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HUDSON'S BAY COMPANY.

COPY of the Letter addressed by Mr. Chief Justice Draper to Her Majesty's Secretary of State for the Colonies, bearing date the 6th day of May 1867, together with a Copy of the MEMORANDUM therein referred to, relative to the HUDSON'S BAY COMPANY.

(Mr. Labouchere.)

Ordered, by The House of Commons, to be Printed,
16 June 1857.

104—SESS. 2.

Under 1 oz.

HUDSON'S BAY COMPANY.

RETURN to an Address of the Honourable The House of Commons,
dated 29 May 1857;—for,

A "COPY of the LETTER addressed by Mr. Chief Justice *Draper* to Her Majesty's Secretary of State for the Colonies, bearing date the 6th day of May 1857; together with a Copy of the MEMORANDUM therein referred to, relative to the HUDSON'S BAY COMPANY."

Colonial Office, }
15 June 1857. }

C. FORTESCUE.

COPY of LETTER from Chief Justice *Draper*, c. B., to the Right Honourable
H. Labouchere, M. P.

Chief Justice
Draper, c. B., to
Right. Hon. *H.*
Labouchere, M. P.
6 May 1857.

Sir,

33, Spring-gardens, 6 May 1857.

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 a Committee of the last House of Commons, and as I understand to be again submitted to the new 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 40 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 the honour to enclose. As the construction of the language of the charter, and the extent of the territory purporting 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 right, 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 that 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.

I have, &c.
(signed) *Wm. H. Draper*.

Enclosure.

Enclosure.

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.

The parts of the charter bearing on this question are as follow: 1. "All the lands and territories upon the countries, coasts, and confines of the seas, bays, lakes, rivers, creeks, and sounds aforesaid" (stated in a preceding part to be those which lie "within the entrance of the straits commonly called Hudson's Straits," in whatsoever latitude such bays, &c. 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 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 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 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, 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 Haye's 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 bays, 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.

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 for ever 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 Mons. 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."

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In a letter dated 25 January 1796-7 they urge, "whenever there 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."

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 Streights 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 in about 53° of north latitude on the west main 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 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 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 Streights 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 $\frac{1}{2}$ 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-westerly, to pass through the centre of Lake Mistassinnee, 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 the Second, 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 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 there, whereby to invite the Indian nations (who lived like savages many hundred leagues up in the country) down to their factories."

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* L'Escarbot describes Canada at the period of the appointment of De la Roche in 1698, 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 et l'île Espagnole; au levant la Mer du Nord qui baigne la Nouvelle France; et au septentrion cette terre qui est dite inconnue vers la Mer Glacée jusqu'à la Pole Arctique."

In August 1719 the Hudson's Bay Company acknowledged the surrender by the French of the straits and bay, in such 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."

In all the foregoing documents it will be observed, that whether upon the peace of Ryswick, when 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 follow: All the land lying on the east side or coast of the said bay eastward to the Atlantic Ocean and Davis' Straits, and the line hereafter mentioned as the east and 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 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," &c.; describing the line from Cape Perdrix to the 49th parallel, and along that parallel westward, as in their proposal 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 territories of the Hudson's Bay Company.

The foregoing extracts are deemed sufficient to establish that the Company considered their territorial rights in reference to their connexion 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 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 M'Kenzie's are "Rivers," into 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 November 1719, in reference thereto, "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." No settlement of the boundary could be arrived at.

If the later claim of territorial limits had been advanced during this negotiation, there can
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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 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 organised 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 the 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 Luson* 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 17 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."

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 *Aleminipigou*, at the *Lake of the Woods*, *Lake Winnipeg*, and two, it is believed, on the *Saskatchewan*, which are referred to by *Sir Alexander M'Kenzie* 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 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 Pigott*, *Serjeant 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 Temiscamang* "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 of commercial enterprise, 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.

* In the evidence given by the Honourable *Wm. M'Gillivray*, on one of the North-west trials at *York* (now *Toronto*), in 1818, he stated that there were no Hudson's 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.