

IN THE MATTER OF THE BOUNDARY BETWEEN THE DOMINION OF  
CANADA AND THE COLONY OF NEWFOUNDLAND IN THE LABRADOR  
PENINSULA

BETWEEN

THE DOMINION OF CANADA OF THE ONE PART

AND

THE COLONY OF NEWFOUNDLAND OF THE OTHER PART.

---

REPORT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 1ST MARCH, 1927.

---

*Present at the Hearing :*

THE LORD CHANCELLOR.

VISCOUNT HALDANE.

VISCOUNT FINLAY.

VISCOUNT SUMNER.

LORD WARRINGTON OF CLYFFE.

[*Delivered by* THE LORD CHANCELLOR.]

---

The Government of the Dominion of Canada and the Govern-  
ment of the Colony of Newfoundland having petitioned His  
Majesty to refer to the Judicial Committee of the Privy Council  
the following question :—

“ What is the location and definition of the boundary as between  
Canada and Newfoundland in the Labrador Peninsula under the Statutes,  
Orders in Council and Proclamations ? ”

that question has been referred to this Board under the Statute  
3 and 4 Will. IV, c. 41, s. 4, for its consideration and advice. The  
Board has accordingly heard evidence and arguments upon the  
matter, and has now arrived at a conclusion.

The Orders in Council and Proclamation upon which the  
decision must mainly depend were made in the year 1763, and  
it may seem strange that a question which affects (as it now  
appears) the jurisdiction over more than 100,000 square miles of  
territory has remained so long undecided. But an explanation  
is to be found in the fact that the region in dispute consists mainly

of dense forests and bleak and inhospitable table-lands, of which the greater part is uninhabited (except by a few Indian families) and was until recently unexplored, being visited only occasionally by a few trappers in search of furs. The country has accordingly been regarded as having little or no value, and it is only in recent years, when the growing demand for paper has attracted attention to the vast quantity of timber suitable for pulping, that a serious controversy as to its ownership has arisen. The question of boundary was first raised in or about the year 1888, and was the subject of discussion at the Halifax Conference of 1892; but no solution was then reached, and it was not until the year 1903 that the Government of Canada, having been informed that the Government of Newfoundland had issued a licence for cutting timber in the neighbourhood of the Hamilton River, raised the question in a serious form. Since that time the matter has been the subject of close and skilled investigation, and it now comes before this Board for decision. The issue so raised is, as Lord Hardwicke said in another connection, of a nature "worthy the judicature of a Roman Senate" (*Penn v. Lord Baltimore*, 1750, 1 Ves. Sen. 444); but the duty of the Board is not to consider where the boundary in question might wisely and conveniently be drawn, but only to determine where, under the documents of title which have been brought to their notice, that boundary is actually to be found.

The capture of Quebec in the year 1759 was followed by other British successes; and by the Treaty of Paris, signed on the 10th February, 1763, the Most Christian King ceded to His 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 (côtes) in the gulf and river of St. Lawrence and in general everything that depends on the said countries, lands, islands and coasts"—a description which included the whole of the great peninsula of Labrador, except such parts of it as had been already granted to the Hudson's Bay Company by their charter of 1670 and confirmed to them under the Treaty of Utrecht.

British sovereignty over the whole of the vast region which had belonged to or been claimed by France having been thus secured, it became the duty of the advisers of King George III to consider what government or governments should be established in the territories so acquired; and the Lords of Trade (a name then usually given to the Lords Commissioners for Trade and Plantations) first turned their attention to Labrador. On the 15th March, 1763, in reporting to the King upon the steps proper to be taken for the protection of the fisheries upon the coasts of Newfoundland and in the gulf and river of St. Lawrence, they observed that "upon the coast of Labrador it will be impossible to prevent the French continuing to have the full benefit of their former commerce with the Indians of that coast unless some British settlement should be made there, or sufficient cruisers stationed with instructions to the Commanders to seize all French ships coming within a certain

distance of that coast." Shortly after receiving this report the Secretary of State (Lord Egremont) caused a letter to be written to the Hudson's Bay Company, whose territory extended to the entrance of Hudson Straits at the extreme northern end of the peninsula of Labrador, expressing his desire to know as soon as possible " what were the limits upon the coast between the Hudson's Bay Company and the coast of Labrador "; and on the morning of the 24th March Sir William Baker, the Governor of the Company, waited on the Secretary of State and had an interview with him. Immediately after this interview, namely, on the 24th March, the Secretary of State wrote a letter to the Lords of Trade informing them that the King had " judged it proper that all the coasts of Labrador from the entrance of Hudson's Straits to the River of St. John's, which discharges itself into the sea nearly opposite the west end of the island of Anticosti, including that island with any other small islands on the said coast of Labrador, and also the islands of Madelaine in the gulf of St. Lawrence, should be included in the government of Newfoundland," and requesting them to prepare for the King's approval the draft of a new Commission for Captain Thomas Graves (who was then Governor of Newfoundland) to be " Governor of the island of Newfoundland and of the coast of Labrador with the several islands as above described," and revised Instructions for the Governor's guidance. Drafts were accordingly prepared, and on the 30th March both drafts were submitted to the King in Council and approved for issue in regular form. On the 25th April the revised Commission was duly sealed and the revised instructions signed by the King; and, armed with these documents, and also with separate Admiralty instructions issued to him as Commander in Chief of His Majesty's ships on the Newfoundland station, Captain Graves sailed on the 2nd May to take up his duties.

By the Commission as passed under the Great Seal on the 25th April, 1763, in accordance with the Order in Council of the 30th March, King George III revoked the former Commission (dated the 29th May, 1761) by which Captain Graves had been appointed Governor and Commander-in-Chief of the island of Newfoundland and constituted and appointed him to be the King's " Governor and Commander-in-Chief in and over our said island of Newfoundland and all the coasts of Labrador from the entrance of Hudson's Straits to the river St. John's, which discharges itself into the sea nearly opposite the west end of the island of Anticosti, including that island with any other small islands on the said coast of Labrador and also the islands of Madelaines in the gulf of St. Lawrence, as also of all our forts and garrisons erected and established or that shall be erected and established in our said islands of Newfoundland, Anticosti and Madelaine, or on the coast of Labrador within the limits aforesaid," and required him to conform to the Instructions given or to be given to him. By the same document power was

given to the Governor to administer the oath of allegiance to all persons who should at any time "pass into our said islands or shall be resident or abiding there or upon the coasts of Labrador within the limits aforesaid"; to constitute and appoint judges and justices of the peace for the administration of justice and keeping the peace and quiet of "the said islands and coasts," with power to hold Quarter Sessions and adjourn the same as might be convenient "for the peace and welfare of our subjects inhabiting there"; and to erect and set apart court-houses for such justices of the peace and prisons for the keeping of offenders. The Commission required all officers, civil and military, "and all other inhabitants of our said islands and the coasts and territories of Labrador and islands adjacent thereto or dependent thereupon within the limits aforesaid," to be obedient, aiding and assisting to the Governor in the execution of the Commission.

