

NEGOTIATIONS
FOR
HUDSON'S BAY TERRITORY
BY CANADA

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EARLY NEGOTIATIONS FOR THE ACQUISITION
OF THE HUDSON'S BAY TERRITORY
BY THE UNION GOVERNMENT OF CANADA

T H E S I S
for
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by
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CHAPTER I

The Canadian West, with its thriving towns, its network of railways, and its rich harvest fields, may fittingly be called the monument of Canada's three greatest statesmen. For eighteen years, in the press, on the platform, and on the floor of parliament, the Honourable George Brown advocated the acquisition of the territory. Immediately Canada's title to the land was established, Sir John A. Macdonald with unflinching courage solved the first issue, communication. Sir Wilfrid Laurier came at a happier hour, and had the pleasant task of guiding the long immigrant trains into Canada's prairie provinces. Brown was the least fortunate of the three; just when the goal was in sight, the hand of fate interposed. Consequently his work has remained obscure.

The early agitation for the acquisition of the Hudson's Bay Territory by the Union Government of Canada, with which George Brown was associated, extended from 1847 to 1865, resulting in negotiations in 1857 and the

two succeeding years and again in 1864-65. Before touching on the actual negotiations, a brief survey of the position of Hudson's Bay Company in 1867 might be made under the following headings:-

- (a) Legal position,
- (b) Financial position,
- (c) Organization and extent of operations.

The legal position of the Company was a very important problem. As early as 1833 the question was discussed in Upper Canada. Henry Bliss' report on Upper Canada, which appeared in an English paper, stated that five and a half million acres of vacant land were available for settlement. The select Committee of the Assembly of Upper Canada on Education criticized the statement, on the ground that forty million acres of such lands were available. The Committee evidently doubted what was commonly accepted as the Northern boundary of Upper Canada, and expressed a desire "to know something of the regions beyond." Acting on the recommendation of the Committee, the Assembly agreed to secure a copy of the Charter of the Hudson's Bay Company. (1) The matter apparently rested there, for

(1) Hodgins - Documentary History of
Education - I - p.VII

in 1857 even the members of parliament revealed the grossest ignorance of the subject. Members frequently interchanged the terms, licence and charter, stating that the Charter of the Company expired in 1859. Joseph Cauchon, Commissioner of Crown Lands, deserves credit for enlightening the members of parliament and the public. He promptly secured copies of documents bearing on the title of the Company, and also prepared a lengthy argument, refuting the claims. His entire work, as parliamentary papers, was laid on the table of the Assembly, and later a copy appeared in the appendix to the Journal of the Assembly of 1857. The Press extended the benefit to the public. (1)

The title of the Company was founded on five documents, three issued by the Imperial Government and two by the Canadian Government -

- (1) The original Charter granted by Charles II, May 22, 1670, was, of course, the foundation stone.

- (1) The Press of 1857, one would judge, was a more important factor in politics than the Press of today. The Editor's resources were limited - the telegraph in its infancy, no cable, no sporting news, and only fragments of social news. The Editor then exploited his one theme, politics, to the utmost, publishing complete reports of parliamentary debates and papers. Since each issue commonly consisted of four pages, three of advertisements and one of general information, the reader had no choice.

The Charter incorporated the Company under the name of "The Governor and Company of Adventurers of England trading into Hudson's Bay", and granted to the members: "The sole trade and commerce of those seas, straits, bays, rivers, lakes, creeks and sounds..... that lie within the entrance to the straits called Hudson's Straits, together with all the lands and territories upon the countries, coasts and confines of the seas, bays, lakes, rivers, creeks and sounds aforesaid, that are not already actually possessed or granted to any of our subjects, or possessed by the subjects of any other Christian Prince or State."

The privilege of government was also included. The striking feature of the grant is Charles' extreme generosity in extending the privileges to the members of the Company and their successors forever. The Company, nevertheless, becoming uneasy on the accession of William of Orange and the introduction of parliamentary government, petitioned to Parliament for a confirmation of the Charter. Parliament, more discreet than Charles II, confirmed the Charter, in 1690, for seven years only. No further

confirmation was ever made.

- (2) The Crown Grant of the Exclusive Trade with the Indians in the Indian Territories, July 2, 1821, is second in importance to the Charter. This document first proclaimed the Union of the North West Company and the Hudson's Bay Company. To the new Company under the name of the Hudson's Bay Company, a licence or grant was made of, "The exclusive privilege of trading with the Indians in all such parts of North America, to the Northward and to the Westward of the said lands and territories belonging to the United States of America, as should not form part of His said Majesty's Provinces in North America, or of any lands or territories belonging to the said United States of America, or to any European Government, state or power". (1) West of the Rocky Mountains any foreign power might engage in trade - this clause was in accord with the London Convention 1818, by which territory west of the Rocky Mountains was to be open to subjects of both Great Britain and United States. The Licence was to be valid

(1) Journal of Canadian Assembly 1857 - App.17.

for twenty-one years - no rent was exacted. The Company constantly referred to this document as a licence, in order to distinguish it from the Charter of 1670. The Indian Territory, in the views of the Company, comprised the basin of the Mackenzie River, and the territory at present included in the Provinces of British Columbia and Alberta. The Licence was renewed May 30, 1838, with two additional provisions:

- (a) At the expiration of four years an annual rent of 4s was to be collected.
- (b) Great Britain might, at any time, establish a colony within the territory.

The latter clause is an evidence, that even at this date, alert British Statesmen predicted a brighter future for the great prairie land of America.

- (3) The Grant of Vancouver Island, Jan. 13, 1849, differed in character from the previous grants. The Company received entire possession of Vancouver Island and exclusive trade, provided "the Governor and Company shall establish upon the said Island a settlement or settlements of resident colonists, emigrants

from our United Kingdom of Great Britain and Ireland or from other of our Dominions." The land was to be sold to the Colonists on favourable terms and the proceeds to be used to defray the expenses of the settlement. The grant was valid for five years; at the expiration of that period, the British Government might reclaim the land at any time, should the Company fail in its obligation to establish a successful Colony. Remuneration was to be made for buildings and improvements. The Hudson's Bay Company, as a commercial organization, has ever taken first rank, but as a colonizing agent, failed.

- (4) The King's Posts, in spite of the interesting name, were probably the most obscure of the Company's claims. According to "The Leader" of May 17, 1858, the King's Posts were established in a barren tract of land, 1300 square miles in extent, located in the North Eastern part of Lower Canada. On July 22, 1822, the Government of Lower Canada leased this district to John Gondie, a shipbuilder, of Quebec. In 1842 Gondie's lease was transferred to the Hudson's Bay Company. The Government received a rent of £600, and at any time might

resume control of the land, if required for colonization. In 1851 the original lease was surrendered, and a new lease requiring a rent of £60 was granted for twenty-one years.

- (5) The fifth claim was located in the northern district of Upper Canada. In 1856 the Company received patents for 6300 acres on the north shore of Lake Superior, and for 6238 acres on the north shore of Lake Huron. In 1854, on payment of £50, a patent was received for 6400 acres at the mouth of La Cloche River on Lake Huron, and further patents were promised for certain sites in the Lake Nipissing District. (1) The Reform party of Upper Canada severely criticized the action of the Macdonald Government, claiming that, including the lands promised, the government had actually agreed to the transfer of 50,000 acres for the sum of £50. The press inferred that members of the Cabinet were in cooperation with the Company. As a

(1) Journal of Canadian Assembly - App.17.

result, in 1857, Macdonald directed the Commissioner of Crown Lands to issue no deeds for the lands in question.

It must be remembered that the four minor claims were merely of a temporary character, but in addition to their financial value, added to the prestige of the Company. The formidable claim was based on the Charter of 1670.

A cartoonist might have represented the power of the Hudson's Bay Company in 1857, as a giant enthroned on the shores of Hudson's Bay, holding in his hand a sceptre and anxiously gazing toward the Red River District. From the throne four arms radiate, the first clutching the North Eastern District of Lower Canada, the second, the Northern District of Upper Canada, the third, the Mackenzie Basin, and the fourth, Vancouver Island. The cartoonist might have gone further and depicted, far to the South, two youthful figures, one slightly weaker than the other, defying the age-worn giant as he eyed the Red River District.

The financial position of the Company may be briefly indicated by the following figures:-

Original stock 1670.....	£ 10,500
stock 1690.....	31,500
stock 1720.....	94,500
stock 1821.....	400,000
stock 1857.....	500,000

The actual capital in 1857 stood:

Assets.....	£1,468,301	
Liabilities.....	<u>203,233</u>	
Capital.....	£1,265,068	(1)

The latter statement includes the value of the Company's ships, trading posts, London offices and supplies on hand. The Cornhill Magazine refers to the enormous profits of the Company:

- (1) 1684 - a dividend of 50%
- (2) 1689 - " " " 25%
- (3) 1743 - " " " 10% (2)

The Edinburgh Review 1859 states that a dividend of 10% was also realized in 1857, and added the following comment: "The Company is accused, not without some justice, of having had recourse to the modern method of watering its stock". (3) Whatever methods the Company may have resorted to, the above figures at least indicate a long era of continued prosperity and the power of the Corporation with which Canada was to deal.

The thorough organization of the Company also meant strength. The Governor, Deputy Governor and seven Directors resided in London. A resident Governor assisted by local

- (1) Begg - North West Vol.I - p.336
- (2) Vol.22 - p.174
- (3) Edinburgh Review - Vol.109 - p.127

councils, superintended the establishments in America. Under the Governor were the chief factors, each having charge of one or more trading-posts. The chief trader assisted by clerks was in charge of a single trading-post. The Indians were the trappers. In 1856 - 108 chief factors were in charge of 153 trading-posts; the total number of employees was 1200. The Company had absolute sway over 150,000 Indians and 7,000 whites in the Red River Colony. (1) The annual fur sales in London, which attracted buyers from all the nations of Europe, even from Russia, Poland, Bulgaria and Greece, were an evidence of the industry of trappers and traders.

Although the efforts of the Hudson's Bay Company were crowned with success, dark shadows frequently intervened. One author wrote, "No institution has been more furiously attacked, and more vehemently defended than this Company". (2) In 1749 the British Parliament questioned the validity of the Charter, but two leading attorneys gave an opinion favourable to the Company. In 1804 and in 1816 the North West Company received opinions opposed to the Charter. During the Napoleonic Wars the Directors fought a life and death struggle. European markets were closed to British merchants, the Company's warehouses

(1) Bryce - Hudson's Bay Company - App.C.

(2) Edinburgh Review - Vol.109 - p.133.

were filled to their capacity, the House of Commons refused two petitions for loans, yet the Company's boats cleared each year for the Bay, the factors were fed, and the Indians saved from starvation. In 1857 the Company, a veritable veteran. who had survived eleven sovereigns, faced a new enemy, an enemy more formidable than an eighteenth century parliament, a Napoleonic decree, or a competitive Company. It was a people, in fact, three peoples, one in Great Britain, one in Canada, and one in the Red River Colony. Democracy was not a friend to the Hudson's Bay Company. The Company, with its customary foresight recognized the situation and early in the contest declared its willingness to sell, but with its old tenacity safeguarded its Charter in order to make an honourable and profitable surrender.

CHAPTER II

The Red River Colony, the offspring of Lord Selkirk settlement of 1812, took the initial step in the contest that eventually overthrew the Company's monopoly. The population of the colony in 1857 was 7000; 2000 Scotch, 2500 Scotch half-breeds, and 2500 French half-breeds, who preferred the name metis. The colonists, in spite of their isolation and many handicaps - including the opposition of the North West Company and hostile Indians, as well as damage to their crops from frost, floods, and grass-hopper plagues - succeeded in proving to Great Britain and to Canada that the soil of the prairie was sufficiently fertile to support a considerable population. Sir George Simpson in his work, "A Journey Round the World", wrote: "The soil of the Red River Settlement..... when first tilled, produces extraordinary crops, as much, on some occasions, as forty returns of wheat; and even after twenty successive years of cultivation, without the relief of fertilizer, it still yields from fifteen to twenty-five bushels an acre". This favourable evidence of the character of the soil made a strong appeal to open-minded British Statesmen, and refuted the common belief, that Prince

Rupert's Land was a barren stretch of frozen country.

The colonists were restless under the arbitrary rule of the Company. After the purchase of the Red River Colony from the heirs of Lord Selkirk's estate in 1835, the Company organized a government at Fort Garry, consisting of a Governor and a Council appointed by the Committee in London, from among the most influential inhabitants of the colony. A court and a code of laws were also established. The colonists complained that the system was non-British. The Company practically controlled the government, and all the officials of the courts, including the Judge, were in the pay of the Company. Would a resident, charged with an offence against the Company, receive an impartial judgment? The criticism of the existing government gradually gave rise to a desire for representative government, such as Canada enjoyed. This desire asserted itself at intervals, and finally took concrete form in the petition to the Dominion Government in 1870.

Trade restrictions, however, presented a more serious grievance than the autocratic government. Trade was the making of the Company, but it was also to be a strong factor in its undoing. The Company, as a sound business proposition, carefully guarded its privilege of exclusive trade. No person, other than an employee of the Company, was allowed to purchase furs for

resale. The factors unfortunately weakened their own position by employing half-breeds as middlemen, who purchased from the Indians and resold to the Company. The metis found the occupation profitable and interesting, and in search of a higher profit, frequently sold to American buyers. The factors, realizing the effect of the system, dismissed the half-breed buyers. But the taste for trade was created and illicit traffic became common. The Company's officers frequently raided houses confiscating stores of furs collected illegally. Finally in 1849 William Sayers was arrested on a charge of illicit trade. On May 17th, the day of the trial, métis, to the number of five hundred, surrounded the Court-house. According to Begg's account Sayers pleaded guilty, but owing to the presence of the mob, was released on declaring that an employee of the Company had given him permission to make the purchase.(1) Bryce and Morice claim that the unruly mob interrupted the trial, and no decision was given. In any case the half-breeds hailed the result as a victory and shouted at the Court-house door, "La Commerce est libre! La Commerce est libre! Vive la liberte!"(2) Trade actually was free, but the significant fact was that the Company had been defied. On three occasions in succeeding years the jails were broken open, and prisoners were released. The disregard for authority

(1) Begg - North West I - p.272

(2) Bryce- Hudson's Bay Company - p.441 - 42

in the colony influenced the Company in the direction of sale and the British Government in the direction of acquisition.

In other respects also, trading conditions were unsatisfactory. An enterprising citizen, named Sinclair, exported to England a small quantity of tallow in the Company's boats. The transaction was profitable so Sinclair secured a larger shipment. The Company left the cargo at York Factory, and eventually Sinclair was forced to sell to the factors at a low rate. The petition of the colonists to the Governor for the right to export tallow received no response. In 1839 Judge Thom, a man entirely out of touch with his own age, arrived from Montreal. He at once instituted what Bryce describes as a system of "Thorough". Under his influence the Council of Fort Garry in 1844 issued two proclamations:

- (1) Every merchant, unless he could
sign a declaration that he had
not been engaged in the fur trade,
was required to pay an import duty
of 20%. (1)
- (2) All merchants, unless they signed
a declaration that they had not
been engaged in the fur trade, were
required to leave their letters,

carried in the Company's packet to
England, open.

The authorities might then censor the contents. (1)
French and Scotch alike protested. The system was non-British. The colonists argued that the Company, controlling the only means of transportation, should establish a reasonable freight rate, abolish import duties, and grant a British subject's right of freedom in mail service.

