2. Michilimackinac; 3. La Bais; 4. La Mer d'Ouest; 5. Sault Ste. Marie (the seigniory and the exclusive trade are granted in perpetuity to M. Debonne or his heirs); 6. Chagouamigon; 7. Kaministigouya; 8. Népigon; 9. Michipicoton (no commandant); 10. St. Joseph; 11. The River of the Illinois (no commandant has yet been appointed for that post). The General sells licenses to the traders in order to allow them to trade with the Indians.

Southern Posts.—La Présentation, Frontenac, Toronto, Niagara, (the small Fort of Niagara,—the Indian trade is for the King's benefit); Detroit (Licenses are sold to the traders); The Miamis, sixty

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leagues above Detroit; Ouyatanons, sixty leagues above Miamis, on the Ouabache River; Presqu' Isle; River au Bœuf; Fort Duquesne; Fort Machault—(the trade is controlled by the King.) Below Quebec there are the posts of Tadoussac and Saguenay, controlled by the King. . . . Minghan, . . . Labrador, . . . Anticosty.

II.—ENGLISH DOCUMENTS.

CIVIL AND MILITARY DIVISIONS OF LOUISIANA IN 1723.*

Louisiana, in 1723, was divided into nine civil and military districts, as follows, viz: 1st, the district of the Alibamons; 2nd, of Mobile; 3rd, of Biloxi; 4th, of Natchez; 5th, of New Orleans; 6th, of Yazoo; 7th, of Illinois; 8th, of Arkansas; and 9th of Matchitoches. Each was protected by a fort, and under the jurisdiction of a commandant and judge, who administered the military and civil concerns of the

Civil and
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divisions of
Louisiana,
1723.

FORT CHARTRES was the headquarters of the commandant of Upper Louisiana, and was deemed one of the strongest French posts in North America. It was erected in the vicinity of Prairie du Rocher (in 1720), about one mile and a half from the river bank, about twenty-five miles below Kaskaskia. Its form was quadrilateral, with four bastions built of stone, and well cemented with lime. Each side was three hundred and forty feet in length; the walls were three feet thick and fifteen feet high. Within the walls were spacious stone barracks, a spacious magazine, well, etc. The cornices and casements, port-holes or loops were of solid blocks of stone. In 1770, the river broke through its banks, and in two years afterwards two of its bastions fell into the river. It was then suffered to fall into decay, and it is now one of most beautiful and picturesque ruins in the valley of the Mississippi.

FORT ROSALIE, at the Natchez, stood on the summit of a hill about six hundred and seventy yards from the shore of the river, and about one hundred and eighty feet above the surface of the water, overlooking a beautiful champaign country, and the river for many miles both up and down. It was an irregular pentagon without bastions, and built of thick plank. The buildings within consisted of a stone house, magazine, houses for the officers, and barracks for soldiers. The ditch surrounding it was partly natural and partly artificial, and in most places nineteen feet from the bottom to the top of the rampart. M. de Bienville named it Rosalie in honour of Madame la Duchesse de Pontchartrain. By the sliding and caving in of the banks of the river, its huge bastions became nearly all destroyed; still it is one of the most interesting and picturesque spots that the traveller can visit in the delta of the Mississippi.

The fort at POINT COUPEE was a quadrangle with four bastions, built with stockades, on the west bank of the Mississippi River.

FORT ARKANSAS was erected in 1685, about three leagues from the mouth of that river, and about two hundred yards from the water side. It was built of stockades, and the interior sides of the polygon measured about one hundred and eighty feet long, mounted with cannon. The Arkansas, or Quapas Indians, lived about three leagues above it, where the celebrated John Law had his concession, which he settled with Germans. After the failure of his great financial schemes the Germans deserted the settlement, and located themselves on the Mississippi, about thirty miles above New Orleans, on small plantations, which has ever since borne the name of the German Coast.

FORT CREVEOEUR, afterwards called St. Louis, was built by De la Salle, in the country of the Illinois, on his first visit to that country. It was seated on the top of a steep bluff, about two hundred feet high, with a spacious esplanade, and the river washing its base.

M. de la Salle likewise built a stockade fort at St. Bernard's Bay, Texas, in 1685, claiming possession and jurisdiction over all the country from the mouth of the Mississippi to the Rio Grande, or Rio Bravo del Norte, of Mexico.

FORT ST. LOUIS DE CARLOLETTE was built in 1719, by the orders of M. de Bienville, on the right bank of Red River, in north latitude 33° 55', as a sign of the jurisdiction of France in that part of Louisiana, since called Texas.

* Historical Collections of Louisiana, By B. F. French, part iii., note, pp. 84-86.

Onabache River; Presqu' Isle; (by the King.) Below Quebec g. . . . Minghan, . . .

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The first old FORT BILOXI has been placed by Major Stoddard, in his work on Louisiana, on Perdido Bay, the ancient boundary line of the French and Spaniards, about twelve miles west of Pensacola Bay, where he says M. d'Iberville erected a fort with four bastions, on which he mounted twelve cannons, and where it is said some remains of it may still be seen. But be this true or not, M. d'Iberville, before he sailed for France in 1699, built a fort upon the north-east shore of the Bay of Biloxi, about fifteen miles north of Ship Island, of four bastions and mounted with twelve cannons (the remains of which are still to be seen), which was the sign of the jurisdiction of France from the Rio Perdido to the Rio Bravo del Norte, and appointed M. de Sauvelle its commander, who kept a journal or history of the colony up to the day of his death.

- 10 The BALIZE FORT, at the mouth of the Mississippi River, was built about the same time on an island, and mounted with cannon to protect the French ships that anchored there, and to drive off the Spaniards.

FORT LOUISE DE MOBILE, or CONDE, was built upon the River Mobile, and below the town and about fifteen or sixteen leagues from the fort on Dauphin Island. It was constructed of bricks, with four bastions mounted with cannons, after the manner of Vauban, with half moons, deep ditches, covered ways and glacis, with houses for the officers and barracks for the soldiers. The foundations of this fort are still to be seen, occupying a considerable space in the City of Mobile. Although this was the head-quarters of the French Governor for many years, they were afterwards removed to NEW ORLEANS, on the banks of the Mississippi, which the French, and afterwards the Spanish, fortified after the manner

- 20 of Vauban. A ditch was extended round the city of about eighteen feet in width, with ramparts of earth, and palisades nearly six feet high along the interior or inner side of them. Five large bastions were erected at proper distances, and likewise five intervening redoubts. The bastions were regularly constructed: each of them was furnished with a banquette, rampart, parapet, ditch, covered way, and glacis. The curtains were wholly formed with palisades at a small distance from each other, and were musket proof; they had a banquette within, and ditch and glacis without. A small redoubt, or ravelin, was placed in the centre of each bastion, and all the latter were of sufficient size to admit of sixteen embrasures—four in each face, three in each flank, and two in the gorge facing the city—the whole of which was mounted with heavy cannon; the south-west bastion with a counter-guard and traverses, and a small redoubt on the bank of the river. The two forts (St. Charles and Conde) at the angles 30 facing the river, likewise mounted with heavy Spanish ordnance, constituted the defence of the city when Louisiana was ceded to the United States.

AN ENGLISH VIEW OF THE BOUNDARIES OF CANADA AND OF OTHER MATTERS OF INTEREST; TOGETHER WITH SOME ACCOUNT OF THE NATIVE INHABITANTS, 1747.

[Extracts from "A complete system of Geography.....in two volumes. The whole illustrated with seventy maps, by Emanuel Bowen, Geographer to His Majesty . . . This work is extracted from several hundred books of travel, and history is brought down to the present time, preserving all that is useful in the fourth and last edition of the Complete Geographer, published under the name of Herman Moll, etc.....London, . . . 1747." pp. 621, 624, 629.]

- 40 [CANADA OR NEW FRANCE].—The limits of this large country are variously fixed by our geographers, some of them extending them quite from Florida to the northern boundaries of America or from 33 to 63 degrees of north latitude. . . . Others bound it on the north by the land called Labrador, or New Britany; on the east by the Northern Sea and New England, etc.; on the south by Florida; and on the west by New Mexico, and the unknown tracts north of it. According to which, it will extend itself from the 25th to the 53rd degree of latitude, and from 76 to 93 of west longitude. But its greatest extent is commonly taken from south-west to north-east, that is, from the Province of Padua, in New Spain, to Cape Charles, near the Bay of St. Lawrence, which is reckoned near 900 leagues [The preceding includes, whilst the following excludes, Louisiana.] Baron Hontan, . . . makes it to reach only from 39 to 65 degrees of latitude; that is, from the south side of the Erie Lake to the north-side of Hudson's Bay, and in longitude from the River Mississippi to Cape Race in Newfoundland.

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English Documents:

Civil and military divisions of Louisiana, 1723;

English view of the boundaries, etc., 1747.

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CANADA, in its largest sense, is commonly divided into Eastern and Western, the former of which is commonly known by the name of Canada, or New France, and the latter, which is of much later discovery, Louisiana, in honour of the late Lewis XIV. The former of these, including all to the north and west of the great river and lakes, contains twenty-eight tribes [the following, among others:]—Illinois, Miamis, Maskoutens, Outovagamis, Hurons, Outaouatz, Nipissinians, Algonkins Nadouessoueronous, Kiristinons. SAGUENAY contains the four following nations or tribes, viz: 1, The Esquimaux; 2, Bersiamites or Oupapimachois; 3, Oumionquois; and 4, Cacouchaquois.

It may not be improper to give a farther list of the wild nations of these parts. Round the Hurons' Lake, the Hurons. the Outatonas, Nokes, Missisaques, Attieumekes, and the Outchipones, surnamed Leapers. About the Lake of the Illinois, some Illinois, the Oumamis, Maskoutens 10 Kikapous, Outagamis, Malonismis, Portenotamis, Ojatinous, and the Sakis. All these speak the Algonkin. Along the River of the Outaous are seated the Tabitibi, Monzoni, Machaendibi, Neopemen of Achirim, Nepisirim, and Temiskamink—all speak Algonkin. About the Upper or Superior Lake, in north of the Mississippi, live the Assimpouls, Soukaskitons, Ovadbatons, Atintons, Clistinos, and the Esquimaux.

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of the
boundaries,
etc., 1747.

CANADA PROPRIETARY hath on the north the Terra de Labrador, Hudson's Bay and New Wales. On the east the great River Saguenay divides it from the Province of that name; on the south the great Province of Louisiana, and the Iroquois and Etechemins. As to the northern boundaries, they are not known, and must be left to time to discover.

THE PROVINCE OF LOUISIANA.—This vast tract is bounded on the south by the Gulph of Mexico, 20 on the north by the Illinois. and by the Territories of the Panissus, Paoducas, Osages, Tionontecagas, Chavanons, and other wild nations; on the east, by a part of Florida, Georgia, and Carolina; and on the west, by New Mexico and New Spain. The maps of the accurate Mr. de Lisle give those boundaries a much greater extent, especially on the north side, where they make it contiguous to Canada.

FIRST VISIT OF RADISSON AND DESGROISSELIERS TO HUDSON'S BAY, 1666.—Two French gentlemen meeting with some savages in the Lake of Assimpouls [Winnipeg], in Canada, they learned of them, that they might go by land to the bottom of the Bay, where the English had not yet been; upon which, the Frenchmen desired the Indians to conduct them thither, which the savages accordingly did. The Frenchmen returned to the Upper Lake [Superior] the same way they came, and from thence to 30 Quebec, the capital of Canada; where they offered the principal merchants to carry ships to Hudson's Bay, but their project was rejected. Hence they went to France in hopes of a more favourable hearing at Court. but they were answered as they had been at Quebec. The King of England's Ambassador at Paris persuaded them to go to London, where they met with a favourable reception from some men of quality, merchants and others, who employed Mr. Gillam, a person long used to the New England trade, to perfect this discovery.

OPERATIONS OF THE HUDSON'S BAY COMPANY IN THE BAY, 1670 86.—In the year 1670, the Hudson's Bay Company sent over Charles Baily, Esq., as their Governor, who, with Mr. Radisson, settled at Rupert's River; and another factory was established at Fort Nelson. In the year 1683, 40 Henry Serjeant, Esq., was made Governor at Rupert's River, with orders to be very careful of the French, who now began to shew themselves very jealous of the trade carried on by the English Company with the natives. In the year 1686, we find the Company in possession of five settlements, namely: Albany River, Hayes Island, Rupert's River, Fort Nelson (or York), and New Severn.

NO FORT OF THE HUDSON'S BAY COMPANY BUILT INLAND ON NELSON OR HAYES RIVERS, 1747.—If a fort were built at the Great Fork, sixty leagues above York Fort, towards the south-west, and a factory with European goods fix'd there, and a reasonable price put upon them, the trade would be wonderfully increas'd. The Great Fork is that part where the Rivers Nelson and Hayes join, and having run a little way together, separate again, forming an Island, which is called Hayes Island.

FRENCH POSTS AND TRADE NORTH OF THE HEIGHT OF LAND, SOUTH AND EAST OF THE BAY, 1747.—The bottom of the Bay is by the French pretended to be part of New France; and indeed, to cross the 50

country from St. Margaret's River, which runs into the River of Canada, or St. Lawrence, to Rupert's River, at the bottom of Hudson's Bay, is not above 150 miles.

The French have a house or settlement for trade near the southern branch of Moose River about one hundred miles above the factory, where they sell their goods cheaper than the Company do; altho' it be very difficult and expensive to carry them so far from Canada. . . . The French get all the choice skins, and leave only the refuse for the Company. The French have also got another house pretty high up, upon Rupert's River, by which they have gain'd all the trade upon the East Main, except a little the Company get at Slide River, the mouth of which is about thirty leagues to the north of Rupert's River.

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etc. 1747.

20 TRADE OF THE REMOTE INDIANS WITH MONTREAL, 1747.—Montreal drives a vast trade with the natives, whose chiefs go first to pay their duty to the governor and make him some presents. . . . This concourse begins about June, and some of them come hither from places distant about five hundred leagues. The fair is kept along the bank of the river, and those natives are suffered to go and exchange their wares with the French. . . . This concourse lasts off and on near three months. The natives bring thither all sorts of furs, which they exchange for guns, powder, ball, great-coats, and other French garments, iron and brass works, and trinkets of all sorts.

HUDSON'S BAY COMPANY'S TRADE WITH THE INTERIOR, 1747.—The English who. . . . trade here [New South Wales], have no plantations or settlements within land, but live near the coast within their forts, in little houses or huts.

20 MEMORIAL OF THE HUDSON'S BAY COMPANY TO THE LORDS OF TRADE AND PLANTATIONS, 3RD OCTOBER, 1750.

The said Governor and Company, in obedience to your Lordships orders of the 25th July, last, requiring them to lay before your Lordships an account of the limits and boundaries of the territory granted to them, represent to your Lordships:

H. B. Co.'s
Memorial to
the Lords of
Trade, 3rd
October, 1750.

The said Streights and Bay, commonly called Hudson's Streights and Bay, are now so well known that it is apprehended they stand in no need of any particular description than by the chart or map herewith delivered to your Lordships; and the limits or boundaries of the lands and countries lying round the same, comprised as your memorialists conceive in the said grant, are as follows, that is to say: All the land lying on the east side or coast of the said bay, and extending from the bay eastward 30 to the Atlantic Ocean and Davis Streights, and the line hereinafter mentioned as the east and south-eastward boundaries of the said Company's territories; and toward the north all the lands that lie at the north end, or on the north side or coast of the said bay, and extending from the bay northwards to the utmost limits of the lands, then towards the north pole, but where or how those lands terminate is hitherto unknown; and towards the west, all the lands that lie upon the west side or coast of the said bay, and extending from the bay westward to the utmost limits of those lands, but where or how those lands terminate to the west-ward is also unknown, though, probably, it will be found that they terminate on the great South Sea; and towards the south, all the lands that lie at the south end or south side or coast of the said bay, the extent of which lands to the south to be limited and divided from the places appertaining to the French in those parts, by a line to be drawn for the purpose, to begin 40 from the Atlantic Ocean on the east side of an island called Grimington's Island, otherwise Cape Perdris, in the latitude of 58½° on the Labrador coast, and to be drawn from thence south-westward to the great lake Miscosinke otherwise called Mistoseny, and through the same, dividing that lake into two parts, down to the 49th degree of north latitude, as described in the said map or plan delivered herewith, and from thence to be continued by a meridian line of the said latitude 49° westward.

[The memorial complains of the French encroachments before the Treaty of Utrecht, and sets out the tenth Article of that Treaty thus: "That the French King should restore to the Kingdom and Queen of Great Britain, to be possessed in full right forever, the Bay and Streights of Hudson, together with all lands, seas, sea-coasts, rivers, and places situate in the said Bay and Strait, and which belong

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the limits, no tracts of land or sea being excepted which were possessed by the subjects of France, etc., etc."

[Also the eleventh Article, and proceeds—]

That in pursuance of the said Treaty, and the especial commission of Her late Majesty Queen Anne, dated 20th July, 1713, the said bay and lands were delivered up to, etc., and commissaries were appointed to settle the said limits and adjust the damages, etc., and proceedings were had by the said commissaries toward settling the same, but they were never able to bring the settlement of the said limits to a final conclusion, etc.

The boundary line then proposed by the Hudson's Bay Company, to be settled on the limits on the continent between them and the places belonging to the French at the south end of the said bay, as appears from the several memorials and a map or a plan then presented by the said Hudson's Bay Company to the Lords Commissioners of Trade, and still remaining in your Lordships' office, was the same as the line now proposed by your memorialists for the south-east and south boundaries; and to avoid as much as possible any just grounds for differing with the French in agreeing on those boundaries which be nearest the settlements, it is laid down so as to leave the French in possession of as much or more land than they can make any just pretensions to, and at the same time leave your memorialists but a very small district of land from the south end of the said bay, necessary for a frontier.

H. B. Co.'s
Memorial to
the Lords of
Trade, 3rd
October, 1750.

[It next refers to former memorials setting forth the national rights, and that—]

Since the Treaty of Utrecht the French and all the other nations have effectually been kept out of Hudson's Bay and Straights, and have never offered to come into or navigate on the same with any 20 ship, vessel, or boat or carried on any trade there. But the French, since the said treaty, as has been reported to your memorialists from their factories in the bay, have at different times made some settlements in different parts inland to the west of the said bay, within the aforesaid limits of the Hudson's Bay Company, and have also carried on some trade within the said company's limits by means of wood-runners in an interloping way, both which are conceived and humbly represented to your Lordships as encroachments on the British territories or trade.

That your memorialists have used the best endeavours in their power to prevent the French making any encroachments on the British territory in those parts, and particularly at the south end of the said bay, where, by the neighbourhood of the French, there is most to be apprehended. Your memorialists have made settlements many years since upon the principal river there, called Moose River, which runs 30 from a great distance south into the bay, and have also erected a fort mounted with cannon for the defence of the settlement, and preventing the French entering the bay by any navigation down that river; and your memorialists, on another principal river called Albany River, that likewise falls into the bay towards the southward thereof, and comes a great way from the west, erected another fort called Henley, at the distance of 120 miles up that river, your memorialists thereby endeavouring to guard their territories both to the south and west against the French frontier, and which forts and settlements of your memorialists, are maintained and supported by them at considerable expense. And your memorialists have, in like manner, for their further defence towards the west, erected a fort at Flamboro', head of Port Nelson River, and have also several other settlements or forts at the entrance 40 of the principal rivers that come into the bay from the west, particularly on Churchill River, Hays River, and the said Albany River, and also on the east side of the bay at Sluid River and Axtinepeck Bay, and have also several ships and vessels navigating the straits and bay at proper seasons, some of which remain there the whole year; and the natives all round the bay, by means of the rivers that fall into the same, on breaking up of the ice come down in canoes from the country several hundred miles inland to trade with the Company, bringing with them large quantities of beavers and other furs, the produce of that cold climate, and taking in exchange British manufactures, which the Company have always ready to supply them with, and which the Indians carry back with them for their own consumption and use, and to dispose of among other natives there, and which it is apprehended is better performed by them than could be done by Europeans, and the rivers that run into the bay admit of no navigation for ships, or any vessel of burden at any considerable distance up the same, and the climate 50

round the bay is so extremely cold as to admit of no agriculture, the Indians of those parts being altogether a wandering people, and wholly subsisting themselves by hunting, living on the wild beasts they kill, and bartering their furs.

That your memorialists apprehend it will be for the benefit of this kingdom that the limits of the territories granted to your memorialists, and the places appertaining to the French, should be settled upon the footing hereinbefore mentioned, and that the French should be obliged to remove all encroachments they have made within the said limits, by breaking up their settlements, and restraining the wood-runners from entering the same, etc., etc., etc.

CHARLES HAYS, Secretary.

10 Under the seal of the Company.

OSWEGO
APPROVED.
—
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explorations
and settle-
ments.
—
English
Documents:
H. B. Co.'s
Memorial to
the Lords of
Trade, 3rd
October, 1760.

JEFFERYS' ACCOUNT OF THE FRENCH POSTS OF THE WEST, 1761.*

A number of rivers, some of which are very considerable, discharge themselves into this Lake [Superior]. One of these, which falls into it, near the middle of its northern shore, rises about 25 or 30 leagues north of Lake Superior, from a lake called Alimipegou [Nepigon], near which are the sources of a river that falls into Hudson's Bay. Another river that falls into Lake Superior near the last mentioned, is called, in the French maps, Natouagan [Pigeon River] and communicates, if we may believe the inhabitants, by a chain of rivers and smaller lakes, with a considerable lake called Lake Bourbon, which is made to communicate, in like manner, by Port Nelson River, called by the French Bourbon River, with Hudson's Bay to the north-east. The French likewise suppose that it communi-
20 cates westward with the great sea, commonly called the South Sea or Pacific Ocean.

At the mouth of *Les Trois Rivières*, or the Three Rivers, is a little French fort, called Camanistigouia; and twenty-five leagues to the west of the said fort, the land begins to slope, and the river to run towards the west.

At ninety-five leagues from this greatest height lies the second establishment of the French that way, called Fort St. Pierre, in the Lake des Pluies. The third is Fort St. Charles, eighty leagues farther, on the Lake de Bois. The fourth is Fort Maurepas, a hundred leagues distant from the last near the head of the Lake Oninipigon. Fort la Reine, which is the fifth, lies a hundred leagues farther, on the river of the Assiniboels [Assiniboine.] Another fort had been built on the river Rouge [Red, River of the North], but was deserted on account of its vicinity to the two last. The sixth, Fort
30 Dauphin, stands on the west side of Lac des Prairies, or of the Meadows [Lake Manitoba]. And the seventh, which is called Fort Bourbon, stands on the shore of the great Lake Bourbon [the northern part of Winnipeg]. The chain ends with Fort Poskoyac, at the bottom of a river of that name, which falls into Lake Bourbon. The river Poskoyac is made by Delisle and Buache to rise within twenty-five leagues of their West Sea [Gulf of Georgia], which, they say, communicates with the Pacific Ocean.

All these Forts are under the Governor of Canada.

On the southern coast of Lake Superior, which extends almost due east and west, are the Isle de St. Michel, and the Bay of Chaouamigon, at the bottom of which was formerly a small Indian town, where a missionary and some other French came to settle in 1661, by means of which this place, at first scarce worth notice, soon became very remarkable. The Ontagami, Saki, Outawai, Huron and Illinois
40 Indians resorted thither so early as 1668, for the sake of trade, and many of them settled there; and the traffic is still pretty considerable. This settlement was called La Mission du St. Esprit.

CAPTAIN PITMAN'S ACCOUNT OF THE FRENCH SETTLEMENTS OF THE ILLINOIS AT THE TIME OF THE TREATY OF 1763.†

Fort CHARTRES, when it belonged to France, was the seat of Government of the Illinois. The headquarters of the English commanding officer is now here, who, in fact, is the *arbitrary governor* of

* History of the French Dominions in North and South America. London: 1761 (p. 19). Jefferys was "Geographer to His Majesty."

† The Present State of the European Settlements on the Mississippi. By Captain Philip Pitman, 4to., London, 1770.

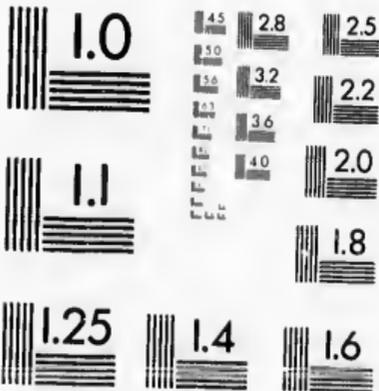
Jefferys'
account of
French Posts
in the West,
1761.

Capt. Pitman
on French
settlements
in the
Illinois, 1763.



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this country. The fort is an irregular quadrangle; the sides of the exterior polygon are 490 feet. It is built of stone, is plastered over, and is only designed as a defence against the Indians. The walls are two feet two inches thick, and are pierced with loop-holes at regular distances, and with two port-holes for cannon in the faces, and two in the flanks of each bastion. The ditch has never been finished. The entrance to the fort is through a very handsome rustic gate. Within the walls is a banquette, raised three feet, for the men to stand on when they fire through the loop-holes. The buildings within the fort are—a commandant's and a commissary's house, the magazine of stores, *corps de garde*, and two barracks; these occupy the square. Within the gorges of the fort are a powder magazine, a bake-house and a prison, in the lower floor of which are four dungeons, and in the upper two rooms, and an out-house belonging to the commandant. The commandant's house is thirty-two yards long and ten 10 broad, &c. The commissary's house (now occupied by officers) is built on the same line as this, and its proportion and the distribution of its apartments are the same. Opposite these are the store-house and the guard-house; they are each thirty yards long and eight broad. The former consists of two large store-rooms, under which is a large vaulted cellar, a large room, a bed-chamber, and a closet for the store-keeper; the latter, of a soldiers' and officers' guard-room, a chapel, a bed-chamber a closet for the chaplain, and an artillery store-room. The lines of barracks have never been finished; they at present consist of two rooms each for officers, and three rooms each for soldiers. They are each twenty feet square, and have betwixt them a small passage. There are five spacious lofts over each building, which reach from end to end; these are made use of to lodge regimental stores, working and entrenching tools, &c. It is generally believed that this is the most convenient and best built fort in North 20 America.

[In 1756, Fort Chartres was rebuilt by order of the French Government, in view of the war with England. It was then half a mile from the Mississippi. In 1766 it was but eighty yards from the bank. In 1768 Captain Pitman writes]:—

Capt. Pitman
on French
settlements
in the
Illinois, 1763.

The bank of the Mississippi, next the fort, is continually falling in, being worn away by the current, which has been turned from its course by a sand bank, now increased to a considerable island, covered with willows. Many experiments have been tried to stop this growing evil, but to no purpose. Eight years ago the river was fordable to the island; the channel is now forty feet deep.

In the year 1764, there were about forty families in the village near the fort, and a parish church, served by a Franciscan friar, dedicated to Ste. Anne. In the following year, when the English took 30 possession of the country, they abandoned their houses, except three or four poor families, and settled in the villages on the west side of the Mississippi, choosing to continue under the French Government.

[In 1772, the channel of the river reached the fort and the wall, and two bastions upon the west side were undermined and fell, and the British garrison abandoned the place, and Kaskaskia became the seat of government for the Illinois country.]

The village of NOTRE DAME DE CASCASQUIAS is by far the most considerable settlement in the country of Illinois, as well for its number of inhabitants, as for its advantageous situation.

Mons. Paget was the first who introduced water-mills in this country, and he constructed a very fine one on the river Cascasquias, which was both for grinding corn and sawing boards. It lies about one mile from the village. The mill proved fatal to him, being killed as he was working in it, with two 40 negroes, by a party of Cherokees, in 1764.

The principal buildings are the church and Jesuits' house, which has a small chapel adjoining it; these, as well as some other houses in the village, are built of stone, and, considering this part of the world, make a very good appearance. The Jesuits' plantation consisted of two hundred and forty arpents of cultivated land, a very good stock of cattle, and a brewery, which was sold by the French commandant, after the country was ceded to the English, for the Crown, in consequence of the suppression of the Order. Mons. Beauvais was the purchaser, who is the richest of the English subjects of this country. He keeps eighty slaves; he furnishes eighty-six thousand weight of flour to the King's magazine, which was only a part of the harvest he reaped in one year.

Sixty-five families reside in this village, besides merchants, other casual people, and slaves. The 50

fort, which was burnt down in October, 1766, stood on the summit of a high rock opposite the village and on the opposite side of the Kaskaskin river. It was an oblong quadrangle, of which the exterior polygon measured two hundred and ninety feet by two hundred and fifty-one feet. It was built of very thick squared timber, and dovetailed at the angles. An officer and twenty soldiers are quartered in the village. The officer governs the inhabitants, under the direction of the commandant at Chartres. Here are also two companies of militia.

LA PRAIRIE DE ROCHES [Du Rocher], is about seventeen miles from Cascasquia. It is a small village, consisting of twelve dwelling-houses, all of which are inhabited by as many families. Here is a little chapel, formerly a chapel of ease to the church at Fort Chartres. The inhabitants here are very industrious, and raise a great deal of corn, and every kind of stock. The village is two miles from Fort Chartres. It takes the name from its situation, being built under a rock that runs parallel with the river Mississippi, at a league distance, for forty miles up. Here is a company of militia, the captain of which regulates the police of the village.

SAINT PHILIPPE is a small village about five miles from Fort Chartres, on the road to Kaoquias. There are about sixteen houses and a small church standing. All the inhabitants, except the captain of the militia, deserted it in 1765, and went to the French side. The captain of the militia has about twenty slaves, a good stock of cattle, and a water-mill for corn and planks. This village stands in a very fine meadow, about one mile from the Mississippi.

The village of SAINTE FAMILLE DE KAOQUIA [Cahokia] is generally reckoned fifteen leagues from Fort Chartres, and six leagues below the mouth of the Missouri. It stands near the side of the Mississippi, and is marked from the river by an island nearly two leagues long. The village is opposite to the centre of this island; it is long and straggling, being three-quarters of a mile from one end to the other. It contains forty-five dwelling-houses and a church near its centre. The situation is not well chosen, as in the floods it is generally overflowed two or three feet. This was the first settlement on the Mississippi. The land was purchased of the savages by a few Canadians, some of whom married women of the Kaoquias nation, and others brought wives from Canada, and then resided there, leaving their children to succeed them. The inhabitants of this place depend more on hunting and their Indian trade, than on agriculture, as they raise scarcely corn enough for their own consumption; they have a great plenty of poultry, and good stocks of horned cattle. The Mission of Saint Sulpice had a very fine plantation here, and an excellent house built on it. They sold this estate, and a very good mill for corn and planks, to a Frenchman who chose to remain under the English Government. They also disposed of thirty negroes, and a good stock of cattle to different people in the country, and returned to France in 1764. What is called the Fort, is a small house standing in the centre of the village. It differs nothing from the other houses, except in being one of the poorest. It was formerly enclosed with high palisades, but these were torn down and burnt. Indeed, a fortress at this place could be of little use.

OFFICIAL REPORT OF THE COMMISSIONERS OF THE STATE OF MICHIGAN ON THE
FRENCH SETTLEMENTS OF THE COUNTRY BETWEEN GREEN BAY AND THE
MISSISSIPPI.

MICHIGAN COMMISSION ON LAND CLAIMS.

*Extract from the letter of instructions to the Agent appointed to receive claims and take evidence concerning land claims at Green Bay and Prairie des Chiens.**

TERRITORY OF MICHIGAN,

Land District of Detroit, August 8, 1821.

It is not practicable for the Commissioners to prescribe the period of time which, by your notices, you will assign at Green Bay and Prairie des Chiens respectively, for receiving the evidences of claims and titles. The law requires *reasonable* notice; what may be deemed *reasonable* notice must depend upon the number of claimants and the remoteness of their relative situations. You must judge of it.

* American State Papers, Vol. 5, pp. 306-7.

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French
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Capt. Pitman
on French
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Though the settlement of Green Bay is spoken of by Charlevoix as early as 1720, yet it is believed the whole number of claimants there cannot exceed one hundred and fifty. The settlement at Prairie des Chiens is supposed to have been some thirty years later, though the number of claimants is believed to be considerably greater; but, in respect to both, it is said the settlements are quite compact. All the traditional or other information which can be procured by you concerning the origin and history of these settlements would be very desirable, and may be of much use in the ultimate investigation of their land claims.

WM. WOODBRIDGE,
Secretary of Michigan.
PETER AUDRAIN,
Registrar.
J. KEARNSLEY,
Receiver.

} Commissioners.

10

ISAAC LEE, Esq., Agent, etc.

*Report of Michigan Commissioners concerning the land titles at Prairie des Chiens, in the County of Crawford, and Territory of Michigan. (1828).**

Few difficulties have been met with by the Commissioners in their investigation of these titles; they are not individually intricate. The determination of a few principles of general applicability, has furnished a rule by which they have all been decided, for they rest upon long continued possession.

Notwithstanding the high antiquity which may be claimed for the settlement of Prairie des Chiens, 20 and the very considerable numbers of which it has so long consisted, no one perfect title, founded upon French or British grant, legally authenticated, has been successfully made out; comparatively but few deeds of any sort have been exhibited to us. To an American, unacquainted with the astonishing carelessness of the Canadians in respect to whatever concerns their land titles, this fact must seem unaccountable. It nevertheless accords with whatever is known in this regard of the French population throughout this country.

Michigan
Commission-
ers' Report on
land titles at
Prairie des
Chiens, 1828.

It became manifest, therefore, immediately after the Commissioners were possessed of the report of the Agent, that whatever claim the people of Prairie des Chiens might have for a confirmation of their land titles, must be founded upon proof of continued possession since 1796,—a basis sufficiently broad to have comprehended perhaps all their claims, but for the changes which have occurred within a few 30 years among them, and the interruptions and occasional evictions from their possessions, consequent upon the establishment there, since the late war, of bodies of American troops.

Such interruptions and evictions, though frequent since the period alluded to, seem never, among the French population, to have excited a spirit of resistance, but to have been admitted to in silence. Since their ancestors were cut off, by the treaty which gave the Canadas to the British, from all intercourse with their parent country, the people, both of Green Bay and Prairie des Chiens, have been left, until within a few years, quite isolated, almost without any government but their own. And although the present population of these settlements are natives of the countries which they inhabit, and consequently are by birth citizens of the United States, yet, until within a few years, they have had, apparently, as little political connection with its Government as their ancestors had with that of the 40 British. Ignorance of their civil rights, carelessness of their land titles, docility, habitual hospitality, cheerful submission to the requisitions of any Government which may be set over them, are their universal characteristics. With those who know them, their quiet surrender of their fields and houses upon the demand of those who came ostensibly clothed with authority, would constitute no evidence of the illegality of their titles, or of the weakness of their claims.

A few additional remarks, in conclusion, might seem sufficient to satisfy the requisition of the law, and to explain adequately the grounds of the decisions the Commissioners have made. A circumstance has occurred, however, which seems to call for a more detailed exposition of their views. After

* American State Papers, Vol. 5, pp. 303-5.

the Agent had returned from Green Bay and Prairie des Chiens, and when it seemed too late to obtain rebutting or further testimony, a caveat was filed with the Commissioners, at the instance of the Superintendent of Indian trade, by John W. Johnson, Esq., Indian Factor, against the claim to Village Lot No. 14, preferred by the American Fur Company. The principles upon which that caveat is founded, and by which it is endeavoured to be supported, apply with equal force to all the other land claims at Prairie des Chiens. The objections against the claim, and the documents adduced in support, consist in this—that the settlement at Prairie des Chiens is of recent origin; that its residents have intruded upon the public lands in violation of the laws of the United States, and that, in truth, the Indian title to the country in question has not been extinguished; objections which, if sustained in one case, must conclude all cases there. Upon a critical examination of this matter, so unexpectedly and so recently presented to them, the Commissioners have not been able to discover anything in the protest of the United States Indian Factor, in the documents he has adduced, or in his own fair and candid statement, which could sanction a doubt as to the propriety of confirming the claim set up by the American Fur Company.

It appears to have been in the spring of 1673 that Pere Marquette and Mons. Juliet took their departure from the French establishment at Green Bay, on a voyage of discovery up the Fox River, and down the Wisconsin to the Mississippi. This channel of communication between the great lakes and the Mississippi, from about that period, had attracted a considerable portion of public attention. The French voyageurs continued afterwards generally to take that route; their Indian traders most usually did; and it is the same channel through which Carver also penetrated into the Mississippi country in 1766.

Although the Commissioners have not, on this head, been able in so short a time to procure that ample and certain information which is desirable, yet it is believed that not very many years after its first discovery in 1673, by the French, a permanent establishment was made by them at the Prairie des Chiens. Vestiges of an old and strong *French fort* [Fort St. Nicholas] are still discernable there, although it is stated to have been destroyed so early as in the first years of the Revolutionary War.

When in 1805, the late General Pike was on his voyage up the Mississippi, he computed the fixed white population of the place, in the absence of the traders and those connected with them, at 370, and the total number at from 500 to 600. Mr. Schoolcraft, in 1820, estimates the population of the place at 500. No evidence can be obtained from the traditional history of the country that, at any one period, that settlement has received, by emigration, any sudden and large augmentation in the number of its inhabitants. It has never been characteristic of the French Canadian settlements to increase rapidly, and it is considered a fair inference, from all that can be learned on the subject, that for a long and indefinite time its numbers have been considerable, and increasing only at a tardy pace. This consideration is supposed to be eminently corroborative of the position the Commissioners have assumed, of the antiquity of this settlement.

With what propriety the inhabitants of Prairie des Chiens who were born there, and whose ancestors have for more than a century resided there, may be said to have "taken possession of the public lands in violation of the laws;" how *they* may be said to be "intruders" who, and whose ancestors through so many political changes, have, with the assent, express or implied, of each successive sovereignty, continued to inhabit the country which gave them birth, it is hard to imagine.

It has been urged against them that their only right to the soil which they occupy consists in the *permission accorded them by the Indians to remain there*. Surrounded as that settlement always has been, by numerous hordes of ferocious savages, quite well disposed at all times to cause their power to be felt, it may, perhaps, be emphatically said (especially since the power of the French Government here was overthrown), that the inhabitants have occupied their lands "*by permission of the Indians*." Left with none to defend them, they must have accommodated themselves to their humours; it has from *necessity* resulted that they have been compelled to submit to their commands, and, however reluctantly, to subservise, perhaps often, their vindictive views. But it is not considered that anything in their history, in such respects, detracts from the force of their present claims.

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French explorations and settlements.

English Documents:

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land titles at
Prairie des
Chiens, 1828.

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French
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and settle-
ments.

English
Documents:

The Commissioners have not had access to any public archives by which to ascertain, with positive certainty, whether either the French or English Government ever effected a formal extinguishment of Indian title at the mouth of the Wisconsin; yet the same observation, with the same truth, may be made in relation to the land now covered by the City of Detroit. It is believed that the French Government particularly, was not accustomed to hold formal treaties for such purposes with the Indians. And when lands have been anciently procured from them, either in virtue of the assumed right of conquest or by purchase, evidence of such acquisition is rather to be sought for in the traditional history of the country, or in the casual and scanty relations of travellers, than among collections of State papers. Tradition *does* recognize the fact of the extinguishment of the Indian title at Prairie des Chiens by the old French Government before its surrender to the English. And by the same species of testimony, more positive because more recent, it is established also that, in the year 1781, Patrick Sinclair, Lieutenant-Governor of the Province of Upper Canada, while the English Government obtained over this country, made a formal purchase from the Indians of the lands comprehending the settlement of Prairie des Chiens.

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Commission-
ers' Report on
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Prairie des
Chiens, 1828.

In Pike's Journal allusion is made to the last-mentioned purchase (Pike's Journal, appendix to part I, page 47). The agent also took down some testimony concerning the same facts, which may be found in the subjoined abstracts.

Whatever purchases may thus have been made by the French or British authorities, have since been sanctioned by the Treaty of St. Louis, holden June 3, 1816; and by another treaty (see Acts of 2nd Session of the 14th Congress, pp. 307-309), concluded also at St. Louis, on the 24th of August, 20 of the same year. It is provided (Art. 2) that the United States relinquish to the tribes with whom that treaty was holden, a certain tract of country lying north of a west line from the south bend of Lake Michigan, "excepting out of said relinquishment a tract of *three leagues space at the mouth of the Wisconsin*, including both banks," &c.; thus giving additional sanction to the allegation of a previous acquisition of the country comprehending the Prairie des Chiens settlement. For it will not escape observation, upon a reference to the Treaty of November 3, 1804 (U. S. Laws, Vol. I, p. 428), that the last-mentioned Treaty *does not contain a cession* of the tract thus excepted by the United States for their relinquishment. The real object of the clause alluded to in the Treaty of the 3rd November, it is apprehended, was to enable the United States, in its election, to erect a fort on the west bank of the Mississippi, where the Indian title has not yet been extinguished, and where a more eligible site, it 30 is supposed, could be selected.

If further evidence were necessary on this head, it might be found perhaps in the provisions of the Fourth Article of the Treaty of Greenville. The settlement of Prairie des Chiens lies "east of the Mississippi;" it is "*west*" from Detroit. It was certainly "*in the possession of the French people*," who, or whose children, still inhabit it. It is believed to be comprehended within both the words and the spirit of the provisions of the third and fourth Articles of that Treaty.

After all, it is not deemed important (except so far as it may seem to strengthen the equity of the claimants) to establish the proposition of an early extinguishment of the Indian title. There can be no doubt but that the Indian title is *now* extinguished. It would be hardly admissible to suppose that the American Government have been themselves guilty of an act of oppressive usurpation and violence; 40 and yet it cannot otherwise be if the Indian title be not extinguished—for they have erected forts and established garrisons there. It would equally violate every principle of decorum for the Commissioners to suppose that they had no power, and that the people of Prairie des Chiens had no right in relation to this matter, when the law of May 11, 1820, under which they act, expressly extends to that people all the benefits and all the rights which, in virtue of former Acts of Congress, the people residing within the Detroit land district heretofore possessed in relation to their land titles; and also imperatively requires of the Commissioners that they give effect to that Act.

The Act of March 3rd, 1807, vested in those for whose benefit it was passed, a right to be confirmed in their claims upon the exhibition of proof of continued possession from July 1st, 1796, to March 3rd, 1807, inclusive. The extension to the people of Green Bay and Prairie des Chiens, of the provisions of that Act, it is presumed, conferred upon them, upon the exhibition of like proof, a like 50

right. Proof of this tenor has been adduced by John Jacob Astor, Ramsay Crooks, and Robert Stewart, co-partners under the firm of "The American Fur Company," (formerly styled "The South-West Company,") as well as by others whose claims they have confirmed, and the Commissioners have not felt themselves justified in adopting any course of reasoning which would frustrate the object of that law from which they derive all the power they have possessed.

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A majority of the Commissioners have felt obliged nevertheless, to withhold from many of the claims the sanction of their confirmation; not because those claims were less equitable but because the proof adduced of occupancy, possession and improvement did not reach far enough back; they considered that the possession, etc., contemplated by the law was an *individual* and *exclusive* possession, from July, 1796, to March, 1807. The fact in relation to the claims not confirmed seems to have been that the lands so claimed had been immemorially occupied by the villagers in common, or as a common, and that they had not been individually and exclusively appropriated until after July, 1796.

As no dissent on the part of the villagers was at any time expressed, or rather as none was *proved*, or attempted to be proved, one of the Commissioners was willing to deduce from circumstances appearing a presumption of assent, equivalent to a formal conveyance. Upon such hypothesis the present claimants, combining their own exclusive possession with the antecedent occupancy of the villagers in common, "under whom" they might be considered to claim, would be respectively entitled under the law to confirmations; but a majority of the Commissioners, believing that such construction was at least obnoxious to much doubt, felt obliged reluctantly to reject it, and without further difference of opinion, they all resolved to present, with these cases to the revising power, their respectful and most earnest petition in behalf of the unsuccessful claimants, that their claims may be confirmed. Although some of these claimants have been in the exclusive occupancy of their possessions but for a very short space of time, yet their claims are considered not the less meritorious, for those who have thus remained in possession for the shortest period, would seem to have been removed from their former and older possessions, because those possessions were deemed necessary for the convenience of the troops by whose permission they have located themselves on the tracts now claimed.

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ers' Report on
land titles at
Prairie des
Chiens, 1828.

Few cases have occurred at Prairie des Chiens, in which different claimants have applied for the same tract. In regard to other districts of country, much perplexity has been experienced in the selection among many, of that claimant in whose favour the title of right should be confirmed. The Commissioners have uniformly acted upon the principle that their power was intended to be exercised only as between the Government and the claimants, and not as between several conflicting claimants. Doubts having been expressed, however, by members of the Supreme Court, as to the power of that tribunal to interfere after the emanation of patents, the Commissioners have become sensible that, without intending it, they might effect injustice by confirming the title in one whose claim, when exhibited before a court having chancery powers, might prove to be much less meritorious than the conflicting claim of some other person. It is most manifest, nevertheless, that a Board of Commissioners constituted as this Board is, are not competent to the undertaking of deciding, in the last resort, between contending individuals. Their proceedings are, of necessity, summary. They cannot administer supplementary oaths to the contending parties, and they have no control over their consciences. Their forms of proceeding are utterly unlike those which obtain in regularly constituted Courts: *forms* which, however slow in their operations, are yet the surest guarantee of justice.

They therefore respectfully submit to the revising power, in order to obviate all doubt, the propriety of causing to be inserted in the patents which may issue, clauses saving by express words the rights of all individual claimants; such saving clauses will be in conformity with every decision which has been made.

It only remains for the Commissioners further to remark that, in making abstracts from the testimony adduced, they have felt disposed, in order that their report may be less encumbered with useless matter, to exclude as well copies of all deeds of individuals in cases where they have been

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satisfied that *bona fide* transfers have been intended, as also irrelevant matter contained in depositions taken.

All of which is respectfully submitted.

WILLIAM WOODBRIDGE,
Secretary of Michigan.
HENRY B. BREVOORT,
Register of Land Office, Detroit.
J. KEARSLEY,
Receiver of Land Office, Detroit.

*Report of Michigan Commissioners concerning the Land Titles at Green Bay, in the County of Brown, 10 Territory of Michigan. (1828.)**

Except that this French settlement is older than that of the Prairie des Chiens, the claims of its present inhabitants rest upon the same basis.

As the same general observations will apply to each class of cases indiscriminately, the Commissioners beg leave to refer to the views they have submitted in their report relative to the Prairie des Chiens titles.

Père Allowez, an enterprising Catholic missionary, became located at Green Bay, superintending a religious establishment there in 1668; and from that period the settlement at "La Baye" does not seem to have been discontinued while the French remained masters in Canada. The Chevalier de Tonti, having under his command a military force, was stationed there in the winter of 1680. The 20 Lieutenant de Luth, a few years afterwards, held military occupancy of the post under the superintendency of the Commandant of Michilimackinae, of which it was a *dependency*.

During the whole period alluded to, the Fox Indians (by Charlevoix called the Outramies) seemed to have been deemed the proprietors of the country comprehending this settlement. (The Winnebagoes may rather be considered sojourners, their establishment there being of recent origin, than proprietors of the soil.) These (the Fox Indians) were attacked and signally defeated by the French troops under Captain Morand, with the aid of their allies, the Chippewas, in the winter of 1706, at a place called "La Butte des Morts." A great proportion of them were destroyed in this engagement, and many driven from the country. Upon this historical fact is probably founded the frequent assertion that the country of Green Bay accrued to the French by conquest.

It has been asserted, however, with more positiveness, that the French Missionary, Père Roquette very many years ago, obtained the possession of several leagues square of this country, comprehending the fort and the whole French settlement. This fact it would have been desirable more fully to establish; but having had access to but few books which treat of the early history of this country, no further light could be obtained on the point, except the above isolated assertion.

But, however this fact may be, "La Baye" was continually occupied as a military post and a missionary establishment, until the Canadas were by treaty surrendered to the British. It seems a fact equally well established, that the latter continued for some time after their acquisition of the country to keep a military force at Green Bay as a dependency of their more important one at Michilimackinae. The same evidence which tends to establish the fact of the purchase by Lieutenant-Governor Patrick 40 Sinclair, by a Treaty holden in 1781, at Michilimackinae, of the country at Prairie des Chiens, establishes also the further one of the purchase of the country of Green Bay.

The antiquity of this settlement being, in the view of the Commissioners, sufficiently established, and they being also satisfied (especially when the subject is considered in connection with the references and the matter contained in their report, concerning the land titles of Prairie des Chiens), that the

*Am. State Papers, Vol. V., pp. 283-4.

Indian title must be considered to have been extinguished, little further, on the part of the Commissioners, seems requisite to elucidate the governing principles of their discussions; a repetition here of the matter of their report of the Prairie des Chiens claims can hardly be esteemed necessary.

It will be perceived that a few claims have been confirmed at a place called the Kakalin. Those claims are considered to have been comprehended within the settlement of Green Bay. (See Schoolcraft, 368). Those at the Portage between the Wisconsin and Fox Rivers have not been considered as comprehended within the limits either of the Green Bay or Prairie des Chiens settlements.

All of which is respectfully submitted.

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WM. WOODBRIDGE, <i>Sec. of Michigan,</i>	} Commissioners.
HENRY B. BREVOORT, <i>Reg. of the Land Office, Detroit.</i>	
J. KEARSLEY, <i>Reg. of the Land Office, Detroit.</i>	

The following is part of the evidence appended to the Commissioners' report :—

TERRITORY OF MICHIGAN, COUNTY OF CRAWFORD, SS :*

Be it remembered, that on this day personally appeared before me, Isaac Lee, a Justice of the Peace in and for said County, and Agent duly appointed to ascertain the title to lands at Green Bay and Prairie du Chien—Denis Courtois, of said County, who after being sworn according to law, deposed and saith that he is fifty-two years old; that he has been a resident of Prairie du Chien twenty-nine years; that according to the best information that he has been able to obtain from the tradition of the inhabitants at Prairie du Chien, the old French Fort was burned during the second year of the revolutionary war; that he has no knowledge of any building or fence being erected on the same ground since that time, but that the land between the said fort and the hills or bluffs was occupied before and since the time that deponent arrived in this country; that Prairie du Chien has been formerly occupied much in the manner of an Indian village, the lands being alternately in common, and improved in detached parts as each should please, and this by the common consent of the villagers since deponent's arrival in the country; that he (deponent) has been uniformly told by the old French inhabitants of the Prairie, that it was bought and paid for by the French many years ago; that he has never heard any Indian make claim to said lands.

DENIS COURTOIS.

Sworn and subscribed before me, October 21, A.D. 1820,

ISAAC LEE, Justice of the Peace for
Crawford County, and Agent.

* Am. State Papers, Vol. V., p. 284.

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Historical Descriptions of the Boundaries of Canada.

1. FRENCH DESCRIPTIONS.

L'ESCARBOT, 1609.

L'Escarbot, an advocate of Paris, in his *Histoire de la Nouvelle France*, published in 1609, defines the boundaries of the French possessions in North America as extending "on the West to the Pacific Ocean, on the South to the Spanish West Indies, on the East to the North Atlantic, and on the North to the Frozen Sea."

THE BARON LA HONTAN, 1683-1693.

- 10 Baron La Hontan, whose *Memoirs of Travels in North America** embraced the decade between 1683 and 1693, says: "All the world knows that Canada reaches from the 39th to the 65th degree of North Latitude, that is from the South of Lake Erie to the North side of Hudson's Bay, and from the 28th to the 33dth degree of longitude, viz., from the River Mississippi to Cape Race. . . . Were I to reckon in all the countries that lie in the north-west of Canada, I should find it larger than Europe; but I confine myself to what is discovered, known and owned—I mean to the countries in which they have forts, magazines, missionaries, and small settlements."

VAISETTE, 1755.†

LA NOUVELLE FRANCE.—We comprise, under this general name, that part of North America situate between the 27th and 55th degrees of latitude, and from the 270th to the 325th of longitude. . . . We divide it into two principal parts, which are Canada and Louisiana.

LE CANADA.—Under the name of Canada, we comprehend, in our best and latest maps, that part of North America situate between the 40th and 55th degrees of north latitude, and the 270th and 325th of longitude. This country is bounded, on the north, by Terre de Labrador and the countries of the Eskimaux and of the Christinaux; on the east, by the ocean, or North Sea, and New England; and on the south by Louisiana. Its limits on the west extend into countries unknown.

LA LOUISIANE.—We comprise, under this name, that part of America which extends from the southerly point of the peninsula of Florida, in the 26th degree of latitude, to nearly the 45th, in its western part, and the 39th in the eastern. . . . It is bounded on the north by Canada. . . . To-day Louisiana is subject to the General Government of Canada.

- 30 [A map, "L'Amerique Septentrionale par le Sr Robert, . . . 1748,"—bound with Vaisette's work,—explains these boundaries of Canada and Louisiana, and the apparent contradiction. The source of the Missouri is in the meridian of 270°, and the most easterly point of Labrador is 325°. The northerly watershed of the Missouri is marked, by an engraved line, as the boundary between the two countries: it runs easterly—to the west above, and to the east below, the parallel of 45°, which it crosses—to the junction of that river with the Mississippi, and thence easterly, partly on, partly above, and partly below, the 40th parallel, to the English colonies where it descends to 39°.]

*Pinkerton's Col., Vol. XIII.

†*Géographie, historique, etc.*, par Dom Joseph Vaisette. Paris, 1755. Vol. iv. pp. 296, 302.

II.—ENGLISH DESCRIPTIONS.

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Ogilby, 1671.

OGILBY ON THE BOUNDARIES OF CANADA, LABRADOR, ETC., 1671.*

The farthest part of land northward, between Hudson's Gulf and Hudson's Strait, betwixt fifty-seven and sixty degrees of northern latitude, goes generally by the name of Estotiland, . . . and, according as Nova Britannia is placed in some charts, might very well be taken for the same, though it hath not been so termed by any author, but rather Terra Laboratoris, Corterealis and Nova Britannia† are generally received to be all one. Terra Laboratoris . . . comprehended, according to Peter Du Val under Nova Britannia, as the more general province,—or, according to Cluverius, under Canada,—lies from about fifty-four to fifty-seven degrees of northern latitude.

CANADA, OR NEW FRANCE.

10

Canada, as it is taken for one and the same Province with New France, contains New France, properly so called, Nova Scotia, Norumbega, and some adjoining Islands; as the Canada of Cluverius, lying more north-westerly, comprehends (as we have already intimated) Estotiland, Laboratoris and Corterealis; and, according to the most modern divisions, hath on the north Terra Corterealis, on the south New England, and on the east the Ocean, and hath between forty-five and fifty-two or fifty-three degrees of northern latitude. The River Canada [St. Lawrence] rises in the western parts of this Province, which remain yet undiscovered, and in some places spreads itself into huge lakes.

Canada is by some accounted a general Province, containing New France, L'Acadie, Norumbega, and other places.

CAPTAIN VETCH'S DESCRIPTION 1708.

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Capt. Vetch,
1708.

Captain Vetch (a British officer, and at one time Governor of Nova Scotia), writing in 1708, says: "As to the situation of the country possessed by the French in North America, and commonly all comprehended under the prevailing name of Canada, the seat and residence of their Governor-General being upon the place properly so called, its situation is from about 54° of north latitude to the eastward of Port Nelson, in the country of the Eschimoos, extending itself all the way south-west to the mouth of the Mississippi River, which falls into the Bay of Appalachie, in the Great Bay of Mexico, about the latitude of 28° 30', comprehending as it goes, their part of Newfoundland, the Island of St. Peter, Aedia or Nova Scotia, which borders on the British Province of New Hampshire, whose boundary to the eastward is the little River St. Croy (as the French allege)."

EXTRACTS FROM SALMON'S MODERN HISTORY, 1743.

30

Salmon's
History,
1743.

"As to Canada, or New France, the French would scarce admit it had any bounds to the north on this side the pole, till they were limited on that side by an article in the Treaty of Utrecht, which assigns New Britain and Hudson's Bay, on the North of Canada, to Great Britain. And Commissioners on both sides afterwards ascertained the limits,† by an imaginary line running from a cape or promontory of New Britain in the Atlantic Ocean, 58° 30' north latitude, and running from thence south-west, to the Lake of Miscousink, or Mistassin, and from thence further south-west indefinitely to the latitude of north of the said line being assigned to Great Britain, and all to south of the said line, as far as the 49°, all the lands to the St. Lawrence, to the French.

"The eastern boundary of New France or Canada, the French admit, are the British plantations of Nova Scotia, New England, &c.; the southern boundary, the line which divides New France from Louisiana; and to the westward, the French extend the country of New France as far as the Pacific Ocean; and the Asiatic continent of Asia shall be found hereafter to be contiguous to North America.

*America, being an accurate description of the New World—with maps and sculptures, by John Ogilby, Esquire, London; 1671. pp. 127-9, 139.

†The names—Nouvelle Bretagne, Nova Britannia, New Brittany, New Britain were given to a certain part of Labrador.

‡ This is an error, though the statement seems to have been generally believed.

" However, as they (the French) have actually been possessed of some countries in Canada between the River St. Lawrence and New Britain or Hudson's Bay, for about one hundred years, and those countries seem to be confirmed to them, as far as the English had a right to confirm them, I shall readily allow their title to that part of Canada. But as to the rest of Canada and Louisiana, they cannot have a right to any part of them, notwithstanding the posts they have erected on those rivers. The eastern side of the Mississippi is the property of those Indians subject to Great Britain, and the western side of it belongs to the Indians who are under the dominion of the Spaniards; and we find the Spaniards asserting their title to it by demolishing the forts of Mons. de Salle and Mons. d'Herbville, erected on the west side of the river, and have as much right to demolish the forts the French have erected on the east side of it."

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English descriptions:

And the error about the boundary line of Canada having been determined, is repeated: "and it was agreed [at Utrecht] that commissaires on the part of Great Britain and France should determine within a year the limits to be fixed between the said Bay of Hudson and the places appertaining to the French, which limits the subjects of Great Britain and France were not to pass over to each other by sea or land. And the commissaires did afterwards settle the limits by an imaginary line, drawn from a promontory situate on the Atlantic Ocean, in 58° 30', and running from thence south-west to the Lake of Miscoussink, or Mistassin, and from thence south-west, indefinitely, to the latitude of 49°; all the countries to the north being assigned to Great Britain, and all on the south, between that line and the River of St. Lawrence or Canada, to France."

Salmon's
History, 1743.

JEFFERYS ON THE ENGLISH VIEW OF THE BOUNDARIES OF CANADA, 1761.

For the English version of the boundaries of Canada, as given by Jefferys, see p. 73, *ante*. A further quotation from his work may be here given: "The country subject to the Crown of France on the Continent of America, which is larger than the Roman Empire ever was, in its most flourishing times, is divided into two parts, the Northern, named Canada, and the Southern, Louisiana. . . . Under the name of Canada, the French would comprehend all that part of North America situated between 40 and 55 degrees of north latitude," etc. (p. 1).

Jefferys on the
boundaries of
Canada, 1761.

1761.—"Canada, according to the English accounts, is bounded on the North by the high lands which separate it from the country about Hudson's Bay, Labrador, or new Britain, and country of the Eskimeaux, and the Christineaux; on the East, by the River St. Lawrence; and on the South, by the Outawai River, the country of the Six Nations, and Louisiana; its limits towards the West extending over countries and nations hitherto undiscovered." *

JEFFERYS ON THE LIMITS OF LOUISIANA, 1761.†

The Province of Louisiana, or the southern part of New France, extends, according to the French geographers, from the Gulf of Mexico, in about 29 degrees, to near 45 degrees of north latitude, on the western side, and to near 39 degrees, on the eastern; and from 86 to near 100 degrees W. longitude, from London. It is bounded on the north by Canada; on the east by the British Colonies of New York, Pennsylvania, Maryland, Virginia, North and South Carolina, Georgia, and by the peninsula of Florida; on the south by the Gulf of Mexico; and, lastly, on the west by New Mexico. It contains, properly, the French settlements on both sides of the Mississippi, and is, by some, said to be the noblest and richest province of all North America.

Jefferys on the
the limits of
Louisiana,
1761.

* A Description of New France; or the French Dominions in North America. By T. Jefferys, Geographer to His Majesty, 1761, p. 1.

† History of the French Dominions in North and South America. London: 1761 (p. 143).

BOUCHETTE ON THE BOUNDARIES OF UPPER CANADA, 1815.*

Sec. II.
*Historical
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of Boundaries*

The Province of Lower Canada lies between 45° and 52° N. Latitude, and 63° and 81° W. Longitude, nearly, from Greenwich. It is bounded on the north by the territory of the Hudson's Bay Company on the East Main; ...and on the west by a line which separates it from Upper Canada as fixed by...Act of Parliament, and promulgated by Proclamation in the Province on the 18th day of November, 1791, as follows:—[Then follows the description from the Proclamation, including the words] "From the head of the said lake [Temiscaming] by a line drawn due north until it strikes the boundary line of Hudson's Bay, including all the territory to the westward and southward of the said line to the utmost extent of the country commonly called or known by the name of Canada."

UPPER CANADA.—Since the year 1791, the Province of Upper Canada has been bounded in the following manner, viz.: on the east by Lower Canada; on the north-east by the Grand or Ottawa River, which in that direction separates it from the Lower Province; on the north by the territory of the Hudson's Bay Company.....On the west and north-west no limits have been assigned to it, therefore it may be supposed to extend over the vast regions that spread towards the Pacific and the Northern Oceans.

* A Topographical Description of the Province of Lower Canada, with remarks upon Upper Canada by Joseph Bouchette, Surveyor-General. London: 1815. (pp. 1-3, 589, 590.)

III.

Proceedings in the North-West after the Cession of Canada.

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EXTRACTS FROM HENRY'S TRAVELS IN CANADA AND THE INDIAN
TERRITORIES, 1761-1776.*

(1761.) FORT MICHILMACKINAC was built by order of the Governor-General of Canada, and garrisoned with a small number of militia, who, having families, soon became less soldiers than settlers. Most of those whom I found in the fort had originally served in the French army.

The fort stands on the south side of the strait which is between Lake Huron and Lake Michigan. It has an area of two acres, and is enclosed with pickets of cedar wood (*Thaya occidentalis*); and it is 10 so near the water's edge, that, when the wind is in the west, the waves break against the stockade. On the bastions are two small pieces of brass English cannon, taken some years since by a party of Canadians who went on a plundering expedition against the posts of Hudson's Bay, which they reached by the route of the River Churchill.

Within the stockade are thirty houses, neat in their appearance, and tolerably commodious; and a church, in which mass is celebrated by a Jesuit Missionary. The number of families may be nearly equal to that of houses; and their subsistence is derived from the Indian traders who assemble here in their voyages to and from Montreal. Michilimackinae is the place of deposit and point of departure between the Upper countries and the Lower. Here the outfits are prepared for the countries of Lake Michigan and the Mississippi, Lake Superior and the North-West, and here the returns in furs are 20 collected and embarked for Montreal.

Relieved as I now imagined myself from all occasion of anxiety as to the treatment which I was to experience from the Indians, I assorted my goods, and hired Canadian interpreters and clerks, in whose care I was to send them into Lake Michigan and the RIVER ST. PIERRE, in the country of the Nadowessies [Sioux]; into LAKE SUPERIOR, among the Chippeways; and to the GRAND PORTAGE, for the North-West. Everything was ready for the departure when new dangers sprung up and threatened to overwhelm me.

Extracts from
Henry's
travels, 1761
1776.

At the entrance of Lake Michigan, and at about twenty miles to the west of Fort Michilimackinae is the Village of L'ARBRE CROCHE, inhabited by a band of Ottawas, boasting of two hundred and fifty fighting men. L'Arbre Croche is the seat of the Jesuit MISSION OF ST. IGNACE de Michilimackinae, 30 and the people are partly baptized and partly not. The Missionary resides on a farm attached to the Mission and situated between the village and the fort, both of which are under his care.

At noon three hundred troops of the sixtieth regiment, under the command of Lieutenant Leslie, marched into the fort; and this arrival dissipated all our fears from whatever source derived. After a few days detachments were sent into the BAY DES PUANS, by which is the route to the Mississippi, and to the mouth of the ST. JOSEPH, which leads to the Illinois. The Indians, from all quarters, came to pay their respects to the commandant; and the merchants despatched their canoes, though it was now the middle of September and therefore somewhat late in the season.

The Village of L'Arbre Croche supplies, as I have said, the maize, or *Indian corn* with which the canoes are victualled. This species of grain is prepared for use by boiling it in a strong lye, after which 40 the husk may be easily removed; and it is next mashed and dried. In this state it is soft and friable

* Travels and Adventures in Canada and the Indian Territories, between the years 1760 and 1776. By Alexander Henry, Esq., pp. 39, 40, 46-7, 51-3, 53, 165, 186, 191-3, 165-6, 214, 218-19, 237-8, 244, 252-3, 255, 259-61, 264-5, 263, 27-2-3, 314, 317, 319-22, 327.

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like rice. The allowance for each man on the voyage is a quart a day; and a bushel, with two pounds of prepared fat, is reckoned to be a month's subsistence. No other allowance is made of any kind; not even of salt; and bread is never thought of. The men, nevertheless, are healthy, and capable of performing their heavy labour. This mode of victualling is essential to the trade, which, being pursued at great distances, and in vessels so small as canoes, will not admit of the use of other food. If the men were to be supplied with bread and pork, the canoes could not carry a sufficiency for six months; and the ordinary duration of the voyage is not less than fourteen. The difficulty which would belong to an attempt to reconcile any other men than Canadians to this fare, seems to secure to them and their employers a monopoly of the fur trade.

(1762.) On the 19th (May) I reached the SAULT [STE. MARIE.] Here was a stockade fort in which 10 under the French Government there was kept a small garrison, commanded by an officer who was called *the governor*, but was in fact a clerk, who managed the Indian trade here on government account. The houses were four in number, of which the first was the governor's, the second the interpreter's and the other two, which were the smallest, had been used for barracks. The only family was that of M. Cadotte, the interpreter, whose wife was a Chipeway.

(1763.) Of the English traders that fell into the hands of the Indians at the capture of the fort [of Michilimackinac], Mr. Tracy was the only one who lost his life. Mr. Ezekiel Solomons and Mr. Henry Bostwick were taken by the Otawas, and, after the peace, carried down to Montreal and there ransomed. Of ninety troops, about seventy were killed, the rest, together with those of the posts in the Bay des Puants and at the River St. Joseph, were also kept in safety by the Otawas till 20 the peace, and then either freely restored or ransomed at Montreal.

(1764.) On the day [Aug. 9th] following that of the Treaty of Peace, Captain Howard was detached with two companies and three hundred Canadian Volunteers for Fort Michilimackinac, and I embarked at the same time.

Extracts from
Henry's
travels, 1761-
1776.

(1765.) Under the French Government of Canada, the FUR TRADE was subject to a variety of regulations, established and enforced by the royal authority; and in 1765, the period at which I began to prosecute it anew, some remains of the ancient system were still preserved. No person could go into the countries lying to the north-westward of Detroit unless furnished with a license, and the exclusive trade of particular districts was capable of being enjoyed in virtue of grants from military commanders. 30

The exclusive trade of Lake Superior was given to myself by the Commandant of Fort Michilimackinac, and to prosecute it I purchased goods which I found at this post, at twelve months' credit. My stock was the freight of four canoes, and I took it at the price of ten thousand pounds weight of good and merchantable beaver. It is in beaver that accounts are kept at Michilimackinac; but in defect of this article, other furs and skins are accepted in payments, being first reduced into their value in beaver. Beaver was at this time at the price of two shillings and sixpence *per* pound, Michilimackinac currency; otter skins six shillings each; marten, at one shilling and sixpence, and others in proportion.

To carry the goods to my wintering ground in Lake Superior, I engaged twelve men at two Hundred and fifty livres, of the same currency, each; that is a hundred pounds weight of beaver. For 40 provisions, I purchased fifty bushels of maize, at ten pounds of beaver *per* bushel. At this place specie was so wholly out of the question that in going to a cantine you took with you a marten's skin to pay your reckoning.

(1765.) On my arrival at Chagouemig [CHAGOUAMIGON], I found fifty lodges of Indians there. These people were almost naked, their trade having been interrupted, first by the English invasion of Canada, and next by Pontiac's war.

Adding the Indians at Chagouemig to those which I had brought with me, I had now a hundred families, to all whom I was required to advance goods on credit. At a council which I was invited to attend, the men declared that unless their demands were complied with, their wives and children would

perish; for that there were neither ammunition nor clothing left among them. Under these circumstances I saw myself obliged to distribute goods to the amount of three thousand beaver skins. This done, the Indians went on their hunt at the distance of a hundred leagues. A clerk acting as my agent accompanied them to Fond du Lac, taking with him two loaded canoes. Meanwhile, at the expense of six days' labour, I was provided with a very comfortable house for my winter's residence.

(1767.) On reaching the trading post [of MICHIGICOTON] which was an old one of French establishment, and ten lodges of Indians. These were *gens de Terres* or *O'pimittish Ininiuac* [also called *Tatouche* or *Boule*] of which nation I have already had occasion to speak. It is scattered over all the country between the Gulf of St. Lawrence and *Lake Arabuthecow* [Athabasca] and between Lake Superior and Hudson's Bay.

(1768.) On the twentieth day of the month [May] the first party of Indians came in from their winter's hunt. During the season some of them had visited one of the factories of the Hudson's Bay Company. Within a few days following, I had the satisfaction of seeing all those to whom I advanced goods, return. Out of two thousand skins, which was the amount of my outstanding debts, not thirty remained unpaid; and even the trivial loss which I did suffer was occasioned by the death of one of the Indians for whom his family brought, as they said, all the skins of which he died possessed, and offered to pay the rest from among themselves. His *manes*, they observed, would not be able to enjoy peace, while his name remained in my books, and his debts were left unsatisfied.

(1775.) On the 10th day of June, I left the Sault [for the North-West] with goods and provisions to the value of three thousand pounds sterling, on board twelve small canoes and four larger ones. The provisions made the chief bulk of the cargo; no further supply being obtainable till we should have advanced far into the country. Each small canoe was navigated by three men, and each larger one by four.

It was by the River Pijitie* that the French ascended in 1750, when they plundered one of the factories in Hudson's Bay, and carried off the two small pieces of brass cannon, which fell again into the hands of the English at Michilimackinac. On the river are a band of Wood Indians, who are sometimes troublesome to the traders passing.

By this river [NIPIGON] the French carried on a considerable trade with the Northern Indians. They had a fort or trading-house at its mouth, and annually drew from it a hundred packs of beaver of a quality more in esteem than that from the north-west. They had another trading house at Caministiquia. As we proceed north-west along the lake, the mountains recede widely from the beach.

The LAKE OF THE WOODS is thirty-six leagues long. On the west side is an old French fort or trading-house, formerly frequented by numerous bands of Chipeways, but these have since been almost entirely destroyed by the Nadowessies.

I kept the north side of the lake [WINNIPEGON], and had not proceeded far before I was joined by Mr. Pond, a trader of some celebrity in the north-west.

On the seventh of September we were overtaken by Messrs. Joseph and Thomas Frobisher and Mr. Patterson. On the twentieth we crossed the Bay together, composing a fleet of 30 canoes and 130 men.

On the first October we gained the mouth of the RIVER DE BOURBON, Pasquayah, or Sascatchiwaine,† and proceeded to ascend its stream.

At the north end [of lake de Bourbon, called by the English, after the Indians, Cedar Lake] there was, in the French time, a fort or trading-house called FORT DE BOURBON, and built by M. de St. Pierre, a French officer, who was the first adventurer into these parts of the country.

On the twenty-sixth [October] we reached JUMBERLAND HOUSE, one of the factories of Hudson's Bay Company, seated on Sturgeon Lake, in about 54° north latitude, and 102° longitude, west from Greenwich. This house had been built the year before by Mr. Hearne, who was now absent on his well-

* [Note by Henry.]—According to Carver, it was by the Michipicoten. If he is correct, it must have been from Moose Fort, in James' Bay, and not from Churchill, that they took the cannon.

† [Note by Henry.]—The lower part of the Sascatchiwaine was once called the River de Bourbon. *Pasquayah* is the name of an upper portion of the Sascatchiwaine.

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known journey of discovery. We found it garrisoned by Highlanders from the Orkney Islands, and under the command of a Mr. Cockings, by whom, though unwelcome guests, we were treated with much civility. The design in building this house was to prevent the Indians from dealing with the Canadian merchants, and to induce them to go to Hudson's Bay.

At Cumberland House the canoes separated; M. Cadotte going with four to Fort des Prairies; Mr. Pond, with two, to FORT DAUPHIN, and others proceeding on still different routes; Messrs. Frobisher retaining six, and myself four; and we resolved on joining our stock and wintering together. We steered for the River Churchill, or Missinipi, to the east of Beaver Lake, or Lake aux Castors.

Our first object, after crossing BEAVER LAKE, was to procure food. We had only three days' stock remaining, and we were forty-three persons in number. Our forty men were divided into three parties, 10 of which two were detached to the River aux Castors, on which the ice was strong enough to allow of setting the nets in a manner heretofore described. The third party was employed in building our house or fort, and in this, within ten days, we saw ourselves commodiously lodged. Indeed, we have almost built a village, or, in soberer terms, we had raised buildings around a quadrangle such as really assumed, in the wilds which encompassed it, a formidable appearance. In front was the house designed for Messrs. Frobisher and myself, and the men had four houses, of which one was placed on each side and two in the rear.

(1776.) On the first day of January, I left for our fort, on Beaver Lake, attended by two men, and provided with dried meat and frozen fish. . . . On the fourth of the month we arrived at Cumberland House. . . . The next morning [5th] I took leave [for FORT DES PRAIRIES.] 20

No trace of anything human presented itself on our road *except that we saw the old wintering ground of Mr. Finlay, who had left it some years before, and was now stationed at Fort des Prairies.* This fort was the stage we had to make before we could enter the prairies or plains, and on examining our provisions we found only sufficient for five days, while even at the swiftest rate we had travelled, a journey of twelve days was before us.

At Fort des Prairies I remained several days, hospitably entertained by friends, who covered their tables with the tongues and marrow of wild bulls. The quantity of provisions which I found collected here exceeded everything of which I had previously formed a notion. In one heap I saw fifty ton of beef, so fat that the men could scarcely find a sufficiency of lean.

Fort of the Prairies, as already intimated, is built on the margin of the Pasquayah or Saskatchewan, 30 waine, which river is here two hundred yards across, and flows at the depth of thirty feet below the level of its banks. The fort has an area of about one acre, which is inclosed by a good stockade though formed only of poplar or aspen-wood, such as the country affords. It has two gates, which are carefully shut every evening, and has usually from fifty to eighty men for its defence.

Four different interests were struggling for the Indian Trade of the Saskatchewan, but fortunately they had this year agreed to join their stock, and, when the season was over, to divide the skins and meat.

On the 7th [April] we left Cumberland House; and on the 9th, in the morning, we reached our fort on Beaver Lake, where I had the pleasure of finding my friends well. . . .

On the 12th, Mr. Thomas Frobisher, with six men, was despatched to RIVER CHURCHILL, where he 40 was to prepare a fort, and inform such Indians as he might see on their way to Hudson's Bay, of the approaching arrival of his partners.

On the 15th June we reached the River Churchill, Missinibi, or Missinipi, where we found Mr. Thomas Frobisher. . . . The river is called the Churchill River from Fort Churchill, in Hudson's Bay, the most northerly of the Company's factories or trading-houses, and which is seated at its mouth. By Mr. Joseph Frobisher it was named English River. . . . We are estimated by the Indians to be distant 300 miles from the sea. Cumberland House was to the south of us, distant 400 miles. . . . We resolved on ascending the river, and to go as far westward as Lake ARABUTHCOW (called also Athapuscow and Athabasa), distant. . . . 450 miles. With these views we embarked on the 16th with six Canadians, and also one Indian woman in the capacity of a guide. . . . On the fifth 50 day we reached the Rapide du Serpent, which is supposed to be 300 miles from our point of departure.

Extracts from
Henry's
travels, 1761-
1776.

... We continued our voyage until the 24th, when.....we saw a number of canoes filled with Indians.....We proposed to them to return with them to our fort, where we were provided with large quantities of such goods as they wanted.

On the 25th of June we embarked, with all the Indians in our company, and continued our voyage day and night..... We reached our house on the 1st of July.

Mr. Frobisher and myself left the remainder of our merchandise in the care of Mr. Thomas Frobisher, who was to proceed with them to Lake Arabutcow.

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EXTRACTS FROM CARVER'S TRAVELS, 1766-8.*

The latter end of July, I arrived, after having coasted through West Bay, at the GRAND PORTAGE, which lies to the north-west borders of Lake Superior. Here those who go on to the North-West Trade, to the Lakes DePluie, Dubois, etc., carry over their canoes and luggage about nine miles, till they come to a number of small lakes, the waters of some of which descend into Lake Superior, and others into the River Bourbon. Lake Superior, from West Bay, is bounded by rocks, except towards the south-west part of the bay where I first entered it, there it was tolerably level. . . .

Here I met a large party of Killistinoe and Assinipoil Indians, with their respective kings and their families. They will come to this place in order to meet the traders from Michillimackinae who make this their road to the north-west. From them I received the following account of the lakes that lie to the north-west of Lake Superior :

LAKE BOURBON, the most northern of those yet discovered, received its name from the French traders who accompanied a party of Indians to Hudson's Bay some years ago; and was thus denominated by them in honour of the Royal Family of France. It is composed of the waters of the Bourbon River, which, as I have before observed, rises a great way to the southward, not far from the northern heads of the Mississippi. This lake is about 80 miles in length, north and south, and is nearly circular. The land on the eastern side is very good; and to the south-west there are some mountains. In many other parts there are barren plains, bogs and morasses. Its latitude is between fifty-two and fifty-four degrees north, and it lies nearly south-west from Hudson's Bay. As through its northern situation the weather there is extremely cold, only a few animals are to be found in the country that borders on it.

LAKE WINNIPECK, or as the French write it, Lake Ouinipique, which lies nearest to the foregoing, is composed of the same waters. It is in length 200 miles, north and south; its breadth has never been properly ascertained, but it is supposed to be about 100 miles in its widest part. This lake is very full of islands; these are, however, of no great magnitude. Many considerable rivers empty themselves into it, which, as yet, are not distinguished by any names.....

The land on the south-west part of it is very good, especially about the entrance of a large branch of the River Bourbon (Assiniboine), which flows from the south-west. On this river there is a factory that was built by the French, called FORT LA REINE, to which the traders from Michillimackinae resort to trade with the Assinipoils and Killistinoes. To this place the Mahabs, who inhabit a country 250 miles south-west, come also to trade with them; and bring great quantities of Indian corn to exchange for knives, tomahawks, and other articles.....

Lake Winnipeck has on the north-east some mountains, and on the east many barren plains.

On the waters that fall into this lake, the neighbouring nations take great numbers of excellent furs. Some of these they carry to the factories and settlements belonging to the Hudson's Bay Company, situated above the entrance of the Bourbon River; but this they do with reluctance on several accounts; for some of the Assinipoils and Killistinoes, who usually traded with the Company's servants, told me that if they could be sure of a constant supply of goods from Michillimackinae, they would not trade anywhere else. They showed me some cloth and other articles that they had pur-

* *Travels through the interior parts of North America*, pp. 107, 109, 134, 137, 151.—Jonathan Carver, an American traveller, was born in Connecticut in 1732, and served as Captain in the war against the French in Canada. He passed about three years (1766-68) in the exploration of North America, which he crossed to the Pacific Ocean, and published his *Travels* in 1778.

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chased at Hudson's Bay, with which they were much dissatisfied, thinking that they had been greatly imposed upon by the barter.

Allowing that their accounts were true, I could not help joining in their opinion. But this dissatisfaction might probably proceed, in a great measure, from the intrigues of the Canadian traders; for whilst the French were in possession of Michillimackinac, having acquired a thorough knowledge of the trade of the north-west countries they were employed on that account, after the reduction of Canada, by the English traders there, in the establishment of this trade, with which they were themselves quite unacquainted. One of the methods they took to withdraw these Indians from their attachment to the Hudson's Bay Company, and to engage their good opinion in behalf of their new employers, was by depreciating on all occasions the Company's goods, and magnifying the advantages that would arise to them from trafficking entirely with the Canadian traders. In this they too well succeeded and from this, doubtless, did the dissatisfaction the Assinipoils and Killistinoes expressed partly proceed. But another reason augmented it, and this was the length of their journey to the Hudson's Bay factories, which, they informed me, took them up three months of the summer heat to go and return, and from the smallness of their canoes they could not carry more than a third of the beavers they killed. So that it is not to be wondered at, that these Indians should wish to have traders come and reside among them. . . .

The French always kept a small schooner on Lake Superior whilst they were in possession of Canada.

Extracts from
Carver's
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Two very large rivers empty themselves into this lake on the north and east sides; one is called 20 the NIPEGON RIVER, or as the French pronounce it, the Allanipegon, which leads to a band of the Chipeways, inhabiting a lake of the same name; and the other is termed the MICHIPICOOTON RIVER, the source of which is situated towards James' Bay, from whence there is but a short carriage to another river, which empties itself into that bay, at a fort belonging to the Company. It was by this passage that a party of French from Michillimackinac invaded the settlements of that society in the reign of Queen Anne. Having taken and destroyed their forts, they brought the cannon which they found in them to the fortress from whence they had issued; these were small brass pieces, and remain there to this present time.

At the upper end of the Straits of STE. MARIE stands a fort that receives its name from them, commanded by Mons. Cadot, a French Canadian, who, being a proprietor of the soil, is still permitted to keep possession of it.

The banks of the RIVER DETROIT, both above and below these towns, are covered with settlements that extend more than twenty miles; the country being exceedingly fruitful and proper for the cultivation of wheat, Indian corn, oats, and peas. The inhabitants, who are chiefly French that submitted to the English Government, after the conquests of these parts by General Amherst, are more attentive to the Indian trade than to farming. It is badly cultivated.

ORIGIN AND PROGRESS OF THE NORTH-WEST COMPANY OF CANADA.*

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Montreal was taken in the year 1760; and in the spring of the following year a few English and French traders sent goods to the borders of Lake Superior, and a few went as far north as the Rainy 40 Lake, where they continued till the year 1763, when the post at Michillimackinac was taken by the Indians. This event and the Indian war, by which it was occasioned, produced a temporary suspension of the trade; and it was not till the year 1771 that the British traders could safely traffic as far as the Saskatchewan, on which river the most remote of the French posts was situated. The subsequent progress of the fur traders in the interior has corresponded with the wishes of the Indians to deal with them, and the success they met with in their first enterprises in a new region.

At the commencement of the English trade, the whole was conducted by the unsupported efforts of individuals. The trader who passed one winter with a newly discovered nation or band of Indians, or

* *Origin and Progress of the North-West Company of Canada, with a History of the Fur Trade.* 1811, pp. 4-10.

on some spot favourable to his traffic, heard in the course of it, of Indians still more remote, among whom provisions might be obtained and trade pursued, with little danger of competition. To the neighbourhood of these he removed, and, while he was suffered to remain alone, generally preserved good order and obtained the furs at a reasonable rate. But as every person had an equal right to sell goods at the same place, the first discoverer of an eligible situation soon saw himself followed by other traders who were ready to undersell him, with a view to reap the harvest which he had sown at so much peril, and with so much difficulty. Thus circumstanced, he, in his turn, resorted to every means for securing to himself the preference of the Indians and for injuring his competitor. This conduct provoked retaliation. The Indians were bribed with rum, and the goods were bartered away for a consideration below their value. The consequence was that the traders ruined each other, the Indians were corrupted and the English character brought into contempt. In the struggle innumerable disorders took place, and even blood was often spilt; till at length, after a competition injurious to all parties, mutual interest suggested the necessity of establishing a common concern, subject to general rules.

Accordingly, in the year 1779, the persons composing nine distinct interests, became parties to an agreement for one year, by virtue of which the whole trade was rendered common property. The success which attended this measure, led to a second and nearly similar agreement in the succeeding year, and to which a further duration of three years was given. As the parties to this agreement were less anxious, however, to fulfil it while it lasted than to prepare themselves for the event of its termination, and for the consequent return of things to the original state of competition, all the benefit that was expected from it was not obtained, and at the end of two years it was renounced. The separate traders renewed, for a time, their feeble and unprofitable efforts; but the value of the principle, upon which the two agreements had been founded, was generally acknowledged; and in the year 1784, to avoid the evils which then threatened the British subjects engaged in the fur trade, a third agreement, for five years, was entered into by them. The association of the traders, parties to this agreement, assumed the name of the North-West Company; and the compact was renewed, from time to time, till the year 1802, when a more permanent one was executed, for twenty years from 1803. The trading body thus constituted, is the present North-West Company of Canada.

The disorders incident to competitions in the trade, that is, to departures from the principle upon which the company was established, are manifest from the history of the Indian Territory during the 30 years 1802, 1803 and 1804, in which period they became the object of a parliamentary proceeding.* So numerous were the acts of violence then committed (the recurrence of which is only prevented by the existence of the present company), that, in compliance with a petition from Canada, the Legislature of Great Britain was induced to pass an Act by which the whole of the Indian Territory was placed under the jurisdiction of the Courts of Justice in Upper and Lower Canada; in order that the perpetration of crimes in those countries should be restrained by the terror of a contiguous tribunal.

EXTENT OF COUNTRY WHICH THE NORTH-WEST COMPANY OCCUPIED.†

[Mr. David Thompson, astronomer and surveyor of the North-West Company, commenced in 1796 to survey the positions of its posts, some of which had been placed as far south as the source of the Mississippi, or even further, when that point was supposed to be the northern boundary of the United States. But when the 49° became the northern boundary line, it was necessary to ascertain what posts were on the south of it, as the Company would be required to vacate them. Mr. Thompson had previously been in the employ of the Hudson's Bay Company; but the aversion of that organization to new discoveries caused him to accept employment under the North-West Company, when his first engagement had expired. In the summer of 1795, he had, with no other aid than that of two young Indians, who knew nothing about the country to be travelled over, and one Irishman, made his way from the shores of Hudson's Bay to the east end of Athabaska Lake. He has left behind him a manuscript, giving an account of his travels when he determined the position of the North-West Company's posts; and it is of great importance as showing exactly what extent of country was still held by that

* 43 Geo. III., c. 138, 1803.

† From "An Investigation of the Unsettled Boundaries of Ontario," by Charles Lindsey, pp. 225-245.

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Company, the successor of the original discoverers of the North-West, some of whose posts it still continued to keep up. This country, so held, and of which the Hudson's Bay Company had not taken possession, had not ceased to be part of Canada at a period later than 1791. I shall follow Mr. Thompson's MS. closely; and it may be advisable to resort to some details connected with this official survey of the country, on account of the great importance of the subject.]

After returning from Athabaska, Mr. Thompson was informed by a letter from Mr. Joseph Colen, the resident at York Factory, with whose sanction the expedition to Athabaska Lake had been undertaken, that he could not sanction any more surveys, whatever might be the extent of the territory still unknown to the H. B. Company. Mr. Thompson's term of service had expired, and his thirst for further discoveries determined him to seek employment from the North-West Company, composed of Canadian 10 merchants, and carrying on their traffic with the Indians from Lake Superior. Accompanied by two Indians, he proceeded to the nearest trading-house of that company, which was under the charge of Mr. Alexander Fraser; and thence, by the usual canoe route, to the Great Carrying Place on the north shore of Lake Superior, then the depôt of the Company's treasures: of merchandize from Montreal and furs from the interior. The agents of the Company, the Hon. William McGillivray and Sir Alexander McKenzie, were also partners; men of enlarged views: one of them had already crossed the Rocky Mountains, by the Peace River, and had proceeded far by the Fraser towards the Pacific Ocean, when the hostility of the natives, and want of provisions, had obliged him to return, and who was destined to make discoveries in these countries that would render his name immortal.

The services of Mr. Thompson were very acceptable to these gentlemen. They desired to learn the 20 position of their trading-houses, with respect to one another, and also to the 49° of north latitude, become, since the treaty of 1792, the boundary line between Canada and the United States, from the north-west corner of the Lake of the Woods to the Rocky Mountains, in lieu of a line from the former point to the head of the Mississippi, as designated by the treaty of 1783. The source of the Mississippi was then known only to the Indians and a few fur-traders, and was supposed to be further north than the Lake of the Woods. Mr. Thompson was instructed to survey the 49th parallel of latitude, to go as far as the Missouri River, visit the ancient villages of the agricultural natives who dwelt there, to inquire for the fossils of large animals, and to search for any monuments that might throw light on the ancient state of the countries to be travelled over and examined. He received orders on all the agents and trading posts of the company for men and whatever else he might require. This liberality and display of public spirit he could not help contrasting with the stinginess of the Hudson's Bay Company, 30 who had done little in the way of discovery which had not been forced on them by the demands of the British Government.

But the way in which it performed this duty was calculated to conceal the very knowledge which it was desired to obtain. It had, in 1785, been requested to send out a competent person to ascertain the latitude and longitude of the west end of Athabaska Lake. Mr. Peter Pond, one of the clerks of the North-West Company, who had wintered three years at Fort Chippewayan, on the north side of the Athabaska Lake, had made a rough map of the country, which placed the west end of the Athabaska Lake near the Pacific Ocean. If this were true, the route across the continent, at this point, might be made available for one purpose or another. Pond had taken his distances from the suppositious leagues 40 of the canoe-men, which Mr. Thompson found to average only two miles each. The agents of the company sent a copy of this map to Sir Hugh Dalrymple, who was then in office; and he, by comparing it with the charts of Captain Cook, found that it brought the west end of Athabaska Lake within less than one hundred miles of the Pacific Ocean. This was the point which the British Government required the Company to determine by actual survey.

And Mr. Thompson relates how the Company performed this duty. It sent out a boy, fifteen years of age, first making him an apprentice for seven years, of the name of George Charles. Having spent one year at a mathematical school, and, armed with a quadrant, had thrice performed the feat of bringing down the sun to a chalk line on a wall, he was forthwith pronounced competent for the duty required. The result of entrusting this lad with a duty which he was quite incompetent to discharge, was to keep 50 from the Colonial Office the required knowledge for five years; and it was not till 1790 that it was

obliged, by the pressing instance of the Colonial Department, to send out a properly qualified person, Mr. Philip Turner, by whom the desired information was obtained.

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This Peter Pond, who had so inaccurately laid down the west end of Athabaska Lake, was a violent and unprincipled character, became implicated in the death of Mr. Ross, a fur trader, and was afterwards accused as principal in the murder of Mr. Wadden, another fur trader. He was sent to Quebec, to be tried on the latter charge; but was released on the ground that the jurisdiction of the court did not extend to these distant territories. Being set at liberty, he went to Boston, Massachusetts, his native city, in 1782. Next year brought peace between the thirteen old colonies and England. The British Commissioners, who had to deal with the boundary question, were ignorant of the geography of the country beyond Lake Ontario; and they had but wretched assistance for their guidance in the shape of maps; one of them, by Farren, dated 1773, stopped short, in any actual information, at Toronto; the whole country to the west being represented as alternations of rock and swamp, and uninhabitable. Mitchell's was somewhat better, and was the best to which they had access. The American Commissioners had Pond at their elbow; and though his knowledge of the true position of places was extremely inaccurate, he had much knowledge of the value of the interior countries. Pond is said to have designated to the American Commissioners a boundary line through the middle of the Upper St. Lawrence and the lakes, and through the interior countries to the north-west corner of the Lake of the Woods, and thence west to the Mississippi; a line that was accepted by the British Commissioners.

Before proceeding to give an account of Mr. Thompson's survey of the boundary line, we must trace the route of the North-West Company of those days from Lake Superior to Winnipeg. In August, 1796, Mr. Thompson started from the south-east end of the Great Carrying Place on Lake Superior, in latitude $47^{\circ} 58' 1''$ north, longitude $89^{\circ} 44' 10''$ west of Greenwich. To this point came the canoes from Montreal, each one carrying from forty to forty-five pieces of merchandize, each piece weighing from ninety to one hundred pounds, besides spirituous liquors; the return cargoes consisting of furs. Then the merchandize was made into assorted packages of ninety pounds each. The canoes destined to carry them into the interior were of less capacity, but each one was capable of carrying twenty-five pieces, besides the necessary provisions for the voyage, and the baggage of the men; making altogether a weight of about 2,900 lbs.; to which add five men, and the complete canoe load will reach 3,700 lbs.

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These moved in brigades of four to eight canoes, to different points in the interior country. That on which Mr. Thompson embarked contained four, and was under charge of Mr. Hugh McGillis; the day of starting being August 9, 1796. His instruments consisted of a sextant of ten inches radius, with quicksilver and parallel glasses, an excellent achromatic telescope, one of a smaller kind, drawing instruments, and thermometers; all by Dolland. They proceeded over the Great Carrying Place, which takes a north-west direction from the starting point, and is eight miles and twenty yards long, to Pigeon River. This point is about three hundred feet above Lake Superior. These eight miles odd consumed five days—days of severe labour to the men. From Pigeon River to the height of land the distance is thirty-eight miles, in which there are twelve carrying places, which are together five and a half miles of the distance. The height of land to which we have now come is in latitude $48^{\circ} 6' 43''$ north, longitude $90^{\circ} 34' 38''$ west, variation six degrees east. South-east from this dividing ridge the streams run into Lake Superior; north-east by east into Lake Winnipeg, and thence into Hudson's Bay.

The country passed over in the forty-eight miles between here and Lake Superior contains many brooks and small lakes of good clear water, and parts of it seem adapted for pasturage.

The country now declines to the north-east, and is intersected by many streams having the same direction, they collect finally in a fine river. Rainy Lake is a fine body of water, nine or ten miles in length, and emptying into Rainy River by a descent of about ten feet. Here, below this fall, stood a trading-house of the North-West Company, in latitude $48^{\circ} 36' 58''$ north, longitude $93^{\circ} 19' 30''$ west. The distance from the height of land to this point is one hundred and seventeen miles. The country is more favourable for agriculture than the previous section from Pigeon River to the height of land;

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and "in several places good farms can be made." Rainy River is a fine stream, about two hundred yards wide, interrupted in its course by only one rapid; at the foot of which, in the season, the natives spear, or used to spear, many fine sturgeon. By this river we travel fifty miles and a-half to the Lake of the Woods. The banks present all the appearance of a country capable of cultivation but the rocks lie at no great distance from the surface. The Lake of the Woods is thirty-two and a-half miles long, and contains many bays. Its area may be estimated at about eight hundred square miles, over which are scattered many islets. The north-east shores are of granite; the western, of limestone, touch on the great alluvial.

The Lake of the Woods is memorable in geographical and diplomatic history. It has been the starting point in every treaty of the boundary line between the dominions of Great Britain and the 10 territories of the United States. It is the southernmost lake of the Stony Region; the first that having limestone on its western side, has granite, greenstone and clay slate on the north and the east.

Out of the lake flows the river Winnipeg (sea river) in a north-western direction, into Lake Winnipeg. It is a bold deep stream about three hundred yards in width, contains many isles, and has thirty-two falls and several channels. It is of granite formation throughout its whole course of one hundred and twenty-five miles. At the point of its entrance into Lake Winnipeg, the North-West Company had a trading-house, which owed its origin to the French. Its position was latitude $50^{\circ} 37' 46''$ north, longitude $95^{\circ} 59' 34''$ west, variation nine degrees east. Though the falls are so numerous, the aggregate length of the carrying places is only three miles.

From Grand Portage to Lake Winnipeg the country was probably never rich in fur-bearing 20 animals; and it has now long since been exhausted as a hunting ground either for fur-bearing or food-producing animals, but few of either remaining. The natives, who are Chippeways, drew their chief means of substance from the waters: sturgeon, white-fish, pike, mackerel, and carp being the principal kinds of fish found there. Winnipeg House was an important dépôt of provisions, which were brought in canoes from the bison countries that surround the Red River (of the North) and the Saskatchewan, and distributed to the canoes and boats for the several wintering places on Lake 30 Winnipeg. Red River enters the lake at a distance of forty-two miles from Winnipeg House; further north the Dauphin contributes its waters, and at the north-west corner of the lake the Saskatchewan, in latitude $53^{\circ} 43' 45''$, longitude $98^{\circ} 31'$ west, comes in on its way to Hudson's Bay. This lake receives many lesser streams both on the east and on the west. All these waters were valuable as highways 30 for fur-traders. From Winnipeg House to the lower end of the Saskatchewan, the western coast line, which runs north thirty-six degrees west, is two hundred and thirty-one miles; the western side is longer, being about two hundred and seventy miles; the width at either end is about forty-five miles. The area of this lake, with its islands, is about ten thousand and eighty square miles. The woods all round the lake are composed of small trees, full of branches. Neither deer nor other animals were abundant, but the waters abound with good fish.

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Mr. Thompson set out from Winnipeg House, coasting along the limestone shores of the lake, mostly low, but sometimes forming cliffs fifty feet high, to the mouth of the Dauphin River. The course, in a straight line, was north 43° west, one hundred and twenty-seven miles. He then proceeded up the Dauphin River, which is about thirty yards wide and three deep, and runs through a forest. 40 Both the soil and the timber improved in quality as he proceeded, but deer and beaver were scarce. The general course for the first eight miles was south by west; but there were many turnings in the river. This brought him to the Meadow Carrying Place, two thousand seven hundred and sixty yards long, which took him to Lake Winnipegos (the little sea). It would have been practicable to reach the lake by continuing on the river, but it was so circuitous as to cause the carrying-place to be preferred. On this lake he went a distance of fifty-nine miles to Swan River, a small stream only about fifteen yards wide and three deep, and which runs with a gentle current through a fine country. He was now among low hills and the heights, which the deer, after spending the summer there, were beginning to leave. Beaver now became plentiful.

Having proceeded twelve miles up the river, he came to Swan River House, of the North-West 50 Company, in latitude $52^{\circ} 24' 5''$ north, longitude $100^{\circ} 36' 52''$, variation 13° east. There were but two

families of the native tribe to whom those countries belong, Nathaways. Several Chippeways had lately come from the south, their own country being exhausted of beaver and deer.

From Swan River (date September 26th, 1796) he proceeded with horses across the country, to the Stone Indian River, on which the North-West Company had several trading-houses, to the upper house, in charge of Mr. Cuthbert Grant; course forty degrees and a half West, ninety miles; most of the way through fine forests, the ground being very good for the horses, except a few pieces of wet meadow, and even here they did not sink ankle deep.

He now made for the trading-house, in charge of M. Bellenau, between Swan River and Stone Indian River, which by observation was found to be in latitude $51^{\circ} 51' 9''$, longitude $102^{\circ} 3'$ West; course for the last thirty miles having been north 12° West. This stretch contains much wet ground and ponds occasioned by beaver dams. He now returned and proceeded to the Upper trading-house, in charge of Mr. Hugh McGillicies, latitude $52^{\circ} 59' 7''$, longitude $102^{\circ} 32' 27''$, on a course north ten degrees East, a distance of one hundred and eleven miles in a direct line, the travelled distance, owing to the *détours* occasioned by the beaver ponds, being one hundred and fifty miles. These animals held full possession of the country; but they were being rapidly destroyed. All these trading-houses of the North-West Company were on the south side of the range of hills which border on the great plains.

These countries were the hunting grounds of the Nathaway Indians. Mr. Thompson was disappointed in not finding numerous mineral springs in a country having such variety of hill and plain, forest and prairie; beyond the saline brooks of the Red River, from which even then salt was obtained by evaporation, he learned of none.

The Nepissings, Algonquins, and Iroquois, their own countries being exhausted of animals, spread themselves over this country, with destructive march, as far as the beaver was concerned, northward and westward, meeting no molestation from the native Nathaways. The Chippeways and other tribes used the fatally baited steel-trap. The bait was *castoreum*, and was quite irresistible. While the great beaver harvest lasted, the Indians were rich; and they all, men, women, and children, made a barbaric display of their wealth, in the use of silver brooches, earrings, wampum, beads and other trinkets. They wore fine scarlet cloth mantles, and sported other absurd fineries in dress. The canoes of the fur-traders were loaded with beaver packs; and the supply outran the demand so far as to bring down the price in the London market. But neither the inflated prosperity nor the excess of production could last long. Over countries of such vast extent as these, four years sufficed almost to complete the work of destruction. The Indians fell back into worse than their original poverty.

Mr. Thompson proceeded to the trading-house in charge of Mr. Thornburn, in latitude $50^{\circ} 28' 58''$, longitude $101^{\circ} 45' 45''$. Having determined the position of this place, he went down the Stone Indian River to the house in charge of Mr. John McDonell, latitude $49^{\circ} 40' 56''$, longitude $99^{\circ} 27' 15''$, the course being south by east, and the distance in a straight line one hundred and thirty-one miles. This river is about thirty yards in width, and as it derives its water from the rains and snows, is of varying depth, according to the seasons. Its course is on the east side of the great plains and the west side of the low hills, whence it receives several brooks, and from the plains of Calling River a few. In addition to its being always shoal in autumn, its course is very sinuous. The Stone Indian River everywhere runs through an agreeable country with a good soil, well adapted for agriculture.

The bison, the moose, the red deer, and two species of antelope, here gave the Nathaways an easy means of subsistence.

The Stone Indians, a numerous tribe of the Sioux nation, possessed the country south and west of this river to the Missouri; but the more southerly and western parts they shared in common with several other tribes.

Mr. Thompson's journals, surveys, and sketches, having been translated out of crayon into ink, and there being nothing more to be done there, he set out from Mr. McDonell's on a winter's journey for the Mandan villages, on the banks of the Missouri, the 28th November, 1797. The guide and interpreter, Monsieur René Jussomme, had resided eight years in those villages, and spoke the Mandan language with fluency. There were also in the party, Mr. Hugh McCracken, a good-hearted Irishman,

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who had been to the villages many times, and even resided there for weeks and months; seven French Canadians, good-humored fellows, willing to hunt for the means of securing their greatest enjoyment—eating—who possessed not the least tincture of education, and did not see its value. All these, except Mr. Thompson's servant man, A. Brossman, were for the time free-traders, on their own account, each of them having taken from Mr. McDonell, on credit, a venture in goods to the value of forty to sixty skins, to be paid for by and. Having been supplied with ammunition, tobacco and trinkets to pay expenses on the way, Mr. Thompson provided with two horses, and Mr. Jussomme with one, the men having their ~~own~~ dogs to the number of thirty, to haul their goods on flat sleds, everything was now ready for the journey. The half wolf dogs had all been obtained in trade from the Stone Indians, by whom numbers are kept in their encampments. These brutes are extremely voracious.

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After thirty-three days' travel, with the thermometer nearly always below zero, and sometimes descending to 36° below, having encountered high winds and blinding snowdrifts, depending chiefly on the previous chase for means of subsistence, and sometimes being in danger from hostile Indians, the party arrived at the village of the Fall Indians, lat. $47^{\circ} 25' 11''$, long. $101^{\circ} 21' 5''$, the whole distance travelled in that time being two hundred and eighty miles.

Although few of the Mandans had guns, they had already received some from trading parties of the Hudson's Bay Company, who had probably straggled through the country in a favourable season, much as the men belonging to Mr. Thompson's party were doing; or, more likely, they obtained them from traders they had met at a distance from their villages. This does not prove that that Company had any substantial occupation of this part of the country. The lower village of the Mandans was found to be in lat. $47^{\circ} 17' 22''$, long. $101^{\circ} 14' 24''$, variation ten degrees East.

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The road from the Mandan villages to Stone Indian River House, travelled by Mr. Thompson, may be thus divided. Following from one piece of woods to another, where fuel and shelter could alone be obtained, the course to the Dog Tent Hill, twenty-eight degrees East, was fifty miles; thence to the elbow of the Moose River, north forty-nine degrees East, twenty miles; then to the south end of Turtle Hill, north nine degrees West, fourteen miles; thence to the Ash House, on Moose River, north three degrees West, twenty-four miles; thence to the house of Mr. McDonell, north sixty-nine degrees East, forty-five miles. A straight line between the two extreme points would run north twenty-six degrees East, one hundred and eighty-eight miles.

Mr. Thompson spent three weeks in calculating the astronomical observations made in the late 30 journey. Stone Indian River House was, by a series of observations, found to be in latitude $49^{\circ} 40' 56''$, longitude $99^{\circ} 27' 15''$, variation eleven degrees East.

On the 26th February, 1798, Mr. Thompson took leave of his hospitable friend, Mr. John McDonell, by whom he was furnished with everything necessary for his journey of survey. He was accompanied by three Canadians and an Indian guide, and six dogs hauled three sleds laden with provisions and baggage. The course was sometimes on the ice of the Stone Indian River, but, to avoid its windings, mostly on the north side. In the afternoon the Manito Hills were reached—a long, low ridge of sand knolls, steep on the west side, sloping more gradually on the east, growing only a few patches of grass, and retaining no snow during the whole winter; which phenomenon the Indians regard as preternatural and fix that idea in the name. Except the sand ridge, the country is very fine, especially at the junction of the Moose River, about half a mile below the trading-house.

As the journey proceeded day after day, the snow was found to increase in depth, and it was no easy task to beat a path for the dogs and sleds, the snow shoes of the foremost man sinking six inches at every step. The guide became so fatigued that he had to be relieved two or three hours every day.

On the 7th March he arrived at the junction of Stone Indian with Red River, in latitude $49^{\circ} 53' 1''$, longitude 97° , variation nine degrees East. In a straight line the course is north, 82° east, one hundred and twelve miles; the windings of the river are more than three times this distance, and the distance travelled was one hundred and sixty-nine miles.

On the 7th March, 1798, Mr. Thompson began the survey of the Red River, and on the 14th he arrived at the trading-house of the North-West Company, under charge of Monsieur Charles Cha-50 boiler, by whom the party were kindly received. The travelling during these eight days was very

difficult. The snow was fully three feet deep, and the surface of the river ice was covered by water the weather being mild, with showers of rain. The snow, mixed with water, stuck to the sleds, and made it impossible for the dogs to haul them. Many times a couple of men had to assist the dogs in extricating them. In wet weather everything was soaked, and had to be dried. To beat the road was slavish work. Ankles and knees were sprained by the weight of wet snow that adhered to the snow-shoes; and the difficulty was increased by the long gait that had to be walked over.

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Mr. Thompson had to take the place of the guide. He tied a string to the toe of each snow-shoe, and holding the opposite ends in his hands, lifted them out of the soft snow. In this way, with his gun slung on his back, the party marched on the west side of the river. The whole distance was over long prairie grass, very difficult to walk among. The only trees were of oak, ash, alder and nutwood; but the numerous charred stumps afforded evidence that on this side of the river had once grown a pine forest. In the more northern regions the pines, when destroyed by fire, have been succeeded by aspens, poplars and alders; but along the Red River, the excellence of the soil and the mildness of the climate made the successors of the pines similarly destroyed, oak, ash, alder and nutwood.

At this trading-house, where he arrived on the 14th, Mr. Thompson remained for six days. He determined its position to be latitude $48^{\circ} 58' 24''$, longitude $97^{\circ} 16' 40''$, variation of the compass eight and a-half degrees East, being one minute and thirty-six seconds south of the United States boundary line, which Mr. Thompson pointed out, in order that the trading-house might be removed beyond it. This line was, several years later, confirmed by Major Long, of the United Corps of Engineers. From the junction of the Stone Indian with the Red River, it is south eleven degrees and a quarter, West sixty-five and a half statute miles; to the boundary line sixty-four miles.

The number of Indians (Chippeways) who traded at this house was ninety-five men; and supposing every one of them to represent a family of seven souls, we have an aggregate of 665. At Rainy River House, in latitude $48^{\circ} 36' 58''$, longitude $93^{\circ} 19' 30''$, on a course hence south eighty-two degrees East, a distance of one hundred and eighty-four miles, sixty of the same tribe traded, representing four hundred and twenty more. If we divide the families by the mileage of the hunting-ground, every seven souls will be found to have had a hunting-ground of one hundred and fifty to one hundred and eighty square miles. And yet they had very little provisions to spare; proof that this part of the country did not even then abound in wild animals. This circumstance would furnish a reason why the Hudson's Bay Company would not care to extend their operations there. The beaver had become scarce; not being obliged to use the same hard materials in building his house as are necessary further north, this animal had been a comparatively easy prey to the Indian. In summer these Indians subsist on fish, and in autumn, part of them on wild rice.

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The Red River is here one hundred and twenty yards wide. Eleven miles further down it receives the waters of the Reed River, from the eastward. It is about the same width, but less deep. This part of the river is called Pembina, from a small stream that comes in. The deep rich soil of the Red River is everywhere fit for cultivation.

York Factory, on Hudson's Bay, was distant north, twenty-four degrees East, six hundred and sixteen miles in a straight line, and not less than nine hundred miles by the only practicable route. The obstructions occasioned by carrying places would greatly lengthen the time and labour of the voyage.

On the 21st March, Mr. Thompson and party started on their journey down the banks of the river, and on the 25th arrived at the North-West Company's house, under charge of Monsieur Baptiste Cadotte, latitude $47^{\circ} 54' 21''$, longitude $96^{\circ} 19'$, variation 10° East. The weather was fine during the journey, and the frosts of night made the snow firm several hours of the day. In some places there was a fine border of woods along the river, from thirty to three hundred yards wide. Among the varieties were oak, ash, elm and basswood; the aspens become more frequent. There is a fine rich, deep soil the whole distance.

On the 9th April, the Red River being clear of ice, Mr. Thompson left the trading-house in charge of M. Cadotte, whither he had returned in a canoe, eighteen feet long, accompanied by three Canadians and a native woman, the wife of one of the men, provided with a stock of twelve days' provisions. The object of the expedition was to survey the country to the source of the Mississippi River. There

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was a choice of two routes; that direct to Red Lake, where the current was moderate, but liable to be encumbered with ice from the lake; or Clear Water River, where the current was swift, but where there was no fear of ice. The latter was chosen, and a slow progress up it commenced. This river was fifty yards wide, and now, from the melting of the snow, about eight feet deep, though in August and September its depth is not over two feet.

On the 11th, the junction of Wild Rice River was passed; after which the current became more moderate and the quantity of water less. Next day the carrying place which leads to Red Lake River was reached, a distance of sixty-four miles up this sinuous river having been made. The east or right bank was covered with a fine forest of pine, but higher up the aspen prevailed. On the west bank grew patches of hard-wood, with a rich soil and fine meadows leading to the plain. The carrying-place 10 is four miles long, part marsh and part ground; it leads to the bank of the Red Lake River, in latitude $48^{\circ} 0' 55''$, longitude $95^{\circ} 54' 25''$, variation ten degrees East.

The course now lay up this river to Red Lake, a distance of thirty-two miles. Both banks were well timbered, oak, ash and other hard woods being intermixed with aspen and poplars, the rich deep soil everywhere covered with water from the melting of the snow. So level was the surface that only here and there a bit of dry land was to be seen. At night the party cut down trees to sleep upon.

The head of this river, at its junction with the lake, was found by observation to be in latitude $47^{\circ} 58' 15''$, longitude $95^{\circ} 35' 37''$. To make a distance in a straight line north 82° East, it was necessary to travel one hundred and seventeen statute miles, and consume seven days of fourteen hours each.

At this lake, the old Chief She-she-she-pas-kut, with six lodges of Chippeways, was encamped. 20 The Chippeways being without a canoe, Mr. Thompson lent them his, with which to spear fish in the night.

Three sturgeon, weighting sixty pounds each, were caught. They were good for clear water lake sturgeon; this fish, like the hog, being most at home in mud.

Red Lake is a fine sheet of water, about thirty miles in length and ten in breadth; the banks twenty to thirty feet high; the soil, somewhat sandy, produces fine firs and other woods; in some places dwarf white cedar. The North-West Company occasionally has a trading-house here for a winter. The country, poor in furs, would be exhausted by a winter's hunt, and would require to lie fallow for some time. The lake being partly covered with ice, the canoe was paddled in open places, and hauled on a rude sled, extemporized for the occasion, over patches of ice. This amphibious kind of travelling was 30 continued over a distance of seventeen miles; wet, laborious work, performed amid many showers of rain and sleet.

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A carrying-place, six miles long, had now to be passed, in a southerly direction, the road leading through a forest of firs and aspen, with a sprinkling of oak and ash. The ground in the middle of the carrying-place presented numerous ascents and descents of from twenty to forty feet; the first met since Red River was left. By nine o'clock P.M., April 23, everything had been carried overland to Turtle Lake. The source of the Mississippi River was reached four days later. The journey was very fatiguing. The country travelled over presented a succession of lakelets or ponds, some of which were open and some partly covered with ice, winding brooks and carrying-places. The low level country everywhere presented the appearance of an immense marsh, growing an abundance of wild rice over 40 an area of at least 6,000 square miles.

The distance from Red River, south 70° East, fifty-six statute miles, was made in nineteen days—not quite three miles in a direct line, a day. Owing to the winding character of the brooks, an hour's paddling would sometimes produce scarcely any progress.

Turtle Lake, the head of the Mississippi River, is about four miles square. Its small bays give it the shape of a turtle. This lake was supposed, in 1783, to be further north than the north-west corner of the Lake of the Woods, and this supposition led to the error in the treaty of that year. The error arose from the fur-traders who ascended the Upper Mississippi counting every pipe a league, at the end of which it was the habit to take a rest. Mr. Thompson found these pipe distances to be as unsubstantial as the smoke itself, and that each instead of three only measured two miles. And the 50

error was, not to make due allowance for the sinuosities of the river. By this false method of reckoning the notion had arisen that the head waters of the Mississippi was 128 geographical miles farther north than Mr. Thompson's survey proved them to be. The north bank of the lake is in latitude $47^{\circ} 38' 20''$, longitude $95^{\circ} 12' 4''$.

Mr. Thompson here fell in with two canoes of Indians on their way to Red Cedar Lake, and as his own canoe was leaking he went with them in one of theirs. On the south-west corner of Turtle Lake is Turtle Brook, three yards wide, two feet deep, and having a current of two and-a-half miles an hour. Rather than follow its windings, they made a portage of 180 yards to a small lake out of which they emerged into a brook, the fantastic windings and turnings of which they followed through a country of grass and marsh. Three portages had to be made to avoid as many falls, and several rapids, with a gravelly bottom, were passed over. On approaching Red Cedar Lake, several brooks from either side contributed their waters; the stream at the entrance of the lake being fifteen yards wide, two feet deep, and having a current of three miles an hour. Crossing the lake, a distance of five miles, Mr. Thompson reached a trading-house of the North-West Company, in charge of John Sayer, one of the partners, which was found to be in latitude $47^{\circ} 27' 56''$, longitude $94^{\circ} 52'$, variation six degrees East. From the mouth of Turtle Lake to this trading-house the distance is south, 58 degrees East, 25 miles; but the windings of the river more than treble the distance to be travelled. On each side of the valley grew oak, ash, elm, birch, pine, aspen, and, where there was a little elevation, fine maple; soil deep, grass long. Mr. Sayer and his men had passed the whole winter here, on no more substantial food than wild rice and maple sugar. The rice made good soup, but when Mr. Thompson tried to live on it he soon became ill. About sixty heads of families traded at this house, and Mr. Sayer estimated each Indian family at seven persons, which would make the whole number 420.

On the 3rd May, Mr. Thompson started down the river, now expanded to twenty-six yards in width by three deep, and having a current of two miles an hour. The Valley of the Mississippi had here the appearance of a meadow of long, half-dried grass, free from water, and scarcely half a mile wide, gradually expanding as it descends. At the mouth of Sand Lake River the river becomes sixty-two yards wide and twelve feet deep. Sand Lake River, south, 48 degrees East, is sixty-eight miles from Red Cedar Lake. In this distance there are ten miles of lake and fifty-eight of river. The windings on the river make the distance to be travelled on it two hundred miles. The descent from Turtle Lake to Cedar Lake is ninety-seven feet nine inches, and from Cedar Lake to Sand Lake River 333 feet 4 inches, making a change of level of no less than 431 feet in an apparently even country.

Arriving at Sand Lake River, on the 6th, Mr. Thompson entered it to make his way to Lake Superior. This river is twenty yards wide, five in depth, and runs a mile and a half an hour. When he had proceeded a mile, half the distance to Sand Lake, Mr. Thompson arrived at another trading-house of the North-West Company, under charge of Mr. Boiské. Here were the women and children of about twenty families. All the furs bought at his post were the produce of the country between the Mississippi River and Lake Superior. Twenty heads of families brought their furs here; reckoning seven to a family, this post must have been supported by the labour of two hundred and ninety-four Indians, men, women and children. This trading-house was found to be in north latitude $40^{\circ} 46' 46' 30''$, longitude $93^{\circ} 44' 17''$ West.

Mr. Thompson had now to cross the country to reach the river St. Louis, by which he was to descend to Lake Superior. Crossing Sand Lake, May 7th, which is about four miles in length and one wide, to Savannah Brook, he proceeded eight geographical miles—made nine by detours—to a great swamp, a mile wide, in a north, 81 degrees East, direction, the latter portion consisting of a bog, being passed over by means of a few sticks to form a road, to slip from which entailed the penalty of sinking down to the waist. Across this description of country, growing scrubby pines a few feet high, all the baggage of the party had to be carried. Over this route the North-West Company had to carry all the furs, provisions, baggage, goods, and canoes connected with their trade between Lake Superior and the Mississippi. The custom was for the person in charge of the brigade to cross this bog and swamp as rapidly as possible, leaving the men to take their own time. It was so difficult to get canoes or goods over this swamp, of which no one standing in the middle could see the end, in any direction, it was the

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custom of the North-West Company to keep canoes at both ends. The swamp having been crossed after a hard day's work, and with the aid of an extra man, Mr. Thompson found the latitude to be $46^{\circ} 52' 3''$ North, longitude $92^{\circ} 28' 42''$ West, variation six degrees East.

Passing through a small brook a distance of twelve miles in a direct line, but twenty by its course, Mr. Thompson entered the River St. Louis, a stream about one hundred yards wide and eight deep. The men of his party, who had been in the habit of navigating this river for years, assured him that in August and the two following months it has only eighteen inches of water, running among stones, which it is often necessary to turn the canoe aside to avoid. In one of the many rapids of this river the canoe filled with water. Then came cataracts formed by a series of small steps round a point of rock necessitating resort to a carrying place 1,576 yards long. Then, after four miles more, another carrying 10 place of seven miles, where, on the left of the travellers, the river has a series of falls estimated at one hundred and twenty feet, below which the river flows with a moderate course into Lake Superior. Near the mouth of the river was a trading-house of the North-West Company, under charge of M. Lemoine, in latitude $46^{\circ} 44' 33''$, longitude $92^{\circ} 9' 45''$, variation five and a half degrees East. M. Lemoine's returns were six hundred pounds of furs, and he expected to obtain four hundred pounds more, nine kegs of gum from the fir trees to staunch the canoes, and one hundred and twenty gallons of maple sugar.

"I have," says Mr. Thompson, "only set down my observations made at certain places, but they are numerous all over the survey, as every clear day no opportunity was omitted of taking observations for latitude and longitude to correct the course and distances of the survey."

It was customary to lay up the canoes that descend the river to Lake Superior, as well as those that came up the lake. Mr. Thompson's party had to take a northern canoe, twenty-eight feet in length, in a state of dilapidation. They repaired it and fitted it up with two oars, as there were only three men to encounter the winds and waves of Lake Superior.

In canoes such as that Mr. Thompson here obtained, the fur trade was carried great distances into the interior; in his own words, it "extended to within two or three days' march of the shores and factories of Hudson's Bay."

EXTRACTS FROM SIR ALEXANDER MACKENZIE'S HISTORY OF THE FUR TRADE.

Extracts from
Mackenzie's
History of
the Fur
Trade.

[Sir Alexander Mackenzie, in *A General History of the Fur Trade, from Canada to the North-West*, † shows how the Canadian traders preceded the Hudson's Bay Company in the North-West. The following is extracted from his work:]—

The Indians, therefore, to procure the necessary supply, were encouraged to penetrate into the country, and were generally accompanied by some of the Canadians, who found means to induce the remotest tribes to bring the skins which were most in demand, to their settlements, in the way of trade.

At length, military posts were established [by the French] at the confluence of the different large lakes of Canada, which, in a great measure, checked the evil consequences that followed from the improper conduct of these foresters [*coureurs des bois*], and at the same time protected the trade. Besides a number of able and respectable men, retired from the army, prosecuted the trade in person, under their respective licenses, with great order and regularity, and extended it to such a distance, as in those days was considered to be an astonishing effort of commercial enterprise.

They [the Missionaries] were, during their mission, of great service to the commanders who engaged in those distant expeditions, and spread the fur trade as far west as the banks of the Saskatchewan river, in 53° north latitude and longitude 102° West. * * *

Notwithstanding all the restrictions with which commerce was oppressed under the French Government, the fur trade was extended to the immense distance which has been already stated; and surmounted many most discouraging difficulties, which will be hereafter noticed; while at the same time,

† Pp. 1, 3, 5-22, 53, 57-8, 65, 69, 73, 91. It is printed with and forms an introduction to the work: "Voyages from Montreal, on the River St. Lawrence, through the Continent of North America, to the Frozen and Pacific Oceans, in the years 1789 and 1793, by Alexander Mackenzie, Esq. London: 1801.

no exertions were made from Hudson's Bay to obtain even a share of the trade of a country which, according to the Charter of that Company, belonged to it, and from its proximity, is so much more accessible to the mercantile adventurer. * * *

For some time after the conquest of Canada this trade was suspended, which must have been very advantageous to the Hudson's Bay Company, as all the inhabitants to the westward of Lake Superior were obliged to go to them for such articles as their habitual use had rendered necessary. Some of the Canadians who had lived long with them, and were become attached to a savage life, accompanied them thither annually, till mercantile adventurers again appeared from their own country, after an interval of several years, owing, as I suppose, to an ignorance of the country in the conquerors, and their want of commercial confidence in the conquered. There were, indeed, other discouragements, such as the immense length of the journey necessary to reach the limit beyond which this commerce must begin; the risk of property; the expenses attending such a long transport; and an ignorance of the language of those who from their experience must be necessarily employed, as the intermediate agents, between them and the natives. But, notwithstanding these difficulties, the trade by degrees began to spread over the different parts to which it had been carried by the French, though at a great risk of the lives, as well as the property, of their new possessors, for the natives had been taught by their former allies to entertain hostile feelings towards the English, from their having been in alliance with their natural enemies the Iroquois; and there were not wanting a sufficient number of discontented, disappointed people to keep alive such a notion; so that for a long time they were considered and treated as objects of hostility. To prove this disposition of the Indians, we have only to refer to the conduct of Pontiac at Detroit, and the surprise and taking of Michilimakinac about this period.

Hence it arose that it was so late as the year 1766, before which the trade I mean to consider commenced at Michilimakinac. The first who attempted it were satisfied to go the length of the River Camenistiquia, about thirty miles to the eastward of the Grande Portage, where the French had a principal establishment and was the line of their communication with the interior country. It was once destroyed by fire. Here they went, and returned successful in the following spring to Michilimakinac. Their success induced them to renew their journey, and invited others to follow their example. Some of them remained at Camenistiquia, while others proceeded to and beyond the Grande Portage, which since that time has become the principal entrepôt of that trade, and is situated in a bay, in latitude 48° north and longitude 90° West. After passing the usual season there, they went back to Michilimakinac as before, and, encouraged by the trade, returned in increased numbers. One of these, Thomas Curry, with a spirit of enterprise superior to that of his contemporaries, determined to penetrate to the furthest limits of the French discoveries in that country; or at least till the frost should stop him. For this purpose he procured guides and interpreters, who were acquainted with the country, and with four canoes arrived at Fort Bourbon, which was one of their posts at the west end of Cedar Lake, on the waters of the Saskatchewan. His risk and toil were well recompensed, for he came back the following spring with his canoes filled with fine furs, with which he proceeded to Canada, and was satisfied never again to return to the Indian country.

From this period people began to spread over every part of the country, particularly where the French had established settlements.

Mr. James Finlay was the first who followed Mr. Curry's example, and with the same number of canoes, arrived in the course of the next season at Nipawee, the last of the French settlements on the bank of the Saskatchewan River, in latitude nearly 43½° [53½°] North, and longitude 103° West; he found the good fortune, as he followed in every respect the example of his predecessor.

As may be supposed, there were now people enough ready to replace them, and the trade was pursued with such avidity and irregularity, that in a few years it became the reverse of what it ought to have been. An animated competition prevailed; and the contending parties carried the trade beyond the French limits, though with no benefit to themselves or neighbours, the Hudson's Bay Company; who in the year 1774, and not till then, thought proper to move from home to the east bank of Sturgeon Lake, in latitude 53° 56' North, and longitude 102° 15' West, and became more jealous of their fellow subjects, and, perhaps, with more cause, than they had been of those of France. From this period to

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the present time, they have been following the Canadians to their different establishments, while on the contrary, there is not a solitary instance that the Canadians have followed them; and there are many trading posts which they have not yet attained. This, however, will no longer be a mystery when the nature and policy of the Hudson's Bay Company is compared with that which has been pursued by their rivals in this trade.

This competition which has been already mentioned, gave a fatal blow to the trade from Canada and, with other incidental causes, in my opinion, contributed to its ruin. * * *

Thus was the trade carried on for several years, and consequently becoming worse and worse, so that the partners, who met them at the Grande Portage, naturally complained of their ill-success.

It was about this time that Mr. Joseph Frobisher, one of the gentlemen engaged in the trade, 10 determined to penetrate into the country yet unexplored, to the north and westward, and, in the spring of the year 1775, met the Indians from that quarter on their way to Fort Churchill, at Portage de Traite, so named from that circumstance on the banks of the Missinipi or Churchill River, latitude 55° 25' North, longitude 103½° West. It was indeed with some difficulty that he could induce them to trade with him, but he at length procured as many furs as his canoes could carry. * * * He then sent his brother to explore the country still further west, who penetrated as far as the Lake of Isle à la Crosse, in latitude 55° 26' North, and longitude 108° West.

The success of this gentleman induced others to follow his example, and in the spring of the year 1778, some of the traders on the Saskatchewan River, finding they had a quantity of goods to spare, agreed to put them into a joint stock, and gave the charge and management of them to Mr. Peter 20 Pond, who, in four canoes, was directed to enter the English River, so called by Mr. Frobisher, to follow his track, and proceed still further, if possible to Athabasca, a country hitherto unknown but from Indian report. In this enterprise he at length succeeded, and pitched his tent on the banks of the Elk River, by him erroneously called the Athabasca, about thirty miles from the Lake of the Hills, into which it empties itself.

Here he passed the winter of 1778-9; saw a vast concourse of the Knisteneaux and Chepewyan tribes, who used to carry their furs annually to Churchill; the latter by the barren grounds, where they suffered innumerable hardships, and were sometimes even starved to death. The former followed the course of the lakes and rivers, through a country that abounded in animals, and where there was plenty of fish; but though they did not suffer from want of food, the intolerable fatigue of such a jour- 30 ney could not be easily repaid to an Indian; they were, therefore, highly gratified by seeing people come to their country to relieve them from such long, toilsome, and dangerous journeys; and were immediately reconciled to give an advanced price for the articles necessary for their comfort and convenience. Mr. Pond's reception and success was accordingly beyond his expectation; and he procured twice as many furs as his canoes would carry. They also supplied him with as much provisions as he required during his residence among them, and sufficient for his homeward voyage. Such of the furs as he could not embark, he secured in one of his winter huts, and they were found the following season, in the same state in which he left them.

These, however, were but partial advantages, and could not prevent the people of Canada from seeing the improper conduct of some of their associates, which rendered it dangerous to remain any 40 longer among the natives.

Most of them who passed the winter at the Saskatchewan, got to the Eagle Hills, where, in the spring of the year 1780, a few days previous to their intended departure, a large band of Indians being engaged in drinking about their houses, one of the traders, to ease himself of the troublesome importunities of a native, gave him a dose of laudanum in a glass of grog, which effectually prevented him from giving further trouble to any one, by setting him asleep forever. This accident produced a fray in which one of the traders and several of the men were killed, and the remainder saved themselves by precipitate flight.

About the same time, two of the establishments on the Assiniboin River were attacked. . . . Nothing but the greatest calamity that could have befallen the natives, saved the traders from destruc- 50 tion: this was the small-pox which spread its destructive and desolating power, as the fire consumes

the dry grass of the field. The fatal infection spread around with baneful rapidity which no flight could escape, and with a fatal effect that nothing could resist. * * *

The consequence of this melancholy event to the traders must be self-evident; the means of disposing of the goods were cut off; and no furs were obtained but such as had been gathered from the habitations of the deceased Indians, which could not be very considerable; nor did they look for the losses of the present year with any encouraging expectations to those which were to come. The only fortunate people consisted of a party who had again penetrated to the northward and westward, in 1780, at some distance up the Missinipi, or English River, to Lake la Roche. Two unfortunate circumstances, however, happened to them, which are as follows:

10 Mr Wadin, a Swiss gentleman, of strict probity and known sobriety, had gone there in the year 1779, and remained during the summer of 1780. * * *

The other circumstance was this. In the spring of the year, Mr. Pond sent the above-mentioned clerk to meet the Indians from the northward, who used to go annually to Hudson's Bay; when he easily persuaded them to trade with him, and return back, that they might not take the contagion which had depopulated the country to the eastward of them; but most unfortunately they caught it here, and carried it with them, to the destruction of themselves and the neighbouring tribes.

The country being thus depopulated, the traders and their friends from Canada, who, from various causes, already mentioned, were very much reduced in number, became confined to two parties, who began seriously to think of making permanent establishments on the Missinipi River, and at Athabasca; 20 for which purpose, 1781-2, they selected their best canoe-men, being ignorant that the small-pox penetrated that way. The most expeditious party got only in time to the Portage la Roche, or Mithy-Ouinigam Portage, which divides the waters of the Missinipi from those that fall into the Elk River, to despatch one canoe, strong-handed, and light-loaded, to that country; but on their arrival there, they found, in every direction, the ravages of the small-pox; so that, from the great diminution of the natives, they returned in the spring with no more than seven packages of beaver. The strong woods and mountainous countries afforded a refuge to those who had fled from the contagion of the plains; but they were so alarmed at the surrounding destruction that they avoided the traders, and were dispirited from hunting, except for their subsistence. The traders, however, who returned into the country in the year 1782-3, found the inhabitants in some sort of tranquility, and more numerous than they had reason to 30 expect, so that their success was proportionably better.

During the winter 1783-4, the merchants of Canada engaged in this trade formed a junction of interests, under the name of the North-West Company, and divided into sixteen shares, without depositing any capital; each party furnishing a proportion or quota of such articles as were necessary to carry on the trade; the respective parties agreeing to satisfy the friends they had in the country, who were not provided for according to this agreement, out of the proportions of which they held. * * *

In the spring, two of those gentlemen went to Grand Portage with their credentials, which were confirmed and ratified by all parties having an option, except Mr. Peter Pond, who was not satisfied with the share allotted to him. Accordingly, he and another gentleman, Mr. Peter Pangman, who had right to be a partner, but for whom no provision had been made, came to Canada with a determination 40 to return to the country, if they could find any persons to join them and give their scheme a proper support.

[The traders in the country, and merchants in Montreal, entered into a co-partnership, and were successful. Pond joined them; but Pangman, Gregory and McLeod formed a separate business. Mackenzie had been five years in Gregory's counting-house, and now left him to seek his fortune at Detroit, where Gregory established an agency, admitted Mackenzie as a partner, and sent him to the Indian country. After the murder of one of the partners, the laming of another, and the narrow escape of one of the clerks who received a bullet through his powder-horn, in the execution of his duty, those who were in possession of the trade of the country were compelled to allow Mackenzie and his partners a share of the trade, and a union was completed in July, 1787. In 1788, the gross adventure 50 for the year did not exceed £40,000. In 1798, the number of shares was increased from 20 to 46. The French, when in possession, had several trading establishments upon the islands and banks of Lac Bois

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Blanc, and also several settlements in and about Lake du Bois, which is in latitude 49° 37', longitude 94° 31'. The northernmost branch of the source of the Mississippi is in latitude 47° 38', longitude, 95° 6'.]

On these waters [those of the Dauphin River, etc.] are three principal forts for trade—Fort Dauphin, which was established by the French, before the conquest; Red Deer River and Swan River forts, with occasionally posts detached from these. The inhabitants are the Knistineaux, from the north of Lake Winnipic; and Algonquins, from the country between Red River and Lake Superior. * * *

There are on this River [Saskatchiwine] five principal factories for the convenience of the trade with the natives—Nepawi House, South-Brauch House, Fort George House, Fort Augustus House, and 10 Upper Establishment. There have been many others which for various causes have been changed for these.

It may be proper to observe that the French had two settlements upon the Saskatchiwine long before, and at the conquest of Canada—the first at the Pasquia, near Carrot River, and the other at Nipawi, where they had agricultural instruments and wheel-carriages, marks of both being found about those establishments, where the soil is excellent.

Till the year 1782, the people of Athabasca sent or carried their furs regularly to Fort Churchill Hudson's Bay; some of them have since that time repaired thither, notwithstanding they could have provided themselves with all the necessaries which they required.....At present, however, this traffic is in a great measure discontinued.

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EXTRACTS FROM MR. HENRY'S JOURNAL OF TRAVEL IN THE NORTH-WEST AND
 ACROSS THE ROCKY MOUNTAINS TO THE PACIFIC, 1800-1809.*

(1800.)

Extracts from Henry's Journal of Travel in the North-west, 1800-1809.

Monday, 4th August.—At day break we embarked and passed the old Hudson's B. C. establishment which has now been abandoned for several years.†

Tuesday, 19th August.—We began early this morning to unpack the goods, to assort and divide them, the one-half being intended for Portage la Prairie, and the remainder for the Red River. This employed us the greatest part of the day, settling the men, delivering the baggages, and attending to the Indians, who were still drinking. At twelve o'clock, five Hudson Bay Company's boats from Albany Factory, or rather Martin's Falls, arrived here,—Mr. Robert Goodwin, Master, assisted by a Mr. 30 Brown; they put ashore and remained with us until four o'clock, when they embarked and proceeded up the Assiniboine River. Their boats carry about forty-five packages of unequal weight, but may be said to average eighty pounds each, conducted by four oars and a steersman; they are neatly built and painted, and sharp at both ends.....

Upon this point, in the time of the French, there was a trading establishment, traces of which are still to be seen. Their chimneys and cellars stood. I am also informed that there was at the same time a chapel and a missionary here for several years, but I don't believe they ever made much progress towards civilizing the nations... Brigade of canoes and boats overtook and camped with us, with Mr. John McDonell, one of the proprietors of the North-West Company.... He proposes to winter himself at Rivière Qu'Appelle.

Wednesday, 20th.—Early this morning Mr. McDonell with his brigade left us.... 40

Friday, 5th September.—Early this morning I sent off the Indians ahead on discoveries. We came to the Paubian River and crossed over to the old fort which was built in 1797-8 by Mr. Chollailler, opposite to the entrance of the river. On the east side of the Red River are the remains of an old fort built by Mr. Peter Grant some years ago, and was the first establishment ever built on the Red River.

* MS. in Library of Parliament, Ottawa.

† Below Monitore Rapids on Rivière Noir, near the entrance of the Lake of the Woods.

(1806.)

The whole of this year appears to have been spent at the old settlement of Kaministiquia, on the north-west of Lake Superior.....

At this period, scattered around the country, was a population of about 80,000, which he has noted down as follows:—

DEPARTMENTS.	WHITES.			INDIANS.		
	Men.	Women.	Children.	Men.	Women.	Children.
Athabasca.....	208	48	84
Athabasca River.....	37	12	15	55	38	66
English River.....	78	40	63	211	380	1,100
10 Rat River.....	25	7	10	70	90	150
Fort Des Prairies.....	136	59	103	4,823	13,632	45,906
Fort Dauphin.....	45	22	18	19	17	31
Upper Red River.....	56	52	82	1,170	1,200	2,500
Lower Red River.....	75	40	60	160	190	250
Lake Winnipeg.....	88	11	15	90	111	194
Lac La Pluie.....	46	10	10	103	141	195
Fond du Lac.....	128	29	50	449	784	1,944
Nepigon.....	90	20	20	238	283	299
Kaministiquia, Mille } 20 Lac and des Chènes }	62	16	36	70	84	178
Pic.....	16	2	3	44	45	58
Traders.....	520	37	31
Total.....	1,610	405	600	7,502	16,995	52,871

(1807.)

August 31st.—This season we were troubled by an augmentation of freemen from Canada, etc.; their total numbers now in this [Pambian] river amount to forty-five men. More worthless fellows could not be found in the North-West.

September 14th.—I sent off a boat for above, Wm. Henry, master, with T. Veauldrie, interpreter, and seven men, to build at the Grande Fourche.

30

(1808.)

August 22nd.—We passed old Fort Bourbon, near which we entered one of the channels of the Saskatchewan.

24th.—At eleven o'clock we entered the main channel of the Saskatchewan, and soon after we arrived at the Opas. This place may be said to be the first spot of real dry land we have seen since we left Lac Bourbon. The little river of the Montagne du Pas [or Pasquiaw Mountain] comes in here on the south side. Formerly the French had an establishment at this spot, some trails of which are to be seen. It was also a place of general rendezvous for the different tribes of Indians previous to the small-pox. . . .

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26th.—We came to the entrance of Sturgeon Lake, where we put ashore on an island, whose black, rocky shore gave us every reason to suppose we have our feet once more on a spot of terra firma. Upon this island our northern-bound brigades generally unload, and proceed to Cumberland House for their supply of provisions, which having brought, they loaded and proceeded along the lake in a northern direction to the entrance of Rivière Matine, about twelve leagues from this; then up this river, and through a succession of lakes and rivers to their respective destinations, some even to the Columbia on the westward, and others to the McKenzie River to the north-west. It is from this vast extent of country from which the North-West Company may be said to draw their treasures. It is true, profits arise from the trade in other parts of the country to the eastward, but nothing in comparison to what we obtain from the Athabasca country.

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Tuesday, 30th August.—At twelve o'clock we passed the old establishment at the *Nepawee*, which stands on the south side [of the River Saskatchewan.]

Wednesday, 31st August.—At 6 o'clock we encamped at the spot where the French formerly had an establishment, called Fort St. Louis, built by Luc La Corne.* It stands in a low bottom, south side. At this place, some years ago, were to be seen agricultural instruments and remains of carriage wheels. Their road to the open plains is still to be seen, winding up a valley on the south side.

Thursday, September 1st.—At 4 o'clock we were again upon the water, and at 9 o'clock we arrived at an old establishment of our own, which has been abandoned since 1805, called Fort St. Louis, from its proximity to the old French Fort below.

Saturday, 3rd September.—At 2 o'clock we passed old Fort Providence, which stands upon an island, and soon after we came to the Sturgeon Fort, where there still appeared the remains of several old establishments. . . . We passed those ruins, and soon after came to the entrance of the Setting River, or Pucketowasipi, where we found a camp of twenty leather tents of Crees, a few Saulteaux, and two Freemen on the south side. I crossed over and camped upon the north side, upon a beautiful small meadow, on the banks of the river, where there was every appearance of a range of forts having stood many years ago. . . . Among them were several Mongrels, who were very troublesome during the night. I was frequently on the point of chastising one of them in particular, for his insolence. I had always observed in this country that whenever any of these people are living among the Indians, and have abandoned themselves entirely to the savage life, they are the worst of Indians, given to all kinds of roguery, and incite the natives to be more troublesome than they would otherwise be. 20

Sunday, 4th September.—Having finished my business with those troublesome fellows, and purchased three horses from them, and hired one of those rascals as hunter, to go up in company with us, I packed up the skins I had traded and gave them in charge of the Freemen, to be delivered at my house at the South Branch, which is only one day's journey from this across by land. At seven o'clock I sent the hunter and my guide off by land, on the north side, with the horses, as the country above will not admit of travelling by horses near the river, being covered with pine and brushwood, and over-run by swamps and marsh-grasses. . . . At two o'clock we passed Hudson's House on the north side, an old establishment of the Hudson's Bay Company, and at sunset we arrived at *Les Ecores Jaunes*, which is open on the north side. Here we found a camp of ten Crees and a few Saulteaux and Freemen, who had a number of horses belonging to them. I gave them liquor for some provisions they gave me, and I purchased three horses from them. They were not so troublesome as those we left this morning. 30

Wednesday, 7th September.—On our coming to the canoes, we met a Freeman from above, who had been sent down in a small canoe to inform us that Crees having fled from above had assembled at the Battle River, and had determined to prevent us from passing upwards, to keep the Slave Indians from receiving any supplies from us in arms or ammunition, as they were apprehensive that a serious war would be the consequence.

Thursday, 8th September.—Passed the old Fort of Montagne D'Aigle, which is now only a heap of ruins, which lays in a low bottom on the north side of the river. It was at this place where the traders who then wintered here and the Crees had a battle, in the spring of the year 1780, when one of the traders was killed by a Canadian, and one Cree. The traders were obliged to fly, and abandon their property to the mercy of the Indians, who pillaged and destroyed the major part. 40

Sunday, 11th September.—We found them [our men] encamped near the Old Fort Brulé which has been abandoned for some years past. It was built on a presqu'isle on the north side. At this place the H. C. Co. servants were plundered by the Fall Indians, and narrowly escaped being all murdered. The same attempt was made upon the N. W. Co. establishment, but by the intrepid behaviour of one of the clerks, they were repulsed, and obliged to retire with the booty they had got from the H. B. Co. house.

* See Col. de Bougainville's Mémoire.

Tuesday, 13th September.—At sunset arrived in front of our establishment of Fort Vermillion, which lays in a low flat bottom of meadow directly opposite the Vermillion River, on the south side, where we observed a large camp of Slave Indians, who, on observing us coming down the hills, began to whoop and halloo, and appeared rejoiced at seeing us. We passed the H. B. Co. fort, and soon after entered our own, where all hands were happy to see us. Soon after my arrival I was visited by our H. B. neighbors, MM. Hallette and Longmore, who were anxious to hear the news from Europe, having been deprived that satisfaction since this time last year. Nothing extraordinary had occurred here in the course of the summer, further than the disturbances between the Slave Indians and the Crees. The former were still exasperated against the treacherous behaviour of the latter, and threatened to be revenged.

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In the dressing and preparing of their robes, they [the Big Bellies or Rapid Indians] are far superior to the Slave Indians, and fully equal to the Mandanes. They are a most audacious and turbulent race, and have repeatedly attempted to destroy and massacre us all. The first glaring attempt was made at old Fort Brulez, in 1793, when they pillaged the H. B. Co. fort instantly, and were proceeding to commit a similar outrage upon that of the N. W. Co., but through the spirited conduct of one of the clerks they were repulsed, and fled with the booty they had already acquired from the H. B. Co. establishment. The summer following, they assembled and made a formal attack upon the H. B. Co. Fort at the South Branch, which they destroyed, massacred, and took away everything they could find, leaving the place in ashes. At the same time they attempted to destroy the N. W. Co. Fort, which stood near that of the H. B. Co., but meeting with an unexpected resistance, they retired with the loss of one of their principal chiefs, and some others killed and wounded, since which period they have been more peaceable.

(1809.)

Friday, 20th October.—My men finished repairing their houses, and this evening every one was entered and settled for the winter, viz. :—

	Men.	Women.	Children.
No. 1. Parrentau	1	1	5
Perain	1	1	1
Clement	1	1	2
Dubois	1	1	1
			17 persons.
No. 2. Cardinale	1	1	5
La Doucure	1	1	0
Ottowa	1	1	3
Fichette	1	0	0
			15 persons.
No. 3. Crevier	1	1	1
Thyfault	1	1	1
Dument	2	1	4
Le Jeunesse	1	0	0
			14 persons.
No. 4. Guillion	1	1	0
Durand	1	1	1
Carrière	1	1	2
Martelle	1	1	4
La Blanc's Wife	0	1	2
			18 persons.

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Extracts from Henry's Journal of Travel in the North-West, 1800-1809.				
No. 5. Faille.....	1	1	4	
La Paire.....	1	1	3	
Susscier.....	2	1	1	
Gagnion.....	1	1	0	
No. 6. Parririan.....	1			17 persons.
Languedoe.....	1	1	6	
Croite.....	1	1	1	
Beauvois.....	1	1	1	
		0	0	
No. 7. Jerome.....	1	0	4	15 persons.
Rocque.....	1	1	1	
Rehelle.....	1	0	0	
Fleming.....	1	0	0	
No. 8. Hamelle.....	1	0	0	10 persons
No. 9. Mr. Small.....	1	0	0	1 person.
No. 10. Self.....	1	1	3	1 person.
Tent. F. Deschamp.....	1	1	4	5 persons.
F. Deschamp, junr.....	1	1	1	
Tent Martin.....	1	1	9	9 persons.
			6	
			8	8 persons.
	36	27	67	
				130 persons.

Tuesday, 24th.—I invited the H. B. Co. agents to breakfast, and settled with them concerning our 30 trade with the natives for the winter. I determined upon taking a jaunt up to Fort Augustus, took inventories, etc., and packed up the property for that purpose, that nothing might be given out in my absence.

Friday, 27th.—Passed the ruins of old Fort George, the chimneys of which are now only to be seen. At five o'clock it began to snow and blow hard. The country here is more level than this morning. At dark we came to the Dog Rump River, which having crossed, we stopped for the night. This river comes from the north-west and falls into the Saskatchewan, which is about two leagues south from us. The Moose River, where my horse-keeper is tented, takes its rise in the hills of that name, and empties itself into the Saskatchewan also, below Fort George.

Monday, 30th.—This may be said to be the final termination of the plains in this direction to the 40 west, on the north side of the Saskatchewan River. We now meet a long string of Indians on their march, mostly of them intoxicated; they wished us to stop, and called loudly for rum, but we continued on until we came to the very entrance of the strong wood, where the track brought us upon the bank, in sight of the river, between which and us lay a flat bottom, on which the two establishments presented themselves at our feet. The hill was steep and slippery. At 4 o'clock we entered the fort, after a tedious but expeditious journey from Fort Vermillion to Fort Augustus.

Tuesday, 31st.—They [the Blood Indians] appear much more troublesome here at present than they were when at Fort Vermillion, in September last. The Saskatchewan River is only 15 yards wide; the current is very swift, and bound in by high banks at no great distance from each other

the flat bottoms are not so extensive as below, but the banks are more steep and elevated, and covered with wood. . . . The ice is generally from ten to fifteen days later in coming here than at Fort Vermillion.

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Wednesday, 1st November.—Early, the Blood Indians were crossed over, and arrived at the
Forty principal men at our Fort [Augustus], and the sixty others at the H. B. . . . This afternoon
two of our men arrived with a large gang of horses from the Rocky Mountain portage, where they
had left our Columbian canoes safely embarked on the west side of the mountain, twenty-seven days
ago. They would not have been more than half that time had they passed by the usual route on the
south side of the Saskatchewan, but it would have been dangerous on account of the trouble among
the natives last summer. They came through a most dreadful country, on the north side.

Extracts from
Henry's
Journal of
Travel in the
North-west,
1800-1809.

Tuesday, 7th.—Here [Moose Creek] we had proposed sleeping, but an old woman arriving from
the fort brought us news that all the Assiniboinnes and Crees had declared war upon us, and were
every moment expected to arrive at the fort, as they were coming up on both sides of the river, and
determined to go up to Fort Augustus also, and sweep the river clear of all the whites they could find,
and take every horse that was belonging to us.

EXTRACTS FROM GENERAL PIKE'S TRAVELS, 1805-1807.

*Observations on the Trade, Views, and Policy of the North-West Company, and the National Objects
connected with their Commerce as it interests the Government of the United States, 1806.*

The fur trade in Canada has always been considered as an object of first importance to that colony,
and has been cherished by the respective governors of that Province by every regulation in their
power, under both the French and the English administrations. The great and almost unlimited in-
fluence the traders of that country had acquired over the savages was severely felt, and will long be
remembered by the citizens on our frontiers.

Gen. Pike's
observations
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Every attention was paid by the Cabinet of St. James, in our Treaty with Great Britain, to secure
to their Canadian subjects the privilege of the Indian trade within our territories; and with what
judgment they have improved the advantages they obtained, time will soon unfold.

In the year 1766, the trade was first extended from Michillimackinac to the north-west by a few
desperate adventurers, whose mode of life on the voyage, and short residence in civil society, obtained
for them the appellation of *Coureurs des Bois*. From this trading beginning arose the present North-
West Company; who, notwithstanding the repeated attacks made on their trade, have withstood every
shock; and are now, by the coalition of the late X. Y. Company, established on so firm a basis as to
bid defiance to every opposition that can be made by private individuals. By a late purchase of the
King's posts in Canada, they extended their lines of trade from Hudson's Bay to the St. Lawrence, up
that river on both sides to the lakes, from thence to Lake Superior,—at which place the North-West
Company have their head-quarters,—from thence to the source of Red River and on all its tributary
streams, through the country to the Missouri, through the waters of Lake Winnipeg to the
Saskatchewan, on that river to its source, up Elk River to the Lake of the Hills, up Peace
River to the Rocky Mountains, from the Lake of the Hills, up Slave River to the Slave
Lake; and this year they have despatched a Mr. Mackenzie on a voyage of trade and
discovery down Mackenzie's River to the North Sea; and also a Mr. McKay to cross the Rocky Moun-
tains, and proceed to the Western Ocean with the same objects. They have had a gentleman by the
name of Thompson making a geographical survey of the north-west part of the continent, who for three
years, with an astonishing spirit of enterprise and perseverance, passed over all that extensive and
unknown country. His establishment, although not splendid, (the mode of travelling not admitting it),

* *Exploratory travels through the Western Territories of North America, by Zebulon Montgomery Pike.* London, 1811. Pp. 158-46. The author was an American officer and traveller, born 1779.

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was such as to allow of the most unlimited expenses in everything necessary to facilitate his inquiries; and he is now engaged in digesting the important results of his undertaking. I find from the observations and suggestions of Mr. Thompson, that when at the source of the Mississippi, it was his opinion the line of limits between the United States and Great Britain must run such a course from the head of the Lake of the Woods as to touch the source of the Mississippi; and this I discovered to be the opinion of the North-West Company, who, we may suppose, or reasonably conclude, speak the language held forth by their Government. The admission of this pretension will throw out of our territory all the upper part of Red River, and nearly two-fifths of the territory of Louisiana; whereas if the line is run due west from the head of the Lake of the Woods, it will cross Red River nearly at the entrance; and, it is conjectured, strike the Western Ocean at Birch Bay, in Queen Charlotte Sound. These differences of opinion, it is presumed, might be easily adjusted between the two Governments at the present day; but it is believed that delays, by unfolding the true value of the country, may produce difficulties which do not at present exist. The North-West Company have made establishments at several places on the south side of Lake Superior, and at the head waters of the rivers Santeaux and St. Croix, which discharge themselves into the Mississippi. The first I met with, on the voyage up, was at Lower Red Cedar Lake, about one hundred and fifty miles above the Isle de Corbeau, being on the eastern side of the river, and distant therefrom six miles. It is situated on the north point of the lake, and consists of log buildings, flanked by picketed bastions on two right angles. The next establishment I met with was situated on Sandy Lake.

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The Fort at this place is situated on the south side of the lake near the east end, and consists of a stockade of one hundred feet square with bastions, and the south-east and north-west angles pierced for 20 small arms. The pickets are squared on the outside, and round within, of about one foot in diameter and are thirteen feet above ground. There are three gates. The principal one fronts the lake on the north, and is ten feet by nine; the one on the west, six feet by four; the one on the east, six feet by five; as you enter by the main gate you have, on the left, a building of one story twenty feet square the residence of the superintendent; opposite to this house, on the left of the east gate, is a house twenty-five feet by fifteen, the quarters of the men; on entering the west gate you will find the store-house on the right, thirty feet by twenty, and on your left a building, forty feet by twenty, which contains rooms for clerks, a workshop and a provision store.

On the west and north-west is an enclosure of about four acres picketed in, in which last year they raised four hundred bushels of potatoes, cultivating no other vegetable; in this enclosure is a very 30 ingeniously constructed vault to contain the potatoes, but which likewise has secret apartments to conceal liquors, dry-goods, etc.

Midway between Sandy Lake and Leech Lake is a small house worthy of notice. On the south-west side of the latter lake from the outlet of the Mississippi, stand the headquarters of the Fond du Lac department.

The fort is situated on the western side of the lake, in $47^{\circ} 16' 13''$ north latitude; it is built near the shore on the declivity of a rising ground, having an enclosed ground of about five acres on the north-west. It is a square stockade of one hundred and fifty feet, the pickets being fifteen feet in length, three feet under, and thirteen above ground, and are bound together by horizontal bars, each 40 the apertures between the large pickets. At the west and east angles are square bastions pierced for fire-arms. The main building in the rear, fronting the lake, is sixty feet by twenty-five, one-and-a-half stories high, the west end of which is occupied by the director of the Fond du Lac department: he has a hall, eighteen feet square, bedroom and kitchen, with an office. The centre is a trading-shop of twelve-and-a-half feet square, with a bedroom in the rear, of the same dimensions; the east end is a large store, twenty-five feet by twenty, under which there is an ice-house well filled; the loft extends over the whole building, and contains bales of goods, packs of peltries, also chests containing wild rice; besides the ice-house, there are cellars under all the other parts of the building. The door and window-shutters are musket proof.

On the western side is a range of buildings, fifty-four by eighteen feet, fronting the parade, the first end of which is a cooper's shop, eighteen feet by fourteen, with a cellar; adjoining to which is a room called the Indian Hall (expressly for the reception of the Indians, and in which the chiefs who met me in council were entertained). In this hall are two close banks for interpreters; its dimensions are twenty-two feet by eighteen. Adjoining to this is a room, eighteen feet square, for the clerks (in which my small party were quartered); under both of the latter rooms are cellars. On the eastern side is a range of buildings fifty feet by eighteen, which has one room twenty feet, and one of fifteen feet, for quarters for the men; also a blacksmith's shop of fifteen feet, which is occupied by an excellent workman. On the left of the main gate, fronting the river, is a flag-staff of sixty feet in height.

10 They intend building a small block-house over the main gate fronting the lake, to place a small piece of artillery in. There are likewise gates on the north and east flanks, of about ten feet by eight.

Here resides the director of this department. This department brings in annually forty canoes, and it appears by a calculation made by a gentleman of veracity and information, who has been eighteen years in the Indian trade, and in the habit of importing goods by Michillimackinac, that the annual amount of duties would be about thirteen thousand dollars. The Lower Red River, which I conceive to be within our territory, would yield about half that sum, viz.: six thousand five hundred; and the Hudson Bay Company servants, who import by the way of Lake Winipic, six thousand five hundred more.

This is the United States defrauded annually of about twenty-six thousand dollars.

20 From my observations and information, I think it will be an easy matter to prevent the smuggling of the Fond du Lac department, by establishing a post with a garrison of one hundred men, and an office of the customs, near the mouth of the River St. Louis, where the Fond du Lac department must enter. This is at present the distributing point, where the Company have an establishment, and the goods, on being received from Kamanistiquia, are embarked for their different destinations. That point also commands the communication with Sandy Lake, Leech Lake, Red Lake, etc., etc. I am also of the opinion that the goods for Red River (if it is within our boundary) would enter here, in preference to being exposed to seizure. It is worthy of remark that the charter of the Hudson's Bay Company extends to all its waters; and if the British Government conceive they have authority to make such a grant, they must certainly claim the country therein specified, which would extend far south of the west line from the head of the Lake of the Woods. The North-West Company were about to push 30 their trade down the Mississippi until they should meet the traders of Michillimackinac, but I gave them to understand this could not be permitted.

Z. M. PIKE,

First United States Regiment of Infantry.

To HUGH MCGILLIS, Esq., Proprietor and Agent of the North-West Company established at Fond du Lac.

NORTH-WEST ESTABLISHMENT ON LAKE LEECH,

February, 1806.

40 SIR,—As a proprietor of the North-West Company and director of the Fond du Lac department, I conceive it my duty as an officer of the United States (in whose territory you are) to address you solely on the subject of the many houses under your instructions. As a member of the greatest commercial nation in the world, and of a company long renowned for their extent of connection and greatness of views, you cannot be ignorant of the rigour of the laws of the duties of imports of a foreign power.

Mr. Jay's treaty, it is true, gave the right of trade with the savages to British subjects in the United States territories, but by no means exempted them from paying the duties, obtaining licenses, and subscribing to all the rules and restrictions of our laws. I find your establishments at every suitable place along the whole extent of the south side of Lake Superior to its head, and from thence to the source of the Mississippi, down Red River, and even extending to the centre of our newly-acquired territory of Louisiana, in which it will yet probably become a question between the two Governments

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if our treaties will authorize the British subjects to enter into the Indian trade on the same footing as in the other parts of our frontiers, this not being an integral part of the United States at the time of the said treaty. Our traders to the south, on the lower Mississippi, complain to our government with justice, that the members of the North-West Company encircle them on the frontiers of our north-west territory, and trade with the savages upon superior terms to what they can afford, who pay the duties of their goods imported from Europe, and subscribe to the regulations prescribed by law; these representations have at length attracted the attention of our government to the object in question, and with an intention to do themselves as well as their citizens justice, they the last year took some steps to ascertain the facts, and make provision against the growing evil. With this, some geographical, and also local objects in view, was I despatched, with discretionary orders, with a party of troops to the source of the Mississippi. I have found, Sir, your commerce and establishments extending beyond our most exaggerated ideas, and in addition to the injury done our revenue by the evasion of the duties, other acts which are more particularly injurious to the honour and dignity of our government.

The transactions alluded to are, the presenting medals of his Britannic Majesty, and flags of his government, to the chiefs and warriors resident in the territory of the United States. If political subjects are strictly prohibited to our traders, what would be the ideas of the Executive to see foreigners making chiefs and distributing flags, the standard of a European power? The savages being accustomed to look on that standard which has been the only prevailing one for years, as that which alone has authority in the country, it would not be in the least astonishing to see them revolt from the limited subjection which is claimed over them by the American Government, and thereby be the cause of their receiving chastisement, although necessary, yet unfortunate, as they have been led astray by the policy of the traders of your country. I must likewise observe, Sir, that your establishments, if properly known, would be looked on with an eye of dissatisfaction by our government, for another reason, viz., there being so many furnished posts. In case of a rupture between the two powers, the English Government would not fail to make use of these as places of deposit for arms, ammunition, etc., to be distributed to the savages who join their arms, to the great annoyance of our territory, and the loss of the lives of many of our citizens. Your flags, Sir, when hoisted in enclosed works, are in direct contradiction to the laws of nations, and their practice in the like cases, which only admits of a foreign flag being expanded on board of vessels, and at the residence of Ambassadors or Consuls.

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I am not ignorant of the necessity of your being in such a position as to protect you from the sallies of drunken savages, or the more deliberate plans of the intended plunderer, and under these considerations have I considered your stockades. You, and the Company to which you belong, must be conscious, from the foregoing statement, that strict justice would demand, and I assure you the law directs under similar circumstances, a total confiscation of your property, personal imprisonment, and fines; but having discretionary instructions, and no reason to think the conduct above noticed was dictated through ill-will or disrespect to our Government, and conceiving it in some degree departing from the character of an officer to embrace the first opportunity for executing those laws, I am willing to sacrifice my prospect of private advantage, conscious that the Government looks not to interest but to its dignity in the transaction.

I have therefore to request of you assurances on the following heads, which, setting aside the chicanery of law, as a gentleman you will strictly adhere to, viz.: That you will make representations to your agents at your head-quarters on Lake Superior, of the quantity of goods wanted the ensuing spring for your establishment in the territory of the United States, time sufficient, or as early as possible, for them to enter them at the Custom House at Michillimackinac, and obtain a clearance and license to trade in due form, and that you will give immediate instruction to all your party in the said territory under your direction, and at no time and under no pretence whatever, to hoist, or suffer to be hoisted, the English flag; if you conceive a flag necessary, you may make use of that of the United States,—it is the only one which can be admitted; that you will on no future occasion present a flag or medal to an Indian, hold Councils with them on political subjects, or others foreign from that of the trade; but on being applied to on those heads, will refer them to the American Agents, informing them that they are the only persons authorized to hold Councils of a political nature with them. There are

many other subjects, such as the distribution of liquor, etc., which would be too long to be treated of in detail; but the Company will do well to furnish themselves with our laws, regulating the commerce with the savages, and regulate themselves in our territories accordingly.

I embrace this opportunity to acknowledge myself and command under similar obligations to yourself and agents for the assistance which you have rendered us, and the polite treatment with which I have been honoured. With sentiments of high respect for the establishment and yourself,

I am, Sir,

Your most obedient servant,

Z. M. PIKE.

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10

To LIEUTENANT PIKE, *First Regiment United States Infantry.*

LEECH LAKE, 15th February, 1806.

SIR,—Your Address, presented on the 6th instant, has attracted my most serious consideration to the several objects of duties on importations; of presents made to, and our consultations with, the Indians; of enclosing our stores and dwelling houses; and finally, of the custom of hoisting the British flag on the territory belonging to the United States of America. I shall, at as early a period as possible, present the agents of the North-West Company with your representations regarding the payment of the duties on the importation of goods to be sent to our establishments within the boundaries of the territories of the United States, as also their being entered at the Custom House at Michillimackinac; but I beg to be allowed to present for consideration, that the major part of the goods necessary to be sent to the said establishment for the trade of the ensuing winter, are now actually in our stores at Kamanistigua, our headquarters on Lake Superior, and that it would cause us vast expense and trouble to be obliged to convey those goods to Michillimackinac, to be entered at the Custom House office; we therefore pray that the work of a gentleman with regard to the quantity and quality of the said goods to be sent to the said establishment, may be considered as equivalent to the certainty of a Custom House register. Our intention has never been to injure your traders, paying the duties established by law, and hope those representations to your government respecting our concerns with the Indians may have been dictated with truth and not exaggerated by envy, to prejudice our interests, and throw a stain upon our character which may require time to efface from the minds of a people to whom we must ever consider ourselves indebted for the lenity of procedure, of which the present is so notable a testimony. The inclosures to protect our stores and dwelling-houses from the insults and barbarity of savage rudeness, have been erected for the security of property and person, in a country till now exposed to the wild will of the frantic Indians. We never formed the smallest idea that the said inclosures might ever be useful in the event of a rupture between the two powers, nor do we now conceive that such poor shifts will ever be employed by the British Government. In a country overshadowed with wood, so adequate to every purpose, forts might in a short period of time be built far superior to any stockades we may have occasion to erect.

We were not conscious, Sir, of the error I acknowledge we have been guilty of, by exhibiting to view on your territories any standard of Great Britain. I will pledge myself to your government, that I will use my utmost endeavors, as soon as possible, to prevent the future display of the British flag, or the presenting of medals, or the exhibiting to public view any other mark of European power, throughout the extent of the territory known to belong to the dominion of the United States. The custom has long been established, and we, innocently and inoffensively (as we imagined), have conformed to it till the present day.

Be persuaded that on no consideration shall any Indian be entertained on political subjects, or on any affairs foreign to our trade; and reference shall be made to the American Agents should any application be made worthy such reference. And be assured that we, as a commercial Company, must find it ever our interest to interfere as little as possible with affairs of Government in the course of trade, ignorant as we are, in this rude and distant country, of the political views of nations.

H. McGillivray
to Lieut.
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We are convinced that the inestimable advantages arising from the endeavours of your Government to establish a more peaceful course of trade in this part of the territory belonging to the United States, are not acquired through the mere liberality of a nation, and are ready to contribute towards the expense necessarily attending them. We are not averse to pay the common duties established by law, and shall ever be ready to conform ourselves to all rules and regulations of trade that may be established, according to common justice.

I beg leave to be allowed to say that we have reason to hope that every measure will be adopted to secure and facilitate the trade with the Indians, and these hopes seem to be confirmed beyond the smallest idea of doubt, when we see a man sent among us who, instead of private consideration to pecuniary views, prefers the honour, dignity and lenity of his Government, and whose transactions are in every respect so conformable to equity.

When we behold an armed force ready to chastise or protect, as necessity or policy may direct, we know not how to express our gratitude to that people whose only view seems to be to promote the happiness of all—the savages that rove over the wild confines of their domain, not excepted.

It is to you, Sir, we feel ourselves most greatly indebted, whose claim to honour, esteem and respect will ever be held in high estimation by myself and associates. The dangers and hardships by your fortitude vanquished and by your perseverance overcome, are signal, and will ever be preserved in the annals of the North-West Company. Were it solely from the consideration of those who have exposed their lives in a long and perilous march, through a country where they had every distress to suffer and many dangers to expect (and this with a view to establish peace in a savage country), we should think ourselves under the most strict obligations to assist them; but we know we are in a country where hospitality and gratitude are to be esteemed above every other virtue, and therefore have offered for their relief what our poor means can allow.

And, Sir, permit me to embrace the opportunity to testify that I feel myself highly honoured by your acceptance of such accommodations as my humble roof could afford.

With great consideration and high respect for the Government of the United States, allow me to express my esteem and regard for you.

I am, Sir,

Your most obedient servant,

H. MCGILLIS,

of the North-West Company.

H. McGillis
to Lieut.
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THE THREE CHARTERS TO SIR WILLIAM ALEXANDER.

CHARTER*

IN FAVOUR OF SIR WILLIAM ALEXANDER, KNIGHT, OF THE LORDSHIP AND BARONY OF NEW SCOTLAND IN AMERICA, 10TH SEPTEMBER, 1621.

Translated by the Rev. Carlos Slafter, A.M., of Dedham.†

JAMES, by the Grace of God, King of Great Britain, France and Ireland, and Defender of the Faith, to all good men, clerical and lay, of his entire realm, greeting:

Charter from
King James
I. to Sir
William
Alexander,
10th Septem-
ber, 1621.

10 Know ye, that we have always been eager to embrace every opportunity to promote the honour and wealth of our Kingdom of Scotland, and think that no gain is easier or more safe than what is made by planting new colonies in foreign and uncultivated regions, where the means of living and food abound, especially, if these places were before without inhabitants, or were settled by infidels whose conversion to the Christian faith most highly concerns the glory of God.

But whilst many other kingdoms, and not very long ago, our own England, to their praise, have given their names to new lands, which they have acquired and subdued; we, thinking how populous and crowded this land now is by Divine favour, and how expedient it is that it should be carefully exercised in some honourable and useful discipline, lest it deteriorate through sloth and inaction, have judged it important that many should be led forth into new territory, which they may fill with colonies, and so we think this undertaking most fit for this kingdom, both on account of the promptness and activity of its spirit, and the strength and endurance of its men against any difficulties, if any other men anywhere dare to set themselves in opposition, and as it demands the transportation only of men and women, stock and grain, and not of money, and can not repay, at this time when business is so depressed, a troublesome expenditure of the treasures of this realm; for these reasons, as well as on account of the good, faithful, and acceptable service of our beloved counsellor, Sir William Alexander, Knight, to us rendered and to be rendered, who, first of our subjects at his own expense, attempted to plant this foreign colony, and selected for plantation the divers lands bounded by the limits hereafter designated.

30 We, therefore, from our sovereign anxiety to propagate the Christian faith, and to secure the wealth and prosperity and peace of the native subjects of our said Kingdom of Scotland, as other foreign princes in such cases already have done, with the advice and consent of our well-beloved cousin and counsellor, John, Earl of Mar, Lord Erskine and Gareoch, etc., our High Treasurer, Comptroller, Collector and Treasurer of our new revenues of this our Kingdom of Scotland, and of the other Lords, Commissioners of our same Kingdom, have given, granted and conveyed, and, by the tenor of our present charter, do give, grant and convey to the aforesaid Sir William Alexander, his heirs or assigns, hereditarily, all and single, the lands of the continent, and islands situated and lying in America, within the head of promontory, commonly called Cape of Sable, lying near the forty-third degree of north latitude, or thereabouts; from this cape stretching along the shores of the sea, westward to the roadstead of St. Mary, commonly

* From the work *Sir William Alexander and American Colonization*. Publication of the Prince Society, Boston, 1873.
† [Note by Translator.]—This translation is made from the Latin as found in the "Great Seal Register," and printed in the collection of Royal Letters, Charters and Tracts, by the Bannatyne Club, Edinburgh, 1867.

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called St. Mary's Bay, and thence northward by a straight line, crossing the entrance or mouth of that great roadstead which runs towards the eastern part of the land between the countries of the Sniroqui and Etechemini, commonly called Suroiquois and Etechemines, to the river generally known by the name of St. Croix, and to the remotest springs, or source, from the western side of the Seine, which empty into the first mentioned river; thence by an imaginary straight line which is conceived to extend through the land, or run northward to the nearest bay, river or stream emptying into the great river of Canada; and going from that eastward along the low shores of the same river of Canada, to the river, harbour, port or shore commonly known and called by the name of Gathepe or Gaspie, and thence south south-east to the isles called Bacalaos, or Cape Breton, leaving the said isles on the right and the mouth of the said great river of Canada, or large bay, and the territory of Newfoundland with the islands 10 belonging to the same lands, on the left; thence to the headland or point of Cape Breton aforesaid, lying near latitude 45°, or thereabouts; and from the said point of Cape Breton toward the south and west to the above-mentioned Cape Sable, where the boundary began; including and containing within the said coasts and their circumference, from sea to sea, all lands of the continent with the rivers, falls, bays, shores, islands, or seas, lying near or within six leagues on any side of the same, on the west, north, or east sides of the same coasts and bounds; and on the south south-east (where Cape Breton lies) and on the south side of the same (where Cape Sable is) all seas and islands southward within forty leagues of said sea-shore, thereby including the large island commonly called Isle de Sable, or Sablon, lying towards Carban, in common speech, south south-east, about thirty leagues from the said Cape Breton seaward, and being in latitude 44°, or thereabouts.

The above-described lands shall in all future time bear the name of New Scotland in America, and also the aforesaid Sir William shall divide it into parts or portions as seemeth best to him, and shall give names to the same at his pleasure. 20

With all mines, both the royal ones of gold and silver, and others of iron, lead, copper, tin, brass, and other minerals, with the power of mining, and causing to dig them from the earth, and of purifying and refining the same, and converting to his own use, or that of others, as shall seem best to the said Sir William, his heirs or assigns, or to whomsoever it shall have pleased him to establish in said lands, reserving only to us and our successors, a tenth part of the metal vulgarly known as ore of gold and silver, which shall be hereafter dug or obtained from the land: leaving the said Sir William and his aforesaid whatever of other metals of copper, steel, iron, tin, lead, or other minerals, we or our successors may be able in any way to obtain from the earth, in order that thereby they may the more easily bear the large expense of reducing the aforesaid metals: together with margarite, termed pearl, and any other precious stones, quarries, forests, thickets, mosses, marshes, lakes, waters, fisheries in both salt and fresh water, and of both royal and other fish, hunting, hawking, and anything that may be sold or inherited: with full power, privilege, and jurisdiction of free royalty, chapelry, and chancery: together with the gift and right of patronage of churches, chapels, and benefices: with tenants, tenancies, and the services of those holding the same freely: together with the offices of justiciary and admiralty within all the bounds respectively mentioned above: also with power of setting up states, free towns, free ports, villages, and barony towns, and of establishing markets and fairs within the bounds of said lands: of holding courts of justice and admiralty within the limits of such lands, rivers, ports, and seas: also with the power of improving, levying and receiving all tolls, customs, anchor dues, and other revenues of the said towns, marts, fairs, and free ports: and of owning and using the same as freely in all respects as any greater or lesser Baron in our Kingdom of Scotland has enjoyed in any past, or could enjoy in any future time: with all other prerogatives, privileges, immunities, dignities, perquisites, profits, and dues concerning and belonging to said lands, seas, and the boundaries thereof, which we ourselves can give and grant, as freely and in as ample form as we or any of our noble ancestors granted any charters, letters patent, enfeoffments, gifts, or commissions to any subjects of whatever rank or character, or to any society or company leading out such colonies into any foreign parts, or searching out foreign lands, and in as free and ample form as if the same were included in this present charter: also, we make, constitute, and ordain the said Sir William Alexander, his heirs and assigns, or their deputies, our hereditary Lieutenants-General, for representing our royal person, both by sea and by land, in the regions of the sea, and on the coast, and in the bounds aforesaid, both

in seeking said lands and remaining there and returning from the same; to govern, rule, punish, and acquit all our subjects who may chance to visit or inhabit the same, or who shall do business with the same, or shall tarry in the said places; also, to pardon the same; and to establish such laws, statutes, constitutions, orders, instructions, forms of governing, and ceremonies of magistrates in said bounds, as shall seem fit to Sir William Alexander himself, or his aforesaid, for the government of the said region, or of the inhabitants of the same, in all causes, both criminal and civil; also, of changing and altering the said laws, rules, forms and ceremonies, as often as he or his aforesaid shall please for the good and convenience of said region; so that said laws may be as consistent as possible with those of our realm of Scotland. We also will that, in case of rebellion or sedition, he may use martial law against delinquents, or such as withdraw themselves from his power, as freely as any lieutenant whatever of our realm or dominion, by virtue of the office of lieutenant, has, or can have, the power to use, by excluding all other officers of this our Scottish realm, on land or sea, who hereafter can pretend to any claim, property, authority, or interest in and to said land or province aforesaid, or any jurisdiction therein by virtue of any prior disposal or patents; and that a motive may be offered to noblemen for joining this expedition and planting a colony in said lands, we, for ourselves and our heirs and successors, with the advice and consent aforesaid, by virtue of our present charter, do give and grant free and full power to the aforesaid Sir William Alexander and his aforesaid, to confer favors, privileges, gifts, and honors on those who deserve them, with full power to the same, or any one of them, who may have made bargains or contracts with Sir William, or his deputies, for the said lands, under his signature, or that of his deputies, and under the seal hereinafter described, to dispose of and convey any part or parcel of said lands, ports, harbors, rivers, or of any part of the premises; also, of erecting machines of all sorts, introducing arts or sciences, or practising the same, in whole or in part, as he shall judge to be for their advantage; also, to give, grant, and bestow such offices, titles, rights, and powers, make and appoint such captains, officers, bailiffs, governors, clerks, and all other officers, clerks, and ministers of royalty, barony, and town, for the execution of justice within the bounds of said lands, or on the way to these lands by sea, and returning from the same, as shall seem necessary to him, according to the qualities, conditions and deserts of the persons who may happen to dwell in any of the colonies of said province, or in any part of the same, or who may risk their goods and fortunes for the advantage and increase of the same; also, of removing the same persons from office, transferring or changing 30 them, as far as it shall seem expedient to him and his aforesaid.

And, since attempts of this kind are not made without great labour and expense, and demand a large outlay of money, so that they exceed the means of any private man, and on this account the said Sir William Alexander and his aforesaid may need supplies of many kinds, with many of our subjects and other men for special enterprises and ventures therein, who may form contracts with him, his heirs, assigns or deputies, for lands, fisheries, trade, or the transportation of people and their flocks, goods and effects to the said New Scotland, we will that whoever shall make such contracts with the said Sir William and his aforesaid under their names and seals, by limiting, assigning and fixing the day and place for the delivery of persons, goods and effects on shipboard under forfeiture of a certain sum of money, and shall not perform the same contracts, but shall thwart and injure him in the proposed 40 voyage, which thing will not only oppose and harm the said Sir William and his aforesaid, but also prejudice and damage our so laudable intention; then it shall be lawful to the said Sir William and his aforesaid, or their deputies and conservators hereinafter mentioned, in such case to seize for himself, or his deputies whom he may appoint for this purpose, all such sums of money, goods and effects forfeited by the violation of these contracts. And that this may be more easily done, and the delay of the law be avoided, we have given and granted, and by the tenor of these presents do give and grant full power to the Lords of our Council that they may reduce to order and punish the violators of such contracts and agreements made for the transportation of persons. And although all such contracts between the said Sir William and his aforesaid and the aforesaid adventurers shall be carried out in the risk and the conveyance of people with their goods and effects at the set time; and they with all their cattle and goods arrive at the shore of that province with the intention of colonizing and abiding there; and yet, afterwards, shall leave the Province of New Scotland altogether, and the confines of the same, without the consent of the said Sir William and his aforesaid, or their deputies, or the society and colony 50

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aforsaid, where first they had been collected and joined together; and shall go away to the uncivilized natives, to live in remote and desert places; then they shall lose and forfeit all the lands previously granted them; also, all their goods within the aforsaid bounds; and it shall be lawful for the said Sir William and his aforsaids to confiscate the same, and reclaim the same lands, and to seize and convert and apply to his own use and that of his aforsaids all the same belonging to them, or any one of them.