By the Instructions to Captain Graves, as passed under the Royal Sign Manual in accordance with the same Order in Council, the Governor was directed (among other things) to use his best endeavours to prevent aliens or strangers from fishing or drying fish "on any of the coasts or in any of the harbours of the islands and territories under your government" except as allowed by the 13th Article of the Treaty of Utrecht and the 5th Article of the Treaty of Paris; to visit all "the coasts and harbours of the said islands and territories under your government" in order to inspect and examine the state of the fisheries carried on there; to endeavour to procure accurate maps of "the several harbours, bays and coasts of Newfoundland and the other islands and territories under your government," and in particular to cause a vessel under his command to "search and explore the great inlet commonly known by the name of Davis' inlet, in order to discover whether the same has or has not any passage to Hudson's Bay, or any other enclosed sea." The Instructions also required the Governor to enquire and report "whether any or what further establishment may be necessary to be made or forts erected in any part of Newfoundland or the other islands or territories under your government either for the protection of the fishery, the security of the country, or the establishing and carrying on a commerce with the Indians residing in or resorting to the said islands or inhabiting the coast of Labrador."

It is worthy of notice that in these two documents, which are of primary importance for the purposes of this enquiry, no distinction was made between the island of Newfoundland and the coast of Labrador, both being included in identical terms in the territories placed under the care of the Governor, and the powers applicable to one being equally applicable to the other.

The business relating to Captain Graves's command having been thus disposed of, Lord Egremont turned his attention to the ceded territory in general, and by a letter dated the 5th May, 1763, requested the Lords of Trade to consider and report upon a number of questions relating to that territory, including the

question what new governments should be established and what form should be adopted for such new governments. In the same letter he called attention to the desirability of conciliating the Indians in the "Indian country" by protecting their persons and property and securing to them the rights and privileges which they had hitherto enjoyed. The Lords of Trade replied by an elaborate report dated the 8th June, 1763, in which, after setting out the advantages which, in consequence of the cession of French Canada, would accrue to the fishing and fur trades and the planting and settlement of North America, they recommended that three new governments should be erected under the names of Canada, East Florida and West Florida, with certain boundaries indicated in the report, and that certain lands outside those limits—described in the report as "all the lands lying about the Great Lakes and beyond the sources of the rivers which fall into the river St. Lawrence from the north"—should be left as an Indian country, open to trade, but not to grants or settlements. After some discussion as to the boundaries of the proposed new government of Canada (which it was decided to call Quebec), the King agreed to the proposals of the Lords of Trade, with the addition of a provision that the "interior country" to be reserved for the use of the Indians should be placed under the control of a military commander-in-chief. A draft Proclamation for giving effect to this decision was accordingly prepared by the Lords of Trade, and was approved for issue at a meeting of the Privy Council held on the 5th October.

By this Proclamation, which was dated the 7th October, 1763, the King declared that he had, with the advice of his Privy Council, granted letters patent under the Great Seal to erect within the countries and islands ceded and confirmed to him by the Treaty of Paris, four distinct and separate governments styled and called by the names of Quebec, East Florida, West Florida and Grenada. The limits and boundaries of these governments were defined by the Proclamation, those of the government of Quebec being described as follows :—

"Firstly.—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 of 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 Rosieres, 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."

After defining the boundaries of the three other new governments, the Proclamation proceeded :—

"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 Streights, together with the islands of Anticosti and the Madelaine and all other smaller islands lying upon the said coast, under the care and inspection of our Governor of Newfoundland."

The Proclamation also contained the following further declarations :—

" 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 or purchased by 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 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 in any 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 and northwest, 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 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 northwest as aforesaid ; and we do hereby strictly forbid, on pain of our displeasure, all our loving subjects from making any purchases or settlements whatever, or taking possession of any of the lands above reserved, without our especial leave and licence for that purpose first obtained."

It is to be noted that this Proclamation, although sometimes referred to in the later documents as if it were the origin of the title of Newfoundland to its territory in Labrador, was in fact only declaratory of an annexation which had already been effected by the Commission approved by the Order in Council of the 30th March and issued to Captain Graves ; and it is plain that the statement in the Proclamation that the coast of Labrador had been placed " under the care and inspection " of the Governor of Newfoundland was not intended to take anything from the rights conferred upon the Governor by his Commission. In the Commissions issued to the Governors of Newfoundland who succeeded Captain Graves, the language of the original Commission was retained unaltered.

The annexation to Newfoundland of the southern coast of Labrador bordering on the Gulf of St. Lawrence soon led to difficulties. It had been the policy of the British Government not to encourage planting and settling in Newfoundland or to establish a form of civil government there, but rather to treat

the island as a base to which fishing vessels should proceed in each season and which they might use for drying and curing their fish and for other purposes connected with the fishing industry ; and, in pursuance of that policy, it had been the practice to appoint as Governor a Naval officer who was also charged, under instructions issued by the Admiralty, with the protection of the free fishing rights of British subjects, such local administration as was required being entrusted to " Admirals of Harbours," who were in fact masters of fishing vessels selected in the order of their arrival in the island harbours. Indeed, the Newfoundland of that day was sometimes spoken of as resembling a great ship provisioned and fitted out by the mother country, and moored off the American continent for the convenience of English fishermen, and its government as a " floating government." When the Labrador Coast was added to Newfoundland, the same policy was applied to that coast ; and Hugh Palliser, who in 1764 was appointed to succeed Captain Graves as Governor of Newfoundland and the coasts of Labrador, applied that policy to the added territory, including the northern shore of the gulf of St. Lawrence. He forbade all persons from Quebec or any of the Colonies to winter on the coasts of Labrador under his government ; and ultimately, by a regulation dated the 28th August, 1765, he went so far as to order that no person whatever should resort to Labrador to fish or trade except ship fishers annually arriving from His Majesty's Dominions in Europe and carrying men engaged to return to those Dominions after the season was over. These restrictions led to serious complaints from the " sedentary fishermen," mostly of French nationality, who had long been settled on the north shore of the gulf of St. Lawrence and had been engaged in the seal and salmon fishery there, and some of whom had received grants of land from the French Government ; and early in the year 1766 these settlers and some Quebec traders presented memorials to the Lords of Trade praying to be reinstated in their rights and possessions. These memorials were taken into consideration, and after a considerable correspondence with Governor Palliser (against whom some of the complainants brought an action at law in London) the Lords of Trade, by reports dated the 24th June, 1772, and the 2nd March, 1773, recommended that the part of the coast of Labrador between the river St. John and the Ance des Espagnols or Baie Phillippeaux near the Straits of Belleisle—being the part of Labrador, with which the settlers and traders were concerned—should be taken from the government of Newfoundland and restored to its dependence on the government of Quebec. This proposal was apparently approved by the King's advisers, and on the 22nd April, 1773, an Order in Council was passed for the preparation of the instruments necessary for carrying it into effect ; but it was ultimately determined that the matter should be dealt with by a provision to be inserted in the Bill for the Quebec Act of 1774, which was then under consideration. In the course of the preparation of that Bill the proposal made by

the Lords of Trade was enlarged so as to provide for the transfer to the Province of Quebec not only of the coast of Labrador from the river St. John to the Ance des Espagnols, but of the whole of the territory in Labrador which had been annexed to Newfoundland. The clauses of the Bill relating to Newfoundland were strenuously opposed by Mr. Edmund Burke, Admiral Saunders and others, but were ultimately carried into law. Accordingly, by the British North America (Quebec) Act, 1774, after reciting (among other things) that by the arrangement made by the Proclamation of 1763 "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," it was enacted that the territories therein described and also "all such territories, islands and countries which have since the 10th February, 1763, been made part of the Government of Newfoundland" be annexed to and made part of the Province of Quebec as created and established by the Proclamation of the 7th October, 1763.