The Company, in view of its Charter, could readily defend its attitude in government and trade, but its system of land tenure introduced in 1845, certainly bore the mark of oppression. The following is the substance of a deed issued to John Slater:

- (1) John Slater received 100 acres in
two parcels of 50 acres each.
- (2) He was to make certain presents of
grain to the Company.
- (3) He was to do road-labour, and to
assist in paying for the general
administration of the colony.
- (4) He was not to engage in the fur
trade.
- (5) All products were to be sold through
the Company and to be transported in
the Company's boats.

(6) He was neither to import goods
nor to buy goods imported by other
than Hudson's Bay Company's agents
(Merchants received licences from
the Governor).

(7) If these terms were not observed,
the land was to be forfeited.

(8) The terms of the deed were to
apply to John Slater and his heirs.

Such was the copy of the deed which accompanied the petition of the Red River Colonists to the Canadian Government in 1857, and was published in the "Globe", June 12, 1857. It is only fair to note that this deed was not characteristic of the Company's system, and was generally supposed to have been issued at the instigation of Judge Thom. Sir George Simpson in his evidence before the Select Committee, stated that deed was seldom used. Nevertheless, what was the position of the colonists? Would intelligent men accept the system?

Exorbitant prices were a further source of irritation. The colonists, in their petition to the Canadian Government, stated that the Company realized a profit of from 100 to 400% on imported goods. Agnes Laut in "The Conquest of the Great North West" gives a detailed statement: Ocean freight rate 33%, land freight rate 20%, profit to

the Company 58%. Thus the advance on the purchase price of all articles was 111%. On the other hand the factors purchased wheat from the colonists at 2s. 6d per bushel. (1) The settlers kept accounts with the Company and paid 5% on arrears. In 1835, on the purchase of Selkirk's claim, the interest and one-fifth of the debts of the colonists were cancelled. The system of barter with the Indians was even more remarkable. The price of a musket was beaver skins piled on either side until level with the muzzle. According to the Cornhill Magazine, sable skins replaced beaver skins in transactions in the Rocky Mountain district. A musket was worth £1 in England, and a sable skin £3. Exceedingly long muskets were imported. The import duty for the colonists was commonly 12%, but in response to a number of petitions was reduced to 5%.

It is well to note that the Hudson's Bay Company, in spite of its shrewd business tactics, was a strong benefactor of the Indians. Agnes Laut wrote: "Not one massacre marked the advance of the Hudson's Bay Company to the Pacific Coast, a record which no other organization in the world can boast of - the bloodless conquest of an Empire from savagery". Perhaps the greatest compliment that the Company ever received was the ingenuity of an American, who in the Sioux rising in Minnesota in 1862,

(1) Laut - Great North West - p.388

hoisted the British flag, and was the one white man to escape alive. The British flag was known to the Indian only through the Hudson's Bay Company.

In 1847 the colonists found an able exponent in Alexander K. Isbister. Isbister, a native of the Red River Colony with a strain of Indian blood in his veins, after a brilliant course at an English University, had become a successful barrister in England. A reader admires his industry, perseverance, and sympathy for his fellow countrymen, but at times questions his sincerity and is disgusted with his boastfulness. For at least thirteen years Isbister published articles in the London Times and other leading English papers, and also in several Canadian papers, especially in the Globe. He communicated with able British Statesmen as Gladstone, and Mr. Christy, and was successful in building up in the House of Commons a little party interested in his cause.

In 1847 Isbister and five half-breeds of the Red River Colony presented a petition to the Secretary of State for the Colonies. The petition contained a long list of grievances - unjust system of barter, neglect of religious training and education for the natives, sale of liquor to the Indians, and other grievances already indicated. Governor Pelly of the Hudson's Bay Company forwarded a detailed reply to the charges, in an attempt to establish the innocence of the Company. Earl Grey appealed to Lord

Elgin, Governor General of Canada, for information.

Lord Elgin replied that owing to the slight intercourse between Canada and the Red River district, it was difficult to secure specific information, but Colonel Crofton, Commander of the Sixth Royal Regiment stationed in the Colony, had made a report favourable to the Company. On the same date, according to Bryce's and Morice's accounts, a petition in the French language, signed by 977 French half-breeds of the colony, was presented to Her Majesty requesting:-

- (1) That as good subjects they might
be governed by the principles of
the British Constitution.
- (2) That as British subjects they
might have the right to enjoy
liberty of commerce.
- (3) That they might sell lands to
strangers and apply a portion of
the proceeds to the improvement of
transportation.

The petitions appeared at an opportune moment. Negotiations were in progress for the Grant of Vancouver Island to the Company. Gladstone and the Earl of Lincoln protested vehemently.

On August 18, 1848, Gladstone delivered a lengthy address in the Commons. He referred to the failure

of Commercial Companies as governing and colonizing bodies, using the East India Company as an illustration. Of the Charter he stated: "The Company had never ventured to maintain their title in a Court of law, and they had never occupied more than some portion of the Coast of the territory to which they laid claim. The interior was explored by the French". The misrule of the Company was then dealt with in detail. As a result a motion was carried to the effect, that an enquiry into the complaints of the Red River colonists against the Company should be instituted, before Vancouver Island was granted. Later Lord John Russel ignored the motion.

In 1849 Gladstone and the Earl of Lincoln again attacked the Grant of Vancouver Island. On June 19th, the Earl of Lincoln stated in the Commons: "I think I may be enabled to prove that this Company is more especially unfitted for this office than any other Colonization by absentee proprietary Companies has, as far as the great experience of this country has gone, been a failure, and those Colonies alone have been prosperous which have originated under different auspices and been governed by a different system." He supported his argument by referring to the failure of absentee landlords in Virginia, Carolina, Pennsylvania and New Zealand. He then dealt at length with the question of the validity of the Charter and the misconduct of the Company. July 5, Gladstone addressed the House, referring to the little attention that

had been paid to the large portion of North America under the sway of the Hudson's Bay Company. He advocated: "A full and perfect, but also a dispassionate enquiry - not into the powers which the Hudson's Bay Company might possess - not into the abuse of their powers..... but simply and dryly into the legality of those powers". Mr. Ellice, Deputy Governor of the Company, and Member of the Commons, defended the Company: "In the Hudson's Bay Company this country had an instrument by which the affairs of the vast regions almost inaccessible to civilized beings were administered without expense and it was not probable that other means would be found to effect the same object..... No public good would accrue from the discussion of this subject". Mr. Ellice refuted the rumour that the Grant of Vancouver Island was a secret favour due to the influence in the Cabinet of certain members of the Company. A motion was introduced and seconded to the effect that measures should be taken to ascertain if, in view of the Charter of Incorporation, the Grant of Vancouver Island was valid. As less than forty members were present no vote was taken. Lord Grey solved the question by suggesting that Isbister present a Memorial to the Queen, to come before the Judicial Committee of the Privy Council, in order that the Company's position might be definitely defined. Isbister was to pay his own expenses, and the Company the expense of their defence.

Gladstone characterized the plan as "monstrous".

Isbister declined the offer.

Thus ended Isbister's first effort. Yet it was not entirely fruitless. Interest had been created among the members of Parliament, and for the first time the English public learned something of the character of the Charter and the dissatisfaction of the inhabitants under the Company's rule.

However, Isbister took a more effective step in communicating with George Brown in 1847, and proposing, as a remedy for the plight of his fellow countrymen, the union of the Red River district with Upper Canada. Isbister had chosen his man well. George Brown, like Gladstone, had a keen eye for social and political injustices. Here was a wealthy Corporation oppressing a little band of Scotchmen, his fellow countrymen. Why not use his journal to defend their cause? Moreover, Brown was a man of visions. Even at this date he may have pictured a United British Colony extending from Coast to Coast. Under the influence of his broad sympathies, he may have seen the destitute of the British Isles happily located in comfortable prairie homes. In later years there is no doubt, but that he saw in the annexation of the Red River belt to Upper Canada a solution of his own political position. The Red River colonists would be represented in the Union Parliament. Their representatives would in all probability join the Reform Party. Thus he would have

the longed for opportunity of overthrowing his old enemy, Macdonald. The Reformers of Upper Canada would direct legislation, and some of his pet schemes, as abolition of separate schools, would become a reality. Did Macdonald and the French of Lower Canada also see this possible situation? But this discussion belongs to the period from 1857-59.

In the meantime, the columns of the Globe were moulding public opinion. From time to time articles by Isbister appeared. In 1857 the Editor offered to every subscriber of "The Globe" a free map of the Red River district - Maps were not to be sold to other persons. Brown in his maiden speech in Parliament, 1851, advocated the acquisition of the West. In 1854 he also mentioned the subject and in 1856 gave notice of a motion for the appointment of a Committee of Enquiry, but was interrupted by other business. In the same year Captain Kennedy declared before the Board of Trade of Toronto, that the most important work before Canada was the settlement of the 279,000,000 acres of land lying West of the Great Lakes. Brown also addressed a number of meetings on the difficulties of the existing Union, declaring that the remedy for the situation was the union of British North America

CHAPTER III

Colonial Policies were not popular in European politics until the last quarter of the nineteenth century. England had spent enormous sums on her colonies with practically no return until the latter half of the nineteenth century. Thus British statesmen approached the question of the Colonization of the Hudson's Bay territory with considerable hesitation, especially since the Hudson's Bay Company had persistently represented the territory as so much rock and ice, a fit hunting ground for trappers. The question was discussed in the Commons every decade for forty years, but fortunately each discussion meant a forward step. In 1838, in renewing the Company's trading licence in the Indian Territory, the British Government reserved the right to establish a colony within the territory. In 1848-49 the first experiment in Colonization was made, by granting Vancouver Island to the Hudson's Bay Company on condition that a colony be established. In 1859, as the Company's efforts were not a success, the British Government undertook an

experiment on its own responsibility, establishing a crown colony in Vancouver Island and British Columbia. In 1869 the entire Hudson's Bay Territory was transferred to Canada on the understanding that Canada would colonize the land. The Act of 1859 was preceded by a long and useful discussion.

In 1857 Labouchere, Colonial Secretary, announced in the House of Commons that he was in receipt of a communication from the Hudson's Bay Company regarding the renewal of its licence of exclusive trade in the Indian Territory, which expired in 1859. He recommended the appointment of a Select Committee to investigate the whole matter. He had also communicated with the Governor General of Canada "with a view that the inhabitants of that colony might be afforded an opportunity of putting forward such opinions and furnishing such information, as they might deem desirable upon a question in which they naturally took a deep interest." The Colonial Secretary evidently recognized Canada's interest in the territory, and looked to her for a solution of the future of the land.

The time was ripe for such a discussion. Liberalism in England was opposed to monopoly. Labouchere stated as his reason for consulting the Commons, that the renewal of the licence would involve a Commercial monopoly. The London Morning Post, January 1857, asks, "Why does the Hudson's Bay Company retain its monopoly and escape the fate of the East India Company? The opposition of the

people of Canada to monopoly will meet with generous sympathy in Great Britain." (1) Begg states that the Company had secured a renewal of its licence in 1838 instead of in 1842 because signs of discontent at exclusive monopoly were appearing in the West(2). Further, Liberalism had led to an interest in the welfare of the masses. Liberal statesmen saw in this prairie land a prosperous future for the destitute of England. In the debate on the question, Roebuck declared that his purpose was, "To civilize that part of the world and to make it a pleasant home for happy people". Adderly declared, "It mattered little whether the Charter was valid or not. It could not be maintained in opposition to the rights and necessities of mankind." Gladstone had expressed similar opinions in 1849 and welcomed the investigation in 1857, but he confined his address to the two questions to be considered by the Select Committee, namely:

(1) The Legality of the title of the
Company.

(2) The expediency and the prudence of
continuing to the Company the
government of this vast territory. (3)

Fear of encroachment from United States was also an important factor in the movement. Adderley

(1) Globe - Jan.15,1857.

(2) Begg - North West - I - pg.252.

(3) Hanzard - CXLIV - 219

in addressing the Commons, referred directly to the danger of annexation and stated: "If the country were freed from the Hudson's Bay Company, it would not be handed over to the Colonial Office but to Canada, or would be formed into a colony to be maintained by its own administration. Unless this were done the inhabitants would do what they had done before, petition to United States to be annexed. Mr. Roebuck stated: "If England did her duty..... there would be created in the Hudson's Bay Territory the Germany of North America, and therein something to counteract the preponderance of United States." The Hon. Edward Ellice, Member of the Commons and Deputy Governor of the Hudson's Bay Company rose to defend the Company. After contending that a large proportion of the territory was unsuitable for settlement, he admitted that under ordinary circumstances a trading Company was not a fit agent for colonization, but this case was an exceptional one. He had just one argument to support his statement. The natural outlet of the Red River district was through United States as railways could readily be built across the prairie. On the other hand almost impassable barriers of morass and rock separated the land from Canada. Should the district be released from the control of the Hudson's Bay Company, annexation with United States would be the result. Another member of the Commons might very aptly

have suggested that the Company did not save Oregon from annexation.

The Oregon question illustrates three important facts. First, Colonization is the best method of establishing a title to a land. In the matter of discovery in Oregon, Great Britain's claim equalled that of United States, but in the matter of occupation United States had the advantage - in 1846 there were 7000 American Colonists on the ground and only 400 English traders. Secondly, the Hudson's Bay Company was useless as a colonizing agent. Governor McLoughlin calmly watched the 7000 Americans settle, and reported to the war office that the whole territory was not worth the expense of a squadron to save it - Oregon, in view of the climate, soil and location, was the most favoured of all the Hudson's Bay Territory. Thirdly, the Oregon Settlement refutes the evidence before the Select Committee of the Canadian witnesses, John Ross and Chief Justice Draper, that a new province, if successful, must be merely an extension of the older provinces, or at least directly connected with them. The Oregon settlers came overland from the East, leaving a wide stretch of unsettled territory between them and the older States in which the Seat of Government was located.

Vancouver Island provides an even better illustration of the failure of the Hudson's Bay Company as a colonizing agent. Here the Company had the strongest motive possible for assisting colonization, as its licence

was directly dependent on the establishment of a successful settlement. On Mar.9,1854, Sir John Pakingham presented a petition from a number of residents of Vancouver Island, asking that the British Government establish a Crown Colony, since under existing conditions, the high price of land and unstable government discouraged settlement. On June 12,1854, Earl Fitzwilliam also presented a petition from the residents of Vancouver, complaining of the defects in government and asking that, at the expiration of the Hudson's Bay Company's licence, Vancouver be placed under the Crown. The Duke of Newcastle stated that "He was quite aware that the colonization of this land had not made that progress which it was important that it should make, not only on account of its proximity to Russian Possessions but also to the British Possessions of North America". Thus some statesmen saw the danger of encroachment from Russia as well as from United States.

British statesmen understood the situation. Roebuck said of Vancouver Island: "The Company fostered foxes, bears, wolves and martins instead of men",and again he stated the reason, "For where the axe of the settler rang,there the trapper must certainly disappear." Bryce has stated the same idea well: "But this king of the solitudes needs an empire for his operations, an empire in extent, though it must have for his purposes not human beings, but foxes as its inhabitants."