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And that all our beloved subjects, as well of our kingdoms and dominions, so also others of foreign birth who may sail to the said lands, or any part of the same, for obtaining merchandise, may the better know and obey the power and authority given by us to the aforsaid Sir William Alexander, our faithful counsellor and his deputies, in all such commissions, warrants and contracts as he shall at any time make, grant, and establish for the more fit and safe arrangement of offices, to govern said colony, 10
grant lands, and execute justice in respect to the said inhabitants, adventurers, deputies, factors, or assigns, in any part of said lands, or in sailing to the same, we, with the advice and consent aforsaid, do order that the said Sir William Alexander and his aforsaids shall have one common seal, pertaining to the office of lieutenant of judiciary and admiralty, which by the said Sir William Alexander and his aforsaids or their deputies, in all time to come, shall be safely kept: on one side of it our arms shall be engraved, with these words on the circle and margin thereof: "*Sigillum Regis Scotiae Angliae Franciae et Hiberniae;*" and on the other side our image, or that of our successors, with these words: "*Pro Nova Scotiae Locum Teneat;*" and a true copy of it shall be kept in the hands and care of the conservator of the privileges of New Scotland, and this he may use in his office as occasion shall require. And as it is very important that all our beloved subjects who inhabit the said Province of New Scotland or its 20
borders may live in the fear of Almighty God, and at the same time in His true worship, and may have an earnest purpose to establish the Christian religion therein, and also to cultivate peace and quiet with the native inhabitants and savage aborigines of these lands, so that they, and any others trading there, may safely, pleasantly, and quietly hold what they have got with great labor and peril, we, for ourselves and our successors, do will and decree, and by our present charter give and grant to the said Sir William Alexander and his aforsaids and their deputies or any other of our Government officers and ministers whom they shall appoint, free and absolute power of arranging and securing peace, alliance, friendship, mutual conferences, assistance, and intercourse with those savage aborigines and their chiefs, and any others bearing rule and power among them; and of preserving and fostering such relations and treaties as they or their aforsaids shall form with them; provided those treaties are, on the other side, 30
kept faithfully by these barbarians; and, unless this be done, of taking up arms against them, whereby they may be reduced to order, as shall seem fitting to the said Sir William and his aforsaids and deputies, for the honor, obedience, and service of God, and the stability, defence, and preservation of our authority among them; with power also to the said Sir William Alexander and his aforsaids, by themselves, or their deputies, substitutes, or assigns, for their defence and protection at all times and on all just occasions hereafter, of attacking suddenly, invading, expelling, and by arms driving away, as well by sea as by land, and by all means, all and singly, those who, without the special license of the said Sir William and his aforsaids, shall attempt to occupy these lands, or trade in the said Province of New Scotland, or in any part of the same, and in like manner all other persons who presume to bring any damage, loss, destruction, injury, or invasion against that province, or the inhabitants of the same: 40
And that this may be more easily done, it shall be allowed to the said Sir William and his aforsaids, deputies, factors, and assigns, to levy contributions on the adventurers and inhabitants of the same; to bring them together by proclamations, or by any other order, at such times as shall seem best to the said Sir William and his aforsaids; to assemble all our subjects living within the limits of the said New Scotland and trading there, for the better supply of the army with necessaries, and enlargement and increase of the people and planting of said lands; with full power, privilege, and liberty to the said Sir William Alexander and his aforsaids by themselves or their agents, of sailing over any seas whatever under our ensign and banners, with as many ships, of as great burden, and as well furnished with ammunition, men, and provisions as they are able to procure at any time, and as often as shall seem expedient; and of carrying all persons of every quality and grade who are our subjects, or who wish to 50
submit themselves to our sway, for entering upon such a voyage with their cattle, horses, oxen, sheep, goods of all kinds, furniture, machines, heavy arms, military instruments as many as they desire, and

other commodities and necessaries for the use of the same colony, for mutual commerce with the natives of these provinces, or others who may trade with these plantations; and of transport of all commodities and merchandise, which shall seem to them needful, into our kingdom of Scotland without the payment of any tax, custom, and impost, for the same to us, or our custom-house officers, or their deputies; and of carrying away the same from their offices on this side, during the space of seven years following the day of the date of our present charter; and to have this sole privilege for the space of three years next hereafter we freely have granted, and by the tenor of our present charter grant and give to the said Sir William and his aforesaid, according to the terms hereinafter mentioned.

And after these three years are ended, it shall be lawful, to us and our successors, to
 10 levy and exact from all goods and merchandise which shall be exported from this our kingdom of Scotland to the said Province of New Scotland, or imported from this province to our said kingdom of Scotland, in any ports of this our kingdom, by the said Sir William and his aforesaid, five *per cent.* only, according to the old mode of reckoning, without any other impost, tax, custom, or duty from them hereafter, which sum of five pounds *per* hundred being thus paid by the said Sir William and his aforesaid, to our officers and others appointed for this business, the said Sir William and his aforesaid may carry away the said goods from this our realm of Scotland into any other foreign ports and climes, without the payment of any other custom, tax, or duty to us or our heirs or successors or any other persons; provided also that said goods, within the space of thirteen months after their arrival in any part of this our kingdom, may be again placed on board a
 20 ship. We also give and grant absolute and full power to the said Sir William and his aforesaid, of taking, levying, and receiving to his own proper use and that of his aforesaid, from all our subjects who shall desire to conduct colonies, follow trades, or sail to the said lands of New Scotland, and from the same, for goods and merchandise, five *per cent.* besides the sum due to us; whether on account of the exportation from this our kingdom of Scotland to the said Province of New Scotland, or of the importation from the said province to this our kingdom of Scotland aforesaid, and, in like manner, from all goods and merchandise which shall be exported by our subjects, leaders of colonies, merchants, and navigators, from the said Province of New Scotland, to any of our dominions or any other places; or shall be imported from our realms and elsewhere to the said New Scotland, five *per cent.* beyond and above the sum before appointed to us; and from the goods and merchandise of all foreigners and others
 30 not under our sway which shall be either exported from the said Province of New Scotland, or shall be imported into the same, beyond and above the said sum assigned to us, ten *per cent.* may be levied, taken, and received, for the proper use of the said Sir William and his aforesaid, by such servants, officers, or deputies, or their agents, as they shall appoint and authorize for this business. And for the better security and profit of the said Sir William and his aforesaid, and of all our other subjects desiring to settle in New Scotland aforesaid, or to trade there, and of all others in general who shall not refuse to submit themselves to our authority and power, we have decreed and willed that the said Sir William may construct, or cause to be built, one or more forts, fortresses, castles, strongholds, watch-towers, block-houses, and other buildings, with ports and naval stations, and also ships of war; and the same shall be applied for defending the said places, as shall, to the said Sir William and his
 40 aforesaid, seem necessary to accomplish the aforesaid undertaking; and they may establish, for their defence there, garrisons of soldiers, in addition to the things above mentioned; and, generally, may do all things for the acquisition, increase, and introduction of people, and to preserve and govern the said New Scotland and the coasts and land thereof, in all its limits, features and relations, under our name and authority, as we might do if present in person; although the case may require a more particular and strict order than is prescribed in this our present charter; and to this command we wish, direct, and most strictly enjoin all our justices, officers and subjects frequenting these places to conform themselves, and to yield to and obey the said Sir William and his aforesaid in all and each of the above-mentioned matters, both principal and related; and be equally obedient to them in their execution as they ought to be to us whose person he represents, under the pains of disobedience and rebellion.
 50 Moreover, we declare, by the tenor of our present charter, to all Christian Kings, princes, and states, that if, hereafter any one, or any from the said colonies, in the Province of New Scotland aforesaid, or any other persons under their license and command, exercising piracy at any future time, by land or by

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sea, shall carry away the goods of any person, or in a hostile manner do any injustice or wrong to any of our subjects, or those of our heirs or successors, or of other kings, princes, governors, or states in alliance with us, then, upon such injury offered, or just complaint thereupon, by any king, prince, governor, state, or their subjects, we, our heirs and successors, will see that publick Proclamations are made in any part of our said Kingdom of Scotland, just and suitable for this purpose, that the said pirate or pirates, who shall commit such violence, at a stated time, to be determined by the aforesaid proclamation, shall fully restore our goods so carried away; and for the said injuries shall make full satisfaction, so that the said princes and others thus complaining shall deem themselves satisfied. And, if the authors of such crimes shall neither make worthy satisfaction, nor be careful that it be made within the limited time, then he, or those who have committed such plunder, neither are, nor hereafter 10 shall be under our government and protection; but it shall be permitted and lawful to all princes, and others whatsoever, to proceed against such offenders, or any of them, and with all hostility to invade them.

And though it is appointed that no nobleman and gentleman may depart from this country without our consent, yet we will that this our present charter be a sufficient permission and assurance to all engaging in the said voyage, save those who may be accused of treason, or retained by any special order; and, according to our present charter, we declare and decree that no person may leave this country and go to the said region of New Scotland unless they have previously taken the oath of allegiance to us; for which purpose, we, by our present charter, give and grant the said Sir William and his aforesaid, or their conservators and deputies, full power and authority to exact the said oath 20 from and administer it to all persons proceeding into the said lands in that colony. Moreover, we for ourselves and our successors, with the advice and consent aforesaid, declare, decree, and ordain that all our subjects, going to the said New Scotland, or living in it, and all their children and posterity born there, and all adventuring there, shall have and enjoy all the liberties, rights and privileges of free and native subjects of our Kingdom of Scotland, or of our other dominions, as if they had been born there.

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Also we, for ourselves and our successors, give and grant to the said Sir William and his aforesaid, the free power of regulating and coining money for the freer commerce of those inhabiting the said Province, of any metal, in what manner and of what form they shall choose and direct for the same.

And if any questions or doubts shall arise on the meaning and construction of any clause in our present charter, all these shall be taken and explained in their amplest form, and in favor of the said Sir 30 William and his aforesaid. Besides, we, of our certain knowledge, proper motive, legal authority, and kingly power have made, united, annexed, created, created, and incorporated, and, by the tenor of our present charter, do make, unite, annex, erect, create and incorporate, the whole and undivided, the said province and lands of New Scotland, with all the seas and limits of the same, and minerals of gold and silver, lead, copper, steel, tin, brass, iron, and any other mines, pearls, precious stones, quarries, forests, thickets, mosses, marshes, lakes, waters, fisheries, as well in fresh water as in salt, as well of royal fishes as of others, cities, free ports, free villages, towns, baronial villages, seaports, roadsteads, machines, mills, offices and jurisdictions, and all other things generally and particularly mentioned above, in one entire and free lordship and barony which shall be called in all future time by the aforesaid name of 40 New Scotland.

And we will grant, and for ourselves and our successors decree and order, that one seisin now made by the said Sir William and his aforesaid, upon any part of the soil of the said land and upon the province before described, shall in all future time be effective; and shall be a sufficient seisin for the whole region, with all the parts, appendages, privileges, accidents, liberties, and immunities of the same mentioned above, without any other special and definite seisin to be taken by himself or his aforesaid on any other part or place of the same. And concerning this seisin and all things which have followed it, or can follow it, we, with the advice and consent above mentioned, for ourselves and our successors, have dispensed, and by the tenor of our present charter, in the manner hereafter mentioned, do dispense forever: *To hold and to possess*, the whole and undivided, the said region and lordship of New Scotland, with all the bounds of the same within the seas above mentioned, all minerals of gold and silver, 50 copper, steel, tin, lead, brass and iron, and any other mines, pearls, precious stones, quarries, woods,

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Annually, at the festival of Christ's nativity, on the soil of the said lands and of the province of New Scotland, the said Sir William Alexander and his aforesaid shall pay to us and our heirs and successors, under the name of quit-rent, one penny of Scottish money, if so much be demanded.

20 And because the tenure of the said lands, and of the Province of New Scotland, and the quit-rent above-mentioned, may fail through want of the timely and lawful entry of any heir or heirs of the said Sir William succeeding him, a thing which they may not easily accomplish on account of the great distance from our Kingdom; and these same lands and Province on account of the non-entrance, may come into our hands and those of our successors until the lawful entrance of the legitimate heir; and we being unwilling that the same lands and region at any time should fall into non-entry, or that the said Sir William and his aforesaid should be thus deprived of the benefits and profits of the same, therefore we, with the advice aforesaid, have dispensed with the said non-entry whenever it shall occur, and, by the tenor of this our charter, we, for ourselves and our successors, do dispense; and also we have renounced and exonerated, and by the tenor of our present charter, with the consent aforesaid, we 30 do renounce and exonerate the said Sir William and his aforesaid in respect to the above-mentioned non-entrance of the said Province and region whenever it shall come into our hands, or, by reason of non-entry, may fall, with all things that can follow therefrom; provided, however, that the said Sir William, his heirs and assigns, within the space of seven years after the decease and death of their predecessors, or entry to the possession of said lands, and of other things aforesaid, by themselves or their lawful agents holding powers for this purpose, do homage to us and our successors, and come to, and receive through us, the said lands, lordship, barony, and other things aforesaid, according to the laws and statutes of our said Kingdom of Scotland. Finally, we, for ourselves and our successors, do will, decree, and ordain that this our present charter and enfeofment above written of the lands aforesaid, lordship, and region of New Scotland, and the privileges and liberties of the same, shall be ratified 40 approved, and established in our next Parliament of our said Kingdom of Scotland whenever it shall meet, so that it shall have therein the force and efficacy of a decree; and for this we, for ourselves and successors, declare that this our charter shall be a sufficient warrant; and, as a Prince, we promise that the same shall be ratified and approved, and also we promise to alter, renew, increase, and extend the same into the most ample form, as often as it shall seem necessary and expedient to the said Sir William and his aforesaid.

Moreover it has seemed best to us, and we order and enjoin our beloved . . . our sheriffs especially appointed on our part, on seeing this our charter under our great seal, so to give and grant to the aforesaid Sir William and his aforesaid, or their attorney or attorneys, possession and seisin, actual and real, of the lands, lordship, barony, and other things mentioned above, with all privileges, immunities, liberties, and other things above expressed; and this seisin we, by the tenor of our present charter, declare 50 to be as lawful and regular as if he had a precept, under proof of our Great Seal, and in the most ample form, with all clauses requisite for the aforesaid purpose; which we, for ourselves and successors, do

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Alexander,
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Charter from
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William
Alexander,
16th Septem-
ber, 1621.

forever dispense. In witness whereof we have commanded our Great Seal to be affixed to this our present charter, Witnesses: Our well beloved cousins and councillors, James, Marquis of Hamilton, Earl of Arran and Cambridge, Lord Aven and Innerduill; George, Earl Marischal, Lord Keith, &c., Marshal of our kingdom; Alexander, Earl of Dunfermline, Lord Fyvie and Urquhart, &c., our Chancellor; Thomas, Earl of Melros, Lord Binning and Byres, our Secretary; Our beloved familiar councillors, Baronets; Sir Richard Cockburn, junior, of Clerkington, Keeper of our Privy Seal; Sir George Hay, of Kinfauns, our Register of the Rolls and Clerk of the Council; Sir John Cockburn of Ormiston, Clerk of our Justiciary; and Sir John Scott of Scotstarvet, Director of our Chancery, Knights.

At our Castle of Windsor, the tenth day of September, in the year of Our Lord, 1621, and of our Reigns, the fifty-fifth and nineteenth years, respectively.

By signature superscribed by the hand of our Sovereign Lord, the King; and subscribed by the hands of our Chancellor, Treasurer, Principal Secretary, and of the other Lords and our Commissioners and of our Privy Council of the said Kingdom of Scotland.

Written to the Great Seal, 29th September, 1621.

Scaled at Edinburgh, 29th September, 1621.

J. SCOTT,

Gratis.

Ja. RAITHIE,

Gr's.

N.B.—“In the Regist. Mag. Sigilli the names of the witnesses are not given, but only a reference as specified in an earlier Charter in the Record. The indorsement of the charter, ‘Written,’ &c., of 20 course is not found in the Register itself.”—*Note by David Laing, L.L.D., in Bannatyne Collection of Royal Letters, Charters, and Tracts.*

NOVODAMUS CHARTER*

OF NEW SCOTLAND IN AMERICA, IN FAVOUR OF SIR WILLIAM ALEXANDER, OF MENSTRIE, KNIGHT,
12TH JULY, 1623,

Charles, by the Grace of God, King of Great Britain, France and Ireland, and Defender of the Faith, to all good men of his whole land, clergy and laity, greeting. Know ye,

[This Charter in the original is the same, *ipsisimis verbis*, from the second sentence [79 *ante*], on page beginning, “Know ye,” to the sentence [85 *ante*], on page beginning, “Finally we for ourselves and our successors,” as the Charter of 1621. This part is therefore omitted here, and the reader is referred back to that Charter for what is here wanting.]

in which case the heirs and assignees of the said Sir William Alexander shall, notwithstanding the foresaid non-entry, enjoy and possess all and sundry the aforesaid lands, country, and lordship of New Scotland, with all and sundry profits, commodities, benefits, privileges, and liberties of the same, as if the said non-entry had never happened, or as if they had never fallen in non-entry; which lands, country, and lordship of New Scotland, as well mainlands as islands, within all and sundry the said bounds and seas thereof, with the woods, fishings, as well in salt water as in fresh, of royal fishes as of others, with pearls, precious stones, veins, royal minerals of gold and silver, other minerals of iron, steel, lead, copper, brass, tin, mountain brass, and others whatsoever; and all privileges, liberties, immunities, prerogatives, offices and jurisdictions, and others, specially and generally above recited, formerly belonged to the said Sir William Alexander and his heirs and assignees, and were by him and his procurators, in his name, duly and lawfully resigned in our hands; and that for our new heritable infetment of the same to be granted in favour of the said Sir William, or his heirs and assignees aforesaid, in due and competent form, as accords, to be holden, as said is, with dispensation of non-entry, in manner before written, when it shall happen. 40

*From the work *Sir William Alexander and American Colonization*. Publication of the Prince Society, Boston, 1873. The following note is there appended: “This translation of the Novodamus Charter is taken from the Appendix to a narrative of Law Proceedings privately printed at Edinburgh in 1836. ‘New Scotland’ has been introduced wherever Nova Scotia occurs, to prevent any confusion with the present province of that name, the boundaries of the two being widely different.”

Novodamus
Charter to Sir
William
Alexander,
12th July,
1623.

Moreover, we, with advice before written, for the good, faithful, and willing service performed and rendered to us by the said Sir William Alexander, and respect being had to the great and manifold expenses and charges bestowed and expended in the plantation of the said bounds of the lordship and country of New Scotland, and reduction of them, under our obedience, and for other weighty and onerous causes, have of new given, granted, and disposed, and by our present charter, give, grant, and dispose to the before-mentioned Sir William Alexander, and his heirs and assignees, heritably, all and sundry the foresaid lands, lordship, and country of New Scotland, together with all and sundry castles, towns, fortalices, manor places, houses, buildings, built and to be built, gardens, orchards, planted and to be planted, tofts, crofts, meadows, grazings, woods, shrubs, mills, milltures, mill lands, fishings, as well of
 10 red as of other fishes, salmon, large fish as small, in salt water as in fresh, together with all and sundry teind sheaves thereof included, as well great as small, with the presentation, gift of benefices, churches, and chapels, and rights of patronage thereof, annexes, connexes, dependencies, tenants, tenandries, and services of free tenants of the same; together with all and sundry precious stones, jewels, crystal, alum, coral, and others, with all and sundry minerals, veins, and quarries thereof, as well of regal and royal metals and minerals of gold and silver within the said bounds and lordship of New Scotland, as of other minerals of iron, steel, tin, copper, brass, mountain brass, and other minerals whatsoever, with all and sundry parts, pendicles, pertinents, privileges, liberties, and immunities of all and sundry the aforesaid lands, lordship, and country of New Scotland, with full power and privilege to the said Sir William Alexander, his heirs and assignees, of trying and searching, digging and examining the ground for the
 20 same, and extracting, cleansing, retining and purifying them, and using, converting, and applying them to their own proper uses, (the tenth part of the royal metals, commonly called the ore of gold and silver, hereafter to be found and extracted out of the said lands and country, only, being reserved to us and our successors), and the remainder of the said metals, minerals, precious stones, jewels, and others whatsoever, to belong to the said Sir William Alexander, and his heirs and assignees, to remain forever with them, and be, with all profits and duties thereof, converted to their own proper uses; with power to the same Sir William Alexander, and his heirs and assignees, of building, constructing, and erecting upon and within all the bounds of the said country, as shall seem to them expedient, cities, free boroughs of barony, towns, villages, harbours, ports, naval stations; and on appointing fairs and markets, as well within the town as without, and imposing, levying, and receiving all and whatsoever tolls, customs,
 30 anchorages, and other dues of the said cities, boroughs of barony, towns, villages, fairs, markets, free ports, harbours, naval stations, with all and sundry casualties, profits, and duties whatsoever; and furnishing the said cities and boroughs, as well within borough as without, with sufficient and able magistrates, justices of the peace, provosts, bailies, aldermen, constables, and other officers, citizens, free burgesses, and manufacturers, crafts of all kinds, with their deacons, and others, thereto requisites, with full power, privilege, and liberty to them, or their children, citizens, and burgesses, to sell wine and wax, salmon, herrings, and other staple goods and merchandises, as well great as small, and constructing churches, chapels, hospitals, maison dieus, market crosses, belfrys, bells, and all other ordinary ornaments thereto belonging, and planting the said churches, and sufficiently providing them with sufficient teachers, preachers, pastors, and ministers: And in like manner of erecting, founding, and constructing
 40 common schools, colleges, and universities, sufficiently provided with able and sufficient masters, rectors, regents, professors of all sciences, letters, languages, and instruction; and of providing for sufficient maintenance, salaries, and living for them to this effect: As also of erecting prelates, archbishops, bishops, rectors, and vicars of parishes, and parish churches, and distributing and dividing all the aforesaid bounds of the said country into divers and distinct shires, provinces, and parishes, for the better provision of the churches and ministry, division of the shires, and all other civil police.

And likewise of founding, erecting, and instituting a senate of justice, places, and colleges of justice, senators of council and session, members thereof, for the administration of justice within the said country, and other places of justice and judicature. Further, of erecting and appointing
 50 secret and privy councils and sessions for the public good and advantage of the said country, and giving and granting titles, honors and dignities to the members thereof, and creating their clerks and members, and appointing seals and registers with their keepers. And, also of erecting and instituting officers of

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Novodamus
 Charter to Sir
 William
 Alexander,
 12th July,
 1621.

be affixed to this our
 of Hamilton, Earl of
 Keith, &c., Marshal of
 Chancellor; Thomas,
 counsellors, Baronets;
 George Hay, of Kin-
 of Ormiston, Clerk of
 ghts.

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 and subscribed by the
 our Commissioners

F. SCOTT,
Gratis.
 a. RAICHE,
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 'Written,' &c., of 20
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ENSTRIE, KNIGHT,

Defender of the

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state, a chancellor, treasurer, comptroller, collector, secretary, advocate or attorney general, clerk or clerks, registers and keepers of the rolls, justice clerk, director or directors of chancery, conservator or conservators of privileges of the said country, advocates, procurators, and pleaders of causes, and solicitors, and agents thereof, and other members necessary.

And, likewise, of gathering, collecting, and appointing meetings and assemblies of ecclesiastical persons and prelates, as well general, special, or provincial meetings as others, for ecclesiastical police and discipline, and authorizing, ratifying and confirming the said meetings, councils, and assemblies, with acts, statutes, and decrees thereon concluded, for the better authority of the same; Further, we have made, constituted, and appointed, and by our present charter, make, constitute, and appoint the said Sir William Alexander, and his heirs and assignees, our and our heirs' and successors' Lieutenants-General 10 to represent our royal person, as well by sea as by land, of all and whole, the said country and lordship of New Scotland, as well during the space in which he shall remain there, as on his or their voyage to the said country, or from it, and forever, after their return, without interval of time or place excluding all others from the usurpation thereof, or from a claim to any right, benefit, authority, and interest within the said bounds and lordship of New Scotland, or to any judicature or jurisdiction heretofore in virtue of any foregoing or subsequent right or title whatsoever; And with special power to the said Sir William Alexander, and his foresaids, of governing, ruling, punishing, and pardoning all our subjects, and other inhabitants of the said bounds and country of New Scotland, or persons going thither, violators of the peace, or of the laws, and of making, sanctioning, and establishing laws there, as well civil as criminal, with laws of judiciary, admiralty, stewardship, regality, and sheriffship, at 20 their good pleasure, provided the said laws be as conformable as possible to the laws of Scotland, respect being had to circumstances, place, country, persons, and their qualities; And, likewise, of appointing rulers, commanders, and heads of all and sundry the foresaid cities, boroughs, ports, naval stations, and harbors, and also captains of castles, fortalices, and fortresses, as well by sea and near the shore as by land, well and sufficiently provided, appointed, and fortified with troops of soldiers and forces, for the maintenance, defence, and preservation thereof, and the repelling of all domestic as well as foreign invasions of the same; and of gathering, assembling, and making all the inhabitants of the said country meet together, for the purpose before written, on all necessary occasions, and for the repelling and resisting of all other force and violences whatsoever; And with power to the said Sir William Alexander, and his foresaids, for the better fortifying of the said lordship and country of New Scotland, of trans- 30 porting from the said Kingdom, and other bounds convenient, all sorts of munitions, great and small greater ordnance, cannons, demi-cannons of cast-iron, swords, guns of brass and iron, and other instruments and engines of war, with small guns, commonly called muskets, hagbuts, half haggis, pistols, powder, balls, and other necessary provision and arms, as well offensive and defensive, and wearing and using such arms, as well within the said country of New Scotland, as in their passage and progress to the said land, or from them, with their companions, associates, and dependants.

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Charter to Sir
William
Alexander,
12th July,
1629.

Also we, with advice foresaid, have made, constituted, and appointed the said Sir William Alexander and his heirs and assignees heritably, our Justices General, in all criminal causes, with the said country and lordship of New Scotland, High Admiral, and Lord of Regality and Admiralty, within the said country, hereditary High Steward, also, thereof, and of all and sundry such regalities, with power 40 to him and his heirs and assignees, of using, exercising, and enjoying all and sundry the foresaid jurisdiction, judicatures, and offices, with all and sundry privileges, prerogatives, immunities, and casualties thereof, in like manner, and as freely as any other Justice, or Justices General, High Stewards, Admirals, Sheriffs, or Lords of Regalities, had, or can have, or possess, and enjoy the said jurisdiction, judicatures, offices, dignities, and prerogatives, in any of our kingdoms, bounds, and dominions whatsoever; with power to the said Sir William Alexander, and his heirs and assignees, of constituting, erecting, nominating, and creating clerks, officers, maceers, apprizers, and all other members of court of all and sundry the foresaid judicatures and jurisdictions respectively, with all fees, dues, and emoluments thereto belonging, as shall seem to them expedient; without prejudice always to all other infants rights, or dispositions, by us, or our predecessors, to whatsoever person or persons, who are or shall be 50 portioners of the said plantation of New Scotland proceeding upon the resignation of the said

Sir William Alexander only, and not otherwise, of whatsoever parts or portions of the said country and lordship of New Scotland, with the privileges and immunities mentioned in their infeftments,

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And seeing by reason of the great remoteness and distance of the said country and lordship of New Scotland, from our said ancient Kingdom of Scotland, both that the said country can neither easily nor conveniently be reached except in the summer time; and that the said country is altogether destitute of public scriveners and notaries, requisite for taking seisins, so that seisin, at all times, cannot conveniently be taken on the ground of the said country; and also, respect being had to the great and manifold disadvantages which may result, by default, of timely seisin being taken upon this present patent, and upon other charters, and similar infeftments granted, and to be granted, of the aforesaid lands and lordship of New Scotland, or any part thereof; Therefore that this, our present charter, will be more effectual, and that seisin thereupon may be more conveniently taken, it is necessary that seisin of all and sundry the aforesaid lands of the said country and lordship of New Scotland be taken within our said Kingdom of Scotland, and on the grounds and lands of the same, in the most eminent place thereof, which can neither conveniently nor lawfully be done without an express union of the said country and lordship of New Scotland to the said Kingdom of Scotland; Wherefore, and for the advantage and readier convenience of the aforesaid seisin, we, with advice aforesaid, have annexed, united, and incorporated, and by our present charter, unite, annex, and incorporate, with our said Kingdom of Scotland all and sundry the aforesaid country and lordship of New Scotland, with the teinds and teind sheaves thereof included, and all and sundry parts, pertinents, privileges, jurisdictions, and liberties of the same, and others generally and specially above mentioned; and by our present charter, will, declare, deem, and ordain that one seisin, now to be taken at our Castle of Edinburgh, as the most eminent and principal place of our said Kingdom of Scotland, of all and sundry the said lands, country, and lordship of New Scotland, or any part of the same, with teinds and teind sheaves thereof included, respectively, is, and shall be sufficient seisin for all and whole the aforesaid lands, country, and lordship of New Scotland, with the teinds and teind sheaves thereof included, or any part of the said lands and country aforesaid, and all the privileges, jurisdiction, and liberties thereof respectively, and others specially and generally above mentioned, notwithstanding the said lands, country, and lordship of New Scotland are far distant, and lie discontinuous from our said Kingdom of Scotland; as to which, we, with advice and consent aforesaid, have dispensed, and by our present charter for ever dispense; without prejudice and derogation always to the said privilege and prerogative granted to the aforesaid Sir William Alexander, and his heirs and assignees, of making and establishing laws, acts, and statutes, concerning all and sundry the aforesaid lands, country and lordship of New Scotland, as well by sea as by land: And by our present charter we declare that notwithstanding the said union (which is declared to be granted solely to the advantage and convenience of seisin) the said country and lordship of New Scotland shall be judged, ruled, and governed by the laws and statutes made, and to be made, constituted, and established by the said Sir William Alexander, and his heirs and assignees, relating to the said country and lordship of New Scotland, in like manner, and as freely, in that respect, as if the said union had never been made or hitherto granted: And further, notwithstanding the aforesaid union, it shall be lawful to the aforesaid Sir William Alexander, and his heirs and assignees, to give, grant and dispose any parts or portions of the said lands, country and lordship of New Scotland, heritably belonging to them, to and in favour of whatsoever persons, their heirs and assignees, heritably, with the teinds and teind sheaves thereof included (provided they are our subjects), to be holden of the said Sir William Alexander, or of us and our successors, either in blench farm, few farm, or in ward and relief, at their pleasure; and to entitle and denominate the said parts and portions by whatsoever styles, titles and designations shall seem to them fit, or be in the will and option of the said Sir William, and his aforesaid, which infeftments and dispositions shall be approved and confirmed by us or our successors freely, without any composition to be paid therefor: Moreover, we, and our successors shall receive whatsoever resignations shall be made by the said Sir William, and his heirs and assignees, of all and whole the aforesaid lands and lordship of New Scotland, or of any part thereof in our hands, and (those) of our successors and Commissioners aforesaid, with the teinds and teind sheaves thereof included, and others generally and specially above mentioned, to and in favour of whatsoever person or persons (provided they are our subjects, and live under our obedi-

Novodamus
Charter to Sir
William
Alexander,
12th July,
1625.

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ence): And they shall pass infeftments there, to be holden in free blench farm, of us, our heirs and successors, in manner above mentioned, freely, without any competition; which lands, country and lordship of New Scotland, with the teind sheaves thereof included, and all the sundry parts, pendicles and pertinents, privileges, jurisdiction, prerogatives and liberties of the same, and others, specially and generally above mentioned, together with all right, title, interest, claim of right, petitory, as well as possessory, which we, or our predecessors or our successors had, have, or any way could have, claim, or pretend thereto, or to any part of the same, or to the mails, farms, profits and duties thereof, of whatsoever years, or terms bygone, for whatsoever cause or occasion, we, with advice foresaid, for the reasons above mentioned, of new, give, grant and dispone to the foresaid Sir William Alexander, and his heirs and assignees, heritably for ever; renoueing and exonerating the same simpliciter, with all action and instance heretofore, competent to, and in favour of the said Sir William Alexander, and his heirs and assignees, as well for non-payment of the duties contained in their original infeftments, as for non-performance of due homage, conform thereto, or for non-fulfillment of any point of the said original infeftment or for commission of any fault or deed of omission or commission prejudicial thereto, and whereby the said original infeftment made, in any way, be lawfully impugned or called in question, for ever acquitting and remitting the same simpliciter, with all title, action, instance and interest, heretofore competent, or that may be competent to us, and our heirs and successors, renoueing the same simpliciter *jure lite et causa cum pacto de non petendo*, and with supplement of defects, as well not named as named, which we will to be held, as expressed in this our present charter.

To be holden in free blench farm, as said is, and dispensing with non-entry, whensoever it shall happen, in manner foresaid: Moreover, we, for us and our successors, with advice foresaid, give, grant and commit power to the said Sir William Alexander, and his heirs and assignees, of having and lawfully establishing and causing to be coined current money, in the said country and lordship of New Scotland, and for the readier convenience of commerce and bargains amongst the inhabitants thereof, of such metal, form and fashion as they shall design or appoint; and for this effect we give, grant and commit to them, or their heirs and assignees, lieutenants of the said country, the privileges of coining money with iron instruments, and with officers necessary for that purpose: Further, we, for us and our successors, with advice aforesaid, have given, granted, ratified, and confirmed; and by our present charter, give, grant, ratify, and confirm to the said Sir William Alexander, and his heirs and assignees, all places, privileges, prerogatives, pre-eminences, and precedencies whatsoever, given, granted, and reserved, or to be given, granted, and reserved, to the said Sir William Alexander, and his heirs and assignees, and his successors, Lieutenants of the said country and lordship of New Scotland, over the Knights, Baronets, and remanent portioners, and associates of the said plantation, so as the said Sir William Alexander, and his heirs-male descending of his body, as Lieutenants foresaid, shall, and may, take place, prerogative, pre-eminence, and precedency, as well before all esquires, lairds, and gentlemen, of our said kingdom of Scotland, as before all the foresaid Knights, Baronets of our said kingdom, and all others, before whom the said Knights Baronets, in virtue of the privilege of dignity to them, can have place in precedency, for the advancement of which plantation and colony of New Scotland, and in respect of it especially, the said Knights Baronets were, with advice foresaid, created in our said kingdom of Scotland, with their state and dignity, as a special token of our favour conferred upon such gentlemen, and honourably born persons, portioners of the foresaid plantation and colony; with this express provision always, that the number of the foresaid Baronets never exceed one hundred and fifty.

Finally, we, with advice foresaid, for us, our heirs and successors, will, decern, and ordain that this our Patent and infeftment, with all its contents, be ratified, approved, and confirmed in our next Parliament of our kingdom of Scotland; and that it may have the force, strength, and effect of an act, statute, and decree of that supreme judicatory, as to which we, for us and our successors, declare and ordain this our present charter to be a sufficient warrant to the Lords of the Articles of our said Parliament, for the ratification and confirmation thereof, in manner before written: Moreover to our lovites . . . and each of you, conjunetly and severally, our Sheriffs in that part, especially constituted, greeting: We charge and command you, that ye give and deliver to the foresaid Sir William Alexander, or his certain Attorney, bearer of these presents, heritable state and seisin, as well as cor-

Novodamus
Charter to Sir
William
Alexander,
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1625.

poral, actual, and real possession of all and whole the foresaid lands, country and lordship of New Scotland with all and sundry parts, pendicles, privileges, commodities, immunities and others, generally as well as particularly above expressed, at our said castle of Edinburgh, without delay: and this in no wise ye leave undone. Which to do we commit to you, and each of you, conjunctly and severally, our Sheriffs in that part foresaid, our full and irrevocable power by our present charter; which seisin we, with advice foresaid, for us and our successors, by our present charter will, declare, and ordain to be as lawful and sufficient, as if precepts of seisin, separately and ordinarily, to that effect had been directed out of our Chancery, upon our said charter, as to which we, with advice foresaid, for us, our heirs and successors, have dispensed, and by our present charter, forever dispense.

10 In witness whereof, we have ordered our Great Seal to be appended to this our present charter, the witnesses being our well-beloved cousins and councillors, James, Marquess of Hamilton, Earl of Arran and Cambridge, Lord Aven and Innerdail, etc.; William, Earl Marishall, Lord Keith, etc., Marishall of our Kingdom: our beloved councillor, Sir George Hay, of Kinfales, Knight, our Chancellor; our well-beloved cousin and councillor, Thomas, Earl of Melros, Lord Bynning and Byres, our Secretary; our beloved familiar councillors, Sir Richard Cokbourne, of Clerkintoun, Keeper of our Privy Seal; Sir John Hamilton, of Magdalens, Clerk of our Rolls, Register and Council; Sir George Elphinstoun, of Blythwode, our Justice-Clerk; and Sir John Scott, of Scotistarvet, Director of our Chancery, Knights. At our Palace of Othlands, the 12th day of July, Anno Domini 1625, and the first of our reign,

CHARTER *

20 IN FAVOUR OF SIR WILLIAM ALEXANDER, KNIGHT, OF THE COUNTRY AND LORDSHIP OF CANADA IN AMERICA, 2ND FEBRUARY, 1628-9.

†NOTE.—This translation is taken from the Appendix to a narrative of Law Proceedings privately printed at Edinburgh in 1836. No revision has been made except that "New Scotland" is introduced instead of "Nova Scotia" wherever the Latin form occurs.

CHARLES, by the Grace of God, King of Great Britain, France and Ireland, and Defender of the Faith, to all good men of his whole land, clergy and laity, Greeting: Know ye, that we, being perfectly mindful by what engagement our faithful and well-beloved Councillor, Sir William Alexander, of Menstrie, Knight, our Principal Secretary for our kingdom of Scotland, and Hereditary Lieutenant 30 of our country and dominion of New Scotland, in America, has sustained great charges and expenses in his various undertakings in the providing of ships, engines of war, ordnance and munitions, in the conducting of colonies; as also, in exploring, settling and taking possession of the said country; and whereby he and our other subjects who amongst with him were to find a settlement in the said country might be assisted by the further diffusion of the Christian religion in those parts of our dominions, its propagation therein, and the expected revealing and discovery of a way or passage to those seas which lie upon America on the west, commonly called the South Sea, from which the head or source of that great river or Gulf of Canada, or some river flowing into it is deemed to be not far distant; and since by the example already exhibited by the said Sir William in the exploring and settling of the said country of New Scotland terminating at the aforesaid Gulf and River Canada, he has proposed establishments by him in those parts of the plantation which seem to be favourable for the propa- 40 gation of the said religion, and tending only to the great honour and profit of our ancient kingdom of Scotland, whence it may come to pass that the said colonies to be planted by him and his successors may by this means in process of time discover the foresaid way or passage to the said seas, much hitherto for very weighty consideration desired and so often by various persons undertaken; Therefore, and for exciting the more earnest resolutions of the said Sir William, his heirs, assignees, portioners and associates, to further progress in such and so great an enterprise, we, with the special advice and consent of our very faithful and well-beloved Cousin and Councillor, John, Earl of Mar, Lord Erskene and Garcoch, our High Treasurer, Comptroller, Collector and Treasurer of our new augmentations of our kingdom of Scotland; our faithful and well-beloved Councillor, Archibald, Lord Naper of Merchings- 50 toun, our deputy in the said offices, and the remanent Lords of our Privy Council, our Commissioners of our

* From the work *Sir William Alexander and American Colonization*, Publication of the Prince Society, Boston, 1875.

† This note is in the work from which the Charter is now printed.

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Novo-Scotia
Charter to Sir
William
Alexander,
12th July,
1625.

Charter from
King Charles
I. to Sir
William
Alexander,
2nd February,
1628-9.

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said kingdom of Scotland, have given, granted and disposed, and by our present charter, give, grant and dispose to the foresaid Sir William Alexander, his heirs and assignees, heritably, forever, all and sundry islands within the Gulf of Canada, lying between New Scotland and Newfoundland, at the mouth and entrance of the great river Canada aforesaid, where it falls and enters into the said Gulf (including therein the great island Anticosti). Also, we have given, granted, and disposed, and, by our present charter, give, grant, and dispose to the before-named Sir William Alexander all and sundry islands lying within the said river Canada, from the said mouth and entrance up to the head, fountain, and source thereof, wheresoever it be, or the lake whence it flows (which is thought to be towards the Gulf of California, called by some the Vermillion Sea), or within any other rivers flowing into the said river Canada, or in whatsoever lakes, waters, or arms of the sea, 10 through which either the said great river Canada, or any of the said other rivers pass, or in which they discharge themselves.

And further, we have given and granted, and by our present charter give and grant to the foresaid Sir William, and his foresaids, fifty leagues of bounds on both sides of the foresaid river Canada, from the said mouth and entrance to the said head, fountain, and source thereof; also on both sides of the said other rivers flowing into the same; as also, on both sides of the said lakes, arms of the sea, or waters, through which any of the said rivers have their course, or in which they terminate; and in like manner we have given and granted, and by our present charter give and grant, to the foresaid Sir William Alexander, and his foresaids, all and whole the bounds and passages, as well in waters as on land, from the foresaid head, fountain, and source of [the river] Canada, wheresoever it is, or from 20 whatsoever lake it flows, down to the foresaid Gulf of California, whatsoever the distance shall be found to be, with fifty leagues altogether on both sides of the said passage, before the said head of (the river) Canada, and Gulf of California, and likewise all and sundry islands lying within the said Gulf of California; as also all and whole the lands and bounds adjacent to the said gulf on the west and south, whether they be found a part of the continent or mainland, or an island (as it is thought they are) which is commonly called and distinguished by the name of California.

Charter from
King Charles
I. to Sir
William
Alexander,
2nd Febru-
ary, 1628-9.

Moreover, we have given and granted, and by our present charter give and grant, and for us and our successors, with advice and consent foresaid, perpetually confirm to the foresaid Sir William Alexander, his heirs and assignees whatsoever, heritably, all and sundry other lands, bounds, lakes, rivers, arms of the sea, woods, forests, and others that shall be found, 30 conquered, or discovered, at any future time, by him or his successors, their partners, associates, or others in their name, or having power from them, upon both sides of the whole bounds and passages foresaid, from the mouth and entrance of the said river Canada, where it discharges itself into the said Gulf of Canada, to the said Gulf of California, or the islands in the seas thereto adjacent, which are not yet really and actually possessed by others, our subjects, or the subjects of any other Christian Prince, or constituted Orders in alliance and friendship with us, with full and absolute power to him the said Sir William Alexander, and his foresaids (and to no others), their 40 stewards, servants, and others in their name, of establishing colonies and engaging in commerce, in the before-named places or bounds, or any part of them particularly designed, and of expelling or debarring all others from the same; also, of leasing out proportions of the land thereof, to whatsoever person or persons shall seem to him fit, and on the same terms, conditions, restrictions, and observances, within all the before-named bounds, as he can do in New Scotland, by whatsoever Charters or Patents granted to him by our late dearest father or by ourselves; Also, with such, and as great privileges and immunities in all the foresaid places, or bounds, islands, and others above written, as well as in the sea and fresh water, as on land, as the said Sir William Alexander has in New Scotland, by his prior charters or patents of New Scotland, dated at ———, which privilege contained in the said prior charters, and every one of them, we ordain to be equally sufficient and valid, and altogether of the same strength, force, and effect, as if each had been herein, word for word, particularly, and by itself, granted and expressed; as to the not particular insertion of which herein, we, for us and our successors, have dispensed, and, by our present charter, 50 for ever dispense; declaring also, as we, with advice and consent foresaid ordain and declare, for us

Charter, give, grant and
ably, forever, all and
id Newfoundland, at
and enters into
have given, granted,
he before-named Sir
in the said mouth and
lake whence it flows
illion Sea), or within
s, or arms of the sea, 10
pass, or in which they

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of the foresaid river
hereof; also on both
id lakes, arms of the
they terminate; and
grant, to the foresaid
as well in waters as
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e distance shall be
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undry other lands,
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Canada, where it
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lling or debarring
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land, by what-
ourselves; Also,
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New Scotland,
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d declare, for us

and our successors, that this our present Charter or Patent shall in no wise be prejudicial or derogatory to whatsoever rights, Charters, or Patents, granted to the foresaid Sir William Alexander, or his foresaids, of, or concerning New Scotland, at whatsoever time preceding the date of these presents, or to any head, clause, article, or condition, therein expressed, as also shall be, without prejudice, to any prior charter granted by us ere now, or to be granted at any time to come to whatsoever Baronets within Scotland, of the country of New Scotland; prohibiting and forbidding all and sundry our subjects, of whatsoever degree, or condition, wheresoever, in our kingdoms, or dominions, to make any plantation, or engage in any commerce in the said places, or bounds, gulfs, rivers, lakes, islands, and arms of the sea above written, or in any part thereof, without the special advice, permission, and
10 consent of the foresaid Sir William Alexander, or his foresaids; and with special power to the said Sir William Alexander, and his foresaids, of seizing, arresting, and apprehending all and sundry persons who shall be found to be in trade, and engaged in commerce in any part of the said places or bounds, contrary to this prohibition, and of confiscating their ships and goods, and disposing thereof at pleasure, to their own proper uses, without rendering any count or reckoning in any manner, for the same, or any part thereof; and of doing all other things within all, and whole, the before named bounds or spaces, as freely and fully, to all intents, purposes, and instructions, as the foresaid Sir William Alexander, and his foresaids could have done, or can do within the said country of New Scotland, or our said kingdom of Scotland, in virtue of any of the said letters-patent, prior Charters or Patents; to be holden, and to hold all, and whole, the before-named lands, spaces, or bounds, islands, and others,
20 generally and particularly expressed, with their sundry privileges, immunities, and commodities whatsoever, generally and particularly, above mentioned, by the foresaid Sir William Alexander and his foresaids, of us and our successors, of the Crown and our kingdom of Scotland, in free bench farm forever, by all their right, meiths, old and divided, as they lie in length and breadth, in houses, buildings, thickets, plains, muirs, marshes, roads, footpaths, waters, pools, rivulets, meadows, grazings, and pastures; mills, multurens, and their sequels; fowlings, huntings, fishings, peat ground, turf grounds, coals, coal pits, rabbits, warrens, pigeons, dove cotes, forges, kilns, breweries, and broom woods, groves, and shrubs, buried trees, timber, quarries, stone, and lime, with courts and their dues; herezelds, fines, and raids of women; with common pasterage, and freeish and entry; and with all other and sundry liberties, commodities, profits, easements, and just pertuents thereof whatsoever, as well not named as named,
30 under ground as above ground, far and near, belonging, or which may justly belong, in any manner, for the future, to the foresaid lands, with the pertuents, freely, quietly, fully, entirely, honourably, well, and in peace, with gibbet, ditch, suit, liberty of pleas, toll, power of having servants, forestry, sea wreck, ware, waif, venison; jurisdiction over thieves taken within and without the liberties; pit and gallows, without any impediment, revocation, contradiction, or obstacle whatsoever; paying therefor yearly, the said Sir William, and his foresaids, to us and our successors, one penny, Scots money, upon the ground of the said lands, or any part thereof, at the Feast of the Nativity of our Lord, in name of bench farm, if asked only: which whole and entire fore-named lands, spaces or bounds, islands and others, generally and particularly, above expressed, as said is, we, with the special advice and consent foresaid, for us and our successors, have erected and united, and, by our present
40 charter, erect and unite into one entire and free lordship forever, to be called of Canada, heritably belonging and pertaining to the before-mentioned Sir William Alexander and his foresaids.

Also, we, by our present charter, are graciously pleased, that whensoever the said Sir William Alexander and his foresaids, or any of them, shall wish and desire this our present charter to be renewed, with all and sundry beneficial clauses and conditions, as in the said prior charters or patents of New Scotland, or as he, his foresaids, or any of them, on consultation of counsel, or by any special exauination towards the further or more certain discovery of the said places or bounds, rivers, lakes, arms of the sea, or passages, and others above mentioned, shall seem to be more advantageous and expedient, then, and in that case, we, on the word of a prince, promise, that we will renew and alter the said charter to the foresaid Sir William Alexander and his foresaids, in the best and most ample form that can be conceived: Moreover, we, by our present charter, with advice and consent foresaid, decern, declare, and ordain, that seisin to be taken by the said Sir William Alexander, or his foresaids, at our castle of Edinburgh, as the most eminent and principal place of our said kingdom of Scotland, or upon the soil

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Charter from
King Charles
1. to Sir
William
Alexander,
2nd Febru-
ary, 1628-9.

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and ground of the foresaid lands, bounds and islands, or any part thereof, at the pleasure and will of the said Sir William, and his fore-aids, shall in all time coming, be sufficient for all and whole the before-named lands, bounds, islands, and others above specified, or any part or portion thereof; and that the heirs of the foresaid Sir William, and his foresaids, may be seized in all and sundry the before-named lands, bounds, islands, and others foresaid, by precepts out of either the chancery of our said kingdom of Scotland, or the chancery to be instituted by the said Sir William, and his foresaids, in the afore-said country and lordship of Canada, as they incline, or also as their heirs can be seized, by their said prior grants in New Scotland, as to which we, with advice and consent foresaid, for us and our successors, have dispensed, and by our present charter, forever dispense, and as to all and sundry the before-named privileges and others, generally and particularly above mentioned.

10

And further, we have made and constituted, and, by our present charter, make and constitute, and any of them, conjunctly and severally, our, bailies in that part, giving and granting our full power and special warrant to them, and any one of them, for giving, granting, and delivering to the foresaid Sir William Alexander, and his foresaids, or to their certain attorneys, holding or producing this our present charter, heritable state and seisin, as well as actual, real, and corporal possession of all and sundry the before-named lands, bounds, rivers, lakes, islands, arms of the sea, or passages, and others whatsoever, generally and particularly above expressed, of the said country, and lordship of Canada, at our said castle of Edinburgh, or upon the soil and ground of any part of the foresaid lands and bounds or places, or in both manners, at the pleasure of the said Sir William Alexander, and his foresaids, commanding them, and any one of them, that, on sight of these 20 presents, they, or any one of them, forthwith give and deliver heritable state and seisin, as well as actual, real, and corporal possession of all and sundry the before-named lands, places or bounds, islands, rivers, lakes, and others foresaid, generally and particularly above expressed, to the foresaid Sir William Alexander, and his foresaids, or to their certain attorneys, holding or producing this our present charter, upon any part of the ground of the said lands, or at our Castle of Edinburgh, or in both manners, as shall appear to him and his foresaids best, by delivery of earth and stone to the foresaid Sir William Alexander, and his foresaids, or to their attorneys, holding or producing this our present charter at the said Castle, or upon the soil and ground of the said lands and others above written, or in both manners, as the said Sir William, and his foresaids, incline, which seisin so to be delivered by our said bailies in that part to the foresaid Sir William, and his foresaids, or to their attorneys, holding or producing this 30 our present charter, we, for us and our successors, deem and ordain to be good, lawful, valid, and sufficient in all time coming, dispensing as we, by our present charter dispense, as to all that can be objected against, the same, whether in form or in effect.

Charter from
King Charles
I. to Sir
William
Alexander,
2nd Febru-
ary, 1628-9.

Lastly, we, for us and our successors, with advice and consent foresaid, will, deem, declare, and ordain this our present charter, with all and sundry privileges, liberties, clauses, and conditions, above-mentioned, to be ratified, approved, and confirmed, in our next Parliament of our kingdom of Scotland, or in any other Parliament of the said kingdom hereafter to be holden, at the will and pleasure of the said Sir William Alexander, and his foresaids, and to have the strength, force, and effect of a decree of that supreme court, which to do, we, for us and our successors, will and declare our said charter, and clauses therein contained, to be a sufficient mandate or 40 warrant, promising, on the word of a King, that the same shall be so done and performed.

In witness whereof, we have ordered our Great Seal to be appended to this our present charter, the witnesses being, as in others (charters) our cousins and councillors, James, Marquess of Hamilton, Earl of Arran and Cambridge, Lord Aven and Innerdaill, William, Earl Marishal, Lord Keyth, &c., Marishal of our Kingdom, George Viscount of Duplin, Lord Hay, of Kinfauns, our Chancellor, Thomas, Earl of Hadingtoun, Lord Bynning and Byres, &c., Keeper of our Privy Seal, our beloved familiar councillors, Sir William Alexander, of Menstrie, our principal Secretary, Sir James Hamilton, of Magdalenis, Clerk of our Rolls, Register, and Council, Sir George Elphinstoun, of Blythiswode, our Justice Clerk, and Sir John Scott, of Scottistavett, Director of our Chancery, Knights, at our palace of Whythall, the second day of February, Anno Domini 1628, and the third of our reign.

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NOTES ON MAPS*

[being the substance of memoranda which appear with that title in the Book of Arbitration Documents, p. 135.]

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EXAMINED WITH A VIEW TO ILLUSTRATE THE BOUNDARIES OF CANADA WHILE UNDER THE FRENCH DOMINION, AND OF THE BRITISH PROVINCES INTO WHICH THE COUNTRY WAS AFTERWARDS DIVIDED; AND TO SHOW THE PROGRESS OF FRENCH EXPLORATION AND SETTLEMENT. MANY HUNDREDS OF OTHER MAPS HAVE BEEN EXAMINED WITH THE LIKE VIEW, BUT ARE HERE OMITTED AS CONTAINING NOTHING OF VALUE ON THE SUBJECT IN HAND.

[THE DESCRIPTION FOLLOWING THE TITLE OF EACH MAP, *infra*, IS OF WHAT APPEARS BY SUCH MAP, UNLESS THE CONTRARY IS INDICATED.]

- 10 The maps mentioned in these notes were consulted at or may be found in the places following, viz :
- Nos. 3, 5a, 12-14, 16-20, 22, 25, 50, 52, 55, 57-63, 74, 92, 103, 113-14, 121-2, 128, 136-7, 142, 151, 183, 185, in the Parliamentary Library, Ottawa.
- Nos. 2, 7-11, 15, 21, 26, 28-32, 34, 40-2, 46, 48, 56, 64-7, 75, 81-2, 90-1, 93-8, 100-3, 105-7, 109-10, 115-20, 125-7, 131-4, 140, 147-50, 152-62, 166, 168-9, 172-4, 181-2, in the New York State Library at Albany.
- Nos. 23-4, 77-9, 85-9, 163-4, 175-7, 180, 184, in the Legislative Assembly Library, Toronto.
- Nos. 1, 35, 47, in the Libraries at both Albany and Ottawa.
- Nos. 4, 27, 53-4, 112, in Paris.
- No. 3, at St. Mary's College, Montreal.
- No. 33, in the Albany and Ottawa, and at Paris Libraries; and copy in possession of the Ontario Government.
- 20 Nos. 43-5, 83, 167, 170-1, 179, in London.
- Nos. 68-73, in the Department of Education, Toronto.
- No. 84, in the Department of the Marine, Paris.
- No. 99, in the Albany Library; copy in possession of the Ontario Government.
- No. 104, in the Libraries at Ottawa and Albany, and in London; copy in possession of the Ontario Government.
- No. 111, in the Education Department, Toronto, and in the Library at Albany.
- Nos. 123, 135, 178.
- No. 138, in the Library at Ottawa.
- Nos. 144, 165.
- No. 145, in the State Department, Washington.
- 30 No. 146.
- Nos. 36-7, 49, 51, 76, 80, 124, 129-30, 141, 186 in possession of the Ontario Government, as are also Nos. 33, 99, and 104.

- (1) 1632.—"Carte de la Nouvelle France" in Champlain's Works, ed. 1632. [Facsimiles in the works of O'Callaghan and Laverdière.]
New York State Library, Albany.

Notes on
Maps, 1632-
1837.

40 In this map Labrador and Hudson's Bay and Straits, and westward, the country to the limit of discovery, are included in Nouvelle France; that name commences north of Grand Lac [Superior], and north-west of *Mer Douce* [Lake Huron], and, skirting the foot of James' Bay, terminates at the Saguenay. The route between the St. Lawrence and Hudson's Bay, by the Rivers Saguenay and Rupert and Lake Mistassin, clearly appears. This, which was at all times the chief overland route followed by the French, and by the great Fur Companies, was evidently well known even at this early date.

- (2) 1635.—Maps "of the World" and "of America," in Mercator's Atlas, English ed. 1635, and second ed., 1637.

New York State Library.

In these maps the name "Nouvelle France" extends northward to Davis' Straits: the name commences, on the last mentioned map, on the south side of these Straits.

- (3) 1643.—"La Nouvelle France, dressée sur dernières relations modernes, 1643," (MS. in Library of Parliament, Ottawa.)

50 Parliamentary Library, Ottawa.

* There is a valuable collection of maps in the Library at Ottawa. In the case of such of them as are in MS., the originals have, in most cases, been, since these notes were put in type, consulted at Paris and elsewhere.

The name Nouvelle France commences north of Grand Lac des Nadouessioux [Superior]; and the name Canada commences east of James' Bay, and north of Lake Mistassin. That country has no limits indicated towards the north; and none to the west, other than the bounds of discovery.

- (4) 1650.—"L'Amérique Septentrionale, par N. Sanson.. 1650." This is the original edition.
At Paris.

The name Canada extends across Hudson's Bay, no northern limit being shewn. "Estotilande Terre de Labrador ou Nouvelle Bretagne," are named east of Hudson's Bay, and north of lat. 54°.

- (5) 1660.—"Tabula Novæ Franciæ, anno 1660," in "Historia Canadensis seu Novæ Franciæ: auctore P. Francisco Creuxio. Paris, 1664." [*Fac simile.*]
St. Mary's College, Montreal.

Hudson's Bay and Straits, and, towards the west, the country to the limit of the map, (the meridian of the centre of Lake Superior), are included in this map as part of New France. 10

- (5a) [Before 1662].—"L'Amérique Septentrionale, par le Sr. Sanson d'Abbeville [Geographe Ordinaire du Roy]. Paris, A. Perouymin, Sculp."
Parliamentary Library, Ottawa.

In this map "Canada ou Nouvelle France" has no limits on the North; it extends south-westerly to the eastern boundary of Me cieo; on the west appears a coloured line, which may represent the then limits of discovery, running, from such last-mentioned boundary, north-easterly to the western shore of Hudson's Bay, in the latitude of Port Nelson. The name runs across Hudson's Bay, Labrador, and the great Lakes. The name "Canadienne" also extends from the west shore 20 of Lake Superior (produced), north-easterly and across Hudson's Bay.

- (6) [Before 1662].—"Le Canada ou Nouvelle France, par N. Sanson."

"Canada ou Nouvelle France" extends westward to the limit of the map, (the meridian of the centre of Lake Superior); and southward to the parallel of the confluence of the Ohio and Mississippi. This map has a line (engraved and coloured) commencing at the western limit of the map, between Hudson's Bay and Lake Superior, and running thence easterly, in about the position of what is now known as the height of land, to a point near Lake Mistassin, and thence, almost due east, to the ocean. North of this line—east of the Bay—are the names "Estotilande ou Terre de Labrador et Nouvelle Bretagne." The map would seem to be, in part, a reproduction of an English one; this idea is confirmed by finding on it the inscription, "James, his Bay." 30

- (7) 1662.—"Amerique, par P. du Val, Geogr. du Roy." From "Cartes du Monde, Paris 1660-1," and "Le Monde Chrestien, par P. du Val. Paris, 1662."
New York State Library.

On this map Canada has no bounds on the north other than the limit of the map, which limit is on the parallel of Hudson's Straits. There is on the map a line (engraved and coloured) which commences on the northern limit, to the west of Hudson's Bay, and runs thence southerly and south-easterly to about the position of the point of confluence of the Mississippi and Ohio Rivers. The easterly boundary is the ocean. The first part of the name, "Canada ou N. France," commences west of Hudson's Bay; the second part commences at a point north-west of Lake Superior, near the westerly line above mentioned.

- (8) 1662.—"Canada," (another map in the same work). 40

New York State Library.

By this map Canada includes the country westward to the limit of the map, (a part only of Lac Superieur and of Lac des Puants [Michigan] being shown), and also Hudson's Bay and Labrador. The names "Canada" and "Nlle France" respectively, are on the face of the map in similar type, the first (Canada) commencing near the mouth of the Rupert, and the other (Nlle France) further south, east of the Ottawa.

- (9) 1662.—"La Virginie par P. du Val, Geographe du Roy, a Paris." (In same work).
New York State Library.

The name "Canada" is applied to the country back of the English Atlantic Colonies, to the northern limit of the map in 41½°; "Lac Erie ou du Chat," being included.

- (10) 1662.—"La Floride par P. du Val Geographe Ordinaire du Roy." (In same work).
In possession of Ontario Government.

Canada is bounded on the south-west by a line commencing on the westerly limit of the map, in about latitude 40°; thence south-easterly, along the north-eastern boundary of New Mexico, to the north-western angle of Florida, in about latitude 39°; and thence easterly, along the northern boundary of Florida, to the boundary of Virginia.

- (11) 1662.—"Nouveau Mexique." (No other title; but it is in the same work, and clearly attributable to Du Val).

New York State Library.

The line referred to as being on the preceding map, is here taken up at the parallel of 40°, and is continued thence north-westward to the limit of the map, in lat. 48°. The territory lying to the north-east of this line is named "Canada ou Nouvelle France."

- (12) 1664.—"Le Canada, fait par le Sr. de Champlain, . . . selon les memoires du P. du Val, 1664."

Parliamentary Library, Ottawa.

Hudson's Bay is included in "Nouvelle France ou Canada;" but on James' Bay, between Charleston Island and some islands to the north-west, is the figure "31," referring to the same number in the margin, under which is found the name "Jamestan, lieu des Anglais."

- (13) 1673.—"Carte de la nouvelle découverte . . . 1672 et 1673, 1673," (MS. Lib. Parl.)

Parliamentary Library, Ottawa.

This map illustrates the voyage of Marquette and Joliet, on the occasion of their discovery of the Mississippi, under the commission, in that behalf, of the Governor of Canada. They reached the great river by way of Green Bay and the Wisconsin, and descended it as far as the Arkansas, the return to Lake Michigan being by the Rivers Illinois and Chicago. Notes on
Maps, 1632-
1857.

- (14) 1673.—Autograph Map of the Mississippi, drawn by Marquette at the time of his voyage. (Facsimile given in Shea's "Discovery and Exploration of the Mississippi Valley.")

Parliamentary Library, Ottawa.

- (15) Shows the Mississippi (here called R. de la Conception) from the Wisconsin to the Arkansas; also the southern and western shores of Lake Superior, and the Missions of Ste. Marie St. Ignace [Michillimackinac], and Du St. Esprit [Chagouamigon or la Point]. On the main shore, opposite Ile Royale, is the note "Chemin aux Assinipoulak à 120 lieues vers le Nord-Ouest." It evidently refers to the route, by the Pigeon or the Kamanistiquia River, to the country of these Indians.

- (15) [1678].—"Novissimæ Americæ descriptio. F. de Witt, Amsteldami."

New York State Library.

A line, engraved and coloured, runs from the easterly point of Labrador, to the height of land east of Mistassin, and thence along the same height of land to a point near Lake Nepigon, which is shown as the westerly limit of discovery. A line of dots is thence continued, not coloured, for about 12° westward. North of this line; and running across Hudson's Bay, is the name "Canada," and south of the line, and extending from beyond Lac des Puans, is the name "Nova Francia."

- (16) [1680].—"Carte d'une grande partie du Canada, depuis Quebec jusq'au fond du Lac Superieur . . . 1680." (MS. Lib. Parl.)

Parliamentary Library, Ottawa.

This date is given in the catalogue, but does not appear on the face of the map, which, however, is evidently referable to a very early and probably this date. The great lakes are shown. The Kamanistiquia or the Pigeon River is represented with the inscription "Par cette rivière ou va aux Assinepoulacs à 150 lieues vers le Nord-Ouest ou il y a beaucoup de castors;" and the St. Louis River (that which falls into Lake Superior at Fond du Lac) is represented with the inscription

"Par cette rivière on va au pays des Nadouessiens à 60 lieues au couchant. . . ." In reference to these inscriptions, it is well established that the French of Canada had, long before the date of this map, considerable intercourse for the purposes of trade and otherwise, with the Assiniboine and the Sioux Indians, and exercised a large influence over them, as mentioned in the note to No. 14. The country of the latter about the sources of the Mississippi, had even been formally taken possession of, in 1679, on behalf of the Governor of Canada. The map shows establishments at Sault Ste. Marie, Michilimakinac and Green Bay.

- (17) [1682].—"Parties les plus occidentales du Canada" by Father "Pierre Kuffieux, J.," whose signature it bears. (MS. Lib. Parl.)

Parliamentary Library, Ottawa.

This map purports to be founded on the discoveries of Marquette, Joliet, "Dulude," La Salle and Hennepin. Of Du Luth it is stated on the map, in a note, "qui le premier a esté chez les Sioux ou Nadouessiou en 1678 et qui a esté proche la source du Mississippi, et qui ensuite vint retiré le P. Louis [Hennepin] qui avait esté fait prisonnier chez les Sioux. . . ." Shews the great lakes, the rivers St. Louis, Wisconsin, Illinois and Ohio, and the Mississippi, from a point N. W. of Fond du Lac, to a point below its Junction with the Ohio; also the missions "Du Sault," "St. Ignace ou Michilimakina," and "des Postes Outa[ga]mi" [Green Bay].

- (18) 1688.—"Carte de l'Amerique Septentrionale, contenant le pays du Canada ou la Nouvelle France, la Louisiane . . . Acadie et Ile Terreneuve . . . en l'année 1688. Par Jean Baptiste Louis Franquelin, Hydrographe du Roi, à Quebec, en Canada." (MS., Lib. Par.)

Parliamentary Library, Ottawa.

This map shews, correctly, the two chief routes of communication between the St. Lawrence and Hudson's Bay (here called Baie du Nord)—that by the Saguenay, Mistassin and Rupert, and that by the Ottawa, Labirinthe, Lake Abitibis and the River Monsony.

From Lac Buade [Red Lake or Leech Lake], situate N. W. of Fond du Lac, a river [the Red River] runs almost due north to Lac des Assineboels; out of which the River Bourbon or Nelson issues and, passing through Lac des Christenaux on the way, runs to Hudson's Bay. The two lakes, last mentioned, appear to represent the southerly and northerly parts respectively of Lake Winnipeg. The main branch of the Mississippi (here called Rivière des François ou des Sioux) has its source in the same L. Buade. Forts St. Croix, St. Antoine,* and St. Nicolas,† (on or near the Upper Mississippi,) St. Louis and Crève-cœur (on the Illinois,) and Chicagou (at the mouth of the river of that name), as also the Missions of the Sault and St. François Xavier [Green Bay] are represented. Fort Abitibis and [Maison] François, on L. Abitibis, and Fort Latourette, on the north shore of Lake Nepigon, are also shewn. The name "Canada ou Nouvelle France," extends across the country, from the pole to the lakes, and from the western limit of the map to the east coast of Labrador: that country has, therefore, no limits on the north or towards the west.

M. Bellin in his "Remarques sur la Carte," published in 1755, refers to another MS. map of this author as being in the "Depôt des Plans de la Marine:" it bears date 1687, and is stated to shew, "to the west of Lake Superior, branches of rivers which communicate with two great lakes, close to each other, which he [Franquelin] names, the one, Lac des Asseniboels, and the other Lac des Cristinaux; and from this last there issues a river by which it discharges itself into Hudson's Bay at Port Nelson (this is the Bourbon River). It is certain that these two great lakes are the same which we to-day call Lac Ouinipigon and Lac Bourbon,‡ and upon which we have establishments."

- (19) 1688.—"Carte generale de la France Septentrionale contenant la découverte du pays des Illinois, fait par le Sr. Joliet." It is dedicated to Colbert, and signed by Du Chesneau, the then Intendant of Canada. (MS., Lib. Parl.)

Parliamentary Library, Ottawa.

*This is the Post St. Anthony at which Perrot drew up the *Procès Verbal* of his taking possession of the country of the Upper Mississippi, in the name of the King of France.

†This fort was at the junction of the Mississippi and Wisconsin Rivers—east of the former and north of the latter—and was afterwards known as Prairie du Chien (or des Chiens.)

‡The southerly and northerly parts respectively of Lake Winnipeg.

This map shews Hudson's Bay and Straits, the River Nelson, issuing from Lac des Assinebouels, and the River Mississippi, from its mouth to a point west of that lake,—all included in the title.

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- (20) 1688.—“Carte de la partie orientale du Canada ou de la Nouvelle France. Par le Père Coronelli, 1688.” (MS., Lib. Parl.)
Parliamentary Library, Ottawa.

The part of the Atlantic shown on this map is named “Mer du Canada ou de la Nouvelle France.”*

- (21) 1688.—“Partie occidentale du Canada ou de la Nouvelle France..... par le P. Coronelli, . . . corr. et aug. par le Sieur Tillemon. A Paris, chez J. B. Nolin. . . . 1688.”
New York State Library.

The name “Partie du Canada” commences, on this map, five degrees west of the Mississippi, on the par. of 47°; “Nouvelle France” commences on the same meridian, in about lat. 41°. Hudson's Bay is included in Canada.

- (22) 1689.—[“Carte de la partie occidentale du Canada ou de la Nouvelle France, par le Père Coronelli, 1689.”] (MS., Lib. Parl.) This title is in the catalogue, but not on this copy of the map.
Parliamentary Library, Ottawa.

This map purports to have special reference to the discoveries of Marquette, Joliet and LaSalle. An affluent of the Mississippi issues from Lac Buade, which is situate due west of L. Nepigon; the main stream marked “Fleuve Miss.” comes from the N. W., and is joined by that affluent on the parallel of Fond du Lac. The inscription “Partie du Canada ou Nouvelle France” stretches, from beyond the Mississippi, eastward to the St. Lawrence, and extends south as far as the Ohio.

- (23) 1690.—“Mondo Nuovo,” by Coronelli; in his Atlas, “Venice, 1690.”
Legislative Assembly Library, Toronto.

This map has an engraved line which commences at the most easterly point of Labrador, in lat. 54°, and runs south-westerly, passing close to (and south of) the foot of James' Bay and the mouth of the Albany river (not shewn), and thence westerly to the merid. of Fort Nelson (not shewn), thence due south to the Gulf of Mexico, —leaving the Mississippi and Lago di Nadouessans, (probably intended for Lake of the Woods), to the east. This western line is probably intended to indicate the limit of the most advanced discoveries in that direction, at the time. North of the line, west of the Bay, New South Wales and New North Wales are shewn; and east of the Bay “Estotilandia. . . . scoperta da Antonio Zeno, nel 1390.” The northern part of the Atlantic is named “Mare di Canada, o della N. Francia.”

- (24) 1690.—“America Septentrionale” by Coronelli (in the same Atlas).
Legislative Assembly Library, Toronto.

This map has the same engraved line as the preceding. The name “Canada o Nuova Francia,” commences at the Mississippi, north of the Ohio, and ends at the Labrador Coast, and is partly above the line in question, which, therefore, could not be intended as a boundary of Canada on the north. “New South Wales” is named, with the memo: Scoperta dagli Inglesi.” “R. Frenchman” is the river next south-west of the Rupert. East of the Bay are the names “Estotilandia or the new Bretagne et Terra di Labrador,” but printed in characters less prominent than “Canada,” and apparently included in, and subordinate to that country. This map would appear to be founded, in part, on an English map.

- (25) 1692.—“Carte Generale de la Nouvelle France, 1692,” designed to shew (inter al.) the situation of the several Missions. (MS. Lib. Parl.)

Parliamentary Library, Ottawa.

The sources of the Mississippi are laid down in this map at about the par. of Nepigon Bay, extending over a space of six degrees—from about 97° to 103° of west long. Lac des Assinebouels

*This name for the north Atlantic, near the American shores, is frequently to be found in ancient maps. It is sometimes referred to as Mer du Canada simply.

is north of these sources, and between it and them, among the Nadouessens [Sioux], a Mission of the Recollects. In this it accords with the map in Hennepin's book, (English ed.) The lower part of Hudson's Bay is shewn, and is included in New France: that country has no limit on the west.

- (26) 1695.—"Carte d'une partie de l'Amerique Septentrionale, tirée des Manuscrits de M. Guill. de l'Isle, où l'on voit son système en 1695, sous les pays situés au Nord-Ouest (publiée par M. de l'Isle, Professeur Royale. . . . 1752.)"

New York State Library.

This map contains what appears to be the first representation of the idea of "La Mer de l'Ouest," of which such frequent mention is made in French memoirs and documents, in connection with explorations west of Lake Superior, during the first half of the 18th century. It is here shown as 10 an inland sea, east of California and north of New Mexico, and the idea may, as here represented, have been founded on the Indian account of the Great Salt Lake or of the Mer Vermillion [Gulf of California.] Any subsequent representations of it on maps, place it in or about the position of the Gulf of Georgia. (See further reference to this sea, under dates 1700, 1717, 1746, and 1752, when the idea had taken better shape).

- (27) 1696.—"Le Canada, ou partie de la Nouvelle France, par H. Jaillot, Paris, 1696, et Amsterdam, chez Ottens."

At Paris.

Fort Dauphin, and an inscription referring to it, viz: "Poste François decouvert et occupé par la compagnie qui s'est formée en Canada pour la Baye d'Hudson," are given in MS., but no 20 indication is given as to when this addition was made. It is not at all improbable, however, that the French, who at this time, and up to the Treaty of Utrecht, carried on a large trade between Winnipeg and the other Western Lakes, and Hudson's Bay, may have erected Fort Dauphin at this early period, and that Verendrye's Fort of the same name was simply a re-building of it on the same site.

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1857.

- (28) 1699.—"Amérique Septentrionale par le Sieur Sanson, Geographe du Roy, Paris, 1699."

New York State Library.

A line engraved and coloured, which appears to be intended to indicate the south-westerly 30 boundary of Canada, commences on the western limit of the map, and runs southerly, at a considerable distance west of the Mississippi, to the parallel of the confluence of that river with the Ohio and thence easterly to the English Colonies. The name "Canada ou Nouvelle France" commences at this line, south-west of L. Winnipeg, and terminates at the easterly point of Labrador, and clearly includes Hudson's Bay.

- (29) 1700.—"Mappe Monde, dressée sur les observations, etc. . . . à son Altesse Royal, Monseigneur le Duc de Chartres, par. . . . G. de l'Isle, Geographe. . . . Paris, chez l'auteur."

New York State Library.

Canada includes Hudson's Bay; it has no western limit. The name "Canada ou Nouvelle France," on this map commences west of the Bourbon [Nelson] R. The sources of the Mississippi are south-west of a lake which occupies nearly the position of L. Winnipeg. The Bourbon River does not issue from or have on its course any lake.

- (30) 1700.—"L'Amerique Septentrionale. . . . par G. de l'Isle. A Paris, chez l'auteur. 1700." 40

New York State Library.

[Winnipeg] and runs easterly, on and below the par. of 50°; it includes Hudson's Bay and all to the north except, "Terres Arctiques;" and all to the west, to the limit of discovery, viz: beyond the Mississippi and L. Winnipeg; the southern boundary is a line, engraved and coloured, running easterly from the border of New Mexico, on about the par. of 36°. The source of the Mississippi is about 15° west of Lac des Assenipoils. Lac des Assenipoils does not discharge into Hudson's Bay, but into Lake Superior, thus forming a part of the St. Lawrence system. All the forts on Hudson's Bay, and Fort de Bonsecours, on the Mississippi, are shewn.

- (31) 1700.—“Carte dressée par M. Guillaume de l'Isle, au commencement de ce siècle, pour servir à ses conjectures sur l'existence de la Mer de l'Ouest. Publiée par Mr. Joseph Nicolas de l'Isle 1752.”*

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New York State Library.

The “Mer de l'Ouest” is shown in part—an inland sea, with a strait connecting it with the [Pacific] ocean. “Canada” includes Hudson's Bay and the country westward to the sea: the name commences west of Lake Superior.

- (32) 1700.—“Partie de la Nouvelle France. dédiée à Monseigneur le Marquis de Seignelay, par Hubert Jaillot. A Paris, 1700.”

10 New York State Library.

This map includes Hudson's Bay. “Poste du Sr. de St. Germain,” on Lake St. Anne, on the Albany River; “Poste du Sur. du Luth” † on the north shore of L. Nepigon; and a Fort on the south-east shore of L. Nemiseau are marked: the latter with the memo: “Poste pour couper les sauvages par le haut de la Traite de Tadoussac, et les empêcher de descendre à la Baye de Hudson.” Fort Nemiseau, and also some French establishments on Lake Mistassin—all north of the height of land—were within the Royal (French) Domain of Tadoussac; and appear to have been centres of a large trade with the Indians. Fort Nelson is marked “Post François;” and Forts Albany, Moose and Rupert, respectively, “Anglois;”—an error, as all the Hudson's Bay forts, with perhaps one exception, were at this time in the hands of the French.

- 20 (33) 1703.—“Carte du Canada ou de la Nouvelle France, par Guillaume de l'Isle, de l'Académie Royale des Sciences, et premier Geographe du Roy. A Paris, chez l'auteur, 1703.”

In possession of the Ontario Government.

The name “Canada ou Nouvelle France” commences, on this map, south-west of the southern portion of Lac des Assenipoils, and runs easterly, partly to the north of the height of land. It includes Hudson's Bay, and, westward, the whole country as far as shewn, viz., beyond the Mississippi; Lake Winnipeg and the Bourbon [Nelson] River. The sources of the Mississippi are indicated at a point about 5° S.W. of L. Winnipeg. Forts L'Huillier, Le Sueur and des Abitibis as also French establishments (“Maison Française”) on the S.W. shore of L. Mistassin, the north-west shore of L. Abitibis and at Chagouamigon, are marked. ‡ Several engraved lines appear within the limits of Canada, and merely denote boundaries of tribes.

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- 30 On an original proof copy of this map, now deposited in the Bureau de la Msrine, at Paris, there appears, as an autograph addition of the author and his brother, a line marked “Ligne selon le memoire de M. d'Auteuil.” This line commences at the entrance to and on the south shore of Hudson's Strait, and runs thence south-westerly (crossing the Rupert River) to about lat. 50½°; thence due west to a point south-west of Fort St. Louis [Moose Fort]; thence north-westward on a direct course to the parallel of 60°.

- 40 Another autograph addition to the same map is a line marked “Ligne selon la pretension des Anglois” and “Ligne selon les Anglois:” it runs from the north shore of Davis' Inlet on the Labrador coast, (in about lat. 56½°), south-westward, and through Lake Mistassin, to the 49th parallel, which it thence follows to the westerly limit of the map.

* “La Mer de l'Ouest,” so frequently mentioned in French official and other documents, between 1700-1763, was the name given by the French geographers, commencing with William de l'Isle, in 1695, to a supposed inland sea near the western coast of America. On the maps, it is represented as connected with the Ocean (Mer du Sud), at first by one passage, and subsequently by two passages or straits. The position of this sea, in the later maps, agrees with that of the Gulf of Georgia (Vancouver's Straits), and the two passages represent, respectively, the two entrances to the latter, north and south of Vancouver's Island.

† Otherwise known as Fort Latourette.

‡ Fort L' Huillier was on the St. Peter's, now the Minnesota River; Fort Le Sueur on the Upper Mississippi, below the St. Peter's; Fort Abitibis on the south-east shore of the lake of that name, north of the height of land; it was built by the Chevalier de Troyes in 1686, on the occasion of his overland expedition for the capture of the English forts on Hudson's Bay, and was thenceforward occupied, continuously, by the French, till 1763. Chagouamigon (or la Pointe) was situate on the southerly shore of Lake Superior, not far from Fund du Lac.

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—
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- (34) 1703.—"Carte du Mexique et de la Floride.dressée sur un grand nombre de memoires, principlt. sur ceux de M.M. d'Iberville et Le Sneur, par Guillaume de l'Isle. A Paris, chez l'auteur . . . 1703."

New York State Library.

The source of the St. Peter's [Minnesota] River, and the great bend of the Missouri, are on the westerly limit of the map. "Canada ou Nouvelle France" has no other limit in that direction. The name commences west of the Missouri.

- (35) 1708.—"A new map of North America, by H. Moll, Geographer," bound with "The British Empire in America [by Oldmixon]."

Library in Albany and Ottawa.

"Canada" has no bounds towards the west; its southern limit is the northern boundary of ancient Florida. The source of the Mississippi is in about lat. 55°, and long. 265° east. The "St. Laurens River" passes through Lakes Assinipouals and Nemepigon to Lake Superior. 10

In a copy of Brotherton's edition of the book, (London, 1741), the map is given in colours, and the southerly boundary of Canada is the same St. Laurens River, from its source, and through the Great Lakes, to the sea; the northerly boundary being the westerly and southerly shore of Hudson's Bay, easterly to a point near Rupert River; thence to and along the Saguenay R. to its mouth N.E. of this line is "Ter. de Labrador or New Britain. . . ."

- (36) 1709.—Map endorsed "14. Draft of the Bay with the limits prescribed by the treaty of Utrecht," but marked on its face "made by Saml. Thornton, at the Sign of the Platt in the Minories, 20 London, Anno 1709," It is in M.S. on vellum, and was sent to the Dominion Government by the Hudson's Bay Company, for the purposes of the present arbitration.

In the possession of the Ontario Government.

This map contains Labrador and Hudson's Bay and Straits. A coloured line runs direct from "Grimington's I," in about lat. 59½° south-westerly to the north-east shore of the "Grand Lake of Micosink," and thence, on almost the same course, through the centre of the lake to its south-western shore, and thence, on the same course, to the limit of the map in about lat. 45½°. On the westerly side of this line is the inscription, commencing at the same limit of the map, "The French not to goe to the westward of this line;" and on the east side the inscription "The English not to come to the eastward of this line." The country north of Rupert's River, between 30 the line and the bay, is named "Rupert's East Land," and is coloured yellow; that east of the line—on which are the names "Nova Britannia," "Laboradore," and "New France,"—is red, as is also the whole Hudson's Bay coast from Rupert River westward.*

* This map was prepared for the Company in 1709, in view of the negotiations at the Hague and Gertruydenburg.

- (37) 1710.—"North America, by John Senex, F.R.S., 1710."

In the possession of the Ontario Government.

This map is an almost servile copy of De l'Isle's, of 1703, and gives, engraved and coloured, certain dotted lines, which appear on De l'Isle's as boundaries of tribes, &c., and have no other significance. The skeleton copies of this map, attached to the report of Mr. Ramsay, and to the first report by Mr. Mills, do not convey a correct idea of these lines of the original. The sources of 40 the Mississippi, Lake of the Assenipolis, and the Bourbon River, are as on De l'Isle's. Canada, or New France, extends southward to Florida, and has no limits assigned to it on the west; the name commences west of the Missouri, on about the parallel of 42°.

- (38) 1712.—"Amplissimæ Regionis Mississippi seu Provinciæ Ludovicianæ, à R. P. Ludovico Hennepin —Nova Tabula, edita a Jo. Bapt. Homanno, S. C. M. Geographo, Norimbergæ."

The south-westerly boundary of "Canada" is a line, engraved and coloured, commencing at the south-west angle of Lake Superior; and drawn thence, north-westerly, along what is shewn as the northerly watershed of the Mississippi system, to the limit of the map, west of Lac des Assenipouils.

(Map No. 39 is cancelled here.)

Notes on
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1857.

- (40) 1713.—"The Isle of California, New Mexico, Louisiana, the River Mississippi, and the Lakes of Canada," from "Atlas Manuale, or a New Set of Maps...by Herman Moll London, 1713."

New York State Library.

The name "New France or Canada" is on the face of the map. The western watershed of Lake Superior is shown, though badly laid down. On the west side of Sioux Lake (which from its position, seems intended to represent Lake of the Woods), is the figure of a tree, with the inscription, "In this tree is cut the arms of France."

- (41) 1713.—"The English Empire in America," from the same Atlas.

New York State Library.

- 10 On this map "New France or Canada" includes Hudson's Bay. The name commences—the first part, east of the Bay, north of Rupert R., and the second part, at the western limit of the map, north of L. Huron.

- (42) 1714.—"Hemisphere Septentrional, par Guillaume de l'Isle...à Paris, chez l'auteur...1714."

New York State Library.

The first part of the name "Canada ou Nouv. France" commences west of the Nepigon R., and the second part, at the Mississippi R., below its confluence with the Ouisconsin; the name applies to the country westward to the limits of discovery, viz., the sources of the Mississippi, and beyond Lac des Asseniboils [Winnipeg]; and northward, to the shores of Hudson's Bay.

- 20 (43-5) 1715, &c.—"New and exact map of the Kingdom of Great Britain on the Continent of North America, by H. Moll London, 1715."

Library, London, England.

This map gives all the country north of the great lakes to "Canada," as high as lat. 53°, which is the northern limit of the map.

Another of this author's, dated 1720, agrees with the preceding; whilst a third, dedicated to Lord Sommers, but without date, includes all Hudson's Bay in "Canada." Notes on Maps, 1632-1857.

- (46) 1717.—"Essay d'une Carte que M. Guillaume de l'Isle...avait joint à son memoire présentée à la Cour en 1717 sur la Mer de l'Ouest...présentée...1752, par...Buache, premier Geographe de sa Majesté, etc."

New York State Library.

- 30 The name "Canada" is on the face of the map, and applies to the country west to the "Mer de l'Ouest." In the margin is quoted a memoir of de l'Isle, of 1706, wherein he claims "cette mer de l'Ouest" as a discovery of his, and that he had refrained from marking it on his published maps for fear that foreign nations would benefit by it to the prejudice of France; that he had laid it down on a MS. Map of the World given by him to the Chancellor Boucherat, in 1697, and had given to Pontchartrain, in 1700, proofs of its existence.

- (47) 1718.—"Carte de la Louisiane et cours de la Mississippi...par Guillaume de l'Isle...à Paris, chez l'auteur...1718."

Libraries, Albany and Ottawa.

- 40 The name "Partie du Canada au Nouvelle France" commences at the Portage between the Fox and Ouisconsin Rivers; and the name "La Louisiane," at the Red R. (lat. 37°): the boundary between the two countries is not exactly indicated, but each would seem to extend westward to the borders of New Mexico. At the great bend of the Missouri R. (about par. 45°) is the memo: "Les Français n'ont remonté le Missouri que jusqu'ici." Fort L'Huilier, and two forts on or near Lake Pepin are shewn.

From the Mississippi, at a point opposite the Ouisconsin, a road is shown as running westerly to the same bend, marked "Chemin des Voyageurs."

- (48) 1719.—"Amérique Septentrionale...par le Sieur Sanson, Geographe Ordinaire du Roi, présenté à Monseigneur le Dauphin...par Hubert Jaillot...Paris, 1719."

New York State Library.

A line engraved and coloured runs from the easterly point of Labrador to the height of land, which it follows to a point near L. Abbitibis, which, with the fort of that name, it leaves to the south, and passing north-westerly, close by the shore of James's Bay, at the mouth of the Moose R., proceeds to a point south-west of Lake Winnipeg, whence it runs south-westerly to the par. of 45°; and thence south-easterly to a point 5° west of the Mississippi, on the parallel of its confluence with the Illinois; and thence, easterly, to the English colonies—Florida being to the south and New Mexico to the west of the line. East of the line, at Lac des Sioux—the source of one of the branches of the Mississippi—the name "Canada ou Nouvelle France" commences; it crosses the foot of James's Bay, and ends on the Labrador coast, being partly above the line described, which cannot therefore be intended as a northern boundary. Sanson's original map, 10 "L'Amérique Septentrionale," (see date 1662), does not contain this northern line; but one like it appears on his map of "Le Canada ou Nouvelle France" (same date).

- (49) 1719.—MS. Lines showing the English claims and what are supposed to have been the French concessions as to the limits of Hudson's Bay, under the Treaty of Utrecht. (See notes on De l'Isle's map of 1703, No. 33 *ante*).

In the possession of the Ontario Government.

- (50) 1720.—"Hemisphere Occidental, dressée en 1720, pour l'usage particulier du Roy, sur les observations astronomiques et géographiques reportées, la même année, dans l'histoire et dans les mémoires de l'Académie Royal des Sciences, par Guillaume de l'Isle, premier Géographe de sa Majesté de la même Académie." (Amsterdam, Couvens et Mortier.) 20

Parliamentary Library, Ottawa.

Canada extends westward to the limit of discovery, and south-westward to the northern watershed of the Missouri, from its source to its confluence with the Mississippi; a line, engraved and coloured, commences at a point on the shore of Hudson's Bay, north-west of R. Danoise [Churchill] and runs south-westerly to, and then easterly along, the said watershed. Another line (engraved and coloured) runs from Ungava Bay (Hudson's Straits) south-westerly to the shore of Hudson's Bay at a point immediately north of the East Main River. Recommencing on the same shore, at a point immediately south of Rupert River, it runs westerly and north-westerly, at no great distance from that shore, to Bourbon [Nelson] River, which it follows to the Bay. This line appears intended to represent the limits of the territories of Hudson's Bay and Straits, as the French then 30 understood them.

- (51) 1722.—"Carte d'Amérique, dressée pour l'usage du Roy, par Guillaume Delisle, premier Géographe de sa Majesté, de l'Académie des Sciences, à Paris, chez l'auteur. 1722."

In possession of Ontario Government.

This map has a line, engraved and coloured, commencing on the south side of Hudson's Straits thence westerly, nearly on the line of the 60th parallel, to within 3 or 4 degrees of the eastern shore of the Bay; thence south-westerly, getting closer to the shore and crossing the Rupert R., near its mouth; thence westerly, skirting closely the foot of the Bay, to the Moose R., just above the parallel of 50°; and thence north-westerly and across the Ste. Thérèse [Hayes] and Bourbon [Nelson] Rivers, to and along the Danoise [Churchill], to its mouth. This is the only 40 limit to Canada towards the north: and no bounds are assigned to it on the west—the map extending to "La Grande Mer du Sud." Its southern boundary is a line, engraved and coloured, commencing at the mouth of the Kennebec, and running along the back of the English Provinces, to the point where it meets the northern boundary of Louisiana, between the 39th and 40th parallels; thence, following the last boundary, to the confluence of the Mississippi and Missouri, and along the northerly watershed of the Missouri to its source in the [Rocky] Mountains, where it meets the northern boundary of "Californie;" and thence due west along such last-mentioned boundary, and in about lat. 43°, to the Grande Mer du Sud, at Cap Blanc. The name "Canada" is on the face of the map; it commences at about the meridian of 95°, present reckoning. The main source of the Mississippi is in about lat. 49° and long. 105°, present reckoning; it is also connected with Lac Teca- 50 inamionen [Rainy Lake], which is 6° to the north-east, and entirely misplaced. Lake of the Woods is not shown.

- (52) 1722.—"Carte de Mexique, dressée sur un grand nombre des memories, principalement sur ceux de M.M. d'Iberville et Le Sueur. Par G. de l'Isle. Amsterdam, 1722."

Parliamentary Library, Ottawa.

The name "Canada ou Nouvelle France" commences at a point west of the Missouri.

Library, Paris.

- (53) 1722.—"Carte de l'Amérique par Guillaume de l'Isle." Paris, 1722.

At Paris.

The original copy of this map, in the *Dépôt des cartes et affaires Etrangères*, shows a dotted line starting from Fort Bourbon, and running to a point on the 59th parallel, west of Lake Christinaux, thence along that parallel to the south end of James's Bay, then coasting along, partially conforming to the shore line, northerly to the intersection of lat. 55° with long. 803° W.

- (54) 1725.—Map "par Chaussegrande, delineateur à Québec, le 25th Octobre, 1725." (MS. recently examined in the Archives of the Marine, Paris)

Library, Paris.

Canada has no other limits on the north and west than those of the map, which extend beyond the meridian of Fort Nelson on the north, and considerably beyond Lake Superior on the west and north-west. The name "Canada" commences north-west of Lac Alouinigon, and terminates north of the source of the Albany; it clearly includes Hudson's Bay.

Parliamentary Library, Ottawa.

- 20 (55) 1728.—"Carte Générale du Canada," bound with "Nouveaux Voyages...et Supplement aux Voyages...du Baron la Montan. Amsterdam [ed. of] 1728."

Parliamentary Library, Ottawa.

"Canada" extends westward of Lake Superior, some 5°, and northward to the limit of the map, about C. Henriette Marie; but Forts Rupert and Moose are marked with a memo. to the effect that they are alternately in the hands of the French and English respectively. Fort St. Germain is also shown.

- (56) 1728.—"Reduction de la Carte tracée par le sauvage Oehagach* et autres . . . par Philippe Buache . . . 1754."

New York State Library.

- 30 This tracing shows the waters from Lake Superior westward to Lake Winnipeg; there being a division in these waters between Rainy Lake and Lake Superior, on both the Kaministiquia and Pigeon River routes. (This map is on the same sheet as Buache's "Carte Physique," 1754.)

- (57) 1731.—"Carte du Domaine en Canada," dedicated to the Dauphin, and signed by "P. Laure, J. à Chikoutimi, 231 Aout, 1731." (MS., Lib. Parl.)

Parliamentary Library, Ottawa.

This map shows—presumably as included in the Royal Domain of Tadoussac†—the Saguenay and its various affluents; the country, lakes and rivers between its head waters and Lake Mistassin; and that lake and the Rupert R. (at whose mouth is Fort Rupert), to its discharge in Hudson's Bay. A French establishment, "Maison des Dorvals," is on the S. W. Shore of the Lake. The author, who describes himself as the Missionary of the Domain, states, in a marginal note, that the portion of the map "depuis Pikoungami jus-qu'au Nemiskau," was prepared with the aid of the Srs. Dorval Desgrossiers, who had spent, the one two and the other three, winters with success at the Grand Mistassins, on behalf of the Western Company; and he further states, in the dedication, that the savages, with constant fidelity, and notwithstanding innumerable hardships, &c., bring their furs to the posts of the French domain, in preference to giving them to "their neighbours, the English.

Two more MS. Maps by the same author—one with the title "Carte du Domaine du Roi en Canada," and date 1732—are more elaborate, but contain no new feature, except that they show more of the bay.

- 50 (58) 1732-3—"A map of the British Empire in America, with the French and Spanish settlements adjacent thereto, by Hen. Popple." (Not dated, but the correct date must be 1732 or 1733. Rich gives the latter.)

Parliamentary Library, Ottawa.

The British Dominions are bounded on the north by the St. Lawrence Gulf and River, Lake Ontario, the River Niagara, the south-east shore of Lake Erie to the north-westerly angle of Pennsylvania; thence by a line running due south to Virginia; thence by a line running due west to the limit of the map, in 107° of west longitude, and which appears to be an extension of the northern boundary of Virginia. The whole country to the north of these lines, though without a name, is indicated by the colouring to be a French possession. The source of the Mississippi is on the parallel of 50°, and in about long. 105°, with the inscription "The head of the Mississippi in about the 50th degree north latitude, and in a very boggy country." There is no boundary between Canada and Hudson's Bay. The two French establishments on Lake Abbitibis are marked.

This map is dedicated "to the Queen's Most Excellent Majesty;" and, in a note, it is stated that it was undertaken with the approbation of the Lords of Trade, and that the authentic records and actual surveys transmitted to them by the Governors, had been used in its preparation.

- (59) 1737.—"Le cours du Fleuve Mississippi, selon les relations les plus modernes" (in "Recueil des Voyages: Amsterdam," 1737, vol. 9.)

Parliamentary Library, Ottawa.

On this map forts are marked on the north shore of Lake Nipigon, and at the position of Lake Nemiseau. "Nouvelle France ou Canada," includes Hudson's Bay; on the west no limits are assigned to it. The name commences east of Hudson's Bay, just south of parallel 55.°

- (60) 1737.—"Carte contenant les nouvelles découvertes de l'Ouest, en Canada, mers, rivières, lacs et nations qui y habitent, en l'année 1737. Découvertes de la Mer de l'Ouest, join à la lettre de M. de Beauharnois, 14 Octobre, 1737." ["Dressée par les Varrenes de la Veranderye," according to the catalogue.] (MS., Lib. Parl.)

Parliamentary Library, Ottawa.

This is a sketch of the country from Lake Superior westward to, and including, Lakes des Prairies [Manitoba] and Winnipeg; the communication between the latter and Hudson's Bay, by the Nelson River, being also shown. From Lac Rouge issues a branch of the Mississippi, as does also the Red River. The other sources of the Mississippi are in about their proper position. Forts Kaministiquia, St. Pierre (on Rainy Lake), St. Charles (on Lake of the Woods), and La Reine, here called Maurepas (on the Assiniboine, south of Lake Manitoba,) Pointe du Bois Fort (midway up the Red River), and a fort at the mouth of the Assiniboine, marked "abandoned," are all shewn: these formed, at the time, the most advanced posts of Canada towards the west; a few years later, Forts Dauphin, on the northern part of Lake Manitoba, and Forts Bourbon, Poskoyac, des Prairies, La Corne and Jonquière—all on the Saskatchewan—were added to them.

- (61) 1738.—"A new and correct map of America, laid down according to the accurate improvements of Senex, Moll and other modern Geographers. Humbly inscribed to His Royal Highness Frederick, Prince of Wales, 1738" (in Sir William Keith's *History of Virginia*, who says of it, in his address to the reader, that it is "the latest and best of the kind that could be got.")

Parliamentary Library, Ottawa.

The map extends to the Great South Sea and to the North Pole. "Canada, or New France," is bounded on the south by Louisiana; on the north and west no limits are assigned to it. A part of the name commences west of the Missouri, in long. 105° and lat. 41° nearly.* The St. Lawrence River has its source north-west of Port Nelson, and passes through Lakes Assiniponals [the northerly part of Lake Winnipeg] and Nempigon [the southerly part of Winnipeg] to the Upper Lake [Superior].

- (62) 1739.—"Carte d'Amérique, dressée pour l'usage du Roi, par Guillaume de l'Isle, premier Geographe de sa Majesté. Amsterdam, Couvens et Mortier, 1739."

Parliamentary Library, Ottawa.

* In the body of the work, p. 53, the author says:—"Hitherto, Virginia was understood to extend from thirty-four to forty-five degrees of northern latitude, bounded by the ocean to the east, Florida to the South, and Canada, or New France, to the north, but towards the west unlimited and unknown.... That part.....planted by the English in the year 1606, reaching only from thirty-seven to thirty-nine degrees of latitude ... continues at this day to be the proper bounds of the ancient colony and Dominion of Virginia."

This map has a line, engraved and coloured, running from Ungava Bay, south-westerly, crossing the East Main and Rupert Rivers, a short distance from their mouths, and thence westerly and north-westerly, at no great distance from the shores of Hudson's Bay, to the Churchill River, whose eastern bank it follows to the Bay. "Canada" has no limits towards the west: its south-west boundary is the northern watershed of the Missouri, from its source to its junction with the Mississippi.

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- (63) [1740, about.]—"Carte d'une partie du Lac Supérieur, avec la découverte de la rivière depuis le Grand Portage, jusqu'au Lac des Bois, et de là jusqu'au Missouri, dressée par M. de la Gémerye" (MS. Lib. Parl.)

10 Parliamentary Library, Ottawa.

Shews the discovery of the Verendryes west of Lake Superior, and the Forts established by them, including Fort Bourbon; also, the Assiniboine and its affluent, the St. Pierre, and, south-west of the former, a portion of the Upper Missouri, which must have been reached by way of the Assiniboine. It is marked "Rivière qui on croit être le Missouri." La Gémerye was the nephew, and acted under the orders of M. de la Verendrye, to whom his services, in the explorations which he was pursuing, were invaluable.

- (64) 1740.—"Carte des Lieux. . . dressée par Philippe Buache. . . gendre de feu M. de l'Isle. . . 1740, A Paris. . . 1740."

New York State Library.

20 The Mississippi has its source in a lake north-west of Lake Superior. The name "Canada" commences just east of this point, and runs across the foot of Hudson's Bay, which it includes. The boundary between Louisiana and Canada is an engraved line, following the northern watershed of the Missouri, to its junction with the Mississippi.

- (65) 1740.—"America, laid down from the observations of the Royal Academy of Sciences. . . London, printed for John Bowles. . . 1740. Engraved by Emanuel Bowen, Geographer."

New York State Library.

A portion of the name "Canada or New France," commences between the Missouri and the Mississippi. The south-western boundary is, partly, the eastern limit of New Mexico, and a line continued thence, north-westerly; the country west of this line is marked "unknown." North of the terminal point of the line, Canada appears to extend indefinitely westward.

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- 30 (66) 1741.—"Moll's map of North America, Brotherton's edition. (See notes under date, 1708, *ante*)"

New York State Library.

- (67) 1741.—"A new and correct map of the trading part of the West Indies. . . likewise the British Empire in America, with the French and Spanish settlements. . . 1741. . . Henry Overton, London."

New York State Library.

The name "Canada or New France" extends from a point west of the Mississippi, near the Missouri. The "Heads of the Mississippi" are shewn in lat. 55° and in long. 275° East. On the west shore of Hudson's Bay, the Albany River, and a line continued from its source north-westerly, and on the east shore, the Pitchibourini [East Main] River, and a line continued thence south-easterly to the Gulf of St. Lawrence—are coloured as if to indicate boundaries; Canada has no other limit towards the north; nor are any limits assigned to it on the west.

- (68) 1743.—"Carte de l'Amérique Septentrionale dressée, par N. Bellin, Ing. du Roy et Hydrog. de la Marine, 1743." (In "Histoire de la Nouvelle France, par le Père Charlevoix.")

Department of Education, Toronto.

"Nouvelle France ou Canada," has no limits on the West or North. The first part of the name commences west of the Lake of the Woods; and the second part commences on the east bank of the Missouri, in about lat. 45°. Between Lake Superior and "Lac Tocmanouiou" [Rainy Lake] there is no division of the waters—these flow from that lake, on the one hand to Lac des Bois and on the other to Lake Superior. The Mississippi has its source in about lat. 47½°, due south of Lac des Bois.

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- (69) 1744.—"Carte de la partie Orientale de la Nouvelle France ou du Canada, dédiée a Monsiegnur le Comte de Maurepas. . . par N. Bellin, Ingénieur de la Marine, 1744." (in same work).
Department of Education, Toronto.
Canada includes Hudson's Bay, as far as the limit of the map. "Maison les Dorvals" is shewn on a peninsula which juts out from the south-west shore of Lake Mistassini. (See *ante*, No. 57.)
- (70) 1744.—"Carte de la Baye de Hudson, par N. Bellin. . . 1744." (in same work.)
Department of Education, Toronto.
Fort St. Germain is shewn on Lake Ste. Anne. This fort is also spoken of by the same author, in 1755, in his remarques sur la Carte, &c." (See pp. 643-644 Joint Appendix.)
- (71) 1744.—"Carte de la Louisiane, cours du Mississipi, et Pais Vosins. . . par N. Bellin. . . 1744." 10
Department of Education, Toronto.
The Mississippi is cut by the northern limit of the map, viz: the parallel of 46°, in long. 96° 40', and the Missouri by the same limit, in long. 107°, west of the meridian of Paris. On the latter river is the memo: "Le Missouri dont tous le cours, n'est pas connu." Forts L'Huillier and Vert are marked. The name "Partie ou Canada" commences midway between the Mississipi and Lake Michigan, just below Fox River.
- (72) 1744.—"Carte de l'Océan Occidental, et Partie de l'Amérique Septentrionale. . . par N. Bellin . . . 1744."
Department of Education, Toronto.
"Nouvelle France ou Canada" has no limits on the North or West, except those of the map 20 viz: the parallel of 55° and the meridian of 93° respectively. The first part of the name commences at the limit of the map—north of Lake Superior—and the other part commences midway between the Mississipi and B. de Puans [Green Bay].
- (73) 1744.—"Carte des Lacs du Canada. . . par N. Bellin. . . 1744."
Department of Education, Toronto.
These lakes are Abitibis, Temiscaming, Nipissing, and the five great Lakes. The posts Abitibis Chagouanigon, Camanestigouia ou les Trois Rivières, and that at the foot of B. des Puans, are marked.
- (74) 1744.—"A New Map of Part of North America," (bound with the work, "Account of the Countries adjoining to Hudson's Bay. . . by Arthur Dobbs, Esq. . . London, 1744.") 30
Parliamentary Library, Ottawa.
Shews the Lakes west of Lake Superior, and a communication with Hudson's Bay by the Nelson River. These are put down "as described by Joseph La France, a French Canadese Indian, who travelled through those countries and lakes, for three years, from 1739 to 1742." The height of land between Lakes Superior and Du Pluis is also shewn.
- (75) 1746.—"Carte Du Globe Terrestre. . . par Buache, premier Geographe. . . 1746. A Paris, chez l'auteur."
New York State Library.
"Canada" includes Hudson's Bay, on the north; extends westward to Mer de l'Ouest, here clearly shewn as occupying the position of the Gulf of Georgia (Straits of Vancouver); and extends 40 Southward to Louisiana. The name stands midway between the western sea and the St. Lawrence.
- (76) 1746.—"Amérique Septentrionale, publiée sous les auspices de Monseigneur le Duc d'Orleans, premier Prince du Sang. Par le Sr. d'Anville, 1746. . . A Paris, chez l'auteur. . . Gravé par Guill. Delahaye."
In possession of the Ontario Government.
A dotted line commences on the northern limit of the map, in lat. 54°, about 1½° east of Hudson's Bay, and runs thence south-westerly, in about the same position as the line on De l'Isle's map, (ed. 1722)—crossing the Rupert between Lake Nemiseau and the Bay—to a point in about latitude 50° 15', and longitude 59° 40', west of Ferro, where it touches the height of land, and there stops. This height of land is continued thence southerly to the portage of Temiscamingue and 50

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thence south-easterly, indicating the division of the waters of the Ottawa from those of Stignenay. The western limit of this map is beyond Rainy Lake; and "Canada" has no other boundary in that direction; nor has it on the north, except as already indicated. Forts St. Germain, Abitibis, Le Sueur and L'Hallier are marked. The Mississippi is cut off by the border of the map in lat. 45° and long. 89° 5'.

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The author of the work, "Remarks in support of the New Chart of North and South America, by F. Green, Esq., London, printed by Thomas Jefferys, 1753," states that "M. D'Anville runs the partition line [between the English and French possessions] through the parallel of fifty, and, to the south of Hudson's Bay, makes it turn off with a sweep northward, and continues it in that direction at the distance of about 20 leagues *only*, from the eastern coast of the Bay, to the latitude of 54 degrees" (p. 26); and in the English reproduction of "D'Anville's Map of North America, greatly improved by Mr. Bolton . . . 1752," the same line east of the Bay, is shown as terminating at the 59th parallel, with a note by the editor, "Mr. D'Anville's line east of James' Bay is false." According to these authorities then, the line in question must appear, on some edition of D'Anville, as running to, and westward along the 50th parallel; but how far is not stated. The continuation may have been in colours only, which are not shown on the copy in hand.

(77) 1747.—"Map of all the Known World, by Emanuel Bowen," (in "Complete System of Geography . . . illustrated with seventy maps, by Emanuel Bowen, Geographer to His Majesty. . . London, 1747.")
Legislative Assembly Library, Toronto

"Canada" has no bounds here assigned to it on the north or west; on the south and south-west, it is bounded by the northern boundary of ancient Florida—or more properly of Louisiana, viz.: an engraved line, following the northern watershed of the Missouri, from its source to a point above its junction with the Mississippi and thence easterly, partly along and partly south of the parallel of 40°, to the Appalachian Mountains, here shown as the westerly bounds of Virginia and Pennsylvania.

(78) 1747.—"A New General Map of America, by Emanuel Bowen," (in same work.)
Legislative Assembly Library, Toronto.

"Canada or New France," has no limits on the north or west; on the south and south-west, they accord with those mentioned in the preceding map. A part of the name, however, commences west of the Missouri, in lat. 42°, thus indicating that Louisiana was a dependency of Canada.

(79) 1747.—"A New and accurate Map of Louisiana, with part of Canada and Florida. . . by Emanuel Bowen," (in same work.)

Legislative Assembly Library, Toronto.

All the territories from the northern limit of the map, which is north of the height of land, to the Gulf of Mexico on the south, and from the "Appalachian Mountains" to the eastern bounds of New Mexico, are comprised in Canada and Louisiana; but no boundary is run between these two Provinces. The name, "Part of Canada," commences south of Lake Superior, at about 89° West, and striking the southerly shores of Lakes Michigan, Erie, and Ontario, ends between Lake George and the St. Lawrence River. The Mississippi and Missouri respectively have their sources south of the 40th parallel. Forts Cumanestigouia, Chagouamigon, Laillier, Verte, Machilimakinac, St. Mary, La Baye, Chiengou, St. Joseph, and those in the Illinois country, are marked.

(80) 1748.—"A Map of North America, with Hudson's Bay and Straits, anno. 1748. R. W. Seale, sculp."

In possession of the Ontario Government.

This is another of the maps sent by the Hudson's Bay Company to the Dominion Government for the purpose of the present Arbitration. It bears the Royal Arms and the Arms of the Company. It was undoubtedly prepared by direction in the interests of the Company, in view of the proceedings of the Parliamentary Committee appointed (in the same year that this map is dated) to enquire into their affairs, and appears intended to show the extent of the limits claimed

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by the Company for trading purposes. These are indicated by a coloured line which commences at the most easterly point of Labrador, and runs thence south-westerly (crossing Frenchman's River in the parallel of 50° , and leaving Lake Tabitabi considerably to the south-east), to about the parallel of 48° , at a point due south of Moose Fort; thence north-westerly to a point a little north of Lake Superior; thence due west to the eastern shore of a Lake, here called Ninigon, but which represents the Lake of the Woods; thence along the easterly banks of that lake, and of a river that meets it with Lake Winipegon [the southerly part of Lake Winnipeg], and along the easterly shores of that lake and of another lake (not named), which is intended to represent the northerly part of Lake Winnipeg; and thence northerly to the head of Baffin's Bay. The only forts of the Company marked are York, Albany, Henley, and Moose, at the mouth of the Slude [East Main] River, a fort is indicated to which no name is attached.

- (81) 1748.—"Mappe Monde par le Sr. Robert. 1748" (bound in Vaissette's "Geographie. Paris 1755.")
New York State Library.

"Canada" extends to the Western Ocean, and includes Hudson's Bay. The name commences midway between that ocean and Lake Superior.

- (82) 1748.—"L'Amérique Septentrionale, par le Sr. Robert, Geographe Ordinaire du Roi, 1748."
New York State Library.

"Canada" extends, as in the preceding, to the Western Ocean, and includes Hudson's Bay; and, in this instance, the name crosses the foot of James' Bay. Its south-westerly boundary, which is the northern boundary of Louisiana, is an engraved line which runs from the Rocky Mountains (not named) easterly, along the northerly watershed of the Missouri, to its junction with the Mississippi; thence easterly, partly on, partly above and partly below the parallel of 40° , to the English colonies, where it ascends to 39° .

- (83) 1749.—A MS. Map, by Wm. Morris, dedicated to His Excellency William Shirley Esq., Captain-General and Commander-in-Chief, in and over His Majesty's Province of Massachusetts Bay in New England, Vice-Admiral of the same, dated Boston, August 6th, 1749. (In the Library of the Foreign Office, London.)
Library, London, England.

A line is drawn through Lake Mistassin, to the 49th parallel marked, "1712. This line by the Treaty of Utrecht was settled as the dividing line between Canada and Hudson's Bay." Another 30 line drawn along 48th parallel to the River St. Lawrence has on it the inscription: "This line of north latitude, 48° , was the northern boundary of the grant made by King James the 1st, to the Council of Plymouth, in 1621; but, in the year 1632, King Charles the 1st ceded all the lands lying to the northward of Canada [St. Lawrence] River to the French, and Canada or New France was indefinite in its northern boundaries till the year 1712."

There is also on the map this further inscription: "By the treaty of Utrecht, the lines between the English and French were thus adjusted: Beginning on the North Atlantic Ocean, in north latitude $58^{\circ} 30'$; thence running south-west to Lake Mistassin; and thence continuing south-west till the line touched 49° , north latitude; and thence west indefinitely."

- (84) 1750.—"Carte des nouvelles Découvertes dans l'Ouest du Canada, dressée sur les Mémoires de 40 M. de la Veranderie, et donnée au Dépôt de la Marine par M. de la Galissonière, 1750." (Facsimile in Mr. Lindsey's Report.)
Department of Marine, Paris.

Shews the lakes, and connecting rivers, west of Lake Superior, and the division of the waters between that Lake and Lac de la Pluie. The Red, Assiniboine, Peckoyne [Saskatchewan], and Nelson Rivers, are also marked—the latter carrying the waters of Lac Quinipigon to Hudson's Bay. Forts St. Pierre on Lac de la Pluie, St. Charles on Lac du Bos, Maurepas at the foot of Lac Quinipigon, La Reine on the Assiniboille, Dauphin on the north-west shore of Lac des Prairies, and Bourbon at the mouth of the Rivière aux Biches are also shewn. It will be noticed,

that whereas, in 1737, Fort La Reine was the most advanced of the Canadian posts towards the west, we have now reached the Saskatchewan, which, within two years afterwards, was ascended to its source.

Another MS. Map, now in the *Dépôt de la Marine*, at Paris, and also bearing the date 1750, with the following title, viz: "Carte des nouvelles découvertes dans l'Ouest du Canada, dressée, dit'on, sur les mémoires de la Verendrye, manuscrit de M. de la Gallissonière," shews, as occupied by the French at that time, as well the Forts above mentioned as Forts Gamaniistoquoya, on the river of that name, Rouge, on the Assiniboine River, and also Poskoyac. Two forts only—Albany and Nelson—and marked as occupied by the British.

- 10 (85) 1750.—"Diversi Globi Terr' Aquæ, &c. (in Scutter's Atlas, pub. Amsterdam, 1750.)

Legislative Assembly Library, Toronto.

The name "Canada hodie Nova Francia," commences at Lake Winnipeg, and extends eastward across the foot of James' Bay, and to the coast of Labrador. Two other little maps on the same sheet shew the name "Nova Francia," commencing at the Mississippi.

- (86) 1750.—*Planiglobii Terrestris*. publicè proponit Jo. Bapt. Homann, Sac. Cæs. Maj. Geographus, &c., (in same Atlas).

Legislative Assembly Library, Toronto.

The name "Canada sive Nova Francia" commences at Lake Winnipeg.

- (87) 1750.—"Nova Orbis sive America. . . . Matth. Scutter, Sac. Cæs. Maj. Geogr., &c."

- 20 Legislative Assembly Library, Toronto.

The name "Canada hodie Nova Francia" commences at Lake Winnipeg.

- (88) 1750.—"Mappa Geographica Regionem Mexicanam. . . . Matth. Scutterie, &c." (same Atlas).

Legislative Assembly Library, Toronto.

The name "Canada sive Nova Francia" commences west of the Missouri, in latitude 42½°.

- (89) 1750.—"Americæ cum Supplementis Polyglottis" (same Atlas).

Legislative Assembly Library, Toronto.

The name "Canada" commences at the Mississippi.

- (90) 1750 (also 1751).—"A New Map of Canada. . . . from the Sr. Robert, with improvements;" in a corner of which is "a Supplement for the Lakes of Canada."

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- 30 New York State Library.

The parallel of 49° is engraved in dots with the inscription "Northern limits of Canada, by the Treaty of Utrecht." The name "Canada" commences at the western limit of the map, beyond the Mississippi.

- (91) 1750.—"Amérique Septentrionale, par le Sr. Robert Vaugondy, fils de M. Robert, Geographe Ordinaire du Roy, 1750."

New York State Library.

"Canada" has no limits towards the west; on the north, there is no boundary between it and Hudson's Bay; but the shore lines of that Bay are so coloured as to leave it to be inferred that they are not a French possession.

- 40 (92) 1752.—"Carte Physique des terrains les plus élevés de la Partie Occidentale du Canada, ou l'on voit les nouvelles découvertes des officiers Français à l'Ouest du Lac Supérieur. . . ." (MS.)

Parliamentary Library, Ottawa.

This map shews the discoveries of, and the Forts established by the Verendryes, on the Lakes west of Superior. Of Hudson's Bay only the west shore is given, close to which, between the Nelson and the Albany, runs the inscription "Terre Anglaise." The Mississippi rises south-west of Lake Winnipeg; and the Missouri still further to the south-west. The height of land between these two rivers is marked by a dotted line, evidently meant as a boundary—the name "Louisiana" being applied to the country west of it; and "Nouvelle France ou Canada" to the country north and east. (This would seem to be the draft of one of Buache's Maps, hereinafter mentioned under

- 50 • date 1754.)

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- (93) 1752.—"Carte des nouvelles découvertes... par Phil. Buache, premier Géographe du Roy, présentée à l'Acad. des Sciences, le 9 Aout, 1752; et approuvée dans son assemblée du 6 Septembre suivant..... à Paris."

New York State Library.

This map has an engraved line agreeing with that on De l'Isle's map, (ed. 1722, heretofore mentioned); it terminates at the Bourbon River. The name "Nouvelle France ou Canada" commences just east of Lake Winnipeg, and applies to the country outside of the line mentioned; south-west to the northern watershed of the Missouri, which is indicated by an engraved line, continued westward to the head of the Colorado River; and west as far as discovery is shown, viz: a chain of mountains in which the R. de Poskoyac [Saskatchewan] and the R. des Assiniboels [Assiniboine] have their source. The height of land west of Lake Superior is shown, and beyond that, the various rivers and lakes which discharge by the Nelson into Hudson's Bay. The sources of the Missouri and Mississippi are south of Lake Manitoba, and south-west of the Lake of the Woods. [On this, as on many other maps before and after this date, an imaginary lake is shewn on the Nelson River between Lake Winnipeg and Split Lake: the error seems to have arisen from a mistaken reading of Jérôme, or by the taking the southern and northern portions respectively of Lake Winnipeg, as two separate lakes.]

- (94) 1752.—"Carte des découvertes de l'Amiral de Fonte..... par Buache.... 1752."

New York State Library.

Shows the line of De l'Isle's Map, (ed. 1722), but ending at the Churchill; the height of land west of Lake Superior; the communication with Hudson's Bay by Nelson River; the engraved line representing the northern watershed of the Missouri; and the name "Nouvelle France ou Canada" almost exactly as in the preceding map.

- (95) 1752.—"Carte Geometrique des découvertes de l'Amiral de Fonte.... Buache.... 1752."

New York State Library.

"Nouvelle France ou Canada" extends westward to the ocean. The name commences near the "Mer de l'Ouest," represented on this and the two preceding maps as being connected with the ocean by two passages, and occupying the position, nearly, of the Gulf of Georgia, (Straits of Vancouver). See note to map of 1700.

- (96) 1752.—"Carte des Terres nouvellement connues au nord de la Mer du Sud..... Buache..... 1752." 30

New York State Library.

Shows the line on De l'Isle's Map, (ed. 1722), from Hudson's Straits to a point south of the Albany. "Canada ou Nouvelle France" extends westward to the ocean. The name commences at "Mer de l'Ouest." Close to this sea is a chain of mountains in which the Saskatchewan (not named) has its source.

- (97) 1752.—"Carte marine des parties septentrionales de la Grand Mer [du Sud]... Buache... 1752." *

New York State Library.

"Canada ou Nouvelle France" extends westward to "Mer de l'Ouest." The name commences north of Lake of the Woods. The map shows, as in the title it professes to shew, the various mountain chains of North America, as far as then known. The watershed of the St. Lawrence—40 north, south, west and south-west—is faithfully given; also, the height of land which divides the waters of the Mississippi and Missouri on the one hand, from those of the Winnipeg system on the other, extending from near Lake Superior to a chain of mountains near Mer de l'Ouest. These mountains run southerly to the tropic of Cancer, and northerly and north-easterly to the parallel of 64°—the Saskatchewan and R. Danouise [Churchill] having their sources in them.

- (98) 1752.—"Carte générale des découvertes de l'Amiral de Fonte et autres... par Mr. de l'Isle, de l'Académie Royale des Sciences, et Professeur de Mathématique au Collège Royal. A Paris, Septembre, 1752."

New York State Library.

This map shews "Mer de l'Ouest" with the two entrances from the ocean, and the inscription 50 "decouv. et parcourue par J. de Fuca en 1592." De l'Isle's line is shewn on the east side of Hud-

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son's Bay; also on the west side, terminating at the mouth of the Churchill; the foot of the bay is cut off, because of the peculiar configuration of the map. The name "Canada" commences north of Lake of the Woods, but applies westward to the sea. An engraved line, intended to represent the boundary between Canada and Louisiana, follows the northern watershed of the Missouri to the Rocky Mountains, close by the sea. In these same mountains, rivers which fall into Lake Winnipeg take their rise. The source of the Mississippi is due south of that lake, and west by south of Lake of the Woods.

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- (99) 1752.—"North America, by the Sr. d'Anville, greatly improved by Mr. Bolton. Engraved by R. W. Seale, 1752." It is also marked on the corner, "North America, plate 1, for Mr. Postlethwait's Dict. of Commerce."

In the possession of the Ontario Government.

An engraved dotted line, commencing on the limit of the map, N. E. of Lake Mistassin, runs, on an irregular course, to a point near Lake Abitibi, which it strikes, on the east shore, in about lat. 49°. Recommencing on the west shore it is continued westward (but not on a straight course) to the limit of the map, 15° beyond Kaminstiquia. In the northern limit of the map, east of Hudson's Bay, in lat. 53½°, another line, corresponding to De l'Isle's (ed. 1722) runs south-westerly to the par. of 50°, which it strikes half way between the Rupert and the Moose, where it stops. On the face of the map is the memo.: "The line that parts French Canada from British Canada was settled by Commissaries after the peace of Utrecht, making a curve from Davis' Inlet, in the Atlantic Sea, down to the 49°, through the Lake Abitibi, to the N. W. Ocean; therefore Mr. D'Anville's dotted line east of James' Bay is false." Fort St. Germain is marked.

- (100) 1752.—"Mappe Monde, par le Sr. Robert de Vaugondy, fils. A Paris, chez les Srs. Robert, Geogs. Ords. du Roy. 1752."

The name "Canada" (but not "New France") appears on the face of the map.

New York State Library.

- (101) 1753.—"Carte du Pays connu sous le nom du Canada... par le Sr. Robert de Vaugondy, fils, Geographe Ordinaire du Roi. Paris, 1753."

New York State Library.

- (102) 1753.—"New Chart of North and South America, by F. Green, Esq." The title claims that the English and French possessions are distinguished in the map; it is dedicated to Monseigneur D'Argenson. An engraved line, not coloured, commencing a little east of Lake Mistassin, follows the height of land (nearly) to a point close to Lake Nepigon, whose easterly shore it strikes and there stops: it has on it, in two places, the inscription, "Hauteurs des Terres:" it would appear to have no other signification than as representing this height of land. The English colonies are coloured red, and all to the north of these, and westward to the limit of the map, at Lake Winnipeg, is, as indicated by the blue colour, included in Canada—except, perhaps, the mere shores of Hudson's Bay, which are of the same colour as the English colonies.

Notes on
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- (103) 1753.—"New Chart of North and South America, by F. Green, Esq."

New York State Library.

- (104) 1753.—"Our knowledge of this map is derived from the author's "Remarks in support, etc. London, printed for Thomas Jefferys, 1753," in which he says: "I have drawn the line which parts the French from English Canada, by beginning it at Davis' Inlet, on the east coast of Labrador, or New Britain (in the latitude of about 56°), and drawing it with a curve through the Lake Abitibi down to the 49th degree of latitude; from thence to be continued to the north-west ocean, as it was settled by commissioners after the Treaty of Utrecht...." (See note to No. 83.)

- (105) 1754.—"Carte Physique des terrains les plus élevés de la partie occidentale du Canada... par Philippe Buache... publiée sous le privilege de l'Academie... 1754."

New York State Library.

- (106) 1754.—"A line, engraved and coloured, and conforming nearly to De l'Isle's (ed. 1722) commences at the eastern limit of the map, a little west of the Rupert River and north of the 50th parallel. It follows this parallel irregularly (crossing the Moose about a degree from its mouth), to the source of the River Perrai, in the height of land, which it touches at no other point; it here abruptly turns

and runs north-westerly and northerly, following the windings of, and at almost even distance from the shores of the Bay, to a point north of the Churchill, where it terminates without approaching the Bay. Within the line is the inscription, "Terres Angloises." The height of land runs from the Perai north-westerly to a point near Split Lake—the line in question being about midway between it and the Bay. The height of land west of Lake Superior is also shewn, as is that which divides the waters of the Mississippi and Missouri on the one hand, from those of the Winnipeg system on the other. This latter reaches a range of mountains which runs northerly, near "Mer de l'Ouest." In them the Missouri, Saskatchewan, Churchill, etc., take their rise. From these mountains another great river flows, westerly, into the Western Sea; its lower part and its eastern branch in the mountains are represented by dots, but its western and longest branch is marked as if well known, and corresponds with the main branch of the Columbia River, which this was probably intended to represent. A branch of the Mississippi has its source in la Rouge, but the main branch rises in the same mountains as the Missouri. The northerly watershed of the latter has a line engraved and coloured, running westward to the mountains; it forms the limit between Louisiana and "Nouvelle France ou Canada." The first part of this latter name commences north of Rainy Lake and the other part west of the Mississippi; it applies to all the territories westward, to the sea. The water communication from west of Lake Superior to Hudson's Bay is correctly shewn, except as to the imaginary lake already mentioned; and the French forts are marked. "Gde. Eau, ou Lac Michinipi" is situated north-west of Split Lake; it is probably intended to represent Lake Athabasca, the region around which the French are said have visited 20 to and traded in at a period long anterior to and up to this date.

- (104) 1755.—"A map of the British and French Dominions in North America...inscribed to...the Earl of Halifax, and the other...the Lords Commissioners for Trade and Plantations...by Jno. Mitchell...published by the author, Feb. 13th, 1755...and sold by Andrew Millar...Thos. Kitchin, sculp."
In possession of the Ontario Government.

It appears from a printed memo. of the author, on the face of the map, that this is the second edition, and contains matter not in the first edition. In the margin is also printed the following:—

"This map was undertaken with the approbation and at the request of the Lords Commissioners for Trade and Plantations, and is chiefly composed from draughts, charts and actual surveys of different parts of His Majesty's Colonies and Plantations in America; great part of which have been lately taken by their Lordships' orders and transmitted to this office by the Governors of the said Colonies and others.

"JOHN POWNALL,
"Secretary."

"Plantation Office, Feb. 13th, 1755."

This is another of the maps sent by the Hudson's Bay Company to the Dominion Government for the purposes of the present arbitration.

A line, engraved and coloured, commences on the limit of the map, north-east of Lake Mistassin, and runs thence westerly, partly along and partly north of the height of land, and north of what are there called the Northern Mountains or the Land's Height—[it crosses one of the branches 40 of the Moose at something more than a degree from its source; it also crosses the waters of, or connected with Long Lake]—to a point north of Lake Nipigon, and thence, westerly and south-westerly, to a point on the limit of the map in that quarter, north of the Lake of the Woods, and in about latitude 49° 48', and longitude 97° 40' west from London. A copy of this map was used by the negotiators of the Treaty of 1783, whose intention being to run the international boundary line to the head waters of the St. Lawrence system, so run it through Long Rainy Lakes and Lake of the Woods, which all then appear as discharging into Lake Superior.

This line is untruly marked "Bounds of Hudson's Bay by the Treaty of Utrecht" in one place, and in another "Bounds of Hudson's Bay." It forms the Northern limit of "New France or Canada;" that country has no limit on the west, than that of the map, which is 50 in about longitude 102°; the name commences north-west of Kamanistiquia, in about longitude

92°. Canada is bounded on the south by the St. Lawrence River, the "bounds of the Six Nations," and (from the meridian of 89° westward) the 49th parallel of north latitude, which is also marked as the "northern bounds of Virginia by charter." The main branch of the Mississippi is cut off by the limit of the map at about latitude 47° 11' and longitude 101° 30'; near it is the memo: "The head of the Mississippi is not yet known. It is supposed to arise about the 50th degree of latitude and western bounds of this map." &c. The western bounds of the map at that latitude would be in the meridian of between 105° and 106°. The Missouri is cut off by the western limit of the map, in latitude 44° 20' and longitude 103° 30'; on it is the inscription "Missouri River is reckoned to run westward to the mountains of New Mexico," &c. At latitude 43° and longitude 100° is the inscription: "Thus far the French ascend the Missouri." Between that river and the western bank of the Mississippi, opposite the Onisconsin, a track is laid down with the inscription: "Route of the French to the western Indians." Forts Abitibis Le Secur and Lullier and the French establishment on Lake Mistouan, are marked as subsisting. Fort Rupert is marked "abandoned." On the western margin of the map is the memo: "... We see that Louisiana, which was granted by Louis XIV. [westward] to New Mexico, is much larger, west of the Mississippi, than all our Colonies taken together would be if extended to the Mississippi. Canada, again, is larger than either of these..."

"A new map of Hudson's Bay and Labrador" occupies a corner of the larger map. It shows a line, engraved and coloured, and marked "Proposed limits of Hudson's Bay," running from "Grimington I. or C. Perleix," (which point is marked "extent of Sir Humphrey Gilbert's grant, 1578,") on a direct course south-westerly to the limit of the map, being the parallel of 50°: it divides Lake Mistouan into two parts in its course.

- (105) 1755.—"Carte des Possessions Angloises et Françoises du continent de l'Amérique Septentrionale, 1775, à Amsterdam, chez R. & J. Ottens, Geographes."

New York State Library.

Has an engraved and coloured line, corresponding exactly with that on Mitchell's map of 1755, just mentioned, and terminating at the same point, north of the Lake of the Woods, although the limit of the map is considerably west of that point. The territory north of this line to Hudson's Bay, is coloured yellow, such colouring not extending west of the westerly point of such line, or of the westerly shores of Lakes St. Pierre and Assinipouais. The territory south of the line is coloured green, such colouring being continued westerly to the limit of the map, in about the meridian 100°. The name "Canada" commences midway between Rainy Lake and Lake Nepigon. In the margin it is explained that the yellow and green colours indicate the English and French colonies, respectively. Canada has therefore no western limit: the western limit of the Hudson Bay territory is the eastern shore of Lake Winnipeg.

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- (106) 1755.—"Carte de l'Amérique Septentrionale, depuis le 28° de lat. jusqu'à 72°... par N. Bellin,..." 1755."

New York State Library.

A line, engraved and coloured, runs from Hudson's Straits south-westerly (at a greater distance from Hudson's Bay than a similar line on De Else's and other maps) to and through Lake Nemiscau, and thence southerly to the height of land, south-east of Lake Abitibi, thence along the watershed, westerly to a point north of Lake Nepigon and north-westerly to the Bourbon (Nelson) River, which it crosses at about the position of Spirit Lake, and thence north-westerly to and beyond the Churchill. A division of the waters of the Nelson and Churchill is indicated at these points of crossing, flowing on the one hand to Hudson's Bay, and on the other to Lac Bourbon. The first part of the name "Nouvelle France ou Canada" commences at Fort Dauphin near Lac des Prairies [Manitoba], and the second part commences west of the Mississippi south of the St. Pierre [Minnesota] River. The south-western boundary of both Canada and Louisiana is the easterly boundary of New Mexico. The westerly watershed of Lake Superior is indicated.—In the margin is the memo: "Nota qu'on n'a point marque de limites."

- (107) 1755.—"A new and accurate map of the English Empire in North America... representing their

rightful claim, as confirmed by charter and formal surrender of their Indian friends... by a Society of Anti-Gallicans. London, 1755." New York State Library.

An engraved line, untruly marked "Bounds of the Hudson's Bay Company according to the Treaty of Utrecht," commences on the limit of the map, north-east of Lake Mistassin, and runs thence on a straight course south-westerly to the 49th parallel, which it follows to the westerly limit of the map, at about 100.

- (108) 1755.—"North America, from the French of Mr. D'Anville, improved with the back settlements of Virginia and course of Ohio.....May, 1755, published.....by Thos. Jefferys...." (in Jefferys' History of the French Dominion, in North and South America..London, 1760.) Parliamentary Library, Ottawa. 10

From a point east of Lake Mistassin an engraved line follows the watershed westerly to the portage of Temiscaming, and thence, partly along and partly north of the height of land, to a point north-east of Lake Nipigon, and thence westerly, (crossing the Alenipissaki, a river falling into Lake Nipigon from the north, at a point where no stream is in existence), to the limit of the map, (in about the merid. of 88°, west of London) in that quarter; it crosses a branch of the Moose. It is marked "Bounds of Hudson's Bay by the Treaty of Utrecht." Another engraved line commences on the northern limit of the map, east of Hudson's Bay, and runs thence, south-westerly, to a point above the par. of 50°; it is transferred from, and entirely agrees with the like line on the original of D'Anville, (1746, ante). "Canada" has no limits assigned to it on the west; the map extends beyond Lakes Tecamamiouen and Missisacigaan. Fort St. Germain, Abitibis, Le Sueur and Luillier are marked.

- (109) 1755.—"North America, from the French of M. D'Anville. Published by Thos. Jefferys, 1755." New York State Library.

A line engraved and coloured, marked "Bounds of Hudson's Bay by the Treaty of Utrecht," follows the height of land from the western limit of the map, in the meridian of L. Nipigon, easterly beyond L. Mistassin. The name "Canada" applies to the country westward beyond Rainy Lake, the limit of the map in that quarter.

Notes on
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1857.

- (110) 1755.—"Carte des Possessions Angloises et Françaises du Continent de l'Amerique, Septentrionale, 1755. Se vend à Londres chez...Millar, Rocque et autres..." New York State Library. 30

Shows a line exactly the same as that of Mitchell's map of 1755, already mentioned: it is engraved and coloured, but has no inscription. The map extends further to the westward and to the eastward than Mitchell's, but the line stops, incomplete, at either end, at the same points as on his. The western boundary of the territory north of this line is indicated by the limitation of the colouring to a line commencing at the western termination of the firstly mentioned line and thence northerly to and along the eastern banks of Lakes Sioux and Assenipouals. The country south of the firstly mentioned line, and south of the parallel of its terminal point, westward to the limit of the map in about 105°, is coloured as a French possession, and named "Canada." This name commences midway between Rainy Lake and Lake Nipigon. (Though the text of this map is French, 40 it is an English publication.)

- (111) 1755.—"Partie de l'Amerique Septent. qui comprend la Nouvelle France ou le Canada, par le Sr. Robert de Vaugondy, Geog. Ordinaire du Roy.. 1755." Education Department, Toronto and Albany.

Extends westward to a point a little west of Lake Abbitibis. The height of land is indicated by an engraved line, marked "Hauteurs des Terres." In the corner is a "Supplement pour les Laes du Canada," which shows these lakes, from Ontario to Lake of the Woods, inclusive. The division of the waters between Rainy Lake and Lake Superior is shown. Forts Luillier, Le Sueur, St. Pierre and St. Charles are marked.

- (112) 1755.—"Carte des Possessions Angloises et Françaises du Continent de l'Amerique Septentrionale, 50

1775." It is without publisher's or author's name, but the name "Thos. Kitchin, sculpeit," shows it to be an English publication. The marginal explanations are in French and English.

Paris Library.

A line, engraved and coloured, follows the 49th parallel, from the western limit of the map, in about long. 105° west from Greenwich, to a point immediately west of Lake Abitibi; whence taking a turn to the south east it follows the watershed, easterly and beyond Lake Mistassin. It bears the inscription "Borne entre la Canada & la terre de la Comp. de la Baie d'Hudson, réglée par les Commissaires après le Traité d'Utrecht." The name "Canada," applied to the country south of this line, commences midway between Rainy Lake and Lake Népigon. (This appears to be the same map, as the one hereinbefore mentioned (No. 110) of like title and date, but showing a different boundary line.)

- 10 (113) 1756.—"Amerien verfertigt von Joh. George Schribery in Leipsiz," in "Das Britische Reich in America. . . Leipsiz, 1756."

Parliamentary Library, Ottawa.

Gives, as the westerly and south westerly boundary of "Canada," a coloured line, commencing at the mouth of the Bourbon [Nelson] River, thence up that river to L. Winnipeg, westerly along the line of the Saskatchewan River (not marked) a short distance, south easterly to the Mississippi at a point due west of L. Superior, and down that river to its confluence with the Ohio. Labrador and Hudson's Bay, except that portion of the west coast north of the Nelson, are included in Canada. The source of the Mississippi is south-west of L. Winnipeg.

- 20 (114) 1756.—"Charte von dem Engelländischen u Franzesischen Besitzungen in Nord America," by the same author, and in same work as the foregoing.

Parliamentary Library, Ottawa.

Gives a line, engraved and coloured, the same as that on Mitchell's Map of 1753, hereinbefore mentioned, but stopping with the map a little east of Rainy Lake, and without inscription.

- 20 (115) 1756.—"Carte des Possessions Françaises et Angloises en Canada. . . à Paris, chez le Sr. Longchamps, Geographe, 1756."

New York State Library.

A line corresponding to that on De l'Isle's maps already mentioned (ed. 1722), runs from the northern limit of the map (in lat. 52°), east of Hudson's Bay, to a point south of Albany, where it is stopped by the title. The name "Canada," on the face of the map, applies westward to the furthest limit—a little east of Rainy Lake.

- 30 (116) 1756 (about)—"Carte Nouvelle d'Amérique Angloise. . . Amsterdam, Mortier."

New York State Library.

The name "Canada ou Nouvelle France," on the face of the map, applies to the country westward to the sources of the Mississippi. Forts Nemiseau and St. Germain, and the Fort on the north shore of Lake Népigon, are marked.

- 40 (117) 1756 (about).—"Partie Orientale de la Nouvelle France ou du Canada. . . par Math. Scutter, Geographe de S. M. Imper. D'Augsbourg."

New York State Library.

A line engraved and coloured follows the height of land from the western limit of the map (a little west of the meridian of Lake Nipissing), easterly beyond Lake Mistassin.

- (118) 1756 (about).—"Carte de la Nouvelle France. . . Amsterdam chez la Veuve de Joselin (?) et fils.

New York State Library.

The name "Canada ou Nouvelle France" commences just south of Lac des Sioux, but applies to the country westward to the limit of the map near the Western Ocean, and it includes Hudson's Bay.

- (119) 1756 (about).—"Canada: ou partie de la Nouvelle France. . . Amsterdam chez Covens et Mortier."

New York State Library.

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Miscellaneous.

Notes on
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An engraved line follows the height of land, from the westerly limit of the map, at Lake Nepigon, to a point near Lake Abbitibi, which it approaches and crosses, running thence north-easterly and crossing Rupert R. midway between lakes Mistassin and Nemiscan. The name "Canada on Nouvelle France" is on the face of the map.

- (120) 1756.—*Amerique Septentrionale*. par le Docteur Mitchell, traduit de l'Anglois. A Paris, par le Rouge, Ingr. Geographe du Roy, . . . 1756." It is stated in the margin that the additional remarks contained in this edition are taken from the maps prepared by "Mr. le Chevalier de Rigaudière etc." Another edition of the same map: "A Paris par le Rouge. . . 1777, corrigée en 1776 par M. Hawkins, Brigadier des Armées du Roi," may be noticed at the same time, as the two practically agree.

New York State Library.

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The northerly boundary line on the original of Mitchell, 1755, is here reproduced as shewing the English contention respecting the limits. It bears the inscription "Limites selon Mitchell de la Baie d'Hudson selon le Traité d'Utrecht." On the one side—the west and south—this line is coloured blue; on the other side, from the Gulf as far west as the merid. of $85\frac{1}{2}^{\circ}$ it is green; and for the rest of the distance yellow.

Another line commences on the northern limit, east of Hudson's Bay (in about lat. $52^{\circ} 10'$ and long. $75^{\circ} 30'$, and runs southerly, in same position as that on De l'Isle's (ed. 1722), till it touches Mitchell's line in lat. $50^{\circ} 10'$ and long. $75^{\circ} 50'$ nearly) which it follows to the parallel of 50° , along which it is continued to the westerly limit of the map, north of Lake of the Woods; it intersects Mitchell's line at the height of land, in long. $85^{\circ} 30'$, and again north of the easterly part of Lake of the Woods. On the one side—that nearest the Bay—it is coloured yellow through out; on the other side—from the northern limit of the map, and west as far as $85\frac{1}{2}^{\circ}$ —it is green, and for the rest of the distance blue. In the small map in the corner, the line from Cape Perdrix, south-west to the parallel of 50° , is green on the easterly, and yellow on the westerly side. It is marked "Limites proposées pour la Baie d'Hudson." In the margin it is explained that the blue colour indicates what is conceded to belong (according to Mitchell) to the French; the yellow what belongs to the English; and the green what is in dispute between them. This would leave in dispute the territory intervening between the two lines as far west as $85\frac{1}{2}^{\circ}$, beyond which each concedes what the other claims. The following memo. appears (*inter al.*) in the margin:—"Je l'ai traduit et fait copier exactement, j'ai même laissé les limites selon les prétentions de MM. les Anglois, se qui sera ici sans conséquence;" and again: "On voit que les limites supposées dans cette carte sont ici sans conséquence et ne servent qu'à donner une idée des différentes prétentions." At the mouth of the River Bagonagache, on the west bank, is marked "Ancien Fort du Sr. du Luth." This river falls into Lake Superior a little east of the Nepigon.

Notes on
Maps, 1632-
1857.

- (121) 1757.—"Carte des Prétentions des Anglois dans l'Amérique Septentrionale, etc." (in the last vol., published in 1756, of "Mémoires des Commissaires du Roi et de ceux de Sa Majesté Britannique. Paris, 1755-7.")

Parliamentary Library, Ottawa.

The lakes to the westward of Lake Superior, together with the French forts on or near them, are correctly marked; except Fort Bourbon, which is cut off by the limit of the map. Partly on, and partly south of the 48th parallel, is shown a portion of a river which corresponds with the upper reaches of the Missouri, the lower parts of which are seen further down. The Mississippi has its source in Lac Rouge, about 2° due south from Lake of the Woods; Lac Rouge is also connected, by a river, with the Asseniboine, and with Lake Winnipeg. On the west coast an island, in the position of Vancouver, is shewn. The line of the main shore south of the Strait of San Juan, is run inwards, in a dotted line, immediately above which, and east of the island, is the inscription, "Mer de l'Ouest, inconnu." The dotted line in question appears to be that erroneously referred to by M. de Mofras as representing the Columbia River.

- (122) 1760.—"A map of Canada and the north part of Louisiana, and the adjacent countries, by Thomas

Jefferys," (bound with Jefferys' "History of the French Dominions, in North and South America. London, 1760.")

Parliamentary Library, Ottawa.

Gives a pretty accurate representation of the lakes, and river communications, from west of Lake Superior to Hudson's Bay; the French forts in that quarter are marked. An affluent of the Mississippi issues from Red Lake or Missisacaugen, the sources of the main branch being almost due south of the Lake of the Woods, between 41° and 46° north, and 82° west from Ferro. The lower portion only of the Missouri is represented; and higher up, in an incomplete state, the "Manton's River," with the inscription "Some suppose a communication between Manton River and the Missouri and Mississippi." Either of these, produced, would connect with the Manton, which in reality represents the upper Missouri. "Canada" has no limits assigned to it on the north or west; the boundary between it and Louisiana is not shown. "Pointe des Bois Forts," on Red River, is marked.

(123) 1762—"A map of Canada and the north part of Louisiana, with the adjacent countrys, by Thos. Jefferys, Geographer to His Majesty, 1762, published by Thos. Jefferys . . ." (copy attached to Mr. Mills' First Report.)

"Canada" is bounded on the north by a coloured line marked "High Lands," which follows the height of land from "Lake des Forts" to a point west of L. Mistassin; its southerly boundary line is along the St. Lawrence, Ottawa and French Rivers, and Lakes Huron and Superior, and (from the head of L. Superior westward to the meridian of 97° west of Ferro) the northern boundary of Louisiana, viz.: the height of land (marked "Land's Height") which divides the waters of the Mississippi and Winnipeg systems; on the west and north-west no boundaries are assigned to it. The western watershed of Lake Superior, and the lake and river communication between it and Hudson's Bay, together with the several French Forts in that direction are shewn; also Forts Abitibis, L'Hullier, Le Sueur, Perrot and Pte. des Bois. The source of the Mississippi is correctly marked with reference to the Lake of the Woods, but a possible extension is indicated by dots. The Missouri is shown as far as the par. of 44° , where there is a break, north-west of which is seen a portion of a river, and, between the two the inscription, "Some suppose a communication between the Manton River and the Missouri or Mississippi." As already mentioned, this Manton River is the upper part of the Missouri, which the French had explored from the direction of Lakes of the Woods and Winnipeg; their exploration of the lower part of it having proceeded from its mouth upwards. A line due west from the Lake of the Woods would not touch any part of either the Missouri or Mississippi, as here laid down. The name Manton probably proceeds from the name—Maudane, Manton, Mantane—of one of the most powerful of the Indian nations met with by the Chevalier de la Verendrye and other French explorers, on the Upper Missouri. Their chief villages were near the great bend of the river.

(124) 1762—"L'Amérique Septentrionale, divisée en ses principaux États. Par le Sr. Janvier, Geographe. A Paris chez Lattre, graveur, Rue St. Jacques, à la Ville de Bordeaux, 1762."

In possession of the Ontario Government.

Canada extends westward to the Pacific, and northward to the 65^{th} degree. Its southern boundary is shown by a line engraved and coloured, following the southern watershed of the St. Lawrence system, from the Gulf westward to a point due west of Fond du Lac, thence westerly along the northern watershed of the Mississippi [including the Missouri] system which is also here shewn as the northern boundary of Louisiana, to the south-easterly corner of "Mer ou Baye de l'Ouest." The source of the Mississippi is south-west of Lake of the Woods, in about long. 105° and lat. $45\frac{1}{2}^{\circ}$. The Missouri rises in a range of mountains, at about long. 112° , and lat. 44° . Lac Michinipi is in nearly the position of L. Athabasen, which it seems intended to represent. Fort Abitibis and St. Germain are marked. The name "Canada" commences at the merid. of 95° .

(125) 1763 (about).—"Chart of the Atlantic Ocean, with the British, French, and Spanish settlements . . . published by T. Jefferys."

New York State Library.

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Maps, 1632-
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A line, engraved and in part coloured, follows the parallel of 49°, from the westerly limit of the map (about 3' west of Lake of the Woods) to a point near Lake Mistassin, and thence north-easterly to a point on the Labrador coast, in about lat. 56°. Here, it is intimated that "Davis ran into a harbour... in lat. 58°." Another boundary line on the north, is indicated by the colouring on the face of the map; this line commences at Hudson's Straits, and passes south-westerly to a point south of Lake Abitibi, thus far conforming to the line on Bellin's map of 1755, already mentioned; it passes thence north-westerly near the estuary of the Moose, crossing the Albany between Lake St. Anne and Hudson's Bay; and running thence to and along the east shore of Split Lake, it ends on the limit of the map north of the Churchill. "Canada" extends westward to the limit of the map; the boundary between it and Louisiana is a line, engraved and coloured, following the 10 45th parallel from the same western limit easterly to the Mississippi, which it follows southerly. The source of this river is at a point due south of Lake of the Woods."

- (126) 1763 (about).—A map of part of North America, without author's or publisher's name, but clearly a section of the preceding map of Jefferys. On the corner is pasted a piece of paper with the following printed thereon: "The claims of the French in 1756 are coloured yellow." The paper and print of this memo, seem conformable to those of the map, and to have been contemporaneous with it.

New York State Library.

This map has a line starting from Hudson's Straits, passing south-westerly, midway between the Bay and Lake Mistassin and to a point south of Lake Abitibi, and thence north-westerly, crossing 20 the Moose and the Albany, as in the preceding, to Split Lake, and thence, north-westerly, beyond the Churchill. It is marked "Limits of Canada from Bellin's Carte, 1754." Outside this line—westward to the limit of the map, south-westward to the western watershed of the Missouri, south to the Gulf of Mexico, south-easterly to the Alleghenies, and along the rear of the English colonies to the sea at Casco Bay—all is coloured yellow as a French possession. Another engraved line, following the 49th parallel, is shewn, as in the preceding map.

Notes on
Maps, 1632.
1857.

- (127) 1763 (about).—The same section of the same map as the preceding. A piece of paper pasted in the corner has the following printed on it: "Plate II. The French dominions, as proposed by M. de Bussy, in 1761, are coloured yellow, and the lands proposed by M. de Bussy to be neutral are coloured green." The paper and print of this memo, are of the same character as those of the 30 memo, on the preceding map.

New York State Library.

An engraved line follows the parallel of 49° as in the two preceding maps. The southern boundary of Canada is a coloured line, commencing at the western limit of the map in latitude 45½°, thence easterly between that and the parallel of 46°, and along the northerly watershed of the Mississippi to Fond du Lac, thence through Lake Superior, St. Mary's River, etc. South of this line the yellow colouring extends westward to the westerly watershed of the Missouri.

- (128) 1763 (about).—"A general map of North America... from actual surveys and observations made in the army employed there from the year 1754 to 1761. Drawn by the late John Rocque, Topographer to His Britannic Majesty, London, published by M. A. Rocque and A. Dury."

Parliamentary Library, Ottawa.

A line, engraved and coloured, runs from a point east of Lake Mistassin, westerly, along the height of land (but crossing the head waters of the Moose on the way) to the north shore of Lake 40 Nepigon, and thence, north-westerly and across the Nelson and Churchill rivers, to the parallel of 60°. All to the north of this line is distinguished by a difference of colour from the territories to the south. On the west shore of the bay is the name "British Canada." Another engraved line follows the 49th parallel, and from a point due south of Moose Fort, westward. It is marked "The southern boundary of the Hudson Bay Company's territories settled by the Commissioners after the treaty of Utrecht." The inscription "Hudson's Bay Company's lands," extends on the 50th parallel, from a point 10° west of L. Manitoba, to a point south of Fort Rupert. The sources of 50 the Mississippi are in lat. 45½° and long. 101°. The Missouri is cut short: it has on it the inscription

"The head not yet discovered." Further north and west, a proportion of a river, corresponding with the Manton River already mentioned, is shewn, with the inscription: "It is not yet determined whether this is the source of the Missouri or not." The French forts on the lakes beyond Superior are represented as being in existence.

- (129) 1763 (about).—"A map of the British and French settlements in North America. J. Lodge, delin. et sculp." No author's or publisher's name. It seems to have been specially intended to shew the claims of the English. In the margin reference is made to "The French encroachments."

In possession of the Ontario Government.

- 10 An engraved line marked "Bounds of Hudson's Bay by the Treaty of Utrecht" commences at a point north-east of L. Mistassin, and runs westerly, exactly as in Mitchell's map of 1755, to the terminal point of the like line on that map, north of the Lake of the Woods; it is continued thence westerly about a degree, leaving a space of nearly another degree between its terminal point and the western limit of the map. This line crosses a branch of the Moose as in Mitchell's; and from this point westward to near Nepigon river, "The Northern Mountains or Ye Land's Height," are delineated as being considerably below the line. The name "New France or Canada," commences at Rainy River between Rainy Lake and Lake of the Woods; it applies westward to the limit of the map. The sources of the Mississippi are in nearly the proper position with reference to Lake of the Woods. Forts Abitibi, Lullier and Le Sueur are marked as in existence.

- 20 (130) 1763.—"A new map of North America from the latest discoveries, 1763."

In possession of the Ontario Government.

Has an engraved line marked "Bounds of Hudson's Bay by the Treaty of Utrecht"* corresponding exactly with that on the preceding map, but here extending to the westerly limit of the map which is on the same meridian as the limit of the preceding. The sources of the Mississippi, in relation to Lake of the Woods, are marked in nearly the proper positions. Forts Abitibi, L'Hullier and Le Sueur are also marked.

- (131) 1763.—"L'Amerique, par le Sieur Janiver en 1753, revuë . . . par Desnos en 1763. A Paris chez Desnos, Ing. Geographe . . ."

New York State Library.

- 30 A line, engraved and coloured, commences at the south-easterly point of Labrador, and runs north-westerly and westerly to the Albany River, leaving Lake Mistassin to the north and closely skirting the foot of James' Bay. West of the Bay is the name "Nouvelle Albion"—a name properly applicable to a tract of country on the Pacific.

- (132) 1763.—"A new map of North America . . . 1763. J. Spilsburg, sculpt."

New York State Library.

40 The western limit of the map is a little west of the Lake of the Woods. A line, engraved and coloured, and marked "Bounds of Hudson's Bay by the Treaty of Utrecht," commences at the point in the western limit where the line on Mitchell's map of 1755 (hereinbefore mentioned), produced westerly, would end, and runs thence easterly, and in about the same position as that on Mitchell's, to the eastern limit of the map, beyond Mistassin. The name "New France, or Canada," commences just east of the Lake of the Woods, but refers to the country westward to the limit of the map: the southern boundary, west of Lake Superior, being the parallel of 48°, is here marked "The north bounds of New England by Charter."

- (133) 1763 (about).—"A New map of North America, showing the advantages obtained therein to England by the Peace."

New York State Library;

Has a line corresponding to that on Mitchell's map of 1755 (hereinbefore mentioned), as far west as the terminal point of that line, and running thence south-westerly to the western limit of the map, in about long. 103° and lat. 49' 12". The name "Canada," on the face of the map applies westward to the same limit. The sources of the Mississippi are in about their true position. Lake of the Woods has no feeders.

ONTARIO
APPENDIX.
—
S. c. IV.
Miscellaneous.

- (134) 1763.—"A new and accurate map of North America including the British acquisitions gained by the late war. . . . 1763."
New York State Library.

An engraved line, marked "Bounds of Hudson's Bay by the Treaty of Utrecht,"* runs from the eastern limit of the map, east of Lake Mistassin, westerly along the height of land (but crossing the Moose on the way), to a point north of Lake Nepigon; thence westerly and south-westerly, north of Lake of the Woods and to the limit of the map, in about 100°, a little below the 50th parallel. The name "New France, or Canada," commences just east of Rainy Lake. A small river appears as a feeder to the Lake of the Woods, whose discharge is through Rainy and Long Lakes into Lake Superior.

- (135) 1763 (about).—"North America, from the French of Mr. D'Anville, improved with the English surveys made since the Peace." (Copy attached to Mr. Mills' first report.)

A line, coloured and marked as a mountain chain, commences east of L. Mistassin, and follows the position of the height of land westerly to the portage of Temiscamingue, thence westerly, partly along and partly north of the position of the height of land, to a point north of Lake Nepigon, and thence (and from this point marked "The Land's Height,") north-westerly in the direction of Split Lake to the limit of the map, in about lat. 53° 30' and long. 96° 30'. The line crosses a branch of the Moose. "Canada" has no limit on the west but that of the map; on the south-west it is bounded by the Mississippi, from its confluence with the Ohio to the point, in lat. 45°, where it is cut short by the border of the map. From the Mississippi eastward, the Ohio forms the 20 boundary.

- (136) 1764.—"Carte de la Partie Septentrionale et Occidentale de l'Amérique. . . . 1764," in work "Mémoires et Observations Géographiques par Mr. . . . [Baillly d'Engen], Lausanne, 1795."
Parliamentary Library, Ottawa.

Shows the western watershed of Lake Superior, and thence westward, the lake and river communication to Hudson's Bay. The two branches of the Poskoyac [Saskatchewan] rise in the Rocky Mountains (not named).

Notes on
Maps, 1632-
1857.

- (137) 1771.—"Amérique. . . . par le Sr. Robert de Vaugondy, Geo. Ord. du Roi. . . . 1771, à Paris chez l'auteur."
Parliamentary Library, Ottawa.

Has a line, engraved and coloured, corresponding with that on De l'Isle's map (ed. 1722), but ending on the shore of the Bay, considerably to the west of the mouth of the Churchill. Within this line is the name "Nouvelle Bretagne." The Mississippi and Poskoyac rise in a chain of mountains; in which other rivers, that flow westward to the sea, have also their sources. The Upper Mississippi is indicated as the boundary between Louisiana and Canada. North of the Poskoyac are two large lakes, one of which, named Michinipi, seems intended, as heretofore mentioned, to represent Lake Athabasca.

- (138) 1772.—"A map of the British Dominions in North America, according to the Treaty in 1763. By Peter Bell, Geographer, 1772." It is bound with the work, "History of the British Dominion in America. . . . London: Strachan. . . . and Beckett & Co., 1773."
Ottawa, mentioned to Mr. Mill's Report.

The Mississippi is coloured from its confluence with the Illinois to the point where it stops, incomplete, south-west of Lake of the Woods, in long. 102°, and lat. 47½°. All to the west of it is named Louisiana; north and north-east of it is "Canada," having for northern boundary a line, engraved and coloured, commencing north-east of Lake Mistassin, and following the height of land (crossing the Moose, however, on the way) westward to a point north of Lake Nepigon, whence it runs south-westerly to the river Winnipeg. West of this point, all is blank and marked, Parts undiscovered." These parts would appear by the map to pertain to Canada.

(No. 139 has been cancelled)

- (140) 1772.—"A map of the whole continent of America. . . . compiled from D'Anville's maps of that Continent, 1772."
New York State Library.

An engraved line, marked, "The southern boundary of Hudson's Bay Company's Territories settled by Commissaries after the Treaty of Utrecht,"* follows the parallel of 49°, from Red River easterly to a point south-east of Moose Fort; thence it follows the height of land to a point north-east of Lake Mistassin; and thence it runs north-easterly to the Labrador coast, in about lat. 56½°. The height of land west of Lake Superior, and also that from Nipigon to Split Lake, are marked. The map extends to the Pacific.

- (141) 1773.—"Partie de l'Amérique Septentrionale, qui comprend le Canada, la Louisiane, &c. . . projetée et assujettie par Mr. Bonne. A Paris chez l'auteur, rue St. Jacques, à la Ville de Bordeaux. Avec priv. du Roy, 1773."

10 In possession of the Ontario Government.

A line, engraved and coloured, commencing east of Lake Mistassin, takes a sweep northward of that lake to Lake Nemiscan, whence it accords with the line on Bellin's map of 1755, terminating, as in that map, at a point beyond the Churchill. The name "Canada" commences at the Mississippi, north of the Illinois. A fine, engraved and coloured, follows the Mississippi to its source (nearly); and thence north-westerly to Red River; thence it is continued as a coloured line to the southernly shore of Lac Oninipigon, where the River Maurepas [Winnipeg] discharges into it; thence along the westerly shore of that lake to the southerly bank of the river which connects it with Lac des Prairies (Manitoba); and thence along that southerly bank and the easterly shore of Lac des Prairies, to the limit of the map at about the centre of that lake. No boundary is assigned to Canada toward the north-west. The source of the Mississippi is in nearly the right position with reference to the Lake of the Woods; it is marked, "Sources du Mississippi." The waters of the Churchill and Nelson Rivers flow, from the point where they are respectively intersected by the northerly line, on the one hand to Hudson's Bay and on the other to Lac Bourbon.

- 20 (142) 1774.—"A map of the British Empire in North America. By Samuel Dunn, mathematician. London: 10th January, 1774."

Parliamentary Library, Ottawa.

The name "Canada" commences east of Rainy Lake. It applies westward to the limit of the map, beyond Lakes Winnipeg and Manitoba. The height of land, marked "The Land's Height" is shewn as running to Split Lake. In the margin is the memo:—"The Hudson's Bay Company's Territories, comprehending New South Wales, New North Wales, Prince William's Land, with the Arctic Lands, down to the London coast in Greenland, and New Britain or Labrador.—Canada, divided into the Government of Quebec and Indian Canada.—The Reserved Lands which contain all the countries comprehended between the Appalaches and the Mississippi." The name Labrador or New Britain is here applied to the territory north of the parallel of the East Main River; New South Wales, to that north of the Albany as far as Nelson River; New North Wales, to that west of Button's Bay.

- 30 (143) 1774.—"North America, as divided among the European Powers. By Samuel Dunn, Mathematician. London: Sayer, 1774." (Dedicated to Gov. Pownall, on whose recommendation it is here stated to have been undertaken.)

40 "Canada" is bounded on the south-west by the Mississippi to its source. No limits are assigned to it on the west or north. The map extends to the Pacific Ocean, into which a river falls, which occupies the position of and is evidently intended to represent the Columbia.

- (144) 1774.—"A map of the British Dominions in North America," (in work, "A complete History of the late War. Dublin: 1774.")

Mr. Lindsay's Report.

Contains a line marked "Bounds of Hudson's Bay by the Treaty of Utrecht." It follows substantially the height of land, from a point west of L. Mistassin to a point north of Lake Nipigon (crossing however a river), whence it runs westerly, passing the Lake of the Woods at a distance of about half a degree north of that Lake.†

- 50 (145) 1775.—"Pownall's Map of the British Provinces in North America, A. D. 1775." (Copy in Mr.

Mills' First Report: the original is to be found in the Department of the Secretary of State, at Washington).

Shews the "Province of Quebec," as constituted by the Quebec Bill, 1774. The name commences at the Mississippi. A line, engraved and coloured, follows what are here called "High Lands." It commences south-east of Lake Mistassin, and ends on the limit of the map towards Split Lake, in about $51\frac{1}{2}^{\circ}$ north, and 94° west. It crosses a branch of the Moose, and the position of the waters of or connected with Long Lake: otherwise it substantially follows the height of land. The southern boundary of the Province from the Bay of Chaleurs, westward to the Mississippi, in that set out in the Act of 1774; it thence follows the Mississippi northerly to the limit of the map in latitude $45\frac{1}{2}^{\circ}$ and longitude 96° nearly. An affluent of this river issues from Red Lake. 10

(146) 1775 (or subsequently).—Maps referred to in the evidence of MM. Bouchette and Sax, respectively, in De Reinhard's case, pp. 262-4, *post*; viz:—

(a) A Map by Mr. Bouchette, Surveyor General, showing the western boundary of Quebec to be the Mississippi River, from its junction with the Ohio to its source in Turtle Lake, and thence by a line drawn due north to Hudson's Bay.

(b) A Map by Jefferys shewing the western boundary of the same Province to be the Mississippi to Turtle Lake; whence no boundary is laid down.

(c) Certain Maps mentioned by Mr. Bouchette, shewing the Mississippi, from its confluence with the Ohio to Turtle Lake, to be the western boundary of Upper Canada.

(d) A Map* of Bowen's, not produced at the trial, but said by a witness to have shewn the western boundary of Upper Canada as running due north from the confluence of the Ohio and Mississippi.

(147-9) 1775 (about).—"An accurate Map of North America, describing and distinguishing the British and Spanish Dominions according to the Treaty of the 10th February, 1763. By Eman. Bowen, Geographer to His Majesty, and Jno. Gibson, Engraver." (From "The American Atlas..... engraved by the late Thomas Jefferys, Geographer to the King [and others], London; Sayer and Bennett, 1776.")

Notes on
Maps, 1632-
1857.

New York State Library.

An engraved line follows the height of land, from a point north-east of Lake Mistassin, westerly to the meridian of Moose Fort where it meets the 49th parallel; it is continued thence west, 30 along that parallel to Red River, where the map stops; it is marked "The southern boundary of the Hudson's Bay Company's territories settled by Commissaries after the Treaty of Utrecht."* The Mississippi runs from a short distance north-west of, and into Red Lake; from that lake southward it is indicated by an engraved and coloured line, as the limit between Louisiana and the English possessions; it forms in its upper part the south-western boundary of "Canada;" but north of Red Lake no western limit is assigned to that country. The Mississippi and the Missouri are correctly laid down in relation to each other; there is added after the name of each, "whose head is unknown." The old Province of Quebec is shewn.

Another edition of Bowen and Gibson's map, "London, printed for Thomas Sayer, 2nd July, 1775," practically agrees with the preceding. A space, however, intervenes between Red River 40 and the western limit of the map, and over this space the boundary line of the 49th parallel is not continued; and the colouring (but not the engraving) of the Mississippi line extends a little to the north-west of Red Lake.

In yet another of Bowen and Gibson's maps, without date, but published by Robert Sayer, the boundary line of 49° is carried west to the meridian of about 103° , which is also the limit of the map; and the name "New France or Canada" commences in long. $92\frac{1}{2}^{\circ}$ west of Greenwich.

In Greenhow's *History of Oregon*, it is stated, (App. F), that on a certain map therein mentioned,

* This is the only published Map of which mention has been found, made as shewing the westerly boundary to be a line drawn due north from the confluence of the Ohio and Mississippi. Search has been made, here and abroad, for any map showing such a line, but unsuccessfully.

of these authors, the boundary line of Hudson's Bay is continued from the point where the 49th parallel intersects the Red River, down that river to Lake Winnipeg. This accords in effect with certain maps wherein the southern boundary terminates at or near the River Winnipeg, and is carried to and along the eastern shore of the lake.

- (150) 1775.—"North America from the French of Mr. D'Anville. London; Sayer & Bennet, 1775." On it is the memo:—"The boundaries of the Provinces, since the conquest of Canada, are laid down as settled by the King in Council."

New York State Library.

"Canada" extends westward to the limit of the map, midway between Rainy Lake and Lake of the Woods. The name commences on the westerly shore of Lake Superior. The height of land, marked, "The Land's Height," is laid down from the limit of the map, in the direction of Split Lake, to a point north-east of Lake Nepigon. So far it is only a range of mountains. Thence, easterly to a point beyond Mistassin it is doubly coloured; and from thence it proceeds—also coloured—to the limit of the map, in the direction of Davis' Inlet. A division of the waters is marked, though not correctly, between Rainy Lake and Lake Superior. The southern boundary is carried from the Bay of Chaleurs westward to the Ohio, and along the Ohio to its confluence with the Mississippi; and thence the boundary line runs northward along that river to the limit of the map in latitude 45°.

- (151) 1776.—"North America" (from "Jefferys' American Atlas, or a geographical description of the whole continent of America, and chiefly the British colonies, composed from numerous surveys which were made by order of the Government..... engraved by Thomas Jefferys, London, 1776-8.")

Shews the first Province of Quebec; "Canada" has no limits on the north or west; the Mississippi bounds it on the south-west.

Parliamentary Library, Ottawa.

- (152) 1776.—"A general Map of the middle British Colonies in America... also of the bordering parts of the Province of Quebec, and corrected from Gov. Pownall's late Map, 1776.. London: Sayer & Bennett, 1776..."

Notes on
Maps, 1632-
1857.

New York State Library.

In the corner is given "A sketch of the upper parts of Canada," which shows the Mississippi, to about the St. Croix river, as included in that Province.

- (153) 1776.—"A Map of the Province of New York, by order of His Excellency, William Tryon, Esquire, Captain-General and Governor of the same, by Claude Joseph Sauthier. Engraved by Faden, successor to the late Mr. Thomas Jefferys. 1776."

New York State Library.

The portion of Canada which is shewn, extending westward to about a league beyond Fort Frontenac, is named "Canada, or Province of Quebec."

- (154) 1776.—"North America and the West Indies, with the opposite coasts of Europe and Africa (from 'The American Atlas...by the late Mr. Thomas Jefferys [and others]'. London: Sayer & Bennett. 1776."

New York State Library.

Shews the western watershed of Lake Superior. A height of land runs to and north-westerly beyond Split Lake, but is only indicated as a mountain range, and marked "The Land's Height."

- (155) 1777.—"A New Map of the British Colonies in North America. . . . By John Andrews. London: Published January 16th, 1777, by John Andrews. . . and Andrew Dury."

New York State Library.

This is another of the maps sent by the Hudson's Bay Company, to the Dominion Government, for the purposes of the present arbitration. It has a line, engraved and coloured, which commences at the western limit of the map, in longitude 87°, and runs easterly, partly along and partly north of the height of land, to a point east of Lake Nepigon; whence it runs north-easterly to the limit of the map, in lat. 53° and long. 66°, nearly. It crosses a branch of the Moose. The

name "Canada" commences north of this line, midway between Lake Abitibis and Hudson's Bay. Fort Abitibis is marked, as also the "French House," on Lake Mistassin; Fort Rupert is marked "abandoned."

- (156) 1777.—"Amérique Septentrionale, par le Docteur Mitchell, traduit de l'Anglois.... A Paris: Par Le Rouge, 1777."

New York State Library.

This Map has been already referred to, in connection with Le Rouge's earlier edition, 1756. See No. 120.

- (157) 1777.—"A new and correct map of North America.... corrected from the original materials of Gov. Pownall. London: Sayer & Bennett, 1777."

New York State Library.

An engraved line, commencing on the limit of the map, north-east of Lake Mistassin, follows the height of land westward to the portage of Temiscaming; it is marked "land's height"; it does not extend further west. A stream enters Red Lake from the north-west; it is marked "Mississippi R, whose head is unknown;" a line of dots marked "conjectural" connects it with Red River. From Red Lake downwards its course is marked by a line, engraved and coloured, which would seem to form the south-western boundary of "Canada." North of Red Lake, no western limit is shown, and on the north there is no line except that already mentioned. The map extends westward to Lake Winnipeg, and northward to Cape Henriette Marie.

- (158) 1778.—"Amérique ou Indes Occidentales.... par Vaugondy.... 1778," in "Atlas Ameriquain 20 Septentrional.... Traduit des cartes levees par ordre du Gouvernement Britannique, par le Major Holland, &c. Paris, chez Le Rouge, 1778."

New York State Library.

Has a line corresponding with that on De l'Isle's Map (ed. 1722), but ending at the mouth of R. du Loup, west of the Churchill. Between this line and Hudson's Bay is the name "Nouvelle Bretagne."

- (159) 1778.—"Théâtre de la Guerre en Amérique," from the same Atlas.

New York State Library.

A line corresponding with that on De l'Isle's Map (ed. 1722), runs from the par. of 53°, being the northerly limit of the map east of Hudson's Bay, to the 50th parallel, which it follows to the 30 westerly limit, a little beyond the meridian of Michipicoten.

- (160) 1778.—"The World, with the latest discoveries, from the best authorities... J. Lodge, sculpt.," (in work, "History of America... by William Russell, Esq., of Gray's Inn.. London... 1778)."

New York State Library.

Shows a line running from about Cape Perdrix direct to Lake Mistassin. Recommencing south of, but not touching, that Lake, it runs westerly in about the same position as that on Mitchell's Map of 1755, to a point north of Lake of the Woods, being the same point at which it stops in Michell's.

- (161) 1778.—"An exact map of the Five Great Lakes... and Hudson's Bay Territories." "J. Lodge sculpt." (in the same work.)

New York State Library.

A range of mountains, along portions of which a line of engraved dots appears, extends from the head of Nodway's River, on the eastern limit of the map, westward to a point north of Lake Nepigon; and thence north-westward, in the direction of Split Lake, to the limit of the map in that quarter, in 92° West and 53° North. It crosses the middle branch of the Moose, and is marked "Bounds of the Hudson's Bay Company." The name "Canada" commences midway between Rainy Lake and the R. Nepigon.

- (162) 1778.—"A General Map of North America," "engraved, by J. Lodge from the late Mr. Jefferys" (in same work.)

New York State Library.

An engraved line, marked "Bounds of Hudson's Bay by the Treaty of Utrecht," and com-

mencing at a point north-east of Mistassin, conforms exactly to the line on Mitchell's Map of 1755, as far west as the terminal point of that line, whence it passes westward to the limit of the map, a short distance beyond Lake of the Woods. It crosses the middle branch of the Moose.

ONTARIO
APPENDIX.
—
SEC. IV.
Miscellaneous.

- (163) 1778.—"A new Map of North America, from the latest discoveries, 1778. Engraved for Carver's Travels."

Legislative Assembly Library, Toronto.

An engraved line marked "Proposed limits of Hudson's Bay," runs from the position of Cape Perdrix, on a straight course south-west to the north-east shore of Lake Mistassin. This was the line proposed by the Hudson's Bay Company in 1712. Another engraved line commences at a point north-east of this lake, and runs thence westerly, and to the north of what are there called the Northern Mountains, and north of the true position of the height of land, to a point north of Lake Nepigon. From the last mentioned point, the line runs westerly, corresponding exactly with that on Mitchell's map of 1755, and terminating at the same point, north of the Lake of the Woods, as the line on that map. The sources of the Mississippi in reference to the Lake of the Woods, are near their true position. The water communications between this Lake and Hudson's Bay are shown with some approach to correctness. The map extends to the Pacific; an inland sea—"Western Sea,"—being indicated in the same position as on the maps of De l'Isle and Buache. No limits are assigned to "Canada" on the west, nor is the boundary between it and Louisiana shown. Ports Charles, Maurepas and Bourdon are marked.

- (164) 1778.—"A Plan of Captain Carver's Travels in the interior parts of North America, in 1766 and 1767," (in same work).

Legislative Assembly Library, Toronto.

The sources of the Mississippi are placed in almost their true position, and due south of L. of the Woods. The division of the waters between Lakes Superior and La Pluie is clearly marked.

Notes on
Map, 1632-
1867.

- (165) 1779.—A Map in the "History of the American War," published in Dublin, 1779.

Has a line marked "Bounds of the Hudson's Bay by the Treaty of Utrecht." It rises north of lat. 30°, near the merid. of 68°, and terminates on the west at lat. 50° north of Lake of the Woods. (Summarized from Mr. Lindsey's work, p. 99).

- (166) 1780.—"L'Amérique. . . par le Sieur Janvier, à Paris, chez Lattré, graveur. . . . 1780."

New York State Library.

Shows "Mer ou Baye de l'Ouest," as in Buache's maps hereinbefore referred to. A coloured line, which seems to indicate the northern boundary of "Canada," runs easterly from this sea, just above the parallel of 50° to the coast of Labrador; the southern boundary is marked by a line, engraved and coloured, which runs from the south-east corner of the sea in question, easterly to and along the watershed between the Mississippi and Winnipeg systems, and thence following the southerly watershed of the great lakes and of the St. Lawrence to the [Atlantic] sea.

- (167) 1781.—De la Rochelle's Map, published in London, 1781.

Library, London, England.

- (168) 1782.—"Hémisphère Occidental. . . par Guillaume de l'Isle. . . revu, corrigé et augmenté par Dezauche, successeur des Srs. De Lisle et Phil. Buache. . . . 1782. A Paris chez Dezauche. . . . a seul charge de l'entrepôt general des Cartes de la marine. . . ."; there is in the corner a memo: "Phil. Buache. . . genre de l'auteur."

New York State Library.

Has a line, engraved and coloured, corresponding nearly to that on De l'Isle's map (ed. 1722) but crossing the R. Danoise [Churchill] and terminating at a point north of it, without approaching the Bay. The western watershed of Lake Superior is marked, and, beyond it, the various lakes and rivers which form the communication with Hudson's Bay. The source of the Mississippi

is south-west of Lake of the Woods. "Canada" extends to the Western Sea: the name commences at Lake Manitoba. The boundary between it and Louisiana is a line, engraved and coloured, commencing at the Rocky Mountains (not named, and running thence easterly to and along the northerly watershed of the Missouri, to the parallel of the junction of the Illinois and Mississippi, and thence due east of the Alleghanias.

- (169) 1783 (about).—"A new map of the United States . . . with the British Dominions, by Samuel Dunn, improved, . . . from . . . Carver. London, Laurie & Whittle."

New York State Library.

A line engraved and coloured, and evidently intended to represent that of the Treaty of 1783, but carried along the Kamanistiquia (named also Long Lake) and north of Rainy Lake, runs to 10 and through the Lake of the Woods, and thence westerly a short distance, with the inscription "To the Mississippi." Canada has no limits on the west or north; the name commences east of Rainy Lake. The limit of the map on the west is beyond Lake of the Meadows [Manitoba]. The land's height, shown as a range of mountains only, runs to Split Lake.