Soon after the passing of this Act it became apparent that, in transferring to the Government of Quebec, not only the parts of Labrador where the "sedentary fishery" for seal, sea-cow and salmon had been carried on, but also those parts facing towards the Atlantic where the great cod and whale fisheries had flourished, a serious blunder had been committed. Complaints were made that the Government of Quebec paid no attention whatever to the cod fisheries on the Atlantic coast, and that "in truth there was no government whatsoever on that coast"; and, ultimately, by the Newfoundland Act, 1809, section 14, it was 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."

It would seem that, in so restoring to Newfoundland the whole of the coast of Labrador originally annexed to that government, Parliament omitted to have regard to the position of the sedentary fishermen in the gulf of St. Lawrence which had given rise to so many complaints before the passing of the Act of 1774; and, as might have been expected, these complaints were soon renewed, with the result that in the year 1825 effect was at last given to the counsel tendered by the Lords of Trade in 1773. By the British North America (Seignorial Rights) Act, 1825, S.9, after reciting that under and by virtue of the Acts of 1774 and 1809 the coast of Labrador from the river St. John to Hudson's



Straights and the islands above referred to were "annexed to and form part of the Government of Newfoundland," and that it was expedient that "certain parts of the said coast of Labrador should be re-annexed to and form part of the province of Lower Canada," it was enacted :—

"that so much of the said coast as lies to the westward of a line to be drawn due north and south from the bay or harbour of Ance Sablon, inclusive as far as the fifty-second degree of north latitude, with the island of Anticosti and all other islands adjacent to such part as last aforesaid of the coast of Labrador, shall be and the same are hereby re-annexed to and made a part of the said province of Lower Canada, and shall henceforward be subject to the laws of the said province and to none other."

The bay or harbour of Ance Sablon referred to in this section lies a little to the east of the Ance des Espagnols or Phillippeaux Bay.

The statute of 1825 is the last of the documents directly affecting the annexation to Newfoundland of a part of Labrador; but it may be here mentioned that by an Act passed in the year 1840 the provinces of Upper and Lower Canada, into which Quebec had been divided in the year 1791, were united to form one province of Canada; that in the year 1854 Newfoundland, in which a representative Government had been established in 1832, became a responsible self-governing Colony; that by the British North America Act, 1867, the Dominion of Canada was set up, Lower Canada becoming the Province of Quebec; and that by an Order in Council made in 1880 it was ordered and declared that :—

"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."

Thus either by the statutes already cited or by the last-mentioned Order in Council, the Dominion of Canada, and particularly its Province of Quebec, has become the next neighbour to the dependencies in Labrador of the Colony of Newfoundland, and the question of boundary falls to be determined as between the Dominion and the Colony.

At this point it is desirable to set out the contentions of the two parties. The contention of the Dominion is that the "coast" which by the Commission and Proclamation of 1763, as modified by the subsequent statutes, was annexed to Newfoundland, is

"a strip of maritime territory, extending from Cape Chidley at the entrance to Hudson Strait, to the eastern headland of the bay or harbour of Blanc Sablon on the Strait of Bellisle, and comprising, in its depth inland, only so much of the land immediately abutting on the sea, above low-water mark, as was accessible and useful to the British fishermen annually resorting to that coast in the ordinary conduct of their fishing operations, for the purposes of 'the open and free fishery' extended to that coast by the Royal Proclamation and carried on there and for those purposes only";

but, recognising that it may be found impracticable to lay down such a line upon the land, Canada suggests "that the boundary be located as a line to be drawn from the eastern headland of the bay or harbour of Blanc Sablon on the south to Cape Chidley on the north at a distance from high-water mark on the seacoast of the peninsula of Labrador of one mile."

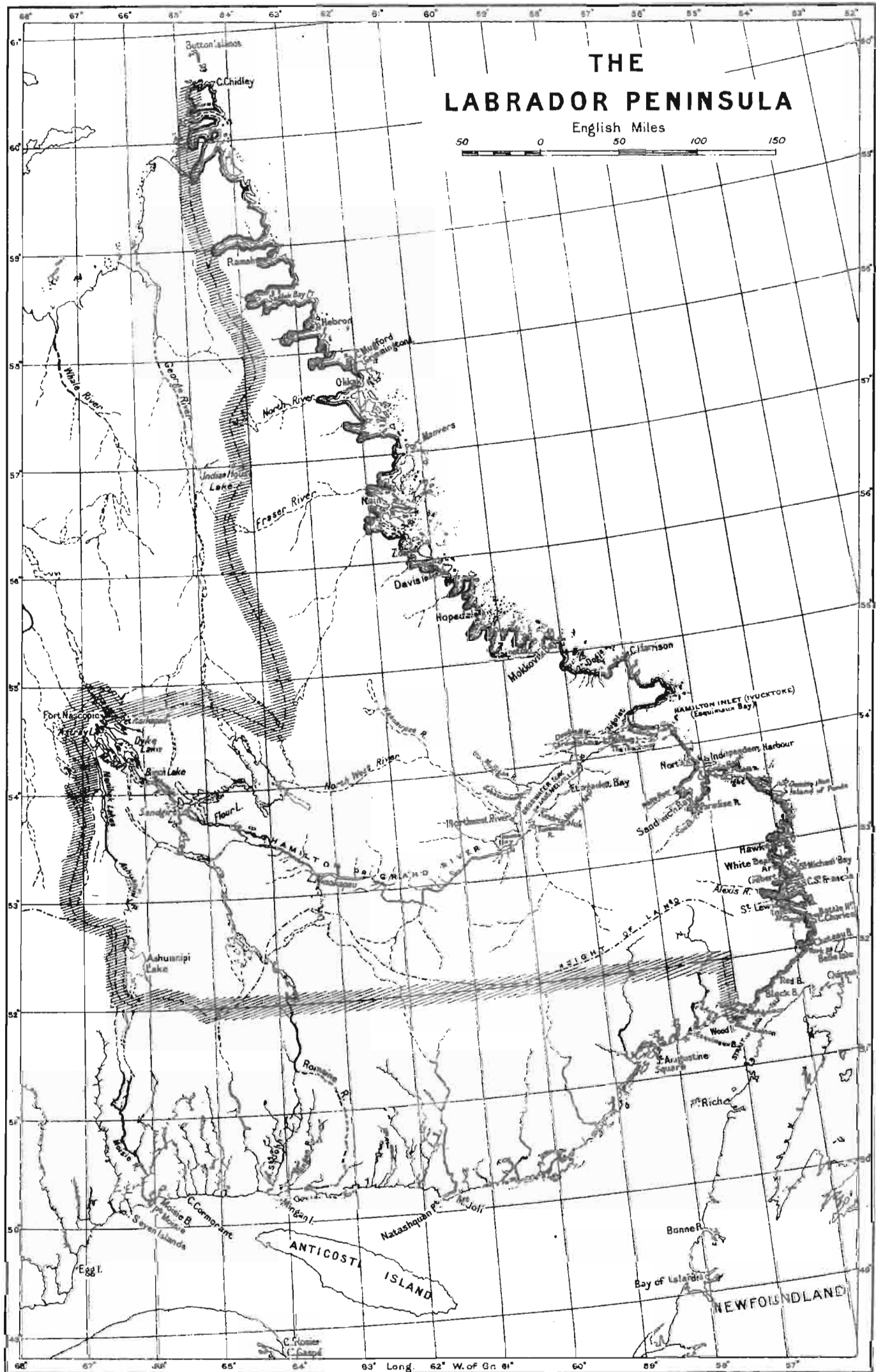
On the other hand, the contention of the Colony of Newfoundland is that the boundary should be "a line drawn due north from Ance Sablon as far as the fifty-second degree of North latitude, and should be traced from thence northwards to Cape Chidley along the crest of the watershed of the rivers flowing into the Atlantic Ocean."