The apprehensions regarding United States were not unfounded. Not only had the Red River colonists petitioned to Congress for admission into the Union, but a member of Congress had introduced a bill providing for the admission of the Colony into the American Confederation. The Petition of the Red River colonists to the Canadian Government in 1857, after complaining that through misrepresentations on the part of the Company the Imperial Government had granted no redress, concluded: "It would seem, therefore, that we have no other choice than the Canadian plow and printing press, or the American rifle and Fugitive Slave Law." The settlement in Minnesota, which had recently been incorporated as a State, was only four hundred miles from the Canadian border. In 1857 the mail entered the Red River Colony through St. Paul. The Wisconsin Railway pointed directly toward the Canadian border. Since the Sayers trial in 1847, a thriving trade had sprung up between St. Paul and the Canadian Colony. The only possible market for the colonists was St. Paul. Danger of annexation increased year by year. In 1860 D'Arcy McGee referred to the North West question thus: "American enterprise has lately taught us a salutary, though a rebuking lesson, for while we were debating its true limits and the title by which it is held, they (Americans) were steaming down to Fort Garry with mails and merchandise from St. Paul." (1) An American steamboat

(1) McGee - Addresses on Br. American Union - p.3

was used on the Red River in 1859. The climax came in 1867. The purchase of Alaska aroused interest on both sides of the Atlantic. For the first time Sir John A. Macdonald openly and vehemently advocated the purchase of the West, declaring: "If we do not embrace this opportunity, it may never come again. All the power of England may not save the land from United States."

One would judge that the Gold Rush in California in 1852 would tend to enhance the value of Western lands, and that British statesmen would not overlook the fact, that in 1857 The Otter, a vessel belonging to the Hudson's Bay Company, arrived in San Francisco with a consignment of gold dust taken from the Mountains of British Columbia. The coal deposits of Vancouver Island were already known and the Island was safeguarded as a future coaling station.

The extension of the boundaries of Canada was evidently a strong motive in the investigation. In the debate seven members addressed the House. All with the exception of Sir Edward Ellice and Gladstone who confined his discussion to the legality of the Charter, referred to Canada's interests. Labouchere had arranged for the presence of Canadian delegates. Mr. Lang's opinion was: "The best course would be to make the territory a part of Canada, as he knew a strong feeling upon the subject existed in that Colony." Mr. Henley asked if the people of Canada had been given time to prepare information for the Committee. Mr.

Adderly's statement has already been quoted. Mr. Roebuck's words were a forecast of the future Dominion of Canada - "Both the Canadas were merely strips of land along the St. Lawrence, and what he wished to see was that..... they would cover the whole, so that British North America might really have the preponderance of territory which it presented on the map." The idea evidently was to add the Hudson's Bay territory to Canada, in order that Canada might form a balance of power with United States in the Western World. Had communication with the Mother Country been improved so that Canadians might have read this debate as a whole, their criticism of British statesmen would probably have been less severe.

The motives of British statesmen in the investigation then included: (1) Opposition to monopolies, (2) A home for British emigrants, (3) A confirmation of Britain's title to the land in order to secure the territory against American aggression, (4) An extension of the boundaries of Canada so that Canada might counteract the influence of the United States in the Western Hemisphere, (5) Justice for the Red River colonists, and the advantages of civilization for the Indians.

The motives of the Canadians in claiming the Great West were varied, and were difficult to analyze. The word "West" had certain unhappy associations for the French Canadian. He regarded the land as the heritage of the French Race. His ancestors, Radisson, La Verendrye and

the French priests were the first white men to set foot upon the prairie. At a later date, A. G. Morice expressed the attitude of the French: "Et pourtant ces terres fertiles où céréales étalent ses dons de choix sont, de par le droit de découverte et de première occupation, l'apanage de la race française. Et dire que l'étranger moissonne aujourd'hui là où le Canadien a semé!" (1) The Frenchmen looked upon the Hudson's Bay Company as a corporation of English capitalists, reaping a fortune from the labours of their ancestors. Young Frenchmen, fully conscious that as Voyaguers and Fur traders their own race was unsurpassed, were not content merely to serve in the ranks of the Hudson's Bay Company, but longed to organize a French Company and exploit the trade on their own account. La Franchère, writing from New York in January, 1858, suggested a partition of Prince Rupert's Land: The district from Labrador to the St. Maurice to be under the control of Quebec City, from the St. Maurice to Lake Nipissing under Montreal, and from Lake Nipissing to the McKenzie River under Toronto. (2) Each city might organize a fur company which should confine its operations to its own district. Thus the evils of competition would be avoided. La Franchère was evidently considering the fur trade only and not colonization, or he would surely not have suggested a settlement so favourable to Upper Canada.

(1) Morice - L'Histoire Manitobaine - p. 4

(2) La Minerve - Jan. 3, 1858

The merchants of Montreal recalled the happier days of the North West Company, when in the Autumn the flotilla of fur-laden canoes came down the Ottawa, and many a labourer found employment in transferring the cargoes to warehouses for reshipment. In the Spring the canoes went North with merchandise purchased in Montreal. After the Union of the Companies in 1821 the Hudson's Bay Company ignored Montreal, and preferred to carry on trade directly between London and York factory. Both French and English Canadians agreed that the abandonment of the Ottawa route was a matter of strategy. Canadians would thus remain ignorant of the returns of the fur trade, the resources of Prince Rupert's Land, and the means of approach.

Upper Canada was also interested in the fur trade, but businessmen and statesmen of both Provinces had a broader vision. The close of the Crimean War in 1856 had brought a decline in the price of farm products, and as a result financial depression. The men of vision, like British statesmen, saw in the westward expansion of Canada an era of prosperity for the whole country. Canadian manufactures would find a market in the West, and since the trade in the West lay through Upper and Lower Canada, Canadian Railway and Steamship Lines would work overtime. The editor of the Montreal Witness, May 21, 1856, after a trip through Canada West, predicted a Canadian Empire with eight or more Provinces - the seat of the Federal Government to be on the Island of Montreal, and each Province to have a local Government. In the general news of

the "Globe" of April 14, 1857, one reads of Mr. Richardson, son of the Harbour Master, contemplating organizing a party to take a stock of goods into the Red River Colony. A company of thirty had also been organized in Norwich Township to carry goods valued at \$20,000. into the district. Both parties expected to engage in the fur trade. These items, though probably incorrect, reveal the intention of businessmen. For the agriculturist the land also had an attraction - the choice land of Upper Canada was already occupied. The speculator always at his best in a new land, saw his opportunity. On June 24, 1857, a shrewd comment on monopoly appeared in the "Globe", "The Palmerston Government is waging a War with China to open her ports to foreign trade, yet the same Government supports a company that is closing half a continent to trade."

Many of the residents of Upper Canada had the erroneous impression that under the Macdonald administration all their ills were due to French dominance. They claimed that the Northern and Western boundaries of Upper Canada had never been defined and that the entire territory as far West as the Rocky Mountains rightly belonged to Upper Canada. An enlarged Upper Canada would certainly be granted representation according to population and the Province would then have her due share in the Government.

The more generous minded were no doubt in sympathy with the Red River colonists, and also wished to

assist in preserving intact British territory in America. The more thoughtful realized that the future of Canada depended on expansion. If United States were to step into the Red River District, all hope was lost, and Canada, herself would have to combat annexation.

CHAPTER IV

The Select Committee of the House of Commons conducted a thorough and systematic investigation. Fortunately, the nineteen members of the Committee included Statesmen keenly interested in the Hudson's Bay Territory, namely, Labouchere, Sir John Pakington, Gladstone, Roebuck, Sir Edward Ellice, Adderly, and later Christy. The witnesses were judiciously chosen so that opinions and information were secured from men engaged in various occupations, but all associated in some respect with Prince Rupert's Land. The agriculturist of the land, the trader, the merchant, and the missionary testified, as well as the sailor, and the scientist who had visited the territory. Two Canadians represented Canada, two officials of the Hudson's Bay Company defended the Company, and even one American testified.

Since we are interested in the Canadian point of view, the evidence of the Canadian witnesses should be discussed in detail. John Ross, the first witness, was President of the Grand Trunk Railway, a member of the Canadian Parliament and a member of the Government until 1856. Ross was not the official representative of the Canadian Government, but merely happened to be in London

on business at that date. His evidence is of special value since, although the son-in-law of Baldwin and a reformer, he had become one of Macdonald's colleagues. In 1855 he corresponded with Macdonald on political questions, as representation by population and expenditure on education in Lower Canada. In 1856 he resigned his seat in the cabinet as the reformers withdrew their support from the Macdonald Government. He himself remained on good terms with Macdonald, and it is probable that his evidence would meet the approval of the cabinet. Macdonald had persistently refrained from expressing the views of the government on the question.

Ross believed that the Hudson's Bay Company should not be permitted to hinder the extension of civilization, but that it would be a great calamity if their control should entirely cease in the North West Territory. The Company had maintained peace among the Indians on the Canadian frontier while the Western States had become a prey to Indian Wars. The Canadian Government would hesitate to interfere with the Indians after the Micipicoton incident. (1)

- (1) A Quebec Mining Company, on receiving a licence, had established works on Micipicoton Island in Lake Superior. The Garden River Indians claimed the island and destroyed the works. The Indians were arrested, but eventually the Government spent a large sum of money compensating them for the surrender of their rights.

The Committee then asked how he would reconcile his two opinions. As soon as Canada was prepared to settle a district of from ten to fifty townships, the Company, on being given a year's notice should be required to surrender the district. By following this plan Canada could, in the course of time, extend her settlements to the Rocky Mountains. However, before acquiring any Territory, Canada should cut a road from the Ottawa River to the territory west of Lake Superior. Settlements should be established on either side of the road. The railway would follow the settlement - that is, access should be established first, and then annexation might follow.

In reply to further questions, Ross stated that the people of Canada wished the territory acquired only so rapidly as it could be occupied. The new territory would not attract colonists so long as any of the older parts of Canada remained unsettled. Roebuck referred to Iona, which was settled while the intervening territory was unoccupied. Ross replied that the intervening lands were poor. Why did he not apply that rule to Canada? Roebuck then explained that the territory West of Iona was settled before Iona was completely settled. Ross agreed, but the system would not apply to Canada; in the States the settlements were contiguous. Roebuck then referred to Oregon.

Ross evaded the question by saying Oregon was not settled by Canada, and in any case the American settlers went in by sea, but Fitzwilliam of the Committee assured him that great numbers crossed the Missouri each year.

To the question, if western lands were acquired by Canada, should the land become a territory or be aggregated to Canada, Ross replied: "I do not think that under the system of government which exists in Canada now, such a course of acquiring new territory, and governing it by means of territorial government would be convenient or conducive to the interests of Canada." To the question, "To what degree do you think the Canadian Government could extend its system of administration from headquarters", the reply was, "At present I am not sure that it would be convenient to extend it at all."

To the question, was a society being established in Toronto for the purpose of colonization west of Lake Superior, the reply was, that the contemplated Society would only be a second North West Company and repeat the difficulties of earlier years. (1)

The Members of the Committee who had hoped to serve Canada well by transferring this vast territory to her, must have felt a pang of regret. Here

(1) Report - Select Committee on H.B.C. p.1-12.

was the first witness, a member of the Canadian Parliament, practically saying: "Do not hand this territory to us. We are not able to govern it. The people of Canada do not wish it. Just give us a little piece at a time, whenever we happen to be ready." Ross' judgment was probably sound under circumstances, and he may have sincerely believed that the Northern district of Upper Canada was capable of settlement, but he might have been frank in discussing the American system, and in admitting that the majority of the people of Canada really wished the territory. The real difficulty was that the Government was too weak to handle the situation. In later years Macdonald said, in referring to this period, "If a member left his seat for half an hour, the ministry ran the risk of being defeated." (1) If the new territory had been added to Upper Canada, Lower Canada would have been offended. The Government had to cater to the French. Ross' own letter to Macdonald from London, August 23, 1855, admits this fact in the words: "There is nothing that will so surely break down the Union as the leeching process going on towards Upper Canada. If they (Lower Canada) will insist on throwing away from year to year large sums of money which bring no return and are productive of no real good to the country, the Union cannot be preserved, and although W. L. McK. has failed for the present, some younger and stronger man will arise and agitate with more success.

The money we vote for education in Lower Canada produces no corresponding results and the priests for the most part pocket the cash.....

.....
I hope we shall hear no more of appropriations for piers below Quebec, and that the estimates for a custom house at Quebec are reduced to something like what the Kingston and Toronto custom houses cost." (1)

Ross' evidence probably served Macdonald's purpose well, but when Sir John A. broke his long silence and addressed the House on Dec. 9, 1867, he laughed at the idea of continuous settlement. The young men of Canada preferred open prairie to the isolated districts of Ontario and Quebec. Hundreds of thousands of immigrants would go in immediately, just as the settlers had gone West in United States. (2)

Chief Justice Draper, as Canada's official delegate, was naturally more fully informed on the subject than John Ross. His evidence reveals his capacity as a delegate, his interest in the subject, and his sincerity in dealing with it. The Chief Justice arrived in England in March, 1857. The Committee was not in session as an election was taking place, but would be reorganized in May. Draper took advantage of the interval to do some research

(1) Pope - Life of Macdonald - p.150.

(2) Globe - Debate in Commons - Dec.10, 1867.

work in connection with the title of the Company. Thus he was prepared to present to the Committee a memorandum of all legal opinions received on the Charter. He believed that the question of validity of the Charter should be submitted to the Judicial Committee of the Privy Council. If the Charter were valid, Canada, he believed, would deal equitably with the Company. He declined to express his private opinion, except that he considered the privilege of exclusive trade void, since a Statute of James I's reign had declared all monopolies illegal.

Draper's plan was both comprehensive and cautious. The question should receive immediate attention for three reasons:

- (1) The northern and western boundaries of Canada should be clearly defined.
- (2) British prestige must be established in this territory or the land would pass to a foreign power.
- (3) Canada should have the privilege of extending her settlements westward.

Canada was not capable of governing the whole territory east of the Rocky Mountains at present. For a limited period the Company should retain its present power in the territory north of a line drawn due West and East through the northern limit of Lake Winnipeg. If the Company's operations were suddenly to cease, the Indians would face starvation and the evils of the liquor traffic introduced by rival traders. The district south of the

line mentioned should be released for settlement. Canada could not undertake the expense and obligations of the government of this land at present. An ad interim provision for government might be made, as a governor and Council including Canadian representatives.

This territory should be granted to Canada for a limited period in the same manner that Vancouver Island was granted to the Hudson's Bay Company. Canada would begin immediately to explore the territory in order to learn its resources, and also to open a line of communication by the Lake Superior Route to the Red River. Settlements would be established along the line. When the settlements reached the Red River, that colony should become an integral part of Canada with representation in the Canadian Assembly. Canada would thus gradually absorb the entire territory. If, however, physical conditions prevented the establishment of a line of communication, the district should revert to the Imperial Government.

In answer to the question, "Has Canada no desire to go West of the Rocky Mountains?" Draper replied: "Only in one sense - I hope you will not laugh at me as very visionary, but I hope to see the time, or that my children may live to see that time, when there is a railway going all across that country and ending at the Pacific."

Thus the Canadian Government chose a delegate with a prophetic eye and also with a keen sense

of loyalty. Draper repeatedly urged the need of colonizing the southern territory in order to prevent American aggression. British Columbia would then remain an isolated district on the Pacific. Unfortunately, the Chief Justice had to present his evidence as the views of a private citizen, and not as the opinion of the Canadian Parliament. The Canadians, he declared, wished possession of the land on account of the Commercial advantages arising from the fur trade and also as a means of preventing annexation. He was justified in the course he was pursuing, he felt, as he had been given very indefinite instructions, and much was left to his discretion. (1) The Committee was still in darkness regarding the opinion of the Canadian Government.

The substance of the evidence of the remaining witnesses on essential matters as, (a) Relation of the Company to colonization, (b) Character of the soil and climate, (c) Means of approach, and (d) Treatment of the Indians, is indicated in the following table:

WITNESSES FAVOURABLE TO COLONIZATION

(a) Witness acquainted with the Red River District.