- (170) 1783.—"America. New and correct map of the United States of North America, agreeable to the Peace of 1783, showing the boundary of Hudson's Bay according to the Treaty of Utrecht. By Abel Buell, New Haven."

Library, London, England.

The southern boundary of Hudson's Bay, extends, by a well-marked red line, north of Lake of the Woods and north of Lake Temiscaming, and does not follow the watershed. The Ohio River and 20 the Mississippi, as far as it runs north, are given as the southern and western boundaries respectively of the Province of Quebec.

- (171) 1785.—"United States of North America, with the British and Spanish Territory, according to the Treaty of 1784, published 1785."

Library, London, England.

Shews the Mississippi as the boundary of "Canada," westward of Lake of the Woods.

- (172) 1785.—"Etats-Unis. . . A Paris, chez De la Marche, 1785."

New York State Library.

The international boundary is shewn, from a point $1\frac{1}{2}^{\circ}$ due west of Lac des Bois, easterly to the head of the Connecticut River; all north of it, including James' Bay, to the limit of the map, in 30 53° , is "Canada." A little to the south-west of Lac des Bois is shewn the head of the Mississippi with the memo: "Mississippi tant la source, est encore inconnu." From the westerly termination of the international boundary, already mentioned, a coloured and engraved line is drawn to this supposed source of the Mississippi, and is thence continued down the river to the Illinois, thence eastward to the Alleghanias, and thence northward to the international boundary line in Lake Erie. Across the face of the country enclosed by these lines is the memo: "Cedées aux Etats Unis le 30. 9bre, 1782."

- (173) 1786.—"Americæ Mappa Generalis . . . Hommanianinis Heredibus, 1786."

New York State Library.

Has a line corresponding with that on De l'Isle's map; it is closer, however, to the Bay than is 40 shewn on the edition of 1722, and ends at the mouth of the Churchill. Within it is the name "Nova Britannia." The name "Canada v. Nova Francia" commences west of L. Assinipouls [Winnipeg].

- (174) 1787.—"Mappe Monde. . . Hémisphère Occidental, in the Atlas Encyclopédique. . . par M. Bonne, Ing. Hyd. de la Marine, et par M. Desmarest, de l'Académie Royale des Sciences. A Paris, 1787."

New York State Library.

The name "Canada" commences just east of Lake Winnipeg. That country has no limit on the west, and Hudson's Bay is included in it. (Several other maps in this atlas show the same features).

- (175) 1790.—"A particular map of the American Lakes, Rivers, etc., par le Sr. D'Anville. . . London: Drawn and engraved for John Harrison, 1790."

Legislative Assembly Library, Toronto.

A dotted line, without inscription, follows the watershed, from a point south-east of L. Mistassin, 50

westerly and northerly, to a point west of and close to the same lake, in about latitude 50° 40'. "Canada, on Nouvelle France" has no limit on the north or west.

- (176) 1791.—"Sketch of the Western Countries of Canada," found in work "Voyages and Travels of an Indian Interpreter and Trader. By George G. London, 1791."

Legislative Assembly Library, Toronto.

The map extends to the western watershed of Lake Superior, and includes the Upper Mississippi. There is no boundary line on the west or the north, but circling James' Bay, from the Albany to the Rupert, is the inscription: "Territory of the Hudson's Bay Company."

- (177) 1791.—"A map of North America, by D'Anville. Drawn and engraved by J. Harrison. [London] 1791."

Legislative Assembly Library, Toronto.

From the south-east corner of Lake Mistassin a dotted line, marked "Hauteurs des terres" runs north-easterly a distance of some 7 or 8, no other limit is shown in "Canada" on the north, nor has it any bounds on the west. A solid line runs from Lake Superior westerly along the Kaministiquia (not name) and some streams which run to the north of, and almost parallel with, the line of the international boundary to a point north of the westernmost point of the lake of the Woods. This line seems intended to represent the southern boundary of Canada in that quarter. The source of the Mississippi is south of the Lake of the Woods.

- (178) 1794.—"North America, which particularly distinguished the British Dominions, the United States and the adjacent Spanish Territories, by Thomas Kitchen, Hydrographer to His Majesty. London: Laurie & Whittle, 1794."

An engraved line, commencing at a point north-east of Lake Mistassin, runs westerly along the watershed to a point south of Lake Abitibi, then westerly, partly along and partly north of the watershed, and partly north of what are there called the "Northern Mountains or the Land's Height," to the meridian of 90, and thence north-westerly in the direction of Split Lake to the limit of the map, in longitude 93° 45', and latitude 52½, about. It is marked "Boundary of Hudson's Bay Company." This line crosses the middle branch of the Moose and also the head waters of one of the branches of the Albany. The international boundary is run to the limit of the map, nearly 2° west of the Lake of the Woods, at which point is the inscription: "Due west to the Mississippi." The Mississippi is cut off by the same limit in about latitude 46. At the parallel of 45 is the inscription: "Thus far the Mississippi has been ascended." "Canada" has no limits assigned to it toward the west or north.

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Maps, 1632-
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- (179) 1795.—"Map exhibiting all the new discoveries in the interior parts of North America, inscribed by permission to the Honourable Governor and Company of Adventurers trading into Hudson's Bay, in testimony of their liberal communications, by A. Arrowsmith, London. 1795, corrected to 1802."

Library, London, England.

This map shows the word "Upper" in "Upper Canada," north of Height of Land, the letter "U" being on the 50th parallel, in about longitude 87° 50'. There is no boundary indicated between Hudson's Bay and Canada. The map published in 1804 is the same in these respects. In the map published in 1822, the position of the words "Upper Canada" is changed to south of the Height of Land, the country north of Height of Land being marked as Rupert's Land. In no other of Arrowsmith's maps is any boundary line indicated as between Canada and Hudson's Bay. In an addition of Arrowsmith's said map of 1795, and so dated, but published in 1650, the words "Upper Canada" had been re-engraved along the shores of Lake Superior, instead of being, as in the original, partly above the Height of Land.

- (180) 1798.—"A new map of Upper and Lower Canada, 1798." (In work "Travels through the States of North America, and the Provinces of Upper and Lower Canada during the years, 1795, 1796 and 1797, by Isaac Weld, junior. London...1799.")

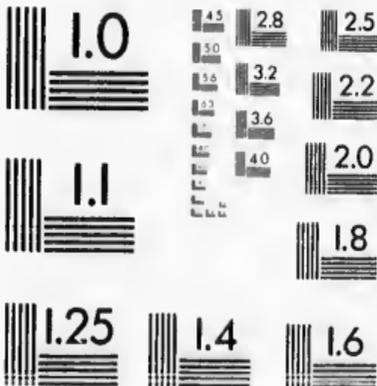
Legislative Assembly Library, Toronto.

The map extends westward and includes part of Lake Winnipeg. The name "Upper Canada"



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commences north of Lake of the Woods; no limits are assigned to that Province on the west or on the north.

- (181) 1799.—Map, published by Phillips, London, 1799, in La Rochefoucauld's Travels (Eng. ed.)
New York State Library.

"Upper Canada" extends to the western limit of the map, in longitude 95°. From this limit, in about latitude 51, a line (which, produced, would probably have gone toward Split Lake), runs easterly, substantially following the height of land to a point near Lake Mistassin, thence northerly, on a winding course, to and a little beyond the River Rupert.

- (182) 1802.—"Northern Hemisphere. London: Faden, Geographer to the King and to the Prince of Wales, 1802." 10

New York State Library.

A line, engraved and coloured, commences north of Lake Mistassin, near the Slude River, and runs thence easterly and southerly to the height of land, which it follows to a point north of Lake Nipigon, whence it passes westerly and then north-westerly, to a river which runs into Lake Winnipeg from the north-east. The international boundary is run some little distance west of the Lake of the Woods, and forms, to that point, the southern boundary of "Upper Canada" and of "Canada." These names commence—the first, north of Rainy River; the second at Kaminstiquia.

- (183) 1808.—"Carte des Etats-Unis..... par Tardieux. Paris, 1808" (being a new edition of his map of 1802). 20

Parliamentary Library, Ottawa.

The international boundary line is carried westward to Rainy Lake, where it is stopped by the limit of the map, in lat. 49°. Thus far it is also the southern limit of "Upper Canada." The Mississippi is doubly coloured, as the boundary line between Louisiana and the United States, to its source in White Bear Lake. Here the red colour which indicates the Louisiana side stops, and the green, which indicates the United States side, is carried northerly to a point outside the border of the map, where is the inscription: "Lake of the Woods."

- (184) 1809.—"Map of Canada, etc.," in "Letters from Canada..... By Hugh Gray.... London, 1809."

Legislative Assembly Library, Toronto.

The names of "Canada" and "Upper Canada" respectively, commence at the western limit of 30 the map, in about long. 102°.

- (185) 1815.—"Map of the Provinces of Upper and Lower Canada, with the adjacent parts of the United States of America, etc..... By Joseph Bouchette. Published August 12th, 1815, by W. Faden, London." The dedication is to H. R. H, the Prince Regent, and is signed "Joseph Bouchette, His Majesty's Surveyor-General for Lower Canada and Lieut.-Col. C. M."

Parliamentary Library, Ottawa.

The map extends to the par. of 55° on the north, and to and including a part of Lake Winnipeg on the west. The height of land north of Lake Superior, etc., is clearly marked without being named. The international boundary line is run to the north-west angle of the Lake of the Woods, and forms to that point the southerly boundary of "Upper Canada;" no limits are assigned to 40 that Province on the north or west; the name commences at Lake Savane, north of the height of land, and continues so to the north till it deflects to the south on approaching the inter-provincial boundary at Temiscaming. The Mississippi is coloured as a boundary line to its source in Turtle Lake, where the line stops.

- (186) 1857.—"Map of North America, drawn by J. Arrowsmith... London, pub'd. 1857, by John Arrowsmith. Ordered by the House of Commons to be printed, 31st July and 11th August, 1857."

In the possession of the Ontario Government.

In the margin is the memo: "On this map the territories claimed by the Hudson's Bay Company, in virtue of the charter granted to them by King Charles the Second, are coloured green; 50

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the other British territories pink; and those of Russia yellow." This is another of the maps sent by the Hudson's Bay Company to the Dominion Government for the purposes of the present arbitration.

It shews the Company's claim at that date, in respect of limits, to have been to all the lands north of the international boundary line, whose waters flow, directly or indirectly, to Hudson's Bay or Straits, or into the bays and channels which are approachable through these on the north; there is but one exception, viz.: east of Lake Nipigon, where the waters of, or to the south of, Long Lake are cut by the line of boundary. On the Labrador coast the line does not approach Cape Perdrix, Grimington's Island, Davis' Inlet or any other point which in the last century was claimed as its terminal point by the Company or by English Geographers. It runs from Cape Chudleigh (the entrance point of Hudson's Straits) southerly to and along the watershed. The portion of the northern watershed of the Missouri which is north of the international boundary, is not claimed to belong to the Company.

[A map published by the Company in 1850, for the information of Parliament, almost agrees with that of 1857.]

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RIGHTS OF POSTLIMINY.

THE DUKE OF YORK'S PATENT OF THE LANDS AND RIVERS FROM THE WEST SIDE OF THE CONNECTICUT RIVER TO THE EAST SIDE OF DELAWARE BAY, ETC., 12TH MARCH 1664.

By the Treaty of Westminster the United Provinces relinquished their conquest of New Netherland to the king of England. The Sovereign Dutch States-General had treated directly with Charles, as Sovereign. A question at once arose at Whitehall about the subordinate interest of the Duke of York. It was claimed by some that James's former American proprietorship was revived. Yet while the Treaty of Westminster re-established the articles of capitulation agreed to by Nicolls and Stuyvesant, who represented their Sovereigns in 1664, it did not cure the imperfections, subject to which the Duke had for nine years governed his American Province. James's patent had been sealed while the Dutch were in quiet possession of New Netherland, and no new grant was made to him after the Treaty of Breda, which confirmed to the English King his conquest of the Dutch Province. Eminent lawyers "very justly questioned" the Duke's pretension to the territory which England had recently recovered, because its cession to her sovereign by the Dutch Government "had given no strength to original defects." James was now obliged to give up the claim of English right which he and his brother had formerly maintained. Moreover, the Duke wished to regain New Jersey which he had foolishly squandered on Berkeley and Carteret. Besides, the boundary agreement with Connecticut which had been ratified by the Crown or by himself, was a sore point. The opinion of counsel having been taken, they advised that the Duke's proprietorship had been extinguished by the Dutch conquest, and that the king was alone seized of New Netherland, by virtue of the Treaty of Westminster. The *Jus Postliminii* did not obtain in New York.

Rights of Post-
liminy.

Duke of
York's
Patent, 12th
March, 1664.

A new patent to the Duke of York was therefore sealed [on the 29th June, 1674]. By it the King again conveyed to his brother the territories he had held before, and granted him anew the absolute power of government he had formerly enjoyed over British subjects, with the like additional authority over "any other person or persons" inhabiting his province. Under the same description of boundaries New Jersey, and all the territory west of the Connecticut River, together with Long Island and the adjacent islands, and the region of Pemaquid, were again included in the grant. The new patent did not, as has been commonly, but erroneously stated, "reite and confirm the former." It did not in any way allude to that instrument. It read as if no previous patent had ever existed. It was a second grant, in almost the same terms with the first, and it conveyed to the Duke, ostensibly for the first time, a territory which the Dutch Government, after conquering and holding, had by treaty "restored to His Majesty." * * *

One of the motives to the Duke of York's second patent was the peculiar condition of New Jersey. James considered that his former release of that region to Berkeley and Carteret was annulled by the Dutch conquest—just as his own grant from the King had been. But both his grantees were old

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is plain: to all prudent men, the Government of any place is more inviting than the soil; for what is good land without good laws? What but an assurance that we should enjoy civil laws, religious privileges, could have tempted us to leave a cultivated country and resort to a gloomy wilderness? What have we gained, if after adventuring in the wilderness many thousands of pounds, we are yet free to be taxed at the mere will and pleasure of another? What is it but to say, that people free by law under any prince at home, are at his mercy in plantations abroad?

"We humbly say, that we have lost none of our liberty by leaving our country; that the duty imposed on us is without precedent or parallel; that had we foreseen it, we should have preferred any other plantation in America. Besides, there is no limit to this power; since we are, by this precedent, taxed without any law, and thereby excluded from our English right of assenting to taxes. What security have we of anything we possess? We can call nothing our own, but are tenants at will, not only for the soil, but for our personal estates. Such conduct has destroyed governments, but never raised one to any true greatness."

The Commissioners adjudged the duties illegal and oppressive, and they were not afterwards demanded.

In following the course of the law of nations, this Court has declared that even in cases of conquest, the conqueror does no more than displace the sovereign and assume dominion over the country* (1 Pet. Rep. 86.)

A cession of territory is never understood to be a cession of the property of the inhabitants. The King cedes only that which belongs to him; lands he had previously granted were not his to cede. Neither party could so understand the treaty. Neither party could consider itself as attempting a wrong to individuals condemned by the whole civilized world. The cession of a territory would be necessarily understood to pass the sovereignty only, and not to interfere with private property. (Ib. 87.)

No construction of a treaty which would injure that security to private property which the laws and usages of nations would without express stipulation have conferred, would seem to be admissible, further than its positive words require. Without it the title of individuals would remain as valid under the new Government as they were under the old; and these titles, at least as far as they were consummate, might be asserted in the Courts of the United States, independently of this article. (Ib. 88)†

Such is the difference of the rule as between the Rights of the Great Corporations and ordinary private holders.

PROCEEDINGS HAD IN THE IMPERIAL PRIVY COUNCIL TOUCHING THE DIVISION OF PROVINCES IN NORTH AMERICA, 1712-1784.‡

[Extracts.]

Mem:—By a search made in the Council Books of Proceedings had touching the division of Provinces belonging to His Majesty in North America, it appears:

Virginia, 7 Jan. 1712. That His Majesty has by mandamus on one occasion directed the Governors to appoint commissioners to meet and settle the boundaries.

New York, 26 June, 1767. On another occasion a commission was passed under the Great Seal here for settling a boundary line.

No. Carolina, 30 Mar., 1763. It appears that instructions have been given to Governors to settle a temporary boundary line.

East Florida, 5 Oct. 1763. Two instances occur where the line has been described and declared by order of His Majesty in Council.

New York, 20 July, 1761. One instance where the boundary was notified by an instrument passed under the Great Seal.

Georgia, 4 Nov., 1763. In the commission appointing Thomas Carleton, Esquire, Governor of New Brunswick, the extent of his government is laid down, but it does not appear by the Council Books by

1784. *Hales' History of the United States, pp. 84-86.

† Also, *passent*, Pet. S. C. Rep. 6, 741-2; 9, 133; 10, 720, 729-30; 12, 438, *Strother v. Lucas*.

‡ Public Record Office.—Colonial Office Records, America and West Indies, Plantations General, 1775 to 1779. No. 605.

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Proceedings in Imp. Privy Council, 1712-1784.

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28 July, 1781. what authority the division of the Provinces was made. Governor Carleton's commission was approved in Council and afterwards passed the Great Seal. In the commission the extent of the government is described.

[Endorsed.] Mem. of Proceedings had in Council upon the division of the Provinces in North America.

I certify that the foregoing are true and authentic extracts.

PETER TURNER,

Assistant Keeper of the Public Records.

April, 1884.

EXTRACTS FROM BENJAMIN FRANKLIN'S LETTERS TO HIS SON,* 1766-68.

Franklin's
Letters to his
son, 1766-68.

May 10, 1766.—I like the project of a colony in the Illinois country, and will forward it to my utmost here. 10

Aug. 25.—I can now only add that I shall endeavour to accomplish all that you and your friends desire relating to the settlement westward.

Sept. 12.—I have just received Sir William's open letter to Secretary Conway, recommending your plan for a colony in the Illinois, which I am glad of. I have closed and sent it to him. He is not now in that Department; but it will of course go to Lord Shelburne, whose good opinion of it I have reason to hope for—and I think Mr. Conway was rather against distant posts and settlements in America. We have, however, suffered a loss in Lord Dartmouth, who I know was inclined to grants there in favour of the soldiery, and Lord Hillsborough is said to be terribly afraid of dispeopling Ireland. Gen. 20
Lyman has been long here soliciting such a grant, and will readily join the interest he has made with ours; and I should wish for a body of Connecticut settlers, rather than all from our frontiers. I purpose waiting to see Lord Shelburne on Tuesday, and hope to be able to send you his sentiments by Felconer, who is to sail about the 20th. A good deal, I imagine, will depend on the account when it arrives of Mr. Crogan's negotiation in that country. This is an affair I shall seriously set about; but there are such continual changes here that it is very discouraging to all applications to be made to the Ministry. I thought the last set to be well established; but they are broken and gone. The present set are hardly thought to stand very firm, and God only knows whom we are to have next. The plan is, I think, well drawn, and, I imagine, Sir William's approbation will go a great way in recommending it, as he is much relied on in all affairs that may have any relation to the Indians. Lord Adam Gordon 30
is not in town, but I shall take the first opportunity of conferring with him. I thank the Company for their willingness to take me in, and one or two others that I may nominate. I have not yet concluded whom to propose to it; but I suppose our friend Sergeant should be one. I wish you had allowed me to name more, as there will be in the proposed country, by reckoning, near sixty-three millions of acres, and therefore enough to content a great number of reasonable people; and by numbers we might increase the weight of interest here. But perhaps we shall do without.

Sept. 27.—I have mentioned the Illinois affair to Lord Shelburne. His Lordship has read your plan for establishing a colony there, recommended by Sir William Johnson, and said it appeared to him a reasonable scheme; but he found it did not quite rate with the sentiments of people here; that their objections to it were, the distance, which would make it of little use to this country, as the expense on the carriage of goods would oblige the people to manufacture for themselves; that it would for the same reason be difficult both to defend it and to govern it; that it might lay the foundation of a Power in the heart of America, which in time might be troublesome to the other colonies, and prejudicial to our government over them; and the people were wanted both here and in the already settled colonies, so that none could be spared for a new colony. These arguments, he said, did not appear of much weight, and I endeavoured by others to invalidate them entirely. But his lordship did not declare whether he would or would not promote the undertaking, and we are to talk further upon it.

I communicated to him two letters of Mr. Crogan's, with his journal, and one or two of yours on the subject, which he said he would read and consider; and I left with him one of Evan's maps of the middle colonies, in the small scale part of which I had marked with a wash of red ink the whole country included in your boundaries. His lordship remarked that this would coincide with General Lyman's project, and that they might be united. 50

* Spark's "Franklin," Vol. IV., pp. 233-41

Sept. 30.—I have just had a visit from Gen. Lyman, and a good deal of conversation on the Illinois scheme. He tells me that Mr. Morgan, who is Under-Secretary of the Southern Department, is much pleased with it, and we are to go together to talk to him concerning it.

Oct. 11.—I was again with Lord Shelburne a few days since, and said a good deal to him on the affair of the Illinois settlement. He was pleased to say that he really approved of it; but intimated that every new proposed expense for America would meet with great difficulty here, the Treasury being alarmed and astonished at the growing charges there, and the heavy accounts and drafts continually brought in from thence; that Major Farmer, for instance, had lately drawn for no less than 30,000 pounds, extraordinary charges, on his going to take possession of the Illinois, and that the Superintendents, particularly the Southern one, began also to draw very largely. He spoke, however, handsomely of Sir William on many accounts.

Nov. 8.—Mr. Jackson has now come to town. The ministry have asked his opinion and advice on your plan of a colony in the Illinois, and he has just sent me to peruse his answer in writing, in which he warmly recommends it, and enforces it by strong reasons, which give me great pleasure, as it corroborates what I have been saying on the same topic, and from him seems less to be suspected of some American bias.

June 13, 1767.—The Illinois affair goes forward but slowly. Lord Shelburne told me again last week that he highly approved of it, but others were not of his sentiments, particularly the Board of Trade. Lyman is almost out of patience, and now talks of carrying out his settlers without leave.

Aug. 28.—Last week I dined at Lord Shelburne's, and had a long conversation with him and Mr. Conway (there being no other company) on the subject of reducing the American expenses. They have it in contemplation to return the management of Indian affairs into the hands of the several provinces, on which the nations border, that the colonies may bear the charge of treaties and the like, which they think will be then managed more frugally, the Treasury being tired with the immense drafts of the Superintendents.

I took the opportunity of urging it as one mode of saving expense in supporting the outposts, that a settlement should be made in the Illinois country, expatiated on the various advantages, namely, furnishing provisions cheaper to the garrisons securing the country, retaining the trade, raising a strength there, which on occasion of a future war, might easily be poured down the Mississippi upon the lower country, and into the Bay of Mexico, to be used against Cuba, the French islands, or Mexico itself. I mentioned your plan, its being approved of by Sir William Johnson, and the readiness and ability of the gentlemen concerned to carry the settlement into execution, with very little expense to Government. The Secretaries appeared finally to be fully convinced, and there remained no obstacle but the Board of Trade, which was to be brought over privately before the matter was referred to them officially. In case of laying aside the Superintendents, a provision was thought of for Sir William Johnson. He will be made Governor of the new colony.

Oct. 9.—I returned last night from Paris, and just now hear that the Illinois settlement is approved of in the Cabinet Council, so far as to be referred to the Board of Trade for their opinion, who are to consider it next week.

Nov. 13.—Since my return, the affair of the Illinois settlement has been renewed. The King in Council referred the proposal to the Board of Trade, who called for the opinion of the merchants on two points, namely whether the settlement of colonies in the Illinois country and at Detroit, might not contribute to promote and extend the commerce of Great Britain; and whether the regulation of the Indian trade might not be best left to the several colonies that carry on such trade—both which questions they considered at a meeting, where Mr. Jackson and I were present, and answered in the affirmative unanimously, delivering their report accordingly to the Board.

Nov. 25.—As soon as I received Mr. Galloway's, Mr. S. Wharton's, and Mr. Crogan's letters on the subject of the (Indian) *Boundary*, I communicated them to Lord Shelburne. He invited me next day to dine with him. Lord Clare was to have been there, but he did not come. There was nobody but Mr. Maclean. My lord knew nothing of the boundaries having been agreed on by Sir William; had sent the letters to the Board of Trade, directing search to be made there for Sir William's letters; and ordered Mr. Maclean to search the Secretary's office, who found nothing. We had much discourse about it, and I pressed the importance of despatching orders immediately to Sir William to complete

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the affair. His lordship asked who was to make the purchase, that is, who should be at the expense. I said that if the line included any lands within the grants of the charter colonies, they should pay the purchase-money of such proportion. If any within the proprietary grants, they should pay their proportion. But what was within Royal Governments, where the King granted the lands, the Crown should pay for that proportion. His lordship was pleased to say he thought this reasonable. He finally desired me to go to Lord Clare, as from him, and urge the business there, which I undertook to do. . . .

I waited next morning on Lord Clare, and pressed the matter of the *boundary* closely upon him. . . . He agreed upon settling it, but thought there would be some difficulty about who should pay the purchase-money; for that this country was already so loaded, it would bear no more. We then talked 10 of the *new colonies*. I found he was inclined to think one near the mouth of the Ohio might be of use in securing the country, but did not much approve that at Detroit. And, as to the trade, he imagined it would be of little consequence, if we had it all, but supposed our traders would sell the peltry chiefly to the French and Spaniards at New Orleans, as he had heard they had hitherto done.

March 13, 1778—The purpose of settling the *new colonies* seems at present to be dropped, the change of American administration not appearing favourable to it. There seems rather to be an inclination to abandon the posts in the back country, as more expensive than useful. But counsels are so continually fluctuating here that nothing can be depended on. The new Secretary, Lord H., is, I find, of opinion that the troops should be placed, the chief part of them, in Canada and Florida.

LETTER OF THE RIGHT HONOURABLE EDMUND BURKE ON THE QUEBEC BILL, 1774.* 20

Rt. Hon. E.
Burke, on
Quebec Bill,
1774.

GENTLEMEN,—I was prevented by pressing business, and by not the best health, from sending you a letter by the July packet. When I had last the honour of writing to you on your affairs, I entertained no strong apprehensions that the clause in the Quebec Bill concerning the boundary of that new Province could materially affect the rights of your colony. It was couched in general and saving terms; it reserved all rights, and confirmed all adjudications; it was in all appearance sufficiently equitable. But upon a close consideration and subsequent enquiry, I found that you might be very much affected by it. I take the liberty of stating to you the light in which it appeared to me, and the conduct which I held, in consequence of that view of your interests.

I must first observe to you, that the proceedings with regard to the Town of Boston and the Province of Massachusetts Bay, had been from the beginning defended on their absolute necessity, not 30 only for the purpose of bringing that refractory town and province into proper order, but for holding out an example of terror to the other colonies, in some of which (as it was said) a disposition to the same or similar excesses had been marked very strongly. This unhappy disposition in the colonies was, by the friends of the coercive measures, attributed to the pride and presumption arising from the rapid population of these colonies, and from their lax form, and more lax exercise, of government. I found it in general discourses, and indeed in public debate, the pre-lominant and declared opinion, that the cause of this resistance to legal power ought to be weakened, since it was impossible to be removed; that any growth of the colonies, which might make them grow out of the reach of the authority of this Kingdom, ought to be accounted rather a morbid fulness than a sound and proper habit. All increase 40 of the colonies which tended to decrease their advantage to this country, they considered as useless and even mischievous.

From this predominant way of thinking, the enormous extent of the colonies was censured. It was not thought wise to make new grants of land but upon the weightiest consideration, if at all. Prerogative was to be strengthened as much as possible, and it was thought expedient to find in the tractable disposition of some provinces, a check upon the turbulent manners, and a balance to the less manageable plan of government, in the others. These principles (whatever their merit may be) became very fashionable during the agitation of the Massachusetts Bill in the House of Commons. A peer, who I think does not always vote in the majority, made a sort of proposition for an address to the King that no more land should be located in America.

This was the substance of the proposition, although it proceeded no further for reasons of decorum. 50 The ministerial side in that House fell in very directly with these sentiments and, as I am told, plainly

showed a resolution to act in conformity with them, so far as the power of the Crown in that particular extended. It is true that a few Lords, and Lord Rockingham in particular, objected to the idea of restraining the colonies from spreading into the back country, even if such restraint were practicable; for by stopping the extending of agriculture they necessitated manufactures, contrary to the standing policy of colonization. The general sentiments were, however, as I have stated them.

I mention this disposition of the House of Peers, particularly, (though it prevailed almost equally elsewhere), because the Quebec Bill originated in that House.

Very many thought, on a careful perusal, that the lines of the plan of policy I have just mentioned were very distinguishable in that Bill, as it came down to us. It was for that reason I became more uneasy than at first, about the lax and undeterminate form in which the boundary clause of this new colony was worded in the original Bill: the idea of which (whether seriously adopted by ministry or not) was very prevalent, that the British colonies ought to be restrained, made it necessary that this restraint should not be arbitrary. It was the main ground of the amendment which I proposed and carried with regard to the boundary clause. However, as a mere unconnected arrangement, it is right to define with clearness, although such a plan of policy never had existed or should pass away, as I hope and think in some degree it has, with the first heats. The bill passed through the House of Lords with some opposition, but no amendment, but when it came into the House of Commons, the Ministers confessed that it was hastily drawn, and they professed great candour in admitting alterations. The part by which your province would be directly affected was only the boundary clause.

As the boundary was, in the most material parts, in the original Bill only constructive, and in general words of reference "to the boundary lines of the other provinces, as adjudged or allowed by the Crown," I thought it necessary to know, with regard to you, what lines had been actually drawn, and next, what principles were to guide in adjudging your real boundaries in future.

With regard to the first point, I found that a line of division, between your colony and that of Quebec, had been allowed by the King in Council, to be run from a point on Lake Champlain in forty-five degrees of north latitude. So far had been agreed between the Governors of the two provinces and allowed. But no line had been actually run in consequence of this agreement, except from the River Connecticut to the Lake. Even this line had not been formally allowed; and none at all had been run to the westward of Lake Champlain. So that your boundary on the north had never been perfectly delineated, though the principle upon which it should be drawn had been laid down. For a great part of the northern frontier, and for the whole of the western, until you meet the line of New Jersey, you had no defined boundary at all. Your claims were indeed extensive, and, I am persuaded, just, but they had never been regularly allowed.

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 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.

They alleged the example of Carolina: first one province; then divided into two separate governments; and which afterwards had a third, that of Georgia, taken from the southern division of it.

They urged, besides, the example of the neutral and conquered islands.

These, after the Peace of Paris, were placed under one government. Since then they were totally separated, and had distinct governments and assemblies.

Although I had the greatest reason to question the soundness of some of these principles, at least in the extent in which they were laid down, and whether the precedents alleged did fully justify them in that latitude, I certainly had no cause to doubt but that the matter would always be determined upon these maxims at the Board by which they were adopted. The more clearly their strict legality

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was proved, the more uneasy I became at their consequences. By this Bill a new province under an old name was in fact created. The limits settled by the proclamation of 1763 were cancelled. On your side a mere constructive boundary was established, and the construction, when examined, amounted to nothing more than the King's pleasure. No part of your province (not even the settled quarters of the country, quite to the River Hudson) was secured from the possible operation of such a principle. Besides, there was a possibility (at least) that in the settlement of the boundary, Ministers would naturally lean to extend those limits the most where the Royal prerogative was most extensive, and consequently their power the highest. I do not mean to charge them with that intention. But no laws stood in the way of such an inclination if it ever did exist, or should happen to exist hereafter. This was not (as it might be between two ancient British colonies) a mere question of geographical distinction, or of economical distribution, where the inhabitants on the one side of the line and the other lived under the same law, and enjoyed the same privileges of Englishmen. But this was a boundary discriminating different principles of jurisdiction and legislation; where in one part the subject lived under law, and in the other under prerogative.

From these impressions I proposed my objections on the second reading, reserving a more regular opposition to the Committee. In the interval I conferred with Lord Dartmouth and Mr. Pownall, and afterwards with Lord North, upon the subject. But first I formed my plan for an amendment to the clause as it stood in the Bill, before it was committed. I could have wished for a more perfect and authorized information, but I was obliged to act at the instant. The Bill came in late in the session, and if I had let it pass for want of being instructed, the occasion would, in all human probability, never be recovered.

I saw you had claims founded on these grounds,—the old Dutch settlement; the placing of the Five Nations within your government; the boundary line of Governors Moore and Carleton; and the maintenance of the Fort at Oswego during the late war, which carried you to Lake Ontario.

Rt. Hon. E.
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These claims had no fault but the want of definition. To define is to abridge. Something, then must be given up. I was persuaded, that when one negotiates with power, it is policy to give up handsomely what cannot be retained, and to gain that strength which will always more or less attend the reasonableness of a proposition, even when it is opposed by power. I thought that well secured and tolerably extensive boundaries were better than the amplest claims which are neither defined nor allowed. My idea was to get the limits of Quebec, which appeared to many, as well as myself, intended to straiten the British colonies, removed from construction to certainty; and that certainty grounded on natural, indisputable and immovable barriers—rivers and lakes where I could have them; lines where lines could be drawn; and where reference and description became necessary, to have them towards an old British colony and not towards this new and, as was thought, favourite establishment.

I assured the Ministry, that if they refused this reasonable offer, I must be heard by counsel. As they found some opposition growing within and without doors, and they were in haste to carry through their Bill, brought in so late in the session, after some discussion and debate they gave way to the amended clause as you see it.

The work was far more troublesome than those who were not present can well believe. It cost us near two whole days in the Committee. The grand difficulty arose from the very unsettled state of the boundary of Pennsylvania. We could not determine whether it advanced northward beyond Lake Erie, or ran within that Lake, or fell to the south of it; and this uncertainty made the whole matter beyond expression perplexing. Objections on the part of Quebec were raised to the last moment, and particularly to the post of Niagara, which Mr. Carleton, I am told, was very earnest to have within his government; but by the Act it is excluded and is on your side. I believe some imagine that these difficulties would make me give up the point; but it is carried, and if not a perfect arrangement it prevents a very bad one, and may form a basis for a much better in times more favourable to the old colonies.

After the affair was over, it was suggested to me that I ought to have expressly defined this line to be the limits of New York as well as of Canada. To this I answer, that I was aware of the inconveniences which might arise from the want of this clear specification, supposing the Board of Trade to

act insidiously, unfairly and captiously, which I have no reason to imagine they will do from anything I have observed in them or in other parts of Ministry.

But I confess, when I consider that Canada is put on the other side of the waters, its bounds being expressly so marked out, it appears to me absolutely impossible to say to whom the land on this side belongs except to you, unless His Majesty should choose to erect a new government, a thing no way likely or convenient for any good purpose. The Quebec line was constantly stated and urged in the House as the boundary between the Provinces of Quebec and New York, in that public discourse (rather than debate) which latterly we had on the subject. I think the line, to all intents and purposes, as much your boundary as if it were ever so expressly set down. Canada, at least, cannot say
10 "this belongs to me."

I did not press to have the line called the boundary between New York and Canada; because we should again fall into discussion about the bounds of other colonies as we had about those of Pennsylvania, which discussion alone had very near defeated me. It would be asked why the line along Nova Scotia, New Hampshire and the Northern Massachusetts Claim was not called the boundary of these Provinces as well as of New York.

It would be said that this Act was to settle a constitution for Quebec, and not for adjusting the limits of the colonies, and in the midst of this wrangle the whole object would have infallibly escaped the House, as it grew quite tired of it. All business stood still whilst we were wording the clause, and, on our difficulties, Lord North proposed to revert to the old words, which, he said, to him were the best,
20 and that he only gave way to the sentiments of other people who, on his concession, found a difficulty in effectuating their own purpose.

I must therefore accept what I could get; and the true method of estimating the matter is to take together—the time, what we escaped, and what we obtained—and then to judge whether we had not had a tolerable bargain. Those who were present congratulated me as on a great advantage. I am sure I acted for the best, with great rectitude of intention and a good deal of assiduity. I send you the Bill with the amendments marked. As to the other parts of the Bill they are matters of more general policy. As I have already given you a great deal of trouble I do not mean to detain you any longer upon foreign matter.

I received your obliging letter of the 31st of May, and am extremely happy in the honour of your
30 approbation.

You undoubtedly may dispose of my letters as you judge proper. I must in this respect confide entirely in your prudence, being fully satisfied that the matter will always direct you sufficiently in what you ought to conceal and what to divulge.

I have sent off long ago the Wawayanda and Cheesecock Acts. I have had the honour of seeing Mr. Cruger at my house on his return to Bristol. I endeavoured to attend to him in the manner to which his merit and connections entitle him.

I have the honour to be,
With the highest esteem and regard,
Gentlemen,

Your most obedient and humble servant,
EDMUND BURKE.

Beaconsfield, August 2, 1774.
To the Committee of Correspondence
for the General Assembly at New York.

OBJECTS OF THE QUEBEC ACT, 1774.*

EXTRACT FROM A PUBLICATION OF THAT YEAR.

The objects of this Act are: the extension of the boundaries of the Province, the revocation of the civil government, which took place in consequence of the proclamation in 1763, and all

* From Pamphlet published in 1774, in volume entitled, "North America, 1774," in the Library of Parliament, Ottawa.

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its Acts; the toleration of the *Roman Catholic* religion, agreeable to the Treaty of Paris; the securing to all the *Canadian* subjects, except the religious orders and communities, the enjoyment of their properties and civil rights; the re-establishment of their ancient laws and customs, subject to such alterations as the legislature of the Province may think fit to make; the continuation of the administration of the criminal laws of *England*, subject to the like alteration, and the establishment of a temporary legislature within the Province.

When the lines drawn by the proclamation of 1763 for the boundaries of *Quebec* and of the *Floridas*, and for the limitation of settlements under grants from the old Provinces, were resolved upon, a general plan for the regulations of the trade with the savages was under consideration of the Board of Trade, and in great forwardness. To give this plan uniformity and effect, it was thought necessary to exclude all the provinces from jurisdiction in the interior or *Indian* country; but all persons resorting thither for trade (and no settlements were to be permitted) were to be subject to a police, deriving authority immediately from the Crown, and supported by a revenue, arising from a tax upon the trade, to be imposed by Act of Parliament.

The events of the following year were fatal to this plan, for it was not then judged expedient to lay the tax, and consequently the expense could not be defrayed without an additional charge upon the *American* contingencies, which were thought to be sufficiently burdened already. This was the reason that so large a part of the ceded territories in *America* was left without government, and that the new Province of *Quebec* contained so small a portion of ancient Canada.

It had been the policy of the *French* Government to possess themselves of the water communications throughout the whole of that vast country, and, for that end, to establish posts at the most important passes; but, being well aware of the great difficulty of supplying these posts with provisions from the inhabited country, they settled a little colony round each post, to cultivate the ground and raise provisions for the garrison. This gave rise to the settlement of *Detroit*, *Missilmakinac* and upon the *heads of the Mississippi*, called the *Illinois country*, and as these settlers had been put entirely under the direction of the commanding officers of the forts, when the French garrisons were withdrawn, and military orders ceased to be law, they were altogether without law or government, especially as, by the new arrangement, they were excluded every *English* province. It must be confessed, no great mischief has happened from these people being left in this lawless state. They had been accustomed to obey *French* military orders, and the *English* officers who commanded the posts which were continued in their neighbourhood, of their own authority, exercised the same command over them; and as it was not the purpose of the administration to encourage settlements in those remote situations, the arbitrary rule of the military was tolerated, as most likely to prevent an increase of inhabitants.

In such parts of this *pays deserte* as lay more contiguous to the prescribed limits of the old colonies and where there were no military posts kept up, the effects were very different. Emigrants in great numbers flocked thither from the other colonies, took possession of vast tracts of country without any authority, and seated themselves in such situations as pleased them best. As no civil jurisdiction reached these intruders upon the King's waste, and as their number increased every day, insomuch that the native savages, in dread of their power, quitted these lands and removed to others at a greater distance, the case was judged to be without other remedy than that of following the emigrants with government, and erecting a new province between the *Alleghany Mountains* and the *River Ohio* for that purpose.

That the mischief might not, however, farther extend itself, and the like reasons for erecting new colonies at still greater distance from the sea coast may not again recur, the whole of the derelict country is by the first clause of the Act, put under the jurisdiction of the Government of *Quebec*, with the avowed purpose of excluding all further settlement therein, and for the establishment of uniform regulations for the *Indian* trade.

The Province of *Quebec* was preferred for these ends before all the others, because the access by water is much easier from *Quebec* to such parts of this country as are the most likely to be intruded upon than from any one other colony, for emigrants always choose to seat themselves upon places where they can have the advantage of a water communication with the market they intend to traffic at; and

if this country had been parcelled out among the several colonies that bounded upon it, experience has fully testified the impracticability of their all agreeing upon one general plan, which would have the effect to prevent settlement, or to enforce any regulations which may be thought necessary for giving security and satisfaction to the savages in their dealings with our traders, the only means to prevent the quarrels and murders which are every day happening, and which are the certain consequences of a fraudulent commerce. Both these objects, it is expected, will be obtained by putting this country under the jurisdiction of Quebec; for, as there is now a legislature in that Province competent to enforce such regulations, administration is pledged to recommend that Acts for those purposes be the first objects upon which the legislative powers shall be exercised.

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10

EXTRACT FROM RUSSELL'S HISTORY OF AMERICA, 1774.*

"The particular objects of the Bill were to augment the importance of the Province of Quebec by extending its limits southward to the banks of the Ohio, westward to the banks of the Mississippi, and northward to the boundary of the Hudson's Bay Company; to form a Legislative Council, [etc.]"

Russell's Hist.
of America,
1774.

DEBATE IN THE HOUSE OF LORDS ON A PROPOSAL TO REPEAL THE QUEBEC ACT
OF 1774.†

17TH MAY, 1775.

Lord Camden.—His Lordship arranged his objections to the Act under the three following heads:—

20

- 1st. The extension of the limits of Quebec.
- 2nd. The establishment, &c.
- 3rd. The civil despotism, &c.

Debate in
House of
Lords on
proposal to
repeal Quebec
Act, 17th
March, 1775.

Under the first of these heads [the extension of the limits of Quebec] his Lordship proved, that there could be no good reason for so extending the limits of Quebec, as to make them comprehend a vast extent of country two thousand miles in length from north to south, and bounded on the west only by the south sea. That this enlargement could only be intended to extend the shackles of arbitrary power and of popery over all the future settlements and colonies of America. That by drawing the limits of that Province close along the interior settlements of all the old English Colonies, so as to prevent their further progress, an eternal barrier was intended to be placed, like the Chinese Wall, against the further extension of civil liberty and the Protestant Religion. His Lordship then animadverted particularly on the instructions lately transmitted to General Carleton, whereby the regulation of all the Indian trade of North America is put into the hands of the Governor and Council of Quebec, and the other Colonies are obliged, in their intercourse with the Indians, to submit to the Laws, not of the British Parliament, but of a despotic, unconstitutional Legislature in Canada; a measure calculated to produce endless contentions and animosities. * * *

His Lordship concluded by offering the following bill:—

A bill to repeal an act made in the last session of the last Parliament, intituled, An act for making more effectual provision for the government of the province of Quebec, in North America.

Whereas an act was passed in the last session of the last Parliament, intituled, An act for making more effectual provision for the government of the province of Quebec, in North America;

And whereas the said act, by enlarging the boundaries of the said province, and making the legislature thereof co-extensive with the same, may put the Indian trade, among other things, under the sole management of that legislature, as in truth appears to be already done, by the instructions lately given to Governor Carleton, by which that trade, which had before been freely carried on by all His Majesty's subjects in North America without restriction, is now to be confined to such regulations

*The History of America. By William Russell, Esquire, of Gray's Inn, London. 1778. Vol. 2, p. 469.

† Parliamentary Register, Vol. 2, 1775, pp. 134, 135, 138, 139, 148, 149.

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as the said legislature may think fit to impose upon it, and thereby the rights of His Majesty's other colonies unwarrantably abridged and invaded; and by a like extension of the said legislature, the said other colonies may come to be excluded from having any intercourse or correspondence whatsoever with the Indian nations of that vast continent, without the leave or permission of the said legislature which would naturally give rise to unnatural divisions and endless controversies between His Majesty's subjects of the old colonies, and the inhabitants of the new province of Quebec;

May it therefore please your most excellent Majesty,

That it may be enacted, and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and the Commons in this present Parliament assembled, and by the authority of the same, that from and after the fifth day of May, 1776, the above 10 mentioned act, and the several matters and things therein contained, shall be, and is, and are, hereby repealed and made void to all intents and purposes whatsoever.

Lord Wycombe [Earl Shelburne]. . . The peltry or skin trade, my Lords, is a matter which I presume to affirm is of the utmost magnitude, and of the last importance to the trade and commerce of the colonies and this country. The arrangement and regulation of this business has, give me leave to say, cost his Majesty's ministers more time and trouble than any one matter I know of. The noble Earl behind me [Earl of Hillsborough], it is true, differed from me among other of His Majesty's servants on the regulating the trade with the Indians; but it was never so much as dreamed of that the whole skin trade, from Hudson's Bay to the Forks of the Mississippi, should be at once taken from the several American colonies and transferred to the French Canadians; or, which is substantially the same thing 20 that by a royal instruction the sole direction of it should be vested in the Governor of Quebec. For I will be bold to contend that whatever colourable construction may be put upon it, it will operate as a complete exclusion, and total monopoly so far as the Protestant British colonies can possibly be interested.

PAPERS RELATING TO THE RED RIVER SETTLEMENT AND TO THE PROCEEDINGS OF LORD SELKIRK TO WESTWARD OF LAKE SUPERIOR, 1815-1819.

EARL BATHURST TO ADMINISTRATOR SIR GORDON DRUMMOND.*

Downing Street, 18th March, 1815.

Occurrences in
Red River
District, etc.,
and Legal
Proceedings
against Lord
Selkirk, 1815-
1819.

Earl Bathurst
to Sir G.
Drummond,
8th March,
1815.

SIR,—Having received from the Governor and Company of the Hudson's Bay Company a Representation, of which a copy is enclosed, in which they state their apprehensions of an attack from the 30 Indian nations in the neighbourhood of the Red River, and request a small military force for their protection, I am induced to transmit it to you in order that you may make the necessary inquiries as to the grounds of the fears expressed by them on this point; and in the event of your considering them to be founded, furnish such protection and assistance as can be afforded without detriment to His Majesty's service. You will take a special care, whatever measures you may adopt for this purpose, to abstain from doing any act or expressing any opinion which may tend to affect the question in dispute between the Hudson's Bay and North-West Companies; the sole object of the present instruction being to secure the lives and properties of His Majesty's subjects, established on the Red River, from the predatory attacks of the Indian nations in the neighbourhood, with which they state themselves to be threatened

I have the honor to be, &c.,

BATHURST.

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ADMINISTRATOR SIR GORDON DRUMMOND TO EARL BATHURST.†

Castle Quebec, August 16th, 1815.

Sir G. Drum-
mond to Earl
Bathurst,
16th August,
1815.

MY LORD,—Having considered what would be the best method of gaining the information required in your Lordship's letter of the 18th March, it appeared to me, that by addressing myself for that pur-

* Sessional Papers, House of Commons (Eng.), 1819, No. 219, p. 1.
† Sessional Papers, House of Commons (Eng.), 1819, No. 219, p. 4.

pose confidentially to the heads of the North-West Company, whom I knew to be persons of the utmost integrity and respectability, I should not only have the best chance of attaining that object, but of more effectually providing for the security of the lives and property of the settlers on the Red River, than by the adoption of any other means within my reach. These objects have, I trust, been attained as far as they are attainable. Before I call your Lordship's attention to the numerous documents which accompany this letter (more particularly to that from Mr. McGillivray, in answer to that which I caused the Deputy Adjutant General to address to him), it is proper to intimate to your Lordship what I did not think it necessary to communicate to the gentlemen of the North-West Company, viz.: that the plan of affording *military* protection to the Earl of Selkirk's settlement, is in my opinion decidedly impracticable; but even admitting the practicability of moving a detachment of troops, with the necessary provisions and stores, to that remote territory, the expense attending it would not only be enormous (far beyond any idea your Lordship would form of it), but the first and unavoidable effect of this interference would, I conceive, be to involve us in an Indian war, for objects foreign to the interests of the British Government. It is far from my intention to attempt to influence the judgment which your Lordship may form from an inspection of the papers herewith transmitted. But I think it incumbent on me to remark that I cannot but feel apprehension that the most mischievous consequences are likely to arise from the conduct and character of the individual whom Lord Selkirk has selected for his agent, who styles himself a Governor, and from whose intercourse with the persons in the service of the North-West Company it is in vain to look for the spirit of moderation and conciliation which it is so desirable should animate persons situated as these traders and settlers are, cut off as they are from the whole civilized world, and dependent on their union and mutual good offices alone for protection, not only from the savage tribes by which they are surrounded, but against an enemy not less formidable, viz.: famine. The question as to the invasion of rights, of which the North-West and Hudson's Bay Companies mutually complain, appears to me to be entirely one of law, and one in fact on which the law can alone decide; it has therefore very properly been referred by the North-West Company to a legal tribunal.

I have the honour to be, &c.,

GORDON DRUMMOND.

The Right Honourable Earl Bathurst, &c., &c., &c.

EARL BATHURST TO ADMINISTRATOR SIR GORDON DRUMMOND.*

Downing Street, 3rd January, 1816.

SIR,—Having received many complaints of the violent proceedings which have taken place in the most remote parts of His Majesty's North American Dominion, and of the outrages committed by the agents and servants of the Hudson's Bay and North-West Companies against each other, it appears highly necessary to adopt some measures for restraining a system of violence which if persevered in may ultimately lead not only to the destruction of the individuals concerned, but of others of His Majesty's subjects. I am therefore to desire that you will without loss of time inculcate upon the servants of the two Companies the necessity of abstaining from a repetition of those outrages which have been latterly so frequent a cause of complaint, and convey to them the determination of His Majesty's Government to punish with the utmost severity any person who may be found to have caused or instigated proceedings so fatal to the tranquillity of the possessions in that quarter, and so disgraceful to the British name.

I have the honour to be, &c.,

BATHURST.

Lieutenant-General Sir Gordon Drummond, K.C.B., &c., &c., &c.

* Sessional Papers, House of Commons (Eng.), 1819, No. 219, p. 42.

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Sherbrooke
to Earl
Bathurst,
23rd October,
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GOVERNOR-GENERAL SIR JOHN C. SHERBROOKE TO EARL BATHURST.*

Quebec, 23rd October, 1816.

MY LORD,—It is with much regret that I have to report to your Lordship a continuance of those unhappy dissensions between the Hudson's Bay and North-West Companies, which formed the subject of my despatch to your Lordship, Number 21, of the 24th of August. The enclosed copy of a memorial presented to me on behalf of the North-West Company, will inform your Lordship of the arrest and imprisonment of the principal partners of that body by the Earl of Selkirk, and of the occupation of Fort William (their principal trading establishment) by his Lordship, and the copy of his letter to me of the 3rd of September, will also show your Lordship his further views, and the course he intended to pursue. The memorial of the North-West Company, though drawn, as was to be expected, with a colouring of prejudice and interest, contained a statement of facts which demanded attention. I therefore immediately submitted it to the Executive Council, whom I called upon to advise me as to the best method of restoring tranquillity to the Indian country, and checking the further outrages of both parties.

The acts of the Earl of Selkirk, which the Council had immediately before them, having been done under colour and by process of law as a Magistrate for the western district of Upper Canada; and the whole magistracy of the Indian territory, being formed exclusively of the partners' agents, are partizans of the contending companies, it was evident that both parties would proceed to use their authority as Magistrates in acts of retaliation and annoyance to each other. To deprive them, therefore, of this authority, was the first step to be taken for the restoration of harmony, and this was recommended by the Council. But evils equally great were to be expected to ensue from leaving that territory entirely without magistrates; and the proposed measure would moreover have been ineffectual, without also depriving both parties of the authority they possessed at Fort William, in the western district of Upper Canada, by being Magistrates for that district; and this act of power could only be exercised by the Government of Upper Canada. The Council therefore further recommended that after superseding the commissions of all the Justices of the Peace for the Indian territory, I should appoint two persons of influence and impartiality to be sole magistrates of that territory, and to proceed thither to exercise their functions, and with further powers, as Commissioners of Enquiry, to mediate between the two Companies. But the Council also recommended that neither the *supersedeas* nor the new commission should take effect unless on a clear understanding with the Government of Upper Canada that the commissions granted to Lord Selkirk and the members and servants of the Hudson's Bay and North-West Companies, as magistrates for the western district of Upper Canada, should be revoked; and that the two new magistrates to be appointed by me should be made Justices of the Peace for that district.

Finding it very difficult, from the extensive influence and connections of the North-West Company to select here two persons impartial enough to be entrusted with the proposed mission to the Indian territory, I referred the matter by a letter, of which I enclose your Lordship a copy, to Lieutenant-Governor Gore; and his answer, of which I also add a copy, will shew your Lordship that he has found the same difficulty of choice, and that consequently I have been unable to carry through the measure which the Council recommended, and which was indeed the only expedient that could be devised for giving peace to the country. In such a deplorable state of things, however painful it is to me to witness proceedings so much to be deprecated, I can do no more; my authority is of no avail over persons at a distance of four thousand miles from me, in a wild and lawless country, at all times difficult to penetrate, and at this advanced season almost inaccessible; and while I beg leave to call your Lordship's serious attention to the forcible, and I fear too just, description given by the Earl of Selkirk, of the state of the Red River territory, I leave your Lordship to judge whether a banditti such as he describes, will yield to the influence, or be intimidated by the menaces, of distant authority.

I have the honor to be, &c.,

The Right Honourable the Earl Bathurst, &c., &c., &c.

J. C. SHERBROOKE

* Sessional Papers, House of Commons (Eng.), 1819, No. 219, p. 56.

GOVERNOR-GENERAL SHERBROOKE TO LIEUTENANT-GOVERNOR GORE.*
(MOST SECRET AND CONFIDENTIAL.)

Castle of St. Lewis, Quebec, 1st October, 1816.

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SIR,—I have had the honour of receiving your Excellency's letter of the 14th instant, relating to the late occurrences at Fort William. Concurring in the fullest manner with your Excellency in the views of this difficult subject, which you have submitted to Lord Bathurst, and being equally impressed with the dangerous consequences that may ensue to the country, unless some steps of interference are taken, I sought the advice of my Council on the subject, and have now the honour of transmitting to you a copy of their report. I do not see any method of arresting the progress of the evil, but that which the Council has recommended; and I now enclose to your Excellency an instrument revoking the commissions of all the magistrates of the Indian territory; and two other instruments for the appointment of two persons (for whose names blanks are left) to proceed to that territory, in the double capacity of Commissioners of Inquiry and Justices of the Peace. The extensive influence and connections of the North-West Company, pervading almost the whole society here, I find it extremely difficult to select two persons impartial enough to be intrusted with such an important mission; and I, therefore, with the fullest confidence, leave the selection of them to your Excellency, in the hope that the same causes may not operate in your Government to embarrass your Excellency's choice. Should the same difficulty, however, prevail there, so that this new commission cannot be filled up, your Excellency will clearly understand that the instrument of revocation cannot be acted upon; and moreover, that I have only been induced to transmit these instruments to your Excellency by the hope and expectation that you will consent to the revocation (as suggested by the Council here) of the commissions held by Lord Selkirk, and the members and servants of the Hudson's Bay and North-West Companies, as magistrates in the western district of Upper Canada; and that your Excellency will also appoint the two persons whom you may select as Commissioners of Enquiry, to be Magistrates for the western district of Upper Canada. I have little doubt that your Excellency will see the necessity of these measures; but should it be otherwise, your Excellency will of course consider the instruments now transmitted as of no effect; and I beg that your Excellency will in this case (as well as in the possible event of your not being able to find two persons qualified for the proposed mission to the Indian territory), be good enough to return these documents to me.

The date of the commission of *supersedeas* being left blank, it is necessary, as your Excellency will no doubt see, that, in filling it up, care be taken that it be subsequent to the date of the commission appointing two Justices of the Peace to proceed to that country, in order that it may not appear that the territory has for a moment been left without the means of the administration of justice. I have the honour to enclose herewith such general instructions to the two new Justices of the Peace (if the appointment takes place) as may be necessary for their guidance; and I have also caused letters to be written to the present magistrates of the Indian territory (to be used of course only in the event of the *supersedeas* taking effect), apprizing them that their commissions have been revoked; to which letters I request that your Excellency will permit the dates to be affixed, according to the date that the *supersedeas* may bear; and that your Excellency will have the goodness to inform me *what* that shall be.

It only remains for me to assure your Excellency of my hearty co-operation and support, on this and every other occasion, where the peace of the country and so many of its important interests are at stake.

I have the honour to be, &c.,

J. C. SHERBROOKE.

His Excellency Lieut.-Governor Gore, &c., &c., &c.

LIEUTENANT-GOVERNOR GORE TO GOVERNOR-GENERAL SHERBROOKE.†

Quebec, 17th October, 1816.

SIR,—I have the honour to acknowledge the receipt of your Excellency's secret and confidential dispatch of the 1st instant, which reached me by express on the 9th, at the new settlement in the vicinity of the River Rideau. I lament extremely to be obliged to state to your Excellency, that

Lieut. Gov.
Gore to Gov.
Gen. Sher-
brooke, 17th
Oct., 1816.

* Sessional Papers, House of Commons (Eng.), 1819, No. 219, p. 61.

† *Ibid.*, p. 62.

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although I have given the subject a most serious consideration, I cannot propose any two persons of Upper Canada as fit to be intrusted with the important mission referred to in your Excellency's dispatch. I have enclosed the commissions and papers, which your Excellency did me the honour to confide to me. I beg to assure your Excellency, that you may command my co-operation to arrest the evil existing at Fort William and in the Indian territory, in any manner you may be pleased to point out.

I have the honour to be, &c.,

FRANCIS GORE.

To His Excellency Lieut.-General Sir John C. Sherbrooke, &c., &c., &c.

EARL BATHURST, TO GOVERNOR-GENERAL SIR JOHN C. SHERBOOKE.*

10

DOWNING STREET, 6th February, 1817.

Earl Bathurst
to Gov.-Gen.
Sherbrooke,
6th Feb.,
1817.

SIR,—Since I had the honour of addressing you on the subject of the disputes existing between the North-West and Hudson's Bay Companies, I have received intelligence from different quarters, of the continuance of those proceedings which have involved the whole Indian country in disturbance, and which, if a check be not early put to them, threaten to be utterly destructive of the intercourse subsisting between that country and His Majesty's dominions. To prevent consequences so fatal to both parties, and so pregnant with danger to the safety of the Canadas, His Royal Highness the Prince Regent has been pleased entirely to approve of the appointment of Mr. Coltman and Mr. Fletcher, as Commissioners to investigate and report upon the subjects of dispute between the Hudson's Bay and the North-West Companies. But as much time must necessarily elapse before their report can be received and properly considered, I am commanded to signify to you His Royal Highness's pleasure that measures should be immediately taken for putting an end to those violent proceedings which have latterly marked the contest of these two companies; and with this view, that each should be restored to the possessions held by them previous to the commencement of their recent disputes. You will therefore upon the receipt of this dispatch, issue a Proclamation, in the name of the Prince Regent, calling upon the agents of each party, and upon all those whom either may have enlisted or engaged in their service, to desist from every hostile aggression or attack whatever; and in order to prevent the further employment of an unauthorized military force, you will require all officers and men composing such force, to leave within a limited time the service in which they are engaged, under penalty of incurring His Royal Highness's most severe displeasure, and of forfeiting every privilege to which their former employment in His Majesty's service would otherwise have entitled them.

You will also require, under similar penalties, the restitution of all forts, buildings, or trading stations (with the property which they contain) which may have been seized or taken possession of by either party, to the party who originally established or constructed the same, and who were possessed of them previous to the recent disputes between the two companies. You will also require the removal of any blockade or impediment, by which any party may have attempted to prevent or interrupt the free passage of traders, or others of His Majesty's subjects, or the natives of the country, with their merchandise, furs, provisions and other effects, throughout the lakes, rivers, roads and every other usual route or communication heretofore used for the purposes of the fur trade in the interior of North America; and the full and free permission for all persons to pursue their usual and accustomed trade, without hindrance or molestation; declaring at the same time that nothing done in consequence of such Proclamation shall in any degree be considered to affect the rights which may ultimately be adjudged to belong to either party, upon a full consideration of all the circumstances of their several claims. I trust that the parties themselves will understand their own interests too well, not to yield a ready obedience to the commands of His Royal Highness, but in order to ensure it you will not hesitate to arm the Commissioners with such additional authority as you may consider requisite to enforce the Proclamation, and to take every other measure in your power for securing the objects which His Royal Highness has in view, namely, the cessation of all hostility both in Canada

*Sessional Papers, House of Commons (Eng.), 1819, No. 23, p. 71.

and the Indian country, and the mutual restoration of all property captured during these disputes, and the freedom of trade and intercourse with the Indians, until the trials now pending can be brought to a judicial decision, and the great question at issue with respect to the rights of the two Companies shall be definitely settled.

I have the honour to be &c.,

BATHURST.

Lieut.-General Sir John C. Sherbrooke, G. C. B., &c., &c.

EARL BATHURST TO GOVERNOR-GENERAL SIR JOHN C. SHERBROOKE.*

DOWNING STREET, 11th February, 1817.

10 STR.—I have had the honor of receiving your despatches from No. 67 to No. 72 inclusive, which have been duly laid before the Prince Regent. I learnt with great regret that the commissioners of special enquiry, to the result of whose labors I looked for some more precise information as to the actual state of the Indian country, and the means by which tranquillity might be restored, had been under the necessity of abandoning the object of their mission, and of returning to York, under the untoward circumstances which prevented them from reaching the point of their ultimate destination. I have entirely to approve the measures which they adopted for making known the powers with which they were themselves invested, and for superseding those of the magistrates of the Indian country. And I trust that when the road to Fort William is practicable, they will proceed to the execution of the important charge which has been confided to them. I am fully sensible of the danger which may in the interim result to the commercial and political interests of Great Britain, from the opening which the conduct of Lord Selkirk appears calculated to give to the admission of foreign influence over the Indian nations, to the exclusion of that heretofore exercised by the subjects of Great Britain; and feel the necessity of putting an end to a system of lawless violence which has already too long prevailed in the Indian territory and the more distant parts of Upper Canada. By resisting the execution of the warrant issued against him, Lord Selkirk has rendered himself doubly amenable to the laws, and it is necessary, both for the sake of general principle, and for the remedy of existing as well as for the prevention of further evils, that the determination of the Government to enforce the law with respect to all, and more particularly with respect to Lord Selkirk, should be effectually and speedily evinced. You will, therefore, without delay on the receipt of this instruction, take care that an indictment be preferred 20 against his Lordship for the rescue of himself, detailed in the affidavit of Robert MacRobb, and upon a true bill being found against him, you will take the necessary and usual measures in such cases for arresting his Lordship and bringing him before the Court from which the process issued. Surrounded, as Lord Selkirk appears to be, with a military force, which has once already been employed to defeat the execution of legal process, it is almost impossible to hope that he will quietly submit to the execution of any warrant against himself, so long as any opening is left for effectual resistance. It is, therefore, necessary that the officer to whom its execution is entrusted should be accompanied by such a civil (or if the necessity of the case should require it by such a military) force, as may prevent the possibility of resistance. The officer, however, must be cautioned that the force entrusted to him is not to be employed in the first instance, but is only to be resorted to in aid of the civil authority in case of any opposition 40 being made to the execution of his warrant in the ordinary manner. As it appears not improbable that Lord Selkirk may, previous to the issue of the process against him, have removed from Upper Canada into the territories claimed by the Hudson's Bay Company, it will be necessary, in order in such case to give validity to the warrant against him, that it should be issued or backed by some magistrate appointed under the Act 43rd of the King, to act both for Upper Canada and for the Indian territory. By this means the warrant will have, under the provisions of the Act of Parliament, a legal operation, not only in Upper Canada but in any Indian territories, or in any other parts of America (without excepting the territory of the Hudson's Bay Company) which are not within the limits of either of the Provinces of Canada, or of any civil government of the United States; and you will see the importance

*Sessional Papers, House of Commons (Eng.), 1819, No. 219, p. 72.

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of not permitting the execution to be defeated by any irregularity in the warrant itself, or by any change of place on the part of Lord Selkirk.

As Captain Mathey appears to have been equally concerned in the rescue of Lord Selkirk, you will take with respect to him the same measures which you are hereby instructed to adopt with respect to Lord Selkirk.

If, however, either from resistance on the part of Lord Selkirk to the execution of the warrant, or from any other cause, the appearance of his Lordship before the Court should not be secured, the Court will proceed to adopt, with respect to his Lordship, such measures as would be taken by them against any other person similarly circumstanced, who, after the issue of such process, should decline or omit to appear. You will not fail to communicate to me the result of these measures, in order that I may, in so extraordinary a contingency, submit to the consideration of Parliament whether the urgency of the case does not require the adoption of some special measure of severity with respect to his Lordship. You will not consider this instruction as in any degree superseding that which I had the honor of conveying to you on the 6th instant.

You will equally call upon the military force employed by Lord Selkirk to abandon the service in which they are at present engaged; and you will acquaint them further that if they permit themselves to be employed in resisting the execution of legal process, they will be exposed to and prosecuted with the utmost severity of the law; and you will equally enforce the mutual restitution of places captured, and the freedom of trade throughout the Indian territory.

I have only further to add, in reply to the inquiry contained in your dispatch, No. 70, that if the 20 Commissioners are appointed magistrates of the Indian countries, in the terms of the 43rd George III., to which I have already referred, and to the terms of which it is important to adhere in their Commission, their powers extend over Upper Canada and all those Indian countries, without distinction, even within the limits of the territory claimed or possessed by the Hudson's Bay Company.

I have the honour to be, &c.,

BATHURST.

Lieut. General,
Sir J. C. Sherbrooke, G.C.B.

CHIEF JUSTICE POWELL, OF UPPER CANADA, TO LIEUTENANT-GOVERNOR MAITLAND.*

YORK, 12th March, 1819.

30

Chief Justice
Powell to
Lieut.-Gov.-
Maitland,
12th March,
1819.

May it Please Your Excellency,

I have read the petition and affidavit of Surgeon Allan, which your Excellency had the goodness to communicate for my notice and remark.

So far as relates to the business of the late Assizes in the Western district, I have already had the honour to explain, in answer to the letter presented by Earl Selkirk. To the reproach intended to be conveyed by the Petitioner, as having promoted an act to enquire and try in any district of the province, crimes and offences committed in any district, without the limits of the organized population of the province, I am happy in the occasion, to refer your Excellency to a short history of that Bill.

In the forty-third year of His Majesty, an Act passed the Imperial Parliament, giving conditional jurisdiction to the Court of this province to try offences committed in the Indian territories, without the limits of Upper and Lower Canada. It was not until 1817 that any appeal was made under this Statute, when various charges against many individuals were transmitted under the seal of Lower Canada; conformably to the provisions of the said Statute, to be enquired of, and tried in this province. A vast extent of Indian territory, inhabited only by Indians and their followers, lies within the limits of this province, which are not precisely known, and difficulties were apprehended on the question of jurisdiction. A Bill was introduced into the Legislative Council, to relieve us from the expected embarrassments. This bill was referred to the three Judges, discussed, amended, and approved by them,

* Sessional Papers, House of Commons, (Eng.) 1819, No. 219, p. 270.

passed the Legislative Council, but was not returned that session. The House of Assembly having considered the bill during the recess, it was sent up at the next session as having originated in the House of Representatives, passed the Council, and received the Royal assent.

Such a course seems incompatible with the suggestions in the Petition, that your Excellency and the other branches of the Legislature were surprised.

With respect to the construction put upon the bill by the Chief Justice, and complained of by the Petitioner, I am at a loss to discover to what he alludes! No question upon this bill has yet been agitated to call for construction.

At the Assizes for the Home district, a bill of indictment was found against the Earl of Selkirk, 10 the Petitioner, and many others, for a conspiracy; the process of the Court was prayed upon filing the bill, and Surgeon Allan, having attended the Court as an evidence in certain civil returns at *Nisi Prius*, applied to the Court to be admitted to bail, and traversed the indictment to the next Session. Upon the question of bail it appeared to the Court, from the details of the overt acts charged in the indictment, as read to the traverser, that the bail should not be light, and it directed £1,000 for the traverse, and £500 for each two sureties; which last, by the indulgence of the Court and prosecutor, was admitted to be subdivided, to suit the circumstances of the traverser.

Your Excellency will perceive that in all this, no occasion was offered on either side, to discuss the legality of the proceeding; and, as the traverser had counsel at his side, the Court had no cause to presume any doubt, to form any construction, or pronounce any opinion upon the Act under which the 20 indictment is alleged to have been found.

Any question of expediency or propriety in bringing forward the prosecution in that shape, was for the consideration of the Attorney-General, and not for the Court. I am grateful to your Excellency for the early communication of this and the former letters, and shall ever be so, for occasion to account for my conduct in any of the various relations in which I stand with your Excellency, the Crown, and the Public, conscious of no motive but duty, for my actions as a Magistrate, a Legislator, and Executive Counsellor.

I have the honor, &c.,
WM. DUMMER POWELL.

His Excellency SIR. P. MAITLAND,
30 Lieut.-Governor, &c.

ATTORNEY-GENERAL ROBINSON (UPPER CANADA), TO LIEUTENANT-GOVERNOR MAITLAND.*

YORK, March 5th, 1819.

May it please Your Excellency:

I have perused the petition of Mr. John Allan, and the affidavit accompanying it, which I am to thank your Excellency for submitting to me; and to assist your Excellency in forming an opinion on the matters they relate to, I will give a short account of the facts with which I am necessarily conversant respecting the prosecution of John Allan.

Sometime last spring, I think late in April, the agents of the North-West Company and their counsel, placed in my hands, as Crown officer, a great mass of testimony, consisting partly of documents 40 in the handwriting of the accused, and incapable of contradiction, and partly of depositions of a great number of witnesses to facts which they were ready to substantiate, by *viva voce* evidence in a Court of Justice.

It regarded principally the conduct of the Earl of Selkirk and his followers, in the year 1816, at Fort William in the western district of this province, and charged them among other things, with having, under pretence of enforcing justice, employed an armed and lawless band of discharged soldiers, in riotously obtaining forcible possession of the persons, houses, goods, papers, and effects of the Company of Merchants mentioned above; of continuing in such violent and unlawful possession from the month of August, 1816, to the end of May, 1817. * * * *

* Return, House of Commons, (Eng.) June 24th, 1819, p 280.

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Fortunately for the ends of public justice, a Bill, which originating in considerations purely of a public nature, had passed one branch of the Legislature in March, 1817, precisely in its present form, before the petitioner or this charge of conspiracy against him was under consideration, and would have passed the other, but for the difference between the two houses respecting their privileges, which obstructed public business, was in their next session revived and passed into a law.

It authorized the trial, in any district of this Province, of offences committed in such parts of it as were yet unorganized, and, if I may use the expression, unreclaimed.

The motives which led to this Bill, as I have understood, for it was not of my framing or suggestion, were these considerations of public justice and convenience. It would enable us to submit to the same tribunal all offences charged upon both parties, cognizable by our courts, whether in the Indian territory 10 out of this Province, and placed within our jurisdiction by the provision 43rd George III. or within this Province, in any unorganized part of it. It would relieve the Court from perplexing questions about the limits of this Province, since as to those places doubtfully situated, and supposed by some to be an Indian territory, properly so called, and by others within this Province, it would give to the same Court jurisdiction in either case, and would render the doubt of no weight in defeating the ends of justice * *

Fort William and the wild country surrounding it have no more geographical affinity to the western district than to this, although annexed to it by an Act of our Parliament. The jurors who dispense justice in that district, are divided from Fort William, the scene of the offences charged against Mr. Allan, by as many hundred miles of savage wilderness as are the jurors of this, and know as little of the parties and their offences, or the credibility of the witnesses, except by the pains taken by the Earl 20 of Selkirk to instruct them on those heads by pamphlets industriously circulated at the moment of the sitting of the Court. * * *

I have the honor, &c.,

(Signed) J. B. ROBINSON, A-G.

His Excellency SIR P. MAITLAND,
Lieut.-Governor, &c.

LIEUTENANT-GOVERNOR MAITLAND TO HENRY GOULBURN, ESQ.,* UNDER-SECRETARY OF STATE.

YORK, 4th May, 1819.

MY DEAR SIR,—Whether the Act against which Lord Selkirk objects in such unmeasured terms be ill-advised or not is a matter of opinion; but in saying it was hastily passed, his Lordship asserts a 30 fact which is capable of most satisfactory contradiction. The Bill in question had met with the concurrence of both Houses the previous session, and but for the abrupt prorogation, would at that time have passed into an Act.

Lieut. Gov.
Maitland to
Under-Secy.
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It appears to me that the necessity for such an Act was abundantly obvious, in the lawless proceedings and sanguinary quarrels between the rival companies; and the bearing of that in question appears to me to be no less salutary than just; but I forbear from any further remarks on the subject, having forwarded for Lord Bathurst's information the observations of the Chief Justice and Attorney-General on a letter of complaint from Lord Selkirk, and on a memorial of Mr. Allan.

I called for these answers with a view of putting Lord Bathurst in possession, as early as possible, of both sides of the question, and for the same reason I send by the present mail certain remarks 40 by the Chief Justice on Lord Selkirk's letter to Lord Liverpool.

Believe me to be, my dear Sir, &c.

HENRY GOULBURN, Esq.,
&c., &c., &c.

P. MAITLAND.

* Return, House of Commons (Eng.) June 24th, 1819, p. 284.

CHIEF JUSTICE POWELL, OF UPPER CANADA, TO LIEUTENANT-GOVERNOR MAITLAND.*

YORK, May 1st, 1819.

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SIR, I have perused with a lively interest the copy of a letter from the Earl of Selkirk to the Earl of Liverpool, dated in Grosvenor Place, the 8th of February last, and beg leave to express my grateful acknowledgment to your Excellency for the communication. On the subject of the bill passed in the last session of the Provincial Legislature, his Lordship has not only handed unfounded surmises, but has advanced as fact that which is not true. He is pleased to say that the Act of the 31st of the King, Cap. 31, divided the Province of Quebec and makes no alteration in the western limits established by the 14th Geo. III., cap. 83. The Canada bill does not divide the Province of Quebec; it premises that it was His Majesty's intention to divide that province into two provinces to be called Upper and Lower Canada, and makes provision for their government when so divided. His Majesty, by his Order in Council, subsequent to the passing the Act, did accordingly separate the Province of Quebec into Upper and Lower Canada, and does make a great alteration in the western limits from those established by the 14th of the King, extending them westward without difference to the limits of Quebec, in such terms as plainly indicate the intention to comprehend all the country conquered from France, under the name of Canada, which had not been relinquished to the United States of America, or secured to the Hudson's Bay Company, or designated as Lower Canada.

Earl Selkirk is pleased to say that the Chief Justice of Upper Canada declared that his jurisdiction extended to the Pacific Ocean; his Lordship must have been misinformed; I never did pretend to pronounce the extent of Upper Canada, but did deem it respectful to pause, when a deliberate act of the King in Council, contemplated and referred to by Parliament, was set at naught by a Provincial Magistrate.

The Earl of Selkirk alluded to legal opinions of the first authority on the jurisdiction of the officers of the Hudson's Bay Company over offences and offenders within its territory. The Chief Justice of Upper Canada had been taught to consider the Parliament of the United Kingdom to be the highest legal authority, and its Act, 43rd of the King, gives jurisdiction over offences committed in the territory of Hudson's Bay to the courts of Lower Canada as occasion may require.

Thirty indictments for felony and murder, in which Earl Selkirk was the prosecutor, had been transmitted for trial in Upper Canada, under the provisions of the last mentioned Act. It was apprehended that the question of jurisdiction might be raised, and if it should turn out that the *locus in quo* was in the western district of Upper Canada, the court of the home district was incompetent to try them, and they must have been renewed in the western district at a great charge to the prosecutor as well as the culprits, and great inconvenience to the public. The bill in question was to meet this contingency; it was introduced and passed in the Council after mature deliberation and references to the judges.

Chief Justice
Powell to
Lieut-Gov.
Maitland, 1st
May, 1819.

It was not returned from the Assembly during that session; but after the prorogation it was at the next session sent up as a new bill from that house and passed the Council. It did not receive the Royal assent until it had undergone the consideration of some weeks.

As relates to the general hardships of the bill to the individuals, and injustice to the local jurisdictions, it may be observed that it operates on no organized population of the province subjected to municipal regulations; the territory which it effects is in the Crown, and part of a district, but the soil is in the aborigines and inhabited only by Indians and their lawless followers. As to the removal of prisoners, prosecutors and witnesses to a remote distance, it has not been thought a hardship to subject them to a journey of five times the distance, passing eight districts and a whole province, with the chance of being remanded for trial to the district nearest to which the offence was committed; such is the operation of the 43rd of the King, under which Earl Selkirk prosecuted in Lower Canada the numerous indictments transmitted to Upper Canada for trial.

As to the insinuations by the Earl of Selkirk that the bill was got up through the influence of the North-West Company, and that from the same cause the Spring Assizes for the home district were

* Return House of Commons (Eng.), June 24th, 1819, p. 285.

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unusually early by appointment of the Chief Justice, it is presumed that a serious attempt to refutation will not be expected.

I have been on the bench thirty years, subject as all are, to good report and evil report, but this is the first surmise of corruption or suspicion of it which has been made known to me.

I have the honour to be, etc.,

WILLIAM DUMMER POWELL.

His Excellency Sir Peregrine Maitland.

CHIEF JUSTICE POWELL TO LIEUTENANT-GOVERNOR MAITLAND.*

York, 3rd May, 1819.

Chief Justice
Powell to
Lieut.-Gov.
Maitland,
3rd May,
1819.

SIR,—In closing my letter of the 1st instant, on the subject of the Earl of Selkirk's libel, it occurred to me that a concise report of the two civil actions decided here against his Lordship for false imprisonment, would be a fair and complete confutation of his Lordship's pretension to exclusive merit and suffering from the injustice of others. I now take the liberty to enclose it, not as an official document, but one which may be relied on, and verified by numbers, thinking that the Colonial Department might be willing to know on what rest the pretensions of his Lordship to credit, as an innocent and persecuted man, persecuted by corrupt influence over his Majesty's servants, under the protection of that department.

I have the honour to be, etc.,

WILLIAM DUMMER POWELL.

His Excellency Sir Peregrine Maitland.

REPORT REFERRED TO IN THE FOREGOING LETTER OF CHIEF JUSTICE POWELL.*

MCKENZIE
AND
EARL OF SELKIRK. } False Imprisonment.

Spring Assizes, York, 1815.

Report on the
Case of Mc-
Kenzie and
Earl of Sel-
kirk, 1815.

It was in evidence that plaintiff was a retired partner of the North-West Company, with several other partners at Fort William, in the western district, when they were arrested on a charge of felony by warrant from defendant. That after examination, the other parties were committed to the prison of the district, or sent to Montreal; but that plaintiff was detained at Fort William, and confined in a place called the Black Hole; that bail was offered to defendant and rejected, on pretence that the charge against him was too serious to admit of bail.

That plaintiff was addicted to excess and frequent intoxication, and that his failing was encouraged, while in confinement, until he was prevailed upon to execute, while under duress, a sale of the co-partnership property to defendant, after which he was discharged without bail. That when defendant had committed to prison the other partners, they had left in charge of their concerns two clerks, Vandersluys and McTavish, with powers to act for the Company; that defendant knew that these persons were also entrusted with the affairs of the Company. That he had made proposals to them to transact for the Company, which they had declined; and that after Vandersluys, one of the agents, finding his presence useless to his employers, from the control of defendant, had obtained leave to quit the fort, defendant renewed application to McTavish, the remaining agent, to transact with him on account of the co-partnership, which McTavish still declining, defendant sent him in custody to Montreal, under a pretended charge of being the receiver of stolen goods, knowing them to be stolen, but did not take his examination on that charge, or give any warrant of commitment to the person under whose custody he was placed, nor was any further prosecution of the charge carried on.

That after Mr. McTavish was thus got off, there remained in the fort six other clerks of the North-West Company, who had no particular charge of confidence, but adhering to the interest of their employers, and having influence over the common servants of the Company, they were got rid of, by the defendant sending them off to York, under pretence of a subpoena signed by himself, to give

* Return House of Commons (Eng.), June 24th, 1819, p. 286.

evidence before a court at York, on a day when no court was holden, and no trials or prosecutions expected; this latter evidence was submitted in aggravation to show that the imprisonment of the plaintiff without commitment regularly was corrupt as well as illegal, with intention, when all other course failed, to extort from him as a nominal partner of the North-West Company, an exercise of authority over their concerns, which he the plaintiff disowned to possess, and protested against, so soon as he was at liberty, in a place where means for such protest could be found. The defendant's counsel limited themselves to cross-examination of the witnesses, and the jury found a verdict for the plaintiff, and £1,50 damages.

The abuses of the authority of the Magistrate, for corrupt purposes of private interest, were so various and unquestionable that the court, after receiving the verdict, intimated to the Attorney-General the propriety of his official notice; but his Lordship having been discharged from the magistracy, and being no longer within the jurisdiction of the Court of King's Bench of this Province, no further notice was taken of him.

UPPER CANADA, AT THE SPRING ASSIZES, 1819.

WM. SMITH, Plaintiff,
and
EARL OF SELKIRK, } Trespass, assault and false imprisonment.

The evidence was, that the plaintiff, as deputy sheriff of the western district, arrested the defendant on a warrant for felony; that the defendant being at Fort William in the western district, with many armed men under his command, rescued himself from the arrest, and imprisoned the plaintiff in a house wherein there were other prisoners, one charged with murder and since convicted; that an armed soldier stood sentinel at the door of the room in which plaintiff was confined, whose orders from defendant were not to permit him to go out or receive his visitors.

That the prisoner under charge of murder was indulged to keep a school and walk in the fort; that defendant would have set the plaintiff at liberty if he would engage not to act upon his warrant; that plaintiff was thus imprisoned from the 19th March to the 11th May, when Lord Selkirk still left him a prisoner, but no authority was used to detain him after his lordship's departure.

The defence attempted was, that plaintiff was imprisoned for a breach of the peace, and also that his imprisonment was voluntary, by connivance with defendant to colour his neglect of duty; but no evidence supporting such a conclusion, the jury found a verdict for plaintiff with £500 damages.

OPINION OF SIR ARTHUR PIGOTT, MR. SPANKIE AND MR. BROUGHAM, ON THE HUDSON'S BAY COMPANY'S CHARTER, 1816.*

IN THE MATTER OF THE HUDSON'S BAY COMPANY'S CHARTER AND THEIR GRANT TO LORD SELKIRK.

1st. *Whether the exclusive trade, territories, powers and privileges granted by the Charter of Charles the Second, confirmed by the expired Act of King William, is a legal Grant, and such as the Crown was warranted in making; and if it was, whether it entitles the Company to exclude the Canadian traders from entering their territory to trade with the Indians, and authorises the Governors and other officers appointed by the Company to seize and confiscate the goods of the persons so trading without the license of the Company?*

The prerogative of the Crown to grant an exclusive trade was formerly very much agitated in the great case of "The East India Company versus Sandys." The Court of King's Bench, in which Lord Jefferies then presided, held and decided that such a grant was legal. We are not aware that there has since been any decision expressly on this question in the Courts of Law, and most of the Charters for exclusive trade and exclusive privileges to Companies or Associations, have, since the Revolution, received such a degree of legislative sanction or recognition, as perhaps to preclude the necessity of any judicial decision on it. Much more moderate opinions were, however, entertained concerning the extent of

* Occurrences in the Indian Countries of North America. App., p. 16.

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Report on the case of Smith and Earl of Selkirk, 1819.

Opinion of Sir A. Pigott, Mr. Spankie, and Mr. Brougham, on H. B. Co.'s Charter, 1816.

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the prerogative, after the Revolution, than prevailed in the latter part of the reign of Charles the Second, and in the reign of James the Second, and to those is to be attributed the frequent recourse which, after the Revolution, was had to legislative authority on such cases, and particularly in the very case of this Company, evidenced by the temporary Act of the 2nd of William and Mary, "for confirming to the Governor and Company trading to Hudson's Bay their privileges and trade;" a confirmation the duration of which the Legislature expressly limited to seven years and the end of the next session of Parliament and no longer: and part of the preamble of that Act is, in effect, a legislative declaration of the insufficiency and inadequacy of the Charter for the purposes professed in it, without the aid and authority of the Legislature; which legislative aid and authority entirely ceased soon after the expiration of seven years after that Act passed.

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In 1745, indeed, the 8th Geo. II., cap. 17, for granting a reward for the discovery of a North-West Passage through Hudson's Straits, enacts, "that nothing therein contained shall any ways extend, or be construed to take away or prejudice any of the estate, rights, or privileges of or belonging to the Governor and Company of Adventurers of England trading to Hudson's Bay;" but this provision gives no validity whatever to the Charter, and only leaves its effect and authority as they stood before that Act, and entirely unaffected by it.

These parliamentary proceedings may at least justify the inference that the extent of the prerogative in this matter was considered as a subject which admitted of great doubt, in times when the independence of the judges insured a more temperate and impartial consideration of it. They may, however, be perhaps considered as too equivocal to afford any certain and conclusive authority on the strict question of law. Such rights, therefore, as the Hudson's Bay Company can derive from the Crown alone, under this extraordinary Charter, such as it is, may not be affected by these proceedings or declarations, and they may now rest entirely upon and stand or fall by the Common Law Prerogative of the Crown to make such a Grant.

Upon the general question of the right of the Crown to make such a Grant, perhaps it may not be necessary for the present purpose that we should give any opinion. The right of the Crown merely to erect a company for trading, by charter, and make a grant of territory in King Charles the Second's reign, may not be disputable; and on the other hand, besides that this Charter seems to create, or attempt to create a Joint Stock Company, and to grant an *exclusive* right of trading, there are various clauses in the Charter, particularly those empowering the Company to impose fines and penalties, to seize or confiscate goods and ships, and seize or arrest the persons of interlopers, and compel them to give security in £1,000, &c., which are altogether illegal, and were always so admitted to be, and among other times [things?] even, at the time when the extent of the Prerogative in this matter was maintained at its height, to grant an *exclusive* right to trade abroad; and even if, by virtue of their Charter, they could maintain an *exclusive* right to trade, we are clearly of opinion that they and their officers, agents, or servants, could not justify any seizure of goods, imposition of fine or penalty, or arrest or imprisonment of the persons of any of His Majesty's subjects. Probably the Company would have some difficulty in finding a legal mode of proceeding against any of those who infringe their alleged *exclusive* rights of trading, or violate their claimed territory; for we hold it to be clear that the methods pointed out by the Charter would be illegal, and could not be supported.

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But we think that the Hudson's Bay Company and their grantee, Lord Selkirk, have extended their territorial claims much farther than the Charter or any sound construction of it will warrant. Supposing it free from all the objections to which we apprehend it may, in other respects be liable, the words of the Grant, pursuing the recital of the petition of the grantees, with a very trifling variation, and with none that can affect the construction of the instrument, are of "the sole trade and commerce of all those seas, straits, bays, rivers, lakes, creeks, and sounds, in whatever latitude they shall be, that lie within the entrance of the Straits, commonly called Hudson's Straits, together with the lands and territories UPON the countries, coasts, and confines of the seas, bays, lakes, rivers, creeks, and sounds aforesaid:" that is, *within* the Straits—and these limits are frequently referred to in the subsequent parts of the Charter, and always referred to throughout the Charter as "*the limits aforesaid.*"

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There is, indeed (p. 10), an affirmation of the right of trade, and His Majesty grants that the Company "shall forever hereafter have, use and enjoy not only the whole, entire and only liberty of trade

Opinion of Sir
A. Pigott,
Mr. Spinkie,
and Mr.
Brougham,
on H. B. Co.'s
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and traffic, and the whole, entire and only liberty, use and privilege of trading and traffic, to and from the territories, limits and places aforesaid, but also the whole and entire trade and traffic to and from all havens, bays, creeks, rivers, lakes, and seas into which they may find entrance or passage, by water or land, out of the territories, limits, and places aforesaid, and to and with all the natives and people inhabiting, or which shall inhabit WITHIN the territories, limits and places aforesaid, and to and with all other nations inhabiting any of the coasts adjacent to the said territories, limits, and places aforesaid, which are not already possessed as aforesaid."

It is plain, therefore, that the Territorial Grant was not intended to comprehend all the lands and territories that might be approached through Hudson's Straits, by land or water. The Territorial Grant then appears to be limited by the relation and proximity of the territories to Hudson's Straits. The general description applying to the whole, is the seas, etc., that lie WITHIN Hudson's Straits, and the land, etc., upon the countries, coasts, and confines, of the seas, etc., that is, *reddendo singula singulis*, the lands upon the countries coasts and confines of each of the seas, rivers, etc., naturally including such a portion of territory as might be reasonably necessary for the objects in view; but it is not a grant of all the lands and territories in which the seas, rivers, etc., lie, or are situated, or which surround them to any indefinite extent or distance from them. Still less is it a grant of all the lands and territories lying between the seas, straits, rivers, etc., though many hundred or thousand miles or leagues of land and territories might lie between one sea, strait, river, lake, etc., and another sea, strait, river, lake, etc., and though the quantity of land comprised in this interior situation, and far distant from any coast or confine of the specified waters, might exceed in dimensions the extent of many existing powerful kingdoms or states. Within the Straits, must mean such a proximity to the Straits as would give the lands spoken of a sort of affinity or relation to Hudson's Straits, and not such lands as, from their immense distance (in this case the nearest point to Hudson's Bay, being 700 miles, and from thence extending to a distance of 1,500 miles from it), have no such geographical affinity or relation to the Straits, but which are not even approached by the Canadians through or by the Straits in question. The whole Grant contemplates the Straits as the access to the lands and territories therein referred to; and, as there is no boundary specified, except by the description of the coasts and confines of the places mentioned, that is the coasts and confines of the seas, etc., within the Straits, such a boundary must be implied as is consistent with that view, and with the professed objects of a trading company, intending, not to found Kingdoms and establish States, but to carry on fisheries in those waters, and to trade and traffic for the acquisition of skins and peltries, and the other articles mentioned in the Charter; and in such a long tract of time as nearly 150 years, now elapsed since the grant of the Charter, it must now be, and must indeed long since have been, fully ascertained, by the actual occupation of the Hudson's Bay Company, what portion or portions of lands and territories in the vicinity, and on the coasts and confines of the waters mentioned and described as within the Straits, they have found necessary for their purposes, and for forts, factories, towns, villages, settlements or such other establishments, in such vicinity, and on such coasts and confines, as pertain and belong to a company instituted for the purposes mentioned in their Charter; and necessary, useful, or convenient to them within the prescribed limits for the prosecution of those purposes. The enormous extensions of land and territory now claimed appears therefore to us not to be warranted by any sound construction of the Charter; if it could be so, we do not know where the land and territory of the Hudson's Bay Company, granted by this Charter, terminate, nor what are the parts of that vast Continent, on which they have taken upon them to grant 116,000 miles of territory, exempted from their proprietorship, under their Charter.

Indeed, there may be sufficient reason to suppose that the territories in question, or part of them, had been then visited, traded in, and in a certain degree occupied by the French settlers or traders in Canada, and their Beaver Company, erected in 1630, whose trade in peltries was considerable prior to the date of the Charter. These territories, therefore, would be expressly excepted out of the Grant; and the right of British subjects in general to visit and trade in these regions would follow the national rights acquired by the King, by the conquest and cession of Canada, and as enjoyed by the French Canadians previous to that conquest and cession.

No territorial right, therefore, can be claimed in the districts in question; and the exclusive trade there, cannot be set up by virtue of the Charter, these districts being remote from any geographical

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relation to Hudson's Bay, and to the Straits, and not being in any sense *within the Straits*, and not being approached by the Canadian traders, or other alleged interlopers, through the interdicted regions. Of course no violence to or interruption of trade could be justified there under these territorial claims.

2. *Whether the Hudson's Bay Company were warranted in making a Grant to Lord Selkirk, as one of their own body, of the immense district of territory described in Governor McDonell's Proclamation, notwithstanding the opposition of part of the proprietors of Stock; and after making such Grant, has the Company any right to exercise their jurisdiction in appointing Governors and other officers over that district; or can they grant or transfer such power to his Lordship? If you should be of opinion that the grant to his Lordship is illegal, or unwarranted by the Charter, what measures ought to be taken to set aside the same?*

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The validity of the Grant to Lord Selkirk may be considered both as it affects the members of the Company and the public at large.

If, contrary to our opinion, the land and territory in question were within the Grant, then the Grant of so large a portion of territory as that of Lord Selkirk, being not less than 116,000 square miles, might perhaps seem an abuse of the Charter, which might justify the interference of the Crown. Because, though the Company might have a right to make Grants of land, such Grants must be for the promotion of, or at least must be consistent with, the object of the Institution. But the Grant to Lord Selkirk tends to an establishment independent of the Company, inconsistent with the purposes of their Institution and its effect: erecting a sub-monopoly in one person, to the detriment both of the Company and of the public. The Company could confer no power upon Lord Selkirk to appoint Governors, Courts of 20 Justice, or exercise any independent authority, nor could they, directly or indirectly, transfer their authority to him, to be exercised by him in his own name. Supposing the Grant of land to be such a Grant as falls within the power of the Company to make, their superior lordship and authority would continue as before, and must be exercised through them.

3rd. *Whether the jurisdiction given by the Act of 43rd George III., to the Canadian Courts of Criminal Judicature, extends to the Territories of the Hudson's Bay Company, so as to entitle those Courts to try and punish offences committed within those territories. And whether Governor McDonell and Mr. Spencer, his Sheriff, can legally be tried before the Canadian Courts for the offence with which they now stand charged?*

Opinion of Sir
A. Pigott,
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and Mr.
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There seems no reason to doubt that offences actually committed in the territories and districts in 30 dispute, where no court of Judicature is or ever has been established, might, in point of jurisdiction, legally be tried by the Courts of Canada, under the 43rd Geo. III., cap. 138; and indeed, unless this district was within the provisions of that Act, we cannot discover what territory was meant to be included in it, but we think that though the jurisdiction might be capable of being supported, the acts done by Messrs. McDonell and Spencer could not be deemed larceny, and that they, or others acting in similar circumstances, ought not to be indicted or brought to a trial for the crime of larceny. They acted, perhaps erroneously, upon a claim of territorial dominion, and of exclusive commercial privilege, and may be liable to be proceeded against as for a trespass or other injury to person or property; but we think they could not be properly convicted on a charge of felony.

4th. *Is it competent to the Governors and other officers already appointed, or that may be appointed 40 by the Hudson's Bay Company, to seize and bring to trial before their Courts of Judicature, His Majesty's Canadian subjects who may be found trading within the Company's territories, for infringing the Company's monopoly, or for committing any other alleged crime or offence?*

Supposing the Charter of the Company valid, and the districts in dispute to be within their limits we should still doubt whether the Governor and Company have lawful power, by the Charter, to establish Courts for the trial by the laws of England of offences committed therein. That power the Company have never yet attempted to exercise, though nearly 150 years have elapsed since they procured their Charter. But if they should still possess this extraordinary power without further authority, legislative or legal, we should nevertheless think that no courts there established would have authority to try, and punish as an offence, the act of going there simply; which, if the grant be legal, could amount at the 50

most only to a misdemeanour or contempt of the King's lawful authority, to be prosecuted at the suit of His Majesty. But the Charter itself seems to take the offence, as far as the Company are concerned, out of the jurisdiction of the local Courts, by (illegally indeed) prescribing certain forfeitures, and declaring (page 12) "that every the said offenders, for their said contempt, to suffer such punishment as to us, our heirs and successors, shall seem meet or convenient, and not to be in anywise delivered until they and every of them shall become bound unto the said Governor for the time being, in the sum of £1,000 at least, and no time thereafter to trade," etc. A subsequent clause (page 16), authorizes the seizing and sending to England those who come into their territories without authority. It seems, therefore, that the Courts in question would have no power to try, as an offence at Common Law, the mere coming into the Company's territories contrary to the prohibition in the Letters Patent, which point out other modes of proceeding, and legally confer no other powers applicable to the case.

If the question were merely a question of boundary between two acknowledged adjacent colonies or provinces, it might perhaps be determined by the King in Council, where we apprehend such a jurisdiction is vested, and has been exercised, but that probably would not set at rest the principal points, or prevent interference. The validity of the Grant of an exclusive trade might, we apprehend, be tried directly by *Scire Facias*, or, incidentally, in actions of trespass, which, however, might still leave other main points undecided; and the Company might perhaps be capable of retaining some part of what has been granted to them, and might fail as to many others. In these circumstances, it appears that interests and pretensions so opposite, and which may be productive of so much confusion and disorder, and of consequences so dangerous and destructive to the persons and properties of those who, by reason of the failure of the ordinary means of protection afforded by the law, may be said to be peculiarly under the safeguard of Government, can only be effectually and satisfactorily adjusted and reconciled by Government, with the aid and authority of Parliament; and by that authority (after causing such an investigation into them as Government would, in such a case, probably feel it indispensable to make, and are fully possessed, by the law officers of the Crown and otherwise, of all the means of making,) due allowance would be made for such rights of the Company as were deemed legal and well-founded, and protection and freedom secured to the Canadians as well as to the rest of the King's subjects, in the prosecution of that commerce which the Canadians have long enjoyed, and which the rest of the King's subjects have frequently, and whenever they thought proper, carried on, and which, it is stated to us, they have never been hitherto attempted to be interrupted in by the Hudson's Bay Company.

Opinion of Sir A. Pigott, Mr. Spankie, and Mr. Brougham, on H. B. Co.'s Charter, 1816.

EXTRACTS FROM REPORT OF CANADIAN COMMISSIONER OF CROWN LANDS, FOR THE YEAR 1856, DATED 31st MARCH, 1857.

(Presented to both Houses of the Canadian Parliament, by Command of His Excellency.)*

GENERAL TERRITORIAL SURVEY OF UPPER CANADA.

Vacant Surveyed Crown Lands	830,398½ Acres.
do Clergy Lands	422,944¼
do School Lands	193,643¼
Total of disposable Public Surveyed Lands	1,446,986¼
Private Lands	19,388,977¾
Total of Surveyed Lands	20,835,984
Unsurveyed Waste Lands of the Crown	56,770,416
Total area of Upper Canada within the watershed of the St. Lawrence and Lakes	77,606,400

Report of Commissioner of Crown Lands, 31st March, 1857.

* Appendix 25, of Vol. 15, No. 5, 1857, to the Journals of the Legislative Assembly of the Province of Canada.

RED RIVER AND SASKATCHEWAN COUNTRY.

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of Crown
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As public attention has of late been much directed to the Red River and Saskatchewan country, and we may have ere long to take action for its development, and as apparently offering a favorable field for settlement, with that easily cultivated prairie land so desirable to many, it seems appropriate here briefly to notice it.

Including in this territory the valleys of the Beaver River, the Peace River and the Arthabaska, as having a common character with it, the whole presents an area of nearly 500,000 superficial miles. Its extreme length, from the Lake of the Woods westward to the Rocky Mountains, is about 900 miles, and its breadth, from the northern boundary of the United States to the mouth of Peace River, about 700 miles. Indifference as to the maintenance of the territorial extent of the Province, is much to be deprecated. We have already had some experience of the serious evils arising from the loss of territory, quite sufficient to be a warning against supineness in future.

It is but a few years, comparatively, since the Province lost what was called the Disputed Territory, on the head waters of the River St. John, of New Brunswick.

A few intelligent persons took an interest in the subject at the time, but the mass of the people of this Province were wholly indifferent to it. The majority of those who thought at all on the subject were satisfied that we had quite enough of land without it.

PROCEEDINGS IN THE HOUSE OF COMMONS, CANADA, 1877-8, 19TH FEBRUARY, 1877*

House of
Commons,
Canada,
19th Feb.,
1877.

MR. MASSON asked what progress had been made towards the settlement of the question of the North-Western boundary of the Province of Ontario.

MR. BLAKE said that, as the hon. gentleman was already aware, arbitrators had been appointed—Judge Wilnot, by the Dominion Government, and the Chief Justice of Ontario, by the Government of Ontario. Upon the latter gentleman assuming a position in the Supreme Court, he resigned, and the Government of Ontario appointed the present Chief Justice of Ontario in his place. An understanding had been reached between the two Governments, by which Sir Edward Thornton, the British Minister at Washington, would probably act as the third commissioner or arbitrator. Considerable progress had been made, and this Government had been for some time investigating the case and mastering the details, which necessitated many papers being searched. Communication had been going on for some time past with the Government agent in England, and other authorities, to complete, as far as possible, the information on that subject, and it was probable that the question might be disposed of in the 30 ensuing summer or fall.

18TH FEBRUARY, 1878.†

House of
Commons,
Canada, 18th
Feb., 1878.

MR. MASSON enquired, what progress had been made in the settlement of the North-Western boundary of the Province of Ontario?

MR. MACKENZIE.—The absence of Sir Edward Thornton, who was selected as the third arbitrator, or umpire, until late in the autumn, made it practically impossible for the three gentlemen to meet, but everything has been prepared for their meeting, which will take place immediately after the session.

SIR JOHN A. MACDONALD.—Who are the commissioners? I forget them now.

MR. MACKENZIE.—Chief Justice Harrison, Hon. Mr. Wilnot, late Lieutenant-Governor of New Brunswick, and Sir Edward Thornton.

SIR JOHN A. MACDONALD.—The Hon. Mr. Wilnot is acting on the part of the Dominion?

MR. MACKENZIE.—Yes.

7TH MAY, 1878.‡

(In the Committee.)

House of
Commons,
Canada,
7th May,
1878.

22. Resolved, That a sum not exceeding Fifteen thousand dollars be granted to Her Majesty to meet expenses of the Ontario Boundary Commission, for the year ending 30th June, 1879.

* Official Report of Debates, 1877, p. 98.

† Official Report of Debates, 1878, Vol. I., p. 352.

‡ Journals House of Commons (Canada), May 7th, 1878, p. 282.

DEBATE IN THE HOUSE OF COMMONS (CANADA), 18TH FEBRUARY, 1880, CONCERNING
BOUNDARY BETWEEN ONTARIO AND UNORGANIZED TERRITORIES
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House of
Commons,
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18th Feb.,
1880.

ON MOTION OF MR. DAWSON

"That a Select Committee be appointed to enquire into, and report to this House, upon all matters connected with the boundaries between the Province of Ontario and the unorganized territories of the Dominion."

HON. MR. McDONALD, *Minister of Justice*: Now, the only embarrassment, if embarrassment should be felt on the subject—a subject so important to the whole Dominion and to the Government having charge of the interests of the Dominion, when we are required to abandon a tract of territory large enough to constitute a province equal, as was remarked by the honourable member for Algoma, to the territory of all the lower provinces—I say, if any embarrassment should be felt, it would be from the high standing, the high character, and the great learning of the gentlemen whose award will probably be under review of the committee sought for by this resolution. But it does appear to me that this House would be wanting in its duty to the country if it allowed any decision, coming from men, however eminent, to control the interests of the country and to deprive the Dominion of its territory, if in their opinion the decision arrived at was erroneous—not wilfully erroneous, for no one would imagine for a moment that either of the eminent men who composed this tribunal, could come to any decision that was not dictated by the purest motives and, I have no doubt, by the most searching enquiry. * *

If I recollect aright, in the able report of the honourable member for Bothwell (Mr. Mills), made at the instance of the Ontario Government, he challenged the validity and force of a judgment bearing on this question given in the Supreme Court of Quebec, on the ground that, at the time the judgment was given, all the facts and circumstances, which have since become available—largely through the industry of the honourable gentleman himself—were not put before the court. Very well, as it is stated on the authority of the honourable member for Algoma, that such information is still open for consideration, I do not really think that the admitted authority of the Arbitrators ought to induce this House to abstain from further enquiry and investigation. * * * * *

There is another reason why I think the Committee ought to be granted, and that is, that many of us think that the conclusion at which that Commission arrived was not justifiable by the evidence. I say this with the greatest possible diffidence; but I am bound to express the opinion which I entertain, and entertain very strongly, though I do so with diffidence, as indeed every lawyer would who felt himself obliged to differ from the opinion of so eminent an authority as Chief Justice Harrison. * *

AREA OF PROVINCES OF THE DOMINION AS PER CENSUS OF 1881, p. 96.

Prince Edward Island	2,133 Square Miles.	Area of Dominion by Provinces.
Nova Scotia	20,907 "	
New Brunswick	27,174 "	
Quebec	188,688 "	
Ontario	101,733 "	
Manitoba	123,200 "	
British Columbia	341,305 "	
Territories	2,665,252 "	
Total	3,470,392 Square miles.	

POPULATION OF THE PROVINCES OF THE DOMINION, CENSUS 1881, PAGES 96-7.

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Miscellaneous.
Population by
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1881.

Prince Edward Island.....	108,891
Nova Scotia.....	440,572
New Brunswick	321,233
Quebec	1,359,027
Ontario.....	1,923,228
Manitoba	65,954
British Columbia.....	49,459
Territories	56,446
Total.....	4,324,810

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MEMORANDUM AS TO THE FURNISHING COPIES OF THE DOCUMENTARY EVIDENCE TO THE ARBITRATORS.

Memo. as to
copies of
Evidence
furnished
Arbitrators.

Copies of Judge Ramsay's Report and of the Ontario Book of Documents were sent by the Dominion Government to Sir Edward Thornton, on the 17th October, 1876; and to Sir Francis Hincks, at the time of his appointment, which was some months before the meeting of the Arbitrators.

TARY EVIDENCE

sent by the Domin-
Francis Hincks, at
Arbitrators.

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ADDITIONS AND CORRECTIONS.

- Page ii, last line, before the, insert taken for.
- 5, line 21, read Pouteouataniis.
 " 30, read Alloüez.
 " 46, read *Meurs*.
 6, " 15, read Masquikoukiouks.
 " 26, after those, insert a comma.
 " 42, read Montagnois.
 7, note*, read Némiskan.
 9, line 15, read (1699.); read Gironde.
 " 17, after years, insert before.
 " 39, read Osage.
 " 40, read villages.
 " 49, read Natchitoches.
 10, " 1, read Panis.
 " 3, read Padouehs.
 " 13, read Indians.
 " 15, read Chartres.
 " 44, read upper.
 lines, 45-6, omit all after New France.
 12, line 8, read Rolland Barrin de la Galissouinière.
 13, " 2, read Christinaux.
 " 5, read Cavalier.
 " 29, the like.
 15, " 18, for deprived, read derived.
 " 46, read half-protection.
 17, " 9, for which, read whose.
 20, " 29, read Galissouinière.
 " 31, read Cavalier.
 21, " 18, after save, for comma, substitute period.
 22, " 1, read "the king's storehouses."
 " 29, after seeds, insert semicolon.
 23, " 11, read Cavalier.
 24, " 17, after *plus*, insert comma.
 27, " 19, after *de*, insert *La*.
 28, " 23, after Brochets, insert comma.
 " 39, read Saint.
 29, " 24, read (*couffés*).
 " 30, read *couffé*.
 " 37, read MM.
 " 38, read Jonquière.
 " 42, read Baie.
 30, " 9, read Natchitoches.
 31, " 13, read LOUIS.
 32, " 5, read Nipiasirinians.
 33, " 22, read Lordships.
 34, " 39, read Flamborough Head, on Port Nelson River.
 35, " 37, read Chagonamigon. —
 39, " 15, read Joliet.
 43, after line 34, insert the following:

TERRITORY OF MICHIGAN, COUNTY OF CRAWFORD, ss:*

Be it remembered that on this day personally appeared before me, Isaac Lee, a Justice of the Peace in and for said county, and Agent duly appointed to ascertain the title to lands at Green Bay

*Am. State Papers, Vol. V., p. 284.

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APPENDIX.

and Prairie du Chien—Michael Brisbois of said county, who after being sworn according to law, deposes and saith that he (this deponent) is sixty years of age; that he has been thirty-nine years in this country; that, from the best information he has been able to obtain, and from his own knowledge, Prairie du Chien, extending from the mouth of the River Wisconsin to the upper part of the prairie, has been occupied and cultivated in small improvements in virtue of sundry claims of French people, both before and since deponent's arrival in the country; that he (deponent) has never heard of any Indian claim to said tract, except that, about eighteen years ago, the French people became somewhat apprehensive as to their title, which fact being made known to the Indians, one of the first chiefs of the Fox nation, named Manponis, ratified at Cahokia, near St. Louis, an ancient sale of said prairie to the French; that in the year seventeen hundred and eighty-one, Governor St. Clair [Sinclair] bought the Island of Mackinac, Green Bay and Prairie du Chien; that this deponent saw the papers relating to said purchase executed and folded up to be sent to Montreal or Quebec. Deponent was informed on his first arrival at this place, that it derived its name from a large family called Les Chiens who formerly resided here; that the same family, or the descendants, were here at the time of deponent's arrival, and were called Les Chiens.

M. BRISBOIS.

Sworn and subscribed before me, October 21, A.D. 1820.

ISAAC LEE,
Justice of the Peace for Crawford County and Agent.

TERRITORY OF MICHIGAN, COUNTY OF CRAWFORD, SS:—

Be it remembered, that on this day personally appeared before me, Isaac Lee, a Justice of the Peace in and for said County, and Agent duly appointed to ascertain the titles to lands at Green Bay and Prairie du Chien—Pierre La Pointe of said County, who, after being sworn according to law, deposes and saith that he is seventy years of age; that he has been forty-four years in this country, of which period he has resided thirty-eight years at Prairie du Chien; that in the year 1781 this deponent was at Michilimackinac, and acted in the capacity of interpreter, at the Treaty held by Governor Sinclair with the Indians for the purchase of the Island of Michilimackinac, Green Bay and Prairie du Chien; that during the time deponent has resided at the Prairie, he has never known the Indians to make claim to said tract of land as their property; the deponent was present at Prairie du Chien, and saw the goods delivered to the Indians, in payment for the said Prairie, by Basil Gurd, Pierre Antya and Augustus Anze, according to the stipulations of the Treaty with Governor Sinclair above mentioned.

Sworn and subscribed before me, October 22nd, 1820.

his
PIERRE X LA POINTE
mark.
ISAAC LEE,
Justice of the Peace for Crawford County, and Agent.

Additions and
Corrections.

- Page 46, line 37, after to insert the.
- 47, lines 37-8, transfer from line 38 and insert before north in line 37, the following:—49^o, all the lands to the.
- “ 21-2, strike out line 21, and line 22 down to given inclusive.
- let the paragraph composed of lines 27 to 31 inclusive come in before that composed of lines 22 to 26 inclusive.
- 53, line 11, read Pluye.
- 55, “ 14, after interests, omit comma.
- 57, “ 3, read Athabaska.
- 61, “ 21, read la Loche.
- 76, “ 11, after our, omit comma.
- 84, “ 4, read public Proclamations.
- 35, “ 1, omit asterisk.
- “ 24, omit copy in possession of the Ontario Government.
- “ 31, for 36-7 read 37; omit 80 and 186; read Nos. 33 and 99 above mentioned.
- “ 32, omit 104.
- after line 32, insert the following:—Nos. 36, 80, 104, 155, 186 in possession of the Dominion Government.
- “ 35, after Albany, insert; Parliamentary Library, Ottawa.
- “ 50, after Ottawa, insert an asterisk.
- 97, “ 2, read Erié.
- “ 4, substitute in New York State Library.
- “ 31, after Ste. Marie, insert a comma.
- “ 32, read La Pointe.

- Page 98, line 1, for *ou*, read *on*.
- 100, " 1, read *Nadouessans*.
- " 14, read 1700, 1717, 1746, 1752 and 1754.
- 100, lines 42 and 43, transpose them.
- 101, line 26, omit).
- " 30, for *and*, read *which*.
- " 41, read *l'Onest*.
- " 52, read *La Pointe*; read *Fond du Lac*.
- 102, " 23, for *Ontario*, read *Dominion*.
- 104, " 18, read *raportée*.
- " 33, read *l'Académie Royale des Sciences*.
- 105, " 5, omit.
- " 14, omit.
- " 27, omit asterisk.
- " 36, omit dagger.
- 106, " 44, read *Nemipigon*.
- 107, " 11, read *discoveries*.
- " 41, omit ‡
- 108, " 9, read *Remarques*.
- 109, " 82, for *Ontario*, read *Dominion*.
- 112, " 16, read *Jérémio*.
- 113, " 11, after *Government*, insert *New York State Library*.
- " 15, read *From*.
- " 16, after *corresponding*, insert *to*.
- lines 22-3, transpose them.
- 114, " 20-1, read *are said to have visited and traded in*.
- line 25, for *Ontario* read *Dominion*.
- " 46, after *Long*, insert *and*.
- Transfer the sentence commencing "a copy" in line 44, and ending with "Superior" in line 47 so as to immediately follow line 37.
- 116, " 17, omit ‡.
- " 21, read *Forts*.
- " 44, for *Albany*, read *New-York State Library*.
- 117, " 14, after *Parliamentary*, omit comma.
- " 43, after *file*, insert quotation mark.
- 118, " 14, read *Traité*.
- 119, " 47, read *Forts*.
- 120, " 3, omit asterisk
- 121, " 21, *the like*.
- " 26, read *Janvier*.
- 122, " 4, omit asterisk.
- " 41, read *Parl. Library, Ottawa*; Mr. Mill's Report.
- 123, " 2, omit asterisk.
- " 45, read *Lindsey's*.
- " 49, omit dagger.
- 124, " 8, for *in*, read *is*.
- " 12, read *case, (662-4 Joint App.) viz. :-*
- " 32, omit asterisk.
- " 43, after *this line*, insert *New York State Library*.
- " 46, after *this line*, *the like*.
- " 48, omit comma.
- 125, " 45, after *Library*, insert ; copy in possession of the Dominion Government."
- 126, " 21, read *lovée*.
- 129, after line 21, insert *Mr. Mills' first report*.
- " 21, after 1794, read (copy attached to Mr. Mill's first Report).
- " 44, read *edition*; read 1850.
- 130, " 47, for *Ontario*, read *Dominion*.
- 151, " 49, read *Home District*.
- 158, " 18, after 1877-8, for comma, substitute a period; make separate line of 19th February, 1877*.

Additions and
Corrections.

being sworn according to
that he has been thirty-
been able to obtain, and
h of the River Wisconsin
small improvements in
deponent's arrival in the
to said tract, except that,
chevaive as to their title,
of the Fox nation, named
l prairie to the French;
air [Sinclair] bought the
t this deponent saw the
to Montreal or Quebec.
ed its name from a large
nily, or the descendants.

M. BRINBOIS.

ISAAC LEE,
County and Agent.

ee, a Justice of the Peace
des to lands at Green Bay
being sworn according to
been forty-four years in
ie du Chien; that in the
city of interpreter, at the
of the Island of Michilini-
deponent has resided at the
f land as their property;
ivered to the Indians, in
is Ange, according to the

his
RRE X LA POINTE.
mark.
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Lines 22 to 26 inclusive.

Dominion Government.



In the Privy Council.

IN THE MATTER OF THE BOUNDARY BETWEEN THE PROVINCES OF ONTARIO AND
MANITOBA, IN THE DOMINION OF CANADA.

BETWEEN THE PROVINCE OF ONTARIO, OF THE ONE PART,

AND

THE PROVINCE OF MANITOBA OF THE OTHER PART.

SUPPLEMENT TO
APPENDIX OF THE PROVINCE OF ONTARIO.

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INSTRUCTIONS OF THE IMPERIAL GOVERNMENT AS TO EXPLORATIONS OF THE TERRITORIES TO THE WESTWARD OF LAKE SUPERIOR AND OF CERTAIN NORTHERN TERRITORIES AS DISTINGUISHED FROM THE TERRITORIES COMPRISED IN THE HUDSON'S BAY COMPANY'S CHARTER.*

LORD SHELburnE TO LIEUT.-GOVERNOR CARLETON OF QUEBEC.

WHITEHALL, November 14th, 1767.

SIR,—Your letters of the 8th, 14th July, and 29th August, have been duly received and laid before the King. Your conduct towards Mr. Chabert appears well judged, who, having become obnoxious to the Court of France, must find it his interest to attach himself entirely to the service of Great Britain.

- 10 His influence among the Indians puts it in his power to be of very essential use, but as the same influence gives him also a power of doing mischief, if ill inclined, a certain degree of caution is requisite, as well as address to prevent his perceiving it. This hint must be applicable to many other persons in your Government, and is left to your own judgment at what times and how far to improve it.

The memorials which you transmitted relative to the Indian trade have with others been referred by His Majesty's commands to the Lords Commissioners for Trade and Plantations, and that matter (as well as several other points very essential to the prosperity of the colonies and the advantage of this country) now lies before their Lordships for their consideration and report.

- 20 As an accurate knowledge of the interior parts of North America would contribute much towards enabling His Majesty's ministers to judge soundly of the true interests of the different provinces, I cannot too strongly recommend to you the encouraging such adventurers as are willing to explore those parts which have not hitherto been much frequented, and consequently are scarcely, if at all, known, particularly towards the territories comprised in the Charter of the Hudson's Bay Company north of the Hudson's Bay Company northward, and the country beyond the Lake Superior westward.

I am, &c.,
SHELburnE.

ESTABLISHMENT BY ROYAL WARRANT OF THE CIVIL OFFICERS OF THE PROVINCE OF QUEBEC, 1776.†

- 30 GEORGE R.

WHEREAS the Commissioners of our Treasury have represented unto us that it will be for the public service that an establishment of Civil Officers should be made for the better government of our Province of Quebec, Now we being graciously pleased to approve thereof, do direct that the several

SUPPLEMENT
TO THE
ONTARIO
APPENDIX.

Lord Shelburne to
Lieut.-Gov.
Carleton of
Quebec.

Establishment of the
Civil Officers
of the Province
of
Quebec.

* Public Record Office—Colonial Correspondence. Canada (Quebec), 1767. No. 4.

† Public Record Office—Treasury Warrant Book. America, 1763 to 1778. Fo. 439.

SUPPLEMENT TO THE ONTARIO APPENDIX. officers and persons hereinafter mentioned shall be established there at the several yearly salaries following to commence on, and to be payable from and after, the First day of May, 1775, viz. :—

Establishment of the Civil Officers of the Province of Quebec.

		Per annum.		
		£	s.	d.
	To the Governor of the Province...	2,000	0	0
	To the Lieutenant-Governor ...	600	0	0
	To the Chief Justice ...	1,200	0	0
	To six Judges of Common Pleas, £500 each ...	3,000	0	0
	To the Attorney-General ...	300	0	0
	To the Clerk of the Crown and Pleas ...	100	0	0
	To two Sheriffs, at £100 each ...	200	0	0
	To the Secretary and Register ...	400	0	0
	To the Clerk of the Council ...	100	0	0
	To the Surveyor of Lands ...	365	0	0
	To the Surveyor of Woods ...	200	0	0
	To the Commissary for Indians ...	300	0	0
	To the Captain of the Port ...	100	0	0
	To the Naval Officer ...	100	0	0
	To the Receiver-General of the Revenue ...	500	0	0
	To twenty-three Counsellors, at £100 each ...	2,300	0	0
	To the Lieutenant-Governor, or Superintendents, at the			
	Illinois ...			
	Port St. Vincenne ...			
	Detroit ...			
	Misselomakinac... }	at £200 each		
	Gaspee ... }		1,000	0 0
	To one Judge of the inferior Courts of King's Bench and Common Pleas at each of the above five Ports at £100 each Judge ...	500	0	0
	To an Assistant or Assessor at each Port at £50 a year...	250	0	0
	To a Sheriff for each district at £20 per annum each ...	100	0	0
	To a Grand Voyer ...	200	0	0
	To a French Secretary ...	200	0	0
	To four Ministers of the Protestant Church at £200 per annum each ...	800	0	0
	To two Schoolmasters at £100 per annum each...	200	0	0
	To an allowance to the person licensed to superintend the Romish Church ...	200	0	0
	To Pensions to the Officers of a Corps of Canadians employed in the last war and discharged without any allowance, as follows, viz. :			
	To Monsieur Riganville the Commandant of the said Corps ...	200	0	0
	To five Captains, £100 each ...	500	0	0
	To ten Lieutenants, £50 each ...	500	0	0
	To the Commandant of the Savages ...	100	0	0
	To the annual contingent expenses ...	1,000	0	0
	To John Chr. Roberts, Esq., late Secretary Register and Clerk of the Council ...	350	0	0
	To Edward Lishopp, Esq., late Naval Officer ...	182	10	0

COMMISSION PASSED UNDER THE GREAT SEAL OF THE UNITED KINGDOM, APPOINTING THE RIGHT HONOURABLE THE EARL OF DUFFERIN, K.P., K.C.B., TO BE GOVERNOR-GENERAL OF CANADA.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, To Our Right Trusty and Right Well-beloved Cousin and Councillor Frederick Temple, Earl of Dufferin, Knight of Our Most Illustrious Order of Saint Patrick, Knight Commander of Our Most Honourable Order of the Bath, Greeting :

Whereas We did by certain Letters Patent under the Great Seal of Our United Kingdom of Great Britain and Ireland, bearing date at Westminster, the twenty-ninth day of December, 1868, in the thirty-second year of Our reign, constitute and appoint Our Right Trusty and Well-beloved Councillor Sir John Young, Baronet (now our Right Trusty and Well-beloved Councillor John Baron Lisgar), Knight Grand Cross of Our most Honourable Order of the Bath, Knight Grand Cross of Our most distinguished Order of Saint Michael and Saint George, to be Governor-General of Canada for and during Our will and pleasure, as upon relation being had to the said recited Letters Patent will more fully and at large appear. 10

Now know you that We have revoked and determined, and by these presents do revoke and determine the said recited Letters Patent, and every clause, article, and thing therein contained. And further, know you that We, reposing especial trust and confidence in the prudence, courage and loyalty of you the said Frederick Temple, Earl of Dufferin, of Our special grace, certain knowledge, and mere motion, have thought fit to constitute and appoint, and by these Presents do Constitute and Appoint you to be Our Governor-General in and over Our Dominion of Canada, for and during Our will and pleasure. 20 And We do hereby authorize and command you in due manner to do and execute all things that shall belong to your said command, and the trust We have reposed in you, according to the several Powers and Directions granted or appointed you by this Our present Commission, and of the Act of Parliament passed in the Thirtieth Year of Our Reign, intituled "The British North America Act, 1867"; and according to such instructions as are herewith given to you, or as may hereafter be given to you under Our Sign Manual and Signet, or by Our Order in Our Privy Council, or by Us through one of Our Principal Secretaries of State, and according to such laws as are now or shall hereafter be in force in Our said Dominion.

II. And We do hereby authorize and empower you to keep and use the Great Seal of Our said Dominion for sealing all things whatsoever that shall pass the said Great Seal. 30

III. And We do further authorize and empower you to constitute and appoint in Our name and on Our behalf all such Judges, Commissioners, Justices of the Peace, and other necessary Officers and Ministers of Our said Dominion, as may be lawfully constituted or appointed by Us.

IV. And we do further authorize and empower you, as you shall see occasion, in Our name and on Our behalf, when any crime has been committed within Our said Dominion, to grant a Pardon to any accomplice, not being the actual perpetrator of such crime, who shall give such information and evidence as shall lead to the apprehension and conviction of the principal offender; and further, to grant to any offender convicted of any crime in any Court, or before any Judge, Justice, or Magistrate within Our said Dominion, a Pardon, either free or subject to lawful conditions, or any respite of the execution of the sentence of any such offender for such period as to you may seem fit; and to remit any fines, 40 penalties, or forfeitures which may become due and payable to Us.

V. And We do further authorise and empower you, so far as We lawfully may, upon sufficient cause to you appearing, to remove from his office, or to suspend from the exercise of the same, any person exercising any such office or place within Our said Dominion, under or by virtue of any Commission or Warrant granted, or which may be granted by Us in Our name or by Our authority.

VI. And We do further authorise and empower you to exercise from time to time, as you may judge necessary, all powers lawfully belonging to Us, in respect of assembling or proroguing the Senate or the

House of Commons of Our said Dominion, and of dissolving the said House of Commons, and We do hereby give the like authority to the several Lieutenant-Governors for the time being, of the Provinces in Our said Dominion with respect to the Legislative Councils, or the Legislative or General Assemblies of those Provinces respectively.

SUPPLEMENT
TO THE
ONTARIO
APPENDIX.

Commission
appointing
the Earl of
Dufferin to
be Governor-
General of
Canada.

VII. And we do by these Presents authorise and empower you, within Our said Dominion, to exercise all such powers as We may be entitled to exercise therein in respect of granting Licenses for Marriages, Letters of Administration, and Probates of Wills, and with respect to the Custody and Management of Idiots and Lunatics, and their Estates.

VIII. And whereas by the said British North America Act, 1867, it is amongst other things enacted, that it shall be lawful for Us, if We think fit, to authorise the Governor-General of Canada to appoint any person or persons jointly, or severally, to be his Deputy or Deputies within any part or parts of Canada, and in that capacity to exercise, during the pleasure of the Governor-General, such of the powers, authorities, and functions of the Governor-General as he may deem it necessary or expedient to assign to him or them, subject to any limitations or directions from time to time expressed or given by Us: Now we do authorise and empower you, subject to such limitations and directions as aforesaid, to appoint any person or persons, jointly or severally, to be your Deputy or Deputies within any Part or Parts of Our Dominion of Canada, and in that capacity to exercise, during your pleasure, such of your powers, functions, and authorities as you may deem it necessary or expedient to assign to him or them: Provided always that the appointment of such a Deputy or Deputies shall not affect the exercise of any such power, authority, or function by you, the said Frederick Temple, Earl of Dufferin, in person.

IX. And We do hereby declare Our pleasure to be that in the event of your death, incapacity, or absence out of Our said Dominion, all and every the powers and authorities herein granted to you shall, until Our further pleasure is signified therein, be vested in such person as may be appointed by Us under Our Sign Manual and Signet, to be Our Lieutenant-Governor of Our said Dominion, or if there shall be no such Lieutenant-Governor in Our said Dominion, then in such person or persons as may be appointed by Us under Our Sign Manual and Signet to administer the Government of the same: and in case there shall be no person or persons within Our said Dominion so appointed by Us, then in the Senior Officer for the time being in command of Our regular troops in Our said Dominion.

X. And We do hereby require and command all Our Officers and Ministers, Civil and Military, and all other the inhabitants of Our said Dominion, to be obedient, aiding, and assisting unto you the said Frederick Temple Earl of Dufferin, or in the event of your death, incapacity, or absence, to such person or persons as may from time to time, under the provisions of this Our Commission, administer the Government of Our said Dominion.

In Witness whereof We have caused these Our Letters to be made Patent. Witness Ourselves at Westminster, the Twenty-second day of May, in the Thirty-fifth year of Our Reign.

By Warrant under the Queen's Sign Manual.

C. ROMILLY.

SUPPLEMENT
TO THE
ONTARIO
APPENDIX.

Instructions
to the Earl of
Dufferin as
Governor-
General of
Canada.

INSTRUCTIONS PASSED UNDER THE ROYAL SIGN MANUAL AND SIGNET TO THE
RIGHT HONOURABLE THE EARL OF DUFFERIN, K.P., K.C.B., AS GOVERNOR-
GENERAL OF CANADA.

VICTORIA R.

INSTRUCTIONS to Our Right Trusty and Right well-beloved Cousin and Councillor, Frederiek Temple, Earl of Dufferin, Knight of Our Most Illustrious Order of Saint Patriek, Knight Commander of Our Most Honourable Order of the Bath, Our Governor-General in and over Our Dominion of Canada, or in his absence, to Our Lieutenant-Governor, or the Officer administering the Government of Our said Dominion of Canada for the time being. Given at Our Court at Balmoral, this Twenty-second day of May, 1872, in the Thirty-fifth Year of Our Reign.

I. Whereas, by a Commission under the Great Seal of Our United Kingdom of Great Britain and Ireland, bearing even date herewith, we have constituted and appointed you, the said Frederiek Temple Earl of Dufferin, to be Our Governor-General in and over Our Dominion of Canada, for and during Our Will and Pleasure, and have further authorised and commanded you to do and execute all things in due manner that shall belong to your said command, and the trust thereby reposed in you, according to the several powers and directions therein-mentioned, and particularly according to such Instructions as should therewith be given to you. Now, therefore, We do by these Our Instructions under Our Sign Manual and Signet, being the Instructions so referred to as aforesaid, declare Our Pleasure to be, that you shall with all due solemnity cause Our said Commission to be published in Our said Dominion; and you shall then and there take the oath of allegiance, in the form provided by an Act passed in the Session holden in the thirty-first and thirty-second years of Our Reign, intituled "An Act to amend the Law relating to Promissory Oaths"; and likewise that you do take the usual oath for the due execution of the office and trust of Our Governor-General in and over Our Dominion of Canada, and for the due and impartial administration of justice, which said oaths the Judges of Our Supreme Courts of Record within Our said Dominion, or any three or more of such Judges, are hereby required to tender and administer unto you.

II. And we do authorise and require you from time to time, and at any time hereafter, by yourself or by any other person to be authorised by you in that behalf, to administer to all and to every persons or person, as you shall think fit, who shall hold any office or place of trust or profit, the said oath of allegiance, together with such other oath or oaths as may from time to time be prescribed by any laws or statutes in that behalf made and provided.

III. And We do require you to communicate forthwith to Our Privy Council for Our said Dominion these Our Instructions, and likewise all such others from time to time as you shall find convenient for Our service to be imparted to them.

IV. And We do hereby direct and enjoin, and it is Our Pleasure, that Our said Privy Council shall not proceed to the dispatch of business unless duly summoned by your authority, nor unless four Members of the said Council be present, and assisting throughout the whole of the meetings, at which any such business shall be dispatched.

V. And We do further direct, that if in any case you see sufficient cause to dissent from the opinion of the major part or of the whole of Our said Privy Council so present, it shall be competent for you to execute the powers and authorities vested in you by Our said Commission, and by these Our instructions, in opposition to such their opinion; it being, nevertheless, Our Pleasure, that in every case it shall be competent to any Member of Our said Privy Council to record at length, on the minutes of Our said Council, the grounds and reasons of any advice or opinion he may give upon any question brought under the consideration of such Council.

VI. And it is Our pleasure and you are hereby authorized to appoint by an instrument under the Great Seal of Canada, one Member of Our said Privy Council to preside in your absence, and to remove

ND SIGNET TO THE
B., AS GOVERNOR-

VICTORIA R.
illor, Frederick Temple,
Knight Commander of
over Our Dominion of
ministering the Govern-
Court at Balmoral, this

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bsence, and to remove

him and appoint another in his stead. And if during your absence the Member so appointed shall also be absent, then the Senior Member of the Privy Council actually present shall preside, the seniority of the Members of the Council being regulated according to the date or order of their respective appointments thereto.

VII. And We do further direct and enjoin that a full and exact journal or minute be kept of all the deliberations, acts, proceedings, votes and resolutions of Our said Privy Council, and that at each meeting of the said Council the minutes of the last meeting be read over, confirmed, or amended, as the case may require, before proceeding to the despatch of any other business.

VIII. And in the execution of so much of the powers as are vested in you by law for assenting to or withholding assent from or of reserving for the signification of Our pleasure, Bills which may have been passed by the Houses of Parliament of Our said Dominion, We do direct and enjoin you to guide yourself, as far as may be practicable, by the following Rules, Directions, and Instructions, that is to say:

IX. You are not to assent in Our name to any Bill of any of the classes hereinafter specified, that is to say:—

1. Any Bill for the divorce of persons joined together in holy matrimony.

2. Any Bill whereby any grant of land or money, or other donation or gratuity, may be made to yourself.

3. Any Bill whereby any paper or other currency may be made a legal tender, except the coin of the realm or other gold or silver coin.

20 4. Any Bill imposing differential duties.

5. Any Bill, the provisions of which shall appear inconsistent with obligations imposed upon Us by Treaty.

6. Any Bill interfering with the discipline or control of Our forces in Our said Dominion by land and sea.

7. Any Bill of an extraordinary nature and importance, whereby Our prerogative, or the rights and property of Our Subjects not residing in Our said Dominion, or the trade and shipping of the United Kingdom and its Dependencies, may be prejudiced.

8. Any Bill containing provisions to which Our assent has been once refused, or which has been disallowed by Us.

30 Unless each Bill shall contain a clause suspending the operation of such Bill unto the signification in our said Dominion of Our pleasure thereupon, or unless you shall have satisfied yourself that an urgent necessity exists, requiring that such Bill be brought into immediate operation, in which case you are authorized to assent in Our name to such Bill, unless the same shall be repugnant to the law of England or inconsistent with any obligations imposed on Us by Treaty. But you are to transmit to Us by the earliest opportunity the Bill so assented to, together with your reasons for assenting thereto.

X. You will take care that all laws assented to by you in Our name, or reserved for the signification of Our pleasure thereon, shall, when transmitted by you, be fairly abstracted in the margins, and be accompanied, in such cases as may seem to you necessary, with such explanatory observations as may be required to exhibit the reasons and occasion for imposing such laws; and you shall also transmit fair 40 copies of the Journals and minutes of the proceedings of the Legislative Bodies of Our said Dominion, which you are to require from the clerks or other proper officers in that behalf of the said Legislative Bodies.

XI. And whereas We have by our said Commission authorized and empowered you, as you shall see occasion, in Our name and on our behalf, to grant to any person convicted of any crime in any Court, or before any Judge, Justice, or Magistrate within Our said Dominion, a pardon either free or subject to lawful conditions: Now We do hereby direct and enjoin you to call upon the Judge who presided at

SUPPLEMENT
TO THE
ONTARIO
APPENDIX.

Instructions
to the Earl of
Dufferin as
Governor-
General of
Canada.

SETTLEMENT
TO THE
ONTARIO
APPENDIX
—
Instructions
to the Earl of
Dufferin as
Governor-
General of
Canada.

the trial of any offender who shall have been condemned to suffer death by the sentence of any Court within Our said Dominion to make you a written Report of the case of such offender, and such Report of the said Judge shall by you be taken into consideration at the first meeting thereafter which may be conveniently held, of our said Privy Council, when the said Judge may be specially summoned to attend; and you shall not pardon or reprove any such offender as aforesaid, unless it shall appear to you expedient to do so, upon receiving the advice of Our Privy Council therein, but in all such cases you are to decide either to extend or to withhold a pardon or reprove, according to your own deliberate judgment, whether the Members of Our said Privy Council concur therein or otherwise; Entering, nevertheless, on the Minutes of Our said Council a Minute of your reasons at length, in case you should decide any such questions in opposition to the judgment of the majority of the members thereof.

XII. And We do further direct and enjoin that all Commissions granted by you to any person or persons to be Judges, Justices of the Peace, or other officers, shall, unless otherwise provided by law, be granted during pleasure only.

XIII. And We do further direct and enjoin that you do transmit to Us punctually from year to year, through one of Our Principal Secretaries of State, such annual Returns as are compiled in the Dominion of Canada, relative to the revenue and expenditure, militia, public works, legislation, civil establishments, pensions, population, schools, course of exchange, imports and exports, agricultural produce, manufactures, and other matters with reference to the state and condition of our said Dominion.

XIV. And whereas great prejudice may happen to Our service and to the security of our said Dominion by the absence of the Governor-General, you shall not, upon any pretence whatever, quit the said Dominion without having first obtained leave from Us for so doing, under Our Sign-Manual and Signet, or through one of Our Principal Secretaries of State.

V.R.

DATED 5TH OCTOBER 1878.

LETTERS PATENT PASSED UNDER THE GREAT SEAL OF THE UNITED KINGDOM,
CONSTITUTING THE OFFICE OF GOVERNOR-GENERAL OF THE DOMINION OF
CANADA.

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen Defender of the Faith, Empress of India; To all to whom these Presents shall come, Greeting:

Whereas We did, by certain Letters-Patent under the Great Seal of our United Kingdom of Great Britain and Ireland, bearing date at Westminster the Twenty-second day of May 1872, in the Thirty-fifth Year of Our Reign, constitute and appoint Our Right Trusty and Right Well-beloved Cousin and Councillor, Frederick Temple, Earl of Dufferin, Knight of Our Most Illustrious Order of Saint Patrick, Knight Commander of Our Most Honourable Order of the Bath (now Knight Grand Cross of Our Most Distinguished Order of Saint Michael and Saint George), to be Our Governor-General in and over Our Dominion of Canada for and during Our will and pleasure: And whereas by the 12th section of "The British North America Act, 1867," certain powers, authorities, and functions were declared to be vested in the Governor-General: and whereas We are desirous of making effectual and permanent provision for the office of Governor-General in and over Our said Dominion of Canada, without making new Letters-Patent on each demise of the said office: Now know ye that We have revoked and determined, and by these presents do revoke and determine, the said recited Letters-Patent of the Twenty-second day of May 1872, and every clause, article and thing therein contained: And further know ye that We, of Our special grace, certain knowledge, and mere motion, have thought fit to constitute, order, and declare, and do by these presents constitute, order, and declare, that there shall be

Letters Patent
constituting
the Office of
Governor-
General of
Canada.

a Governor-General (hereinafter called Our said Governor-General) in and over Our Dominion of Canada (hereinafter called Our said Dominion), and that the person who shall fill the said Office of the Governor-General shall be from time to time appointed by Commission under Our Sign-Manual and Signet. And We do hereby authorize and command Our said Governor-General to do and execute, in due manner, all things that shall belong to his said command, and to the trust We have reposed in him, according to the several powers and authorities granted or appointed him by virtue of "The British North America Act, 1867," and of these present Letters-Patent and of such Commission as may be issued to him under Our Sign-Manual and Signet, and according to such Instructions as may from time to time be given to him, under Our Sign-Manual and Signet, or by Our Order in Our Privy Council, or by Us through one of Our Principal Secretaries of State, and to such Laws as are or shall hereafter be in force in our said Dominion.

II. And We do hereby authorize and empower Our said Governor-General to keep and use the Great Seal of our said Dominion for sealing all things whatsoever that shall pass the said Great Seal.

III. And We do further authorize and empower our said Governor-General to constitute and appoint, in Our name and on Our behalf, all such Judges, Commissioners, Justices of the Peace, and other necessary Officers and Ministers of Our said Dominion, as may be lawfully constituted or appointed by Us.

IV. And we do further authorize and empower Our said Governor-General, so far as we lawfully may upon sufficient cause to him appearing, to remove from his office, or to suspend from the exercise of the same, any person exercising any office within Our said Dominion, under or by virtue of any Commission or Warrant granted, or which may be granted, by Us in Our name or under Our authority.

V. And We do further authorize and empower Our said Governor-General to exercise all powers lawfully belonging to us in respect of the summoning, proroguing, or dissolving the Parliament of Our said Dominion.

VI. And whereas by "The British North America Act, 1867," it is amongst other things enacted, that it shall be lawful by Us, if We think fit, to authorize the Governor-General of Our Dominion of Canada to appoint any person or persons, jointly or severally, to be his Deputy or Deputies within any part or parts of Our said Dominion, and in that capacity to exercise, during the pleasure of Our said Governor-General, such of the powers, authorities, and functions of Our said Governor-General as he may deem it necessary or expedient to assign to such Deputy or Deputies, subject to any limitations or directions from time to time expressed or given by Us: Now We do hereby authorize and empower Our said Governor-General, subject to such limitations and directions as aforesaid, to appoint any person or persons, jointly or severally, to be his Deputy or Deputies within any part or parts of Our said Dominion of Canada, and in that capacity to exercise, during his pleasure, such of his powers, functions, and authorities, as he may deem it necessary or expedient to assign to him or them: Provided always, that the appointment of such a Deputy or Deputies shall not affect the exercise of any such power, authority or function by Our said Governor-General in person.

VII. And We do hereby declare Our pleasure to be that, in the event of the death, incapacity, removal, or absence of Our said Governor-General out of Our said Dominion, all and every the powers and authorities herein granted to him shall, until Our further pleasure is signified therein, be vested in such person as may be appointed by Us under Our Sign-Manual and Signet to be Our Lieutenant-Governor of Our said Dominion; or if there shall be no such Lieutenant-Governor in Our said Dominion, then in such person or persons as may be appointed by Us under Our Sign-Manual and Signet to administer the Government of the same; and in case there shall be no person or persons within Our said Dominion so appointed by Us, then in the Senior Officer for the time being in command of Our regular troops in Our said Dominion: Provided that no such powers or authorities shall vest in such Lieutenant-Governor, or such other person or persons, until he or they shall have taken the oaths appointed to be taken by the Governor-General of Our said Dominion, and in the manner provided by the Instructions accompanying these Our Letters-Patent.

VIII. And We do hereby require and command all Our Officers and Ministers, Civil and Military,

the sentence of any Court
offender, and such Report
thereafter which may be
specially summoned to attend;
as it shall appear to you
not in all such cases you are
in your own deliberate judgment,
Entering, nevertheless, on
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V.R.

UNITED KINGDOM,
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SUPPLEMENT
TO THE
OSTIARD
APPENDIX.

Letters Patent
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the Office of
Governor-
General of
Canada.

and all other the inhabitants of Our said Dominion, to be obedient, aiding and assisting unto Our said Governor-General, or, in the event of his death, incapacity, or absence, to such person or persons as may, from time to time, under the provisions of these Our Letters-Patent, administer the Government of Our said Dominion.

IX. And We do hereby reserve to Ourselves, Our heirs and successors, full power and authority from time to time to revoke, alter or amend these Our Letters-Patent as to Us or them shall seem meet.

X. And We do further direct and enjoin that these Our Letters-Patent shall be read and proclaimed at such place or places as Our said Governor-General shall think fit within Our said Dominion of Canada.

In Witness whereof we have caused these Our Letters to be made Patent. Witness Ourselves at Westminster, the Fifth day of October, in the Forty-second Year of Our Reign. 10

By Warrant under the Queen's Sign-Manual.

C. ROMILLY.

DATED 5TH OCTOBER, 1878.

INSTRUCTIONS PASSED UNDER THE ROYAL SIGN-MANUAL AND SIGNET TO THE
GOVERNOR-GENERAL OF THE DOMINION OF CANADA.
VICTORIA R.

Instructions to Our Governor-General in and over Our Dominion of Canada, or, in his absence, to Our Lieutenant-Governor or the Officer for the time being administering the Government of Our said Dominion.

Given at Our Court at Balmoral, this Fifth day of October, 1878, in the Forty-second year of Our Reign. 20

Instructions
to the
Governor-
General of
Canada.

Whereas by certain Letters-Patent bearing even date herewith, We have constituted, ordered, and declared that there shall be a Governor-General (hereinafter called Our said Governor-General) in and over Our Dominion of Canada (hereinafter called Our said Dominion), And We have thereby authorized and commanded Our said Governor-General to do and execute in due manner all things that shall belong to his said command, and to the trust We have reposed in him, according to the several powers and authorities granted or appointed him by virtue of the said Letters-Patent and of such Commission as may be issued to him under Our Sign-Manual and Signet, and according to such Instructions as may from time to time be given to him, under our Sign-Manual and Signet, or by Our Order in Our Privy Council, or by Us through One of Our Principal Secretaries of State, and to such Laws as are or shall hereafter be in force in Our said Dominion. Now, therefore, We do, by these, Our Instructions under Our Sign-Manual and Signet, declare Our pleasure, to be that Our said Governor-General for the time being shall, with all due solemnity, cause Our Commission, under Our Sign-Manual and Signet, appointing Our said Governor-General for the time being, to be read and published in the presence of the Chief Justice for the time being, or other Judge of the Supreme Court of Our said Dominion, and of the members of the Privy Council in Our said Dominion; And We do further declare Our pleasure to be that Our said Governor-General, and every other officer appointed to administer the Government of Our said Dominion, shall take the Oath of Allegiance in the form provided by an Act passed in the Session holden in the thirty-first and thirty-second years of Our Reign, intituled: "An Act to Amend the Law relating to Promissory Oaths"; and likewise that he or they shall take the usual Oath for the due execution of the Office of Our Governor-General in and over Our said Dominion, and for the due and impartial administration of justice; which Oaths the said Chief Justice for the time being of Our 40

assisting unto Our said person or persons as may, at the Government of Our

power and authority from in shall seem meet.

shall be read and proclaimed in Our said Dominion of Canada.

Witness Ourselves at

10

C. ROMILLY.

AND SIGNET TO THE

, in his absence, to Our Government of Our said

forty-second year of Our

20

constituted, ordered, and (Our Governor-General) in and have thereby authorized for all things that shall come to the several powers and of such Commission and such Instructions as may be in Our Order in Our Privy

with Laws as are or shall

30

Our Instructions under the Governor-General for the time being Manual and Signet,

signed in the presence of Our said Dominion, and of

to declare Our pleasure to enter the Government of

by an Act passed in the said: "An Act to Amend

the usual Oath for the

40

in Our said Dominion, and for the due performance of the time being of Our

said Dominion, or, in his absence, or in the event of his being otherwise incapacitated, any Judge of the Supreme Court of Our said Dominion shall, and he is hereby required to tender and administer unto him or them.

II. And We do authorize and require Our said Governor-General from time to time, by himself or by any other person to be authorized by him in that behalf, to administer to all and to every persons or person as he shall think fit, who shall hold any office or place of trust or profit in Our said Dominion, the said Oath of Allegiance, together with such other Oath or Oaths as may from time to time be prescribed by any Laws or Statutes in that behalf made and provided.

III. And We do require Our said Governor-General to communicate forthwith to the Privy Council for Our said Dominion these Our Instructions, and likewise all such others from time to time, as he shall find convenient for Our service to be imparted to them.

IV. Our said Governor-General is to take care that all laws assented to by Him in Our name, or reserved for the signification of Our pleasure thereon, shall, when transmitted by him, be fairly abstracted in the margins, and be accompanied, in such cases as may seem to him necessary, with such explanatory observations as may be required to exhibit the reasons and occasions for proposing such Laws; and he shall also transmit fair copies of the Journals and Minutes of the proceedings of the Parliament of Our said Dominion, which he is to require from the clerks, or other proper officers in that behalf, of the said Parliament.

V. And We do further authorize and empower Our said Governor-General, as he shall see occasion, in Our name and on Our behalf, when any crime has been committed for which the offender may be tried within Our said Dominion, to grant a pardon to any accomplice, not being the actual perpetrator of such crime, who shall give such information as shall lead to the conviction of the principal offender; and further, to grant to any offender convicted of any crime in any Court, or before any Judge, Justice, or Magistrate, within Our said Dominion, a pardon, either free or subject to lawful conditions, or any respite of the execution of the sentence of any such offender, for such period as to Our said Governor-General may seem fit, and to remit any fines, penalties, or forfeitures which may become due and payable to Us. Provided always, that Our said Governor-General shall not in any case, except where the offence has been of a political nature, make it a condition of any pardon or remission of sentence that the offender shall be banished from or shall absent himself from Our said Dominion. And We do hereby direct and enjoin that Our said Governor-General shall not pardon or relieve any such offender without first receiving in capital cases the advice of the Privy Council for Our said Dominion, and in other cases the advice of one, at least, of his Ministers; and in any case in which such pardon or relieve might directly affect the interests of Our Empire, or of any country or place beyond the jurisdiction of the Government of Our said Dominion, Our said Governor-General shall, before deciding as to either pardon or relieve, take those interests specially into his own personal consideration in conjunction with such advice as aforesaid.

VI. And whereas great prejudice may happen to Our service and to the security of Our said Dominion by the absence of Our said Governor-General, he shall not, upon any pretence whatever, quit Our said Dominion without having first obtained leave from Us for so doing under Our Sign-Manual and Signet, or through one of Our Principal Secretaries of State.

V.R.

SUPPLEMENT
TO THE
ONTARIO
APPENDIX.

Instructions
to the
Governor-
General of
Canada.

SUPPLEMENT
TO THE
ONTARIO
APPENDIX.

Commission
appointing
the Marquis
of Lorne to
be Governor-
General of
Canada

DATED 7th OCTOBER 1878.

COMMISSION PASSED UNDER THE ROYAL SIGN-MANUAL AND SIGNET, APPOINTING
THE RIGHT HONOURABLE THE MARQUIS OF LORNE, K.T., G.C.M.G., TO BE
GOVERNOR-GENERAL OF THE DOMINION OF CANADA.

VICTORIA R.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen Defender of the Faith, Empress of India, To Our Right, Trusty, and Well-beloved Councillor Sir JOHN DOUGLAS SUTHERLAND CAMPBELL (commonly called the Marquis of Lorne), Knight of the Most Ancient and Most Noble Order of the Thistle, Knight Grand Cross of Our Most Distinguished Order of St. Michael and St. George, Greeting:

We do, by this Our Commission under Our Sign-Manual and Signet, appoint you, the said Sir JOHN DOUGLAS SUTHERLAND CAMPBELL (commonly called the Marquis of Lorne), until Our further pleasure shall be signified, to be Our Governor-General in and over Our Dominion of Canada during Our will and pleasure, with all and singular the powers and authorities granted to the Governor-General of our said Dominion in Our Letters-Patent under the Great Seal of Our United Kingdom of Great Britain and Ireland, constituting the Office of Governor, bearing date at Westminster the Fifth day of October, 1878, in the Forty-second year of Our Reign, which said powers and authorities We do hereby authorize you to exercise and perform, according to such Orders and Instructions as Our said Governor-General for the time being hath already or may hereafter receive from Us. And for so doing this shall be your Warrant.

II. And We do hereby command all and singular Our officers, Ministers, and loving subjects in Our said Dominion, and all others whom it may concern, to take due notice hereof, and to give their ready obedience accordingly.

Given at Our Court at Balmoral, this Seventh day of October, 1878, in the Forty-second year of Our Reign.

By Her Majesty's Command,

M. E. HICKS BEACH.

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PREROGATIVES GRANTED TO CHRISTOPHER COLUMBUS.*

FERDINAND and ELIZABETH, by the Grace of God, King and Queen of Castile, of Leon, of Arragon, of Sicily, of Granada, of Toledo, of Valencia, of Galicia, of Majorca, of Minorca, of Sevil, of Sardinia, of Jaen, of Algarve, of Algezira, of Gibraltar, of the Canary Islands, Count and Countess of Barcelona, Lord and Lady of Biscay and Molina, Duke and Duchess of Athens and Neopatria, Count and Countess of Rousillon and Cerdaigne, Marquess and Marchioness of Oristan and Gociano, &c.

For as much as you, Christopher Columbus, are going by our command, with some of our vessels and men, to discover and subdue some Islands and Continent in the ocean, and it is hoped that by God's assistance some of the said Islands and Continent in the ocean will be discovered and conquered by your means and conduct, therefore it is but just and reasonable, that since you expose yourself to such danger to serve us, you should be rewarded for it.

* Spain claimed and exercised the right of ultimate dominion over her possessions in America on the rights given by the discovery of America under this commission, and the grant of Pope Alexander.

SUPPLEMENT
TO THE
ONTARIO
APPENDIX.

Prerogatives
granted to
Christopher
Columbus.

SUPPLEMENT
TO THE
ONTARIO
APPENDIX.

Prerogatives
granted to
Christopher
Columbus.

And we being willing to honour and favour you for the reasons aforesaid ; Our will is, That you, Christopher Columbus, after discovering and conquering the said Islands and Continent in the said ocean, or any of them, shall be our Admiral of the said Islands and Continent you shall so discover and conquer ; and that you be our Admiral, Vice-Roy, and Governour in them, and that for the future, you may call and stile yourself, D. Christopher Columbus, and that your sons and successors in the said employment, may call themselves Dons, Admirals, Vice-Roys, and Governours of them ; and that you may exercise the office of Admiral, with the charge of Vice-Roy and Governour of the said Islands and Continent, which you and your Lieutenants shall conquer, and freely decide all causes, civil and criminal, appertaining to the said employment of Admiral, Vice-Roy, and Governour, as you shall think fit in justice, and as the Admirals of our kingdoms use to do ; and that you have power to punish offenders ; and you and your Lieutenants exercise the employments of Admiral, Vice-Roy, and Governour, in all things belonging to the said offices, or any of them ; and that you enjoy the perquisites and salaries belonging to the said employments, and to each of them, in the same manner as the High Admiral of our kingdom does.

And by this our letter, or a copy of it signed by a Public Notary : We command Prince John, our most dearly beloved Son, the Infants, Dukes, Prelates, Marquesses, Great Masters and Military Orders, Priors, Commendaries, our Counsellors, Judges, and other Officers of Justice whatsoever, belonging to our Household, Courts, and Chancery, and Constables of Castles, Strong Houses, and others and all Corporations, Bayliffs, Governours, Judges, Commanders, Sea Officers ; and the Aldermen, Common Council, Officers, and Good People of all Cities, Lands, and Places in our Kingdoms and Dominions, and in those you shall conquer and subdue, and the captains, masters, mates, and other officers and sailors, our natural subjects now being, or that shall be for the time to come, and any of them, that when you shall have discovered the said Islands and Continent in the ocean ; and you, or any that shall have your commission, shall have taken the usual oath in such cases, that they for the future, look upon you as long as you live, and after you, your son and heir, and so from one heir to another forever, as our Admiral on our said Ocean, and as Vice-Roy and Governour of the said Islands and Continent, by you, Christopher Columbus, discovered and conquered ; and that they treat you and your Lieutenants, by you appointed, for executing the employments of Admiral, Vice-Roy, and Governour, as such in all respects, and give you all the perquisites and other things belonging and appertaining to the said offices ; and allow, and cause to be allowed you, all the honours, graces, concessions, preheminees, prerogatives, immunities, and other things, or any of them which are due to you, by virtue of your commands of Admiral, Vice-Roy, and Governour, and to be observed completely, so that nothing be diminished : and that they make no objection to this, or any part of it, nor suffer it to be made ; forasmuch as we from this time forward, by this our Letter, bestow on you the employments of Admiral, Vice-Roy, and perpetual Governour forever ; and we put you into possession of the said offices, and of every of them, and full power to use and exercise them, and to receive the perquisites and salaries belonging to them, or any of them, as was said above.

Concerning all which things, if it be requisite, and you shall desire it, We command our Chancellor, Notaries, and other Officers, to pass, seal, and deliver to you, our Letter of Privilege, in such firm and legal manner, as you shall require or stand in need of. And that none of them presume to do any thing to the contrary, upon pain of our displeasure, and forfeiture of 30 ducats for each offence. And we command him, who shall show them this our Letter, that he summon them to appear before us at our Court, where we shall then be, within fifteen days after such summons, under the said penalty. Under which same, we also command any Public Notary whatsoever, that he give to him that shows it him, a certificate under his seal, that we may know how our command is obeyed.

GIVEN at Granada, on the 30th of April, in the year of our Lord, 1492.—

I, THE KING, I, THE QUEEN.

By their Majesties Command,
JOHN COLOMA,
Secretary to the King and Queen.

THE CHARTER OF ACADIA—1603.*

SUPPLEMENT
TO THE
ONTARIO
APPENDIX.

The Charter
of Acadia—
1603.

HENRY, par la grace de Dieu, Roi de France & de Navarre: A nos amés & fiaux Conseillers les Officiers de notre Admirauté de Normandie, Bretagne, Picardie & Guienne, & à chacun d'eux en droit soi, & en l'étendue de leurs ressorts & juridictions; Salut. Nous avons pour beaucoup d'importantes occasions, ordonné, commis & établi le sieur de Monts, Gentilhomme ordinaire de notre Chambre, notre Lieutenant général, pour peupler & habiter les terres, côtes & pays de l'Acadie, & autres circonvoisins, en l'étendue du quarantième degré jusqu'au quarante-sixième, & à établir notre autorité, & autrement s'y loger & assurer; en sorte que nos sujets desormais y puissent être reçus, y hanter, résider & trafiquer avec les Sauvages habitans desdits lieux, comme plus expressément nous l'avons déclaré par nos lettres patentes, expédiées & délivrées pour cet effet audit sieur de Monts le huitième jour de novembre dernier, suivant les conditions & articles, moyennant lesquelles il s'est chargé de la conduite & exécution de cette entreprise.

Pour faciliter laquelle, & à ceux qui s'y sont joints avec lui, & leur donner quelque moyen & commodité d'en supporter la dépense; Nous avons en agréable ce leur promettre & assurer qu'il ne seroit permis à aucuns autres nos sujets, qu'à ceux qui entrent en association avec lui pour faire ladite dépense, de trafiquer de pelletterie & autres marchandises durant dix années, es terres, pays, ports, rivières & avenues de l'étendue de sa charge; ce que nous voulons avoir lieu.

Nous, pour ces causes & autres considérations à ce nous mouvans, vous mandons & ordonnons que vous ayez, chacun de vous en l'étendue de vos pouvoirs, juridictions & détroits, à faire de notre part, comme de notre pleine puissance & autorité Royale, nous faisons très-expresses inhibitions & défenses à tous marchands, maîtres & Capitaines de navires, matelots & autres nos sujets de quelque état, qualité & condition qu'ils soient, autres néanmoins & fors à ceux qui sont entrés en association avec ledit sieur de Monts pour ladite entreprise, selon les articles & conventions d'icelles, par nous arrêtés, ainsi que dit est; d'équiper aucuns vaisseaux, & en iceux aller ou envoyer faire trafic & troque de pelletterie, & autres choses avec les Sauvages, fréquenter, négocier & communiquer durant ledit temps de dix ans, depuis le cap de Raze, jusqu'au quarantième degré, comprenant toute la côte de l'Acadie, terre & Cap-Breton, baie de Saint-Cler, de Chaleur, isles perçées, Gaspar, Chichedeo, Mesumichi, Lesquemin, Tutoussac & la rivière de Canada, tant d'un côté que d'autre, & toutes les baies et rivières qui entrent au delans desdites côtes, à peine de desobéissance, & confiscation entière de leurs vaisseaux, vivres, armes & marchandises, au profit dudit sieur de Monts & de ses associés, & de trente mille livres d'amende.

Pour l'assurance & acquit de laquelle, & de la cohertion & punition de leur desobéissance, vous permettrez, comme nous avons aussi permis & permettons, audit sieur de Monts & associés, de saisir, appréhender & arrêter tous les contrevenans à notre présente défense & ordonnance, & leurs vaisseaux, marchandises, armes & victuailles, pour les amener & remettre es mains de la justice, & être procédé, tant contre les personnes que contre les biens desdits desobéissans, ainsi qu'il appartiendra: ce que nous voulons, & vous mandons & ordonnons de faire incontinent publier & lire par tous les lieux & endroits publics de vosdits pouvoirs & juridictions où vous jugerez besoin être, à ce qu'aucun de nosdits sujets n'en puisse prétendre cause d'ignorance, ains que chacun obéisse & se conforme sur ce à notre volonté; de ce faire nous vous avons donné & donnons pouvoir & commission & mandement spécial: Car tel est notre plaisir. DONNÉ à Paris, le dixhuit décembre, l'an de grace mil six cens trois, & de notre règne le quinziesme, ainsi signé HENRY. Et plus bas, Par le Roi, POTTIER. Et scellé du grand seel de cire jaunie.

* This charter, which was granted by Henry IV. of France to Pierre du Gast, sieur de Monts, a Protestant member of his suite, embraced the whole of North America between the fortieth and forty-sixth degrees of latitude. An expedition fitted out under it visited Passamaquoddy Bay in 1604, and another explored the coast of Maine in 1605, entering the Penobscot, Kennebec, and Saco Rivers. But in 1606 it was decided to make a permanent settlement at Port Royal, and no further attempt was made to plant colonies under this charter within the limits of the present State of Maine. The French in Canada, however, maintained friendly relations with the Penobscot Indians, and had several missionary and trading stations among them until Great Britain took possession of the country under the treaty of Paris of 1673.

THE FIRST CHARTER OF VIRGINIA—1606.

SUPPLEMENT
TO THE
SECOND
APPENDIX.
—
The First
Charter of
Virginia—
1606.

JAMES, by the Grace of God, King of England, Scotland, France and Ireland, Defender of the Faith, &c. WHEREAS our loving and well-disposed Subjects, Sir Thomas Gates, and Sir George Somers, Knights, Richard Hakluyt, Clerk, Prebendary of Westminster, and Edward-Maria Wingfield, Thomas Hanham, and Raleigh Gilbert, Esqrs. William Parker, and George Popham, Gentlemen, and divers others of our loving Subjects, have been humble Suitors unto us, that We would vouchsafe unto them our Licence, to make Habitation, Plantation, and to deduce a colony of sundry of our People into that part of America commonly called VIRGINIA, and other parts and Territories in America, either appertaining unto us, or which are not now actually possessed by any Christian Prince or People, situate, lying, and being all along the Sea Coasts, between four and thirty Degrees of Northerly Latitude from the Equinoctial Line, and five and forty Degrees of the same Latitude, and in the main Land between the same four and thirty and five and forty Degrees, and the Islands thereunto adjacent, or within one hundred Miles of the Coast thereof :

And to that End, and for the more speedy Accomplishment of their said intended Plantation and Habitation there, are desirous to divide themselves into two several Colonies and Companies; the one consisting of certain Knights, Gentlemen, Merchants, and other Adventurers, of our City of London and elsewhere, which are, and from time to time shall be, joined unto them, which do desire to begin their Plantation and Habitation in some fit and convenient Place, between four and thirty and one and forty Degrees of the said Latitude, amongst the Coasts of Virginia, and the Coasts of America aforesaid : And the other consisting of sundry Knights, Gentlemen, Merchants, and other Adventurers, of our Cities of Bristol and Exeter, and of our Town of Plymouth, and of other Places, which do join themselves unto that Colony, which do desire to begin their Plantation and Habitation in some fit and convenient Place, between eight and thirty Degrees and five and forty Degrees of the said Latitude, all alongst the said Coasts of Virginia and America, as that Coast lyeth :

We, greatly commending, and graciously accepting of, their Desires for the furtherance of so noble a Work, which may, by the Providence of Almighty God, hereafter tend to the Glory of his Divine Majesty, in propagating of Christian Religion to such people, as yet live in Darkness and miserable Ignorance of the true Knowledge and Worship of God, and may in time bring the Infidels and Savages, living in those parts, to human Civility, and to a settled and quiet Government: DO, by these our Letters Patents, graciously accept of and agree to, their humble and well-intended desires ;

And do therefore, for Us, our Heirs, and Successors, GRANT and agree that the said Sir Thomas Gates, Sir George Somers, Richard Hakluyt, and Edward-Maria Wingfield, Adventurers of and for our City of London, and all such others, as are, or shall be, joined unto them of that Colony, shall be called the first Colony ; And they shall and may begin their said first Plantation and Habitation, at any place upon the said coast of Virginia or America, where they shall think fit and convenient, between the said four and thirty and one and forty Degrees of the said Latitude ; And that they shall have all the Lands, Woods, Soil, Grounds, Havens, Ports, Rivers, Mines, Minerals, Marshes, Waters, Fishings, Commodities, and Hereditaments, whatsoever, from the said first seat of their Plantation and Habitation by the Space of fifty Miles of English Statute Measure, all along the said coast of Virginia and America, towards the West and Southwest, as the Coast lyeth, with all the Islands within one hundred Miles directly over against the same Sea Coast ; And also all the Lands, Soil, Grounds, Havens, Ports, Rivers, Mines, Minerals, Woods, Waters, Marshes, Fishings, Commodities, and Hereditaments, whatsoever, from the said Place of their first Plantation and Habitation for the space of fifty like English Miles, all alongst the said coasts of Virginia and America, towards the East and Northeast, or toward the North, as the Coast lyeth, together with all the Islands within one hundred Miles, directly over against the said Sea Coast ; And also all the Lands, Woods, Soil, Grounds, Havens, Ports, Rivers, Mines, Minerals, Marshes, Waters, Fishings, Commodities, and Hereditaments, whatsoever, from the same fifty Miles every way on the Sea Coast, directly into the main Land by the Space of one hundred like English Miles ; And shall and may inhabit and remain there ; and shall and may also build and fortify within

any the same, for their better Safeguard and Defence, according to their best Discretion, and the Discretion of the Council of that Colony; And that no other of our Subjects shall be permitted, or suffered to plant or inhabit behind, or on the Backside of them, towards the main Land, without the Express License or Consent of the Council of that Colony, thereunto in Writing first had and obtained.

And we do likewise, for Us, our Heirs, Successors, by these Presents, GRANT and agree, that the said Thomas Hauham, and Raleigh Gilbert, William Parker, and George Popham, and all others of the Town of Plimouth in the County of Devon, or elsewhere, which are, or shall be, joined unto them of that Colony, shall be called the second Colony; And that they shall and may begin their said Plantation and Seat of their first abode and Habitation, at any Place upon the said Coast of Virginia and America, where they shall think fit and convenient, between eight and thirty Degrees of the said Latitude, and five and forty Degrees of the same Latitude; And that they shall have all the Lands, Soils, Grounds, Havens, Ports, Rivers, Mines, Minerals, Woods, Marshes, Waters, Fishings, Commodities, and Hereditaments, whatsoever, from the first Seat of their Plantation and Habitation by the Space of fifty like English Miles, as is aforesaid, all alongst the said Coasts of Virginia and America, towards the West and Southwest, or towards the South, as the Coast lyeth, and all the Islands within one hundred Miles, directly over against the said Sea Coast; And also all the Lands, Soils, Grounds, Havens, Ports, Rivers, Mines, Minerals, Woods, Marshes, Waters, Fishings, Commodities, and Hereditaments, whatsoever, from the said Place of their first Plantation and Habitation for the Space of fifty like Miles, all alongst the said Coast of Virginia and America, towards the East and Northeast, or towards the North, as the Coast lyeth, and all the Islands also within one hundred Miles directly over against the same Sea Coast; And also all the Lands, Soils, Grounds, Havens, Ports, Rivers, Woods, Mines, Minerals, Marshes, Waters, Fishings, Commodities, and Hereditaments, whatsoever, from the same fifty Miles every way on the Sea Coast, directly into the main Land, by the Space of one hundred like English Miles; And shall and may inhabit and remain there; and shall and may also build and fortify within any the same for their better Safeguard, according to their best Discretion, and the Discretion of the Council of that Colony; And that none of our Subjects shall be permitted, or suffered, to plant or inhabit behind, or on the back of them, towards the main Land, without express Licence of the Council of that Colony, in Writing thereunto first had and obtained.

Provided always, and our Will and Pleasure herein is, that the Plantation and Habitation of such of the said Colonies, as shall last plant themselves, as aforesaid, shall not be made within one hundred like English Miles of the other of them, that first began to make their Plantation, as aforesaid.

And we do also ordain, establish, and agree, for Us, our Heirs, and Successors, that each of the said Colonies shall have a Council, which shall govern and order all Matters and Causes, which shall arise, grow, or happen, to or within the same several Colonies, according to such Laws, Ordinances, and Instructions, as shall be, in that behalf, given and signed with Our Hand or Sign Manual, and pass under the Privy Seal of our Realm of England: Each of which Councils shall consist of thirteen Persons, to be ordained, made, and removed, from time to time, according as shall be directed and comprised in the same instructions; And shall have a several Seal, for all Matters that shall pass or concern the same several Councils; Each of which Seals, shall have the King's Arms engraven on the one Side thereof, and his Portraiture on the other; And that the Seal for the Council of the said first Colony shall have engraven round about, on the one Side, these Words; Sigillum Regis Magnæ Britannia, Franciæ, & Hiberniæ: on the other Side this Inscription round about: Pro Concilio primæ Colonie Virginie. And the Seal for the Council of the said second Colony shall also have engraven, round about the one Side thereof, the aforesaid Words; Sigillum Regis Magnæ Britannia, Franciæ, & Hiberniæ; and on the other Side; Pro Concilio secundæ Colonie Virginie:

And that also there shall be a Council, established here in England, which shall, in like Manner, consist of thirteen Persons, to be, for that Purpose, appointed by Us, our Heirs, and Successors, which shall be called our Council of Virginia; And shall, from time to time, have the superior Managing and Direction, only of and for all Matters that shall or may concern the Government, as well of the said

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several Colonies, as of and for any other Part or Place, within the aforesaid Precincts of four and thirty and five and forty Degrees abovementioned; Which Council shall, in like manner, have a Seal, for Matters concerning the Council or Colonies, with the like Arms and Portraiture, as aforesaid, with this inscription, engraven round about on the one Side; Sigillum Regis Magnæ Britanniae, Francia, & Hiberniae; and round about on the other Side, Pro Concilio suo Virginiae.

And moreover, we do GRANT and agree, for Us, our Heirs and Successors; that that the said several Councils of and for the said several Colonies, shall and lawfully may, by Virtue hereof, from time to time, without any Interruption of Us, our Heirs or Successors, give and take Order, to dig, mine, and search for all Manner of Mines of Gold, Silver, and Copper, as well within any Part of their said several Colonies, and of the said main Lands on the Backside of the same Colonies; And to HAVE and enjoy the Gold, Silver, and Copper, to be gotten thereof, to the Use and Behoof of the same Colonies, and the Plantations thereof; YIELDING therefore to Us, our Heirs and Successors, the fifth Part only of all the same Gold and Silver, and the fifteenth Part of all the same Copper, so to be gotten or had, as is aforesaid, without any other Manner of Profit or Account, to be given or yielded to Us, our Heirs, or Successors, for or in respect of the same: 10

And that they shall, or lawfully may, establish and cause to be made a Coin, to pass current there between the people of those several Colonies, for the more Ease of Traffick and Bargaining between them and amongst them and the Natives there, of such Metal, and in such Manner and Form, as the said several Councils there shall limit and appoint.

And we do likewise, for Us, our Heirs, and Successors, by these Presents, give full Power and Authority to the said Sir Thomas Gates, Sir George Somers, Richard Hackluit, Edward-Maria Wingfield, Thomas Hanham, Raleigh Gilbert, William Parker, and George Popham, and to every of them, and to the said several Companies, Plantations, and Colonies, that they, and every of them, shall and may, at all and every time and times hereafter, have, take, and lead in the said Voyage, and for and towards the said several Plantations, and Colonies, and to travel thitherward, and to abide and inhabit there, in every the said Colonies and Plantations, such and so many of our Subjects, as shall willingly accompany them or any of them, in the said Voyages and Plantations; With sufficient Shipping, and Furniture of Armour, Weapons, Ordnance, Powder, Victual, and all other things, necessary for the said Plantations, and for their Use and Defence there: PROVIDED always that none of the said Persons be such, as shall hereafter be specially restrained by Us, our Heirs, or Successors. 30

Moreover, we do, by these Presents, for Us, our Heirs, and Successors, GIVE AND GRANT Licence unto the said Sir Thomas Gates, Sir George Somers, Richard Hackluit, Edward-Maria Wingfield, Thomas Hanham, Raleigh Gilbert, William Parker, and George Popham, and to every of the said Colonies, that they, and every of them, shall and may, from time to time, and at all times forever hereafter, for their several Defences, encounter, expulse, repel, and resist, as well by Sea as by Land, by all Ways and Means whatsoever, all and every such Person and Persons, as without the especial Licence of the said several Colonies and Plantations, shall attempt to inhabit within the said several Precincts and Limits of the said several Colonies and Plantations, or any of them, or that shall enterprise or attempt, or at any time hereafter, the Hurt, Detriment, or Annoyance, of the said several Colonies and Plantations:

Giving and granting, by these Presents, unto the said Sir Thomas Gates, Sir George Somers, Richard Hackluit, Edward-Maria Wingfield, and their Associates of the said first Colony, and unto the said Thomas Hanham, Raleigh Gilbert, William Parker, and George Popham, and their Associates of the said second Colony, and to every of them, from time to time, and at all times for ever hereafter, Power and Authority to take and surprise, by all Ways and Means whatsoever, all and every Person and Persons, with their Ships, Vessels, Goods, and other Furniture, which shall be found trafficking, into any Harbour or Harbours, Creek or Creeks, or Place, within the Limits or Precincts of the said several Colonies and Plantations, not being of the same Colony, until such time, as they, being of any Realms, or Dominions under our Obedience, shall pay, or agree to pay, to the Hands of the Treasurer of that Colony, within whose Limits they shall so traffick, two and a half upon every Hundred, of any thing, so by them trafficked, 40

bought, or sold; And being Strangers not Subjects under our Obedience, until they shall pay five upon every Hundred, of such Wares and Merchandises, as they shall traffick, buy, or sell, within the Precincts of the said several Colonies, wherein they shall so traffick, buy, or sell, as aforesaid; Which Sums of Money, or Benefit, as aforesaid, for and during the space of one and twenty years, next ensuing the Date hereof shall be wholly employed to the Use, Benefit, and Behoof of the said several Plantations, where such Traffick shall be made; And after the said one and twenty years ended, the same shall be taken to the Use of Us, our Heires, and Successors, by such Officers and Ministers as by Us, our Heirs, and Successors, shall be thereunto assigned or appointed.

And we do further, by these Presents, for Us, our Heirs and Successors, GIVE AND GRANT unto the said Sir Thomas Gates, Sir George Somers, Richard Hackluit, and Edward Maria Wingfield, and to their Associates of the said first Colony and Plantation, and to the said Thomas Hauham, Raleigh Gilbert, William Parker, and George Popham, and their Associates of the said second Colony and Plantation, that they, and every of them, by their Deputies, Ministers, and Factors, may transport the Goods, Chattels, Armour, Munition, and Furniture, needful to be used by them, for their said Apparel, Food, Defence, or otherwise in Respect of the said Plantations, out of our Realms of England and Ireland, and all other our Dominions, from time to time, for and during the Time of seven Years, next ensuing the Date hereof, for the better Relief of the said several Colonies and Plantations, without any Customs, Subsidy, or other duty, unto Us, our Heirs, or Successors, to be yielded or payed for the same.

Also we do, for Us, our Heirs, and Successors, DECLARE, by these Presents, that all and every the Persons being our Subjects, which shall dwell and inhabit within every or any of the said several Colonies and Plantations, and every of their children, which shall happen to be born within any of the Limits and Precincts of the said several Colonies and Plantations, shall HAVE and enjoy all Liberties, Franchises, and Immunities, within any of our other Dominions, to all Intents and Purposes, as if they had been abiding and born, within this our Realm of England, or any other of our said Dominions.

Moreover, our gracieus Will and Pleasure is, and we do, by these presents, for Us, our Heirs, and Successors, declare and set forth, that if any Person or Persons, which shall be of any of the said Colonies and Plantations, or any other, which shall traffick to the said Colonies and Plantations, or any of them, shall, at any time or times hereafter, transport any Wares, Merchandises, or Commodities, out of any of our Dominions, with a Pretence to land, sell, or otherwise dispose of the same, within any the Limits and Precincts of any of the said Colonies and Plantations, and yet, nevertheless, being at Sea, or after he hath landed the same within any of the said Colonies and Plantations, shall carry the same into any other Foreign Country, with a Purpose there to sell or dispose of the same, without the Licence of Us, our Heirs, and Successors, in that Behalf first had and obtained; That then, all the Goods and Chattels of such Person or Persons, so offending and transporting, together with the said Ship or Vessel, wherein such Transportation was made, shall be forfeited to Us, our Heirs, and Successors.