In order to make the matter clear, a sketch-map illustrating the two claims is annexed. On this map the territory proposed by the Dominion as the land to be allotted to Newfoundland is indicated by a thick black line following the line of the seashore, while the boundary claimed by the Colony is marked by a broken line with a hatching over it.

It may be added that the Colony contends that, in the event of the Dominion establishing its main contention, the littoral strip of land which would then represent the territory annexed to Newfoundland should not cross the mouth of the great Hamilton Inlet as shown on the sketch-map, but should be carried along the northern shore of that inlet and round the head of Goose Bay and so back along the southern shore of the inlet to the seacoast.

Before examining these claims in detail, their Lordships think it desirable to formulate two propositions which appear to be common to both sides, and which indeed are beyond dispute.

First, the word "coast" or "coasts" (for both are used in the documents) is a word of undefined meaning; and while it is usually to be understood in the sense which is given to it in Dr. Johnson's and other dictionaries, that is to say, as meaning "the edge or margin of the land next the sea" or "the shore," there are many examples of its being used to denote a considerable tract of land bounded by and looking towards the sea. In Murray's Oxford Dictionary (1891) it is stated that the term "is familiarly applied in different regions to specific littoral districts, in India especially to the Coromandel coast"; and in the "Encyclopædia Britannica" (12th edition, 1922) that "the word is sometimes applied to the bank of a river or lake and sometimes to a region (*cf.*, Gold Coast, Coromandel Coast), which may include the hinterland." In the Appendix of documents used in this inquiry a number of extracts are given from the Old and New Testaments and from well-known authors, in which the word "coast" is used as signifying a whole country, sometimes extending from the sea to the sources of the rivers running into it; and it is plain that the word is susceptible of more constructions than one, and that its precise meaning must depend on the subject and context.





The second proposition which appears to be beyond dispute in this case, is that the effect of the Orders in Council, Proclamation and Statutes which have to be construed, was to give to the Government of Newfoundland, not mere rights of inspection and regulation exercisable upon a line of shore, but territory which became as much a part of the Colony as the island of Newfoundland itself, and which was capable of being defined by metes and bounds. This is evident from the form of the Commissions issued to Captain Graves and his successors, by which they were appointed Governors of the island of Newfoundland and of the coast of Labrador in identical terms, and, indeed, in one and the same sentence, and in which reference is again and again made to the "territory" of Labrador comprised in the Commission. If there remained any doubt upon this point, it would be set at rest by the language of the statutes of 1774, 1809 and 1825, which refer to the territory in Labrador as being "annexed" first to the Government of Newfoundland and then to the Government of Quebec, and afterwards as being "re-annexed" to Newfoundland and partly "re-annexed" to Lower Canada. Stress was laid by Counsel for Canada on the declaration in the Proclamation of 1763 that the Labrador coast had been put under the "care and inspection" of the Government of Newfoundland; but this ambiguous expression cannot affect the plain inference to be drawn from the other documents cited that what was added to Newfoundland was a tract of land, having a boundary which can be located and defined. Indeed, this is assumed by the terms of reference to this Board, to which the parties have agreed.

In these circumstances the question to be determined is, not whether Newfoundland possesses territory upon the peninsula of Labrador, but what is the inland boundary of that territory. Is it to be defined by a line following the sinuosities of the shore at a distance of one mile or thereabouts from high-water mark, or is it to be found at the watershed of the rivers falling into the sea on that shore? No third alternative has been suggested by any person.

When the material documents are considered from this point of view, it is evident that they contain much which supports the contention that the word "coast" is to be construed as including a considerable area of land. The Commissions issued to Captain Graves and his successors until 1774 refer to the "territories" of Labrador and to the planters or inhabitants resident there; and they authorise the Governor to appoint judges and justices of the peace for keeping the peace of the coasts and for holding Quarter Sessions at places convenient to the inhabitants. The instructions issued during the same period direct the Governor to erect upon the "coast" court houses for the trial of offenders and prisons for their detention; and it is plain that a criminal jurisdiction limited to a narrow coastal strip, so that offences committed beyond that limit would not be justiciable and offenders

escaping from it could not be apprehended, would be very difficult to exercise. Further, the same instructions require the Governor to report, not only as to the protection of the fishery, but also as to the security of the country and the establishing and carrying on of commerce with the Indians inhabiting the coasts of Labrador; and the directions for protecting the timber from waste and for reporting as to the number of the inhabitants and of the furs taken by them and the improvement of the land, which apply to Labrador as well as to the Island, are appropriate to a government extending into the interior.

With regard to the limit in depth of the country which may be described as "coast," where that term is used in the wider sense, it is argued that the natural limit is to be found (in the absence of special circumstances) in the watershed which is the source of the rivers falling into the sea at that place; and there is much to be said in favour of that view. It is consistent with the doctrine of international law by which the occupation of a sea-coast carries with it a right to the whole territory drained by the rivers which empty their water into its line (*see* Hall's International Law, 5th edition, page 104; Westlake's International Law, Part I, page 112; and Lawrence's Principles of International Law, 3rd edition, page 151); and it is certainly difficult, in the absence of any specified boundary or of any special feature (such as a political frontier), which could be taken as a boundary, to suggest any point between the seashore and the watershed at which a line could be drawn.