<u>WITNESS</u>	<u>OCCUPATION</u>	<u>EVIDENCE</u>
(1) Isbister	Native of colony. Barrister in England.	1.Favoured gradual annexation to Canada. 2.Hudson's Bay Company impedes settlement, education, and religion. 3.Lake Superior route possible. 4.Soil fertile and climate favourable. 5.Danger of encroachment from United States.

<u>WITNESS</u>	<u>OCCUPATION</u>	<u>EVIDENCE</u>
(2) Crofton	Military Commander	<ol style="list-style-type: none">1. Excellent crops.2. Climate similar to that of Upper Canada.3. Government of Hudson's Bay Company commendable.4. Superior route possible.
(3) Anderson	Bishop of Rupert's Land	<ol style="list-style-type: none">1. Hudson's Bay Company hindered colonization.2. Climate and soil good.3. Superior Route possible.4. Hudson's Bay Company kind to Indians and aided education.5. Indians benefitted by civilization.
(4) Corbett	Missionary	<ol style="list-style-type: none">1. Suitable climate and soil.2. Monthly mail service from St. Paul.3. Hudson's Bay Company opposed missionaries.
(5) Caldwell	Commander of Pensioners	<ol style="list-style-type: none">1. Sufficient cultivation to support considerable population.2. Difficulty of access prevents improvement.3. Halfbreeds difficult to rule.4. Civilization, a benefit to Indians.5. Monopoly protects Indians.
(6) McLaughlin	General Trader	<ol style="list-style-type: none">1. Territory south of Norway House should be opened for colonization.2. No violence if trade were open.3. Hudson's Bay Company offered low prices.4. Spirits used as a means of barter.
(7) King	Travelled as Surgeon through Territory	<ol style="list-style-type: none">1. Both climate and soil adapted for colonization.2. Hudson's Bay Company did not encourage cultivation.3. Indians kindly treated but used liquor freely.

<u>WITNESS</u>	<u>OCCUPATION</u>	<u>EVIDENCE</u>
(8) Kernaghan	Merchant of Chicago	1. Abolish monopoly. 2. American settlers would cross boundary if Hudson's Bay Company gave proper facilities.
(b) <u>Vancouver Island</u>		
(9) Blanchard	Governor - app'td. by Cr.	1. Island suitable for settlement. 2. Hudson's Bay Company kind to Indians but opposed colonization.
(10) Cooper	Colonist	1. Excellent climate and soil. 2. Valuable coal deposits. 3. Decrease in population under Hudson's Bay Company rule.
(11) Fitzwilliam	Traveller	1. Soil productive. 2. Doubtful if Company encouraged colonization.
(12) Miles	Traveller	1. Every essential for a great colony. 2. Distance from England hindered settlement.

Witnesses favourable to Hudson's Bay Company Monopoly

(13) (Sir Geo.) Simpson	Resident Governor of H. B. C.	1. Soil and climate ill adapted for colonization. 2. Superior route too expensive to develop. 3. Indians would suffer if monopoly were removed.
(14) (Hon. Ed.) Ellice	Deputy Governor of H. B. C.	1. Soil inferior and climate unfavourable. 2. Establishment of communication with Canada expensive. 3. Competition disastrous to Indians. 4. Proprietary rights of Hudson's Bay Company indisputable. 5. No agitation in Canada in favour of acquisition.

<u>WITNESS</u>	<u>OCCUPATION</u>	<u>EVIDENCE</u>
(15) (Sir John) Rae	Official of H. B. C.	1. Competition would mean introduction of liquor. 2. Red River and Saskatchewan districts fertile, but no communication. 3. Self supporting colony could not exist. 4. Indians generously treated by Hudson's Bay Company.
(16) Lefroy	Inspector of Army School	1. Soil fertile but climate too rigorous for colonization. 2. More judicious to cultivate the unsettled lands of Canada. 3. No pressure from Canada or United States.
(17) (Sir John) Richardson	Traveller	1. Soil not capable of cultivation except in a few places. 2. Settlement should advance gradually from Canada. 3. No communication with Canada. 4. Rule of Hudson's Bay Company beneficial to Indians.
(c) <u>Neutral</u>		
(18) Tennent	Professor of Mineralogy King's College	
(19) Herd	Capt. of H. B. C. boat	

The preponderance of the above evidence is decidedly in favour of the abolition of the monopoly in the Southern portion of the territory, and the establishment of a colony in that portion - under the Canadian Government, if possible.

On June 9, 1857, H. Merivale, under the direction of Labouchere, requested the opinion of the Attorney-General and the Solicitor-General, regarding, -

- "(a) The validity at the present day of the Charter itself.
- (b) The validity of the several claims of territorial right, of government, exclusive trade and taxation insisted on by the Company.
- (c) The geographical extent of this claim (supposing it to be well founded to any extent).

The reply of the Solicitors was:-

" The questions of the validity and construction of the Hudson's Bay Company's Charter cannot be considered apart from the enjoyment that has been had under it during nearly two centuries, and the recognition made of the rights of the Company in various acts, both of the Government and the Legislature.

Nothing could be more unjust, or more opposed to the spirit of our law, than to try this Charter as a thing of yesterday, upon principles which might be deemed applicable to it, if it had been granted within the last 10 or 20 years.....

But with respect to any rights of government, taxation, exclusive administration of justice or exclusive trade, otherwise than as a consequence of the right of ownership of the land, such rights could not be legally insisted on by the Hudson's Bay Company.....

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

To these elements of consideration upon this question must be added the inquiry (as suggested by the following words of the charter, viz. "not possessed by the subjects of any other Christian prince or state"), whether at the time of the Charter any part of the territory now claimed by the Hudson's Bay Company could have been rightfully claimed by the French, as falling within the boundaries of Canada, or Nouvelle France, and also the effect of the Acts of Parliament passed in 1774 and 1791.

Under these circumstances, we cannot but feel that the important question of the boundaries of the territory of the Hudson's Bay Company might with great utility, as between the Company and Canada, be made the subject of a quasi-judicial inquiry.

But this cannot be done except by the consent of both parties, namely, Canada and the Hudson's Bay Company, nor would the decision of a Committee of the Privy Council have any effect as a binding judicial determination." (1)

Thus, the Solicitors gave no hope of proving the Charter invalid, but recommended testing the boundaries. The territory in which French claims could be

(1) Select Committee on H.B.C. - p.403-404.

established prior to 1670 would be released.

The Committee concluded its work on July 31, 1857, by passing the following recommendations:-

- (1) The country capable of settlement should be withdrawn from the jurisdiction of the Hudson's Bay Company at as early a date as possibly convenient. Canada's wishes in regard to this territory should be consulted.
- (2) Any territory, not adapted for permanent settlement at present, should remain under the control of the Hudson's Bay Company.
- (3) The connection of the Hudson's Bay Company with Vancouver Island should be terminated. Provision should be made for the extension of the colony over any portion of the continent west of the Rocky Mountains. (1)

It is interesting to notice the impression made by Draper's evidence, and how closely the recommendations follow his plan.

The Imperial Government decided that expert information was required to supplement the work of the Select Committee. Accordingly an exploring expedition was organized under Captain Palliser of the Royal Engineers. Palliser entered the country by way of New York, Detroit, and Sault Ste, Marie,

while Lieutenant Blakiston was directed to enter by York Factory and join Palliser. The Indians evidently had a foreboding that the old order was changing, and according to Bryce, the Chief delivered the following address to the engineers at Fort Frances on Rainy River:

"I know that you have come straight from the Great Country, and we know that no men from that country ever came to us and lied. I want you to declare to us truthfully what the Great Queen of your country intends to do to us when she will take the country from the Fur Company's people. All around me I see the smoke of the white men to rise. The Long Knives (the Americans) are trading with our neighbours for their lands and they are cheating them and deceiving them. Now, we will not sell nor part with our lands." (1)

From Fort Frances, Palliser with one division of the expedition proceeded westward along the boundary line; a second division advanced in a northerly direction, spending the Winter at Fort Carleton on the northern branch of the Saskatchewan. Palliser himself, with considerable difficulty, returned to Canada. A trader of the Red River Colony agreed to provide him with a horse and to transport his supplies from Fort Garry to the nearest Minnesota settlement, a distance of five hundred and twenty miles, for £65. Palliser's horse was killed at Pembina, and

he walked four hundred and fifty miles of the journey. In the Spring of 1858 the entire expedition was again in the field. The country was explored as far as the Rocky Mountains, the party wintering at Fort Edmonton. In the Summer of 1859 the engineers reached Victoria.

Palliser presented a very favourable report to the Government. The Saskatchewan Valley as well as the Red River Valley was well adapted for cultivation; the territory should be released from the Hudson's Bay Company; a railway might readily be built across the prairie.

CHAPTER V

In January 1857, the Reformers of Upper Canada held a meeting in order to organize a determined opposition to the Government. The main planks in their platform were: (1) Acquisition of the North West Territory (2) Abolition of Separate Schools and (3) Representation by Population. The platform was unfortunate. Co-operation of the French was required in handling the North West question, and the French would gladly have co-operated, through interest in the fur trade and opposition to the Hudson's Bay Company, had the other two planks - Separate Schools and Representation by Population - not alienated them. The French, apart from a small party of the Rouges, had no term sufficiently strong to denounce George Brown and the Reformers. One might ask - would Macdonald have taken up the question had the Reformers omitted it, just as he took up the Tariff Question in 1878 when the Mackenzie Government rejected it? A study of Macdonald's political career would lead to a negative answer. Macdonald's policy was guided by public opinion. He took up no issue until he was assured of substantial public support.

The agitation for the acquisition of the

West began in the Autumn of 1856. The press was divided on the subject. In the "Montreal Transcript" we read: "the climate of the North West is altogether unfavourable to the growth of grain, and the Summer is so short as to make it difficult to mature even a small potato or cabbage." A series of letters by Ermatinger, a former employee of the Company, appeared in the "Hamilton Spectator", denouncing Canada's interest in the territory. One quotation is sufficient: "Here, in the midst of, and surrounded by millions of acres of the finest land in the world, diversified by magnificent lakes and watered by beautiful rivers, and capable of supporting millions upon millions of our fellow subjects, what good reason can we have to tempt them into the arid plains of Saskatchewan?" The general opinion was that some writers were sincere, while others were serving the interests of the Company. The balance of opinion was probably in favour of acquisition and found ready support in the "Globe", the "Kingston Chronicle", "La Minerve", and "Le Canadien".

Suddenly, in February, the even tenor of the discussion was interrupted, and a whirlwind of criticism hurled at the Government. The Assembly was not consulted in the appointment of Draper, unnecessary delay had arisen in making the appointment, the dignity and authority of the bench had been interfered with, and incomplete instructions had been given the delegate. "Le Canadien" states that "Le Courier de Quebec" was the only Canadian paper which supported the appointment. It is a tribute to Draper that

the press was unanimous in recognizing his ability for the position. Even the "Globe", despite the sober morals of the editor, indulged in mirth at the expense of the Government, in the parody:

"Departure of (Sir) William Draper.

Not a cheer was heard, not a juvenile shout,
As his traps to the cars we hurried,
Not a lawyer despatched a farewell note
To his chief so cruelly worried.

We hurried him quickly in a dreadful fright,
Sad thoughts in our minds were turning,
For our star gave out but misty light,
When we thought it was brightly burning.

No useless instructions were on him press'd,
Nor by bond nor seal we confined him -
He went as a courtier to do his best
For himself and his friends behind him.

Few and short were the words we said,
We spoke not the half of our sorrow,
But steadfastly gazed at the breakers ahead,
And bitterly thought of the morrow.

We thought of all that the papers had said,
And how they had brought our "Sweet Will" low,
Of the votes that the house will soon fling at his head,
And he far away on the billow.

Lightly they'll speak of the judge that is gone,
And deeply will suitors upbraid him,
But little he'll reck, if they let him hold on
To the berth that his comrades have made him.

But the half of our task was done
When the bell tolled the hour for starting,
And we saw by the sneers of everyone,
That they all knew how we were smarting.

Slowly and sadly we came to town,
Thinking over the points of our story,
Knowing full well we should all be done Brown,
And perhaps left alone in our glory!" (1)

Parliament met in February. In the Assembly the Draper appointment formed the chief subject of the debate on the speech from the throne. Mr. Wilson of the opposition contended that the question should have been submitted to the House, since it concerned the extension of the boundaries of Canada. The appointment of the Select Committee had been submitted to the Commons in England. Parliament should have been called earlier, if necessary. Dorion condemned the appointment on the ground that the Hudson's Bay Territory was not under the Canadian Government, and hence the question was not within the scope of the administrative duties of the Government. He criticised the argument of the Government that Draper was not a politician. Dorion argued that the extension of territory involved political consequences, for example -

- (1) Would not the extension give rise to questions about representation?
- (2) Was the territory annexed to be divided between Upper and Lower Canada, or what was to be done with it?

Dorion had touched on two delicate points that occupied the minds of the French and that made the Government reluctant in taking effective steps in the matter.

Mr. Loranger, a government supporter, did

not favour the appointment, though he did not consider it unconstitutional. The Hon. Mr. Cameron thought that an unfortunate precedent had been established by connecting a judge with political life. Brown asserted that there was a rumour that certain cabinet ministers had wished the mission, but Draper was sent to quell the discontent. Macdonald defended the appointment; had the Government waited for Parliament to meet, much of the evidence would have been given before Draper arrived. He quoted two precedents; Lord Mansfield, an able Judge, was a cabinet minister, and the Imperial Government had sent Judge Parker from New Brunswick to Toronto to settle a political question by arbitration. Dorion's amendment, that the House regretted that His Excellency had been advised to despatch to England, on a mission relating to the Hudson's Bay Territory, a Judge of the province, was lost on a vote of 52 to 30. A few of the government supporters voted with the opposition.

The facts of the case were: The communication from Labouchere, announcing the appointment of the Select Committee and requesting the presence of a Canadian delegate was dated December 4, 1856, and received by the Governor-General on December 20. According to Brown's statements, the Government took no action until January 17. Draper was appointed February 16. Parliament opened on February 26. Draper sailed at as early a date as possible, but the first session of Committee was

practically over. There was then some ground for charging the Government with undue delay. Had the Government waited until Parliament met, the entire work of the Committee would have been completed, if the election in England had not interrupted the proceedings. Mr. Wilson's suggestion of Parliament meeting earlier would have solved the difficulty, had the business of the cabinet permitted such a course. A delegate appointed by Parliament would have been able to present the views of Parliament, and have had the benefit of definite instructions and clearly defined powers. The natural course would have been to send a member of the cabinet. That was the course pursued in 1858 when Galt, Cartier and Rose interviewed the Imperial Government, and again in 1864⁵ when Brown, Macdonald and Cartier undertook a mission to the Imperial Government regarding Confederation. Macdonald was too alert a politician to fall into that trap.