Provided always, and our Will and Pleasure is, and we do hereby declare to all Christian Kings, Princes, and States, that if any Person or Persons which shall hereafter be of any of the said several Colonies and Plantations, or any other, by his, their, or any of their Licence and Appointment, shall, at any Time or Times hereafter, rob or spoil, by Sea or Land, or do any Act of unjust and unlawful Hostility to any the Subjects of Us, our Heirs, or Successors, or any the Subjects of any King, Prince, Ruler, Governor, or State, being then in League or Amitie with Us, our Heirs, or Successors, and that upon such Injury, or upon just Complaint of such Prince, Ruler, Governor, or State, or their Subjects, We, our Heirs, or Successors, shall make open Proclamation, within any of the Ports of our Realm of England, Commodions for that purpose, That the said Person or Persons, having committed any such robbery, or Spoil, shall, within the term to be limited by such Proclamations, make full Restitution or Satisfaction of all such Injuries done, so as the said Princes, or others so complaining, may hold themselves fully satisfied and contented; And, that if the said Person or Persons, having committed such Robbery or Spoil, shall not make, or cause to be made Satisfaction accordingly, within such Time so to be limited, That then it shall be lawful to Us, our Heirs, and Successors, to put the said Person or Persons, having com-

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mitted such Robbery or Spoil, and their Procurers, Abettors, and Comforters, out of our Allegiance and Protection; And that it shall be lawful and free, for all Princes, and others to pursue with hostility the said offenders, and every of them, and their and every of their Procurers, Aiders, abettors, and comforters, in that behalf.

And finally, we do for Us, our Heirs, and Successors, GRANT and agree, to and with the said Sir Thomas Gates, Sir George Somers, Richard Hackluit, Edward-Maria Wingfield, and all others of the said first colony, that We, our Heirs and Successors, upon Petition in that Behalf to be made, shall, by Letters Patent under the Great Seal of England, GIVE and GRANT, unto such Persons, their Heirs and Assigns, as the Council of that Colony, or the most part of them, shall, for that Purpose, nominate and assign all the Lands, Tenements, and Hereditaments, which shall be within the Precincts limited for that Colony, as is aforesaid, To BE HOLDEN of Us, our heirs and Successors, as of our Manor at East-Greenwich, in the County of Kent, in free and common Socceage only, and not in Capite :

And do in like Manner, Grant and Agree for Us, our Heirs and Successors, to and with the said Thomas Hanham, Raleigh Gilbert, William Parker, and George Popham, and all others of the said second Colony, That We, our Heirs, and Successors, upon Petition in that behalf to be made, shall, by Letters-Patent, under the Great Seal of England, GIVE and GRANT, unto such Persons, their Heirs and Assigns, as the Council of that Colony, or the most Part of them, shall for that Purpose nominate and assign, all the Lands, Tenements, and Hereditaments, which shall be within the Precincts limited for that Colony as is aforesaid, To BE HOLDEN of Us, our Heires, and Successors, as of our Manor of East-Greenwich, in the County of Kent, in free and common Socceage only, and not in Capite.

All which Lands, Tenements, and Hereditaments, so to be passed by the said several Letters Patent, shall be sufficient Assurance from the said Patentees, so distributed and divided amongst the Undertakers for the Plantation of the said several Colonies, and such as shall make their Plantations in either of the said several Colonies, in such Manner and Form, and for such Estates, as shall be ordered and set down by the Council of the said Colony, or the most part of them, respectively, within which the same Lands, Tenements, and Hereditaments shall lye or be; Although express Mention of the true yearly Value or Certainty of the Premises, or any of them, or of any other Gifts or Grants, by us or any of our Progenitors or Predecessors, to the aforesaid Sir Thomas Gates, Knt., Sir George Somers, Knt., Richard Hackluit, Edward-Maria Wingfield, Thomas Hanham, Raleigh Gilbert, William Parker, and George Popham, or any of them, heretofore made, in these Presents, is not made; Or any Statute, Act, Ordinance, or Provision, Proclamation, or Restraint, to the contrary hereof had, made, ordained, or any other Thing, Cause, or Matter whatsoever, in any wise notwithstanding. In Witness whereof, we have caused these our Letters to be made Patents: Witness Ourself at Westminster, the tenth Day of April, in the fourth Year of our Reign of England, France, and Ireland, and of Scotland the nine and thirtieth.

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Per breve de privato Sigillo.

THE THIRD CHARTER OF VIRGINIA— 1611-12.

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JAMES, by the Grace of God, King of England, Scotland, France, and Ireland, Defender of the Faith; To all to whom these Presents shall come, Greeting. WHEREAS at the humble Suit of divers and sundry our loving Subjects, as well Adventurers as Planters of the first Colony in Virginia, and for the Propagation of Christian Religion, and Reclaiming of People barbarous, to Civility and Humanity, We have, by our Letters-Patents, bearing date at Westminster, the three-and-twentieth Day of May, in the seventh Year of our Reign of England, France, and Ireland, and the two-and-fortieth of Scotland, GIVEN and GRANTED unto them that they and all such, and so many of our loving Subjects as should from time to time, for ever after, be joined with them as Planters or Adventurers in the said Plantation, and their Successors, for ever, should be one Body politick, incorporated by the Name of The Treasurer and Company of Adventurers and Planters of the City of London for the first Colony in Virginia.

And whereas also for the greater Good and Benefit of the said Company, and for the better Furtherance, Strengthening, and Establishing of the said Plantation, we did further Give, GRANT and CONFIRM, by our Letters-patents unto the said Company and their Successors, for ever, all those Lands, Countries or Territories, situate, lying and being in that Part of America called Virginia, from the Point of Land called Cape Comfort all along the Sea Coasts to the Northward two hundred Miles; and from the said Point of Cape Comfort all along the Sea Coast to the Southward two hundred Miles; and all that Space and Circuit of Land lying from the Sea Coast of the Precinct aforesaid, up into the Land throughout from Sea to Sea West and North-west; and also all the Islands lying within one hundred Miles along the Coast of both the Seas of the Precinct aforesaid; with divers other Grants, Liberties, Franchises and Preheminences, Privileges, Profits, Benefits, and Commodities granted in and by our said Letters-patents to the said Treasurer and Company and their Successors for ever.

Now forasmuch as we are given to understand, that in those Seas adjoining to the said Coast of Virginia, and without the Compass of those two hundred Miles by Us so granted unto the said Treasurer and Company as aforesaid, and yet not far distant from the said Colony in Virginia, there are or may be divers Islands lying desolate and uninhabited, some of which are already made known and discovered by the Industry, Travel, and Expenses of the said Company, and others also are supposed to be and remain as yet unknown and undiscovered, all and every of which it may import the said Colony, both in Safety and Policy of Trade to populate and plant; in Regard whereof, as well for the preventing of Peril, as for the better Commodity of the said Colony, they have been humble suitors unto Us, that We would be pleased to grant unto them an Enlargement of our said former Letters-patents, as well for a more ample Extent of their Limits and Territories into the Seas adjoining to and upon the Coast of Virginia, as also for some other Matters and Articles concerning the better government of the said Company and Colony, in which Point our said former Letters-Patents do not extend so far as Time and Experience hath found to be needful and convenient.

We therefore tendering the good and happy Success of the said Plantation, both in Regard of the general Weal of human Society, as in Respect of the Good of our own Estate and Kingdoms, and being willing to give Furtherance unto all good Means that may advance the Benefit of the said Company, and which may secure the Safety of our loving Subjects planted in our said Colony, under the Favour and Protection of God Almighty, and of our Royal Power and Authority, have therefore of our especial Grace, certain Knowledge, and mere Motion, given, granted, and confirmed, and for Us, our Heirs and Successors, we do by these Presents give, grant, and confirm to the said Treasurer and Company of Adventurers and Planters of the City of London for the first Colony in Virginia, and to their Heirs and Successors for ever, all and singular those Islands whatsoever situate and being in any Part of the Ocean Seas bordering upon the Coast of our said first Colony in Virginia, and being within three Hundred Leagues of any of the Parts heretofore granted to the said Treasurer and Company in our said former Letters-Patents as aforesaid, and being within or between the one-and-fortieth and thirtieth Degrees of Northerly Latitude.

Together with all and singular Soils, Lands, Grounds, Havens, Ports, Rivers, Waters, Fishings,

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Mines and Minerals, as well Royal Mines of Gold and Silver, as other Mines and Minerals, Pearls, precious Stones, Quarries, and all and singular other Commodities, Jurisdictions, Royalties, Privileges, Franchises, and Preheminences, both within the said Tract of Land upon the Main, and also within the said Islands and Seas adjoining whatsoever and thereunto or thereabouts, both by Sea and Land being or situate.

And which, by our Letters-Patents we may or can grant, and in as ample Manner as We or any our noble Progenitors have heretofore granted to any Person or Persons, or to any Company, Body Politick or corporate, or to any Adventurer or Adventurers, Undertaker or Undertakers of any Discoveries, Plantations, or Traffick, of, in, or into any foreign Parts whatsoever, and in as large and ample Manner as if the same were herein particularly named, mentioned, and expressed.

Provided always, that the said Islands or any Premises herein mentioned, or by these Presents intended or meant to be granted, be not actually possessed or inhabited by any other Christian Prince or Estate, nor be within the Bounds, Limits, or Territories of the Northern Colony heretofore by Us granted to be planted by divers of our loving Subjects in the North Parts of Virginia.

To HAVE AND TO HOLD, possess and enjoy, all and singular the said Islands in the said Ocean Seas so lying and bordering upon the Coast and Coasts of the said Territories of the said first Colony in Virginia, as aforesaid. With all and singular the said Soils, Lands, Grounds, and all and singular other the Premises heretofore by these Presents granted or mentioned to be granted to them, the said Treasurer and Company of Adventurers and Planters of the city of London for the first Colony in Virginia, and to their Heirs, Successors, and Assigns, for ever, to the sole and proper Use and Behoof of them the said Treasurer and Company, and their Heirs and Successors and Assigns, for ever.

To BE HOLDES OF US, our Heirs and Successors, as of our Manor of East-Greenwich, in Free and common Socceage, and not in Capite.

YIELDING AND PAYING therefore to Us, our Heirs and Successors, the fifth Part of the Ore of all Gold and Silver which shall be there gotten, had, or obtained for all Manner of Services whatsoever.

And further, Our Will and Pleasure is, and We do by these Presents, GRANT AND CONFIRM, for the Good and Welfare of the said Plantation, and that Posterity may hereafter know who have adventured and not been sparing of their Purses in such a noble and generous Action for the general Good of their Country, and at the Request and with the Consent of the Company aforesaid, that Our trusty and well-beloved Subjects George Lord Archbishop of Canterbury, Henry, Earl of Huntington, Edward Earl of Belford, Richard Earl of Clanrickard, &c. who since Our said last Letters-Patents are become Adventurers, and have joined themselves with the former Adventurers and Planters of the said Company and Society, shall from henceforth be reputed, deemed, and taken to be, and shall be Brethren and free Members of the Company; and shall and may respectively, and according to the Proportion and Value of their several Adventures, HAVE, HOLD, and ENJOY, all such Interest, Right, Title, Privileges, Preheminences, Liberties, Franchises, Immunities, Profits, and Commodities whatsoever, in as large and ample and beneficial Manner, to all Intents, Constructions, and Purposes, as any other Adventures nominated and expressed in any our former Letters-Patents, or any of them have or may have by Force and Virtue of these Presents, or any our former Letters-Patents whatsoever.

And We are further pleased, and We do by these Presents GRANT and CONFIRM, that Philip Earl of Montgomery, William Lord Paget, Sir John Starrington, Knt. &c. whom the said Treasurer and Company have since the said last Letters-Patents nominated and set down as worthy and discreet Persons fit to serve Us as Counsellors, to be of our Council for the said Plantation, shall be reputed, deemed, and taken as Persons of our said Council for the said first Colony, in such Manner and Sort, to all Intents and Purposes, as those who have been formerly elected and nominated as our counsellors for that Colony, and whose names have been, or are inserted and expressed in our said former Letters-Patents.

And we do hereby ordain and grant by these Presents, that the said Treasurer and Company

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of Adventurers and Planters aforesaid, shall and may, once every week, or oftener, at their Pleasure, hold, and keep a Court and Assembly for the better Order and Government of the said Plantation, and such Things as shall concern the same: And that any five Persons of our Council for the said first Colony in Virginia, for the Time being, of which Company the Treasurer, or his Deputy, to be always one, and the Number of fifteen others, at the least, of the Generality of the said Company, assembled together in such Manner, as is and hath been heretofore used and accustomed, shall be said, taken, held, and reputed to be, and shall be a sufficient Court of the said Company, for the handling and ordering, and dispatching of all such casual and particular Occurrences, and accidental Matters, of less Consequence and Weight, as shall from Time to Time happen, touching and concerning the said Plantation. And that nevertheless, for the handling, ordering, and disposing of Matters and Affairs of greater Weight and Importance, and such as shall or may, in any Sort, concern the Weal Publick and general Good of the said Company and Plantation, as namely, the Manner of Government from Time to Time to be used, the ordering and Disposing of the Lands and Possessions, and the settling and establishing of a Trade there, or such like, there shall be held and kept every Year, upon the last Wednesday, save one, of Hilary Term, Easter, Trinity, and Michaelmas Terms, for every, one great, general, and solemn Assembly, which four Assemblies shall be stiled and called, The four Great and General Courts of the Council and Company of Adventurers for Virginia; In all and every of which said Great and General Court, so assembled, our Will and Pleasure is, and we do, for Us, our Heirs and Successors, for ever, Give and Grant to the said Treasurer and Company, and their Successors for ever, by these Presents, that they, the said Treasurer and Company, or the greater number of them, so assembled, shall and may have full Power and Authority, from Time to Time, and at all times hereafter, to elect and chuse discreet Persons, to be of our said Council for the said first Colony in Virginia, and to nominate and appoint such Officers as they shall think fit and requisite, for the Government, managing, ordering, and dispatching of the Affairs of the said Company.

And shall likewise have full Power and Authority, to ordain and make such Laws and Ordinances, for the Good and Welfare of the said Plantation, as to them from Time to Time, shall be thought requisite and meet: So always, as the same be not contrary to the Laws and Statutes of this our Realm of England: And shall, in like Manner, have Power and Authority, to expulse, disfranchise, and put out of and from their said Company and Society for ever, all and every such Person and Persons, as having either promised or subscribed their Names to become Adventurers to the said Plantation, of the said first Colony in Virginia, or having been nominated for Adventurers in these or any other our Letters-Patents, or having been otherwise admitted and nominated to be of the said Company, have nevertheless either not put in any adventure at all for and towards the said Plantation, or else have refused or neglected, or shall refuse and neglect to bring in his or their Adventure, by Word or Writing, promised within six Months after the same shall be so payable and due.

And whereas, the Failing and not Payment of such Monies as have been promised in Adventure, for the Advancement of the said Plantation, hath been often by Experience found to be dangerous and prejudicial to the same, and much to have injured the Progress and Proceeding of the said Plantation, and for that it seemeth unto Us a Thing reasonable, that such Persons, as by their Hand Writing have engaged themselves for the Payment of their Adventures, and afterwards neglecting their Faith and Promise, should be compelled to make good and keep the same: Therefore, our Will and Pleasure is, that in any Suit or Suits commenced, or to be commenced in any of our Courts at Westminster, or elsewhere, by the said Treasurer and Company, or otherwise against any such persons, that our Judges for the Time being, both in our Court of Chancery, and at the Common Pleas do favour and further the said suits so far forth as Law and Equity will in any wise further and permit.

And We do, for Us, our Heirs and Successors, further give and grant to the said Treasurer and Company, or their Successors forever, that the said Treasurer and Company, or the greater part of them for the Time being, so in a full and general Court assembled as aforesaid, shall and may from Time to Time, and at all times forever hereafter, elect, choose, and admit into their Company, and Society, any person or persons, as well Strangers and Aliens born in any Part beyond the Seas wheresoever, being in

SUPPLEMENT
TO THE
CHARTER OF
VIRGINIA
1611-12.

Amity with us, as our natural Liege Subjects, born in any our Realms and Dominions: And that all such Persons so elected, chosen, and admitted to be of the said Company as aforesaid, shall thereupon be taken, reputed, and held, and shall be free Members of the said Company, and shall have, hold, and enjoy all and singular Freedoms, Liberties, Franchises, Privileges, Immunities, Benefits, Profits, and Commodities whatsoever, to the said Company in any sort belonging or appertaining, as fully, freely, and amply as any other Adventurers now being, or which hereafter at any Time shall be of the said Company, hath, have, shall, may, might, or ought to have and enjoy the same to all Intents and Purposes whatsoever.

And we do further of our especial Grace, certain Knowledge, and mere Motion, for Us, our Heirs and Successors, give and grant unto the said Treasurer and Company, and their Successors for ever, by these Presents, that it shall be lawful and free for them and their Assigns, at all and every Time and Times hereafter, out of any our Realms and Dominions whatsoever, to take, lead, carry, and transport in and into the said Voyage, and for and towards the said Plantation of our said first Colony in Virginia, all such and so many of our loving Subjects, or any other Strangers that will become our loving Subjects, and live under our Allegiance, as shall willingly accompany them in the said Voyages and Plantation, with Shipping, Armour, Weapons, Ordnance, Munition, Powder, Shot, Victuals, and all Manner of Merchandises and Wares, and all Manner of Cloathing, Implements, Furniture, Beasts, Cattle, Horses, Mares, and all other Things necessary for the said Plantation, and for their Use and Defence, and for Trade with the People there, and in passing and returning to and from, without paying or yielding any Subsidy, Custom, or Imposition, either inward or outward, or any other Duty to Us, our Heirs and Successors, for the same, for the Space of Seven Years from the date of these Presents.

And We do further, for Us, our Heirs and Successors, give and grant to the said Treasurer and Company, and their Successors forever, by these Presents, that the said Treasurer of that Company, or his Deputy for the Time being, or any two other of the said Council, for the said first Colony in Virginia, for the Time being, or any two other at all Times hereafter, and from Time to Time, have full Power and authority to minister and give the Oath and Oaths of Supremacy and Allegiance, or either of them, to all and every person and persons, which shall at any Time or Times hereafter, go or pass to the said Colony in Virginia.

And further, that it shall be lawful likewise for the said Treasurer, or his Deputy for the Time being, or any two or others of our said Council, for the said first Colony in Virginia, for the Time being, from Time to Time, and at all Times hereafter to minister such a formal Oath, as by their discretion shall be reasonably devised, as well unto any Person or Persons employed in, for, or touching the said Plantation, for their honest, faithful and just Discharge of their Service in all such Matters as shall be committed unto them, for the Good and Benefit of the said Company, Colony and Plantation; As also unto such other Person or Persons as the said Treasurer, or his Deputy, with two others of the said Council shall think meet, for the Examination or clearing of the Truth, in any Cause whatsoever, concerning the said Plantation, or any business from thence proceeding, or thereunto belonging.

And furthermore, whereas We have been certified, That divers lewd and ill disposed Persons, both Sailors, Soldiers, Artificers, Husbandmen, Labourers and others, having received Wages, Apparel, and other Entertainment, from the said Company, or having contracted, and agreed with the said Company to go, or to serve, or to be employed in the said Plantation of the said first Colony in Virginia, have afterwards either withdrawn, hid, or concealed themselves, or have refused to go thither, after they have been so entertained and agreed withal; And that divers and sundry Persons also, who have been sent and employed in the said Plantation of the said first Colony in Virginia, at and upon the charge of the said Company, and having there misbehaved themselves by Mutinies, Sedition, or other notorious Misdemeanors, or having been employed or sent abroad by the Governor of Virginia, or his Deputy, with some Ship or Pinnace, for our Provision of the said Colony, or for some Discovery, or other Business and Affairs concerning the same, have from thence most treacherously either come back again, and returned into our Realm of England, by Stealth, or without Licence of our Governor of our said Colony in

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Virginia, for the Time being, or have been sent thither as Misdoers and Offenders: And that many
 also of those Persons after their Return from thence, having been questioned by our said Council here,
 for such their Misbehaviors and Offences, by their Insolent and Contemptuous Carriage in the Presence
 of our said Council, have shewed little respect and Reverence either to the Place or Authority in which
 we have placed and appointed them; And others for the colouring of their Lewdness and Misdemeanors
 committed in Virginia, have endeavoured by most vile and slanderous Reports made and divulged, as
 well of the Country of Virginia, as also of the Government and Estate of the said Plantation and
 Colony, as much as in them lay, to bring the said Voyage and Plantation into Disgrace and
 Contempt; By means whereof, not only the Adventurers and Planters already engaged in the said
 Plantation, have been exceedingly abused and hindered, and a great number of other, our loving and
 well-disposed Subjects, otherwise well affected and inclined to join and adventure in so noble, Christian,
 and worthy an Action, have been discouraged from the same; but also the utter overthrow and Ruin of
 the said Enterprise had been greatly endangered, which cannot miscarry without some Dishonour to Us,
 and our Kingdom.

Now, forasmuch as it appeareth unto us, that these Insolences, Misdemeanors, and Abuses, not to
 be tolerated in any civil Government, have, for the most part, grown and proceeded, in regard our said
 Council have not any direct Power and Authority, by any express words in our former Letters-patents, to
 correct and chastise such Offenders; We, therefore, for more speedy Reformation of so great and enormous
 Abuses and Misdemeanors heretofore practised and committed, and for the preventing f the like
 hereafter, do by these Presents for us, our Heirs and Successors, GIVE and GRANT, to the said Treasurer,
 and Company, and their Successors for ever, that it shall, and may be lawful for our said Council for the
 first Colony in Virginia, or any two of them (whereof the said Treasurer or his Deputy for the time
 being, to be always one) by Warrant under their Hands, to send for, or cause to be apprehended, all, and
 every such Person or Persons, who shall be noted, or accused, or found at any Time or Times hereafter, to
 offend or misbehave themselves, in any the Offences before mentioned or expressed, and upon the
 Examination of any such Offender or Offenders, and just Proof made by Oath, taken before the said
 Council, of any such notorious Misdemeanors by them committed as aforesaid; And also upon any
 insolent and contemptuous, or indecent Carriage and Misbehaviour, to, or against, any of our said Council,
 shewed or used by any such Person or Persons so called, convented, and appearing before us as
 aforesaid; That in all such cases they our said Council, or any two of them for the time being, shall, and
 may have full Power and Authority, either here to bind them over with good Sureties for their good
 Behaviour, and further therein, to proceed to all Intents and Purposes, as it is used in other like Cases,
 within our Realm of England; Or, else at their Discretions to remand and send back the said Offenders,
 or any of them, unto the said Colony in Virginia, there to be proceeded against and punished, as the
 Governor, Deputy or Council there, for the time being, shall think meet; Or otherwise, according to
 such Laws and Ordinances, as are and shall be in Use there, for the well-ordering and good Government
 of the said Government.

And for the more effectual Advancing of the said Plantation, We do further, for Us, our Heirs, and
 Successors, of our especial Grace and Favour, by Virtue of our Prerogative Royal, and by the Assent and
 Consent of the Lords and others of our Privy Council, GIVE and GRANT, unto the said Treasurer and
 Company, full Power and Authority, free Leave, Liberty, and Licence, to set forth, erect, and publish,
 one or more Lottery or Lotteries, to have Continuance, and to endure and be held, for the Space of our
 whole Year, next after the opening of the same; And after the End and Expiration of the said Term, the
 said Lottery or Lotteries to continue and be further kept, during our Will and Pleasure only, and not
 otherwise. And yet nevertheless, we are contented and pleased, for the Good and Welfare of the said
 Plantation, that the said Treasurer and Company shall, for the Dispatch and Finishing of the said Lottery
 or Lotteries, have six Months Warning after the said Year ended, before our Will and Pleasure shall, for
 and on that Behalf, be construed, deemed, and adjudged, to be in any wise altered and determined.

And our further Will and Pleasure is, that the said Lottery and Lotteries shall and may be opened
 and held, within our City of London, or in any other City or Town, or elsewhere, within this our Realm

SUPPLEMENT
 TO THE
 ONTARIO
 APPENDIX.

The Third
 Charter of
 Virginia
 1611-12.

SUPPLEMENT
TO THE
ONTARIO
APPENDIX.

The Third
Charter of
Virginia—
1611-'12.

of England, with such Prizes, Articles, Conditions, and Limitations, as to them, the said Treasurer and Company, in their Discretions, shall seem convenient: And it shall and may be lawful, to and for the said Treasurer and Company, to elect and choose Receivers, Surveyors, Auditors, Commissioners, or any other Officers whatsoever, at their Will and Pleasure, for the better marshalling, disposing, guiding, and governing of the said Lottery and Lotteries; And that it shall likewise be lawful, to and for the said Treasurer and any two of the said Council, to minister to all and every such Person, so elected and chosen for Officers, as aforesaid, one or more Oaths, for their good Behaviour, just and true Dealing, in and about the said Lottery or Lotteries, to the Intent and Purpose, that none of our loving Subjects, putting in their Names, or otherwise adventuring in the said general Lottery or Lotteries, may be, in any wise defrauded and deceived of their said Monies, or evil and indirectly dealt withal in their said Adventures. 10

And we further GRANT, in Manner and Form aforesaid, that it shall and may be lawful, to and for the said Treasurer and Company, under the Seal of our said Council for the Plantation, to publish, or to cause and procure to be published by Proclamation, or otherwise (the said Proclamation to be made in their Name, by Virtue of these Presents) the said Lottery or Lotteries, in all Cities, Towns, Burroughs, and other Places, within our said Realm of England; And we Will and Command all Mayors, Justices of the Peace, Sheriffs, Bailiffs, Constables, and other Officers and loving Subjects, whatsoever, that in no wise, they hinder or delay the Progress and Proceedings of the said Lottery or Lotteries, but be therein, touching the Premises, aiding and assisting, by all honest, good, and lawful Means and Endeavours.

And further, our Will and Pleasure is, that in all Questions and Doubts, that shall arise, upon any Difficulty of Construction or Interpretation of any Thing, contained in these, or any other our former Letters-patents, the same shall be taken and interpreted, in most ample and beneficial Manner for the said Treasurer and Company, and their Successors, and every Member thereof. 20

And lastly, we do, by these Presents, RATIFY AND CONFIRM unto the said Treasurer and Company, and their Successors, for ever, all and all Manner of Privileges, Franchise, Liberties, Immunities, Preheminences, Profits, and Commodities, whatsoever, granted unto them in any our former Letter-patents, and not in these Presents revoked, altered, changed or abridged. ALTHOUGH express Mention of the true Yearly Value or Certainty of the Premises, or any of them, or of any other Gift or Grant, by Us or any our Progenitors or Predecessors, to the aforesaid Treasurer and Company heretofore made in these Presents is not made; or any Statute, Act, Ordinance, Provision, Proclamation, or Restraint, to the contrary thereof heretofore made, ordained, or provided, or any other Matter, Cause or thing, whatsoever, to the contrary, in any wise, notwithstanding. 30

IN WITNESS whereof, we have caused these our Letters to be made Patents. Witness Ourselves, at Westminster, the twelfth day of March, in the ninth Year of our Reign of England France, and Ireland and of Scotland, the five and fortieth.

THE CHARTER OF NEW ENGLAND—1620.*

SUPPLEMENT
TO THE
ONTARIO
APPENDIX

The Charter
of New Eng-
land—1620.

JAMES, by the Grace of God, King of England, Scotland, France, and Ireland, Defender of the Faith, &c., to all whom these Presents shall come, Greeting, Whereas, upon the humble Petition of divers of our well disposed Subjects, that intended to make several Plantations in the Parts of America, between the Degrees of thirty-foure and ffourty-five; We according to our princely Inclination, favouring much their worthy Disposition, in Hope thereby to advance the in Largement of Christian Religion, to the Glory of God Almighty, as also by that Meanes to stretch out the Bounds of our Dominions, and to replenish those Deserts with People governed by Lawes and Magistrates, for the peaceable Commerce of all, that in time to come shall have occasion to traffique into those
10 Territories, granted unto Sir Thomas Gates, Sir George Somers, Knights, Thomas Hamon, and Raleigh Gilbert, Esquires, and of their Associates, for the more speedy Accomplishment thereof, by our Letters-Patent, bearing Date the Tenth Day of Aprill, in the Fourth Year of our Reign of England, France, and Ireland, and of Scotland the ffourtieth, free Liberty to divide themselves into two several Collonyes; the one called the first Collonye, to be undertaken and advanced by certain Knights, Gentle-
20 men, and Merchants, in and about our Cty of London; the other called the Second Collonye, to be undertaken and advanced by certaine Knights, Gentlemen, and Merchants, and their associates, in and about our Citties of Bristol, Exon, and our Towne of Plymouth, and other Places, as in and by our said Letters-Patents, amongst other Things more att large it doth and may appeare.

And whereas, since that Time, upon the humble Petition of the said Adventurers and Planters
20 of the said first Collonye, We have been graciously pleased to make them one distinct and entire Body by themselves, giving unto them their distinct Lymitts and Bounds, and have upon their like humble Request, granted unto them divers Liberties, Priveliges, Enlargements, and Immunityes, as in and by our severall Letters-Patents it doth and may appeare.

Now forasmuch as We have been in like Manner humbly petitioned unto by our trusty and well beloved Servant, Sir Ferdinando Gorges, Knight, Captain of our flort and Island by Plymouth, and by certain the principal Knights and Gentlemen Adventurers of the said Second Collonye, and by divers other Persons of quality, who now intend to be their Associates, divers of which have been at great and extraordinary Charge, and sustained many Losses in seeking and discovering a Place fit and convenient
30 to lay the Foundation of a hopeful Plantation, and have divers Years past by God's Assistance, and their own endeavours, taken actual Possession of the Continent hereafter mentioned, in our Name and to our Use, as Sovereign Lord thereof, and have settled already some of our People in Places agreeable to their Desires in those Parts, and in Confidence of prosperous Success therein, by the Continuance of God's Divine Blessing, and our Royall Permission, have resolved in a more plentifull and effectual Manner to prosecute the same, and to that Purpose and Intent have desired of Us, for their better Encouragement and Satisfaction herein, and that they may avoide all Confusion, Questions, or Differences between them-
40 selves, and those of the said first Collonye, We would likewise be graciously pleased to make certaine Adventurers, intending to erect and establish fishery, Trade and Plantacion, within the Territories, Precincts, and Lymitts of the said second Colony, and their Successors, one several distinct and entire Body, and to grant unto them, such Estate, Liberties, Priveliges, Enlargements, and Immunityes there,
50 as in these our Letters-Patents hereafter particularly expressed and declared.

And forasmuch as We have been certainly given to understand by divers of our good Subjects, that have for these many Yeares past frequented those Coast and Territories, between the Degrees of Fourty and Fourty-Eight, that there is noe other the Subjects of any Christian King or State, by any Authority from their Sovereignes, Lords, or Princes, actually in Possession of any of the said Lands or Precincts, whereby any Right, Claim, Interest, or Title, may, might, or ought by that Meanes accrue, belong, or appertaine unto them, or any of them.

* The London Company, organized under the charter of 1606, received a new charter in 1609, as the South Virginia Company, and the Plymouth Company was reorganized in 1620, "for the planting, ruling, ordering, and governing of New England in America.

And also for that We have been further given certainly to knowe, that within these late Yeares there hath by God's Visitation raigned a wonderfull Plague, together with many horrible Slaughters and Murthers, committed amongst the Sauges and brutish People there, heertofore inhabiting, in a Manner to the utter Destruction, Deustacion, and Depopulation of that whole Territorye, so that there is not left for many Leagues together in a Manner, any that doe claime or challenge any Kind of Interests therein, nor any other Superiour Lord or Souveraigne to make Claime thereunto, whereby We in our Judgment are persuaded and satisfied that the appointed Time is come in which Almighty God in his great Goodness and Bountie towards Us and our People, hath thought fitt and determined, that those large and goodly Territoryes, deserted as it were by their naturall Inhabitants, should be possessed and enjoyed by such of our Subjects and People as heertofore have and hereafter shall by his Mercie and Favour, and by his Powerfull Arme, be directed and conducted thither. 10

In Contemplacion and serious Consideracion whereof, Wee have thought it fitt according to our Kingly Duty, soe much as in Us lyeth, to seconde and followe God's sacred Will, rendering reverend Thanks to his Divine Majestie for his gracious favour in laying open and revealing the same unto us, before any other Christian Prince or State, by which Meanes without Offence, and as Wee trust to his Glory, Wee may with Boldness goe on to the settling of soe hopefull a Work, which tendeth to the reducing and Conversion of such Sauges as remaine wandering in Desolacion and Distress, to Civil Societie and Christian Religion, to the Inlargement of our own Dominions, and the Advancement of the Fortunes of such of our good Subjects as shall willingly intresse themselves in the said Employment, to whom We cannot but give singular Commendations for their soe worthy Intention and Enterprize: 20
Wee therefore, of our especial Grace, mere Motion, and certaine Knowledge, by the Advice of the Lords and others of our Privy Councell have for Us, our Heirs and Successors, granted, ordained, and established, and in and by these Presents, Do for Us, our Heirs and Successors, grant, ordaine and establish, that all that Circuit, Continent, Precincts, and Limits in America, lying and being in Breadth from Forty Degrees of Northerly Latitude, from the Equinoctiall Line, to Forty-eight Degrees of the said Northerly Latitude, and in length by all the Breadth aforesaid throughout the Maine Land, from Sea to Sea, with all the Seas, Rivers, Islands, Creekes, Inletts, Ports, and Havens within the Degrees, Precincts, and Limits of the said Latitude and Longitude, shall be the Limits and Bounds, and Precincts of the second Collony: And to the End that the said Territoryes may forever hereafter be more particularly and certainly known and distinguished, our Will and Pleasure is, 30
that the same shall from henceforth be nominated, termed, and called by the Name of New-England, in America; and by that Name of New-England in America, the said Circuit, Precinct, Limitt, Continent, Islands, and Places in America aforesaid, We do by these Presents, for Us, our Heirs and Successors, name, call, erect, found and establish, and by that Name to have continuance for ever.

And for the better Plantacion, ruling, and governing of the aforesaid New-England in America, We will, ordaine, constitute, assigne, limitt and appoint, and for Us, our Heirs and Successors, Wee, by the Advice of the Lords and others of the said privie Councill, do by these presents ordaine, constitute, limitt, and appoint, that from henceforth, there shall be for ever hereafter, in our Towne of Plymouth, in the County of Devon, one Body politique and corporate, which shall have perpetuall succession, which shall consist of the Number of fourtie Persons, and no more, which shall be, and shall be called and knowne by the Name the Council established at Plymouth, in the County of Devon, for the planting 40
ruling, ordering, and governing of New-England in America; and for that Purpose Wee have, at and by the Nomination and Request of the said Petitioners, granted, ordained, established, and confirmed; and by these Presents, for Us, our Heirs and Successors, doe grant, ordaine, establish, and confirme, our right trusty and right well beloved Cosins and Councillors Lodewick, Duke of Lenox, Lord Steward of our Household, George Lord Marquess Buckingham, our High Admiral of England, James Marquess Hamilton, William Earl of Pembroke, Lord Chamberlaine of our Household, Thomas Earl of Arundel and our right trusty and right well beloved Cosin, William Earl of Bathe, and right trusty and right well beloved Cosin and Comceல்லor, Henry Earl of Southampton, and our right trusty and right well beloved Consins, William Earle of Salisbury, and Robert Earle of Warwick, and our right trusty and well

at within these late Yeares
any horrible Slaughters and
herebefore inhabiting, in a
whole Territorie, so that there
be no such Kind of Interests
hereunto, whereby We in our
right Almighty God in his
Name determined, that those
Persons, should be possessed and
held, shall be by his Mercie and

it fit according to our
Will, rendering reverend
and revealing the same unto us,
and as We trust to his Glory,
which tendeth to the relieving
of Distress, to Civil Societies
the Advancement of the
in the said Employment, to
Attention and Enterprize: 20
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aforesaid throughout the
Islands, Ports, and Havens
aforesaid shall be the Limits
of the said Territories may for
our Will and Pleasure is, 30
the Name of New-England,
Precinct, Limit,
for Us, our Heirs and
continuance for ever.

England in America, We
Successors, Wee, by the
Persons ordaine, constitute,
our Towne of Plymouth,
the perpetuall succession,
shall be, and shall be called 40
of Devon, for the planting
purpose Wee have, at and
published, and confirmed:
publish, and confirme, our
Lenox, Lord Steward of
England, James Marquess
Thomas Earl of Arundell
right trusty and right
right trusty and right well

beloved John Viscount Haddington, and our right trusty and well beloved Concellor Edward Lord Zouch, Lord Warden of our Cinque Ports, and our trusty and well beloved Edmond Lord Sheffield, Edward Lord Gorges, and our well beloved Sir Edward Seymour, Knight and Barronet, Sir Robert Manselle, Sir Edward Zouch, our Knight Marshall, Sir Dudley Diggs, Sir Thomas Roe, Sir Ferdinando Gorges, Sir Francis Popham, Sir John Brook, Sir Thomas Gates, Sir Richard Hawkins, Sir Richard Edgecombe, Sir Allen Apsley, Sir Warwick Hale, Sir Richard Catchmay, Sir John Bourchier, Sir Nathaniel Rich, Sir Edward Giles, Sir Giles Mompesson, and Sir Thomas Wroth, Knights; and our well beloved Matthew Suttcliffe, Dean of Exeter, Robert Heath, Esq.; Recorder of our Cittie of London, Henry Bourchier, John Drake, Rawleigh Gilbert, George Chudley, Thomas Hamon, and John Argall, Esquires, 10
to be in and by these Presents.

We do appoint them to be the first moderne and present Councill established at Plymouth, in the County of Devon, for the planting, ruling, ordering, and governing of New-England, in America; and that they, and the Surniours of them, and such as the Surniours and Surniour of them shall, from tyme to tyme elect, and chuse, to make up the aforesaid Number of fourtie Persons, when, and as often as any of them, or any of their Successors shall happen to decease, or to be removed from being of the said Councill, shall be in, and by these Presents, incorporated to have a perpetuall Succession for ever, in Deed, Fact, and Name, and shall be one body corporate and politieque; and that those, and such said Persons and their Successors, and such as shall be elected and chosen to succeed them as aforesaid, shall be, and by these Presents are, and be incorporated, named, and called by the Name of the Councill established at 20
Plymouth, in the County of Devon, for the planting, ruling, and governing of New-England, in America; and them the said Duke of Lenox, Marquess Buckingham, Marquess Hamilton, Earle of Pembroke, Earle of Arundell, Earle of Bathe, Earle of Southampton, Earle of Salisbury, Earle of Warwick, Viscount Haddington, Lord Zouch, Lord Sheffield, Lord Gorges, Sir Edward Seymour, Sir Robert Mansell, Sir Edward Zouch, Sir Dudley Diggs, Sir Thomas Roe, Sir Ferdinando Gorges, Sir Francis Popham, Sir John Brooks, Sir Thomas Gates, Sir Richard Hawkins, Sir Richard Edgecombe, Sir Allen Apsley, Sir Warwick Heale, Sir Richard Catchmay, Sir John Bourchier, Sir Nathaniel Rich, Sir Edward Giles, Sir Giles Mompesson, Sir Thomas Wroth, Knights; Matthew Suttcliffe, Robert Heath, Henry Bourchier, John Drake, Rawleigh Gilbert, George Chudley, Thomas Hamon, and John Argall, Esqrs. and their successors, one Body corporate and politiek, in Deed and Name, by the Name of the Councell established 30
at Plymouth, in the County of Devon, for the planting, ruling, and governing of New-England, in America.

Wee do by these Presents, for Us, our Heires and Successors, really and fully incorporate, erect, ordaine, name, constitute, and establish, and that by the same Name of the said Councill, they and their Successors for ever hereafter be incorporated, named, and called, and shall by the same Name have perpetuall Succession.

And further, Wee do hereby for Us, our Heires and Successors, grant unto the said Councill established at Plymouth, that they and their Successors, by the same Name, be and shall be, and shall continue Persons able and capable in the Law, from time to time, and shall by that Name, of Councill aforesaid, have full Power and Authority, and lawful Capacity and Hability, as well to purchase, take, 40
hold, receive, enjoy, and to have, and their Successors for ever, any Manors, Lands, Tenements, Rents, Royalties, Privileges, Immunities, Reversions, Annuities, Hereditaments, Goods and Chattles whatsoever, of or from us, our Heirs, and Successors, and of or from any other Person or Persons whatsoever, as well in and within this our Realme, of England, as in and within any other Place or Places whatsoever or wheresoever; and the same Manors, Lands, Tenements, and Hereditaments, Goods or Chattles, or any of them, by the same Name to alien and sell, or to do, execute, ordaine and performe all other Matters and Things whatsoever to the said Incorporation and Plantation concerning and belonging.

And further, our Will and Pleasure is, that the said Councill, for the time being, and their Successors, shall have full power and lawful Authority, by the Name aforesaid, to sue, and be sued; to implead, and to be impleaded; to answer, and to be answered, unto all Manner of Courts and Places that

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now are, or hereafter shall be, within this our Realme and elsewhere, as well temporal and spiritual, in all Manner of Suits and Matters whatsoever, and of what Nature or Kinde soever, such Suite or Action be or shall be.

And our Will and Pleasure is, that the said forty Persons, or the greater Number of them, shall and may, from time to time, and at any time hereafter, at their owne Will and Pleasure, according to the Laws, Ordinances, and Orders of or by them, or by the greater Part of them, hereafter in Manner and forme in these Presents mentioned, to be agreed upon, to elect and choose amongst themselves one of the said forty Persons for the Time being, to be President of the said Council, which President soe elected and chosen, Wee will, shall continue and be President of the said Council, which President as by the Orders of the said Council, from time to time to be made, as hereafter is mentioned, shall be thought fitt and no longer; unto which President, or in his Absence, to any such Person as by the Order of the said Council shall be thereunto appointed, Wee do give Authority to give Order for the warning of the said Council, and summoning the Company to their Meetings.

And our Will and Pleasure is, that from time to time, when and so often as any of the Council shall happen to decease, or to be removed from being of the said Council, that then, and so often, the Survivors of them the said Council, and no other, or the greater Number of them, who then shall be from time to time left remaininge, and who shall, or the greater number of which that shall be assembled at a Public Court or Meeting to be held for the said Company, shall elect and choose one or more other Person or Persons to be of the said Council, and which from time to time shall be of the said Council, so that the number of forty Persons of the said Council may from time to time be supplied: Provided always that as well the Persons herein named to be of the said Council, as every other Conncellor hereafter to be elected, shall be presented to the Lord Chancellor of England, or to the Lord High Treasurer of England, or to the Lord Chamberlaine of the Household of Us, our Heires and Successors for the Time being, to take his and their Oath and Oathes of a Conncellor and Conncellors to Us, our Heires and Successors, for the said Company and Collonye in New-England.

And further, Wee will and grant by these Presents for Us, our Heires and Successors, unto the said Council and their Successors, that they and their Successors shall have and enjoy for ever a Common Seale, to be engraven according to their Discretions; and that it shall be lawfull for them to appoint whatever Seale or Seales, they shall think most meete and necessary, either for their Use, as they are one united Body incorporate here, or for the publick of their Gouvernour and Ministers of New-England aforesaid, whereby the Incorporation may or shall seale any Manner of Instrument touching the same Corporation, and the Manors, Lands, Tenements, Rents, Reversions, Annuities, Hereditaments, Goods, Chattles, Affaires, and any other Things belonging unto, or in any wise appertaininge, touching, or concerning the said Council and their Successors, or concerning the said Corporation and plantation in and by these our Letters-Patents as aforesaid founded, erected, and established.

And Wee do further by these Presents, for Us, our Heires and Successors, grant unto the said Council and their Successors, that it shall and may be lawfull to and for the said Council, and their Successors for the Time being, in their discretions, from time to time to admitt such and so many Person and Persons to be made free and enabled to trade traffick unto, within, and in New-England aforesaid, and unto every Part and Parcell thereof, or to have, possess, or enjoy, any Lands or Hereditaments in New-England aforesaid, as they shall think fitt, according to the Laws, Orders, Constitutions, and Ordinances, by the said Council and their Successors from time to time to be made and established by Virtue of, and according to the true Intent of these Presents, and under such Conditions, Reservations, and agreements as the said Council shall set downe, order and direct, and not otherwise.

And further, of our especiall Grace, certaine Knowledge, and mere Motion, for Us, our Heires and Successors, Wee do by these Presents give and grant full Power and Authority to the said Council and their Successors, that the said Council for the Time being, or the greater Part of them, shall and may, from time to time, nominate, make, constitute, ordaine, and confirme by such Name or Names, Sale or

Sales, as to them shall seeme Good; and likewise to revoke, discharge, change, and alter, as well all and singular, Governors, Officers and Ministers, which hereafter shall be by them thought fit and needful to be made or used, as well to attend the Business of the said Company here, as for the Government of the said Collony and Plantation, and also to make, ordaine, and establish all Manner of Orders, Laws, Directions, Instructions, Forms, and Ceremonies of Government and Magistracye fit and necessary for and concerning the Government of the said Collony and Plantation, so always as the same be not contrary to the Laws and Statutes of this our Realme of England, and the same att all Times hereafter to abrogate, revoke, or change not only within the Precincts of the said Collony, but also upon the seas in going and coming to and from the said Collony, as they in their good Discretions shall thinke to be fittest for the good of the Adventurers and Inhabitants there.

And we do further of our especiall Grace, certaine Knowledge, and mere Motion, grant, declare, and ordain, that such principall Governor, as from time to time shall be authorized and appointed in Manner and Forme in these Presents heretofore expressed, shall have full Power and Authority to use and exercise marshall Laws in Case of Rebellion, Insurrection and Mutiny, in as large and ample Manner as our Lientenants in our Countyes within our Realme of England have or ought to have by Force of their Commission of Lientenancy.

And for as much as it shall be necessary for all our lovinge Subjects as shall inhabit within the said Precincts of New-England aforesaid, to determine to live together in the Peace and true Worship of Almighty God, Christian Peace, and civil Quietness, each with other, whereby every one may with more Safety, Pleasure, and Profit, enjoye that wherunto they shall attaine with great Pain and Perill, Wee, for Us, our Heires and Successors, are likewise pleased and contented, and by these Presents do give and grant unto the said Council and their Successors, and to such Governors, Officers, and Ministers, as shall be by the said Council constituted and appointed according to the Natures and Limits of their Offices and Places respectively, that they shall and may, from time to time for ever hereafter, within the said Precincts of New-England, or in the Way by the Seas thither, and from thence have full and absolute Power and Authority to correct, punish, pardon, govern, and rule all such the Subjects of Us, our Heires and Successors, as shall from time to time adventure themselves in any Voyage thither, or that shall att any Time hereafter inhabit in the Precincts or Territories of the said Collony as aforesaid, according to such Laws, Orders, Ordinances, Directions, and Instructions as by the said Council aforesaid shall be established; and in Defect thereof, in Cases of Necessity, according to the good Discretions of the said Governors and Officers respectively, as well in Cases capitall and criminall, as civill, both marine and others, so always as the said Statutes, Ordinances, and Proceedings, as near as conveniently may be, agreeable to the Laws, Statutes, Government and Policie of this our Realme of England.

And furthermore, if any Person or Persons, Adventurers or Planters of the said Collony, or any other, att any Time or Times hereafter, shall transport any Moneys, Goods, or Merchandizes, out of any of our Kingdoms, with a Pretence or Purpose to land, sell, or otherwise, dispose of the same within the Limits and Bounds of the said Collony, and yet nevertheless being att sea, or after he hath landed within any Part of the said Collony shall carry the same into any other foraigne Country with a Purpose there to sell and dispose thereof, that then all the Goods and Chattles of the said Person or Persons so offending and transported, together with the Ship or Vessell wherein such Transportation was made, shall be forfeited to Us, our Heires and Successors.

And Wee do further of our especiall Grace, certaine Knowledge, and mere Motion for Us, our Heires and Successors for and in Respect of the Considerations aforesaid, and for divers other good Considerations and Causes, us therunto especially moving, and by the Advice of the Lords and Others of our said Privy Council have absolutely given, granted, and confirmed, and do by these Presents absolutely give, grant, and confirm unto the said Council, called the Council established att Plymouth in the County of Devon for the planting, ruling, and governing of New-England in America, and unto their Successors for ever, all the aforesaid Lands and Grounds, Continent, Precinct, Place, Places and Territoryes, viz. that aforesaid part of America, lying, and being in Breadth from forty Degrees of Northerly Latitude from the

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Equinoctial Line, to forty-eight Degrees of the said Northerly Latitude inclusively, and in Length of, and within all the Breadth aforesaid, throughout all the Maine Lands from Sea to Sea, together also, with the Firme Lands, Soyles, Grounds, Havens, Ports, Rivers, Waters, Fishings, Mines, and Minerals, as well Royall Mines of Gold and Silver, as other Mines and Minerals, precious Stones, Quarries, and all, and singular other Comodities, Jurisdictions, Royalties, Priveliges, Franchises, and Preheminences, both within the same Tract of Land upon the Maine, and also within the said Islands and Seas adjoining: Provided always, that the said Islands, or any of the Premises herein before mentioned, and by these Presents intended and meant to be granted, be not actually possessed or inhabited by any other Christian Prince or Estate, nor be within the Bounds, Limitts, or Territoryes, of that Southern Collony heretofore by us granted to be planted by diverse of our loving Subjects in the South Part, to have and to hold, possess and enjoy, all, and singular, the aforesaid Continent, Lands, Territoryes, Islands, Hereditaments and Precinets, Sea Waters, Fishings, with all, and all Manner their Commodities, Royalties, Liberties, Preheminences, and Profitts, that shall arise from thence, with all and singular, their Appertenances, and every Part and Parcell thereof, and of them, to and unto the said Councell and their Successors and Assignes for ever, to the sole only and proper Use, Benefit, and behoofe of them the said Council and their Successors and Assignes for ever, to be holden of Us, our Heires, and Successors, as of our Manor of East-Greenwich, in our County of Kent, in free and common Socage and not in Capite, nor by Knight's Service: yielding and paying therefore to Us, our Heires, our Successors, the fifth Part, of the Ore of Gold and Silver, which from time to time, and att all times hereafter, shall happen to be found, gotten, had, and obtained, in or within any of the said Lands, Limitts, Territoryes, and Precinets, or in or within any Part or Parcell thereof, for, or in respect of all, and all Manner of Dutys, Demands, and Services whatsoever, to be done, made, or paid to Us, our Heires, and Successors.

And Wee do further of our especiall Grace, certaine Knowledge, and meere Motion, for Us, and our Heires, and Successors, give and grant to the said Councell, and their Successors for ever by these Presents, that it shall be lawfull and free for them and their Assignes, att all and every time and times hereafter, out of our Realmes or Dominions whatsoever, to take, load, carry, and transport in, and into their Voyages, and for, and towards the said Plantation in New-England, all such and so many of our loving Subjects, or any other Strangers that will become our loving Subjects, and live under our Allegiance, as shall willingly accompany them in the said Voyages and Plantation, with Shipping Armour, Weapons, Ordnance, Munition, Powder, Shott, Victuals, and all Manner of Cloathing Implements, Furniture, Beasts, Cattle, Horses, Mares, and all other Things necessary for the said Plantation, and for their Use and Defence, and for Trade with the People there, and in passing and returning to and fro, without paying or yielding, any Custom or Subsidie either inward or outward, to Us, our Heires, or Successors, for the same, for the Space of seven Years, from the Day of the Date of these Presents, provided, that none of the said Persons be such as shall be hereafter by special Name restrained by Us, our Heire, or Successors.

And for their further Encouragement, of our especiall Grace and Favor, Wee do by these Presents, for Us, our Heires, and Successors, yield and grant, to and with the said Councell and their Successors, and every of them, their Factors and Assignes, that they and every of them, shall be free and quitt from all Subsidies and Customes in New England for the Space of seven Years, and from all Taxes and Impositions for the Space of twenty and one Yeares, upon all Goods and Merchandizes, att any time or times hereafter, either upon Importation thither, or Exportation from thence into our Realme of England, or into any our Dominions by the said Councell and their Successors, their Deputies, Factors, and Assigns, or any of them, except only the five pounds per Cent. due for Custome upon all such Goods and Merchandizes, as shall be brot and imported into our Realme of England, or any other of our Dominions, according to the ancient Trade of Merchants; which five Pounds per Cent. only being paid, it shall be thenceforth lawfull and free for the said Adventurers, the same Goods and Merchandize to export and carry out of our said Dominions into forraigne Parts, without any Custom, Tax, or other Duty to be paid to Us, our Heires, or Successors, or to any other Officers or Ministers of Us, our Heires, or Successors, provided, that the said Goods and Merchandizes be shipped out within thirteene Months after their first Landing within any Part of these Dominions.

And further our Will and Pleasure, and Wee do by these Presents charge, comand, warrant, and authorize the said Councill, and their Successors, or the Major Part of them, which shall be present and assembled for that Purpose, shall from time to time under their comon Seale, distribute, convey, assigne, and sett over, such particuler Portions of Lands, Tenements, and Hereditaments, as are by these Presents, formerly granted unto each our loving Subjects, naturally borne or Denisons, or others, as well Adventurers as Planters, as by the said Company upon a Comission Survey and Distribution, executed and returned for that Purpose, shall be named, appointed, and allowed, wherein our Will and Pleasure is, that Respect be had as well to the Proportion of the Adventurers, as to the speciall Service, Hazard, Exploit, or Meritt of any person so to be recompensed, advanced, or rewarded

10 and wee do also, for Us, our Heires and Successors grant to the said Councell and their Successors and to all and every such Governours, or Officers, or Ministers, as by the said Councill shall be appointed to have power and Authority of Government and Command in and over the said Collony and Plantation, that they and every of them, shall, and lawfully may, from time to time, and att all Times hereafter for ever, for their severall Defence and Safety, encounter, expulse, repel, and resist by Force of Arms, as well by Sea as by Land, and all Ways and Meanes whatsoever, all such Person and Persons, as without the speciall Licence of the said Councell and their Successors, or the greater Part of them, shall attempt to inhabit within the said severall Precincts and Limits of the said Collony and Plantation. And also all, and every such Person or Persons whatsoever, as shall enterprize or attempt att any time hereafter Destruction, Invasion, Detriment, or

20 Annoyance to the said Collony and Plantation; and that it shall be lawfull for the said Councill, and their Successors, and every of them, from Time to Time, and att all Times hereafter, and they shall have full Power and Authority, to take and surprize by all Ways and Meanes whatsoever, all and every such Person and Persons whatsoever, with their Ships, Goods, and other Furniture, traffeking in any Harbour, Creeke, or Place, within the Limitts and Precinctes of the said Collony and Plantations, and not being allowed by the said Councill to be adventurers or Planters of the said Collony.

And of our further Royall Favor, Wee have granted, and for Us, our Heires, and Successors, Wee do grant unto the said Councill and their Successors, that the said Territoryes, Lands, Rivers, and Places aforesaid, or any of them, shall not be visited, frequented, or traded unto, by any other of our Subjects, or the Subjects of Us, our Heires, or Successors, either from any the Ports and Havens belonging or

30 appertayning, or which shall belong or appertayne unto Us, our Heires, or Successors, or to any forraigne State, Prince, or Pottentate whatsoever: And therefore, Wee do hereby for us, our Heires, and Successors, charge, comand, prohibit and forbid all the Subjects of Us, our Heires, and Successors, of what Degree and Quality soever, they be, that none of them, directly, or indirectly, presume to vissitt, frequent, trade, or adventure to traffick into, or from the said Territoryes, Lands, Rivers, and Places aforesaid, or any of them other than the said Councill and their Successors, ffactors, Deputyes, and Assignes, unless it be with the License and Consent of the said Councill and Company first had and obtained in Writing, under the comon Seal, upon Pain of our Indignation and Imprisonment of their Bodys during the Pleasure of Us, our Heires or Successors, and the Forfeiture and Loss both of their Ships and Goods, wheresoever they shall be found either within any of our Kingdomes or Dominions, or

40 any other Place or Places out of our Dominions.

And for the better effecting of our said Pleasure herein Wee do heereby for Us, our Heires and Successors, give and grant full Power and Authority unto the said Councill, and their Successors, for the time being, that they by themselves, their Factors, Deputyes, or Assignes, shall and may from time to time, and at all times hereafter, attach, arrest, take, and seize all and all Manner of Ship and Ships, Goods, Wares, and Merchandizes whatsoever, which shall be bro't from or carried to the Places before mentioned, or any of them, contrary to our Will and Pleasure, before in these Presents expressed. The Moyety or one halfe of all which Forfeitures Wee do hereby for Us, our Heires and Successors, give and grant unto the said Councill, and their Successors to their own proper Use without Accompt, and the other Moyety, or halfe Part thereof, Wee will shall be and remaine to the Use of Us, our Heires and Successors.

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And we likewise have condiscended and granted, and by these Presents, for Us, our Heires and Successors, do condiscend, and grant to and with the said Council and their Successors, that Wee, our Heires or Successors, shall not or will not give and grant any Libertye, License, or Authority to any Person or Persons whatsoever, to saile, trade, or trafficke unto the aforesaid parts of New-England, without the good Will and Likinge of the said Council, or the greater Part of them for the Time beinge, att any their Courts to be assembled.

And Wee do for us, our Heires and Successors, give and grant unto the said Council, and their Successors, that whensoever, or so often as any Custome or Subsidie shall growe due or payable unto Us, our Heires or Successors, according to the Limitation and Appointment aforesaid by Reason of any Goods, Wares, Merchandizes, to be shipped out, or any Returne to be made of any Goods, Wares, or Merchandizes, unto or from New-England, or any the Lands, Territoryes aforesaid, that then so often, and in such Case the farmers, Customers and Officers of our Customes of England and Ireland, and every of them, for the Time beinge, upon Request made unto them by the said Council, their Successors, factors, or Assignes, and upon convenient Security, to be given in that Behalf, shall give and allow unto the said Council and their Successors, and to all Person and Persons free of the said Company as aforesaid, six Months Time for the Payment of the one halfe of all such Custome and Subsidie, as shall be due, and payable unto Us, our Heires and Successors for the same, for which these our Letters-patent or the Duplicate, or the Enrolment thereof, shall be unto our said Officers a sufficient warrant and Discharge.

Nevertheless, our Will and Pleasure is, that if any of the said Goods, Wares, and Merchandizes, which be, or shall be, att any Time hereafter, landed and exported out of any of our Realmes, aforesaid, and shall be shipped with a Purpose not to be carried to New-England aforesaid, that then such Payment, Duty, Custome, Imposition, or Forfeiture, shall be paid and belong to Us, our Heires, and Successors, for the said Goods, Wares, and Merchandizes, so fraudulently sought to be transported, as if this our Grant had not been made nor granted: And Wee do for Us, our Heires and Successors, give and grant unto the said Council and their Successors for ever, by these Presents, that the said President of the said Company, or his Deputy for the Time beinge, or any two others of the said Council, for the said Collony in New-England, for the time beinge, shall and may, and att all times hereafter, and from time to time, have full Power and Authority, to minister and give the Oath and Oaths of Allegiance and Supremacy, or either of them, to all and every Person and Persons, which shall att any Time and Times hereafter, goe or pass to the said Collony in New-England.

And further, that it shall be likewise be lawfull for the said President, or his Deputy for the time beinge, or any two others of the said Council for the said Collony of New-England for the Time beinge, from time to time, and att all Times hereafter, to minister such a formal Oath, as by their Discretion shall be reasonably devised, as well unto any Person and Persons employed or to be employed in, for, or touching the said Plantation, for their honest, faithfull, and just Discharge of their Service, in all such Matters as shall be committed unto them for the Good and Benefit of the said Company, Collony, and Plantation, as also unto such other Person or Persons, as the said President or his Deputy, with two others of the said Council, shall thinke meete for the Examination or clearing of the Truth in any Cause whatsoever, concerning the said Plantation, or any Business from thence proceeding, or thereunto belonging.

And to the End that no lewd or ill-disposed Persons, Saylor, Soldiers, Artificers, Labourers, Husbandmen, or others, which shall receive Wages, Apparel, or other Entertainment from the said Council, or contract and agree with the said Council to goe, and to serve, and to be employed, in the said Plantation, in the Collony in New-England, do afterwards withdraw, hide, and conceale themselves, or refuse to go thither, after they have been so entertained and agreed withall; and that no Persons which shall be sent and employed in the said Plantation, of the said Collony in New-England, upon the Charge of the said Council, doe misbehave themselves by mutinous Seditions, or other notorious Misdemeanors, or which shall be employed, or sent abroad by the Governour of New-England or his

Deputy, with any Shipp or Pinnace, for provision for the said Collony, or for some Discharge of their Business or Affaires concerninge the same, doe from thence either treacherously come into the same, or returne into the Realme of Englande by Stealth, or without Licence of the Governour of the said Collony in New-England for the Time being, or be sent hither as Misdoers or Offenders; and that none of those Persons after their Returne from thence, being questioned by the said Councill here, for such their Misdemeanors and Offences, do, by insolent and contemptuous Carriage in the Presence of the said Councill shew little Respect and Reverence, either to the Place or Authority in which we have placed and appointed them and others, for the clearing of their Lewdness and Misdemeanors committed in New-England, divulge vile and scandalous Reports of the Country of New-England, or of the Government or Estate of the said Plantation and Collony, to bringe the said Voyages and Plantation into Disgrace and Contempt, by Means whereof, not only the Adventurers and Planters already engaged in the said Plantation may be exceedingly abused and hindered, and a great number of our boyeing and well-disposed Subjects, other ways well affected and inclined to joine and adventure in so noble a Christian and worthy Action may be discouraged from the same, but also the Enterprize itself may be overthrowe, which cannot miscarry without some Dishonour to Us and our Kingdome: Wee, therefore, for preventing so great and enormous Abuses and Misdemeanors, Do, by these presents for Us, our Heires and Successors, give and grant unto the said President or his Deputy, or such other Person or Persons, as by the Orders of the said Councill shall be appointed by Warrant under his or their Hand or Hands, to send for, or cause to be apprehended all and every such Person and Persons, who shall be noted or accused, or found at any time or times, hereafter to offend or misbehave themselves in any the Affaires before mentioned and expressed; and upon the Examination of any such Offender or Offenders, and just Proove made by Oathe taken before the said Councill, or of any such notorious Misdemeanours by them committed as aforesaid, and also upon any insolent, contemptuous, or irreverent Carriage or Misbehaviour, to or against the said Councill, to be shewed or used by any such Person or Persons, so called, convened, and appearing before them as aforesaid, that in all such Cases, our said Councill, or any two or more of them for the Time being, shall and may have full Power and Authority, either here to bind them over with good Sureties for their good Behaviour, and further therein to proceed, to all Intents and Purposes as it is used in other like Cases within our Realme of England, or else at their Discretions to remand and send back the said offenders, or any of them, to the said Collony of New-England, there to be proceeded against and punished as the Governour's Deputy or Councill there for the Time being, shall think meete, or otherwise according to such Laws and Ordinances as are, and shall be, in Use there, for the well ordering and good Government of the said Collony.

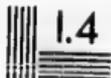
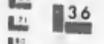
And our Will and Pleasure is and Wee do hereby declare to all Christian Kings, Princes and States, that if any Person or Persons which shall hereafter be of the said Collony or Plantation, or any other by License or Appointment of the said Councill, or their Successors, or otherwise, shall at any time or times hereafter, rob or spoil, by Sea or by Land, or do any Hurt, Violence, or unlawful Hostility to any of the Subjects of Us, our Heires, or Successors, or any of the Subjects of any King, Prince, Ruler, or Governour, or State, being then in League or Amity with Us, our Heires and Successors, and that upon such Injury, or upon just Complaint of such Prince, Ruler, Governour, or State, or their Subjects, Wee, our Heires, or Successors shall make open Proclamation within any of the Ports or our Realme of England commodious for that Purpose, that the Person or Persons having committed any such Robbery or Spoile, shall within the Term limited by such a Proclamation, make full Restitution or Satisfaction of all such Injuries done, so as the said Princes or other, so complaining, may hold themselves fully satisfied and contented. And if that the said Person or Persons having committed such Robbery or Spoile, shall not make or cause to be made Satisfaction accordingly within such Terme so to be limited, that then it shall be lawful for Us, our Heires, and Successors, to put the said Person or Persons out of our Allegiance and Protection; and that it shall be lawful and free for all Princes to prosecute with Hostillity the said Offenders and every of them, their, and every of their Procurers, Aidors, Abettors and Comforters in that Behalfe

And also, Wee do for Us, our Heires, and Successors, declare by these Presents, that all and every



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SUPPLEMENT
TO THE
ONTARIO
APPENDIX.

The Charter
of New Eng-
land 1620.

the Persons beinge our Subjects, which shall goe and inhabitt within the said Colony and Plantation, and every of their Children and Posterity, which shall happen to be born within the Limitts thereof, shall have and enjoy all Liberties and franchises, and Immunities of free Denizens and naturall Subject within any of our other Dominions, to all Intents and Purposes, as if they had been abidinge and born within this our Kingdome of England, or any other our Dominions.

And lastly, because the principall Effect which we can desire or expect of this Action, is the conversion and reduction of the People in those Parts unto the true Worship of God and Christian Religion, in which Respect, Wee would be loath that any Person should be permitted to pass that Wee suspected to affect the Superstition of the Chh of Rome, Wee do hereby declare that it is our Will and Pleasure that none be permitted to pass, in any Voyage from time to time to be made into the said 10
Country, but such as shall first have taken the Oathe of Supremacy; for which Purpose, Wee do by these Presents give full Power and Authority to the President of the said Council, to tender and exhibit the said Oath to all such Persons as shall at any time be sent and employed in the said Voyage.

And Wee also for us, our Heires and Successors, do covenant and grant to and with the Councill, and their Successors, by these Presents, that if the Councill for the time being, and their Successors, or any of them, shall at any time or times heereafter, upon any Doubt which they shall conceive concerning the Strength or Validity in Law of this our present Grant, or be desirous to have the same renewed and confirmed by Us, our Heires and Successors, with Amendments of such Imperfections and Defects as shall appear fitt and necessary to the said Council, or their Successors, to be reformed and amended on the Behalfe of Us, our Heires and Successors, and for the furthering of the Plantation and Government, 20
or the Increase, continuing, and flourishing thereof, that then, upon the humble petition of the said Councill for the time being, and their Successors, to us, our Heires and Successors, Wee, our Heires and Successors, shall and will forthwith make and pass under the Great Seall of England, to the said Council and their Successors, such further and better Assurance, of all and singular the Lands, Grounds, Royalties, Privileges, and Premises aforesaid granted, or intended to be granted, according to our true Intent and Meaneing in these our Letters-patents, signified, declared, or mentioned, as by the learned Councill of Us, our Heires, and Successors, and of the said Company and their Successors shall, in that Behalfe, be reasonably devised or advised.

And further our Will and Pleasure is, that in all Questions and Doubts, that shall arise upon any Difficulty of Instruction or Interpretation of any Thing contained in these our Letters-patents, the 30
same shall be taken and Interpreted in most ample and beneficial Manner, for the said Council and their Successors, and every Member thereof.

And Wee do further for Us, our Heires and Successors, charge and command all and singular Admirals, Vice-Admirals, Generals, Commanders, Captaines, Justices of Peace, Majors, Sheriffs, Bailiffs, Constables, Customers, Comptrollers, Waiters, Searchers, and all the Officers, of Us, our Heires and Successors, whatsoever to be from time to time, and att all times heereafter, in all Things aiding, helping, and assisting unto the said Councill, and their Successors, and unto every of them, upon Request and Requests by them to be made, in all Matters and Things, for the furtherance and Accomplishment of all or any the Matters and Things by Us, in and by these our Letters-patents, given, 40
granted, and provided, or by Us meant or intended to be given, granted, and provided, as they our said Officers, and the Officers of Us, our Heires and Successors, do tender our Pleasure, and will avoid the contrary att their Perills.

And Wee also do by these Presents, ratifye and confirm unto the said Councill and their Successors, all Priveliges, franchises, Liberties, Immunities granted in our said former Letters-patents, and not in these our Letters-patents revoaked, altered, changed or abridged, altho' express Mention, &c.

In Witnes, &c.

Witness our selfe at Westminster, the Third Day of November, in the Eighteenth Yeare of our Reign over England, &c.

Par Breve de Privato Sigillo, &c.

THE CHARTER OF MASSACHUSETTS BAY—1629.*

CHARLES, BY THE GRACE OF GOD, Kinge of England, Scotland, Fraunce, and Ireland, Defender of the Fayth, &c. To ALL to whome theis Presents shall come Greeting,

SUPPLEMENT
TO THE
ONTARIO
APPENDIX.

The Charter
of Massa-
chusetts
Bay—1629.

WHEREAS, our most deare and Royall Father, Kinge James, of Blessed Memory, by his Uighnes Letters-patents bearing Date at Westminster the third Day of November, in the eighteenth Yeare of his Raigne, hath given and graunted vnto the Councell established at Plymouth, in the County of Devon, for the planting, ruling, ordering, and governing of Newe England in America, and to their Successors and Assignes for ever, all that Parte of America, lying and being in Breadth, from Forty Degrees of Northerly Latitude from the Equinoctiall Lync. to forty eight Degrees of the saide Northerly Latitude inclusively, and in Length, of and within all the Breadth aforesaid, throughout the Maine Landes from Sea to Sea; together also with all the Firme Landes, Soyles, Groundes, Havens, Portes, Rivers, Waters, Fishing, Mynes, and Myneralls, as well Royall Mynes of Gould and Silver, as other Mynes and Mineralls, precious Stones, Quarries, and all and singular other Coñodities, Jurisdiccõns, Royalties, Priviledges, Franchises, and Prehemynences, both within the said Tract of Land vpon the Mayne, and also within the Islandes and Seas adioining :

PROVIDED always, That the saide Islandes, or any the Premises by the said Letters-patents intended and meant to be graunted, were not then actualie possessed or inhabited, by any other Christian Prince or State, nor within the Boundes, Lymitts, or Territories of the Southerne Colony, then before graunted by our saide Deare Father, to be planted by divers of his loveing Subiects in the South Partes.

TO HAVE and to houlde, possess, and enjoy all and singular the aforesaid Continent, Landes, Territories, Islandes, Hereditaments, and Precincts, Seas, Waters, Fishings, with all, and all Manner their Coñodities, Royalties, Liberties, Prehemynences, and Proffitts that should from thenceforth arise from thence, with all and singular their Appurtenances, and every Parte and Parcell thereof, vnto the saide Councell and their Successors and Assignes for ever, to the sole and proper Vse, Benefitt, and Behoofe of them the saide Councell, and their Successors and Assignes for ever: To be houlden of our saide most Deare and Royall Father, His Heires and Successors, as of his Mannor of East Greenwich in the County of Kent, in free and coñon Socceage, and not in Capite nor by Knight's Service: YEILDINGE and paying therefore to the saide late Kinge, his Heires and Successors, the fiftte Parte of the Oare of Gould and Silver, which should from tyme to tyme, and at all Tymes then after happen to be found, gotten, had, and obteyned in, att, or within any of the saide Landes, Lymitts, Territories, and Precincts, or in or within any Parte or Parcell thereof, for or in Respect of all and all Maaner of Duties, Demaunds and Services whatsoever, to be don, made, or paide to our saide Dear Father the late Kinge his Heires and Successors, as in and by the saide Letters-patents (amongst sundrie other Clauses, Powers, Priviledges, and Grauntes therein conteyled, more at large appeareth :

AND WHEREAS, the saide Councell established at Plymouth, in the County of Devon, for the plantinge, ruling, ordering, and governing of Newe England in America, have by their Deede, indented vnder their Coñon Seale, bearing Date the nyneteenth Day of March last past, in the third Yeare of our Raigne, given, graunted, bargained, soulede, enfeoffed, aliened, and confirmed to Sir Henry Rosewell, Sir John Young, Knightes, Thomas Southcott, John Humphrey, John Endecott, and Symon Whetcombe, their Heires and Assignes, and their Associats for ever, all that parte of Newe England in America aforesaid, which lyes and extends betweene a greate River there coñonlie called Monomack alias Merriemack, and a certen other River there, called Charles River, being in the Bottome of a certayne Bay there, comonlie called Massachusetts, alias Mattachusetts, alias Massatusetts Bay, and also all and singular those Landes and Hereditaments whatsoever, lying within the

* Lord Sheffield gave a patent in January, 1623, to the New England Company, for the location of a colony at Cape Anne. It was established, but the new settlement did not thrive, and this charter was obtained March 4, 1628-29. The officers provided for in it were appointed at Plymouth, in England, but under a resolution adopted by the company, August 29, 1629, the seat of government was transferred to Massachusetts.

Space of three English Myles on the South Parte of the said Charles River, or of any, or everie Parte thereof; and also, all and singular the Landes and Hereditaments whatsoever, lyeing and being within the Space of three English Myles to the Southwarde of the Southermost Parte of the saide Bay called Massachusetts, alias Mattachusetts, alias Massatusets Bay; and also, all those Landes and Hereditaments whatsoever, which lye, and be within the space of three English Myles to the Northward of the said River called Monomack, alias Merrymack, or to the Northward of any and every Parte thereof, and all Landes and Hereditaments whatsoever, lyeing within the Lymitts aforesaide, North and South in Latitude and bredth, and in Length and Longitude, of and within all the Bredth aforesaide, throughout the Mayne Landes there, from the Atlantick and Westerne Sea and Ocean on the East Parte, to the South Sea on the West Parte; and all Landes and Groundes, Place and Places, Soyles, Woodes and Wood Groundes, Havens, Portes, Rivers, Waters, Fishings, and Hereditaments whatsoever, lyeing within the said Boundes and Lymitts, and everie Parte and Parcell thereof; and also, all Islandes lyeing in America aforesaide, in the saide Seas or either of them on the Westerne or Eastern Coastes or Partes of the saide Tractes of Lande, by the saide Indenture mencōed to be given, graunted, bargained, sould, enfeoffed, aliened, and confirmed, or any of them; and also, all Mynes and Myneralls, as well Royal Mynes of Gould and Silver, as other Mynes and Myneralls whatsoever, in the saide Lands and Premisses, or any Parte thereof; and all Jurisdiccōns, Rights, Royalties, Liberties, Freedomes, Ymmunities, Priviledges, Franchises, Preheminences, and Comōdities whatsoever, which they, the said Cuncell established at Plymouth, in the County of Devon, for the planting, ruling, ordering, and governing of Newe England in America, then had, or might vse, exercise, or enjoy, in or within the saide Landes and Premisses by the saide Indenture mencōed to be given, graunted, bargained, sould, enfeoffed, and confirmed, or in, or within any Parte or Parcell thereof: To HAVE and to hould, the saide Parte of Newe England in America, which lyes and extendes and is abutted as aforesaide, and every Parte and Parcell thereof; and all the saide Islandes, Rivers, Portes, Havens, Waters, Fishings, Mynes, and Myneralls, Jurisdiccōns, Franchises, Royalties, Liberties, Priviledges, Comōdities, Hereditaments, and Premisses whatsoever, with the Appurtenances vnto the saide Sir Henry Rosewell, Sir John Younge, Thomas Southcott, John Humfrey, John Endecott, and Simon Whetcombe, their Heires and Assignes, and their Associatts, to the onlie proper and absolute vse and Behoofe of the said Sir Henry Rosewell, Sir John Younge, Thomas Southcott, John Humfrey, John Endecott, and Simon Whetcombe, their Heires and Assignes, and their Associatts forevermore: To BE BOULDEN of Vs, our Heires and Successors, as of our Mannor of Eastgreenwich, in the County of Kent, in free and comōn Socceage, and not in Capite, nor by Knightes Service; YELDING and payeing therefore vnto Vs, our Heires and Successors, the fitte Parte of the Oure of Goulde and Silver, which shall from Tyme to Tyme, and at all Tymes hereafter, happen to be founde, gotten, had, and obteyned in any of the saide Landes, within the saide Lymitts, or in or within any Parte thereof, tor, and in Satisfaccōn of all manner Duties, Demaundes, and Services whatsoever to be donn, made, or paid to Vs, our Heires or Successors, as in and by the said recited Indenture more at large maie appeare.

NOWE Knowe Yee, that Wee, at the humble Suite and Peticon of the saide Sir Henry Rosewell, Sir John Younge, Thomas Southcott, John Humfrey, John Endecott, and Simon Whetcombe, and of others whome they have associated vnto them, HAVE, for divers good Causes and consideracōns, vs moveing, graunted and confirmed, and by theis Presents of our especiall Grace, certen Knowledge, and meere Mocon, doe graunt and confirm vnto the saide Sir Henry Rosewell, Sir John Younge, Thomas Southcott, John Humfrey, John Endecott, and Simon Whetcombe, and to their Associatts hereafter named, (videlicet) Sir Richard Saltonstall, Knight, Isaack Johnson, Samuel Aldersey, John Ven, Mathew Cradock, George Harwood, Increase Nowell, Richard Perry, Richard Bellingham, Nathaniell Wright, Samuel Vassall, Theophilus Eaton, Thomas Goffe, Thomas Adams, John Browne, Samuell Browne, Thomas Hutchins, William Vassall, William Pinchion, and George Foxerofte, their Heires and Assignes, all the saide Parte of Newe England in America, lyeing and extending betweene the Boundes and Lymitts in the said recited Indenture expressed, and all Landes and Groundes, Place and Places, Soyles, Woods and Wood Groundes, Havens, Portes, Rivers, Waters, Mynes, Mineralls, Jurisdiccōns, Rightes, Royalties, Liberties, Freedomes, Immunities, Priviledges, Franchises, Preheminences, Hereditaments,

and Commodities whatsoever, to them the saide Sir Henry Rosewell, Sir John Younge, Thomas Southcott, John Humfrey, John Endeecott, and Simon Whetcombe, their Heires and Assignes, and to their Associatts, by the saide recited Indenture, given, graunted, bargayned, solde, enfeofed, aliened, and confirmed, or mencōed, or intēded thereby to be given, graunted, bargayned, sold, enfeofed, aliened, and confirmed :

To HAVE, and to hold, the saide Parte of Newe England in America, and other the Premisses hereby mencōed to be graunted and confirmed, and every Parte and Parcell thereof with the Appurtenances, to the saide Sir Henry Rosewell, Sir John Younge, Sir Richard Saltonstall, Thomas Southcott, John Humfrey, John Endeecott, Simon Whetcombe, Isaack Johnson, Richard Pery, Richard Bellingham, Nathaniell Wright, Samuell Vassall, Theophilus Eaton, Thomas Goffe, Thomas Adams, John Browne, Samuel Browne, Thomas Hutchins, Samuel Aldersey, John Ven, Mathewe Cradock, George Harwood, Increase Nowell, William Vassall, William Pinchion, and George Foxcrofte, their Heires and Assignes forever, to their onlie proper and absolute Use and Behoofe for evermore; To be holden of Vs, our Heires and Successors, as of our Mannor of Eastgreenewich aforesaid, in free and coñon Soeage, and not in Capite, nor by Knights Service.

AND ALSO YEELING and paying therefore to Vs, our Heires and Successors, the fite parte onlie of all Oare of Gould and Silver, which from tyme to tyme, and att all tymes here after shalbe there gotten, had, or obtēyued, for all Services, Exaccions and Demaundes whatsoever, according to the Tenure and Reservacon in the said recited Indenture expressed.

AND FURTHER, knowe yee, that of our more especiall Grace, certen Knowledg, and meere moōn, Wee have given and graunted, and by theis Presents, doe for Vs, our Heires and Successors, give and graunte unto the saide Sir Henry Rosewell, Sir John Younge, Sir Richard Saltonstall, Thomas Southcott, John Humfrey, Jo'n Endeecott, Symon Whetcombe, Isaack Johnson, Samuell Aldersey, John Ven, Mathewe Cradock, George Harwood, Increase Nowell, Richard Pery, Richard Bellingham, Nathaniell Wright, Samuell Vassall, Theophilus Eaton, Thomas Goffe, Thomas Adams, John Browne, Samuel Browne, Thomas Hutchins, William Vassall, William Pinchion, and George Foxcrofte, their Heires and Assignes, all that Parte of Newe England in America, which lyes and extendes betwene a great River there, comonlie called Monomack River, alias Merrimack River, and a certen other River there, called Charles River, being in the Bottom of a certen Bay there, comonlie called Massachusetts, alias Mattachusetts, alias Massachusetts Bay; and also all and singuler those Landes and Hereditaments whatsoever, lying within the Space of Three English Myles on the South Parte of the said River, called Charles River, or of any or every Parte thereof; and also all and singuler the Landes and Hereditaments whatsoever, lying and being within the Space of Three English Miles to the southward of the southermost Parte of the said Baye, called Massachusetts, alias Mattachusetts, alias Massatusets Bay :

And also all those Landes and Hereditaments whatsoever, which lye and be within the Space of Three English Myles to the Northward of the saide River, called Monomack, alias Merrymack, or to the Norward of any and every Parte thereof, and all Landes and Hereditaments whatsoever, lying within the Lymitts aforesaid, North and South, in Latitude and Breadth, and in Length and Longitude, of and within all the Breadth aforesaid, throughout the mayne Landes there, from the Atlantick and Western Sea and Ocean on the East Parte, to the South Sea on the West Parte; and all Landes and Groundes, Place and Places, Soyles, Woodes, and Wood Groundes, Havens, Portes, Rivers, Waters, and Hereditaments whatsoever, lying within the said Boundes and Lymytts, and every Parte and Parcell thereof; and also all Islandes in America aforesaid, in the saide Seas, or either of them, on the Western or Eastern Coastes, or Partes of the saide Traets of Landes hereby mencōed to be given and graunted, or any of them: and all Mynes and Mynerals whatsoever, in the said Landes and Premisses, or any parte thereof, and free Libertie of fishing in or within any the Rivers or Waters within the Boundes and Lymytts aforesaid, and the Seas thereunto adjoining; and all Fishes, Royal Fishes, Whales, Balan, Sturgions, and other Fishes of what Kinde or Nature soever, that shall at any time hereafter be taken in or within the saide Seas or Waters, or any of them, by the said Sir Henry Rosewell, Sir John Younge, Sir Richard Saltonstall, Thomas Southcott, John Humfrey, John Endeecott, Simon Whetcombe, Isaack Johnson,

SUPPLEMENT
TO THE
HISTORY OF THE
PROVINCE OF MASSACHUSETTS

The Charter of Massachusetts Bay 1629

Samuel Aldersey, John Ven, Mathewe Cradock, George Harwood, Increase Noell, Richard Pery, Richard Bellingham, Nathaniell Wright, Samuell Vassell, Theophilus Eaton, Thomas Goffe, Thomas Adams, John Browne, Samuell Browne, Thomas Hutchins, William Vassall, William Pinchion, and George Foxcroft, their Heires and Assignes, or by any other person or persons whatsoever there inhabiting, by them or any of them, to be appointed to fishe therein.

PROVIDED alwaies, That yf the said Landes, Islandes, or any other the Premisses hereinbefore mençoned, and by theis presents, intended and meant to be graunted, were at the tyme of the graunting of the saide former Letters patents, dated the Third Day of November, in the Eighteenth Yeare of our said deare Fathers Raigne aforesaide, actuallie possessed or inhabited by any other Christian Prince or State, or were within the Boundes, Lymyts or Territories of that Southerne Colony, then before graunted by our said late Father, to be planted by divers of his loving Subjects in the south partes of America, That then this present Grant shall not extend to any such partes or parcells thereof, soe formerly inhabited, or lyeing within the Boundes of the Southerne Plantaçon as aforesaide, but as to those partes or parcells soe possessed or inhabited by such Christian Prince or State, or being within the Bounders aforesaide shal be vtterlie voyd, theis presents or any Thing therein conteyned to the contrarie notwithstanding.

To HAVE and hould, possesse and enjoy the saide partes of New England in America, which lye, extend, and are abutted as aforesaide, and every parte and parcell thereof; and all the Islandes, Rivers, Portes, Havens, Waters, Fishings, Fishes, Mynes, Myneralls, Jurisdicçõs, Franchises, Royalties, Liberties, Priviledges, Comodities, and Premisses whatsoever, with the Appurtenances, vnto the said Sir Henry Rosewell, Sir John Younge, Sir Richard Saltonstall, Thomas Southcott, John Humfrey, John Endecott, Simon Whetcombe, Isaack Johnson, Samuell Aldersey, John Ven, Mathewe Cradock, George Harwood, Increase Nowell, Richard Pery, Richard Bellingham, Nathaniell Wright, Samuell Vassall, Theophilus Eaton, Thomas Goffe, Thomas Adams, John Browne, Samuell Browne, Thomas Hutchins, William Vassall, William Pinchion, and George Foxcroft, their Heires and Assignes forever, to the onlie proper and absolute Use and Abuse of the said Sir Henry Rosewell, Sir John Younge, Sir Richard Saltonstall, Thomas Southcott, John Humfrey, John Endecott, Simon Whetcombe, Isaac Johnson, Samuell Aldersey, John Ven, Mathewe Cradocke, George Harwood, Increase Nowell, Richard Pery, Richard Bellingham, Nathaniell Wright, Samnell Vassall, Theophilus Eaton, Thomas Goffe, Thomas Adams, John Browne, Samuell Browne, Thomas Hutchins, William Vassall, William Pinchion, and George Foxcroft, their Heires and Assignes forevermore:

To BE HOLDEN of Vs, our Heires and Successors, as of our Manor of Eastgreenwich in our Countie of Kent, within our Realme of England, in free and comon Soccage, and not in Capite, nor by Knights Service; and also yeilding and paying therefore, to Vs, our Heires and Successors, the fite Parte onlie of all Oare of Gould and Silver, which from tyme to tyme, and at all tymes hereafter, shal be there gotten, had, or obteyned, for all Services, Exaccõs, and Demaundes whatsoever; PROVIDED alwaies, and our expresse Will and Meaninge is, that onlie one fite Parte of the Gould and Silver Oare above mençod, in the whole, and noe more be reserved or payable vnto Vs, our Heires and Successors, by Collour or Vertue of theis Presents, the double Reservaçõs or recitalls aforesaid or any Thing herein conteyned notwithstanding.

AND FORASMUCH, as the good and prosperous Successe of the Plantacon of the saide Partes of New-England aforesaide intended by the said Sir Henry Rosewell, Sir John Younge, Sir Richard Saltonstall, Thomas Southcott, John Humfrey, John Endecott, Simon Whetcombe, Isaack Johnson, Samuell Aldersey, John Ven, Mathew Cradock, George Harwood, Increase Noell, Richard Pery, Richard Bellingham, Nathaniell Wright, Samuell Vassall, Theophilus Eaton, Thomas Goffe, Thomas Adams, John Browne, Samuell Browne, Thomas Hutchins, William Vassall, William Pinchion, and George Foxcroft, to be speedily sett vpon, cannot but cheifly depend, next vnder the Blessing of Almighty God, and the support of our Royall Authoritie vpon the good Government of the same, To the Ende that the Affaires and Buysinneses which from tyme to tyme shall happen and arise concerning the saide Landes, and the

hard Pery, Richard
e, Thomas Adams,
chion, and George
here inhabiting, by

misses hereinbefore
of the granting
eenth Yeare of our
Christian Prince or
men before graunted 10
partes of America,
ereof, soe formerly
at as to those partes
within the Bounders
d to the contrarie

America, which lye,
e Islandes, Rivers,
Royalties, Liberties,
he said Sir Henry 20
ey, John Endecott,
George Harwood,
assall, Theophilus
Hutchins, William
o the onlie proper
richard Saltonstall,
Samuell Aldersey,
ehard Bellingham,
ns, John Browne,
xcroft, their Heires 30

in our Countie of
e, nor by Knights
e fite Parte onlie
ter, shal be there
EDD alwaies, and
Silver Oare above
nd Successors, by
any Thing herein 40

e Partes of Newe-
ehard Saltonstall,
Samuell Aldersey,
ard Bellingham,
ns, John Browne,
Foxcrofte, to be
ie God, and the
that the Affaires
Landes, and the

Plantation of the same maie be the better managed and ordered, WEE HAVE FURTHER hereby of our especial
Grace, certain Knowledge and mere Moçon, Given, graunted and confirmed, and for Vs, our Heires
and Successors, doe give, graunt, and confirme vnto our said trustie and welbeloved subiects Sir Henry
Rosewell, Sir John Younge, Sir Richard Saltonstall, Thomas Southcott, John Humfrey, John Endicott,
Simon Whetecombe, Isaack Johnson, Samuel Aldersey, John Ven, Mathewe Cradock, George Harwood,
Increase Nowell, Richard Pery, Richard Bellingham, Nathaniell Wright, Samuell Vassall, Theophilus
Eaton, Thomas Goffe, Thomas Adams, John Browne, Samuell Browne, Thomas Hutchins, William
Vassall, William Pinchion, and George Foxcrofte: AND for Vs, our Heires and Successors, Wee will and
ordeyne, That the saide Sir Henry Rosewell, Sir John Young, Sir Richard Saltonstall, Thomas Southcott,
10 John Humfrey, John Endicott, Symon Whetecombe, Isaack Johnson, Samuell Aldersey, John Ven,
Mathewe Cradock, George Harwood, Increase Noell, Richard Pery, Richard Bellingham, Nathaniell
Wright, Samuell Vassall, Theophilus Eaton, Thomas Goffe, Thomas Adams, John Browne, Samuell
Browne, Thomas Hutchins, William Vassall, William Pinchion, and George Foxcrofte, and all such others
as shall hereafter be admitted and made free of the Company and Society hereafter mencōed, shall from
tyme to tyme, and att all tymes forever hereafter be, by Vertue of theis presents, one Body corporate and
politique in Fact and Name, by the Name of the Governour and Company of the Mattachusetts Bay in
Newe-England, and them by the Name of the Governour and Company of the Mattachusetts Bay in
Newe-England, one Bodie in politique and corporate, in Deede, Fact, and Name Wee doe for vs, our
Heires and Successors, make, ordeyne, constitute, and confirme by theis Presents, and that by that
20 name they shall have perpetuall Succession, and that by the same Name they and their Successors shall
and maie be capeable and enabled aswell to implead, and to be impleaded, and to prosecute, demand,
and aunswere, and be aunswared vnto, in all and singuler Suites, Causes, Quarrells, and Acccons, of what
kind or nature soever. And also to have, take, possesse, acquire, and purchase any Landes, Tenements,
or Hereditaments, or any Goodes or Chattells, and the same to lease, graunte, demise, alien, bargaine,
sell, and dispose of, as other our liege People of this our Realme of England, or any other corporacon or
Body politique of the same may lawfully doe.

AND FURTHER, That the said Governour and Companye, and their Successors, maie have forever
one comon Seale, to be vsed in all Causes and Occasions of the said Company, and the same Seale may
alter, change, breake, and newe make, from tyme to tyme, at their pleasures. And our Will and
Pleasure is, and Wee doe hereby for Vs, our Heires and Successors, ordeyne and graunte, That from
30 henceforth for ever, there shalbe one Governour, one Deputy Governour, and eighteene Assistants of the
same Company, to be from tyme to tyme constituted, elected and chosen out of the Freemen of the
saide Company, for the tyme being, in such Manner and Forme as hereafter in theis Presents is expressed,
which said Officers shall applie themselves to take Care for the best disposing and ordering of the
generall buysines and Affaires of, for, and concerning the said Landes and Premises hereby mencōed, to
be granted, and the Plantacion thereof, and the Government of the People there.

AND FOR the better Execucion of our Royall Pleasure and Graunte in this Behalf, WEE doe, by theis
presents, for Vs, our Heires and Successors, nominate, ordeyne, make, & constitute, our welbeloved the
saide Mathewe Cradocke, to be the first and present Governour of the said Company, and the saide
40 Thomas Goffe, to be Deputy Governour of the saide Company, and the said Sir Richard Saltonstall, Isaack
Johnson, Samuell Aldersey, John Ven, John Humfrey, John Endecott, Simon Whetecombe, Increase
Noell, Richard Pery, Nathaniell Wright, Samuell Vassall, Theophilus Eaton, Thomas Adams, Thomas
Hutchins, John Browne, George Foxcrofte, William Vassall, and William Pinchion, to be the present
Assistants of the saide Company, to continue in the saide several Offices respectivelie for such tyme, and
in such manner, as in and by theis Presents is hereafter declared and appointed.

AND FURTHER, Wee will, and by theis Presents, for Vs, our Heires and Successors, doe ordeyne
and graunte, That the Governour of the saide Company for the tyme being, or in his Absence by
Occasion of Sicknes or otherwise, the Deputie Governour for the tyme being, shall have Authoritie
from tyme to tyme vpon all Occasions, to give order for the assembling of the saide Company,
and calling them together to consult and advise of the Buseinneses and Affairs of the saide Company,
and that the said Governour, Deputie Governour, and Assistants of the saide Company, for the tyme being,

shall or maie once every Moneth, or oftener at their Pleasures, assemble and houlde and keepe a Courte or Assemblie of themselves, for the better ordering and directing of their Affaires, and that any seaven or more persons of the Assistants, together with the Governor, or Deputie Governor soe assembled, shalbe saide, taken, held, and reputed to be, and shalbe a full and sufficient Courte or Assemblie of the said Company, for the handling, ordering, and dispatching of all such Buysinneses and Occurents as shall from tyme to tyme happen, touching or concerning the said Company or Plantacon; and that there shall or maie be held and kept by the Governor, or Deputie Governor of the said Company, and seaven or more of the said Assistants for the tyme being, vpon every last Wednesday in Hillary, Easter, Trinity, and Michas Termes respectivelie forever, one greate generall and solempne assemblie, which foure generall assemblies shall be stiled and called the foure greate and generall Courts of the saide Company; In all and every, or any of which saide greate and generall Courts soe assembled, WEE DOE for Vs, our Heires and Successors, give and graunte to the said Governor and Company, and their Successors, That the Governor, or in his absence, the Deputie Governor of the saide Company for the tyme being, and such of the Assistan's and Freemen of the saide Company as shalbe present, or the greater number of them so assembled, whereof the Governor or Deputie Governor and six of the Assistants at the least to be seaven, shall have full Power and authoritie to choose, nominate, and appointe, such and soe many others as they shall thinke fitt, and that shall be willing to accept the same, to be free of the said Company and Body, and them into the same to admitt; and to cleet and constitute such Officers as they shall thinke fitt and requisite, for the ordering, mannaging, and dispatching of the Affaires of the saide Governor and Company, and their Successors; And to make Lawes and Ordiinnces for the Good and Welfare of the saide Company, and for the Government and ordering of the saide Landes and Plantacon, and the People inhabiting and to inhabite the same, as to them from tyme to tyme shalbe thought meete, soe as such Lawes and Ordinannces be not contrarie or repugnant to the Lawes and Statuts of this our Realme of England.

AND, our Will and Pleasure is, and Wee doe hereby for Vs, our Heires and Successors, establish and ordeyne, That yearely once in the yeare, for ever hereafter, namely, the last Wednesday in Easter Tearme, yearely, the Governor, Deputy-Governor, and Assistants of the saide Company and all other officers of the saide Company shalbe in the Generall Court or Assembly to be held for that Day or Tyme, newly chosen for the Yeare ensuing by such greater parte of the said Company, for the Tyme being, then and there present, as is aforesaide. AND, yf it shall happen the present governor, Deputy Governor, and assistants, by theis presents appointed, or such as shall hereafter be newly chosen into their Roomes, or any of them, or any other of the officers to be appointed for the said Company, to dye, or to be removed from his or their severall Offices or Places before the saide generall Day of Eleccōn (whome Wee doe hereby declare for any Misdemeanor or Defect to be removeable by the Governor, Deputie Governor, Assistants, and Company, or such greater Parte of them in any of the publique Courts to be assembled as is aforesaid) That then, and in every such Case, it shall and maie be lawfull, to and for the Governor, Deputie Governor, Assistants, and Company aforesaide, or such greater Parte of them soe to be assembled as is aforesaide, in any of their Assemblies, to proceade to a new Eleecon of one or more others of their Company in the Roome or Place, Roomes or Places of such Officer or Officers soe dyeing or removed according to their Discrecons, And, ymmediately vpon and after such Eleecōn and Eleccōns made of such Governor, Deputie Governor, Assistant or Assistants, or any other officer of the saide Company, in Manner and Forme aforesaid, the Authoritie, Office, and Power, before given to the former Governor, Deputie Governor, or other Officer and Officers soe removed, in whose Steade and Place newe shalbe soe chosen, shall as to him and them, and everie of them, cease and determine.

PROVIDED alsoe, and our Will and Pleasure is, That aswell such as are by theis Presents appointed to be the present Governor, Deputie Governor, and Assistants of the said Company, as those that shall succeed them, and all other Officers to be appointed and chosen as aforesaid, shall, before they vndertake the Execucon of their saide Offices and Places respectivelie, take their Corporal Oathes for the due and faithfull Performance of their Duties in their severall Offices and Places, before such Person or Persons as are by theis Presents herevnder appointed to take and receive the same; That is to saie, the saide

Mathewe Cradock, whoe is hereby nominated and appointed the present Governor of the saide Company, shall take the saide Oathes before one or more of the Masters of our Courte of Chauncery for the Tyme being, vnto which Master or Masters of the Chauncery, Wee doe by theis Presents give full Power and Authoritie to take and administer the said Oathe to the said Governor accordinglie: And after the saide Governor shalbe soe sworne, then the said Deputy Governor and Assistants, before by theis Presents nominated and appointed, shall take the said severall Oathes to their Offices and Places respectivelie belonging, before the said Mathew Cradock, the present Governor, soe formerlie sworne as aforesaide.

SUPPLEMENT
TO THE
OSTARIO
APPENDIX.

The Charter
of Massa-
chusetts
Bay—1629.

And every such Person as shalbe at the Tyme of the annuall Eleccion, or otherwise, vpon Death or Removeall, be appointed to be the newe Governor of the said Company, shall take the Oathes to that Place belonging, before the Deputy Governor, or two of the Assistants of the said Company at the least, for the Tyme being: And the newe elected Deputie Governor and Assistants, and all other officers to be hereafter chosen as aforesaide from Tyme to Tyme, to take the Oathes to their places respectivelie belonging, before the Governor of the said Company for the Tyme being, vnto which said Governor, Deputie Governor, and assistants, Wee doe by theis Presents give full Power and Authoritie to give and administer the said Oathes respectively, according to our true Meaning herein before declared, without any Comission or further Warrant to be had and obteyned of Vs, our Heires or Successors, in that Behalf.

AND, Wee doe further, of our especial Grace, certen Knowledge, and mere mocon, for Vs, our Heires and Successors, give and graunte to the said Governor and Company, and their Successors for ever by theis Presents, That it shalbe lawfull and free for them and their Assignes, at all and every Tyme and Tymes hereafter, out of any our Realmes or Domyions whatsoever, to take, leade, carry, and transport, for in and into their Voyages, and for and towards the said Plantacon in Newe England, all such and soe many of our loving Subjects, or any other strangers that will become our loving Subjects, and live under our Allegiance, as shall willinglie accompany them in the same Voyages and Plantacon; and also Shipping, Armour, Weapons, Ordinance, Municon, Powder, Shott, Corne, Victuals, and all Manner of Clothing, Implements, Furniture, Beastes, Cattle, Horses, Mares, Marehandizes, and all other Things necessarie for the saide Plantacon, and for their Use and Defence, and for Trade with the People there, and in passing and returning to and fro, any Lawe or Statute to the contrary hereof in any wise notwithstanding; and without paycing or yielding any Custome or Subsidie, either inward or outward, to Vs, our Heires or Successors, for the same, by the Space of seaven Yeares from the Day of the Date of theis Presents.

PROVIDED, that none of the saide Persons be such as shalbe hereafter by especiall Name restrayned by Vs, our Heires or Successors. AND, for their further Encouragement, of our especiall Grace and Favor, Wee doe by theis Presents, for Vs, our Heires and Successors, yeild and graunt to the saide Governor and Company, and their Successors, and every of them, their Factors and Assignes, That they and every of them shalbe free and quitt from all Taxes, Subsidies, and Customes, in Newe England, for the like Space of seaven Yeares, and from all Taxes and Imposicōns for the Space of twenty and one Yeares, vpon all Goodes and Merchandizes at any Tyme or Tymes hereafter, either vpon Importacōn thither, or Exportacōn from thence into our Realme of England, or into any other our Domyions by the said Governor and Company, and their Successors, their Deputies, Factors, and Assignes, or any of them; EXCEPT onlie the five Pounds per Centum due for Custome vpon all such Goodes and Merchandizes as after the saide seaven Yeares shalbe expired, shalbe brought or imported into our Realme of Engla or any other of our Dominions, according to the auncient Trade of Merchants, which five Poundes per Centum onlie being paide, it shall be thenceforth lawfull and free for the said Adventurers, the same Goodes and Merchandizes to export and carry out of our said Domyions into forraine Partes, without any Custome, Tax, or other Dutie to be paid to Vs, our Heires or Successors, or to any other Officers or Ministers of Vs, our Heires and Successors. PROVIDED, that the said Goodes and Merchandizes be shipped out within thirteene Monethes, after their first Landing within any Parte of the saide Domyions.

AND, Wee doe, for Vs, our Heires and Successors, give and graunte vnto the saide Governor and Company, and their Successors, That whensoever, or soe often as any Custome or Subsidie shall growe

due or payable vnto Vs, our Heires, or Successors, according to the Lymittacon and Appointment aforesaide, by Reason of any Goodes, Wares, or Merchandizes to be shipped out, or any Retorne to be made of any Goodes, Wares, or Merchandize vnto or from the said Partes of Newe England hereby mencoed to be granted as aforesaide, or any the Landes or Territories aforesaide. That then, and soe often, and in such Case, the Farmors, Customers, and Officers of our Customes of England and Ireland, and everie of them for the Tyme being, vpon Request made to them by the saide Governour and Company, or their Successors, Factors, or Assignes, and vpon convenient Security to be given in that Behalf, shall give and allowe vnto the said Governour and Company, and their Successors, and to all and everie Person and Persons free of that Company, as aforesaide, six Monethes Tyme for the payement of the one halfe of all such Custome and Subsidy as shalbe due and payable vnto Vs, our Heires and Successors, for the same; for which theis our Letters patents, or the Duplicate, or the inrollem^t thereof, shalbe vnto our saide Officers a sufficient Warrant and Discharge. 10

Nevertheless, our Will and Pleasure is, That yf any of the saide Goodes, Wares, and Merchandize, which be or shalbe at any Tyme hereafter landed or exported out of any of our Realmes aforesaide, and shalbe shipped with a Purpose not to be carried to the Partes of Newe England aforesaide, but to some other place, That then such Payment, Dutie, Custome, Imposicion, or Forfeyture, shalbe paid, or belonge to Vs, our Heires and Successors, for the said Goodes, Wares, and Merchandize, soe fraudulently sought to be transported, as yf this our Graunte had not been made nor granted.

And, Wee doe further will, and by theis Presents, for Vs, our Heires and Successors, firmlie enjoine and comaunde, as well the Treasurer, Chauncellor and Barons of the Exchequer, of Vs, our Heires and Successors, as also all and singuler the Customers, Farmors, and Collectors of the Customes, Subsidies, and Imposts, and other the Officers and Ministers of Vs, our Heires and Successors whatsoever, for the Tyme Being, That they and every of them, vpon the shewing forth vnto them of theis Letters patents, or the Duplicate or exemplificacon of the same, without any other Writt or Warrant whatsoever from Vs, our Heires or Successors, to be obteyned or sued forth, doe and shall make full, whole, entire, and due Allowance, and cleare Discharge vnto the saide Governour and Company, and their Successors, of all Customes, Subsidies, Imposicions, Taxes and Duties whatsoever, that shall or maie be claymed by Vs, our Heires and Successors, of or from the said Governour and Company, and their Successors, for or by Reason of the saide Goodes, Chattels, Wares, Merchandizes, and Premises to be exported out of our saide Domyions, or any of them, into any Parte of the saide Landes or Premises hereby mencoed, to be given, granted, and confirmed, or for, or by Reason of any of the saide Goodes, Chattels, Wares, or Merchandizes to be imported from the saide Landes and Premises hereby mencoed, to be given, granted, and confirmed into any of our saide Domyions, or any Part thereof as aforesaide, excepting only the saide five Poundes per Centum hereby reserved and payable after the Expiracon of the saide Terme of seaven Yeares as aforesaid, and not before: And theis our Letters-patents, or the Inrollement, Duplicate, or Exemplificacon of the same shalbe for ever hereafter, from time to tyme, as well to the Treasurer, Chauncellor and Barons of the Exchequer of Vs, our Heires and Successors, as to all and singuler the Customers, Farmors, and Collectors of the Customes, Subsidies, and Imposts of Vs, our Heires and Successors, and all Searchers, and other the Officers and Ministers whatsoever of Vs, our Heires and Successors, for the time being, a sufficient Warrant and Discharge in this behalf. 20 30 40

And, further our Will and Pleasure is, and Wee doe hereby for Vs, our Heires and Successors, ordeyne and declare, and graunte to the saide Governour and Company, and their Successors, That all and every the Subject of Vs, our Heires and Successors, which shall goe to and inhabite within the saide Landes and Premises hereby mencoed to be granted, and every of their Children which shall happen to be borne there, or on the Seas in going thither, or retorning from thence, shall have and enjoy all liberties and Immunities of free and natural Subjects within any of the Domyions of Vs, our Heires and Successors, to all Intents, Construccions, and Purposes whatsoever, as yf they and everie of them were borne within the Realme of England. And that the Governour and Deputie Governour of the said Company for the Tyme being, or either of them, and any two or more of such of the saide Assistants as

shalbe therevnto appointed by the saide Governour and Company at any of their Courts or Assemblies to be held as aforesaide, shall and maie at all Tymes, and from tyme to tyme hereafter, have full Power and Authoritie to minister and give the Oathe and Oathes of Supremacie and Allegiance, or either of them, to all and everie Person and Persons, which shall at any Tyme or Tymes hereafter goe or passe to the Landes and Premisses hereby mencoed to be graunted to inhabit in the same.

SUPPLEMENT
TO THE
CHARTER OF
MOUNTAIN
APPENDIX.

The Charter
of MASSACHUSETTS
May 1629

AND, Wee doe, of our further Grace, certen Knowledge and mere Mocon, give and graunte to the saide Governour and Company, and their Successors, That it shall and maie be lawfull, to and for the Governour or Deputie Governour, and such of the Assistants and Freemen of the said Company for the Tyme being as shalbe assembled in any of their generall Courts aforesaide, or in any other Courtes to be specially sumoned and assembled for that Purpose, or the greater Parte of them (whereof the Governour or Deputie Governour, and six of the Assistants to be alwayes seaven) from tyme to tyme, to make, ordeine, and establishe all Manner of wholesome and reasonable Orders, Lawes, Statutes, and Ordinances, Direcons, and Instrucecons, not contrarie to the Lawes of this our Realme of England, aswell for setting of the Formes and Ceremonies of Governour and Magistracy, fitt and necessary for the said Plantacon, and the Inhabitants there, and for nameing and stiling of all sorts of Officers, both superior and inferior, which they shall finde needefull for that Governement and Plantacon, and the distinguishing and setting forth of the severall duties, Powers, and Lymytts of every such Office and Place, and the Formes of such Oathes warrantable by the Lawes and Statutes of this our Realme of England, as shalbe respectivelie ministred vnto them for the Excecution of the said severall Offices and Places; as also, for the disposing and ordering of the Elecons of such of the said Officers as shalbe annuall, and of such others as shalbe to succede in Case of Death or Removeall, and ministring the said Oathes to the newe elected Officers, and for Imposicons of lawfull Fynes, Mulets, Imprisonment, or other lawfull Correecon, according to the Course of other Corporacones in this our Realme of England, and for the directin, ruling, and disposing of all other Matters and Thinges, whereby our said People, Inhabitants there, may be soe religiously, peaceablie, and civilly governed, as their good Life and orderlie Conversacon, maie wynn and incite the Natives of Countrie, to the Knowledge and Obediencie of the onlie true God and Saviour of Maukinde, and the Christian Fayth, which in our Royall Intencion, and the Adventurers free Profession, is the principall Ende of this Plantacon.

WILLING, comaunding, and requiring, and by theis Presents for Vs, our Heires and Successors, ordeyning and appointing, that all such Orders, Lawes, Statuts and Ordinnces, Instrucecons and Dirececons, as shalbe soe made by the Governour, or Deputie Governour of the said Company, and such of the Assistants and Freemen as aforesaide, and published in Writing, vnder their comon Seale, shalbe carefullie and dulle observed, kept, performed, and putt in Excecution, according to the true Intent and Meaning of the same; and theis our Letters-patents, or the Duplicate or exemplificacon thereof, shalbe to all and everie such Officers, superior and inferior, from Tyme to Tyme, for the putting of the same Orders, Lawes, Statutes and Ordinnces Instrucecons, and Dirececons in due Excecution against Vs, our Heirs and Successors, a sufficient Warrant and Discharge.

AND WEE DOE further, for Vs, our Heires and Successors, give and graunt to the said Governour and Company, and their Successors by theis Presents, that all and everie such Chiefe Comatanders, Captaines, Governours, and other Officers and Ministers, as by the said Orders, Lawes, Statuts, Ordinnces, Instrucecons, or Dirececons of the said Governour and Company for the Tyme being, shalbe from Tyme to Tyme hereafter ympleied either in the Governement of the saide Inhabitants and Platacon, or in the Waye by Sea thither, or from thence, according to the Natures and Lymytts of their Offices and Places respectivelie, shall from Tyme to Tyme hereafter for ever, within the Precincts and Partes of Newe England hereby mencoed to be graunted and establisht, or in the Waie by Sea thither, or from thence, have full and Absolute Power and Authorite to correct, punishe, pardon, governe, and rule all such the Subjects of Vs, our Heires and Successors, as shall from Tyme to Tyme adventure themselves in any Voyage thither or from thence, or that shall at any Tyme hereafter, inhabite within the Precincts and

Partes of Newe England aforesaid, according to the Orders, Lawes, Ordinnances, Instruccions, and Direccions aforesaid, not being repugnant to the Lawes and Statutes of our Realme of England as aforesaid.

AND WEE DOE further, for Vs, our Heires and Successors, give and graunte to the said Governor and Company, and their Successors, by theis Presents, that it shall and maie be lawfull, to and for the Chiefe Commanders, Governors, and Officers of the said Company for the Tyme being, who shalbe resident in the said Parte of Newe England in America, by theis Presents graunted, and others there inhabiting by their Appointment and Direccion, from Tyme to Tyme, and at all Tymes hereafter for their speciall Defence and Safety, to encounter, expulse, repell, and resist by Force of Armes, aswell by Sea as by Lande, and by all fitting Waies and Meanes whatsoever, all such person and persons, as shall at any Tyme hereafter attempt or enterprise the Destruccon, Invasion, Detriment, or Annoyance to the said Plantation or Inhabitants, and to take and surprize by all Waies and Meanes whatsoever, all and every such Person and Persons, with their Shippes, Armour, Municon, and other Goodes, as shall in hostile manner invade or attempt the defeating of the said Plantacon, or the Hurt of the said Company and Inhabitants: 10

NEVERTHELES, our Will and Pleasure is, and Wee doe hereby declare to all Christian Kinges, Princes and States, that yf any Person or Persons which shall hereafter be of the said Company or Plantacon, or any other by License or Appointment of the said Governor and Company for the Tyme being, shall at any Tyme, or Tymes hereafter, robb or spoyle, by Sea or by Lande, or doe any Hurt, Violence, or unlawful Hostilitie to any of the Subjects of Vs, our Heires or Successors, or any of the Subjects of any Prince or State, being then in League and Amitye with us, our Heires and Successors, and that upon such injury don and vpon iust Complaint of such Prince or State or their Subjects, Wch, our Heires and Successors shall make open Proclamacon within any of the Partes within our Realme of England, comodious for that purpose, that the Person or Persons having committed any such Roberie or Spoyle, shall within the Terme lymytted by such a Proclamacon, make full Restituccon or Satisfaccon of all such Injuries don, soe as the said Princes or others soe complayning, maie hould themselves fullie satisfied and contented; and that yf the said Person or Persons, having committed such Robbery or Spoile, shall not make, or cause to be made Satisfaccon, accordinglie, within such Tyme soe to be lymytted, that then it shalbe lawfull for Vs, our Heires and Successors, to putt the said Person or Persons out of our Allegiance and Proteccion, and that it shalbe lawfull and free for all Princes to prosecute with Hostilitie, the said Offendors, and every of them, their and every of their Procnrers, Ayders, Abettors, and Comforters in that Behalf: 20

PROVIDED also, and our expresse Will and Pleasure is, And Wee doe by theis Presents for Vs, our Heires and Successors ordeyne and appoint That theis Presents shall not in any manner envre, or be taken to abridge, barr, or hinder any of our loving subiects whatsoever, to vse and exercise the Trade of Fishing vpon that Coast of New England in America, by theis Presents mencoed to be graunted. But that they, and every, or any of them, shall have full and free Power and Liberty to continue and vse their said Trade of Fishing vpon the said Coast, in any the Seas therevnto adioyning, or any Armes of the Seas or Saltwater Rivers where they have byn wont to fishe, and to build and sett vp vpon the Landes by theis Presents graunted, such Wharfes, Stages, and Workehouses as shalbe necessarie for the salting, drying, keeping, and packing vp of their Fish, to be taken or gotten vpon that Coast; and to cut down, and take such Trees and other Materialls there growinge, or being, or shalbe needefull for that Purpose, and for all other necessarie Easements, Helpes, and Advantage concerning their said Trade of Fishing there, in such Manner and Forme as they have byn heretofore at any tyme accustomed to doe, without making any wilfull Waste or Spoyle, any Thing in theis Presents conteyned to the contrarie notwithstanding. 30

AND WEE DOE further, for Vs, our Heires and Successors, ordeyne and graunte to the said Governor and Company, and their Successors by theis Presents that theis our Letters-patents shalbe firme, good, effectuell, and available in all Thinges, and to all Intents and Construecons of Lawe, according to our true Meaning herein before declared, and shalbe construed, reputed, adiudged in all cases most favourable on the Behalf, and for the Benefitt and Behoofe of the saide Governor and Company and their Successors: ALTHOUGH express mencion of the true yearly Value or certenty of the Premisses or any of 40

them, or of any other Giftes or Grauntes, by Vs, or any of our Progenitors or Predecessors to the fore-
 said Governor or Company before this tyme made, in their Presents is not made; or any Statute, Acte,
 Ordinance, Provision, Proclamacon, or Restrainte to the contrarie thereof, heretofore had, made, published
 ordeyned, or provided, or any other Matter, Cause, or Thing whatsoever to the contrarie thereof in any
 wise notwithstanding.

IN WITNESS whereof, Wee have caused this our Letters to be made Patents.

Witness ourself, at Westminster, the fourth day of March, in the fourth Yeare of our R igne.

Per Breve de Privato Sigillo,

WOLSELEY.

SECRET
 TO THE
 OFFICE
 OF RECORDS

The Charter
 of Mass.
 ch. 11.
 Bay 1621

GRANT OF NEW HAMPSHIRE—1629.*

SUPPLEMENT
TO THE
ONTARIO
APPENDIX
—
GRANT OF NEW
HAMPSHIRE
—1629.

THIS INDENTURE, made the Seventh Day of November, Anno Domini One Thousand Six Hundred and Twenty Nine, and in the Fifth Year of the Reign of our Sovereign Lord, Charles, by the Grace of God, King of England, Scotland, France, and Ireland, Defender of the Faith, &c. Between the President and Council of New-England on the one Part, and Captain John Mason, of London, Esquire, on the other Party: WITNESSETH, That whereas our late Sovereign Lord, of famous Memory, King James, for the making of a Plantation, and establishment of a Colony or Colonys, in the Country called or known by the Name of New-England, in America, did by his highness's Letters-patents, under the Great Seal of England, bearing Date at Westminster, the Third Day of November, in the Eighteenth year of his Reign, Give and Grant and Confirm unto the Right Honourable Lodwick, Duke of Lenox, George, Marquiss of Buckingham, James, Marquiss Hamilton, Thomas, Earl of Arundel, Robert, Earl of Warwick, Sir Ferdinando Gorges, Knight, and divers others, whose Names are expressed in the said Letters-patents, their Heirs and Assigns, that they shall be one Body Politick and Corporate perpetuall, and that they should have perpetuall Succession, and one Common Seal or Seals to serve for the said Body; and that they and their Successors shall be known, called, incorporated by the name of the President and Council, established at Plymouth, for the planting, ruling, and governing of New-England, in America: And also did, of his especial Grace, certain knowledge, and meer Motion, for him, his Heirs and Successors, give, grant, and confirm unto the said President and Council, and their Successors, under the Reservations, Limitations, and Declarations, in the said Letters-patents expressed, all that Part and Portion of that Country, now commonly called New-England, which is situate, lying, and being between the Latitudes of Forty Degrees and Forty Eight northerly Latitude; together with the Seas and Islands lying within One Hundred Miles of any Part of the said Coast of the Country aforesaid; and also all the said Soyle, Ground, Havens, Ports, Rivers, Mines, as well Royal Mines of Gold and Silver as other Mines and Minerals, Pearls and Precious Stones, Woods, Quarries, Marshes, Waters, Fishings, Huntings, Hawkings, Fowlings, Commodities, and Hereditaments whatsoever; together with all Prerogatives, Jurisdictions, Royalties, Privileges, Franchises, and Preheminences within any of the said Territories and the Precincts thereof whatsoever: To have, hold, possess and enjoy, all and singular the said Lands and premisses in the said Letters-patents granted, or mentioned to be granted, unto them the said President and Council, their Successors and Assigns forever, to be holden of his Majesty, his Heirs and Successors, as of his Highness's Manor of East-Greenwich, in the County of Kent, in free and common Socage, and not in Capite, or by Knights Service: yielding and paying to the King's Majesty, his Heirs and Successors, the one-fifth Part of all Gold and Silver Oare, that from time to time, and at all times from the date of the said Letters-patents shall be thus gotten, had, or obtained for all Services, Duties, or Demands, as in and by his Highness's said Letters-patents amongst divers other Things therein contained, more fully at large it doth and may appear.

And whereas the said President and Council have, upon mature deliberation thought fitt, for the better Furnishing and Furtherances of the Plantation in those Part, to appropriate and allot to several and particular Persons, divers parcels of Lands within the Precincts of the aforesaid granted Prmisses by his Majesty's said Letters-patents:

Now this Indenture witnesseth, That the said President and Council, of their free and mutual Consent, as well to the End, that all the Lands, Woods, Lakes, Rivers, Waters, Islands and Fishings, with all the Traffick, Profits, and Commodities whatsoever, to them or any of them belonging, and hereafter in these Presents mentioned, may be wholly and entirely invested, appropriated, served and settled, in and upon the said Captain John Mason, his Heires and Assigns forever, as for divers special Services for

* Several small grants of land located within the present limits of the State of New Hampshire had been made by the "Plymouth Company," in England, to different persons before this grant was made to John Mason, and confirmed by the following supplementary grant in 1635. The settlements, however, sought the protection of Massachusetts in 1641, and enjoyed it until 1675, when Robert Mason, a grandson of John Mason, obtained a royal decree, under which, four years later, a colonial government, with a president, a council, and house of burgesses were established. But no charter was given to the colony, and its government was only continued during the King's pleasure.

the Advancement of the said Plantation, and other good and sufficient Causes and Considerations them especially thereunto moving, have given, granted, bargained, sold, assigned, aliened, set over, enfeoffed, and confirmed, and by these presents, do give, grant, bargain, sell, assign, aliene, set over, enfeof, and confirm unto the said Captain John Mason, his Heires and Assigns, all that Part of the main Land in New-England, lying upon the Sea Coast, beginning from the middle Part of Merrimack River, and from thence to proceed northwards along the Sea Coast to Piscataqua River, and so forwards up within the said River, and to the furthest Head thereof, and from thence northwestwards, until three Score Miles be finished from the first entrance of Piscataqua River and also from Merrimack through the said River, and to the furthest Head thereof, and so forwards up into the Lands westwards until three Score Miles be finished; and from thence to cross over Land to the three Score Miles, and accepted from Piscataqua River, together with all Islands and Islets within Five Leagues Distance of the Premises, and abutting upon the same or any Part or Parcel thereof; as also all Lands, Soyles, Grounds, Havens, Ports, Rivers, Mines, Minerals, Pearls, Precious Stones, Woods, Quarries, Marshes, Waters, Fishings, Huntings, Hawkings, Fowling, and other Commodities and Hereditaments whatsoever, with all and singular their Appurtenances; together with all Prerogatives, Rights, Royalties, Jurisdictions, Privileges, Franchises, Liberties, Preheminences, Marine Power, in and upon the said Seas and Rivers; as also all Escheats and Casualties thereof, as Flotsam, Jetson, Lagan, with Anchorage, and other such Duties, Immunities, Scotts Islets, and Appurtenances whatsoever, with all the Estate, Right, Title, Interest, Claim, and Demand whatsoever, which the said President and Council, and their successors, of Right ought to have or claim in or to the said Portions of Lands, Rivers, and other the Premises as is aforesaid, by Reason or Force of his Highness's said Letters-patents, in as free, large, ample, and beneficial Manner, to all Intents, Constructions, and Purposes whatsoever, as in and by the said Letters-patents the same are amongst other Things granted to the said President and Council aforesaid, except two-fifths of the Oar of Gold and Silver in these Presents hereafter expressed; which said Portions of Lands with the Appurtenances, the said Captain John Mason, with the Consent of the President and Council, intends to name New-Hampshire:

To have and to hold all the said Portions of Lands, Islands, Rivers and Premises, and all and singular other the Commodities and Hereditaments hereby given, granted, aliened, enfeoffed, and confirmed, or mentioned, or intended by these Presents to be given, granted, aliened, enfeoffed, and confirmed, with all and singular the Appurtenances and every Part and Parcel thereof, unto the said Captain John Mason, his Heirs and Assigns forever, to be holden of his said Majesty, his Heirs and Successors, as of his Highness's Manor of East-Greenwich in the County of Kent, in free and common Socage, and not in Capite, or by Knight's Service; nevertheless with such Exceptions, Reservations, Limitations and Declarations, as in the said Letters-patents are at large expressed:

Yielding and paying unto our Sovereign Lord the King, his Heirs and Successors, the fifth Part of all the Oar of Gold and Silver, that from time to time, and at all times hereafter, shall be there gotten, had, and obtained, for all Services, Duties, and Demands; and also yielding and paying unto the said President and Council, and their Successors, yearly, the sum of Five Shillings, English Money, if it be demanded, and the said President and Council, for them and their Successors, do covenant and grant to and with the said Captain John Mason, his Heirs and Assigns, from and after the Sealing and Delivery of these Presents, according to the Purport, true Intent and meaning of these Presents, that he shall from henceforth, from time to time forever, peaceably and quietly have, hold, possess, and enjoy, all the aforesaid Lands, Islands, Rivers and Premises, with the Appurtenances, hereby before given and granted, or mentioned or intended to be hereby given and granted, and every Part or Parcel thereof, without any Lett, Disturbance, Denial, Trouble, Interruption, or Eviction, of or by the said President and Council, or any Person or Persons whatsoever, claiming by, from, or under them, or their Successors, or by or under their Estate, Right, Title, or Interest.

And the said President and Council, for them and their Successors, do further covenant and grant to and with the said Captain John Mason, his Heirs and Assigns, by these Presents, that they, the said President and Council, shall at all times hereafter, upon reasonable Request, at the only proper Cost

and Charges in the Law, of the said Captain John Mason, his Heirs and Assigns, do make, perform, suffer, execute, and willingly consent unto any further Act or Acts, Conveyance or Conveyances, Assurance and Assurances whatsoever, for the good and perfect investing, assuring, conveying, and sure-making of all the aforesaid Portions of Lands, Islands, Rivers, and all and singular the Appurtenances, to the said Captain John Mason, his Heires and Assigns, as by him, his Heirs and Assigns, or by their, or any of their Council learned in the Law, shall be devised, advised, or required.

And further it is agreed, by and between the said Parties to these Presents, and the said Captain John Mason, for him, his Heirs and Assigns, doth covenant to and with the said President and Council, and their Successors, by these Presents, that if at any Time hereafter there shall be found any Oar of Gold and Silver within the Ground, in any Part of the said Premisses, that then he the said Captain John Mason, his Heirs and Assigns, shall yield and pay unto the said President and Council, their Successors and Assigns, one-fifth Part of all such Gold and Silver Oar as shall be found in and upon the Premisses, and digged and brought above Ground, to be delivered above Ground, and that always within reasonable and convenient time if it be demanded, after the finding, digging, and getting up of such Oar as aforesaid, without Fraud or Covin, and according to the true Intent and Meaning of these Presents.

And the said Captain John Mason doth further covenant for him, his Heirs and Assigns, that he will establish such Government in the said portion of Lands and Islands granted unto him, and the same will from time to time continue, as shall be agreeable as near as may be to the Laws and Customs of the Realm of England; and if he shall be charged at any time to have neglected his duty therein, that then he will reform the same, according to the Discretion of the President and Council, or in Default thereof, it shall be lawful for any of the aggrieved Inhabitants or Planters, being Tenants upon the said Lands, to appeal to the chief Court of Justice of the said President and Council:

And further, that if the said Captain John Mason, his Heirs and Assigns, shall at any Time hereafter aliene these Premisses, or any Part, to any foreign Nations, or to any Person or Persons of any foreign Nation, without the especial Lycence, Consent, and Agreement of the said President and Council, their Successors or Assigns, that then the Part or Parts of the said Lands so aliened, shall immediately return back again to the Use of the said President and Council:

And further, know ye, that the said President and Council have made, constituted, deputed, authorised, and appointed, and in their stead and place do put Captain Walter Neal, or in his Absence, any other Person who shall be their governor, or other Officer, to be their true and lawful Attorney, and in their Name and Stead, to enter the said Portion of Lands, and other the Premisses, with their Appurtenances, or into some Part thereof, in the Name of the whole, for them and in their Name, to have and take possession and Seizin thereof, or of some Part thereof, in the Name of the whole so had and taken, then for them and in their names, to deliver the full and peaceable Possession and Seisin of all and singular the said granted Premisses, unto the said Captain John Mason, or to his certain Attorney or Attornies in that Behalf, according to the true Intent and Meaning of these Presents, ratifying, confirming, and allowing all and whatsoever the said Attorney shall do in and about the Premisses by these Presents.

In Witness whereof to one part of this present Indenture, remaining in the Hands of Captain John Mason, the said President and Council have caused their Common Seal to be affixed; and to the other Part of these present Indentures remaining in the Custody of the President and Council, the said Captain John Mason hath put to his Hand and Seal, given the Day and Year first above written.

GRANT OF NEW HAMPSHIRE—1635.

TO all Christian People unto whom these Presents shall come, the Councell for the Affayres of New England, in America, send Greeting in our Lord God everlasting. Whereas our late Soueraign Lord King James, of blessed memory, by his Highness's letters-patents vnder the Great Seal of England, bearing date at Westminster, the third day of November, in the eighteenth yeare of his Reign over his Highness's Realme of England, for the Consideration in the said Letters-patents expressed and declared, hath absolutely giuen, granted, and confirmed vnto the said Councell, and their successors for eter, all the land of New England in America lying and being in breadth from forty degrees of northerly latitude from the Equinoctiall Line, to forty-eight degrees of the said northerly latitude inclusively; and in length of and within all the breadth aforesaid, from sea to sea, together alsoe with all the firme lands, soyles, grounds, havens, ports, rivers, waters, fishings, mines, and mineralls, as well Royall mines of gould and silver, as other mines and mineralls, pretious stoons, quaries, and all and singular other commoditys, jurisdictions, Royalties, privileges, franchises, preheminences, both within the said tract of land upon the Mayn, and alsoe within the yslands and seas adjoyneing, as the said letters-patents, amongst diuers other things therein contayned, more at large doth and may appeare.

Now know all men by these presents, that the said Councell of New England, in America, being assembled in publick court, according to an act made and agreed vpon the third day of February last past, before the date of these presents, for diuerse good causes and considerations them there vnto espetially moveing, Have given, granted, aliened, barganed and sould, and in and by these presents do for them and their successors, give, grant, alien, bargane sell and confirm vnto Capt. John Mason, Esq. his heyres and assignes, all that part of the Mayn Land of New England aforesaid, beginning from the middle part of Naumkeek River, and from thence to proceed eastwards along the Sea Coast to Cape Anne, and round about the same to Pischataway Harbour, and soe forwards vp within the river Newgewanacke, and to the furthest head of the said River, and from thence northwards till sixty miles bee finished, from the first entrance of Pischataqua Harbor, and alsoe from Naumkecke through the River thereof vp into the land west sixty miles, from which period to cross over land to the sixty miles end, accompted from Pischataway, through Newgewanacke River to the land northwest aforesaid; and alsoe all that the South Halfe of the Ysles of Sholes, all which lands, with the Consent of the Councell, shall from henceforth be called New-hampshyre :

And alsoe ten thousand acres more of land in New England aforesaid, on the southeast part of Sagadihoc, at the mouth or entrance thereof, from henceforth to bee called by the name of Massonia; togeatber with all and singular Havens, Harbors, Cricks, and Yslands inbayed, and all Islands and Isletts lying within five leagues distance of the Mayne land opposite and abutting upon the Premises or any part thereof, not formerly lawfully granted to any by spetiall name; and all mines, mineralls, quaries, soyles, and woods, marshes, waters, rivers, lakes, fishing, lawkings, hunting, and fowling, and all other Royalties, jurisdictions, priuiledges, preheminences, profitts, comoditys, and hereditaments, whatsoever, with all and singular theire and every of their appurtenances, and togeather alsoe with all rents reserved, and the benefitt of all profitts due to the said Councell, and their successors, with power of iudicature in all causes and matters whatsoever, as well criminall, capitall, and civil, arising or which may hereafter arise within the lymitts, bounds, and precincts aforesayd, to bee exercised, and executed according to the laws of England as neere as may bee, by the said capt. John Mason, his heyres and assignes, or his or their Deputys, Loefftenants, Judges, Stewards, or Officers thereunto by him or them assigned, deputed or appoynted from tyme to tyme, with all other priuiledges, franchises, libertys, immunitys, escheats, and causallitys, thereof ariseing or which shall or may hereafter arise within the said lymitts and precincts, with all the right, title, claime, and demand whatsoever, which the said Councell and their successors now of right have or ought to have, or claim, or may have or acquire hereafter in or to the said portions of lands, or Islands or any the premisses, and in as large, free, ample, benefitfull a manner, to all intents, constructions, and purposes whatsoever, as the said Councell, by virtue of his Majesty's said

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letters patents may or can grant the same; saving and always reserving vnto the said Counsell and their successors, power to receive, heare and determine all and singular appeale and apeales of every person and persons whatsoever, dwelling or inhabiting within the said Territorys and Yslands or any part thereof, soe granted as aforesaid, of and from all judgement, and sentences whatsoever given within the said lands and territory aforesaid :

To have and to hold all and singular the lands and premisses above, by these presents granted (except before excepted) with all and all manner of profetts, commoditys, and hæreditaments whatsoever, within the lands and precinets aforesaid, to the said lands, yslands, and premisses, or any part of them, anywise belonging or appertayning vnto the said Capt. John Mason, his heyres, and assignes, to the onely proper vse and behoefe of him the said Capt. John Mason, his heyres and assignes for ever, to bee 10
houlden of the said Counsell, and their successors per gladium committatis, that is to say by finding four able men conueniently armed and arrayed for the warre to attend vpon the Governor of New England, for the publik service of, within foureteen dayes after any warneing given; Yielding and paying vnto the said Counsell and their successors for ever, one fifth part of all the ore of the mines of gould and silver, which shall bee had possessed, or obteyned within the lymitts or precinets aforesaid, for all rents, services, dutys, and demands whatsoever due vnto the said Counsell and their successors, from any plantation within the precinets aforesaid, the same to bee delivered vnto his Majesty's Receiver, his Deputy or Deputys assigned for the receipt thereof, to the use of his Majesty, his heyres and successors, from tyme to tyme, within the lands, precinets, and territory's of New-England aforesaid.

And lastly, the said Counsell have deputed and authorized and appointed, and in their place and 20
stead have putt Henry Jocelyn, Esq; and Ambrose Gibbines Gentle, or either of them, to be their true and lawfull Attorney and Attorneys, for them, and in their name and stead to enter into the said lands and other the premisses with their appurtenances, or any part thereof in the name of the whole, and take quiet and peaceable possession and seizin thereof so had and taken as aforesaid, then to deliver the same vnto the said Capt. John Mason, his heyres or assigns, or to his or their certen Attorney, or Attorneys, to be by him or them deputed on that behalf, according to the purport, true intent and meaning of these presents.

In witness whereof they the said Counsell have hereunto affixed their common seal, dated the two-
and-twentieth day of April, in the eleventh yeare of the Reigne of our Soueraign Lord Charles, by the
Grace of God, King of England, Scotland, France, and Ireland, Defender of the Faith, Anno Domini, 30
1635. Sealed with the Seal of the said Counsell thereto appended.

GRANT OF THE PROVINCE OF MAINE—1639.*

CHARLES by the grace of God King of England Scotland France and Ireland
Defender of the Faith, &c

To all to whom these Presents shall come Greeting Whereas Sir Ferdinando Gorges Knight hath been an humble suitor unto us to graunte and confirme unto him and his heires a parte and porcon of the country of America now commonly called or knowne by the name of New England in America hereafter in these Presents described by the meets and boundes thereof with divers and sundrie priviledges and jurisdiccions for the welfare and good of the state of those Colonies that shalbee drawne thither and for the better government of the people that shall live and inhabite within the lymits and preeints thereof whiche parte or porcon of the said Countrie wee have heretofore (amongst other things) for us our heires and successors taken into actual and reall possession or in defaulte of such actual and reall possession formerly taken Wee Doe by these Presents for us our heires and successors take the same into our actual and reall possession Knowe yee therefore that of our especiall grace certaine knowledge and meere mocon Wee Have given graunted and confirmed And by these Presents for us our heires and successors Doe give graunte and confirme unto the said Sir Fardinando Gorges his heires and assignes All that Parte Purparte and Porcon of the Mayne Lande of New England aforesaid beginning att the entrance of Pascataway Harbor and soe to passe upp the same into the River of Newichewanocke and through the same unto the furthest heade thereof and from thence Northwestwards till one hundred and twenty miles bee finished and from Pascataway Harbor mouth aforesaid Northeastwards along the Sea Coasts to Sagadahocke and upp the River thereof to Kynybequy River and through the same unto the heade thereof and into the Lande Northwestwards untill one hundred and twenty myles bee ended being accompted from the mouth of Sagadahocke and from the period of one hundred and twenty myles aforesaid to crosse over Lande to the one hundred and twenty myles end formerly reckoned upp into the Lande from Pascataway Harbor through Newichewanocke River and alsoe the North halfe of the Isles of Shoales together with the Isles of Capawock and Nawtican neere Cape Cod as alsoe all the Islands and Ilets lyeinge within five leagues of the Mayne all alonge the aforesaide Coasts betweene the aforesaid River of Pascataway and Segadahocke with all the Creekes Havens and Harbors thereunto belonginge and the Revercon and Revercons Remynder and Remynders of all and singular the said Landes Rivers and Premisses All which said Part Purpart or Porcon of the Mayne Lande and all and every the Premisses herein before named Wee Doe for us our heires and successors create and incorporate into One Province or Countie

And Wee Doe name ordeyne and appoynt that the porcon of the Mayne Lande and Premisses aforesaide shall forever hereafter bee called and named The Province or Countie of Mayne and not by any other name or names whatsoever with all and singular the Soyle and Grounds thereof as well drye as covered with water and all Waters Portes Havens and Creekes of the Sea and Inletts of the said Province of Mayne and Premisses as to them or any of them belonginge or adjacent as alsoe all Woodes Trees Lakes and Rivers within the said Provynce of Mayne and Premisses and the Lymitts of the same together with the Fischeings of whatsoever kinde as well Pearle as Fische as Whales Sturgeons or any other either in the Sea or Rivers and alsoe All Royalties of Hawkeing Hunting Fowleing Warren and Chases within the said Province of Mayne and Premisses aforesaid Deere of all sorts and all other Beasts and Fowles of Warren and Chase and all other Beasts there and alsoe All Mynes and Ore of Goulde Silver Precious Stones Tynne Leade Copper Sulphure Brimstone or any other Mettall or Mynerall matter whatsoever within the said Province and Premisses or any of them opened or hidden in all Quarries there And all

* This charter which was granted by Charles I. to Sir Ferdinando Gorges virtually confirmed a patent which had been given by the Plymouth Company, established under the charter of 1606, to Sir Ferdinando Gorges and Captain John Mason, dated August 10, 1622. Gorges established a government under it, which was broken up by his death in 1647.

Sir Ferdinando Gorges's grandson, Ferdinando Gorges, sold and gave a deed of the Province of Maine, March 13, 1677, to John Usher, a merchant of Boston, for £1,250. In the same year Usher gave a deed of the same territory to the governor and company of Massachusetts Bay.

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Province of
Maine
1639

Gould Silver Pearle Precious Stones and Ambergreece whiche shall be founde within the said Province and Premisses or any of them and the Lymitts and Coasts of the same or any of them or any parte of them or any of them and all and singular other Proffitts Benefitts and Commodities groweing comeing acruing or happening or to be had perceived or taken within the said Province and Premisses Lymitts and Coasts of the same or any of them and alsoe All Patronages and Advowsons Free Disposicions and Donacons of all and every such Churches and Chappells as shall be made and erected within the said Province and Premisses or any of them with full power lycense and authority to builde and erecte or cause to be builde and erected soe many Churches and Chappells there as to the said Sir Ferdinando Gorges his heires and assignes shall seeme meete and convenient and to dedicate and consecrate the same or cause the same to be dedicated and consecrated according to the Ecclesiastical Lawes of this our Realme of England togeather alsoe with all and singuler and as large and ample Rights Jurisdiccions Priviledges Prerogatives Royalties Libertyes Imunityes Franchises Prehemineces and Hereditaments as well by Sea as by Lande within the said Province and Premisses and the Precincts and Coasts of the same or any of them and within the Seas belonging or adjaect to them or any of them as the Bishopp of Durham within the Bishopricke or Countie Palatine of Duresme in our Kingdome of England now hath useth or enjoyeth or of right hee ought to have use or enjoye within the said Countie Palatine as if the same were herein particularly menconed and expressed To have and to hould possesse and enjoye the said Province and Premisses and every of them and all and singuler other the Premisses before by these Presents graunted or menconed or intended to be graunted with their and everye of their rights members and appurtenances unto the said Sir Ferdinando Gorges his heires and assignes 20
To the sole and only use of the said Sir Ferdinando Gorges his heires and assignes forever To be houlden of us our heires and successors as of the Mannor of East Greenwich in the Countie of Kent by Fealty onely in fee and common Soeage and not in Capite nor in Knights Service for all manner of service whatsoever Yeldeing and Payeing therefore yearely to us our heires and successors one Quarter of Wheate And alsoe Yeldeing and Payeing to us our heires and successors the fiftte parte of the cleere yearely proffitts of all Royall Mynes of Goulde and Silver that from tyme to tyme and att all tymes hereafter shall be there gotten and obteyned (if any suche shall be there founde) and the fiftte part of all Goulde and Silver founde uppon the Sea Shoare or in Rivers or elsewhere within the boundes and lymitts of the said Province and Premisses and the fiftte parte of the cleere yearely proffitt of Pearle Fisheing

And Wee Doe for us our heirs and successors further Graunte unto the said Sir Ferdinando Gorges 30
his heires and assignes forever All Treasure Trove Goodes and Chattells of Felons and of Felons of themselves Waifes Estrayes Pyrats Goodes Deodands Fynes and Amerciaments of all the Inhabitants and others happening groweing or arising in the said Province and other the Premisses or any part thereof or in any Voyage or Passage to or from the same aswell for Offences committed against our selfe our heires and successors or things concerninge our selfe our heires or successors or our proffitt as against others or things concerninge others or the proffitts of others and all and all manner of Wrecks of Shippes or Merchandize and all that which to wrecke belongeth by what means soever happening within or uppon the Havens Coasts Creeks or Shoares of the Premisses or any parte thereof

And Wee Doe for us our heires and successors create ordeyne and constitute the said Ferdinando 40
Gorges his heires and assignes the true and absolute Lords and Proprietors of all and every the aforesaid Province of Mayne and Premisses aforesaid and all and every the Lymitts and Coasts thereof saveing always the faith and allegiance and the Supream Dominion due to us our heires and successors

And for the better governement of such our Subjects and others as att any tyme shall happen to dwell or reside within the said Province and Premisses or passe to or from the same our will and pleasure is that the Religion nowe professed in the Church of England and Ecclesiasticall Governement nowe used in the same shall be forever hereafter professed and with asmuch convenient speede as may be settled and established in and throughout the said Province and Premisses and every of them

And Wee Doe for us our heires and successors by these Presents give and graunte unto the said Sir Ferdinando Gorges his heires and assignes power and authority with the assent of the greater parte

in the said Province
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 Ferdinando Gorges
 and of Felons of
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 nte unto the said
 the greater parte

of the Freeholders of the said Province and Premises for the tyme being (when there shall be any) whoe are to be called thereunto from tyme to tyme when and as often as it shall be requisite to make ordeyne and publish Lawes Ordinances and Constitucions reasonable and not repugnant or contrary but agreeable (as neere as conveniently may be) to the Lawes of England for the publique good of the said Province and Premises and of the Inhabitants thereof by imposinge of penalytes imprisonments or other conceons (or if the offence shall require) by takinge away of life or member the said Lawes and Constitucions to extend as well to such as shall be passinge unto or returninge from the said Province and Premises as unto the Inhabitants and Residents of or within the same and the same to be put in excecucion by the said Sir Ferdinando Gorges his heires or assignes or by his or their Deputies
 10 Lieutenants Judges Officers or Ministers in that behalfe lawfully authorized and the same Lawes Ordinances and Constitucions or any of them to alter change revoke or make voyde and to make new not repugnant nor contrary but agreeable as neere as may be to the Lawes of England as the said Sir Ferdinando Gorges his heires or assignes together with the said Freeholders or the greater parte of them for the tyme being shall be from tyme to tyme thought fitt and convenient

And Wee Doe further by these Presents for us our heires and successors give and graunte unto the said Sir Ferdinando Gorges his heires and assignes full power and authoritie and that itt shal be lawfull to and for him the said Sir Ferdinando Gorges his heires and assignes to erect Courtes of Justice as well ecclesiasticall as evill and temporall whatsoever and to appoynt and constitute from tyme to tyme Judges Justices Magistrates and Officers as well of the said Courte and Courtes of Justice as otherwise
 20 aswell by Sea as by Lande for the hearing and determining of all manner of Causes whatsoever within or concerning the said Province and Premises or any of them or the Inhabitants or Residents there and Passengers to or from the same aswell by Lande as by Sea and to order and appoynt what matters or things shal be heard determyned done or ordered in anie of the said Courtes or by any of the said Judges Magistrates and officers with such power and in such forme as it shall seeme good to the said Sir Ferdinando Gorges his heires and assignes And the said Judges Justices Magistrates and Officers and every or any of them from time to time to displace and remove when the said Sir Ferdinando Gorges his heires or assignes shall thinke fitt and to place others in theireromes and steed And that the Inhabitants and Residents within the said Province and Premises and Passengers to and from the same may within fortye days after sentence given in the said Courtes (where appeales in like Courtes
 30 within this Kingdome are admitted) appeale to the said Sir Ferdinando Gorges his heires or assignes or his or their generall Governour or Chiefe Deputie of the said Province and Premises for the tyme being To whome Wee Doe by these Presents for us our heires and successors give full power and authoritie to proceede in such Appeals as in like case of Appeales within this our Realme of England And Wee Doe further for us our heires and successors give and graunte unto the said Sir Ferdinando Gorges his heires and assignes full power and authoritie to pardon remitt and release all offences and offenders within the said Province and Premises against all and every or any the said Lawes Ordynances or Constitucions and to doe all and singular other things unto the excecucion of Justice apperteyning in any Courte of Justice according to the forme and manner of proceeding in such Courtes to be used although in these our Letters Patents there be noe particuler mencion of the same

40 But Wee Doe nevertheles hereby signifie and declare our will and pleasure to be the powers and authorities hereby given to the said Sir Ferdinando Gorges his heires and assignes for and concerning the Government both Ecclesiasticall and Civill within the said Province and Premises shal be subordinate and subject to the power and reglement of the Lords and other Commissioners here for forraigne Plantacons for the tyme being but for all and whatsoever doth shall or maye concerne the proprietie of the said Province Partes and Coastes of the same or any of them or any Owner Shipp or Interest in any Landes Tenements or other Hereditaments Goodes or Chattells or the nomyngateing or appoynting of any Officer or Officers the same is lefte whollie to the said Sir Ferdinando Gorges his heires and assignes according to the tenor intent and true meaning of these Presents And because such Assemblies of Freeholders for makinge of Lawes cannot alwayes be soe suddenly called as there may be occasion to require the same Wee Doe therefore for us our heires and successors give and graunte unto the said Sir

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Ferdinando Gorges his heires and assignes full power and authoritie that hee the said Sir Ferdinando Gorges his heires and assignes by him and themselves or by his or their Deputies Magistrates or Officers in that behalfe lawfully constituted shall or may be from tyme to tyme make and ordeyne fitt and wholesome Ordinances within the said Province or Premisses aforesaid to bee kepte and observed as well for the keepinge of the pence as for the better government of the people there abiding or passing to or from the same and to publish the same to all to whome itt maye concerne which Ordinances Wee Doe for us our heires and successors straightly comand to bee inviolably observed within the said Province and Premisses under the penaltie therein expressed soe as the same Ordinances bee reasonable and not repugnant or contrary but as neere as may be agreeable to the Lawes and Statutes of our Kingdome of England and soe as the same Ordinances doe not extend to the bindeing chargeing or taking away of the right or Interest of any person or persons in their lives members Freeholds Goodes or Chattells whatsoever And because in a Country soe farr distant and seated amongst soe many barbarous nations the Incursions or Invasions aswell of the barbarous people as of Pirates and other enemies maye be justly feared Wee Doe therefore for us our heires and successors give and graunte unto the said Sir Ferdinando Gorges his heires and assignes aswell by him and themselves as by his and their Deputyes Captaynes or other Officers for the tyme being shall or lawfullyc maye muster leavie rayse armes and employe all person and persons whatsoever inhabiteing or resideing within the said Province or Premisses for the resisting or withstanding of such Enymies or Pyrates both att Lande and att Sea and such Enimies or Pyrates (if occasion shall require) to pursue and prosecute out of the lymits of the said Province or Premisses and then (if itt shall soe please God) to vanquish apprehende and take and being taken either according to the Lawe of armes to kill or to keepe and preserve them att their pleasure And likewise by force of armes to recover from any person or persons all such Territories Domyinions Landes Places Goods Chattels and Wares which hereafter shalbee taken from the said Sir Ferdinando Gorges his heires or assignes or from his or their Deputyes Officers or Servants or from any the Plantors Inhabitants or Residents of or within the said Province or Premisses or from any other Members Aylors or Assistors of the said Sir Ferdinando Gorges his heires or assignes or from any other the subjects of us our heires and successors or others in amitie with us our heires and successors in the said Province and Premisses and Coasts or any of them or in their passage to or from the same

And Wee Doe further for us our heires and successors give and graunte unto the said Sir Ferdinando Gorges his heires and assignes in case any Rebellion sudden tumult or mutynie shall happen to arise either uppon the said Lande within the said Province and Premisses or any of them or Coastes of the same or uppon the mayne Sea in passing thither or returning from thence or in any such expedicon or service as aforesaid itt shall and may be lawfull to and for the said Sir Ferdinando Gorges his heires and assignes as well by him and themselves as by his and their deputies Captaynes or other officers under his or their scale in that behalfe to bee authorised (to whome wee alsoe for us our heires and successors doe give and graunte full power and authoritye to doe and execute the same) to use and execute martial lawe against such Rebels Traytors Mutyners and Seditious Persons in as ample manner and forme as anie Captayne General in the Warrs or as any Lieutenante or Lieutenants of any Countie within this our Realme of England by vertue of his or their Office or Place maie or have been accustomed in tyme of Warre Rebellion or Mutynie to doe and performe

And Wee Doe for us our heires and successors further give and graunte unto the said Sir Ferdinando Gorges his heires and assignes and to all and every Commander Governour Officer Minister Person and Persons which shall by the said Sir Ferdinando Gorges his heires or assignes bee thereunto authorized or appoynted leave lycense and power to erect rayse and builde from tyme to tyme in the Province Territories and Coastes aforesaid and every or any of them such and soe manie Forts Fortresses Platforms Castles Citties Townes and Villages and all Fortificacons whatsoever and the same and everie of them to fortifie and furnishe with men Ordynances Powder Shott Armour and all other Weapons Munition and Habilliments of Warr both for defence and offence whatsoever as to the said Sir Ferdinando Gorges his heires and assignes and everie or anie of them shall seeme meete and convenient And likewise to committ

from tyme to tyme the Government Custody and defence thereof unto such person and persons as to the said Sir Ferdinando Gorges his heires and assignes shall seeme meete and to the said severall Citties Borroughes and Townes to graunte Letters or Charters of Incorporacons with all Libertyes and thinges belonging to the same and in the said severall Cittyes Borroughes and Townes to constitute suche and soe manie Marketts Marts and Fayres and to graunte such meete Tolles Customes Dutyes and Priviledges to or with the same by the said Sir Ferdinando Gorges his heires or assignes shalbee thought fitt And for that Plantacons are subjecte to diverse difficulties and discommodities Therefore Wee favouring the present beginning of the said Plantacon and haveing a provident care that those whoe are grieved in one thing may bee releived in another Doe of our especiall grace certeyne knowledge and meere mocon for us our heires and successors give and graunte unto the said Sir Ferdinando Gorges his heires and assignes and to all other our subjects the Dwellers or Inhabitants that shall att any tyme hereafter bee the Plantors of or in the said Province or any of the Premisses free Lycense and Libertie for the landeing bringeing in and unladeing or otherwise disposeing of all the Wares Merchandize Proffits and Comodities of the said Province or any the Premisses both by sea and lande either by themselves or their Servants Factors or Assignes in any of the Portes of us our heires and successors within our Kingdomes of England and Ireland payeing onely such Customes Subsidies and Dutyes as our naturall subjects of this our Realme of England shall or ought to paye and none other and to have and enjoye all such Libertyes Freedomes and Priviledges for or concerneing the exporting of the same agayne without payement of any more Customes or Dutyes and for having agayne of Imposts in such manner and in the like beneficiall sorte as any of our naturall subjects of this our Realme shall then have and enjoye

And Wee Doe alsoe for us our heires and successors give and graunte unto the said Sir Ferdinando Gorges his heires and assignes full and absolute power and authoritie to make erect and appoynt within the said Province and Premisses such and soe many Portes Havens Creekes and other Places for the ladeing and unladeing of Shippes Barques and other Vessells and in such and soe many places and to appoynt such Rights Jurisdicecons Priviledges and Libertyes unto the said Portes Havens and Creekes belonging as to him or them shall seeme meete and that all and singuler Shippes Boyes Barques and other Vessells to bee laden and unladen in any way of Merchandize shalbee laden or unladen att such Portes Havens and Creekes soe by the aforesaid Sir Ferdinando Gorges his heires or assignes to bee erected and appoynted and not elsewhere within the said Province Promisses and Coasts and to appoynt what reasonable Tolles shalbee paid for the same and the same Tolles to receive take and enjoye to the said Sir Ferdinando Gorges his heires and assignes to his and their use without accompte to bee therefore made to us our heirs or successors any use custume matter or thinge to the contrary thereof notwithstandinge Saveing always to all our Subjects of this our Kingdome of England Libertie of Fisheing aswell in the sea as in the Creekes of the said Province and Premisses aforesaid and the Priviledge of Salteing and dryeing of their Fische and dryeing their netts upon the Shoare of the said Province and any of the Premisses any thinge to the contrary thereof notwithstanding which said Libertyes and Priviledges our pleasure is that the said subjects of us our heires and successors shall enjoye without any noteable dammage or injurie to bee done to the said Sir Ferdinando Gorges his heires and assignes or the Inhabitants of the said Province or any of the Premisses or in any of the said Portes Creekes or Shoares aforesaid but chiefly in the Woodes there groweing

And Wee doe further for us our heires and successors give and graunte unto the said Sir Ferdinando Gorges his heires and assignes full power and authoritie to divide all or anie parte of the Territories hereby graunted or menconed to bee graunted as aforesaid into Provinces Counties Citties Townes Hundreds and Parishes or such other partes or porcons as hee or they shall thinke fitt and in them every or any of them to appoynt and allot out such porcons of Lande for publique uses Ecclesiasticall and Temporall of what kinde soever and to distribute graunte assigne and sett over such particuler porcons of the said Territories Counties Landes and Premisses unto such our subjects or the subjects of any other State or Prince then in anytie with us our heires or successors for such estates and in such manner and forme as to the said Sir Ferdinando Gorges his heires or assignes shall seeme meete and conveniente and the said person and persons according to the said Estate and Estates soe assigned and graunted to

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have and enjoy the same and to make erect and ordeyne in and uppon the said Province and Premises or in and uppon any of them or any parte or parcell of them soe many severall and distincte Mannors as to the said Sir Fardinando Gorges his heires and assignes from tyme to tyme shall seeme meete and to the same severall Mannors to assigne lymitt and appoynt soe much lande distinctly and severallie for demeanse Landes of the said severall Mannors and every of them us to the said Sir Fardinando Gorges his heires and assignes shall and may seeme necessary and fitt and the said Mannors or any of them to call by such name and names as the said Sir Fardinando Gorges his heirs and assignes shall please the said Mannors to bee houlden of the said Sir Fardinando Gorges his heires and assignes by such services and Rents as to him or them shall seeme meete And alsoe that the said Sir Fardinando Gorges his heires and assignes shall and may att their pleasure graunte in frechoulde soemuch of the said demeanse Landes Tenements and Hereditaments belonging or to be belonging to any of the said Mannors to any person or persons their heires or assignes for and under such rentes and services as to the said Sir Fardinando Gorges his heires or assignes shalbee thought fitt to bee houlden of the said Sir Fardinando Gorges his heires and assignes as of the said Mannors or any of them respectively the Acte of Parliament made and enacted in the eighteenth yeare of King Edward the First commonly called (Quia Emptores Terrarum) or any other Statute whatsoever or any other matter or thinge whatsoever to the contrary thereof in any wise notwithstandinge And that hee the said Sir Fardinando Gorges his heires and assignes shall have houlde and keepe within the said severall Mannours soe to bee erected suche and soe many Courtes aswell as Courte Lectes as Courtes Barons as to our Lawes and Statutes of England shalbe agreeable

And Wee Doe further for us our heires and successors give and graunte unto the said Sir Fardinando Gorges his heires and assignes for ever all Admirall Rights Benefitts and Jurisdiccions and likewise all Priviledges and Commodities to the said Admirall Jurisdiccions in any wise belonging or apperteyning in and uppon the Seas Rivers and Coastes of or belonging to the said Province and Premises or every or any of them or to the same adjoyneing within twentie leagues of the said Province and Premises or any of them and in and uppon all other Rivers and Creekes thereof And likewise power to heare and determine all manner of Pleas for and concerning the same Saveing allwayes to us our heires and successors and to the Lord High Admirall of England for the tyme being of us our heires and successors all and all manner of Jurisdiccions Rights Powers Benefitts and authorities whatsoever incident or belonging to the said office of Admirall which itt shalbee lawfull from tyme to tyme to us our heires or successors or the Lord High Admirall of England for the tyme being to have use and exercise within the said Province and Premises and the Seas or Rivers thereof or within twentie leagues of the same as aforesaid when wee shall thinke fitt

And Wee Doe for us our heires and successors give and graunte unto the said Sir Fardinando Gorges his heires and assignes full power and authoritie att any time or times hereafter by him or themselves or by his or their Deputies to administer oathes to all Judges Justices Magistrates and other officers whatsoever by the said Sir Fardinando Gorges his heires and assignes his or their deputies to be elected att the elecon of them to their severall offices and places or within convenient time after And alsoe that the said Fardinando Gorges his heires and assignes shall have full power and authoritie aswell by him and themselves as by his or their deputie or other Chief Magistrate or Officer by him or them to bee in that behalfe appointed to give and administer reasonable oathes to all or any person or persons of what degree or qualitie soever employed or to be employed in or about the said Province Premises and Territories aforesaid or anie of them or in or about the coasts of the same And likewise to all or any Inhabitants and others that shalbee or remayne within the said Province and Premises or any of them for the true and faithfull execution and performance of their severall charges and places or for the exaiacon and cleareing the truth and likewise for the Informacon and better direcon of his and their judgments in any matter or cause whatsoever concerning the said Sir Fardinando Gorges his heires or assignes or any Inhabitant member or Person belonging or repaying unto the said Province and Premises or any of them or any parte of them And in all causes Accions Suits and Debates there to bee begun and prosecuted as the nature of the cause shall require And further of our more espeaciall grace

certeyne knowledge and meere mocon Wee Doe hereby for us our heires and successors graunte unto the said Sir Fardinando Gorges his heires and assignes that itt shall and may bee lawfull to and for the said Sir Fardinando Gorges his heires and assignes and every of them from tyme to tyme to sett to Sea such and soe many Shippes Pinnaces Barges Boates and other Vessells as shalbee thought fitt by the said Sir Fardinando Gorges his heires and assignes prepared and furnished with Ordinances Artillery Powder Shott Victualls Municon or other Weapons or Habiliments of War aswell invasive as defensive in wrlike manner or otherwise and with such number of Men Weomen and Children as the said Sir Fardinando Gorges his heires or assignes shall thinke fitt such voyage into the said Islands and Places or any parte thereof aswell for the Plantacon and Fortificacon thereof as otherwise And that these Presents shalbee a sufficient Lycense and Warrant for any person or persons that shalbee by him or them sent and ymployed thither to goe beyonde the Seas and in that manner soe as the persons soe to bee shipped sent or transported as aforesaid bee not such as are or for the tyme being shalbee prohibited by Proclamacon of us our heires or successors or by any order or orders of the Lords or others Commissioners for Forraigne Plantacons for the tyme being.

And Wee Doe for us our heires and successors further graunte to and with the said Sir Fardinando Gorges his heires and assignes that onely hee the said Sir Fardinando Gorges his heires and assignes and his and theirs Factors Agents and such as shalbee employed sent lycensed or allowed by him or them and noe other person or persons whatsoever except before excepted shall repayre or goe into the said Province of Mayne and Premisses aforesaid and the places within the lymits and coasts thereof or any of them to dwell inhabite or abide there nor have use or enjoye the libertie use and privileges of trade or traffique unto in or from the said Province and Premisses or any of them or buying selling bartering or exchanging for or with any Wares Goodes or Merchandizes there whatsoever And likewise that itt shall and may bee lawfull to and for the said Sir Fardinando Gorges his heires and assignes and for all and every other person and persons that shalbee lycensed or allowed by the said Sir Fardinando Gorges his heires or assignes from henceforth and at all other tymes and from tyme to tyme after the date of these our Letters Patents according to the orders and constitucons of the said Sir Fardinando Gorges his heires and assignes not being repugnant to our Proclamacons and Orders of the Lords and others our Commissioners as aforesaid to take convey carrie and transport for and towards the Plantacon of the said Province and Premisses or any of them or to bee used there or in the passage thither or returning from thence and there to leave abide and inhabite all such and soe many of our loving subjects or any other Strangers that will become our subjects and live under our allegiance as shall willingly transport themselves or bee transported thither and that such our subjects or Strangers may together with their persons send carrie or convey thither aswell Shipping Armour Weapons Ordinance Municon Powder Shott and Habiliments of Warr as Victualls Canvas Lynnen Woollen Cloath Tooles Ymplements Furniture Twyne and Pullen Goodes Wares and Merchandizes of all kindes and sortes whatsoever fitt and necessary for the foode lyvelyhood habitacon apparrell or Defence of our subjects which shall there inhabite and bee and all other Wares Merchandizes and Goods whatsoever not prohibited by the Lawes or Statutes of this our Kingdome payeing customes and other duties as other our subjects doe in such cases And of our further Royall favour Wee have graunted

And by these Presents for us our heires and successors Wee Doe graunte unto the said Sir Fardinando Gorges his heires and assignes that the aforesaid Province Rivers and Places hereby before menconed to bee graunted or any of them shall not bee traded in or unto nor inhabited by any of the subjects of us our heires and successors without the speacial lycense of the said Sir Fardinando Gorges his heires and assignes And therefore wee doe hereby for us our heires and successors charge and comand prohibit and forbidd all the subjects of us our heires and successors of what degree qualitie or condicon soever they bee that none of them directlie or indirectlie presume to trade or adventure to traffique into or from nor to inhabite or abide in the said Province of Mayne Island Dominion and Places hereby menconed or intended to bee graunted or any of them other then the said Sir Fardinando Gorges his heires and assignes and his and their deputies and factors unles itt bee with the license and consent of the said Sir Fardinando Gorges his heires and assignes first had and obteyned in that behalf in writeinge under

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his and their hands and seals under payne of our indignacon and alsoe of suche penalties and punishments as by the Lawes and Ordinances of the said Sir Ferdinando Gorges his heires and assignes to be made in that behalfe shalbee appoynted

And Wee Doe further for us our heires and successors graunte unto the said Sir Ferdinando Gorges his heire und assignes that all and every the persons being the subjects of us our heirs and accessories which shall goe or inhabite within the said Province and Premises or any of them and all and everie the children and posteritie ~~discussing~~ of English Scottish or Irish Parents which shall happen to be borne within the same or upon ~~the seas~~ passing thither or from thence from henceforth ought to be and shalbee taken ~~and~~ reputed to ~~be~~ of the allegiance of us our heires and successors and shalbee and soe shalbee forever hereafter esteemed to be the naturall borne subjects of us our heires and successors and shall be able to ~~pleade~~ and be ~~unpleaded~~ and shall have power and be able to take by descent purchase or otherwise Landes Tenements and Hereditaments and shall have and enjoy all Liberties Franchises and Immunities of or belonging to any the naturall borne subjects of this our Kingdome of England within this our Kingdome and within all or anie other of our Domyinions to all intents and purposes as if they had ~~beene~~ abidyding and borne within this our Kingdome or any other of our Dominions

And Wee Doe further for us our heires and successors give full power and authoritie to the said Sir Ferdinando Gorges his heires and assignes or any person or persons to be thereunto nominated by the said Sir Ferdinando Gorges his heires or assignes to minister and give Oathes of Allegiance and supremacie according to the formes now established in this our Realme of England to all and every such person and persons as they shall thinke fitt that shall att any tyme or tymes goe or passe into the said Province and places or any of them or shalbee resident or abiding there

And our further Will and pleasure is and Wee Doe by these Presents for us our heires and successors Covenant promise and graunte to and with the said Sir Ferdinando Gorges his heires and assignes that if hee the said Sir Ferdinando Gorges his heires or assignes shall att any tyme or tymes hereafter upon any doubte which hee or they shall conceave concerning the validitie and strength of this our present graunte be desirous to renewe the same from us our heires or successors with amendment of such ymperfecons and defects as shall appeare fitt and necessary to be reformed and amended by us our heires and successors that then upon the humble peticion of the said Sir Ferdinando Gorges his heires and assignes such further and better assurance of all and singuler the Premises hereby graunted or mentio~~ned~~ or intended to be graunted according to the true meaneing of these our Letters Patents shall from tyme to tyme by us our heires and successors be made and graunted unto the said Sir Ferdinando Gorges his heires and assignes as by the Attorney Generall of us our heires and successors for the tyme being and the Learned Councell of the said Sir Ferdinando Gorges his heires and assignes shall in that behalfe be reasonably devised or advised

And further Wee Doe hereby for us our heires and successors chardge and commaunde all and singuler Admirals Vice-admiralls Generalls Commaunders Captaynes Justices of Peace Maiors Sheriffs Bayliffs Constables Customers Comptrollers Collectors Waiters Searchers and all other the officers and Ministers of us our heires and successors whatsoever aswell nowe as hereafter for the tyme being to be from tyme to tyme in all things aydeing and assisting unto the said Sir Ferdinando Gorges his heires and assignes and to his and their officers Factors and agents and to every or any of them upon request made as they tender our pleasure and will avoyde the contrary att their perills

And Wee Doe will and for us our heires and successors Doe declare and ordeyne that the said Province and Premises shalbee ymediately subject to our Crowne of Englande and dependant upon the same for ever

And further Wee Will and by these Presents for us our heires and successors Doe graunte to the said Sir Ferdinando Gorges his heires and assignes that these our Letters Patents or the enrollment of them shalbee in all things and to all intents and purposes firme good effectuall and sufficient in the

lawe against us our heires and successors aswell in all Courts as elsewhere within our Kingdome of England or in any other our Kingdomes and Domyions as in the said Province and Premises aforesaid or in any of them and shalbee construed reputed and taken aswell according to the true meaning and intent as to the wordes of the same most benignely favorably and beneficiially to and for the said Sir Fardinando Gorges his heires and assignes (noe Interpretacon being made of any worde or sentence Whereby Gods worde true Christian Religion now taught professed and maynteyned the fundamentall Lawes of this Realme or Allegiance to us our heires or successors may suffer prejudice or diminucion) any omission misinformacon want of certayne expresse of the contents lymitts and boundes or the certeyne scituacon of the said Province and Premises aforesaid hereby created or mencioned to be
 10 granted or in what height longitude or degree the same are or any thing in these Presents or any Lawe Statute or other cause or matter to the contrary notwithstanding And although expresse mencion bee not made of the true yearely value or certeyntie of the Premises or any of them and notwithstanding any misnameing and not certeyne or particuler nameing of the said Province Places Landes, Territories Hereditaments and Premises whatsoever before by these Presents given granted confirmed or mencioned and intended to be granted or confirmed or any parte thereof or the misnameing or not nameing or not rightly nameing of the degrees and Coasts wherein or wheruppon the same or any of them doe lie or any Acte of Parliament Statute Ordinance Proclamacon or restraint heretofore made ordeyned or provided or any other thinge cause or matter to the contrary notwithstanding.

Nevertheless our intent and meaneing is that out of the Premises hereby granted or mencioned to
 20 bee granted there shalbee always saved and reserved to all and every such person and persons as have or hath any lawfull graunte or graunts of Landes or Plantacones lawfully settled in the division and Premises aforesaid the free holding and enjoyeing of his and their right with the Liberties thereunto apperteyning hee or they relinquishing and layeing downe all his or their Jura Regalia (if hee or they have any) to the said Sir Fardinando Gorges his heires and assignes whom wee have hereby made Proprietor of the Province or Division and Premises aforesaid and payeing some small acknowledgement to the said Sir Fardinando Gorges his heires and assigns for that hee or they are now to houlde their said Landes anew of the said Sir Fardinando Gorges his heires and assignes In Wittnes &c Wittnes our selfe att Westminster the third day of April—

P. Ego, Privato Sigillo.

CHARTER OF CONNECTICUT—1662.*

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Charter of
Connecticut
—1662

CHARLES the Second, by the Grace of GOD, King of England, Scotland, France, and Ireland, Defender of the Faith, &c. To all to whom these Presents shall come, Greeting.

Whereas by the several Navigations, Discoveries, and Successful Plantations of divers of Our loving Subjects of this Our Realm of England, several Lands, Islands, Places, Colonies, and Plantations have been obtained and settled in that Part of the Continent of America called New-England, and thereby the Trade and Commerce there, hath been of late Years much increased: And whereas We have been informed by the humble Petition of our Trusty and Well beloved John Winthrop, John Mason, Samuel Wyllys, Henry Clarke, Matthew Allyn, John Tapping, Nathan Gold, Richard Treat, Richard Lord, Henry Wolcott, John Taleott, Daniel Clarke, John Ogden, Thomas Wells, Obadiah Bruen, John Clarke, Anthony Hawkins, John Deming, and Matthew Camfield, being Persons principally interested in Our Colony or Plantation of Connecticut, in New-England, that the same Colony, or the greatest part thereof, was Purchased and obtained for great and valuable Considerations, and some other Part thereof gained by Conquest, and with much difficulty, and at the only Endeavors, Expence, and Charges of them and their Associates, and those under whom they Claim, Subdued, and Improved, and thereby become a considerable Enlargement and Addition of Our Dominions and Interest there.

Now Know Ye, That in Consideration thereof, and in Regard the said Colony is remote from other the English Plantations in the Places aforesaid, and to the End the Affairs and Business which shall from Time to Time happen or arise concerning the same, may be duly Ordered and Managed, we have thought fit, and at the humble Petition of the Persons aforesaid, and are graciously Pleased to create and make them a Body Politick and Corporate, with the Powers and Privileges herein after mentioned; and accordingly Our Will and Pleasure is, and of our especial Grace, certain Knowledge, and meer Motion, We have ordained, constituted and declared, and by these Presents, for Us, Our Heirs and Successors, Do ordain, constitute and declare, that they the said John Winthrop, John Mason, Samuel Wyllys, Henry Clarke, Matthew Allyn, John Tapping, Nathan Gold, Richard Treat, Richard Lord, Henry Wolcott, John Taleott, Daniel Clarke, John Ogden, Thomas Wells, Obadiah Bruen, John Clarke, Anthony Hawkins, John Deming, and Matthew Camfield, and all such others as now are, or hereafter shall be admitted and made Free of the Company and Society of Our Colony of Connecticut, in America, shall from Time to Time, and for ever hereafter, be One Body Corporate and Politick, in Fact and Name, by the Name of, Governor and Company of the English Colony of Connecticut in New-England, in America; and that by the same Name they and their Successors shall and may have perpetual Succession, and shall and may be Persons able and capable in the Law, to plead and be impleaded, to answer and to be answered unto, to defend and be defended in all and singular Suits, Causes, Quarrels, Matters, Actions, and Things, of what Kind or Nature soever; and also to have, take, possess, acquire, and purchase Lands, Tenements, or Hereditaments, or any Goods, or Chattels, and the same to lease, grant, demise, alien, bargain, sell, and dispose of, as other Our liege People of this Our Realm of England, or any other Corporation or Body Politick within the same may lawfully do.

And further, That the said Governor and Company, and their Successors, shall and may forever hereafter have a common Seal, to serve and use for all Causes, Matters, Things, and affairs whatsoever, of them and their Successors, and the same Seal, to alter, change, break, and make new from Time to Time, at their Wills and Pleasures, as they shall think fit.

And further, We will and ordain, and by these Presents, for Us, our Heirs and Successors, do declare and appoint, that for the better ordering and managing of the Affairs and Business of the said Company and their Successors, there shall be One Governor, One Deputy-Governor, and Twelve Assistants, to be from time to Time constituted, elected and chosen out of the Freemen of the said Company for the time being, in such Manner and Form as hereafter in these Presents is expressed, which said Officers shall apply themselves to take Care for the best disposing and ordering of the general Business and affairs of

* The Colonies of Hartford and New Haven had continued separate until they accepted this charter from King Charles, April 20 1665. An attempt was made in 1687 to repeal this charter, but the colonists refused to surrender it, and after the accession of William and Mary, in 1689, it was again recognized.

and concerning the Land and Hereditaments herein after mentioned to be granted, and the Plantation thereof, and the Government of the People thereof :

And for the better Execution of Our Royal Pleasure herein, We do for Us, Our Heirs, and Successors, assign, name, constitute and appoint the aforesaid John Winthrop to be the first and present Governor of the said Company, and the said John Mason, to be the Deputy-Governor, and the said Samuel Wyllys, Matthew Allyn, Nathan Gold, Henry Clarke, Richard Treat, John Ogden, John Tapping, John Talcott, Thomas Wells, Henry Wolecott, Richard Lord, and Daniel Clarke, to be the Twelve present assistants of the said Company, to continue in the said several Offices respectively, until the second Thursday which shall be in the Month of October now next coming.

- 10 And further We Will, and by these Presents for Us, Our Heirs, and Successors, Do ordain and grant, That the Governor of the said Company for the Time being, or in his Absence by occasion of Sickness, or otherwise by his Leave or Permission, the Deputy-Governor for the Time being, shall and may from Time to Time upon all Occasions, give Order for the assembling of the said Company, and calling them together to consult and advise of the Business and Affairs of the said Company, and for ever hereafter, twice in every Year, That is to say, On every Second Thursday in October, and on every Second Thursday in May, or oftener in case it shall be requisite; the Assistants, and Freemen of the said Company, or such of them (not exceeding Two Persons from each Place, Town, or City) who shall be from Time to Time thereunto elected or deputed by the major Part of the Freemen of the respective Towns, Cities, and Places for which they shall be elected or deputed, shall have a General Meeting, or Assembly, then and there to consult and advise in and about the Affairs and Business of the said Company: and that the Governor, or in his Absence the Deputy-Governor of the said Company for the Time being, and such of the Assistants and Freemen of the said Company as shall be so elected or deputed, and be present at such Meeting or Assembly, or the greatest Number of them, whereof the Governor or Deputy-Governor, and Six of the Assistants at least, to be Seven, shall be called the General Assembly, and shall have full Power and authority to alter and change their Days and Times of Meeting, or General Assemblies, for electing the Governor, Deputy-Governor, and Assistants, or other Officers, or any other Courts, Assemblies or Meetings, and to choose, nominate and appoint such and so many other Persons as they shall think fit, and shall be willing to accept the same, to be Free of the said Company and Body Politick, and them into the same to admit; And to elect and constitute such Officers as they shall think fit and requisite for the ordering, managing and disposing of the Affairs of the said Governor and Company, and their Successors :
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- And we do hereby for Us, Our Heirs and Successors, establish and ordain, That once in the Year for ever hereafter, Namely, the said Second Thursday in May, the Governor, Deputy-Governor, and Assistants of the said Company, and other Officers of the said Company, or such of them as the said General Assembly shall think fit, shall be in the said General Court and Assembly to be held from that Day or Time, newly chosen for the Year ensuing, by such greater part of the said Company for the Time being, then and there present; and if the Governor, Deputy-Governor, and Assistants by these Presents appointed, or such as hereafter be newly chosen into their Rooms, or any of them, or any other the Officers to be appointed for the said Company shall die, or be removed from his or their several Offices or Places before the said general Day of Election, whom We do hereby declare for any Misdemeanor or Default, to be removable by the Governor, Assistants, and Company, or such greater Part of them in any of the said public Courts to be assembled, as is aforesaid, that then and in every such Case, it shall and may be lawful to and for the Governor, Deputy-Governor, and Assistants, and Company aforesaid, or such greater Part of them so to be assembled, as is aforesaid, in any of their Assemblies, to proceed to a new Election of one or more of their Company, in the Room or Place, or Rooms or Places of such Governor, Deputy-Governor, Assistant, or other Officer or Officers so dying or removed, according to their Discretions, and immediately upon and after such Election or Elections made of such Governor, Deputy-Governor, Assistant or Assistants, or any other Officer of the said Company, in Manner and Form aforesaid, the Authority, Office and Power before given to the former Governor, Deputy-Governor, or other Officer and Officers so removed, in whose Stead and Place new shall be chosen, shall as to him and them, and every of them respectively, cease and determine.
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SUPPLEMENT
TO THE
OSTLAND
APPENDIX.
Charter of
Connecticut
1662.