Further, the use of the watershed or "height of land" as a boundary was undoubtedly familiar in British North America at the period in question, and it is shown as a boundary in many of the maps of that time. Thus, in some of the pre-annexation maps of French Canada which have been produced (Sanson 1656, Coronelli 1689, and Mortier 1693), the watershed running westward from Cape Charles is shown as the boundary between Labrador (or Nouvelle Bretagne) and Nouvelle France. In Bowen's map of 1763 the southern boundary of Labrador appears to run along the fifty-second north parallel of latitude, roughly corresponding with the same line of watershed; and the same feature is reproduced in Rocque's map of about the same date. In Bellin's map of 1755 the "hauteur des terres" is indicated as the boundary between the possessions of the Hudson's Bay Company and the territory (then in French ownership) of Labrador or Nouvelle Bretagne; and the same observation applies to Gibson's map of 1763. In the Proclamation of 1763 the province of Quebec thereby constituted was defined as bounded on the south by "the high lands which divide the rivers that empty themselves into the said River St. Lawrence from those which flow into the sea." It may well be, therefore, that in allotting to Newfoundland the "coast" of Labrador the framers of the documents of 1763 had in mind as a boundary the "height of land" from which the rivers ran down to that shore—though without any accurate conception of the distance of that boundary from the sea.

The contention that the territory annexed to Newfoundland was intended to run back to the watershed is supported by the fact that in the Proclamation of 1763 the province of Quebec is described as bounded on the north by a line drawn from the head of the river St. John to the westward—a description which leads to the inference that the land on the east or left bank of the river St. John from its head to the sea had been already allotted to the government of Newfoundland. It has been ascertained by recent surveys that the river St. John here mentioned does not in fact rise near the watershed, but at some point between the height of land and the sea; but it is plain from contemporary maps that the sources of the river Romaine, which rises at the watershed and runs parallel with the St. John, had been taken for the sources of the latter river, and that the eastern boundary of the new Province of Quebec at this point was intended to follow the course of the river Romaine from the watershed to the sea.

A further argument for the adoption of the watershed as the boundary of Newfoundland-Labrador is based on the position at that time of the Hudson's Bay Company. That Company had always claimed to be entitled under its charter to the land reaching to the watersheds from which the rivers ran into Ungava Bay, James Bay and Hudson's Bay, and this claim was ultimately conceded by the British Government. Upon this footing the line of the watershed running from Cape Chidley southward was for a considerable distance the eastern boundary of the Hudson's Bay territory, and so that watershed might for that distance form a political as well as a natural boundary for the "coast" of Labrador.

But perhaps the strongest argument in favour of an extended construction of the grant to Newfoundland is to be found in the terms of the Act of 1825 above quoted. By that statute, after a recital that it was expedient that "certain parts of the said coasts of Labrador should be re-annexed to and form part of the province of Lower Canada," it was enacted that "so much of the said coast as lies to the westward of a line to be drawn due north and south from the bay or harbour of Ance Sablon inclusive as far as the fifty-second degree of north latitude" should be re-annexed to and made part of that province. Now a line drawn due north and south from the bay of Ance Sablon to the fifty-second degree of north latitude would penetrate the interior of the country for a distance of about 40 miles, and the land to the westward of such a line would in some of its parts cover a distance of over 100 miles from the sea; and this being so, it would seem that the language of this enactment, construed in its plain and natural meaning, points directly to the inference that the expression "coasts of Labrador" as used in 1763 and 1809 was understood by Parliament in 1825 to have comprised the interior of the country back to those limits. It is suggested in the case for the Dominion that the line to be drawn north and south as far as the fifty-second degree was merely the draftsman's device for effecting the

division of the coastal strip of one mile at Ance Sablon, and was probably intended to serve as a "boundary monument, as it were," for that purpose; but, having regard to the terms of the statute, their Lordships find great difficulty in accepting that construction.

While these arguments make a formidable case in favour of the contention of Newfoundland, it is obvious that the Canadian claim presents great difficulties. A grant of "so much of the land immediately abutting on the sea above low-water mark as was accessible and useful to the British fishermen annually resorting to the coast," even if expressly made in those terms, would have been so vague and indefinite as to be hardly capable of taking effect without some further and clearer definition. Under a grant in those or similar terms, would regard be had only to the needs of the fishermen resorting to the coast at the date of the grant, or would it be necessary to take into account the possibly greater needs of future generations of fishermen? And in case of doubt, upon whom would the duty fall of determining what extent of land was "accessible and useful" to the fishermen? The case for Canada admits that it may be found impracticable to lay down such a line upon the land, and suggests that, in order that neither party may suffer by reason of this difficulty, the boundary should be drawn along the coast at a distance of one mile from high-water mark; but their Lordships cannot think that in adopting such a proposal they would be performing the duty cast upon them by the terms of reference to determine the boundary "under the Statutes, Orders in Council and Proclamations." In any case they could not regard the line proposed as accurately defining the territory accessible and useful for the fishery. Of the ribbon of land along the coast which it is proposed to concede to Newfoundland, a great part lies at the summit of high cliffs not accessible from the sea, and this part of the area proposed would be of no use to fishermen. On the other hand, in places where, owing to the existence of a sea beach or of an inlet, opportunities for landing are available, a limit of one mile would often be found insufficient. Dr. Wilfred T. Grenfell, who has an unequalled knowledge of the country to which he has rendered such devoted service, states that he knows of no building in Labrador which is more than 250 yards above high-water mark, and that all nets are spread and fish dried within that distance from the sea; but his report makes it clear that, for the purpose of obtaining wood for repairs, an allowance of three miles on the average or five miles as a maximum would not be excessive. This view is confirmed by Minutes of the Executive Council of Newfoundland, from which it appears that it has been the practice in leasing the right to cut timber in the island to reserve a margin of three (or sometimes five) miles from the sea in the interest of the fishermen. Further, there are places where a broad peninsula is joined to the mainland by a neck not more than two miles in width, and in each of these instances the one-mile strip would meet in the neck of the peninsula and cut off by an interposed



barrier of Newfoundland soil all access to the Canadian *enclave* on the broader part of the promontory. These considerations seem to show that on any view of the construction of the grant an allowance of one mile from high-water mark would be inadequate, and that any allowance of that kind which might be made would certainly be arbitrary and would probably be insufficient. Indeed, it may be doubted whether any person, noting upon the sketch-map the configuration of the coast as proposed by Canada to be defined, would conceive that the Crown can have intended to annex to Newfoundland an area of that shape and character, to refer to it as a "territory," and to establish a form of Government there; and if, as the Colony forcibly contends, the shores of the great Hamilton Inlet must be treated as a part of the sea coast, so that the one-mile strip would pass up the northern shore of that inlet and round the head of Goose Bay and would then return along its southern shores, the fantastic character of the boundary proposed would become even more apparent. It is also to be observed that the effect of allotting to Newfoundland a continuous one-mile strip along the shore would be to seal off the hinterland up to the watershed from all contact with the shore, from which access to it would naturally be sought; and it cannot be supposed that the statesmen of 1763 intended, while setting up a new form of Government in the interior, to put that Government entirely at the mercy as regards customs duties and otherwise of the Government of Newfoundland.