The question was a plank in the platform of the opposition and many of the government supporters favored immediate acquisition of the territory. If a government delegate were not sufficiently enthusiastic in his support, the prestige of the Government would suffer. Macdonald himself was evidently not prepared to face the annexation of the territory at that date. Dorion had touched on the tender point. How was the territory to be divided? The French claimed the land as their heritage - their ancestors had explored it, their missionaries had

laboured there, and their own people were settled there, enjoying freedom in religion and in education. Many in Upper Canada claimed that the boundaries of Upper Canada had never been clearly defined and that the Red River District was legally a part of Upper Canada. Others went further and declared that Upper Canada extended as far West as the Rocky Mountains. In any case the natural affinity of the Red River District was with Upper Canada. The Macdonald Government drew its support from Lower Canada; the French must not be offended at any cost. Annexation to Upper Canada would force the issue of Representation by population. Macdonald's attitude on this question is indicated in John Ross' letter to him of September 17, 1855, - "I think with you that the representation by population question may be staved off for the present, as there is no such disproportion between the respective sections of the province as to justify an agitation." (1)

Macdonald was well aware of the possibility of an Indian Rising. The expense of establishing communication with the Red River was not a trifling matter. If Lower Canada were offended she would not vote the necessary funds. The expenditure of the two provinces in 1857 was \$340,000.00 in excess of the income. The Premier knew that his Government was too weak to face the issue. His policy like Walpole's

(1) Pope - Life of Macdonald - p.150

was, "To let sleeping dogs lie", but there was a risk in this - the possibility of encroachment from United States, and the future of Canada depended on expansion. Thus the Government washed its hands of the affair, and appointed an able statesman, who was not liable to commit a rash act. The instructions to the delegate were certainly non-committal. The following quotations from E. A. Meredith's letter to Draper, February 20, 1857, include the only instructions given:-

" As it is impossible to anticipate the nature of the evidence that may be taken, or the conclusion that may be arrived at by the Committee, or the course which Parliament or Her Majesty's Government may think proper to adopt on the report of the Committee, it is not in His Excellency's power to convey to you at present instructions of a precise or definite character.

As soon as any Parliamentary Committee on the subject of the Hudson's Bay Company or Territory is constituted, you will take steps for offering to afford all information in your power relating to the interest or claims of Canada.

You will consider it as a part of your duty to watch over those interests by correcting any erroneous impressions, and by bringing forward any claims of a legal or equitable kind which this province may possess on account of its territorial or past history.

You will not consider yourself as authorized to conclude any negotiation, or to assent to any definite plan of settlement affecting Canada, without reporting the particulars of the same, and your own views thereon to His Excellency in Council.....
.....

" His Excellency feels it particularly necessary that the importance of securing the North West Territory against sudden and unauthorized influx of immigration from the United States should be strongly pressed. He fears that the continued vacancy of this great tract, with a boundary not marked on the soil itself, may lead to future loss and injury both to England and Canada. He wishes you to urge the expediency of marking out the limits, and so protecting the frontier of the lands above Lake Superior, about the Red River, and from thence to the Pacific, as effectually to secure them against violent seizure or irregular settlement until the advancing tide of emigrants from Canada and the United Kingdom may fairly flow into them, and occupy them as subjects of the Queen on behalf of the British Empire.

With these objects in view, it is especially important that Her Majesty's Government should guard any renewal of a licence of occupation (should such be determined on) or any recognition of rights by the Company, by such stipulations as will cause such licence or such rights not to interfere with the fair and legitimate occupation of tracts adapted for settlement.

It is unnecessary, of course, to urge in any way the future importance of Vancouver Island as the key to all British North America."

The criticism of the instructions in the "Globe", March 7, 1857, was no doubt accurate: "The Government has no settled policy on the subject of the territory, no views as to the rights of the Company, no statesmenlike aim in the interest of Canada"; yet a strong defence may be established for the Government. It did emphasize the two essential aspects of the question - the maintenance of Britain's title to the land, and provision for releasing lands from the Company for colonization. On Canada's connection

with the land the Government had no policy. Probably, in view of the political and economic situation in Canada, Macdonald's plan "Wait and See" was best. Draper's evidence before the Select Committee justified the choice of a delegate.

It is a relief to turn from the Assembly to the Legislative Council, and find the Hon. De Blaquiére pleading that political animosities be thrown aside, and the question discussed on its own merits. De Blaquiére was intensely in earnest, but took a broad view of the question. The number of Indians in the Territory had increased and Indians from United States had sought shelter under the rule of the Company, but the interests of the trader and the settler conflicted. His motion that copies of the Draper correspondence be laid on the table of the House was carried. He then moved that an address be presented to the Queen, to the effect that no decision respecting the renewal of the Hudson's Bay Company's licence be concluded until the Legislative Council of Canada had expressed its opinion on the matter. He hoped that the Hon. Mr. Ferguson would second the motion, but Mr. Ferguson declined. The Hon. Van Koughnet suggested that the motion be postponed until the correspondence be brought down. The Hon. Morris seconded the motion in order that it might be placed on the books, but on the understanding that the discussion would be postponed.

On March 10, Van Koughnet brought down the correspondence, but stated that a communication from the

Governor General to the Colonial Secretary, dated September 2, was marked "private" and had not been brought down. The communication stated the views of the Canadian Government on the question, and inquired if the licence would be renewed. As a result the Imperial Government had undertaken the investigation. In the Assembly when Brown had charged the Government with negligence in the issue, Macdonald had referred to this communication. But it is peculiar that Labouchere, in his address on the appointment of the Select Committee, did not refer to this communication although he stated that Canada was interested in the question. Neither did Labouchere make any reference in his correspondence regarding the appointment of a Canadian delegate. Copies of the entire correspondence on the question, with the exception of this communication, are available at present. If the Government favoured an early acquisition of the territory, the publication of its views could not injure Canada's case, and would probably meet with general approval. But if the Government favoured the continuance of the Company's rule for a limited period, the Company's position would be strengthened, and there would be the risk of disapproval in Canada. The "Globe" insinuated that the secret correspondence had never existed. It is significant that the election ticket of the Hon. Van Koughnet in Perth County had included acquisition of the North West Territory, but since he had become a

member of the Government, his enthusiasm had cooled.

The system of delay was working effectively in the Assembly. On March 2 the motion of Brown for copies of the instructions given to Draper and of all correspondence between the Imperial and the Provincial Governments on the subject was carried. On March 4 the motion of Brown for a return of all land in Upper Canada, specifying the location and quantity of such lands, the terms of sale and to what extent the terms had been complied with, was carried. Brown also referred to the appointment of a Canadian Committee to secure information, but Macdonald considered it advisable to wait to see the results of the efforts of the English Committee. On March 16 the Hon. Mr. Cameron delivered a long address on the question, and moved an address for copies of any charters, leases, or other documents under which the claims of the Company were established. Macdonald was rather indifferent. The papers would be brought, but it would be of no advantage to enter into a discussion of the conflicting rights of Canada and the Hudson's Bay Company. Chief Justice Draper had been authorized to employ counsel, if necessary, to argue the question of the validity of the Charter. Cauchon, however, stated that he would have the copies of all documents placed in the hands of the members.

On April 30 Brown moved an address for copies of any further correspondence from Draper to be laid on the table. The Charter had just one year and a half to

operate, and action must be taken by the Imperial Parliament in the next session. Macdonald replied that it would not be in the interests of Canada to make public any communication from Draper. As soon as the new Government was organized the Committee would resume the work; in the meantime it was not permissible to publish evidence taken before the Committee (copies of evidence taken from English papers had appeared in the "Montreal Witness" and in the "Globe" in March). Brown replied that he did not wish the publication of evidence that would be injurious to Canada, but he thought that the House should have some information as to the proceedings. The Governor General had intimated that the question would be given prominence in the debates of the House. He (Brown) had come prepared to discuss the subject but he had been waiting for the Government to introduce it. Macdonald then yielded and mentioned the aims of the British Committee and Draper's examination of state paper relating to the title of the Company. Brown, in one of his generous moods, cast aside antagonism and expressed his pleasure at receiving this information, and stated that the opposition approved of the course that Draper was pursuing - he had already seen some of Draper's evidence. He favoured the appointment of a Select Committee in Canada to obtain information from persons acquainted with the territory, and thus to be able to correct any erroneous information given before the Imperial Committee. If the Government would take the matter up the opposition would

assist, but he would not press the motion for a Select Committee. Thus the Reform party had cast aside political barriers and opened the way for united action. Macdonald recognized the spirit, but merely agreed to consider if he might show the correspondence in question to Brown confidentially. Cameron complained that the papers bearing on the Charter that he had asked for had not been brought down. It is interesting to note that the members of the Imperial Committee considered that the Canadian Committee, owing to the proximity of Canada to the territory, should be able to obtain more direct information than they.

The public were not so reluctant as the Government in discussing the subject. In the opening months of 1857 it was certainly the favourite theme of editors. The advocates left no stone unturned. Six petitions were presented in the Assembly, namely:-

- (1) Mar. 5 - Petition of the Municipal Council of the United counties of Lanark and Renfrew, praying that measures may be adopted to impress on the British Government the necessity and expediency of at once assuming the possession of the Hudson's Bay Territory, and establishing the boundary line between it and the United States, and also incorporating the territory in Canada.
- (2) Mar. 18 - Petition of the Municipal Council of the County of Argenteuil, praying that the Red River Settlement may be incorporated within the limits of Canada.
- (3) Mar. 19 - Petition of James Thompson and others of the United counties of Lanark and Renfrew, praying that the Hudson's Bay Territory may be annexed to Canada.

- (4) Mar. 26 - Petition of the Aborigines Protection Society of London, praying that the Indians of the Hudson's Bay Territory may be placed under the protection of the Government of Canada.
- (5) Apr. 15 - Petition of the Toronto Board of Trade, praying that the licence of exclusive trade may not be renewed to the Hudson's Bay Company, that the westward and northward boundaries of Canada may be declared, and that the protecting arm of Canadian laws and benefits of Canadian Institutions be extended throughout the territory.
- (6) May 22 - Petition of Roderick Kennedy and others, inhabitants and natives of the Red River settlement, complaining of certain alleged grievances inflicted on them by the Hudson's Bay Company, and praying for the protection of the Canadian Government

The difference in wording and in substance in the petitions would indicate independent action.

In the midst of the excitement the Hudson's Bay Company hurled a missile into its own camp. The Company had requested that a small detachment of soldiers be placed in the Red River Colony. The soldiers were stationed at Montreal, and the Company decided to transport them by way of Hudson's Bay. Canada was in an uproar - she had built a railway to Collingwood, and a steamer would make the journey from Collingwood to Superior City, an American town on the west shore of Lake Superior, in seven hours. The distance from Superior City to Fort Garry was 230 miles, while the distance from York Factory was

700 miles with thirty-six portages. The scheme, they declared, was a trick of Sir George Simpson's to obscure the present facilities for communication between Canada and the Red River district. The Red River colonists cried out, "Simpson is coming with the troops to punish all who have broken the monopoly." A meeting presided over by the Rev. Mr. Gun was immediately held. (July 15, 1857)

The meeting passed a series of resolutions:-

- (1) The meeting was surprised at the false statements made by Sir Geo. Simpson and Dr. Rae before the Select Committee.
- (2) The Colony will challenge the world in fertility of soil, and the ease with which it may be cultivated.
- (3) If the monopoly of the Company continued, disorder would follow.
- (4) Dr. Rae testified before the Committee that the Company had established hospitals. Members of the meeting had travelled through the entire district, and not one had seen a hospital.
- (5) Liquor was used in barter. Members of the meeting had exchanged furs for liquor.
- (6) The colonists longed for the day of milder British rule.
- (7) The Company did not buy the surplus grain of the colonists, or import grain from United States as was testified before the Select Committee.
- (8) A. K. Isbister should represent the colonists before the Imperial Government, and Captain Kennedy before the Canadian Government.
- (9) Copies of the petition and land deed were to be forwarded to the Imperial Government and to the Canadian Government. The minutes of the meeting were to be forwarded to Captain Kennedy and to I.K. Isbister.

"The London Times" commented on the absurdity of transporting troops 4200 miles by Hudson's Bay, when the Superior route of 1200 miles was available. Sir Geo. Simpson himself always travelled by the Superior route. Simpson forwarded a communication to the Canadian Government, explaining that canoes would be required on the Superior route and expert voyageurs could no longer be secured. Troops were required in the colony, though the Company remained silent on the question, because authority was weakening, marauding bands were operating on the boundary, and the attitude of United States was doubtful. A sudden termination of the Licence or Charter might result in disorder.

By May Macdonald realized that the Government must display some interest in the question. On the motion of the Hon. Mr. Terrill a Select Committee, composed of Terrill, Hon. Robinson, Solicitor-General Smith, Hon. Cameron, Polette, Brown and Macbeth, was appointed to receive and to collect evidence and information as to the rights of the Hudson's Bay Company under their charter, the expediency of renewing their Licence of Trade, the character of the soil, the climate of the territory, and the adaptability of the district for settlement. The Committee was to report thereon from time to time. Brown was delighted and delivered a brilliant address, pointing out certain important aspects of the question. Cauchon considered that the Committee should have power to report on certain questions as: (a) If Canada has any rights should she defend them? (b) Would it be

advantageous to bring the territory under the control of the Canadian Government? He explained that the expense of administration and of communication would, of course, have to be thoroughly discussed. There was no supporter for the suggestion.

On June 10 Parliament was prorogued, and practically nothing had been accomplished. Was it a bit of strategy to defer the appointment of the Select Committee until May, in order that the report might not be received when Parliament was in session? It is significant that the Hon. Mr. Cauchon, the only member of the Government who had taken an active interest in the subject, resigned his portfolio in 1858. Mr. Loranger, a government supporter, made a very accurate criticism of the situation, "Much had been said of the appointment of Draper, but very little of the subject of his mission."

Cauchon as Commissioner of Crown Lands found expression for his interest in preparing a long refutation of the claims of the Company. In the conclusion he stated that Canada must assert her claim to the territory, as expansion was a necessity owing to her growing population and trade. The loyalty of the western population must be secured, or another power would step in. Cauchon attempted to prove that the Charter was invalid as French traders had already established trading posts on James Bay in 1670. Why did the Company seek a confirmation of the Charter in 1690? In 1804 the North West Company had received a legal opinion

from Sir V. Gibbs and Mr. Bearcroft that the claims of the Company in regard to navigation, trade, and fisheries of the Bay were void. In 1816 Sir Arthur Piggett, Sergeant Spankie and Lord Bougham had advised the North West Company that the Hudson's Bay Company had no claim to the Red River Country and the Saskatchewan Valley. (1)

Draper seemed to accept the opinion of the Solicitors of the Crown that through usage and recognition the validity of the charter could not be contested, but that the boundary question was open to discussion. He listed a number of passages in State papers that referred to the boundary. In 1687 the Company, in referring to the dispute with the French, submitted the statement:

" It shall not be the fault of the Company of Hudson's Bay, if their agents and those of the Company of Canada do not keep within their respective bounds, the one pretending only to the trade of the bay and straits above-mentioned, whilst the other keep to that of Canada."

In 1700 the Company suggested that the French be limited not to trade or to build any factory beyond the bounds of 53° N or the Albany River. The Treaty of Utrecht in 1713 did not state the boundary - a commission was to be

(1) Journal of Assembly 1857 - App.17.

appointed for that purpose. French Commissioners were appointed, but failed to agree with the English commissioners.(1)

The Select Committee of the Canadian Parliament met in Toronto on June 8. Three witnesses were examined. George Gladman of Moose Factory explained the agricultural possibilities of the land and emphasized the need of markets for the colonists. Agriculture was not permitted near the trading posts. William Dawson of the Woods and Forest Branch of the Crown Land Department discussed the Charter and boundary question. He had made a careful study of the matter, and was convinced that the Hudson's Bay Company had no jurisdiction in the Red River and Saskatchewan valleys. The Company had never asserted this claim until 1774. The Commission to Lord Dorchester in 1783 distinctly claimed that the territory west of Lake of the Woods was attached to Canada. Allan MacDonell, who had spent ten years on the north shore of Lake Superior, was also examined. He believed the charter invalid as only a Parliament could grant the powers in question. The Company recognized this fact when they appealed to Parliament in 1690. The claim to exclusive trade had not been asserted until 1814. Traders in Toronto were now preparing to take merchandize into the country by the St. Paul Route. He then described the Lake Superior route in detail.