Provided also, And Our Will and Pleasure is, That as well such as are by these Presents appointed to be the present Governor, Deputy-Governor, and Assistants of the said Company, as those that shall succeed them, and all other Officers to be appointed and chosen, as aforesaid, shall before they undertake the Execution of their said Offices and Places respectively, take their several and respective corporal Oaths for the due and faithful Performance of their Duties, in their several Offices and Places, before such Person or Persons as are by these Presents hereafter appointed to take and receive the same; That is to say, The said John Winthrop, who is herein before nominated and appointed the present Governor of the said Company, shall take the said Oath before One or more of the Masters of Our Court of Chancery for the Time being, unto which Master of Chancery, We do by these Presents give full Power and Authority to administer the said Oath to the said John Winthrop accordingly: And the said John Mason, who is herein before nominated and appointed the present Deputy-Governor of the said Company, shall take the said Oath before the said John Winthrop, or any Two of the Assistants of the said Company, unto whom We do by these Presents give full Power and Authority to administer the said Oath to the said John Mason accordingly: And the said Samuel Wyllys, Henry Clarke, Matthew Allyn, John Tapping, Nathan Gold, Richard Treat, Richard Lord, Henry Wolcott, John Taleott, Daniel Clarke, John Ogden, and Thomas Wells, who are herein before nominated and appointed the present Assistants of the said Company, shall take the Oath before the said John Winthrop, and John Mason, or One of them, to whom We do hereby give full Power and Authority to administer the same accordingly. 10

And Our further Will and Pleasure is, that all and every Governor, or Deputy-Governor to be elected and chosen by Virtue of these Presents, shall take the said Oath before two or more of the Assistants of the said Company for the Time being, unto whom We do by these Presents give full Power and Authority to give and administer the said Oath accordingly; and the said Assistants, and every of them, and all and every other Officer or Officers to be hereafter chosen from Time to Time, to take the said Oath before the Governor, or Deputy-Governor, for the Time being, unto which the Governor, or Deputy-Governor, We do by these Presents give full Power and Authority to administer the same accordingly. 20

And further, Of Our more ample Grace, certain Knowledge, and meer Motion, We have given and granted, and by these presents for Us, Our Heirs and Successors, do give and grant unto the said Governor and Company of the English Colony of Connecticut, in New England, in America, and to every Inhabitant there, and to every Person and Persons trading thither, and to every such Person and Persons as are or shall be Free of the said Colony, full Power and Authority from Time to Time, and at all Times hereafter, to take Ship, Transport and carry away for and towards the Plantation and Defence of the said Colony, such of Our loving Subjects and Strangers, as shall or will willingly accompany them in, and to their said Colony and Plantation, except such Person and Persons as are or shall be therein restrained by Us, Our Heirs and Successors; and also to ship and transport all, and all Manner of Goods, Chattels, Merchandises, and other Things whatsoever that are or shall be useful or necessary for the Inhabitants of the said Colony, and may lawfully be transported thither; Nevertheless, not to be discharged of Payment to Us, our Heirs and Successors, of the Duties, Customs and Subsidies which are or ought to be paid or payable for the same. 30

And further, Our Will and Pleasure is, and We do for Us, Our Heirs and Successors, ordain, declare and grant unto the said Governor and Company, and their Successors, That all, and every the Subjects of Us, Our Heirs, or Successors, which shall go to inhabit within the said Colony, and every of their Children, which shall happen to be born there, or on the Seas in going thither, or returning from thence, shall have and enjoy all Liberties and Immunities of free and natural Subjects within any the Dominions of Us, Our Heirs or Successors, to all Intents, Constructions and Purposes whatsoever, as if they and every of them were born within the realm of England; And We do authorize and empower the Governor, or in his Absence the Deputy-Governor for the Time being, to appoint two or more of the said Assistants at any of their Courts or Assemblies to be held as aforesaid, to have Power and Authority to administer the Oath of Supremacy and Obedience to all and every Person and Persons which shall at any Time or Times hereafter go or pass into the said Colony of Connecticut, unto which said Assistants so to be appointed as aforesaid, We do by these Presents give full Power and Authority to administer the said Oath accordingly. 40

And We do further of especial Grace, certain Knowledge, and meer Motion, give, and grant unto the said Governor and Company of the English Colony of Connecticut, in New-England, in America, and their Successors, That it shall and may be lawful to and for the Governor, or Deputy-Governor, and such of the Assistants of the said Company for the Time being as shall be assembled in any of the General Courts aforesaid, or in any Courts to be especially summoned or assembled for that Purpose, or the greater part of them, whereof the Governor, or Deputy-Governor, and Six of the Assistants to be always Seven, to erect and make such Juridicatories, for the hearing, and determining of all Actions, Causes, Matters and Things happening within the said Colony, or Plantation, and which shall be in Dispute, and Depending there, as they shall think Fit, and Convenient, and also from Time to Time to Make, Ordain, and Establish all manner of wholesome, and reasonable Laws, Statutes, Ordinances, Directions, and Instructions, not Contrary to the Laws of this Realm of England, as well for settling the Forms, and Ceremonies of Government, and Magistracy, fit and necessary for the said Plantation, and the inhabitants there, as for naming, and Stiling all Sorts of Officers, both Superior and Inferior, which they shall find Needful for the Government, and Plantation of the said Colony, and the distinguishing and setting forth of the several Duties, Powers, and Limits of every such Office and Place, and the Forms of such Oaths not being contrary to the Laws and Statutes of this Our Realm of England, to be administered for the Execution of the said several Offices and Places as also for the disposing and ordering of the Election of such of the said Officers as are to be annually chosen, and of such others as shall succeed in case of Death or Removal, and administering the said Oath to the newly-elected Officers, and granting necessary Commissions, and for Imposition of lawful Fines, Mulets, Imprisonment or other Punishment upon Offenders and Delinquents according to the Course of other Corporations within this our Kingdom of England, and the same Laws, Fines, Mulets and Executions, to alter, change, revoke, annul, release, or pardon under their Common Seal, as by the said General Assembly, or the major Part of them shall be thought fit, and for the directing, ruling and disposing of all other Matters and things, whereby Our said People Inhabitants there, may be so religiously, peaceably and civilly governed, as their good Life and orderly Conversation may win and invite the Natives of the Country to the Knowledge and Obedience of the only true GOD, and the Saviour of Mankind, and the Christian Faith, which in Our Royal Intentions, and the adventurers free Possession, is the only and principal End of this Plantation; willing, commanding and requiring, and by these Presents for Us, Our Heirs and Successors, ordaining and appointing, that all such Law, Statutes and Ordinances, Instructions, Impositions and Directions as shall be so made by the Governor, Deputy-Governor, and Assistants as aforesaid, and published in Writing under their Common Seal, shall carefully and duly be observed, kept, performed, and put in Execution, according to the true Intent and Meaning of the same, and these Our Letters Patents, or the Duplicate, or Exemplification thereof, shall be to all and every such Officers, Superiors and Inferiors from Time to Time, for the putting of the same Orders, Laws, Statutes, Ordinances, Instructions, and Directions in due Execution, against Us, Our Heirs, and Successors, a sufficient Warrant and Discharge.

And We do further for Us, Our Heirs and Successors, give and grant unto the said Governor and Company, and their Successors by these Presents, That it shall and may be lawful to, and for the Chief Commanders, Governors and Officers of the said Company for the Time being, who shall be resident in the Parts of New-England hereafter mentioned, and others inhabiting there, by their Leave, Admittance, Appointment, or Direction, from Time to Time, and at all Times hereafter, for their special Defence and Safety, to Assemble, Martial-Array, and put in warlike Posture the Inhabitants of the said Colony, and to Commissionate, Impower, and Authorize such Person or Person as they shall think fit, to lead and conduct the said Inhabitants, and to encounter, expulse, repel, and resist by Force of Arms, as well by Sea as by Land, and also to kill, slay, and destroy by all fitting Ways, Enterprises, and Means whatsoever, all and every such Person or Persons as shall at any Time hereafter attempt or enterprize the Destruction, Invasion, Detriment, or Annoyance of the said Inhabitants or Plantation, and to use and exercise the Law Martial in such Cases only as Occasion shall require; and to take or surprize by all Ways and Means whatsoever, all and every such Person and Persons, with their Ships, Armour, Ammunition and other Goods of such as shall in such hostile Manner invade or attempt the defeating of the said Plantation, or the hurt of the said Company and Inhabitants, and upon just Causes to invade and destroy the Natives, or other Enemies of the said Colony.

SUPPLEMENT
TO THE
ONTARIO
APPENDIX.
—
Charter of
Connecticut
— 1662.

Nevertheless, Our Will and Pleasure is, and We do hereby declare unto all Christian Kings, Princes, and States, that if any Persons which shall hereafter be of the said Company or Plantation, or any other by Appointment of the said Governor and Company for the Time being, shall at any Time or Times hereafter rob or spoil by Sea or by Land, and do any Hurt, Violence, or unlawful Hostility to any of the Subjects of Us, our Heirs or Successors, or any of the Subjects of any Prince or State, being then in league with Us, Our Heirs or Successors, upon Complaint of such Injury done to any such Prince or State, or their Subjects, We, Our Heirs and Successors will make open Proclamation within any Parts of Our Realm of England fit for that Purpose, that the Person or Persons committing any such Robbery or Spoil, shall within the Time limited by such Proclamation, make full Restitution or Satisfaction of all such Injuries done or committed, so as the said Prince, or others so complaining may be fully satisfied and contented; and if the said Person or Persons who shall commit any such Robbery or Spoil shall not make such Satisfaction accordingly, within such Time so to be limited, that then it shall and may be lawful for Us, Our Heirs and Successors, to put such Person or Persons out of Our Allegiance and Protection; and that it shall and may be lawful and free for all Princes or others to prosecute with Hostility such Offenders, and every of them, their, and every of their Procurers, Aiders, Abettors and Counsellors in that behalf.

Provided also, and Our express Will and Pleasure is, and We do by these Presents for Us, Our Heirs and Successors, Ordain and Appoint, that these Presents shall not in any Manner hinder any of Our loving Subjects whatsoever to use and exercise the Trade of Fishing upon the Coast of New-England in America, but they and every or any of them shall have full and free Power and Liberty, to continue, and use the said Trade of Fishing upon the said Coast, in any of the Seas thereunto adjoining, or any Arms of the Seas, or Salt Water Rivers where they have been accustomed to fish, and to build and set up on the waste Land belonging to the said Colony of Connecticut, such Wharves, Stages, and Work-Houses as shall be necessary for the salting, drying, and keeping of their Fish to be taken, or gotten upon that Coast, any Thing in these Presents contained to the contrary notwithstanding.

And Know Ye further, That We, of Our abundant Grace, certain Knowledge, and mere Motion have given, granted, and confirmed and by these Presents for Us, our Heirs and Successors, do give, grant and confirm unto the said Governor and Company, and their Successors, all that Part of Our Dominions in New-England in America, bounded on the East by Narraganset-River, commonly called Narraganset-Bay, where the said River falleth into the Sea; and on the North by the Line of the Massachusetts-Plantation; and on the South by the Sea; and in Longitude as the Line of the Massachusetts-Colony, running from East to West, That is to say, From the said Narraganset-Bay on the East, to the South Sea on the West Part, with the Islands thereunto adjoining, together with all firm Lands, Soils, Grounds, Havens, Ports, Rivers, Waters, Fishings, Mines, Minerals, precious Stones, Quarries, and all and singular other Commodities, Jurisdictions, Royalties, Privileges, Franchises, Preeminences, and Hereditaments whatsoever, within the said Tract, Bounds, Lands, and Islands aforesaid, or to them or any of them belonging.

To have and to hold the same unto the said Governor and Company, their Successors and Assigns for ever, upon Trust, and for the Use and Benefit of Themselves and their Associates, Freemen of the said Colony, their Heirs and Assigns, to be holden of Us, Our Heirs and Successors, as of Our Manor of East-Greenwich, in free and common Socceage, and not in capite, nor by Knights Service, yielding and paying therefore to Us, Our Heirs and Successors, only the Fifth part of all the Ore of Gold and Silver which from Time to Time, and at all times hereafter, shall be there gotten, had, or obtained, in Lieu of all Services, Duties, and Demands whatsoever, to be to Us, our Heirs, or Successors therefore, or thereout rendered, made, or paid.

And lastly, We do for Us, our Heirs and Successors, grant to the said Governor and Company, and their Successors, by these Presents, That these Our Letters Patents, shall be firm, good and effectual in the Law, to all Intents, Constructions, and purposes whatsoever, according to Our true Intent and

Meaning herein before declared, as shall be construed, reputed and adjudged most favourable on the Behalf, and for the best Benefit, and Behoof of the said Governor and Company, and their Successors, although express Mention of the true Yearly Value or Certainty of the Premises, or of any of them, or of any other Gifts or Grants by Us. or by any of Our Progenitors, or Predecessors, theretofore made to the said Governor and Company of the English Colony of Connecticut, in New-England, in America, aforesaid, in these presents is not made, or any Statute, Act, Ordinance, Provision, Proclamation, or Restriction heretofore, had, made, enacted, ordained, or provided, or any other Matter, Cause, or Thing whatsoever to the contrary thereof, in any wise notwithstanding.

SETTLEMENT
TO THE
ONTARIO
APPENDIX.
—
Charter of
Connecticut
— 1662.

In Witness whereof, We have caused these Our Letters to be made Patents. Witness Ourselves at
10 Westminster, the Three and Twentieth Day of April, in the Fourteenth Year of our Reign.

By Writ of Privy Seal,

HOWARD.

CHARTER OF CAROLINA—1663.

SUPPLEMENT
TO THE
ONTARIO
APPENDIX.

Charter of
Carolina—
1663.

CHARLES the Second, by the grace of God, king of England, Scotland, France, and Ireland, Defender of the Faith, &c., To all to whom these present shall come: Greeting:

1st. Whereas our right trusty, and right well beloved cousins and counsellors, Edward Earl of Clarendon, our high chancellor of England, and George Duke of Albemarle, master of our horse and captain general of all our forces, our right trusty and well beloved William Lord Craven, John Lord Berkley, our right trusty and well beloved counsellor, Anthony Lord Ashley, chancellor of our exchequer, Sir George Carteret, knight and baronet, vice chamberlain of our household, and our trusty and well beloved Sir William Berkley, knight, and Sir John Colleton, knight and baronet, being excited with a laudable and pious zeal for the propagation of the Christian faith, and the enlargement of our empire and dominions, have humbly besought leave of us, by their industry and charge, to transport and make an ample colony of our subjects, natives of our kingdom of England, and elsewhere within our dominions, unto a certain country hereafter described, in the parts of America not yet cultivated or planted, and only inhabited by some barbarous people, who have no knowledge of Almighty God. 10

2d. And whereas the said Edward Earl of Clarendon, George Duke of Albemarle, William Lord Craven, John Lord Berkley, Anthony Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, have humbly besought us to give, grant and confirm unto them and their heirs, the said country, with priviledges and jurisdictions requisite for the good government and safety thereof: Know ye, therefore, that we, favouring the pious and noble purpose of the said Edward Earl of Clarendon, George Duke of Albemarle, William Lord Craven, John Lord Berkley, Anthony Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, of our special grace, certain knowledge, and meer motion, have given, granted and confirmed, and by this our present charter, for us our heirs and successors, do give, grant and confirm unto the said Edward Earl of Clarendon, George Duke of Albemarle, William Lord Craven, John Lord Berkley, Anthony Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs and assigns, all that territory or tract of ground, situate, lying and being within our dominions of America, extending from the north end of the island called Lucke island, which lieth in the southern Virginia seas, and within six and thirty degrees of the northern latitude, and to the west as far as the south seas, and so southerly as far as the river St. Matthias, which bordereth upon the coast of Florida, and within one and thirty degrees of northern latitude, and so west in a direct line as far as the south seas aforesaid; together with all and singular ports, harbours, bays, rivers, isles and islets belonging to the country aforesaid; and also all the soil, lands, fields, woods, mountains, fields, lakes, rivers, bays and islets, situate or being within the bounds or limits aforesaid, with the fishing of all sorts of fish, whales, sturgeons, and all other royal fishes in the sea, bays, islets and rivers within the premises, and the fish therein taken; and moreover all veins, mines, quarries, as well discovered as not discovered, of gold, silver, gems, precious stones, and all other whatsoever, be it of stones, metals, or any other thing whatsoever, found or to be found within the countries, islets, and limits aforesaid. 30

3d. And furthermore, the patronage and advowsons of all the churches and chappels, which as Christian religion shall increase within the country, isles, islets and limits aforesaid, shall happen hereafter to be erected, together with license and power to build and found churches, chappels and oratories, in convenient and fit places, within the said bounds and limits, and to cause them to be dedicated and consecrated according to the ecclesiastical laws of our kingdom of England, together with all and singular the like, and as ample rights, jurisdictions, priviledges, prerogatives, royalties, liberties, immunities and franchises of what kind soever, within the countries, isles, islets and limits aforesaid. 40

4th. To have, use, exercise and enjoy, and in as ample manner as any bishop of Durham in our kingdom of England, ever heretofore have held, used or enjoyed, or of right ought or could have, use, or enjoy. And them, the said Edward Earl of Clarendon, George Duke of Albemarle, William Lord Craven, John Lord Berkley, Anthony Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs and assigns, we do by these presents, for us, our heirs, and successors, make, create and constitute the true and absolute Lords Proprietors of the country aforesaid, and of all other

the premises; saving always the faith, allegiance and sovereign dominion due to us, our heirs and successors, for the same, and saving also the right, title, and interest of all and every our subjects of the English nation, which are now planted with the limits and bounds aforesaid (if any be). To have hold, possess and enjoy the said country, isles, islets, and all and singular other the premises, to them the said Edward Earl of Clarendon, George Duke of Albemarle, William Lord Craven, John Lord Berkley, Anthony Lord Ashley, Sir George Carteret, Sir William Berkley, Sir John Colleton, their heirs and assigns forever, to be holden of us, our heirs and successors, as of our manner of East Greenwich in our county of Kent, in free and common socage, and not in capite, or by knight service; yielding and paying yearly to us, our heirs and successors, for the same, the yearly rent of twenty marks of lawful money of England, at the feast of All Saints, yearly forever, the first payment thereof to begin and to be made on the feast of All Saints, which shall be in the year of our Lord one thousand six hundred and sixty-five, and also the fourth part of all gold or silver ore, which, within the limits aforesaid, shall from time to time happen to be found.

5th. And that the country, thus by us granted and described, may be dignified by us with as large titles and privileges as any other part of our dominions and territories in that region, Know ye, that we of our further grace, certain knowledge, and meer motion, have thought fit to erect the same tract of ground, county, and island, into a province, and out of the fulness of our royal power and prerogative, we do, for us, our heirs and successors, erect, incorporate and ordain the same into a province, and call it the Province of Carolina, and so from henceforth will have it called; and forasmuch as we have hereby made and ordained the aforesaid Edward Earl of Clarendon, George Duke of Albemarle, William Lord Craven, John Lord Berkley, Anthony Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs and assigns, the true lords and proprietors of all the province aforesaid; Know ye, therefore moreover that we, reposing especial trust and confidence in their fidelity, wisdom, justice and provident circumspection, for us, our heirs and successors, do grant full and absolute power, by virtue of these presents, to them the said Edward Earl of Clarendon, George Duke of Albemarle, William Lord Craven, John Lord Berkley, Anthony Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, and their heirs, for the good and happy government of the said province, to ordain, make, enact, and under their seals to publish any laws whatsoever, either appertaining to the publick state of the said province, or to the private utility of particuler persons, according to their best discretion, of and with the advice, assent and approbation of the freemen of the said province, or of the greater part of them, or of their delegates or deputies, whom for enacting of the said laws, when and as often as need shall require, we will that the said Edward Earl of Clarendon, George Duke of Albemarle, William Lord Craven, John Lord Berkley, Anthony Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, and their heirs, shall from time to time assemble in such manner and form as to them shall seem best, and the same laws duly to execute upon all people within the said province and limits thereof, for the time being, or which shall be constituted under the power and government of them or any of them, either sailing towards the said province of Carolina, or returning from thence towards England, or any other of our, or foreign dominions, by imposition of penalties, imprisonment, or any other punishment; yea, if it shall be needfull, and the quality of the offence requires it, by taking away member and life, either by them, the said Edward Earl of Clarendon, George Duke of Albemarle, William Lord Craven, John Lord Berkley, Anthony Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, and their heirs, or by them or their deputies, lieutenants, judges, justices, magistrates, officers and members to be ordained or appointed according to the tenor and true intention of these presents; and likewise to appoint and establish any judges, or justices, magistrates or officers whatsoever, within the said province, at sea or land, in such manner and form as unto the said Edward Earl of Clarendon, George Duke of Albemarle, William Lord Craven, John Lord Berkley, Anthony Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton and their heirs shall seem most convenient; also, to remit, release, pardon and abolish (whether before judgment or after) all crimes and offences whatsoever, against the said laws, and to do all and every other thing and things, which unto the compleat establishment of justice unto courts, sessions, and forms of judicature and manners of proceed-

ings therein do belong, although in these presents express mention be not made thereof; and by judges and by him or them delegated, to award process, hold pleas, and determine in all the said courts, and places of judicature, all actions, suits and causes whatsoever, as well criminal or civil, real, mixt, personal, or of any other kind or nature whatsoever; which laws, so as aforesaid to be published, our pleasure is, and we do require, enjoin and command, shall be absolute, firm and available in law, and that all the liege people of us, our heirs and successors, within the said province of Carolina, do observe and keep the same inviolably in those parts, so far as they concern them, under the pains and penalties therein expressed, or to be expressed: Provided nevertheless, that the said laws be consonant to reason, and as near as may be conveniently, agreeable to the laws and customs of this our kingdom of England.

6th. And because such assemblies of freeholders cannot be so conveniently called, as there may be occasion to require the same, we do, therefore, by these presents, give and grant unto the said Edward Earl of Clarendon, George Duke of Albemarle, William Lord Craven, John Lord Berkley, Anthony Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs and assigns, by themselves or their magistrates, in that behalf lawfully authorized, full power and authority from time to time to make and ordain fit and wholesome orders and ordinances, within the province aforesaid, to be kept and observed as well for the keeping of the peace, as for the better government of the people there abiding, and to publish the same to all to whom it may concern; which ordinances, we do by these presents streightly charge and command to be inviolably observed within the said province, under the penalties therein expressed, so as such ordinances be reasonable, and not repugnant or contrary, but as near as may be, agreeable to the laws and statutes of this our kingdom of England, and so as the same ordinances do not extend to the binding, charging, or taking away of the right or interest of any person or persons, in their freehold, goods or chattels whatsoever.

7th. And to the end the said province may be more happily increased, by the multitude of people resorting thither, and may likewise be the more strongly defended from the incursions of salvages and other enemies, pirates and robbers, therefore we, for us, our heirs and successors, do give and grant by these presents, power, license and liberty unto all the liege people of us, our heirs and successors in our kingdom of England or elsewhere, within any other our dominions, islands, colonies or plantations, (excepting those who shall be especially forbidden,) to transport themselves and families unto the said province, with convenient shipping and fitting provisions, and there to settle themselves, dwell and inhabit, any law, statute, act, ordinance, or other thing to the contrary in any wise notwithstanding. And we will also, and of our more special grace, for us, our heirs and successors, do streightly enjoin, ordain, constitute and command, that the said province of Carolina, shall be of our allegiance, and that all and singular the subjects and liege people of us, our heirs and successors, transported or to be transported into the said province, and the children of them and of such as shall descend from them, there born or hereafter to be born, be and shall be denizens and lieges of us, our heirs and successors of this our kingdom of England, and be in all things held, treated, and reputed as the liege faithful people of us, our heirs and successors, born within this our said kingdom, or any other of our dominions, and may inherit or otherwise purchase and receive, take, hold, buy and possess any lands, tenements or hereditaments within the same places, and them may occupy, possess and enjoy, give, sell, aliene and bequeathe; as likewise all liberties, franchises and privileges of this our kingdom of England, and of other our dominions aforesaid, and may freely and quietly have, possess and enjoy, as our liege people born within the same, without the least molestation, vexation, trouble or grievance of us, our heirs and successors, any statute, act, ordinance, or provision to the contrary notwithstanding.

8th. And furthermore, that our subjects of this our said kingdom of England, and other our dominions, may be the rather encouraged to undertake this expedition with ready and chearful minds, know ye, that we of our special grace, certain knowledge and mere motion, do give and grant by virtue of these presents, as well to the said Edward Earl of Clarendon, George Duke of Albermarle, William Lord Craven, John Lord Berkley, Anthony Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, and their heirs, as unto all others as shall from time to time repair unto the said province, with a purpose to inhabit there, or to trade with the natives of the said province, full liberty

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and license to lade and freight in any port whatsoever, of us, our heirs and successors, and into the said province of Carolina, by them, their servants or assigns, to transport all and singular their goods, wares and merchandises, as likewise all sorts of grain whatsoever, and any other things whatsoever, necessary for the food and clothing, not prohibited by the laws and statutes of our kingdoms and dominions, to be carried out of the same, without any let or molestation of us, our heirs and successors, or of any other of our officers, or ministers whatsoever, saving also to us, our heirs and successors, the customs and other duties and payments, due for the said wares and merchandises, according to the several rates of the places from whence the same shall be transported. We will also, and by these presents, for us, our heirs and successors, do give and grant license by this our charter, unto the said Edward Earl of Clarendon, 10 George Duke of Albemarle, William Lord Craven, John Lord Berkley, Anthony Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs and assigns and to all the inhabitants and dwellers in the province aforesaid, both present and to come, full power and absolute authority to import or unlade, by themselves or their servants, factors or assigns, all merchandises and goods whatsoever, that shall arise of the fruits and commodities of the said province, either by land or by sea, into any of the ports of us, our heirs and successors, in our kingdom of England, Scotland or Ireland, or otherwise to dispose of the said goods, in the said ports; and if need be, within one year next after the unloading, to lade the said merchandises and goods again into the same or other ships, and to export the same into any other countries either of our dominions, or foreign, being in amity with us, our heirs and successors, so as they pay such customs, subsidies, and other duties for the same, to us, our heirs and successors, as the rest of our subjects of this our kingdom, for the time being, shall be bound to pay, beyond 20 which we will not, that the inhabitants of the said province of Carolina, shall be any ways charged.

9th. Provided nevertheless, and our will and pleasure is, and we have further for the consideration aforesaid, of our more especial grace, certain knowledge, and meer motion, given and granted, and by these presents, for us, our heirs and successors, do give and grant unto the said Edward Earl of Clarendon, George Duke of Albemarle, William Lord Craven, John Lord Berkley, Anthony Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs and assigns, full and free license, liberty and authority, at any time or times, from and after the feast of St. Michael the archangel, which shall be in the year of our Lord Christ, one thousand six hundred sixty and seven, as well to import, and bring into any of our dominions from the said province of Carolina, or any part thereof, the several goods and commodities, hereinafter mentioned, that is to say, silks, wines, currants, raisins, capers, wax, almonds, oyl and olives, without paying or answering to us, our heirs or successors, any custom, import, or other duty, for and in respect thereof, for and during the term and space of seven years, to commence and be accempted, from and after the first importation of four tons of any the said goods, in any one bottom, ship or vessel from the said province, into any of our dominions, as also to export and carry out of any of our dominions, into the said province of Carolina, custom free, all sorts of tools which shall be usefull or necessary for the planters there, in the accommodation and improvement of the premises, any thing before, in these presents contained, or any law, act, statute, prohibition or other matter, or anything heretofore had, made, enacted or provided, or hereafter to be had, made, enacted or provided, to the contrary, in any wise notwithstanding.

40 10th. And furthermore, of our own ample and especial grace, certain knowledge and mere motion, we do for us, our heirs and successors, grant unto the said Edward Earl of Clarendon, George Duke of Albemarle, William Lord Craven, John Lord Berkley, Anthony Lord Ashley, Sir George Carteret, Sir William Berkley and Sir John Colleton, their heirs and assigns, full and absolute power and authority, to make, erect and constitute, within the said province of Carolina, and the isles and islets aforesaid, such and so many seaports, harbours, creeks and other places, for discharge and unloading of goods and merchandises, out of ships, boats and other vessels, and for lading of them, in such and so many places, and with such jurisdiction, privileges and franchises unto the said ports belonging, as to them shall seem most expedient, and that all and singular the ships, boats and other vessels which shall come for merchandises and trade into the said province, or shall depart out of the same, shall be laden and unladen at such ports only, as shall be erected and constituted by the said Edward Earl of Clarendon,

George Duke of Albemarle, William Lord Craven, John Lord Berkley, Anthony Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs and assigns, and not elsewhere, any use, custom or any other thing to the contrary, in any wise notwithstanding.

11th. And we do furthermore will, appoint and ordain, and by these presents for us, our heirs and successors, do grant unto the said Edward Earl of Clarendon, George Duke of Albemarle, William Lord Craven, John Lord Berkley, Anthony Lord Ashley, Sir George Carteret, Sir William Berkley and Sir John Colleton, their heirs and assigns, that they the said Edward Earl of Clarendon, George Duke of Albemarle, William Lord Craven, John Lord Berkley, Anthony Lord Ashley, Sir George Carteret, Sir William Berkley and Sir John Colleton, their heirs and assigns, may from time to time forever, have and enjoy, the customs and subsidies in the ports, harbors, creeks and other places within the province aforesaid, payable for goods, merchandise and wares, there laded or to be laded, or unladed, the said customs to be reasonably assessed, upon any occasion, by themselves, and by and with the consent of the free people there, or the greater part of them as aforesaid: to whom we give power by these presents, for us, our heirs and successors, upon just cause and in a due proportion, to assess and impose the same. 10

12th. And further, of our special grace, certain knowledge, and meer motion, we have given, granted and confirmed, and by these presents, for us, our heirs and successors, do give, grant and confirm unto the said Edward Earl of Clarendon, George Duke of Albemarle, William Lord Craven, John Lord Berkley, Anthony Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs and assigns, full and absolute license, power and authority, that the said Edward Earl of Clarendon, George Duke of Albemarle, William Lord Craven, John Lord Berkley, Anthony Lord Ashley, Sir George Carteret, Sir William Berkley, Sir John Colleton, their heirs and assigns, from time to time, hereafter, forever at his and their will and pleasure, may assign, alien, grant, demise, or enfeof the premises, or any part or parcels thereof, to him or them that shall be willing to purchase the same, and to such person or persons as they shall think fit, to have and to hold, to them the said person or persons, their heirs or assigns, in fee simple or fee taylor, or for term for life, or lives, or years, to be held of them, the said Edward Earl of Clarendon, George Duke of Albemarle, William Lord Craven, John Lord Berkley, Anthony Lord Ashley, Sir George Carteret, Sir William Berkley and Sir John Colleton, their heirs and assigns, by such rents, services and customs, as shall seem meet to the said Edward Earl of Clarendon, George Duke of Albemarle, William Lord Craven, John Lord Berkley, Anthony Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs and assigns, and not immediately of us, our heirs and successors, and to the same person and persons, and to all and every of them, we do give and grant by these presents, for us, our heirs and successors, license, authority and power, that such person or persons, may have or take the premises, or any parcel thereof, of the said Edward Earl of Clarendon, George Duke of Albemarle, William Lord Craven, John Lord Berkley, Anthony Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs and assigns, and the same to hold, to themselves, their heirs or assigns, in what estate of inheritance whatsoever, in fee simple, or fee taylor, or otherwise, as to them and the said Edward Earl of Clarendon, George Duke of Albemarle, William Lord Craven, John Lord Berkley, Anthony Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton their heirs and assigns, shall seem expedient; the statute made in the parliament of Edward, son of King Henry, heretofore king of England, our predecessor, commonly called the statute* of *quia emptores terrarum*; or any other statute, act, ordinance, use, law, custom or any other matter, cause or thing, heretofore published, or provided to the contrary, in any wise notwithstanding. 20 30 40

13th. And because many persons born, or inhabiting in the said province, for their deserts and services, may expect and be capable of marks of honor and favor, which, in respect of the great distance, cannot be conveniently conferred by us; our will and pleasure therefore is, and we do by these presents give and grant unto the said Edward Earl of Clarendon, George Duke of Albemarle, William Lord Craven, John Lord Berkley, Anthony Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir

* 18 Ed. 1 West. 3 c. 1 p. 45.

John Colleton, their heirs and assigns, full power and authority, to give and confer, and upon, such of the inhabitants of the said province, as they shall think do or shall merit the same, such marks of favour and titles of honour as they shall think fit, so as these titles of honour be not the same as are enjoyed by, or conferred upon any the subjects of this our kingdom of England.

14th. And further also, we do by these presents, for us, our heirs and successors, give and grant license to them, the said Edward Earl of Clarendon, George Duke of Albemarle, William Lord Craven, John Lord Berkley, Anthony Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs and assigns, full power, liberty and license to erect, raise and build within the said province and places aforesaid, or any part or parts thereof, such and so many forts, fortresses, castles, cities, boroughs, towns, villages and other fortifications whatsoever, and the same or any of them to fortify and furnish with ordinance, powder, shot, armory, and all other weapons, munition, habilements of war, both offensive and defensive, as shall be thought fit and convenient for the safety and welfare of the said province and places, or any part thereof, and the same, or any of them from time to time, as occasion shall require, to dismantle, disarm, demolish and pull down, and also to place, constitute and appoint in and over all or any of the castles, forts, fortifications, cities, towns and places aforesaid, governors, deputy governors, magistrates, sheriffs and other officers, civil and military, as to them shall seem meet, and to the said cities, boroughs, towns, villages, or any other place or places within the said province, to grant "letters or charters of incorporation," with all liberties, franchises and privileges, requisite and usefull, or to or within any corporations, within this our kingdom of England, granted or belonging; and in the same cities, boroughs, towns, and other places, to constitute, erect and appoint such and so many markets, marts and fairs, as shall in that behalf be thought fit and necessary; and further also to erect and make in the province aforesaid, or any part thereof, so many manors as to them shall seem meet and convenient, and in every of the said manors to have and to hold a court baron, with all things whatsoever which to a court baron do belong, and to have and to hold views of "frank pledge" and "court leet," for the conservation of the peace and better government of those parts within such limits, jurisdictions, and precincts, as by the said Edward Earl of Clarendon, George Duke of Albemarle, William Lord Craven, John Lord Berkley, Anthony Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, or their heirs, shall be appointed for that purpose, with all things whatsoever, which to a court leet, or view of frank pledge do belong, the said court to be holden by stewards, to be deputed and authorized by the said Edward Earl of Clarendon, George Duke of Albemarle, William Lord Craven, John Lord Berkley, Anthony Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, or their heirs, or by the lords of other manors and leets, for the time being, when the same shall be erected.

15th. And because that in so remote a country, and situate among so many barbarious nations, and the invasions as well of salvages as of other enemies, pirates and robbers, may probably be feared; therefore we have given, and for us, our heirs and successors, do give power, by these presents, unto the said Edward Earl of Clarendon, George Duke of Albemarle, William Lord Craven, John Lord Berkley, Anthony Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs and assigns, by themselves, or their captains, or other their officers, to levy, muster and train all sorts of men, of what condition or wheresoever born, in the said province for the time being, and to make war and pursue the enemies aforesaid, as well by sea as by land, yea, even without the limits of the said province, and by God's assistance to vanquish and take them, and being taken to put them to death by the law of war, or to save them at their pleasure; and to do all and every other thing, which unto the charge of a captain general of an army belongeth, or hath accustomed to belong, as fully and freely as any captain general of an army hath or ever had the same.

16th. Also our will and pleasure is, and by this our charter we give unto the said Edward Earl of Clarendon, George Duke of Albemarle, William Lord Craven, John Lord Berkley, Anthony Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir George Colleton, their heirs and assigns, full power, liberty and authority, in case of rebellion, tumult or sedition, (if any should happen,) which God forbid,

either upon the land within the province aforesaid, or upon the main sea, in making a voyage thither, or returning from thence, by him or themselves, their captains, deputies and officers, to be authorised under his or their seals for that purpose, to whom also, for us our heirs and successors, we do give and grant by these presents, full power and authority, to exercise martial law against mutinous and seditious persons of those parts, such as shall refuse to submit themselves to their government, or shall refuse to serve in the wars, or shall fly to the enemy, or forsake their colours or ensigus, or be loyterers or straglers, or otherwise howsoever offending against law, custom or discipline military, as freely and in as ample manner and form as any captain general of an army by vertue of his office, might or hath accustomed to use the same.

17th. And our further pleasure is, and by these presents for us, our heirs and successors, we do grant unto the said Edward Earl of Clarendon, George Duke of Albemarle, William Lord Craven, John Lord Berkley, Anthony Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs and assigns, and to all the tenants and inhabitants of the said province of Carolina, both present and to come, and to every of them, that the said province and the tenants and inhabitants thereof, shall not from henceforth be held or reputed a member or part of any colony whatsoever in America, or elsewhere, now transported or made, or hereafter to be transported or made; nor shall be depending on, or subject to their government in anything, but be absolutely separated and divided from the same; and our pleasure is, by these presents, that they be separated, and that they be subject immediately to our crown of England, as depending thereof for ever; and that the inhabitants of the said Province, nor any of them, shall at any time hereafter be compelled or compellable, or be any ways subject or liable to appear or answer to any matter, suit, cause or plaint whatsoever, out of the Province aforesaid, in any other of our islands, colonies, or dominions in America or elsewhere, other than in our realm of England, and dominion of Wales. 10

18th. And because it may happen that some of the people and inhabitants of the said province, cannot in their private opinions, conform to the publick exercise of religion, according to the liturgy, form and ceremonies of the church of England, or take and subscribe the oaths and articles, made and established in that behalf, and for that the same, by reason of the remote distances of these places, will, we hope, be no breach of the unity and uniformity established in this nation; our will and pleasure therefore is, and we do by these presents, for us, our heirs and successors, give and grant unto the said Edward Earl of Clarendon, George Duke of Albemarle, William Lord Craven, John Lord Berkley, Anthony Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs and assigns, full and free license, liberty and authority, by such legal ways and means as they shall think fit, to give and grant unto such person or persons, inhabiting and being within the said province, or any part thereof, who really in their judgments, and for conscience sake, cannot or shall not conform to the said liturgy and ceremonies, and take and subscribe the oaths and articles aforesaid, or any of them, such indulgencies and dispensations in that behalf, for and during such time and times, and with such limitations and restrictions as they, the said Edward Earl of Clarendon, George Duke of Albemarle, William Lord Craven, John Lord Berkley, Anthony Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs or assigns, shall in their discretion think fit and reasonable; and with this express proviso, and limitation also, that such person and persons, to whom such indulgencies and dispensations shall be granted as aforesaid, do and shall from time to time declare and continue, all fidelity, loyalty and obedience to us, our heirs and successors, and be subject and obedient to all other the laws, ordinances, and constitutions of the said province, in all matters whatsoever, as well ecclesiastical as civil, and do not in any wise disturb the peace and safety thereof, or scandalise or reproach the said liturgy, forms and ceremonies, or anything relating thereunto, or any person or persons whatsoever, for or in respect of his or their use or exercise thereof, or his or their obedience and conformity, thereunto. 30

19th. And in case it shall happen, that any doubts or questions should arise, concerning the true sense and understanding of any word, clause or sentence contained in this our present charter, we will, 40

ordain and command, that at all times, and in all things, such interpretation be made thereof, and allowed in all and every of our courts whatsoever, as lawfully may be adjudged most advantageous and favourable to the said Edward Earl of Clarendon, George Duke of Albemarle, William Lord Craven, John Lord Berkley, Anthony Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs and assigns, although express mention be not made in these presents, of the true yearly value and certainty of the premises, or any part thereof, or of any other gifts and grants made by us, our ancestors, or predecessors, to them the said Edward Earl of Clarendon, George Duke of Albemarle, William Lord Craven, John Lord Berkley, Anthony Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, or any other person or persons whatsoever, or any statute, act, ordinance, provision, proclamation or restraint, heretofore had, made, published, ordained or provided, or any other thing, cause or matter, whatsoever, to the contrary thereof, in any wise notwithstanding.

IN WITNESS, &c.

Witness the King, at Westminster, the fourth and twentieth day of March, in the fifteenth year of our reign (1663.)

PER IPSUM REGEM.

SUPPLEMENT
TO THE
ONTARIO
APPENDIX.

Charter of
Carolina
1663.

CHARTER OF RHODE ISLAND AND PROVIDENCE PLANTATIONS—1663.*

CHARLES THE SECOND, by the grace of God, King of England, Scotland, France, and Ireland, Defender of the Faith, &c., to all to whom these presents shall come, greeting: Whereas we have been informed, by the humble petition of our trustie and well beloved subject, John Clarke, on the behalf of Benjamine Arnold, William Brenton, William Codrington, Nicholas Easton, William Boulston, John Porter, John Smith, Samuell Gorton, John Weeks, Roger Williams, Thomas Ohnic, Gregoire Dexter, John Cogeshall, Joseph Clarke, Randall Holden, John Greene, John Roome, Samuell Wildhore, William Ffield, James Barker, Richand Tew, Thomas Harris, and William Dyre, and the rest of the purchasers and free inhabitants of our island, called Rhode-Island, and the rest of the colonie of Providence Plantations, in the Narragansett Bay, in New-England, in America, that they, pursueing, with peaceable and loyall mindes, their sober, serious, and religious intentions, of godlie edifieing themselves, and one another, in the holie Christian faith and worshipp as they were perswaded; together with the gaining over and conversiōe of the poore ignorant Indian natives, in those partes of America, to the sincere professione and obedience of the same faith and worship, did, not onlie by the consent and good encouragement of our royall progenitors, transport themselves out of this kingdome of England into America, but alsoe, since their arrivall there, after their first settlement amongst other our subjects in those parts, ffor the avoideing of discorde, and those manie evils which were likely to ensue upon some of those oure subjects not beinge able to beare, in these remote parties, theire different apprehensions in religious concernementes, and in pursuance of the afforesayd ends, did once againe leave their desirable stations and habitationes, and with excessive labour and travell, hazard and charge, did transplant themselves into the middlest of the Indian natives, who, as wee are informed, are the most potent princes and people of all that country; where, by the good Providence of God, from whome the Plantationes have taken their name, upon their labour and industrie, they have not onlie byn preserved to admiration, but have increased and prospered, and are seized and possessed, by purchase and consent of the said natives, to their full content, of such lands, islands, rivers, harbours, and roades, as are verie convenient, both for plantationes and alsoe for buildinge of shippes, suplye of pype-staves, and other merchandize; and which lyes verie commodious, in manie respects, for comm^{er}ce, and to accomodate oure sonthern plantationes, and may much advance the trade of this oure realme, and greatlie enlarge the territories thereof; they haveinge, by neare neighbourhoode to and friendlie societie with the greate bodie of the Narragansett Indians, given them encouragement, of their owne accorde, to subject themselves, their people and landes, unto us; whereby, as is hoped, there may, in due tyme, by the blessing of God upon their endeavours, bee layd a sure ffoundation of happinesse to all America:

And whereas, in their humble addresse, they have freely declared, that it is much on their hearts (if they may be permitted), to hold forth a livelie experiment, that a most flourishing civill state may stand and best bee maintained, and that among our English subjects, with a full libertie in religious concernementes; and that true pietye rightly grounded upon gospell principles, will give the best and greatest security to sovereignty, and will lay in the hearts of men the strongest obligations to true foyaltye:

Now know yee, that wee bringe willinge to encourage the hopefull undertakeinge of oure sayd loyall and loveinge subjects, and to secure them in the free exercise and enjoyment of all their civill and religious rights, appertaining to them, as our loveing subjects; and to preserve unto them that libertye, in the true Christian faith and worshipp of God, which they have sought with soe much travaill, and with peaceable myndes, and loyall subjectione to our royall progenitors and ourselves, to enjoye; and because some of the people and inhabitants of the same colonie cannot, in their private opinions, conforme to the publicke exercise of religion, according to the liturgy, formes and ceremonies of the

* The commonwealth of England had claimed the right, in 1651, to appoint a governor for Rhode Island and Providence Plantations, with a provincial council, to be elected by the freeholders and accepted by himself. After the restoration an agent was sent to England, who obtained this charter from Charles II.

PLANTATIONS—1663.*

and, France, and Ireland,
; Whereas wee have been
Clarke, on the behalf of
William Boulston, John
Obnie, Gregoire Dexter,
Samuell Wildbore, William
the rest of the purchasers
the colonie of Providence
pursueing, with peaceable
10 themselves, and one
together with the gaining
of America, to the sincere
by the consent and good
Kingdome of England into
against other our subjects in
likely to ensue upon some
different apprehensions
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and charge, did transplant
20 re the most potent princes
whome the Plantations
are preserved to admiration,
and consent of the said
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, and other merchandize;
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ie enlarge the territories
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subject themselves, there
30 the blessing of God upon

it is much on their hearts
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makeinge of oure sayd loyall
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40 e unto them that libertie,
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do Island and Providence Planta-
e restoration an agent was sent to

Church of England, or take or subscribe the oaths and articles made and established in that behalfe; and for that the same, by reason of the remote distances of those places, will (as wee hope) bee noe breach of the unitie and unifformitie established in this nation; Have therefore thought fitt, and do hereby publish, graunt, ordeyne and declare, That our royall will and pleasure is, that noe person within the sayd colonye, at any tyme hereafter, shall bee any wise molested, punished, disquieted, or called in question, for any differences in opinione in matters of religion, and doe not actually disturb the civill peace of our sayd colony; but that all and everye person and persons may, from tyme to tyme, and at all tymes hereafter, freeely and fullye have and enjoye his and their owne judgments and consciences in matters of religions concernments, throughout the tract of lande hereafter mentioned; they behaving themselves peaceable and quietlie, and not using this libertie to lycentiousnesse and profanenesse, nor to the civill injurye or outward disturbance of others; any lawe, statute, or clause, therein contayned, or to bee contayned, usage or custome of this realme, to the contrary hereof, in any wise, notwithstanding.

And that they may bee in the better capacity to defend themselves, in their just rights and libertyes against all the enemies of the Christian faith, and others, in all respects, wee have further thought fitt, and at the humble petition of the persons aforesayd are graciously pleased to declare. That they shall have and enjoye the benefit of our late act of indemnity and free pardon, as the rest of our subjects in other our dominions and territories have; and to create and make them a bodye politique or corporate, with the powers and privileges hereinafter mentioned.

20 And accordingly our will and pleasure is, and of our especiall grace, certaine knowledge, and mere motion wee have ordeyned, constituted and declared, and by these presents, for us, our heires and successors, doe ordeyne, constitute and declare, That they, the sayd William Brenton, William Codrington, Nicholas Easton, Benedict Arnold, William Boulston, John Porter, Samuell Gorton, John Smith, John Weekes, Roger Williams, Thomas Olneye, Gregorie Dexter, John Cogeshall, Joseph Clarke, Randall Holden, John Greene, John Roome, William Dyre, Samuell Wildbore, Richard Tew, William Pfield, Thomas Harris, James Barker, — Rainsborrow, — Williams, and John Nickson, and all such others as now are, or hereafter shall bee admitted and made free of the company and societie of our collonie of Providence Plantations, in the Narragansett Bay, in New-England, shall bee, from tyme to tyme, and forever hereafter, a bodie corporate and politique, in fact and name, by the name of The Governour and Company of the English Colony of Rhode-Island and Providence Plantations in New-England, in America; and that, by the same name, they and their successors shall and may 30 have perpetuall succession, and shall and may bee persons able and capable, in the lawe, to sue and bee sued, to plende and be impended, to answeare and be answered unto, to defend and to be defended, in all and singular suites, causes, quarrels, matters, actions and thinges, of what kind or nature soever; and alsoe to have, take, possesse, acquire and purchase, lands, tenements or hereditaments, or any goods or chattels, and the same to lease, graunt, demise, aliene, bargain, sell and dispose of, at their owne will and pleasure, as other our liege people of this our realme of Englande, or unic corporation or bodie politique within the same, may lawefully doe.

And further, that they the sayd Governour and Company, and their successors, shall and may, 40 forever hereafter, have a common seale, to serve and use for all matters, causes, thinges and affaires, whatsoever, of them and their successors; and the same seale to alter, change, breake, and make new, from tyme to tyme, at their will and pleasure, as they shall thinke fitt.

And further, wee will and ordeyne, and by these presents, for us, oure heires and successors, doe declare and apoynt that, for the better ordering and managing of the affaires and business of the sayd Company, and their successors, there shall bee one Governour, one Deputie-Governour and ten Assistants, to bee from tyme to tyme, constituted, elected and chosen, out of the freemen of the sayd Company, for the tyme beinge, in such manner and forme as is hereafter in these presents expressed: which sayd officers shall aplye themselves to take care for the best disposinge and orderinge of the generall businesse and affaires of, and concerneinge the landes and hereditaments hereinafter mentioned to be graunted, and the plantation thereof, and the government of the people there.

And, for the better execution of our royall pleasure herein, wee doe, for us, our heires and successours, assign, name, constitute and apoynt the aforesayd Benedict Arnold to bee the first and present Governour of the sayd Company, and the sayd William Brenton to bee the Deputy-Governour, and the sayd William Boulston, John Porter, Roger Williams, Thomas Olnie, John Smith, John Greene, John Cogeshall, James Barker, William Ffield, and Joseph Clarke, to bee the tenn present Assistants of the sayd Companye, to continue in the sayd severall offices, respectively, untill the first Wednesday which shall bee in the month of May now next cominge.

And further, wee will, and by these presents, for us, our heires and successours, doe ordeyne and graunt that the Governour of the sayd Company, for the tyme being, or, in his absence, by occasion of sicknesse, or otherwise, by his leave and permission, the Deputy-Governour, ffor the tyme being, shall and may, from tyme to tyme, upon all occasions, give order ffor the assemblinge of the sayd Company and callinge them together, to consult and advise of the businesse and affaires of the sayd Company. 10

And that forever hereafter, twice in every year, that is to say, on every first Wednesday in the month of May, and on every last Wednesday in October, or oftener, in case it shall bee requisite, the Assistants, and such of the ffreemen of the Company, not exceedinge six persons ffor Newport, floure persons ffor each of the respective townes of Providence, Portsmouth and Warwicke, and two persons for each other place, towne or city, whoe shall bee, from tyme to tyme, thereunto elected or deputed by the majour parte of the ffreemen of the respective townes or places ffor which they shall bee so elected or deputed, shall have a generall meetinge, or Assembly then and there to consult, advise and determine, in and about the affaires and businesse of the said Company and Plantations. 20

And further, wee doe, of our espeeiall grace, certayne knowledge, and meere motion, give and graunt unto the sayd Governour and Company of the English Colonie of Rhode-Island and Providence Plantations, in New-England, in America, and their successours, that the Governour, or, in his absence, or, by his permission, the Deputy-Governour of the sayd Company, for the tyme beinge, the Assistants, and such of the ffreemen of the sayd Company as shall bee soe as aforesayd elected or deputed, or soe many of them as shall bee present att such meetinge or assemblye, as aforesayde, shall bee called the Generall Assemblye; and that they, or the greatest parte of them present, whereof the Governour or Deputy-Governour, and sixe of the Assistants, at least to bee seven, shall have, and have hereby given and graunted unto them, ffull power authority, ffrom tyme tyme, and at all tymes hereafter, to apoynt, alter and change, such dayes, tymes and places of meetinge and Generall Assemblye, as theye shall thinke fitt; and to choose, nominate, and apoynt, such and so manye other persons as they shall think fitt, and shall be willing to accept the same, to bee ffree of the sayd Company and body politique, and them into the same to admitt; and to elect and constitute such offices and officers and to graunt such needfull commissions, as they shall think fitt and requisite, ffor the ordering, managing and dispatching of the affaires of the sayd Governour and Company, and their successours; and from tyme to tyme, to make, ordeyne, constitute or repeal, such lawes, statutes, orders and ordinances, formes and ceremonies of government and magistracye as to them shall seeme meete for the good and welfare of the sayd Company, and ffor the government and ordering of the landes and hereditaments, hereinafter mentioned to be graunted, and of the people that doe, or at any tyme hereafter shall, inhabitt or bee within the same; soe as such lawes, ordinances and constitutions, soe made, bee not contrary and repugnant unto, butt, as near as may bee, agreeable to the lawes of this our realme of England, considering the nature and constitutione of the place and people there; and alsoe to apoynt, order and direct, erect and settle, such places and courts of jurisdiction, for the heareinge and determininge of all actions, cases, matters and things, happening within the sayd collonie and plantatione, and which shall be in dispute, and depending there, as they shall thinke fitt; and alsoe to distinguish and sett forth the severall names and titles, duties, powers and limitts, of each court, office and officer, superior and inferior; and alsoe to contrive and apoynt such formes of oaths and attestations, not repugnant, butt, as neare as may bee, agreeable, as aforesayd, to the lawes and statutes of this our realme, as are conveniente and requisite, with respect to the due administration of justice, and due execution and discharge of all offices and places of trust by the 30 40

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 to be the first and
 Deputy-Governor, and
 Smith, John Greene,
 present Assistants of
 the first Wednesday

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persons that shall bee therein concerned ; and alsoe to regulate and order the waye and manner of all elections to offices and places of trust, and to prescribe, limitt and distinguish the numbers and boundes of all places, towines or cities, within the limitts and bounds herein after mentioned, and not herein particularlie named, who have, and shall have, the power of electing and sending of ffreemen to the sayd Generall Assembly ; and alsoe to order direct and authorize the imposing of lawfull and reasonable ffynes, mulets, imprisonments, and executing other punishments pecuniary and corporal, upon offenders and delinquents, according to the course of other corporations within this oure kingdom of England ; and agayne to alter, revoke, annull or pardon, under their common seale or otherwyse, such ffynes, mulets, imprisonments, sentences, judgments and condemnations, as shall bee thought fitt ; and to direct, rule, order and dispose of, all other matters and things, and particularly that which relates to the makinge of purchases of the native Indians, as to them shall seeme meete ; whereby oure sayd people and inhabitants, in the sayd Plantationes, may be soe religiously, peaceably and civilly governed as, that, by their good life and orderlie conversatione, they may win and invite the native Indians of the countrie to the knowledge and obedience of the onlie true God, and Saviour of mankinde ; willing, commanding and requireing, and by these presents, for us, our heirs and successours, orleyneing and apoynting, that all such lawes, statutes, orders and ordinances, instructions, impositions and directiones, as shall be soe made by the Governour, deputye-Governour Assistants and ffreemen, or such number of them as aforesayd, and published in writinge, under their common seale, shall be carefully and duely observed, kept, performed and putt in execution, according to the true intent and meaning of the same.

20 And these our letters patent, or the duplicate or exemplification thereof, shall bee to all and everie such officer, superiour or inferiour, ffrom tyme to tyme, for the putting of the same orders, lawes, statutes, ordinances, instructions, and directions, in due execution, against us, our heirs, and successours, a sufficient warrant and discharge.

And further, our will and pleasure is, and wee doe hereby, for us, our heirs and successours, establish and ordeyne, that yearlie, once in the yeare, forever hereafter, namely, the aforesayd Wednesday in May, and at the towne of Newport, or elsewhere, if urgent occasion doe require, the Governour, Deputy-Governour and Assistants of the sayd Company, and other officers of the sayd Company, or such of them as the Generall Assemblye shall thinke fitt, shall bee, in the sayd Generall Court or Assembly to be held from that daye or tyme, newly chosen for the year ensueing, by such greater part 30 of the sayd Company, for the tyme beinge, as shall bee then and there present ; and if itt shall happen that the present Governour, Deputy-Governour and Assistants, by these presents apoynted, or any such as shall hereafter be newly chosen into their roomes, or any of them, or any other the officers of the sayd Company, shall die or bee removed ffrom his or their severall offices or places, before the sayd generall day of election, (whom wee doe hereby declare, for any misdemeanour or default, to be removeable by the Governour, Assistants and Company, or such greater parte of them, in any of the sayd publique courts, to be assembled as aforesayd), that then, and in every such case, it shall and may bee lawfull to and ffor the sayd Governour, Deputy-Governour, Assistants and Company aforesayde, or such greater parte of them, soe to be assembled as is aforesayde, in any their assemblies, to proceede to a new election of one or more of their Company, in the roome or place, roomes or places, of such officer or 40 officers, soe dyeing or removed, according to their discretiones ; and immediately upon and after such electione or elections made of such Governour, Deputy-Governour or Assistants, or any other officer of the sayd Company, in manner and forme aforesayde, the authoritie, office and power, before given to the former Governour, Deputy-Governour, and other office and officers, soe removed, in whose stede and place new shall be chosen, shall, as to him and them, and every of them, respectively, cease and determine :

Provided, allwayes, and our will and pleasure is, that as well such as are by these presents apoynted to bee the present Governour, Deputy-Governour and Assistants, of the sayd Company, as those that shall succede them and all other officers to be apoynted and chosen as aforesayde, shall, before the undertakeinge the execution of the sayd offices and places respectively, give their solemn engagement, by

SUPPLEMENT
 TO THE
 ONTARIO
 APPENDIX.

Charter of
 Rhode Island
 and Providence
 Plantations
 1663.

SUPPLEMENT
TO THE
ONLARD
APPENDIX.
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Charter of
Rode Island
and Providence Plantations—1663.

oath, or otherwise, for the due and faythfull performance of their severall offices and places, before such person or persons as are by these presents hereafter apoynted to take and receive the same, that is to say: the sayd Benedict Arnold, whoe is hereinbefore nominated and apoynted the present Governour of the sayd Company, shall give the aforesayd engagement before William Brenton, or any two of the sayd Assistants of the sayd Company; unto whome, wee doe by these presentes give full power and authority to require and receive the same; and the sayd William Brenton, whoe is hereby before nominated and apoynted the present Deputy-Governour of the sayd Company, shall give the aforesayd engagement before the sayd Benedict Arnold, or any two of the Assistants of the sayd Company; unto whom wee doe by these presents give full power and authority to require and receive the same; and the sayd William Boulston, John Porter, Roger Williams, Thomas Olneye, John Smith, John Greene, John Cogeshall, James Barker, William Pfield, and Joseph Clarke, whoe are hereinbefore nominated apoynted the present Assistants of the sayd Company, shall give the sayd engagement to their offices and places respectively belonging, before the sayd Benedict Arnold and William Brenton, or one of them; to whome, respectively wee doe hereby give full power and authority to require, administer, or receive the same.

And further, our will and pleasure is, that all and every other future Governour or Deputy-Governour, to bee elected and chosen by vertue of these presents, shall give the sayd engagement before two or more of the sayd Assistants of the sayd Company for the tyme being; unto whome wee doe by these presents give full power and authority to require, administer, or receive the same; and the sayd Assistants, and every of them, and all and every other officer or officers to bee hereafter elected and chosen by vertue of these presents, from time to time, shall give the like engagements to their offices and places respectively belonging, before the Governour or Deputy-Governour for the time being; unto which sayd Governour or Deputy-Governour, wee doe by these presents give full power and authority to require, administer or receive the same accordingly.

And wee doe likewise, for vs, our heires and successours, give and graunt vnto the sayd Governour and Company and their successours by these presents, that, for the more peaceable and orderly government of the sayd Plantations, it shall and may bee lawfull for the Governour, Deputy-Governour, Assistants, and all other officers and ministers of the sayd Company, in the administration of justice, and exercise of Government, in the sayd Plantations, to vse, exercise, and putt in execution, such methods, rules, orders and directions, not being contrary or repugnant to the laws and statutes of this our realme, as have byn heretofore given, vsed and accustomed, in such cases respectively, to be putt in practice, until att the next or some other Generall Assembly, special provision shall be made and ordeyned in the cases aforesaid.

And wee doe further, for vs, our heires and successours, give and graunt vnto the sayd Governour and Company, and their successours, by these presents, that itt shall and may bee lawfull to and for the sayd Governour, or in his absence, the Deputy-Governour, and majour parte of the sayd Assistants, for the tyme being, att any tyme when the sayd Generall Assembly is not sitting, to nominate, apoynt and constitute, such and soe many commanders, governours, and military officers, as to them shall seeme requisite, for the leading, conductinge and trayning vpp the inhabitants of the sayd Plantations in martiall affaires, and for the defence and safeguard of the sayd Plantations; and that itt shall and may bee lawfull to and for all and every such commander, governour, and military officer, that shall bee soe as aforesyd, or by the Governour, or, in his absence, the Deputy-Governour, and six of the sayd Assistants, and majour parte of the freemen of the sayd Company present att any Generall Assemblies, nominated, apoynted and constituted accordinge to the tenor of his and their respective commissions and directions, to assemble, exercise in arms, martiall array, and putt in warlyke posture, the inhabitants of the sayd collonie, for their speciall defence and safety; and to lead and conduct the sayd inhabitants and to encounter, expulse, expell and resist, by force of armes, as well by sea as by lande; and alsoe to kill, slay, and destroy, by all fitting wayes, enterprizes and meanes, whatsoever, all and every such person or persons as shall, att any time hereafter, attempt or enterprize the destruction, invasion,

detriment or annoyance of the sayd inhabitants or Plantations; and to vse and exercise the lawe martiall in such cases only as occasion shall necessarily require; and to take or surprize, by all wayes and meanes whatsoever, all and every such person and persons, with their shipp or shippes, armor, ammunition or other goods of such persons, as shall, in hostile manner, invade or attempt the defeating of the sayd Plantations, or the hurt of the sayd Company and inhabitants; and vpon just causes, to invade and destroy the native Indians, or other enemies of the sayd Collony.

Nevertheless, our will and pleasure is, and wee doe hereby declare to the rest of oure Colonies in New-England, that itt shall not bee lawfull for this our sayd Collony of Rhode-Island and Providence Plantations, in America, in New-England to invade the natives inhabiting within the boundes and 10 limitts of their sayd Colonies without the knowledge and consent of the sayd other Colonies.

And itt is hereby declared, that itt shall not bee lawfull to or for the rest of the Colonies to invade or molest the native Indians, or any other inhabitants, inhabiting within the bounds and lymitts here- 20 after mentioned (they having subjected themselves vnto vs, and being by vs taken into our speciall protection), without the knowledge and consent of the Governour and Company of our Collony of Rhode-Island and Providence Plantations.

Alsoe our will and pleasure is, and wee do hereby declare unto all Christian Kings, Princes and States, that if any person, which shall hereafter bee of the sayd Company or Plantations, or any other, by apoyntment of the said Governour and Company for the tyme beinge, shall at any tyme or tymes hereafter, rob or spoyle, by sea or land, or do any hurt, unlawfull hostility to any of the subjects of vs, 20 oure heires or successours, or any of the subjects of any Prince or State, beinge then in league with vs, oure heires, or successours, vpon complaint of such injury done to any such Prince or State, or their subjects, wee, our heires and successours, will make open proclamation within any parts of oure realme of England, fit for that purpose, that the person or persons committing any such robbery or spoyle shall, within the tyme lymitted by such proclamation, make full restitution or satisfaction of all such injuries done or committed, soe as the sayd Prince, or others soe complaineinge, may bee fully satisfied and contented; and if the sayd person or persons whoe shall committ any such robbery or spoyle shall not 30 make satisfaction, accordingly, within such tyme, soe to bee lymitted, that then wee, oure heires and successours, will putt such person or persons out of oure allegiance and protection; and that then itt shall and may bee lawfull and free for all Princes or others to prosecute, with hostility, such offenders. 30 and every of them, their and every of their procurers, ayders, abettors, and counsellors, in that behalfe.

Provided alsoe, and oure expresse will and pleasure is, and we doe, by these presents, for vs, our heirs and successours, ordeyne and apoynt, that these presents shall not, in any manner, hinder any of our loving subjects, whatsoever, from vseing and exercising the trade of fishing vpon the coast of New-England, in America; butt that they, and every or any of them, shall have full and free power and liberty to continue and vse the trade of fishing vpon the sayd coast, in any of the seas thereunto adjoyninge, or any armes of the seas, or salt water, rivers and creeks, where they have been accustomed to fish; and to build and to sett upon the waste land, belonginge to the sayd Collony and Plantations, such wharfes, stages, and workehouses as shall be necessary for the salting, drying and keeping of their 40 fish, to be taken or gotten upon that coast.

And further, for the encouragement of the inhabitants of our sayd Collony of Providence Plantations to sset vpon the business of takeing whales, itt shall be lawfull for them or any of them, having struck whale, dubertus, or other greate fish, itt or them, to pursue unto any parte of that coaste, and into any bay, river, cove, creeke or shoare, belonging thereto, and itt or them, vpon the sayd coaste, or in the said bay, river, cove, creeke or shoare, belonging thereto, to kill and order for the best advantage, without molestation, they makinge noe wilful waste or spoyle, any thinge in these presents contraryed, or any other matter or thing, to the contrary notwithstanding.

And further alsoe, wee are graciously pleased, and doe hereby declare, that if any of the inhabitants of oure said Collony doe set vpon the plantinge of vineyards (the soyle and clymate both seeming naturally

to concur to the production of wyne), or bee industrious in the discovery of fishing bank, in or about the sayd Collony, wee will, ffrom tyme to tyme, give and allow all due and fitting enouragement therein as to others in cases of lyke nature.

And further, of oure more ample grace, certayne knowledge, and meere motion, wee have given and graunted, and by these presents, ffor vs, oure heires and successours, doe give and graunt vnto the sayd Governour and Company of the English Collony of Rhode-Island and Providence Plantations, in the Narragansett Bay, in New-England in America, and to every inhabitant there, and to every person and persons trading thither, and to every such person or persons as are or shall bee ffree of the said Colony, full power and authority, from tyme to tyme, and att all tymes hereafter, to take, shipp, transport and carry away, out of any of our realmes and dominions, for and towards the plantation and defence of the sayd Collony, such and soe many of oure loveing subjects and strangers as shall or will willingly accompany them in and to their said Collony and Plantation; except such person or persons as are or shall be therein restrained by vs, oure heires and successours, or any law or statute of this realme: and also to shipp and transport all and all manner of goods, chattels, merchandizes, and other things whatsoever, that are or shall bee vsefull or necessary ffor the sayd Plantations, and defence thereof, and vsually transported, and nott prohibited by any lawe or statute of this our realme; yielding and paying vnto vs, our heires and successours, such the duties, customes and subsidies, as are or ought to bee payd or payable for the same.

And further, our will and pleasure is, and wee doe, ffor us, our heires and successours, ordeyn, declare and graunt, vnto the sayd Governour and Company, and their successours, that all and every the subjects of vs, our heires and successours, which are already planted and settled within our sayd Collony of Providence Plantations, or which shall hereafter goe to inhabit within the sayd Collony, and all and every of their children, which have byn borne there, or which shall happen hereafter to bee borne there, or on the sea, going thither, or retourneing from thence, shall have and enjoye all liberties and immunityes of free and naturall subjects within any the dominions of vs, our heires or successours, to all intents, constructions and purposes, whatsoever, as if they, and every of them, were borne within the realme of England.

And further, know ye, thatt wee, of our more abundant grace, certain knowledge and meere motion, have given, graunted and confirmed, and by these presents, for vs, our heires and successours, doe give, graunt and confirme, vnto the sayd Governour and Company, and their successours, all that parte of our dominiones in New-England, in America, conteyneing the Nahantick and Nanhyganset Bay, and countreyes and partes adjacent, bounded on the west or westerly to the middle or channel of a river there, commonly called and known by the name of the Pawcatuck, alias Pawcawtuck river, and soe along the sayd river, as the greater or middle streame thereof reaches or lies vpp into the north countrey northward, unto the head thereof, and from thence, by a streight lyne drawn due north, until it meets with the south lyne of the Massachusetts Collonie; and on the north, or northerly, by the aforesayd south or southerly lyne of the Massachusetts Colony or Plantation, and extending towards the east, or eastwardly, three English miles to the east and north-east of the most eastern and north-eastern parts of the aforesaid Narragansett Bay, as the sayd hand lyeth or extendeth itself from the ocean on the south, or southwardly, vnto the mouth of the river which runneth towards the town of Providence, and from thence along the eastwardly side or banke of the said river (higher called by the name of Seacunck river), vp to the ffalls called Patucketts ffalls, being the most westwardly lyne of Plymouth Colony, and soe from the sayd ffalls, in a streight lyne, due north, until itt meete with the aforesaid lyne of the Massachusetts Collony; and bounded on the south by the ocean: and, in particular, the lands belonging to the townes of Providence, Pawtuxet, Warwicke, Misquammacok, alias Pawcatuck, and the rest vpon the maine land in the tract aforesayd, together with Rhode-Island, Blocke-Island, and all the rest of the islands and banks in the Narragansett Bay, and bordering vpon the coast of the tract aforesaid (Fisher's Island only excepted), together with all firme lands, soyles, grounds, havens, ports, rivers, waters, fishings, mines royall, and all other mynes, mineralls, precious stones, quarries, woods, wood-grounds, rocks, slates,

and all and singular other commodities, jurisdictions, royalties, privileges, franchises, preeminences and hereditaments, whatsoever, within the sayd tract, bounds, landes, and islands, aforesayd, or to them or any of them belonging, or in any wise appertaining; to have and to hold the same, vnto the sayd Governour and Company, and their successours, forever, vpon trust, for the vse and benefitt of themselves and their associates, freemen of the sayd Collony, their heires and assignes, to be holden of vs, our heires and successours, as of the Manor of East-Greenwich, in our county of Kent, in free and comon socage, and not in capite, nor by knight service; yeilding and paying therefor, to vs, our heires and successours, only the fifth part of all the oare of gold and silver which, from tyme to tyme, and att all tymes hereafter, shall bee there gotten, had or obtained, in lieu and satisfaction of all services, duties, flynes, forfeitures, made or to be made, claimes and demands whatsoever, to bee to vs, our heires or successours, therefor or thereout rendered, made or paid; any graunt, or clause in a late graunt, to the Governour and Company of Connecticutt Colony, in America, to the contrary thereof in any wise notwithstanding; the aforesaid Pawcatuck river having byn yielded, after much debate, for the fixed and certain boundes betweene these our sayd Colonies, by the agents thereof: whoe have also agreed, that the said Pawcatuck river shall bee alsoe called alias Norrogansett or Narragansett river; and, to prevent future disputes, that otherwise might arise thereby, forever hereafter shall bee construed, deemed and taken to bee the Narragansett river in our late graunt to Connecticutt Colony mentioned as the easterly boundes of that Colony.

And further, our will and pleasure is, that in all matters of publique controvery which may fall out betweene our Colony of Providence Plantations, and the rest of our Colonies in New-England, itt shall and may bee lawfull to and for the Governour and Company of the sayd Colony of Providence Plantations to make their appeales therein to vs, our heires and successours, for redresse in such cases, within this our realme of England: and that itt shall bee lawfull to and for the inhabitants of the sayd Colony of Providence Plantations, without let or molestation, to passe and repasse with freedome, into and thorough the rest of the English Collonies, vpon their lawfull and civill occasions, and to converse, and hold commerce and trade, with such of the inhabitants of our other English Collonies as shall bee willing to admit them thereunto, they behaueing themselves peaceably among them; any act, clause or sentence, in any of the sayd Colonies provided, or that shall bee provided, to the contrary in anywise notwithstanding.

And lastly, wee doe, for vs, our heires and successours, ordeyne and graunt vnto the sayd Governour and Company, and their successours, and by these presents, that these our letters patent shall be firme, good, effectuell and available in all things in the lawe, to all intents, constructions and purposes whatsoever, according to our true intent and meaning hereinbefore declared; and shall bee construed, reputed and adjudged in all cases most favorably on the behalfe, and for the benefitt and behoofe, of the sayd Governour and Company, and their successours; although express mention of the true yearly value or certainty of the premises, or any of them, or of any other gifts or graunts by vs, or by any of our progenitors or predecessors, heretofore made to the sayd Governour and Company of the English Colony of Rhode-Island and Providence Plantations, in the Narragansett Bay, New England, in America, in these presents is not made, or any statute, act, ordinance, provision, proclamation or restriction, heretofore had, made, enacted, ordeyned or provided, or any other matter, cause or thing whatsoever, to the contrary thereof in anywise notwithstanding.

In witnes whereof, wee have caused these our letters to bee made patent.

Witnes our Selfe att West-minster, the eighth day of July, in the fifteenth yeare of our reigne.

By the King:

HOWARD.

SUPPLEMENT
TO THE
ORDER
APPENDIX.

Charter of
Rhode-Island
and Providence
Plantations—1663.

GRANT OF THE PROVINCE OF MAINE—1664.

SUPPLEMENT
TO THE
ONTARIO
APPENDIX.

Grant of the
Province of
Maine—
1664.

CHARLES the Second by the Grace of God King of England Scotland France and Ireland Defender of the Faith &c. to all to whom these presents shall come Greeting

Know yee that wee for divers good causes and consideracons us thereunto moving have of our especial Grace certaine knowledge and meere motion given granted and by these presents for us our heires and successors do give and grant unto our dearest brother James Duke of Yorke his heires and assigns all that part of the maine land of New England begining at a certaine place called or knowne by the name of St. Croix next adjoining to New Scotland in America and from thence extending along the sea coast unto a certain place called Petuquine or Pemaquid and so up the river thereof to the furthest head of ye same as it tendeth northwards and extending from thence to the River Kinebequi and so upwards by the shortest course to the River Canada northward and also all that Island or Islands commonly called by the severall name or names of Matowaeks or Lond Island scituate lying and being towards the west of Cape Codd and ye narrow Higansetts abutting upon the maine land between the two Rivers there called or knowne by the severall names of Conectiutt and Hudsons River together also with the said river called Hudsons River and all the land from the west side of Conectiutt to ye east side of Delaware Bay and also all those severall Islands called or knowne by the names of Martin's Vinyard and Nantukes otherwise Nantuckett together with all ye lands islands soyles rivers harbours mines minerals quarryes woods marshes waters lakes fishings hawking hunting and fowling and all other royalltyes proffitts commodities and hereditaments to the said severall islands lands and premisses belonging and appertaining with their and every of their appurtenances and all our estate right title interest benefit advantage claime and demand of in or to the said lands and premisses or any part or parcell thereof and the revercon and revercons remainder and remainders together with the yearly and other ye rents revenues and proffitts of all and singular the said premisses and of every part and parcell thereof to have and to hold all and singular the said lands islands hereditaments and premisses with their and every of their appurtenances hereby given and granted or hereinbefore menconed to be given and granted unto our learest brother James Duke of Yorke his heires and assigns forever to the only proper use and behoofe of the said James Duke of Yorke his heires and assigns forever to be holden of us our heires and successors as of our mannor of East Greenwich in our county of Kent in ffree and common soccage and not in capite nor by Knight service yielding and rendring and the said James Duke of Yorke doth for himselfe his heires and assigns covenant and promise to yield and render unto us our heires and successors of and for the same yearly and every yeare forty Beaver skins when they shall be demanded or within ninety days after and wee do further of our speciall grace certaine knowledge and meere mocon for us our heires and successors give and grant unto our said dearest brother James Duke of Yorke his heires deputies agents commissioners and assigns by these presents full and absolute power and authority to correct punish pardon governe and rule all such the subjects of us our heires and successors from time to time adventure themselves into any of the parts or places aforesaid or that shall or doe at any time hereafter inhabite within the same according to such lawes orders ordinances direcons and instruments as by our said dearest brother or his assigns shall be established and in defect thereof in cases of necessity according to the good direcons of his deputies commissioners officers and assigns respectively as well in all causes and matters capitall and criminall as civill both marine and others soe always as the said statutes ordinances and proceedings be not contrary to but as neare as conveniently may be agreeable to the lawes statutes and government of this our realme of England and saving and reserving to us our heires and successors ye receiving hearing and determining of the appeal or appeales of all or any person or persons, of in or belonging to ye territoryes or islands aforesaid in or touching any judgment or sentence to be there made or given.

And further that it shall and may be lawfull to and for our said dearest brother his heires and assigns by these presents from time to time to nominate make constitute ordaine and confirme by such name or names stile or stiles as to him or them shall seeme good and likewise to revoke discharge change

and alter as well all and singular Governours officers and Ministers which hereafter shall be by him or them thought fitt and needfull to be made or used within the aforesaid parts and islands and also to make ordaine and establish all manner of orders lawes directions instruccions formes and ceremonies of government and magistracy fitt and necessary for and concerning the government of the territories and islands aforesaid so always as the same be not contrary to the lawes and statutes of this our Realme of England but as neare as may be agreeable thereunto and the same at all times hereafter to put in execution or abrogate revoke or change only within the precincts of the said territories or islands but also upon the seas in going and coming to and from the same as he or they in their good discrecons shall thinke to be fitt for the good of the adventurers and inhabitants there.

10 And wee do fu ther of our speciall grace certaine knowledge and meere mocon grant ordaine and declare that such governours officers and ministers as from to time shall be authorized and appointed in manner and forme aforesaid shall and may have full power and authority to use and exercise martiall law in cases of rebellion insurrection and mutinie in as large and ample manner as our Lieutenants in our countyes within our Realme of England have or ought to have by force of their commission of Lieutenancy or any law or statute of this our Realme.

And wee do further by these presents for us our heires and successors grant unto our said dearest brother James Duke of Yorke his heires and assignes that it shall and may be lawfull to and for the said James Duke of Yorke his heires and assignes in his or their discrecons from time to time to admit such and so many person and persons to trade and traffique unto and within the
20 territories and islands aforesaid and into every and any part and parcell thereof and to have possesse and enjoy any lands or hereditaments in ye parts and places aforesaid as they shall thinke fitt according to the lawes orders constitucions and ordinances by our said brother his heires deputyes commissioners and assignes from time to time to be made and established by vertue of and according to the true intent and meaning of these presents and under such condicions reservacons and agreements as our said brother his heires or assignes shall set downe order direct and appoint and not otherwise as aforesaid.

And wee do further of our especiall grace certaine knowledge and meere mocon for us our heires and successors give and grant to our said deare brother his heires and assignes by these presents that it shall and may be lawfull to and for him them or any of them at all and every time and times hereafter out of any of our realmes or dominions whatsoever to take leade carry and transport in and into their
30 voyages and for and towards the plantacons of our said territories and islands all such and so many of our loving subjects or any other strangers being not prohibited or under restraint that will become our loving subjects and live under our allegiance as shall willingly accompany them in the said voyages together with all such cloathing implements furniture and other things usually transported and not prohibited as shall be necessary for the inhabitants of the said islands and territories and for their use and defence thereof and manageing and carrying on the trade with the people there and in passing and returning to and fro yielding and paying to us our heires and successors the customes and duties therefore due and payable according to the lawes and customes of this our Realme.

And wee do also for us our heires and successors grant to our said dearest brother James Duke of Yorke his heires and assignes and to all and every such governor or governors or other officers or ministers
40 as by our said brother his heires or assignes shall be appointed to have power and authority of government and command in or over the inhabitants of the said territories or islands that they and every of them shall and lawfully may from time to time and at all times hereafter forever for their severall defence and safety encounter expulse repell and resist by force of arms as well by sea as by land and all wayes and meanes whatsoever all such person and persons as without the speciall licence of our said deare brother his heires or assignes shall attempt to inhabit within the severall precincts and limits of our said territories and islands and also all and every such person and persons whatsoever as shall enterprize or attempt at any time hereafter the destruceon or invasion detriment or annoyance to ye parts places or islands aforesaid or any parte thereof.

And lastly our will and pleasure is and wee do hereby declare and grant that these our letters patents

SUPPLEMENT
TO THE
ONTARIO
APPENDIX.
—
Grant of the
Province of
Maine—
1664.

or the enrollment thereof shall be good and effectull in the law to all intents and purposes whatsoever notwithstanding the not reciting or menconing of the premises or any part thereof or the meets or bounds thereof or of any former or other presents patents or grants heretofore made or granted of the premisses or of any part thereof by us or any of our progenitors unto any other person or persons whatsoever bodyes politique or corporate or any act law or other restraint incertainty or imperfection whatsoever to the contrary in any wise notwithstanding although express mencon of the true yearly value or certainty of the premises or any of them or of any other gifts or grants by us or by any of our progenitors or predecessors heretofore made to the said James Duke of Yorke in these presents is not made or any statute act ordinance provision proclamacon or restriction heretofore had made enacted ordained or provided or any other matter cause or thing whatsoever to the contrary thereof in any wise notwithstanding. 10

In witnesse whereof wee have caused these our letters to be made pattents.—Witness ourselfe at Westminster the twelveth day of March in the sixteenth yeare of our raigne.

By the King :

HOWARD

GRANT OF THE PROVINCE OF MAINE—1674.

SUPPLEMENT
TO THE
ONTARIO
APPENDIX.

Grant of the
Province of
Maine
1674.

CHARLES the Second by the Grace of God King of England Scotland France and Ireland Defender of the Faith &c. To all to whom these presents shall come Greeting: Know ye that wee for divers good causes and consideracons have of our especial grace certaine knowledge and meer motion given and granted and by these presents for us our heirs and successors do give and graunt unto our dearest brother James Duke of Yorke his heires and assigns All that part of the main land of New England, beginning at a certaine place callel or known by the name of St. Croix nexce adjoining to New Scotland in America and from thence extending along the seacoast unto a certaine place called Petnaquine or Pemaquid and so up the river thereof to the furthest head of the same as it windeth northward and extending from the river of Kinebeque and so upwards by the shortest course to the river Canada northwards: And all that Island or Islands commonly called by the severall name or names of Matowacks or Long Islands scituate and being towards the west of Cape Cod and the narrow Higansetts abutting upon the main land between the two rivers there called or known by the severall names of Connecticut and Hudson's River together also with the said river called Hudson's River and all the lands from the west side of Connecticut River to the east side of Delaware Bay: And also all those severall Islands called or known by the names of Martin Vin Yard and Nantukes otherwise Nantuckett: Together with all the lands Islands soiles rivers harbors Mines Minerals Quarries woods marshes waters lakes fishings Hawking hunting and fflowing and all other royalties profits Commodities and hereditaments to the said severall Islands lands and premissas Lands belonging and appertaining with their and every of their appurtenants: And all our Estate right title and interest benefit and advantage claime and demand of in or to the said lands or premises or any part or parcell thereof and the revercon and revercons remainder and remainders together with the yearly and other rents revenues and profits of the premises and of every part and parcell thereof To have and to hold all and singular the said lands and premises with their and every of their appurtenents hereby given and graunted or herein before mentioned to be given and graunted unto our said dearest brother James Duke of Yorke his heirs and assigns forever: To bee holden of us our heirs and successors as of our Manor of East Greenwich, in our county of Kent in free and common soccage and not in capite nor by Knight service yielding and rendering:

And the said James Duke of Yorke for himself his heirs and assigns doth covenant and promise to yield and render unto Us our heirs and successors of and for the same yearly and every year fforty Beaver Skins when they shall bee demanded or within ninety days after such demand made and wee do further of our speciall grace certaine knowledge and meer motion for Us Our heirs and successors give and graunt unto our said Dearest brother James Duke of Yorke his heirs Deputyes Agents Commissioners and assigns by these presents full and absolute power and authority to correct punish pardon govern and rule all such the subjects of us our heirs and successors or any other person or persons as shall from time to time adventure themselves into any of the parts or places aforesaid or that shall or do at any time hereafter inhabit within the same according to such Lawes orders ordinances directions and instructions as by our said dearest brother or his assigns shall bee established and in defect thereof in cases of necessity according to the good direcons of his Deputyes Commissioners Officers or Agents respectively as well in all cases and matters capitall and criminall as Civil Marine and Others so alwayes as the said Statutes ordinances and proceedings bee not contrary to but as neare as may bee agreeable to the Lawes Statutes and Government of this our realm of England and saving and reserving to Us our heirs and successors the receiving hearing and determining of the appeal and appeals of all or any person or persons of in or belonging to the Territoryes or Islands aforesaid or touching any Judgment or sentence to bee there made or given.

And further that it shall and may bee lawfull to and for our said dearest brother his heirs and assigns by these presents from time to time to nominate make constitute ordaine and confirme such Lawes as aforesaid by such name or names stile or stiles as to him or them shall seem good And likewise

HOWARD

GOVERNMENT
TO THE
ONTARIO
APPENDIX.

Grant of the
Province of
Maine--
1674.

to revoke discharge change and alter as well all and singular Governors officers and ministers which hereafter shall be by him or them thought fit and needfull to be made or used within the aforesaid Islands and parts :

And also to make ordaine and establish all manner of lawes orders direceous instructions formes and ceremonies of Government and Magistracy fit and necessary for and concerning the Government of the Territoryes and Islands aforesaid so always as the same bee not contrary to the Lawes and Statutes of this our realme of England, but as neare us may bee agreeable thereunto and the same at all times hereafter to put in execution abrogate revoke or change not only within the precincts of the said Territoryes or Islands but also upon the seas in going and coming to and from the same as hee or they in their good discretions shall thinke fittest for the good of the adventurers and inhabitants.

And wee do further of our Especiall Grace certaine knowledge and meer motion graunt orhine and declare that such Governors Deputyes Officers and Ministers as from time to time shall bee authorized and appointed in manner and forme aforesaid shall and may have full power and authority within the Territoryes aforesaid to use and exercise Marshall Lawe in cases of rebellion insurrection and Mutiny in ns large and ample manner as our Lieutenants in our Countyes within Our realme of England have or ought to have by force of their Commission of Lieutenancy or any law or Statute of this our realme :

And Wee do further by these presents for us our heirs and successors graunt unto Our said dearest brother James Duke of Yorke his heirs and assignes that it shall and may be lawfull to and for the said James Duke of Yorke his heirs and assignes in his or their discreeson from time to time to admit such and so many person and persons to trade and trafficke into and within ye Territoryes and Islands aforesaid and into every or any of the Territoryes and Islands aforesaid and into every or any part and parcell thereof: And to have possess and enjoy any Lands and hereditaments in the parts and places aforesaid as they shall thinke fit according to the Lawes orders constitutions and ordinances by our said brother his heirs deputyes Commissioners and assignes from time to time to bee made and established by vertue of and according to the true intent and meaning of these presents and under such condicions reseravacons and agreements as our said dearest brother his heirs and assignes shall set downe order direct and appoint and not otherwise as aforesaid

And we do further of our Especiall Grace certaine knowledge and meer motion for us our heires and successors give and graunt unto our said deare brother his heirs and assignes by these presents that it shall and may be lawfull to and for him them or any of them at all and Every time and times hereafter out of any of our realms or dominions whatsoever to take lead carry and transport in and into their voyages for and towards the Plantacons of our said Territoryes and Islands aforesaid all such and so many of our loving subjects or any other strangers being not prohibited or under restraint that will become our loving subjects and live under our allegianee and shall willingly accompany them in the said voyages together with all such cloathing implements ffurniture and other things usually transported and not prohibited as shall be necessary for the inhabitants of the said Islands and territoryes and for their use and defence thereof and managing and carrying on the trade with the people there and in passing and returning to and fro Yielding and paying to us our heirs and successors the customes and duties therefore due and payable according to the Lawes and Customes of this our realme

And Wee do also for us our heirs and successors graunt to our said dearest brother James Duke of Yorke his heirs and assignes and to all and every such Governor or Governors Deputyes their Officers or Ministers as by our said brother his heirs or assignes shall bee appouited to have power and authority of government or command in or over the inhabitants of the said Territoryes or Islands that they or every of them shall and lawfully may from time to time and at all times forever hereafter for their severall defence and safety encounter repulse and Expell and resist by force of armes (as well by sea as by land) and all wayes and means whatsoever all such person and persons as without the speciall lieence of our dearest brother his heirs and assignes shall attempt to inhabit within the several precincts and limits of our said Territoryes and Islands and also all and every such person and persons whatsoever as

shall enterprize and attempt at any time hereafter the destruccon invasion detriment or annoyance to the parts places or Islands aforesaid or any part thereof

And lastly our will and pleasure is and We do hereby declare and graunt that these our Letters Patents or the enrolment thereof shall bee good and Effectnall in the Law to all intents and purposes whatsoever notwithstanding the not well and true reciting or menconing of the premises or any part thereof or the limits or bounds thereof or of any former or other Letters Patents or graunts whatsoever made or graunted or of any part thereof by us or any of our progenitors unto any person or persons whatsoever bodyes politick or corporate or any law or other restraint uncertainty or imperfeccon whatsoever to the contrary in any wise notwithstanding although Expreesse mention of the true yearly value or certainty of the premises or any of them or of any other gifts or grants by us or by any of our progenitors heretofore made to the said James Duke of Yorke in these presents is not made or any statute act ordinance provision proclamation or restriction heretofore had made enacted or provided or any other matter cause or thing whatsoever to the contrary thereof in any wise notwithstanding.

In witness whereof Wee have caused these our Letters to bee made Patents Witness Our Selfe at Westm. the 29th day of June in the 26th yeare of our reigne.

PIGOTT.

SUPPLEMENT
TO THE
ONSTARIO
APPENDIX.

Grant of the
Province of
Maine
1674.

CHARTER OF CAROLINA—1665.

SUPPLEMENT
TO THE
ORIGINAL
APPENDIX.

Charter of
Carolina
1665

CHARLES the Second, by the grace of God, of Great Britain, France and Ireland, King, Defender of the Faith, &c. Whereas, by our Letters Patents, bearing date the twenty-fourth day of March, in the fifteenth year of our reign, We were graciously pleased to grant unto our right trusty and right well-beloved Cousin and Counsellor Edward Earl of Clarendon, our High Chancellor of England; our right trusty and entirely beloved Cousin and Counsellor George Duke of Albemarle, Master of our Horse; our right trusty and well-beloved William now Earl of Craven; our right trusty and well-beloved Counsellor John Lord Berkeley; our right trusty and well-beloved Counsellor Anthony Lord Ashley, Chancellor of our Exchequer; our right trusty and well-beloved Counsellor Sir George Carteret, Knight and Baronet, Vice-Chancellor of our Household; our right trusty and well-beloved Sir John Colleton, Knight and Baronet; and Sir William Berkeley, Knight; all that province, territory, or tract of ground, called Carolina, situate, lying and being within our dominions of America; extending from the north end of the island called Lake-Island, which lieth in the Southern Virginia seas, and within thirty-six degrees of north latitude; and to the west, as far as the South-Seas; and so respectively as far as the river of Matthias, which bordereth upon the coast of Florida, and within thirty-one degrees of north latitude; and so west, in a direct line, as far as the South-Seas aforesaid.

Now Know ye, That We, at the humble request of the said grantees, in the aforesaid Letters Patents named, and as a further mark of our especial favour to them, we are graciously pleased to enlarge our said grant unto them, according to the bounds and limits hereafter specified, and in favour to the pious and noble purpose of the said Edward Earl of Clarendon, George Duke of Albemarle, William Earl of Craven, John Lord Berkeley, Anthony Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkeley, their heirs and assigns, all that province, territory or tract of land, situate, lying and being within our dominions of America aforesaid; extending north and eastward, as far as the north end of Currituck river or inlet, upon a strait westerly line to Wyonoak creek, which lies within or about the degrees of thirty-six and thirty minutes, northern latitude; and so west, in a direct line, as far as the South-Seas; and south and westward, as far as the degrees of twenty-nine, inclusive, of northern latitude; and so west, in a direct line, as far as the South-Seas; together with all and singular the ports, harbours, bays, rivers and inlets, belonging unto the province or territory aforesaid: And also, all the soils, lands, fields, woods, mountains, ferms, lakes, rivers, bays and islets, situate or being within the bounds or limits last before mentioned; with the fishings of all sorts of fish, whales, sturgeons, and all other royal fish, in the sea, bays, islets and rivers, within the premises, and the fish therein taken, together with the royalty of the sea upon the coast within the limits aforesaid: and moreover all veins, mines and quarries, as well discovered as not discovered, of gold, silver, gems and precious stones, metal, or any other thing, found, or to be found, within the province, territory, islets and limits aforesaid: And furthermore, the patronage and advowsons of all the churches and chapels, which, as Christian religion shall increase within the province, territory, isles, and limits aforesaid, shall happen hereafter to be erected; together with licence and power to build and found churches, chapels and oratories, in convenient and fit places, within the said bounds and limits; and to cause them to be dedicated and consecrated, according to the ecclesiastical laws of our kingdom of England; together with all and singular the like and as ample rights, jurisdictions, privileges, prerogatives, royalties, liberties, immunities, and franchises of what kind soever, within the territory, isles, islets and limits aforesaid: To have, hold, use, exercise, and enjoy the same, as amply, fully and in as ample manner, as any Bishop of Durham, in our kingdom of England, ever heretofore had, held, used, or enjoyed, or of right ought or could have, use, or enjoy: And then the said Edward Earl of Clarendon, George Duke of Albemarle, William Earl of Craven, John Lord Berkeley, Anthony Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkeley, their heirs and assigns, we do, by these presents, for us, our heirs and successors, make, create, and constitute, the true and absolute Lords and Proprietors of the said province or territory, and of all other the premises; saving always the faith, allegiance, and sovereign dominion, due to us, our heirs and

successors, for the same: To hold, possess, and enjoy the said province, territory, islets, and all and singular other the premises, to them the said Edward Earl of Clarendon, George Duke of Albemarle, William Earl of Craven, John Lord Berkeley, Anthony Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkeley, their heirs and assigns forever; to be holden of us, our heirs and successors, as of our manor of East-Greenwich, in Kent, in free and common socage, and not in capite, or by Knight's service: Yielding and paying, yearly, to us, our heirs and successors, for the same, the fourth part of all gold and silver ore, which, within the limits hereby granted, shall, from time to time, happen to be found, over and besides the yearly rent of twenty marks, and the fourth part of the gold and silver ore, in and by the said written Letters Patent reserved and payable.

Supplement
to the
Ostend
Appendix

Charles of
Carolina
1665.

- 10 And that the province or territory hereby granted and described, may be dignified with as large tythes and privileges, as any other parts of our dominions and territories in that region; Know ye That we, of our further grace, certain knowledge, and mere motion, have thought fit to annex the same tract of ground or territory unto the same province of Carolina; and out of the fullness of our royal power and prerogative, we do, for us, our heirs and successors, annex and unite the same to the said province of Carolina.

- And forasmuch as we have made and ordained the aforesaid Edward Earl of Clarendon, George Duke of Albemarle, William Earl of Craven, John Lord Berkeley, Anthony Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkeley, their heirs, and assigns, the true Lords and Proprietors of all the province or territory aforesaid; Know ye therefore moreover, That we, reposing especial trust and confidence in their fidelity, wisdom, justice, and provident circumspection, for us, our heirs and successors, do grant full and absolute power, by virtue of these presents, to them the said Edward Earl of Clarendon, George Duke of Albemarle, William Earl of Craven, Lord John Berkeley, Anthony Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkeley, their heirs and assigns, for the good and happy government of the said whole province or territory, full power and authority, to erect, constitute, and make several counties, baronies, and colonies, of and within the said provinces, territories, lands, and hereditaments, in and by the said Letters Patents, granted, or mentioned to be granted, as aforesaid, with several and distinct jurisdictions, powers, liberties, and privileges: And also, to ordain, make, and enact, and under their seals, to publish any laws and constitutions whatsoever, either appertaining to the public state of the whole province or territory, or of any distinct or particular county, barony, or colony, or of or within the same, or to the private utility of particular persons, according to their best directions, by and with the advice, assent and approbation, of the freemen of the said province or territory, or of the freemen of the county, barony, or colony, for which such law or constitution shall be made, or the greater part of them, or of their delegates or deputies, whom, for enacting of the said laws, when, and as often as need shall require, We will, that the said Edward Earl of Clarendon, George Duke of Albemarle, William Earl of Craven, John Lord Berkeley, Anthony Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkeley, and their heirs or assigns, shall, from time to time, assemble in such manner and form as to them shall seem best; and the same laws duly to execute, upon all people within the said province or territory, county, barony, or colony, or the limits thereof, for the time being, which shall be constituted, under the power, and government of them or any of them, either sailing towards the said province, or territory of Carolina, or returning from thence towards England, or any other of our, or foreign dominions, by imposition of penalties, imprisonment, or any other punishment; yea, if it shall be needful, and the quality of the offence require it, by taking away member and life, either by them the said Edward Earl of Clarendon, George Duke of Albemarle, William Earl of Craven, John Lord Berkeley, Anthony Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkeley, and their heirs, or by them, or their Deputies, Lieutenants, Judges, Justices, Magistrates, or officers, whatsoever, as well within the said province, as at sea, in such manner and form as unto the said Edward Earl of Clarendon, George Duke of Albemarle, William Earl of Craven, John Lord Berkeley, Anthony Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkeley, and their heirs, shall seem most convenient: And also, to remit, release, pardon, and abolish, whether before judgment or after, all crimes and offences whatsoever against the said laws; and to do all and every

thing and things, which, unto the compleat establishment of justice, unto courts, sessions, and forms of judicature, and manners of proceeding therein, do belong, although in these presents express mention is not made thereof; and by Judges to him or them delegated, to award process, hold pleas, and determine, in all the said courts and places of judicature, all actions, suits, and causes whatsoever, as well criminal as civil, real, mixt, personal, or of any other kind or nature whatsoever: Which laws so as aforesaid to be published, our pleasure is, and we do enjoin, require, and command, shall be absolutely firm and available in law; and that all the liege people of us, our heirs and successors, within the said province or territory, do observe and keep the same inviolably in those parts, so far as they concern them, under the pains and penalties therein expressed, or to be expressed: *Provided nevertheless*, That the said laws be consonant to reason, and as near as may be conveniently, agreeable to the laws and customs of this 10
our realm of England.

And because such assemblies of freeholders cannot be so suddenly called as there may be occasion to require the same, we do therefore, by these presents, give and grant unto the said Edward Earl of Clarendon, George Duke of Albemarle, William Earl of Craven, John Lord Berkeley, Anthony Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkeley, their heirs and assigns, by themselves, or their magistrates, in that behalf lawfully authorised, full power and authority, from time to time, to make and ordain fit and wholesome orders and ordinances within the province or territory aforesaid, or any county, baronny, or province, within the same, to be kept and observed, as well for the keeping of the peace, as for the better government of the people there abiding, and to publish the same to all to whom it may concern: Which ordinances we do, by these presents, straitly charge and command 20
to be inviolably observed within the same province, counties, territories, baronnies and provinces, under the penalties therein expressed; so as such ordinances be reasonable, and not repugnant or contrary, but as near as may be, agreeable to the laws and statutes of this our kingdom of England; and so as the same ordinances do not extend to the binding, charging, or taking away the right or interest of any person or persons, in their freehold, goods, or chattels, whatsoever.

And to the end the said province or territory may be the more happily increased, by the multitude people resorting thither, and may likewise be the more strongly defended from the incursions of savages, and other enemies, pirates and robbers; therefore, we, for us, our heirs and successors, do give and grant, by these presents full power, licence and liberty, unto all the liege people of us, our heirs and successors, in our kingdom of England, and elsewhere, within any other our dominions, islands, colonies, or plantations, (excepting those who shall be especially forbidden) to transport themselves and families into the said province or territory, with convenient shipping and fitting provision; and there to settle themselves, dwell, and inhabit: Any law, act, statute, ordinance, or other thing, to the contrary notwithstanding. 30

And we will also, and of our especial grace, for us, our heirs and successors, do straitly enjoin, ordain, constitute, and command, that the said province and territory shall be of our allegiance; and that all and singular the subjects and liege people of us, our heirs and successors, transported, or to be transported into the said province, and the children of them, and such as shall descend from them there born, or hereafter to be born be, and shall be denizens and lieges of us, our heirs and successors, of this our kingdom of England, and be in all things, held, treated and reputed, as the liege faithful people of us, our heirs and successors, born within this our said kingdom, or any other of our dominions; and may inherit 40
or otherwise purchase and receive, take, hold, buy and possess, any lands, tenements, or hereditaments, within the said places, and them may occupy and enjoy, sell, alien, and bequeath; as likewise all liberties, franchises, and privileges, of this our kingdom, and of other our dominions aforesaid, may freely and quietly have, possess, and enjoy, as our liege people, born within the same, without the molestation, vexation, trouble, or grievance, of us, our heirs and successors: Any act, statute, ordinance, or provision, to the contrary, notwithstanding.

And furthermore, that our subjects of this our said kingdom of England, and other our dominions, may be the rather encouraged to undertake this expedition, with ready and cheerful means; Know ye, That we, of our special grace, certain knowledge and mere motion, do give and grant, by virtue of these

presents, as well to the said Edward Earl of Clarendon, George Duke of Albemarle, William Earl of Craven, John Lord Berkeley, Anthony Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkeley, and their heirs, as unto all others as shall, from time to time, repair unto the said province or territory, with a purpose to inhabit there, or to trade with the natives thereof; full liberty and licence, to lade and freight, in every port whatsoever, of us, our heirs and successors, and into the said province of Carolina, by them, their servants and assigns, to transport all and singular their goods, wares and merchandises; as likewise all sorts of grain whatsoever, and any other thing whatsoever, necessary for their food and clothing, not prohibited by the laws and statutes of our kingdom and dominions, to be carried out of the same, without any let or molestation of us, our heirs and successors, or of any other our officers or ministers whatsoever; saving also unto us, our heirs and successors, the customs and other duties and payments, due for the said wares and merchandises, according to the several rates of the places from whence the same shall be transported.

We will also, and by these presents, for us, our heirs and successors, do give and grant licence, by this our charter, unto the said Edward Earl of Clarendon, George Duke of Albemarle, William Earl of Craven, John Lord Berkeley, Anthony Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkeley, and their heirs and assigns, and to all the inhabitants and dwellers in the province or territory aforesaid, both present and to come, full power and absolute authority, to import or unlade, by themselves or their servants, factors, or assigns, all merchandises and goods whatsoever that shall arise of the fruits and commodities of the said province or territory, either by land or sea, into any the ports of us, our heirs and successors, in our kingdom of England, Scotland, or Ireland, or otherwise to dispose of the said goods in the said ports; and, if need be, within one year next after the unlading, to lade the said merchandises and goods again into the same or other ships; and to export the same into any other countries, either of our dominions or foreign, being in amity with us, our heirs and successors, so as they pay such customs, subsidies and other duties, for the same, to us, our heirs and successors, as the rest of our subjects of this our kingdom, for the time being, shall be bound to pay; beyond which we will not, that the inhabitants of the said province or territory, shall be any ways charged: *Provided nevertheless*, and our will and pleasure is, and we have further, for the considerations aforesaid, of our especial grace, certain knowledge, and mere motion, given and granted, and by these presents, for us, our heirs and successors, do give and grant unto the said Edward Earl of Clarendon, George Duke of Albemarle, William Earl of Craven, John Lord Berkeley, Anthony Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkeley, their heirs and assigns, full and free licence, power and authority, at any time or times, from and after the Feast of St. Michael the Archangel, which shall be in the year of our Lord Christ one thousand six hundred and sixty-seven, as well to import and bring into any of our dominions, from the said province of Carolina, or any part thereof, the several goods herein after mentioned; that is to say, silks, wines, raisins, capers, wax, almonds, oil, and olives, without paying or answering to us, our heirs and successors, any custom, impost, or other duty, for or in respect thereof, for and during the term and space of seven years, to commence and be accounted from and after the importation of four tons of any of the said goods, in any one bottom, ship, or vessel, from the said province or territory, into any of our dominions; as also, to export, and carry out of any of our dominions, into the said province or territory, custom free, all sorts of tools which shall be useful or necessary for the planters there, in the accommodation and improvement of the premises: Any thing before in these presents contained, or any law, act, statute, prohibition, or other matter or thing, heretofore had, made, enacted, or provided, in any wise notwithstanding.

And furthermore of our more ample and especial grace, certain knowledge, and mere motion, we do, for us, our heirs and successors, grant unto the said Edward Earl of Clarendon, George Duke of Albemarle, William Earl of Craven, John Lord Berkeley, Anthony Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkeley, their heirs and assigns, full and absolute power and authority, to make, erect, and constitute, within the said province or territory, and the isles and islets aforesaid, such and so many sea-ports, harbours, creeks, and other places, for discharge and unlading of goods and merchandises, out of ships, boats and other vessels, and for lading of them, in such and so many places,

with such jurisdictions, privileges, and franchises, unto the said ports belonging, as to them shall seem most expedient; and that all and singular the ships, boats and other vessels, which shall come for merchandises and trade into the said province or territory, or shall depart out of the same, shall be laden and unladen at such ports only as shall be erected and constituted by the said Edward Earl of Clarendon, George Duke of Albemarle, William Earl of Craven, John Lord Berkeley, Anthony Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkeley, their heirs and assigns, and not elsewhere: Any use, custom, or thing, to the contrary notwithstanding.

And we do further will, appoint, and ordain, and by these presents, for us, our heirs, and successors, do grant unto the said Edward Earl of Clarendon, George Duke of Albemarle, William Earl of Craven, John Lord Berkeley, Anthony Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkeley, and their heirs and assigns, that they the said Edward Earl of Clarendon, George Duke of Albemarle, William Earl of Craven, John Lord Berkeley, Anthony Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkeley, their heirs and assigns, may, from time to time, forever, have and enjoy the customs and subsidies, in the ports, harbours, creeks, and other places within the province aforesaid, payable for the goods, wares and merchandises there laded, or to be laded or unladed; the said customs to be reasonably assessed, upon any occasion, by themselves, and by and with the consent of the free people, or the greater part of them, as aforesaid; to whom we give power, by these presents, for us, our heirs and successors, upon just cause, and in due proportion, to assess and impose the same.

And further, of our especial grace, certain knowledge, and mere motion, we have given, granted and confirmed, and by these presents, for us, our heirs and successors, do give, grant and confirm, unto the said Edward Earl of Clarendon, George Duke of Albemarle, William Earl of Craven, John Lord Berkeley, Anthony Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkeley, their heirs and assigns, full and absolute power, licence and authority, that they the said Edward Earl of Clarendon, George Duke of Albemarle, William Earl of Craven, John Lord Berkeley, Anthony Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkeley, their heirs and assigns, from time to time hereafter, forever, at his and their will and pleasure, may assign, alien, grant, demise, or enfeoff, the premises, or any part or parcel thereof, to him or them that shall be willing to purchase the same, and to such person and persons as they shall think fit; to have and to hold to them, the said person or persons, their heirs and assigns, in fee-simple, or in fee-tail, or for term of life or lives, or years; to be held of them the said Edward Earl of Clarendon, George Duke of Albemarle, William Earl of Craven, John Lord Berkeley, Anthony Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkeley, their heirs and assigns, by such rents, services and customs, as shall seem fit to them the said Edward Earl of Clarendon, George Duke of Albemarle, William Earl of Craven, John Lord Berkeley, Anthony Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkeley, their heirs and assigns, and not of us, our heirs and successors: And to the same person and persons, and to all and every of them, we do give and grant, by these presents, for us, our heirs and successors, licence, authority and power, that such person or persons may have and take the premises, or any part thereof, of the said Edward Earl of Clarendon, George Duke of Albemarle, William Earl of Craven, John Lord Berkeley, Anthony Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkeley, their heirs and assigns; and the same to hold to themselves, their heirs and assigns, in what estate of inheritance soever, in fee-simple, or fee-tail, or otherwise, as to them the said Edward Earl of Clarendon, George Duke of Albemarle, William Earl of Craven, John Lord Berkeley, Anthony Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkeley, their heirs or assigns, shall seem expedient; the statute in the Parliament of Edward, son of King Henry, heretofore King of England, our predecessor, commonly called the statute of *quia emptores terrarum*, or any other statute, act, ordinance, use, law, custom, or any other matter, cause or thing, heretofore published or provided to the contrary, in any-wise notwithstanding.

And because many persons, born and inhabiting in the said province, for their deserts and services, may expect and be capable of marks of honour and favour, which, in respect of the great distance

cannot be conveniently conferred by us; our will and pleasure therefore is, and we do by these presents, give and grant unto the said Edward Earl of Clarendon, George Duke of Albemarle, William Earl of Craven, John Lord Berkeley, Anthony Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkeley, and their heirs and assigns, full power and authority, to give and confer unto and upon such of the inhabitants of the said province or territory, as they shall think do or shall merit the same, such marks of favour and titles of honour, as they shall think fit; so as their titles of honour be not the same as are enjoyed by or conferred upon any of the subjects of this our kingdom of England.

SUPPLEMENT
TO THE
ONTARIO
APPENDIX.
—
Charter of
Carolina
1665.

And further also, we do, by these presents, for us, our heirs and successors, give and grant licence to the said Edward Earl of Clarendon, George Duke of Albemarle, William Earl of Craven, John Lord Berkeley, Anthony Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkeley, and their heirs and assigns, full power, liberty and licence, to erect, raise and build, within the said province and places aforesaid, or any part or parts thereof, such and so many forts, fortresses, castles, cities, boroughs, towns, villages, and other fortifications whatsoever; and the same, or any of them, to fortify and furnish with ordnance, powder, shot, armour, and all other weapons, ammunition, and habiliments of war, both defensive and offensive, as shall be thought fit and convenient, for the safety and welfare of the said province and places, or any part thereof; and the same, or any of them, from time to time, as occasion shall require, to dismantle, disfigure, demolish and pull down: And also to place, constitute and appoint, in or over all or any of the said castles, forts, fortifications, cities, towns, and places aforesaid, Governors, Deputy-Governors, Magistrates, Sheriffs, and other officers, civil and military, as to them shall seem meet: And to the said cities, boroughs, towns, villages, or any other place or places, within the said province or territory, to grant letters or charters of incorporation, with all liberties, franchises, and privileges, requisite or usual, or to or within this our kingdom of England granted or belonging; and in the same cities, boroughs, towns, and other places, to constitute, erect and appoint such and so many markets, marts, and fairs, as shall, in that behalf, be thought fit and necessary: And further also, to erect and make in the province or territory aforesaid, or any part thereof, so many manors, with such signories as to them shall seem meet and convenient; and in every of the same manors to have and to hold a Court-Baron, with all things whatsoever which to a Court-Baron do belong: and to have and to hold views of Frank-Pledge and Court-Leets, for the conservation of the peace and better government of those parts, with such limits, jurisdictions and precincts, as by the said Edward Earl of Clarendon, George Duke of Albemarle, William Earl of Craven, John Lord Berkeley, Anthony Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkeley, or their heirs, shall be appointed for that purpose, with all things whatsoever which to a Court-Leet, or view of Frank-Pledge, do belong; the same courts to be holden by stewards, to be deputed and authorized by the said Edward Earl of Clarendon, George Duke of Albemarle, William Earl of Craven, John Lord Berkeley, Anthony Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkeley, or their heirs, by the Lords of the manors and leets, for the time being, when the same shall be erected.

And because that in so remote a country, and situate among so many barbarous nations, the invasions of savages and other enemies, pirates and robbers, may probably be feared; therefore, we have given, and for us, our heirs and successors, do give power by these presents, unto the said Edward Earl of Clarendon, George Duke of Albemarle, William Earl of Craven, John Lord Berkeley, Anthony Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkeley, their heirs or assigns, by themselves, or their Captains, or other officers, to levy, muster, and train up all sorts of men, of what condition soever, or wheresoever born, whether in the said province, or elsewhere, for the time being; and to make war, and pursue the enemies aforesaid, as well by sea, as by land, yea, even without the limits of the said province, and, by God's assistance, to vanquish, and take them; and being taken, to put them to death, by the law of war, and to save them at their pleasure, and to do all and every other thing, which to the charge and office of a Captain-General of an army, hath had the same.

Also, our will and pleasure is, and by this our charter, we do give and grant unto the said Edward Earl of Clarendon, George Duke of Albemarle, William Earl of Craven, John Lord Berkeley, Anthony Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkeley, their heirs and assigns,

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Edward Earl of Clarendon,
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full power, liberty, and authority, in case of rebellion, tumult, or sedition, (if any should happen, which God forbid) either upon the land within the province aforesaid, or upon the main sea, in making a voyage thither, or returning from thence, by him and themselves, their Captains, Deputies, or officers, to be authorised under his or their seals, for that purpose; to whom also, for us, our heirs and successors, we do give and grant, by these presents, full power and authority, to exercise martial law against any mutinous and seditious persons of these parts; such as shall refuse to submit themselves to their government, or shall refuse to serve in the war, or shall fly to the enemy, or forsake their colours or ensigns, or be loiterers, or stragglers, or otherwise offending against law, custom, or military discipline; as freely and in as ample manner and form, as any Captain-General of an army, by virtue of his office, might or hath accustomed to use the same.

And our further pleasure is, and by these presents, for us, our heirs and successors, we do grant unto the said Edward Earl of Clarendon, George Duke of Albemarle, William Earl of Craven, John Lord Berkeley, Anthony Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkeley, their heirs and assigns, and to the tenants and inhabitants of the said province or territory, both present and to come, and to every of them, that the said province or territory, and the tenants and inhabitants thereof, shall not, from henceforth, be held or reputed any member or part of any colony whatsoever in America, or elsewhere, now transported or made, or hereafter to be transported or made; nor shall be depending on, or subject to their government in any thing, but be absolutely separated and divided from the same; and our pleasure is, by these presents, that they be separated, and that they be subject immediately to our Crown of England, as depending thereof, forever: And that the inhabitants of the said province or territory, nor any of them, shall, at any time hereafter, be compelled, or compellable, or be any ways subject or liable to appear or answer to any matter, suit, cause or point whatsoever, out of the province or territory aforesaid, in any other of our islands, colonies, or dominions in America, or elsewhere, other than in our realm of England, and dominion of Wales.

And because it may happen that some of the people and inhabitants of the said province cannot, in their private opinions, conform to the public exercise of religion according to the liturgy, forms, and ceremonies of the Church of England, or take and subscribe the oaths and articles made and established in that behalf; and for that the same, by reason of the remote distances of those places, will, as we hope, be no breach of the unity and conformity established in this nation; our will and pleasure therefore is, and we do, by these presents, for us, our heirs and successors, give and grant unto the said Edward Earl of Clarendon, George Duke of Albemarle, William Earl of Craven, John Lord Berkeley, Anthony Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkeley, their heirs and assigns, full and free licence, liberty, and authority, by such ways and means as they shall think fit, to give and grant unto such person and persons, inhabiting and being within the said province or territory, hereby, or by the said recited Letters Patents mentioned to be granted as aforesaid, or any part thereof, such indulgences and dispensations, in that behalf, for and during such time and times, and with such limitations and restrictions, as they the said Edward Earl of Clarendon, George Duke of Albemarle, William Earl of Craven, John Lord Berkeley, Anthony Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkeley, their heirs or assigns, shall, in their discretion, think fit and reasonable: And that no person or persons unto whom such liberty shall be given, shall be any way molested, punished, disquieted, or called in question, for any differences in opinion, or practice in matters of religious concerns, who do not actually disturb the civil peace of the province, county or colony, that they shall make their abode in: But all and every such person and persons may, from time to time, and at all times, freely and quietly have and enjoy his and their judgments and consciences, in matters of religion, throughout all the said province or colony, they behaving themselves peaceably, and not using this liberty to licentiousness, nor to the civil injury, or outward disturbance of others: Any law, statute, or clause, contained or to be contained, usage or custom of our realm of England, to the contrary hereof, in any-wise, notwithstanding.

And in case it shall happen, that any doubts or questions shall arise, concerning the true sense and

understanding of any word, clause, or sentence contained in this our present charter; we will, ordain, and command, that in all times, and in all things, such interpretations be made thereof, and allowed in all and every of our courts whatsoever, as lawfully may be adjudged most advantageous and favourable to the said Edward Earl of Clarendon, George Duke of Albemarle, William Earl of Craven, John Lord Berkeley, Anthony Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkeley, their heirs and assigns, although express mention, &c.

SUPPLEMENT
TO THE
ONTARIO
APPENDIX.
—
Charter of
Carolina—

Witness Ourselves, at Westminster, the thirtieth day of June, in the seventeenth year of our reign.

PER IPSUM REGEM.

any should happen, which
in sea, in making a voyage
Deputies, or officers, to be
heirs and successors, we
martial law against any
hemselves to their govern-
their colours or ensigns, or
itary discipline; as freely
tue of his office, might or

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cessors, we do grant unto
arl of Craven, John Lord
r William Berkeley, their
rritory, both present and
s and inhabitants thereof,
y whatsoever in America,
; nor shall be depending
l divided from the same;
subject immediately to
s of the said province or
pellable, or be any ways
ever, out of the province
erica, or elsewhere, other

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said province cannot, in
the liturgy, forms, and
ies made and established
places, will, as we hope,
nd pleasure therefore is,
to the said Edward Earl
Berkeley, Anthony Lord
heirs and assigns, full
nk fit, to give and grant
territory, hereby, or by
hereof, such indulgences
h such limitations and
marle, William Earl of
John Colleton, and Sir
asonable: And that no
d, punished, disquieted,
religious concernments,
t they shall make their
and at all times, freely
of religion, throughout
g this liberty to licen-
te, or clause, contained
y hereof, in any-wise,

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ing the true sense and

THE CHARTER OF MASSACHUSETTS BAY—1691.*

SUPPLEMENT
TO THE
ONTARIO
APPENDIX.

Charter of
Massa-
chusetts
Bay—1691.

WILLIAM & MARY by the grace of God King and Queene of England Scotland France and Ireland Defenders of the Faith &c To all to whom these presents shall come Greeting Whereas his late Majesty King James the First Our Royall Predecessor by his Letters Patents vnder the Greate Seale of England bearing date at Westminster the Third Day of November in the Eighteenth yeare of his Reigne did Give and Grant vnto the Councell established at Plymouth in the County of Devon for the Planting Ruling Ordering and Governing of New England in America and to their Successors and Assignes all that part of America lying and being in Breadth from Forty Degrees of Northerly Latitude from the Equinoctiall Line to the Forty Eighth Degree of the said Northerly Latitude Inclusively, and in length of and within all the Breadth aforesaid throughout all the Main Lands from Sea to Sea together alsoe with all the firme Lands Soiles Grounds Havens Ports Rivers Waters Fishings Mines and Mineralls aswell Royall Mines of Gold and Silver as other Mines and Mineralls Pretious Stones Quarries and all and singular other Comodities Jurisdiecons Royalties Priviledges Franchises and Prehemineces both within the said tract of Land vpon the Main and alsoe within the Islands and Seas adjoyning Provided alwayes that the said Lands Islands or any the premises by the said Letters Patents intended or meant to be Granted were not then actually possessed or Inhabited by any other Christian Prince or State or within the bounds Limits or Territories of the Southern Collony then before granted by the said late King James the First [to be planted†] by divers of his Subjects in the South parts To have and to hold possesse and enjoy all and singular the aforesaid Continent Lands Territories Islands Hereditaments and Precincts Seas Waters Fishings with all and all manner of their comodities Royalties Liberties Prehemineces, and Profitts that should from thenceforth arise from thence with all and singular their appurtenances and every part and parcell thereof vnto the said Councill and their Successors and Assignes for ever to the sole and proper vse and benefitt of the said Councill and their Successors and Assignes for ever To be holden of his said late Majestie King James the First his Heires and Successors as of his Manor of East Greenwich in the County of Kent in free and Comon Socceage and not in Capite or by Knights service Yielding and paying therefore to the said late King his Heires and Successors the Fifth part of the Oar of Gold and Silver which should from time to time and at all times then after happen to be found gotten had and obteyned in att or within any of the said Lands Limits Territories or Precincts or in o within any part or parcell thereof for or in respect of all and all manner of duties demands and services whatsoever to be done made or paid to the said late King James the first his Heires and Successors (or in and by the said Letters Patents amongst sundry other Clauses Powers Priviledges and Grants therein conteyned more at large appeareth).

And Whereas the said Councill established at Plymouth in the County of Devon for the Planting Ruling Ordering and Governing of New England in America Did by their Deed Indented vnder their Comon Seale bearing Date the Nineteenth Day of March in the Third yeare of the Reigne of our Royall Grandfather King Charles the First of ever Blessed Memory Give Grant Bargaine Sell Enffoeffe Alien and Confirme to Sir Henry Roswell Sir John Young Knights Thomas Southcott John Humphreys John Endicot and Simond Wheteomb their Heires and Assines and their Associats for ever All that part of New England in America aforesaid which lyes and extends betweene a great River there comonly called Monomack als Merrinack and a certaine other River there called Charles River being in a Bottom of a certaine Bay there comonly called Massachusetts als Mattachuseetts als Massatuseetts Bay And alsoe all and singular those Lands and Hereditaments whatsoever lying within the space of Three English Miles on the South part of the said Charles River or of any and every part thereof And alsoe all and singular the Lands and Hereditaments whatsoever lying and being within the space of three English Miles to the Southward of the Southermost part of the said Bay called the Massachusetts als Mattachuseetts als Massatuseetts Bay And alsoe all those Lands and Hereditaments whatsoever which lye and being within the

* The charter of 1629 had been cancelled by a judgment of the high court of chancery of England June, 18, 1684.

† These words occur in the printed copies, but are not in the original. See also colony charter.

space of three English Miles to the Northward of the said River called Monomack als Merrimack or to the Northward of any and every part thereof And all Lands and Hereditaments whatsoever lying within the Limitts aforesaid North and South in Latitude and in Breadth and in length and longitude of and within all the Breadth aforesaid throughout the Main Lands there from the Atlantick and Western Sea and Ocean on the East parte to the South Sea on the West part and all Lands and Grounds Place and Places Soile Woods and Wood Grounds Havens Ports Rivers Waters Fishings and Hereditaments whatsoever lying within the said Bounds and Limitts and every parte and parcell thereof and alsoe all Islands lying in America aforesaid in the said Seas or either of them on the Western or Eastern Coasts or Parts of the said Tracts of Land by the said

10 Indenture menconed to be Given and Granted Bargained Sold Enffoefed Aliened and Confirmed or any of them And alsoe all Mines and Mineralls aswell Royall Mines of Gold and Silver as other Mines and Mineralls whatsoever in the said Lands and Premisses or any parte thereof and all Jurisdiccions Rights Royalties Liberties Freedoms Imunities Priviledges Franchises Preheminences and Comodities whatsoever which they the said Council established at Plymouth in the County of Devon for the planting Ruleing Ordering and Governing of New England in America then had or might vse exercise or enjoy in or within the said Lands and Premisses by the same Indenture menconed to be given granted bargained sold enffoefed and confirmed in or within any part or parcell thereof. To have and to hold the said parte of New England in America which lies and extends and is abutted as aforesaid and every parte and parcell thereof And all the said Islands Rivers Ports Havens Waters Fishings

20 Mines Mineralls Jurisdiccions Franchises Royalties Liberties Priviledges Comodities Hereditaments and premisses whatsoever with the appartenance vnto the said Sir Henry Roswell Sir John Young Thomas Southcott John Humphreys John Endicott and Simond Whetcomb their Heires and Assignes and their Associates for ever to the only proper and absolute vse and behoofe of the said Sir Henry Roswell Sir [John]* Joung Thomas Southcott John Humphreys John Endicott and Simond Whetcomb their Heires and Assignes and their Associates for evermore. To be holden of Our said Royall Grandfather King Charles the first his Heires and Successors as of his Mannor of East Greenwich in the County of Kent in free and Comon Socceage and not in Capite nor by Knights Service Yielding and paying therefore vnto Our said Royall Grandfather his Heires and Successors the fifth part of the Oar of Gold and Silver which should from time to time and at all times hereafter happen to be found gotten, had &

30 obteyned in any of the said Lands within the said Limitts or in or within any part thereof for and in satisfaccion of all manner of duties demands and services whatsoever to be done made or paid to Our said Royall Grandfather his Heires and Successors (as in and by the said recited Indenture may more at large appeare.

And Whereas Our said Royal Grandfather in and by his Letters Patents vnder the Greate Seale of England bearing date at Westminster the Fourth Day of March in the Fourth yeare of his Reigne for the consideracon therein menconed did grant and confirme vnto the said Sir Henry Roswell Sir John Young Thomas Southcott John Humphreys John Endicott and Simond Whetcomb and to their Associates after named (viz.) Sir Ralph Saltenstall Kn^t Isaac Johnson Samuel Aldersey John Ven Mathew Craddock George Harwood Increase Nowell Richard Berry Richard Bellingham Nathaniel

40 Wright Samuell Vassall Theophilus Eaton Thomas Golte Thomas Adams John Browne Samuell Browne Thomas Hutehings William Vassall William Pincheon and George Foxcroft their Heires and Assignes.

All the said part of New England in America lying and extending betweene the bounds and limitts in the said Indenture expressed and all Lands and Grounds Place and Places Soiles Woods and Wood Grounds Havens Ports Rivers Waters Mines Minerals Jurisdiccions Rights Royalties Liberties Freedomes Imunities Priviledges Franchises Preheminences and Hereditaments whatsoever bargained sold enffoefed and Confirmed or menconed or intended to be given granted bargained sold enffoefed aliend and confirmed to them the said Sir Henry Roswell Sir John Young Thomas Southcott John Humphreys John Endicott and Simond Whetcomb their Heires and Assignes and to their Associates for ever by the said recited Indentur[e] To Have and to hold the said part of New England in America and other the

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reeting Whereas his late
nder the Greate Seale of
Eighteenth yeare of his
County of Devon for the
to their Successors and
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Latitude Inclusively, and
Lands from Sea to Sea 10
aters Fishings Mines and
ineralls Pretious Stones
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alsoe within the Islands
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n actually possessed or
imits or Territories of
irst [to be planted+] by
enjoy all and singular the
s Waters Fishings with 20
Profitts that should from
every part and parcell
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holden of his said late
East Greenwich in the
ts service Yielding and
of the Oar of Gold and
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ervices whatsoever to be 30
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erein conteyned more at

Devon for the Planting
d Indented vnder their
e Reigne of our Royall
ne Sell Enffoefe Alien
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ever All that part of
there comonly called 40
eing in a Bottom of a
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f Three English Miles
alsoe all and singular
ee English Miles to the
als Mattachusetts als
lye and be within the

nd June, 18, 1684.
y charter.

* Omitted in the original.

SUPPLEMENT
TO THE
ONTARIO
APPENDIX.
—
CHARTER OF
MASSA-
CHUSETTS
BAY—1691.

Premises thereby menconed to be granted and confirmed and every parte and parcell thereof with the appurtenances to the said Sir Henry Roswell Sir John Young Sir Richard Saltenstall Thomas Southcott John Humphreys John Endicott Simond Whetcomb Isaac Johnson Samuell Aldersey John Ven Matthew Craddock George Harwood Increase Nowell Richard Perry Richard Bellingham Nathaniel Wright Samuell Vassall Theophilus Eaton Thomas Golfe Thomas Adams John Browne Samuell Browne Thomas Hutchins William Vassall William Pincheon and George Foxcroft their Heires and Assignes for ever to their own proper and absolute vse and behoofe for evermore To be holden of Our said Royall Grandfather his Heires and Successors as of his Mannor of East Greenwich aforesaid in free and comon Socceage and not in Capite nor by Knights Service and alsoe yielding and paying therefore to Our said Royall Grandfather his Heires and Successors the fifth part only of all the Oar of Gold and Silver which from time to time and at all times after should be there gotten had or obteyned for all Services Exaccous and Demands whatsoever according to the tenour and Reservacon in the said recited Indenture expressed.

And further Our said Royall Grandfather by the said Letters Patents did Give and Grant vnto the said Sir Henry Roswell Sir John Young Sir Richard Saltenstall Thomas Southcott John Humphreys John Endicott Simond Whetcomb Isaac Johnson Samuell Aldersey John Ven Mathew Craddock George Harwood Enecrease Nowell Richard Perrey Richard Bellingham Nathaniel Wright Samuell Vassall Theophilus Eaton Thomas Golfe Thomas Adams John Browne Samuell Browne Thomas Hut[c]hins William Vassall William Pincheon and George Foxcroft their Heires and Assignes All that part of New England in America which lyes and extends betweene a Greate River called Monomack als Merrimack River and a certaine other River there called Charles River being in the Bottom of a certaine Bay there coñionly called Massachutts als Mattachusetts als Massatusetts Bay and alsoe all and singular those Lands and Hereditaments whatsoever lying within the space of Three English Miles on the South part of the said River called Charles River or of any or every part thereof and alsoe all and singuler the Lands and Hereditaments whatsoever lying and being within the space of Three English Miles to the Southward of the Southermost part of the said Bay called Massachusetts als Mattachusetts als Massatusetts Bay And alsoe all those Lands and Hereditaments whatsoever which lye and bee within the space of Three English Miles to the Northward of the said River called Monomack als Merrimack or to the Northward of any and every parte thereof And all Lands and Hereditaments whatsoever lyeing within the limits aforesaid North and South in Latitude and in Breadth and in length and Longitude of and within all the Breadth aforesaid throughout the Main Lands there from the Atlantick or Western Sea and Ocean on the East parte to the South Sea on the West parte And all Lands Grounds Place and Places Soils Wood and Wood Lands Havens Ports Rivers Waters and Hereditaments whatsoever lying within the said bounds and limits and every part and parcell thereof And alsoe all Islands in America aforesaid in the said Seas or either of them on the Western or Eastern Coasts or partes of the said Tracts of Lands thereby menconed to be given and granted or any of them And all Mines and Mineralls aswell Royal Mines of Gold and Silver as other Mines and Mineralls whatsoever in the said Lands and premisses or any parte thereof and free Libertie of Fishing in or within any of the Rivers and Waters within the bounds and limits aforesaid and the Seas thereunto adjoining and of all Fishes Royall Fishes Whales Balene Sturgeon and other Fishes of what kind or nature soever that should at any time thereafter be taken in or within the said Seas or Waters or any of them by the said Sir Henry Roswell Sir John Young Sir Richard Saltenstall Thomas Southcott John Humphreys John Endicott Simond Whetcomb Isaac Johnson Samuell Aldersey John Ven Mathew Craddock George Harwood Increase Nowell Richard Perrey Richard Bellingham Nathaniel Wright Samuell Vassall Theophilus Eaton Thomas Golfe Thomas Adams John Browne Samuell Browne Thomas Hutchins William Vassall William Pincheon and Georgs Foxcroft their Heires or Assignes or by any other person or persons whatsoever there Inhabiting by them or any of them to be appointed to Fish therein.

Provided alwayes that if the said Lands Islands or ny the premisses before mençõned and by the said Letters Patents last mençõned intended and meant to be granted were at the time of granting of the said former Letters Patents dated the third day of November in the Eighteenth yeare of the Reigne of his late Majesty King James the First actually possessed or inhabited by any other Christian Prin.e

or State or were within the bounds Limits or Territories of the said Southern Colony then before granted by the said King to be planted by divers of his Loving Subjects in the South parts of America. That then the said Grant of Our said Royall Grandfather should not extend to any such parts or parcells thereof soe formerly inhabited or lying within the bounds of the Southern Plantaçon as aforesaid but as to those parts or parcells soe possessed or inhabited by any such Christian Prince or State or being within the boundaries aforesaid should be vterly void To have and to hold possesse and enjoy the said parts of New England in America which lye extend and are abutted as aforesaid and every part and parcell thereof and all the Islands Rivers Ports Havens Waters Fishings Fishes Mines Mineralls Jurisdiçions Franchises Royalties Riverties* Priviledges Coñodities and premisses whatsoever with the

10 Appurtenances vnto the said Sir Henry Roswell Sir John Young Sir Richard Saltenstall Thomas Southcott John Humphreys John Endicott Simond Wheteomb Isaac Johnson Samuel Aldersey John Ven Mathew Craddock George Harwood Increase Nowell Richard Perry Richard Bellingham Nathaniell Wright Samuel Vassall Theophilus Eaton Thomas Golfe Thomas Adams John Browne Samuel Browne Thomas Hutchins William Vassall William Pincheon and George Foxcroft their Heires and Assignes for ever To the only proper and absolute vse and behoofe of the said Sir Henry Roswell Sir John Young Sir Richard Saltenstall Thomas Southcott John Humphreys John Endicott Simond Wheteomb Isaac Johnson Samuel Aldersey John Ven Mathew Craddock George Harwood Increase Nowell Richard Perry Richard Bellingham Nathaniell Wright Samuel Vassall Theophilus Eaton Thomas Golfe Thomas Adams John Brown Samuel Browne Thomas Hutchins William Vassall William Pincheon and George Foxcroft

20 their Heires and Assignes for evermore.

To be holden of our said Royall Grandfather his Heires and Successors as of his Mannor of East Greenwich in the County of Kent within the Realme of England in free and Comon Soecage and not in Capite nor by Knights Service And alsoe yielding and paying therefore to Our said Royall Grandfather his Heires and Successors the Fifth part only of all the Oar of Gold and Silver which from time to time and at all times thereafter should be gotten had and obteyned for all services Exacons and demands whatsoever.

Provided alwayes and his Majesties expresse Will and meaning was that only one Fifth parte of all the Gold and Silver Oar above mencioned in the whole and no more should be answered reserved and payable vnto Our said Royall Grandfather his Heires and Successors by colour or vertue of the said last mencioned Letters Patent the double reservacons or recitalls aforesaid or any thing therein conteyned notwithstanding And to the end that the affaires and businesse which from time to time should happen and arise concerning the said Lands and the Plantacons of the same might be the better managed and ordered and for the good Government thereof Our said Royall Grandfather King Charles the First did by his said Letters Patents Create and make the said Sir Henry Roswell Sir John Young Sir Richard Saltenstall Thomas Southcott John Humphreys John Endicott Symond Wheteomb Isaac Johnson Samuel Aldersey John Ven Mathew Craddock George Harwood Increase Nowell Richard Perry Richard Bellingham Nathaniell Wright Samuel Vassall and Theophilus Eaton Thomas Golfe Thomas Adams John Browne Samuel Browne Thomas Hutchins William Vassal William Pincheon and George Foxcroft and all such others as should thereafter be admitted and made free of the Company and

30 Society thereafter mencioned one Body Politique and Corporate in fact and name by the Name of the Governour and Company of the Massachusetts Bay in New England and did grant vnto them and their Successors divers powers Liberties and Priviledges as in and by the said Letters Patents may more fully and at large appeare.

And whereas the said Governour and Company of the Massachusetts Bay in New England by vertue of the said Letters Patents did settle a Collony of the English in the said parts of America and divers good Subjects of this Kingdome encouraged and invited by the said Letters Patents did Transport themselves and their Effects into the same whereby the said Plantacon did become very populous and divers Counties Townes and Places were created created made setforth or designed within the said parts of America by the said Governour and Company for the time being.

* Liberties.
C C

And Whereas in the Terme of the Holy Trinity in the Thirty Sixth yeare of the Reigne of Our dearest Vncle King Charles the Second a Judgment was given in Our Court of Chancery then sitting at Westminster vpon a Writ of Scire Facias brought and prosecuted in the said Court against the Governour and Company of the Massachusetts Bay in New England that the said Letters Patents of our said Royall Grandfather King Charles the First bearing date at Westminster the Fourth day of March in the Fourth yeare of his Reigne made and granted to the said Governour and Company of the Massachusetts Bay in New England and the Enrollment of the same should be cancelled vacated and annihilated and should be brought into the said Court to be cancelled (as in and by the said Judgment remaining vpon Record in the said Court doth more at large appeare.)

And whereas several persons employed as Agents in behalfe of Our said Collony of the Massachusetts Bay in New England have made their humble application vnto Vs that Wee would be graciously pleased by our Royall Charter to Incorporate Our Subjects in Our said Collony and to grant and confirme vnto them such powers privileges and Franchises as [in] our Royall Wisdome should be thought most conducing to Our Interest and Service and to the Welfare and happy State of Our Subjects in New England and Wee being graciously pleased to gratifie Our said Subjects And alsoe to the end Our good Subjects within Our Collony of New Plymouth in New England aforesaid may be brought vnder such a forme of Government as may put them in a better Condition of defence and considering aswell the granting vnto them as vnto Our Subjects in the said Collony of the Massachusetts Bay Our Royall Charter with reasonable Powers and Priviledges will much tend not only to the safety but to the Flourishing estate of Our Subjects in the said parts of New England and alsoe to the advancing of the ends for which the said Plantacions were at first encouraged of Our especiall Grace certaine knowledge and meer Mocon have willed and ordeyned and Wee doe by these presents for Vs Our Heires and Successors Will and Orleyne that the Territories and Collonyes comonly called or known by the Names of the Collony of the Massachusetts Bay and Collony of New Plymouth the Province of Maine the Territorie called Accadia or Nova Scotia and all that Tract of Land lying betweene the said Territories of Nova Scotia and the said Province of Maine be Erected Vnited and Incorporated And Wee doe by these presents Vnite Erect and Incorporate the same into one reall Province by the name of Our Province of the Massachusetts Bay in New England And of Our especiall Grace certaine knowledge and meer mocon Wee have given and granted and by these presents for Vs Our Heires and Successors doe give and grant vnto Our good Subjects the Inhabitants of Our said Province or Territory of the Massachusetts Bay and their Successors all that parte of New England in America lying and extending from the grente River comonly called Monomack als Merrimack on the North part and from three Miles Northward of the said River to the Atlantick or Western Sea and Ocean on the South part And all the Lands and Hereditaments whatsoever lying within the limitts aforesaid and extending as farr as the Outermost Points or Promontories of Land called Cape Cod and Cape Mallabar North and South and in Latitude Breadth and in Length and Longitude of and within all the Breadth and Compass aforesaid throughout the Main Land there from the said Atlantick or Western Sea and Ocean on the Easte parte towards the South Sea or Westward as far as Our Collonyes of Rhode Island Connecticut and the Narragansett * Countrey all† alsoe all that part or porcon of Main Land beginning at the Entrance of Pescata way Harbour and soe to pass vpp the same into the River of Newickewannock and through the same into the furthest head thereof and from thence North-westward till One Hundred and Twenty Miles be finished and from Piscata way Harbour mouth aforesaid North-Eastward along the Sea Coast to Sagadahock and from the Period of One Hundred and Twenty Miles aforesaid to crosse over Land to the One Hundred and Twenty Miles before reckoned vp into the Land from Pisataway Harbour through Newickawannock River and alsoe the North halfe of the Isles and Shoales together with the Isles of Cappawock and Nantukett near Cape Cod aforesaid and also [all †] Lands and Hereditaments lying and being in the Countrey and Territory comonly called Accadia or Nova Scotia And all those Lands and Hereditaments lying and extending between the said Countrey or Territory of Nova Scotia and the said River of Sagadahock or any part thereof And all Lands Grounds Places

* Narragansett.

† In printed copies this is "the," but the omission in the original seems better supplied as above.

Soiles Woods and Wood Grounds Havens Ports Rivers Waters and other Hereditaments and premisses whatsoever lying within the said bounds and limits aforesaid and every part and parcel thereof and alsoe all Islands and Islets lying within ten Leagues directly opposite to the Main Land within the said bounds and all Mines and Minerals as well Royall Mines of Gold and Silver as other Mines and Minerals whatsoever in the said Lands and premisses or any parte thereof To Have and to hold the said Territories Tracts Countreys Lands Hereditaments and all and singular other the premisses with their and every of their Appurtenances to Our said Subjects the Inhabitants of Our said Province of the Massachusetts Bay in New England and their Successors to their only proper use and behoofe for evermore To be holden of Vs Our Heires and Successors as of Our Mannor of East Greenwich in the County of Kent by Fealty only in free and Common Socceage, yielding and paying therefore yearly to Vs Our Heires and Successors the Fifth part of all Gold and Silver Ore and precious Stones which shall from time to time and at all times hereafter happen to be found gotten had and obteyned in any of the said Lands and premisses or within any part thereof.

Provided nevertheless and Wee doe for Vs Our Heires and Successors Grant and ordeyne that all and every such Lands Tenements and Hereditaments and all other estates which any person or persons or Bodeys-Politique or Corporate Townes Villages Colledges or Schooles doe hold and enjoy or ought to hold and enjoy within the bounds aforesaid by or vnder any Grant or estate duly made or granted by any Generall Court formerly held or by vertue of the Letters Patent herein before recited or by any other lawful Right or Title whatsoever shall be by such person and persons Bodeys Politique and Corporate Townes Villages Colledges or Schooles their respective Heires Successors and Assigns for ever hereafter held and enjoyed according to the purport and Intent of such respective Grant vnder and Subject nevertheless to the Rents and Services thereby reserved or made payable any matter or thing whatsoever to the contrary notwithstanding.

And Provided alsoe that nothing herein conteyned shall extend or be vnderstood or taken to impeach or prejudice any right title Interest or demand which Samuell Allan of London Merchant claiming from and vnder John Mason Esq^r decease (or any other person or persons hath or have or claimeth to have hold or enjoy of in to or out of any part or parts of the premisses scituate within the limits above mençoned But that the said Samuel Allan and all and every such person and persons may and shall have hold and enjoy the same in such manner (and no other then) as if these presents had not been had or made.

It being Our further Will and Pleasure that no Grants or Conveyances of any Lands Tenements or Hereditaments to any Townes Colledges Schooles of Learning or to any private person or persons shall be judged or taken to be avoided or prejudiced for or by reason of any want or defect of Form but that the same stand and remaine in force and be mainteyned adjudged and have effect in the same manner as the same should or ought before the time of the said recited Judgment according to the Laws and Rules then and there vsually practised and allowed.

And Wee doe further for Vs Our Heires and Successors Will Establish and ordeyne that from henceforth for ever there shall be one Governour One Leivten, or Deputy Governour and One Secretary of Our said Province or Territory to be from time to time appointed and Commissionated by Vs Our Heires and Successors and Eight and Twenty Assistants or Councillors to be advising and assisting to the Governour of Our said Province or Territory for the time being as by these presents is hereafter directed and appointed which said Councillors or Assistants are to be Constituted Elected and Chosen in such forme and manner as hereafter in these presents is expressed.

And for the better Exeeucon of Our Royall Pleasure and Grant in this behalfe Wee doe by these presents for Vs Our Heires and Successors Nominate Ordeyne make and Constitute our Trusty and Wellbeloved Simon Broadstreet John Richards Nathaniel Saltenstall Wait Winthrop John Phillippis James Russell Samuell Sewall Samuel Appleton Barthilomew Gedney John Hawthorn Elisha Hutchinson Robert Pike Jonathan Curwin John Joliffe Adam Winthrop Richard Middlecot John Foster Peter Serjeant Joseph Lynd Samuell Hayman Stephen Mason Thomas Hinckley William Bradford John Walley

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Barnabas Lothrop Job Aleott Samuell Daniell and Silvanus Davis Esquiers the first and present Councillors or Assistants of Our said Province to continue in their said respective Offices or Trusts of Councillors or Assistants vntill the last Wednesday in May which shall be in the yeare of Our Lord One Thousand Six Hundred Ninety and Three and vntill other Councillors or Assistants shall be chosen and appointed in their stead in such manner as in these presents is expressed.

And Wee doe further by these presents Constitute and appoint Our Trusty and welbeloved Isaac Addington Esquier to be Our first and present Secretary of Our said Province during Our Pleasure.

And Our Will and Pleasure is that the Governour of Our said Province from the time being shall have Authority from time to time at his discretion to assemble and call together the Councillors or Assistants of Our said Province for the time being and that the said Governour with the said Assistants or Councillors or Seaven of them at the least shall and may from time to time hold and keep a Council for the ord ring and directing the Affaires of Our said Province.

And further Wee Will and by these presents for Vs Our Heires and Successors doe ordeyne and Grant that there shall and may be convened held and kept by the Governour for the time being vpon every last Wednesday in the Moneth of May every yeare for ever and at all such other times as the Governour of Our said Province shall think fitt and appoint a great and Generall Court of Assembly Which said Great and Generall Court of Assembly shall consist of the Governour and Councill of Assistants for the time being and of such Freeholders of Our said Province or Territory as shall be from time to time elected or deputed by the Vajor part of the Freeholders and other Inhabitants of the respective Townes or Places who shall be present at such Eleccions Each of the said Townes and Places being hereby impowered to Elect and Depute Two Persons and noe more to serve for and represent them respectively in the said Great and Generall Court or Assembly To which Great and Generall Court or Assembly to be held as aforesaid Wee doe hereby for Vs Our Heires and Successors give and grant full power and authority from time to time to direct appoint and declare what Number each County Towne and Place shall Elect and Depute to serve for and represent them respectively in the said Great and Generall Court or Assembly.

Provided always that noe Freeholder or other Person shall have a vote in the Eleccion of Members to serve in any Grete and Generall Court or Assembly to be held as aforesaid who at the time of such Eleccion shall not have an estate of Freehold in Land within Our said Province or Territory to the value of Forty Shillings per Annum at the least or other estate to the value of Forty pounds Sterl And that every Person who shall be soe elected shall before he sitt or Act in the said Great and Generall Court or Assembly take the Oaths mencioned in an Act of Parlimment made in the first yeare of our Reigne Entituled an Act for abrogateing of the Oaths of Allegiance and Supremacy and appointing other Oaths and thereby appointed to be taken instead of the Oaths of Allegiance and Supremacy and shall make Repeat and Subscribe the Declaracon mencioned in the said Act before the Governour and Leivtent or Deputy Governour or any two of the Assistants for the time being who shall be thereto authorized and Appointed by Our said Governour and that the Governour for the time being shall have full power and Authority from time to time as he shall Judge necessary to adjourne Prorogue and dissolve all Great and Generall Courts or Assemblys met and convened as aforesaid.

And Our Will and Pleasure is and Wee doe hereby for Vs Our Heires and Successors Grant Establish and Ordeyne that yearly once in every yeare for ever hereafter the aforesaid Number of Eight and Twenty Councillors and Assistants shall be by the Generall Court or assembly newly chosen that is to say Eighteen at least of the Inhabitants of or Proprietors of Lands within the Territory formerly called the Collony of the Massachusetts Bay and four at the least of the Inhabitants of or Proprietors of Lands within the Territory formerly called New Plymouth and three at the least of the Inhabitants of or Proprietors of Land within the Territory formerly called the Province of Main and one at the least of the Inhabitants of or Proprietors of Land within the Territory lying between the River of Sagadahoc and Nova Scotia And that the said Councillors or Assistants or any of them shall or may at any time hereafter be removed or displaced from their respective Places or Trust of Councillors or Assistants by

any Great or Generall Court or Assembly And that if any of the said Councillors or Assistants shall happen to dye or be removed as aforesaid before the Generall day of Eleccion That then and in every such Case the Great and Generall Court or Assembly at their first sitting may proceed to a new Eleccion of one or more Councillors or Assistants in the roome or place of such Councillors or Assistants soe dying or removed.

And Wee doe further Grant and Ordeyne that it shall and may be lawfull for the said Governour with the advice and consent of the Councill or Assistants from time to time to nominate and appoint Judges Commissioners of Oyer and Terminer Sheriffs Provosts Marshalls Justices of the Peace and othe. Officers to Our Councill and Courts of Justice belonging *Provided* alwayes that noe such Nomination o. appointment of Officers be made without notice first given or summons ysued out seven dayes before such Nominacon or appointment vnto such of the said Councillors or Assistants as shall be at that time residing within Our said Province.

And Our Will and pleasure is that the Governour and Leivtent or Deputy Governour and Councillors or Assistants for the time being and all other Officers to be appointed or chosen as aforesaid shall before the Undertaking the Execucon of their Offices and Places respectively take their severall and respective Oaths for the due and faithfull performance of their duties in their severall and respective Offices and Places and alsoe the Oaths appointed by the said Act of Parliament made in the first yeare of Our Reigne to be taken instead of the Oaths of Allegiance and Supremacy and shall make repeate and subscribe the Declaration mentioned in the said Act before such Person or Persons as are by these presents herein after appointed (that is to say) The Governour of Our said Province or Territory for the time being shall take the said Oaths and make repeate and subscribe the said Declaracon before the Leivtent or Deputy Governour or in his absence before any two or more of the said Persons hereby Nominated and appointed the present Councillors or Assistants of Our said Province or Territory to whom Wee doe by these presents give full power and Authority to give and administer the same to our said Governour accordingly and after Our said Governour shall be sworn and shall have subscribed the said Declaracon that then Our Leivtent or Deputy Governour for the time being and the Councillors or Assistants before by these presents Nominated and appointed shall take the said Oaths and make repeat and subscribe the said Declaracon before our said Governour and that every such person or persons as shall (at any time of the Annuall Eleccions or otherwise vpon death or removall) be appointed to be the New Councillors or Assistants and all other Officers to bee hereafter chosen from time to time shall take the Oaths to their respective Offices and places belonging and alsoe the said Oaths appointed by the said Act of Parliament to be taken instead of the Oaths of Allegiance and Supremacy and shall make repeate and subscribe the declaracon menconed in the said Act before the Governour Leivtent or Deputy Governour or any two or more Councillors or Assistants or such other Person or Persons as shall be appointed thereunto by the Governour for the time being to whom Wee doe therefore by these presents give full power and authority from time to time to give and administer the same respectively according to Our true meaning herein before declared without any Comission or further Warrant to be had and obtained from vs Our Heires and Successors in that behalfe.

And Our Will and Pleasure is and Wee doe hereby require and comand that all and every person and persons hereafter by Vs Our Heires and Successors nominated and appointed to the respective Offices of Governour or Leivt or Deputy Governour and Secretary of Our said Province or Territory (which said Governour or Leivt or Deputy Governour and Secretary of Our said Province or Territory for the time being Wee doe hereby reserve full power and Authority to us Our Heires and Successors to Nominate and appoint accordingly shall before he or they be admitted to the Execucon of their respective Offices take as well the Oath for the due and faithfull performance of the said Offices respectively as alsoe the Oaths appointed by the said Act of Parliament made in the said First year of Our Reigne to be taken instead of the said Oaths of Allegiance and Supremacy and shall alsoe make repeate and subscribe the Declaracon appointed by the said Act in such manner and before such persons as aforesaid.

And further Our Will and Pleasure is and Wee doe hereby for Vs Our Heires and Successors Grant

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Establish and Ordaine That all and every of the Subjects of Vs Our Heires and Successors which shall goe to and Inhabit within Our said Province and Territory and every of their Children which shall happen to be born there or on the Seas in going thither or returning from thence shall have and enjoy all Libertyes and Immunities of Free and naturall Subjects within any of the Dominions of Vs Our Heires and Successors to all Intents Construecons and purposes whatsoever as if they and every of them were borne within this Our *Realme* of England and for the greater Ease and Encouragement of Our Loveing Subjects Inhabiting our said Province or Territory of the Massachusetts Bay and of such as shall come to Inhabit there Wee doe by these presents for vs Our heires and Successors Grant Establish and Ordaine that for ever hereafter there shall be a liberty of Conscience allowed in the worshipp of God to all Christians (Except Papists) Inhabiting or which shall Inhabit or be Resident within our said Province or Territory 10

And Wee doe hereby Grant and Ordaine that the Governour or leiveten or Deputy Governour of our said Province or Territory for the time being or either of them or any two or more of the Councill or Assistants for the time being as shall be theremto appointed by the said Governour shall and may at all times and from time to time hereafter have full Power and Authority to Administer and give the Oathes appointed by the said Act of Parliament made in the first yeare of Our Reigne to be taken instead of the Oathes of Allegiance and Supremacy to all and every person and persons which are now Inhabiting or resideing within our said Province or Territory or which shall at any time or times hereafter goe or passe thither

And wee doe of our further Grace certaine knowledge and meer moõõ Grant Establish and Ordaine for Vs our heires and Successors that the great and Generall Court or Assembly of our said Province or Territory for the time being Convened as aforesaid shall for ever have full Power and Authority to Erect and Constitute Judicatories and Courts of Record or other Courts to be held in the name of Vs Our heires and successors for the Hearing Trying and Determining of all manner of Crimes Offences Pleas Processes Plaints Aeõõs Matters Causes and things whatsoever ariseing or happening within Our said Province or Territory or between Persons Inhabiting or residing there whether the same be Criminall or Civill and whether the said Crimes be Capitall or not Capitall and whether the said Pleas be Reall personall or mixt and for the awarding and making out of Execution thereupon To which Courts and Judicatories wee doe hereby for vs our heirs and Successors Give and Grant full power and Authority from time to time to Administer oathes for the better Discovery of Truth in any matter in Controversy or depending before them 30

And wee doe for vs Our Heires and Successors Grant Establish and Ordaine that the Governour of our said Province or Territory for the time being with the Councill or Assistants may doe execute or performe all that is necessary for the Probate of Wills and Granting of Administracons for touching or concerning any Interest or Estate which any person or persons shall have within our said Province or Territory

And wherea Wee judge it necessary that all our Subjects should have liberty to Appeale to vs our heires and Successors in Cases that may deserve the same Wee do by these presents Ordaine that in case either party shall not rest satisfied with the Judgement or Sentence of any Judicatories or Courts within our said Province or Territory in any Personall Aeõõn wherein the matter in difference doth exceed the value of three hundred Pounds Sterling that then he or they may appeale to vs Our heires and Successors in our or their Privy Councill Provided such Appeale be made within Fourteen dayes after y^e Sentence or Judgement given and that before such Appeale be allowed Security be given by the party or parties appealing in the value of the matter in Difference to pay or Answer the Debt or Damages for the which Judgement or Sentence is given With such Costs and Damages as shall be Awarded by vs Our Heires or Successors in case the Judgement or Sentence be affirmed 40

And provided alsoe that no Execution shall be stayd or suspended by reason of such Appeale vnto vs our Heires and Successors in our or their Privy Councill soe as the party Sueing or taking out Execution doe in the like manner give security to the value of the matter in difference to make Restitucion in Case the said Judgement or Sentence be reversed or annul'd vpon the said Appeale.

And we do further for vs our Heires and Successors Give and Grant to the said Governor and the great and Generall Court or Assembly of our said Province or Territory for the time being full power and Authority from time to time to make ordaine and establish all manner of wholesome and reasonable Orders Laws Statutes and Ordinances Directions and Instructions either with penalties or without (soe as the same be not repugnant or contrary to the Lawes of this our Realme of England) as they shall Judge to be for the good and welfare of our said Province or Territory And for the Government and Ordering thereof and of the People Inhabiting or who shall Inhabit the same and for the necessary support and Defence of the Government thereof

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And wee doe for vs our Heires and Successors Give and grant that the said Generall Court or
10 Assembly shall have full power and Authority to name and settle annually all Civill Officers within the said Province such Officers Excepted the Election and Constitution of whome wee have by these presents reserved to vs Our Heires and Successors or to the Governor of our said Province for the time being and to Setforth the severall Duties Powers and Lymitts of every such Officer to be appointed by the said Generall Court or Assembly and the formes of such Oathes not repugnant to the Lawes and Statutes of this our Realme of Englande as shall be respectiuey Administered vnto them for the Execution of their severall Offices and places And also to impose Fines mulets Imprisonments and other Punishments And to impose and leavy proportionable and reasonable Assessments Rates and Taxes vpon the Estates and Persons of all and every the Proprietors and Inhabitants of our said Province or Territory to be Issued and disposed of by Warrant vnder the hand of the Governor of our said Province for the time
20 being with the advice and Consent of the Conneill for Our service in the necessary defence and support of Our Government of our said Province or Territory and the Protection and Preservation of the Inhabitants there according to such Acts as are or shall be in force within our said Province and to dispose of matters and things whereby our Subjects inhabitants of our said Province may be Religiously peaceably and Civilly Governed Protected and Defended soe as their good life and orderly Conversation may win the Indians Natives of the Country to the knowledge and obedience of the onely true God and Saviour of Mankinde and the Christian Faith which his Royall Majestie our Royall Grandfather king Charles the first in his said Letters Patents declared was his Royall Intentions And the Adventurers free Possession* to be the Princepall end of the said Plantation And for the better securing and maintaining Liberty of Conscience hereby granted to all persons at any time being and residing within
30 our said Province or Territory as aforesaid Willing Commanding and Requireing and by these presents for vs Our heires and Successors ordaining and appointing that all such Orders Lawes Statutes and Ordinances Instructions and Directions as shall be soe made and published vnder our Seale of our said Province or Territory shall be Carefully and duely observed kept and performed and put in Execution according to the true intent and meaning of these presents

Provided alwaies and Wee doe by these presents for vs Our Heires and Successors Establish and Ordaine that in the framing and passing of all such Orders Laws Statutes and Ordiances and in all Elections and Acts of Government whatsoever to be passed made or done by the said Generall Court or Assembly or in Council the Governor of our said Province or Territory of the Massachusetts Bay in New England for the time being shall have the Negative voice and that without his consent or Approbation
40 signified and declared in Writing no such Orders Laws Statutes Ordinances Elections or other Acts of Government whatsoever soe to be made passed or done by the said Generall Assembly or in Council shall be of any Force effect or validity anything herein contained to the contrary in anywise notwithstanding

And wee doe for vs Our Heires and Successors Establish and Ordaine that the said Orders Laws Statutes and Ordinances be by the first opportunity after the makeing thereof sent or Transmitted vnto vs Our Heires and Successors vnder the Publique Seale to be appointed by vs for Our or their approbation or Disallowance And that in case all or any of them shall at any time within the space of three yeares next after the same shall have been presented to vs our Heires and Successors in Our or their Privy Council be disallowed and reiected and soe signified by vs Our Heires and Successors vnder our or their Signo Manuall and Signett or by or in our or their Privy Council vnto the Governor for the time being
50 then such and soe many of them as shall be soe disallowed and reiectet† shall thenceforth cease and determine and become vtterly void and of none effect.

* Profession.

† Rejected.

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Provided always that in case Wee our Heires or Successors shall not within the Terme of Three Yeares after the presenting of such Orders Lawes Statutes or Ordinances as aforesaid signifie our or their Disallowance of the same Then the said orders Lawes Statutes or Ordinances shall be and continue in full force and effect according to the true Intent and meaneing of the same vntill the expiration thereof or that the same shall be Repealed by the Generall Assembly of our said province for the time being

Provided alsoe that it shall and may be Lawfull for the said Governor and Generall Assembly to make or passe any Grant of Lands lying within the Bounds of the Colonys formerly called the Collonys of the Massachusetts Bay and New Plymouth and province of Main in such manner as heretofore they might have done by vertue of any former Charter or Letters Patents which grants of lands within the Bounds aforesaid Wee doe hereby Will and ordaine to be and continue for ever of full force and effect without our further Approbation and Consent.

And soe as Neverthesse and it is Our Royall Will and Pleasure That noe Grant or Grants of any Lands lying or extending from the River of Sagadahock to the Gulph of S. Lawrence and Canada Rivers and to the Main Sea Northward and Eastward to be made or past by the Governor and Generall Assembly of our said Province be of any force validity or Effect vntill Wee our Heires and Successors shall have Signified Our or their Approbation of the same.

And Wee doe by these presents for vs Our Heires and Successors Grant Establish and Ordaine that the Governor of our said Province or Territory for the time being shall have full Power by himselfe or by any Cheif Comānder or other Officer or Officers to be appointed by him from time to time to traine instruct Exercise and Governe the Militia there and for the speciall Defence and Safety of Our said Province or Territory to assemble in Martiall Array and put in Warlike posture the Inhabitants of Our said Province or Territory and to lead and Conduct them and with them to Encounter Expulse Repel Resist and pursue by force of Armes aswell by Sea as by Land within or without the limits of Our said Province or Territory and alsoe to kill slay destroy and Conquer by all fitting wayes Enterprises and meanes whatsoever all and every such Person and Persons as shall at any time hereafter Attempt or Enterprize the destrucion Invasion Detriment or Annoyance of Our said Province or Territory and to vse and exercise the Law Martiall in time of actual Warr Invasion or Rebellion as occasion shall necessarily require and alsoe from time to time to Erect Forts and to fortifie any place or Places within Our said Province or Territory and the same to furnish with all necessary Amunition Provisions and Stores of Warr for Offence and Defence and to comitt from time to time the Custody and Government of the same to such Person or Persons as to him shall seem meet And the said Forts and Fortificacions to demolish at his Pleasure and to take and surprise by all wayes and meanes whatsoever all and every such Person or Persons with their Shippes Arms Ammunition and other goods as shall in a hostile manner Invade or attempt the Invading Conquering or Annoying of our said Province or Territory.

Provided always and Wee doe by these Presents for Vs Our Heires and Successors Grant Establish and Ordeyne That the said Governour shall not at any time hereafter by virtue of any power hereby granted or hereafter to be granted to him Transport any of the Inhabitants of Our said Province or Territory nor grant Comissions for exercising the Law Martiall vpon any the Inhabitants of Our said Province or Territory without the Advice and Consent of the Council of Assistants of the same.

Provided in like manner and Wee doe by these presents for Vs Our Heires and Successors Constitute and Ordeyne that when and as often as the Governour of Our said Province for the time being shall happen to dye or be displaced by Vs Our Heires or Successors or be absent from his Government That then and in any of the said Cases the Lievtenant or Deputy Governour of Our said Province for the time being shall have full power and authority to doe and execute all and every such Acts Matters and things which Our Governour of Our said Province for the time being might or could by vertue of these Our Letter Patents lawfully doe or execute if he were personally present vntill the return of the Governour soe absent or Arrivall or Constitution of such other Governour as shall or may be appointed by Vs Our

Heires or Successors in his stead and that when and as often as the Governour and Lieutenant or Deputy-Governour of Our said Province or Territory for the time being shall happen to die or be displaced by Vs Our Heires or Successors or be absent from Our said Province and that there shall be no person within the said Province Commissionated by Vs Our Heires and Successors to be Governour within the same Then and in every of the said cases the Council or Assistants of Our said Province shall have full power and Authority and Wee doe hereby give and grant vnto the said Councill or Assistants of Our said Province for the time being or the Major parte of them full power and Authority to doe and execute all and every such Acts matters and things which the said Governour or Lieutenant or Deputy-Governour of Our said Province or Territory for the time being might or could lawfully doe or exercise if they or either of them were personally present vntill the returne of the Governour Lieutenant or Deputy-Governour soe absent or Arrivall or Constitucōn of such other Governour or Lieutenant or Deputy-Governour as shall or may be appointed by Vs Our Heires or Successors from time to time.

Provided alwaies and it is hereby declared that nothing herein shall extend or be taken to Erect or grant or allow the Exercise of any Admirall Court Jurisdiçōn Power or Authority but that the same shall be and is hereby reserved to Vs and Our Successors and shall from time to time be Erected Granted and exercised by vertue of Cōmissions to be issued vnder the Great Seale of England or vnder the Seale of the High Admirall or the Cōmissioners for executing the Office of High Admirall of England.

And further Our expresse Will and Pleasure is. And Wee do by these presents for Vs Our Heires and Successors Ordaine and appoint that these Our Letters Patents shall not in any manner Enure or be taken to abridge bar or hinder any of Our loving Subjects whatsoever to vse and exercise the Trade of Fishing vpon the Coasts of New England but that they and every of them shall have full and free power and Libertie to continue and vse their said Trade of Fishing vpon the said Coasts in any of the seas therevnto adjoining or any Arms of the said Seas or Salt Water Rivers where they have been wont to fish and not then possess by particuler Proprietors such Wharfs Stages and Workhouses as shall be necessary for the salting drying keeping and packing of their Fish to be taken or gotten vpon that Coast And to Cutt down and take such Trees and other Materialls there growing or being or growing upon any parts or places lying wast and not then in possession of particuler proprietors as shall be needfull for that purpose and for all other necessary easments helps and advantages concerning the Trade of Fishing there in such manner and forme as they have been heretofore at any time accustomed to doe without making any Wilfull Wast or Spoile any thing in these presents conteyned to the contrary notwithstanding.

And lastly for the better provideing and furnishing of Masts for Our Royall Navy Wee doe hereby reserve to Vs Our Heires and Successors all Trees of the Diameter of Twenty Four Inches and vpwards of Twelve Inches from the ground growing vpon any soyle or Tract of Land within Our said Province or Territory, not heretofore granted to any private persons And Wee doe restraine and forbid all persons whatsoever from felling cutting or destroying any such Tree without the Royall Lycence of Vs Our Heires and Successors first had and obeyned vpon penalty of Forfeiting One Hundred Pounds sterling vnto Ous Our Heires and Successors for every such Tree soe felled cutt or destroyed without such Lycence had and obeyned in that behalfe any thing in these presents conteyned to the contrary in any wise Notwithstanding.

In Witnesse whereof Wee have caused these our Letters to be made Patents. Witnesse ourselves att Westminster the Seaventh Day of October in the Third yeare of Our Reigne.

By Writt of Privy Seale

PIGOTT.

Pro Fine in Hauaperio quadragint Marcas

J. TREVOR C. S.

W. RAWLINSON C. S.

G. HURCHINS C. S.*

* Sir John Trevor, Sir William Rawlinson, and Sir George Hurchins were appointed lords commissioners of the great seal May 15, 1690; and were succeeded by Lord Somers as chancellor May 3, 1693.

CHARTER OF GEORGIA—1732.*

SUPPLEMENT
TO THE
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Charter of
Georgia—
1732.

GEORGE the second, by the grace of God, of Great Britain, France and Ireland, king, defender of the faith, and so forth. To all to whom these presents shall come, greeting.

Whereas we are credibly informed, that many of our poor subjects are, through misfortunes and want of employment, reduced to great necessity, insomuch as by their labor they are not able to provide a maintenance for themselves and families; and if they had means to defray their charges of passage, and other expences, incident to new settlements, they would be glad to settle in any of our provinces in America where by cultivating the lands, at present waste and desolate, they might not only gain a comfortable subsistence for themselves and families, but also strengthen our colonies and increase the trade, navigation and wealth of these our realms.

And whereas our provinces in North America, have been frequently ravaged by Indian enemies; more especially that of South Carolina, which in the late war, by the neighbouring savages, was laid waste by fire and sword, and great numbers of English inhabitants, miserably massacred, and our loving subjects who now inhabit them, by reason of the smallness of their numbers, will in case of a new war be exposed to the late calamities; inasmuch as their whole southern frontier continueth unsettled, and lieth open to the said savages—

And whereas we think it highly becoming our crown and royal dignity to protect all our loving subjects be they never so distant from us; to extend our fatherly compassion even to the meanest and most infatuated of our own people, and to relieve the wants of our above mentioned poor subjects; and that it will be highly conducive for accomplishing those ends, that a regular colony of the said poor people be settled and established in the southern territories of Carolina.

And whereas we have been well assured, that if we will be graciously pleased to erect and settle a corporation, for the receiving, managing and disposing of the contributions of our loving subjects; divers persons would be induced to contribute to the purposes aforesaid—

Know ye therefore, that we have, for the considerations aforesaid, and for the better and more orderly carrying on of the said good purposes; of our special grace, certain knowledge and mere motion, willed, ordained, constituted and appointed, and by these presents, for us, our heirs and successors, do will, ordain, constitute, declare and grant, that our right trusty and well beloved John, lord-viscount Pureval, of our kingdom of Ireland, our trusty and well beloved Edward Digby, George Carpenter, James Oglethorpe, George Heitheote, Thomas Tower, Robert Moore, Robert Hucks, Roger Holland, William Sloper, Francis Eyles, John Laroche, James Vernon, William Beletha, esquires, A. M. John Burton, B. D. Richard Bundy, A. M. Arthur Bedford, A. M. Samuel Smith, A. M. Adam Anderson and Thomas Coraue, gentlemen; and such other persons as shall be elected in the manner herein after mentioned, and their successors to be elected in the manner herein after directed; be, and shall be one body politic and corporate, in deed and in name, by the name of the Trustees for establishing the colony of Georgia in America; and them and their successors by the same name, we do, by these presents, for us, our heirs and successors, really and fully make, ordain, constitute and declare, to be one body politic in deed and name forever; and that by the same name, they and their successors, shall and may have perpetual succession; and that they and their successors by that name shall and may forever hereafter, be persons able and capable in the law, to purchase, have, take, receive and enjoy, to them and their successors, any manors, messuages, lands, tenements, rents, advowsons, liberties, privileges, jurisdictions, franchises, and other hereditaments whatsoever, lying and being in Great Britain, or any part thereof, of whatsoever nature, kind or quality, or value they be, in fee and in perpetuity, not exceeding the yearly value of one thousand pounds, beyond reprises; also estates for lives, and for years, and all other manner of goods, chattels and things whatsoever they be; for the better settling and

* Georgia was included in a proprietary charter granted to the lords proprietors of Carolina in 1662-63 for which a provincial charter was substituted in 1719. The charter of Georgia, as an independent Colony, was granted to a company organised by James Oglethorpe, esq., who desired to provide in the New World homes for indigent persons. This charter was surrendered June 20, 1752, and a provincial government, with a governor and council, was substituted, on the recommendation of the lords commissioners for trade and plantations.

supporting, and maintaining the said colony, and other uses aforesaid; and to give, grant, let and demise the said manors, messuages, lands, tenements, hereditaments, goods, chattels and things whatsoever aforesaid, by lease or leases, for term of years, in possession at the time of granting thereof, and not in reversion, not exceeding the term of thirty-one years, from the time of granting thereof; on which in case no fine be taken, shall be reserved the full, and in case a fine be taken, shall be reserved at least a moiety of the value that the same shall reasonably and *bona fide* be worth at the time of such demise; and that they and their successors, by the name aforesaid, shall and may forever hereafter, be persons able, capable in the law, to purchase, have, take, receive, and enjoy, to them and their successors, any lands, territories, possessions, tenements, jurisdictions, franchises and hereditaments whatsoever, lying and being in America, of what quantity, quality or value whatsoever they be, for the better settling and supporting and maintaining the said colony; and that by the name aforesaid they shall and may be able to sue and be sued, plead and be impleaded, answer and be answered unto, defend and be defended, in all courts and places whatsoever, and before whatsoever judges, justices, and other officers, of us, our heirs and successors, in all and singular actions, pleas, matters, suits and demands, of what kind, nature or quality soever they be; and to act and to do, all matters and things in as ample manner and form as any other our liege subjects of this realm of Great Britain, and that they and their successors forever hereafter, shall and may have a common seal, to serve for the causes and businesses of them and their successors; and that it shall and may be lawful for them and their successors, to change, break, alter and make new the said seal, from time to time, and at their pleasure, and as they shall think best.

And we do further grant, for us, our heirs and successors, that the said corporation, and the common council of the said corporation, hereinafter by us appointed, may from time to time, and at all times, meet about their affairs when and where they please, and transact and carry on the business of the said corporation.

And for the better execution of the purposes aforesaid, we do, by these presents, for us, our heirs and successors, give & grant to the said corporation, and their successors, that they and their successors forever, may upon the third Thursday in the month of March, yearly, meet at some convenient place to be appointed by the said corporation, or major part of them who shall be present at any meeting of the said corporation, to be had for the appointing of the said place; and that they, or two-thirds of such of them, that shall be present at such yearly meeting, and at no other meeting of the said corporation, between the hours of ten in the morning and four in the afternoon of the same day, choose and elect such person or persons to be members of the said corporation, as they shall think beneficial to the good designs of the said corporation.

And our further will and pleasure is, that if it shall happen that any person hereinafter by us appointed, as the common council of the said corporation, or any persons to be elected or admitted members of the said common council in the manner hereafter directed, shall die, or shall by writing under his and their hands respectively resign his or their office or offices of common council man or common council men; the said corporation, or the major part of such of them as shall be present, shall and may at such meeting, on the third Thursday in March yearly, in manner as aforesaid, next after such death or resignation, and at no other meeting of the said corporation, into the room or place of such person or persons so dead or so resigning, elect and choose one or more such person or persons, being members of the said corporation, as to them shall seem meet: and our will is, that all and every the person or persons which shall from time to time hereafter be elected common council men of the said corporation as aforesaid, do and shall, before he or they act as common men of the said corporation, take an oath for the faithful and due execution of their office; which oath the president of the said corporation for the time being, is hereby authorised and required to administer to such person or persons elected as aforesaid.

And our will and pleasure is, that the first president of the said corporation is and shall be our trusty and well-beloved, the said Lord John Viscount Percival; and that the said president shall within thirty days after the passing this charter, cause a summons to be issued to the several members

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of the said corporation herein particularly named, to meet at such time and place as he shall appoint, to consult about and transact the business of said corporation.

And our will and pleasure is, and we, by these presents, for us, our heirs, and successors, grant, ordain, and direct, that the common council of this corporation shall consist of fifteen in number; and we do, by these presents, nominate, constitute, and appoint our right trusty and well beloved John Lord Viscount Percival, our trusty and beloved Edward Digby, George Carpenter, James Oglethorpe, George Heathcote, Thomas Laroche, James Vernon, William Beletta, esqrs., and Stephen Hales, Master of Arts, to be the common council of the said corporation, to continue in the said office during their good behaviour.

And whereas it is our royal intention, that the members of the said corporation should be increased by election as soon as conveniently may be, to a greater number than is hereby nominated; Our further will and pleasure is, and we do hereby, for us, our heirs and successors, ordain and direct, that from the time of such increase of the members of the said corporation, the number of the common council shall be increased to twenty-four; and that the same assembly at which such additional members of the said corporation shall be chosen, there shall likewise be elected in the manner hereinafore directed for the election of common council men, nine persons to be the said common council men, and to make up the number twenty-four.

And our further will and pleasure is, that our trusty and well beloved Edward Digby, esquire, shall be the first chairman of the common council of the said corporation; and that the said lord-viscount Percival shall be, and continue, president of the said corporation, and that the said Edward Digby shall be and continue chairman of the common council of the said corporation, respectively, until the meeting which shall be had next and immediately after the first meeting of the said corporation, or of the common council of the said corporation respectively, and no longer; at which said second meeting, and every other subsequent and future meeting of the said corporation or of the common council of the said corporation respectively, in order to preserve an indifferent rotation of the several offices, of president of the corporation, and of chairman of the common council of the said corporation we do direct and ordain that all and every the person and persons, members of the said common council for the time being, and no other, being present at such meetings, shall severally and respectively in their turns, preside at the meetings which shall from time to time be held of the said corporation, or of the common council of the said corporation respectively: and in case any doubt or question shall at any time arise touching or concerning the right of any member of the said common council to preside at any meeting of the said corporation, or at the common council of the said corporation, the same shall respectively be determined by the major part of the said corporation, or of the common council of the said corporation respectively, who shall be present at such meeting.

Provided always, that no member of the said common council having served in the offices of president of the said corporation, or of chairman of the common council of the said corporation, shall be capable of being, or of serving as president or chairman at any meeting of the said corporation, or common council of the said corporation next and immediately ensuing that in which he so served as president of the said corporation or chairman of the said common council of the said corporation respectively; unless it shall so happen that at any such meeting of the said corporation, there shall not be any other member of the said common council present.

And our will and pleasure is, that at all and every of the meetings of the said corporation, or of the common council of the said corporation, the president or chairman for the time being, shall have a voice and shall vote, and shall act as a member of the said corporation or of the common council of the said corporation, at such meeting; and in case of any equality of votes, the said president or chairman for the time being, shall have a casting vote.

And our further will and pleasure is, that no president of the said corporation, or chairman of the common council of the said corporation, or member of the said common council or corporation, by us by

these presents appointed, or hereafter from time to time to be elected and appointed in manner aforesaid, shall have, take, or receive, directly or indirectly, any salary, fee, perquisite, benefit or profit whatsoever, for or by reason of his or their serving the said corporation, or common council of the said corporation, or president, chairman, or common council-man, or as being a member of the said corporation.

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And our will and pleasure is, that the said herein before appointed president, chairman or common council-men, before he and they act respectively as such, shall severally take an oath for the faithful and due execution of their trust, to be administered to the president by the Chief Baron of our Court of Exchequer, for the time being, and by the president of the said corporation to the rest of the common council, who are hereby authorised severally and respectively, to administer the same.

10 And our will and pleasure is, that all and every person and persons, shall have in his or their own name or names, or in the name or names of any person or persons in trust for him or them, or for his or their benefit, any place, office, or employment of profit, under the said corporation, shall be incapable of being elected a member of the said corporation; and if any member of the said corporation during such time as he shall continue a member thereof, shall in his own name or in the name of any person or persons, in trust for him or for his benefit, have, hold, or exercise, accept, possess, or enjoy, any office, place or employment of profit, under the said corporation, or under the common council of the said corporation—such member shall from the time of his having, holding, exercising, accepting, possessing and enjoying such office, place and employment of profit, cease to be a member of the said corporation.

20 And we do for us, our heirs and successors, grant unto the said corporation, that they and their successors or the major part of such of them as shall be present at any meeting of the said corporation, convened and assembled for that purpose by a convenient notice thereof, shall have power from time to time, and at all times hereafter, to authorise and appoint such persons as they shall think fit to take subscriptions, and to gather and collect such moneys as shall be by any person or persons contributed for the purposes aforesaid; and shall and may revoke and make void such authorities and appointments, as often as they shall see cause so to do.

30 And we do hereby for us, our heirs and successors, ordain and direct, that the said corporation every year lay an account in writing before the chancellor, or speaker, or commissioners, for the custody of the great seal of Great Britain, of us, our heirs and successors; the Chief Justice of the Court of King's Bench, the Master of Rolls the Chief Justice of the Court of Common Pleas, and the chief Baron of the Exchequer of us, our heirs and successors for the time being, or any two of them; of all moneys and effects by them received or expended, for carrying on the good purposes aforesaid.