The principal arguments urged on behalf of the Dominion were based on the terms of the Proclamation of 1763, and particularly (1) on the declared purpose for which the government of the coast of Labrador was entrusted to Newfoundland and (2) on the provision made in the Proclamation for the Indians residing in the hinterland. It is true that the actual annexation of part of Labrador to Newfoundland was effected by the Commission issued to Graves under the Order in Council of the 30th March, 1763, which was prior in date to the Proclamation of the 7th October; but the Proclamation is referred to in some of the statutes as a document of great importance, and no doubt regard must be had to its terms so far as they bear on the construction of the Commission of the same year.

As to the purpose of the grant, great stress was laid on the declaration in the Proclamation that "to the end that the open and free fishery of [the King's] subjects might be extended to and be carried on upon the coast of Labrador and the adjacent islands," that coast with the islands has been put under the "care and inspection" of the Governor of Newfoundland. Attention was also called to a number of passages in letters and reports of about the same date, in which the control of the fishermen and the prevention of encroachments by the French were referred to as the principal objects to be attained. Having regard to these expressions, it was said the grant of the "coast" must be held to include only so much of the land as was accessible

and useful to the fishermen resorting to that coast in the ordinary conduct of their fishing operations.

There is no doubt that the fisheries supplied the principal, if not the only, motive for the annexation of the coast of Labrador to Newfoundland. Labrador, like Newfoundland, was to be a base for fishing and a nursery of British seamen. But although this was the principal motive of the annexation, it does not follow that it was the measure of the grant. The free right to fish off the shores of Labrador, and the right of British fishermen to land there for the purpose of curing and drying their fish and repairing their ships and tackle, was already secured by statute or Order in Council; and the instructions regularly given to the Admiral in command of the Fleet provided for the protection of British subjects and the prevention of foreign intruders. What King George III and his advisers desired was that there should be a government on the coast, with power to administer justice, to imprison offenders, to encourage trade, and to erect forts for the purpose of defence; and it was for these purposes, which went beyond the regulation of the fisheries, that the coast of Labrador was subjected to the government of Newfoundland on the same terms as the island of Newfoundland itself.

Further, the fishing industry would not have been fully provided for by the grant of jurisdiction over a narrow strip of land near the shore. In addition to the cod and the whale which were caught off the Atlantic coast, and to the seal and sea-cow which were found mainly in the gulf of St. Lawrence, the salmon and salmon-trout had to be considered. The salmon fisheries are mentioned in the Instructions given to Captain Graves, and the special importance of those fisheries in the gulf of St. Lawrence, and in the rivers running into the gulf, is apparent from many references in the documents produced in evidence. The salmon fishery could only be fully protected by the grant of jurisdiction over the rivers and inland lakes as well as over the seashore; and from this point of view the reference to the fisheries tends rather to extend than to limit the grant.

But it was pointed out that the Proclamation of 1763 contained a declaration (quoted above) reserving under the sovereignty, protection and dominion of the King for the use of the Indians, the lands and territories not included within the limits of the three new governments of Quebec, East Florida and West Florida, or within the limits of the territory granted to the Hudson's Bay Company; and it was argued that this reservation applied to the territory occupied by the Indian tribes who were settled between the Atlantic seaboard of Labrador and the watershed, and was evidence that this territory was not intended to be included in the "coast" granted to Newfoundland. The Indians living in this territory consisted of Nascopies who lived north of the Hamilton River, and Montagnais who ranged to the south of that river; and if it were established that those tribes were intended to be included among the Indians in whose favour the reservation was made,

the argument would undoubtedly have much force. But it does not appear to their Lordships to be made out that the declaration in question referred to the lands occupied by these two tribes. The reservation is confined to lands occupied by "the said Indians"—that is to say, those who are referred to in the next preceding paragraph of the Proclamation as nations or tribes of Indians with whom the King was connected and who lived under his protection; and it appears from the report of the Lords of Trade, dated the 8th June, 1763, on which the Proclamation was based, that the Indians so described consisted of those tribes of the Six Nations who were settled round the great lakes or beyond the sources of the rivers which fell into the river St. Lawrence from the north. This description would not include Indians residing beyond the sources of the rivers which flow into the gulf of St. Lawrence or into the Atlantic. It is true that the exception of lands and territories included in the three new governments or the Hudson's Bay territory does not apply to lands in the "coast" annexed to Newfoundland; but if the Indians in the "coast" territory were not included in "the said Indians," it was unnecessary to except them. Nor would the lands occupied by these Indians fall within the general description contained in the Proclamation as "lands and territories lying to the westward of the sources of the rivers which fall into the sea from the west and north-west." Further, the Nascopies and Montagnais, so far as they had taken any part in the Anglo-French conflict, had sided with France, and they were not connected with or under the protection of the King before the cession of the French territory to him. The instructions given to Governor Graves in the earlier part of the same year had required him to report as to the establishing or carrying-on of a commerce with the Indians "inhabiting the coast of Labrador"—a direction which was repeated in the Instructions to the Governors appointed immediately after the Proclamation, but which was omitted in those given after 1774 when Labrador was withdrawn from the government of Newfoundland; and such a direction would have been out of place if the Indians settled in Labrador had been altogether excluded from the Governor's jurisdiction. Upon the whole, their Lordships are of opinion that this argument, although well deserving of consideration, is not well founded.

It is said that the territory claimed by Newfoundland is of great extent, being about twice the size of Newfoundland itself; and no doubt this is the case. But the territory in question, when compared with the vast regions with which the British Government was dealing at the time, was relatively small in area and infinitesimal in value.

The colony of Newfoundland claimed to support its case founded on the documents by a reference to evidence showing that the annexation of the "coast" had from the year 1763 onwards been understood and treated by everyone as including the whole area lying between the sea and the watershed or "height

of land"; and there is no doubt that, where a document is ambiguous, evidence of a course of conduct which is sufficiently early and continuous may be taken into account as bearing upon the construction of the document. In this case the events of the sixty years next after the year 1763 have a special relevance, as the statute of 1809 (under which the present title of Newfoundland directly arises) and the statute of 1825 may be assumed to have been passed with knowledge of the public events which had occurred before their passing. It may be added that it was a term of the agreement between the two governments that in the discussion before this Board reference might be made to any evidence which (having regard to the nature of the case and the parties to it) the Board might think material and proper to be considered; and that throughout the discussion, which was conducted in the most friendly spirit, both parties were desirous that no available material which might possibly bear upon the question to be decided should be excluded from consideration.