The Committee made no recommendations in their report, but merely submitted the evidence of the witnesses.

The report was later forwarded to the Imperial Parliament.

So the parliamentary session of 1857 closed. Interest in the subject subsided, and the press contented itself with occasionally bewailing the lack of progress, and printing bits of evidence given before the Imperial Committee. Meanwhile the Government was not wholly indifferent, and directed its attention to the problem of communication. Under instructions from the Provincial Secretary of Canada a topographical and geographical survey of the canoe route between Lake Superior and Fort Garry was made, as well as a survey of the Red River Valley north of the forty-ninth parallel. The expedition was organized under G. Y. Hind, Geologist and naturalist.

CHAPTER VI

The year 1857 was a year of disaster for Canada. Reaction in trade, due to the close of the Crimean War, had resulted in the failure of several Canadian wholesale houses. The harvest was but half a crop, and the Province faced heavy debt owing to extravagance in railway building - the Receiver General's Report showed a deficit of \$340,000.00. Two accidents added to the gloom; a railway accident near Hamilton in which seventy lives were lost, and the burning of a steamer near Cape Rouge in which two hundred and fifty immigrants perished. (1) Life in the Colony in 1857 was exceedingly narrow and consequently misfortunes made a deep impression. The opening months of 1858 were not an auspicious time for the discussion of expansion.

The Canadian Government might be indifferent to the Hudson's Bay question, but the Imperial Government could not be as the licence of the Company expired on May 30, 1859. A communication of January 20, 1858, from Labouchere to the Secretary of the Hudson's Bay Company contained the following offer: The Licence of exclusive trade in the Indian Territory.

(1) Dent - The Last Forty Years II - p.349

should be renewed for twenty-one years, subject to the following conditions:-

- (1) Reservation, as in the present lease, of any territory that may be formed into colonies by Her Majesty's Government,
- (2) Vancouver Island to be excepted, as it is already constituted into a colony,
- (3) The question of the boundary of Canada shall be submitted to a Judicial Committee of the Privy Council. (In this course the Company had already admitted concurrence.)

The communication then explained that the Province of Canada had not yet agreed to Condition (3), unless allowed to discuss the validity of the Charter. The Imperial Parliament would not discuss the validity question, but any colony might bring the matter before a legal tribunal on its own authority. The option of trying the boundary question only would be submitted to Canada (1).

The Imperial Government had evidently accepted the opinion of the Solicitors of the Crown, and decided to contest the boundary question in preference to the validity question. On January 21, 1858, Labouchere received a communication from the Hudson's Bay Company, accepting all the terms of the renewal of the lease and especially seeking the support of the

British Government and the co-operation of Canada in performing its duties. On January 22, 1858, Labouchere forwarded the following correspondence to Sir Edward Head, Governor General of Canada:

" I do not propose to discuss the question of the validity of the claims of the Company in virtue of their Charter over the whole Territory known as Rupert's Land. Her Majesty's Government have come to the conclusion that it would be impossible for them to institute proceedings with a view to raise this question before a legal tribunal, without departing from the principles of equity by which their conduct ought to be guided. If, therefore, it is to be raised at all, it must be by other parties on their own responsibility.

With regard to Boundary as distinguished from that of Charter, Her Majesty's Government are anxious to afford every facility toward its solution, a mode of accomplishing which is indicated in the correspondence, if such should be the desire of Canada.

But I trust that in any case a machinery may be provided through the course now proposed, which will afford to Canada the means of obtaining any districts which she may require for the purpose of settlement and to which she may be able to afford the benefit of administration and justice."

The British Government then wished Canada to co-operate in the settlement of the Boundary Question by a Judicial Committee of the Privy Council, with the hope that certain lands would be released for settlement by Canada. Had Canadian Statesmen only laid aside their petty party and racial jealousies and accepted this offer, the Southern portion of the Hudson's Bay Territory might have been awarded to Canada. In that case the British Government would probably have offered

a slight compensation to the shareholders of the Company. The Northern portion of the territory would not have been required for many years, and would only have been worth a trifling sum. The purchase price of the West in 1869, \$1,500,000.00, was certainly not excessive, but the granting of one twentieth of the land to the Company has proven a decided handicap in the settlement of the territory. Had Canada not been financially able to take over the administration of the territory and establish communication, the Imperial Government, as Draper proposed, would probably have assisted in making an 'ad interim' provision for government. Draper in his report to the Canadian Government had favoured contesting the boundary, but the press of the opposition condemned him as a traitor. The Charter, it was contended, was void, and the entire territory should pass to Canada without compensation to the Company. The Government was distinctly at fault in not allowing an open discussion of the matter. Brown and his followers had offered to co-operate. Much of the bitterness and some of the extreme views of the opposition might have yielded in favour of a moderate course.

Unfortunately the Session of 1858 was one of bitter controversy, and every condition unfavourable to useful legislation existed. Wallace describes the situation that followed the election of December, 1857, thus: "The position of the Government, when the Houses met in the Summer of 1858, was, nevertheless, far from comfortable. Though he

had a working majority, the new prime minister was supported by a minority of the Members from his own Province. He had never subscribed to the doctrine of the 'double majority' But it was unpleasant for him to be forced to govern Upper Canada by means of his Lower Canadian majority. The situation gave too much colour to George Brown's charge of 'French domination'." (1)

In the Speech from the Throne on February 26, the Governor General intimated that correspondence and papers re the Hudson's Bay Company would be laid before the House, and the House would consider the proposition made by the Secretary of State for the Colonies in the interests of Canada. But the Assembly was more interested in Her Majesty's choice of Ottawa as the Seat of Government than it was in the expansion of Canada. The Hudson's Bay question was not mentioned until May 3, when Brown moved for a Select Committee to enquire into circumstances connected with the sale of certain lands by the Government on the shores of Lake Huron and Lake Superior to the Hudson's Bay Company (Claim (5) - Chapter I). Macdonald resorted to his old tactics and reminded Brown that he should have asked for the papers to be brought down. Brown replied that he had asked for the papers last Session and that they had been brought down. Macdonald said: "Let it stand over in the meantime." The motion was postponed. On June 30,

(1) Wallace - Sir John Macdonald - p.40-41.

Brown seconded by Dorion, moved that a Select Committee composed of Sicotte, Bell, Dawson, Wallbridge, Carling and Clark be appointed to enquire into and report as to all facts connected with negotiations for the transfer of certain tracts of land on the shores of Lake Huron and Lake Superior to the Hudson's Bay Company. Macdonald seconded by Cartier moved an amendment that the Governor General have an officer transmit to the House all papers and correspondence respecting any grants of land to the Hudson's Bay Company. The Amendment carried. Editorials in the 'Globe' had insinuated that these large tracts of land had been handed over for the nominal sum of £50. as a result of the co-operation of the Government and the Company. An article in the 'Perth Courier' copied by the 'Weekly Globe' of March 19, 1885, asks why the Hudson's Bay Company sent Hector McKenzie down from Fort William to spend two or three weeks in canvassing for Cayley, the Conservative Candidate for Renfrew. There is not sufficient evidence to prove that the Government was acting in the interests of the Company, but their conduct gave room for suspicion.

In April the Board of Trade of the City of Toronto presented a petition, praying "that such measures may be taken as will speedily open up a communication for settlement of and traffic with the Valley of the Red River." (1) On May 21, it was moved by the Honourable Mr. Loranger, and seconded by the Honourable Mr. Sicotte, "That this House will on Tuesday next resolve itself into a Committee to

(1) Journal of Assembly 1858 - p.384.

consider certain proposed Resolutions relating to Prince Rupert's land, the Indian Territory and the affairs of the Hudson's Bay Company." The Motion was not carried out. On July 16 the Amendment of the Opposition that "In the opinion of this House the City of Ottawa ought not to be the permanent seat of Government of this Province," carried by a vote of sixty-four to fifty. The Government, since it had supported Her Majesty's choice of the Capital, resigned. Brown's Ministry was defeated in three days. Macdonald returned to power and by means of the "double-shuffle" avoided an election. However, Brown and his thirteen Cabinet Ministers had resigned, and were without seats for the rest of the Session.

Finally on August 13, the day before Parliament was prorogued, when thirteen of the Reformers were absent and part of the Members had gone home, the House went into a Committee of the Whole to discuss certain Government Resolutions on the Hudson's Bay question. The Honourable Loranger introduced the debate by delivering a long address on the history of the Hudson's Bay Company and Draper's mission. He explained two arguments, generally supported by Canadians, against the validity of the Charter, (1) Could Charles II grant such extensive territory without the consent of Parliament? (2) The French Company of One Hundred Associates had received a Charter over the entire territory in 1627; thus France owned the territory in 1670. Mr. Loranger was very conscientious, and had spared no pains in making his

researches, but he was not a practical politician in the sense that Brown or Macdonald was. The Government had agreed to the following Resolutions:-

- (1) a. That measures be taken to defend the rights of Canada,
b. That this was an opportune date for a final decision on the validity of the Charter and the boundaries of Canada on the North and on the West.
- (2) That the opinion of the Imperial Government be asked for and a definite decision obtained.
- (3) That the Imperial Government decide the boundaries of Canada, Canada being permitted to present arguments against the validity of the Charter.
- (4) If the licence of the Hudson's Bay's Company be renewed, the Imperial Government should reserve certain lands for colonization, if required. Also other persons should be granted a licence to trade, provided such persons observe the laws and protect the Indians.
- (5) Canada should not be required to compensate the Company for such lands the Company withdraws from, but the Company should be allowed to retain or dispose of any lands which they have improved or erected buildings on.
- (6) That a Joint Address of both Houses embodying the foregoing resolutions be presented to Her Majesty.

Mr. Loranger had stated in his Address that the question before the Cabinet was: "Should Canada be a party to an investigation before the Judicial Committee of the Privy Council in which the validity of the Charter was not included, and also would Canada agree to compensate the

Hudson's Bay Company?" There was no debate in the Assembly on the question at issue. The Government resolutions were lacking in decision and evaded the real issue. The aim was to thrust the responsibility upon the Imperial Government.

Mr. Dawson of the Opposition then delivered a lengthy Address, and in amendment proposed the following Resolutions:-

- (1) Resolved that Canada or New France had no limit toward the North except the frozen sea and no limit toward the West except the Pacific Ocean.
- (2) The Charter was granted in lands belonging to France.
- (3) France resisted British encroachment as soon as she knew of them.
- (4) The Treaty of Ryswick 1697 granted the said territory to France.
- (5) In 1713 Treaty of Utrecht granted the country to England. The commission to decide the limits never met.
- (6) For fifty years after 1713 the extent of the actual possession by each of the nations decides its rights.
- (7) The English possessions were only on the coast; the French possessions were in the interior.
- (8) In 1763 by the Peace of Paris New France was ceded to England, reserving to the French inhabitants all the rights and privileges enjoyed by English subjects. This term applied to the Western Territories.
- (9) Canadians, British and French continued the fur trade on a large scale from 1763 to 1821.
- (10) In 1774 members of the Hudson's Bay Company as British subjects entered on trade in the Saskatchewan Valley and other parts of the Canadian Territory.

- (11) In 1812 the Hudson's Bay Company laid claim to the Red River and Saskatchewan Valleys under their original Charter, and attempted to expel the North West Company. Canadian and Imperial authorities decided against the Hudson's Bay Company.
- (12) The Companies united in 1821, and obtained a joint lease of the Indian Territories.
- (13) After 1821 the Hudson's Bay Company allowed the St. Lawrence Route to fall into disuse.
- (14) As the boundaries of the Indian Territories are not specifically defined, the Company has issued maps and circulated propaganda regarding their claims. Thus Canada has been unjustly excluded from a lucrative trade.
- (15) The original Charter is not valid and under the lease of the Indian Territories the Hudson's Bay Company can claim power only over those parts that do not belong to Canada. (Lake Winnipeg and the Saskatchewan River belong to Canada).
- (16) All subjects of Canada should henceforth enjoy the trade of the Hudson's Bay district.
- (17) By the Peace of Paris the Mississippi became the Western Boundary of Southern Canada, and all territory north of the Northern boundary of Louisiana belonged to Canada as far West as the Pacific Ocean.
- (18) That a joint address of the two Houses be presented to Her Majesty, asking that the licence of the Hudson's Bay Company in the Indian Territories be not renewed and that Her Majesty sanction no Act by which the existing territorial rights of the Company be renewed. (1)

Resolutions (5), (6) and (7) contained important evidence in favour of Canada on the boundary question. A Committee did meet after 1713 to decide the boundary between Prince Rupert's Land and the French Territory, but no decision was reached.

The French traders undoubtedly occupied the territory South of the Northern limit of Lake Winnipeg from 1713 till 1763 and the North West Company from 1783 till 1821. The French then had the better claim to the territory by right of occupation.

Mr. Dawson's Resolutions contained useful evidence for Canada, but the Resolutions should have been in concise form, stating definitely whether Canada wished to contest the validity of the Charter or the Boundary Question, and by what means she wished the settlement effected.

D'Arcy McGee, though probably uninformed on the subject, contributed some enthusiasm to the so-called debate, and made an accurate criticism of the parliamentary situation in the words: "We are discussing the fate of an Empire, and half the House is empty. - The matter should have been brought up earlier. These Resolutions were mentioned in the Speech from the Throne. All have waited for them, and now after a six months' Session, when every member is exhausted, on the eve of prorogation we are to vote on the fate of 100,000 aborigines in the West. It is physically impossible to do justice to such an important problem of trade. " He favoured the amendment - Charles II's intention was a coastal and not an inland monopoly; the remains of French forts still testified to French Claims. The closing words were characteristic of the Speaker, and a rebuke to the indifferent members of the Government,"The Canadian

Parliament should declare to this Company: 'We are determined to have no more tinkering on the subject. You have no right to this territory. You are trespassers and we order you to leave immediately'. There is no policy like the bold policy (1).

The original Resolutions carried on a vote of 42 to 23. Had the thirteen leading members of the opposition been present, the vote would have been 42 to 36. According to reports many members were absent. George Brown or one of the missing members would probably have drafted more practical Resolutions that would have appealed more strongly to the House. Evidently all the Government supporters did not accept the Government Policy on this question.

An excuse for the indecision of the Government might be found in the change in the policy of the Colonial Secretary, which will be explained in the following Chapter. But the Government was not justified in shelving the matter. The Government Resolutions declared that the "present" was an opportune time for a final decision in the matter. This was the most important subject before Parliament. The Resolutions should have been introduced at an early date, and each term fully discussed and amended if necessary, in order that the Resolutions, as finally adopted, might represent in concise and definite form the views of the Canadian Parliament. The Resolutions were simply voted on as a whole, with practically no discussion

(1) Weekly Globe, Aug. 20, 1858 - Debates of Assembly.

It is not to be wondered at that the Reformers of Upper Canada sought representation by population or a repeal of the Union.

The Session of 1858 had at least one merit. Members of the Government party were looking to Confederation as a solution of the political situation. Before the "Double-Shuffle" Galt had introduced Resolutions requiring the appointment of a Committee to ascertain the views of the Lower Provinces and of the Imperial Government on a federal Union (1). The Resolutions brought forth a protest from Lower Canada and no vote was taken. After the "Double-Shuffle" Cartier, in announcing the policy of the Cartier Macdonald Ministry, stated: "The expediency of a federal Union of the British North American Provinces will be anxiously considered, and communications with the Home Government and the Lower Provinces entered into forthwith on this subject." (2) Did Cartier and Galt see in Confederation a solution of the expense of governing the North West Territory, of establishing communication, and also of the division of the Territory?