40 And we do hereby, for us, our heirs and successors, give and grant unto the said corporation, and their successors, full power and authority to constitute, ordain and make, such and so many by-laws, constitutions, orders and ordinances, as to them, or the greater part of them, at their general meeting for that purpose, shall seem necessary and convenient for the well ordaining and governing of the said corporation; and the said by-laws, constitutions, orders and ordinances, or any of them, to alter and annul, as they or the major part of them then present shall see requisite: and in and by such by-laws, rules, orders and ordinances, to sell, impose and inflict, reasonable pains and penalties upon any offender or offenders, who shall transgress, break or violate the said by-laws, constitutions, orders, and ordinances, so made as aforesaid, and to mitigate the same as they or the major part of them then present shall think convenient; which said pains and penalties, shall and may be levied, sued for, taken, retained and recovered, by the said corporation and their successors, by their officers and servants, from time to time, to be appointed for that purpose, by action of debt, or by any other lawful ways or means to the use and behoof of the said corporation and their successors, all and singular: which by-laws, constitutions, orders and ordinances, so as aforesaid to be made, we will shall be duly observed and kept, under the pains and penalties therein to be contained, so always, as the said by-laws, constitutions, orders, and ordinances, pains and penalties, from time to time to be made and imposed, be reasonable and not contrary or repugnant to the laws or statutes of this our realm; and that such by-laws, constitutions and

ordinances, pains and penalties from time to time to be made and imposed; and any repeal or alteration thereof, or any of them, may be likewise agreed to be established and confirmed by the said general meeting of the said corporation, to be held and kept next after the same shall be respectively made.

And whereas the said corporation intend to settle a colony, and to make an habitation and plantation in that part of our province of South-Carolina, in America, herein after described—Know ye, that we greatly desiring the happy success of the said corporation, for their further encouragement in accomplishing so excellent a work have of our aforesaid grace, certain knowledge and mere motion, given and granted by these presents, for us, our heirs and successors, do give and grant to the said corporation and their successors under the reservation, limitation and declaration, hereafter expressed, seven undivided parts, the whole in eight equal parts to be divided, of all those lands, countrys and territories, situate, lying and being in that part of South-Carolina, in America, which lies from the most northern part of a stream or river there, commonly called the Savannah, all along the sea coast to the southward, unto the most southern stream of a certain other great water or river called the Altamaha, and westerly from the heads of said rivers respectively, in direct lines to the sea, and all that share, circuit, and precinct of land within the said boundaries, with the islands, creeks, and shoals opposite to the eastern coast of the said lands, within twenty leagues of the same, which are not inhabited already, or settled by any authority derived from the crown of Great-Britain: together with all the soils, grounds, havens, ports, gulfs and bays, mines, as well royal mines of gold and silver, as other minerals, precious stones, quarries, woods, rivers, waters, fishings, as well royal fishings of whale and sturgeon as other fishings, pearls, commodities, jurisdictions, royalties, franchises, privileges and pre-eminences within the said frontiers and precincts thereof and thereunto, in any sort belonging or appertaining, and which we by our letters patent may or can grant, and in as ample manner and sort as we may or any of our royal progenitors have hitherto granted to any company, body politic or corporate, or to any adventurer or adventurers, undertaker or undertakers, of any discoveries, plantations or traffic, of, in, or unto any foreign parts whatsoever: and in as legal and ample manner, as if the same were herein particularly mentioned and expressed: to have, hold, possess and enjoy, the said seven undivided parts, the whole into eight equal parts, to be divided as aforesaid, of all and singular the lands, countrys and territories, with all and singular other the premises herein before by these presents granted or mentioned, or intended to be granted to them, the said corporation, and their successors forever, for the better support of the said colony, to be holden of us, our heirs and successors, as of our honour of Hampton-court, in our county of Middlesex in free and common socage, and not in capite, yielding, and paying therefor to us, our heirs and successors yearly forever the sum of four shillings for every hundred acres of the said lands, which the said corporation shall grant, demise, plant or settle: the said payment not to commence or to be made, until ten years after such grant, demise, planting or settling: and to be answered and paid to us, our heirs and successors, in such manner and in such species of money or notes, as shall be current in payment, by proclamation from time to time, in our said province of South-Carolina. All which lands, countrys, territories and premises, hereby granted or mentioned, and intended to be granted, we do by these presents, make, erect and create one independent and separate province, by the name of Georgia, by which name we will, the same henceforth be called. And that all and every person or persons, who shall at any time hereafter inhabit or reside within our said province, shall be, and are hereby declared to be free, and shall not be subject to or be bound to obey any laws, orders, statutes or constitutions, which have been heretofore made, ordered or enacted by, for, or us, the laws, orders, statutes or constitutions of our said province of South-Carolina, (save and except only the in chief of the militia, of our said province of Georgia, to our governor for the time being of South-Carolina, in the manner hereafter declared;) but shall be subject to, and bound to obey, such laws, orders, statutes and constitutions as shall from time to time be made, ordered and enacted, for the better government of the said province of Georgia, in the manner hereinafter declared.

And we do hereby, for our heirs and successors, ordain, will and establish, that for and during the term of twenty-one years, to commence from the date of these our letters patent, the said corporation assembled for that purpose, shall & may form and prepare, laws, statutes and ordinances, fit and necessary

for and concerning the government of the said colony, and not repugnant to the laws and statutes of England; and the same shall and may present under their common seal to us, our heirs and successors, in our or their privy council for our or their approbation or disallowance; and the said laws, statutes and ordinances, being approved of by us, our heirs and successors, in our or their privy council, shall from thence forth be in full force and virtue within our said province of Georgia.

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And forasmuch as the good and prosperous success of the said colony cannot but chiefly depend next under the blessing of God, and the support of our royal authority, upon the provident and good direction of the whole enterprise, and that it will be too great a burthen upon all the members of the said corporation to be convened so often as may be requisite, to hold meetings for the settling, supporting, 10 ordering, and maintaining the said colony; therefore we do will, ordain and establish, that the said common council for the time being, of the said corporation, being assembled for that purpose, or the major portion of them, shall from time to time, and at all times hereafter, have full power and authority to dispose of, extend and apply all the monies and effects belonging to the said corporation, in such manner and ways and by such expenses as they shall think best to conduce to the carrying on and effecting the good purposes herein mentioned and intended; and also shall have full power in the name and on account of the said corporation, and with and under their common seal, to enter under any covenants or contracts, for carrying on and effecting the purposes aforesaid.

And our further will and pleasure is, that the said common council for the time being, or the major part of such common council, which shall be present and assembled for that purpose, from time to time 20 and at all times hereafter, shall and may nominate, constitute and appoint a treasurer or treasurers, secretary or secretaries, and such other officers, ministers and servants of the said corporations as to them or the major part of them as shall be present, shall seem proper or requisite for the good management of their affairs; and at their will and pleasure to displace, remove and put out such treasurer or treasurers, secretary or secretaries, and all such other officers, ministers and servants, as often as they shall think fit to do so; and others in the room, office, place or station of him or them so displaced, removed or put out, to nominate, constitute and appoint; and shall and may determine and appoint, such reasonable salaries, perquisites and other rewards, for their labor, or service of such officers, servants and persons as to the said common council shall seem meet; and all such officers servants and persons shall, before the acting in their respective offices, take an oath to be to them administered by the chair- 30 man for the time being of the said common council of the said corporation, who is hereby authorized to administer the same, for the faithful and due execution of their respective offices and places. And our will and pleasure is, that all such person and persons, who shall from time to time be chosen or appointed treasurer or treasurers, secretary or secretaries of the said corporation, in manner herein after directed, shall during such times as they shall serve in the said offices respectively, be incapable of being a member of the said corporation.

And we do further of our special grace, certain knowledge and mere motion, for us, our heirs and successors, grant, by these presents, to the said corporation and their successors, that it shall be lawful for them and their officers or agents, at all times hereafter, to transport and convey out of our realm of Great-Britain or any other of our dominions, into the said province of Georgia, to be there settled 40 so many of our subjects, or any foreigners that are willing to become our subjects, and live under our allegiance, in the said colony, as shall be willing to go to, inhabit, or reside there, with sufficient shipping, armour, weapons, powder, shot, ordnance, munition, victuals, merchandize and wares, as are esteemed by the wild people; clothing, implements, furniture, cattle, horses, mares, and all other things necessary for the said colony, and for the use and defence and trade with the people there, and in passing and returning to and from the same.

Also we do, for ourselves and successors, declare by these presents that all and every the persons which shall happen to be born within the said province, and every of their children and posterity, shall have and enjoy all liberties, franchises and immunities of free denizens and natural born subjects, within any of our dominions, to all intents and purposes, as if abiding and born within this our Kingdom of

Great-Britain, or any other dominion.—And for the greater ease and encouragement of our loving subjects and such others as shall come to inhabit in our said colony, we do by these presents, for us, our heir and successors, grant establish and ordain, that forever hereafter, there shall be a liberty of conscience allowed in the worship of God, to all persons inhabiting, or which shall inhabit or be resident within our said province, and that all such persons, except papists, shall have a free exercise of religion, so they be contented with the quiet and peaceable enjoyment of the same, not giving offence or scandal to the government.

And our further will and pleasure is, and we do hereby for us, our heirs and successors, declare and grant, that it shall and may be lawful for the said common council, or the major part of them assembled for that purpose, in the name of the corporation, and under the common seal, to distribute, convey, assign and set over such particular portions of lands, tenements and hereditaments by these presents granted to the said corporation, unto such our loving subjects, natural born, denizens or others that shall be willing to become our subjects, and live under our allegiance in the said colony, upon such terms, and for such estates, and upon such rents, reservations and conditions as the same may be lawfully granted, and as to the said common council, or the major part of them so present, shall seem fit and proper.

Provided always that no grants shall be made of any part of the said lands unto any person, being a member of the said corporation, or to any other person in trust, for the benefit of any member of the said corporation; and that no person having any estate or interest, in law or equity, in any part of the said lands, shall be capable of being a member of the said corporation, during the continuance of such estate or interest.

Provided also, that no greater quantity of lands be granted, either entirely or in parcels, to or for the use, or in trust for any one person, than five hundred acres; and that all grants made contrary to the true intent and meaning hereof, shall be absolutely null and void.

And we do hereby grant and ordain, that such person or persons, for the time being as shall be thereunto appointed by the said corporation, shall and may at all times, and from time to time hereafter, have full power and authority to administer and give the oaths, appointed by an act of parliament, made in the first year of the reign of our late royal father, to be taken instead of the oaths of allegiance and supremacy; and also the oath of abjuration, to all and every person and persons which shall at any time be inhabiting or residing within our said colony; and in like cases to administer the solemn affirmation to any of the persons commonly called quakers, in such manner as by the laws of our realm of Great Britain, the same may be administered.

And we do, of our further grace, certain knowledge and mere motion, grant, establish and ordain, for us, our heirs and successors, that the said corporation and their successors, shall have full power and authority, for and during the term of twenty-one years, to commence from the date of these our letters patent, to erect and constitute judicatories and courts of record, or other courts, to be held in the name of us, our heirs and successors for the hearing and determining of all manner of crimes, offences, pleas, processes, plaints, actions, matters, causes and things whatsoever, arising or happening, within the said province of Georgia, or between persons of Georgia; whether the same be criminal or civil, and whether the said crimes be capital or not capital, and whether the said pleas be real, personal or mixed: and for awarding and making our executions thereupon; to which courts and judicatories, we do hereby, for us, our heirs and successors, give and grant full power and authority, from time to time, to administer oaths for the discovery of truth in any matter in controversy, or depending before them, or the solemn affirmation, to any of the persons commonly called quakers, in such manner, as by the laws of our realm of Great-Britain, the same may be administered.

And our further will and pleasure is, that the said corporation and their successors, do from time to time, and at all times hereafter, register or cause to be registered, all such leases, grants, plantings, conveyances, settlements, and improvements whatsoever, as shall at any time hereafter be made by, or in the name of the said corporation, of any lands, tenements or hereditaments within the said province;

and shall yearly send and transmit, or cause to be sent or transmitted, authentic accounts of such leases, grants, conveyances, settlements and improvements respectively, unto the auditor of the plantation for the time being, or his deputy, and also to our surveyor for the time being of our said province of South-Carolina; to whom we do hereby grant full power and authority from time to time, as often as need shall require, to inspect and survey, such of the said lands and premises, as shall be demised, granted and settled as aforesaid: which said survey and inspection, we do hereby declare, to be intended to ascertain the quitrents which shall from time to time become due to us, our heirs and successors, according to the reservation herein before mentioned, and for no other purposes whatsoever; hereby for us, our heirs and successors, strictly enjoining and commanding, that neither our or their surveyor, or any person whatsoever, under the pre-text and colour of making the said survey or inspection, shall take, demand or receive, any gratuity, fee or reward, of or from, any person or persons, inhabiting in the said colony, or from the said corporation or common council of the same, on the pain of forfeiture of the said office or offices, and incurring our highest displeasure. Provided always, and our further will and pleasure is, that all leases, grants and conveyances to be made by or in the name of the said corporation, of any lands within the said province, or a memorial containing the substance and effect thereof, shall be registered with the auditor of the said plantations, of us, our heirs and successors, within the space of one year, to be computed from the date thereof, otherwise the same shall be void.

And our further will and pleasure is, that the rents, issues and all other profits, which shall at any time hereafter come to the said corporation, or the major part of them which shall be present at any meeting for that purpose assembled, shall think will most improve and enlarge the said colony, and best answer the good purposes herein before mentioned, and for defraying all other charges about the same.

And our will and pleasure is, that the said corporation and their successors, shall from time to time give in to one of the principal secretaries of state, and to the commissioners of trade and plantations, accounts of the progress of the said colony.

And our will and pleasure is that no act done at any meeting of the said common council of the said corporation, shall be effectual and valid, unless eight members at least of the said common council, including the member who shall serve as chairman at the said meeting, be present, and the major part of them consenting thereunto.

And our will and pleasure is, that the common council of the said corporation for the time being, or the major part of them who shall be present, being assembled for that purpose, shall from time to time, for, and during, and unto the full end and expiration of twenty-one years, to commence from the date of these our letters patent, have full power and authority to nominate, make, constitute and commission, ordain and appoint, by such name or names, style or styles, as to them shall be meet and fitting, all and singular such governors, judges, magistrates, ministers and officers, civil and military, both by sea and land, within the said districts, as shall by them be thought fit and needful to be made or used for the said colony, save always, and except such offices only as shall by us, our heirs and successors, be from time to time constituted and appointed, for the managing, collecting and receiving such revenues, as shall from time to time arise within the said province of Georgia, and become due to us, our heirs and successors.

Provided always, and it is our will and pleasure, that every governor of the said province of Georgia, to be appointed by the common council of the said corporation, before he shall enter upon or execute the said office of governor, shall be approved by us, our heirs or successors, and shall take such oaths, and shall qualify himself in such manner, in all respects, as any governor or commander in chief of any of our colonies or plantations in America, are by law required to do; and shall give good and sufficient security for observing the several acts of parliament relating to trade and navigation, and to observe and obey all instructions that shall be sent to him by us, our heirs and successors, or any acting under our or their authority, pursuant to the said acts, or any of them.

And we do by these presents for us, our heirs and successors, will, grant and ordain, that the said corporation and their successors, shall have full power for and during and until the full end and term of

twenty-one years, to commence from the date of these our letters patent, by any commander or other officer or officers, by them for that purpose from time to time appointed, to train and instruct, exercise and govern a militia, for the special defence and safety of our said colony, to assemble in martial array the inhabitants of the said colony, and to lead and conduct them, and with them to encounter, expulse, repel, resist and pursue, by force of arms, as well by sea as by land, within or without the limits of our said colony; and also to kill, slay and destroy, and conquer by all fitting ways, enterprizes and means whatsoever, all and every such person or persons as shall at any time hereafter, in any hostile manner, attempt or enterprize the destruction, invasion, detriment or annoyance of our said colony; and to use and exercise the martial law in actual war and invasion or rebellion, in such cases, where by the law the same may be used or exercised; and also from time to time to erect forts, and fortify any place or places 10 within our said colony; and the same to furnish with all necessary ammunition, provisions and stores of war, for offence and defence, and to commit from time to time the custody or government of the same, to such person or persons as to them shall seem meet: and the said forts and fortifications to demolish at their pleasure; and to take and surprize, by all ways and means, all and every such person or persons, with their ships, arms, ammunition and other goods, as shall in any hostile manner, invade or attempt the invading, conquering or annoying of our said colony.

And our will and pleasure is, and we do hereby, for us, our heirs and successors, declare and grant, that the governor and commander-in-chief of the province of South Carolina, of us, our heirs and successors, for the time being, shall at all times hereafter have the chief command of the militia of our said province, hereby erected and established; and that such militia shall observe and obey all orders 20 and directions, that shall from time to time be given or sent to them by the said governor or commander-in-chief; anything in these presents before contained to the contrary hereof in any wise notwithstanding.

And, of our special grace, certain knowledge and mere motion, we have given and granted, and by these presents, for us, our heirs and successors, do give and grant, unto the said corporation and their successors, full power and authority to import and export their goods; at and from any port or ports that shall be appointed by us, our heirs and successors, within the said province of Georgia, for that purpose, without being obliged to touch at any other port in South-Carolina.

And we do, by these presents, for us, our heirs and successors, will and declare, that from and after the termination of the said term of twenty-one years, such form of government and method of making laws, statutes, and ordinances, for the better governing and ordering the said province of Georgia, and 30 the inhabitants thereof, shall be established and observed within the same, as we, our heirs and successors, shall hereafter ordain and appoint, and shall be agreeably to law; and that from and after the determination of the said term of twenty-one years, the governor of our said province of Georgia, and all officers civil and military, within the same, shall from time to time be nominated and constituted, and appointed by us, our heirs and successors.

And lastly, we do hereby, for us, our heirs and successors, grant unto the said corporation and their successors, that these our letters patent, or the enrolments or exemplifications thereof, shall be in and by all things good, firm, valid, sufficient, and effectual in the law, according to the true intent and meaning thereof, and shall be taken, construed and adjudged, in all courts and elsewhere in the most favourable and beneficial sense, and for the best advantage of the said corporation and their successors 40 any omission, imperfection, defect, matter or cause, or thing whatsoever to the contrary, in any wise notwithstanding.

In witness we have caused these our letters to be made patent: witness ourself at Westminster the ninth day of June, in the fifth year of our reign.

By writ of privy-seal.

OFFICIAL CORRESPONDENCE BETWEEN THE FOREIGN OFFICE AND THE COLONIAL OFFICE, AND BETWEEN THE IMPERIAL GOVERNMENT AND SIR EDWARD THORNTON, 1877-8.

SUPPLEMENT
TO THE
ONTARIO
APPENDIX.

Official Correspondence
between the
Foreign
Office and
the Colonial
Office and
between the
Imperial
Government
and Sir
Edward
Thornton—
1877-8.

THE FOREIGN OFFICE TO THE COLONIAL OFFICE.

Foreign Office,
April 5, 1877.

SIR,

I am directed by the Earl of Derby to state to you, for the information of the Earl of Carnarvon, that His Lordship sent a telegram on the 3rd instant to Sir E. Thornton, authorising him to proceed to Canada for a few days, with reference to the arbitration on the boundary of the Province of Ontario.

I am, &c.,
J. PAUNCEFOTE.

The Under Secretary of State,
Colonial Office.

THE FOREIGN OFFICE TO THE COLONIAL OFFICE.

Foreign Office,
July 4, 1878.

SIR,

With reference to Sir J. Pauncefote's letter of the 5th of April, 1877, I am directed by the Marquis of Salisbury to request that you will inform Sir M. H. Beach that a telegram has been addressed to Her Majesty's Minister at Washington, authorising him to go to Ottawa, as he proposes, on the 8th instant, on business connected with the boundary between Ontario and the Dominion of Canada.

I am, &c.,
T. V. LISTER.

The Under Secretary of State,
Colonial Office.

THE FOREIGN OFFICE TO THE COLONIAL OFFICE.

Foreign Office,
July 26, 1878.

SIR,

With reference to Mr. Lister's letter of the 4th instant, I am directed by the Marquis of Salisbury to transmit to you, to be laid before Her Majesty's Secretary of State for the Colonies, for his information, the accompanying copy of a despatch from Her Majesty's Minister at Washington, stating that he did not avail himself of the leave of absence granted to him for the purpose of proceeding to Ottawa on the 8th instant, on business connected with the arbitration regarding the question of the unsettled Northern and Western Boundaries of the Province of Ontario.

I am, &c.,

The Under Secretary of State,
Colonial Office.

SUPPLEMENT
TO THE
ONTARIO
APPENDIX.

No. 216.

SIR E. THORNTON TO THE MARQUIS OF SALISBURY.

Washington,
July 8, 1878.

Official Corre-
spondence
between the
Foreign
Office and
the Colonial
Office and
between the
Imperial
Government
and Sir
Edward
Thornton—
1877-8.

MY LORD MARQUIS,

On the 26th ultimo I had the honour to ask your Lordship by telegraph to grant me leave of absence in order that I might go to Ottawa on the 8th instant (to-day) with reference to the Arbitration regarding the question of the unsettled Northern and Western Boundaries of the Province of Ontario. Her Majesty's Secretary of State was good enough to grant me the necessary leave.

I had made this request because I had been informed by the Honourable R. W. Scott, Secretary of State of the Dominion of Canada, that the two Arbitrators representing the respective sides would meet at Ottawa on the 10th instant for the purpose of taking the matter into consideration, and were desirous that I should also be present at the meeting as Umpire, which position I had accepted in November 1874.

On the evening of the 2nd instant, however, I received a telegram from Mr. Scott, announcing that the meeting of the Boundary Commission had been postponed, and that he would inform me by letter on what future day it would meet.

Since then I have not received any communication from Mr. Scott.

I have, &c.,

EDWARD THORNTON.

The Marquis of Salisbury,
&c., &c., &c.

20

SIR EDWARD THORNTON TO THE MARQUIS OF SALISBURY.

No. 236.

Newport,
July 29, 1878.

MY LORD,

I have the honour to inform your Lordship that the Secretary of State of the Dominion of Canada has announced to me that the meeting of the Commission for settling the Northern and Western Boundaries of Ontario, which had been postponed, will take place on the 1st of next month, and has expressed the desire of the Canadian Government that I should be present at the meeting.

I shall therefore avail myself of the permission granted me by Her Majesty's Secretary of State, and intend to start to-morrow for Ottawa, leaving Mr. Victor Drummond, First Secretary to this Legation, as Her Majesty's Chargé d'Affaires during my absence.

I have, &c.,

EDWARD THORNTON.

The Marquis of Salisbury, K.G.,
&c., &c., &c.

THE FOREIGN OFFICE TO THE COLONIAL OFFICE.

Foreign Office,
August 16, 1878.

SIR,

With reference to my letter of the 26th ultimo, I am directed by the Marquis of Salisbury to transmit to you, to be laid before Sir M. H. Beach, a copy of a despatch from Her Majesty's Minister at Washington, respecting the Ontario Boundary Arbitration.

I am, &c.,

The Under Secretary of State,
Colonial Office.

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SIR EDWARD THORNTON TO THE MARQUIS OF SALISBURY.

No. 241.

Washington,
August 9th, 1878.

MY LORD,

With reference to my despatch, No. 236 of the 29th ult., I have the honour to inform your Lordship that I left Newport for Ottawa on the 30th ult.; Mr. Victor Drummond remaining as Her Majesty's Chargé d'Affaires during my absence. The Commission, of which I was a member, for deciding upon the Western and Northern Boundaries of the province of Ontario, has come to a unanimous agreement, and has signed its decision, so that having performed the task which was assigned to it, it has dissolved.

I have to-day returned to Washington, and have assumed my duties as Her Majesty's Minister. As my absence from my post was entirely upon official business, I venture to ask that the allowance to which Her Majesty's Chargé d'Affaires is entitled for the days during which I have been absent may be paid to him, but not deducted from my salary.

I have, &c.,
EDWARD THORNTON.The Marquis of Salisbury, K.G.,
&c., &c., &c.SUPPLEMENT
TO THE
ONTARIO
APPENDIX.Official Correspondence
between the
Foreign
Office and
the Colonial
Office and
between the
Imperial
Government
and Sir
Edward
Thornton—
1877-8.Washington,
July 8, 1878.

telegraph to grant me leave
with reference to the Arbitra-
ratories of the Province of
necessary leave.

Honourable R. W. Scott,
representing the respective sides
brought into consideration, and
position I had accepted in

from Mr. Scott, announce-
d that he would inform me

EDWARD THORNTON.

20

Newport,
July 29, 1878.

State of the Dominion of
settling the Northern and
the 1st of next month,
sent at the meeting.
Her Majesty's Secretary of 30
Drummond, First Secretary

EDWARD THORNTON.

Foreign Office,
August 16, 1878.The Marquis of Salisbury
Her Majesty's Minister

DOMINION ACT, 45 VICT., CAP. 3 (1882).

AN ACT TO READJUST THE REPRESENTATION IN THE HOUSE OF COMMONS, AND FOR OTHER PURPOSES.

(Assented to 17th May, 1882.)

Dominion Act,
45 Vict.,
cap. 3 (1882).

WHEREAS by the Census of the year one thousand eight hundred and eighty-one, and in accordance with "The British North America Act, 1867," the Province of Ontario is entitled to four additional members in the House of Commons, and the Province of Manitoba, by its present population, to one additional member, the same being severally in excess of the number of members of the said House for each of the said Provinces as provided by "The British North America Act, 1867," and "An Act to readjust the Representation in the House of Commons," passed in the thirty-fifth year of Her Majesty's reign; and by reason thereof and of the intended union of the electoral district of the town of Niagara with the township of Niagara thereto attached with the electoral district of the county of Lincoln, and the union of the electoral district of the town of Cornwall with the township of Cornwall thereto attached with the county of Stormont, it is expedient to readjust the boundaries of certain of the electoral districts in the said Provinces of Ontario and Manitoba: Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. The House of Commons shall consist of two hundred and eleven members, of whom ninety-two shall be elected for Ontario; sixty-five for Quebec; twenty-one for Nova Scotia; sixteen for New Brunswick; five for Manitoba; six for British Columbia; and six for Prince Edward Island.

2. The said provinces respectively shall, for the purposes of the election of members to serve in the House of Commons, be divided into the electoral districts established by "The British North America Act, 1867," and the Act above cited readjusting the representation, and the addresses of the two Houses of the Legislature of Prince Edward Island to Her Majesty on the admission of that Province into the Dominion of Canada, and those constituted by this Act,—each of the now existing electoral districts remaining constituted and represented as it now is, except in so far as it may be altered by the following provision of this Act, that is to say:—

ONTARIO.

The settlements westward of the Provisional District of Thunder Bay and eastward of the Electoral Districts of Manitoba, shall, pending the adjustment of the boundaries, be and the same are hereby made part of the Electoral District of Algoma.

THE EARL OF SELKIRK AS TO THE REASONS FOR THE PASSING OF THE
IMPERIAL ACT, 43 GEORGE III. CAP. 138 (1803).

His Lordship says that the immediate cause for the passage of the Act was the shooting of one King by one Lamotte in the vicinity of Lake Athabasca. He describes the event as follows:—

“ In the winter of 1801-2, Mr. John McDonald managed the affairs of the old North-West Company in the Athabaska country; Mr. Rocheblave, those of the new company in the same district. Mr. McDonald had under his command a clerk of the name of King, an experienced man, of a bold and active character, and of a herculean figure. Mr. Rocheblave's assistant was Lamotte, a young man of a respectable Canadian family, of a spirited and active disposition, but much younger and of less experience among the Indians, and not to be compared to King in point of personal strength. In the course of the winter two Indians arrived as deputies from a band with which both parties had had transactions, to inform the traders that they had furs ready at an encampment at the distance of four or five days' march. King was sent with four men to collect those due to the old North-West Company—Lamotte with two men for those due to the new Company. Both of them were charged to use the utmost diligence and to defend the rights of their employers with courage. They set out accordingly on their mission, and great activity and address were used by each to get the start of the other, but without success on either side. When they reached the Indian encampment, both parties proceeded to collect the furs due to them, but King, by means of the superior number of his assistants, got possession of all the furs except one bundle which was delivered to Lamotte by the same Indian who had come as a delegate to the new Company. King then came to Lamotte's tent, accompanied by all his men, armed, peremptorily demanding that bundle also; threatening violence and declaring his intention to take the furs by force if they were not given up to him. Lamotte was determined to defend the property of his employers to the last extremity, and warned King, that if he ventured to touch the furs, he should do so at his peril. King, nevertheless, was proceeding to put his threats into execution and to seize the bundle when Lamotte pulled out his pistol and shot the robber dead on the spot. King's men would have revenged his death, but the Indians interfered and expressed their opinion that he had merited his fate. Though it would be difficult to quote an instance of homicide more decidedly justifiable, all Canada rang with the claims of the old North-West Company against this murder, as they chose to term it. It was upon this occasion that the Act of 1803 was obtained, under the idea that the case could not be brought to trial, though it might undoubtedly have been tried at Westminster under the Act of Henry VIII.”

SUPPLEMENT
TO THE
ONTARIO
APPENDIX.

The Earl of
Selkirk as to
the Reasons
for the
Passing of the
Imperial Act,
43 Geo. III.
cap. 138
(1803).

FOR OTHER PURPOSES.

(17th May, 1882.)

ty-one, and in accordance
entitled to four additional
resent population, to one
bers of the said House for
1867,” and “ An Act to
fifth year of Her Majesty's
et of the town of Niagara
e county of Lincoln, and
p of Cornwall thereto at-
laries of certain of the
Her Majesty, by and with
as follows:—
bers, of whom ninety-two
; sixteen for New Bruns-
Island.

members to serve in the
e British North America
resses of the two Houses
on of that Province into
existing electoral districts
altered by the following

astward of the Electoral
d the same are hereby
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SUPPLEMENT
TO THE
ONTARIO
APPENDIX.

Imperial Act,
11 Geo. III.
cap. 83 (1771).

IMPERIAL ACT, 14 GEO. III., CAP. 83 (1774).

AN ACT FOR MAKING MORE EFFECTUAL PROVISION FOR THE GOVERNMENT OF THE PROVINCE OF QUEBEC
IN NORTH AMERICA.

Preamble.

Whereas His Majesty, by His Royal Proclamation, bearing Date the Seventh Day of October, in the Third Year of His Reign, thought fit to declare the Provisions which had been made in respect to certain Countries, Territories, and Islands in America, ceded to His Majesty by the definitive Treaty of Peace, concluded at Paris on the Tenth Day of February, One thousand seven hundred and sixty-three: And whereas, by the Arrangements made by the said Royal Proclamation, a very large Extent of Country, within which there were several Colonies and Settlements of the Subjects of France, who claimed to remain therein under the Faith of the said Treaty, was left, without any Provision being made for the Administration of Civil Government therein; and certain Parts of the Territory of Canada, where sedentary Fisheries had been established and carried on by the Subjects of France, Inhabitants of the said Province of Canada, under Grants and Concessions from the Government thereof, were annexed to the Government of Newfoundland, and thereby subjected to Regulations inconsistent with the Nature of such Fisheries; May it therefore please Your most Excellent Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That all the Territories, Islands, and Countries in North America, belonging to the Crown of Great Britain, 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 Saint 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 the River Saint 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 of the said Province, until the said Western Boundary strike the Ohio; but in case the said Bank of the said Lake shall not be found to be 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 strike the River Ohio; and along the Bank of the said River, Westward, to the Banks of the Mississippi, and Northward to the Southern Boundary of the Territory granted to the Merchants Adventurers of England trading to Hudson's Bay; and also all such Territories, Islands, and Countries, which have, since the Tenth of February, One thousand seven hundred and sixty-three, been made Part of the Government of Newfoundland, be, and they are hereby, during His Majesty's Pleasure, annexed to, and made Part and Parcel of, the Province of Quebec, as created and established by the said Royal Proclamation of the Seventh of October, One thousand seven hundred and sixty-three.

The
Territories,
Islands, and
Countries in
North
America
belonging to
Great
Britain

annexed to
the Province
of Quebec.

Not to affect
the
Boundaries
of any other
Colony;
nor to make
void other
Rights
formerly
granted.

Provided always, That nothing herein contained relative to the Boundary of the Province of Quebec, shall in anywise affect the Boundaries of any other Colony.

Provided always, and be it enacted, That nothing in this Act contained shall extend, or be construed to extend, to make void, or to vary or alter any Right, Title, or Possession, derived under any Grant, Conveyance, or otherwise howsoever, of or to any Lands within the said Province, or the Provinces thereto adjoining; but that the same shall remain and be in Force, and have Effect, as if this Act had never been made.

And whereas the Provisions, made by the said Proclamation, in respect to the Civil Government of the said Province of Quebec, and the Powers and Authorities given to the Governor and other Civil Officers of the said Province, by the Grants and Commissions issued in Consequence thereof, have been found, upon Experience, to be inapplicable to the State and Circumstances of the said Province, the Inhabitants whereof amounted, at the Conquest, to above Sixty-five thousand Persons professing the Religion of the Church of Rome, and enjoying an established Form of Constitution and System of Laws, by which their Persons and Property had been protected, governed, and ordered, for a long Series of Years, from the first Establishment of the said Province of Canada; be it therefore further enacted by the Authority aforesaid, That the said Proclamation, so far as the same relates to the said Province of

10 Quebec, and the Commission under the Authority whereof the Government of the said Province is at present administered, and all and every the Ordinance and Ordinances made by the Governor and Council of Quebec for the Time being, relative to the Civil Government and Administration of Justice in the said Province, and all Commissions to Judges and other Officers thereof, be, and the same are hereby revoked, annulled, and made void, from and after the First Day of May, One thousand seven hundred and seventy-five.

And, for the more perfect Security and Ease of the Minds of the Inhabitants of the said Province, it is hereby declared, That His Majesty's Subjects, professing the Religion of the Church of Rome, of and in the said Province of Quebec, may have, hold, and enjoy the free exercise of the Religion of the Church of Rome, subject to the King's Supremacy, declared and established by an Act, made in the First Year of

20 the Reign of Queen Elizabeth, over all the Dominions and Countries which they did, or hereafter should, belong to the Imperial Crown of this Realm, and that the Clergy of the said Church may hold, receive, and enjoy their accustomed Dues and Rights with respect to such persons only as shall profess the said Religion.

Provided nevertheless, That it shall be Lawful for His Majesty, His Heirs or Successors, to make such Provision out of the rest of the said accustomed Dues and Rights, for the Encouragement of the Protestant Religion, and for the Maintenance and Support of a Protestant Clergy within the said Province, as he or they shall, from Time to Time, think necessary and expedient.

Provided always, and be it enacted, That no Person, professing the Religion of the Church of Rome, and residing in the said Province, shall be obliged to take the Oath required by the said Statute

30 passed in the First Year of the Reign of Queen Elizabeth, or any other Oaths substituted by any other Act in the Place thereof; but that every such Person who by the said Statute is required to take the Oath therein mentioned, shall be obliged, and is hereby required, to take and subscribe the following Oath before the Governor, or such other Person in such Court of Record as His Majesty shall appoint, who are hereby authorised to administer the same; videlicet.

I A. B. do sincerely promise and swear, That I will be faithful, and bear true Allegiance to His Majesty King George, and him will defend to the utmost of my power, against all traiterous Conspiracies, and Attempts whatsoever, which shall be made against His Person, Crown, and Dignity; and I will do my utmost Endeavour to disclose and make known to His Majesty, His Heirs and Successors, all Treasons, and traiterous Conspiracies, and Attempts, which I shall know to be against Him, or any of Them; and

40 all this I do swear without any Equivocation, mental Evasion, or secret Reservation, and renouncing all Pardons and Dispensations from any Power or Person whomsoever to the Contrary.

So help me GOD.

And every such Person, who shall neglect or refuse to take the said Oath before mentioned, shall incur and be liable to the same Penalties, Forfeitures, Disabilities, and Incapacities, as he would have incurred and been liable to for neglecting or refusing to take the Oath required by the said Statute passed in the First Year of the Reign of Queen Elizabeth.

SUPPLEMENT
TO THE
ONTARIO
APPENDIX.

Imperial Act,
11 Geo. III.
cap. 83
(1774).

Former
Provisions
made for the
Province to
be null and
void after
May 1, 1775.

Inhabitants of
Quebec may
profess the
Romish
Religion,
subject to the
King's
Supremacy,
as by Act
1 Eliz.;
and the
Clergy enjoy
their
accustomed
Dues.

Provision may
be made by
His Majesty
for the
support of
the
Protestant
Clergy.

No person
professing
the Romish
Religion
is obliged to
take the
Oath of
1 Eliz.;
but to take
before the
Governor
&c. the
following
Oath.

The Oath.

Persons
refusing the
Oath to be
subject to the
Penalties by
Act 1 Eliz.

SUPPLEMENT
TO THE
ONTARIO
APPENDIX.

Imperial Act,
14 Geo III.
cap. 83
(1774).

His Majesty's
Canadian
Subjects
(religious
Orders
excepted)
may hold all
their

possessions,
&c.,
and in matters
of Contro-
versy, Resort
to be had to
the laws of
Canada for
the decision.
Not to extend
to Lands
granted by
His Majesty
in Common
Soeenge.

Owners of
goods may
alienate the
same by
will, &c.
if executed
according to
the Laws of
Canada.

Criminal Law
of England
to be con-
tinued in the
Province.

His Majesty
may appoint
a Council for
the affairs of
the Province;

which Council
may make
Ordinances,
with consent
of the
Governor.

And be it further enacted by the Authority aforesaid, That all His Majesty's Canadian Subjects, within the Province of Quebec, the religious Orders and Communities only excepted, may also hold and enjoy their Property and Possessions, together with all Customs and usages relative thereto, and all other their Civil Rights, in as large, ample, and beneficial Manner, as if the said Proclamation, Commissions, Ordinances, and other Acts and Instruments, had not been made, and as may consist with their Allegiance to His Majesty, and Subjection to the Crown and Parliament of Great Britain; and that in all Matters of Controversy, relative to Property and Civil Rights, Resort shall be had to the Laws of Canada, as the Rules for the Decision of the same: and all Causes that shall hereafter be instituted in any of the Courts of Justice, to be appointed within and for the said Province, by His Majesty, His Heirs and Successors, shall, with respect to such Property and Rights, be determined agreeably to the said Laws and Customs of Canada, until they shall be varied or altered by any Ordinances that shall, from Time to Time be passed in the said Province by the Governor, Lieutenant Governor, or Commander in Chief, for the Time being, by and with the Advice and Consent of the Legislative Council of the same, to be appointed in Manner hereinafter mentioned.

Provided always, That nothing in this Act contained shall extend, or be construed to extend, to any Lands that have been granted by His Majesty, or shall hereafter be granted by His Majesty, His Heirs and Successors, to be holden in free and common Soeenge.

Provided also, that it shall and may be lawful to and for every Person that is owner of any Lands, Goods, or Credits, in the said Province, and that has a right to alienate the said Lands, Goods, or Credits, in his or her Life-time, by Deed of Sale, Gift, or otherwise, to devise or bequeath the same at his or her death, by his or her last Will and Testament; any Law, Usage, or Custom heretofore or now prevailing in the Province, to the Contrary hereof in any-wise notwithstanding; such Will being executed, either according to the Laws of Canada, or according to the forms prescribed by the Laws of England.

And whereas the Certainty and Lenity of the Criminal Law of England, and the Benefits and Advantages resulting from the Use of it, have been sensibly felt by the Inhabitants, from an Experience of more than Nine Years, during which it has been uniformly administered; be it therefore further enacted by the Authority aforesaid, That the same shall continue to be administered and shall be observed as Law in the Province of Quebec, as well in the Description and Quality of the Defence as in the Method of Prosecution and Trial; and the Punishments and Forfeitures thereby inflicted to the Exclusion of every other Rule of Criminal Law, or Mode of Proceeding thereon, which did or might prevail in the said Province before the year of our Lord One thousand seven hundred and sixty-four; any Thing in this Act to the Contrary thereof in any respect notwithstanding; subject nevertheless to such Alterations and Amendments as the Governor, Lieutenant-governor, or Commander in Chief for the time being, by and with the Advice and Consent of the Legislative Council of the said Province, hereafter to be appointed, shall from Time to Time, cause to be made therein, in Manner herein-after directed.

And whereas it may be necessary to ordain many Regulations for the future Welfare and good Government of the Province of Quebec, the Occasions of which cannot now be foreseen, nor, without much Delay and Inconvenience, be provided for, without intrusting that authority, for a certain Time, and under proper Restrictions, to Persons Resident there: And whereas it is at present inexpedient to call an Assembly; be it therefore enacted by the Authority aforesaid, That it shall and may be lawful for His Majesty, His Heirs and Successors, by Warrant under His or Their Signet or Sign Manual, and with the advice of the Privy Council, to constitute and appoint a Council for the Affairs of the Province of Quebec, to consist of such Persons resident there, not exceeding Twenty Three, nor less than Seventeen, as his Majesty, his Heirs and Successors, shall be pleased to appoint: and, upon the Death, Removal, or Absence of any of the Members of the said Council, in like manner to constitute and appoint such and so many other Person or Persons as shall be necessary to supply the Vacancy or Vacancies; which Council, so appointed and nominated, or the major Part thereof, shall have Power and Authority to make

Ordinances for the Peace, Welfare, and good Government, of the said Province, with the Consent of His Majesty's Governor, or, in his absence, of the Lieutenant-governor, or Commander in Chief for the Time being.

Provided always, That nothing in this Act contained shall extend to authorise or empower the said Legislative Council to lay any Taxes or Duties within the said Province, such Rates and Taxes only excepted as the Inhabitants of any Town or District within the said Province may be authorised by the said Council to assess, levy, and apply, within the said Town or District, for the Purpose of making Roads, erecting and repairing Publick Buildings, or for any other Purpose respecting the local Convenience and economy of such Town or District.

- 10 Provided also, and be it enacted by the Authority aforesaid, That every Ordinance so to be made shall, within Six Months, be transmitted by the Governor, or, in his Absence, by the Lieutenant-Governor, or Commander in Chief for the Time being, and laid before His Majesty for his Royal Approbation; and if His Majesty shall think fit to disallow thereof, the same shall cease and be void from the Time that His Majesty's Order in Council thereupon shall be promulgated at Quebec.

Provided also, That no Ordinance touching Religion, or by which any Punishment may be inflicted greater than Fine or Imprisonment for Three Months, shall be of any Force or Effect, until the same shall have received His Majesty's Approbation.

- 20 Provided also, That no Ordinance shall be passed at any Meeting of the Council where less than a Majority of the whole Council is present, or at any Time except between the First Day of January and the First day of May, unless upon some urgent Occasion, in which Case every Member thereof resident at Quebec, or within fifty Miles thereof, shall be personally summoned by the Governor, or, in his Absence, by the Lieutenant-Governor, or Commander in Chief for the Time being, to attend the same.

And be it further enacted by the Authority aforesaid, That nothing herein contained shall extend, or be construed to extend, to prevent or hinder His Majesty, His Heirs and Successors, by His or Their Letters Patent under the Great Seal of Great Britain, from creating, constituting, and appointing, such Courts of Criminal, Civil, and Ecclesiastical Jurisdiction within and for the said Province of Quebec, and appointing, from Time to Time, the Judges and Officers thereof, as His Majesty, His Heirs and Successors, shall think necessary and proper for the Circumstances of the said Province.

- 30 Provided always, and it is hereby enacted, that nothing in this Act contained shall extend, or be construed to extend, to repeal or make void, within the said Province of Quebec, any Act or Acts of Parliament of Great-Britain heretofore made, for prohibiting, restraining, or regulating, the Trade of Commerce of his Majesty's Colonies and Plantations in America; but that all and every the said Acts, and also all Acts of Parliament heretofore made concerning or respecting the said Colonies and Plantations, shall be, and are hereby declared to be, in force, within the said Province of Quebec, and every part thereof.

SUPPLEMENT
TO THE
ONTARIO
APPENDIX.

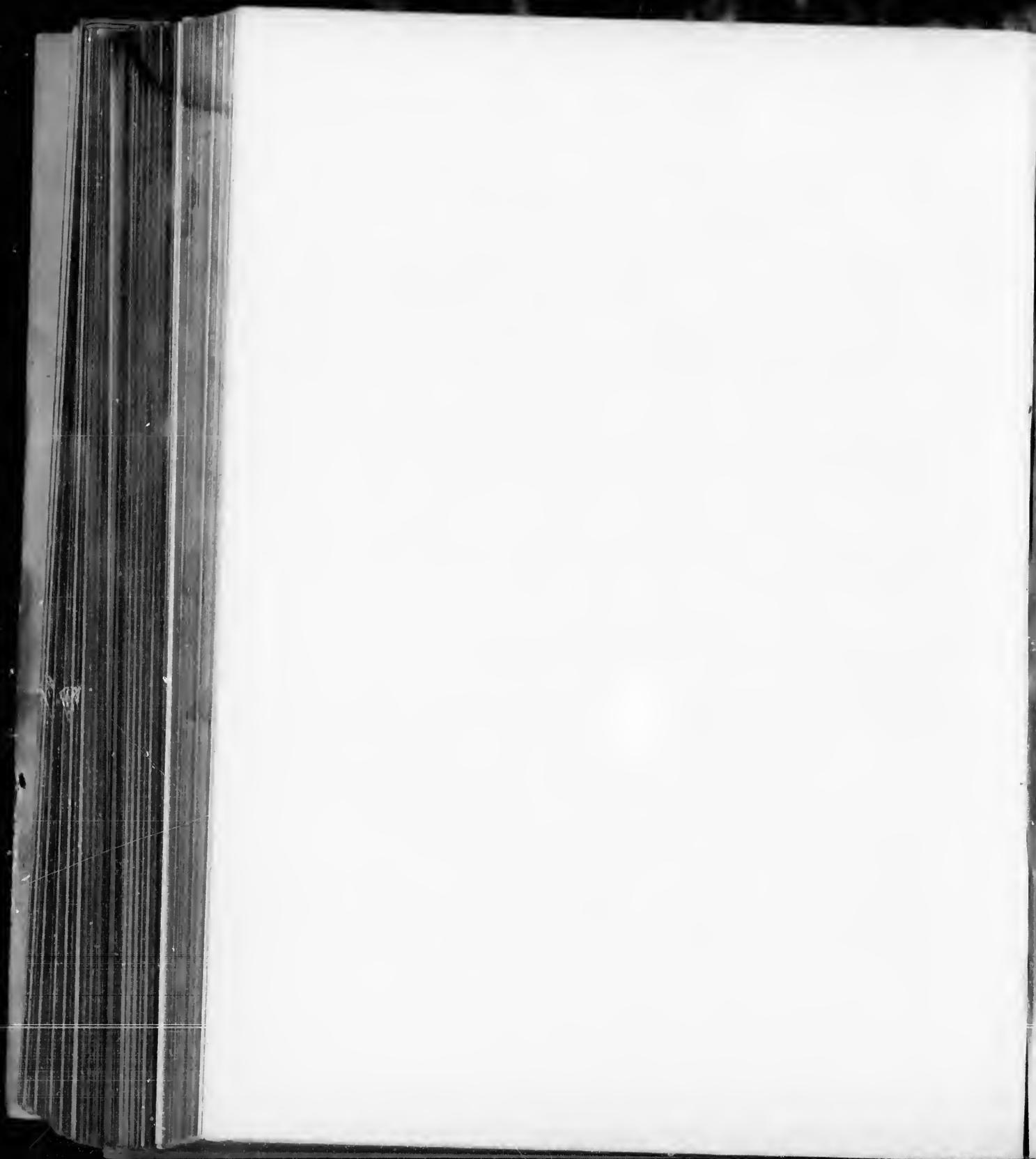
Imperial Act,
14 Geo. III.
cap. 83
(1774).

The Council
are not
empowered
to lay taxes.
Publick roads
or buildings
excepted.
Ordinances
made to be
laid before
His Majesty
for His
Approbation.
Ordinances
touching
Religion not
to be in force
without His
Majesty's
Approbation.

When
Ordinances
are to be
passed by a
majority.

Nothing to
hinder His
Majesty to
constitute
Courts of
Criminal,
Civil, and
Ecclesiastical
Jurisdiction.

All Acts
formerly
made are
hereby
inforced
within the
Province.



ADDITIONS AND CORRECTIONS.

- Page 1, line 21, read willing.
- 13, " 2 and 33, after Elizabeth, read *in foot note*, So in Hazard's "Historical Collections," from which this copy of the grant to Columbus was printed; but of course the name should be Isabella.
- 15, last line, read 1703.
- 18, line 5, read *Censario*.
- " 5 from foot, read *found*.
- 20, " 10, after assign, insert a comma.
- 29, " 8, before the order, for semicolon substitute comma.
- 32, " 19 from foot, after yielding, omit comma.
- " 18 from foot, read *Heira*.
- 98, last line, after charter, insert p. 37. ante.
- 100, line 4 from foot, read *any*.

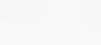
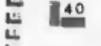
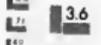
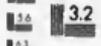
SUPPLEMENT
TO THE
ONTARIO
APPENDIX.

Additions and
Corrections.



MICROCOPY RESOLUTION TEST CHART

(ANSI and ISO TEST CHART No. 2)



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In the Privy Council.

IN THE MATTER OF THE BOUNDARY BETWEEN THE
PROVINCES OF ONTARIO AND MANITOBA,
IN THE DOMINION OF CANADA.

BETWEEN THE PROVINCE OF ONTARIO OF THE ONE PART
AND
THE PROVINCE OF MANITOBA OF THE OTHER PART.

MEMORANDUM

ON

THE PART OF ONTARIO.

FRESHFIELDS & WILLIAMS.



MEMORANDUM ON ACQUISITION OF TERRITORY

AND ON EXTENT OF TERRITORY OF HUDSON'S BAY COMPANY BEFORE SURRENDER.

TITLE BY DISCOVERY.

HENRY VII. of England granted a commission to John Cabot, citizen of Venice, and Louis Sebastian and Sanctius, his sons, and to their heirs and deputies, by which he gave them "full authority, privilege, and power to sail to all ports, regions, and bays of the eastern, western and northern seas under our banners, standards and insignia, with five ships or vessels, of whatever burden or quality they may be, and with so many and such sailors and men as they may choose to take with them in their said ships at their own proper expense and charges, to find, discover, or explore whatever islands, countries, regions, or provinces either of Gentiles or infidels in whatever part of the world situated have hitherto been unknown to all Christian people."

- 10 It is said that under this charter Cabot sailed along the coast of North America from the 56th to 58th degrees of north latitude and touched at Newfoundland, which he named *Prima Vista*.

Foster, in his "Voyages of Discovery in the North," says that in 1562 Hugh Elliot and Thomas Ashurst, Merchants of Bristol, obtained letters patent from Henry VIII. for the establishment of colonies in the countries newly discovered by Cabot, but we have no information whether they ever made use of this permission or set on foot any voyages in consequence of their grant.

There are many accounts extant which mention that since the year 1504 the French from Normandy and Bretagne and the Spaniards from Biscay, as also the Portuguese, used to carry on the cod fishery on these banks of Newfoundland with a great number of ships. These fisheries must therefore have been carried on at least 32 years without the Englishmen having the least knowledge of it. Page 291.

- 20 In the year 1584 an Act was passed in the reign of Edward VI. for the better direction of the fisheries in Iceland and Newfoundland, prohibiting the exaction of money, fish, or other rewards from English fishermen and mariners going on this service.

Richard Hackluyt, in 1587, says that a sea captain, Anthony Parkhurst, gave an authentic account of the cod fishery in the vicinity of Newfoundland, by which it appears that fifty English ships were there employed in this fishery. For the same purpose there used to come 100 Spanish ships, 20 or 30 of which were engaged in the whale fishery only, and there were about 50 Portuguese ships engaged in the cod fishing and about 150 French ships, chiefly from Bretagne.

No successful attempt had been made by France or England to colonise any part of North America, and the doctrine of public law which the English Government recognised is thus laid down by Elizabeth.

- 30 When Mendoza, the Spanish ambassador, remonstrated against the expeditions of Drake, Queen Elizabeth replied that "she did not understand why either her subjects or those of any other Christian Prince should be deprived of the traffic in the Indies; that as she did not acknowledge the Spaniards to have any title by the donation of the Bishop of Rome, so she knew no right which they had to any places other than those they were in actual possession of, but that their having touched here and there upon a coast and given names to a few rivers or capes were such insignificant things as could in no wise entitle to a propriety further than any parts where they actually settled and continued to inhabit."—Camden's "Annals" 1580, page 360.

Vattel says: "But it is questioned whether a nation can by the bare act of taking possession appropriate to itself countries which it does not really occupy, and thus engross a much larger extent of territory than it is able to people or to cultivate. It is not difficult to determine that such a pretension would be an infringement of the natural rights of man and repugnant to the views of nature, which hath destined the whole earth to the supply of the common wants of mankind in general, and gives no nation a right to appropriate a country except for the purpose of making use of it, and not of hindering others from deriving advantage from it. The law of nations will therefore not acknowledge the property and sovereignty to a nation over any uninhabited countries except to those of which it has really taken actual possession, in which it has formed settlements, or of which it makes actual use. In effect, when navigators have met with desert countries in which those of other nations have either had in their transient visits erected some monuments to show their having taken possession of them, they have paid as little regard as to the regulations of the Popes who divided a great part of the world between the crowns of Castile and Portugal."—"Law of Nations," Book I, cap. xviii., Sec. 207-8.

Puffendorff, in his "Law of Nature and of Nations" says: "This rule therefore for settling the disputes between the two claimants has been agreed upon, namely, that the power of dealing shall vest in him who has the first occupied it (*primo occupatori*) and not in him who has been the first to come in sight of it (*non ei qui primum in conspectum venit*). Book IV., cap. iv., sec. 5. Again he says: "We are then said properly to have occupied when we have taken actual possession (*quando possessionem adprehensimus*), but the mere seeing a thing or knowing where it is to be found will produce no title at all." Book IV., cap. vi., sec. 8.

Binkershok, "De dominion Marise," says: "A State cannot push the limits of its dominion beyond the reach of its actual powers of occupationary detention and restraint. * * * * Besides the mere will to exercise control there must be actual control physically exercised." Vol. II., page 136.

Berlamoqui says: "The dominion over vacant countries is to be acquired by taking possession of them." "Principes," Part IV., cap. ix.

Von Martens, in his "Precis du Droit des Gens Modernes de l'Europe," says: "The simple declaration of the will of a nation is no more sufficient to impose upon others the duty of abstaining from use or occupation of the object in question than a paper grant, or than a private agreement between two particular claimants. The bare fact of having been the first to discover or visit an island (and so forth), which is then forthwith abandoned again, and whereon no permanent indications remain of the possession or the discoveries claimed, is admitted by all nations, without opposition or dissent, to be insufficient to found any right." Book II., cap. i., sec. 37.

Pinheiro Ferreira says: "Where the question is raised whether such and such a territory belongs or not to such and such a nation, the point to decide is not whether that particular nation has the willingness, or caprice, to forbid the approach of other nations to it; and, if it is already acquired, no intention of turning it to its own advantage, but the point to decide is this: Has the nation put the territory to any practical use—is it in possession, or does it merely exercise the ordinary power of possession? Is it engaged in any measures for the development of its natural resources? If nothing of this sort has been done the question is at an end. It would be as weak to respect such a pretension as it is preposterous to put it forward." Book I., cap. xviii., page 200.

Kluber, in his "Law of Nations of Modern Europe," says: "A State may acquire property in things which belong to nobody, by occupation; in things which belong to another, by contract. By lawful occupation the right is first acquired; by continuous possession it is maintained. In order to acquire property in a thing by means of occupation, it is not enough to merely entertain the design of acquiring it, or to give ourselves the credit by the mere process of the mind. Even a public announcement of our design to occupy, made before occupation is actually effected by another, will not suffice to exclude the latter. It is necessary that we should, moreover, have been, in point of fact, the first to occupy it; and it is by this means alone, by the acquisition thus made of an exclusive right over the particular object, that we can impose upon the rest of the world an obligation to abstain from it." Vol. I., sec. 125.

Heffter, in his "International Law of Modern Europe," Berlin, 1844, says: "The acquisition by a State of new territory can only be effected according to the rule of international law by one of the following means: first, by treaty; second, by natural aggregation; third, by occupation. The acquisition of territory by means of occupation is subject to these restrictions: (1) it obtains only in the case of things which are by their natural condition susceptible of conclusive possession; (2) it requires an intention on the part of the occupying State to hold the territory in permanent subjection to its authority; (3) it must be accompanied by an actual taking of possession, whereby the design of a continuous appropriation is demonstrated; and (4) the arrangements or institutions requisite for the exercise of the functions of exclusive sovereignty are to be connected. On the other hand, mere verbal declarations or manifestoes, or transient tokens of an intended occupation are altogether insufficient and have no legal purpose." Section 70.

Oppenheim, in his "System of International Law," Frankfurt, 1845, says: "Acquisition of further territory may be effected either by occupation or by treaty. But originally, and in the first instance, by that which is the only duly recognised and effectual method, applicable alike to the law of nature and of nations—by occupation. Not by mere discovery, but by actual taking possession, or by conquest." Cap. vii., sec. 8.

Phillimore says: "Discovery, according to the acknowledged practice of nations, whether originally founded upon comity or strict rights, furnishes an inchoate title to possession to the discoverer; but the discoverer must, either in the first instance be fortified by the public authority, and by a commission from the State of which he is a member, or his discovery must be subsequently adopted by the State; otherwise, it does not fall with respect to the protection of the individual under the cognizance of international law, except in a limited degree; that is to say, the individual has a natural title to be undisturbed in the possession of the territory which he occupies as against third powers. It will be a question belonging to the Municipal law of his own country whether such possessions do not belong to her, and whether he lawfully hold them under her authority and by her permission."

Queen Elizabeth granted a charter to Sir Humphry Gilbert in 1578, authorising him to discover and take possession of all remote territories and lands unoccupied by any Christian Prince or people. She adhered to the rule which she laid down, making no claim on account of discovery, and admitting that America was a desert country, open to the occupation of any Christian Prince or people, and that those who were first in time were best in right.

Foster says that Sir Humphry Gilbert "to put his plan in execution gave away large tracts of land at the mouth of the River Canada to other people, on condition that they should people and stock them; but finding that they did not intend to fulfil these conditions he resolved at last to undertake this voyage once more himself, as there were but two years remaining before the entire expiration of the royal grant. He made, therefore, every possible effort, and was, moreover, assisted by some friends with money as well as advice, and at length set sail with five ships and 160 men. On 11th June, 1583, they ran into the Bay of St. John, where they found a great number of ships, English as well as foreigners, which were there on account of the cod fishery. Sir Humphry Gilbert took possession of the island and of all other lands that lay 200 leagues from it in all directions, and received rich presents from all the captains of the ships that lay off that island, principally from the foreigners, who were very numerous there. By one of these he was informed that about thirty years before, hogs as well as horned cattle had been landed on Sable Island."—Pages 293-294.

On the 26th March, 1584, the Queen granted a charter to Sir Walter Raleigh, in which he is given "free liberty and license for ever after to discover such remote and heathen and barbarous countries and territories not at the time possessed by any Christian Prince nor inhabited by a Christian people as to him, his heirs and assigns, may seem good." By this charter he is authorised "to colonise the country and to take possession of the land not at the time possessed by any Christian Prince nor inhabited by Christian people, with full powers to dispose thereof in fee simple according to the laws of England, all

of which lands, countries, and territories, shall for ever be holden by the said Sir Walter Raleigh, his heirs and assigns, of us, our heirs and successors by homage," and so forth.

See joint appendix of documents, p. 694.

Raleigh's charter was assigned to Sir Thomas Smith and a couple of London merchants. In 1596 an attempt at settlement of what was afterwards called Carolina was made and failed; so that at the death of Elizabeth, 100 years after Cabot had received his charter, there was not an English settler in North America.

Elizabeth's successor, James the First, made no claim to the exclusive possession of North America along the coast that Cabot was said to have discovered. In 1606 he granted a Charter providing for the incorporation of two Companies. In this Charter it is stated that "certain well-disposed subjects" 10
--whose names are given--"and divers others, wish to obtain a licence to make habitations and plantations, and deduce a colony to sundry of our subjects in that part of America commonly called Virginia, and other parts and territories in North America either appertaining unto us or which are not actually possessed by any Christian Prince or people."

In this paragraph it is intimated that there are two grounds upon which he has a right to grant a Charter for colonization within the limits mentioned, between 34 and 45 degrees north latitude. First, that parts of the territories already belong to him; second, that other parts may not be actually possessed by any other Christian Prince or people.

In 1609 the King granted a second Charter. In this there is no stronger claim made to the country than in that of 1606. There is the same exception of territories actually possessed by any Christian 20
Prince or people within certain bounds and regions, but in the Charter of 1606 he promised to make a title in free and common soccage to those whom the Corporators may name. In that of 1609 the property in the soil is formally conveyed to the Corporators.

In 1611-12 the King granted a third Charter to Virginia, in which is found the following clause: "Now forasmuch as we are given to understand that in those seas adjoining to the said coasts of Virginia, and without the compass of those 200 miles by us so granted unto the said Treasurer and Company as aforesaid, and yet not far distant from the said Colony of Virginia, there are, or may be, divers island- 30
lying desolate and uninhabited, some of which are already discovered and made known by the industry, travel, and expenses of the said Company, and others also are supposed to be, and remain as yet unknown and undiscovered, all and every of which it may inport the said Colony both in safety and in policy of trade to populate and plant, and in regard whereof, as well for the preventing of perils as for the better accommodation of the said colony, they have been humble suitors unto us that we shall be pleased to grant unto them an enlargement of our said former Letters Patent, as well as for the more ample extending of their limits and territories into the islands adjoining to and upon the coasts of Virginia." Supplement to Ontario Appendix, p. .

In this Charter the King formally conveys territory, the Sovereignty of which the Charter admits was not yet acquired.

In 1620 a new Charter was issued to Mr. James Gates, Sir George Somers and others, who were mentioned as the Northern Colony in the Charter of 1606, "who were with divers parties of the Second Colony desirous of laying the foundation of a plantation, and had endeavoured to take actual possession 40
of the Continent hereinafter mentioned in our name and to our use as Sovereign Lord thereof, and having settled already some of their people in places agreeably to their desires in those parts, and in confidence of prosperous success therein by the continuance of God's Divine Blessing and our Royal permission, have resolved in a more plentiful and effectual manner to prosecute the same . . . and forasmuch as we have been certainly given to understand by divers of our good subjects, that they have for many years past frequented those Coasts and Territories between the degrees of 44 and 48, and that there is no other the subjects of any Christian King or Prince by any authority from their

Sovereign Lords and Princes actually in possession of any of the said Lands or Plantations, whereby any right, claim, interest or title may, might or ought by that means secured belong or appertain unto them, or any of them." Here it will be seen the King says that the Corporators endeavoured to take actual possession of the Continent, and to his use as Sovereign Lord thereof. So that the formal conveyance in fee simple was made before the Sovereignty was acquired.

The King had been misinformed. The King of France had granted to Pierre du Gast the country between the 40th and the 46th degrees of north latitude 17 years before, and settlements had been established 15 years before this Charter was granted.

The Charters of 1609, 1611-12, and of 1620 granted the territory entirely across the Continent from the Atlantic Ocean to the South Sea. King James I. in the year 1621, as King of Scotland, granted to Sir William Alexander the province of New Scotland, which lies wholly within the grant made the previous year as King of England to James Gates, Sir George Somers and others, to be held of the Crown of England. (See Ontario Appendix, p. 75.)

It does not seem that the King's English Ministers made any objection to this grant, which would have been absolutely void if the territory so granted already belonged to the Realm of England. The King assumes that notwithstanding his grant, this part of North America is still a desert waste, and that if first occupied by the English it will belong to the grantees of the Charter of 1620, as to be held of the Crown and Realm of England, and if it is first occupied by Sir William Alexander it would attach to his Crown of Scotland.

The Charter granted to the Hudson's Bay Company excepts from their grant "the territories that are already actually possessed by or granted to any of our subjects, or possessed by the subjects of any other Christian Prince or State." What the French then were in possession of could not have been conveyed by the grant. The territories which were lying waste at the time the grant was made, and which were not within the sovereignty of either France or England, could not be so conveyed to the Hudson's Bay Company as to interfere with the freedom of the French to acquire possession by occupation and settlement.

The English Plenipotentiaries in discussing this question with the United States in 1825-26 say "that these Charters have no valid force or effect against the subjects of any other sovereign, but could only bind and restrain *vigore suo* those who were under the jurisdiction of the grantors of the Charters, and that although they might confer on the grantees an exclusive title against the subjects of the same sovereign power, they could only affect the subjects of other sovereign powers as far as the latter might be bound by the common law of nations to respect acts of discovery and occupation effected by the subjects of other Christian political communities." (British and Foreign State Papers, 1825-26.)

In the case of Connecticut and Massachusetts, although these Colonies by their Charters extended to the Pacific, they were subsequently limited by other grants to the territories of which the Corporators had reduced possession.

The territorial grant to the Hudson's Bay Company is set out in their Charter as follows: "We have given, granted, and confirmed, and for us, our heirs and successors, do give, grant, and confirm unto the said Governor and Company, and their successors, the sole trade and commerce of all these seas, bays, straits, rivers, lakes, creeks and sounds, in whatsoever latitude they shall be, that lie within the entrance of the straits commonly called Hudson's Straits, together with all the lands and territories within the countries, coasts, and confines of the seas, bays, creeks and rivers aforesaid that are not already actually possessed by or granted to any of our subjects, or possessed by the subjects of any other Christian Prince or State, with the fishing of all sorts of fish—whales, sturgeon, and all other royal fishes in the seas, bays, rivers, and inlets within the premises; and the fish therein taken, together with the royalty of the sea upon the coasts and within the limits aforesaid, and all the mines royal, as well discovered as not discovered, of gold, silver, gems, and precious stones to be found or discovered within the territories, limits, and places aforesaid, and that the said lands be henceforth reckoned and included as one of our plantations or colonies in America called Rupert's Land."

The Charter shows: (1) that it was thought that the straits extended to the South Sea; (2) the grant in fee simple was a grant within the entrance of the straits, according to the above description; and as the description shows it was for the purpose of establishing plantations and colonies where there has been non-usage, for the purpose for which the franchise has been conferred, the Charters must be held in this respect to have been abandoned.

There is a further grant in the Charters to the Company, and their successors, factors, servants and agents, for them and on their behalf, of not only the whole and entire and only trade and traffic, and the whole, entire, and only liberty and privilege of trading and trafficking to and from the territory, limits, and places aforesaid, but also the whole and entire trade and traffic to and from all bays, creeks, rivers, lakes and seas into which they shall find entrance by water or land out of the territories, places, and limits aforesaid." 10

The conduct of the Company shows that this is the franchise which they have used, and whatever establishments they had at Hudson's Bay were for the purpose of giving effect to this franchise.

The first account we have of the English sailing in the neighbourhood of Hudson's Bay were the voyages of Mr. Martin Frobisher, in the time of Queen Elizabeth, in the year 1576, 1577, and 1578.

Davis's voyages, which I refer to in the supplement to the Manitoba Appendix, were not in the vicinity of Hudson's Bay at all. Davis's voyages were on the West Coast of Greenland, in the Straits which now bear his name, and in Baffin's Bay. For an account of Davis's voyages, see Forster's "Voyages of the North," pages 298-320. 20

Hudson's first voyage in the year 1607 was not in the direction of Hudson's Straits at all. It was made in a north-easterly direction on behalf of a Company of London Merchants. Hudson, in this voyage, undertook to sail to the East Indies by passing north of Siberia. He sailed to the north of Iceland and on the east side of Greenland. In his voyage he reached the Island of Spitzbergen, and on September 15 he returned to England.

In 1608 he sought for a north-east passage between Spitzbergen and Nova Zembla. He failed to get beyond the Weygotz Straits. He returned to England on August 22. (Forster's "Voyages," pages 324-328.)

In the year 1609, Hudson sailed to the coast of America under the auspices of the Dutch East India Company, and in the following years he again engaged in the service of the London Company. While in this service he undertook the discovery of the North-West Passage. He left Blackwall on April 11, 1610. He sailed again to Hudson's Straits. He wintered there. In the following spring a number of his crew mutinied. He, his son, and a few others were put in an open boat and left in Nelson's Bay. Nothing was ever heard of him afterwards. His ship, under the charge of Robert Bylot, returned to England in 1611. 30

Hudson's voyages seemed to have no official character.

In 1612 the same London Company fitted out two ships, the "Resolution" and the "Discovery," and put them in charge of Captain Thomas Button. Button sailed into the Straits and to the mouth of the Nelson River. They wintered at Port Nelson and they returned to England in the autumn of 1613. 40

The same Society which promoted the voyage of Button, in the year 1614 sent out Captain Gibbons, but he failed to reach Hudson's Straits, was carried on the coast of Labrador by the ice, from which, when he escaped, he returned to England.

They also, in 1615, sent out the "Discovery," under the command of Bylot. He reached Hudson's Bay, and returned in the autumn to Plymouth.

The same gentlemen, Sir Thomas Smith, Sir Dudley Diggs, John Wolstenholme, Alderman Jones, and others, the patrons of these discoveries, sent out the ship "Discovery" on a fifth voyage, in the

command of Robert Bylot, in 1616, but they did not approach Hudson's Bay, but went northward into Baffin's Bay, on the west coast of Greenland.

In the same year Hawkbridge sailed into Hudson's Straits, but did not proceed further than Resolution Island.

None of these voyages were undertaken by parties with any public or official character, so far as is known. They were in search, in the interest of London merchants, of a shorter and more direct passage to the East Indies.

For an account of the foregoing voyages, see Forster's "Voyages of the North," pages 324-359.

Captain Fox undertook a voyage at the instance of the London Merchants, but Charles the First also approved of the undertaking, and placed a small vessel at his disposal. This voyage also was undertaken with a view of discovering a North-West Passage. He received from the King instructions, and a letter to the Emperor of Japan, in case he should get into the South Sea and reach Japan by that passage. He sailed from Deptford on the 5th May, 1631. On the 20th of June he reached Lunley's Inlet. He sailed over the northern part of the Bay, visited various islands and points on the coast to which he gave names, and at the beginning of October he started on his return voyage, and on the 31st he reached England. (See Forster's "Voyages," pages 359 to 367.)

Captain James sailed about the same time from Bristol. He entered Hudson's Bay and sailed to the southern end, for the purpose of seeing whether there was any river or strait which led into the river of Canada. He reached the southern part of the bay which now bears his name. He ran the ship aground on Charlton Island, in James' Bay. He wintered there and returned to England the next season. (See Forster's "Voyages of the North," pages 367-376.)

No attempt was made to colonise or to trade at the Bay in consequence of these discoveries, nor does it seem that the English Government laid any claim to Hudson's Bay on this account. A large portion of North America was still uninhabited. Settlements were only beginning to be established on the Atlantic Coast, in New England and Virginia; and the Government took no interest in the inhospitable regions to the North.

FRENCH OCCUPATION.

The relative locations of the Saguenay and Rupert Rivers on Champaign's map shows that the country had been explored by the French fur traders from the St. Lawrence River to Hudson's Bay, about the time of the voyages of James and Fox, or very soon after.

By an entry in the Ancient Register of the Sovereign Council of New France, it would appear that the Attorney-General, Jean Bourdon, was authorised to enter and take possession of Hudson's Bay, which it would seem he did. ("Chardenoix," vol. iii., pages 230-231. M. Calliers to M. de Seignelay, "New York Historical Collection," vol. ix. page 268. See also Joint Appendix, page 466.)

A failure to reach the Bay in 1657 does not prove that it was not reached in the voyage of 1656.

In the year 1661 the Company of Canada built a fort upon the River Nemiskaw, called by the English the Frenchman's River, which empties itself into the lower part of Hudson's Bay. ("Joint Appendix," page 477.) In the same year the savages of the Bay came to Quebec to ratify the resolution they had taken to live under the dominion of the French. *Ibid.* 477.

In the year 1663 the savages returned to Quebec and asked for persons to assist in their affairs. M. Canture, a missionary, was sent with five men, and he erected a new establishment upon the lands at the foot of the Bay, and took formal possession in the King's name. *Ibid.* 477.

These statements by the French are confirmed by the account given by Oldmixon. Oldmixon says that Mr. Thomas Gorst, the Secretary to Charles Baily, the first Governor that the Hudson's Bay Company had sent into the Bay in the year 1670, kept a journal of their proceedings there, which is now, at the time he wrote, in his custody.

Oldmixon says that they erected huts covered with moose skins upon the banks of Rupert's River. He relates nothing of what transpired until 1673. He says Captain Grosselliers searched the river for Indians, but met with none. Saw several wigwams where they had lately been. On October 23rd several came to trade at the Fort, amongst them one from Quebec. In the March following, some Indians built their wigwams at the East end of the Fort, intending to stay there all the winter, that they might be ready for trade in the Spring. About the 20th of March it began to thaw. The Nodwaye Indians threatened the English with war; a chief with six men came, but he brought little beavers, the Indians having sent their best to Canada. He says the reason why the Indians who came stayed near the Fort was, they were apprehensive of being attacked by some Indians whom the French Jesuits had animated against the English and all who dealt with them. The French used many artifices to hinder the natives trading with the English. They gave them great rates for their goods, and obliged Mr. Baily to lower the prices of his to oblige the Indians who dwell on the Moose River, with whom the French drove the greatest trade. The French, to ruin their commerce with the natives, came and made a settlement not above eight days' journey up that river.

It will be seen from Oldmixon's account that at this time the English had no fort on the Moose River, but they proposed to build one there to prevent their traffic being intercepted by the French.

In May a considerable number of Indians went down to the bottom of the Bay, along with the Governor and some English, to seek for the Nodwayes, but met with none. The Indians who came were a poor, beggarly people, "by which," says Oldmixon, "we may perceive the French ran away with the best of the trade." The English were frequently alarmed by reports of incursions from the Nodwaye and Moose River Indians, who quarrelled with them for their selling to them.

These observations of Oldmixon tend to confirm the claims of the French of their being already in possession of the country around the Southern shore of the Bay. (Joint Appendix, page 565.)

It would also appear from Oldmixon, as well as from the account given by French writers, that Radisson and Grosselliers were, in the year 1666, in the country of the Assiniboines, on the shore of Lake Winnepeg, and that they accompanied those Indians to the shore of Hudson's Bay; that they returned again by way of the Great Lakes to Quebec; that they endeavoured to enlist the merchants of Quebec in their proposal to open up a trade by sea with Hudson's Bay. (Oldmixon, page 565.)

At this time there were rival fur traders at Quebec, some engaged in trading at the Lakes, others in the vicinity of Hudson's Bay. Into these rival Companies the Government officials were drawn, and they sought to cripple the enterprise of each other. (See Parkman's "Life of Frontenac," and the documents there quoted.)

The Hudson's Bay Company had its origin in the representations and efforts of these two Frenchmen, who had been trading on the upper waters of the Nelson River, and whose visit to Hudson's Bay shows the extent of country over which the French were carrying on their trade before the Hudson's Bay Company was organised. From the statements contained in the documents it would appear that Fort Nemiseaw, on the Frenchman's River, was founded by the French in 1661, and a Fort some distance up the Moose River in the year 1673. That Fort Albany was built by the Hudson's Bay Company in 1684, and that Fort La Mame, near the junction of the La Mame and Albany Rivers, by DuRoi the same year, that Fort Bourbon was established by the French before it was established by the English; that in fact the French had possession of the interior country before the Hudson's Bay Company was incorporated, and that they continued in advance of them in the country around Hudson's Bay, the English building their forts upon the coast, and the French theirs some little distance in the interior. (See Oldmixon, Joint Appendix, 565. French Documents Joint Appendix, 461-468; also pages 619-626.)

It would also appear from Oldmixon's account that the French were at the Nelson River before the Hudson's Bay Company. Oldmixon says that in the year 1682 Mr. Bridger embarked for Fort Nelson, where the factory was to be established and a fort built, but before he arrived Captain Benjamin Gillam, captain of a New English ship, and son of Captain Gillam of the "Prince Rupert" ship, then in the

Company's service, settled at that factory, but had not been there above fourteen days before Radisson and Grosselliers, who deserted the English service, arrived from Canada. The Company having dismissed them their service, these two Frenchmen in revenge procured some merchants from Canada to undertake a settlement there. Benjamin Gillam was not in the Company's service, and the French declared in their account that they were establishing a fort before any of those parties arrived, and according to the statement of Oldmixon, Biggar did not arrive until ten days after Radisson and Grosselliers had begun building their establishment in the interest of the Canada Company. But it must be observed that Radisson and Grosselliers built a trading establishment here immediately after they were dismissed from the Hudson Bay Company's service in 1676. (N. Y. Hist. Doc. vol. 9, p. 268.)

- 10 The French, under the command of De Troyes, who was sent thither by the Government of Canada in 1686, took possession of the forts which the English had established at the bottom of the Bay—that is of Fort Rupert, Moose Fort and Albany Fort. Three years later the war was declared between England and France, which was concluded by the treaty of Ryswick, 1697. By this treaty the posts which the French had taken during the peace, which included the three posts mentioned, were to remain to France, and the French continued to hold possession of them until they were restored to the English by the treaty of Utrecht in 1714. By the rules of International Law the restoration of the country after it had been once recognised as the possession of another State would not carry with it the right of postal liminium. Halleck says in his work on International Law, where a territory has been acquired by conquest and confirmed to the conqueror by a treaty of peace, the right or title of the new sovereign is not that of the original possessor, and therefore is not subject to the same limitations or restrictions. It originates in force and dates back to the Conquest. A subsequent restoration of such territory to its former sovereign is regarded in law as a retrocession, and carries with it no right of post liminy. When the inhabitants of such conquered territory become a part of a new sovereign, they must bear the consequences of the transfer of their allegiance to a new sovereign. He is in turn to be regarded as a conqueror, and they cannot claim, as against him, any rights of post liminy. The correctness of this principle of International Law is never disputed.—Halleck's "International Law," Chapter 35, Section 9.

- 20 After the Duke of York obtained his first patent for the province of New York, the Dutch regained possession, and re-established a civil Government. It was restored to the English by the Treaty of Westminster, and although it had not been ceded to the Dutch, but was restored to the English, still, the Dutch having not only conquered the country, but established a civil government, the Law Officers of the Crown advised that the title of the Duke of York was forfeited, and that the *jus post liminia* did not obtain, and they advised the issue of a new patent.—Broadhead's "History of New York," vol. ii. page 260.

POSSESSION OF THE SEA COAST.

- It has sometimes been stated that the possession of the coast of Hudson's Bay, and the few establishments which the French made upon the coast, are sufficient to entitle them to claim the whole of the interior country. This rule does not obtain in international usage. Bluntschli says: "If possession is taken from the sea coast, it is conceived that the interior land which lies inland from the coast is occupied along with it, in so far as such interior land is in its nature bound up with the other in a natural whole, especially through the rivers which empty themselves through it into the sea. This principle has no absolute but only a relative validity. Where great rivers like the Mississippi flow through an entire continent, the control of the whole naturally cannot be inferred from the possession of the mouth."—(Page 282.)

40 Sir Travers Twiss, in his work on the Oregon question, observes in reference to this same matter: "The same principle is sanctioned in the grant to Pennsylvania and Carolina, and it is perfectly reasonable, for, as the discovery has taken place from the sea, the approach to the territory is presumed to be from the sea, so that the occupant of the sea coast will necessarily bar the way to any second comer, and as he is supposed in all these grants to have settled in vacant territory, he will naturally be entitled to extend his settlement over the vacant district, as there will be no other civilised power in his way."—(Pages 282 and 283.)

Phillimore says, in reference to the extent of territory which may be claimed on account of the occupation of the sea coast: "In truth it is impossible to do more than lay down a broad general rule, aided in some degree by the practice of nations, to be applied to each case as it may arise, and modified in some degree by any particular circumstance which may belong to it. Some natural circumstances, however, seem to distinguish the rule in its application to a continent or an island. With respect to a continent, the occupation of a portion of the sea coast gives a right to the usual protecting limits at sea, which is holden to exist in all old countries. The right of dominion would extend from the portion of the coast actually and duly occupied inland, so far as the country was uninhabited, and so far as it might fairly be considered to have the occupied sea-board for its natural outlet to other nations." (Phillimore, Vol. I., Sections 234 & 235.)

It would seem that a reasonable extent of territory may be claimed in connection with a settlement upon the occupation of the sea coast. In the case of *Johnson v. McIntosh*, Chief Justice Marshall observes, in reference to the extent of territory embraced in the charters granted by the English Government, that "though the right of England to a reasonable extent of country in virtue of her discovery of the sea coast, and of the settlement she made on it, was not to be questioned, her claim to all the lands to the Pacific Ocean because she had discovered the country washed by the Atlantic, might, without derogating from the principle recognised by all, be deemed extravagant." (*8th Wheaton's Supreme Court Reports*, page 599.)

Where the access to the interior is only from the sea, the nation in the possession of the sea-coast would be entitled to the possession of the interior only to the height of land; but where the possession of the sea-coast does not bar the access to the interior, then the height of land is not necessarily the boundary to the settlement upon the coast.

The United States Government in their discussions with the Government of Spain in reference to the country that lay between Louisiana and Mexico, contended that the possession of any extent of sea-coast is understood as extending into the interior country to the sources of the rivers emptying within that coast, and to all their branches. In that case the rule was not an unreasonable one, because both the settlements of the United States and Spain, at some distance from the unsettled country that lay between them, extended much further north than the source of any river that might become the boundary, so that the prior possessions of the two countries made it impossible that the interior country could become the possession of any other State once the entire coast came under their jurisdictions, because the coast, the only remaining means of access to the country, was then occupied.

France did not claim the right to possess the whole valley of the Mississippi, because of the possession that was taken by La Salle of the mouth of the river, and the coast of the Gulf of Mexico adjoining. On the contrary, the French based their claim on the exploration of the country throughout the entire length of the river, and the exploration of its tributaries, and the settlements which had been made, and the posts which had been established. When a dispute arose between the French and English Governments with reference to the possession of the valley of the Ohio, the French did not claim the valley in consequence of any formal possession of the mouth of the Mississippi, or of the shore of the Gulf of Mexico in its neighbourhood, but because of La Salle's discovery of the Ohio, the explorations of the country through which it flowed, the establishment of trading posts and of military posts in the country, it is actual and effective occupation by the French, and on the ground of its being necessary to the preservation of their Colony in Illinois, and on the lower Mississippi. (See Correspondence between the Governments of England and France upon this subject, contained in Craig's "Olden Time," volume 2, pages 251 to 275.)

The United States Commissioners in their discussions with Spain say: "It is evident that by the discovery and possession of the river Mississippi in its whole length and the coast adjoining it, the United States are entitled to the whole country dependent on that river, the waters which empty into it, and their several branches within the limits on that coast." (*British and Foreign State Papers*, 1817 and 1818, page 327.)

The case here referred to is one in which a dispute arose between the United States and Spain as to whether the United States were entitled to extend the boundaries of Louisiana westward to the Rocky Mountains. They were not claiming the entire valley of the Mississippi because of the possession of the coast of the Gulf of Mexico adjoining its mouth. They say that coast is in their possession. They say the river throughout its entire length is in their possession. As a matter of fact the whole eastern side of the valley was fairly well settled. There were extensive colonies west of the Mississippi, and the question was whether the United States could fairly claim the remaining portion of the valley, that which lay in the upper portions of the western tributaries of the Mississippi.

Now this claim had nothing whatever to do with the possession of the coast. It was a claim based upon the principle of contiguity, so that this affords no authority for the contention that the possession of the coast entitles the possessor to the entire country to the sources of the rivers falling into the sea along the coast so possessed.

The English Government, it will be seen from the correspondence alluded to in Craig's "Olden Time," maintained not only the right to the height of land from the sea coast, but they insisted upon the sovereignty of the valley of the Ohio on principle of contiguity, and as a means for affording necessary security to their colonies. They also claimed the possession of the country from the sea coast across the height of land to the shores of the St. Lawrence and Lake Ontario. They were making this claim at the time the Hudson's Bay Company's possessions were in dispute, and they were not likely to put forward on behalf of the Hudson's Bay Company a claim totally at variance with the pretensions which they were making on behalf of their more important colonies to the south of Canada.

Before 1825 the north west coast of North America was in dispute between Russia and England. Russia claimed the sovereignty of the country because of prior discoveries along the coast, and of prior settlements. Several Russian settlements had been established, and when the Treaty of St. Petersburg was negotiated, it provided that the coast, which had been surveyed and occupied by the Russians, should belong to them, but that the interior country, which had been explored by the North West Trading Company of Canada, should remain to the English. If the Russians had been entitled to the land's height in consequence of their settlements upon the coast, they would have claimed the country far into the interior, as the Stikine river and the Yukon river rise far in the interior beyond the limits of the possessions allowed to Russia. By the Treaty, Russia is entitled to the country to the summit of the coast range, where that coast range does not lie at a greater distance than 10 leagues from the coast; but in no case are the Russian possessions to extend to a greater distance than 10 leagues. (*See the Treaty of St. Petersburg, Articles 3 and 4.*)

By Article 10 of the Treaty of Utrecht, it is provided: "The said most Christian King shall restore to the kingdom and Queen of Great Britain, to be possessed in full right for ever, the bay and straits of Hudson, together with all lands, seas, sea coasts, rivers and places, situate in the said bay and straits, and which belong thereunto, no tract of land or of sea being excepted which are at present possessed by the subjects of France."

During the period that the treaty was being negotiated the French seemed to fear that the English might claim under this a larger extent of territory than it was the intention of France to concede; and so the French Prime Minister, the Marquis De Torey, wrote as follows to Mr. Prior, then the English representative at the French Court: "The plenipotentiaries of Great Britain insist that it shall be expressed that France shall restore not only what has been taken from the English, but also all that England has ever possessed in that quarter. This new clause differs from the plan, and would be a source of perpetual difficulties, but to avoid them the King has sent to his plenipotentiaries the same map of North America as had been furnished by the plenipotentiaries of Great Britain. His Majesty has caused to be drawn upon this map a line which describes the boundaries in such a manner as he has reason to think they easily may agree on this point on both sides."

Mr. Prior wrote to Lord Bolingbroke the following day: "As to the limits of Hudson's Bay and what the Ministry here seem to apprehend, at least in virtue of the general expression *tout ce que*

l'Angleterre a jamais possédé de ce côté là, which they assert to be wholly new, and which I think is really so since our plenipotentiaries make no mention of it, may give us occasion to encroach at any time upon their dominions in Canada. I have answered that since, according to the carte which came from our plenipotentiaries marked with the extent of what was thought our dominions, and returned by the French with what they judged to be the extent of theirs, there was no very great difference, and that the parties who determined that difference must be guided by the same carte. I thought the article would admit no dispute."

From this it will be seen that the French feared the English might claim all that they had ever possessed of the coast of Hudson's Bay, and that lines were marked upon a map which were to serve to interpret the Treaty, and which show that there was less restored to the English than they had at one time possessed of the coast there. The French gave up the posts upon the shore of the Bay: they surrendered no post in the interior of the Hudson's Bay Company, afterwards admitted that they "had obtained a surrender of the Straits and Bay aforesaid, according to the tenour of the Treaty, at least in such manner that the Company acquiesced therein, and have nothing to object or desire further on that head." The Company at that time did not claim from the French the surrender of the posts in the interior, and it is clear both from the letters of Count de Torey, and of Mr. Prior, that they were not to do so.

The Hudson's Bay Company in their memorial of 1711, in answer to the Lords of Trade that they should state the limits of their possessions, "propose that their limits should begin from the island called Grinnington's Island, or Cape Perdrix, in the latitude of 58½ North, which they desire may be the boundary between the English and French, on the said Labrador, towards Rupert's Land on the east main, and Nova Britannia on the French side, and that no French ship, barque, boat, or vessel whatsoever shall pass to the Northward at Cape Perdrix, or Grinnington's Island, towards or into the Straits or Bay of Hudson, on any pretence whatever: that a line be supposed to pass to the south-westward of the said Island of Grinnington, or Cape Perdrix, to the great lake Miskosinke, alias Mistoseny, dividing the same into two parts, as in the map now delivered; and that the French, nor any other employed by them, shall come to the north or north-westward of the said lake, or supposed line, by land or water, on or through any rivers, lakes, or countries, to trade or to erect any forts or settlements whatsoever, and the English, on the contrary, not to pass the said supposed line either to the southward or eastward."

No boundary upon the south was proposed by the Company, and no proposition was made to carry the separating line further south than the southern shore of Lake Mistoseny.

During the enquiry that was made before a Committee of the House of Commons in 1749, John Robson says he thinks "the beavers which are brought down to the Company" (that is at their factories) "or trading posts on Hudson's Bay, are refused by the French from their being a heavy commodity; for the natives who come to trade with the Company dispose of their small valuable furs to the French, and bring down their heavy goods to the Company in summer when the rivers are open, which they sell, and supply the French with European goods purchased from the Company."

Richard White says: "The French intercept the Indians coming down with their trade, as the witness believes, he having seen them with guns and cloth of French manufacture, and that an Indian told him there was a French settlement up Moose River, something to the southward of the west, at the distance, as the witness apprehends, of about 50 miles. The French deal in light furs, and take all of that sort they can get, and the Indians bring the heavy to us."

Robert Griffin, another witness, said: "The French intercept the trade, to prevent which the Company some time ago built Henley House, which did in some measure answer the purpose; but if they would build further in the country, it would have a better effect. The French went there first, and are better beloved; but that if we would go up into the country, the French Indians would trade with us."

Alexander Brown says: "The French intercept the Southern Indians, and by that means obtain the valuable furs. The French Indians come to Albany to trade for their heavy goods. I had heard Mr

Norton, the Governor, say that the French ran away with our trade. If the trade was opened, the French would not intercept the Indians, since, in that case, the separate traders must have out-factories in the same manner as the French have, and which the Company have not." When Mr. Brown was asked if the same trade could be carried on at the present settlements in that case, he said: "That was impossible, but the trade would be extended, and by that means they would take it from the French; that if these settlements were near the French, they must have garrisons to secure them against the French and the Indians, who trade with and are in friendship with them." * * * * *

"He heard the Indians tell Governor Norton, in the year 1739, that the French had a settlement about the distance of one hundred or six score miles from Churchill, which had then been built about a year, and contained sixty men with small rooms." * * * * * "That the witness was informed by an Indian and his whole family that this settlement was upon Seel River, which was navigable up to it for canoes."

When the French Government learnt of the proposal to open the trade of Hudson's Bay with a view of encroaching upon their establishments in the interior, they addressed a memorandum to the English Government upon the subject, and they were informed by the English Minister that it would be very easy to give the Court of France an entire satisfaction on that article, assuring them that this plan, which was debated in Parliament, had no other intention than to open an exclusive commerce to the whole nation, which had been practised a long time by a privileged Company under a private patent, and that only with an intent to extend a general trade in these parts, and not to enlarge the possessions of the nation at the expense of any other. (Craig's "Olden Time," vol. ii., page 167.)

These extracts show that the trade of the interior was continued after the restoration by the Treaty of Utrecht, in the possession of France as before, and so continued down until Canada was surrendered by the Treaty of Paris in 1763.

The French Government in Canada, at the expense and with the authority of the King, undertook the regular extension of the boundaries of Canada westward to the Rocky Mountains. The height of land between the great lakes and the Upper Mississippi and its tributaries was never a boundary between Canada and Louisiana. The province of Louisiana was bounded on the north by the Ohio river and the Missouri. (See Crozat's Charter.) Sometimes what is called the Illinois country was included in Louisiana, sometimes it was included in Canada, but all the country north of the Ohio and the Missouri, except the Illinois country, was included in Canada. The trading post and settlements at Prairie Duchien, and at other points still further up the Mississippi, and upon the St. Peter's River, were included in Canada. In 1717, Lieutenant Lanoie established a trading post, by order of the King, at Rainy Lake. From 1731 until 1749 Varrennes de Verrendrye and his sons, with others under him, were engaged in the exploration of the country between Rainy Lake and the Rocky Mountains. The account of his explorations will be found in the papers of M. Margry, which are published in the Appendix, page . Verrendrye and his sons established a post upon Rainy Lake; they established Fort St. Charles upon the Lake of the Woods; they established Fort Maurepas upon Winnipeg River; they established Fort Verrendrye upon the Red River; they established Fort La Reine upon the Assiniboine; they established Fort Dauphin upon the Dauphin River, near Lake Manitoba; and they established Fort Bourbon upon Cedar Lake. After the death of Verrendrye, Captain St. Pierre, Lieutenant Neiverville, and Luke Lacorne established Fort Peseoyac, Fort Lacorne, Fort Desprairies, and Fort Jonquiere.

According to the memoirs of De Bougainville (which will be found in the joint appendix at page 644), there were nearly 1,000 Frenchmen at these various trading posts which had been farmed out by the Government of Canada, and were under their control. The country from the Yellow Stone River to the North Saskatchewan, westward to the Rocky Mountains, was under the dominion of the Governor of Canada, and was surrendered as a part of Canada to the Government of Great Britain.

By the Treaty of Paris, the King of France surrendered all Canada and its dependencies, except that portion of them lying westward of the Mississippi, between its source to the river Iberville, and

from thence by a line drawn along the middle of this river and the Lakes Maurepas and Port Chartrain to the sea.

After this territory was acquired, the King, by letters patent, organised a small province, denominated "Quebec," which will be found described in the joint appendix at page 351.

In 1774 a measure was introduced into Parliament, declaring "That during the King's pleasure the province of Quebec embraced all the countries, territories, and islands belonging to the Crown of Great Britain in North America, bounded on the south by a line which is described as extending from the bay of Chaleurs to the banks of the Mississippi, northward to the Hudson's Bay Company's possessions."

In 1791 the King informed Parliament that it was his intention "to divide the province of Quebec 10 into two provinces by a separate line extending, as described in a paper laid before Parliament, along the Ottawa river northward to Lake Tamiscaming, and thence due north to the boundary line of Hudson's Bay, and that all the countries, territories, and islands to the southward and westward of this separating line to the utmost extent of what is commonly called or known as Canada shall be embraced in the province of Upper Canada."

This description of the boundaries of Upper Canada, embraces the country northward to the Saskatchewan and westwards to the Rocky Mountains, for all the territory within these limits was commonly called or known as Canada.

ADDITIONS AND CORRECTIONS.

- Page 3, line 2, after Louis, insert a comma.
 " 20, read In the year 1584, in the reign of Edward VI., an Act was passed.
- 4, " 17, after venit), insert quotation mark.
 " 24, read Burlamaqui.
- 5, lines 26 and 38, read Humphroy.
- 6, " 2-3, read so forth. (See Joint Appendix of Documents, p. 694.)
 " 35, read p. 21.
 " 38, for Mr. James, read Sir Thomas.
- 7, " 12, for James, read Sir Thomas.
 " 13, for 75, read 79.
- 8, " 7, before the whole, insert quotation marks.
 " 15, for Mr., read Sir.
 " 36, after have, insert had.
- 9, " 28, read Champlain's map.
 " 33, read Charlevoix; read Callières.
 " 36, read Nemiskau.
 " 41, read Couture.
- lines 41-2, read erected anew, upon the lands at the foot of the Bay, a cross and the arms of France, and took formal.
 " 45-6, for is now, read was.
- 10, line 2, before searché, insert quotation mark.
 " 3, for saw, read He saw; after been, insert quotation mark.
 " 5, before built, insert quotation mark.
 " 6, after thaw, insert quotation mark.
 " 7, before little, insert quotation mark; for beavers, read beaver.
- 10, " 8, after Canada, insert quotation mark.
 " 9, before they, the like.
 " 12-13, read whom [the French] drove.
 " 14, after river, insert quotation mark.
 " 16, before to prevent, the like; after French, the like.
 " 26, for those, read some.
 " 28, before page, insert Joint App.
 " 37, read Nemiscou.
 " 38, read year 1673; that Fort.
 " 39, omit that; read La Maune; read Du l'Hut; after year, insert semicolon.
 " 44, after 463, insert 475-9; after 626, insert 629-30.
- 11, " 6, for Biggar, read Bridg r.
 " 23, for sovereign, read sovereignty.
 " 31, read liminii.
 " 36, for French, read English.
- 14, " 1, read côté.
 " 3, read carte.
 " 6, read carte.
 " 6, for period, substitute comma.
 " 12, read in the interior. And the Hudson's Bay Company afterwards.
 " 20, read Gimmingt n's.
 " 21, for said, read east of.
 " 23, read Grimuington's.
 " 25, the like.
- 15, " 10, for rooms, read arms.
 " 30, read posts.
 " 32, read La Noüe.
 " 33, read Varenne.

- Page 15, line 36, before Appendix, insert On'ario ; after page, insert 11.
" 41, read Niverville ; read Luc ; read Des Prairies.
" 42, read Jonquièro.
" 43, for jo nt read Ontario.
" 44, for 644, read 25.
" 49, for between, read from.
16, " 5, read declaring that.
" 9, omit quotation mark.
" 10, omit quotation mark ; read divide.
" 11, read into two separate Provinces by a line.
" 12, read Temiscaming.
" 14, for is, read was ; for shall, read should.
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MEMORIAL OF THE HUDSON'S BAY COMPANY TO
THE LORDS OF TRADE AND PLANTATIONS,

3RD OCTOBER, 1750.

TO THE RIGHT HONORABLE THE LORDS COMMISSIONERS
OF TRADE AND PLANTATIONS.

The humble Memorial of the GOVERNOR and
COMPANY of ADVENTURERS of ENGLAND
trading into Hudson's Bay.

May it please your Lordships—

The said Governor and Company, in obedience to your Lordships' orders of the 25th July last, requiring them to lay before your Lordships an account of the limits and boundaries of the territory granted to them, represent to your Lordships :

That His late Majesty King Charles the 2nd, by Letters Patent under the Great Seal bearing date the 2nd day of May, in the 22nd year of his reign, reciting that Prince Rupert and several others had undertaken an expedition for Hudson's Bay, for the discovery of a new passage into the South Sea, and for finding some trade of furs and other commodities. For the encouragement of the design, was graciously pleased to incorporate them, and grant unto them the sole trade and commerce of all those seas, streights, bays, rivers, lakes, creeks and sounds in whatsoever latitude they should be that lye within the entrance of Hudson's Streights, together with all the lands and territorys upon the countries, coasts, and confines thereof which were not then actually possessed by or granted to any of His Majesty's subjects, or possessed by the subjects of any other Christian Prince.

The description in the said Letters Patent of the Territorys thereby granted being in so general terms is apprehended to have been owing to those parts being but little known, and to have further proceeded from the Crown of England having in view (amongst other things) by means of the said Grant to lay a foundation for this Nation's claim and right to the said Bay and whatever Territorys might lye round the same, and to prevent the French gaining any right therein.

The said Streights and Bay, commonly called Hudson's Streights and Bay, are now so well known that it is apprehended they stand in no need of any particular description further than by the chart or mapp herewith delivered to your Lordships; and the limits or boundaries of the lands and countries lying round the same, comprized as your memorialists conceive in the said grant, are as follows, that is to say: All the lands lying on the east side or coast of the said bay, and extending from the bay eastward to the Atlantick Ocean and Davis's Streights, and the line hereinafter mentioned as the east and south-eastward boundaries of the said Company's territories; and towards the north all the lands that lye at the north end, or on the north side or coast of the said bay, and extending from the bay northward to the utmost limits of the land there towards the north pole, but where or how those lands terminate is hitherto unknown; and towards the west, all the lands that lye on the west side or coast of the said bay, and extending from the bay westward to the utmost limits of those lands, but where or how those lands terminate to the westward is also unknown, though, probably, it will be found they terminate on the great South Sea; and towards the south, all the lands that lye at the south end or south side or coast of the said bay, the extent of which lands towards the south to be limited and divided from the places appertaining to the French in those parts, by a line to be drawn for that purpose, to begin from the Atlantick Ocean on the east side at an island called Grimington's Island, otherwise Cape Perdrix, in the latitude of $59\frac{1}{2}^{\circ}$ on the Laboradore coast, and to be drawn from thence south-westward to the great lake Miscosinke otherwise called Mistoseny, and through the same, dividing that lake into two parts, down to the 49th degree of north latitude, as described in the said map or plan delivered herewith, and from thence to be continued by a meridian line of the said latitude of 49° westwards.

The French before the Treaty of Utretch, in the time of peace, under some pretended claim of right, disturbed the said Hudson's Bay Company in the quiet possession of the Bay and territorys aforesaid, and in a hostile manner, with ships of warr and an armed land force attacked and took several of the Hudson's Bay Company's ships in harbour in the Bay, and also took, plundered and dispossessed them of several factorys and settlements on the coast thereof, but those matters having been under consideration at the Treaty of Utretch, were in some measure settled by the following Articles thereof:—

By the 10th Article of the Treaty of Utretch it was stipulated that the French King should restore to the Kingdom and Queen of Great Britain to be possessed in full right for ever the Bay and streights of Hudson, together with all lands, seas, sea coasts, rivers and places situate in the said bay and streights, and which belong

Hudson's Straights
 extended they stand in
 by the chart or map
 limits or boundaries of
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 follows, that is to say :
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 the east and south-
 territories; and towards
 the north side
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 north pole, but where or
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 and an armed land force
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 and dispossessed them of
 thereof, but those matters
 of Utrecht, were in
 hereof :—

Utrecht it was stipulated
 Kingdom and Queen of
 for ever the Bay and
 seas, sea coasts, rivers
 rights, and which belong

thereunto no tracts of land or sea being excepted which were then
 possessed by the subjects of France. And it was further agreed to
 determine by Commissarys the limits which were to be fixed between
 the said Bay of Hudson and the places appertaining to the French,
 which both subjects should be wholly forbid to pass over. And by the
 11th Article of the said Treaty it was further stipulated that his most
 Christian Majesty should take care that satisfaction should be given
 according to justice and equity to the said Hudson's Bay Company for
 all damages and spoil done to their colonies, ships, persons and goods
 by the hostile incursions and depredations of the French in time of
 peace, an estimate being to be made thereof by Commissarys to be
 named at the requisition of each party.

That in pursuance of the said Treaty and the especial Commission
 of Her said late Majesty Queen Anne, dated 20th day of July, 1713, the
 said bay and lands then in possession of the French were delivered up
 to Governor Knight and Kelsey, who took possession thereof for the
 English Hudson's Bay Company, and Commissarys were appointed to
 settle the said limits, and adjust the damages the Company had sustained,
 which damages, as appears by an account delivered to the then Lords
 Commissioners of Trade, amounted to upwards of £100,000, and pro-
 ceedings were had by the said Commissarys towards settling the same,
 but they were never able to bring the settlement of the said limits to a
 final conclusion, nor did the said Hudson's Bay Company ever receive
 any satisfaction for their said damages.

The boundary line then proposed by the Hudson's Bay Company, to
 be settled on the limits on the continent between them and the places
 belonging to the French at the south end of the said bay, as appears
 from several memorials and a map or plan then presented by the said
 Hudson's Bay Company to the then Lords Commissioners of Trade, and
 still remaining in your Lordships' office, was the same as the line now
 proposed by your memorialists for the south-east and southern
 boundaries; and to avoid as much as possible any just grounds for
 differing with the French in agreeing on those boundaries which lye
 nearest their settlements, it is laid down so as to leave the French in
 possession of as much or more land than they can make any just
 pretension to, and at the same time leaves your memorialists but a very
 small tract of land from the south end of the said bay, necessary for a
 frontier.

The national claims of both the French and English with respect
 to Hudson's Bay and the territories round the same having been
 formerly discussed in a very particular manner by Commissarys
 appointed to settle the same, and the papers relating to those transac-
 tions being now remaining in your Lordship's office, it is conceived that

therein will appear the best state of the rights of both crowns that can be laid before your Lordships.

Since the Treaty of Utrecht, the French and all other nations have been effectually kept out of Hudson's Bay and Straights, and have never offered to come into or navigate on the same with any ship, vessel, or boat, nor have they had or made any settlement on the coast of the said bay, or carryed on any trade there; but the French, since the said treaty, as has been reported to your memorialists from their factorys in the bay, have at different times made some settlements in different parts inland, to the west of the said bay, within the aforesaid limits, by means of wood runners, in an interloping way, both which are conceived and humbly represented to your Lordships as incroachments on the British territorys and trade.

That your memorialists have used the best endeavours in their power to prevent the French making any incroachments on the British territorys in those parts, and particularly at the south end of the said bay, where by the neighbourhood of the French there is most to be apprehended; your memorialists have made a settlement many years since upon the principal river there, called Moose River, which runs from a great distance south into the bay, and have also erected a fort mounted with cannon for the defence of that settlement and preventing the French entering the bay by any navigation down that river, and your memorialists on another principal river called Albany River, that likewise falls into the bay towards the south end thereof, and comes a great way from the west, erected another fort called Henley, at the distance of 120 miles up that river, your memorialists thereby endeavouring to guard their territorys both to the south and west against the French frontier, and which forts and settlements of your memorialists are maintained and supported by them at considerable expense, and your memorialists have in like manner for their further defence towards the west erected a fort at Flamborough Head, on Port Nelson River, and have also several other settlements and forts at the entrance of the principal rivers that come into the bay from the westward, particularly on Churchill River, Hays's River, and the said Albany River, and also on the east side of the bay at Slude River and Artiwinipeck Bay, and have also several ships and vessels navigating the streights and bay at proper seasons, some of which remain there the whole year, and the natives all round the bay, by means of the rivers that fall into the same, on breaking up of the ice come down in canoes from the country several hundred miles inland to trade with the Company, bringing with them large quantities of beaver and other furs, the produce of that cold climate, and taking in exchange the British manufactures which the Company have allways ready to supply them with, and which the Indians carry back with them for their own consumption and use and to dispose of amongst the other natives there;

and which it is apprehended is better performed by them than could be done by Europeans, as the rivers that run into the Bay admit of no navigation for ships or other vessels of burthen at any considerable distance up the same, and the climate round the bay is so extremely cold as to admit of no agriculture, the Indians in those parts being altogether a wandering people, wholly subsisting themselves by hunting, living on the wild beasts they kill and bartering their furs.

That your memorialists apprehend it will be for the benefit of this kingdom that the limits of the territories granted to your memorialists, and the places appertaining to the French should be settled upon the footing hereinbefore mentioned, and that the French should be obliged to remove all encroachments they have made within the said limits, by breaking up their settlements, and restraining their wood-runners from entering the same; and that no ship or vessel should be suffered to pass to the north-westward of the said Grimington's Island or Cape Perdrix, or into the Bay or Streights of Hudson on any pretence whatsoever; and that the French or any employed by them should not come to the north or north-westward of the aforesaid line to be drawn from Grimington's Island as the south-east and southern boundaries of the British Factories, either by land or water, or through any rivers, lakes or countries, to trade or erect any forts or settlements whatsoever; and that your memorialists, on the other hand, should not pass that line either to the south or south-eastward.

All which is most humbly submitted to your Lordships.

 Com. Seal.

HUDSON'S BAY HOUSE,
3rd October, 1750,

By order of the Gov. and Committee,

CHAS. HAY,
Secretary.

Memorial

OF THE

HUDSON'S BAY COMPANY

TO THE

LORDS OF TRADE AND
PLANTATIONS,

Dated 3rd October, 1750.

FRESHFIELDS & WILLIAMS.

In the Privy Council.

IN THE MATTER OF THE BOUNDARY BETWEEN THE PROVINCES OF ONTARIO AND
MANITOBA IN THE DOMINION OF CANADA.

BETWEEN THE PROVINCE OF ONTARIO, OF THE ONE PART,

AND

THE PROVINCE OF MANITOBA, OF THE OTHER PART.

APPENDIX OF THE PROVINCE OF MANITOBA.

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In the Privy Council.

IN THE MATTER OF THE BOUNDARY BETWEEN THE PROVINCES OF ONTARIO
AND MANITOBA, IN THE DOMINION OF CANADA.

BETWEEN THE PROVINCE OF ONTARIO, OF THE ONE PART,

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THE PROVINCE OF MANITOBA, OF THE OTHER PART.

APPENDIX OF THE PROVINCE OF MANITOBA.

The claim of the Province of Ontario to extend the western limit of the Province, rests, it is assumed, on the supposed title of France as having been the first discoverers thereof. This will doubtless be urged and the following asserted, viz. :—

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That L'Escarbot, in 1617, stated that New France has for its limits, on the western side, the lands as far as the sea called the Pacific; on this side, the Tropic of Cancer; on the South, the islands of the Atlantic Sea, in the direction of Cuba and the island of Hispaniola; on the East by the Northern Sea which bathes New France; and on the north that land called "Unknown," towards the Icy Sea, as far as the North Sea.

That in 1626, Louis XII. granted to the Company of New France a charter which, it is asserted included the whole of the country about the Hudson's Bay, and west of it.

That Jean Bourdon, the Attorney-General, in 1656, explored the entire coast of Labrador, and entered Hudson's Bay.

That Father Dablon and Sieur de Valiere were, 1661, ordered by Sieur d'Argenson, 20 Governor of Canada, to proceed to the country about Hudson's Bay, and they went thither accordingly.

That some Indians came from about Hudson's Bay to Quebec, in 1663, and that Sieur la Couture with five men proceeded overland to the Bay, possession whereof they took in the King's name.

That Sieur Duquet, King's Attorney for Quebec, and Jean L'Anglois, a Canadian colonist, are said to have gone to Hudson's Bay in 1663 by order of Sieur D'Argenson, and renewed the act of taking possession by setting up the King's arms there a second time.

ANSWER.

Jean Bourdon, the Attorney-General, never reached Hudson's Bay, as shewn by the records of his attempted voyage.

It appears that in the year 1656 there was an order of the Sovereign Council of Quebec authorizing Sieur Bourdon, its Attorney-General, to make a *discovery* thereof.

There is no record whatever of his having attempted to make the discovery in the same year in which the order was passed by the Council. There is a record, however, of his having made the attempt in the year following (1657) and he may then have designed carrying out the order. He sailed on the 2nd day of May, and returned on 11th August, 1657; and it is not pretended that he could have made a voyage to Hudson's Bay and return between these dates. As to the extent of this voyage there can be no doubt, as it is thus reported:

"The 11th (August) there appeared the barque of M. Bourdon, which, having descended the Grand River on the north side, sailed as far as the 55th degree, where it encountered a great bank of ice, which caused it to return, having lost two Hurons that it had taken as guides. The Esquimaux savages of the north massacred them and wounded a Frenchman with three arrows and one cut with a knife." (REL DES JÉSUITES, Vol. III, Re^l, 1858.)

1657.

May 2nd. M. Bourdon loosed anchor from Quebec, for the voyage to the North.

August 11th. At ten o'clock in the evening, M. Bourdon anchored before Quebec, from his voyage to the North. (*Journal of the Jesuites*, 1657, pp. 209 and 218.)

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The Jesuits would have known if Jean Bourdon had entered the Straits of Hudson, and would have mentioned it in their relations. On the contrary, they never mention it, and it is to be taken from that that the assertion that he ever entered Hudson's Bay is a myth, because he was of the Province of Quebec, and was a man well known and trusted by the Jesuits, and went with Father Jogues on an embassy to Governor Dongan of New York.

FATHER DABLON AND SIEUR DE VALLIERE.

Respecting the asserted voyage of Father Dablon and Sieur de Valliere there is evidence that he made the attempt but did not succeed. The following is the account of the voyage:

* * * "Fathers Gabriel Druillettes and Claude Dablon set out from here in the month of May last with the greater number of our savages, the one with the intention of wintering in the country and of informing himself at leisure of all things necessary for the resuscitation of this mission; the other, to come to instruct us concerning these new discoveries, and to explain to us the present state of these countries."

"Here is what the Fathers have written from Nekouba, which is the place they have arrived at two months after their departure."

1661.

"From Nekouba, 100 leagues from Tadoussac, in the woods, on the journey to the North Sea, July 2nd, 1661."

* * * "At length, with the aid of God, we are nearly half way to the North Sea, in a place which is like the middle point between two seas, that which we have left and that which we are seeking."

Here is a little journal of all our travels.

* * * * *
 "We were detained at Tadoussac three weeks by a sort of contagious and hitherto unknown disease, which carried off the greater part of those who were seized by it. * * *

"The disease having abated a little, we set out at length on the 1st of June of this year, 1661, numbering forty canoes. We left Tadoussac, but not the disease, which followed us. * * * We were obliged to take five days to make a league from Chicoutimi. * * * On the 16th we arrived in good time at Chegontimi, a place noted as being the end of navigation, and the commencement of the portages. * * * We entered into a very narrow lake, about nine leagues long: the savages call it the Long Lake. * * * Lake St. Jean, which is the end of the navigation of the French, no person having dared to pass beyond, whether it was that the roads beyond were too rough, or that they were hitherto unknown. * * * What gave us more trouble was the news which we learned on entering the lake, that the deputies who were to command the nations at the North Sea, and to give them a rendezvous at which to await us, had been killed last winter in an astonishing manner. * * * We did not abandon our journey, advancing towards the end of the latter, where the river which was to bear us into a country hitherto unknown to the French empties. * * * The 26th we encamped at the commencement of a lake which we have called Bonne Esperance, (Good Hope), 20 * * * The three following days were employed in passing lakes, in seeking rivers in the woods, then entering into other lakes and other rivers, which bear us at last to Nekouba, which is, as I have said, the middle point between the two seas, that of the North, and that of Tadoussac. We found its latitude to be 49° 20', and its longitude 305°."

* * * "Without deducting from our other troubles, it was indeed enough that the Iroquois was always before and behind us, scarcely were we set out from Tadoussac, when the enemy arrived there, and after having massacred our French, if they did not come upon us, it was (only) because God blinded them, and deprived them of all thought of it; before us, and at the termination of our voyage, which is the North Sea, the Iroquois intends to be there at the same time as we, he is set out from his country for this purpose, finding no other limit to his ravages than the 30 sea, and that most distant from his own country, to which neither the French nor the savages have as yet been able to penetrate. * * * * News is brought to us, that the Iroquois has gone before us, and having surprised the nation of the Excurieux, some days journey from here, has entirely defeated it, and has impelled such a terror into all the surrounding peoples, that they are all scattered, seeking other mountains more hidden, and rocks of more difficult of access, to place their lives in safety. It is said that the fear is carried even to the sea, where we are going, and those barbarians intend to carry, during this year, their cruelty, to push their conquest still in advance towards the north, as they have done, during these last years, towards the south."

"At the news of this envied nation, so near where we now are, our savages think only of returning upon their steps, since the peoples whom they were going to seek, are scattered; we 40 find ourselves equally urged to keep them company, regretting the injury the Iroquois are doing to the faith, in hindering the publication, and retarding the course of the gospel. * * *
Relations of the Jesuites, Vol. 3. Rel of 1661, pp. 12-21.

In Shea's Charlevoix, Vol. III., pp. 39 and 40, it is stated that he (Father Dablon) *attempted* to penetrate to the Northern Ocean by ascending the Saguenay. Early in July, two months after they set out, they found themselves at the head of the Nekauba River, 300 miles from Lake St. John. They could not proceed any further, being warned by the approach of the Iroquois.

Nekruba is a place where a kind of fair was held. Doblin gives it as 49° 20' N. 305° 10' W. (*Shea's Charlevoix*, Vol. 3, p. 39, note 3.)

On the 27th July, those returned who had gone, or pretended to go, to the North Sea or to the Livistons, Father Doblin, &c. (*Journal of the Jesuites*, 1661, p. 300.)

Rev. Claud Dablon arrived in Canada in 1655, and was immediately sent missionary to Onondaga, where he continued, with a brief interval, until 1658. In 1661 he set out overland for Hudson's Bay, but succeeded in reaching only the head waters of the Nekauba, 300 miles from Lake St. John. (N. Y. His. Doc., Vol. IX., p. 97, note 2.—*Ed.*)

SIEUR LA COUTURE AND DUQUET.

There is no record of the voyage of Sieur la Couture, and Duquet in 1663.

No mention is made in Charlevoix or in the Relations of the Jesuits respecting Couture or his expedition.

Touching the assumed voyage of Sieur Duquet. Viscount D'Argenson, who is stated to have given the order to Duquet to proceed to Hudson's Bay, left Canada on 16th September, 1661, two years prior to the giving of the order, which it is stated Sieur Duquet received. (*Shea's Charlevoix*, Vol. III., p. 38, note 4.

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"Baron Dubois D'Avaugour succeeded Viscount Argeuson, as Governor of Canada, in 1661. He had already distinguished himself in the wars of Hungary, and brought to the Government of Canada that strictness and inflexibility of character which he originally acquired in the camp. In 1662 he concluded a Treaty with delegates from the Onondaga, Cayuga and Seneca Indians." N. Y. Col. Docts (*Paris Docts*), vol. IX, p. 17, note.

"In 1660, Mr. Dubois Davaugour was selected as Governor of New France by the Queen, the mother of the King, who filled the office of Grand Master, Chief and Superintendent of the Navigation and Trade of France. He arrived at Quebec in the month of August, 1661. (N. Y. Col. Docts. Paris Doct., Vol. 9, p. 783.)"

VOYAGE OF FATHER ALBANEL AND M. ST. SIMON.

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Father Albanel and Sieur St. Simon were, in November, 1671, sent by M. Talon to Hudson's Bay, which they reached in 1672.

In the Relations of the Jesuits, Albanel gives an account of his trip, and shows that the English Company were already in possession of Hudson's Bay, having entered there under their Charter.

The following is Albanel's relation of the voyage :

"Voyage to the North Sea by land, and the discovery of Hudson's Bay. Mission of St. Francis Xavier, in 1671 and 1672."

"The sea which we have at the North, is the famous bay, to which Hudson has given his name, and which for a long time has piqued the curiosity of us French, to make the discovery of it by land, and to know its situation as regards ourselves, its distance, and to know who are the people that inhabit it. The desire to make acquaintance with this sea has been increased since we learned from our savages that quite recently some ships had appeared there, and even had commenced commerce with these natives, which we have always been told are numerous and rich in furs."

"It is for that, that M. Talon, our Intendant, has judged that he ought to omit nothing that was in his power to make this discovery; and since he knows that the intention of His Majesty is that all the peoples of Canada may be instructed in Christianity, he has demanded one of our Fathers, who should open the road for us French towards this bay, at the same time that he carried the Gospel there."

"They cast their eyes, then, on Father Charles Albanel, an ancient missionary of Tadoussac, because that for a long time he had had intercourse with the savages, who have knowledge of this sea, and who alone could be guides over these, hitherto unknown, routes."

"M. de St. Simon and another Frenchman having been chosen for this enterprise, and M. the Intendant having furnished them with everything that was necessary to make it succeed, the Father set out from Quebec on the 6th August, 1671, and met them at Tadoussac, where he wished to make choice of an active and intelligent savage to serve him as guide during the whole voyage."

"We will follow him step by step, thus we will know better all that took place in this expedition, placing his journal here, just as he wrote it during his journey."

"I arrived at Tadoussac, said he, the 8th of August, where I saw myself compelled to sustain many battles, in order to break down the objections which the savages made to this expedition."

"The Captain of the place having died a few days ago, I addressed myself to the uncle of the deceased, who was the most to be relied on; this savage, who had much respect for us, and who has no less affection for all the French, cheerfully consented to oblige me."

"Here, he said, are two of my people that I give you, who are my brothers-in-law, and this other one will be the third, who is my own nephew, they will carefully conduct you."

"The affection of this good man did not stop there, he wished us to embark, with our luggage in his boat, as being more convenient than our canoes, and he would conduct us with his men 40 leagues on our way."

"The 20th after having made a considerable present to these good savages, who had carried us in their boat so far, and having thanked them for all the good services they had kindly rendered me, we embarked in our canoes to shoot the first rapids which presented themselves on our journey to the Lake of Kinoungami."

"The 7th of September we reached the extremity of the Lake. Good fortune willed it, that I should meet two savages, who accommodated us with two guns suitable for hunting, four of ours being useless. The 17th. Five canoes of Attikamegues, or white fish, and of Mistassinins came to join us, they brought us for news that two ships had cast anchor in Hudson's Bay, and that they had done great trade with the savages established there for commerce; they shewed us a hatchet and some tobacco, which they had obtained from a Papinachois, who had been trading towards the North sea this very summer. They said enough to cast terror into the minds of all our men, but as it was no longer the season to continue our route, because of the winter which threatened us.

This discourse made no impression on my mind, nevertheless in order not to act without direction in this affair, seeing that I had no passport, I determined to send to Quebec to provide myself with one, at the same time giving advice of all I had just heard, and to ascertain what measures I ought to take under these circumstances."

"Two savages and a Frenchman set out on the 19th September with my letters. In the meantime I occupied myself with instructing this little band, that God had sent me so seasonably: * . . . till the 10th October, our canoe having returned on that day, with the patents of Mgr. our Bishop, and passports from M. de Coureclles our Governor, and M. Talon our Intendant. I also received their advice which was of much service to me in this conjunction of affairs."

"The season being too far advanced to proceed to the sea before the snow and ice, by which we were stopped the last day of October, our savages chose this place to pass the winter in, on account of the hunting, which is very plentiful."

"But it is time to resume the course of our voyage. The spring had already succeeded the rigor of the winter, the rivers were free, the ice had melted, when we were obliged to enter into disputes with our guides on the subject of our enterprise." * . . .

"It was on the 1st June, 1672, that we set out from Natashigamion to continue our route, to the number of nineteen persons, sixteen of whom were savages and three Frenchmen, in three canoes."

"The 19th, about six o'clock in the morning, we arrived at Pastiskaw, which separates the lands of the north from those of the south; it is a little tongue of land, about an acre broad and 20 two long. The two extremities of this point are terminated by two little lakes, from whence issue two rivers: one descends to the east, and the other to the north-west; the one enters into the sea at Tadoussac by the Saguenay, and the other into Hudson's Bay by Menskaw which is midway between the seas."

"It is not a new thing that the savages, by a maxim of their policy or of their avarice, are extremely reluctant to give strangers a passage by their rivers, to go to distant nations. Rivers are to them what the fields are to the French."

"On the 13th of June, thirteen canoes arrived, the greater part having painted their faces, and having decked themselves out with all the precious things they had, as head-gear, necklaces, girdles and porcelain bracelets. They disembarked quite close to us, and as the Captain stepped on shore, I saluted him with ten guns, as a sign of rejoicing, and the same evening I summoned him, with his chief men, to speak to them by means of two rich presents." * . . .

"The 18th we entered this great lake of the Mistassirinius, which they consider to be so great, that it requires twenty days of fine weather to make the tour of it."

"The 28th. Scarcely had we advanced a quarter of a league, when we met on the left hand in a little stream, a hoy with its burden of ten or twelve tons, which carried the English flag and a Latin sail; at a gunshot from there, we entered into two deserted houses. A little further on we discovered that the savages had wintered close by, and that they had left quite recently; we pursued our route then to a point distant six leagues from the house of the Europeans. There, the tide being low, and the wind contrary, we retired into a little river on the right hand, stretching 40 to the north-east, where in turning and seeking, we discovered two or three huts, and an abandoned dog, which made us sure that the savages were near, and that they had only removed two days ago. All that evening we remained there, firing guns to make ourselves heard, and entertaining ourselves by viewing the sea which we had reached so well, and this so famous Hudson's Bay, about which we shall speak by-and-by."

"It pleased God to give us a very good wind; we made sail, and proceeded on our journey to the dwelling of the English, where we slept."

"Before leaving Hudson's Bay, I must give you the plan of it. But the short sojourn that I made at Mestantenagasit, did not give me leisure to visit it, nor to instruct myself thoroughly in the particulars of this Bay, and neighbouring country."

"I shall only say that the river by which we entered the Bay is called Muriskansipion, and retains its name; the river is very beautiful. It is almost half a league broad, and more than that in some places, but it is not very deep: it comes from the south-east, and flows to the north-west about eighty leagues."

"The ebb and flow, which is here very regular, enters four leagues into the river, until it is stopped by a sault, which does not prevent the waters preserving their sweetness, during the highest tides, not only in the river, but also four leagues forward into the Bay."

"It is incredible how far the sea retires at the time of low tide; the savages put it at twenty leagues; we found that the mouth of the river is at the 50° of latitude, and we saw that during its course it cuts the Bay by very many windings, which form islands fit to be inhabited." * *

"Those who imagine that the climate is uninhabitable, deceive themselves." * *

"I can assure you that on the 15th June there were wild roses as beautiful and sweet smelling as at Quebec, the season even appeared to me to be more advanced, the air more mild and agreeable. There was no night when I was there, the twilight from sunset was not quite over, ere the orb of day appeared at sunrise." * * 20

"We were four days in reaching Nemiskaw, where we hoisted the King's arms on the point of the island, which divides this lake, on the 9th July."

"The 19th, about two o'clock, I planted the arms of our powerful and invincible monarch over the river, to serve as a safeguard to all these people, against all these Iroquois nations."

"The 22nd we arrived at Lake St. John, after many difficulties, I was quite surprised on my arrival to learn that the Mistasirinins had been waiting for me for a month." *

"The 29th, we set out from the Lake to go to Chegoutinick, where M. de St. Denis, captain of *Tadoussac*, was waiting to embark us in his vessel; we arrived there the 1st of August."

"As soon as I arrived in Quebec, I endeavored to state the results of our journey to those persons who had employed me, and who I knew took a great interest in the success of this mission: I informed them of the causes of my so speedy return, of the places I had seen, of all that I had done for the salvation of all these people, for the publication of the gospel, the establishment of our holy faith, and for the glory of our great monarch in all the nations we had had intercourse with, in order to give them an ample and faithful report." 30

Hitherto, this voyage had been considered impossible for Frenchmen, who after having undertaken it already three times, and not having been able to surmount the obstacles, had seen themselves obliged to abandon it in despair of success. What appears impossible, is found to be very easy when it pleases God. The conduct of it was reserved for me, after eighteen years prosecution that I had made, and I have very sensible proofs that God reserved the execution of it for me, after the signal favor of a sudden and marvellous, not to say miraculous recovery that I received. As soon as I devoted myself to this mission, at the solicitation of my superior, and in fact, I have not been deceived in my expectation. I have opened the road in company with two Frenchmen and six savages." 40

I finish this recital of our voyage by the number of baptized, which amounts since our departure to two hundred, as well infants as adults. What can not one hope for after such a fine beginning? particularly if one considers the ardent desire that all these people have shown to be instructed, the difficulty they have had to let me depart, the importunities they have made for us to go and establish ourselves in their country, and the pressing solicitations they have made to all Frenchmen to invite them to come and trade with them. Can one wish for anything after so many advantages, except that it may please God to give benediction to all our works? *Relations des Jesuites*, vol. 3, (1671-2,) p. 42-67.

Up to this time (1672) the Jesuits had not heard of any prior expedition having reached Hudson's Bay; and Father Albnel was led to believe by M Tallon the French Intendant at Quebec, that he was the pioneer voyageur. 10

Mr. De Courcelles to my Lord Colbert, 26th October, 1671:—"Five weeks since, three Frenchmen, with a Father and some Indians, left to go to the Saguenay, and are to proceed thence northward in quest of Hudson's Bay: they cannot be back before the end of Autumn of next year."—(*N. Y. Col. Docts. Paris Docts*, p. 790.)

M. Talon to the King, 3rd November, 1671.—"Three months ago I sent off Father Albnel, a Jesuit, and Sieur de St. Simon, a young Canadian gentleman recently honored by the King with that title. They are to go as far as Hudson's Bay, draw up an account of all they will discover, establish a fur trade with the Indians, and especially examine whether there be a place to winter some ships, in order to establish an entrepot there which might some day furnish supplies to the vessels that will be able hereafter to discover in that quarter the passage between the two seas, the southern and northern." (*Ibid.*) 20

"A proposal has been made me to send from this place to Hudson Bay a bark of 60 tons with which it is pretended to discover something of the communication between the two seas."

"If the adventurers who form this design do not charge the King anything, I shall give them hopes in case of success of some mark of honor in addition to whatever they will be able to gain by the trade in furs that they will carry on with the Indians." (*Ibid.*)

"Father Charles Albnel, Jesuit Missionary, employed in the instruction of Indian nations and Montagnois, and Paul Denis de St. Simon, Commissary and deputed by Mr. Talon, Intendant of Canada, to take possession, in the King's name of the countries, lands, lakes and rivers, which lie between the banks of the River St. Lawrence as far as the shores of the Strait of the Fretum Davis, including Hudson's Bay and adjacent lands and seas being at Miskaout, Nagasit, places where the Indians meet to trade, and at the River Nemiskau, which rises in Lake Nemiskau, the residence of Captain Kiaskou, Chief of all the Indians inhabiting the North Sea and Hudson's Bay, did on the 9th of July, 1672, plant the cross with the Captain's consent, and in His Majesty's name set up the arms of France on the said Lake Nemiskau at the mouth of the river of the same name." (*Ibid.*, p. 791.)

"In 1669 Mr. Talon was destined to return to Canada as Intendant. He wrote at Paris to my Lord Colbert, on the 24th February, that he had with him a half-breed of Canada, who had penetrated among the western nations further than any other Frenchman, and had seen the copper mine in Lake Huron. This man offered to go to that mine, and to explore, either by sea or by the lakes and rivers, the communication supposed to exist between Canada and the South Sea; or else to make the voyage of Hudson's Bay, which would be of great use to Canada, because he would send down to Quebec and Tadoussac, the northern nations with their peltry."—(*N. Y. Col. Docts.* Vol. 9, p. 787.) 30

"*M. Talon to the King, 10th November, 1670.*—"Since my arrival I have dispatched some persons of nerve who promise to penetrate farther than any one has yet done; some to the west and north-west, and others to the south-west and to the south of Canada. These adventurers are invariably to prepare journals and reply in writing on their return, to the instructions I have given them, they are everywhere to take possession and to erect the King's arms and to draw up procès-verbaux to serve as titles. His Majesty will not have any news of them, probably before two years from this time, and after I shall have returned to France."—(*N. Y. Col. Docts. Paris Docts, p. 789.*)

To M. Talon, 11th March, 1671.—"The resolution you have adopted to send Siens de la Salle towards the South, and Siens de St. Lusson to the North in order to discover the passage to the South Sea is very good, but the principal thing to which you ought to apply yourself in these sorts of discoveries is to look for the Copper Mine."—(*N. Y. Col. Docts, Paris Docts, p. 789.*)

What is relied upon by the Province of Ontario, as furnishing evidence of Father Dablon and Siens Couture having visited Hudson's Bay, is a Memoir of M. de Callières sent to the Marquis de Seignelay on 25th February, 1685, (*N. Y. Coll. Paris Docts, Vol. IX., p. 268*); and M. de Denonville, on 8th November, 1686, by a memoir sent to M. de Seignelay, appears to have copied the statement made by M. de Callières (See *Ibid.*, p. 304). But in his letter which accompanied the memoir, M. de Denonville says: "I annex to this letter a memoir of our rights to the entire of that country, of which our registers ought to be full, but no memorials of them are to be found." (*N. Y. Col. Doc. Paris Docts., Vol. IX., p. 297.*) M. de Denonville thereby admits the documentary evidence could not even at that time be adduced in support of these visits having been made to Hudson's Bay.

At the time M. de Collicres wrote (in 1685) twenty-one years had elapsed, and M. de Denonville following in 1686 was twenty-two years had passed the events they pretended to chronicle. It was then most important to show if possible that Dablon, Couture, and Duquet had been at Hudson's Bay. The French, before that time, in 1682 and 1684, had driven the English from a number of their forts, burned their houses, and in March, 1686, Canadian troops were sent by Denonville, who surprised and captured Forts Albany, Hayes, and Rupert, belonging to the Hudson's Bay Company. *Sheus's Charlevoix* Vol. 3, p. 270; *Freland 2 partie*, pp. 162-6. *Vide Petition of H. B. Co. to the Queen in 1711, Joint Appendix p.* 30

It therefore became necessary to show a colour of right for these proceedings, and these memoirs were evidently prepared with that view.

ENGLISH DISCOVERY.

1507.

CABOT'S VOYAGE.

Sebastian Cabot, who sailed to Hudson's Bay and Straits under a commission from Henry VII. of England, entered the Bay, which, in 1610, took the name of Hudson.

"For that Cabota was not only a skillful seaman, but a long traveller, and such a one as entered personally that strait, sent by King Henry VII. to make this aforesaid discovery, as in his own discourse of navigation you may read in his card written with his own hand, that the mouth of the northwestern strait lieth near the 318 meridian, between 61 and 64 degrees in the elevation continuing the same breadth about 10 degrees west, where it openeth southerly more and more, until it come under the Tropic of Cancer, and so runneth into Mardel' Zur at least 18 degrees more in breadth there than it was when it first began."

"Besides Cabota and all other travellers' navigations, the only credit of M. Frobisher may suffice, who lately through all these islands of ice, and mountains of snow, passed that way, even beyond the gulf that tumbleth down from the north, and returning in August came he home safely again."—(*Hakluyt, Vol. 3, pp. 26, 27.*)

1576—1577—1578.

SIR MARTIN FROBISHER'S VOYAGES.

"He prepared two small barques, wherein he intended to accomplish his voyage. Wherefore, being furnished with the aforesaid two barques and one small pinnace of ten-tons burden, having therein victuals and other necessaries for twelve months' provisions, he departed upon the said voyage from Blackwell, June 15th, A. D. 1576.

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. . . *

"One of the barques was named *Gabriel*, and the other the *Michael*, and sailing northwest from England upon the 11th July, he had sight of high and ragged land, which he judged to be Frisland."

. . . *

"The worthy captain continued his course towards the northwest, knowing that the sea at length must needs have an ending, and that some land must have a beginning that way; and determined, therefore, at the least, to bring true proof what land and sea, some might be so far to the northwestwards, beyond any man that hath heretofore discovered."

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. . . *

"This place he named after his name Frobisher's Strait."

. . . *

"Captain Frobisher returned homeward, and arrived in England, in Harwich, the 2nd of October following, and thence came to London in 1576, where he was highly commended by all men for his great and notable attempt, but specially famous for the great hope he brought of the passage to Cathay."

SECOND VOYAGE—1577.

"Being furnished with one tall ship of her majesty's, named *The Ayde*, and two small barques of thirty ton a piece, being fitly appointed, the said Captain Frobisher, with the rest of his company, came aboard his ships riding at Blackwell."

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. . . *

"On Whitsunday, May 26th, 1577, early in the morning, we weighed anchor at Blackwell, and fell that tide down to Gravesend, where we remained until Monday, at night."

. . . *

"Tuesday, July 23rd, our general with his soldiers and sailors, to the number of seventy, marched with ensign displayed, upon the continent of the Southerland (the supposed continent of America) where, commanding the trumpeter to sound a call for every man to repair to the ensign, he declared to the whole company how much the cause imparted to the service of Her Majesty. And he appointed for leaders Captain Fenton, Captain York, and his Lieutenant George Beste."

"The morning of the 1st of August, Captain York with the *Isabel* came into Jackman's Sound, and declared unto the company there, that the last night the *Isabel* came to anchor in a certain bay (which thence was named Yorke's Sound) about four leagues distant from Jackman's Sound."

"Thursday, August 22nd, we plucked down our tents, and our men hastened homeward, and making bonfires upon the highest mound of the island, and marching, with ensign displayed round about the island, we gave a volley of shot for farewell, in honour of the Right Honourable Lady Anne, Countess of Warwick, whose name it beareth; and so departed abroad."

"The 23rd of August we set sail out of the Countesses Sound homeward."

"About the 23rd of September we arrived at Millford Haven in Wales." 10

"About one month after our arrival here, by order of the Lords of the Council, the ship came up to Bristow, where the ore was committed to keeping in the castle there."

THIRD VOYAGE—1578.

"Having received these articles of direction we departed from Harwich on the 31st of May, and sailing along the south part of England westward, we at length came by the coast of Ireland at Cape Clear the 1st of June."

"Having a fair and large wind we on the three and twentieth of June departed toward Frobisher's Straights."

"Now after the general had bestowed these many days here, not without many damages, he returned back again. And by sailing along this coast (being the backside of the supposed continent of America) and the Queen's Foreland, he perceived Frobisher's Straights. Whereupon he sent the *Gabriel* on the 21st of July to prove whether they might go through, and went again with him in the Straights, which they did."

"August 11th, the captain of the *Francis*, taking the master of his ship with him, went up to the top of Hatton's Headland, which is the highest land of all the Straights, to the end, to descry the situation. And the rather for the honour the said captain doth owe to that honourable name, he caused his company to make a cross of stone, in token of Christian possession. In this place there is plenty of black ore, and divers pretty stones."

"Having now received articles and directions for our return homewards, August 31st, the whole fleet departed from the Countesses Sound, excepting the *Judith*, and the *Anne Francis*, and came the next day, and met the fleet lying off and on, athwart Bear's Sound, who stayed for the General."

"Thanks be to God, all the fleet arrived safely in England about October 1st, some in one place, and some in another."—(*Hakluyt*, Vol. 3, pp. 55-92.)

DAVIS'S VOYAGES—1585-1586-1587.

"In 1585 Captain John Davis made an attempt to find the North-west passage and discovered a part of Greenland to which he gave the name of the "Land of Desolation." He sailed afterwarde as high as 64 degrees, 15 minutes, through that which has since been called Davis's Straights, and thence to the latitude of 66 degrees 40 minutes. In 1586 he made another voyage in which he made further discoveries, and returned full of hopes that a third voyage would complete his design. Accordingly in 1587 he proceeded through Davis's Straights to the height of 72 degrees 12 minutes, and found an open sea to the South-west."—(*Harris's Travels*, vol. 2, p. 404.)

1605-1610.

HUDSON'S VOYAGE.

According to the narrative of Prickett (who was with Hudson during the voyage), Hudson sailed on 17th April, 1610, reached the Bay now known as "Hudson's" in July of that year and wintered in the Bay, and remained there until late in the summer of 1611.

"All the misarranges that had happened in attempting discoveries to the northeast and northwest, could not so far discourage the merchants of England as to oblige them to lay aside their designs of that sort; and, therefore, when any opportunity offered they never failed to lay hold of it, in hopes that some time or other they might accomplish one or both of these great projects. It was with this view that they fitted out captain Henry Hudson in 1607, who undertook to sail directly north, which he did to the hight of 81° 30', on the coast of Greenland, where he was on the sixteenth of July, the weather being pretty warm. His scheme, it seems, was to have passed around that great tract of country, which the Danes call Greenland, and falling into Davis' straights, have returned that way home. After being disappointed in this, he undertook two voyages for the discovery of a north-east passage, in which his conduct was very good, but his success no better than that of those who went before him; upon which he resolved to make an attempt towards the north-west. He sailed on this voyage April 17th, 1610, and thus Mr. Prickett describes the principal events in that undertaking."

"We continued steering north-west: on the 8th July we raised land to the south-west, covered with snow, which our master named 'Desire Prevokes;' lying in the latitude of 60°. We still plied to westward, and fearing a storm we found a harbour at the west end of an island, wheremto we went at a full sea over a rock, which had then two fathom and a half of water upon it, and the next morning was two fathoms above water. Our master named it 'The Island of God's Mercies.' We then stood to the south-west, until we saw the land, which our master named 'Hold with Hope;' and being gotten again into a clear sea; our master stood to the west along the south shore, and raised three capes or head-lands, lying one beyond another, which he named Cape Henry, Cape James, and Queen Anne's Foreland; we also raised a high hill, which he called Mount Charles. We passed on in sight of the south shore, until we raised a fair head-land (which our master took to be part of the Mainland, but is an island) and named it Deep's Cape, and the land on the south side now falling away to the south makes another Cape or Head-land, which our master called Worsenham's Cape."

"Then standing southward we lost sight of the mainland we had all this while followed and came into shallow water, broken ground, and rocks, and passed down so far southward, till we had land on both sides, and the water shoaling apace, we came to an anchor."

"On the first of November we found a place wheremto we brought our ship, and hailed her aground; on the 10th we were frozen in, and now it concerned us to take care of what we had, and so to spend, that we might have wherewith to keep us alive, until we should come at the capes where the fowls breed; for they were all the hopes we had of finding subsistence to bring us home. Our master therefore appointed a reward to them that killed most fish or fowl. We were victualled for six months, in good proportion, and of that which was good; and if our master would have had more he might have been supplied at home and at other places, and it is strange he did not prevent the hunger we endured, which occasioned the overthrow of himself, and many other honest men." *Harris's Voyage*, Vol. 2, pp. 243-4.

BUTTON'S VOYAGE.

It was desired to prosecute the discoveries made by Hudson, and, in 1611, His Royal Highness Henry, Prince, of Wales was applied to by persons concerned in the project, and he resolved to send Captain Button, who penetrated to the Hudson Bay and sailed about 200 leagues to the north-west. He wintered there at Nelson River.

"His Royal Highness Henry, Prince of Wales, was the great patron of virtue and learning at this time: and being applied to by the persons concerned in this project, he resolved to send on Captain Button his own servant a man of great courage, abilities, and experience, and having the countenance of so great a person, was most likely to maintain discipline among the seamen. Accordingly, in the year 1611 he sailed on this expedition, in which he passed Hudson's Straights, and leaving Hudson's Bay to the south sailed about two hundred leagues to the north-west, through a sea about eighty fathom deep, and discovered a great continent called by him New Wales, where, after much misery and sickness, wintering at Port Nelson, he carefully searched all the Bay, from him called Button's Bay, back again, almost to Digg's Island. He discovered the great Island called Cary's Swans-nest. He lost many of his men during his stay in the River called Port Nelson, in 57° 10' north latitude, though he kept three fires in his ship all winter, and had great store of white partridges, and other fowl, besides deer, bears, and foxes. Upon his return from this voyage he received the honour of Knighthood, and great expectations were raised from his discoveries which certainly had been prosecuted with effect, if Prince Henry had not died soon after." *Harris's Voyages*, Vol. 2, p. 275-4. 20

"Mr. Henry Button, (afterwards Sir Henry) in the year 1611, having been encouraged by Prince Henry to attempt a more perfect knowledge of that sea, which had been found by Mr. Hudson, went thither accordingly, and proceeded two hundred league farther to the south-west coasting along a great continent to which he gave name of New South Wales, and wintered at Port Nelson: then sailing across that sea which has since been called Button's Bay, he discovered another country, to which he gave the name of New North Wales, which seems to be only an island in that great sea, which opens into the Northern Ocean by the passes of Hudson Straits and Davis's Straits, and of which Hudson's Bay, Button's Bay, and Baffin's Bay, are only parts, bounded by the continents of Greenland and North America, wintering at Port Nelson, which is in the latitude of 57° 10' north, * * * He, for causes elsewhere related (especially the tides) concluded a northwest passage certain, and thereby restored the hopes of it, then fallen very low." *Harris's Voyages*, Vol. 2, p. 404. 30

The instructions under which Sir Thomas Button sailed were recovered. They are considered to be drawn up with considerable skill, to be interesting in various particulars, and to advert to points not devoid of value, even in the present day. That the reader may form a judgment of the character of this document it is subjoined.

Certain Orders and instructions set down by the most noble Prince Henry of Wales, this 5th of April, 1612, under his Highness signature and signe manuell, and delivered unto his servant Captain Thomas Button, General of the Company now employed about ye full and perfect discovery of the North-West passage for the better government, as well of the shippes committed to his charge as of the persones in them employed upon all occasions whatsoever. 40

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| 1. | * | . | . | . |
| 2. | . | . | . | . |
| 3. | . | . | . | . |
| 4. | . | . | . | . |

5. More particularlie when you shal be cleare of the Landes End, be careful to have kept a true account of yr wayes to Groinland, and from thence to the streights mouth, and to observe in what latitude it lieth, and what face the coast beareth, what sea seteth into it, and when you are within it, howe the coaste doth bend, the contynance and course of ebbe and fludd, what height it riseth, from whence it cometh, and with what moone; what current, eddie, or overfall you finde, what Islandes or rockes, and howe bearing, and last of all your soundings, which you must trie with good store of faddome once at least everie fforth glasse, and oftener amongst broken landes, rocks, shole, and white waters. Yet remembering that the waie is already beaten to Digges Island, rather than lose tyme, we would have you hasten thither, and have the perfect observation of the things to the Pinnacle in her return.

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6. * * * *

7. "Let there be care by your order and direction for keeping of your shippes in consort all your course, wherein we wishe you to make all the haste you can to the Streights mouth, but we think your surest way wil be to stand upp to Iseland and see over to Groinland in the heighte of 61 see to fall downe with the current to the most southerlie Cape of that land lying in about 59 called Cape Farewell, which pointe as Ice will give you leave, you must double, and from thence, or rather from some 20 or 30 L. to the northward of it, you shall over fall Davis His Straights to the westerne maine: in the height of 62 degrees or thereabouts you shall finde Hudson's Straights, which you maie knowe by the furious course of the sea and ice into it, and by certaine Islandes in the Northerne side thereof as your carte shewes."

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8. "Being in; we holde it best for you to keepe the northerne side as most free from the pester of ice at least till you be past Cape Henry, from thence follow the leading ice betweene King James and Queen Anne's Forelands, the distance of which two capes observe if you can, and what harbour or rode is near them, but yet make all the haste you maie to Salisbury. This Island between which and the Northerne continent you are like to meet a great hollowe billowe from an opening and flowing sea from thence. Therefore, remembering that your end is West, we would have you stand over to the opposite maine in the latitude of some 58 degrees, where riding at some headland observe well the flood of it come in Southwest, then you maie be sure the passage is that waie, from the North or Northwest your course must be to stand upp into it, taking need of following aiee flood for feare of entring into Bais, Inlets, or sands (? sounds), which is but losse of time to noe purpose."

9. * * * *

10. * * * *

11. "Last of all: see that you and all under yor charge, doe faithfullie observe and followe all such further directions and instructons as shal be given by the Adventurers. And to the end it may appeare what care we have of the Action and howe acceptable everie manne's good endeavour and service therein will be to us. Let theis be perticuler read once everie month, if it can be to your whole Companie."

(L.S.)

Sir Thomas Button appears to have felt acutely the disappointment occasioned by his failure 40 to discover the passage of which he was in search, but he does not despair of ultimate success (Rundall's Voyages (printed for the Hakluyt Society) pp. 81 to 90.)"

JAMES'S VOYAGE, 1631.

"It appears that the English nation had been trading with Greenland, and those trading, finding that "other nations were interfering with this trade," found themselves under a necessity of having recourse to the crown for protection and assistance as well for defending their fisheries, as for prosecuting their discoveries, and they accordingly addressed themselves to King Charles I., who furnished them with a frigate called the *Charles*, under the command of Captain Luke Fox, who sailed in the spring of 1631, made a voyage to Hudson's Bay, and finding the cross erected by Sir Thomas Button renewed the same. Captain James and Captain Fox met at Port Nelson in August 1631."

"Captain Thomas James undertook his voyage in 1631 for the satisfaction of Charles I., at the 10 expense of the merchants of Bristol. The account of the voyage was written by himself, and published in 1633. Captain James left England in May, and met Captain Luke Fox on 29th near Port Nelson. He wintered in Hudson's Bay."

"I shall present the reader with an account of Captain James's preface, which is to be found only in his original edition, of the manner in which this voyage was undertaken, containing many particulars that are very well worth notice. Never any enterprise of this kind — better concerted, or more deliberation used in providing for its success. Captain James had been employed, as he tells us, in some Northern voyages before, whence he came to be thought the fittest person in the kingdom. He was not determined to undertake the voyage till it was signified to him on the part of the king, that it would be highly satisfactory to His Majesty, 20 After he was once come to a resolution, he signified to the merchants of Bristol, both his own inclination to venture on this voyage, and the encouragement he received from His Majesty, Captain James desired only a single ship. She was built for this voyage. The number of persons he desired for the execution of the design was twenty-two; and the provisions and necessaries that he required were for eighteen months; and they were provided for him in the full proportions he demanded, and were as wholesome and good as he could wish. He had the free choice of the men that were to serve under him, but he absolutely refused all volunteers that never had been at sea. The qualities that he required were, that they should be unmarried, approved, able, and healthy seamen; he also took care that they should not have the least knowledge or acquaintance with each other. Precautions taken to prevent faction and mutinies, 30 with which, as we will see, he was never troubled."

"When all things were ready he made a short journey to London, to receive His Majesty's last commands, and, upon his return to Bristol, he went directly aboard of his ship, with a resolution of sailing the first fair wind. After his return he drew up a history of his voyage, for his master's satisfaction."

"The 2nd May I took leave of the merchant adventurers in this action, in the City of Bristol, and being accompanied by the Rev. Mr. Palmer, and several of the merchants, I repaired on board where Mr. Palmer made a sermon. After they had received such entertainment as I could afford they departed for Bristol. The 4th June we made the land of Greenland, standing in with it, to have knowledge of the trending of it. 40

"From the 29th to the 5th July, we sailed continually, with varying winds and fogs, and sometimes calm. The fifth at noon we had a good observation, and were in latitude 63° 15', and then we saw Salisbury Island bearing west-by-north, some seven leagues off."

"On the 1st of August the wind came up at the west which drove us to the eastward where our depth increased to thirty-five fathoms."

"On the twenty-ninth in the morning we had driven back again some seventeen or eighteen leagues and in the morning as it cleared we saw a ship to leeward three or four leagues, so we made sail and bore up with her; she was then at anchor, in thirteen fathoms. It was Her Majesty's ship commanded by Captain Fox: I saluted him according to the manner of the sea and received the like of him, so I stood in to see the land, and thought to tack about, and keep the weather of him, and send my boat aboard of him; but the wind shifted, so that for the time I could not. Yet in the evening I came to weather of him, who presently weighed, and stood off with me till midnight, and then we stood in again. In the morning Captain Fox and his friends came aboard of me, where I entertained them in the best manner I could, and with some fresh meat I had gotten from the shore. I told him that I had named the land the Principality of South Wales. I shewed him how far I had been to the eastward, where I had landed, and, in brief, I made known to him all the dangers of the coast, as far as I had been."

"In the evening he departed aboard his ship, and the next morning stood away southward, since which time I never saw him."

"September 1st, we coasted along the shore in ten fathom, when it cleared in sight of land."

"On the first of November I cast up accounts with the steward concerning victuals, the third part of our time being this day out. The first of December was so cold that I went the same way over the ice to the ship where the boat had gone yesterday."

"The 1st of January, 1632, and for the most part of the month, was extremely cold. The 6th I observed the latitude with what exactness I could, it being clear sunshiny weather, which I found to be $51^{\circ} 52'$. July, 1632, the 1st of the month we were up betimes, and I caused the ship to be adorned the best I could. Our flag in the poop, and the King's colours in the main-top."

"I had provided a short account of all the passages of our voyage to this date. I likewise wrote in what state we were in at present, and how I intended to prosecute this discovery, both to the westward, and to the southward, about this island. This brief discourse I had concluded, with a request to any noble minded traveller that should take it down, or come to the notice of it: that if we should perish in the action, there to make our endeavours known to our Sovereign Lord the King."

"The 22nd of October we arrived in the Road of Bristol, having been hindered and crossed with much contrary winds and weather." *Harris's Voyages*, Vol. 2, pp. 407-434. 30

FOX'S VOYAGE, 1631.

"Luke Fox, a native of Yorkshire, became associated with M. Henry Briggs, whose name has already been mentioned in connection with Sir Thomas Button's Voyage; and by persuasion of that learned and zealous gentleman, the 'honourable Knight, Sir John Brook,' was induced, with "divers friends," to join in the adventure. A petition was presented to Charles I, and that monarch without hesitation gave his countenance to the action, and placed one of the ships of the Royal Navy at the disposal of the applicants."

• • • • •
 'The Masters and Wardens of the Trinity House were, also, commanded to give their aid.'

• • • • •
 A.D., 1631. The ship selected for the service was the Charles, a pinnace of seventy tons burden, carrying a compliment of twenty men and two boys, with an armament of seven guns. The voyage was commenced from Deptford on the 3rd of May.
 • • • • •

No event of importance occurred until the 3rd of June, when somewhat about latitude $58^{\circ} 39'$ N., a storm was encountered.

On the 18th, the 60th parallel was obtained.

Two days afterwards land was made on N. side of Lumley's Inlet, or Frobisher's Straights. At that instant, eleven o'clock, the latitude by dead reckoning was $62^{\circ} 17'$, and by a good observation made presently afterwards $62^{\circ} 25'$, the difference being $8'$ to the westward.

Fox takes his last departure from latitude N. $58^{\circ} 30'$, on the west coast of Greenland. He calculates the distance he has passed in crossing over Davis's Straights at 220 leagues.

June 22nd. This day we had boarded it up in smooth water, bearing a good sail between Cape Childlie and Cape Warwick, and were entering Fretum Hudson; and (near by) the island 10 Resolution, so named by whom I know not. But sure I am, Davis was the first of us that see it, naming the east end thereof Cape Warwick.

On the 15th of July, Fox was in the vicinity of the Islands named respectively, Digges, Salisbury, Nottingham, Mansil, and Southampton; with Cape Pembroke and Carey's Swan's Nest on the latter island. This circumstance affords the navigator an opportunity, of which he readily avails himself, to make honorable mention of the personages, who had been the main support of the successive adventures to the Northwest; and he concludes in the following emphatic words, no less true than just. He says: "They were so named as a small remembrance for the charge, countenance, and instruction given to the search of the enterprise; and which, though smaller, neither time nor fame, ought to suffer oblivion to burie; for whosoever it shall please God to ripen 20 those seedes and make them redie for his sickle, whom he hath appoynted to be the happy reaper of this crop, must remember to acknowledge, that those honourable and worthie personages were the first advancers." This remark applies with no less force to the navigators themselves, that on the parties in whose service they were engaged.

On the 27th, in latitude $64^{\circ} 10'$, an island was descried, which was taken to be the N. E. side of Sir Thomas Button's *ut ultra*.

On the 8th, Port Nelson was, made and having debated the propriety of wintering there, it was determined merely to look in and then proceed on the voyage.

On the 10th of August, Fox entered Nelson River, and plied up about a mile with the flood. He would have gone higher, but was prevented by the shallowness of the water. He was content, 30 however, for he was enabled to moor in a snug berth, which afforded facilities both for refitting the vessel, and for putting together a pinnace, that had been brought out in frame, and of which the navigator was in great need. These necessary proceedings were not completed until about the nineteenth. Both sides of the river are represented to be full of small woods; and the north shore to be a clay cliff, like the naze of Essex, but not so high. On shore was found: good grass, store of wood, black berries, strawberries, and several sorts of shrubs. Various fragments of the timbers of a vessel, of casks, and of chests, were also found. A cross, which, it was conjectured, had fallen down, or had been pulled down; and "a board broken in two, the one half quite gone, whereon had been the Kings arms, and an inscription of the time of Sir Thomas Button, with his own name; when and why he took harbour, with other expressions," were viewed with great interest. The 40 cross was reerected, and this inscription, on lead, nailed thereon: "I suppose this cross was first erected by Sir Thomas Button, in 1613. It was again raised by Luke Fox, Capt. of the *Charles*, in the right and possession of my dread sovereigne Charles I., King of Great Brittain, etc., the 15th of August, 1631. This land is called New Wales."

The twenty-first, in about latitude N. $57^{\circ} 10'$, it is observed, that since quitting Sir Thomas Roe's Welcome, not a single indication in favour of the desired passage had occurred.

Three days afterward, Captain James of Bristol, in the *Maria*, and Captain Luke Fox, in His Majesty's ship, *Charles*, met in Hudson's Bay. At first some difficulty was experienced in communicating, but at length the *Maria's* shallop with the lieutenant, coxen, and others on board came alongside the *Charles*. The rowers were taken between decks, entertained at several messes, most carefully examined as to their proceedings, and every particular extracted from them; though it must be confessed, Fox did not make any attempt to conceal his own proceedings, but, on the contrary, seems to have communicated them without reserve.

The day following that on which the two ships met, the captain of the *Charles*, dined, by invitation on board the *Maria*. Fox represents his reception to have been cordial, and his entertainment to have been as hospitable as circumstances would permit.

Fox states that he was sent out on the voyage, in consequence of a statement made by Sir Thomas Button, that the tide in the vicinity of Nottingham Ireland came from the north-west, a point, however, which was disputed, on good grounds, but without success, by Bylot, who served in the expedition with Sir Thomas Button. By exact observation, Fox ascertained that the tide came from the S. E., at Nottingham Island; and the same he alleges proved to be the case at the point he designated "his farthest." (*Randall's Voyages, (printed for the Hakluyt Society) pp. 152 to 183.*)

1667—1668.

Des Grosellières and Radisson (who it is supposed were *Coureurs des bois*) were roaming among the Assiniboines and were conducted by them to Hudson's Bay.

Des Grosellières and Radisson went to Quebec for the purpose of inducing the merchants there to conduct trading vessels to Hudson's Bay. The proposal was rejected, as the project was looked upon as chimerical by the Quebec merchants. (This does not accord with the pretensions of the French that Jean Bourdon had made a voyage there in 1656 or 1657).

Des Grosellières was in London in 1667, and before going there had been in Boston and Paris in search of persons willing to fit out an expedition to explore Hudson's Bay. He met with as favorable reception, and the London merchants employed Z. Gillam, a person long used to the New England trade, to perfect this discovery. Gillam sailed in the "Nonsuch" in 1667, and on his arrival built Fort Charles, said to have been the first fort erected in the Bay, and upon his return those engaged in the enterprise applied to Charles II. for a patent, which was issued on 2nd May, 1670, to Prince Rupert and others.

Thus was the Hudson's Bay Company erected by King Charles II. upon the following occasion: Monsieur Radisson and Monsiur Groselier, two Frenchmen, meeting with some savages in the Lake of Assimponals in Canada, they learn from them that they might go by land to the bottom of the Bay, where the English had not yet been, upon which they desired them to conduct them thither, and the savages accordingly did it. The two Frenchmen returned to the upper lake the same way they came, and thence to Quebec, the capital of Canada; where they offered the principal merchants to envy ships to Hudson's Bay, but their project was rejected; thence they went to France in hopes of a more favorable hearing in Court; but after presenting several memorials, and spending a great deal of time and money, they were answered as they had been at Quebec, and their project looked upon as chimerical. The King of England's ambassador at Paris, hearing what proposals they had made, imagined he should do his country good service by engaging them to serve the English, who had already pretences to the Bay, persuaded them to go to

London, where they met with a favorable reception from some men of quality, merchants, and others, who employed Mr. Gillam, a person long used to the New England trade, to perfect this discovery.

"Médard Chouart des Groselliers was a native of Touraint, and an excellent pilot. He emigrated to Canada quite young, where he married Helen, daughter of Abraham Martin, King's pilot, who has left his name to the celebrated Plains of Abraham, near Quebec. (*Ferland*) Meeting afterwards with some Indians on Lake Assiniboine to the north-west of Lake Superior, he was conducted by them to James' Bay, where the English had not yet been. On his return by Lake Superior to Quebec, Des Groselliers offered the principal merchants to carry ships to Hudson's Bay, but the project was rejected. He thence went to France, where he made similar propositions to the court, but without any better success, and finally passed over to England, where his offers were accepted, and with one Radisson, another Frenchman, conducted an English vessel commanded by Zachariah Gillam, a New England Captain, to the mouth of the river Nemiscou on the east side of James Bay where they built Fort Rupert. This was in 1663 according to Charlevoix I, 476; Oldmixon says in 1667." (*British Empire in America* 1741, I, 544.)

"In 1673, Capt. des Groselliers made a voyage to Port Nelson; in 1674 he was at Fort Rupert, when he was sent on a trading expedition to Moose River, on the west side of the bay. Having been discovered holding a correspondence with the French, he was dismissed the English service, and soon after went to France, where he was pardoned, and received permission to return to Canada in 1676 with the privilege to establish a fishery for white porpoises and seals. A company was formed in course of a few years which undertook to expel the English from Hudson's Bay. Des Groselliers sailed for that purpose in 1682, found Capt. Benjamin Gillam, son of his old shipmate Zachariah, at Port Nelson, of which place he took possession for the French King, as above stated. He returned to Canada in the following year, bringing with him Governor Bridger and Capt. Gillam, and a large cargo of peltry, but he was so harrassed by those who had the monopoly of that trade, that he proceeded once more to France and thence to England. The remainder of his course is narrated in the text, *Charlevoix* I, 479, says he had married Radisson's sister, perhaps as his second wife." (N. Y. Col. Docts; Paris Docts 797. Eds. note.)

He sailed in the *Nonsuch*, catch, in the year 1667, into Badin's Bay, to the height of 75 degrees, and from thence southward to 51 degrees, where he entered a river, to which he gave the name of Prince Rupert's River; and finding the savages disposed to a friendly commerce, he erected a small fortress there, which he named Charles Fort. The success of this expedition was so remarkable that the persons concurred in fitting out this vessel, upon the return of Mr Gillam, applied themselves to King Charles II. for a patent, who accordingly granted them one, dated 2nd of May, in the 22nd year of his reign, A. D. 1670. The first directors of what was called the Hudson's Bay Company were Prince Rupert, Sir James Hayes, Mr. William Young, Mr. Gerard Weymans, Mr. Richard Craclack, Mr. John Letton, Christopher Wren, Esq., and Mr. Nicholas Haywood.

But to return to our history. In the year 1670 the company sent over Charles Bailey, Esq., as their governor, who, with Mr. Radisson, settled at Rupert's River, and another factory was established at Fort Nelson. In 1683 Henry Sergeant, Esq., was made governor at Rupert's River, with orders to be very careful of the French, who began now to show themselves very jealous of the trade carried on by the English company with the natives; and at the same time they were not a little perplexed by some bad practices among their own servants, who considering the hardships they endured in that miserable cold country, thought they might make bold with some part of the profits, which were entirely owing to their labour and negotiations with the natives; for the company, by their governors and agents, made such contracts with the captains, or kings, of rivers, or territories where they had settlements for the freedom of trade there, exclusive of all others, that

the Indians could not pretend they had encroached upon them. These contracts were as firm as the Indians could make them by such ceremonies as were most sacred and obligatory among them.

In the year 1686 we find the Company in possession of five settlements, viz., Albany River, Hayes Island, Rupert's River, Fort Wilson and New Severn. Their trade at each of them was very considerable. From Albany River they had generally three thousand five hundred beavers a year, and by Mr. Sergeant's great care and fidelity, their commerce increased so much, that the French began to be afraid all the upland Indians might be drawn down to the Bay. They knew they could do anything with King James II., who then reigned in England; and therefore they resolved to drive the English out of all their places in the bottom of the Bay. First they took Hayes Island, and then the Fort on Rupert's River. The French Company in Canada procured a 10 detachment of soldiers to be sent, under command of Chevalier De Troyes, who came overland from Quebec, and in a time of profound peace committed these acts of hostilities. It is worth observing that the French have so good an opinion of the American Colonies, as to take not only all lawful, but even unlawful means to preserve and enlarge them, as contemptible as they are in themselves; whereas the English who, next the Spaniards, have the richest plantations in this part of the world, have been as negligent of them as if they were not worth keeping.

The 8th July, the Chevalier de Troyes came before the Fort at Albany River, where the Governor, Mr. Sergeant, then resided. Two Indians having informed him of their having surprised the forts at Hayes Island and Rupert River, and had brought with them the great guns from these places, the Governor did all in his power to defend the place, but was not able to keep 20 it above a week, as appears by the articles of his surrender, dated July 16th, 1686, which articles were but indifferently kept. In 1693, the Hudson's Bay Company, being assisted by the Government, retook all the forts and factories of which the French had deprived them in the time of peace; but they were soon after driven out of them again by the French.

In the year 1696, the company applied themselves to King William, representing their own incapacity to maintain themselves against the French, and praying the assistance of the Crown for their support. Upon which two men of war were ordered to their assistance, under the command of Captain Allen—who coming into the River Hayes, sent to summon all the forts to surrender; and the French Governor finding he could not defend them against the English 30 capitulated; and on the second of August, in the same year, surrendered Albany Fort, upon certain articles the chief of which were, that all those in the fort as well French as Indians, and one Englishman, the Governor's servant, should have their lives and liberties: and that no harm should be done to their persons, or to anything belonged to them: That they should march out with their arms, drums beating, colours flying, match lighted at both ends, ball in mouth, and carry with them the two guns brought from France, that they should all embark with their clothes and goods without being visited or pillaged in anything, and, if they met with any French vessels, there should be a truce between the English and them; and the said French vessels should be permitted to take aboard the persons that came out of the same fort, with all that belonged to them. These conditions were a little too honourable to grant, though they were complied with, Captain Allen took the governor and some of his men aboard his own ship, the *Bonadventure*, 40 some he put aboard the *Seaford*, and the rest aboard a merchant-man called the *Doring*.

(Shea's Charlevoix, vol. 1, p. 57; Harris's Travels, vol. 2, pp. 286-7; Bowen's Geography (1747) vol. 2, p. 769.)

1667.

Zachary Gillam, an Englishman having run up Baffin's Bay to 75° N., ran down to the bottom of Hudson's Bay, entered a river which rising in Canada, empties there, and which he named the Rupert River. A few years before, some Englishmen had ascended the river to Lake Nemwiscan.

Gillam sailed in the "*Nouruch*" and built a fort at Prince Rupert's River.

When Gillam returned, the Adventurers concerned, applied to King Charles II, for a patent, which was granted to them on 2nd of May, A. D, 1650. (Shea's Charlevoix, Vol. I, p. 57.)

LICENSE TO SIEUR DE LA SALLE TO DISCOVER THE WESTERN PART OF NEW FRANCE.

Louis, by the grace of God, King of France and of Navarre, To our dear and well-beloved Robert Chevalier, Sieur de la Salle, Greeting: We have favourably received the most humble petition presented to Us in your name, to permit you to endeavour to discover the western part of New France; and we have the more willingly assented to that proposal, as there is nothing we have more at heart than the discovery of that country, where there is a prospect of finding a way 10 to penetrate as far as Mexico, the success of which, to our satisfaction, and the advantage of our subjects in that country. We have every reason to expect from the application you have exhibited in clearing the lands we granted you by the arret of Our Council of the 13th May, 1675, and Letters Patent of the same date, in forming settlements on said lands, and in placing Fort Frontenac, whereof we have granted you the Seigniors and government, in a good state of defence These and other causes Us moving hereunto. We have permitted, and by these Presents, signed by our hand, do permit you to labor in the discovery of the western part of New France, and for the execution of this undertaking, to construct forts in the places you may think necessary whereof we will that you enjoy the same clauses and conditions as of Fort Frontenac according and conformably to our said letters patent of the 13th May, 1675, which we have, as 20 far as necessary, confirmed, and by these presents do confirm. We will that they be executed according to their form and tenor; on condition, nevertheless, that you complete this enterprise within five years, in default whereof these presents shall be null and void; and that you do not carry on any trade with the savages called Outaoues and others who carry their beavers and other peltries to Montreal; that you perform the whole at your expense and that of your associates, to whom we have granted, as a privilege, the trade in eibola skins. We command Count de Frontenac, Our Governor and Lieutenant-General, and Sieur Duchesneau, Intendant of Justice Police and Finance, and its Officers comprising the Sovereign Council in said Country, to aid in the execution of these presents. For such is Our pleasure. Given at St. Germain in laye, the 12th of May, 1678, and of our reign the 35th. 30

LOUIS.

COLBERT.

(N. Y. Col. Man. Paris Docts., Vol. IX., p. 127.)

1687.

In de Comporlé, in the name of the company, had borne to the king complaints against the conduct of the English and obtained permission to retake the fort built by the French on the river Sainte-Thérèse and to drive the English out of it.

An expedition was prepared for this purpose; as it had to be made land, in order to succeed, men were required who were accustomed to long marches, who were trained to manage canoes, able to endure without too much grumbling the sharpest cold and accustomed to plundering— 40 seventy Canadians were chosen. Those of their fellow countrymen brave officers trained in savage warfare, accustomed equally to dangers on land and sea were given to them as leaders. These were the sieurs d'Iberville, de St. Hélène and de Maricourt son of Charles Le Mogne. To this troupe of Canadians thirty soldiers were added commanded by de Troyes, Duchesnil and Catalogue. Father Sylvie accompanied them in the hope of making himself useful not only to the French but also to the Christmas and other savages in the north.

The rivers were frozen and the snow still covered the earth when this little body of active and hardy men left Montreal to ascend the river of the Ontonagois to the height of land and afterwards descend to St. James Bay. More than two hundred leagues must be traversed before reaching the first British post. The voyageurs had to traverse the first portion of their journey on snow shoes dragging provisions and baggage on toboggans. They arrived in the beginning of April at the long Sault where they prepared canoes to ascend the Ontonagois; from Lake Temiscamingue we passed by small rivers and making several portages to the large Lake of Abitibi near the entrance of which they built a small fort of pales, in which they left three Canadians. They afterwards descended towards St. James Bay. This march lasted till the 20th of June, and was accompanied by many fatigues and dangers. "One must be a Canadian," remarks de la Potherie 10 on this subject, "to endure the inconveniences of so long a journey." The Fort of Monsipi built on a height near the river was flanked by four bastions and armed with a dozen canon. In the middle a small block house had been erected carrying four small pieces of artillery. Saint Hélène and d'Iberville followed by some Canadians, scaled the palisade whilst de Troyes broke in the main gate by blows from a battering ram. The block house was vigorously attacked amid savage war cries. Surprised and frightened by the sudden attack which they had not expected the British yielded to their assailants. The gunner alone sought to defend himself and was killed by a piece which he was about to discharge.

Two other forts remained to the British in St. James's Bay—Fort Rupert, forty leagues from Fort Monsipi, and Quitquehonane, thirty leagues off. De Troyes decided to attack the former 20 first. A boat found at Fort Monsipi was repaired to transport two small canon, and the little force followed the sea coast to reach Rupert. A boat manned by fifteen men was anchored opposite the fort; d'Iberville accompanied by seven Canadians seized it without much difficulty whilst De Troyes forced the gates of the fort and made himself master of it; he caused the redoubt to be blown up, and the palisades thrown down.

The boat was sent to Monsipi with the English prisoners; the soldiers of the expedition relieved him soon afterwards. De Troyes, after such auspicious commencement, desired to proceed with his undertaking by seizing Fort Quitquehonane or Albany. The same success followed this expedition. Sir Henry Sergent who commanded these was at the same time governor of all the British establishments in Hudson Bay. He was very amiable to the French envoys who 30 were sent to him, but he would neither yield his fort nor fight to defend it. De Troyes had to commence to make a breach in the entrenchments to show that he had decided to take the fort.

When the British commandant perceived that he was in earnest, he hastened to send a man with a white flag to demand quarter and to give up the place.

The conduct of the chevalier de Troyes during this expedition, merits great praise. After having organized the forts he set out for Montreal on the 10th August, 1686.

Having remained on the spot to re-establish the affairs of the Company of the North, d'Iberville sent the British prisoners to France in a ship sent to transport thither the furs taken from the enemy. Six months later he appointed his brother Maricourt to re-place him in the command, and proceeded to Montreal by land. The English Company during this campaign lost 40 all its establishments with the exception of Fort Nelson situated several hundred miles to the north of Fort Albany.

Before returning to Montreal, d'Iberville had news of an English ship being in the ice near Charleston Island; he sent four men to reconnoitre her—one of them died from sickness, the other were surprised taken and bound, one escaped after having been hit by several shots, the others were bound in the bottom of the hold where they passed the winter. The commander of the ship

drowned himself in spring, when the time came to make sail the pilot and the others to the number of six made the least vigorous of the Canadians assist them. One day when the greater part of the British were aloft the Canadian seeing two only on the deck armed himself with an axe with which he split the heads of both and ran to deliver his comrade, both seized arms and ascended to the deck where they made themselves masters and made the ship take the direction of the French ports, on the way they met d'Iberville who had armed a boat to free his men. The British ship was laden with goods and provisions which were of great assistance in the Forts.—*Ferland*, 162-6.

M. Talon to M. Colvert, November 10th, 1670. "You will understand, My Lord, by the M. Talon I furnish the King, that some adventurers have set out to discover unknown countries and to seek out things which may be of use to his state. According as I have advices, I shall 10
dispatch others, with the precaution necessary to such enterprises.

"I learn by the return of the Algonquins, who will winter this year at Tadoussac, that two European vessels have been seen very near Hudson's Bay, where they wigwam as the Indians express it. After reflecting on all the nations that might have penetrated as far north as that, I can light only on the English, who, under the guidance of a man named Des Groseillers, formerly an inhabitant of Canada, might possibly have attempted that navigation, of itself not much known, and not less dangerous. I intend dispatching thither overland some man of resolution to invite the Killistinons, who are in great numbers in the vicinity of that Bay, to come down to see us, as the Ottawas did, in order that we may have the first pick of what the latter savages bring us, who, acting as pedlers between those nations and us, make us pay for a round-about of 3 or 20
4 hundred leagues."—(*N. Y. Col. Docts. Paris Docts*, vol. 9, p. 67.)

My Lord to M. de Cheveau; 15th May, 1678. "In proof of your representation that Count de Frontenac under pretence of granting passes to go hunting eludes the execution of the order prohibiting trading among the Indians, you send me copy of a pass he gave some private persons to hunt towards Hudson's Bay. On this point you ought to be aware that this pass by no means proves what you advance, because it is of advantage to the King's service to go towards that Bay in order to be able to contest the title thereto of the English who pretend to take possession of it, although it lies within the limits of the countries appertaining to the Crown. His Majesty sails not to transmit you the two annexed Ordinances which he also sends to Count de Frontenac, with orders to see that they be executed."—(*N. Y. Col. Docts. Paris Docts*, p. 794.) 30

The King to M. de la Barre, 5th of August, 1683. "I recommend you to prevent as much as possible, the English establishing themselves in Hudson's Bay, possession whereof has been taken in my name several years ago."

"He has received His Majesty's instructions respecting Hudson's Bay, and has engaged those who have organized that expedition to form a company and to send and purchase a ship in France." (*Ibid.*, 799.)

M. de la Barre; the 4th and 9th November, 1683. "The people who had been at Hudson's Bay, have returned after having encountered extreme dangers. They erected a small fort in which they left a garrison of a few men, about 4 leagues up a river 200 leagues north of any English settlements. It is expected that communication can be had with it overland, as will be seen in the map he sends."—(*N. Y. Col. Docts. Paris Docts*, Vol. 9, p. 798.) 40

M. D. Beauharnois to Count de Mauvepas, 8th October, 1744. "In regard to the posts on Hudson's Bay and those they have established on this side, in the direction of Temiscaming, and which His Majesty has been pleased to recommend me to endeavour to neutralize, or to utterly destroy if possible; I have accordingly Sieur Guillet who farms the post of Temiscaming, and has gained the good opinion and confidence of all the nations thereabouts, to prevail on them to

assemble together in the course of this winter in order to fall, at the opening of the spring, as well on Fort Rupert as on the other posts in the direction of Hudson's Bay; I have, in like manner on receiving news of the war, sent orders to Missilimakinac, to be transmitted to Alepimigon, and the other posts in that neighborhood, so that they may all co-operate in the destruction of the English establishments at the North, and among the rest, of that newly built about twenty leagues Michipicoton, by a Canadian refugee, who has conducted thither seven or eight Englishmen who trade there; and I have ordered not only the forcible destruction of that establishment, but also that the Canadian be killed, if it be impossible to seize him. I have also given Sieur Guillet notice, that I should, at the very opening of spring despatch a party of Frenchmen and Indians, under the command of an officer and some others, so as to make a simultaneous attack¹⁰ on those posts. Sieur Guillet is to warn those Indians of this expedition, in order that they may hold themselves in readiness to join it, and in fact I calculate on sending it thither as soon as the season will permit, and I beg you, My Lord, to assure His Majesty that I will not neglect anything to utterly destroy, if possible, the English establishments in that quarter, as well as all those the difficulties whereof I shall be able to surmount."—*N. Y. Col. Docts. Paris Docts, vol. 9, p. 1105.*

M. de Beauharnois to Count de Maurepas, 18th June, 1745. "In other respects every thing is quiet on this side. I am on my guard, and merely on the defensive, not being able to act offensively, as I had the honour to inform you, either against New England or the posts on Hudson's Bay, in consequence of the want in the King's stores and even in those of the merchants,²⁰ of the supplies necessary for such expeditions, a circumstance I was not informed of last autumn. Besides, the preservation of our possessions and forts, in the interior of the Colony, being my principal object, I considered it more prudent *not* to divest ourselves of our small means of resistance in case of attack, and to suspend the *other* projects, until I am in a condition to execute them."—(*N. Y. Col. Docts. Paris Docts, Vol. 1, p. 20.*)

HUDSON'S BAY COMPANY'S MEMORIAL TO THE LORDS OF TRADE, 1750.