In this connection the following facts, which were proved, appear to their Lordships to be material and proper to be considered:—

(1) In the year 1765 the *Unitas Fratrum*, a Society of Moravian missionaries, petitioned the Lords of Trade for the allotment to them of four tracts of land on the coast of Labrador containing together about 400,000 acres, with a view to the settlement there of missions to the Eskimos; and with the approval of the Lords of Trade missionaries were sent out by the Society and received the support and protection of Governor Palliser. At a meeting of the Privy Council held on the 3rd May, 1769, upon a report of the Lords of Trade recommending that a grant of land should be made to the Society, the King in Council authorised certain British subjects as trustees for the *Unitas Fratrum* to occupy and possess during His Majesty's pleasure 100,000 acres of land in such part of Eskimo Bay on the coast of Labrador as they should find most suitable to that purpose, and directed the Governor of Newfoundland to give them all reasonable assistance and support in forming their establishment. This grant was duly made, and early in the year 1774 two other similar grants to or in trust for the Society of 100,000 acres each were sanctioned by the Privy Council and committed to the Governor of Newfoundland to be carried out. In the year 1821, after the retransfer of Labrador to Newfoundland, a fourth grant of a like nature was made to the same Society. The lands so granted to the Society of *Unitas Fratrum* penetrated into the country far beyond the suggested limit of one mile from high-water mark, and in the case of the most northerly of them to a distance of about 30 miles from the shore. It would appear that these grants, connected as they were with the Government of Newfoundland, were consistent only with the existence of a Newfoundland jurisdiction extending beyond the littoral strip; and it is hard

to believe that when, in the year 1809, Parliament restored to Newfoundland the coast of Labrador, it intended to divide the Moravian settlements then in existence, placing a small fraction of them (one mile in width) under the jurisdiction of the colony, and leaving the remainder to Canada.

(2) In the year 1774, John Agnew and others having petitioned for a grant of mines and minerals to be discovered on the "coast or country of Labrador" between the river St. Lawrence and Hudson's Straits, the King in Council approved of the grant to them of all such mines and minerals "upon such parts of the sea coasts of Labrador as lie within 60 miles of low-water mark of the open sea" between the river St. John and the southern limits of the territories granted to the Hudson's Bay Company. This grant appears to treat the "coasts" as extending far inland from the shore.

(3) The administration of justice in Labrador has throughout been under the direction of the government of Newfoundland. In the early years after the annexation it was found sufficient, as in the case of Newfoundland itself, to administer justice by the agency of Naval Surrogates exercising their functions on board their vessels or from some place close to the sea shore. But by the Act of 1809 (section 15) it was enacted that the Supreme Court of Judicature of Newfoundland might hold sittings for criminal and civil cases in the parts of the coast of Labrador by that Act re-annexed to Newfoundland; and by an Act of 1811 the institution of surrogate courts for that purpose was authorised. By an Act of 1824 the government of Newfoundland was empowered to institute a court of civil jurisdiction on the "coast" itself, and to appoint a judge of such court; and Judge Patterson, the Judge so appointed, exercised his functions at various places in the Labrador territory, including Rigolet, Kimmamish and North West Brook, places which would have been far outside his jurisdiction if it had been limited as suggested by the Dominion in this enquiry. In 1834 the Legislature of Newfoundland, which had then been established, abolished the court in Labrador on the ground of expense; but by an Act of the same Legislature passed in 1863 the Governor was empowered to institute "at the Labrador" a court of civil and criminal jurisdiction to be presided over by one judge to be appointed by the Governor in Council, and with an appeal to the Supreme Court of Newfoundland, and to appoint such judge to be a collector of revenue on the Labrador. This court was duly set up and was presided over by Judges Sweetland, Pinsent and McNeil successively; and it continued to function until 1874, when it was discontinued. Each of these judges, in addition to performing his judicial duties, made reports from time to time to the Governor on a number of questions relating to the territory of Labrador, including roads, schools, churches and the fur trade. Among other incidents may be mentioned a visit of Judge Pinsent in 1873 to the North West river (about 100 miles from the open sea), when a Government

official vaccinated a number of Montagnais Indians coming there for trade.

(4) Customs duties have been levied on behalf of the government of Newfoundland on goods disembarked in Labrador from about the year 1826 until the present time, and the right of the government to collect such duties has from time to time been affirmed by the Secretary of State. In the year 1864 Mr. Donald Smith (afterwards Lord Strathcona), who was in control of the Hudson's Bay Company's trading station at North West river, agreed after some demur to pay the duties on goods landed at that place; and such duties have since been regularly paid.

It may be added that a considerable trade in fur was carried on by traders settled at or near the seashore or on the shores of the Hamilton inlet with the Indians in the interior, and was fostered by the Governor of Newfoundland; but a trade of this character would easily reach beyond the territory of the traders themselves, and it has little bearing on the question of boundary. A similar observation applies to the trade carried on by the Indians with the King's Posts in the Province of Quebec, on which counsel for Canada relied. No evidence was given of any exercise of a Canadian jurisdiction in any part of the territory in dispute.

It seems desirable to add some observations on the maps, of which a large number (some of great antiquity and interest) were produced by the parties.\* Maps published by private persons must, of course, be received with caution, as such persons depend to a large extent upon information obtained from general and unauthoritative sources; but from a map issued or accepted by a public authority, and especially by an authority connected with one of the governments concerned, an inference may not improperly be drawn.

The maps issued before 1763 have no direct bearing on this case, although some of them have been already referred to as instances of the use of a watershed or "height of land" as the boundary of a territory; and the later maps down to the year 1842 are of little use, except that they clearly indicate the whole course of the river St. John as the eastern boundary between Quebec and Labrador. Arrowsmith's map of British North America (N 24), published in 1842, is interesting as showing a line drawn from Ance Sablon northward to the fifty-second degree of north latitude and then along that parallel to the head of the St. John river as being at that point the boundary between Lower Canada and Labrador, thus indicating that the construction of section 9 of the Act of 1825 now put forward by Newfoundland was then adopted by the cartographer. The same indication of boundary appears, with greater authority, in the map (N 25) prepared in 1855 by T. C. Keeper, C.E., on the instructions of the government of Canada for the use of the Canadian Commissioners at the

\* The maps contained in the collection put in by the Dominion are referred to by their numbers following a C, and those contained in the atlas put in by Newfoundland by their numbers following an N.

Paris Exhibition. Arrowsmith's map of 1857 (N 26) has some authority as having been ordered to be printed by the House of Commons for the purposes of the Hudson's Bay Committee of that year, and as having been selected as an exhibit in the Alaska Boundary case; and that map not only has a similar indication as to the southern boundary of Labrador, but assigns to that territory the exact boundaries now claimed for it on behalf of Newfoundland. The same observation applies to a map (N 31) prepared in 1871 by two Canadian officials (Russell and Mare) on the order of the Canadian Minister of Agriculture, and to a map (N 32a) compiled by Desbarats in 1873 and sent by Lord Dufferin as Governor-General of Canada to the British Ambassador in Washington as showing "the exact boundary on the coast and the assumed boundary in the interior." The despatch of the Governor-General transmitting this map enclosed a copy of the report of a Committee of the Privy Council approved by the Governor-General in Council on the 12th November, 1874, which was in the following terms:—

In a despatch dated 20th June, 1874, from Sir Edward Thornton to Your Excellency, inclosing a communication from the Hon. Hamilton Fish, Secretary of State at Washington, desiring to be informed whether any part of Labrador is separated from the jurisdiction of either the Dominion of Canada or that of Newfoundland.