(1) Pope - Life of Macdonald - p.204.

(2) Boyd - Life of Cartier - p.119.

CHAPTER VII

In 1858, under the new administration Sir Bulwer Lytton replaced Labouchere as Colonial Secretary. Lytton favoured contesting the Charter, and for that reason the Canadians considered him more sympathetic toward their cause. Labouchere, who had confined his attention to the boundary, obtained the following terms from Governor Shepherd of the Company, July 18, 1857:

" The Company is willing to submit the question of the boundary to the Judicial Committee of the Privy Council and to yield any lands for colonization, but expects compensation owing to the shareholders. The shareholders invested with faith in the Company's Charter and the Company must protect them." (1)

In the matter of compensation the Company was overstepping its bounds. If the Judicial Committee decided that the original Charter included lands in the immediate vicinity of the Bay only, and that through the union with the North West Company, which had never held any chartered territory, it had extended its trade over the whole Southern district, the directors and not the Imperial Government were responsible. In any case the British Government would probably have granted a small compensation, and the Company was acting on this assumption.

(1) Journal of Assembly 1859. App.7

In view of the opinion of the solicitors of the Crown, Labouchere in wishing to contest the boundary only was probably choosing the more judicious course. A thorough discussion and study of the question had constantly led to an abandonment of the Charter Question in favour of the Boundary Question. Gladstone, the Select Committee, Draper and even George Brown followed this course. Would the Canadian Parliament not have adopted this course too had there only been proper discussion and study of the subject? A London correspondent stated that all the English papers except the "Times" supported Lytton's views, but the editors and the public were in the position of the politicians when uninformed.

In the Autumn of 1858 Lytton evidently communicated with the Company, in the hope of inducing them to consent to a discussion of the validity of the Charter before the Judicial Committee of the Privy Council. The reply of H. H. Berens, Deputy Governor, on October 12, 1858, concluded:

" The Company will not therefore consent to any proceedings to call in question rights so long established and recognized, but will defend themselves against any attempt by Canada to deprive them, without compensation, of territory so long in their possession." (1)

In his communication of November 3, 1858, Lytton again urged the Company to submit to an amicable inquiry before the Judicial Committee of the Privy Council, offering

the following terms:

- (1) The question of the claims of the Hudson's Bay Company to be under consideration.
- (2) The decision of the Committee to form a basis of negotiation, including concessions and claims for compensation.
- (3) If the full claims of the Company are upheld, the British Government will pay the cost. If the Company loses, each party will pay its own costs.

The letter further intimated that the licence could not be renewed without the investigation, and that if the Company declined the offer, a legal conflict would follow. On November 10, Berens replied: "The Company has at all times been willing to entertain any proposal that might be made to them for the surrender of any of their rights or of any portion of their territory, but it is one thing to consent, for a consideration to be agreed upon, to the surrender of admitted rights, and another to volunteer to consent to an enquiry to call those rights into question. To agree to such a procedure would not be consistent with the duty of the directors to the shareholders." (1)

On December 16, Lytton received the following opinion from the Attorney and Solicitor General: "Since the

(1) Journal of Assembly - App.7

Company is not willing to submit the proposed question.....
.....to the Judicial Committee of the Privy Council,
the only course open is for Canada to commence the proceedings by 'scire facias'. Proceedings may be instituted by the Canadian Government in the name of any individual subject of her Majesty." Lytton had inferred that the Canadian Government had expressed a willingness to undertake such proceedings. The solicitors advised obtaining a definite answer from Canada. On December 22, Lytton communicated with Governor-General Head, asking him to submit the correspondence between the Colonial Office and the Company to the Canadian Government, and invite them to take steps to obtain a writ in accordance with the suggestions of the advisers.

On January 28, Lytton notified the Company that their licence over the Indian Territories would be renewed for one year only. Berens, Deputy Governor, replied, declining the offer as the Indians would look forward to the termination of the licence, and the authority of the Company would be weakened. The letter stated the attitude of the Company toward colonization:

" They are willing to concede immediately or gradually.....for purposes of actual settlement, portions of their territory on the Red and Saskatchewan Rivers, which may be available for cultivation and settlement, on equitable principles. They are ready to leave these principles to the decision of commissioners to be indifferently appointed. They are willing, if it is considered desirable, to remain in temporary possession of those parts of the territories until adequate arrangements shall be made for their settlement and administration by some other authority, and to concede in the

"meantime lands to settlers on such terms as may be recommended by Her Majesty's Secretary of State, and in any other way to assist Her Majesty's Government in such ulterior views as they may entertain, whether for the purpose of establishing those territories as an independent colony, or of placing them under the Government of Canada."

The Company was very generous in the offer of its services, but was exacting compensation for every foot of the Red and Saskatchewan Valleys to which it is doubtful if it had any title.

On March 9, Lytton again corresponded with Berens, explaining that the delay was due to the Colonial Office waiting for the decision of the Legislature of Canada regarding contesting the Charter. The correspondence continued: "The late Government.....were willing to test before the Judicial Committee of the Privy Council not the existence but the extent of the rights claimed under the Charter. To this proposal the Company assented. But Canada declined to take part in any inquiry so limited. Whatever the original advantages of such a scheme may have been, the refusal of Canada to take part in the proceedings absolutely nullified it." Communication to that effect was received from Canada on August 16, 1858.

By indifference and devoting their attention to trifling matters the Canadian Parliament had thrown away a golden opportunity. It is true that possibly the majority of the members of the Assembly favoured contesting the Charter, but if men like Macdonald and Cartier had come forward and

explained the opinions of the Solicitors of the Crown, and the change in the opinion of Gladstone and the Select Committee, they could have carried the question. Lytton also mentioned in the communication of March 9 that he was unable to obtain an opinion, regarding contesting the Charter, from Galt, Cartier and Rose, Canadian delegates in London in the Autumn of 1858. These delegates were to interview the Imperial Government on four matters of which the Hudson's Bay Territory was one. Brown was correct when he declared that the Government had no policy on the question.

Edmund

On March 10, Lytton wrote Sir Edward Head that if a decision of the Canadian Government were not received by May 1, the Imperial Government must proceed, though reluctantly, to take steps as to the chartered territory, whether in the way of negotiations, legislation or legal proceedings. On March 18 Lytton again wrote Governor-General Head asking for an immediate answer as the Company would not accept the renewal of their licence for even two years. Finally, on April 10 Governor Head replied that he had repeatedly urged the Executive Council to give a decision. The Executive Council had decided not to advise steps to be taken for testing the validity of the Charter by "scire facias".

The Cabinet was judicious in refusing Lytton's offer, but they should have accepted Labouchere's offer of contesting the boundaries, which was still open. In the

passage of the communication of March 9, already quoted, the Company offered to remain in temporary possession of the portions of the territory available for settlement, whether those portions were to remain independent or to pass to Canada. This offer would have solved the difficulty of Government for Canada until communication was established.

Meanwhile the "Globe" was conducting an educational campaign on the subject. The Charter and the question of its validity was discussed - with arguments on both sides of the case. The resources of the Red River District and the extent of the settlement were discussed evidently with the aim of attracting settlers. The Report of Dawson and Hinds, of the Canadian geological expedition, on the possibilities of the Lake Superior route, was published from day to day. On April 25, 1859, the editor gave vent to his impatience: "Is Canada less able to take charge of the North West than two hundred and seventy-four rat-skin traders living in the City of London?"

The Hon. Van Koughnet introduced the subject in the Legislative Council. He had certainly changed his views since his entry into the cabinet. He now declared that he firmly believed the Charter to be valid and that Canada had no claim to the Great North West. Canada ought not to take legal action in contesting the Charter. Even if she were successful, the territory would belong to England, and England might make a separate colony of it as she had done with British Columbia. His opinion regarding legal

action was undoubtedly correct, but the latter statement was simply an attempt to deceive the members of the Council. The whole course of the Colonial Office indicated that the intention of the Imperial Government was to hand the territory to Canada if she would take the responsibility of governing it. The following address, embodying Van Koughnet's views, was passed by the Legislative Council on April 20, and by the Assembly on April 29:

" Canada ought not to be called upon to litigate the question of the validity of the Charter claimed by the Company, in as much as such portion of Territory as the Charter covers is not part of Canada, and is, if the Charter be invalid, subject to Imperial and not Provincial Control, and that in our opinion the question of the future of that Territory should not be made to depend on the mere legal view which may be taken by a Court of Law on the validity or extent of the Charter, but that there are considerations involved higher than those of strict legal rights, and which can be dealt with by the Imperial Government alone.

That the formation of a British Province on the shores of the Pacific and the prospect of immediate and extensive settlement therein, render it of imperative necessity that the vast extent of country lying between the Province and Canada should come under immediate organization, with a view to colonization.

That while the important object above alluded to can only be accomplished by the interference and action of the Imperial Government, yet Canada feels that as a portion of the Empire in whose rule she rejoices, and from the most direct interest she has in the future of the vast territory contiguous to her on the West, she is justified in urging upon Your Majesty's Government the final disposition of these great questions." (1)

Thus Canada refused to be a party to any negotiations with the Company and contented herself by stating that she was interested in the future of the Territory, and wished the Imperial Government to make an immediate settlement. Resolution I of 1858 declared that measures should be taken to defend the rights of Canada. The Resolutions of 1859 did not infer that Canada had any rights, but merely that she was interested in the Territory.

On April 30, the third last evening of the Session, after the Assembly had concurred in the resolutions, the first discussion of practical value since the opening of negotiations in 1857, took place. The substance of the debate is indicated:-

Macdonald - England should contest the Charter as she has granted it and assigned the boundaries. The Imperial Government should settle the boundaries. It is not wise to submit the validity of the Charter to a purely legal tribunal as the urgent need of the lands for colonization would be overlooked.

If Canada were successful in a contest the land would belong to England, and the boundary would have to be settled. If Canada were not successful, she should have to pay a tremendous sum for the land.

Dawson - It is not advisable to contest the Charter. It would take ten years to accomplish that. In any case the Charter only refers to the shores of Hudson's Bay, and this territory is of little value to Canada. The boundary question is

important. Canada extends to the Rocky Mountains. The Peace of Paris defined the Northern boundary of Louisiana as Canada. The Quebec Act 1774 did not recognize Canada in the West, but since that date Canada has been extended to her original limits by acts of sovereign authority, e.g., (1) In 1783 the King's Commission to Lord Dorchester describes the Southern boundary of Canada as extending to the Lake of the Woods and then due West exactly as laid down on Bouchette's map. (2) The proclamation of 1791 distinctly included in our limits "the utmost extent of the country known by the name of Canada."

United States has grown through westward expansion. Canada will do the same. Canada needs markets for her manufactures. The City of Quebec will be a great commercial centre, and Upper Canada will benefit by the transit trade.

Brown - I regret that the matter comes before the House three days before closing.

Macdonald - What of that?

Brown - The best answer is to be found in the empty benches.

^T
Frumpery matters have taken the attention of the House until ten o'clock.....

He had tried to force the matter but had failed.

He agreed with Mr. Dawson's views, and also with the Attorney-General's views about contesting the Charter, but why had negotiations not been begun, the claims of

Canada forced and an appeal made to the Privy Council. The present Imperial Government was favourable to Canada. Why not act now, as the Imperial Government was likely to change. Four despatches had been received by the Canadian Government, and only one reply forwarded.

Macdonald - What action could have been taken?

Brown - The leader of the Government should have despatched his views to the Imperial Government. The resolutions of last year were too mild. Canada owns all the territory East of the Rocky Mountains.

Macdonald - No use to take an untenable position.

Brown - The question is one of state politics and not legal technicalities.

Macdonald - The Canadian Government desires the matter tried not by a strictly legal tribunal but by a quasi-legal tribunal such as the Privy Council. Canada does not own the West. If the validity of the Charter were swept away the Imperial Government would have to settle the ownership.

Macdonald was probably justified in not stating his view earlier that Canada had no claim to the West. It might have injured Canada's interests and have added to the difficulties of the Colonial Secretary. But, as Brown argued, negotiations could have been attempted. The Colonial office would certainly have preferred an amicable settlement to legal proceedings. Had Macdonald stated the grounds on which he rejected the theory of a Canadian claim to the West, his position would have been stronger.

CHAPTER VIII

The negotiations of 1857 - 59 had failed. The Cabinet had maintained a persistent silence on its policy, but during the practical negotiations in 1869, the Ministers incidentally revealed the reason for their attitude at an earlier date. In a debate in the Assembly in 1864, Macdonald stated that he did not favour Canada taking a definite stand on the boundary as it might mean that Canada would have a Holstein War of her own. In '67 Cartier stated in the Commons: "It had been argued that he was formerly opposed to the acquisition because it would give the Province of Ontario undue preponderance over the other Province, but that argument did not apply now, and the acquisition would not disturb the equilibrium existing under the Act of Union." In '67 Langevin, Macdonald's colleague, also stated in the Commons: "Lower Canada in the past opposed the annexation of the Western Territories because Representation by Population would have endangered her institutions. By Confederation we got rid of those fears. Quebec is now eager to have Canada acquire the Western Territory as it will aid in her own development."

If the boundary had been contested and the

territory south of a line drawn through the Northern limit of Lake Winnipeg declared part of Canada, Upper Canada would have claimed the fertile territory from the Lake of the Woods to the Rocky Mountains as the Ottawa River is the boundary line between Upper and Lower Canada. Lower Canada would have received the territory East of James Bay which is only adapted for fur-trade. When Upper Canada was thus enlarged and included the seven thousand colonists of the Red River District, Lower Canada could no longer deny her Representation by Population. The Reform Party of Upper Canada would then have overthrown the Macdonald-Cartier Government, and would probably have legislated against separate schools and other privileges enjoyed by the Roman Catholic Church. Under the Macdonald administration the French had been unduly favoured in return for their support. Macdonald himself, who had a certain fondness for power, was not likely to take a step that would mean his own overthrow and a further alienation of the two races.

The French would have claimed a part of the Great West for Lower Canada, on the ground that the explorations of their ancestors had established Canada's title to the land. Thus a bitter quarrel, or in Macdonald's words, "A Holstein War" might have arisen. If both the Provinces had agreed on establishing a third Province in the new territory, the new Province, as far as the English population and the immigrants were concerned, would undoubtedly have supported the Reformers as Brown had befriended the Western Cause.

When Brown was a Member of the Coalition Cabinet in 1864 and wished to bury all antipathies, he stated that the negotiations of an earlier date had failed because the Ministry was too weak. Party animosities were too bitter, and the parties were too nearly balanced for the Conservative Ministry to have dealt effectively with the immigration problem, the form of Government in the new Province, and the possibility of an Indian rising. The Provinces were not financially able to establish communication. They were staggering under the debt of their own railways, and a Western line, owing to the rugged character of Northern Ontario, would have been a tremendous expense and brought little return for many years. In the year 1870 the Dominion Government spent \$10,000.00 in establishing a mail service in Western Canada, and the receipts were less than \$100.00. This statement is merely one indication of the expense of opening up the West.

Another factor was also to be considered. In the Red River Colony there were from 2,000 to 3,000 French half-breeds or métis. In 1857 there were four priests and ten oblate missionaries at work in the Colony (1). Interest in the work grew to such an extent that by 1868, West of the Rocky Mountains there were four Bishops, five secular priests, thirty-two oblate missionaries, and the Grey Nuns were established at ten stations. Bishop Taché who had spent his priesthood in the West referred to the

(1) A. G. Morice - Catholic Church in
Western Canada I -
p.248.

proposed Union of Canada and the position of his own people in 1869 thus: "A great number, the majority, dread the change. Many are very reasonable; the country might gain by the change, and it would certainly obtain many advantages which it now lacked; but the population would certainly be the losers.