When Commissioners were appointed in 1750 to settle the various disputes relating to the boundaries between the possessions of England and France in America, the Hudson's Bay Company again addressed a memorial to the Lords of Trade and Plantations, relating to the extent of country which they claimed under their charter. It is dated 3rd of October, 1750³⁰ and reads as follows:—

"The said Governor and Company, in obedience to your Lordships' orders of the 25th July, last, requiring them to lay before your Lordships an account of the limits and boundaries of the territory granted to them, represent to your Lordships:

* * * * *

"The said Streights and Bay, commonly called Hudson's Streights and Bay, are now so well known that it is apprehended they stand in no need of any particular description than by the chart or map herewith delivered to your Lordships; and the limits or boundaries of the lands and countries lying round the same, comprised as your memorialists conceive in the said grant, are as follows, that is to say: All the land lying on the east side or coast of the said bay, and extending⁴⁰ from the bay eastward to the Atlantic Ocean and Davis Streights, and the line hereinafter mentioned as the east and south-eastward boundaries of the said Company's territories; and toward the north all the lands that lie at the north end, or on the north side or coast of the said bay, and extending from the bay northwards to the utmost limits of the lands, then towards the North Pole, but where or how these lands terminate is hitherto unknown; and towards the west, all the lands that lie upon the west side or coast of the said bay, and extending from the bay

westward to the utmost limits of those lands but where and how those lands terminate to the westward is also unknown, though, probably, it will be found that they terminate on the Great South Sea; and towards the south, all the lands that lie at the south end or south side or coast of the said bay, the extent of which lands to the south to be limited and divided from the places appertaining to the French in those parts, by a line to be drawn for the purpose, to begin from the Atlantic Ocean on the east side of an island called Grimington's Island, otherwise Cape Perdrix, in the latitude of $58\frac{1}{2}$ on the Labrador coast, and to be drawn from thence south-westward to the great lake Misecosinke otherwise called Mistoseny, and through the same, dividing that lake into two parts, down to the 49th degree of north latitude, as described in the said map or plan delivered herewith, and from thence to be continued by a meridian line of the said latitude 49° westwards," 10

The memorial complains of the French encroachments before the Treaty of Utrecht, and sets out the Tenth Article of that Treaty thus: "That the French King should restore to the Kingdom and Queen of Great Britain, to be possessed in full right forever, the Bay and Straights of Hudson, together with all lands, seas, sea-coasts, rivers, and places situate in the said Bay and Straight, and which belong thereunto, no tracts of land or sea being excepted which were possessed by the subjects of France, &c., &c."

Also the Eleventh Article, and proceeds -

"That in pursuance of the said Treaty, and the especial commission of Her late Majesty Queen Anne, dated 20th July, 1713, the said bay and lands were delivered up to, &c., and commissioners were appointed to settle the said limits and adjust the damages, &c., and proceedings 20 were had by the said commissioners towards settling the same, but they were never able to bring the settlement of the said limits to a final conclusion," &c.

"The boundary line then proposed by the H. B. Co., to be settled on the limits on the continent between them and the places belonging to the French at the south end of the said Bay, as appears from the several memorials and a map or a plan then presented by the said H. B. Co. to the Lords Commissioners of Trade, and still remaining in Your Lordships' office, was the same as the line now proposed by your memorialists for the south-east and south boundaries; and to avoid as much as possible any just grounds for differing with the French in agreeing on those boundaries, which be nearest the settlements, it is laid down so as to leave the French in possession of as much or more land than they can make any just pretensions to, and at the same 30 time leave your memorialists but a very small district of land from the south end of the said Bay, necessary for a frontier."

It next refers to former memorials setting forth the national rights, and claims that—"Since the Treaty of Utrecht the French and all the other nations have effectually been kept out of Hudson's Bay and Straights, and have never offered to come into or navigate on the same with any ship, vessel, or boat, or carried on any trade there. But the French, since the said Treaty, as has been reported to your memorialists from their factories in the bay, have at different times made some settlements in different parts inland to the west of said bay, within the aforesaid limits of the H. B. Co., and have also carried on some trade within the said company's limits by means of wood-runners in an interloping way, both which are conceived and humbly represented 40 to your Lordships as encroachments on the British territories or trade.

"That your memorialists have used the best endeavours in their power to prevent the French making any encroachments on the British territory in those parts, and particularly at the south end of the said bay, where, by the neighbourhood of the French, there is most to be apprehended Your memorialists have made a settlement many years since upon the principal river there, called Moose River, which runs from a great distance south into the bay, and have also erected a for

mounted with cannon for the defence of the settlement, and preventing the French entering the bay by any navigation down that river; and your memorialists, on another principal river, called Albany River, that likewise falls into the bay towards the southward thereof, and comes a great way from the west, erected another fort called Henley, at the distance of 120 miles up that river your memorialists thereby endeavouring to guard their territories both to the south and west against the French frontier, and which forts and settlements of your memorialists, are maintained and supported by them at considerable expense. And your memorialists have, in like manner, for their further defence towards the west, erected a fort at Flamboro', head of Port Nelson River, and have also several other settlements or forts at the entrance of the principal rivers that come into the bay from the west, particularly on Churchill River, Hays River, and the said Albany River, 10 and also on the east side of the bay at Sluide River and Axtinepeck Bay, and have also several hips and vessels navigating the straits and bay at proper seasons, some of which remain there the whole year; and the natives all around the bay, by means of the rivers that fall into the same, on breaking up of the ice come down in canoes from the country several hundred miles inland to trade with the Company, bringing with them large quantities of beavers and other furs, the produce of that cold climate, and taking in exchange British manufactures, which the Company have always ready to supply them with, and which the Indians carry back with them for their own consumption and use, and to dispose of among other natives there, and which it is apprehended is better performed by them than could be done by Europeans, and the rivers that run into the bay admit of no navigation for ships, or any vessel of burden at any considerable 20 distance up the same, and the climate round the bay is so extremely cold as to admit of no agriculture, the Indians of those parts being altogether a wandering people, and wholly subsisting themselves by hunting, living on the wild beasts they kill, and bartering their furs.

"That your memorialists apprehend it will be for the benefit of this kingdom that the limits of the territories granted to your memorialists, and the places appertaining to the French, should be settled upon the footing hereinbefore mentioned, and that the French should be obliged to remove all encroachments they have made within the said limits, by breaking up their settlements, and restraining the wood-runners from entering the same, &c., &c., &c. *Mills Revised Reports*, pp. 176-78.

"Under the seal of the Company.

"CHARLES HAYS, Secretary."* 30

(COPIED FROM DOCUMENTS FURNISHED BY THE FOREIGN OFFICE.)

M. de Vandreuil was Governor of La Nouvelle France in 1755.

General Wm. Shirley (as Mr. Shirley) was Captain-General and Commander-in-Chief of the Province of Massachusetts Bay in 1749, and in July of that year it was agreed that Commissaries should be appointed to define, in an amicable spirit, the boundaries between the colonial possessions of Great Britain and France in North America.

There is proof that Mr. Shirley was originally one of these Commissaries, and that Mr. Mildmay was the other; for on the 21st September, 1750, a mémoire, signed "W. Shirley" and "W. Mildmay," was presented to the French Commissaries, respecting the boundaries of Nova Scotia or Acadia, under Art. 12 of the Treaty of Utrecht; and on the 11th of January, 1751, a 40 second mémoire on the same subject was signed by "W. Shirley" and "Wm. Mildmay," as British Commissaries at Paris; but it is evident that Mr. Shirley had ceased to be a Commissary in April,

* Entered in Book Plantations General 174 O. No. 14, B. T.

1755; for on the 23rd January, 1753, a further mémoire was presented by the British Commissaries to the French Commissaries respecting this same boundary; but instead of its bearing the signatures of Mr. Shirley and Mr. Mildmay, it was signed "Mildmay" and "Ruvigny de Cosne."

Mr. Shirley had therefore no doubt returned to America, and Mr. Ruvigny de Cosne, who was British Chargé d'Affaires at Paris, in the absence of the Earl of Albemarle, had succeeded him as one of the British Commissioners.

In May, 1755, the commission was still sitting at Paris.

On the 14th of May of that year, a mémoire was delivered by the French Ambassador in London (the Duke de Mirepoix) to the British Minister for Foreign Affairs, in which was laid down the following four points of discussion:

1. Limits of Acadia.
2. Limits of Canada.
3. The course and territory of the Ohio.
4. The islands of St. Lucia, St. Vincent, Dominica, and Tobago.

With regard to the limits of Canada the mémoire ran as follows:—

"The Court of France have decisively rejected, and will always reject, the proposition which has been made by England, that the southern bank of the River St. Lawrence, and Lakes Ontario and Erie shall serve as boundaries between the two nations.

"It is necessary to establish as a base of negotiation relative to this Article, that the River St. Lawrence is the centre of Canada. This truth is justified by all titles, by all authors, and by possession. All that France will be able to admit, after having established this principle, which cannot be reasonably contradicted, is to examine, in regard to this object, whether the reciprocal convenience of the two nations can exact some particular arrangement thereto, in order to fix invariably the respective boundaries.

"The only pretext the English make use of to colour their pretensions is drawn from Article 15 of the Treaty of Utrecht; but in examining attentively all the expressions of that Article, it is evident that nothing is less founded than the inductions which the Court of London actually wish to draw from it.

"1. It is only a question in this Article of the person of the savages, and not at all of their country or pretended territory, since they have no determined territory, and the only knowledge they have of property is the actual use they make of the land they occupy to-day, and which they will cease perhaps to occupy to-morrow.

"2. It would be absurd to pretend that everywhere where a savage, a friend or subject of one of the two Crowns, should make a passing residence, that country that he had dwelt in should belong to the Crown of which he might be the subject or the friend.

"3. The savages in question are free and independent, and there are none that could be called subjects of one or the other Crown; the enumeration of the Treaty of Utrecht in this respect is incorrect, and cannot change the nature of things. It is certain that no Englishman would dare,

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without running the risk of being massacred, to tell the Iroquois that they are subjects of England; these savage nations govern themselves, and are as much, and more, friends and allies of France than of England; several French families are even affiliated among the Iroquois, and have dwelt with them during the course of the last war, during which the five nations preserved the most exact neutrality.

"4. Article 15 of the Treaty of Utrecht contains the same stipulations, as much in favour of the French as in favour of the English, and these stipulations are mutual: the French could, then sustain with a better title than the English pretend about the Iroquois, that the nations Abénaquises and Souriquoises, otherwise Miamaes, Malécites, Canibas, etc., are subjects of France and as there are some Souriquois who inhabit the extremity of the Peninsula of Cote, Cape Fourcher, and Cape Sable, it would follow that the French could pretend to form settlements there with as much right as the English have formed them at Oswego, or Chouagen on the shores of Lake Ontario, in 1726 or 1727, and consequently long after the peace of Utrecht; France has not ceased since that time to complain of that enterprise, and she relies upon the Fort of Chouagen being destroyed.

"5. The Treaty of Utrecht has been ill interpreted in pretending that it would authorize the French and English to go and trade indiscriminately amongst all the savage nations, under pretext of subjection, alliance, or friendship. This Article, well understood, and well expounded, assures only the liberty of commerce which the savages can make among themselves, or with European nations, and does not at all authorize them to leave the confines of their colonies to go and trade with the savages.

"6. Finally, this Article 15 conveys that it shall be settled that the American nations shall be reputed subjects or friends of the two Crowns. This stipulation has not been executed, because in fact, it is scarcely susceptible of execution, since such a savage nation, which to-day is friendly to-morrow may become an enemy, and, consequently, the fixation which might have been appointed for it would be continually contradicted by fact.

"All that has just been exposed proves clearly that in discussing concerning the rules of the justice and right of Article 15 of the Treaty of Utrecht, it will be easy to destroy the false interpretations that have been given it: it will not be less easy to demonstrate that the English should not be determined by any motive of interest to put forward the pretensions they have formed; it is not a question in these vast regions of America, to dispute about a little more or a little less land. The essential interest is confined to two objects, that of security and that of commerce; and the Court of France will be always disposed to concert, in these two respects, with that of London, equitable and solid arrangements as well for the present as for the future."

On the 7th of June following, the British Government returned a reply to this mémoire repeating Article by Article, and with reference to the limits of Canada, said:

"It will be difficult to form a precise idea of what is called in the Memorial the centre of Canada, and still less can it be admitted as a base of negotiation that the River St. Lawrence is the centre of that Province; this is advanced without proof, and it is impossible that the course of a river of that length can form the centre of any country. Besides, Great Britain cannot grant that the country between the northern coast of the Bay of Fundy and the southern bank of the River St. Lawrence, which Great Britain has already offered to leave neutral, and not possessed by either of the two nations, in reserve for the borders that are proposed to be drawn for it, ought to be regarded or has ever been considered as a part of Canada, since the contrary has been demonstrated by authentic proofs. Neither can Great Britain admit that France has right to Lakes Ontario and Erie, and the Niagara River, and to the navigation of these waters exclusively, since

it is evident, by incontestible facts, that the subjects of Great Britain and of France, as well as the Five Nation Iroquois, have indiscriminately made use of the navigation of these lakes and this river, according as occasions and convenience have required; but as regards a piece situated on the south bank of the River St. Lawrence, exclusive of that already proposed to be left neutral, the boundaries of which are in dispute between the two nations or their respective colonies, the Court of Great Britain is ready to enter into a discussion in regard to this, and to fix the limits of it by an amicable negotiation, but without prejudice, nevertheless, to the rights and possessions of any of these five nations.

"With regard to the exposition that is made in the French Memorial, of the 15th Article of the Treaty of Utrecht, the Court of Great Britain does not conceive that it is authorized either by the words or the intention of that Article.

"1. The Court of Great Britain cannot admit that this Article only has regard to the person of the savages, and not their country; the words of that Treaty are clear and precise, viz: The Five Nations or Cantons Indians are subject to the rule of Great Britain, which, by the accepted exposition of all treaties, must have reference to the country as well as to the person of the inhabitants; France has recognized this most solemnly; she has well weighed the importance of that avowal at the time of the signing of this Treaty, and Great Britain can never depart from it; the countries possessed by these Indians are very well known, and are not at all as indeterminate as is pretended in the Memorial; they possess and transfer them, as other proprietors do everywhere else. 20

"2. Great Britain has never pretended that the country in which a savage should make a passing residence would belong to the Crown whose subject or friend he might be.

"3. However free and independent the savages in question may be (which is a point which the Court of Great Britain does not at all wish to discuss), they can only be regarded as subjects of Great Britain, and treated as such by France in particular, since she has solemnly engaged herself by the Treaty of Utrecht, renewed and confirmed in the best form by that of Aix-la-Chapelle, to regard them as such; the nature of things is not changed by the Treaty of Utrecht. The same people, the same country, exists still; but the acknowledgement made by France of the subjection of the Iroquois to Great Britain is a perpetual proof of her right in this respect, which can never be disputed with her by France. 30

"4. It is true that the 15th Article of the Treaty of Utrecht contains the same stipulations in favour of the French as in favour of the English, with regard to such Indian nations as shall be deemed, after the conclusion of this Treaty, by Commissaries, to be subjects of Great Britain or of France; but as to what is mentioned of the five nations or Cantons Iroquois, France has distinctly and specifically declared by the said 15th Article that they are subjects of Great Britain, '*Magna Britannia imperio subjecte*,' and consequently this is a point to be no more disputed about.

"5. In whatever manner one interprets the Treaty of Utrecht with respect to the trade which will be permitted the English and French to carry on indiscriminately with the savage nations, it is nevertheless very certain that such a general trade is by no means forbidden by this Treaty. 40 It is an ordinary and natural right to transact business with one's own subjects, allies or friends; but to come in force into the territories belonging to the subjects or allies of another Crown, to build forts there, to deprive them of their territories and to appropriate them, is not and will not be authorized by any pretension, not even by the most uncertain of all, viz, convenience. However, such are the forts of Frederick, Niagara, Presqu'isle, Rivière-aux-bœufs, and all those that have been built on the Oyo and in the adjacent countries. Whatever pretext France can

allege for regarding these countries as dependencies of Canada, it is certainly true that they have belonged to, and (inasmuch as they have not been ceded or transferred to the English) belong still to the same Indian nations that France has agreed, by the 15th Article of the Treaty of Utrecht not to molest, '*Nullo in posterum impedimento aut molestia efficiant.*'

"6. It has already been proved that France has, by the express words of the said Treaty, fully and absolutely recognized the Iroquois as subjects of Great Britain. It would not have been as difficult as is pretended in the Memorial to come to an agreement on the subjects of the other Indians, if, among the many Commissions which have emanated to settle this point, there had been a mutual disposition to come to a conclusion. The acts of these Commissions have sufficiently shown the true reasons which have prevented the execution of the 15th Article of the Treaty of Utrecht, without recourse to an imaginary supposition, as if the Treaty was not capable of being executed; a supposition which is evidently destroyed by the Treaty itself with regard to the Iroquois nations."

On the 22nd of July, 1755, Monsieur de Mirepoix, the French Ambassador, left England by order of his Court, without taking leave; consequently, on the same day, Mr. de Cosne was instructed by His Britannic Majesty's Government to quit France immediately without taking leave, and to repair to England, which he did on the 25th, and arrived in England, with all his public papers, on the 31st of the same month.

Negotiations were accordingly suspended, and on the 17th of May, 1756, war was declared by Great Britain against France; followed, on the 9th of June, by a French ordonnance declaring war against England.

No further reports than those above described would appear to have been made to the Government by the English Commissaries between the 1st of April, 1755, and March, 1756.

The following is an account of what passed between the 26th March and 20th September, 1761:

On the 26th of March, 1761, the Duc de Choiseul, in the name of the King of France addressed the King of Great Britain, through Mr. Pitt, a letter, communicating proposals as to the basis of negotiations for a separate peace between England and France, in addition to those pending to secure a general European peace.

On the 8th of April, the British reply was forwarded to the Duke, containing the views of the Court of St. James as to the proper basis to be established, in which willingness was expressed to receive an Envoy duly authorized to enter into negotiations. The result of this was, that M. de Bussy was appointed French Minister to London, and Mr. Hans Stanley was sent in a similar capacity from Great Britain to Paris; these diplomatists arriving at their respective posts early in June of the same year.

Negotiations were immediately set on foot for the conclusion of peace between France and England; but the chief difficulty in arriving at an amicable understanding consisted in the desire of the French to retain the fisheries at and near Cape Breton.

On the question of Canada, under date of the 17th June, the Duke de Choiseul had demanded that the boundary of Canada in that part of the Ohio which is regulated by the water-line, and so clearly defined by the Treaty under discussion, be so established, that there may not be any contestation between the two nations as to the said boundaries.

On the 26th of June the above proposal of the Duc de Choiseul as to the fixation of new limits to Canada towards the Ohio, was rejected by Great Britain on the grounds that it was

"captions and insidious: thrown out in hopes, if agreed to, to shorten thereby the extent of Canada, and to lengthen the boundaries of Louisiana, and in the view to establish what must not be admitted, namely, that all that was not Canada was Louisiana, whereby all the intermediate nations and countries, the true barrier to each Province, would be given up to France."

The intentions of the Court of St. James were further fully set forth, as to Canada, in the following passage of the same letter:—

"First, then, the King will never depart from the total and entire cession, on the part of France, without new limits or any exception whatever, of all Canada and its dependencies."

On the 29th June Mr. Stanley reported that "the southern bounds of Canada were to be so settled as to give that Province entire and unamutilated to Great Britain, such as France, in short, held it in all respects;" and on the 1st July he stated that "it was agreed that Canada, as that Province was determined by their (French) geographers and historians, as well as by the respective civil and military Departments, should be ceded, undismembered and entire to Great Britain."

In his despatch of the 14th July, 1761, Mr. Stanley forwarded a Mémoire containing proposals from the Duc de Choiseul, Art. 1 of which ran as follows:—

"1. The King cedes and guarantees Canada to the King of England, such as it has been, and in right ought to be possessed by France, without restriction, and without the liberty of returning upon any pretence whatever against this cession or guaranty, and without interrupting the Crown of England in the entire possession of Canada."

It must, however, be remembered that other questions of great importance bearing on European interests were involved in these negotiations for peace; and as difficulties were offered by France to the British proposals, on the 25th of July Mr. Stanley was instructed to present an ultimatum from Great Britain, the first point of which related to Canada, and declared that "His Britannic Majesty would never depart from the total and entire cession on the part of France, without new limits, or any exception whatever, of all Canada and its dependencies."

The reply of France to this ultimatum was transmitted home in Mr. Stanley's despatch of the 6th August which contained the following clause with regard to Canada:

"The King consents to cede Canada to England in the most extensive form, as specified in the memorial of propositions." 30

Nevertheless, the replies of the French Government to the other demands were not deemed satisfactory, and Mr. Stanley, assuming that the Treaty had failed, stated in his despatch of the 6th August, that he was "convinced that the sole cause of the failure was the determined resistance of the French as to the entire concession of the fishery."

M. de Bussy was, as has been stated, at this time French Minister in London, and on the 18th August he furnished to Mr. Pitt a memo. upon the limits of Louisiana, which bore upon the limits of Canada, and ran thus:

"On the limits of Louisiana.

"To fix the limits of Louisiana towards the English Colonies and Canada, a line should be drawn which will extend from Rio Perdido, between the Bay of Mobile and that of Pensacola, passing by Fort Toulouse in the Allouabous, and which, being prolonged by the western point of 40

Lake Erie will enclose the river of the Miamis, and by the eastern extremity of Lake Huron will go and meet the high lands on the side of Hudson's Bay toward the Lake of Abitibis, from whence the line will be continued from east to west up to and comprising Lake Superior."

Instructions, however, accompanied by an ultimatum, were transmitted under date the 27th August, 1761, to Mr. Stanley, in which it was laid down that these limits could not be acceded to and Mr. Pitt, in alluding to the conduct of France, stated that among the reasons whereby British confidence had been shaken, was "the claiming, as Louisiana, with an effrontery unparalleled, vast regions which the Marquis of Vaudreuil had surrendered to General Amherst, as Canada, and defined himself, with his own hand, as comprehended in the government of that Province where he commanded;" and Mr. Pitt gave the following definition of the boundaries of Canada, as set forth by M. de Vaudreuil:

"Canada, according to the line of its limits traced by the Marquis de Vaudreuil himself, when this Governor-General surrendered, by capitulation, the said Province to the British General, Chevalier Amherst, comprises, on one side, Lakes Huron, Michigan and Superior, and the said line drawn from Lake Rouge, embraces by a tortuous course the River Ouabache (Wabash) up to its junction with the Ohio, and from there extends the length of this river inclusively, until its confluence into the Mississippi;" and on this definition of the limits of Canada, its cession was claimed; a copy of M. de Vaudreuil's map being sent to Mr. Stanley for reference, together with an extract of a letter from General Amherst, dated 4th October, 1760, bearing upon that subject

Annexed hereto will be found a further copy of that map of M. de Vaudreuil, to which Mr. Pitt referred, which has been made from the original enclosed by General Amherst in his despatch of 4th October 1760, from which document also the following extracts have been taken:

STATE OF CANADA.

	Parishes.	Companies of Militia.	Number of Militia.	Total of Souls.
Government of Montreal :—	46	87	7 331	37 200
Government of Three Rivers :—	19	19	1 105	6 388
Government of Quebec :—	43	64	7 976	32 584
Total of Canada :—	108	170	16 412	76 172

"The Government of Canada includes Lakes Huron, Michigan and Superior, as you will see by the enclosed sketch, the red line being marked by the Marquis de Vaudreuil.

"The above State is taken only from the part beginning above the Island of Montreal, with the Cedars and Vaudreuil on the north-west of the River St. Lawrence, and Chateau-Gay on the south-east, and ends with Berthier on the north-west of the river, the Island of Dupas and Sorel on the south-east."

"The Government of Trois Rivieres joins that of Montreal with Maskenongy on the north-west, and Yamaska on the south-east, and ends with Ste. Anne on the north-west, and Ste. Pierre de Becquit on the south-east of the River St. Lawrence."

"The Government of Quebec begins with Groulmes on the north-west and de Chillon on the south-east, and takes in all the parishes from there down the River St. Lawrence."

It is further recorded on the 2nd September, the Marquis de Vaudreuil's map was shown to the Duc de Choiseul by Mr. Stanley, and that the bounds of Canada were agreed upon as therein

stated. This fact is further substantiated by a passage in Mr. Stanley's despatch of the 4th of that month, which runs as follows:—

"The Duc de Choiseul complained that the bounds of Canada were laid down very unfavourably to France, in the description which your Memorial contains, alleging (*sic*) that there had been disputes between the Marquis de Vaudreuil and the Governor of Louisiana with regard to the limits of their two Provinces, wherein the former, being the more able and the more active, had greatly enlarged his jurisdiction. He added, however, that though many such objections might be made, it had been the intention of the King his master to make the most full and complete cession of Canada, and that he consented in his name to those limits. I then produced the map you sent me, and it was agreed that this Province should remain to Britain, as it is there delineated."

The last Mémoire of France to England, in these negotiations, is dated 9th September, and was delivered by M. de Bussy to Mr. Pitt on the 14th.

The 1st Article fully confirms the acceptance by France of the de Vaudreuil* map, and states as follows:—

"The King has declared in his first Memorial of propositions, and in his ultimatum, that he will cede and guarantee to England the possession of Canada, in the most ample manner. His Majesty still persists in that offer, and without discussing the line of its limits marked on a map presented by Mr. Stanley,—as that line, on which England rests its demands, is without doubt the most extensive bound which can be given to the cession,—the King is willing to grant it." 20

On September 15th, in consequence of the non-acceptance by France of the terms offered by Great Britain, instructions were sent to the British Minister at Paris to demand his passports, and on the 21st a passport was sent to M. de Bussy, the French Envoy in London.

On the 20th, Mr. Stanley received his passport, together with an assurance that the King of France would be found at any time willing to re-open these negotiations, which were in effect resumed the following year; for on the 29th August, 1762, the French King despatched the Duc de Nivernois to London to carry over the peace propositions; and as a result preliminary Articles of Peace were signed at Fontainebleau on the 3rd November, 1762.

From these is given the following extract:—

"His Majesty renounces all the pretensions that he had formerly formed, or could form, for 30 New Scotland or Acadia, in all its parts, and guarantees it quite entire and with all its dependencies to the King of Great Britain. Besides, his very Christian Majesty cedes and guarantees to his said Britannic Majesty, in all its entirety, Canada, with all its dependencies, as well as the Island of Cape Breton and all the other islands in the Gulf and River St. Lawrence, without restriction, without his being free to come back upon this cession and guarantee, under any pretext, nor to trouble Great Britain in the aforementioned possessions."

EDWARD HERTSLET.

Foreign Office, April 27th, 1878.

* Yet, on the 30th November, weeks after the cessation of these negotiations, M. de Vaudreuil addressed a letter to the Duc de Choiseul, which was published, as stated in the Annual Register of 1761, "to quiet the minds of the people," 40 and in which the Marquis stated that what he was charged with by the English as regards the limits of Canada was entirely false and groundless, and that nothing passed in writing on that head, nor was any line drawn on any map.—An. Reg., 1761, pp. 267, 268.

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CO'Y, FURTHER QUERIES AND OPINIONS OF Mr. HOLROYD.

QUERIES.

1. Whether any objection can be made to the grant of the soil contained in the Charter, and whether the grant will include all the countries, the waters of which run into Hudson's Bay, as ascertained by geographical observations?

OPINION.

To 1st. I am not aware of any objection that appears to me to be a valid one to the grant of the soil contained in the Charter. I think the grant will include all the countries, the waters of which run into Hudson's Bay, as ascertained by geographical observation, that were not at the time of the Charter actually possessed by the subjects of any foreign prince, and which have not been possessed of any foreign trade previous to actual or virtual possession thereof being taken under the Charter, or by or on behalf of the Crown of England.

2nd. Whether as proprietors of the soil, the company may exclude all other persons from residing therein, and dispossess the Canadian traders of the posts already occupied by them and used for the purposes of trade with the native Indians.

3rd. Though the company may not be entitled to prevent other persons from using the navigation of Hudson's Bay, or of navigable rivers within their territories, are they entitled to prevent all persons from landing upon the shores of the Bay or the banks of the rivers, and in those places where the navigation of a river is interrupted by falls, may the company prevent any person from passing over their land for the purpose of transporting himself and his merchandise to another point, where the river may again become navigable.

To 2nd and 3rd. I think that as proprietors of the soil of the Company may not exclude all other persons from residing thereon, and dispossess the Canadian traders of the posts occupied by them, and used for the purposes of trade with the native Indians, notwithstanding the grant of a sole trade and the consideration mentioned in the Charter for the same, and though such a grant for such consideration may formerly have been thought good, yet, I am inclined to think that all the King's subjects have a right there, and that the grant of an exclusive trade is in that respect void. See Skin., 334, 361. It appears to me, too, that the grant of the territory must be taken subject to the rights of the King's subjects to go into that country to trade there, and to their rights of passing and repassing through the country for that purpose, and doing what is necessary for the enjoyment of their rights of trade in like manner as they would be entitled to if the soil had remained the King's, and the grant had not been made. Though these may be regulated in a reasonable manner by the King or his grantees of the territory and soil, yet I am inclined to think the King's subjects cannot by law be deprived of their rights of trading there, and incidentally of doing what is necessary and reasonable for that purpose. I am inclined to think, therefore, that the King's subjects have, as necessarily to their right of trade, a right to pass and cross along the navigable rivers, and in those places where the navigation is interrupted by falls, to pass over the company's land in a proper course for the purpose of transporting themselves and their merchandise to another point where the river may again become navigable. I think, therefore, that the company have no right to prevent the Canadian traders from doing these things, or from landing on the banks of the bays or the shores of the rivers.

4th. Whether the company by virtue of their right of property may prevent the Canadian traders from passing through their territories to arrive at Athabaska, or other countries not included in the Charter, or will the use which these traders have enjoyed for nearly forty years of travelling through the company's territories entitle them to its continuance. You will observe

that it is impossible for the Canadian traders to traverse the companies territories without cutting wood or using the water found in the course of their journey and pitching their tents upon the company's lands, and on this head you will further please to say whether there are rights which the Canadian traders can acquire by any, and what length of possession?

To 4th.—I think that the company have not any right by law to prevent this. In the infancy of a country, all these things may be necessary to be done in order to exercise the right of trade, and so long as they are necessary, and without which the country cannot be traversed for the purposes of trade, so long as the right to do these things are, as it seems to me, upon the principles of reason and law and from necessity increased to the right of trade, without which it cannot exist. I am inclined to think, therefore, that until these conveniences are otherwise provided, can be otherwise had, traders may, in traversing the company's territories, provide themselves in a reasonable manner with what is necessary for fire, water and temporary habitation, though this be done upon and from lands granted to or appropriated to other purposes. Twenty years exclusive enjoyment will give, I think, a right of possession, from which the party cannot be removed by ejectment or otherwise than by a real action, and 60 years like enjoyment of any lands or tenements will give, I think, a complete title against the company. No action will, however, lie in the courts of law in England to recover lands or tenements abroad, or for trespass committed upon them. *See 4 Term, Rep. 503.*

5. Supposing the company entitled to dispossess the Canadian traders and to maintain an exclusive right to trade within their territories, what steps do you advise as the best to be purchased for making the right effectual?

To 5th. Supposing the company were so entitled, this is a query embracing considerations of prudence, policy and discretion, and which must depend, in every instance, upon the circumstances attending it and connected with it, which I, therefore, cannot take upon me to answer further than that an application may be advisable to the King's Ministers upon the subject, or to the King in Council in whom the original jurisdiction as to the boundaries of our Provinces in America is said to be rested. *See 1, Vez. 4, 44.*

6. Does it appear to you that the civil and criminal jurisdiction granted to the company, is valid?

To 6th. It appears to me that the civil and criminal jurisdiction granted to the company is valid, but I am not so clear in this as to advise it being carried into execution in any case of life or limb, without the express authority of the Crown in the particular instance or more explicit powers by Charter.

7. If valid, how is it to be exercised? May the company erect Courts of Justice or authorize any person or persons to administer the laws of England as they might be administered in England?

To 7th. I think it can only be exercised by the Governor and his Council. The company cannot, I think, erect Courts of Justice or authorize any person or persons to administer the laws of England as they might be administered in England.

8. May the company appoint a Sheriff to execute the judgment of their Court and to do the duty of a Sheriff as performed in England?

To 8th. I incline to think that the Governor and his Council, who have the power of jurisdiction, may as incident to that power, appoint such an officer, who, in similar cases is, I believe, usually called the Provost Marshall. *See 4, Meod., 222.*

9. May such Sheriff, in case of resistance to his authority, call out the population to his assistance, and may the company put arms in the hands of their servants and those who live under them, as well as for their defence against attack as to assist in enforcing the judgments of their Courts?

To 9th. I incline to think that all this may lawfully be done.

10. Supposing the company to hold Courts of Justice, who will be subject to their jurisdiction, will it be only their own servants and persons residing within their territories by their permission, or will these words of the Charter, viz.: those that live under them—include Canadian traders who have established themselves intrusively on the lands of the company, and who dispute their rights?

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To 10th. I think that all those persons including the Canadian traders will be subject to the jurisdiction of the Governor in Council.

11. Supposing these traders were to resist the sheriff in the execution of a warrant and death should ensue, would the servants of the company or others acting in support of the warrant be responsible for the consequences, and in like manner would the servants of the company be responsible for the consequences of a forcible resistance against an attempt of the Canadian traders to trespass on the company's territories.

To 11th. I am inclined to think that the servants of the company or others acting in support of the warrant, supposing it to be made out in proper form, would be equally protected from the consequences of the execution of the warrant with persons executing on similar civil or criminal warrant in England. The servants of the company may resist with force, not directly tending to the loss of life or limb, any illegal attempt of the Canadian traders to trespass upon the company's property, but a man's house, which is his castle, he may defend, even with the direct destruction of life if he cannot otherwise defend his possession of it, but not to that extent with respect to lands or other property, as to which he must appeal to the laws in preference to taking away life for its protection.

12. Supposing that in the course of such resistance or trespass on the part of the Canadian traders, any of them should be guilty of crime or misdemeanor, would the company be justified in terms of a clause in their Charter above cited, in transmitting the party or parties to England, and could the case there be brought to trial so as to subject the offenders to the punishment prescribed by law for the same offence in England.

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To 12th. I think the company would not be justified in sending the parties to England in this case, unless in cases where a party is authorized by an Act of Parliament to be seized and sent to England for trial. The cause of seizure of the persons and sending them to England in the Charter is, I think, invalid.

13. Seeing the territories within which criminal jurisdiction is given by the 43rd Geo. III, c. 138, to the Courts of Lower and Upper Canada, are "the Indian territories or parts of America not within the limits of either the said Provinces," can this Act be stated to give to these Courts jurisdiction within the territories of the Hudson's Bay Company?

To 13th. I am inclined to think that this Act does not extend to give to these Courts jurisdiction over the territories belonging to and in the possession of the Hudson's Bay Company. It extends, I think, only to the Indian territories, not to those belonging to England or held of its Crown.

40

14. If the company were to erect Courts for the punishment of crimes, or if they were to send home offenders to England to be tried, would the criminal jurisdiction given to the Courts of Lower and Upper Canada by the 43rd Geo. III., c. 138 (supposing it to extend to their territories) be thereby superseded ?

To 14th. Supposing the criminal jurisdiction given by Act of Parliament to the Courts of Upper and Lower Canada, to extend to these territories of the Hudson's Bay Company, I think it would not be superseded by any Act that the Hudson's Bay Company might do.

15. There are partners of the North-West Company resident in London, who concur in sending persons from Canada into the company's territory, for the purpose of trade. Does it appear to you that the company can bring and maintain a special action of damages on the case in England against such partners of the North-West Company resident in London ?

To 15th. I think that no such action is maintainable against them in England for any of the acts above alluded to in the case.

16. What would be the effect in such an action if it could be established that the traders employed by the North West Company, not content with a fair participation in the trade, are in the practice of maltreating the native Indians to deter them from dealing with the Hudson's Bay Company, and likewise of using violence and threats to intimidate the servants of the Hudson's Bay Company from prosecuting their trade ?

To 16th. If the action was maintainable against the above partners, these circumstances would I think, increase the damages. 20

17. Nothing is said in the Charter in regard to the amount of the capital of the company, or the manner of raising it. But in the year 1700 the original stock of the company subscribed at the date of its Charter, was trebled out of the profits by adding the amount of the latter to the former, without dividing them. In the year 1720 it was again trebled, and a further subscription was opened, but it does not appear that subscriptions were received from any persons excepting proprietors of stock, who were allowed to subscribe in proportion to their stock.

It is now proposed to raise a further capital, for which purpose two modes have been suggested :—

Firstly : To offer to each proprietor who may be inclined to subscribe permission so to do in a given proportion to his existing stock, subject to the condition of his declaring his acceptance of this offer within a limited time, and in case of his failure or refusal to accept such offer, then his share of the new stock to be offered to the other stockholders, and in case of their failure or refusal to accept it, then such share of the new stock to be offered to public sale to the highest bidder.

Secondly : It has been proposed to make a call on the present stockholders, *pro rata* of their stock, with a declaration that, if they do not satisfy the call, their stock will be forfeited.

You are requested to say whether either mode is within the powers given to the company by their Charter ?

The first of these modes is, I think, within the powers given to the company by their charter, but not the 2nd.

(Signed), G. S. HOLROYD.

Weymouth, 1st October, 1812.

COPY, QUERIES AND OPINIONS OF MR. CRUISE.

1. Does the right of the company to the property of the soil appear to be open to any material objection?

Some very difficult points arise in this case, which have not been discussed in modern times, 1st, as to the validity of the exclusive right of trading and fishing, granted by the Charter. In the case of the East India Company *v.* Sandys, which arose in 32 Charles II., reported by Skinner 132, and Shower *v.* 2, 366, but more fully in the State Trials *v.* 7, 494, where the East India Company brought an action on the case against Mr. Sandys, for invading their rights under several Charters to the sole and exclusive trade to the East Indies. It was held by the Court of K. B., after great consideration, that the East India Company had an exclusive right, by their Charter, to the trade 10 of the East Indies, and judgment was given for them. Lord Chief Justice Jeffries gave his opinion at great length, and stated that, though by the law of England monopolies were prohibited, yet societies to trade such as the pets to certain places was exclusive of others, were no monopolies, but were allowed to be erected here, and were strengthened by usage and practice in all times.

The period when this judgment was given and the characters and principles of the judges who gave it, are circumstances which do not add to its authority. But in the case of *Nightingale v. Bridges*, reported by Shower, *v.* 1, 135, which arose in 2nd William and Mary, a time when the prerogative had suffered a considerable diminution, and Lord Holt was Chief Justice, the Court of K. B. did not deny the validity of the judgment in the case of the East India Company *v.* Sandys, though they held that a clause in the Charter of the Royal African Company, by which 20 certain regions in Africa were granted to them for 1,000 years, prohibiting other persons to trade within their limits, under pain of imprisonment and forfeiture of their ships and goods, and giving power to enter into and search and seize their ships and goods, was void, because the King could not, by letters patent, create a forfeiture of or any way by his own act confiscate a subject's property. Although the decision in the case of the East Indian Company *v.* Sandys does not appear to have ever been directly contradicted, yet I apprehend that the doctrine then established is not now considered as law. Lord C. B. Comyns appears to have doubted it, Digest Tit. Trade, D 1, and it is said in Bacon's Ab. Tit. Merchant, that nothing can exclude the subject from trade but an Act of Parliament.

As to the exclusive right of fishing, it has been long settled (*vide Warren v. Matthews*, 6 Mod. 30 Rep. 73) that the King's grant of an exclusive fishery in the sea or in rivers where the tide flows and ebbs, only extends to royal fish, namely, whale and sturgeon, and does not exclude any British subject from taking all other kinds of fish.

There is, however, a very important difference between the Charters upon which the case of the East India Company *v.* Sandys arose, and the Charter of the Hudson's Bay Company. In the former, only an exclusive right to trade was given, whereas, in the latter, the company are made the proprietors of the soil, to hold to them and their successors forever, of the Crown in fee and common socage. This places the Governor and company in a very different situation from that in which the East India Company stood.

I am, therefore, of opinion, 1st. That no objection can be made to the grant of the soil contained in the Charter; and that as proprietors of the soil they may exclude all persons from entering their territories and trading therein. The right of fishing in the rivers where the tide does not flow, also belongs to the company, as proprietors of the banks, and they may in that character prevent those who fish in the sea or in the mouths of the rivers from landing their fish. *Ipswich v. Brown*, Sar. 11, 14. 40

2. Will that right be held to include all the country, the waters of which run into Hudson's Bay?

The description of the lands granted is, by reference to the grant of an exclusive trade, where the words are: "All those seas, straits, bays, rivers, lakes, creeks, sounds in whatsoever latitude they shall be, within the entrance of the straits commonly called Hudson's Straits, together with all the lands and territories upon the countries, coasts, and confines of the seas, bays, lakes, rivers, creeks and sounds aforesaid."

The objection to this description is that it is too general, there being no boundaries mentioned. But I apprehend that as the Charter is granted by the King's especial grace, certain knowledge and mere motion, it would be construed liberally, and in favour of the grantees, *vide* Bacon's Al., 10 vol. 5, 603, 8 vo. edition, and that therefore the opinion of the geographers would be adopted, namely, that all the countries lying upon the waters which run into Hudson's Bay are included within the Charter for therein it will be ineffectual.

3. Are the company as proprietors of the soil entitled to prevent the British subjects from building and occupying house, cutting wood and doing other acts of property?

The Hudson's Bay Company as proprietors of the soil are clearly entitled to exclude all persons as well British subjects as foreigners from occupying any part of their land.

4. Are they entitled to dispossess the Canadian traders of the posts already occupied by them intrusively without legal title?

They may certainly dispossess the Canadian traders by legal process of the posts occupied by them, and may pull down any buildings erected by them.

5. In this case, what are the legal steps necessary for carrying into effect the rights of the company, *vide* answer to Query 9.

Supposing that those clauses of the Charter by which the exclusive navigation of the Hudson's Bay, and the exclusive trade of the adjacent country, is granted to the company, should be found of no avail, how far are other British subjects entitled to make use of the internal navigation of rivers and creeks which run through the Company's Territories?

Supposing the grant of an exclusive trade to be void, as a monopoly, still the company, as proprietors of the soil, may exclude all persons from navigating the inland rivers and creeks within their limits. 30

7. On the other hand, how far have the company a right, as proprietors of the land, to prevent that trespass which must be committed on their property by other traders, in using the navigation of these rivers where it is interrupted by falls, and where it is necessary to carry the goods, etc., by land.

The company, as proprietors of the soil, have a right to protect and preserve their property, and to use all lawful means for that purpose.

8. Supposing a forcible attempt on the part of the Canadian traders to trespass where they have no right to go or to maintain their intrusive and illegal professions, would the servants of the Hudson's Bay Company be legally responsible for the consequence of asserting by force the rights of the company? 40

If the Canadian traders should be guilty of any violence, the proper remedy will be by action or indictment.

9. Is the civil and criminal jurisdiction granted to the company valid, and, if valid, to what extent will the Governors and Council appointed by the company be authorized to punish offences against the law, and will their power be limited to the servants of the company only, or will it extend to settlers holding lands by grants from the company, or to any other description of people residing in the Territory?

The civil and criminal jurisdiction granted by the Charter may be exercised by the company by authorizing their Governor and Council to hold a Court of Justice in which the English law may be administered, and by the appointment of a Sheriff to execute the judgments of such Court, the individuals subject to the jurisdiction of this Court, will be according to the words of the Charter: "All persons belonging to the said Governor and Company, or that shall live under 10 them," so that as to Canadians entering the territories of the company and violating their property, the prosecution must be either in the Courts of Upper or Lower Canada, or in the Courts of Westminster, and I think that a special action on the case would lie, and might be brought by the company in the Courts of Upper Canada. As to the Courts of Lower Canada, they proceed according to the French law, and, therefore, I cannot point out the mode in which redress may be obtained in them. If any of the persons who are partners in the North-West Company are resident in England, and it could be proved that the traders violating the territories and properties of the Hudson's Bay Company acted by the authority and direction of the Hudson's Bay Company, may bring a special action on the case in Westminster against them in the same manner as the East India Company brought an action of that kind against Mr. Sandys. 20

(Signed), WILLIAM CRUISE.

LINCOLN'S INN, 22nd February, 1812.

COPY QUERIES AND FURTHER OPINIONS OF MR. WM. CRUISE.

1. You are of opinion that the Hudson's Bay Company, as proprietors of the soil, are clearly entitled to exclude all persons from occupying any part of their lands, and that they may certainly dispossess the Canadian traders by legal process of the posts occupied by them.

Now, under this head the Hudson's Bay Company wish to be informed.

1. What is the legal process by which this may be effected? It is to be done by holding a Court of Justice, and by the appointment of a sheriff to execute the judgments of such Court which it is stated they may do in your answer to Query 9th? But it is also stated that the individuals subject to the jurisdiction of such court, will be "All persons belonging to the said Governor and company, or that shall live under them." Will these last words apply to Canadian traders who have established themselves upon the territory, but who reside there in opposition to the company, and dispute their rights altogether.

I think the words of the charter "or who shall live under them," must be construed to extend to Canadian traders, or any other persons residing within the territories of the company, or even passing through. For otherwise the words of the charter would be nugatory. Canadian traders might enter the territories of the company, commit depredations on their property and disturb the peace of the country, without being amenable to their laws, this would be absurd.

2. The Hudson's Bay Company are further desirous of knowing what is the extent of the 40 civil and criminal jurisdiction which may be exercised by a Court of Justice, established under their authority. Will it be warranted in trying all sorts of felonies and inflicting capital punishments, or to what offences will their power extend?

It is admitted by all legal writers that the Crown has a right to erect Courts of Justice; but that such Courts must proceed according to the rules of the Common Law. In this case the Crown has already authorized the Hudson's Bay Company to hold a Court of Justice, with power to judge in all causes, whether civil or criminal, and therefore the Governor and his Council, residing in America, may try felonies, and inflict capital punishments. This appears clearly from the clause in the charter, page 184: That in case any crime is committed where there is no Governor and Council, the Chief Factor of that place shall transmit the party to where there shall be a Governor and Council, where justice may be executed.

3. Supposing your opinion to be that the words "or that shall live under them" will apply to the Canadian traders; and supposing the sheriff to proceed under a warrant from a Court of Justice, to be held by the authority of the Governor and Council, to dispossess any of the Canadians from their intrusive possessions, and that the intruders shall resist; will the sheriff be justified in using force; and in case death should ensue, will the sheriff or any other party concerned be liable to indictment in the Courts of Upper or Lower Canada, under the 43 Geo. III., c. 138?

A sheriff duly appointed by a Governor and Council residing at Hudson's Bay, would have the same power and authority as a sheriff of an English county; and such a sheriff would not be liable to an indictment in the Courts of Upper or Lower Canada. The introductory clause of the Statute 43 Geo. III., c. 138, shews that the intention of the Legislature was only to give a power of acting where a crime was not cognizable by any jurisdiction whatever; by which means great offenses went unpunished, and certainly did not affect the power of erecting a Court of Justice given to the Hudson's Bay Company. Now, if a Court of Justice be established in Hudson's Bay, the jurisdiction given by the above Act to the Courts of Upper and Lower Canada will become unnecessary.

4. Will the company be warranted in establishing and maintaining a body of armed men to defend their exclusive right to the soil and to act as a police guard and support the sheriff whom they appoint in the discharge of his duty; and if such armed body may be established, may the company direct it to be subject to and be governed by the British articles of war.

I do not think the company would be warranted in establishing an armed force. The sheriff, if resisted, may call out the *posse comitatus*, which comprises all the gentlemen, yeomen, laborers, servants, apprentices, and all others above the age of 15 years, within the county, who will be obliged to assist him in enforcing the judgments of the court.

5. Will the company be entitled to prevent the Canadian traders from continuing to use the roads or tracts which they have traversed through the company's territories to arrive at Athabaska or the country west of the great chain of mountains, which bound the company's territory, or will the use which they have enjoyed of traveling through the company's territories, or such use for any and what length of time, entitle them to its continuance? You will observe that it is impossible for the Canadian traders to traverse the company's territories without cutting wood for firewood, using the water found in the course of their journey, and pitching their tents upon the company's territory, and you will further say whether these are rights which the Canadian traders can acquire by any and what length of possession?

If a highway were made through the Province, all British subjects would have a right to travel on it; but a track made by the Canadians is not a highway, and no prescriptive right to traverse the territories of the company, or to cut wood or pitch tents, can exist in this case, because such a prescriptive must be founded on immemorial usage.

6. There are individuals of the North-West Company who reside in Upper Canada, and also in the City of London. The Hudson's Bay Company would not incline to proceed against them by action on the case in Upper Canada from the influence of the Canadian traders there, and from

the effect which that influence will have upon a Provincial jury, if not upon the judge. But they would wish to bring a special action on the case against the partners of the North-West Company who reside in London, and they will be much obliged to you for any suggestions which may enable them by its consequences to prevent the Canadian traders from continuing to intrude upon their territories. They will have no difficulty they believe, in proving that their territories are violated by the authority and direction of the North-West Company.

I can add nothing to what I have said on my former opinions on this point. Since the case of the East India Company *v.* Sandys I have not been able to find any other of the same nature. I should, as to this point, recommend the opinion of a special pleader should be taken.

II. There is another point which is connected with the former, and that is the pecuniary means of enabling the company to avail themselves of all the right conferred upon them by their charter. 10

There is no restraint or limit imposed by the charter with respect to the amount of the capital stock of the company, or the manner of raising it. In the year 1700 the original stock of the company, subscribed at the date of its charter, was trebled out of the profits, by adding the amount of the latter to the former, without dividing them. In the year 1720, it was again trebled, and a further subscription was opened, but it does not appear that the subscriptions were received from any persons excepting proprietors of stock, who were allowed to subscribe in proportion to their stock.

In the view of raising a further capital, two modes have been suggested. 20

First.—To offer to each proprietor, who may be inclined so to do, permission to subscribe in a given proportion to his existing share of stock, subject to the condition of his declaring his acceptance of this offer within a limited time; and in case of his failure or refusal to accept such offer, then his share of the new stock to be offered to the other stockholders, and in case of their failure or refusal to accept it, then such share of the new stock to be offered to public sale to the highest bidder.

Secondly.—To make a call on the present stockholders *pro rata* of their stock, with the declaration that if they do not satisfy the call, their stock will be forfeited.

You are requested to say whether either mode is within the powers given to the company by their charter? 30

The charter is silent as to the quantum of capital stock which the company may create, or the mode of raising it, and therefore I see no objection to the company calling on the proprietors for an additional sum, and, in case of refusal, to offer new shares to public sale. But I do not see how the company can forfeit the stock of the present proprietors, though I understand that the York Buildings Company have lately acted on that principle, and have forfeited the shares of those proprietors who refused to advance an additional sum of money. This should be enquired into.

III. There is a third point arising out of an act of Parliament which appears to have been passed in the reign of William and Mary, of which a copy is herewith laid before you. This Act confirmed the charter of the Hudson's Bay Company and the rights and privileges thereby granted, but its endurance was limited to seven years, and you are requested to say whether this Act can be stated to have now any, and what effect with reference to the Hudson's Bay Company and their charter. 40

The Act is clearly expired, and can now have no effect. If a renewal of it could be obtained, it would be extremely advantageous to the company, as they might then seize all the property of the North-West Company found within their territories, under the clause in page 181 of the charter.

(Signed) WILLIAM CRUISE.

LINCOLNS INN, 18th March, 1812.

COPY QUERIES AND OPINION OF MR. SCARLETT.

QUERIES.

1. Whether any objection can be made to the grant of the soil contained in the charter, and whether the grant will include all the country, the waters of which run into Hudson's Bay, as 10
ascertained by geographical observation.

2. Whether, as proprietors of the soil, the company may exclude all other persons from residing thereon, and dispossess the Canadian traders of the posts already occupied by them and used for the purposes of trade with the native Indians.

3. Though the company may not be entitled to prevent other persons from using the navigation of Hudson's Bay, or of navigable rivers within their territories, are they entitled to prevent all persons from landing upon the shores of the bay or the banks of the rivers; and in those places where the navigation of a river is interrupted by falls, may the company prevent any person from passing over the land for the purpose of transporting himself and his merchandise to 20
any other point where the river may again become navigable.

4. Whether the company, by virtue of their right of property, may prevent the Canadian readers from passing through their territories to arrive at Athabaska or other countries not included in the charter, or will the use which the traders have enjoyed for nearly 40 years of travelling through the company's territories, entitle them to its continuance. You will observe that it is impossible for the Canadian traders to traverse the company's territories without cutting wood for firewood, using the water found in the course of their journey, and pitching their tents upon the company's lands; and on this head you will further please to say whether these are rights which the Canadian traders can acquire by any and what length of possession.

5. Supposing the company entitled to dispossess the Canadian traders and to maintain an exclusive right to trade within the territories, what steps do you advise as the best to be pursued for making this right effectual. 30

6. Does it appear to you that the civil and criminal jurisdiction granted to the company is valid.

7. If valid, how is it to be exercised. May the company erect Courts of Justice, or authorize any person to administer the laws of England as they might be administered in England.

8. May the company appoint a sheriff to execute the judgments of their courts, and to do the duty of a sheriff as performed in England.

9. May such sheriff, in case of resistance to his authority, call out the population to his assistance, and may the company put arms in the hands of their servants and those who live under them, as well for their defence against attack, as to assist in enforcing the judgments of their courts.

10. Supposing the company to hold courts of justice, who will be subject to their jurisdiction? Will it be only their own servants and persons residing within their territories by their permission and direct authority, or will these words of the charter, viz.: "those that live under them," include the Canadian traders who have established themselves intrusively on the lands of the company and who dispute their rights.

11. Supposing these traders to resist the Sheriff in the execution of his warrant, and death should ensue, would the servants of the company or others acting in support of the warrant, be responsible for the consequences, and, in like manner, would the servants of the company be responsible for the consequences of a forcible resistance against an attempt of the Canadian traders to trespass on the company's territory.

12. Supposing that in the course of such resistance or trespass on the part of the Canadian traders, any of them should be guilty of crime or misdemeanor, would the company be justified, in terms of a clause in their charter above cited, in transmitting the party or parties to England, and could the case be there brought to trial so as to object the offenders to the punishment prescribed by law for the same offence in England.

13. Seeing the territories within which criminal jurisdiction is given by the 43 Geo. III. c. 138, to the courts of Lower and Upper Canada are the Indian territories, or parts of America not within the limits of either the said Provinces," can this Act be stated to give to these courts jurisdiction within the territories of the Hudson's Bay Company.

14. If the company were to erect courts for the punishment of crimes, or if they were to send home offenders to England to be tried, would the criminal jurisdiction given to the courts of Lower and Upper Canada by the 43 Geo. III. c. 138 (supposing it to extend to their territories), be thereby superseded.

15. There are partners of the North-West Company resident in London who concur in sending persons from Canada into the company's territory for the purpose of trade. Does it appear to you what the company can bring and maintain a special action of damages on the case in England against such partners of the North-West Company resident in London.

16. What would be the effect in such an action, if it could be established that the traders employed by the North-West Company, not content with a fair participation in the trade, are in the practice of maltreating the native Indians, to deter them from dealing with the Hudson's Bay Company, and likewise of using violence and threats to intimidate the servants of the Hudson's Bay Company from prosecuting their trades.

17. Nothing is said in the charter in regard to the amount of the capital of the company or the manner of raising it. But in the year 1700 the original stock of the company subscribed at the date of its charter was trebled out of the profits, by adding the amount of the latter to the former without dividing them. In the year 1720, it was again trebled and a further subscription was opened, but it does not appear that subscriptions were received from any persons excepting proprietors of stock who were allowed to subscribe in proportion to their stock.

It is now proposed to raise a further capital, for which two two modes have been suggested.

First. To offer each proprietor who may be inclined to subscribe permission so to do in a given proportion to his existing stock, subject to the condition of his declaring his acceptance of this offer within a limited time, and in case of his failure or refusal to accept such offer, then his share of the new stock to be offered to the other stockholders, and in case of their failure or refusal to accept, then such share of the new stock to be offered to public sale to the highest bidder.

Secondly. It has been proposed to make a call on the present stockholders *pro rata* of their stock, with a declaration that if they did not satisfy the call their stock would be forfeited.

You are requested to say whether either mode is within the power given to the company by their charter.

OPINION.

10

1. It appears to me that no other objection can be made to the grant of the soil to the extent stated in the charter, except that his His Majesty could not make a valid grant of territory occupied by any other nation, though not Christian. I apprehend the grant is good of all such part of the territory in question as was really unoccupied, and of which a sort of possession had been taken for His Majesty by the first English Adventurers. I believe that the title of all the owners of lands in the British plantations is desired, this grant similar to the present made either to inhabitants or to a company.

2. As I do not find, from the case, that the company have established any regulations to govern the possession or title of lands within their territories, I know not how otherwise to answer this query than by reference to the law of this country; and I am of opinion that they could not 20 at this time receive any aid from the law of this country to dispossess those whose occupation has continued above 20 years without any disturbance from the company, their acquiescence in so long an adverse possession would afford a sufficient presumption of an actual grant from them of the portions of territory so occupied, together with all the necessary means of occupation and access which have been hitherto enjoyed.

3. Generally speaking, I apprehend the company have by their charter, and their territorial rights under it, a legal authority to restrain persons from the Acts stated in this query. But this authority, I think, must be qualified in particular instances by the sort of usage referred to in the answer to the preceding question.

4 and 5. I am of opinion that the usage of the right of passage for the space of 40 years, with 30 the knowledge of the company, and without interruption by them, will establish the right for the King's subjects in Canada to use the passage in the same manner and for the same purposes as hitherto. I should here observe that in this opinion I support the question upon this right to arise before some tribunal in England, though I am not aware how this is possible, except by a feigned issue to try it.

6, 7, 8, 9 and 10. It appears to me that the civil and commercial jurisdiction granted to the company is valid, except in such instances where the powers seem to be more extensive than the King could by his prerogative exercise himself, or grant to a subject, some of them will be noticed. And I am rather inclined to think the company have authority, by the terms of their charter, to enact laws not only for the government of their own body, but of such persons as are resident 40 within their jurisdiction, supposing those laws and regulations to be merely local and consistent with the laws of this country. I observe that, by a clause in the charter (page 15 of the copy left herewith) the company have authority to appoint Governors of forts, factories, etc, and other officers, and that the Governors so appointed, and their council, have each within the limits of his own jurisdiction, which the company of course must assign, power to judge all causes, civil or criminal

according to the law of England. I apprehend, therefore, that the said company have no right to appoint judges in nominee, for that is incidental to the Sovereign dominion, which the King expressly reserves in the charter, and which I conceive he cannot part with by law, yet when they have appointed a Governor of a fort that the charter invests that Governor with a judicial power to administer the law of England; and I think the company may by the charter appoint such officers subordinate to the Governor, as may assert him in the executive part of his administration. The power of the officer corresponding to the sheriff, would be analagous to the power of that officer in England, and I apprehend that the subjects of the plantation would be bound by the same rules of civil obedience as prevail in England to support the officers of justice in the execution of legal process or judgments. But, though it appears to me that those powers are granted 10 by the charter, and that it was competent to the Crown to grant therein this form; yet, if they have not hitherto been exercised, if this part of the charter has not been acted upon, I should not think it expedient at this time, after the various changes which have taken place in the circumstances of the colony, and in the opinions of men since the time of Charles II., to put these powers into activity without some sanction from the Legislature. The jurisdiction which would have been submitted to at the first will now be resisted, and the whole machinery for the administration of justice must at the present day be so much more complicated and extensive than it would have been thought requisite to make it at the date of the charter or the commencement of the adventure, that it is likely to encounter more difficulty in its operation, and may possibly fail of its intended effect. 20

11. The particular case must occur before any answer can be given. There may be circumstances where, those acting under the orders of the Sheriff, in England, might be responsible in case of death. Generally speaking, however, the parties acting in the case supposed in this query strictly within the limits of a lawful authority from the Sheriff, would not be responsible for the death of a person resisting that authority. The present state of trade, as appears from this case, seems likely to give rise to disputes. The Judge, the Sheriff, and his *posse comitatus* will in a great measure be the parties to in the cause, and the resisting intruders are likely to give very early occasion for investigating whether the legal authority of the new functionaries and their subjects has been strictly pursued with all due form. The probability of some error, where there has been no previous habit of observing any forms and of a disposition to take advantage of error 30 wherever it can be found, leads me to apprehend that the Sheriff and those acting under his warrant might incur considerable risk in the event supposed.

12. I am of opinion that the company would not be justified in sending the supposed offender to England, and that he could not be there tried by any known law. The clause alluded to in this query seems to me not to be justified by the mere prerogative of the King, and I should think it very unsafe to act upon it without the sanction of the Legislature.

13. I am inclined to think that this Act does not give the jurisdiction here supposed.

14. I think not; the company having now no courts, the jurisdiction given by the Legislature, which might be necessary by reason of the company's omission, cannot be affected by any subsequent exercise of their powers under the charter.

15 and 16. The particular case must be stated before these queries can be answered. The partners of the North-West Company resident here may be answerable in an action upon the case for any infringement of the charter authorized by them individually and which has not power into a right by usage. The maliciously deterring the Indians from having prejudice of the company would be actionable and brought home to the parties in evidence. 40

17. It appears to me that the first mode above suggested of raising a further capital is quite unexceptionable. The present members of the company may undoubtedly increase the capital by a voluntary subscription among themselves, or they may admit any new member who chooses to subscribe. They have, by the charter, a general power of admitting whom they please, agreeably to the orders and regulations made by them at a general court.

They may therefore make an order to admit any person who subscribes a certain sum a member. The second mode proposed involves a question of the jurisdiction of the company over their own body, I doubt very much whether they could impose the penalty of forfeiture for not subscribing a further sum. There is an express instance of a cause of forfeiture stated in the charter, which is, where a party who has voluntarily subscribed, refuses afterwards to pay; and I therefore doubt whether the company could, by law or order of their own, create a new case of forfeiture. Much, however, may depend upon the actual regulations or by-laws under which the company now are governed, to which no allusion has been made in this case.

(Signed)

J. SCARLETT.

TEMPLE, January 22nd, 1813.

COPY QUERIES AND OPINION OF MR. JUSTICE HOLROYD, SIR SAMUEL ROMILLY, MR. CRUISE, Mr. SCARLETT, AND MR. BELL.

1. Whether any objection can be made to the grant of the soil contained in the charter, and whether the grant will include all the country the waters of which run into Hudson's Bay, as ascertained by geographical observations?—We are of opinion that the grant of the soil contained in the charter is good, and that it will include all the country the waters of which run into Hudson's Bay, as ascertained by geographical observation.

2. Whether as proprietors of the soil the company may exclude all other persons from residing thereon, and dispossess the Canadian traders of the posts already occupied by them and used for the purposes of trade with the native Indians?—We are of opinion the company may exclude all persons from residing on the lands granted to them, and not already settled there. But we are of opinion they cannot dispossess the Canadian traders of the posts already occupied by them where there has been 20 years' quiet possession, and by making use of their grant only for the purpose of exclusion, and not to encourage settlers they may possibly endanger the grant.

3. Though the company may not be entitled to prevent other persons from using the navigation of Hudson's Bay or of navigable rivers within their territories, are they entitled to prevent all persons from landing upon the shores of the bay or the banks of the rivers; and on those places where the navigation of a river is interrupted by falls, may the company prevent any person from passing over the land for the purpose of transporting himself and his merchandize to any other point where the river may again become navigable?—We are of opinion the company are not entitled to prevent other persons from using the navigation of Hudson's Bay and of the navigable rivers within their territories, or to prevent persons from landing upon the shores of the bay or banks of rivers, or from passing over their land where it is desert and uncultivated, and where the King's, whether native Indians or others, have been accustomed to pass for the purpose of transporting themselves and their merchandize where no roads or passage must be subject to the reasonable regulations of the company.

4. Whether the company, by virtue of their right of property, may prevent the Canadian traders from passing through their territories to arrive at Athabaska or other countries not included in the charter; or will the use which these traders have enjoyed for nearly 40 years, of travelling through the company's territories, entitle them to its continuance. You will observe that it is impossible for the Canadian traders to traverse the company's territories without cutting wood for firewood, using the water found in the course of their journey, and pitching their tents upon the company's lands; and, on this head, you will further please to say whether these are rights which the Canadian traders can acquire by any and what length of possession?—It follows from what we have said in answer to the last query that, we think the Canadian traders are entitled to this right of passage, and we think that as incident to it they must have such right of pitching tents, using water and cutting firewood as necessity requires. 10

5. Supposing the company entitled to dispossess the Canadian traders and to maintain an exclusive right of trade within the territories, what steps do you advise as the best to be pursued for making the right effectual?—We are of opinion the company cannot maintain a right to an exclusive trade.

6. Does it appear to you that the civil and criminal jurisdiction granted to the company is valid?—We are of opinion that the grant to the civil and criminal jurisdiction is valid, but it is not granted to the company, but to the Governor and Council at their respective establishments; but we cannot recommend it to be exercised so as to affect the lives or limbs of criminals.

7. If valid, how is it to be exercised? May the company erect courts of justice, or authorize any person or persons to administer the laws of England as they might be administered in England?—It is to be exercised by the Governor and Council as judges, who are to proceed according to the laws of England. 20

8. May the company appoint a sheriff to execute the judgments of their court, and to do the duty of a sheriff as performed in England?—The company may appoint a sheriff to execute judgments and to do his duty, as in England.

9. May such sheriff, in case of resistance to his authority, call out the population to his assistance, and may the company put arms into the hands of their servants and those who live under them, as well for their defence against attack as to assist in enforcing the judgments of their courts?—We are of opinion that the sheriff, in case of resistance to his authority, may call out the population to his assistance, and may put arms into the hands of their servants for defence against attack, and to assist in enforcing the judgments of the court, but such powers cannot be exercised with too much circumspection. 30

10. Supposing the company to hold courts of justice, who will be subject to their jurisdiction: Will it be only their own servants and persons residing within their territories by their permission and direct authority, or will the words of the charter, viz.: "those who live under them," include the Canadian traders who have established themselves intrusively on the lands of the company, and who dispute their rights?—We are of opinion that all persons will be subject to the jurisdiction of the courts, who reside or are found within the territories over which they extend, including the Canadian traders. 40

11. Supposing these traders to resist the sheriff in the execution of his warrant, and death should ensue, would the servants of the company or others acting in support of the warrant, be responsible for the consequences; and, in like manner, would the servants of the company be responsible for the consequences of a forcible resistance against an attempt of the Canadian traders to trespass on the company's territories?—We think the sheriff and those assisting him, acting in

support of a warrant made out by due authority and in proper form, would be equally protected from the consequences of the execution of the warrant with persons executing a similar warrant in England.

We also think the servants of the company may resist with force, not directly tending to loss of life or limb, any illegal attempt of persons to trespass on the company's property, and if an attack is made on a man's house, he may defend it, even to the destruction of life, if he cannot otherwise defend the possession of it. But such powers cannot be executed with too great moderation. Though the general law may be such as is above laid down, it is impossible, in our opinion, to give those directions which are necessary for its safe application in each particular case, independently of the difficulty which may arise from want of evidence or imperfect evidence of what 10 passes in so distant a quarter, and from the circumstances that the company's servants, the judges, sheriff and *posse comitatus*, in disputes with Canadian traders, will be, in some measure, parties interested, and their conduct may thereof be more strictly invested. Nothing should be done to endanger either life or limb, unless in cases of most extreme necessity.

12. Supposing that, in the course of such resistance or trespass on the part of the Canadian traders, any of them should be guilty of crime or misdemeanor, would the company be justified, in terms of a clause in their charter above cited, in transmitting the party or parties to England, and could the case be there brought to trial, so as to subject the offenders to the punishment prescribed by law for the same offence in England?—Parties can only be sent to England for murder. For other offences they must be tried by the courts of the territory. 20

13. Seeing the territories within which criminal jurisdiction is given by the 43 Geo. III, c. 138, to the Courts of Upper and Lower Canada, are "The Indian Territories, or parts of America, not within the limits of either the said Provinces," can this Act be stated to give to these courts jurisdiction within the territories of the Hudson's Bay Company?—We do not think this Act gives jurisdiction within the territories of Hudson's Bay Company, the same being within the jurisdiction of their own Governor and Council.

14. If the company were to erect courts for the punishment of crime, or if they were to send home offenders to England to be tried, would the criminal jurisdiction given to the Courts of Lower and Upper Canada by the 43 Geo. III, c. 138 (supposing it to extend to their territories), be thereby superseded?—If the Act gives the Courts of Upper and Lower Canada jurisdiction, 30 that would not be superseded in the manner here suggested.

15. There are partners of the North-West Company resident in London, who concur in sending persons from Canada into the company's territory for the purposes of trade. Does it appear to you that the company can bring and maintain a special action of damages on the case in England against such persons of the North-Western Company resident in London?—We are of opinion the grant to the company of an exclusive trade is not valid, and we conceive that no action will be against any one moiety for trading, though the trade of the company should thereby be rendered less profitable.

16. What would be the effect in such an action if it could be established that the traders employed by the North-Western Company, not content with a fair participation in the trade, are 40 in the practice of maltreating the native Indians, to deter them from dealing with the Hudson's Bay Company, and likewise of using violence and threats to intimidate the servants of the Hudson's Bay Company from prosecuting their trades? If it could be shewn that any parties made use of improper means to injure the company in their trade, an action on the case might be maintained against those persons, or any by whose direction such acts are done to the injury of the company.

17. Nothing is said in the charter in regard to the amount of the capital of the company or the manner of raising it; but in the year 1700 the original stock of the company, subscribed at the date of its charter, was trebled out of the profits by adding the amount of the latter to the former without dividing them. In the year 1720 it was again trebled and a further subscription was opened, but it does not appear that subscriptions were received from any persons excepting proprietors of stock, who were allowed to subscribe in proportion to their stock.

It is now proposed to raise a further capital, for which purpose two modes have been suggested:—

First. To offer each proprietor, who may be inclined to subscribe, permission so to do on a given proportion to his existing stock, subject to the condition of his declaring his acceptance of this offer within a limited time, and in case of his failure or refusal to accept such offer, then his share of the new stock to be offered to the other stockholders, and in case of their failure or refusal to accept then such share of the new stock to be offered to public sale to the highest bidder.

Second. It has been proposed to make a call on the present stockholders *pro rata* of their stock, with a declaration that if they do not satisfy the call their stock will be forfeited.

You are requested to say whether either mode is within the power given to the company by their charter?

The first of these modes seems the most proper mode of proceeding. The charter does not appear to warrant the second mode proposed.

(Signed)	SAMUEL ROMILLY,	20
"	WILLIAM CRUISE,	
"	G. S. HOLROYD,	
"	J. SCARLETT,	
"	JOHN BELL.	

LINCOLNS INN, June 10, 1814.

COPY QUERIES AND OPINIONS OF DR. STODDART.

QUERIES.

Whether the Hudson's Bay Company, or their officers or servants, or any of the settlers before mentioned, are entitled to any and what redress against the North-West Company, or any of their servants, or persons acting under their authority or against any other persons, for any of the numerous acts of robbery, imprisonment and aggression committed on them as stated in the several instances set forth in this case and in the documents therein referred to; as well in respect of the acts committed within the limits of the Hudson's Bay Company's charter, as those committed in the County of Athabaska and other parts of the Indian territory not within the territory granted to the Hudson's Bay Company?

And whether the Hudson's Bay Company can adopt any and what course of proceedings by which the validity of their charter, and of the rights claimed by them under the same, may be put in a train for judicial decision, either by a petition to the Prince Regent in Council, or a petition

to Parliament, or by any and what other proceedings, either before any of the Departments of Government or in any of the Courts of Law or equity, in order that the disputes which have taken place and still continue between the Hudson's Bay Company and the North-West Company may be discussed, and the rights of the parties satisfactorily ascertained and established by some competent tribunal, and to advise the Hudson's Bay Company generally as to their rights, and the measures it will be most advisable for them to adopt under the particular circumstances before mentioned.

OPINION.

1. I am of opinion that all crimes and offences committed either within the limits of the Hudson's Bay Charter, or in the County of Athabaska, and other parts of the Indian Territory, 10 may be prosecuted under the Canada Jurisdiction Act (Stat. 43, Geo. III., c. 138), in the Courts of the Province of Lower Canada, or in those of Upper Canada, if so directed by the Governor of the former Province. Crimes and offences committed within the Hudson's Bay Territory, might, I apprehend, be prosecuted before the Governor and Council of Rupert's Land, if such Governor was appointed by the Hudson's Bay Company, and allowed by the Prince Regent, for the jurisdiction which is given to the Governor and Council by the charter, would, I conceive, be perfectly valid, although it appears to me that the Statute of the 43rd of the King gives a concurrent jurisdiction in such cases to the Courts of Canada, with respect to murders and manslaughters, in particular if committed in any part of the Indian Territory not within His Majesty's dominions, nor subject to any European State, nor within the territory of the United States of America. It seems, that 20 these, if perpetrated by any person that may have sailed in any British vessel, fall under the Revision of Stat. 47 Geo. III., c. 53, and may therefore be tried in any of His Majesty's colonies under the King's commission, issued for such a purpose. Murders committed in any of the places before specified, whether within or without the King's dominions, may be tried in England according to the provisions of Stat. 33, Henry VIII., c. 23, but other crimes and offences committed in those places could not easily be tried in England. If any partners of the North-West Company or others, could be proved to have conspired in England to bring about crimes or offences in Rupert's Land, the Indian Territory, or the Canadas, I apprehend that such conspirators may be proceeded against in this country. On the whole of this part of the case, however, I desire to be understood as speaking with great diffidence, since it does not relate to those branches of the law 30 to which my professional practice is confined.

For civil injuries done out of the limits of the two Canadas, I apprehend the courts of these Provinces can afford no address, but some of the civil injuries done to the Hudson Bay Company and their servants appear to have been consummated within those limits, and may consequently become the subject of civil actions there.

From the criminal proceedings of the British Courts of North America, there is no appeal to this country, but in regard to civil actions the case is somewhat different. From the courts of civil jurisdiction in Upper Canada, an appeal lies only where the question is matter of law, as in the case of *Gray v. Welocks*, which was carried by writ of error from a decision of the King's Bench of Upper Canada in 1807, to the Governor and Council, and from thence to the King in 40 Council.

In Lower Canada the courts appear to proceed, in most cases, according to the old French laws, upon written evidence, and where that is the case an appeal seems to lie from the judgments, both on matter of law and fact, to the King in Council, as in the case of *Sheppard v. Maclure*, which was merely an appeal from the judgment of the Court of King's Bench of Lower Canada in 1812, first to the Governor and Council, and then to the King in Council.

2nd. The validity of the Hudson's Bay charter having been so frequently recognized by the most solemn Acts of State, the objections made against it would seem scarcely deserving of any serious notice if it were not that they are in some degree supported by the opinions of the learned gentlemen who appear to have been consulted by the North-West Company. It is not necessary to the general validity of a charter that every particular clause in it should be valid, and it will hardly be contended that in the Hudson's Bay charter there are not some things granted which it was fully in the power of the Crown to grant. As to nonuse or misuse of a charter these do not annul it *ipso facto*, whatever weight they may have if proved in a proceeding by *scire facias* or *quo warranto*. Therefore, it must be taken that unless some Legislature or Judicial Act has declared the charter void, it stands good in its generality, notwithstanding any specific invalidity 10 as to its provisions. Doubts, for instance, may exist as to the grant of exclusive trade, but these it is not material at present to consider, more especially as it is stated that no attempt has been made to prevent the Canadian traders from resorting to the same places as the servants of the Hudson's Bay. A more important question is that of the territorial limits.

I am clearly of opinion that the grant of lands is not void for uncertainty. A mode of construing it has indeed been suggested in the opinion of the learned gentlemen, before alluded to from which I must, with all deference to them, beg leave to dissent. They argue that the words "within the strait," imply such a proximity to the straits as would give the lands spoken of a sort of affinity or relations to Hudson's Straits; but I think that if these last quoted words had been actually inserted in the charter they would only have introduced an uncertainty which does not 20 now appear to me to exist, for every river which discharges its waters into the sea, in Hudson's Bay, is a river within the entrance of Hudson's Straits, and all lands from the mouth of such river to its sources are lands which lie upon the river, and the limit of the lands so granted is a precise and definite limit, namely, the height of land from which the river flows, and, as the grant gives all the lands upon all such rivers, it follows that all the lands between all such heights and the bay are within the limits of the charter; and it is not necessary that all those heights should have been specifically known either to the grantor or grantee, for they both knew that such heights must exist, and that they were capable of ascertainment *et id certum est quod certum riddi potest*. Indeed, this was a mode of fixing the limits of new colonies very frequently adopted by foreign Sovereigns as well as our own, and it is particularly observable in the case of Canada, a province 30 directly bordering on the territory of the Hudson's Bay Company. (See the commission of M. Champlain, Lieutenant-Governor of the French Province of Canada in 1625, the expressions of Davity the Topographist 1643, His Britannic Majesty's Proclamation, 7th October, 1763, Stat 14 Geo. III, c. 83, etc.) Geographers, it is true, have differed in opinion as to the precise heights from which the waters flowed into Hudson's Bay, but they have uniformly considered some ridge of high lands real or imaginary to be the boundary of the company's territory.

The objection that is founded on the large extent of the grant appears to me to be of little weight. The word lands is coupled with territories and countries and that the whole were meant to be very comprehensive and reach far inland, appears from the grants of fishing and miners, and from the power to erect and build castles, fortifications, forts, garrisons, colonies or plantations, 40 towns and villages in any parts or places within the limits and bounds granted; as well as from the original objects of the undertaking, viz. to discover a passage into the South Sea and to find some trade for fur, minerals and other considerable commodities, and lastly, from the high rank of the original grantees, particularly of Prince Rupert, who was Count Palatine of the Rhine, Duke of Bavaria, Cumberland, etc.

Similar grants at various periods of history have embraced very extensive tracts of land. The Caroline charter (1663) granted all the lands from Tucker Island on the east to the westward as far as the South Seas. The Legislature distinctly recognized a still larger grant in case of the South Sea Company, who, by Statute 10, Anne c. 21, were made sole owners of all the places

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they should discover on the east side of America, from the River Oronoco to the southernmost part of the Terra del Fuego, and from that point westward to the northernmost part of America. So the first Massachusetts charter (18 Ja., c. 1) extended throughout all the mainland from "sea to sea," and the objects of these charters, as stated in that of Pennsylvania, were "to enlarge the English empire, and promote such useful commodities as might be of benefit to the King and his dominions, as also to reduce the savage nations by gentle and just manners to the love of civil society and christian religion."

If any authoritative decision could be obtained settling the territorial limits of Rupert's Land on the principles by which it appears to me that they should be regulated, I think the subordinate questions, such as those of jurisdiction, etc., would afford comparatively little trouble. I am therefore of opinion that the company should use every exertion to obtain a settlement of those limits by competent authorities, judicial or legislative. The only original jurisdiction for that purpose appears to be in the Prince Regent in Council, I am not aware that the Board of Trade has any such jurisdiction, although it was formerly much in the habit of having similar questions referred to it by the King in Council, or by the Committee of Council, for plantation affairs, and of reporting on them accordingly, which report was usually adopted as a ground of decision by the King in Council. The Court of Chancery has no original jurisdiction of boundaries, but may consider them incidentally where the jurisdiction is otherwise founded, as in the case of *Penn v. Lord Baltimore* (1 Ves. 444), which was a bill for a specific performance of articles between the plaintiff and defendant to settle the boundaries of two contiguous proprietary Governments. It might perhaps 20
deserve consideration whether the Hudson's Bay Company could offer any sufficient inducement to the individual partners of the North-West Company (including those who are in England) to enter into articles recognizing the boundaries of Rupert's Land, and binding themselves to do or con-
cense to be done by persons under their influence or control, certain acts in recognition of the rights of the Company. Perhaps such articles might not only be enforced in Chancery, but if secured by a penalty might be brought under the consideration of the Courts of Common Law. On the latter point, however, I speak with much hesitation, as I do when I say it appears to me that the action for slander of title, above suggested, could not be successfully maintained.

I am, however, of opinion that the Hudson's Bay Company should present a petition to the Prince Regent in Council, praying for a settlement of boundaries and for such other relief as to wisdom of His Royal Highness in Council might seem meet. In support of such petition affidavits should be prepared setting forth the injuries already sustained by the company, and also describing the limits which the company consider to be those of the plantation or colony of Rupert's Land, with reference to the unfortunate occurrences which have taken place at the Red River. I think it material to prove that the waters of that river fall into the sea within the entrance of Hudson's Straits, and adverting to the maps which I have seen, I conceive that for the satisfactory determination of this point, it would be necessary to shew that the Saskatchewan River flows into, and the Nelson River out of Lake Winipce; for the real and only question, as far as I have been able to consider the subject, is whether the heights of land in which the Severn and Hill Rivers have their sources, or that more southerly range in which the Red and Winipce 40
rivers are the proper boundaries of Rupert's Land. To the Company, however, it would be of incalculable advantage to obtain a decision of the Prince Regent in Council recognizing either, but more especially the latter, and in case a doubt should remain, after considering the evidence, it might be advisable to petition the Council to appoint Commissioners to make a survey and report, in consequence of which a dividing line might be run between Rupert's Land and the adjoining territories; such was the course adopted in the case of Lord Fairfax against the Governor and Council of Lord Virginia before the King in Council, 1745, when the Committee of Council for plantation affairs, after hearing counsel for several days, reported in favour of a survey made by certain Commissioners who had been named some years before by an Order in Council on his Lordship's petition.

It might be made part of the company's prayer that, during the pendency of proceedings, instructions should be issued to His Majesty's Governor of Upper and Lower Canada to afford protection to the servants, grantees, etc., under the Hudson's Bay Company against any forcible dispossession or other violence. A petition to this effect was presented to the King in Council in 1743 by the Governor and Council of Rhode Island in their dispute respecting boundaries with Massachusetts's Bay. I am not aware that the hearing or determining on a petition to the Prince Regent in Council is a matter that can be demanded as to the right by the Hudson's Bay Company, but I rather conceive that these are matters of grace and favour, the granting or withholding which are in the discretion of His Royal Highness as he may be advised by his Council. I apprehend, however, that if a strong case be made out and in evidence tendered thereon to the Council, without obtaining any hearing or decision from the High Tribunal, within a reasonable time, it will then be proper on the part of the Hudson's Bay Company to implore the interference of the Legislature.

DOCTORS' COMMONS, 29th November, 1819.

(Signed)

J. STODDART.

Extract from His Majesty's instructions to His Excellency, Lord Dorchester, dated at St. James', the 16th September, 1791, viz. :—

"1st. With these our instructions, you will receive our commission under our Great Seal of Great Britain, constituting you our Captain General and Governor-in-Chief, in and over our Provinces of Upper Canada and Lower Canada, bounded as in our said commission is particularly expressed. In the execution, therefore, of so much of the office and trust we have reposed in you as relates to our Province of Lower Canada, you are to take upon you the administration of the Government of the said Province, and to do and to execute all things belonging to your command, according to the several powers and authorities of our said commission, under our Great Seal of Great Britain, and of the Act passed in the present year of our reign, therein recited, and of these our instructions to you, and according to such further powers and instructions as you shall, at any time hereafter, receive under our Signet and Sign Manual, or by order of our Privy Council."

"2nd. And you are with all due solemnity before the members of our Executive Council, to cause our said commission to be read and published, which being done, you shall then take, and also administer to each of the members of our said Executive Council, the oaths mentioned in an Act passed in the first year of the Reign of His Majesty King George the First."

SUPPLEMENTAL APPENDIX.

ACCOUNT OF SURRENDER OF FORTS AFTER THE CAPITULATION OF
MONTREAL.APPENDIX
OF MONTREAL

Sec. 1

Account of
surrender of
Forts, 1760-1

It was on the twenty-ninth of November, 1760, that Detroit fell into the hands of the English. The garrison were sent as prisoners down the lake, but the Canadian inhabitants were allowed to retain their farms and houses, on condition of swearing allegiance to the British Crown. An officer was sent southward to take possession of the forts Miami and Onatanon, which guarded the communication between Lake Erie and the Ohio; while Rogers himself, with a small party, proceeded northwards to relieve the French garrison of Michillimackinac. The storms and gathering ice of Lake Huron forced him back without accomplishing his object; and Michillimackinac, with the three remoter posts of 10 St. Marie, Green Bay and St. Joseph, remained for a time in the hands of the French. During the next season, however, a detachment of the 60th regiment, then called the Royal Americans, took possession of them; and nothing now remained within the power of the French, except the few posts and settlements on the Mississippi and the Wabash, not included in the capitulation of Montreal.

The work of conquest was finished. The fertile wilderness beyond the Alleghanies, over which France had claimed sovereignty,—that boundless forest, with its tracery of interlacing streams, which, like veins and arteries, gave it life and nourishment,—had passed into the hands of her rival. It was by a few insignificant forts, separated by oceans of fresh water and uncounted leagues of forest, that the two great European powers, France first, and now England, endeavoured to enforce their claims to this vast domain. There is something ludicrous in the disparity between the importance of the possessions and 21 the slenderness of the force employed to maintain it. A region embracing so many thousand miles of surface was consigned to the keeping of some five or six hundred men. Yet the force, small as it was, appeared adequate to its object, for there seemed no enemy to contend with. The hands of the French were tied by the capitulation, and little apprehension was felt from the red inhabitants of the woods. The lapse of two years sufficed to show how complete and fatal was the mistake.*

DESCRIPTION OF FRANQUELIN'S MAP, 1684.

"Carte de la Louisiane ou des Voyages du S^r de la Salle et des pays qu'il a decouverts depuis la Nouvelle France jusqu'au Golfe Mexique les anees 1679, 80, 81, et 82, par Jean Baptiste Louis Franquelin, l'an 1684, Paris." Franquelin was a young engineer, who held the post of hydrographer to the king, at Quebec, in which Joliet succeeded him. Several of his maps are preserved, including one made in 1681, 30 in which he lays down the course of the Mississippi,—the lower part from conjecture,—making it discharge itself into Mobile Bay. It appears from a letter of the Governor, La Barre, that Franquelin was at Quebec in 1683, engaged on a map which was probably that of which the title is given above, though, had La Barre known that it was to be called a map of the journeys of his victim La Salle, he would have been more sparing of his praises. "He" (Franquelin), writes the governor, "is as skilful as any in France,

* Rogers' Journals.—Account of North America. Parkman's "Co-spiracy of Pontiac," vol. I. 1883, p.p. 169, 170.

APPENDIX
OF MANTOYA.

SEC. I.

Franquelin's
Map, 1681.

but extremely poor and in need of a little aid from his Majesty as an Engineer: he is at work on a very correct map of the country, which I shall send you next year in his name; meanwhile, I shall support him with some little assistance."—*Colonial Documents of New York*, IX, 205.

The map is very elaborately executed, and is six feet long and four and a half wide. It exhibits the political divisions of the continent, as the French then understood them; that is to say, all the regions drained by streams flowing into the St. Lawrence and the Mississippi are claimed as belonging to France, and this vast domain is separated into two grand divisions, La Nouvelle France and La Louisiane. The boundary line of the former, New France, is drawn from the Prenobscot to the southern extremity of Lake Champlain, and thence to the Mohawk, which it crosses a little above Schenectady, in order to make French subjects of the Mohawk Indians. Thence it passes by the sources of the Susquehanna and the Alleghany, along the southern shore of Lake Erie, across Southern Michigan, and by the head of Lake Michigan, whence it sweeps north-westward to the sources of the Mississippi. Louisiana includes the entire valley of the Mississippi and the Ohio, besides the whole of Texas. The Spanish province of Florida comprises the peninsula and the country east of the Bay of Mobile, drained by streams flowing into the Gulf; while Carolina, Virginia, and the other English provinces, form a narrow strip between the Alleghanies and the Atlantic.

The Mississippi is called "Missisipi, on Rivière Colbert;" the Missouri, "Grande Rivière des Enis-sourittes, on Missourits;" the Illinois, "Rivière des Illinois, on Macopins;" the Ohio, which La Salle had before called by its present name, "Fleuve St. Louis, on Chaegoa, on Caspimnapogamou;" one of principal branches is "Ohio, on Olighin" (Alleghany); the Arkansas, "Rivière des Acunsea; the Red River, "Rivière Seignelay," a name which had once been given to the Illinois. Many smaller streams are designated by names which have been entirely forgotten.

The nomenclature differs materially from that of Coronelli's map, published four years later. Here the whole of the French territory is laid down as "Canada, ou La Nouvelle France," of which "La Louisiane" forms an integral part. The map of Homannus, like that of Franquelin, makes two distinct provinces, of which one is styled "Canada" and the other "La Louisiane," the latter including Michigan and the greater part of New York. Franquelin gives the shape of Hudson's Bay, and of all the Great Lakes, with remarkable accuracy. He makes the Mississippi bend much too far to the West. The peculiar sinuosities of its course are indicated; and some of its bends, as, for example, that at New Orleans, are easily recognized. Its mouths are represented with great minuteness; and it may be inferred from the map that, since La Salle's time, they have advanced considerably into the sea.

Perhaps the most interesting feature in Franquelin's map is his sketch of La Salle's evanescent colony on the Illinois, engraved for this volume. He reproduced the map in 1688, for presentation to the king, with the title *Carte de l'Amerique Septentrionale, depuis le 25 jusqu'au 35 degré de latitude et environ 140 et 235 degrés de longitude, etc.* In this map, Franquelin corrects various errors in that which preceded. One of these corrections consists in the removal of a branch of the river Illinois which he had marked on his first map,—as will be seen by referring to the portion of it in this book,—but which does not in fact exist. On this second map, La Salle's colony appears in much diminished proportions, his Indian settlements having in good measure dispersed.

Two later maps of New France and Louisiana, both bearing Franquelin's name, are preserved in the Dépôt des Cartes de la Marine, as well as a number of smaller maps and sketches, also by him. They all have more or less of the features of the great map of 1684, which surpasses them all in interest and completeness.*

* Parkman's "La Salle, and the Discovery of the Great West." Appx. p. p. 155-7.

APPENDIX
OF MANITOBA.
—
Sec. I.

NORTH WEST
ANGLE
TREATY.
Sec. I.

In witness whereof, Her Majesty's said Commissioners and the said Indian Chiefs have hereunto subscribed and set their hands, at the north-west angle of the Lake of the Woods, this day and year herein first above-named.

(Signed) ALEXANDER MORRIS, [L.S.]
Lieutenant-Governor.

J. A. N. PROVENCHER,
Indian Commissioner.

S. J. DAWSON,
Indian Commissioner.

KEE-TA-KAY-DI-NAIS. His x mark.
And 23 others.

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Signed by the Chiefs within named in presence of the following witnesses, the same having been first read and explained by the Honourable James McKay:—

(Signed) JAMES MCKAY.
And 16 others.

ON THE ACQUISITION OF TERRITORY BY OCCUPATION.

APPENDIX
OF MANITOBA.

"When a nation takes possession of a country to which no prior owner can lay claim, it is considered as acquiring the *empire* or sovereignty over it, at the same time with the *domain*. For, since the nation is free and independent, it can have no intention, in settling in a country, to leave to others the rights of command, or any of those rights that constitute sovereignty? The whole space over which a nation extends its government, becomes the seat of its jurisdiction, and is called its *territory*." (Vattel, b. i. § 205.)

Sec. 1.

Twiss,
Oregon ques-
tion,
Cap. vii. p. 150Acquisition of
Territory by
Occupation.

Vattel (b. i. l. xviii. § 207) discusses this title at large:—

"All mankind have an equal right to things that have not yet fallen into the possession of any one, and those things belong to the person who first takes possession of them. When therefore a nation finds a country uninhabited, and without an owner, it may lawfully take possession of it, and *after it has sufficiently made known its will in this respect*, it cannot be deprived of it by another nation. Thus navigators going on voyages of discovery, furnished with a *commission from their sovereign*, and meeting with islands or other lands in a desert state, have taken possession of them in the name of the nation; and this title has been usually respected, provided it was soon after followed by a real possession."

Vattel,
v. 1. 2. xviii.
Sec. 207.

According to this statement, the act of discovery must be sanctioned by a commission from the sovereign, and the will of the nation to take possession must be by its agent sufficiently made known. What acts should be respected by the courtesy of nations, and be held sufficient to make known formally the will of a nation to avail itself of a discovery, has been a subject of much dispute.

The framers, however, of the second article of the Treaty of 1873, were ignorant of the true position of the sources of the Mississippi. It was in consequence stipulated by the fourth article of the subsequent Treaty of 1794, that a "joint survey of the river from one degree below the falls of St. Anthony, to the principal source or sources of the said river, and of the parts adjacent thereto," should be made; and if, on the result of the survey, it should appear that the river could not be intersected by the above-mentioned line, the parties were to regulate the boundary line by amicable negotiation, according to justice and mutual convenience, and in conformity to the intent of the Treaty of 1783.

Twiss, O.Q.,
Cap. xi. P.p.
204-5.

It is to this treaty that President Jefferson alludes in his letter of August, 1803, referred to by Mr. Pakenham, in his letter of September 12, 1814:—"The boundaries (of Louisiana), which I deem not admitting question, are the high lands on the western side of the Mississippi, enclosing all its waters (the Missouri of course) and terminating in the line drawn from the north-west point of the Lake of the Woods to the nearest source of the Mississippi, *as lately settled* between Great Britain and the United States."

Twiss, O.Q.,
p. 205-6.

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Mr. Greenhow (p. 281.), in alluding to the negotiations antecedent to this convention, states that Mr. Monroe, on the part of the United States, proposed to Lord Harrowby the 49th parallel of latitude, upon the grounds that this parallel had been adopted and definitely settled, by commissaries appointed agreeably to the tenth article of the treaty concluded at Utrecht in 1713, as the dividing line between the French possessions of Western Canada and Louisiana on the south, and the British territories of Hudson's Bay on the north; and that this treaty, having been specially confirmed in the Treaty of 1763, by which Canada and the part of Louisiana east of the Mississippi and Iberville were ceded to Great Britain, the remainder of Louisiana continued as before, bounded on the north by the 49th parallel. The same fact was alleged by the commissioners of the United States, in their negotiations with Spain in 1805, respecting the western boundary of Louisiana. (British and Foreign State Papers, 1817-18, p. 322.)

Twiss, O.Q.,
p. 207.

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APPENDIX
OF MANITOBA.

Sec. I.

Twiss, O.Q.,
Cap. xii. p. 219
p. 220.

* Louisiana, it will be thus seen, according to this authoritative document of the French crown, was the country watered by the Mississippi, and its tributary streams from the sea-shore to the Illinois: such was the limitation affixed to the province by the French themselves; and, by the same public instrument all the rest of the French possessions were united under the government of New France. It is true that the Illinois was subsequently annexed to Louisiana by a royal decree in 1717, after Crozat had relinquished his charter, and the whole region was granted to Law's Mississippi Company; but the Illinois were still spoken of as the Illinois, and the district was not merged in Louisiana, though it was annexed to that province, to give the company access to Canada, in which the monopoly of the beaver-trade had been granted to them. It has been already observed, that the limits of the Hudson's Bay territories and French Canada were settled by the peace of Utrecht, in 1713: one great object of that treaty was to provide against the commercial disputes of the subjects of the two crowns, which had led to a series of conflicts on the shores of Hudson's Bay; it was in furtherance of this object that the fur-trade of Canada was now diverted from the St. Lawrence to the Mississippi, by this grant of the monopoly of the beaver-trade to the Compagnie d'Occident, and the annexation of the Illinois country to Louisiana.

Cap. xii. p. 221

The treaty of Paris, however, has not furnished the only occasion upon which intricate discussions have arisen respecting the limits of Louisiana. By a secret treaty with Spain, made in 1762, but not signed till 1764, France ceded to her all the country known under the name of Louisiana. This transfer, however, was not promulgated till 1765, two years after the Treaty of Paris had been signed by France, Spain, and Great Britain; nor did the Spaniards obtain possession of the country till 1769.

Twiss, O.Q.,
Cap. xvi.
p. 307-8.

Mr. Gallatin says, in alluding to royal charters:—"In point of fact, the whole country drained by the several rivers emptying into the Atlantic Ocean, the mouths of which were within those charters, has from Hudson's Bay to Florida, and it is believed without exception, been occupied and held by virtue of those charters. Not only has this principle been fully confirmed, but it has been notoriously enforced, much beyond the sources of the rivers on which the settlements were formed. The priority of the French settlements on the rivers flowing westwardly from the Alleghany Mountains into the Mississippi, was altogether disregarded; and the rights of the Atlantic colonies to extend beyond those mountains, as growing out of the *contiguity of territory*, and as asserted in the earliest charters, was effectually and successfully enforced." In reply to these remarks it may be observed, that the limits of the Hudson's Bay territory were settled by the Treaty of Utrecht, in 1713, those of the Atlantic colonies by the Treaty of Paris, 1763, and in the preliminary negotiation no allusion is anywhere made to rights founded on charters, or to rights of *contiguity*. On the contrary, in regard to the Hudson's Bay territories, the possible acquiescence of the Marquis de Frontenac, then Governor of Canada, in the settlement of the Bay of Hudson by the English company, was maintained to be a bar to any claims on the part of the French to question, at a subsequent period, the title which the British crown asserted on the grounds of *discovery*.

p. 309.

The cession by France of all that she possessed, or was entitled to possess, on the left bank of the River Mississippi, would convey to Great Britain all her title to the Illinois and other districts north of the Illinois country, if she possessed any; but she could only possess any title to them as forming part of the dependencies of Canada or New France. Out of these, indeed, the province of Louisiana had been carved by the grant to Crozat in 1712, and from these the Illinois territory had been detached in 1717, by the charter of Law's Mississippi Company; the remainder, such as it was, had retained its original character of New France or Canada unchanged, as well as its original limits, such as they had been determined to be, either by special commissioners, in pursuance of the provisions of the Treaty of Utrecht, or by an understanding between the crowns of France and Great Britain. If therefore the French had

(NOTE).—"Twiss" remarks on description of Louisiana in Crozat's Charter.

any possessions in America, north of the sources of the Mississippi, as Louisiana did not extend further north than those sources, they must have been part of the original province of Canada, and have been ceded to Great Britain with Canada and all her dependencies. The western boundary of Louisiana was never attempted to be extended by the French beyond the limits of Crozat's grant, by which Louisiana was expressly defined to be bounded by New Mexico on the west, and impliedly by the head-waters of the Missouri river.

"The actual possession," Mr. Gallatin maintained, "and populous settlements of the valley of the Mississippi, including Louisiana, and now under one sovereignty, constitute a strong claim to the westwardly extension of that province over the *contiguous* vacant territory, and to the occupation and sovereignty of the country as far as the Pacific Ocean. If some trading factories on the shores of Hudson's Bay have been considered by Great Britain as giving an exclusive right of occupancy as far as the Rocky Mountains; if the infant settlements on the more southern Atlantic shores justified a claim thence to the South Seas, and which was actually enforced to the Mississippi, that of the millions already within the reach of those seas cannot consistently be resisted. For it will not be denied that the extent of contiguous territory, to which an actual settlement gives a prior right, must depend, in a considerable degree, on the magnitude and population of that settlement, and on the facility with which the vacant adjoining land may, within a short time, be occupied, settled, and cultivated by such population, as compared with the probability of its being thus occupied and settled from another quarter."

In reference, then, to the original title of the United States, Mr. Calhoun, in his letter of September 3, 1881, grounded it on the prior discovery of the mouth of the Columbia River by Captain Gray, on the prior exploration of the river from its head-waters by Lewis and Clarke in 1805-6, on the prior settlement on its banks by American citizens in 1809-10, and by the Pacific Fur Company at Astoria in 1811, which latter establishment was formerly restored by the British Government in 1818 to the Government of the United States. Mr. Buchanan, in his letter of July 12, 1845, having briefly recapitulated these alleged facts, says:—"If the discovery of the mouth of a river, followed up within a reasonable time by the first exploration of its main channel and its branches, and appropriated by the first settlements on its banks, do not constitute a title to the territory drained by its waters in the nation performing these acts, then the principles consecrated by the practice of civilised nations ever since the discovery of the New World must have lost their force. These principles were necessary to procure the peace of the world. Had they not been enforced in practice, clashing claims to newly-discovered territory, and perpetual strife among the nations, would have been the inevitable result."

The Commissaries on both sides were appointed, and they met, but whether they agreed on such a boundary and the position thereof, or did not, is disputed. Phillimore, in his great work on International Law (Vol. 1, p. 311, 3rd Ed.) says,—

"In conformity with the 10th Article of the first-mentioned Treaty (Utrecht), the boundary between Canada and Louisiana, on the one side, and the Hudson's Bay and North-western Companies, on the other, was established by Commissaries by a line to commence at a Cape or Promontory on the Ocean in 58° 30' north latitude, to run thence South-westwardly to latitude 49° north from the Equator, and along that line definitely westward."

APPENDIX
OF MANITOBA.
Sec. I.

Twiss, O.Q.,
p. 310.

Cap. xvii.,
p. 326.

Phill. Int. Law
vol. 1, p. 311
d.

EVIDENCE OF DONALD A. SMITH, HON. MR. JUSTICE JOHNSON, MR. JUSTICE
 ARMOUR, WILLIAM MURDOCH, C.E., P. L. MORIN, and W. McD. DAWSON,
 GIVEN BEFORE THE COMMITTEE OF HOUSE OF COMMONS, CANADA
 MARCH, 1880,

also

REPORT OF T. K. RAMSAY, Esq., Q.C., ON THE NORTHERN AND WESTERN
 LIMITS OF ONTARIO.

Sec. II.

Friday, 12th March, 1880.

Hon. DONALD A. SMITH, M.P., called and Examined.

Evidence
 given before
 Committee of
 House of
 Commons,
 Canada,
 March, 1880.
 Evidence of
 Hon. Donald
 A. Smith, M.P.

By the Chairman :

179. I suppose that previous to the time of the Treaty of Utrecht, the Hudson's Bay Company's possession was rather uncertain?—It had been disputed.

180. But subsequent to that Treaty, in the neighbourhood of Hudson's Bay it was undisputed?—The Hudson's Bay Company always held it to be so.

181. Since the Treaty of Utrecht there has been no dispute as to the possession on the confines of the Bay?—Not that I am aware of; never.

10 182. The possession of the Hudson's Bay Company originated under a charter?—This is the charter of the Company granted by King Charles II.

183. In 1670?—Yes.

By Mr. Robinson :

184. In what year was the Treaty of Utrecht?—In 1714.

By the Chairman :

185. What territory do you consider the Charter held by the company extended over and embraced?—All the lands of North America, the waters of which empty themselves into Hudson's Bay and Hudson's Straits, bounded by what is usually known as the height of land.

186. Then, you consider the height of land or St. Lawrence watershed to be the southern boundary
 20 of the territory of the Hudson's Bay Company?—The Hudson's Bay Company have always held it to be so. I might say that the opinions they have had from learned counsel confirm them in that view.

By Mr. Tror :

187. The Hudson's Bay Company did not confine themselves to these particular limits which you now describe?—They did not, because they held a license to trade in the territory beyond that as well, in what is known as the Indian country, outside of Rupert's Land, as well as in their territory proper, which is all that country, the waters of which empty themselves into Hudson Bay's and Hudson's Straits. They had a special license from the Imperial Government.

By the Chairman :

188. Might it not be well to submit that Special License; I think it is dated 1821; it was granted
 30 when the Hudson's Bay and North-West Companies confederated.

189. You spoke about the opinions of counsel; I presume they were English counsel learned in the law. You have, I suppose, some of those opinions?—Yes, Lord Mansfield, Mr. Scarlett, Lord Abinger, Lord Romilly, and other most eminent counsel were consulted by the Hudson's Bay Company. I think the names of some of them are given here (page 327, House of Commons Report, 1857.) Lord Mansfield, Lord Romilly, Erskine, Scarlett, Holroyd, and several others. (Opinions produced.)

By Mr. Weldon :

190. Where are those opinions to be found?—Some of them are here.

191. Does the case submitted by the Hudson's Bay Company accompany the opinion?—Yes; the case of the Company is given.

By Mr. De Cosmos :

192. Were there not legal opinions given in England against the Hudson's Bay Company?—There were opinions given at the instance of the North West Company, those of Lord Brougham, and one or two others, which were not so favourable.

193. Could you state the names of the others?

The Chairman—They are in the Ontario documents here.

By Mr. Robinson :

194. As to the boundary?—In some cases—as to the boundary. The boundary was held to be by those who were consulted to be the height of land.

By Mr. Troie :

195. Does Lord Brougham's opinion take in the boundary?—I am not very sure; I think it 20 does.

196. What were those opinions which were given adversely to those previous decisions in favour of the company?—They are to the effect that, with regard to trade, the company could not claim an exclusive right to trade in the country, as being the Government of the country, but that as to their territorial rights there could be no question.

By the Chairman :

197. They all agreed that the charter was valid as to territorial rights?—Yes; and that their right to exclude other traders from the country would be merely as the proprietors, in a matter of trespass.

198. With regard to the charter of the Hudson's Bay Company, I believe that part of the condition 30 on which it was granted was that the Company should establish colonies within the territory which it covered. I believe that in carrying out this condition the Company established a colony called the colony of Assiniboia. Is not that the case?—It is.

199. As to whether that colony was recognized by the Imperial Government or not, that is an important question? I believe that on two occasions the Imperial troops were sent out to maintain order in the territory; is that so?—Yes; that colony was recognized by the Imperial Government, and Her Majesty's troops were sent out there. The 6th Regiment and the Canadian Rifles were there at different times.

By Mr. Weldon :

200. At what time was the 6th Regiment there?—I think in 1846, under Colonel Crofton. 40

201. And the Canadian Rifles, when?—In 1857 the Canadian Rifles were sent there under Major Seaton, and afterwards under Captain Hilbert. The Home Government also assisted in forming a body of pensioners for service in Red River after that time. Those pensioners were sent out there, and I believe some of them are, at this moment, in the Red River country, although not employed as a force.

By Mr. De Cosmos :

202. Who paid the force?—The Imperial Government paid the troops and the company contributed to their sustenance.

203. Did the Imperial Government also contribute to the expenses of the pensioners?—Not further than their pensions.

APPENDIX
OF MANITOBA.
Sec. II.

Evidence
given before
Committee of
House of
Commons,
Canada,
March, 1880.
Evidence of
Hon. Donald
A. Smith, M.P.

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JOHNSON, MR. JUSTICE
and W. McD. DAWSON,
OF COMMONS, CANADA

NORTHERN AND WESTERN

Friday, 12th March, 1880.
Examined.

the Hudson's Bay Company's
on's Bay it was undisputed?—

possession on the confines of the
a charter?—This is the charter

extended over and embraced?
into Hudson's Bay and Hudson's

ed to be the southern boundary
company have always held it to
confirm them in that view.

ese particular limits which you
territory beyond that as well, in
in their territory proper, which
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is dated 1821; it was granted

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By the Chairman :

204. The Imperial Government corresponded with the Governors and the Government of the new colony of Assiniboin, I presume?—With the Governors of the Hudson's Bay Company.

205. Had the Government of that colony Courts established and power to administer the law; had it, for instance, the power of life and death?—It had the power of life and death. There was a Council of Assiniboin, and a Recorder who was Judge—Judge Thom.

By Mr. Royal :

296. He was the first Recorder?—Yes; as I have said, the Government had power of life and death, and one person was executed.

By Mr. De Cosmos :

207. What was the date of these appointments?—The appointment of the first Recorder must have been in 1838 or 1839.

By the Chairman :

208. The colony, I believe, had clearly defined boundaries?—It had.

209. And these boundaries are given in Mr. Mills' report?—Yes.

By Mr. Tron :

210. I suppose the old boundaries cover the whole of Dakotuh?—A portion of Dakotah.

211. And also Minnesota?—Some part of Minnesota.

By Mr. De Cosmos :

20 212. What was the ascertained boundary of the Colony of Assiniboin?—I don't recollect exactly. I should state that I have given no particular attention to this subject for many years past.

The Chairman read from the proclamation of Governor McDonell, as follows:—

“Whereas the Governor and Company of Hudson's Bay have ceded to the Right Honourable Thomas, Earl of Selkirk, his heirs and successors, for ever, all that tract of land or territory, bounded by a line running as follows, viz.:—Beginning on the western shore of Lake Winnipic, at a point in fifty-two degrees and thirty minutes north latitude; and thence running due west to Lake Winnipigashish, otherwise called Little Winnipic; then in a southerly direction through the said lake, so as to strike its western shore in latitude fifty-two degrees; then due west to the place where the parallel of fifty-two degrees north latitude intersects the western branch of Red River, otherwise called
30 Assiniboine; then due south from that point of intersection to the height of land which separates the waters running into Hudson's Bay from those of the Missouri and Mississippi Rivers; then in an easterly direction along the height of land to the source of the River Winnipic (meaning by such last-named river the principal branch of the waters which unite in the Lake Saginagas); thence along the main stream of these waters and the middle of the several lakes through which they pass, to the mouth of the Winnipic River; and thence in a northerly direction through the middle of the Lake Winnipic, to the place of beginning; which territory is called Assiniboin, and of which I, the undersigned, have been duly appointed Governor.”

213. *Mr. Weldon.*—What date was that given?

The Chairman.—It says, “Given under my hand at Fort Daer (Pembina), the 8th day of January,
40 1814.”

By the Chairman, to witness :

214. So that the colony existed for a long time, and was recognized by the Imperial Government as a Crown colony, in fact?—It was. The Hudson's Bay Company had a council called the Northern Council. Their factors or officers were the Council of Rupert's Land for all the purposes of Government. Besides having their officers and government at Red River, the company had Sheriffs for Rupert's Land.

215. Outside of the colony?—Yes.

216. So they had all the powers of Government?—Yes.

By Mr. Ross :

217. Did the southern boundary of the so-called colony of Assiniboin correspond with what was

supposed to be the southern boundary of the Hudson's Bay Company's territory?—Yes; the height of land.

218. But the eastern boundary did not in any way correspond with what was supposed to be the eastern boundary of the Hudson's Bay Company?—It did not.

219. Then it was only the boundary of the colony on the south side that corresponded with the boundary of the Hudson's Bay Company?—Yes; the boundaries of the colony were made simply for its convenience.

By the Chairman :

220. Another important point is this, was the height of land recognized as a boundary by Upper Canada. Have you any documents showing that it was so recognized?—Yes, there was the Robinson Treaty.

221. I believe that the Imperial Government, in proclamations and otherwise, recognized the validity of the Company's charter and the existence of their claims up to the time the country passed to Canada?—Yes; on many occasions, up to the last moment before the transfer. At the latter time I was acting, not as Governor of the Hudson's Bay Company, for the Governor is the Chairman of the Company in England, but as territorial Governor, and the then commander of the forces insisted that I, acting as Governor of Hudson's Bay, should administer the Government when the forces went in in 1870. I did, in fact, administer the Government until Lieutenant-Governor Archibald arrived.

The Chairman :—The treaty referred to by Mr. Smith is that made by Upper Canada with the Lake Superior Indians. It provides: "That for and in consideration of the sum of £2,000 of good and lawful money of Upper Canada, to them in hand paid, and for the further perpetual annuity of £500, the same to be paid and delivered to the said Chiefs and their tribes at a convenient season of each summer, not later than the first day of August, at the Honourable the Hudson's Bay Company's posts of Michipicoten and Fort William, they, the said Chiefs and principal men, do freely, fully, and voluntarily surrender, cede, grant and convey unto Her Majesty, her heirs and successors, for ever, all their right, title, and interest in the whole of the territory above described, save and except the reservations set forth in the schedule hereunto annexed, which reservation shall be held and occupied by the said Chiefs and their tribes in common for the purposes of residence and cultivation. And should the said Chiefs and their respective tribes at any time desire to dispose of any mineral or other valuable productions upon the said reservations, the same will be, at their request, sold by order of the Superintendent-General of the Indian Department for the time being, for their sole use and benefit and to the best advantage."

Here is the description of the territory: "From Batchewanning Bay to Pigeon River, at the western extremity of said lake, and inland throughout that extent to the height of land which separates the territory covered by the Charter of the Honourable the Hudson's Bay Company from the said tract and also, the islands in the said lake within the boundaries of the British possessions therein, of the other part."

The Chairman, to witness :

222. In the old descriptions which are here and in the commissions to Governors, there is a boundary line of Hudson Bay referred to. In the descriptions of the boundary between Upper and Lower Canada the line is always referred to as running due north from the head of Lake Temiscaming, until it strikes the boundary of Hudson's Bay. That continued for a very long period, up to 1838, to be the description contained in the commissions to Governors. Subsequent to 1838 the description given is from the head of Lake Temiscaming due north, until it strikes the shore of Hudson's Bay. The question I wish to ask is: was the boundary line of Hudson's Bay identical with the shore of Hudson's Bay, or was it not?—Not with the shore. It was understood that the height of the land was the boundary line of Hudson's Bay, or the Hudson's Bay Company's territory. I have noticed what the Chairman has mentioned, with respect to the change which, I think, was made when Lord Durham was appointed Governor and Commissioner. I can only account for it as being a mistake on the part of some one in one of the offices of the English Government, who took this to be the shore of Hudson's Bay.

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By Mr. Robinson :

223. But if it was a mistake it was repeated in the commissions of half a dozen Governors?—In those of four.

224. In the commission of Lord Gosford in 1836 or 1837 of Lord Elgin as late as 1846, and in that of Lord Durham, also, the expression "shore" was used?—I do not think there was ever any correspondence with the Hudson's Bay Company at home on the subject, nor that they were aware of any cause for the change. And from that I suppose that it occurred accidentally, the official not having any knowledge whereby to distinguish between the boundary and the shore.

By Mr. Ross :

10 225. Did any dispute ever arise on account of that supposed clerical error?—Not that I am aware of.

By Mr. Ouint :

226. The Hudson's Bay Company always had possession of the territory to the height of land?—Yes.

227. Suppose the southern boundary of the Hudson's Bay Company's territory should be the shore of Hudson's Bay, where would be the territory; would it consist of any land of importance?—There really would be no territory; there really would be nothing worth having. The Charter says most explicitly they shall have all lands the waters of which empty into Hudson's Bay and Hudson's Straits.

By Mr. Weldon :

20 228. Are those exactly the words?—It is more general afterwards. It says all such lands not possessed by any other Christian power which they can have access to from those.

229. Then the question arises whether France or England was in possession of the land at Albany River?—That question was supposed to have been decided by the Treaty of Utrecht. The Hudson's Bay Company put forward their claim and it was not questioned.

230. At the time of the Treaty of Utrecht it was surrendered to Great Britain?—Certain portions.

231. But previous to the Treaty of Ryswick those portions of the country were given up to France?—They were.

By Mr. Royal :

30 232. I suppose, under the interpretation given by the Hudson's Bay Company to that part of their Constitution, they never considered they were limited for trading purposes to the shores of Hudson's Bay?—Never.

233. And particularly, they had the right to build forts and fur trading establishments within the water-shed of Hudson's Bay?—Yes.

234. That was never questioned?—It was not questioned except by rival companies at the time, nothing more; and the Hudson's Bay Company resisted what they believed to be the encroachments of the North-West Company. On one occasion they took prisoner the principal officer of the North-West Company, J. C. McTavish.

By Mr. De Cosmos :

235. Where was that?—Near Hudson's Bay, on one of the islands.

40 236. What part of Hudson's Bay?—St. James' Bay.

By Mr. De Cosmos :

237. Who appointed the magistrates around the shores of James' Bay?—The Hudson's Bay Company. The chief factors of the company were already magistrates, *ex-officio*, under the charter, and they exercised all the powers of magistrates under the charter, in conformity, as near as the circumstances would permit, with the laws of England.

238. Did the Canadian Government, so far as you are aware, ever appoint any magistrates or other officers of Canada to perform magisterial duties within the territory, commencing at the northern and western boundaries of Quebec; that is within, and west of a line drawn from Temiscaming to James' Bay?—My own impression was that the magistrates they appointed were for that district lying

189. You spoke about the opinions of counsel; I presume they were English counsel in the law. You have, I suppose, some of those opinions?—Yes, Lord Munstfield, Mr. Scarlett, Lord Abinger, Lord Brougham, and other most eminent counsel were consulted by the Hudson's Bay Company. I think the names of some of them are given here (page 327, House of Commons Report, 1857.) Lord Mansfield, Lord Romilly, Erskine, Scarlett, Holroyd, and several others. (Opinions produced.)

By Mr. Weldon :

190. Where are those opinions to be found?—Some of them are here.

191. Does the case submitted by the Hudson's Bay Company accompany the opinion?—Yes; the case of the Company is given.

By Mr. De Cosmos :

192. Were there not legal opinions given in England against the Hudson's Bay Company?—There were opinions given at the instance of the North West Company, those of Lord Brougham, and one or two others, which were not so favourable.

193. Could you state the names of the others?

The Chairman—They are in the Ontario documents here.

By Mr. Robinson :

194. As to the boundary?—In some cases—as to the boundary. The boundary was held to be by those who were consulted to be the height of land.

By Mr. Tror :

195. Does Lord Brougham's opinion take in the boundary?—I am not very sure; I think it does.

196. What were those opinions which were given adversely to those previous decisions in favour of the company?—They are to the effect that, with regard to trade, the company could not claim an exclusive right to trade in the country, as being the Government of the country, but that as to their territorial rights there could be no question.

By the Chairman :

197. They all agreed that the charter was valid as to territorial rights?—Yes; and that their right to exclude other traders from the country would be merely as the proprietors, in a matter of trespass.

198. With regard to the charter of the Hudson's Bay Company, I believe that part of the condition on which it was granted was that the Company should establish colonies within the territory which it covered. I believe that in carrying out this condition the Company established a colony called the colony of Assiniboin. Is not that the case?—It is.

199. As to whether that colony was recognized by the Imperial Government or not, that is an important question? I believe that on two occasions the Imperial troops were sent out to maintain order in the territory; is that so?—Yes; that colony was recognized by the Imperial Government, and Her Majesty's troops were sent out there. The 6th Regiment and the Canadian Rifles were there at different times.

By Mr. Weldon :

200. At what time was the 6th Regiment there?—I think in 1846, under Colonel Crofton.

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Canada,
March, 1850.
Evidence of
Hon. Donald
A. Smith, M.P.

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Sec. II.

Evidence
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A. Smith, M.P.*By the Chairman :*

204. The Imperial Government corresponded with the Governors and the Government of the new colony of Assiniboia, I presume?—With the Governors of the Hudson's Bay Company.

205. Had the Government of that colony Courts established and power to administer the law; had it, for instance, the power of life and death?—It had the power of life and death. There was a Council of Assiniboia, and a Recorder who was Judge—Judge Thom.

By Mr. Royal :

206. He was the first Recorder?—Yes; as I have said, the Government had power of life and death, and one person was executed.

By Mr. De Cosmos :

207. What was the date of these appointments?—The appointment of the first Recorder must have been in 1838 or 1839.

By the Chairman :

208. The colony, I believe, had clearly defined boundaries?—It had.

209. And these boundaries are given in Mr. Mills' report?—Yes.

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20 212. What was the ascertained boundary of the Colony of Assiniboia?—I don't recollect exactly. I should state that I have given no particular attention to this subject for many years past.

The Chairman read from the proclamation of Governor McDonell, as follows:—

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302. With respect to the matter of the northern and western boundaries of Ontario having regard to the Quebec Act of 1774, with which, of course, you are familiar, would you favour the Committee with your opinion as to what would be the true northern and western boundaries of the old Province of Quebec as constituted by that Act?—Yes. The northern and western boundaries—

By Mr. Weldon.—The question is whether this is proper evidence to be brought before the Committee. Any information that can be furnished ought to be received, but we must form our own opinions thereon, and not be guided by the opinions of witnesses.

By the Chairman.—The order of reference is to enquire into all matters connected with the boundaries of Ontario. Judge Johnson has been Governor of the territory covering the disputed grounds, and has had a great deal to do with the question.

By Mr. Weldon.—Facts, information, and documents would be proper evidence, but we must form our opinion from the facts presented and the documents submitted.

By Mr. Robinson.—The witness will, no doubt, state on what grounds his opinion is formed.

By Mr. Royal.—I believe that indiscriminate opinions by every man on this subject should not be taken as evidence; but the opinions of certain men as to the correct meaning of certain Statutes are, I believe, very important, from their experience, learning, and position. I believe what is called jurisprudence in our courts is nothing but the opinion of judges. It might be very proper to have the opinion of men of standing, such as the Hon. Justice Johnson, especially considering that he has long resided in the Red River country and been long connected with the administration of justice there. With all due deference to the opinions of other members of the Committee, I believe we ought to have an expression of the opinion of the witness. 20

By Mr. O'Connell.—I think the technical objection of Mr. Weldon has some force, but the question might be put to the witness in a different way, so as to make it a proper question. The Statutes which we shall have to consult, and from which we will have to form our opinions, are well-known Statutes. They were passed a long while ago. It might be, and I think it is, of very great interest and importance, to this Committee to know how these Statutes have been interpreted, and more especially how they have been interpreted by those who have administered justice in the North-West, and who, consequently, have been in the habit of looking at these Statutes, and have seen for themselves *sur les lieux* how they ought to be interpreted. I think, in this respect, Judge Johnson's opinion would be of very great weight, and that it is very important to have it; although the form in which the Chairman has put the question might be objectionable in a strictly technical sense. 30

By the Chairman.—Probably the Judge will inform us as to the way in which the Statute has hitherto been interpreted, and the way in which it has been interpreted more especially as affecting the western and northern boundaries of the old Province of Quebec.

By Mr. Weldon.—If we lay down the principle that some opinions ought to be given, I do not see exactly where we ought to draw the line.

By the Chairman.—What we want is information as to the way in which the matter was regarded at a period not very remote, and this information we wish to elicit from the Judge. These questions were very much discussed at the time he was Governor, and at the time troops were being sent to the North-West. If he could give us information as to the opinions of counsel and as to the views held in respect to the northern and western boundaries as constituted by the Quebec Act, would not that be within the scope of the order of reference?—I can give you evidence of the authoritative recognition of the District of Assiniboia by the Crown of England. I have always understood that the original Province of Quebec, as constituted by the Act of 1774, was bounded to the north by the southern boundary of the territory granted to the Hudson's Bay Company, and I have always understood that that southern boundary was the height of land separating the basin of Hudson's Bay from the chain of great lakes and the St. Lawrence, and constituting a water-shed on one side and on the other. I have always understood that to be the case. I have further understood that when the Constitutional Act came to be passed in 1791, and the 40

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Provinces divided, it was judicially held in the deReinhardt case by Chief Justice Sewell, that although that Act divided the Provinces, it did nothing to extend either of them. I think that is self-evident.

303. Was the Colony of Assiniboia recognized by the Imperial Government, and in what way?—The existence *de facto* of the Colony of Assiniboia was certainly recognized in a variety of ways, and in the most authoritative manner by the Crown of England in a series of Acts that admit of no doubt whatever. They sent the 6th Regiment there in 1846 or 1847, under Colonel Crofton. They were sent by orders of the Duke of Wellington to occupy that place, so that in view of any trouble in respect to the Oregon question, they might be made available on the other side of the mountains. However that was, they were sent there. After that, when I was sworn in as Governor in 1855, after the retirement of Colonel Crofton and the troops, I made a demand for troops for the purpose of keeping order, and I got troops commanded by Major Seaton. They sent out a company of 100 men of the Canadian Rifles, British troops in the pay of the British Government, and they were quartered there some years.

B. Mr. Oulmet :

304. You were sent there in 1855 as Governor of Assiniboia?—Yes. Besides the troops, the Crown of England sent out a number of pensioners whom they re-enrolled in a permanent form, to whom the Hudson's Bay Company agreed to give land on their becoming settlers there. That was done on the retirement of the 6th Regiment, about the year 1850 or 1851, and those pensioners were there with their families, while I was there a Governor. Some of them and their descendants are still there. But I found a more important recognition accidentally yesterday evening on the part of the English Crown, of the fact that the Colony of Assiniboia was a colony, the existence of which they not only knew of but with respect to which they reserved to themselves the right to establish, of their prerogative, Courts of Justice whenever they should see fit.

305. You mean the Imperial Government?—Yes. The way I came across that was in referring to some old notes which I kept when I was in Assiniboia in 1857 or 1858. In turning them over I found the opinions given by the Attorney and Solicitor-Generals of England of that day, Sir Richard Bethel and Sir Henry Keating. I found that I had extracted from a newspaper the opinions which those gentlemen were supposed to have given. I also found that I had made this note: "There is an all-important paragraph omitted," and I find the paragraph is inserted in my handwriting." Then to verify it I looked at the opinion as it is published by authority in this country, and contained in the book entitled "Statutes, documents and papers bearing on the discussion respecting the northern and western boundaries of the Province of Ontario, compiled by direction of the Government of Ontario." I found that the paragraph which was omitted in publication, probably for some party purpose, at that time, was this: [to be found on page 200 of the book referred to] "The company has, under the charter, power to make ordinances (which would be in the nature of bye-laws) for the government of the persons employed by them, and also power to exercise jurisdiction in all matters civil and criminal; but no ordinance would be valid that was contrary to the common law, nor could the company insist on its right to administer justice as against the Crown's prerogative right to establish Courts of Civil and Criminal Justice within the territory." Here then, in 1857, you have the two law officers of the Crown in England, stating it was the Crown's prerogative right, at that time, if they should see fit, to establish Courts of Civil and Criminal Justice in Assiniboia. Now, that is a declaration entirely at variance with the possibility of its being part of Upper Canada, because to Upper Canada had been granted legislative powers and a constitution of its own, and in its legislature had been vested the right to constitute Courts of Justice. That was a decisive recognition of the fact by the law officers in England that that colony *de facto* existed, that the Crown recognised it, and not only had the power but possibly at that time contemplated the exercise of the power of making it a Crown colony, and establishing Courts of Justice there irrespective of Upper Canada, to which it was not considered to belong at all.

306. It was considered that the water-shed formed the northern boundary line of Upper Canada?—Undoubtedly, and it was considered that the western boundary was the line running due north, as it was

laid down in the de Reinhardt case, from the confluence of the Mississippi and Ohio to the southern boundary of the Hudson Bay Company's territory.

By Mr. Trow :

307. Is the word due north used?—No; the word northward is used, but that has been interpreted by the most eminent Judge who ever lived in Lower Canada, Chief Justice Sewell, to mean undoubtedly north.

By Mr. De Cosmos :

308. What do you consider the eastern boundary of Assiniboia?—I do not exactly remember at this minute, but I could easily verify it. The question as to how Assiniboia was erected is a long story. The Earl of Selkirk affected to surrender or did surrender, to the Hudson's Bay Company a large tract of country which is now comprised in the State of Minnesota; no doubt of that. But the limits of Assiniboia, while I was there, I do not now exactly remember. I could, however, verify it in a moment by my report, because when I was sent up as Commissioner in 1870 or 1871, to report upon the state of the laws that existed previous to the establishment of Manitoba, I considered that question involved, in a certain degree, the geographical extent of the country; and although the title of the Hudson's Bay Company had been admitted by the surrender which was accepted of their title by the Crown of England and by Canada, still I had to report what the laws were, and in my report I find that the district of Assiniboia, long after the Earl of Selkirk had surrendered his rights to the Hudson's Bay Company, was constituted and defined by the Board of Directors of the Hudson's Bay Company in London. I have that here.

By Mr. Robinson :

309. There never was any setting out by stakes and bounds officially of the district of Assiniboia?—I am not able to say whether there was or not; my impression is there was. There were two eminent surveyors in olden times, Messrs. Thomson and Taylor, and I always understood a survey had been made. But I will not answer the question with certainty. I always took it for granted such had been done.

By the Chairman :

310. You say that the surrender of the title of the Hudson's Bay Company to the Crown of England and to Canada, and its acceptance by them, established its validity. Have you opinions of learned counsel as to the validity of the Hudson's Bay Company's charter, and the extent of territory it covered?—There have been a series of opinions from the earliest times, going back to the day of Lord Mansfield, then, Mr. Murray, and coming down to the present day, which, with very little variation, have always maintained the right of the company to the soil, and to the territory; but have not maintained with equal certainty their right to exclusive trading privilege. I take it that the Crown of England had the same right to grant land when it was granted by King Charles, that the Crown in Canada has to grant land now apart from exclusive trade privilege. It was in the year 1839, on the 13th March, at a general court held in the Hudson's Bay House, London, that the district of Assiniboia was erected and was declared "co-extensive with such portions of the territory (these are the words of the order) granted to the late Thomas, Earl of Selkirk, on the 12th June, 1811, as is now within the domains of Her Britannic Majesty." That is what constituted the district of Assiniboia, and it so constituted *de facto*, whatever its precise extent, it has certainly been recognised by a series of Acts by the British Government. I may state more than that: I came down from the Red River country in the fall of 1858. Mr. Watkin was in this country, and was associated with Sir Edmund Head in connection with the interests of the Hudson's Bay Company, or with respect to some proposition for establishing a Government in that territory by-and-bye. It was felt it could no longer be held as a monopoly. I was, at the request of the Duke of Newcastle, called upon to draw up a report and make a recommendation as to the form of Government which was desirable. This was in 1863. I reported in favour of a Crown colony. I believe Sir Edmund Head did so too. Most certainly the Duke of Newcastle recognised as a possible event that the Crown of England might make a Crown Colony of it. I believe it was a mere accident that it was not done. At one time it was considered not only desirable, but almost certain, that it would be made a Crown colony, which is perfectly at variance with its being part of Upper Canada.

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311. You had a judiciary established there for the trial of criminal cases?—Yes. The validity of the company's charter, in that respect, has always been acknowledged by the law officers of England. They administered justice there, perhaps in a ready, but in a very efficient manner; and on one occasion, I am happy to say not in my time, but in that of my predecessor, an Indian was tried for his life. He was found guilty by a jury, condemned to be executed, and was executed just outside Fort Garry.

312. So that it was *de facto* a separate colony?—It was unquestionably. It was *de facto* a separate colony, and recognized as such by the Crown of England, which intimated more than once the possibility of their exercising their authority there quite independent of Canada.

By Mr. De Cosmos:—

10 313. I understood that the territory of Assiniboia was the same as that which had been granted to Lord Selkirk?—Partly so.

314. What I desire to have is a description of those boundaries.—No doubt what Lord Selkirk assumed to own, and the country he intended to settle, extended over a very great part of what is now Minnesota, and which before it became Minnesota, was the territory of Dakota and Minnesota, now forming two States.

By Mr. De Cosmos:

20 315. The international boundary fixes conclusively the fact that the territory of Upper Canada cannot go further south; but what we want to know is, what documentary evidence can be produced to show how far the boundary of Assiniboia went east along the international boundary, or how far the boundary of Upper Canada went west along the international boundary—I take it everything that was west of a due north line from the confluence of the Mississippi and Ohio was Assiniboia?—I think so.

By the Chairman:

316. Or Hudson's Bay Company's territory?—Or Hudson's Bay Territory, but Assiniboia certainly used to bring in criminals from some distance and try those criminals from *Bout de la Rivière*, at the foot of Lake Winnipeg, and Winnipeg River, just where the river runs into the lake.

By Mr. De Cosmos:

317. Are there any records of criminals having been brought in from the Lake of the Woods?—Not that I know of.

30 318. Or east of the water-shed?—Not that I know of. I know of no instance in which it was found necessary to do that. I do not know that the authority of Assiniboia would have been assumed. I think probably one of the Statutes vesting jurisdiction in the Province of Lower and Upper Canada would have been invoked. There were two Acts, and one of them would probably have been invoked; but at all events, whichever was invoked, it was not considered Upper Canada, or it would not have been necessary to give jurisdiction to the Provinces.

By Mr. Ouimet:

40 319. How did Lord Selkirk come into the possession of that vast territory called Assiniboia, and how did it pass afterwards into the hands of the Hudson's Bay Company?—The old Canada Company, called the North-West Company, gave certain rights in the first instance; what they were I do not know, and I have never seen any instrument attesting them to Lord Selkirk, who brought out a number of Scotch and Shetland Island emigrants and settled them there.

By Mr. De Cosmos:

320. In other words it was merely a quit claim. They surrendered their possessory rights?—The North-West Company assumed to be trading there, and the Hudson's Bay Company said the country was theirs, and there was a battle fought at the Frog Plains between them, but the country eventually came back to the Hudson's Bay Company.

By Mr. Robinson:

321. The North-West Company always disputed that the Hudson's Bay Company had territorial rights, and maintained that they should confine themselves to the shores of Hudson's Bay?—I do not

know of any pretension of that kind. The North-West Company took all they could, and as fur traders they rather beat the Hudson's Bay Company.

By Mr. Oimel :

322. But what territorial rights had Lord Selkirk, and were these territorial rights recognized by the Crown of England?—They were not recognized by the Crown of England, so far as I know, in Lord Selkirk's time, only after the establishment by the Company of the colony there under the charter, because under that charter they had two distinct rights; they had not only the right of governing and exercising jurisdiction over servants and employes, but another part of the charter distinctly recognized the possibility of a colony being established.

By Mr. Trow :

323. The allotments given by Lord Selkirk to settlers were recognized at all time afterwards, were they not?—Yes. The Hudson's Bay Company always exercised the greatest good faith with respect to the land grants. What was called the land system was most imperfect, consisting of a book kept by a clerk; but any representation made or fact ascertained was always at once recognized by the Hudson's Bay Company, and a sort of title given. The settlers always had their rights respected; nobody ever lost land they occupied.

324. These settlements were confined to the Red River bottom lands as a rule?—Yes.

325. They did not extend to any districts outside?—Originally they were settled for twenty miles on the banks of the Red River between Lower Fort Garry and Upper Fort Garry. The Kildonan settlement was an offshoot from the old settlement.

By Mr. Royal :

326. Did Lord Selkirk get any charter from any power?—Lord Selkirk was an usurper. He wanted to do good to some of his Scotch countrymen, and to exclude the North-West Company, if he could, from that country. He was a very energetic man; but from the moment Assiniboia was established as a colony the British Government dealt with it as a colony, and as a separate thing altogether from Upper Canada.

By Mr. Oimel :

327. When was it established as a colony?—In 1839. That is to say, that *de facto* it existed before then; but on the 13th March, 1839, this governing power, the Hudson's Bay Company, made laws for that place.

Witness handed in papers and documents to accompany his evidence.

Examination continued:—

By Mr. Oimel :

328. You have told us that after the 6th Regiment was withdrawn by the English Government, pensioners were left there with the understanding that the Hudson's Bay Company would give them lands to settle upon, and also on the condition that they would serve in case of emergency?—Yes; that was the arrangement made between the English War Office and the Hudson's Bay Company. They continued to draw their pay, the Hudson's Bay Company being the agents of the War Office for that purpose, Col. Caldwell and Captain Hill being the officers of the pensioners there. They were regularly paid for years, and called out annually for drill. They had a uniform, and were to all intents and purposes a military force employed by the Crown of England.

329. Were lands given to them according to agreement?—Yes.

330. In what portion of the settlement?—Generally up the Assiniboine, from Fort Garry up as far as where Burke's used to be, round the bend of the Assiniboine. Some of their descendants now hold those lands.

331. This, according to your judgment, would show that the Crown recognized that the Hudson's Bay Company had the right to dispose of the land; that they had possession of the land and the right to dispose of it?—No doubt of it. No English lawyer has ever given an opinion that the grant was invalid as regards the land. In the very early days of the controversy, there were some gentlemen who were of the opinion that the extent of the territory granted meant only the immediate shores of Hudson's Bay.

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That was immediately refuted by the words, "lakes, rivers, and inlets," and the extent of their occupation would necessarily be the points to which they could penetrate by these rivers; that is to say, the height of land. That deed existed. When the Act of 1774 came to be passed, that deed was recognized; and it is stated there that their southern boundary should be the northern boundary of the Province of Quebec; and when the Province was divided nothing was said about it at all. Nothing was added to Upper Canada, only it was divided from Lower Canada.

By Mr. Trow :

332. Are you of opinion that the Hudson's Bay Company's Charter gave them an absolute right to the soil, or gave them rights merely for trading purposes?—I believe it gave them an absolute right to
10 the soil.

By Mr. Robinson :

333. What was the opinion of Sir Arthur Pigott, Sergeant Spankey and Lord Brougham?—There were some early opinions of counsel, and Lord Brongham's was one of them, that the title was circumscribed with respect to the rights of discovery, and limited to the immediate shores of the Bay. I know such opinions were given.

334. Did those opinions not touch the territorial rights of the Company?—I don't remember at this moment; but the opinions are all printed.

By Mr. Ouimet :

335. Could you find the agreement between the War Office and the Hudson's Bay authorities about
20 those pensioners and their being given land to settle upon by the Hudson's Bay Company?—You will find in the archives at Fort Garry those people's titles to those lands. As to the dispatches which passed between the War Office and the Hudson's Bay Company, they are to be found in London.

336. The lands were given as an inducement to send out the military?—The English Government said: "We will send out soldiers and pay them, but in order to ameliorate their lot, you must give them grants of land."

By Mr. De Cosmos :

337. Are you aware whether there is any deed of surrender in existence between Lord Selkirk and his heirs and the Hudson's Bay Company?—I am not aware of that. There must have been something, I take it.

30 338. Are you aware whether there is any deed passing the rights of the North-West Company to Lord Selkirk?—I am not.

By the Chairman :

339. Are you aware whether, subsequent to the Treaty of Utrecht, when the French, by that treaty, restored all their possessions on the Bay to the English, whether the Hudson's Bay Company were ever afterwards disturbed in possession on the immediate confines of the Bay?—As a matter of curious history, I do not know whether it can be exactly ascertained or not. I have known a great many old people in that country, full of traditions, one of which is that the Hudson's Bay Company had establishments on the Albany River at a very early period.

40 340. I speak of the mere confines of the Bay?—I have never heard that the French had really any establishments there after the Treaty of Utrecht.

341. Not subsequent to the Treaty of Utrecht?—They had before they took the forts in 1686.

342. The object of my question is this: there is, on that map on the wall and all the maps of the time, a line called the boundary line of Audson's Bay. In the instructions to Governors from 1791 to 1838, in describing the dividing line, they say a line drawn due north from the head of Lake Temisaming to the boundary line of Hudson's Bay; subsequent to 1838 the wording of the Commissions ran "to the shore of Hudson's Bay." Was that boundary line of Hudson's Bay held to be identical with the height of land or the shore?—I have always considered it to be the height of land.

343. The country of the Illinois, was it considered a part of Canada at the time of the cession, or was it considered a part of Louisiana?—This is a subject which is rather nebulous in my mind. I

have always had an idea that the Illinois country was a sort of offshoot or territory of Louisiana in ancient times. I do not know that it was ever considered a part of Canada at all, but I would not profess to give a reliable opinion on the subject. My recollection has been that it was something quite apart from Canada.

By Mr. De Cosmos :

344. That is, French Canada?—Yes.

By Mr. Trow :

345. I consider Judge Johnson to say that the colony of Assiniboa was acknowledged by the British Government, but I do not see that that gives us much information respecting the northern limits of Quebec or Canada?—No; merely with respect to the northern boundary.

346. You have not given us the western limits, because you have not told us how far east that colony was acknowledged to extend?—It was always considered to extend to the boundary of Upper Canada on the south and south-east, namely, the height of land.

347. Were any settlements made on Rainy River or Lake of the Woods?—You cannot call them settlements. I have known eccentric individuals who settled there, one of whom was a Mr. McLeod, but there were no settlements of any importance. About the Rat Portage and Fort Frances, there were several French half-breed families settled.

348. That is at the head of Rainy River?—The head of Rainy Lake.

The Chairman:—Rainy River, or rather its waters, have their source 200 miles to the east of that.

By Mr. Royal :

349. Do you think that General Alured Clark's proclamation of 18th Nov., 1791, considering it in connection with the Orders of Council of the 19th and 24th August, 1791, and the Royal Instructions of 12th and 16th September of the same year, to Governor General Lord Dorchester, could have the effect of enlarging the Province of Upper Canada beyond the limits assigned to it by the Act and the Order in Council and instructions based thereon?—Of course any Statute may have been interpreted rightly or wrongly by the Executive, but the interpretation would not alter the Statute.

350. But these instructions must have been based on the Statutes?—Yes.

351. Therefore they could not in any way extend or diminish the territory of the Province of Quebec?—Clearly not.

352. You spoke, some time ago, of the opinions of Lord Brougham; I see the Cavendish papers are often quoted in these volumes. Do you consider them very valuable as an authority on the matter we are considering?—Lord Brougham was asked by the adversaries of the Hudson's Bay Company to give an opinion; it is published in the volumes before us. The Cavendish papers were published in 1839, 65 years after the debates of 1774, and were never considered to be of any importance, but rather hazy. They would have the authority of any report, if published at the time, subject to contradiction or correction by people who could contradict or correct them. But when published 65 years afterwards, when the people who could contradict or correct them were dead, they could not possess any value. They were looked upon as the gossip production of an old gentleman, who was not very eminent, Mr. Henry Cavendish, afterwards Sir Henry Cavendish.

By Mr. Robinson :

353. Still they agree very much with the letter of Mr. Burke to his then constituents in York State?—The impression of Cavendish was evidently that it was intended to go to the Mississippi, but I believe it is considered a mistake.

By the Chairman :

354. Is there anything about the Mississippi in the Cavendish papers?—I have not seen them for years. I remember when they appeared, I was young at the time; the people looked for them as if they were going to throw light on a number of things, but they did not throw any light that I know of.

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355. You spoke of the decision in the de Rheinhardt case. I judge from what you have said, you have given that judgment some consideration.—Yes, but not very lately. I had occasion to look at it in reference to occurrences of many years ago.

356. You mentioned it as settling the question of boundary in your mind?—The question of boundary was specifically raised in that case before Chief Justice Sewell.

357. How was it no force was given to that decision by the executive of the Reinhardt?—I forget whether he was acquitted or found guilty.

358. Do you know whether it was upon an objection taken by the Crown officers in England that the decision was not justified?—I do not know; I forget what the verdict was.

Mr. Caron :—He was found guilty, but his case was submitted to the Privy Council?—He was pardoned.

Witness, continuing :—The line of defence taken by Stuart and Valliere was that this murder, having been committed at the Dalles on the Winning River, was committed in Upper Canada. They failed to establish that. The court was dead against them; no doubt about that. Chief Justice Sewell, who tried the case, is looked upon as the greatest luminary of the law we ever had in Lower Canada. It may almost be said that he made our laws.

By Mr. Robinson :

359. I see that Sir George Carter in a despatch which he sent to the English in 1869, when he was associated with Mr. McDougall, styled the Hudson's Bay Company, touching the territory which they claimed from Lake Superior to Winnipeg, as squatters?—That was with the view of getting the title as cheaply as he could.

360. He gave his reasons?—He was treating with them and was prepared to give them money £300,000. Of course he wanted to cheapen their title as much as he could. I do not want to say that, in giving that opinion, he was not quite sincere. The view he and Mr. McDougall took was propounded with a great deal of force by Mr. McDougall, but all with the object of buying the territory.

By Mr. Royal :

361. In the instructions that were given to you as Recorder, was any territorial jurisdiction assigned?—The district of Assiniboia; I had to find that out for myself; I never gave myself much trouble to find it out.

By Mr. Robinson :

362. The demand you made, when you were sworn in as Governor, for troops: did you make it direct to the English or Canadian Government?—I was instructed to make it to the Hudson's Bay Company, who were my immediate superiors, and they applied to the English Government, and the troops were sent out. They came out by York Factory, and proceeded by way of Nelson River up to Fort Garry.

Original paper handed in by the Honourable Mr. Justice Johnson.

To His Excellency the Right Honourable John, Baron Lisgar, of Lisgar and Baillie-borough, one of Her Majesty's Most Honourable Privy Council, Knight Grand Cross of the Most Honourable Order of the Bath, Knight Grand Cross of the Most Distinguished Order of St. Michael and St. George, Governor General of Canada, &c., &c.

I, the undersigned Special Commissioner appointed by instrument under the Great Seal of Canada, bearing date at Ottawa, the third of September, 1870, to proceed to Fort Garry and investigate, enquire, and report as therein directed, have the honour to make the following report:—

I was required by my Commission to ascertain and report,

1st. The state of the laws, regulation, and institution or ordinances, lawfully in force in Manitoba, up to the 15th July, 1870.

2nd. The mode of administering Justice in Manitoba, the organisation of Courts, the number and

mode of appointment of Justices of the Peace, and Police arrangements, together with a means employed for the administration of Justice thereunder, and the measures adopted for keeping the peace.

3rd. To transmit copies of laws, institutions, ordinances, or regulations having the force or effect of law up to the date aforesaid, whether made by the Hudson's Bay Company or by any other lawfully constituted authority on that behalf.

4th. To report what measures it might be expedient to adopt for the introduction into the Province of Manitoba of the system of criminal law and criminal procedure now in force in the other Provinces of the Dominion of Canada.

5th. To make similar inquiry and report with respect to the North-West Territories, suggesting such amendments as I might judge proper to facilitate the administration of civil as well as criminal justice in those territories.

These several subjects will now be noticed *seriatim* :

The State of the Laws in Force in Manitoba up to the 15th of July, 1870.

King Charles the Second, in the year one thousand six hundred and seventy, granted to the Hudson's Bay Company, under the name of the Governor and Company of Adventurers of England trading into Hudson's Bay, a Charter of incorporation with very extensive privileges and powers the whole or even the greater part of which it is not necessary for the purpose of this report to describe.

The Charter ordained, amongst other things, that the territory granted to the Company was to be reckoned one of His Majesty's plantations or Colonies in America, and called Rupert's Land, and that the Company were to be the absolute lords proprietors of the same for ever. With respect to the power of making laws, the language used in the Charter seems to contemplate, in the first instance, merely the power of making and enforcing such regulations and imposing such penalties and punishments not repugnant to the Laws of England, as the Company might deem necessary for the good government of the territory in respect to their own officers and servants and the protection of their trade.

These powers are conferred in the following words of the Charter:—

"And further we do, by these presents for us, our heirs and successors, make, create, and
 "constitute the said Governor and Company for the time being, and their successors the true and
 "absolute Lords and proprietors of the same territory, limits and places aforesaid, and of all other the
 "premises, saving always the faith, allegiance and Sovereign dominion due to us, our heirs and
 "successors, for the same to have, hold, possess and enjoy the said territory, limits and places, and all
 "and singular other the premises hereby granted, as aforesaid, with their and every of their rights,
 "members, jurisdictions, prerogatives, royalties and appurtenances whatsoever, to them the said
 "Governor and Company and their successors for ever, to be holden of us our heirs and successors, as of
 "our Manor of East Greenwich, in our County of Kent, in free and common socage, and not
 "in *capite* or by Knights service; yielding and paying yearly to us, our heirs and successors for the
 "same, two elks and two black beavers, whensever and as often as we, our heirs and successors, shall
 "happen to enter into the said countries, territories and regions hereby granted; and further our will and
 "pleasure is, and by these presents for us our heirs and successors, we do grant unto the said Governor
 "and Company, and to their successors, that it shall and may be lawful to and for the said Governor and
 "Company, and their successors from time to time to assemble themselves for or about any matters,
 "causes, affair or business of the said trade in any place or places for the same convenient within our
 "dominions or elsewhere, and there to hold Court for the said Company, and the affairs thereof; and that
 "also it shall and may be lawful to and for them and the greater part of them, being so assembled and
 "that shall then and there be present in any such place or places whereof the Governor or his Deputy for
 "the time being to be one, to make, ordain and constitute such and so many reasonable laws, constitutions,
 "orders and ordinances as to them or the greater part of them being then and there present shall seem
 "necessary and convenient for the good government of the said Company and of all Governors of
 "colonies, forts and plantations, factors, masters, mariners, and other officers employed or to be employed in

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- “any of the territories and lands aforesaid and in any of their voyages; and for the better advancement
 “and continuance of the said trade or traffic and plantations, and the same laws, constitutions,
 “orders and ordinances so made, to put in use and execute accordingly, and at their pleasure to revoke
 “and alter the same or any of them as the occasion shall require, and that the said Governor and
 “Company, so often as they shall make, ordain or establish any such laws, constitutions, orders and
 “ordinances in such form, as aforesaid, shall and may lawfully impose, ordain, limit and provide such
 “pains, punishments, and penalties upon all offenders contrary to such laws, constitutions, orders and
 “ordinances, or any part of them as to the said Governor and Company, for the time being or the greater
 “part of them then and there being present, the said Governor or his Deputy being always one, shall
 10 “seem necessary, requisite or convenient for the observation of the same laws, constitutions, orders and
 “ordinances, and the same fines and amerciaments shall and may be by their officers and servants from
 “time to time to be appointed for that purpose, levy, take, and have to the use of the said Governor and
 “Company and their successors without the impediment of us, our heirs, or successors, or of any of the
 “officers or ministers of us, our heirs, or successors, and without any account therefore to us, our heirs,
 “or successors, to be made; all and singular which laws, constitutions, orders and ordinances, so, as
 “aforesaid, to be made, we will to be duly observed, and kept under the pains and penalties therein to be
 “contained, so, always, as the said laws, constitutions, orders and ordinance, fines and amerciaments, be
 “reasonable and not contrary or repugnant, but as near as may be agreeable to the Laws, Statutes, or
 “Customs of this our Realm.”
- 20 The powers and privileges granted with such amplitude of expression, seem, nevertheless, to apply
 more particularly to the government of the Company's officers and servants, as far as one object only
 of the Charter was concerned, viz., that of extension of trade, and the regulations necessary for carrying
 it on at forts, factories and other places, where a large number of persons of different rank in the service
 were employed. Accordingly, in a subsequent part of the instrument, as if in contemplation of a future
 when, as a natural consequence of the establishment of forts and factories, and the employment of
 numerous officers and servants, settlements should come to be formed, as well as persons who had ceased
 to be in the service, as of their descendants and other powers to legislate and to administer justice, civil
 and criminal, as regards all other persons living within the territories, are expressly conferred in the
 following terms: “And further of our special grace, certain knowledge and mere motion, we do for us,
 30 “our heirs and successors, grant to and with the said Government and Company of Adventurers of
 “England trading into Hudson's Bay, that all lands, islands, territories, plantations, forts, fortifications,
 “factories or colonies where the said Company's factories and trade are or shall be within any of the
 “forts, or places afore limited, shall be immediately from henceforth under the power and command
 “of the said Governor and Company, their successors and assigns, saving the faith and allegiance due to be
 “performed to us, our heirs and successors, as aforesaid; and that the said Governor and Company shall
 “have liberty, full power, and authority to appoint and establish Governors and all other officers to govern
 “them, and that the Governor and the Council of the several and respective places where the said Company
 “shall have plantations, forts, factories, colonies, or places of trade within any of the countries, lands, or
 “territories hereby granted, may have power to judge all persons belonging to the said Governor,
 40 “and Company, or that shall live under them, in all causes, whether civil or criminal, according to the
 “laws of this Kingdom, and to execute justice accordingly; and in case any crime or misdemeanour
 “shall be committed in any of the said Company's plantations, forts, factories, or places of trade within the
 “limits aforesaid, where judicature cannot be executed for want of a Governor and Council there, then in
 “such case it shall and may be lawful for the Chief Factor of that place, and his Council to transmit the
 “party, together with the offence, to such other plantation, factory or fort where there shall be a
 “Governor and Council, where justice may be executed, or into the Kingdom of England, as shall
 “be thought most convenient, there to receive such punishment as the nature of his offence shall
 “deserve.”

I assume that what is required of me in this report, is a statement of the laws and institutions *de facto*

existing and administered up to the 15th of July, 1870. I therefore purposely abstain from offering any remarks upon a question which, but for recent events, would have been one of great interest and importance, that is to say, the question of the geographical limits and extents of Rupert's Land, within which the rights and powers of the Hudson's Bay Company were to be exercised.

That question, depending as it did upon historical facts, treaties and Statutes, for the determination of what extent of country was occupied by the subjects of the King of France at the time the Charter of Charles the Second was granted, and also upon the effect of the Acts of Parliament of 1774 and 1791, in fixing the boundaries of Canada, was one of great importance in its time, but is not embraced in the objects of this commission.

Whatever interest may formerly have attached to that question, has, of course, been superseded by the recent public acts of the Executive, both in England and in Canada, and by the authority of Imperial and Canadian legislation.

It is enacted in the 2nd section of the Rupert's Land Act (Imperial), 1868, that for the purpose of that Act, "the term Rupert's Land shall include the whole of the land and territories held or claimed to be held by the said Governor and Company;" and the 5th section provides that "until otherwise enacted by the Parliament of Canada, all the powers, authority, and jurisdiction of the several courts of justice now established in Rupert's Land, and of the several officers thereof, and of all magistrates and officers thereof, and of all magistrates and justices now acting within the said limits shall continue in force and effect therein."

The Act of the Canadian Parliament, 32 and 33 Vic., c. 3 (1869), provides that all existing laws are to remain in force until otherwise ordered by the Lieutenant-Governor under the authority of that Act; and public officers and functionaries are to retain their offices and continue to exercise their functions.

The Statute of the Canadian Parliament to amend and continue the last mentioned Act, and to establish and provide for the Government of the Province of Manitoba, creates a Province consisting of the greater part of the former district of Assinibonia, the principal settlement or colony under the Government of the Hudson's Bay Company in that part of the country, and which the opponents of their rights had formerly maintained to be within the limits of Canada; and, finally, the Parliament of Canada and Local Parliament of the Province of Manitoba have part of them, in various statutory enactments, recognised and continued throughout the entire Province the authority of the laws passed by the Governor and Council of Assiniboia, and of the courts of justice formerly existing in that district under their 30 authority.

Without, therefore, expressing any opinion upon the merits of a former controversy, it seems clear that at the present time the Dominion of Canada has established the Province of Manitoba upon the recognition of the Company's title which is involved in the surrender to the Crown of the whole territory that was occupied by them, and which was the basis of the Order in Council of Her Majesty admitting the country into the Union or Dominion of Canada.

By Royal Charter, then, Rupert's Land was constituted one of Her Majesty's colonies, or plantations in America, and by the words of the Charter above quoted, power was given to the Company to administer Justice civil and criminal, according to the laws of this Kingdom. Even if the Charter had been silent on this subject, there is no doubt that in the case of an English Colony of this kind, 40 as contradistinguished from colonies acquired by the conquest, cession, or descent, the English laws, so far as they are applicable to the condition of an infant settlement, are *ipso facto* in force, for the reason that there can at first be no existing law to contest the superiority. (1)

Under the authority of the Charter (2) also, the Hudson's Bay Company, from the time they reacquired that portion of the country from the Earl of Selkirk () to whom they had made a grant of it in 1811, made some regulations suited to the state of the country through a Governor and

(1) Clark's, Col. Law—Burge's, Col. and Foreign Law.

(2) Charter, Hudson's Bay Company.

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Council for the government of the settlers in the Selkirk or Red River Settlements, the only settlement then existing in the territories where any considerable number of persons had their abode.

This state of things continued up to the year 1839.

On the 13th of March of that year, at a General Court held at the Hudson's Bay House in London, by the Governor and Committee, "the District of Assiniboia was erected, and was to be co-extensive with such portion of the territory granted to the late Thomas, Earl of Selkirk, on the 12th day of June, 1811, as is now within the Dominions of Her Britannic Majesty." (1)

At the same time, and by the same authority, a Governor and Council of Assiniboia were appointed, and also a judicial officer by the style of "Recorder," who thereafter administered justice at regular 10 quarterly courts, in all cases civil and criminal, as nearly as possible in accordance with English Law, and with the aid of the jury. (2)

The Governor and Council of Assiniboia soon recognised the necessity of adopting the alterations and improvements that had been made in the laws of England since the time of King Charles II., and desired to introduce, as far as they could be made applicable to the circumstances of the country, the English law as it existed at the time of her present Majesty's accession, and subsequently they wished to extend the modern laws still further by introducing the existing laws of England for the time being.

With this view they passed the 53rd Article of the Laws of the Governor and Council of Assiniboia, as revised on the 11th April, 1862, and afterwards the amendment of the 7th January, 1864.

20 The first of these enactments was in the following words: "In place of the laws of England of the date of the Hudson Bay Company's charter, the laws of England at Her Majesty's accession, so far as they may be applicable to the condition of the colony, shall regulate the proceedings of the General Court, till some higher authority or this Council itself shall have expressly provided, either in whole or in part, to the contrary."

The amendment is in the language following: "To remove all doubts as to the true construction of the 53rd Article of the Code of the 11th April, 1862, the proceedings of the General Court shall be regulated by the laws of England, not only of the date of Her present Majesty's Accession, so far as they may apply to the condition of the colony, but also by all such laws of England of subsequent date as may be applicable to the same. In other words, the proceedings of the General Court 30 shall be regulated by the existing laws of England for the time being, in as far as the same are known to the Court and are applicable to the condition of the colony."

(3) It is obvious that the language of either and both of these enactments is inadequate to extend the laws of England of either of the periods therein mentioned to the rights and obligations of the inhabitants; the express terms, both of the one and of the other, being restricted to the regulations of the proceedings of the court. Contemporaneous English law was, nevertheless, deemed to have been introduced and was considered to be applied by the Court to the cases that came before it. (4)

The general principles of English law, as understood to have been modified as above by the action of the Governor and Council of Assiniboia, together with such local regulations as that body made from time 40 to time, constituted the body of law existing in the District of Assiniboia.

These laws of the Governor and Council were enregistered in a book as they were passed, and were in the form of resolutions until the year 1862. On the 11th of April of that year they were revised; that is to say, all local enactments that were in force on the 13th of March, 1862, were repealed, and the

(1) The grant by the Company to Lord Selkirk had included a considerable portion of what is now the state of Minnesota and the Territory of Dakota.

(2) Extract of proceedings of General Court of Hudson's Bay Company in London. See Appendix.

(3) Revised Laws of Governor and Council of Assiniboia, Act 53, 11th January, 1862.

(4) The Supreme Court Bill passed by the Parliament of Manitoba; Amendments, 7th January, 1864, but regulated this subject. See Sections 30 and 33.

Revised Laws of Assiniboia were enacted. Subsequently to that time, amendments and alterations of the Revised Laws continued to be made by the Governor and Council. The whole of these laws are comprised in the appendix to this report under the third head of enquiry, indicated by my commission, and directing me to furnish copies of the laws in force up to the 15th of July, 1870.

I should observe that the revision of 1862, though it repealed the laws in force on the 13th of March of that year, and re-enacted most of them, omitted to re-enact a law of the Governor and Council of the 4th of July, 1839, by which trial by jury in all criminal cases, and in civil cases for more than ten pounds sterling, was established. The qualification of petit jurors had been also fixed, and the mode of making the lists defined by regulations of the same date (4th July, 1839).

These regulations remained in force and were acted upon up to the date of the revision (11th of April, 1862). They were then repealed, but no other regulations on these subjects were made. From the 11th of April, 1862, up to the 15th July, 1870, petty jurors were summoned under the assumed authority of the old law, or under the common law of England, as understood to prevail, and there never was in the laws of Assiniboia any law whatever respecting grand jurors, their qualification or the mode of making the list. (1)

In the year 1867 the British North America Act was passed by the Imperial Parliament, which so far affected the laws in force in that part of the territory which is now the Province of Manitoba, that amongst other things it made provision for the eventual admission into the Union of other parts of British America besides Canada, Nova Scotia, and New Brunswick, and in the execution of that purpose the Rupert's Land Act of 1868 (Imperial), was enacted, and in express terms continued in full force and effect "until otherwise enacted by the Parliament of Canada, all the powers, authorities and jurisdiction of the several Courts of Justice now established in Rupert's Land, and of the several officers thereof, and of all Magistrates and Justices now acting within the said limits."

The Parliament of Canada, on the 22nd June, 1869, enacted the Statute 32 and 33 Vic., c. 3, for the temporary Government of Rupert's Land and the North-West Territory when united with Canada, which contained similar provisions, recognizing and continuing established institutions and existing offices. Besides the general body of law existing, as above described, up to 15th July, 1870, some Imperial legislation from time to time took place, which though it can hardly be said to have had any practical effect in the country now constituting Manitoba, nevertheless extended to it.

This legislation is comprised (1803) in the Imperial Statutes 43rd Geo. III., c. 138, the 1st and 2nd Geo. IV., c. 66 (1821) and the 22nd and 23rd Vic. c. 26, 1859.

The first of these Statutes enacted that all offences committed within any of the Indian territories, or parts of America not within the limits of either of the Provinces of Upper or Lower Canada, or of any Civil Government of the United States of America, shall be, and be deemed to be offences of the same nature, and shall be tried in the same manner, and subject to the same punishment, as if the same had been committed within the Provinces of Lower or Upper Canada. It also gave power to the Government of the then Governor of the then Province of Lower Canada to appoint persons to act as Justices for the Indian territories for the purpose merely of hearing and committing for trial in Lower Canada, whereof the Governor, if the circumstances of the case made it more convenient to have the trial in Upper Canada, could send the offender to that Province, and by instrument under the Seal of the Province of Lower Canada, cause him to be tried in the Upper Province.

The second Statute (1st and 2nd Geo. IV., c. 66), enacted that the Act of the 43rd of Geo. III. should be extended to, and be in full force in and through all the territories of the Hudson's Bay Company.

Sec. 5. It further gave jurisdiction in civil cases in these territories to the Courts of Upper Canada.

(1) The Supreme Court Bill of the Manitoba Parliament has supplied their deficiencies, and empowered the General Quarterly Court to exercise at its usual sittings the authority of the Supreme Court, until a Chief Justice shall be appointed by the Government of Canada.

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Sec. 6. It also conferred power on the Government of Lower Canada to name Commissioners in the Territories for the execution of the processes of the Canadian Courts.

Sec. 10. It gave power to the Crown to appoint Justices of the Peace in these territories on special terms, including the Territories granted to the Hudson's Bay Company, with power to such Justices to take evidence in the country, to be used in the Courts in Upper Canada.

Sec. 11. It gave further power to the Crown to issue commissions under the Great Seal, empowering Justices to hold Courts of Record for the trial of criminal offences and misdemeanours, and also of civil cases, notwithstanding anything contained in the Hudson's Bay Company's Charter.

Sec. 12. Such Courts as to the number of justices, and as to the times and places of holding them, 10 either within or beyond the territories of the Company, were to be constituted as His Majesty should direct, but their power was not to extend to the trial of capital offences, nor to civil actions wherein the amount in issue exceeded two hundred pounds.

Sec. 14. By the last section, all the rights, privileges, authorities and jurisdictions which the Hudson's Bay Company could by law claim and exercise under their Charter were to remain in as full force, virtue and effect as if the Act had never been made.

The third, in this series of Imperial Statutes, is the 22nd and 23rd Viet., c. 26.

This Act recites the main provision of the 43rd Geo. III., and of the 1st and 2nd Geo. IV., and empowers the Crown either by commissions appointing justices under the latter Statute, or by subsequent commission, or by Order in Council, to authorize such Justices to try in a summary way all crimes, mis- 20 demeanours, and offences whatsoever, and to punish by fine or imprisonment, or both. In cases punishable by death, or in which, in the Justice's opinion, fine and imprisonment were inadequate to the offence, they might either try the offender in the ordinary way, or send him to Upper Canada, to be tried there under the Act of Geo. IV., or if they saw fit, to British Columbia, to be tried by any Court having cognizance of a like offence committed there. This last mentioned Act, however, in the final section is declared not to extend to the territories granted to the Hudson's Bay Company. The reason of this exception is apparent in the preamble of the Statute which recites, that although the Acts of 1803 and of 1821 had been passed, the Crown had never given effect to those laws. No Justices had been appointed, and no Courts of Record established by the Crown, nor had the Governor of Lower Canada ever appointed any 30 Commissioners to execute the processes of the Canadian Courts, and therefore it became necessary to make provision for the Indian territories that were not included in the limits of the Charter, leaving to the courts established by the Hudson's Bay Company in their territories the authority and jurisdiction that belongs to them.

II.

The mode of administering justice in the General Quarterly Court has been indicated under the preceding head of this report.

It is proper, however, to observe that the authority to administer justice under the Charter was conferred upon the Governor and his Council, and they, in their own persons, in the early history of the colony, administered justice without the aid of a judicial officer.

On the 12th of February, 1835, it was resolved by the Governor and Council of Assiniboia: "That 40 a General Court of the Governor and Council shall be held at the Governor's residence on the last Thursday of every quarter, at which the Magistrates shall attend, where cases of a more serious nature, cases of debt exceeding forty shillings, and all appeal cases from the decisions of Justices of the Peace, shall be examined into, such court to be adjourned from day to day until all the cases in hand be disposed of; and as a check on frivolous and vexatious litigation, that the prosecutor shall pay into Court a fee of three shillings before any warrant shall be issued, and in cases of appeal from the Justice of Peace Court to the Court of the Governor and Council, a fee of five shillings be paid into Court by the appellant."

After the appointment of a Recorder (1839), the administration of justice in the General Quarterly Court practically devolved upon that officer.

Although the provisions of the 1st and 2nd Geo. IV., c. 66, section 12, limited the jurisdiction of the Courts to be created under that statute, in criminal cases to non-capital offences, and in civil cases to the amount of two hundred pounds, no such limit had ever been imposed upon the courts existing under the Royal Charter, and they exercised civil and criminal jurisdiction without any limitation as to the amount demanded or the character of the offence. The form of trial was in accordance with English practice, viz.,—with the aid of a jury, and either party might make the other a witness. These courts had also, under the Charter, the power to try offenders who were sent to them from the distant parts of the country where there might be no Governor and Council to try them. The words of the charter that gave this power are as follows:—"That the Governor and his Council of the several and respective places where the said Company shall have plantations, forts, factories, colonies or places of trade within any the countries, lands or territories hereby granted may have power to judge all persons belonging to the said Governor and Company, or that shall live under them in all causes, whether civil or criminal according to the laws of this Kingdom, and to execute justice accordingly, and in case any Crime or Misdemeanour shall be committed in any of the said Companies, plantations, forts, factories or places of trade within the limits aforesaid where Judicature cannot be executed for the want of a Governor and Council there, then in such case, it shall and may be lawful for the Chief Factor of that place and his Council to transmit the party, together with the offence to such other plantation, factory or fort where there shall be a Governor and Council, where justice may be executed or into this Kingdom of England, as shall be thought most convenient."

By the local laws, Constables to the number of twelve, holding office for three years, and at an annual salary of twelve pounds sterling, were appointed by the Magistrates who assembled once in each year (on the last Thursday) for the purpose of appointing to vacancies and considering complaints. The constables were liable for misconduct to be suspended by the Petty Courts or by the magistrate, and to be dismissed by the General Court.

2. Petty Courts were constituted under the authority of the same laws, having cognizance of debts (except those due to the public revenue) not exceeding five pounds sterling; and also of all petty offences punishable by not more than forty shillings fine or penalty, and had special jurisdiction of cases arising from breach of the liquor laws, and of the laws respecting the supplying of intoxicating drinks to Indians.

For the purposes of these Petty Courts, the district was divided into three sections, defined in the law, for each of which a presiding and three other Magistrates were assigned, at salaries varying according to the extent of the duty to be performed in each section. The President and two Magistrates constituted a quorum, and there was an appeal to the General Court given from their judgments where they exceeded two pounds. The Petty Court of each section had jurisdiction co-extensive with the limits of such section only, and in these, as in the General Court, either party to a suit might be made a witness by the other.

III.

Copies of Laws in Force up to 15th July, 1870.—To be furnished.

Under this head I have the honour to append to this report the documents numbered 1, 2, 3, 4, 5, 40 and 6.

No. 1. Charter of Incorporation granted by King Charles II. to the Governor and Company of Adventurers of England trading into Hudson's Bay. 2nd May, 1870.

No. 2. Statute of Imperial Parliament (1803), 43rd Geo. III. c. 138.

No. 3. Statute of Imperial Parliament (1821), 1st and 2nd Geo. IV. c. 66.

No. 4. Statute of Imperial Parliament (1859), 22nd and 23rd Vic. c. 26.

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No. 5. Extract from proceedings of a General Court held by the Governor and Committee of the Hudson's Bay Company in London, 13th March, 1839.

No. 6. Laws of the Governor and Council of Assiniboine as revised 11th April, 1862, and continued afterwards to the latest session of that body.

IV.

Measures expedient for introduction into Province of Manitoba of the Criminal Law in force in the other Provinces of Canada.

On the 4th of January, 1871, I had the honour to make a preliminary report under this head, of my commission, and to recommend, first, that the system of criminal law and criminal procedure existing throughout the rest of the Dominion, under the Statutes of Canada of 1869, should be extended with all convenient celerity to the Province of Manitoba, to the extent, and with the amendments which I then suggested, that is to say, that the thirteen consecutive chapters of the Statutes of the Parliament of Canada of the 32nd and 33rd Viet., from chapter 18 to chapter 30 inclusively; 2dly, that the General Court now existing, and any Court that might be constituted by the Local Legislature to supersede it, should be empowered to take cognizance of all criminal offences committed either in the Province of Manitoba or in any part of the North-West Territories; 3rdly, that in the circumstances of this country, the right possessed by the Queen's subjects in the Province of Quebec, speaking either the English or the French language, to elect to be tried by a jury composed one-half of persons speaking the language of the defence, should be extended to the inhabitants of Manitoba and the rest of the Territories.

As these suggestions and amendments have been adopted by the Parliament of Canada, since I had the honour of making that report, it becomes unnecessary that I should now repeat the reasons of law and expediency upon which they were based.

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Douglas
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Hon. JOHN DOUGLAS ARMOUR, Judge of the
Court of Queen's Bench, Ontario, Examined.

By the Chairman :

573. The Act of 1803 extended the jurisdiction of Quebec to the Indian Territories?—Yes, I was going to say this: It struck me when I was acting for the Dominion in the matter. I wrote to see if they could not get information from the Executive Council of the old Province of Quebec from 1774 to 1791, to show what view obtained, so far as the authorities were concerned, with regard to the construction of the Quebec Act, whether it meant due north or northward. The answer I got was that they had examined and there was nothing to be found there. You will find, however, the proclamation of Lord Dorchester of 24th July, 1788, divided the country into districts. The western district is the district of Hesse. He does not describe the western boundary there, but extends the district to the northward and west. Then, in 1791, the name of Hesse, Lunenburg, Nasseau, &c., were changed, Hesse becoming the western district. Then to the western district was added all other parts of Canada not already divided into districts. I thought that perhaps having found the proclamation of Lord Dorchester in 1788 dividing the country, that probably between 1774 and that time something might be found in the Executive Council office showing the view Lord Dorchester and his officers held as to the limits of the country on the west and north.

574. The commission of 1786 to Lord Dorchester ran the western limit of Quebec to the Mississippi, the commission of Lord Durham carried the western boundary of Upper Canada into Lake Superior only. Do you think that such Commissions and Proclamations could really alter boundaries established by Act of Parliament?—I do not think that any lawyer will be found who will affirm seriously that any procla-

mation for the purpose of dividing the Province, or any commission issued to a Governor of the Province, can have any effect whatsoever on the territorial rights of the proprietors of the country dealt with.

By Mr. Brecken :

575. Of course, it would not prejudice the rights of outside parties, but would it not be looked upon as a sort of corroborative evidence?—Of course, it would throw light upon contemporary opinion, but it could not interfere with territorial rights. When they were dividing Quebec into two Provinces I do not think they ever thought of the Hudson's Bay Company's territory at all; and the boundary line of Hudson's Bay was considered as the boundary line of the territory and not of the sheet of water. That is the view which I entertain. Some time ago I was anxious to get the return made by the Commissioners, Captain Knight and Mr. Kelsey, who accepted a commission from Queen Anne to receive possession of the forts on Hudson's Bay after the Treaty of Utrecht. Letters were sent by the King of France to Quebec, directing these forts to be given up; and I thought that the letters and the return made by these Commissioners of what they did would be important. Both Knight and Heleay, I think, were Hudson's Bay people; they were both employed by the Company, and the commission was issued by the Crown to them to receive possession of these forts, not for Great Britain, but for the Hudson's Bay Company.

By Mr. Ross :

576. That is a question which is disputed; it is said they were acting for the Queen?—I think there is no doubt that they were acting for the Hudson's Bay people, because they were named in the Commission as the Hudson's Bay people, to receive the forts.

By Mr. Trow :

577. Your researches have all been, I suppose, to make out a case with some degree of colour in the interests of the Dominion, and I think it is perfectly justifiable that a solicitor employed to do so should do so?—I want it to be understood, because there is sometimes a misconception when a lawyer speaks, that I am not stating the case as I would have argued it before the Commission. I am giving my conscientious view.

578. I am aware of that, but I have reference to the report read?—That report was a guide for Mr. MacMahon, who was innocent of any knowledge of the thing at all. He came to me for any notes I might have made and I gave them to him, reciting them to a shorthand writer in the rather disconnected way in which they are before the Committee.

By Mr. Robinson :

579. Let me ask you whether, upon the best consideration you can give to this question, you are not of the same opinion as you were when you prepared that statement?—Yes, I am of the same opinion.

580.—Your opinion is now the same then both as to the western and northern boundaries?—Of course the height of land forms, in my opinion, both the westerly and northerly boundaries.

Extracts from Twiss, Oregon, and some of the other memorandum left by Judge Armour, now follow:—

Twiss.

"The difficulty in executing the provisions of boundary treaties in America has arisen chiefly from adopting the data which incorrect maps have furnished, to which there has been nothing in nature corresponding, and from agreeing to certain parallels of latitude, as appearing from these maps to form good natural frontiers, but which have been found, upon actual survey, to frustrate the intentions of both parties."—*Twiss, Oregon, 212.*

"Maps, however, are but pictorial representations of supposed territorial limits, the evidence of which must be sought for elsewhere. There may be cases, it is true, where maps may be evidence; when, for instance, it has been specially provided that a particular map, such as Mitchell's map of North America, shall be the basis of a convention, but it is to be regretted that maps of unsurveyed districts should

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“ever have been introduced into diplomatic discussions, where limits conformable to convenient physical outlines, such as head-lands or water-courses, are really sought for, and are understood to be the subject of negotiation. The pictorial features of a country which, in such cases, have been frequently assumed as the basis of the negotiation, have not unusually caused greater embarrassment to both the parties in the subsequent attempt to reconcile them with the natural features than the original question in dispute, to which they were supposed to have furnished a solution. That the name of Nouvelle France should have been applied by French authors and French maps to the country as far as the shores of the Pacific Ocean was as much to be expected as that the name of California should have been extended by the Spaniards to the entire north-west coast of America, which we know to have been the fact, from the negotiations in the Novtka Sound Controversy.”—*Triss, Oregon, page 228.*

10 “This is another very remarkable instance of the danger of referring even to the best maps, when territorial limits are to be regulated by the physical features of a country. There must have been a monstrous error in Mitchell’s map, which the Spanish Commissioner had before him, if such a line could have been drawn upon it from the source of the Arkansas due west to the source of the Multonamah, the modern Willamette River.”—*Triss, Oregon, page 235.*

“The claim, however, to the westwardly extension of New France to the Pacific Ocean, requires some better evidence than the maps of the French geographers. A map can furnish no proof of territorial title; it may illustrate a claim, but it cannot prove it. The proof must be derived from facts which the law of nations recognizes as founding a title of territory. Maps, as such, that is, where they have not had a special character attached to them by treaties, merely represent the opinions of the geographers who have constructed them, which opinions are frequently founded on fictitious or erroneous statements. An examination of the collection in the King’s Library at the British Museum will remove all scepticism on this head.”—*Triss, Oregon, page 306.*

TITLE BY DISCOVERY.