The Honourable the Secretary of State to whom this despatch, with enclosures, has been referred, reports that the boundary-line between the Dominion of Canada and Labrador is a line drawn due north and south from the Bay or Harbor of Ance au Blanc Sablon, near the Straits of Belle Isle, as far as the 52nd degree of north latitude; that Labrador extends eastward and northward from that point to Hudson's Straits.

That the division-line in the interior separating Labrador from the Dominion of Canada has only been defined as far north as the 52nd degree of north latitude, but it has been assumed that the boundary-line in the interior would have taken the direction laid down on the accompanying map, which follows the height of land.

That Labrador, with the islands adjacent thereto, is annexed to Newfoundland, and under the Government of that Island.

Attached to the Report of the Secretary of State are extracts from the Imperial Statute bearing on the question, and a map showing the exact boundary on the coast and the assumed boundary in the interior.

The Committee recommend that a copy of this Minute with map and extracts from the Imperial Statute, above alluded to, be transmitted to Sir Edward Thornton for the information of the United States Government.

The terms of this report appear to their Lordships to be significant.

The maps subsequent to 1874 are not less interesting. The boundary now claimed by Newfoundland is assigned to Labrador by a map (N 35) prepared by Johnston in 1878, signed by the Surveyor-General of Canada and published by order of the Ministry of the Interior; in a map (C 36 and N 36) prepared by Johnston and Edmunds in 1882 and issued by the Canadian Department of Railways; and in a map (N 38) compiled by two French-Canadians (Tache and Genest) and issued by the Department of Railways of

Quebec in 1883. In a map (C 37 and N 39) prepared by J. Johnston by authority of the Minister of the Interior and issued by the Department of the Interior at Ottawa in July, 1890, the height of land now claimed by Newfoundland as a boundary is shown by a red line; and though it is not clear on that map whether it is intended to be taken as the boundary between Canada and the Dependency of Newfoundland, no other boundary is indicated. This observation does not apply to a map (N 41) issued by the Department of Railways and Canals of Canada in 1891 and signed by the Chief Engineer of Government Railways, for in that map Labrador is clearly shown as bounded by the height of land; nor to a map (N 43) published by the Map and School Supply Company of Canada, Limited, and registered with the Department of Agriculture, in which "Labrador (Dependency of Newfoundland)" is depicted in bold colours as containing (subject to a slight difference to be mentioned hereafter) the precise area for which Newfoundland is contending. In the important map (N 42) prepared by Mr. A. P. Low, an official of the Canadian Geographical Survey, as the result of a careful survey of the country and issued by that Department in 1896, the approximate height of land is shown, though not as a boundary; but the line drawn due north from Ance Sablon to the fifty-second parallel is shown and marked "boundary line." No other boundary of Labrador is indicated in that map. It is not until the year 1900 that the boundary now claimed by Canada is found upon any map; but it then appears upon a map (C 39) issued by the Department of the Interior, where a dotted line is drawn along the line of the shore and is marked "boundary undefined." It is also found in later maps; but as these were published after the dispute had arisen, no importance attaches to them.

The maps here referred to, even when issued or accepted by departments of the Canadian Government, cannot be treated as admissions binding on that Government; for even if such an admission could be effectively made, the departments concerned are not shown to have had any authority to make it. But the fact that throughout a long series of years, and until the present dispute arose, all the maps issued in Canada either supported or were consistent with the claim now put forward by Newfoundland, is of some value as showing the construction put upon the Orders in Council and statutes by persons of authority and by the general public in the Dominion.

Upon the whole, their Lordships, having considered the facts and arguments put before them with the care which is necessary in a matter of such grave importance, have come to the conclusion that the claim of the Colony of Newfoundland is in substance made out; but there are two points of detail to be mentioned.

First, in many of the maps issued after the year 1882, and particularly in the official maps above mentioned and numbered N 38, 41 and 43, and in maps issued by W. and A. K. Johnston



(N 37) and by Stanford (N 40), the southern boundary of Labrador is shown as running, not from the point where the north and south line drawn from Ance Sablon meets the fifty-second parallel, and in a straight line along that parallel, but from a point where that north and south line would reach the watershed north of the fifty-second parallel and along that watershed as far as the head of the Romaine river. A boundary so drawn along the watershed would no doubt be more convenient than one which follows the arbitrary line of the fifty-second parallel, and would have the advantage of throwing into Canada the whole course of the rivers which run into the gulf of St. Lawrence. But their Lordships would not feel justified in adopting a boundary which, however convenient in itself, is not warranted by the terms of the statute of 1825; and they are of opinion that the line must be drawn along the parallel as far as the supposed river of St. Johns, namely, the Romaine river. According to the claim of the Colony as illustrated by the sketch-map, the line would be continued westward across the river until it met the height of land; but there is no warrant in the statute of 1825 for such a continuation of the line, the effect of which would be to give to Newfoundland a part of the original province of Quebec as constituted under the Proclamation of 1763. The line should follow the parallel only until it meets the river, and should then turn north to the watershed.

Secondly, a small island called Woody Island, lying opposite to the bay of Ance Sablon, is claimed both by Canada and by Newfoundland. In their Lordships' opinion the transfer to Canada by the Act of 1825 of so much of the coast as lies to the westward of a line drawn due north and south from the bay or harbour of Ance Sablon "inclusive," with the islands adjacent to that part of the coast, carries with it Woody island, which accordingly belongs to the Dominion.

For the above reasons their Lordships are of opinion that, according to the true construction of the Statutes, Orders in Council and Proclamations referred to in the Order of Reference, the boundary between Canada and Newfoundland in the Labrador Peninsula is a line drawn due north from the eastern boundary of the bay or harbour of Ance Sablon as far as the fifty-second degree of north latitude, and from thence westward along that parallel until it reaches the Romaine river, and then northward along the left or east bank of that river and its head waters to their source and from thence due north to the crest of the watershed or height of land there, and from thence westward and northward along the crest of the watershed of the rivers flowing into the Atlantic Ocean until it reaches Cape Chidley; and they will humbly advise His Majesty accordingly.

In the Privy Council.

---

IN THE MATTER OF THE BOUNDARY BETWEEN  
THE DOMINION OF CANADA AND THE  
COLONY OF NEWFOUNDLAND IN THE  
LABRADOR PENINSULA

BETWEEN

THE DOMINION OF CANADA OF THE ONE PART

AND

THE COLONY OF NEWFOUNDLAND OF THE  
OTHER PART.

---

DELIVERED BY THE LORD CHANCELLOR.

Printed by

Harrison & Sons, Ltd., St. Martin's Lane, W.C.2.

1927.