As we love the people more than the land in which we live, as we prefer the well-being of the former to the splendour of the latter, we now repeat that for our population we very much dread some of the promised changes." (1) Tache's entire work on the North West underates the adaptability of the country for cultivation. In 1857 Bishop Taché visited Rome, France and Canada in the interest of the Colony. His influence in Lower Canada would certainly be opposed to annexation by Canada.

Mr. Maccouin who was in the Colony in 1868 also wrote: "The French party desired to be left as they were or if an annexation had to take place, let it be with United States." (2) G.M.Adam who was with the army in the West in 1870 wrote:

" The French and the half-breeds, who lived by the fur-trade, opposed union with Canada as the Hudson's Bay Company would lose power, and the fur-trade would become less profitable. The French were encouraged by the Church. The French people, jealous of their language, their religion, and their institutions, naturally found support from the Roman Catholics in their desire

(1) Tache - History of North West - p.69

(2) Maccouin - History of Manitoba - p.458

to uphold their racial possessions; and the Church had its own reasons for assuming this position.....
.....
The Romish Priest wished now to exclude the English Protestant that the country might be kept as a preserve for the Church." (1)

If these were the views of the metis and the priests in 1869, they were probably their views in 1857 also, although not openly expressed. The Lower Canadians undoubtedly felt it a duty to protect their fellow country-men on the Red River from the rule of Upper Canada. Cartier, for example, never discussed the question before Confederation, but after Confederation was the prime mover in the question, with William McDougall. However, it is evident that the first argument, the preponderance of Upper Canada after annexation, is more important than the question of the welfare of the metis. E. Porritt has stated the first argument in the words: "The French Canadians blocked all proposals for taking over the territory of the Hudson's Bay Company lest the settlement and development should add to the political power of Upper Canada." (2) Alexander Mackenzie also supports this argument in the lines: "For many years the late Sir George Cartier and his friends resolutely opposed all attempts to open up these regions for settlement, on the pitiful plea that its development would add to the political power of Ontario. The adoption of the Federal System removed all petty objections

(1) G.M.Adam - North West - p.192

(2) Porritt - Evolution of the Dominion of Canada p.185

to the immediate acquirement of these Western lands, which are yet to add so much wealth to Canada." (1)

The early discussion had certain important results. Both British and Canadian statesmen had become well informed on the subject so that negotiations proceeded fairly rapidly in 1868 - 69. The extreme idea of contesting the Charter had given way to the moderate course of contesting the boundaries. The thought of compensation for the Company had grown less repulsive to Canada. But the most important result was the proof, that owing to the peculiar political situation in Canada, the Union Government was unfitted to bear the responsibility of the Western Territory.

In the early sixties political and economic conditions in the British Possessions in North America were very unsatisfactory. The one redeeming feature was the prosperous Colony that had sprung up in British Columbia; the discovery of gold in 1858 had resulted in an influx of miners and settlers so that by 1867 British Columbia had a population of 10,000. The Licence of the Hudson's Bay Company in the Indian Territory had not been renewed, and in this territory, with its ill-defined boundaries, there was practically no authority. In the Red River Colony the power of the Company as a governing body was rapidly declining; in broad daylight the citizens broke open the jail and released their companions. Attempts to establish communication between the East and the West had failed. The North-West Transportation

(1) Mackenzie - Life of George Brown - p.102

Company was incorporated by the Canadian Government in 1859, but made no progress. In 1862 Sicotte and Howland interviewed the British Government on the subject. As a result the Atlantic and Pacific Transit and Telegraph Company was organized by influential capitalists in London. The Company offered to construct a telegraph line from Lake Superior to British Columbia; the Canadian Parliament refused financial assistance as a post road was not included in the plans.

South of the international boundary the American Civil War was in progress. England and the States were not on friendly terms as a result of the Trent affair, the Alabama question, and the supposed sympathy in England for the Southern States. The question in the minds of British Statesmen was: "When the war is terminated, the North will have at her command 1,000,000 trained soldiers. If she loses the Southern States, will she try to repair her loss by seizing the unguarded plains of the Hudson's Bay Company; if she wins, flushed with victory, will she seek expansion along her Northern boundary?"

Once again, in 1862, the Colonial Secretary, the Duke of Newcastle, offered Canada the Red River District. How could the Union Government of Canada listen to such a proposition? With two elections and four Cabinets in three years, it could not legislate for two Provinces, let alone three. There was another solution of the North West situation. If the Union Government of Canada could not annex the territory, a Federal Government of Canada

and the Maritime Provinces might. Lord Monck, who became Governor-General in 1863, received frequent despatches from the Colonial Office, urging him to support any steps toward Union.

Through the gloom of Canadian politics the beam of a better day was slowly but surely penetrating. Canada was fortunate in having two brilliant orators, D'Arcy McGee and George Brown, who never missed an opportunity of laying before their audiences a vivid picture of a great United Canada extending from the Atlantic to the Pacific. In 1858 at a Banquet in Belleville, Brown addressed his audience thus:

" Who can look at the map of this Continent and mark the vast portion of it acknowledging British Sovereignty, without feeling that Union and not separation ought to be the foremost principle with British American Statesmen? Who that examines the condition of the several Provinces which constitute British America can fail to feel that with the people of Canada must mainly rest the noble task, at no distant date, of consolidating these Provinces, aye, and of redeeming to civilization and peopling with new life the vast territories of our North, now so unworthily held by the Hudson's Bay Company? Who cannot see that Providence has entrusted to us the building up of a great Northern people, fit to cope with our neighbours of the United States and to advance step by step with them in the march of civilization? Sir, it is my fervent aspiration and belief that some here tonight may live to see the day, when the British American flag shall proudly wave from Labrador to Vancouver Island and from our own Niagara to the shores of Hudson's Bay."(1)

(1) Lewis - Life of George Brown - p.218-219

In 1859 at a Convention of Liberals in Toronto, attended by five hundred and seventy delegates, a vote on the question of the dissolution of the existing Union was defeated. A vote on the principle of Confederation carried. Isabel Skelton in her "Life of D'Arcy McGee" states the reason: "One of the arguments which carried most weight with the Assembly was that Federation provided for the Future Government of the North West Territory and could thus be seen to be a step toward nationality." (1) Brown explained his attitude toward the resolution in the words: "I do place the question on the ground of nationality. I do hope there is not one Canadian in this Assembly who does not look forward with high hope to the day when the Northern countries shall stand out among the nations of the world as one great Confederation. What true Canadian can witness the tide of immigration now commencing to flow into the vast territories of the North West without longing to have a share in the first settlement of that great, fertile country? Who does not feel that to us rightfully belong the right and the duty of carrying the blessings of civilization throughout those boundless regions, and making our own country the highway of traffic to the Pacific? But is it necessary that all this should be accomplished at once? Is it not true wisdom to commence federation with our own country, and leave it open to extension hereafter if time and experience shall prove it

(1) I. Skelton - Life of McGee - p.374.

desirable? And shall we not then have better control over the terms of federation than if all were made parties to the original compact, and how can there be the slightest question with one who longs for dissolution and the scheme of the day? Is it not clear that the former would be the death blow of the hope of future Union, while the latter will readily furnish the machinery for a great federation." (1)

Meanwhile D'Arcy McGee was addressing audiences in Ottawa, Montreal and Halifax on the foremost aim of the Reform Party, Confederation and Annexation of the Great North West. Wallace has called Brown and McGee "Crusaders" - perhaps it is a name that both would be proud to claim despite their difference in religious views. One of McGee's outstanding addresses was delivered in the Assembly on May 2, 1860, concluding with the great prophecy:

" I look to the future of my adopted country with hope, though not without anxiety; I see in the not remote distance, one great nationality bound, like the shield of Achilles, by the blue rim of ocean - I see it quartered into many communities - each disposing of its internal affairs - but bound together by free institutions, free intercourse, and free commerce; I see within the round of that shield, the peaks of the Western mountains and the crests of the Eastern waves - the winding Assiniboine, the five-fold lakes, the St. Lawrence, the Ottawa, the Saguenay, the St. John, and the Basin of Minas - by all these flowing waters, in all the valleys they fertilize, in all the cities they visit in their courses, I see a generation of industrious, contented moral men, free in name and in fact, - men capable of maintaining in peace and in war, a Constitution worthy of such a country." (2)

(1) Lewis - Life of Brown - p.137-38

(2) McGee - Addresses on British American Union - p.175-76.

Fortunately the period of oratory was soon to give way to a period of action. On June 14, 1864, the fourth Ministry since 1861 was defeated. There was little hope of an election improving the situation. Brown saw that his long-awaited opportunity had come. To Alexander Morris he intimated his views on a Coalition Government. The first cog in the wheel of Confederation was turned on June 17, 1864, when in the St. Louis Hotel at Quebec Brown agreed to co-operate with Galt and Macdonald on the terms: "The Government are prepared to bring in a measure next Session for the purpose of removing existing difficulties by the introduction of the federal principle into Canada, coupled with such provision as will permit the Maritime Provinces and the North West Territory to be incorporated into the same system of Government." Brown was the member who insisted on the provision for incorporation of the North West Territory.

One sees George Brown at his best during his short association with the Coalition Cabinet. His speeches had always rung with force and energy; now they radiated with hope and joy. In Woodstock on July 11, 1864, when re-elected by acclamation, in words that resounded with enthusiasm, he referred to the great work before the Cabinet, first, Confederation, and second, Annexation of the North West. In the following words he depicted the wonderful future of the enlarged Canada: "The truth is that British territories cover a larger portion of North America than the whole

United States, and though a portion of it may never be filled up - although we may not for some time stretch our outposts to the extreme North of our domains - still boundless tracts of fertile lands have yet to be thrown open to settlement and cultivation - exhaustless mineral wealth has yet to be developed and the most extensive and valuable fisheries of the world are those of the North American colonies.....Surely no Canadian has a claim to the name of **Statesman**, who has not looked forward to the day when all the British portions of this continent shall be gathered in one.....
.....But, Gentlemen, the first step towards the accomplishment of all this is to settle our political institutions on a sound and healthy basis." (1)

On July 1, 1864, Mr. Cardwell, Colonial Secretary, forwarded a despatch to the Executive Council of Canada, in which he quoted the resolutions of the Committee of the British House of Commons in 1857, and enquired if the Canadian Parliament would undertake the Government of territory released from the Hudson's Bay Company. He suggested that Canada send delegates to England to discuss the matter before the Imperial Parliament met. In November George Brown sailed for England. Events indicated a need for prompt action. In 1863 an American Scientific Expedition had visited the Red and Saskatchewan Rivers in order to investigate the possibilities of steam-navigation. Newspapers

reported that Congress was considering purchasing the territory from the Hudson's Bay Company. Macdonald declared in 1867: "The Americans are going in singly first; the trapper, then the trader, and by and by the settler. The people of United States are tearing up every line of demarcation between the North West and United States.....
.....We would be false to ourselves, and false to everything that would make us respectable in the eyes of the world if we neglected this opportunity. If we do, it may pass from us to United States. (1)

In 1863 the Hudson's Bay Company sold its entire rights to a new Company under President Watkins. The new Company had certain ambitious schemes for establishing a colony and selling the land to immigrants. President Watkins declared that it would be a disastrous thing to hand the North West Territory to a Country like Canada which could scarcely defend itself. At a later date George Brown referred to his arrival in England at an opportune time. The Colonial Secretary was just concluding negotiations with the new Company for the construction of a telegraph line, on terms unsatisfactory to Canada, Canada's interest in the subject induced the Colonial Office to withdraw the proposition.

In March 1865 a delegation, consisting of Macdonald, Cartier, Galt, and Brown interviewed the Imperial Government on five questions (1) Confederation (2) Defence

of Canada in the event of War with United States (3) Reciprocity (4) Hudson's Bay Territory (5) Political Situation in Canada. In the Autumn of '65 in a two hour address before the Assembly, Brown reviewed his entire connection with the Hudson's Bay question, commencing with the receipt of Ibister's communication in 1847. As a result of the efforts of the delegation of 1864-65 the Imperial Government had ceded its claim, subject to the claims of the Hudson's Bay Company, to Canada. The Canadian Government would now deal directly with the Company. Several Members of Parliament, probably with very just reasons, preferred to have the Imperial Government a party to the negotiations. Two courses were now open to Canada, Brown explained, to contest the boundary and restrict the Company to its original territory, or to purchase the entire rights of the Company. He felt that Canada could undoubtedly claim all the territory that was in the possession of France in 1763, but he preferred the latter course as the early colonists would probably have to depend for support on the fur-trade as well as agriculture.

Future events and the terms of the purchase in 1869-70 indicated that a contest of the boundary would have been advantageous to Canada, provided her case was reasonably clear as leading Statesmen believed it to be. The large tracts of land retained by the Company in the Southern district have to some extent hindered settlement. On the other hand, it is doubtful if it were possible or advisable to have entered into a boundary question at this date. Macdonald and Cartier

would never have supported the proposition as Ontario would have claimed the released territory, and an inter-provincial dispute might have been added to the difficulties of the new Confédération. Even in 1869 Mr. Mills, a loyal member from Ontario, stated in the Commons that the territory belonged to Ontario, and the Dominion Government should purchase it from the Ontario Government. Fortunately he found no supporter for his shrewd proposition.

Toward the close of Brown's Address, the reporter notes that the Members gathered round a table on which was a map of the North West Territory. George Brown explained the limits of the different divisions, and a general discussion followed. This would have been an interesting point at which to conclude the narrative, a picture of Liberals and Conservatives, English Canadians and French Canadians gathered round a map, discussing the future of the North West. But the enmity between Brown and Macdonald had been too great to permit of a permanent Coalition. Brown disagreed with the Cabinet on the question of Reciprocity and resigned in 1866, stating that he believed that Confederation was on such firm ground that his support, as leader of the Reform Party, was no longer required. He has been severely criticised for this act, but while Macdonald was a master of the art of managing men, statesmen of outstanding ability as Galt, Cartier and Donald Smith had had acute disagreements with him. Brown was of an uncompromising disposition.

In 1867 the "most unkindest cut of all" came. The Conservatives decided to rid themselves of their most formidable opponent, and by resorting to every means at the disposal of a political party, caused Brown's defeat in the Riding of Southern Ontario. Thus his connection with the North West question practically ceased.

The foregoing discussion is an evidence that the Acquisition of the North West Territory was directly associated with the Confederation Movement. The desire of George Brown and his supporters for a strong Government, that could overcome the interprovincial grievances and annex the North West Territory, was an important factor in their determination to enter a Coalition Cabinet. The Reformers of Upper Canada, who represented the most progressive part of the population, realized that renewal of the Reciprocity Treaty was doubtful, owing to the ill feeling between England and United States and the growing feeling in favour of protection South of the boundary. Canada must then seek new channels in the West for her trade. The Imperial Government too was not insensible to the danger of American aggression in the West. In 1858 the Colonial Office was indifferent to Galt's proposal of Confederation, but in the sixties every forward step in the movement was applauded by the Home Government. (1)

It is pleasing to note that in the heat of the debate on the final terms of the purchase of the Territory in 1869, the Honourable Mr. Holton reminded the House that:

(1) Wallace - Life of Macdonald - p.48-51.

"If any public man in this country had the credit of initiating the agitation which had led to this result it was George Brown. On him would rest the responsibility, if the measure eventuated unfortunately for the country, and to him on the contrary would belong the largest measure of credit that would appertain to any man, if it proved to be of the highest advantage to the country." (1)