Great Britain alone, of all countries, was the only nation whose ships discovered the Bay and Straits of Hudson, or sailed into them, till after the granting of the Charter.

John Cabot, a Venetian living in London, had three sons, Lewis, Sebastian, and Samlus, commissioned by the King, Henry VIII. Set sail May, 1497, and 24th June, 1497, discovered Newfoundland and the coast of Labrador, and sailed thence about as far as Chesapeake Bay. Edward VI. made him Grand Pilot of England in 1549, and pensioned him.

Sir Martin Frobisher, sent out by Queen Elizabeth with small ships in 1567, saw the coast of Labrador. Went out following year with three ships, 1577, discovered *Frobisher’s Straits*. *Natives had* arrows armed with iron points.

Queen sent him out with 15 small vessels to establish a fort on the land which she named “*Meta Newgnita*.” Sailed May 31, 1578. *Hakluyt was with him, assisted nothing.*

In 1585 John Davis set out. Discovered Davis Straits and Cumberland Straits.

1586 set out on second voyage. Discovered Cumberland Island. Touched at *N* on the coast of Labrador.

1587 he set out again. Named Cape Chudley and Warwick’s Forland.

40 In 1589 Weymouth sailed in the *Discovery* to Warwick’s Forland, which he found to be an island, and entered Sumley’s Inlet.

Hudson’s first voyage in 1607 discovered Hold with Hope six or seven degrees to the north of Inland, on east of Greenland. Tried to get round Greenland and return by way of Davis Straits.

Second voyage, 1608, reported nothing.

Third voyage, April 17, 1610, discovered Hudson’s Straits, named Cape Diggs and Cape Walsingham. Wintered in the Bay.

In 1612 Button set sail. Wintered at Nelson River, which he named from his mate. *Resolution* commanded by Button. Discovered by Ingram.

- 1614 Captain Gibbons sailed, but only got to Hudson's Straits.
 1615 Bylat went out in the *Discovery*.
 1616 Bylat, with Boggin for pilot, went again. Smith's Sound, Lancaster Sound, Whale Sound, Cary's Islands, Jones Sound, Baffin's Bay.
 1616 to 1631, Haukbridge.
 1631 James Fox went to Nelson's River. Found Button's Cross overturned. Erected it. Met Capt. James, August 29th.
 1631 *Thomas James* wintered in James Bay.

CLAIM OF BOURDON.

- See Mills, page 97.
 „ Lindsay, page 506.
 Bourdon was well known by the priests. He was Ingénieur en chef et procerer de la Nouvelle France. (Le Sieur Jean Bourdon) Relation des Jésuites, 1637, page 9, "dirige un feu d'artifice."
 1646, page 15, accompagne le P. Jacques chez les Iroquois.
 1647, page 36. He returns to Quebec.
 1658, page 9, le 11 (du même mois d'aoust 1657) joint la banque de monsieur Bourdon, lequel était descendu sur le grand fleuve du côté du Nord, voyage jusqu'au 55e degré, où il rencontra un grand banc de glace qui le fit remonter, ayant perdu deux Hurons, qu'il avait pris pour guides. Les Esquimaux, Sauvages du Nord les massacrèrent, et blessèrent un Français de trois coups de flèches et de un coup de couteau.
 See Charlevoix, vol. ii., page 186, describing his journey with Jacques in 1646, letter to page 195. (Jacques was killed 1647.)
 Bourdon removed from office, item Sieur Villeny by Mr. de Mesy.
 Charlevoix, vol. iii., page 74, or 1664, and sent by France.
 Charlevoix, vol. iii., page 230. "Since it is certain" that the English pressed nothing on that Bay when in 1656 the Sieur Bourdon was sent there to secure its possession to France, a ceremony repeatedly renewed in subsequent years.
Churchill's Collection of Voyages, vol. ii., page 430.
 Captain Thomas Jones discovered James' Bay. His vessel was provided by merchants of Bristol.
He is named in His Majesty's Royal Letters.
 Set sail May 2nd, 1631.
 August 20. Named the land "The new Principalities of South Wales," and drank a health in the best liquor we had to Prince Charles His Highness, whom God preserve.
 August 29th. Fell in with a ship, "Fox."
 September 3rd. Named Cape Henrietta Maria by Her Majesty's name who had before named our ships.
 September 10th. Named land "Weston's Island."
 September 13th. That he would go to the bottom of Hudson's Bay and see if he could discover a way into the River of Canada.
 September 19th. Named "the Earl of Bristol's Island."
 September 23rd. Named "Sir Thomas Roe's Island."
 October 2nd. Named "Earl of Danby's Island." *Wintered on it.*
 December 25th. Made a merry Christmas, and named the port he wintered in, in honour of Sir James Winter, "Winter's Forest."
 May 29th, 1632. Named the Island they wintered on, Charlton's Island, in honour of Prince Charles' birthday, and their habitation Charlestown.
 June 24th. Whereas, I had formerly cut down a very high tree, and made a cross of it, to it I now fastened the King's and Queen's Majesties pictures drawn to life, and doubly wrapt in lead, and so close

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that no weather could hurt them. Betwixt both these I affixed His Majesty's Royal titles, viz.: Charles the First, King of England, Scotland, France, and Ireland; as also of Newfoundland and of these territories; and to the westward as far as Nova Albion; and to the northward to the latitude of 80 degrees, etc.

On the outside of the lead, I fastened a shilling and a sixpence of His Majesty's coin; under that we fastened the King's Arms fairly cut in lead, and under that the Arms of the City of Bristol. And, this being mid-summer day, we raised it on the top of the bare hill, where we had buried our dead fellows, formally by this ceremony taking possession of these territories to His Majesty's use.

July 2nd. Found on Danby Island two stakes driven into the ground about a foot and a half and 10 fire-brands, and pulling up the stakes found they had been cut sharp at the ends with a hatchet or good iron tool.

July 3rd. Set sail.

July 22nd. Erected a cross on Cape Henrietta Maria, fastened the King's Arms and the Arms of the City of Bristol to it. Left his dogs ashore, one with a collar on.

October 22nd. Arrived at Bristol. Reasons that a North-West Passage can be found and that there is a good deal of land between Hudson's and Passage.

Mr. MURDOCH, C.E. and D.L.S., was examined and testified as follows:—

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C.E. and
D.L.S.

581. I am acquainted with the territory in dispute. I am a civil engineer in the employ of the Government. I have travelled from Winnipeg through that country to Lake Superior at different times, 20 I have travelled from Manitoba in a line almost direct to the north of Lake Nipigon, to Nipigon Bay by those routes (pointing out routes on map); also, from Thunder Bay to a point called Sandy Bay, about midway between Nipigon and Manitoba; also, further to the north, again midway between Sturgeon Lake and Sandy Lake. I have also gone by land and water as far as Fort Frances from Thunder Bay by water route. On the north of Lake Nipigon is generally a flat country, covered, immediately, to the north of the Lake, densely with spruce timber and evergreens of that description. The land is low, and in the spring of the year, swampy. As you ascend from the low grounds around the lake, you come into higher grounds. Proceeding westward, you come into portions where the soil is rich, that of the valleys in all these rocky countries being very fertile. Between the valleys, the country is rocky. As you go still further west, say to the shores of Eagle Lake, you come to a more level country.

30 *By Mr. Weldon:*

582. This is a hilly country throughout here?—Yes, near Sturgeon and Sandy Lakes.

By Mr. De Cosmos:

583. What is the elevation of these hills?—They vary in height from 25 to 100 feet, the latter being the maximum.

By the Chairman:

584. After leaving Sandy Lake and going along the tributaries of the Winnipeg you get into a better country?—Yes; immediately around Eagle Lake, the country is more flat. You can call it a level country.

585. Into what river system does Eagle Lake run?—It runs into the English River, which runs into 40 Winnipeg.

586. What do you consider the climate in that region; is it such as to admit of the growth of wheat? I should undoubtedly say so.

587. Do not the Indians grow Indian corn at Wabegon Lake, near Gull Lake?—I think they do. I know they grow it at Fort Frances.

By Mr. Weldon:

588. You have been there in winter?—Yes; both in winter and summer.

589. How is the winter?—It is, I suppose, about the same as Quebec winters are.

590. Much snow?—Yes; a good deal.

By the Chairman :

591. At what time does spring open about the Lake of the Woods and Lake Nipigon?—At Lake Nipigon the spring does not open sometimes by two weeks as early as at Thunder Bay.

592. But at Lake of the Woods it opens quite early?—At the time I was there in March, 1873, I had to be very careful in crossing at Rat Portage, owing to the opening of the water. In fact, I saw open water at that time.

593. Do you know anything of the old colony of Assiniboia, that was established by Lord Selkirk?—As to its boundaries?

594. *The Chairman* :—About it generally?—I know something of the character of the soil and country. I have lived there for the last year.

595. You have, I understand, a commission from Her Majesty to the Bishop of Rupert's Land?—Yes; here is the document. It is a copy of letters patent from the Queen to the Bishop of Rupert's Land, in 1849.

596. Are you aware what extent of territory the See covered?—As given in those letters patent it extends over the entire water-shed from the Hudson's Bay coast south to the height of land, and the height of land would be the boundary.

597. Would you read the document?—

BISHOP'S COURT, March 20th, 1880.

DEAR MR. MURDOCH,—

The following is the reference in the Letters Patent founding the See of Rupert's Land to the 20 Boundaries :—

“Whereas His Majesty King Charles the Second, by letters patent under the Great Seal of England, bearing date at Westminster, the second day of May, in the twenty-second of His Majesty's reign, and in the year of our Lord one thousand six hundred and seventy, did incorporate a certain Company by the name of ‘The Governor and Company of Adventurers of England trading into Hudson's Bay,’ and did in and by the said letters patent, among other things, give, grant, and confirm to the said Governor and Company, ‘All the lands and territories upon the countries, coasts, and confines of the seas, bays, lakes, rivers, brooks, and sounds in whatsoever latitude they shall be that lie within the entrance of the Straits commonly called Hudson's Straits, that was not already actually possessed or granted to any of His Majesty's subjects, or possessed by the subjects of any other Christian Prince or State,’ and did, moreover, ordain and direct that the 30 land within the said limits, territories, and places should thenceforth be reckoned and reputed as one of His Majesty's plantations and Colonies of America called ‘Rupert's Land.’

We have determined to erect the said Colony of Rupert's Land into a Bishop's See or Diocese, to be styled the Bishopric of Rupert's Land. Now know ye, that in pursuance of such, our Royal intention, We, by these our letters patent, under the Great Seal of our United Kingdom of Great Britain and Ireland, do erect, found, make, ordain and constitute the said Colony of Rupert's Land into a Bishop's See or Diocese, and so declare and ordain that the same shall be styled ‘the Bishopric of Rupert's Land.’”

The above description extends Rupert's Land to the sources of the rivers in any latitude. It, therefore, carries the Colony of Rupert's Land to the Rocky Mountains, to the source of the Saskatchewan and 40 along the height of land very near to Lake Superior at some point on to the Labrador coast. Of course there is the exception of any part previously granted, etc.

But in ecclesiastical matters I never heard, and I think I may say my predecessor never heard, of any exception, and as far as we have had the means we have visited and directed the whole Colony of Rupert's Land from the height of land; and the members of the Church of England within that whole district have latterly, by mutual consent of bishops, clergy and laity, formed the Province of Rupert's Land, inclusive of only such Colony of Rupert's Land, with the knowledge and approval of the English authorities, being enabled to do so by the said authorities. The Archbishop of Canterbury, by the Queen's mandate, having consecrated additional bishops for the colony, one to reside at Moose, the Bishop

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of Moosenee; one to reside in the Saskatchewan, the Bishop of Saskatchewan; one to reside in the far north, the Bishop of Athabasca. And the part of the Colony of Rupert's Land still under my own care, extends east to the height of land somewhere between 70 and 40 miles from Lake Superior. I have one of my clergy stationed at Fort Frances. As for the Diocese of Moosenee, it has been practically worked and visited all round, I believe, to the height of land.

I send with this a copy of Synod reports and documents. On page 3 and 4 you will find marked the limits of the several dioceses. The Diocese of Athabasca, however, is an addition to the Colony of Rupert's Land, being under the care of the Bishop of Rupert's Land, not by letters patent, but from evangelic motives. That district was never placed by the Queen in any See.

10 What I have written above upon the question of the effect of old grants, or French possessions, but it shows what was the practical of the case for many years. The Church has acted on that state of things and settled itself by it. I cannot but think it is a pity that the Province of Ontario, which is already so large and powerful in comparison with other provinces, should open up this matter of old grants, &c., for I presume the Hudson's Bay Company practically managed all the colony temporally, as the Church did spiritually.

I am, faithfully yours,

W. MURDOCH, Esq.

R. RUPERT'S LAND.

By the Chairman :

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598. You have been in communication, I believe, with the Archbishop also?—Yes; his Grace the Archbishop of St. Boniface, in a conversation we had on the subject, furnished me with a plan of his own, which I now exhibit.

599. Would you show the extent of his diocese and say how long it has been recognised as a diocese?—Here is a line drawn by his Grace along the international boundary line to the height of land, thence by the sinuosities of the height of land to the height of land between Hudson's Bay and Lake Winnipeg, and thence following the sinuosities of the height of land you can take in the whole extent.

By Mr. Dr Cosmos :

30 600. Where is the written or printed description of these?—It is in these maps which were furnished me by his Grace. They have been handed from Vicar to Vicar, as far back as all records they have, as the eastern boundaries of the diocese.

By the Chairman :

601. From what date back does that reckon?—His Grace does not know how far back it does extend. It was given him by his predecessor.

602. From the first missionaries, I suppose?—Yes, from the first who went there and occupied it as a diocese.

603. It is a diocese connected with Lower Canada?—I suppose so.

40 604. There is no incorporation by Royal charter or proclamation or anything of that kind?—Their records were lost at the time of the fire. Their records came down from the time of the old French occupation, very likely.

605. There was an Act passed in 1803 providing for the administration of justice in the Indian territories. Have you anything to show where these Indian territories were, or what was considered Indian territory by the Canadian authorities?—I have the proclamation of Sir John Coape Sherbrooke, who was then Governor General of Canada.

606. *The Chairman :*—In 1816, there were troubles occurring at Red River, and after the Act of 1803, the Canadian authorities were making arrests and endeavouring to maintain order in these territories?—This is the proclamation issued by Sir John Coape Sherbrooke, in English and French, which clearly shows the territory to which the Act was intended to apply:—

By His Excellency SIR JOHN COAPE SHERBROOKE, Knight Grand Cross of the Most Honourable Military Order of the Bath, Captain-General and Governor-in-Chief in and over the Province

of Lower Canada, Upper Canada, Nova Scotia, New Brunswick and their several Dependencies, Vice-Admiral of the same, Lieutenant-General and Commander of all His Majesty's Forces in the said Province of Lower Canada and Upper Canada, Nova Scotia and New Brunswick, and their several Dependencies, and in the Islands of Newfoundland, Prince Edward, Cape Breton, and Bermuda, &c., &c.

A PROCLAMATION.

Whereas in and by a certain Statute of the Parliament of the United Kingdom of Great Britain and Ireland, made and passed in the forty-third year of His Majesty's Reign, intituled: "An Act for extending the Jurisdiction of the Courts of Justice in the Provinces of Lower Canada and Upper Canada to the Trial and Punishment of persons guilty of Crimes and Offences within certain parts of North America, adjoining the said Provinces," it is amongst other things enacted and declared that from and after the passing of the said Statute, "All Offences committed within any of the Indian Territories or parts of America, not within the limits of either of the said Provinces of Lower or Upper Canada, or of any Civil Government of the United States of America, shall and be deemed to be Offences of the same nature, and shall be tried in the same manner and subject to the same Punishment as if the same had been committed within the Province of Lower or Upper Canada."

And whereas under and by virtue of the above in part recited Statute, Justices of the Peace have been duly nominated and appointed with power and authority to apprehend within the Indian Territories aforesaid, and to convey to this Province of Lower Canada for trial, all and every person and persons guilty of any crime or offence whatever:

And whereas there is reason to believe that divers breaches of the Peace, by acts of force and violence, have lately been committed within the aforesaid Indian Territories, and jurisdiction of the aforesaid Justices of the Peace:

I have therefore thought fit, and by and with the advice of His Majesty's Executive Council, of and for the Province of Lower Canada, to issue this Proclamation, for the purpose of bringing to punishment all persons who may have been or shall be guilty of any such act or acts of force or violence as aforesaid, or other crime and offence whatever, and to deter all others from following their pernicious example, thereby requiring all His Majesty's subjects and others within the said Indian Territories, to avoid and to discourage all acts of force and violence whatsoever, and all proceedings whatever tending to produce tumults and riots, or in any way to disturb the public peace.

And I do hereby strictly charge and command all Justices of the Peace so as aforesaid nominated and appointed under and by virtue of the above-mentioned Statute, and all Magistrates throughout this Province, and do require all others of His Majesty's subjects generally in their several and respective stations to make diligent enquiry and search to discover, apprehend and commit, or cause to be committed to lawful custody for trial, in due course of Law, pursuant to the provisions in the above-mentioned Statute contained, all persons who have been, or shall be guilty of any act or acts of force or violence as aforesaid, or of any other crime or crimes, offence and offences within the said Indian Territories, to the end that the laws may be carried into prompt execution, against all such offenders, for the preservation of peace and good order therein.

Given under my Hand and Seal at Arms, at the Castle of St. Lewis, in the city of Quebec, in the said Province of Lower Canada, this Sixteenth Day of July, in the Year of Our Lord One Thousand Eight Hundred and Sixteen, and in the Fifty-sixth Year of His Majesty's Reign.

J. C. SHERBROOKE.

By His Excellency's Command.

JOHN TAYLOR,
Deputy Secretary.

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By the Chairman:

607. This is a very important document, because it shows clearly that the Provinces exercised jurisdiction under the Act of 1803, in the Indian territories where those troubles were taking place.

By Mr. Mowsean:

608. Where was that document deposited?—I got it from an Indian Chief called Henry Prince, who lives down on the shores of Lake Winnipeg, and it was given to him by his father.

By Mr. Ouimet:

609. What meaning would you attach to the word "northward," used in the Quebec Act, as the direction in which the western boundary of the Province should run?—As a professional man, running a line or determining a boundary of that description, as given in that Act, there is no other meaning I could put upon it but due north.

By Mr. De Cosmos:

610. Why?—Because, if anything else had been used in connection with it, such as north-east or north-west, it would define that the line tended either to the east slightly or to the west slightly, but it says distinctly northward, and it distinctly defines, in the opinion of a surveyor, that no other meaning can be attached to it, except a due north direct line.

By Mr. Ouimet:

611. Can you point out on the map at what point of a boundary between the United States and Canada would this due north line strike?—A true meridional line drawn from the junction of the Mississippi and Ohio, would pass through Lake Superior, cutting the south-westerly portion of Isle Royale, intersecting the international boundary in the sound between Isle Royale and the mainland, thence across Thunder Bay, a little to the east of Prince Arthur's Landing, running northward, thence northward a little to the west of Lake Nipigon, and thence still northward to the height of land, or the southern boundary of the Hudson's Bay Company's Territories, as shown on Devine's map of part of North America, dated 1878.

612. Does the line you have drawn as your interpretation of that due north line pass on the same boundary as that presumed to exist before the award of 1878?—Certainly, as by the Quebec Act.

By Mr. Weldon:

613. You treat the word "northward" as the direction of a line not referring to the location?—
30 Yes, as a boundary line.

P. L. MORIN called and examined:

614. I was formerly director of the Cadastral Office at Quebec, and am now a Crown Lands officer. I beg to hand the Committee a copy of the original map of Varennes de la Verandrye, the first discoverer of the Rocky Mountains. I made this copy from the original at Paris.

By the Chairman:

615. I suppose your professional duties have made you acquainted with maps?—Yes; I have had a good deal to do with maps.

616. Can you tell us anything about the country lying between Lake Superior and Hudson's Bay?—This map of Mitchell's, to which you refer me, does not appear to be correct, according to the maps I have copied at Paris. It puts the territorial line of Hudson's Bay farther south.

617. You observe in this map of Mitchell's that the rivers are made continuous from Lake Superior to Hudson's Bay.—That arises from an error in lithographing; any one can see where the height of land passes.

By Mr. Trow:

618. Were you employed by the Government to secure these papers?—Yes.

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619. Under what circumstances?—They wanted to know about the affairs of the country and they sent me to Paris, two years ago.

620. Have you been employed in that section of the country?—Yes; I travelled from York, on Hudson's Bay, by way of Lake Winnipeg and Rainy River. This memorandum contains an account of my journey, and my impressions in respect to the country.

(Witness handed in his memorandum, but it does not bear on the subject of the boundaries.)

621. What were these lines drawn for on this map which you have handed in?—The one represents the line claimed by the French after the Treaty of Utrecht; the other, the line insisted on by the English. The latter, being near the water-shed, seems the most natural.

622. The French Commissioners wanted this, and the English the other line?—The English made this line, thinking it the height of land. The spirit of the treaty is to go to the height of land.

By Mr. Royal :

623. Here is Mitchell's original map, published in England. Looking at the rivers as laid down on it, you cannot tell which way they run; they are all joined together. How do you account for that?—It is simply an error of the lithographers. He has marked the heights of land, which you can easily trace. Looking at that map, no one would suppose that the Lake of the Woods or Lake Winnipeg sent their waters south to Lake Superior, but north to Hudson's Bay, as they really do.

Mr. WM. McD. DAWSON, of Three Rivers, was examined as follows :

By Mr. Mousseau :

111. Have you any special knowledge of questions of disputed territorial boundaries, or practical experience in describing or delineating the same?—Yes. At a very early date, I had the direction of the surveys of the Ottawa River and its tributaries in connection with the lumber trade, the describing of the boundaries of timber limits and supervising their survey when required, under circumstances of great difficulty and complication in the then unexplored condition of almost the whole Ottawa Valley, and in the face of as eager contestants, with as great a variety of conflicting pretensions, and of precisely the same character as could arise with regard to the boundaries of a whole country.

112. Have you in any way specially studied the northern and western boundaries of Canada in connection with the claims of the Hudson's Bay Company as the question stood before the purchase of the rights of the company?—Yes. I wrote a report upon the subject for the Commissioner of Crown Lands at Toronto in 1857, which, I may say, has been the cause of all the controversy that has since taken place in relation thereto. It was the first paper since 1821 through which the just claims of Canada had been asserted and maintained; it has been continually used by quotation or plagiarism throughout every phase of the controversy since, and, I think I may safely say, is mainly the cause that we have redeemed and possess the vast and fertile regions of the North-West to-day.

113. Under what circumstances did you come to write that report and for what object?—I was, at that time, occupying an important position in the Crown Lands Department. Mr. Cauchon was Commissioner of Crown Lands, and a Cabinet Minister. I was generally working late at night, and was then frequently visited by Mr. Cauchon for consultation on public affairs under his surveillance, and one night, before leaving, he incidentally mentioned that a despatch had just been laid before Council by His Excellency the Governor General, from the Colonial Office, the purport of which was that the Hudson's Bay Company had made application to be allowed to resign their lease of the Indian territories, and obtain a renewal, and that it was suggested that the answer should be that it was no concern of ours, as the country did not belong to us, etc. I at once told him, I dare say somewhat excitedly, that this was a subject I had been watching for years in the interest of Canada; that the licence the Company already had did not expire for two years; that they were but playing the same game they had successfully done once already by resigning the lease before it expired, so as to get the crisis quietly over without

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any one knowing it; that the country was ours, and our future greatness and prosperity depended on reclaiming it as the just inheritance of the people of Canada. Mr. Cauchon was very much astonished, as the subject had never come under his notice before; he at once took a very warm interest in the matter, but said that in the conversation they already had on the subject there seemed to be no doubt entertained of the "validity" of the Hudson's Bay Company's Charter, and that it did not need renewal. I then explained to him the hue and cry that had been got up about the "validity of the Charter," which was a false issue, for the most part absurd and unfounded, as the Charter, so far as making them a chartered Company, was as valid as any other Royal Charter; that if any point in it were invalid as beyond the constitutional powers of the King to grant, such as the exclusive right of trade in Hudson's Bay, etc., it was a matter of secondary importance to us; but that it was not the Charter, as he had at first supposed, that they were seeking a renewal of, but a license of exclusive trade with the Indians under a special Act covering a large area of what was properly Canada, under the name of the "Indian Territory." That this Indian territory had already the nucleus of settlement established at Red River, and embraced a great part of the most fertile regions of the continent, which were the just inheritance of the people of Canada, secured to them at the surrender of the country and by the Treaty of Paris. The question then came up of the boundary of Canada, as represented on every map that hung upon the walls or met the eye everywhere, giving the northern watershed of the St. Lawrence from the United States limits as the boundary of Canada, and I explained that there was no authority whatever for such a boundary, and that it was not to be found on maps anterior to 1821. That since the date of the lease of the Indian territories granted jointly to the

10 North-West Fur Company of Montreal and the Hudson's Bay Company, the surveys made by the Canadian Company (a large manuscript map of which was in the Department) had been used for publication in London, and the boundaries laid down as shown at the instigation of the united lessees of the said territories as a blind which had succeeded in course of a generation in habituating people to the belief that these boundaries were real instead of imaginary. Mr. Cauchon became quite excited and entered warmly into the subject, expressing the strongest determination to defend the rights and interests of the Province—as I must do him the justice to say he always did during the period I served under him in the Crown Land Department. It was then arranged that, as a territorial matter, he was to claim the despatch as appertaining to his Department, and bring it to me to report upon. These are the circumstances, and I would only add that from the discussions that arose among Ministers, and the sending of

20 Judge Draper to England to appear before the Committee of Parliament, the report was very much pressed for, and was in fact written against time, which may fairly account for anything that is obscure or imperfect in it.

714. Did you then take the ground that the North-West country, embracing the Red River, the Saskatchewan, etc., were within the boundaries of Upper Canada?—Not exactly. I claimed these countries, and was sustained in that claim by the highest authorities, as the birth-right of the people of United Canada, the just inheritance of the early French settlers who had traded, settled in, and originally owned undisputedly these territories as well as the British who had succeeded unitedly with them in possessing, and unitedly with them, as for instance under Sir Alexander

40 MeKenzie, extended those territories to the Pacific and to the North Sea, without any intervention or interference, either in the way of prevention or aid from the Hudson's Bay Company, who had then made no such pretension as they did at a later period. It might indeed seem that the claim put forward by me (and which became the ground-work of all that Canada claimed and has accomplished since) would have inured, if promptly and efficiently maintained, to the benefit of Upper Canada, but that was not a point of special importance at the time—we were one province, under one Government and one Legislature, under the same laws (except in some particulars of French and English law which did not seem to me to be of much importance), and every acre of those vast regions was as much the property of the one as the other portion of the United Province. I simply demonstrated that the country was part of that acquired by Great Britain as Canada, or *la Nouvelle France*, and that as such, it was the duty of our Government to claim it, whether it was technically within our Provincial boundaries, or as a dependency of Canada

formed part of the "Indian territories," to which the then expiring lease gave us the opportunity of maintaining our original title.

715. What do you mean by the "Indian territories;" can you state definitely what they were?—When the first province of Quebec was constituted in 1673, it embraced a very limited portion of the country just then acquired from France, the great bulk being reserved for the benefit of the Indian nations, who were its principal inhabitants. In 1774 an Act was passed extending the boundaries of the Province of Quebec, and whatever this Act did not embrace within these boundaries continued to be reserved for the benefit of the Indians, and would therefore be the "Indian territories."

716. How do you define the boundary prescribed by the Quebec Act of 1774, as the western boundary of the Province?—That point might be deemed sufficiently clear by itself, in the terms of the Statute, but seems to be involved in some difficulty by reason of official mistakes. The other boundaries of the Province are described with such minute accuracy of detail that the vagueness of "northward" taken by itself, would, in my mind, imply some condition by which its precise direction would be guided. It would not necessarily be a due north line. It might be to the east or to the west of north, according, as these conditions prevailed, the one way or the other; but if all conditions failed it would, of necessity, be due north. The conditions are:—1st, that starting from the Mississippi at its junction with the Ohio, it runs northward; and 2nd, that it strikes the southern boundary of the Hudson's Bay Co.'s territories. Taking the first, if the commission, issued immediately after the passing of the Act, was meant to interpret it, then the Mississippi would be the westerly boundary of the Province as far as it went. There is not, however, the slightest doubt but what the upper waters of the Missouri were, at that time, taken to be the Mississippi, and such a boundary would, in no sense, be called "northward," as it would be about north-west. Such a boundary would not, therefore, fulfil the first condition, and still less would it fulfil the second, as a line in continuation of the general bearing of the Mississippi, as laid down on the maps of the day, would never strike the southern boundary of the Hudson's Bay Company's territories, as then understood. Assuming, however, that the Governor's commission gave so much of the boundary as was intended to run along the Mississippi River, and that the "northward" meant from its source to the southern boundary of the Company's territories, it would equally fail in fulfilling the second condition, as, to do so, the line would require to take a new departure and a new course, and run north-easterly. Failing, therefore, in both conditions, we necessarily fall back upon a due north line, which does fulfil these conditions, as it is "northward," and strikes the southerly boundary of the Hudson's Bay Company's territories, though it does not accord with the terms of the Governor's commission, which I shall deal with presently. It is hardly worth while to advert to the fact that the Mississippi, taking simply what is so designated at the present day, would fulfil the first part of the condition of the boundary in being sufficiently near north to be called "*northward*," but even that would not fulfil the second condition, as a continuation of the line on its general bearing would not strike the Hudson's Bay Company's territories as then recognized, but would pass to the westward thereof. It is needless to discuss this, however, as that was *not* the Mississippi mentioned in the Act—neither was it the Mississippi meant or intended, even at a later period, when the independence of the United States pushed our southern boundary up to the 49th parallel on a due west course from the Lake of the Woods, as it was perfectly well known, at both those periods, that the source of the Mississippi, as now known by that name, lay to the south, or even east of south from the north-west angle of the Lake of the Woods, and could not, therefore, be the Mississippi the due west line from that point was intended to intersect.

Notwithstanding, however, that these conditions fail to give the line a direction either to the east or to the west, I would not construe the Act rigidly as meaning a due north line if any contemporaneous Act of the Imperial Government had otherwise construed it, and at first sight, the Governor's commission, first issued thereafter, would seem to imply such a construction.

The instructions to the Governor simultaneously issued with that commission, would seem indeed to account for the difference between the Act and the commission, and indicate that the distinction was

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given before
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House of
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Three Rivers.

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not matter of accident or oversight, but of design. I have already adverted to the fact that on the formation of the first Province of Quebec, in 1763, all the then recently acquired territories of Canada or New France, were reserved for the use and protection of the Indians, and only so much as was deemed necessary for the purposes of civil Government affecting the European population, erected into a Province. As a better acquaintance with the actual circumstances of the country grew up, it became expedient to extend and enlarge the Province of Quebec, and hence the Act of 1774. This Act did one of two things. It either on the one hand, abolished all separate autonomy of the Indian nations (so carefully guarded in the proclamation of 1763), abrogated all special charge of the Indians as the wards of the Crown, and extended the Province of Quebec over all the territories acquired from France by the Treaty of Paris, without any liminary line whatever; or, on the other hand, it presented a positive and defined liminary line, dependent as to its exact position upon conditions already explained, but absolute in its essential characteristics.

If the latter of these propositions were unconditionally true, I argued in the report written for the Government and signed by Mr. Cauchon in 1857, that the Act would have so expressed it by saying "*due north*," and read by the light of the commission and proclamation of 1791 (to be further adverted to), which were then before me, I would say so still.

If the former of these propositions were true, the converse of this might as well be assumed, and that the Act would have so expressed it as covering the whole of the acquired territory, especially as the distinction seems to have been quite well understood at the time, as evidenced by the commission and certain instructions that issued simultaneously therewith, and which, differing from the Act, undoubtedly did put the whole of the ceded territory under the Governor as "*dependencies*" of the province, created or enlarged by the statute. And here I think may be found the solution of the difficulty that confronted me in the hurried composition of the report of 1857, and which I had not then the time to study up, viz., as to the division between the Indian territories and Canada. A glance at that report will show that it was intended to prove, and did prove, that no part of the territory ceded by France by the treaty of 1763, including the countries on the Red River and the Saskatchewan, could possibly belong to the Hudson's Bay Company, that they simply held a license of exclusive trade with the Indians since 1821, under a specific Act for a specific and limited time, in that part of the ceded country called the "*Indian territories*," and that as the lease was about to expire, and United Canada then in a position to assume control of these territories, it should not be renewed.

I think it must be clearly seen that by the authority of the Imperial Government, either with or without Parliamentary sanction (although the Quebec Act of 1774 may not be held to have done so), the whole of the territory acquired from France by the Treaty of Paris was put under the Governors of Quebec, and afterwards of Lower Canada, as it was done after as well as before the division of the Province, until 1821.

The Province of Quebec and its dependencies were thus manifestly two distinct things. The "*dependencies*" were part of the territory acquired from France, as well as the enlarged Province of Quebec, legally constituted and bounded by the statute, was: but the Province of Quebec did not cover all, else there would have been no Indian Territories and no dependency. The Proclamation of 1763 clearly reserved the whole acquired territory as Indian territory, except the small Province of Quebec then constituted. The enlargement of that small Province was cut out of that Indian territory, the remainder of which, in the more settled state of things that was succeeding to military occupation, was naturally placed under the Governor-General as a *dependency*, but not as part of the Province constituted by the Act.

This leads to the inquiry of how the Proclamation of 1791, dividing the Province of Quebec, came to be issued. I have shown that there two distinct things: 1st, the Province of Quebec; and 2nd, its *dependencies*. By its dependencies, I apprehend there can be no difficulty in distinguishing the "*Indian territories*," set aside and recognized by the first act of Government performed towards the country acquired under the treaty by the Proclamation of 1763, and afterwards encroached upon,

but not absorbed by the Quebec Act of 1774. The Commission issued to Lord Dorchester in the period intervening between the independence of the United States and the division of the Province of Quebec (1786) necessarily prescribed the international boundary (I here drop the word and state the fact) to the waters of the Missouri, supposed at that time to be the true Mississippi. This was no more than his previous commission in 1774 had done, and was certainly within the prerogative right of the Crown to do, even though the extreme limit of his jurisdiction may thus have gone far beyond the boundary legally provided by Statute for the Province of Quebec. In fact, it was a necessity of the case that the supreme authority, the only authority representing the territorial rights of the Crown in the country, should cover the whole of the acquired territory, whether within or without the Province constituted by the Statute, otherwise the whole country outside of the Province would have been practically abandoned.

With these precedent facts established, though the order in Council of 19th of August, and the Commission to Lord Dorchester of 12th September, 1791, very clearly defined what was to be done, it devolved upon the Lieutenant-Governor, temporarily administering the Government in the absence of his chief, to issue the proclamation for the division of the Province, which he did under date of 18th November, 1791, and expressed one part of it in words which may have a presumptive, but certainly have no intelligent meaning. It is impossible, without any data to go by, to realize how the wording of the proclamation came to be adopted. Possibly Lieut.-Governor Clarke may have been advised that the Order in Council and Commission did not cover all the territory already placed under the jurisdiction of his chief, as, for instance, by the Commission of 1786, and not realizing the distinction between the legal boundaries of the Province and its *dependencies*, this gentleman, who was a soldier and not a statesman, seems to have conceived the idea of adding to the act he was required to accomplish, and giving as a quotation from the verbal definition of it, words which it did not contain, and not only so, but suppressing the words which it did contain. It was this ill-conceived proclamation that seems to have exercised the Bar and the Bench in the De Reinhardt trial at Quebec in 1818, and without sifting the discrepancy, of which the above appears to be the only possible explanation, the judges held to their interpretation of the Act, pure and simple, as they found it in the Statutes. I must confess that taking the proclamation of 1791, as elaborated by Messrs. Stuart and Vallière de St. Réal, then reputed the ablest counsel in the country, and not noticing that it was in conflict with every other official act of the time, so far as these acts have yet become available, and which were not, in fact, available at that time for reference, I was thereby influenced in the indecision or doubt I expressed regarding the precise division *between Canada and the Indian territories*; but I must here add that it had no effect whatever upon the conclusions I then arrived at, and still adhere to, as absolutely beyond the possibility of intelligent contradiction, upon the true *extent of Canada unitedly with its dependencies, the "Indian territories,"* as against the pretensions of the Hudson's Bay Company, which was a matter of undoubted historical fact, public law, long acknowledged possessory right, and fully admitted alike by the Bench and the Bar on the occasion referred to.

I would here call attention to the fact that the sole pretension of the defence in the De Reinhardt trial was, not that the Province of Quebec, as constituted by the Act of 1774, covered the territory in question; on the contrary, it was clearly admitted that it did not, but that in the division of the Province of Quebec, under the Act of 1791, the King not only *divided* the Province of Quebec, but by the exercise of His Royal Prerogative, added to that part of it which became Upper Canada.

This was the pretension, and it rested solely upon the Proclamation of 1791.

It, therefore, becomes a matter of the first importance to ascertain what this Proclamation amounted to, on which two pertinent questions arise:—

1st. Was it authentic—by which I do not mean any question as to its having gone through all the forms and been duly promulgated, as it professes to have been, but as to any authentic authority given to the Lieut.-Governor by the Crown, to add the words, or rather substitute the words which have been the cause of all the controversy, and which differ from every other authentic authority of the day that has yet been brought to light?

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2nd. Assuming its authenticity and authority as proved, does it really do that which has been attributed to it and add to Upper Canada more than a specific allotment out of the pre-existing Province of Quebec?

If either of these conditions fail, the whole fabric on which the pretension of claiming a boundary, beyond that assigned by Statute to the Province of Quebec, has been raised, that would embrace the Indian territories in Upper Canada, crumbles to the ground.

On the first of these it may not be surprising that in the De Reinhardt trial neither the Bench nor the Bar seem to have questioned the authenticity of the authority under which Lieut.-Governor Clarke issued the Proclamation in question, containing the added words; it was, as a matter of course, taken for granted that it issued *in its entirety* under the direct mandate of the Crown. And yet we have the fact now plainly established, that every contemporary act of authority was in direct contradiction of the meaning attributed to the words added or substituted. The Order in Council of 24th August, the commission to Lord Dorchester of 12th September, clearly describing Upper Canada as comprehending such territories west of the dividing line, "*as were part of our Province of Quebec,*" and no more, and the instructions to his Lordship, again stating the boundary to be "*as in our said commission is particularly expressed,*" must all have reached Quebec just shortly before the Proclamation issued on 18th November, 1791, and were all in direct contradiction of it; and not only so, but every subsequent commission up to that of the Earl of Durham in 1838, contained precisely the same definition and in the same words, making the westerly boundary of Upper Canada identical with that of the pre-existing Province of Quebec as constituted by the Statute of 1774.

The words added by Lieutenant-Governor, General Alured Clarke, were therefore without authority, and, consequently, were and are without effect.

But, on the second of these points, do the words substituted by Governor Clarke really convey the meaning so extensively attributed to them? A vaguely-expressed idea, indistinct and meaningless, may sometimes, rashly interpreted, get hold of men's minds and become widely expatiated upon, while no one ever thinks of any close analysis of the original, but takes for granted any supposed meaning that may have been once attached to it, and makes that instead of the real meaning the ground of long disputation. Any one accustomed, however, to the delineation of complicated boundaries, on sitting down, pencil in hand and map before him, to apply specific words with mathematical precision to intelligent results, will very soon come to a point of error, if it exists, that will bring the matter to a stand. Such seems to be the case with regard to the Proclamation of 1791, and the unauthorized words it contains, which, when tried by the test of the most superficial analysis are found to be utterly meaningless.

Let anyone read the proclamation and see whether it says that Upper Canada shall have an extent greater than its allotted portion of the divided Province of Quebec. The description is precisely the same as in all the other authorities up to the words "boundary line of Hudson's Bay." The other authorities continue: "The Province of Upper Canada to comprehend all such lands, territories, and islands lying to the westward of the said line of division as were part of our Province of Quebec; and the Province of Lower Canada to comprehend all such lands, territories, and islands lying to the eastward of the said line of division as were part of our said Province of Quebec." That is at least clear and explicit, but *instead* of this the proclamation continues, "*including* all the territory to the westward and southward of the said line to the utmost extent of the country commonly called or known by the name of Canada." These words *do not follow*, they are *substituted*, for the words that declare what shall be Upper and what shall be Lower Canada. Had the declaration of what should be Upper Canada been inserted and followed by these words, the meaning would at least have been intelligible and apparent, and it would have only remained to consider whether Governor Clarke had the power to make the change.

But as the words stand, let me ask, in what was this territory "to the westward and southward, etc.," *included*? Not in the Province of Upper Canada! The proclamation does not say so. Let me read from the document itself, leaving out the mere description of the line, "that our Province of Quebec

"should be divided into two distinct Provinces, to be called the Province of Upper Canada and the Province of Lower Canada, by separating the said two Provinces according to the following line of division"—"including all the territory to the westward and southward of the said line to the utmost extent of the country commonly called or known by the name of Canada." Now, the introduction of the description of the line does not alter the sense in the least; it is still the "line of division," (as described) "including all the territory, etc." What is it, then, that has the privilege of "including" all that territory? Is it Upper Canada or is it Lower Canada? The proclamation does not say, and the only grammatical solution the construction of the sentence is susceptible of is that the "line of division" includes itself and all the territory to the westward and southward of itself. And yet it is on such nonsense as this, substituted for language the most clear and definite that could be put in words, that the claim has been preferred to half a continent.

There may, indeed, be a *presumption* that it was the intention to include all the territory, etc., within the limits of Upper Canada, but the intention of the writer, if such it was, has not been expressed in intelligible language. It is not, however, clear that it was even the intention, as there may have been some correspondence indicating that the unorganized or Indian territories should remain in some way under the Governor General (as they did before and as they did after), and which, misinterpreted, may have caused the error, for, according to the words used, and the only possible grammatical application of them, it is Lower Canada as well as Upper Canada and the line of division that includes all the territory, etc. The proclamation does not say that Upper Canada is to the west of the line of division, nor that Lower Canada is to the east of it. It simply describes the line of division as including all the territory, etc.

To elucidate any intention that may have existed by the correspondence of that day, there seems to have been no inquiry or investigation by the Dominion, and the volumes published by Ontario have not resulted from researches made on every point in the right direction. The inquiry would only be interesting, however, as affecting matters of historic research, as the facts already available are quite sufficient to establish the point now in controversy.

I need only further remark on the Indian territories that they were, though vaguely, defined by the proclamation of 1763, as embracing all the lands not covered by the Province then constituted, including the lands to the north-west beyond the sources of the rivers flowing from that direction. They were encroached upon to some extent by the Quebec Act in 1774, and by instructions of that date put as "dependencies" under the Governor of Quebec. In 1803 they were legislated specially for, and again put more particularly under the jurisdiction of Lower Canada, in virtue of which commissions of the peace were issued and criminals arrested and brought therefrom for trial in the courts of that Province. On one of these trials a question arose as to whether the boundary between Upper Canada and the Indian territories was governed by the Quebec Act of 1774 or by the Proclamation of 1791, and a judicial decision was then rendered that such boundary was governed by the Act, and that the interpretation of the word "northward," as used in the Act, was due north. This decision was taken to England by appeal, or reference by consent, to the Imperial authorities, but was not reversed, and therefore remains of binding force as to what was *then* the boundary, unless and until some constituted tribunal of higher authority declares otherwise.

Trials took place about the same time in Upper Canada for offences committed in the same region west of Lake Superior, as being within that Province, but without result or judicial decision on the point involved. By the Act of 1821, the "Indian territories" were put more particularly under the jurisdiction of Upper as well as Lower Canada, but without further definition of their boundaries, and by the exclusive license of trade with the Indians granted jointly to the fur companies of Montreal and Hudson's Bay, were practically lost sight of by the people of Canada for, I may say, more than a generation, when the application of the company for a new lease, the action taken in Canada as already described, and the inquiry before a committee of the House of Commons in England brought on the agitation that has ultimately—though not so soon, nor on the terms we should have had it—put us in possession of the country.

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MANITOBA.

Sec. II.

Evidence
given before
Committee of
House of
Commons,
Canada,
March, 1880.
Evidence of
Mr. Wm.
Mel. Dawson,
son, of Three
rivers.

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I submit copy of the report I wrote for the Commissioner by which this matter was first brought into notice in 1857, the evidence I gave before a Committee of the Legislature the same year, and also a set of resolutions I moved during the following year in Parliament, to which I had been elected for Three Rivers in the interim. These resolutions were negatived through influence it is not necessary now to dwell upon, but I may call attention to the fact, that these papers maintain the just rights of Canada, unfettered by sectional divisions, just as I maintain them to-day; and if any sectional discrepancy appears as to the division between Canada and the Indian territories, it will scarcely seem strange that a document—the Proclamation of 1791—emanating from the highest authority in the country, professedly under the Order of the King in Council, after having been argued upon before the court of highest jurisdiction, without exception being taken by the Bench or the Bar as to the authority from which it professed to emanate, or the meaning that was attributed to its verbal construction, should have been taken by me in the light which it was thus placed before the world, notwithstanding that a scrutiny, to which I had not then subjected its contents, and examination of the documents on which it was founded now show that it had neither the authority claimed for it, nor conveyed the meaning attributed to it.

Q. Have you examined the boundary prescribed by the Arbitrators appointed by the Dominion of the Province of Ontario, and can you state upon what ground of history or fact it rests, or can be maintained?—With all possible respect for the Arbitrators, two of whom I have known well and esteemed highly, and the other of whom, occupying a diplomatic position that commands the confidence and respect of two great nations, is entitled to the highest consideration, I must nevertheless candidly say that their decision has no basis whatever of history or fact to sustain it. If the Arbitrators conceived that they were to make a boundary, it was, of course, a matter of opinion as to where it would be suitable to place it, in which they would be right to exercise their own judgment and views of expediency; but if they had merely to examine and declare where the boundary was, or where it had ever been, they have adopted that which was not a possible one. They had, I think, one of three things open to them to declare. 1st. That Ontario embraced the whole North-West Territory under the Proclamation of 1791, which I have just dismissed as untenable. 2nd. That it was bounded by the line prescribed by the Quebec Act in 1774; or 3rd. That a more recent definition which they seem to have intended to adopt *in part*, should prevail. The boundary they have adopted was not a possible one under any circumstances.

As to the first, apart from the untenable character of any proposition based upon the proclamation of 1791, with the analysis I have just given of its contents, I think that Ontario practically entered confederation without it, as well as that Confederation would have been practically impossible with it, as the smaller Provinces would not have consented to stand like pigmies beneath the shadow of a colossus; assuredly objection would have been taken by Lower Canada, already stripped by the division of the Province in 1791 of the just inheritance of her people (jointly considered as regards both races), and a new Province established in the very garden of the then available country, whose people, rapidly accumulating the wealth that soil and climate poured for them into the lap of plenty, have been sometimes but too ready to deery the less rapid advance of those whose lot has been cast in the more sterile regions of the north; and finally, if Ontario even had any such colourable claim, she abandoned it when a majority of her representatives voted for the erection of the Province of Manitoba.

As to the 2nd, had the British North America Act declared that the Province of Ontario should consist of Upper Canada as it had existed for 47 years, (from 1791 till 1838), instead of as it existed at the passing of that Act, it would very clearly have embraced all that it had originally possessed as the western division of the former Province of Quebec; but its description having been changed by competent authority at the last-named date, it ceased to have the same boundaries as before and entered confederation as it then existed.

On the 3rd alternative, therefore, that was open to the Arbitrators, and which they seem to have intended to, and did in part, adopt, I would observe:—that, for a consecutive period of 47 years, in every document issued by competent authority, after describing the divisional line drawn due north from the head of Lake Temiscamingue “to the boundary line of Hudson’s Bay,” the Province of Upper Canada was declared

in the most brief and intelligible language as simply "to comprehend all such lands, territories, and islands lying to the westward of the said line of division as were part of our Province of Quebec." Its boundary on the north, therefore, was the "boundary line of Hudson's Bay," which, by the Statute which gave a limit to its boundary in that direction, necessarily was the southern boundary of the Hudson's Bay Company territories, wherever that might be found. It was positively restricted by Statute from going further. Its westerly extension has already been fully dealt with.

In 1838, however, the description was entirely remodelled, all reference to what it had been as a division of the former Province of Quebec expunged, a new description formulated and a new, distinct and in some respects, entirely different boundary given to Upper Canada by competent authority, as embodied in the commission to Lord Durham, and continued in every succeeding description thereafter.

By this new boundary the Province of Upper Canada was extended on the north to the "shore" of Hudson's Bay, and curtailed on the west to the entrance "into Lake Superior."

I observe that it has been contended that "the boundary line of Hudson's Bay" and "the shore of Hudson's Bay" were convertible terms and meant one and the same thing. I cannot admit this; the law does not admit it, for it has declared that a territory granted to the Hudson's Bay Company existed, and if it existed it had to be found somewhere between its southern boundary and the shore of Hudson's Bay, and its southern boundary being, by Statute law, the northern boundary of the Province of Upper Canada, it could not be identical with the shore of Hudson's Bay.

The question then arises, had the Crown the prerogative right to extend the boundary of Upper Canada to the north beyond that provided by Statute, and if so did that right include the power to extend it over any part of the Hudson's Bay Company's territories? On this point, it may be observed that the Hudson's Bay Company's territories had already been put by law (Act of 1821) very effectually under the Government of Upper as well as Lower Canada—reserving whatever peculiar rights may have appertained to them under their charter. The Hudson's Bay Company were a trading concern, having certain rights, but they were not a government—notwithstanding that they made some pretensions in that direction, and, I see nothing in the law, as it then stood, to render it incompatible for the Royal prerogative to have extended the limits of Upper or of Lower Canada over these territories, reserving the rights of the Company as the law already did.

This seems to have been the view taken by the Arbitrators, for they commence their description *at the shore* of Hudson's Bay where an extension of the due north line from the head of Lake Temisamingue would reach it.

It would not, however, appear to be the view taken by the Department of the Interior, if I may judge by the Dominion maps issued since the sitting of the Arbitrators, for these maps carry the boundary of Ontario to the *shore* of Hudson's Bay as if the Arbitrators had made a boundary line there, but do not carry the contiguous boundary of Quebec to the same point, but indicate it as extending only to what may have been considered "the boundary line of Hudson's Bay." The Department must necessarily be in error in this, for the Arbitrators have not made nor declared a boundary for Ontario between these points. They have assumed it as existing by commencing at the *shore* of Hudson's Bay; but if the Department is right, there is a hiatus and no legal boundary whatever provided for Ontario in the large gap between the point where the boundary of Quebec is made to terminate and the point where the Arbitrators commence their description; for if they were right in commencing there, Quebec also extends contiguously to the same point, as the same extension of Lower Canada to the North was made in 1838 as of Upper Canada in a separate and distinct description.

I think, therefore, that in commencing their description at the shore of Hudson's Bay, the Arbitrators were correct, and that the Crown had the prerogative right to extend the boundary to that point, just as the first Province of Quebec was created in 1763, and as the extended province of Quebec *might have been* further added to by Proclamation in 1791, had it been so done by proper authorization, and conveyed in intelligible language, which it was not.

I now come to the other point, *the curtailment of the Province on the West* by the same instrument the Arbitrators have recognized as *extending it on the North*.

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By that instrument it will be seen that all reference to the former Province of Quebec, to be found in every antecedent descriptive act of authority for the preceding forty-seven years, is entirely dropped, and a new description, complete within itself, formulated, not resting upon any previous law, proclamation, or order. From that date, the Province of Upper Canada no longer subsisted as a divisional part of the old Province of Quebec; it subsisted from that date independently, on the merits of the description by which it was duly designated by competent authority, and by which its limits were extended to the "shore" of Hudson's Bay on the north, and curtailed to the entrance "into Lake Superior" on the west. I apprehend that there can be no constitutional objection to the prerogative right of the Crown to make the extension. Those who maintain that the Province of Quebec was extended by the Proclamation of 1791 cannot, at least, controvert it. If, then, it was a constitutional exercise of the prerogative to extend it to the north, as assumed by the Arbitrators and acquiesced in by Ontario, how can the legal exercise of the prerogative, authorised by a specific provision of statute law to curtail it in the west, be denied? That specific provision of law will be found in the Quebec Act of 1774, enlarging the Province by certain additions that were to subsist only "during His Majesty's pleasure," by which power was undoubtedly given to the Crown to curtail it again, which was done by the new and specific description most carefully and minutely drawn up for the Earl of Durham, in 1838, and continued thereafter.

I conclude, therefore, that the Arbitrators were right in their construction of that part of the description of Upper Canada existing at the time of the passing of the B. N. A. Act—as it was, in fact, contended for by the Ontario Government—by which the Province had been, about thirty years before, extended to the shore of Hudson's Bay; and that, whether from their not being experts in matters of the kind, accustomed to deal with questions of boundary, or from the exceedingly defective manner in which the case for the Dominion was placed before them—which was, in fact, no case at all—they failed to give effect to the whole description, on one part of which they acted, and consequently failed to define correctly the western limit of the Province.

The following is the description of Upper Canada as it entered Confederation:—

"The said Province being bounded on the east by the line dividing that Province from Lower Canada, beginning at a stone boundary on the north bank of the Lake St. Francis, at the cove west of the Point au Beaudet, in the limit between the Township of Lancaester and the Seigneurie of New Longueuil, running along the said limit in the direction of north thirty-four degrees west, to the westernmost angle of the said Seigneurie of New Longueuil; thence along the north-western boundary of the Seigneurie of Vaudreuil, running north twenty-five degrees east, until it strikes the Ottawa River, to ascend the said river into the Lake Temiscamingue; the said Province of Upper Canada being also bounded by a line drawn due north from the head of the said lake until it reaches the shore of Hudson's Bay; the said Province of Upper Canada being bounded on the south, beginning at the said stone boundary between Lancaester and Longueuil, by the Lake St. Francis, the River St. Lawrence, the Lake of the Thousand Islands, Lake Ontario, the River Niagara, (1), Lake Erie, and along the middle of that Lake; on the west by the channel of Detroit, Lake St. Clair, up the River St. Clair, Lake Huron, the west shore of Drummond Island, that of St. Joseph and Sugar Island, thence into Lake Superior."

That description gives as its easterly boundary from the Ottawa, a due north line to the shore of Hudson's Bay, and as its westerly limit the commencement of Lake Superior; and taking the description simply on its own merits, on the one point as well as the other, its westerly boundary must run from its extreme westerly extension, where it enters Lake Superior, parallel to its eastern, due north to the shore of Hudson's Bay.

By Mr. Ross:

717. Does that agree with your contention as to the northward line from the confluence of the Mississippi; it will be 200 miles short of that?—That was previous to 1838. I take the ground that

(1) In the first description there seems to have been a clerical error making the Niagara River fall into the Lake Erie, but afterwards corrected, and I have copied from the corrected one.

that was changed. The new boundary was made according to the terms of the description given in 1838.

718. Why due north from the east end of Lake Superior, instead of striking a line from the east end of Lake Superior diagonally across the country to the shore of Hudson Bay? What authority have you for going due north?—Because, as a general principle, you give a description due east or due west or due north, say, for instance, due north from the head of Lake Temiscamingue, and extend the line so far westward, then your western boundary is naturally a boundary parallel to the eastern, unless otherwise described.

719. That is merely an inference. Where would that line due north from Lake Superior terminate?—At the shore of Hudson's Bay.

720. It would strike Hudson's Bay?—Certainly; it would still go parallel to a due north line from the confluence of the Mississippi and Ohio. I was going to remark, in reply to the suggestion that I differed so much from everybody else, that I did so also when I wrote that report in 1857, no other had given the subject any consideration. I might turn out as near right now as then.

721. You were the first explorer. Does that statement substantially agree with your report of 1857?—Yes; except in this, that I did not raise then the question of inter-provincial boundary. I was claiming the country for Canada as a whole.

By Mr. De Cosmos :

722. You stated that licenses were granted to Montreal Companies to trade in the Indian territory. Who granted the licenses, to whom were they granted, and where was the eastern boundary of the territory?—The licenses were granted under the Imperial Act of 1821, which had been passed in consequence of the troubles and bloodshed that had occurred there between the two companies, the North-West Company of Montreal and the Hudson's Bay Company. The license was granted by the Imperial Government, and these two companies united and settled their differences. The first license to exclusive trade with the Indians was granted to the North-West Company of Montreal, the Right Honorable Edward Ellis and others (conjointly with the Hudson's Bay Company), who afterwards became the strongest advocates of the claims of the Hudson's Bay Company, of which they had previously been the strongest opponents. The actual boundaries of the territory were not definitely described any more than they had been at any previous period.

Committee adjourned.

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The Committee met.

Mr. W. McD. Dawson re-called and further examined:—

By Mr. Ross :

723. Did you ever see the lease that was made to the North-West Fur Company of Montreal for trading in furs in the Indian territories?—You mean the lease that was made to them jointly with the Hudson's Bay Company?

724. Yes?—I have seen it. It was made on December 6th, 1821, and was resigned in 1838, three years before the time at which it would have expired.

By Mr. Trow :

725. What object had the company in resigning the lease?—The object stated was that the North-West Company had sold out to the Hudson's Bay Company, but in fact the former company became incorporated with the latter.

By Mr. Ross :

726. What powers, under the joint lease to the North-West Fur Company, and to the Hudson's Bay Company, did these companies exercise in the country in question; were they territorial powers or powers to trade?—They were simply and exclusively powers to trade with the Indians. The true object of resigning the lease was, I may say, to blind the eyes of the Canadian people by making it appear that all this country that had been leased to them as Indian territory came in fact under their charter.

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727. Will you explain as near as you can over what area of country they traded; and over what area you think they had a right to trade?—You mean the two companies jointly.

728. Yes?—They traded over precisely the same country as the two companies had traded over before when separate. The North-West Company traded, for instance, in succession to the French over the whole country from Lake Superior, first to the Rocky Mountains, and afterwards through the discoveries of Sir Alexander Mackenzie, to the North Sea by the Mackenzie River, and to the Pacific by the Fraser River and the Columbia.

729. So that they traded over all that is now Canada with the exception of Quebec and the Maritime Provinces?—They traded from Lake Superior to the Pacific and to the North Sea. The North-West Company, in succession to the French, were the first to do so. The Hudson's Bay Company made their first post in the interior in 1774. They had never gone into the interior from the shores of Hudson's Bay before that.

By Mr. Royal:

730. But it is a fact that the fur-trading posts of the French had been established in that part of Canada before the cession of the country to England? Most undoubtedly. There was Fort Bourbon, near the mouth of the Saskatchewan, Fort La Reine, Fort Maurepas, Fort Rouge, and others on the Red River, the Winnipeg, Rainy Lake, etc.; all these were established before the French ceded the country.

By Mr. Trow:

731. Did you, in your report, question the validity of the Hudson's Bay Company's Charter? I explained that in the first part of my evidence. The validity of the Hudson's Bay Company's Charter had been a subject of question before. I ignored that controversy altogether. I admitted the validity of their Charter so far as it made them a chartered company, but I denied that it covered the territories ceded by France, which were occupied in succession to the French by Canadians, British and French together, and became known as the Indian territories.

By Mr. Royal:

732. I suppose you have noticed the evidence given before this Committee by judges on the effect of proclamations and commissions to Governors. You have in your last evidence referred to these commissions in connection with this question?—Yes, I remark upon it, that since I was before the Committee on Friday, my attention has been called to the fact that some hon. judges who were examined do not attach much importance to descriptions in Governor's commissions or even proclamations that would over-ride boundaries established by law. But my contention does not conflict with this: When Upper Canada was curtailed on the west by the commission issued to Lord Durham in 1838, it was in strict accordance with a specific provision of law; and when it was by the same instrument extended on the north over a part of what could not but be deemed as appertaining to the Hudson's Bay Company's Territory, there not only was *no law violated*, but the deed had been already, *in effect*, accomplished and all but completed by the Act of 1821 extending the jurisdiction of the Province over it.

I assume that Lord Durham's commission correctly designated the limits of the Provinces, to the government of which he was appointed under very exceptional circumstances. It is needless to refer to these circumstance further than to say that they were such as to cause the deepest anxiety to the British Government, and to ensure to every act affecting the interests of the country, the closest and most careful supervision. When, then, we find under these circumstances a most careful and studied revision of the boundaries by which these Provinces had been continuously designated for 47 years previous, I am compelled to assume that the change was an intentional, a deliberate, and a legal one, effected at a time when the state of this country made every Act in relation to it a matter of great care and anxiety. It must therefore have undergone the most anxious consideration of the whole Cabinet, and been found both expedient and entirely within the powers of the Crown, under the ablest advice and the best legal acumen the British Government could command.

With these facts established, therefore, no expert in such matters, with this description before him, can, I think, for a moment hesitate in laying down the boundaries of Upper Canada, under which her distinct autonomy, both separate and in Union with Lower Canada, had been continuously recognised for about 30 years before the passing of the B.N.A. Act, with that mathematical precision that leaves no doubt. There may be room for argument on one point, on which the description is not fully closed, but not of sufficient force to create a rational doubt. The northerly and easterly boundaries are first described, and the most northerly limit is the shore of Hudson's Bay on a line continued due north from the head of Lake Temiscamingue; the south and south-westerly boundaries are then described, and the most westerly limit is the commencement of Lake Superior; you can go no farther, the shore of Hudson's Bay is the limit on the north; the entrance to Lake Superior is the limit on the west; 10 you can only close the boundaries by connecting these two points, and there is but one rational way to do it, by producing from your last-named western limit a westerly boundary, parallel to the eastern, to the other objective point, the shore of Hudson's Bay: your only alternative would be to connect your two objective points by a direct line; but I don't think it admissible. When you have got an eastern boundary distinctly described, and a westerly extension to a given spot specially named, a parallel line to your eastern necessarily becomes your western boundary. You certainly cannot go west of it.

Upper Canada, then, ceased to be a constituent part of the former Province of Quebec in 1838. From that time it had a separate and *distinct identity* with which, with that specific description and these boundaries, it entered Confederation, and no pre-existing state of things or past history can shake it.

I would only further observe that the large northerly addition thereby made to the Province of 20 Upper Canada embraces a very extensive and valuable territory, a considerable portion of it lying south of some very fine Lower Canada settlements, with a degree of westing that also favors its climatic character, while it abounds with coal or lignite and other minerals of great economic value.

I would call the attention of the Committee to another point that may have escaped notice, which is, that *at the very time* when this somewhat revised boundary was made in 1838, the affairs of the Hudson's Bay Company, and the joint lessees representing the Canadian interest were also under discussion before the Imperial Government on the question of resigning the first lease and obtaining a renewal, which renders it all the more unlikely that there was any misunderstanding on the part of the Imperial Ministers as to what they were doing.

It will also be observed that the Act of 1821, authorised the license of trade in the Indian 30 territories, "not being part of the lands or territories heretofore granted" to the Hudson's Bay Company, and yet, the license when issued, while making all the other exceptions named in the Act, did not except the Hudson's Bay Company's territories; and why this was so, as must strike the most casual observer, was that to get a share in the trade of the Canadian North-West, the Hudson's Bay Company consented to the Canadian Company sharing the trade of their chartered territory, and the fact that this was all a second time under discussion during the great crisis in Canadian history (in 1838) when the amended boundaries of the Provinces were described, shows that the matter obtained the fullest consideration.

By Mr. Ross:

733. In what year did that description first appear?—1838.

734. That was Lord Durham's commission. In subsequent changes from 1838 to 1867, the year of 40 Confederation, the Government of the old Parliament of Canada exercised jurisdiction north of Lake Superior—did they not—in the region of Thunder Bay?—They did, I think, justifiably.

735. You say they did, according to the commission of Lord Durham?—They did, notwithstanding the commission.

736. On your contention now, they would have no right to exercise jurisdiction north of Lake Superior, that is, it was outside their commission if they did. On what ground do you consider they exercised jurisdiction?—By the Act of 1803 and the Act of 1821, which were not repealed.

737. That Act of 1803 was the Act which gave them a criminal jurisdiction, and the Act of 1821 was confirmatory of that. But, besides, did not the two Provinces exercise jurisdiction in another way? 50 Did they not expend money in the construction of works in that part of the country, on the Dawson

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route, for instance? How could they tax people of the old legislative union for the construction of public works outside of what was part of either the Province of Ontario or of Quebec?—I think they were justified in doing so, seeing that the jurisdiction of the country was entirely in their hands. I have discussed the subject very thoroughly in 1859 with the Colonial Minister, Lord Lytton, who coincided with me thoroughly in everything that is written in the report of 1857, heretofore referred to, and wished that Canada would go on and occupy the whole.

738. But still that would have no legal weight. We want to know the legal status of Ontario in the West?—It was the United Provinces of Upper and Lower Canada that exercised that jurisdiction, and the law gave civil as well as criminal jurisdiction over that and the whole of the Indian territories.

739. Lord Durham's commission, according to your contention, would entitle him to exercise jurisdiction to the extreme east of Lake Superior. In the face of that commission, however, he and successive governors have exercised jurisdiction all along the north shore. For instance, the uncle of my hon. friend (Mr. Robinson) entered into a treaty with the Indians along the north shore, and that is the treaty that sometimes gives us a little trouble, the treaty of 1850 with regard to the contention of the Hudson's Bay Company, because there is a tacit admission in that treaty that the company had a right to come down to the height of land for which they (the Canadian authorities) negotiated with the Indians for the disposal of a part of those lands. On what authority could they act if they did not feel their Commissions entitled them to go further west?—It is stated, in the case made for Ontario in the present controversy, that this purchase was made under a special permission granted by the British Government in 1850. The height of land being the limit of that purchase, creates no title in the territory beyond it for the Hudson's Bay Company, and the mere statement in the Treaty is only a part of the prevailing ignorance on the subject that had got hold of men's minds since 1821. Had the Treaty said territory covered by the "lease" instead of "charter," it would have been more accurate. The distinction had simply been lost sight of.

740. While you were in England, did you ever discuss these matters with other persons in authority besides Lord Lytton?—I have discussed this matter in regard to the boundaries, as regards the view I have taken of the past history of it in my reports, with the gentleman who had been principal geographer of the British Empire for a very long period, Mr. Arrowsmith, and who had made all the maps and plans for the Hudson's Bay Company which designated our boundaries as being the height of land; and he entirely and absolutely concurred with me that there was no authority whatever for making the height of land the boundary. He said he had put that boundary, simply at their (the United Company's) request, upon the map of the old North-West Company of Canada, a copy of which I have referred to in the first part of my evidence as having been long on record in the Crown Lands Department.

By Mr. Ross :

741. What maps do you think the members of the English Parliament had before them when they passed the Quebec Act of 1774—when they then settled a boundary? I could not say, excepting from what information is before the Committee, more than that I presume all previous maps of the French and English were before them. I think the investigation made by Mr. Devine, which he has consolidated in the map now before the Committee, seems on the whole to be very correct.

742. I see you made some reference to the Mississippi as then known?

Mr. Weldon :—He says what was then the Mississippi is now the Missouri.

Witness :—All the maps, without exception, confirm that view.

By Mr. Ross :

743. You make the statement further in your evidence that a line drawn northward along the Mississippi, now the Missouri, would not reach the southern boundary of the Hudson's Bay Company's territory as then known?—Certainly not; neither would the line on the course of what is now recognised as the actual Mississippi strike the territory of the Hudson's Bay Company.

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By Mr. Robinson :

* 44. It would go off to the west?—Yes.

By Mr. Ross :

745. And along the Missouri it would go further west of the Hudson's Bay Company's territory?—
Yes, very far; but by the Mississippi, as it is now, the line would go, though of course not so far, still a long way west of what was then recognised as the Hudson's Bay Company's territories.

746. Can a Governor's commission alter a boundary?—As an exercise of the royal prerogative, when the law specially allows it, I think so; where it is an extension out of territory not otherwise organized, and the law does not forbid it, I think so too. I would beg to state that I give these answers without having any more interest in Quebec than in Ontario, and simply as an *expert* giving the only possible definition of the descriptions laid before me.

By Mr. Tron :

747. The intention of the Quebec Act in defining the western boundary was for the purpose of including certain settlements west of Lake Superior, was it not?—I could not say what the intention was in that way. There was a distinct province, Illinois, at that period, which lies east of the Mississippi, and was undoubtedly part of New France, but may not have been part of Canada.

748. It was part of New France, but not of Illinois. The Mississippi was the boundary between New France and Louisiana?—It became the boundary between Canada and Louisiana by treaty afterwards.

749. What was called New France by the French extended to the Mississippi?—New France was the generic term for the whole of the French possessions, which included Louisiana.

750. But it did not include Louisiana?—It included Louisiana and Canada both; the whole was called New France.

By Mr. Robinson :

751. In your statement to us the other day you said that the Arbitrators, Sir Edward Thornton, Sir Francis Hincks, and Chief Justice Harrison, had no proper case presented to them. I think you went as far as to say that they had no case at all before them. Why do you say that?—In reply to Mr. Robinson, I may remark that, in saying the case presented by the Dominion was no case at all, I do not wish to cast any imputation upon the learned gentleman whose name is at the case, with whom I am not acquainted, but who had, evidently, after a great deal of desultory reading, failed to seize the true facts of history bearing upon it, neither do I wish to impute any dereliction to the late Ministers who placed the case in his hands, and for some of whom I entertain the highest esteem, but simply that they had not made themselves masters of the subject; in which they were only like some of their predecessors, for I cannot but remember that in 1858, after the report I had written one year previous was fully before the country, the then Provincial Secretary, speaking in Parliament as the mouthpiece of the Government, after a very eloquent speech on the beauties of the North-West Territories, and a truthful assertion of my conclusions that they were part of French Canada at the time of the cession in 1763, nevertheless read the description of the boundaries of the first Province of Quebec as conveying the only title we had, and declared that we were not legally entitled to a foot of territory beyond it. I asked him under what title we held Toronto, in which the Legislature was then sitting, which, of course, gentlemen here now are well aware, was not within the first Province of Quebec, but so great was the ignorance prevailing at the time he did not even know what I meant. I am bound to say, therefore, that the Dominion case is utterly unsound and something more than that, for, after Canada, before Confederation, and the Dominion after it, had claimed the North-West Territories, and acquired whatever interest the Hudson's Bay Company had there or elsewhere, it amounts to this, that by the pressure of two powerful Governments we had compelled them to part with their possessions, and now acknowledged that their title was undisputable, that we had, in fact bullied these gentlemen into parting with property for a song which was worth hundreds of millions, and made it the basis of an empire. To show how strong impressions sometimes get hold of men's minds that cannot easily be got rid of, I notice that my esteemed friend, the Deputy Minister of the Interior, has given evidence before this Committee in which he gives as a quotation from the Hudson's Bay Company's charter, the following words:—"Extending over and including all lands and territories drained by the waters emptying into Hudson's Bay;" whereas there

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are no such words in it, nor anything that, as I would translate that very absurd document, could possibly bear such a construction.

By Mr. Ross :

752. You say there are no such words in the charter?—There are no such words. You will find something else in the charter by which, provided they could reach it through Hudson's Straits, they could just as rightly claim Hong Kong, which Great Britain had since taken possession of. The charter provided that the company could make war on any heathen nation, and acquire their territory, but it restricted them from acquiring a right to any territory they found in possession of a Christian Prince or People.

By Mr. Weldon :

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753. You gave evidence before a Committee in June, 1857. You then stated as follows, speaking of the De Reinhardt trial: "De Reinhardt was found guilty and sentenced to death, but although the court refused to re-consider its decision, yet the reasoning of Messrs. Stuart and Vallière was so clear that the judges deemed it expedient that the execution should be delayed till the decision of the Imperial Government could be had upon the question of jurisdiction. The actual reasons given by the Imperial Government I have not been able to get at, but I know that when the decision was given, the prisoner was released, and that the question submitted was that of jurisdiction, as above stated." Where did you get that information?—I searched for the despatch by which De Reinhardt had been released. I searched the Governor General's office, where I found an index giving its number; but that alone of all the papers was wanting from the place where it should have been. I have since heard that the late Colonel Gagy of Quebec made a search in the records of the Quebec Court House, since burnt, and there discovered that the cause given for the release of De Reinhardt was that the murder resulted through what was known as a private war.

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By Mr. Royal :

754. Between two civil companies?—Yes, the North-West and Hudson's Bay Companies. I am aware, otherwise, from reading other authorities on the subject, that it was known by the British Government as a private war.

By Mr. Weldon :

755. It seems that you were leaving the question of jurisdiction open here. The contention seems to have been whether the place where this murder was committed was in the Indian Territory or within the Province of Upper Canada. The whole question turned upon that, and Messrs. Stuart and Vallière's argument is entirely upon that point, and so was the decision of Chief Justice Sewell. I thought you might give us some information as to whether that question had been before the Imperial Government?—No doubt it had, but there appears to have been no decision further than that the man was released upon the other ground.

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By Mr. Royal :

756. I see you, on the same occasion, when the question, "Have you made the early and present boundaries of Canada a particular subject of study; if so, state the result?" was put to you, your answer was, "The early boundaries of Canada or New France included, I think, the whole of Hudson's Bay, for I find all that part of the country granted to a trading company by the King of France, in a charter somewhat similar, but forty-three years earlier than the charter of the Hudson's Bay Company." How did you ascertain that?—It is in the history of the time that France had granted charters extending to the North Sea—wherever it might be found—previous to that. I have also shown in the document I had written previous to that evidence that such a charter was granted by France, and that the maps of Hudson's Bay produced by the French previous to the existence of the Hudson's Bay Company were the first that really showed the conformation of Hudson's Bay at all.

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By Mr. Royal :

757. Those charters given by the French were merely trade licences for a very short period—five years, I think?—Precisely.

By Mr. Ross :

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758. You have no other written documents in your possession containing your opinions on the question than this report?—No. I discussed the subject a great deal (and there are some documents

both written and probably printed upon it) with the authorities in England, both with Lord Lytton and the Duke of Newcastle, when he became Colonial Minister; and I may say I was also sustained by him in the view I have taken, as will be found by the English *Hansard*, in the speech he made in the House of Lords.

By Mr. Ross :

759 The general consensus of opinion here was that the northern boundary of Ontario was the height of land; Mr. Dawson evidently goes to the shore of Hudson's Bay?—I do that under the commission to Lord Durham. Previous to that I hold it only extended to such point as France occupied under the Treaty of Utrecht, in contradistinction to what was then ceded to England.

760. I am glad we have got that out. I wanted to know on what grounds you based that contention; you contend that we go now to the shore of Hudson's Bay, on Lord Durham's commission?—Precisely. We did before go to whatever might be considered to have been the boundary created by the Treaty of Utrecht, between the French possessions and the English; but the height of land was never made a boundary.

By Mr. Wehlon :

761. Mr. Dawson's pretension is that the boundary of Upper Canada was defined by Lord Durham's Commission of 1838, was recognized and continued down to Confederation, and the Province of Ontario went into Confederation as the Province of Upper Canada, defined in Lord Durham's Commission?—Yes; the Ontario case, I would observe, accepted that definition on one point, but seems to evade it on the other.

By Mr. Ross :

762. I suppose it accepts it on the north?—Yes; but it seems to evade it on the west.

By Mr. Wehlon :

763. I see in the Ontario case the description of Lower Canada taken from Lord Durham's Commission; but not the description of Upper Canada; we should also have a description of Upper Canada from Lord Durham's Commission?—I have put it in my previous evidence.

By Mr. Royal :

764. In conversation a few minutes ago, Mr. Chairman, you related the facts that led to the passing of the Imperial Act of 1803. Do you know anything further than was stated to the Committee?

The Chairman :—I have here a complete list of facts that led to it—the disturbances from 1765 to 1803.

765. *Mr. Royal :* Some witnesses in their evidence stated what was not exactly correct regarding the reason for the passage of the Act.

The Witness :—I may here observe to the Committee that when I wrote this report and gave that evidence I was an officer of the Government, and had full access to all the papers in the Executive Council office, had seen the early manuscripts of trials and everything else there, and was quite aware that the disturbances referred to at the time of the passing of the Act of 1803 occurred from the shores of Lake Superior back through the interior to James' Bay, and that the disturbances which caused the second Act of the same nature to be passed in 1821, were the disturbances that occurred at Red River, where the Governor of the Hudson's Bay Company and some nineteen or twenty of his people were killed in battle. It was such incidents as these that caused these troubles to be recognized as a private war.

766. Can you tell us what effect the report you wrote in 1857 had upon the state of the case as it then stood?—I am very certain that, backed by the very energetic support of Mr. Cauchon, it had the effect of preventing the renewal of the lease of the Indian Territories to the Hudson's Bay Company, as I think the answer to the despatch from the Colonial Office would otherwise have been that we had no objection to the renewal of the lease, and its renewal would have been for 21 years, which would have shut us out of that country at least till it expired, say two years ago. There were many facts and circumstances, however, of that time that I do not know that I can properly divulge without much consideration. I was not, of course, sworn to secrecy, but there are many things 50

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Sec. II.

given before
Committee of
House of
Commons,
March, 1884.
Evidence of
Mr. Wm. McD.
Dawson, of
Three Rivers.

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Sec. II.

Evidence
given before
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House of
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March, 1880.
Evidence of
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that a Minister may find it necessary to disconsent with a confidential officer of the Department over which he presides, involving Cabinet secrets that require at least great circumspection on the part of such officer. I should like to add that having very strong convictions against the former pretensions of the Hudson's Bay Company (which are now but matters of history), any remark of mine that may seem harsh, does not in any way apply to individuals connected with that Company, from whom I have never received anything but the utmost courtesy, even to the extent of local assistance when pushing the opening of the route by the sending of the mail, and making preliminary improvements between Thunder Bay and Red River.

By Mr. Robinson:

- 10 767. Were you consulted by or did you furnish any information to the authorities of either the Local or Dominion Governments to be made use of by the Arbitrators in the matter?—No; I must say it very often seems to be the habit of Governments not to consult those who know most about the case that has to be dealt with.

Sec. III.

Report of
T. K. Ramsay,
Q.C., March,
1873.

REPORT OF T. K. RAMSAY, Esq., Q.C., ON THE NORTHERN AND WESTERN
LIMITS OF ONTARIO.

MONTREAL, 18th March, 1873.

SIR.—I beg leave to enclose my Report on the question submitted to me as to the Northern and Western Limits of the Province of Ontario.

- 20 I have condensed the Report as much as possible; but as my statements may not appear altogether satisfactory, not being always based on precise authority, I have added notes containing proofs and illustrations in support of the conclusions at which I have arrived. Some of these may, perhaps, go into greater detail than is absolutely required, but in my investigations of the confused and often contradictory narratives of the early voyages to, and settlements in Hudson's Bay, I was obliged to examine all these details, and having done so, it was scarcely more difficult to reduce the whole result of my researches to writing than to separate the more from the less essential parts.

In the form in which these notes are presented, it is hoped they may interest, even where they do not instruct, those who may hereafter require to make use of the accompanying work.

I have the honor to be, Sir, your obedient servant,

T. K. RAMSAY.

- 30 To the Honorable A. CAMPBELL, P.M.G., P.C.,
&c., &c., &c., Ottawa.

REPORT.

A difficulty having arisen as to what are the true Northern and Western boundaries of the Province of Ontario, and the question having been referred to me for my opinion, I beg leave to report the result of my investigations.

1. The limits of the Province of Ontario are defined in *The British North American Act, 1867*, as being such part of the Province of Canada, at the passing of the said Act, as formerly formed the Province of Upper Canada. We have, therefore, to enquire what were the limits of Upper Canada prior
40 to the Legislative Union of Upper and Lower Canada in 1840.

2. The position taken by the Government of Canada is, that the Northern and Western boundaries of the Province of Ontario are identical with so much of those laid down in the Quebec Act (14 Geo. III., cap. 83), as being the limits of the old Province of Quebec, as would not include the former Province of Lower Canada. That is to say, the western boundary of Ontario is the meridian passing through the point of junction of the Ohio and Mississippi rivers (now ascertained to be 89° 9' 27"

16 west) north of the United States and south of the Hudson's Bay territories; and its northern boundary is the southern boundary of the territory granted to "The Merchant Adventurers of England trading to Hudson Bay," west of the line of division between the former Provinces of Upper and Lower Canada. It is further contended that the southern boundary of the Hudson's Bay territory is the height of land dividing the waters which flow into Hudson's Bay from those emptying into the valley of the St. Lawrence and the great lakes.

3. The Government of Ontario claims that the boundary is "very different" from the one set forth by the Government of Canada; and that the western boundary is at least to be determined (north of the United States and south of Hudson's Bay territory), by a line drawn north from the source of the Mississippi, and that the northern boundary of Ontario is the southern boundaries of the Hudson's Bay territories, west of the line of division between the former Provinces of Upper and Lower Canada. While agreeing with the Government of Canada, in general terms, that the southern boundary of the Hudson's Bay territories is the northern boundary of Ontario, the Government of that Province does not, however, admit that the height of land dividing the waters falling into Hudson's Bay from the waters falling into the St. Lawrence and the great lakes is that boundary. On the contrary, they claim that the boundary is to the north of the watershed, according to the contentions of all former Governments, and by the indisputable facts that the northern boundary lies north of the watershed of the St. Lawrence system.

The Provincial Government further contends that there are grounds for maintaining the contention of former Governments of Canada, that the western boundary is further west than the line drawn due north from the source of the Mississippi (1).

4. It is important, before proceeding further, to clear the way, as far as possible, the vagueness created by the reference to the pretensions of former Governments of Canada. For this purpose, it is necessary to examine what they contended, in order to know what the Government of Ontario now claims. Except for the purpose of limiting the indefinite description of the pretensions of the Ontario Government, the enquiry as to the contentions of former Governments of Canada, prior to confederation, will be barren of results. Former contentions cannot bind in any way the Dominion Government, and this appears from every consideration. (a) Former Governments were not urging precisely the same question. Incidentally they may have represented a right to a greater extent of territory than that which they possessed; but the actual question formerly was the resistance of the claims of the Hudson's Bay Company to the renewal of a lease held by them of the Indian territories (2). The real question now is, as to what was understood to be the Hudson's Bay Company's southern boundary, by the authority which fixed that of Upper Canada. (b) The Dominion Government is not liable for the opinions of former Governments; but only for their debts and liabilities. (c) The pretensions of the Government of the Province of Canada were not admitted. On the contrary, the title of the Hudson's Bay Company was maintained; and the Dominion Government actually paid a large sum of money for the expropriation of the Company, besides leaving them a considerable estate (3).

5. The most extreme pretension of the former Government of a portion of the now Dominion of Canada, so far as I can learn, is that put forth by the Commissioner of Crown Lands, in 1857, in a report which was not considered conclusive, in spite of its unquestionable ability. It was there incidentally contended that to the north Canada was either bounded by a few isolated posts on the shore of Hudson's Bay, or that it had no particular limit in that direction, that to the west Canada includes the country about Red River and Lake Winnipeg.

6. The line of argument usually adopted turns on priority of discovery. So long as the contest was carried on between two independent nations, the title derived from conquest or discovery, however unsatisfactory, was the only possible subject of discussion. But when the whole title centres in one supreme power, the question becomes simplified, and the facts to be considered acquire a more conclusive

(1) Correspondence between the Dominion Government and the Government of the Province of Ontario.

(2) M. Cauchon's Report in 1857.

(3) In a Treaty between the Government of the late Province of Canada and the Indians, "the height of land" is described as that which separates the territory covered by the Charter of the Honourable the Hudson's Bay Company from the tract over which the Government was to acquire the rights of the Indians.

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character. It is the neglect to observe this distinction which gives the difficult aspect to the question before us. The attempt has been to submit to legal appreciation, pretensions which after years of fruitless diplomacy, were only disposed of by force (*note A*). Were the question a new one, I should not stop even for an instant, to enquire who first discovered and took possession of the lands round Hudson's Bay, or how far the French pushed their discoveries in the west; but from the bent given to the discussion, I cannot wholly ignore the line of argument involving these matters, although the conclusions at which I arrive will not be materially influenced by it.

7. The historical argument of those who seek to give the greatest extension to the limits of the former Provinces of Upper and Lower Canada seems to be, that these Provinces were co-extensive with *La Nouvelle France*. They say that the Hudson Bay charter was, if not wholly bad, at all events limited by its terms, which only grant those territories not already actually possessed by the subjects of any other Christian Prince or State, (*note B*) that by the right of discovery, and as part of *La Nouvelle France*, all the country up to the Arctic Circle belonged to France, and that in the west, Canada extended to the furthestmost post ever held by the French, which would include Red River (1).

8. It will at once strike those who examine this pretension, that it is one thing to say that Canada extended to the Arctic Ocean, and quite another to say that the territories around Hudson's Bay were first discovered by the French, independently of any connection with *La Nouvelle France* or Canada. Of course if the discovery of *La Nouvelle France* gave the King of France a right to the whole continent north of the St. Lawrence, it is idle to waste time discussing the question of particular discoveries on the side of Hudson's Bay. But this pretension is utterly untenable and an after-thought. The Commission to De Lauzon as Governor, 20th March, 1651, gives him authority—"dans toute l'étendue du dit fleuve St. Laurent en la Nouvelle France, Isles et Terres adjacentes de part et d'autre du dit fleuve et autres Rivières qui se déchargent en celui jusqu'à son Embouchure à prendre dix lieues près de Miscou du côté du Sud et du côté du Nord autant que s'étendent les terres du dit pays—De la même sorte et toute ainsi que l'avoit, tenoit et exerçoit le Sr. d'Aillebout." A similar commission was also given to De Mézy in 1663. It is therefore plain that at that time the King of France did not think that *La Nouvelle France* extended beyond the water-shed of the St. Lawrence (*note C*). It would not be difficult to make numerous extracts from ancient grants in unsettled countries to show that the grant of lands adjacent to a river was understood to be those drained by such river. A few instances will suffice. In a letter in the Paris MS. Vol. 8, p. 990, limiting the extent of the post of Temiskamingue, we find: "Ce n'est point l'intention de Sa Majesté d'affermir sous le nom de Temiskamingue plus de deux cent lieues des pays qui faisoient en-devant la majeure partie du commerce de Montreal, puisque cela tend à la ruine de cette ville. Son intention étoit d'affermir le seul post de Temiskamingue dans ces limites qui naturellement doivent consister dans les terres arrosées de la rivière de ce nom et des autres qui se déchargent dans la dite rivière; sans que l'on puisse comprendre les terres qui sont au dessus ni au dessous de la dite rivière." The grant to the Hudson's Bay Company was of the lands and territories on the confines of certain Bays, Lakes, Rivers, Creeks, and Sounds. So completely was it understood that the watershed is the limit of a grant described by rivers, lakes, or bays, that even the use of the word "highlands" in such a grant or in a treaty will be controlled so as to mean such an elevation as divides the flow of the waters. In the decision of the King of the Netherlands upon the disputed points of Boundary under the Fifth Article of the Treaty of Ghent, between Great Britain and the United States of America, H.M. said: "Selon les exemples allégués le terme Highlands s'applique non seulement à un pays montueux ou élevé, mais encore à un terrain qui sans être montueux, sépare des eaux coulant dans une direction différente, et qui ainsi le caractère plus ou moins montueux et élevé du pays à travers lesquelles sont tirées les deux lignes respectivement réclamées, au nord et au midi de la Rivière St. John, ne saurait faire la base d'une option entre elles." In M. Bobé's (? Bolé) memoir (1) respecting the boundaries, prepared in 1723, the name of "*La Nouvelle*

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(1) Mgr. to M. du Chesneau, 16th May, 1678. Memoir 8 Nov., 1686. Doc. Hist. 9, Père Marest Lettres Ed. Nello Ed. Vol. VI., p. 4.

(2) Doc. Hist. 9., 913

France" is given to that vast tract of country extending from the 30 to the 52 degree of N. Lat. And in 1755 Bellin, who was "Ingénieur de la marine et du dépôt des Cartes Plans et Journaux et Conseur Royal, says 'La Baie d'Hudson et les Pays voisins sont une grande étendue de côtes entre le 67 et le " 51 degré de Latitude Septentrionale." (note D.)

9. The question of priority of discovery of the Hudson's Bay, and of the territories on the confines of the rivers and bays connected with the Hudson's Bay, does not appear to be in favour of French pretensions. If discovery alone is to convey a title to either nation, the French pretensions must fail.

10. It is not denied (note E) that Hudson discovered the bay which bears his name, (1) and that he wintered there in 1610-11. In the following year, Button, following in the path already traced by Hudson, discovered Nelson River, which he named after his pilot, who died during the expedition, and he passed the winter of 1612-13 in the bay. It would seem the failure of these discoverers, in their main object, to find a north-west passage, discouraged further enterprise in this direction, and "the business slept from 1616 to 1631," while their attention was turned towards the South. In 1631 Luke Fox went and wintered at Nelson River. James wintered in the Bay in 1631-32 (note F.) In 1667 or 1668, Gillam, with Des Grozeliere and Radisson, (note G) went to Hudson's Bay and established himself at Rupert's river. On his return to England a Company was formed which, under the name of "The Governor and Company of Adventurers of England trading into Hudson's Bay," obtained from Charles II. the famous Charter bearing date the 2nd May, 1670.

In the same year the Company sent out an expedition to make a permanent establishment, with Mr. Bailey as Governor, and Fort Nelson was founded as the principal post.

11. The French meet this, without denying the early discoveries of Hudson, Button, Fox, and James, by saying (3) that possession of unknown countries must be taken by some formal act, such as planting the arms of the King who claims a title to it; that those travellers have left no account of their discoveries, and consequently it is not established that they ever took possession of the countries they are said to have visited, in the name of their Sovereign. They further pretend that in 1656 Jean Bourdon sailed from Quebec and took possession of the Baie du Nord, and that this is proved by the register of the Council of New France of the 26th August, 1656. That in 1661 the Indians of the North Bay came expressly to confirm the good understanding between them and the French, and asking for a Missionary, and that Father Dablon went there in the same year. That there were expeditions of Couture and Duquet in 1663; and that the expedition at Gillam was led there by rebellious subjects, who could convey no title, and that the very fact of Des Grozeliere and Radisson being able to lead the English Captain Gillam there, shows that they had themselves been there before, and consequently had acquired the territory for the King. The French then proceed to relate the voyage of De Lauson to Sault Ste Marie in 1671, and his formal taking possession in the name of the King of France with the consent of seventeen nations, among whom were the Indians from Hudson's Bay. They also insist on the voyage of P. Albanel and St. Cimon in 1671-72.

12. This is an unfortunate answer. It either goes too far or not far enough. To get over Hudson's and Button's discoveries, it cuts off the expeditions of Couture and Duquet, of which there are no formal records. The same may be said of the overland expedition of Des Grozeliere and Radisson. Prior to the voyage of Gillam in company with them, there is no record whatever of Des Grozeliere and Radisson ever having been at Hudson's Bay, nor is it even now said in what year they were there. It is a mere rumour, in no way proved by their conducting Gillam to Hudson's Bay. The experience derived from an overland journey, even if it had taken place, could not have aided them in a voyage by sea. Again, if anything were to be drawn from the quality of these two adventurers as Frenchmen, by parity of reasoning, we should have to deprive Spain of the results of Columbus' discoveries. The presence of a

(1) Map in Gottfriedt, 1655. Charlevoix 1, p. 476, Gervais 1, p. 139.

(2) Ogilby's America, published 1671. French and English discoveries in America, Doc. Hist. 9, p. 1. Supposed to be written by Champlain, Am. Ed. note.

(3) See Memoir de Caillieres to M. Seignelay, 25th February, 1685, P.M.S. III., p. 1, and memoir of 8th Nov. 1686. Is it y Danonville? See note signed Louis and lower down Colbert, Doc. Hist. 9, 303.

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Q. C., March,
1873.

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foreigner, even were he the leader of the expedition, would not alter its national character. However, no mystery attends the history of Jean Bourdon's voyage in 1656 (*note H*). The evidence is complete that neither ever reached Hudson's Bay. Albanel's (*note J*) journey again, is too late to affect the question, and trading with the Indians (*note K*) from other countries in Canada cannot give a title to their country.

13. The answer to the French to the early discoveries of Hudson, Button (*note L*) Fox, and James, is unfounded. In the work attributed to Champlain, already quoted, (1) the map published by "the English Captain" of his discoveries in 1612 is referred to in 1632. Purchas also saw this map, and Jeremie (2) speaks of the taking possession of Bourbon river by Nelson, and says that he planted a post on which he exposed the arms of England, and a great board on which a ship was drawn. He also left some trifling articles of which the Indians profited in the spring. Jeremie says, also, that the English returned the following year; but it is more probable that they wintered at the Bay, for there it is said Nelson died, and Button gave his name to the river they discovered. Again, Fox, when he went there in 1631, saw "quelques petits monumens du sejour que Thomas Button (y) avait autrefois," (3) In 1635 Luke Fox published "The North-West," with a map; and in 1633 James had already published his adventures with a map. James' work was republished in 1740.

14. We have therefore two English voyages of discovery (those of Hudson and Button) well authenticated, more than forty years before the voyage of Bourdon, of which there is no authentic mention till 1686, and then the account is evidently incorrect and written with a purpose. Fox and James' voyages to Hudson's Bay were both in 1661, the year of the pretended journey of Dablon, and two years previous to the totally authenticated journeys of Couture and Duquet. Again, the English Company was established and had built forts in 1670, whereas the Canadian Company did not begin its operations till 1682, and was not chartered till 1685. Whether then we consider priority of discovery, or discovery backed by actual acts of possession, the English claim to the country round Hudson's seems to be superior to that of the French (*note M*).

15. But it is still more worthy of note that the activity displayed by the French in the direction of Hudson's Bay dates from the time they heard that ships had been seen in the neighbourhood of the Bay (*note N*.) They learned this from some Algonquins (4), and they immediately became alarmed. The next year, 1671, Father Albanel was despatched with St. Cimon to take possession of the country anew. (5) It was only, however, in 1685 that the Canadian Company de la Baie du Nord was formed, (6) and the following year the Governor of Canada sent de Troyes and d'Iberville to attack the English posts in Hudson's Bay. (7) These attempts to recover lost time were such flagrant violations of international law, that the Governor was obliged to disavow the object he really had in view, and to pretext the desire to capture Radisson. (8) The excuse was a bad one, even if it had been true, and it would have been more to the purpose if he had said that the Treaty of Neutrality was not signed till the 16th November, 1686, and that his commission to de Troyes was dated the 12th February, 1686.

16. The effect of the Treaty of Neutrality (*note O*) was not, however, much felt in these out-of-the-way places, and the war between the English and French companies progressed while the Commissaries hunted up titles and exchanged statements of pretensions. Reciprocal complaints having been made, the French and English Commissaries met in London, but not being able to agree as to the facts, they adjourned until the first of January, 1689. (9) In the meantime the revolution took place, and William, profiting by the invasion of the Caribee Islands of the State of New York, and of the

(1) P. 8, note (3).

(2) Recueil de Voyages du Nord, p. 320.

(3) Discours preli, au Voyages du Nord, Vol. 1, p. xxxv.

(4) Talon to Colbert 10 Nov. 1670, Doc. Hist. 9, p. 67.

(5) Talon to the King 2nd Nov., 1671, *Ib.*, p. 71.(6) Denonville on the state of Canada, 12th Nov., 1685, *Ib.*, p. 280.

(7) Instructions by de Denonville, 12th Feb., 1686, Paris, Doc. V. p. 176, 2 Serie.

(8) Denonville to Minster, 10th Nov., 1686, *Ib.*, p. 259.

(9) Instructions to de Frontenac, 7th June, 1689, Doc. Hist. 9, p. 422.

Territories of Hudson's Bay, declared war on the 8th May, 1689. On the 7th June, the King of France, presuming that owing to "the present troublesome conjuncture" in England, the English would not have adopted "great precautions in those parts" (Hudson's Bay) desired de Frontenac to afford the Canadian Company the protection it might need "as well for the expulsion of the English from the posts they occupy at Hudson's Bay as for the continuation of trade." (1) On the 25th June the French declared war. (2)

17. Hostilities which had been carried on at Hudson's Bay in spite of the Treaty of Neutrality, sanctioned by the Declaration of War, continued with all the force the rival Companies could command. The dashing courage of d'Iberville turned the scale in favour of the French, and the English Companies loudly complained of their losses (*note P*). In Europe William's appeal to arms had not produced all the results he desired, and the Treaty of Ryswick (3), by which his title to the English throne was acknowledged, was concluded with a total disregard of the rights and interests of "The Merchants Adventurers of England trading into Hudson's Bay." Most dolefully did they complain that in the general rejoicings at peace, they alone were left to grieve (4). Nevertheless it would seem that their sufferings were not altogether insupportable, for the Commissaries named never reported (*note Q*), and things went on at Hudson's Bay pretty much as they had done before, until the Treaty of Utrecht (5) transferred to the English the "Bay and Straits of Hudson, together with all lands, seas, sea-coasts, rivers and places situate in the said Bay and Straits, and which belong thereunto, no tracts of land or of sea being excepted which are at present possessed by the subjects of France." But it is agreed on both sides to determine within a year by Commissaries, to be forthwith named by each party, the limits which are to be fixed between the said Bay of Hudson and the places appertaining to the French. And "the above-mentioned most Christian King" undertook that satisfaction should be given according to the rule of justice and equity, to the English Company trading to the Bay of Hudson, for all damage and spoil done to their colonies, ships, persons, and goods, by the hostile incursions and depredations of the French in time of peace, an estimate being made thereof by Commissaries to be named at the requisition of each party (6).

18. The stipulation to surrender the posts near Hudson's Bay, in the possession of the French at the time of the Treaty was at once carried out, the forts being delivered up under orders from the King of France in 1714 (7).

19. Commissaries were appointed to define the limits, but they never arrived at any decision (*note R*); but both countries seem to have acquiesced in the idea that the watershed, or the height of land dividing the waters which flow north from those which flow south, was the real boundary between Canada and the Hudson's Bay territory.

20. This conclusion, with only slight variation, is supported by numerous maps, both French and English, by Douglas, who gives the whole line from the Atlantic Coast; by Bellin (8), who gives the limits of Canada, and by Mr. Bouchette, Surveyor-General of Canada. In the map published by the Government of Quebec in 1870, the same line of highlands is unhesitatingly adopted. As it has been already shown, the principle that the watershed was the natural limit of an unexplored country was generally acquiesced in. The rivers were the only highways, and the utmost limit of a possession could hardly be interpreted to extend further than those claiming it could go.

21. Nor is there anything to contradict this view to be found in the voluminous correspondence

(1) Garneau 2, p. 51.

(2) Garneau 2, p. 137, says the English lost all their forts by the capture of Fort Nelson, 1697; but this is an error. See *note G*.

(3) 10-20 Sept., 1697.

(4) Memorial of Company, exposing state of their affairs, 19th January, 170½, Pownall papers: M.S. in Parl. Lib. In the Quebec Act, the Company is thus styled: "The Merchants Adventurers of England, trading into Hudson's Bay."

(5) Article 10.

(6) Article 11.

(7) Jeremie (Noel Jeremie Lamontagne, see l'Abbe Ferland, 2de partie, p. 279 *note*) Recueil de Voyages du Nord, vol. 5, Amsterdam, 1732.

(8) Already quoted, p. 8.

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between the authorities in Canada and the Government of France, from the time of the Treaty of Utrecht (*note S*) till the Treaty of Paris, by which England acquired Canada, put an end to the possibility of a question arising between the two countries as to the boundaries of the Hudson's Bay Territories.

22. But whether the conclusion at which we have arrived be legally correct or not, in so far as regards the right of the Hudson's Bay Company to the territory claimed by them, it is clear it was so understood by the Government in England; and, being so understood, a description in a document by competent authority, giving the Hudson's Bay territory as the northern limit of Canada, would limit Canada to the line understood to be the southern boundary of the Hudson's Bay territory. In other words, if the Hudson's Bay claim had been proved to be wholly unfounded, this would not of itself have
10 extended the limits of Canada.

23. By laying down the height of land or watershed as the general rule by which the territory of Canada was to be distinguished from that of Hudson's Bay, results more important than any contemplated at that time were attained. The actual flow of the river was not then known, and it could not readily be imagined that the height of land which forms the watershed of the system of the St. Lawrence and the great lakes, should hem in as closely as it does the waters of Lake Superior. This fact, now perfectly established, reduces to very moderate proportions any claim the province of Ontario could put forward, based on the idea that the western limits of la Nouvelle France, were also those of the late Province of Canada. The Treaty of 1783, which fixes the line of division between the British possessions and the United States, cuts this height of land, and with it defines the whole boundaries of
20 the province—north, west and south—even if the extreme pretension to which allusion has just been made were adopted. A 1.

24. But looking at the question from a strictly legal point of view, this pretension cannot be maintained. The terms of the Treaty of Paris, conveying certain territory to the Crown of England, could not possibly convey to the people of Canada, much less to any portion of them, any absolute territorial right to any particular extent of territory further than what they actually occupied, or what was afterwards conferred by competent authority (*note T*). They might seek to have certain limits granted them as a matter of sentiment or convenience (1), but no one has ever pretended that the English Government was obliged to maintain under one government the whole territory ceded to the Crown of England as Canada; and, in effect, no such unity has ever been attempted. The whole
30 territory ceded by Vaudreuil as Canada, and claimed by England as such, has never for a moment been all included in any Government of Canada (*note U*).

25. It is unquestionable law that after the cession of Canada, and until a regular Government was conferred by Statute, the Province remained a Crown Colony, and was subject to be governed under the special ordinances and instructions of the King. Hence it is we must turn to the Proclamation of 1763, to ascertain what was thenceforward to be considered as the Province of Quebec or Canada.

26. That Proclamation sets forth that the King, with the advice of his Privy Council, had granted letters patent, creating four distinct and separate governments within the countries and islands ceded and confirmed to the Crown in England by the Treaty of Paris (1763).

27. The first of these governments, that of Quebec, was declared to be bounded on the Labrador
40 coast by the River St. John, and from thence by a line drawn from the head of that river through the Lake St. John to the south end of the Lake Nipissing, from whence the said line, crossing the River St. Lawrence and the Lake Champlain in 45 degrees of north latitude, passes along the highlands which divide the rivers which empty themselves into the said River St. Lawrence from those which fall into the sea, and also along the north coasts of the Baie des Charleux, and the coast of the Gulf of St. Lawrence to Cape Rosier, and from thence, crossing the mouth of the River St. Lawrence by the west end of the Island of Anticosti, terminates at the aforesaid River St. John, (*note V*.) A 2.

(1) They did by their petition of 1773. Doutré et Lareau Dr. Civil Canad. I, p. 674.

28. Several maps, published subsequent to the Treaty, give the limits thus described to Canada. (*note W.*) (1)

29. The boundary to the south-west remained unchanged till 1774 (2). It included all the settlements of any importance at that time (*note X*). Burke (3) says "this boundary, fixed for the Government, was so because it was the boundary of the possession, and that the people of Canada acquiesced in it." (4) But on this point, perhaps, Burke was not a totally impartial witness, and he probably expressed the extreme pretensions of the Government he represented. At any rate the people of Canada did not approve of the limitation, and by their petition in 1773, they prayed that as under the French Government, their boundaries might be extended to the Mississippi. (5) (*note Y.*)

30. It seems, however, of very little importance in a legal point of view, whether the old Government of Canada as a French Province, really extended to the Mississippi, or whether the people of Canada acquiesced in the limits given by the King in his letters patent constituting the Government of Quebec or not; nor indeed does it signify, for the discussion at present, how far constitutionally the King had a right to carve Provinces and Governments out of the possessions of the Crown, for we are now arrived at the time when the limits of Canada were determined by Act of Parliament.

31. The 14 Geo. III. C. 83, (1774) called the Quebec Act, after setting up the eastern boundaries, continues, 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 of the said Province, until the said western boundary strike the Ohio; but in case the said bank of the lake shall not be found to be 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 (Pennsylvania) until it strike the Ohio; and along the bank of the said river westward to the banks of the Mississippi, and northward to the southern boundary of the territory granted to "The Merchants Adventurers of England trading to Hudson's Bay." Section 2 of this Act contains the only limitation to this description; Provided always, that nothing herein contained relative to the boundary of the Province of Quebec, shall in anywise affect the boundaries of any other Colony."

32. The boundaries laid down by the Act were deliberately adopted after much discussion (6). All the parties were either represented directly in the house or were heard by petition; and very notably the petition of the Canadians of the previous year had received due attention. The only difficulty which remained was foreseen. The unsurveyed boundary of the Province of Pennsylvania might, or it might not strike the bank of Lake Erie, and both cases were provided for; but about the line of the Ohio there could be no doubt. From the point at which it cut the western line of the Province of Pennsylvania, it constituted the boundary of Canada, until its confluence with the Mississippi. From that point the line was clearly defined; it was a due north line, for that is the only interpretation which can be given to the words "northward to the southern boundary of the territory granted to 'Merchants Adventurers of England trading to Hudson's Bay.'" (*note Z.*)

This opinion, which indeed recommends itself naturally, is supported by the decision of Chief Justice Sewell, in the trial of De Reinhard at Quebec in 1818 (7), which judicially interprets the Act of 1774 in this sense. Nor can there be any doubt that the effect of these words in the Statute, was matter of law for the court to decide (8).

(1) Jeffrey's Map, 10th June, 1775. Also map in translation of Charlevoix. Dunn's Map. 1776, and see notes R and V.

(2) Burke, in Cavendish Debates, p. 189.

(3) *Ibid.*

(4) *Ibid.*

(5) Doutré & Lareau Droit Civil, Canad. I, p. 674.

(6) Cavendish Debates.

(7) Report of Trial, p. 646.

(8) Attorney General of Upper Canada remarks, acquiesced in by the Court on the Trial of Grant for the murder of Governor Temple, p. 267.

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33. Curious to say, in the new Commission to Sir Guy Carleton, rendered necessary by the Act of 1774, a somewhat different boundary is described. After following the description of the Statute till the confluence of the Ohio and Mississippi, the Commission goes on: "and northward *along the eastern bank of the said river* to the southern boundary of the territory granted to 'The Merchants Adventurers of England trading to Hudson's Bay.'" The words *in italics* are an evident and every material addition to the Statute; and they either fell in with or created the general impression that Canada, before the treaty with the United States (1783), extended to the Mississippi. This description also appears in a Commission of two years later date to Sir Frederick Haldimand, and very probably in other Commissions between 1774 and 1783; but no words in letters patent could alter the express dispositions of an Act of Parliament. The only manner in which the effect of the Act of 1774 could be destroyed would be by another Act of Parliament. Was there any such?

34. The Act of 1791 does not deal with the question of the western boundaries of the Province of Quebec. The subject of the precise boundaries of Upper Canada was then of some difficulty, for the Treaty of 1783 had not made clear the line which was to divide the British possessions from the United States. In this dilemma it was thought advisable to describe "the Upper district by some general words." (1) But whether, owing to the difficulties occasioned by the Treaty of 1783 or not, all description was omitted in the Act, and the King, by his Message of the 25th February, 1791, announced his intention of dividing "the Province of Quebec into two Provinces to be called the Province of Upper Canada and the Province of Lower Canada," whenever His Majesty shall be enabled by Act of Parliament to establish the necessary regulations for the Government of said Provinces. The Act being passed, the King, by proclamation, declared what should be the division line, but he abstained most carefully from entering into any other description of the two Provinces, and as Lord Grenville had suggested, used "some general words." Having established the boundary line of Hudson's Bay as the northern limit, the Upper Province is said to include "all the territory to the westward and southward of the said line to the utmost extent of the country commonly called or known by the name of Canada."

35. It is maintained that what is called or known by the name of "Canada" must be taken to mean what was then known by law (*i.e.*, by the Act of 1774) as Canada, less the reductions under the Treaty of 1783, which are provided for by Section 2 (2) of the Act of 1774. But even if the words had another and more extended sense, it is further maintained that in so far they would be inoperative. The King's authority to make any proclamation at all to divide the Province depended on the implied consent of Parliament by the Act of 1791. He could only divide the Province of Quebec—he could not extend it by proclamation. (*Note AA.*)

36. This view is supported by Chief Justice Sewell in the case of *De Reinhard*, already cited. He said: "The intention of the Proclamation and Act of 1791 was to divide the Province, not to add to it." (*Note BB.*)

37. The Act (3) reuniting the Provinces of Upper and Lower Canada simply declared "that it shall be lawful for Her Majesty, with the advice of Her Privy Council, to declare or to authorize the Governor General of the said two Provinces of Upper and Lower Canada to declare, by Proclamation, that the said Provinces, upon, from and after a certain day, in such Proclamation, to be appointed, which day shall be within fifteen calendar months next after the passing of this Act, shall form and be one Province, under the name of "the Province of Canada."

38. The British North America Act, 1867, is equally unambitious. The Province of Canada was divided by it, and the part which formerly constituted the Province of Upper Canada was declared to constitute the Province of Ontario.

39. Canada, then, as it stood after the Act of 1774, was divided into two Provinces, the two were

(1) Letter from Lord Grenville to Lord Dorchester, 20th October, 1789. Christy's History of Canada, Vol. 6, p. 16

(2) *Supra*, p. 14.

(3) 3 and 4 Vic., c. 35 (imp. Act.), 1810.

again re-united; but the limits of the whole were not changed in so far as regards the north-western boundaries, until the Act constituting the New Dominion became law.

40. The limits of Ontario are, therefore, to the east, the Province of Quebec; to the north, the southern boundary of the Hudson's Bay territory (shown to be the height of land dividing the waters which fall into the Hudson's Bay from those which fall into the St. Lawrence and the great Lakes); to the south, the northern boundary of the United States and longitude 89° 27' 16" west of Greenwich to the west.

T. K. R.

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MEMO.

In the report submitted the strictly legal view has alone been considered, because it alone seemed to be within the scope of my instructions; but from the course of my investigations I could not fail to see that beyond this there is another consideration not less important, and that is the equitable side of the question. In creating the Province of Ontario it is not possible to conceive that the Imperial Legislature intended to convey to that Province and to the Province of Quebec less territory than the late Province of Canada actually enjoyed. Now it is incontestable that up to 1867 the Government of Canada, *de facto*, extended to the height of land which forms the watershed of the water system of the St. Lawrence and the great Lakes. This is made apparent by the registers of the Executive Council, by which we find that a Commissioner was appointed to obtain the surrender of the claims of the Indians to the lands in the vicinity of Lakes Superior and Huron, or of such of them as may be required for mining purposes. The Commissioner executed a treaty by which he obtained a portion of the very territory that would be cut off from the Province of Ontario if the dispositions of the Act of 1774 were literally observed. "From Batchewanning Bay to Pigeon River, at the western extremity of the said Lake (Superior), and inland to that extent to the height of land which separates the territory covered by the Charter of the Honorable the Hudson's Bay Company from the said tract and also the islands in the said lake within the boundaries of the British possessions therein." 20

There are doubtless other acts of authority beyond the meridian indicated in the foregoing report. In the De Reinhard trial, Mr. Coltman, a magistrate for the District of Quebec, and a Commissioner in the Indian territory, in his evidence said: "Il est notoire que les writs des Magistrats du District ouest du Haut Canada sont émanés pour être exécutés à Fort William." It would, therefore, seem that in fairness to the Province of Ontario the old line of the height of land should be adopted as the western as well as the northern boundary of the Province of Ontario.

T. K. R.

Montreal, March, 1873.

NOTES.

Note A.—"They (France and England) prepared to cut the *gordian* knot of this long and intricate negotiation with the sword." ("The history of the present war," by Burke, in the first number of the Annual Register. Republished separately in 1774.) 40

Note B.—It is quite unnecessary now to discuss the validity of the Charter. It should, however, be remarked that the words "limiting the grant to such territories as are not already actually possessed by the subjects of any other Christian Prince or State," ceased to have any legal value after the Treaty of Utrecht. As between the King of England and the Hudson's Bay Company there could be no contest as to the rights of the French. I do not know whether the value of the particular words "actually possessed" has ever been commented. They exclude the idea of a claim of title by simple discovery or by any naked formality, and there can be no question that in 1670 the French had no *actual possession* of any part of the lands round Hudson's Bay.

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Note C.—The report of the Commissioners of Crown Lands in 1857 is incorrect in saying that the commission to Roberval "included Hudson's Bay, though not then, of course, known by that name." The writer would have extended geographical knowledge had he told us by what *name* it was, and by whom known in 1540. It is possible the official writer mistook "The Great Bay," which is mentioned by Jeffrey (from whom he quotes), as the name by which Hudson's Bay was known in 1540? Then, and long after, "La grande baie" was the name given to the Gulf of St. Lawrence, from "le cap de St. Louis à l'entrée de la baie des Chaleurs." (Denis' Description de l'Amérique Septentrionale, 1672, Tom. I., p. 164, chap. 7.)

In the same report it is said that in "1627 the Quebec Fur Company was formed under the auspices of Cardinal Richelieu, and an exclusive charter granted to them for the whole of New France or Canada, described as extending to the Arctic Circle." This is incorrect. At the time it is not unlikely that the French Government knew little or nothing of the two early English voyages of discovery to Hudson's Bay, and they could not have known anything of these parts from their own voyages, for no French expedition had ever then been there. But the *arrêt* of 1627 does not mention Hudson's Bay. It gives the Company the whole country from Florida, "en rangeant les Côtés de l'Amérique jusqu' au Cercle Arctique." (Ed. and Ords., Tom. I, p. 7. Quebec, 1854.)

Note D.—In the oft-repeated description by L'Escarbot it is said that La Nouvelle France is bounded to the north by "cette terre qui est dite inconnue vers la mer glacée jusqu' au pôle arctique." Thus he does not pretend that La Nouvelle France stretches to the Frozen Ocean (L'Escarbot, vol. I, p. 31, ed. 1611), as Mr. Chouart's Report seems to imply, but only to the unknown lands, which, in their turn, extend to the Frozen Ocean. Having quoted the passage of L'Escarbot referred to, Garneau adds: "Mais ces limites étaient plus imaginaires que réelles, puisque l'on ne connaissait pas alors même la vallée entière du St. Laurent."

Note E.—"Il est certain que ce fut Henry Hudson, anglais qui en 1611 donna son nom et à la Baie et au détroit par où il entra." (Charlevoix I, p. 476.)

Note F.—Mr. Justice Monk, in the case of Connolly *vs.* Woolrich, p. 14, says: "From the voyage of Sir Thomas Button in 1611 till the year 1667, it (Hudson's Bay) appears to have been wholly neglected by the English Government and Nation." There is, however, no doubt about the voyages of Fox and James.

Note G.—Medard Coumard des Grozeliens ("the name is spelled in a variety of ways;" L'Abbé Tanguay writes, "Medard Chouart des Grozeliens,") Pierre Esprit Hayet-Radisson, and Pierre LeMoyne d'Iberville. These three names are intimately connected with the history of the early settlement of Hudson's Bay. Des Grozeliens came from Touraine when very young and became a voyageur of some repute. (Ferland, 2de Pie, p. 80. Jermie Rel. de la Baie d'Hudson, p. 14. Mere de l'Incarnation Lettre d' Août, 1670.) He reported that, being to the north of Lake Superior, he met some Indians who led him to James' Bay. Subsequently, he endeavoured to induce the principal merchants in Quebec to fit out an expedition to visit the North Sea; but failing in this, (1) he went to Boston, and from thence to Paris, (2) and finally to London, in search of persons sufficiently adventurous to carry out his scheme. In London his representations were favourably listened to, and a New England captain, Zacariah Gillam, was sent off with des Grozeliens in 1668 or 1664. (3) They built a fort, which they called Charles or Rupert,

(1) Jermie says that he did induce the Merchants in Quebec to fit out a bark with which he went to the Bay and discovered Nelson River: but the whole of his narrative up to the expedition of 1694, in which he was engaged, is totally worthless. He is, however, followed by Murray, who adopts the account of a sea voyage by des Grozeliens from Canada, and gives other details; for all of which he disdains to quote any authority. 2 p. 132.

(2) De la Potherie omits the going to Paris.

(3) Oldmixon says 1667; so does M. de Callières in a letter to M. de Seignelay, 25th February, 1685, Doc. Hist. 9, p. 797; Ferland says 1668, 2de pie, p. 80; Murray also says 1668, 2, p. 132. In the French Memoir of the 8th November, 1686, the year

at the mouth of the Nemisco River. On their return, the Hudson's Bay Company was formed and obtained a charter, dated 2nd May, 1670. (1) Nowhere is any date given to des Grozelier's alleged first journey overland to James' Bay; indeed it was only formally put forward in 1686 (French Memoir, 8th November, 1686, Doc. Hist. 9) to sustain the French claim to be the first discoverers of the Bay. But, curious to say, in the French Memoir, the year of the Gillam expedition is stated to be 1662. It is, however, perfectly certain that he did not go to the North in 1662, and that the Gillam expedition did not start before 1667—perhaps only in 1668. It seems more than probable that the story of the overland journey to James' Bay was an invention of des Grozeliers in order to draw the Quebec merchants into his scheme. Probably he had heard of Hudson's Bay from the Indians he met in the North-West; for difficult and tedious as was the overland journey, it was not impossible; and occasionally there was some intercourse between those living in Canada and Indians from the neighbourhood of the Bay. Thus, in 1657, eight Canadians went up to the Bastien with twenty canoes of Algonquins. The voyage was rough, long, and dangerous, though prosperous, and they met with the Kiristinons "*qui sont proche de la mer du Nord.*" (Journal des Jesuites, p. 217.) Again, in 1661, it is said 80 Kiristinons came as far as Montreal to look for a Missionary. (Ibid.) But it seems very odd if he had really made any such journey that the records of the Jesuits should be silent on the subject. From their journal we learn that, in 1659, des Grozeliers did go up to Lake Superior, and passed the winter with the Nation de Beauf, returning the following year to Canada with 300 Ottawas and a great quantity of fur. He was at Three Rivers on the 24th August, 1660. Again we hear of him on 5th May, 1662, and he then said he was going to La Mer du Nord. He passed the night at Quebec, and he wrote to the Governor from Cap Tourmente (2). We know nothing positive of his subsequent movements for some time; but it is not unlikely that after leaving Quebec, he passed the years from 1662 to 1667 advocating his project of a voyage to Hudson's Bay. This conjecture would also account for the error of the French Memoir in placing the date of the Gillam expedition in 1662. It would appear that des Grozeliers was accompanied by Radisson, to whose sister he was married, and that Radisson was married to an English woman. (De Frontenac's letter, 2nd Nov., 1681.) This marriage of Radisson is involved in great confusion. De la Potherie tells us that Lord Preston, who was Ambassador at Paris, promised to make a servant of his named Godet perpetual Secretary of the Embassy, if he could prevail on Radisson to go to England, and that Godet, as an inducement to Radisson, promised him his daughter in marriage (1,145). Charlevoix says that the negotiation took place through a servant of Lord Preston, called "Gods," (1, p. 481), and that Radisson was then married to a daughter of Chevalier Kirke; that he went to London, where he was cordially received by his father-in-law, and that he was granted a pension of 12,000 livres a year. Shea, in a note to his translation of Charlevoix (3,233), says that it was Sir David Kirke's daughter he married. Another account (Murray, 2,131) is that des Grozeliers was induced to go to England by Mr. Montague, the English Ambassador, who gave him a letter to Prince Rupert. Murray gives no authority for his version; but it is possible there may be some truth in all these stories, though certainly not all true. The following dates are correct, and contradict much of them. Des Grozeliers' first expedition to England must have been prior to the summer of 1668. Ralph Montague was Ambassador at Paris from September, 1668, to 1678. Radisson was married to an Englishwoman before November, 1681. (De Frontenac's letter, 40 2nd November, 1681.) Radisson's second visit to England was in 1681, and then Sir David

is given twice as 1662, Doc. Hist. 9; Charlevoix gives the year as 1663, vol. 1, p. 476; and in this he is followed by Garneau, 2, p. 126; but in the *Fastes Chronologiques* Charlevoix says 1668; again Dobbes says 1667, but later he says Gillam was there from 1668 to 1673; in the description of the right and title of the Crown of Great Britain to Hudson's Bay, June 2, 1769, Eng. MSS. vol. 1, p. 64, it is said that Saenary Gillam went there in 1667, in the "*Nousuch*," to explore and make a settlement in Hudson's Bay, and built Charles Fort at Rupert River.

(1) Ferland says 1669. He is not the originator of this error. I have seen it elsewhere. It arises from a miscalculation of the year of the King's reign. The charter is dated the 2nd day of May, in the two and twentieth year of the King's reign. Charles the 1st was beheaded the 30th January, 1648; the 22nd year, therefore, began on the 31st January, 1670.

(2) Under date May, 1662, in the *Journal des Jesuites*, there is this entry: "*Je partis de Quebec le 3 pour les Trois Rivières, je recontra de Groselliers qui s'en alloit à la Mer du Nord. Il passa la nuit devant Quebec avec 16 hommes et étant arrivé au Cap Tourmente, il l'escrivit à Mons. le Gouverneur,*" p. 308.

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Kirke had been dead nearly thirty years. He died in 1655 or 1656 (Shea's translation of Charlevoix 3,232-6—6, 124.) In 1670, Radisson accompanied the new Governor back to Hudson's Bay. We hear of him, and also of des Grozeliens, at Fort Nelson, in 1673, and at Fort Rupert in 1674. They obtained their pardon in 1676 from the King of France, and returned to Canada. I do not know when they returned to Canada, nor can the date be given by M. de Callieres in his letter to M. de Seignely, 25th February, 1685, he relied on, for he goes on to speak of the Canadian Company having been formed in 1676. This is evidently an error, if not an intentional mis-statement, for in a memoir of the Compagnie du Nord établie en Canada, 1698, P. M. S. VIII. 265, it is said: "*Elle la Compagnie commença cette entreprise en 1682.*" Before we have anything more to do with Radisson in Hudson's Bay, he served
10 under Marshal d'Estrées in the West Indies, and obtained permission from him to go in a vessel belonging to S. de la Chesnay ("Aubert de la Chenaye" is one of the signatures to the Memoire de la Compagnie du Nord, 15 November, 1690, Paris, M. S. V., p. 156), to make settlements along the coast leading to Hudson's Bay. This was prior to November, 1681. (M. de Frontenac, 2nd Nov., 1681, Doc. Hist. 9.) In 1682 a company was formed at Quebec to trade to Hudson's Bay. This was the commencement of this enterprise. (Memoire de le Cie. du Nord, établie en Canada, 1698, P. M. S. VIII., p. 265.) There was a complaint by the English Ambassador that in 1682, Radisson and other Frenchmen had gone with two barks, called the "St. Pierre" and the "Ste. Anne," to Fort Nelson, and seized the fort and the property found there. (The King to M. de la Barre, 10th April, 1684.) They also took Benjamin Gillam, son of their old captain, prisoner. They also captured a Boston
20 ship, and took it to Quebec. (De la Potherie I, 143.) M. de la Barre caused the ship to be restored to the owners, for which he was severely reprimanded by the Minister (10th April, 1684).

Des Grozeliens and Radisson, from some cause or other, became dissatisfied with their partners in the Hudson's Bay trade. It is not unlikely they were not over-pleased with the restitution of their capture. At all events, Radisson went to France in 1684. From France he went to London, induced by Lord Preston, as some say, and there he succeeded so well that the same year he sailed from Hudson's Bay with five ships. He captured Fort Nelson by surprise, 16th August, 1684,—(Instructions from M. de Denonville, 12th February, 1686), took prisoner his own nephew, together with all the Frenchmen he found there, and carried them to London. He also carried off an immense quantity of furs, and did the Canadian Company £400,000 worth of damage. De la Potherie says 300,000 livres, which is more
30 credible. After this, we hear very little of MM. Des Grozeliens and Radisson. It would appear, however, that Radisson wintered in the Bay in 1685-'6, for the exense for de Troyes' expedition was the capture of Radisson. (Instructions of M. de Denonville to de Troyes, 12th February, 1686; letter of de Denonville, 10th November, 1686.) In 1685, the Canadian Company obtained a charter (20th May). In 1686, de Troyes and d'Iberville went overland to Hudson's Bay. They first attacked Fort Mississippi or Moose Fort, which they took. They next surprised Fort Rupert. On the 16th July, they took Fort Chechouan or Albany. On the 10th August, 1686, de Troyes started on his return journey to Montreal. (De la Potherie, I, p. 147; Ferland, 2de partie, 164.) M. de la Potherie says that six months after, having sent the English prisoners home, d'Iberville went to Quebec; but it would appear, from a letter from M. de Denonville to M. de Seignelay, he
40 was still supposed to be in command of the forts at Hudson's Bay on the 25th August, 1687. On the 31st October, 1688, M. de Denonville announces the return of d'Iberville, but says he was to return to the Bay. In 1688, it would seem, the English built Fort Churchill, towards the end of the year. (Memoire de la Cie. du Nord, 15 November, 1690.) In 1688 d'Iberville took two English ships. (See the account given of it in the letter of Sr. Patu de Quebec, 14th November, 1689, and in d'Iberville's letter of the 17th, in which he promised to go back next year and take Fort Nelson, if he could obtain the assistance he required.) Fort Churchill was captured by the French in 1689 (Memoire de la Cie du Nord, 15 November, 1690.) In 1690 d'Iberville returned, intending to take Fort Nelson, but being repulsed he landed and forced the English to abandon Fort Nieu Savanne. He had gone there with three ships called "La Sainte Anne," "Les Armes de la Compagnie," and "Le Saint François." In
50 1693, the English re-took the Forts Cechouan or Albany, Mississippi or Moose Fort, and

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Rupert. (De la Potherie I, 165.) No one but de la Potherie mentions the retaking of
Moose Fort and Fort Rupert, and in 1700 the Hudson's Bay Company complain of the French
encroachments, saying that, owing to them, they have only one settlement remaining out of seven
they had. It would, therefore, seem that if the English re-took Moose and Rupert Forts, they lost them
before 1700. In 1694, d'Iberville, in command of two of the King's ships, which were lent to the
Company, sailed for Hudson's Bay to retake Fort Nelson. Jeremie, who was in the expedition, says the
two ships were the "Poli" and the "Charente." He is followed in this by l'Abbé Ferland (2 Pie,
p. 278.) P. Marest, who was also in the expedition as "aumonier," says de Serigny commanded the
"Salamandre," and his relation is called "voyage du Poli et Salamandre." (Lettres Ed. Nouv. Ed.
vol. VI., p. 4.) In the letter of MM. de Frontenac et de Champigny to the Minister, 5th Nov., 1694, 10
it is said that de Serigny commanded the "Salamandre." De Bacqueville de la Potherie, who was the
King's Commissioner in the expedition of 1697, say that the ships sent out in 1694, were the "Poli" and
"Salamandre" (vol. I, 1661.) He says they sailed from Quebec on the 8th August, de Frontenac et de
Champigny says the 9th August, and Jeremie says the 10th August, jour de St. Laurent (p. 17.) MM.
de la Potherie and Jeremie agree that they reached Fort Nelson the 24th September; L'Abbé
Ferland says the 20th September. The Fort capitulated on the 12th October. D'Iberville
remained at Fort Nelson fifteen months. He then returned to Canada, leaving La Forest as Governor.
In 1696 the English returned, recaptured Fort Nelson, and carried off the Governor and all the Beaver.
The capitulation by La Forest of Fort Nelson (alias York, alias Boubon), is that mentioned in the 8th
Article of the Treaty of Ryswick. The capitulation was dated 31st August, 1696, but it is spoken of as 20
the capitulation of the 1st September, and in the Treaty as of the 5th September. In 1697 a fleet of five
ships sailed from La Rochelle to retake Fort Nelson, namely, "Le Profond," "Le Palmier," "Le
Weesph," "Le Pelican," and "Le Violent." M. de la Potherie went as the King's Commissioner.
"Le Violent" was crushed in the ice. Action between the "Pelican," the "Hampshire," the "Dering,"
and the "Hudson's Bay," 3rd September. The "Hampshire" was sunk by the French ships; the
"Hudson's Bay" was captured, and the "Dering" escaped. "Le Pelican" was very much shattered
in the action with the English ships, and went ashore next day in a storm and was lost. The other
three French ships coming up, d'Iberville attacked Fort Nelson, which he took about the 12th September.
D'Iberville left his brother, de Serigny, in command of the Fort, and sailed on his return voyage on the
24th September. (De la Potherie, I, p. 183; Jeremie, who was also in this expedition, and who remained 30
with de Serigny at the Fort). At this point M. Garneau exclaims, "Ainsi le dernier poste que les Anglais
"avaient dans le baie d'Hudson tomba en notre pouvoir, et la France resta seule maitresse de cette région."
(2 p. 137). M. Garneau totally overlooked the three forts in James' Bay retaken by the English in
1693, and one of which, Fort Anne or Chechouan, he mistook for Fort Nelson. At any rate Fort Anne
or Chechouan remained in possession of the English from 1693, and they never lost it. It was unsuccess-
fully attacked by de Menthel in 1709. (Paris M.S. 11, p. 123; Letter of de Vandreuil to the Minister,
25th October, 1710, p. 139.)

To avoid confusion, it may be well to enumerate the forts, to give their different names. In
1700, the company said that they had had seven forts, and that by the encroachments of
the French there remained to them only one. (Powmull papers MMS.) Six of the seven only 40
appear to have given rise to any contest; the seventh I presume to be East Main. The six
others are—

1st. Fort Rupert, called by the French St. Jacques, founded in 1667 or 1668 by Gillam. Taken by
the French under de Troyes and d'Iberville July, 1686. Retaken by the English in 1693.

2nd. Fort Mississippi, Monsonis, St. Louis, or Moose Fort, taken by de Troyes and d'Iberville about
the 20th June, 1686. Retaken in 1693.

3rd. Fort Chechouan, Ste. Anne, or Albany, taken by de Troyes and d'Iberville in 1686. Retaken
in 1693.

4th. New Severn, or Nieu Savanne, taken by d'Iberville in 1690.

5th. Fort Bourdon, Nelson or York, founded in 1670. Taken by des Grozeliens and Radisson, 50

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acting for the French, in 1682; retaken by Radisson, acting for the English, in 1684; retaken by d'Iberville 12th October, 1694; retaken by the English 1696, and again by the French in 1697. It remained in the possession of the French until 1714, when it was given up under the Treaty of Utrecht.

6th. Fort Churchill, built 1688, and taken by the French in 1689.

Note H.—In the memoir of the French right to the Iroquois country and Hudson's Bay of the 8th November, 1686, it is said that in 1656 Jean Bourdon ran along the entire coast of Labrador with a vessel of 30 tons, entered and took possession of the North Bay, and that this is proved by an extract of the ancient register of the Council of New France of the 26th of August of the said year (1656.)
10 Unfortunately the register in question is not now in existence; but if it were, it could not prove what the writer of this memoir pretends. At most it was but an authorization (1) to Jean Bourdon to undertake the voyage to the coast of Labrador, and not a recital of what he actually did, for Bourdon's voyage was in 1657 and not in 1656. He sailed from Quebec on the 2nd May, 1657, and returned on the 11th August of the same year at ten at night. (*Journal des Jésuites* pp. 209-218.) But we are not left in any doubt as to the extent of Bourdon's voyage. On reference to the "*Relations des Jésuites*," vol. III., 1658-9, we find this entry: "Le 11 (August) parut la barque de Monsieur Bourdon, lequel estant descendu sur "le grand fleuve du côté du Nord, voyage à jusques au 55 degré, on il rencontra un grand banc de glace, "qui le fit remonter aiant perdu deux Hurons qu'il avait pris pour guides. Les Esquimaux sauvages du "Nord les massacrèrent et blesserent un François de trois coups de flèches et d'un coup de ceuteau."

20 *Note I.*—Dablon never reached Hudson's Bay; the extreme limit of his journey being only 106 leagues from Tadousac. We learn from the "*Journal des Jésuites*," that he started for "la Mission St. "Fr. aux Keristinons" the 11th May, 1661, p. 296. He left Tadousac on the 1st or 2nd June. On the 6th, the Iroquois attacked Tadousac, and drove away all the Canadians. They even came up to the Isle d'Orleans and the Côte Beauré, and killed several persons. At page 300 of the *Journal*, there is this entry: "1661, Juillet le 27, retournerent ceux qui étoient allés on prétendoient aller à la mer du Nord on aux Kiristinons P. Dablon, &c." In the "*Relation des Jésuites*," we have the relation of this voyage, which is called "*Journal du premier voyage fait vers la mer du Nord*." (12 août 1661.) The account dated from the highest point they reached, "Nekouba 100 lieues de Tadousac, 2 Juillet, 1661." See also *Journal of Count of Frontenac*, 1673, when the importance of making it appear that Dablon had been at
30 Hudson's Bay was fully understood. (*Doc. Hist.*, vol. 9.)

Note J.—The voyage of Albanel and St. Simon is not open to the same objections as that of Dablon. It would appear that they performed the whole journey from Canada to Hudson's Bay, and that they took formal possession in the King's name. (*Relation de 1672*.) The difficulty to this voyage as giving a title to the King of France, is that it came too late (1671-'2), and after the English were in possession of Hudson's Bay. Besides, it was only a formality, for the French took no steps towards making a settlement there till 1682. (*Ferland*, 2^{de} partie, p. 83.)

Note K.—The dealings with the Indians from Hudson's Bay cannot be relied on as a title. Besides, we have the repeated assurance that trade with Hudson's Bay could only be carried on by sea. (*Denonville on State of Canada*, 12th Nov., 1685, *Doc. Hist.* 9; *Letter from Denonville au Ministre*, 10th Nov.,
40 1686; *Paris*, *Doc. MS. V*; same to de Seignelay, 25th August, 1687, *Doc. Hist.* 9; *Memorial de la Cie du Nord*, 1698.) This conclusion had not been arrived at without an effort to keep up communication by land. M. de la Barre, on the 9th November, 1683, writes: "The people who have been at Hudson's Bay have returned after having encountered extreme dangers." * * * "It is expected that communication can be had with it overland, as will be seen by the maps he sends."

(1) Besides, see letter of M. de Callieres to M. de Seignelay, 25th February, 1685.

Note L.—Dobbes says that Hudson's and Button's Journals are not to be found. Murray says: "It is remarkable that no original of this voyage (Button's) has been published, and that it is not even mentioned by Purchas, who made it his business to collect accounts of all voyages made at this era." (Vol. 2, p. 56.) In Rose's Biographical and Geographical Dictionary, it is said there is an extract of Button's Journal in Purchas. Both the Biographical Dictionary and Mr. Murray are in error. There is no extract of the Journal in Purchas. On the contrary, Purchas says he had not seen the Journal, but he had seen the chart, which was also seen by Champlain, p. 926, ed. 1617. Murray, probably, had only looked at the first edition of Purchas, which was printed in 1613, so that it was hardly possible for it to contain any mention of Button's voyage, which only terminated that year. Although not in Purchas, a fragment of Button's Journal was communicated to Fox by Sir Thomas Roe. (Hakluyt 10 Society Papers. See also Appendix.) Even in the absence of any mention of Button's Journal in Purchas, there is no doubt of the voyage having taken place. It is not questioned by foreign writers. As an example, see *Anecdotes Americaines*, Paris, 1776, by Hornot.

It is hardly necessary to answer the doubt thrown out by the French Memoir and by Dobbes on Hudson's voyage. If we have not Hudson's Journal, which, under the circumstances, is not very remarkable, we have, at all events, the account of Prickett, who, in his own justification, wrote an account of the mutiny; and, in doing so, he mentions Hudson's discoveries. (Harris' complete collection of *Voyages and Travels*, 2, p. 244.)

Note M.—There is a great uncertainty as to what sort of discovery or occupation gives a title.

In the report of the Commissioner of Crown Lands in 1857, it is maintained, citing the Oregon 20 dispute as an authority, that a discovery "not made known to the world either by the discoverer himself or by his Government, has no value." This would destroy one of the Commissioner's own pretensions.

M. Denonville, in a memoir on the French limits in North America, in 1688, makes the right depend on discovery, and "planting the arms of the King or Prince." But the French officials urged claims, owing to voyages where no such formality was or could be complied with.

Note N.—In 1671, the French authorities in Canada could not venture to fix a date for the first taking possession of Hudson's Bay. In Tallou's Memoir to the King, 2nd November, 1671, he says: those countries were *anciennement* discovered by the French. (Doc. Hist. vol. 9.) It seems to be only in February, 1685, that the French detailed their pretensions. The 15th May, 1678, the French Minister, writing to M. du Chesneau, takes exception to what du Chesneau had written about giving passes to 30 private persons, and remarks: "It is of advantage to the King's service to go towards that Bay, in order to be able to contest the title thereto of the English, who pretend," etc. On the 15th August, 1683, the King, writing to M. de la Barre, recommends him "to prevent as much as possible the English establishing themselves in Hudson's Bay, possession whereof has been taken in my name *several years ago*." (Doc. Hist. 9.) In the *Relations des Jésuites*, the narrative of the voyage of P. Dablon is called "Journal du premier voyage fait vers la mer du Nord." This was in 1661. In the relation of 1667, they say they know nothing of the country, but the reports of the Indians. (1667, 23.) On the 18th March, 1688, M. Denonville is instructed to make the strictest search possible for titles. In a letter of August, 1670, la Mère de l'Incarnation, who knew des Grozeliers well, because he was from Touraine, from which Province she came, mentions the expedition of des Grozeliers in the English ship, and speaks 40 of him on that account, as being the discoverer of the Bay.

Note O.—Commissaries were named under the Treaty of Neutrality, on the part of England. They were the Earl of Sunderland, Lord President of the Council and Principal Secretary of State; the Earl of Middleton, Principal Secretary of State; and Lord Godolphin, one of the Lords Commissioners of the Treasury. On the part of France, the Pr. Barillon, Ambassador, and the Pr. Bonrepaux, Envoy Extraordinary. They had their first conference 18th May, 1687. (Doc. Hist. 3, p. 506.) In 1687,

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complaints were made of the injuries done by the French. (Collection of Treaties, 1648 to 1710.) It would seem the Commissaries arrived at no conclusion, and in 1687 the English Commissaries report that the Company have full right to the Bay and Straits of Hudson, and to the trade thereof. (1 vol. Trade and Plantations, MS. p. 89; Pownall papers in Lib. of Parl.)

Note P.—They lost all their forts save Nelson in 1686, and Garneau says they lost their last fort in 1697. (Garneau, vol. 1, p. 137.) But this is an error. (See note G.) On the 20th, 1701, the Governor and Company of Hudson's Bay petitioned the Lords Commissioners of Trade and Plantations on the subject of their losses in the Bay. In this petition they say they have lost all their settlements but one out of seven, namely, "Albany, vulgarly called Chochohan."

- 10 *Note Q.*—The Treaty of Ryswick was not altogether so disastrous to the Hudson's Bay Company as it is represented. In order fully to understand its operations, its terms must be brought into relation with the position of the contending parties there.

Article VII. stipulated that within six months, or sooner if it could be done, the King of France should restore to the King of England all countries, islands, forts, and colonies wheresoever situated, which the English possessed before the declaration of the war (1689), and that, on the other hand, the King of England should do likewise for the French possessions.

- By Article VIII. it was stipulated that Commissioners should be appointed to examine and determine the rights and pretensions which either of the said Kings had to the places situated in Hudson's Bay. But the places taken by the French during the peace preceding the present war, and retaken by the English during the war, should be left to the French. The capitulation of the 5th September, 1696, was to be carried out, the Governor then taken released, and the merchandize to be valued by commissioners who were also to decide what lands belonged to the French and what to the English.
- 20

From these two articles we deduce, first, the general principle that there should be a mutual restoration of conquests made during the war; second, that the affairs of Hudson's Bay gave rise to a question, to be settled by a joint commission, which might make it an exception to the general principle in so far as regards English conquests during the war; third, that until the Commissioners should decide as to the merits of this question, English conquests during the war should follow the general principle; fourth, that the capitulation of the 5th September, 1696 (during the war), should be carried out.

- Commissaries were appointed, but it does not appear that they settled anything. Their dilatoriness caused some comment. (Letter of Frontenac to Bellomont, 21st September, 1698; Lords of Trade to Bellomont, 5th January, 1698-9, the King to Frontenac, 25th March, 1699; letter from de Callières to Governor Nanfan, 6th August, 1699.) While the Commissaries negotiated, events in Europe were preparing the way for a new war. By his will, Charles II., who died 1st November, 1700, bequeathed the Crown of Spain to the grandson of Louis XIV. On the 24th November the King of France accepted the succession for his nephew. This led, early in 1701, to the negotiations for the Grande Alliance, which was signed 7th September, 1701. On the 16th September James II. died, and Louis XIV. recognized his son as King of Great Britain, in violation of the Treaty of Ryswick. This caused the Emperor to add another article, to the effect that he would not treat of peace with France until she had offered England reparation for this affront. France having refused to do this, war was declared by the States General, 8th May, by Great Britain 14th May, and by the Emperor 15th May, 1702. (Garden Hist. des Traites de paix, Tom. 2, ch. x.)
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Note R.—Both the Treaties signed at Utrecht—the Treaty of Commerce and the Treaty of Peace—required the appointment of commissaries to regulate certain questions that could not be determined summarily. The treaties were signed on the 13th April, 1713, and no great time was lost in appointing commissaries. Those representing the King of France were MM. Anison and Fenelon, Deputez au Conseil de Commerce, whom Lord Bolingbroke had, on a previous occasion, contemptuously styled "Mercantile Politicians," and M. d' Tberville, a diplomatist of some note, who must not

be confounded with the Canadian sailor of that name, who died in 1706 at Havana. (Pownall papers, v. 7.) Messrs. Anison and Fenelon arrived in London on the 17th February, 1713-4 (Lord Bolingbroke's letter of the 19th, Pownall papers, v., p. 19.) M. d'Iberville, who had preceded them, arrived before the 17th December, 1713, on which day he had an interview with Lord Bolingbroke, to whom he brought a special letter of introduction from M. de Torey, dated the 14th December. (Letter to the Queen 8th December, 1713; *Ibid.*, 17th December, Bolingbroke's correspondence, vol. IV., p. 387.) The English Commissaries were Charles Whitworth, James Murray, Esq., Sir Joseph Martin, Kt., and Frederick Herne, Esq. (Letter to Mr. Whitworth, December 23rd, 1713, correspondence IV., 408). There was no mention of M. d'Iberville in the commission of the King of France, dated Versailles, 10th February, 1714; but he desired to take part in the discussions under his private instructions. It appears 10 that this difficulty was overcome by the issue of a new Commission including M. d'Iberville, of the same date as the other. Another difficulty soon presented itself. The inhabitants of Montserrat had sent a petition to the Queen, and the Hudson's Bay Company sent a memoir, setting forth their claims. The petition and memoir were forwarded by Lord Bolingbroke to the Lords Commissioners of Trade and Plantations, who at the same time intimated that the commissaries "now here" have not "any powers to treat upon the said matters." (Pownall papers, v., p. 35.) It would seem that the difficulty as to powers had been already raised, and been admitted by the French commissaries who wrote to the King for "more ample powers." (London, 11-12th March, 1714; *Ibid.*, p. 22.) In May the Commissioners of Trade and Plantation wrote to Mr. Martin, Secretary to the English commissaries, to know whether the French commissaries were empowered to treat upon the subject matter of the memorial and petition pursuant to 20 the 10th, 11th, and 15th Articles of the Treaty of Peace with France. (Minutes of the 11th May, 1714. *Ib.*) Mr. Martin answered on the 12th, saying, that the French commissaries were not empowered to treat about Hudson's Bay and the Island of Montserrat; but that the Envoy of France, M. d'Iberville, had told Mr. Whitworth that a general mention thereof was made in his instructions, and he should receive more particular orders from his Court, whenever demanded. (Minutes of the 13th. *Ibid.*) The Commissioners of Trade and Plantations immediately resolved that the commissaries of France should be notified that the commissaries should be named to treat of these matters pursuant to the 10th, 11th, and 15th Articles of the Treaty of Peace.

It is somewhat odd that there should have been any question on this point, for neither in the Queen's 30 instructions to the English commissaries, nor in the commission of the French commissaries, was there any reference to the Treaty of Peace. It does not appear that more ample powers were ever accorded to those commissaries, and on the 9th June, 1714, the English commissaries report the deliberations "at a stand." Thus the first effort to establish the limits of Hudson's Bay failed.

The death of the Queen, and the change of policy which followed on the succession of the House of Hanover, put an end to any immediate prospect of settling these delicate questions as to boundaries. The Treaty of Utrecht was no longer popular, and nothing seems to have been done in the matter for some years. The next mention of the subject, I have found, is contained in a despatch to MM. de Vandreuil and Begon, dated 23rd May, 1719. (Doc. Hist. 9.) In this despatch, the King says he has instructed his Ambassador in England to propose the nomination of commissaries on both sides agreeably to the Treaty of Utrecht, for the settlement of the boundaries of New France. With the materials within my 40 reach, I have not been able to trace the steps taken to fix these boundaries; but having had communication of the notes of Chief Justice Draper, who went to England in 1857, to represent the late Province of Canada before a Committee of the House of Commons, I take the liberty of copying from him. The Chief Justice says: "On 3rd September, 1719, instructions were given to Daniel Pulteney and to Martin Bladen, Esqrs., as Commissioners for Great Britain, under several Articles of the Treaty of Utrecht, which, after a special reference to the 10th Article of the Treaty, proceeds thus: 'You are to endeavour to get the said limit settled in the following manner, that is to say,' giving a particular description, and then adding: 'But you are to take especial care in wording such articles as shall be agreed on with the commissary or commissaries of His Most Christian Majesty on this head that the said

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boundaries be understood to regard the trade of the Hudson's Bay only; that His Majesty does not thereby recede from his right to any lands in America, not comprised within the said boundaries." In a letter, dated Paris, 7th Nov. (N.S.), 1719, Colonel Bladen writes to the Lords of Trade: "And this day we shall deliver in the Company's demand upon that subject (the boundary of Hudson's Bay) in the terms of our instructions, although I already foresee some difficulty in the execution of this affair, there being at least the difference of two degrees between the best French maps and that which the Company delivered us."

"Again, in November, 1719, Lord Stair and Colonel Bladen delivered to the Mareschal d'Estrees, one of the French Commissaries, the demand of the H. B. Company. The other French Commissary, the
10 Abbe Du Bois (afterwards Cardinal), was prevented by indisposition from attending.

"On the 3rd January, 1720, Lord Stair wrote to Secretary Craggs: 'J'ay parlé aussi touchant la "commission pour les limites son A. R. ma assuré qu'on tiendrait incessamment des nouvelles conférences.'"

"Similar assurances were transmitted to Lord Stair from the French Regent in several letters."

"On the 29th February, 1720, Lord Stair wrote: 'De la manière que Mons. le Mareschal d'Estrees, m'a parlé aujourd'hui nous seront encore du temps sans voir renuer les conférences sur les limites en Amerique.'"

(The French spelling is Lord Stair's. I copied from originals. Note by Chief Justice Draper.)

"14th April, 1718, Mr. Secretary Craggs writes to Mr. Pulteney, then at Paris: 'As my Lord Stair is on the point of leaving Paris, H. My. would have you use this occasion, either yourself directly or by
20 His Excellency, as you shall judge proper, to demand some peremptory answer upon the subject of your commission, and whether the French Court will renew the conferences with you; which, if you find they will not, H. My. thinks it needless, in that case, for you to make any longer stay at Paris, and would have you say you are to come away, but not come away until such time as you shall have further orders from hence.'"

"Mr. Pulteney's letters, which I have examined, showed that he and Lord Stair made many fruitless attempts to get the French Commissaries to meet them, but though repeated promises were made, there was no meeting after Colonel Bladen had submitted the British proposals and the map."

"Colonel Bladen was again in Paris in 1722, but his letters made no allusions whatever to the limits in America. They refer to some matters connected with Ste. Lucie, as to which it does not appear
30 whether any arrangement was made."

"By a letter from Sir Robert Sutton to Secretary Craggs, dated Paris, 8th September, 1720, it appears nothing had been done in regard to 'settling the limits in America, beginning with Hudson's Bay.'"

"I could not trace any further correspondence on this subject in the State Paper Office until after the Treaty of Aix la Chapelle (October, 1748). But in July, 1750, the H. B. Company were again called upon to lay before the Lords of Trade an account of the boundaries granted to them, and they repeat what their former memorials stated on the negotiations for carrying out the Treaty of Utrecht. They refer to their proposals as what they still desired, and they stated that the Commissioners under that treaty were never able to bring the settlements of those limits to a final conclusion."

"But there is a letter from the Duke of Bedford to the Earl of Albemarle, dated 12th February,
40 1749-50, stating that the commissaries for settling the limits will be ready to set out for Paris as soon as Governor Shirley has finished some affairs now depending with the Board of Trade, and on the 16th April, 1750, the Duke of Bedford writes to the Earl of Albemarle to the effect that Mr. Shirley and Mr. Mildmay, or one of them, will be in Paris 'as soon as this letter,' to act as Commissioners, there to settle the difference between England and France as to encroachments of the latter in North America."

The French commissaries were M. Silhouette and M. de la Galissonnière. They sailed from Quebec in the "Leopard," on the 24th September, 1749, to return to France to meet the English commissaries, General Shirley and Mr. Mildmay (Ferland, 2nde Pie, p. 495). These Commissaries had no greater success than those who preceded them. In the private instructions from the King to M. de Vaudreuil, of the 1st April, 1755 (Doc. Hist. 10), it is stated that commissaries had been appointed on both sides,

that they did meet at Paris to regulate all the disputes concerning the French and British possessions. The King regrets that the success of the labours of these commissaries to the present time did not correspond to the hopes he had entertained, and that as yet the commissaries had not entered on the limits of Canada further than what regards Acadia. It seems they never did enter seriously on the question of the limits of Canada. Several bulky volumes made known to the world what they did. The first of the papers exchanged is dated September, 1750, and the last the 7th June, 1755; by a strange coincidence, the very day Boscawen captured the "Lys" and the "Alcide." The only tangible proposition I have found in all these volumes is that the St. Lawrence is to be the centre of Canada. The English commissaries say they do not know what is meant by that; neither do I.

The capture of the "Lys" and the "Alcide" was really the recommencement of hostilities between France and England, but the formal declaration of war was not until the 18th May, 1756. There was, however, an end of negotiation until after the taking of Quebec, when negotiations were recommenced. They lasted from the 26th March to the 20th September, 1761. See the "Mémoire historique sur les négociations de la France et de l'Angleterre," prepared by the King's order by the Duc de Choiseul, Paris, 1761. Those were, I believe, the last negotiations until the Treaty of Paris (1763).

In the meantime, it would appear, that so far as the Hudson's Bay territory was concerned the limits were practically settled.

In a map by John Senex, F.R.S., 1711 (A 3) we find a dotted line indicating a division between Canada and the Hudson's Bay territories, similar to the one described and claimed by the Hudson's Bay Company. In a map in Carver's travels (1778) this is carried out to the Atlantic. In Mitchell's map (1755), (A 4), there is a line similar to that on Senex's map, with the words "Bounds of Hudson's Bay by the Treaty of Utrecht." Beunett's map of 1770 coincides with Mitchell's. (Bouchette's British Dominions, 1, p. 30.) In a map published from 1754 to 1761, by John Roque, Topographer to His Britannic Majesty, we have much the same line, called "Southern boundaries of Hudson's Bay territories as settled by the commissaries of the Treaty of Utrecht." In Vaugondy's map (he was son of the geographer to the King of France), in 1750, we find a similar line, but without any words explaining it. (A 5.) Douglas in his summary, published in 1747, says: "By the Treaty of Utrecht the Canada or French line with Hudson's Bay Company or Great Britain was ascertained, viz. from a certain promontory upon the Atlantic Ocean in lat. n. 56 deg. 30 min. run s.w. to Lake Mistassin (which communicates by Indian water carriage by P. Rupert's River with Hudson's Bay, and by Saguenay River with St. Lawrence River at the Port of Tadousac, thirty leagues below), and from thence continued s.w. to lat. n. 49 deg., and from thence due west indefinitely."

It is not maintained that the lines shown on these different maps are identical. Mr. Bouchette has remarked on the difference between Mitchell's and Bowen's, the latter giving the 49th parallel. But it is evident they were all aiming at the same natural division—the height of land dividing the waters flowing to the north from those which flow to the south.

The subject of maps would not be fully disposed of without some allusion to the map accompanying the Report of the Commissioner of Crown Lands in 1857, and which appears at the end of the Hudson's Bay Report of the House of Commons of that year. A dotted line enclosing Hudson's Bay is given 40 with the following description: "Boundary of Hudson's Bay after the Treaty of Utrecht, 1703 (sic), according to maps published at Paris in 1720, 1739 and 1771. Another line, giving a little more space to the Hudson's Bay Territory, is thus described: "Northern boundary of Canada at the conquest, according to British geographers." Nothing is more easy than to manufacture history thus. Who are the British geographers? I presume the French maps alluded to are—1720, Delisle's map of the Western hemisphere; 1739, map by the same, published not at Paris, but at Amsterdam; and Vaugondy's map of 1771. Neither of the two first give any boundaries to Hudson's Bay territory. Vaugondy's map of 1771 is, of course, no authority, for it comes after the Treaty of Paris.

APPENDIX
OF MANITOBA.
Sec. III.

Report of T.
K. Ramsay,
O.C., March,
1873.

Note S.—In the correspondence between Canada and France I have found two allusions to Hudson's Bay after 1713. On the 8th October, 1744, M. de Beauharnois, in writing to Count Maurepas, says that the King recommended him to neutralize or utterly destroy the English Forts at Hudson's Bay (Doc. His. 9). And the following year (18th June, 1745) M. de Beauharnois explains why he could not carry out the King's orders in this respect.—*Ibid.*

Note T.—This did not escape the perspicacity of the author of Crown Lands Report of 1857. He says: "The most direct interest that Canada could have in the matter at the present moment, being responsible for the administration of justice, would be rather of a moral and political than of an interested or commercial character."

Note U.—La Nouvelle France, as understood by the French, has never been under one government. The Province of Quebec was first limited in the east by the River St. Jean, in the west by the line from Lake Nipissing, which struck the St. Lawrence about 15 leagues from Montreal. It was then extended, but the extension did not include the territory ceded by Vandreuil, and claimed by England as Canada; a part was then ceded to the United States by Treaty (1783). What remained was divided into two Provinces (1791), again reunited into one (1840), and lastly, the remnant is joined at once or prospectively to the whole of B.N.A. (1867.)

Note V.—In Dunn's map, 1776, this boundary is given as the "Old Boundary by which the French possessed Canada." It is curious that in Vaugondy's map of 1750 (A 5) a similar line is marked out without anything to show what it was intended to limit, and the paucity of materials prevents our finding out the history of this line. Vaugondy's father was historiographer to the King of France.

Note W.—By the Act of 1774 all the territories and countries heretofore part of the territory of Canada which are within the limits of some other British Colony, or which have, since the 10th February 1763, been made part of the Government of Newfoundland, during His Majesty's pleasure, are annexed to and made part of the Government of Canada. In conformity with this disposition, so much of the Commission of the Governor of Newfoundland was revoked as related to the Coast of Labrador, including the Island of Anticosti, with any other of the said small islands on the said Coast of Labrador."

Note X.—In 1721 Charlevoix writes: "Jusqu' à présent la Colonie Française n'allait pas plus loin à l'ouest," than the Lake of the Two Mountains and Isle Perrot.

Note Y.—It is curious how deeply rooted was the desire to have the Mississippi recognized as the western boundary of Canada. The people of Canada claimed this in 1773, and the King immediately after the Act of 1774 describes the limits of Canada in his Commissions as following the banks of the Mississippi. Mr. Bouchette, however, did not fall into this error, and in his later and more important work he quotes and comments a document, which negatives this pretension in the most formal manner. Up to the time of ceding Canada to England it was the interest of France to make its limits as extensive as possible, while the interest of England was directly the reverse; but when the negotiations which led to the Treaty of Paris were being carried on, the interest changed. France sought to circumscribe the limits of the provinces she had promised to cede, while England sought to extend them. England, by its answer of 1st September, 1761, to the French ultimatum, claimed "d'un côté le lac Huron, Michigan et Supérieure et la dite ligne (la ligne de ces limites) tirée depuis le lac Rouge, embrasse par un cours tortueux la rivière Onabache jusqu' à sa jonction avec l'Ohio et de là se prolonge long de cette dernière rivière inclusivement jusqu' à son confluence dans le Mississippi," being the limits as traced by the Marquis de Vandreuil in capitulating. The King of France, as he had promised to cede the possession of Canada "dans la forme la

plus étendue," says in reply to the English answer to the French ultimatum, "comme cette ligne demandée par l'Angleterre est sans doute la plus étendue que l'on puisse donner à la cession le Roi veut bien l'accorder." (13th Sep., 1761, Mémoire du Duc Choiseul, 1761.) Le Duc de Choiseul in his memoir, p. 139, says: "Il était prescrit à M. de Bussy de convenir des limites du Canada et de la Louisianne d'après la carte angloise quoique très de favorable aux droits et aux possessions de la France." Vaudreuil denied having made the tracing in question, and the map has not been found. Was it that mentioned in the French reply as having been presented by Mr. Stanley? On the annexed map A 2, the green line marks the probable "cours tortueux" to the Wabash.

APPENDIX
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Sec. III.

Report of T.
K. Ramsay,
Q. C., March,
1873.

Note Z.—In the original draft of the bill the words were "southward to the banks of the River 10 Ohio, westward to the banks of the Mississippi, and northward to the southern boundary." It is therefore probable that the amendment passed unperceived by those who drew the new Commissions; or the Commissions may have been engrossed from drafts made prior to the passing of the Act. In Lord Elgin's Commission, 1846, there is also a curious mistake. The western boundary of Lower Canada is made to extend to the shore of Hudson's Bay. I call it a mistake, for no account can be given of it at the Colonial Office; and by comparing it with the Proclamation of 1791, it will be observed that the alteration consists in using the word "shore" for the words "boundary line." It was not unnatural to say that the "shore" was the "boundary line" of Hudson's Bay.

Note AA.—I did not fail to notice the words "During His Majesty's pleasure" in the Act of 20 1774. I take it these words, if more than deferential, cannot be extended, and therefore they would not give the King the power to add to the Province of Quebec. But at all events, he never attempted it for extending the authority of the Governor to the Mississippi cannot be converted into an extension of the province to that line. Otherwise Lord Elgin's commission would have extended Canada to the shore of Hudson's Bay.

Note BB.—It has been attempted to throw some ridicule on the decision in the De Reinhard case, and it may therefore be worth mentioning that Chief Justice Sewell was probably the man at the time in Canada best fitted to preside in such a case, and that the Bar of Lower Canada could not then, or indeed at any other time, have been more brilliantly represented. The prisoner's counsel, who desired to have 30 the western boundary of Canada extended beyond the due north line from the confluence of the Ohio and Mississippi Rivers, were Andrew Stuart, the equal, if not superior, of his brother, the well-known Sir James Stuart, Vallières de St. Real, afterwards Chief Justice of the Queen's Bench, Montreal, and Vanfelson, one of the first-named Judges of the Superior Court after its organization in 1849.

ADDITION TO NOTE Y.

Since my report was sent in, I have received a letter from the Abbé Verreau, now in London prosecuting historical investigations on behalf of the Government, enclosing a correspondence between General Haldimand and Sir Jeffrey Amherst, with respect to the limits of Canada alleged to have been traced by Mr. de Vaudreuil, on a map which he gave to General Haldimand, and which has not yet been found. 40 The letters forming this correspondence were copied by the Abbé Verreau from the Haldimand papers in the British Museum.

The Abbé Verreau gives the following account of the work he has obligingly volunteered to perform: "J'ai tenu à copier cette lettre moi-même. Je n'ai trouvé que le projet de Haldimand, corrigé et raturé "avec un soin qui montre l'importance attachée par lui à ce qu'il écrivait. C'est ce qui m'a engagé à "copier les ratures; je les ai mises entre parenthèse. Il y a bien deux parenthèses de Haldimand, mais "j'ai indiqué qu'elles sont de lui."

New York, 1st November, 1762.

Sec. III.

Report of T. K.
Ramsay, Q. C.,
March, 1873.

DEAR SIR,—I have been twenty times at the point of writing to you on a subject which, though of no consequence, I should be glad to know, the exact transactions that passed. When I made a report of Canada to the Secretary of State, I transmitted a copy of the part of the map where the limits between Canada and Louisiana were marked, which you delivered to me, and which I acquainted the Secretary of State were done by Monsieur de Vaudreuil. Whether by him, or done in his presence by his direction, comes to the same thing, and the thing itself is of no sort of consequence, as the letter and orders he (Monsieur de Vaudreuil) sent to the officers commanding at Michillimakinach, the Bay, Oocciatanon, Miamis, &c. 10 mark out the boundaries and expressly include those posts in Canada, so that there can be no dispute about it; yet as I see some alteration has passed in England and France about Monsieur de Vaudreuil's giving the boundaries, I should be glad to know of you whether he marked the map himself, or whether it was done in his presence, and what passed on that subject, that I may hereafter be able to say all that was done regarding the whole affair.

I am, with great truth, dear Sir,

Your most obedient humble servant,

JEFF. AMHERST.

CORRECTIONS.

- Page 1, line 16, read 1627 ; read Louis XIII.
 " 20, read Vallière ; before 1661, read in.
 2, " 14, read having.
 " 18, read Bourdon.
 " 19, read clock.
 " 22, read Relations.
 " 26, read Sieur.
 " 27, read Dablon.
 3, " 24, read 49' 20'.
 " 35, after rocks, omit of.
 4, " 5, read Nekouba is a ; read Dablon.
 " 8, read Dablon.
 " 11, read Nekouba.
 " 14, read Duquet.
 " 21, read Argenson.
 6, " 13, read of.
 " 33, read Mistassinins.
 9, " 23, read Calléros.
 " 25, read Dablon.
 " 30, after , read 670-1.
 12, " 13, read passed.
 13, " 21, after Henry, read [1 Thomas].
 19, " 4, read Courme.
 21, " 3, read Charlevoix.
 " 15, read Signiory.
 " 27, read Duchesneau.
 " 35, for In de Comporlé, read M. de Couporté.
 " 43, read Le Moyne.
 " 44, read troop ; read Catalogne.
 22, " 2, read Outaouais.
 " 6, the like.
 " 20, read Quitquitouane.
 " 28, the like.
 " 29, for Sir, read Mr. ; for these, read there.
 " 35, read Chevalier.
 " 37, read affairs of.
 23, " 8, read Colbert.
 " 29, read fails.
 " 33, after Fort, insert [at Port Nelson].
 26, " 8, read Flamborough Head, on Port. After River, read as note, Flamborough Head is in the Estuary of the Nelson, on the northerly shore.
 31, " 41, read Alibamons.
 59, " 20, read 1783.
 61, " 23, for formerly, read formally.
 62, " 14, read 1713.
 76, " 43, read Hudson's.
 88, " 27, for Samus, read Sanctus.
 " 28, for Henry VIII., read Henry VII.
 89, " 14, for Jacques, read Jogues.
 " 21, the like.
 " 22, the like.
 " 25, for pressed, read p sessed.
 " 29, for Jones, read James.
 97, " 4, for 1673, read 1763.

APPENDIX
OF MANITOBA.

Corrections.

APPENDIX OF MANITOBA.	Page	115, line 36, read St. Simon.
	117,	" 36, read Bouchette.
	122,	" 43, for 1668 or 1664, read 1667 or 1668.
	124,	" 3, read Port Nelson.
		" 33, read Denouville.
	126,	" 11, read Bourdon.
	127,	" 27, read Talon's.

Corrections.

- 134, [after line 17, the following papers, appearing in Mr. Ramsay's Report (original ed., and as given in proceedings of House of Coms. Com. of 1880) are here omitted, viz.: Haldimand's letter to Amherst, 10th Dec., 1762; Amherst to Haldimand, 25th Jan., 1763; Mr. Ramsay's remarks on the correspondence; and list of books and papers quoted by Mr. Ramsay.]
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GREENHOW'S HISTORY OREGON & CALIFORNIA,

On line of 49th parallel, as boundary between the French possessions of Western Canada and Louisiana on the South, and the British territories of Hudson's Bay on the north.

"During the progress of the negotiations between the government of the United States and that of Great Britain, respecting the northern boundary of Louisiana, for which the Americans claimed a line running along the 49th parallel of latitude, upon the grounds that *this parallel had been adopted and definitely settled, by commissaries appointed agreeably to the tenth article of the treaty concluded at Utrecht, in 1713, as the dividing line between the French possessions of Western Canada and Louisiana on the south, and the British territories of Hudson's Bay on the north*; and that, this treaty having been specially confirmed in the treaty of 1763, by which Canada and the part of Louisiana east of the Mississippi and Iberville were ceded to Great Britain, the remainder of Louisiana continued, as before, bounded on the north by the 49th parallel."

APPENDIX
OF MANITOSA.

Greenhow's
Hist. Oregon
and California,
p. 281-3.

"This conclusion would be undeniable, if the premises on which it is founded were correct. The tenth article of the treaty of Utrecht does certainly stipulate that commissaries should be appointed by the governments of Great Britain and France respectively, to determine the line of separation between their possessions in the northern part of America above specified; and there is reason to believe that persons were commissioned for that object: *but there is no evidence which can be admitted as establishing the fact that a line running along the 49th parallel of latitude, or any other line, was ever adopted, or even proposed by those commissaries, or by their governments, as the limits of any part of the French possessions on the north, and of the British Hudson's Bay territories on the south.*"

"It is true that, on some maps of Northern America, published in the middle of last century, a line drawn along the 49th parallel does appear as a part of the boundary between the French possessions and the Hudson's Bay territories, as settled according to the treaty of Utrecht: but on other maps which are deservedly held in higher estimation, a different line, following the course of the highlands encircling Hudson's Bay, is presented as the limit of the Hudson's Bay territory, agreeably to the same treaty; and, in other maps again, enjoying equal if not greater consideration, as having been published under the immediate direction of the British Government, no line separating those British possessions from Louisiana or Canada is to be seen. In the other works, political, historical, and geographical, which have been examined with reference to this question, nothing has been found calculated to sustain the belief that any line of separation was ever settled or even proposed; nor has any trace of such an agreement been discovered in the archives of the Department of Foreign Affairs of France, which have been searched with the view of ascertaining the fact.*

The belief, nevertheless, that the 49th parallel of latitude was fixed, by commissaries appointed agreeably to the provisions of the treaty of Utrecht, as the northern limit of Louisiana and Western Canada, has been hitherto universally entertained without suspicion in the United States, and has formed the basis of most important treaties.

During the negotiations above mentioned, between the United States and Great Britain, no attempt was made, on the part of the latter power, to controvert the assertion of the Americans respecting this supposed boundary line; and, in the fifth of the additional and explanatory articles proposed to be annexed to the treaty signed by the plenipotentiaries on that occasion, it was agreed that "a line drawn due north or south (as the case may require) from the most north western point of the Lake of the Woods, until it shall intersect the 49th parallel of north latitude, and from the point of such intersection, due west, along and with the said parallel, shall be the dividing line between his majesty's territories and those of the United States, to the westward of the said lake, as far as their said respective territories extend in that quarter; and that the said line shall, to that extent form the southern boundary of his majesty's said territories and the northern boundary of the said territories of the United States: *Provided*, That nothing in the present article shall be construed to extend to the north-west coast of America, or to the territories belonging to or claimed by either party on the continent of America to the westward of the Stony Mountains." † This article was approved by both governments;

* See the complete investigation of this subject in the Proofs and Illustrations under the letter F.

† President Jefferson's Message to Congress of March 22nd, 1808.

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OF MANITOBA.

Greenhow's
Hist. Oregon
and Cali-
fornia,
p. 281-3.

President Jefferson, nevertheless wished that the *proviso* respecting the north west coast should be omitted, as it "could have little other effect than as an offensive intimation to Spain that the claims of the United States extend to the Pacific Ocean. However reasonable such claims may be, compared with those of others, it is impolitic especially at the present moment to strengthen Spanish jealousies of the United States, which it is probably an object with Great Britain to excite, by the clause in question." The outrage committed by the British upon the American frigate Chesapeake, together with the change in the British ministry, prevented the ratification of this treaty; and the discussion of boundaries was not renewed until 1814.

How far Louisiana extended westward when it was ceded by France to Spain, there are no means of determining. The question has never been touched in treaties, or even in negotiations, so far as known. The French maps and histories are, in general, so entirely erroneous as regards the geography of America, and always so absurd in their statements as to the extent of the French dominions, that they are of no value as evidence; while the charters of the British sovereigns, appear at present, scarcely less extravagant. Those charters, embracing, together, the whole division of North America between the 48th and 31st parallels of latitude, were, nevertheless, maintained by Great Britain until the peace of 1763, when her government, by agreeing to admit the Mississippi as the west, implicitly recognized the right of the latter power to the whole territory beyond that river between the same parallels; and Louisiana always embraced all the French possessions west of the Mississippi. In the absence of more direct light on the subject from history, we are forced to regard the boundaries indicated by nature—namely, the highlands separating the waters of the Mississippi from those flowing into the Pacific or the Californian Gulf—as the true western boundaries of the Louisiana ceded by France to Spain in 1762, and retroceded to France in 1800, and transferred to the United States by France in 1803: but then it must also be admitted, for the same as well as for another and stronger reason, that the British possessions farther north were bounded in the west by the same chain of highlands; for the charter of Hudson's Bay Company, on which the right of those possessions was founded and maintained, expressly included only the countries traversed by streams emptying into Hudson's Bay.

EXTRACT

From the Report of the Committee on Military Affairs, made in Congress in 1843.

"The Treaty of Utrecht was concluded in 1713. By the tenth article it was agreed between Great Britain and France to determine within one year, by Commissioners, the limits between the Hudson's Bay and the places appertaining to the French. The same Commissioners were also authorised to settle in like manner, the boundaries between the other British and French colonies in these parts. Commissioners were accordingly appointed by the two powers, and there is strong reason to believe they actually established the boundaries according to the terms of the treaty, although no formal record of the fact now exists. The evidence that the boundaries were thus established is, first, the fact of the appointment of the Commissioners for that express purpose, and that two distinct lines may be found traced on different maps, published in the last century, each purporting to be the limits between the Hudson's Bay Territories on the north, and the French possessions on the south, fixed by Commissioners according to the Treaty of Utrecht. One of these lines is drawn irregularly from the Atlantic to a point in the 49th parallel of latitude, south of the southernmost part of the Hudson's Bay, and thence westward along that parallel to Red River, and in some maps still farther west. This line is generally considered in the United States, and has been assumed by their Government, as the true boundary, settled by the Commissioners agreeably to the treaty above mentioned.

"Thus, we find Messrs. Munro and Puckney, at Madrid, in 1805, writing to the Spanish Minister as follows: 'In conformity with the tenth article of the first mentioned Treaty (Treaty of Utrecht), the boundary between Canada and Louisiana, on the one side, and the Hudson's Bay and Northwestern Companies, on the other, was established by Commissioners by a line to commence at a cape or promontory on the ocean, in 58 degrees and 31 minutes north latitude; to run thence southwestwardly to latitude 49 degrees north from the equator, and along that line indefinitely westward.' These extracts are taken from the memoir of Mr. Greenhow, who, it is proper to add, considers the opinion that these boundary lines were actually established by the Commissioners, 'at variance with the most accredited authorities.' In this opinion the Committee do not concur; so far from doing so, it is thought the presumption, that the 49th Parallel was adopted by the Commissioners under the Treaty of Utrecht, is strengthened by the line of demarcation subsequently agreed on by the Treaty of Versailles, in 1763, between France and Great Britain, and also by the Treaty of Peace of 1783, between the United States and Great Britain. By the former, the confines between the British and French possessions were irrevocably fixed 'by a line drawn along the middle of the Mississippi, from its source to the Iberville,' &c. By the latter, that part of the northern boundary of the United States, which is applicable to the subject, is described to be through the Lake of the Woods, to the most northwestern point thereof, and from thence on a due west course to the Mississippi River.'

"The most northwestern point of the Lake of the Woods is perhaps a few minutes north of the 49th parallel of latitude.

"By the convention of 1818, between the United States and Great Britain, in the second article, it is agreed, that a line drawn from the most northwestern point of the Lake of the Woods, along the 49th parallel of north latitude, or, if the said point shall not lie in the 49th parallel of north latitude, then that a line drawn from the said point, due north or south, as the case may be, until the said line shall intersect the said parallel of north latitude, and from the point of such intersection due west, along and with said parallel, shall be the line of demarcation between the territories of the United States and those of His Britannic Majesty; and that the said line shall form the northern boundary of the said territories of the United States, and the southern boundary of the territory of His Britannic Majesty from the Lake of the Woods to the Stony Mountains.

"This line, it will be observed, is a deviation from the boundary established by the Treaty of 1783, for that was to extend due west from the northwestern point of the Lake of the Woods, without any reference to its latitude. By this we are in the contingency named, to run, by the shortest line, from the specified point on the Lake of the Woods, to the 49th parallel of latitude. Whence, it may be asked, the solicitude to adopt this particular parallel, except as it corresponded with pre-existing arrangements, which could have been made under the provisions of the Treaty of Utrecht alone; for under no other had any reference, at that time, been made to the said 49th degree.

" This coincidence between the boundaries established by Great Britain and France, in 1763, and between Great Britain and the United States, 1783 and 1818, can scarcely be accounted for on any other supposition than that the said line had been previously established by the Commissioners under the Treaty of Utrecht.

" This conclusion is strengthened by a further coincidence in the boundaries fixed in the said Treaties of 1763 and 1783. In both the Mississippi is adopted as the boundary. One of the lines then (the Mississippi), previously established between Great Britain and France, being thus, beyond all cavil, adopted between the United States and Great Britain, may it not be fairly inferred, in the absence of all proof to the contrary, and with strong corroborating proof in favour of the inference drawn from the stipulation of treaties, lines of demarcation on old maps, &c., that the other line (forty-ninth parallel), equally beyond cavil, established by the United States and Great Britain, was also the same one previously existing between Great Britain and France ?

" But such line had no existence, unless under the stipulation of the Treaty of Utrecht. For these reasons the Committee have adopted the opinion, that the forty-ninth parallel of latitude was actually established by the Commissioners under that Treaty. It may not be unimportant here to observe that this forty-ninth parallel is not a random line arbitrarily selected, but the one to which France was entitled upon the well settled principle that the first discoverer of a river is entitled, by virtue of that discovery, to all the unoccupied territory watered by that river and its tributaries."

Captain Carver, in his account of his travels already alluded to, after describing the countries from the Grand Portage, above the head of Lake Superior, to and around the Lake of the Woods, and from the head waters of the Mississippi—or what was supposed to be the head waters thereof—northward to and around Lake Winnipeg, and along the Bourbon River from its source, and speaking of the Assinipoil, the Killistinoes, and other Indian tribes inhabiting those regions, and excusing them for trading with others than the Hudson's Bay Company, on account of the great distance they had to travel to that Company's trading posts, says, (page 112) :—

" It is true that the parts they inhabit are within the limits of the Hudson's Bay Territories, but the Company must be under the necessity of winking at an encroachment of this kind, as the Indians would, without doubt, protect the traders when amongst them."

Here is a positive averment made in 1766, that these countries were " within the limits of the Hudson's Bay Territories," and Mr. Carver so indicated them on a map in his work.

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